

The Legal Consequences of Failing to Observe the Principal's Interests by the Agent in Iranian Law, with Emphasis on Supreme Court's Unified Ruling No. 847

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Abstract

Matters related to representation, particularly in contractual representation such as agency agreements, hold significant importance due to the extensive scope of contractual discussions. This significance is further highlighted by the large number of legal disputes between lawyers and their principals, which underscores the issue. The obligation to act in the principal's interests is generally addressed within the law; however, there is no precise standard or clear guideline to define the extent of this duty. This lack of clarity often leads to disagreements between agents and their principals regarding whether the agent has complied with this obligation, with the potential for harm to either party. Moreover, no specific legal remedy has been established for such violations. For example, in a case concerning the annulment of a document and declaring a transaction as being contrary to the best interests of the client, the Ninth Chamber of the Supreme Court, in Ruling No. 108/9, ruled in a case where the client filed a lawsuit against the agent for transferring a property at a price much lower than its real value, against the client's interests. Although the power of attorney stipulated that the agent could transfer the subject matter at any price and in any manner deemed appropriate, the court, in overturning the appellate decision, stated: "The appeal's reliance on the premise that determining the client's best interests (as the power of attorney grants the agent discretion to act at any price and by any method deemed appropriate) is within the agent's discretion, is neither justifiable nor reasonable. Accepting this position would contradict the provisions of Article 667 of the Civil Code, and its broad application would constitute an abuse of power, contrary to the latter part of the aforementioned article." This study, through an analysis of the Civil Code, judicial practices, and reliance on the Supreme Court's recent Unified Ruling No. 847, demonstrates that agents are legally bound to fully safeguard the best interests of the principal. However, variations in the scope of authority granted to agents, the nature of representation, and the interpretation of the agents' duties can lead to differences in how this obligation is applied.

Keywords: Principal's Interests, Iranian Law, Supreme Court Unified Ruling No. 847, Judicial Practice

Received: 19 August 2024

Revised: 13 September 2024

Accepted: 26 September 2024

Published: 01 October 2024



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Citation: Keikhayfarzaneh, R., Ghafghazi, A., & Rohany, F. (2024). The Legal Consequences of Failing to Observe the Principal's Interests by the Agent in Iranian Law, with Emphasis on Supreme Court's Unified Ruling No. 847. *Legal Studies in Digital Age*, 3(4), 1-13.

1. Introduction

In the Iranian legal system, representation is recognized as one of the most important legal institutions, where a person, known as the representative, acts on behalf of another person, known as the principal or the one represented, to carry out legal actions. One of the key duties of the representative is to uphold the interests and welfare of the principal, a principle emphasized in the Civil Code in a manner similar to the laws of some other countries. In the Iranian legal system, this duty is addressed in various provisions of the Civil Code, including Articles 667 and 668.

The main issue raised in this context is what enforcement measures are in place in case the representative fails to act in accordance with the principal's interests, and to what extent these measures can protect the rights of the principal. This issue is significant because in many cases, the representative may misuse their powers, taking actions that not only fail to benefit the principal but may even cause harm. In such cases, the legal system must provide appropriate solutions for compensating the damages and protecting the principal. In Iranian law, judicial practices have adopted different approaches in dealing with the enforcement of the principal's interests in cases where the representative fails to act in their best interests. Some court rulings have deemed such actions as invalidating the transaction, while others have only granted the principal the right to claim damages. Furthermore, with the increasing use of representation in commercial and legal relations, there is a growing need to establish effective and efficient enforcement measures to safeguard the principal's interests. This requires a careful study of existing judicial practices and identification of legal gaps.

Another challenge in this field is determining the criteria for what constitutes the principal's best interests and how to assess them. In many cases, determining whether the representative's actions align with the principal's interests is a difficult task and requires a thorough review of the specific circumstances and context of each case. This issue has been addressed in judicial practices, where courts have tried to evaluate the representative's behavior by considering both objective and subjective criteria.

The issue of enforcement in cases of failure to act in the principal's best interests is an important and significant subject in private law in Iran, leading to the issuance of Supreme Court Unification Decision No. 847 on 2024/05/15. The most innovative aspect of this research is the development of objective criteria and indicators for determining the principal's interests in representative relationships. These criteria, combining both quantitative and qualitative factors, provide a scientific and measurable framework for evaluating the representative's actions.

One of the main reasons for addressing this issue is the vital role of trust in representative relationships. Representation is based on the trust the principal places in the representative, and this trust can only be sustained if there are effective and efficient enforcement measures to protect the principal's interests. In the absence of or inefficiency in such enforcement measures, public trust in the institution of representation is undermined, which can have a significant negative impact on the commercial and economic relationships within society. Therefore, studying and reviewing the existing enforcement measures and striving to improve their effectiveness is considered essential.

2. Methodology

The research conducted is of an applied nature, and an analytical-descriptive method was employed to achieve the desired results. Data collection was carried out through note-taking, utilizing library sources.

3. Enforcement of the Obligation to Observe the Interests of the Principal by the Agent in Shia Jurisprudence and Iranian Law

Under Iranian law, the principle is that the agent must conduct all actions for the benefit of the principal and avoid any actions that conflict with the interests of the principal. This principle is emphasized not only as a legal obligation but also as an ethical and fiduciary commitment, forming the foundation for trust and interaction between the agent and the principal (Katouzian, 2013).

