

The Role of Apparent Volition and Actual Volition in Creation of Legal Acts (Comparative Study in the Civil Code of Afghanistan and Egypt and the Code of Obligations and Contracts of Lebanon)

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Abstract

The volition has fundamental role to create legal actions. In order to create legal acts, in addition to the existence of volition it must be expressed. But in some cases the apparent volition is contrary to the actual volition of the issuing party. In this case, the question arises, which one of them governs on legal relations? If we prefer one of them over the other, what effects will be arranged on it? There are two different theory on this issue. Some scholars say that the actual volition governs on legal relations. The result of this theory is that the contract is not valid if there is no actual volition or it is defective. In opposite to this opinion, some other writers believe in the rule of the apparent volition on legal relations. One effect of this theory is the invalidity of legal acts if the actual volition is defective. In this research we show that Afghanistan's civil code has established the principle of the rule of apparent volition in article 513. But in Articles 493, 497, 594, 700 it has preferred the actual volition. Egyptian civil code has also chosen an amended method from the theory of the rule of the apparent volition and the rule of the actual volition. In this law the main theory is the theory of actual volition but in some cases it has been modified with the apparent volition. The code of obligations and Contracts of Lebanon recognizes the rule of actual volition.

Keywords: volition; apparent volition; actual volition; legal acts.

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