The principles of loyalty, fiduciary duty, and good faith are recognized as the core components in agency relationships, requiring the agent to act with care, transparency, and complete honesty in the best interests of the principal. The basis for observing the principal's interests in Iranian law is grounded not only in contractual obligations but also in fiduciary principles and legal doctrines that have been emphasized in the Islamic legal system for centuries.

The most important principle in the relationship between the agent and the principal is the fiduciary principle, which states that the agent is a trustee in the actions and duties carried out on behalf of the principal and must act as a trustee in all circumstances. The agent must avoid any misuse of their position.

This principle is explicitly reflected in the Civil Code and related laws, binding the agent to act in accordance with the principal's interests. Furthermore, the agent must avoid any conflict of interest and, if such a conflict arises, must transparently disclose it to the principal (Bojnordi, 1999).

4. Section One: The Foundations of the Necessity of Observing the Beneficiary's Interests by the Representative in Iranian Law and Shia Jurisprudence

The duty of observing the beneficiary's interests refers to the legal and religious obligation of a representative to act in the best interest of the principal in all actions and decisions. In Iranian law, this duty is an imperative and non-negotiable responsibility imposed on the representative, requiring them to always act in favor of the principal and avoid any actions that conflict with their interests.

In Islamic jurisprudence, the representative is recognized as a trustee and is obligated to act with complete loyalty for the benefit of the principal. This duty is not only a moral obligation but also a religious one, where failure to comply makes the representative liable. Principles such as "Yad Amaniya" (the hand of the trustee) are grounded in the notion that the representative, like a trustee, must act in the best interest of the principal (Estaji Darini, 2001).

In Iranian Civil Law, particularly in provisions related to agency, representation, and trusteeship, the representative is bound to observe the interests of the principal. For instance, Article 667 of the Civil Code stipulates that the agent must consider the principal's interest in their actions and use their authority to further the principal's benefits.

The imperative duty of observing the principal's interests is recognized in Iranian law as a binding and non-waivable responsibility for representatives. This duty obligates representatives to prioritize the principal's interests in all their actions and decisions and to fully and transparently honor their commitments. Failure to comply with this duty can result in legal and ethical liabilities for the representative, potentially leading the principal to demand compensation for damages. Adhering to the duty of observing the principal's interests not only helps protect the principal's rights but also strengthens trust in representative relationships and improves the performance of representatives.

In Shia jurisprudence, the concept of public interest is not an independent source for deriving legal rulings, unlike in Sunni jurisprudence, where public interest is considered an independent source. This is perhaps why Shia jurisprudential texts have not focused on the systematic development of the concept. However, despite this, Islamic law is based on promoting benefits and preventing harm. This implies that the divine purpose behind actions is based on the pursuit of benefit. On the other hand, although public interest is not an independent source for deriving legal rulings, Sharia law reveals the benefits inherent in actions (Allama Hilli, 1998). Public interest can therefore be considered as a condition for the enforcement of a ruling or as a criterion for prioritizing one ruling over another.

Jurists also refer to the first part of two verses (Al-An'am 152, Al-Isra 34) in support of the obligation to consider the benefit and interest of the principal. For example, if a minor becomes of age but is of unsound mind, it is permissible for the guardian to divorce the wife of the minor while considering the minor's best interest. This is because the guardian's actions must align with the minor's welfare. It is not unlikely that the generalities of the verses can be used to support this principle, particularly

regarding the minor's wealth, as indicated by the divine command regarding the protection of the minor's welfare (Khawansari, 1985).

Allama Khoei writes that it is commonly accepted that public interest is a valid consideration in the handling of an orphan's property, and some have even claimed consensus on this point, citing the following verses as evidence. He then presents three interpretations for the meaning of the word "Ahsan." The first interpretation suggests that it refers to superiority or excellence. The second interpretation considers "Ahsan" to mean goodness, similar to the verse: "Relatives are closer to one another in Allah's Book." The third interpretation is the absence of corruption. According to him, if the word "Ahsan" refers to superiority, it implies an absolute preference, meaning that handling the orphan's property is only permissible if it is the best option compared to other alternatives. According to the second interpretation, "Ahsan" refers to what serves the best interest of the orphan, and whenever it does not align with the orphan's best interest, the handling of the property is not allowed (Tuhidi, 1999).

Sheikh Tabarsi, the author of the exegesis *Majma' al-Bayan*, and Sheikh Tusi, the author of *al-Tibyan*, after discussing various opinions about the meaning of contracts in this context, including the view of Ibn Abbas, conclude that the opinion of Ibn Abbas is the most accurate. They state that what is meant by contracts in this verse refers to those agreements that Allah has made obligatory upon His servants to fulfill, including both obligatory and prohibitive acts, duties, and penalties. Thus, this view encompasses all other opinions, meaning that all contracts and oaths must be fulfilled unless the contract pertains to an impermissible act, in which case it is agreed by all scholars that such a contract should not be honored.

From the perspective of Usul (Islamic Jurisprudence), the term contracts in this verse is in the definite plural form contracts which implies a general meaning. Therefore, the term refers to all types of contracts and agreements, including all types of transactions such as sale, peace agreements, lease, agency, sharecropping, profit-sharing, and others. Some interpreters have gone further, asserting that even preliminary conditions are included, and this encompasses contracts between the Creator and the creation, between the Prophet and the community, between the Imam and the people, between spouses, and also includes vows and promises (Tayyib, 1999).

The author of *Zubdat al-Bayan* believes that fulfilling and honoring contracts means acting according to the terms and obligations of the agreement. A contract is a firm and binding pledge made between two parties; therefore, every contract is essentially a promise. However, the reverse is not true. He further adds that it is possible that the term contracts in this context refers specifically to legal or religious contracts, and perhaps the intended meaning is broader, encompassing both obligations and contracts made between people, such as oaths. Consequently, fulfilling all such agreements is obligatory, and the verse in *Surah al-Ma'idah* (1) indicates the necessity of honoring all contracts. From this verse, we understand that the default principle in contracts is their obligatory nature (Muqaddas Ardabili, n.d.).

Conclusion: The verse refers to contracts that are made between parties, implying that the customary practice and the implicit term in these contracts require that the parties respect the interests of one another. In other words, it is understood that anyone who is entrusted with a task by another, either legally or according to a contract, must perform the task with due consideration for the other party's interests. This verse could, therefore, highlight the necessity of an implicit term in contracts to respect the principal's legitimate interests. As such, the obligation to observe the principal's interests, particularly in cases of contractual representation (as opposed to guardianship), is supported by the verse. In Shiite jurisprudence, an implicit term is regarded as valid and enforceable, and various justifications for its validity have been offered. Among the primary arguments is the generality of the verse "Fulfill your contracts" and the well-known Hadith, "The believers are bound by their conditions." Some scholars believe that such implicit terms are recognized based on rational conventions and the practices of reasonable people, meaning that they do not need to be explicitly mentioned in the contract. For example, a transaction might take place without specifying a price, with the market price of the item being used as the implied price, or rational conventions might require that the item and price be free of defects, among other instances that align with the inherent nature of contracts (Khoei, 1999). From this perspective, the legitimacy of such terms does not need separate proof, as their validity is inherent in the general principles governing transactions, as established by the verse and Hadith.

Therefore, it can be argued that the implicit understanding of the term based on rational conventions in society is the basis for the legitimacy of implicit terms in customary contracts. In our discussion about observing the legitimate interests of the principal, specifically in the case of contractual representation, since a contract exists, it follows that, in accordance with the Hadith, the implicit term requires that any representative, like an attorney, must act in the best interests of the principal.

The question arises as to whether the obligation to observe the principal's interests is a foundational element in agency agreements, or if it is an aspect of mandatory legal rules, imposed by law on the agent. It is evident that if we regard this as a contractual foundation, the parties may include an exception and agree, for instance, that the agent may perform the transaction without regard for the principal's interests. Some have argued that judicial authorities believe such an exception goes against the very essence of agency, and it would be void and invalid (Haji Azizi and Etemad, 2015) (Article 233 of the Civil Code). Alternatively, it might be viewed as being contrary to law, public order, good morals, and Sharia, in which case it would be void, but not necessarily invalidating the entire contract. Thus, the obligation to respect the principal's interests is considered a legal obligation with mandatory nature. However, it seems that a provision contrary to respecting the principal's interests does not necessarily relate to public order or good morals, nor is it part of mandatory rules. In practice, respecting the principal's interests is a legal rule designed to protect the principal's benefits, and the principal may waive this privilege and not hold the agent responsible for any shortcomings or excesses in their actions. Nevertheless, any provision contrary to the best interests of the principal would not cover gross negligence or intentional misconduct, as no one can use a contract to harm others. Such a provision would violate public order, and the legislator does not permit such an agreement (Article 975 of the Civil Code).

5. Section 2: The Scope of Benefit in Different Types of Representation

In this section, various types of representatives will be examined, and the scope of the application of the concept of benefit in relation to them will be identified and determined. This is because the duties of each representative differ from one another, and identifying the scope of each representative's duty helps clarify how the benefit rule applies to them, as well as how actions should be carried out (Mousavi Khomeini, 1989).

The broadest scope of the delegation of discretion in executing the provisions regarding the benefit of children is entrusted to their guardians. Children, mentally incompetent individuals, and those with intellectual disabilities are restricted from managing their own assets due to physical incapacity or intellectual weakness. All matters related to them, such as education, training, supervision, decision-making, etc., are entrusted to their legal guardian to ensure comprehensive care and protection. In such a case, the father and paternal grandfather are the legal guardians in the first instance. The most important reason for the involvement of the legal guardian in matters related to children is the protection of their benefit and interest. Shia jurists (Shahid Thani, 1991) regard the father and paternal grandfather as the mandatory guardians for a child under the age of maturity. Similarly, for mentally incompetent individuals or those with intellectual disabilities whose condition began during childhood, they remain under the guardianship of the father and paternal grandfather by the rule of continuity.

In Iranian Civil Law, the legal guardianship of minors and mentally incompetent individuals, whose condition started in childhood, is only recognized for the father and paternal grandfather. Some jurists believe that the guardianship of a person who was once competent and later became mentally incompetent should belong to the ruler (Allama Hilli, 1994). This is because the guardianship over the incompetent individual is due to a lost capacity, and proving it requires a legal basis.

On the other hand, there are no restrictions on the guardian's ability to manage the property of the ward; however, despite the general and broad nature of the legal guardian's authority, the guardian cannot act at will or exercise any form of control over the ward's assets or make any decisions in this regard. The guardian is required to act in a manner that is beneficial to the ward and should avoid taking any actions contrary to the ward's best interest and welfare. Therefore, when we state that the guardian's actions must consider the welfare of the ward, it is necessary to limit the guardian's authority to decisions that align with the ward's benefit. For example, if a person buys property from a legal guardian on behalf of an incompetent individual, the property becomes the buyer's, or if the guardian buys property for the incompetent person, the payment must be made from the ward's property.

Regarding whether the guardian's actions must follow the principle of benefit, or if avoiding harm is sufficient, there is no consistent or fixed opinion. Many jurists, such as Sheikh Tusi (1968), Ibn Idris (1990), Hilli (1988), and Allama Hilli, have stated that the guardian's actions must consider the ward's benefit, with some even claiming consensus on this point.

In the context of marriage, specific rules regarding the scope of benefit have been established in Islamic jurisprudence. For example, the marriage of children before maturity is discouraged. Premarital sexual relations are not permissible, and heavy penalties are imposed if this is violated, such as the payment of compensation for the loss of virginity (Ihra'), and permanent prohibition from marriage in the case of divorce (Bahrani, 1987). It is also impermissible for the guardian to marry the ward off to someone with defects, whether or not those defects are grounds for annulment of the marriage, such as drinking alcohol, engaging in sinful activities, or being foul-mouthed (Imam Khomeini, 2000).

Civil Law also, based on Article 1136, considers full maturity as a necessary condition for divorce, in addition to reason, intention, and consent, without any exceptions. Since divorce is a matter that the individual must decide on personally, the guardian or custodian does not have the authority to make such a decision on their behalf and cannot divorce the wife of the ward on their behalf. Some legal scholars (Safai and Emami, 1999) have not found this legal strictness problematic in cases where the divorce of the wife of a minor is necessary, but they have not provided further explanations for this issue.

The demand for retaliation, blood money, and the pardoning of a criminal are matters that the legal guardian must meet general conditions to be able to demand retaliation, receive blood money, or decide on the pardoning of the criminal. A person lacking mental capacity can either demand retaliation, pardon, or agree to receive blood money. This is because a lacking mental capacity is prohibited from dealing with his own property, but is not prohibited from all matters (Sheikh Tusi, 1988). Therefore, his position concerning the enforcement of retaliation from a murderer is similar to non-prohibited cases, and there is no difference in this regard. Thus, it is permissible to forgive a murderer free of charge or to forgive with the demand for blood money. Similarly, it is permissible to receive blood money from the murderer with mutual consent. However, since the ward cannot manage their property, the guardian must receive the blood money on their behalf.

Civil Law also stipulates in Article 1194 that the father, paternal grandfather, and any guardian appointed by them are called the specific guardian of a child. Article 1217 of the Civil Code also states: "The management of the property of minors, mentally incapacitated individuals, and persons lacking capacity is entrusted to their guardian or custodian, as outlined in Chapter Three of Book Eight and the following articles." Therefore, a guardian can manage the property of a minor, an insane person, or an individual lacking mental capacity whose incapacity is connected to their childhood. The guardianship and the guardian's duties are granted by the legal guardian, and the scope and limitations of their authority are defined by the legal guardian. The guardian's management of the ward's property may be limited to a specific matter. In this case, the guardian will act within the scope of the appointment, and if the appointment is unrestricted, meaning it also applies to the custodian, the guardian must carry out every action that benefits and is in the best interest of the ward, such as renting out property, collecting rent, receiving claims, and paying debts. A hadith from Imam Ali (peace be upon him) states that the guardian is like the father of an orphan (Sheikh Tusi, 1987). The guardian must provide for the ward's needs, such as clothing, household items, and necessities, in accordance with the ward's family and social status, provided that the financial condition allows it. Furthermore, the guardian must pay for the maintenance of the ward's relatives, as the responsibility for fulfilling the ward's financial obligations lies with the guardian, just as they are responsible for paying the ward's debts.

Legal representation is not generalized, but exists in a specific sense based on law. The law has explicitly defined the manner of appointing such a representative, and once chosen, the representative must carry out their duties according to the law. Examples of such legal representation include ministers, members of parliament, directors of non-commercial institutions, heads of organizations, and similar cases, all of which involve specific legal representation, not compulsory. We will focus on the issue of directors of non-commercial institutions and organizations, as ministers and members of parliament fall under public law.

Shiite jurists accept the authority of the judge, citing the prophetic hadith “The ruler is the guardian of those who have no guardian” (Allama Hilli, 1995). As a result, the religious ruler can personally take charge of the guardianship of the ward or appoint someone to manage their affairs. The appointed person is a representative of the ruler, and their authority is defined by the ruler. Whenever the judge wishes, they can appoint someone else in place of the guardian or assume control of the ward’s affairs themselves. From the perspective of Iranian law, an important point in the transactions of a custodian is that for some transactions, the custodian must obtain permission from the public prosecutor. Some transactions do not require permission, and some are prohibited. For example, transactions by a custodian with the ward, if they involve transferring property between them, are generally prohibited to prevent misuse by the custodian and harm to the ward.

In the jurisprudential view on transactions, the general principle of considering the ward’s best interests is observed. If we suffice with the custodian’s responsibility and the existence of benefit in managing matters, it is not illogical to say this; however, the specific legal principles regarding guardianship in the law are not as explicitly detailed in jurisprudence (Isfahani and Mousavi Khomeini, 2001 - Sabzevari, 1994).

Since in Islam, the property of a Muslim is considered as sacred as his blood, and its waste is prohibited, as is the unauthorized taking of it without the owner’s consent, it is not permissible to seize someone’s property or divide it among their heirs simply because they are missing. Therefore, if the missing person has designated someone to manage their financial affairs before their disappearance, such as appointing an agent to handle specific matters, that agent will manage the affairs within their scope of authority. Alternatively, if there is someone designated by law to manage their assets, such as a guardian or curator, then the missing person’s property will be administered under their supervision. In both cases, the agent, guardian, or curator will perform their duties in the usual manner until the missing person returns, their death is confirmed, or a declaration of presumed death is made. Thus, the agent, guardian, or curator is considered a representative of the missing person and is obligated to carry out all duties in accordance with Islamic jurisprudence and the law, always considering the best interests of the missing person.

The second stage involves managing the property after a period of time has passed, during which the absent person is no longer presumed alive. If their death is confirmed, the matter is clear; the difficulty arises when the person’s death is not certain. In such cases, the court issues a judgment of presumed death, transferring the property into the definitive possession of the heirs. In the absence of a declaration of presumed death, the presumption of life, based on the principle of continuity (*istishab*), applies, and the legal effects of being alive continue to be attributed to the missing person. Therefore, the legislator, in order to protect the rights of the heirs, has foreseen the presumed death of the missing person and the transfer of their property to the heirs under certain conditions (Safaei and Qasemi Zadeh, 2024).

It is worth noting that, with regard to the subject matter being discussed, there is no specific, independent discussion in Islamic jurisprudence. In most jurisprudential texts, this matter is intermittently addressed, often concerning the purchase of defective goods or selling below the fair price through an agent. It seems that considering the agent’s role as a trustee, who is required to act with care and integrity, one should take into account the conventional behavior expected from the agent. If the agent has acted in a manner that is consistent with this expectation, even if the transaction goes against the best interests of the principal, the transaction would still be valid. Expecting the agent to act beyond the role of a responsible trustee would, in itself, go against the best interests. Conversely, if the agent acts against the principal’s best interests and the transaction results in harm to the principal, the transaction would be considered an unauthorized act (*fasid*) and invalid. Therefore, the standard for determining a lack of regard for the principal’s best interests is ultimately a measure of the “tolerable loss” for a reasonable person. “Tolerable loss” refers to the extent to which the typical profit of a contractual relationship can be sacrificed for the completion of that transaction.

In the Civil Code, the agent is also obliged to act in the best interests of the principal and not exceed the scope of the authority granted. Article 667 of the Civil Code states: “The agent must take into account the best interests of the principal in their dealings and must not exceed what the principal has explicitly authorized or what is typically understood as part of the agent’s authority according to custom and usage.” Article 666 of the Civil Code considers the consequences of failing to consider the

best interests of the principal, stipulating: “If the agent’s betrayal of the principal is proven, such as collusion with the other party leading to the loss of the principal’s rights, the agent will be permanently disqualified from practicing law, and the principal may claim damages from the agent.”

6. Section 3: Explanation of Supreme Court’s Unification of Precedents No. 847 dated 2024/05/15 regarding the Consequences of Failing to Consider the Client’s Interest

In Iranian law, the prevailing judicial practice on various subjects plays a crucial role. Since there has been a divergence of opinions among courts regarding the consequences of failing to consider the client’s interests by the agent, and since courts have provided various interpretations of cases concerning the observance or non-observance of the client’s interest, the Supreme Court issued Unification of Precedents No. 847 by the General Assembly on 2024/05/15, which clarified the necessity of considering the client’s interests (the principal).

The basis and reason for issuing Unification of Precedents No. 847, dated 2024/05/15, arose from the differing interpretations of Article 667 of the Civil Code by the 5th branch of the Court of Appeal of Kohgiluyeh and Boyer-Ahmad province and the 59th branch of the Court of Appeal of Tehran province regarding the invalidation of a contract due to the agent’s failure to consider the client’s interests.

Given the importance of the matter, the text of the unification of precedents is first presented:

A) According to the judgment No. 140041390001770007, issued on 13/10/1400 by the Third Civil Court of Gachsaran, concerning the lawsuit filed by Mr. Ali Akbar... and Mrs. Kukab... represented by Mr. Mohammad... against Mr. Mohammad... and Mr. Benyamin... seeking the annulment of a formal sale contract due to the agent’s failure to consider the client’s interests, the court ruled as follows:

“... The court, taking into account the contents of the submitted petition, the statements of the plaintiff’s lawyer, the defense of the second defendant, and the official document No. ... which indicates [that] the power of attorney granted by the plaintiffs regarding the land in question is absolute, with the authority to perform any transaction for themselves or anyone else at any price, and considering the principle of freedom, validity, and necessity of contracts, finds the plaintiff’s request unjustified and, based on Articles 10, 219, 220, 223, 656, 660, 663, and 667 of the Civil Code and Article 197 of the Code of Civil Procedure of General and Revolutionary Courts in Civil Matters, rejects the plaintiff’s claim and declares...”

Upon appeal, the 5th branch of the Court of Appeal of Kohgiluyeh and Boyer-Ahmad province, in its judgment No. 14004139002284110, issued on 25/12/1400, ruled as follows:

“... After reviewing the appeal petition, the court finds that the agent had the duty to consider the client’s best interests. By transferring the property at a negligible price of 350,000 tomans, the agent undoubtedly failed to act in the best interest of the clients, and the buyer, aware of the transaction’s low price, was aware of the agent’s bad faith. Therefore, based on the foregoing, the court deems the appeal justified, and pursuant to Articles 667 and 1257 of the Civil Code and Articles 358, 515, and 519 of the Code of Civil Procedure, annuls the lower court’s judgment and rules to invalidate the sale contract in question and orders the payment of litigation costs at both the trial and appeal stages, including court fees and the lawyer’s fee in favor of the plaintiffs.”

B) In accordance with the judgment No. 9409970237800291 dated 04/02/2015, issued by the 50th Branch of the Tehran General Court, regarding the lawsuit filed by Mr. Ali... represented by Mr. Javad... and Ms. Sara... against Mr. Hossein... requesting the annulment of the official deed due to the lawyer’s failure to observe the client’s interests, the court has ruled as follows:

“... After reviewing the contents of the case, the court has reached the following conclusion: Firstly, according to Article 10 of the Civil Code, private contracts are binding on both parties unless they are explicitly against the law or public order. The content of the power of attorney indicates that the client explicitly authorized the lawyer to set any price, and as per the legal

principle, the client acted against their own interests by doing so. Secondly, the plaintiff's lawyers have not raised any objection or doubt regarding the signature at the bottom of the power of attorney where the plaintiff granted the authority to set the price to the defendant. Thirdly, the claim of annulment based on non-payment of the price, either affirmatively or negatively, has no merit. According to Article 190 of the Civil Code, the validity or invalidity of the contract is determined at the time of the contract, irrespective of the payment of the price. Additionally, the claim regarding the lawyer's failure to protect the client's interests is not valid, considering that the client had explicitly authorized the lawyer to set the price. In such cases, the owner is not involved in the transaction until after it has been completed and cannot object to the price or type of sale. In this case, the plaintiff had authorized the lawyer to set any price before transferring the deed, so the question of ratification or non-ratification of this transaction does not apply. Fourthly, customary interests, in accordance with Article 959 of the Civil Code, have been respected, as the law permits partial forfeiture of rights. The authority to set the price granted to the defendant is a partial forfeiture of rights, which the legislator has accepted based on legal articles and Islamic jurisprudence principles (principle of action). Fifthly, if there had been a disagreement on the price, the customary price could have been specified in the power of attorney, but this option was not utilized. Therefore, the court finds the plaintiff's claim to be without merit and, according to Article 1257 of the Civil Code, rules to dismiss the plaintiff's case."

Upon appeal of this decision, the 59th Branch of the Tehran Court of Appeal, in its judgment No. 9409970270400960 dated 11/08/2015, has ruled as follows:

"... After careful review of the case contents, considering that, according to the official power of attorney No. ..., dated 07/06/1989, the appellant granted the authority to transfer all rights related to the aforementioned apartment to the respondent for any price, and the transfer of the apartment was carried out based on the powers granted in the power of attorney, the court concludes that the appellant has not presented any valid objection or reason that would require the annulment of the judgment. Furthermore, no procedural errors have been observed in the lower court's judgment. Therefore, in accordance with Article 358 of the Code of Civil Procedure, the appeal is rejected, and the judgment of the lower court is upheld in full." As observed, the Fifth Branch of the Court of Appeals of Kohgiluyeh and Boyer-Ahmad Province and the Fifty-Ninth Branch of the Court of Appeals of Tehran Province have divergent views regarding the annulment of a transaction based on the failure to observe the interests and welfare of the principal by the attorney. This divergence stems from different interpretations of Article 667 of the Civil Code. The Fifth Branch, upon finding that the interests of the clients were not observed, issued a ruling declaring the sale contract void. However, the Fifty-Ninth Branch considered the full transfer of all assumed rights to be within the authority granted by the power of attorney and ruled to dismiss the plaintiff's claim.

According to Article 247 of the Civil Code, enacted on 18/02/1307, performing a transaction on behalf of another person through a power of attorney is permissible. On the other hand, under Article 667 of the same law, the attorney is obligated to act in a manner that protects the interests of the principal and must not exceed the powers explicitly granted or implied by the circumstances, custom, or practice. Therefore, when a person delegates the authority to sell their property to another and specifies in the power of attorney that the attorney has the right to sell the property at any price, the phrase "at any price or to any person, including themselves" is understood to refer to the customary price. If the attorney sells the property at a price considered significantly low or an unacceptable price (i.e., under the concept of "unreasonable price"), it is considered an unauthorized act, and by analogy with Article 1073 of the Civil Code, the transaction will be annulled unless confirmed by the principal.

At the outset, it is stated that this precedent pertains to general powers of attorney in which the attorney is granted full discretion by the principal to transfer property to any person, under any condition, and at any price that the attorney deems appropriate. For example, when a principal is abroad and has granted a general power of attorney to someone to manage all their properties, the attorney can make decisions as necessary. Therefore, in cases where the purpose of the power of attorney is not a simple one and includes authority over sales or the granting of specific rights, the attorney is considered to be the de facto owner and is naturally not bound by the requirement to observe the principal's interests, having the right to dispose of their own property in any manner they choose. As a result, this does not apply to powers of attorney granted with the intent of specific transactions.

Second, in order for the precedent to apply, the attorney must have full authority, meaning the assumption is that the attorney has a mandate with full powers. As we know, in Islamic jurisprudence, powers of attorney are divided into “mandate” and “delegated” categories. In a delegated power of attorney, jurists hold that the attorney is considered as the owner and may exercise any disposition they see fit. Thus, if it is clear that the principal intended for the attorney to engage in actions such as waiving the property, gifting it, or making a charitable donation, this type of power of attorney falls outside the scope of the aforementioned precedent.

This position has been reiterated in a legal advisory opinion from 1391 issued by the Legal Department, which states: “The attorney must act in the best interests of the principal; otherwise, the transaction is not valid unless explicitly stated otherwise in the power of attorney.” Contemporary jurists, including Ayatollah Makarem Shirazi and the late Ayatollah Hashemi Shahroudi, have expressed the same view in a fatwa, stating: “In the case where the attorney sells the subject of the power of attorney at an unreasonably low price, the transaction is not valid unless it is proven that the sale was specifically authorized, even at such a price.” Therefore, in cases where it is clear that the principal’s intention in granting the power of attorney was to allow the attorney to make any kind of disposition, including gratuitous or nominal transactions, this falls outside the scope of our discussion. Thus, our focus is on the “delegated power of attorney” or, as commonly referred to, a “power of attorney with the attorney’s discretion.”

As previously mentioned, there has long been a debate in judicial practice regarding whether the attorney is required to consider the interests of the principal or not. We noted that there are two perspectives on the matter. Some, based on the principle of freedom of will and Article 10 of the Civil Code, believe that the attorney has the authority to act on behalf of the principal with any price and condition, and that such actions are valid without the need to consider the interests of the principal. Even if the attorney disregards the principal’s interests, the principal has acted against their own interests, and thus the attorney bears no responsibility, and the transaction is naturally valid. The second perspective holds that, in this case, the attorney has a duty to consider the principal’s interests, and failure to do so would render the transaction invalid.

There is no doubt that the attorney must consider the principal’s interests, but what has caused controversy is how to address specific cases. Sometimes, the attorney acts on behalf of the principal, transferring the subject of the power of attorney in a manner or at a value that, although the power of attorney may be general, is clearly against the interests of the principal. The issue is whether such an action, based on the principal’s authorization and the powers granted, should be considered valid, or whether it should be invalid due to the failure to consider the principal’s interests. There may also be concerns about the rights and claims of third parties involved, which go beyond the issue of the principal’s interests. What is the solution to this matter?

The Supreme Court’s general assembly, in its ruling, has stated that if the attorney fails to consider the principal’s interests as required by Article 667 of the Civil Code, the principal has the right to rescind the transaction and request the annulment of the sale. This ruling carries the conclusion that even in the case of a general power of attorney, the attorney’s actions are still contingent upon the consideration of the principal’s interests. In reality, the issue in this ruling pertains to a legal doubt rather than a factual one. The dispute concerns the interpretation of Article 667 of the Civil Code and related provisions, such as Article 1073. The disagreement centers on whether a transaction in which the principal’s interests are not considered is fundamentally valid or invalid. The Supreme Court rightly ruled that the interpretation of Article 667 means that the transaction is invalid, which provides guidance to the courts. However, the main issue that has left judges confused is how to apply Article 667 to specific cases, rather than determining the general rule. After all, the general rule is clear: if the principal’s interests are not considered, the principal has the right to annul the transaction. This is also reflected in Article 1073 of the Civil Code, which deals with marriage (and is widely understood as a general rule, not specific to marriage).

The issue is, however, determining when the principal's interests have been respected and when the agent has acted contrary to those interests. For example, if an asset worth one billion tomans is sold for one hundred million tomans, has the principal's interest been respected? What if the asset is sold for five hundred or six hundred million tomans? Or if the principal instructs the attorney to sell the asset for a price between one million and one billion tomans, but the attorney sells it for ten million tomans, can the principal annul the transaction? These are some of the criticisms raised against the ruling, especially in cases where the power of attorney is irrevocable (with full authority), which implies that the principal authorizes the attorney to perform transactions. If the attorney engages in transactions with other parties, how can we protect third parties acting in good faith from the risk of having their transactions annulled, while also maintaining the stability of transactions?

Thus, while the general ruling effectively resolves the legal ambiguity, it does not address the factual issue of whether the principal's interests have been respected in a specific case. The judge must decide based on the circumstances of the case. Therefore, it seems that the recent ruling has not introduced a new or significant development to the legal community.

Regarding the Role of the Lawyer's Malice in Transactions Where the Client's Interest Was Not Observed

It is also worth discussing that in the case where the client's best interest is not considered, the criterion for the decision in the uniformity ruling has been the client's interest. The court did not make a distinction between the client's malice or good faith when the client's best interest was disregarded. On one hand, it can be argued that the failure to observe the client's interest implies a certain malice because it is believed that rights protect a transaction in which economic balance is maintained. Now, if a contract is concluded and the client's best interest is not respected (meaning that the interest was clearly ignored, not merely partially disregarded), there are two possibilities: either there is collusion (malice), which is often the case, and proving malice is sometimes difficult. This must be inferred from specific circumstances, such as when a property worth ten billion tomans is transferred to the lawyer, their relatives, or a third party for six billion tomans, where malice is implied, and the transaction is subject to annulment. The other possibility is that the lawyer had no malice, but the issue was a lack of adequate knowledge, and the counterparty took advantage of this deficiency. For example, if the lawyer was unaware of the current market price of the subject matter of the power of attorney, in this case, the transaction would also be considered subject to annulment.

Therefore, regarding whether the lawyer's actions were intentional or unintentional, as the court practice shows, there is no distinction between these two cases. The Supreme Court also considers this approach correct and does not engage in this debate. In our view, this method is correct because when discussing the relationship between the lawyer and the client, there is no difference between intentional and unintentional actions. The authority granted to the lawyer is conditioned upon the lawyer observing the client's best interest. If this best interest is not observed (whether intentionally or not), the transaction is voidable, and the main criterion for validity is whether or not the client's best interest has been respected.

Another Issue Regarding the Uniformity Ruling: Protecting Third-Party Rights

An issue that has unfortunately not been addressed in the ruling concerns the protection of third-party rights. Several assumptions can be considered here:

1. If the lawyer does not respect the client's best interest and transfers the subject of the power of attorney to themselves, there is no doubt about the invalidity of the transaction.
2. If the lawyer transfers the subject of the power of attorney to their close relatives, in this case, failure to observe the client's best interest is presumed.
3. If the lawyer transfers the property to third parties who were aware of or could have reasonably been assumed to be aware of the failure to observe the client's best interest (for instance, if the transaction was made at a nominal price or for an inadequate price), in this case, the third party's rights, being based on bad faith, do not take precedence over the client's rights.

4. Regarding the Power of Attorney, Transfer of Possession, and Third-Party Rights

In the case where the power of attorney has been transferred multiple times to different individuals and the client's best interest has not been considered, the question arises whether the client's rights should take precedence over the rights of third parties. The prevailing practice in the courts is that the property is considered lost, especially if the subject matter of the power of attorney was transferred via a formal deed and has undergone several transfers. The proposed amendment to Article 323 of the Civil Code, which was introduced in 2019, states that if a stolen property is transferred by a formal deed, it is considered to be lost. Therefore, the client can claim compensation for the property's replacement, either from the lawyer or from a purchaser who acted in bad faith, following the principle of wrongful possession or the principle of "Ali al-Yad."

A Further Issue Regarding the Uniformity Ruling: The Absence of "Customary Behavior" Consideration

A further shortcoming of the uniformity ruling is the failure to address "customary behavior of persons." It was necessary for this criterion to be included in the ruling so that courts could use it when applying the judgment to a case, thereby taking into account the usual conduct of both the lawyer and third parties. Given the practical nature of this issue, one might wonder, if we accept that the transaction is voidable, what would the client seek in this case? Would the client request a declaration of invalidity or annulment of the transaction? In our opinion, it is preferable for the client to file a lawsuit for the declaration of the invalidity of the transaction and the annulment of the formal deed (in case a formal deed has been executed).

7. Discussion and Conclusion

This research examined the consequences of the failure to observe the best interest of the client (or "principal") by their representative under Iranian law, with a focus on the Supreme Court's ruling No. 847. The obligation to consider the best interest of the principal is one of the fundamental principles in agency relationships, and its violation can lead to serious breaches and both financial and non-financial damages. Analysis shows that the Iranian legal system, inspired by Shia jurisprudence, emphasizes principles of loyalty, trustworthiness, and the avoidance of conflicts of interest. However, when it comes to observing the best interest, decisions must be made according to the specific context of each case.

As an agent, the representative is obliged to act in good faith and with full transparency for the benefit of the principal. These duties are emphasized not only in the laws and regulations but also in judicial practices. If the best interest of the principal is violated, the representative is liable for the damages incurred. This legal remedy is designed to protect the rights of the principal and prevent potential abuses by representatives. The representative should not find themselves in a position where their personal interests conflict with the principal's interests, and if such a situation arises, they are required to disclose it to the principal.

In Iran, although judicial practices are important, the foundations of Islamic jurisprudence and civil law play a more significant role in determining the duties of agents. In Iran, the duties of agents are largely based on laws and interpretations of Islamic jurisprudence, with courts playing a supporting role in clarifying these obligations. In jurisprudential texts, the issue is often discussed in relation to the purchase of defective goods or the sale of goods at less than the market value through an agent. It seems that, given the notion that the agent is considered a trustee and must maintain trustworthiness and act diligently, the customary behavior of the agent should be taken into account. Even if a transaction turns out to be contrary to the principal's best interest, if the agent acted in a trustworthy and responsible manner, the transaction should be considered valid. Expecting the agent to act beyond the duties of a loyal trustee would be contrary to the principal's interest. On the other hand, if the agent acts against the principal's best interest and consequently a transaction occurs contrary to the principal's best interest, the transaction is considered voidable and invalid. Therefore, the standard for failure to observe the best interest, as mentioned, is a reflection of the "tolerable harm for a reasonable person." The tolerable harm refers to the extent to which a reasonable person would accept sacrificing the usual benefits of a contractual relationship in order to complete the transaction.

Based on the analysis conducted, recommendations for improving and strengthening the enforcement mechanisms regarding the consideration of the principal's best interest in both legal systems can be made. It is suggested that independent regulatory bodies or specific oversight committees be established to assess and monitor the performance of agents. These bodies could act as intermediaries between the principal and the agent, continuously evaluating the agents' actions. The use of modern technologies, such as performance management systems, reporting software, and online monitoring, could help increase transparency and accuracy in overseeing agents' activities. These systems could enable real-time reporting and access to precise data. Comprehensive and clear standards for evaluating the performance of agents should be developed and regularly updated. These standards could serve as criteria to assess how well the principal's best interest is observed and to monitor the agents' performance. It is also recommended that the laws and regulations related to agency be more clearly and precisely drafted, with an emphasis on the principles of loyalty and trustworthiness. This clarity could help prevent varied interpretations and reduce violations.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

Acknowledgments

Authors thank all participants who participate in this study.

Conflict of Interest

The authors report no conflict of interest.

Funding/Financial Support

According to the authors, this article has no financial support.

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