

Revisiting the Doctrine of Ghurūr in Imāmī Jurisprudence and the Four Sunni Schools: The Impact of the Deceived Party's Knowledge and Ignorance on Possessory Liability (Ḍamān al-Yad), with a Critical Analysis of Iranian Judicial Practice

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Abstract

Ghurur (deception) in Islamic jurisprudence addresses the liability of a person who, by creating customary trust, leads another to a harmful act. The main issue is the impact of the deceived person's knowledge and ignorance on the establishment of liability of possession (Daman Yad) and the scope of the deceiver's responsibility. This study re-examines the jurisprudential foundations of Ghurur in Imami jurisprudence and the four Sunni schools, determining the effect of the deceived person's knowledge and ignorance on the distribution of liability, while critiquing Iranian judicial practice. A descriptive-analytical method with an inferential and comparative approach was employed. In Imami jurisprudence, the deceived person's non-negligent ignorance establishes ultimate liability on the deceiver, although initial liability of possession remains with the deceived person. In cases of knowledge or negligent ignorance, recourse to the deceiver is barred or limited. In Hanafi and Maliki schools, "generic deception" (taghrir naw'i) and customary criteria play a more prominent role, sometimes maintaining liability even with the deceived person's knowledge. Iranian judicial practice, by failing to distinguish between initial possession liability and ultimate responsibility, has issued inconsistent rulings. Distinguishing between the two stages and precisely considering the deceived person's degree of awareness is necessary for jurisprudential coherence and alignment with legal principles.

Keywords: : Ghurur, Daman Yad, Knowledge and Ignorance of the Deceived, Comparative Jurisprudence, Iranian Judicial Practice.

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1. Introduction

The rule “al-ghurūr lā yusqīṭ al-ḍamān” (deception does not nullify liability) and traditions such as “man gharra ghayrahu fa-huwa ḍāmin” (whoever deceives another is liable) have long been the basis of civil liability arising from deception in Islamic jurisprudence. However, the main complexity appears when the deceived party (maghrūr) is himself aware or semi-aware. If the deceived party has detailed knowledge of the truth, can he still have recourse to the deceiver (ghārr)? Or is his ignorance a condition for the realization of ghurur? This question becomes doubly important in interaction with the institution of ḍamān al-yad (the rule “alā al-yad mā akhadhat ḥattā tu’addī” — the hand is liable for what it takes until it pays); because the deceived party may initially dominate the property as a “hand” and then suffer loss.

A review of the research literature shows that studies have been conducted on the rule of ghurur (e.g., Safaei, 1385; Katouzian, 1390; Muhaqqiq Damad, 1395), but most of them have either analyzed it merely within the framework of French civil law or, in Imāmī jurisprudence, have not examined the effect of degrees of knowledge and ignorance comparatively with the four Sunni schools. Also, no research has systematically criticized Iranian judicial practice in distinguishing between ḍamān al-yad and the deceiver’s responsibility based on the epistemic state of the deceived party. This is the research gap that the present study seeks to fill.

In the Iranian legal system, Article 1 of the Civil Liability Law and Articles 308 and 311 of the Civil Code implicitly refer to ghurur, but judicial practice has suffered from inconsistency in distinguishing between the initial possessory liability (the deceived party’s responsibility toward the original owner) and the ultimate responsibility of the deceiver (the deceiver’s responsibility toward the deceived party).

Research Questions:

What effect does the knowledge and ignorance of the deceived party have on the establishment of possessory liability and the final distribution of responsibility between the deceiver and the deceived in Imāmī jurisprudence, the four Sunni schools, and Iranian judicial practice? What criterion do the four Sunni schools provide for generic deception and the effect of the deceived party’s knowledge? In what respects does Iranian judicial practice conform to or conflict with jurisprudential foundations?

Research Hypotheses:

In Imāmī jurisprudence, the non-culpable ignorance of the deceived party causes the complete transfer of ultimate liability to the deceiver, while the deceived party’s detailed knowledge causes the right of recourse to fall. The Ḥanafī and Mālīkī schools, unlike the Imāmī and Ḥanbalī schools, consider the deceiver liable even in the case of the deceived party’s general knowledge, due to generic deception. Iranian judicial practice has often, by conflating the stage of establishing possession and the stage of recourse, reached results inconsistent with jurisprudential foundations.

The main objective of the research is to present a differentiated jurisprudential-legal model of the degrees of knowledge and ignorance of the deceived party in the doctrine of ghurur, in order to reform judicial practice.

The structure of the article is as follows: after the introduction, Section 2 addresses the background and research gap. Section 3 explains the research method. Section 4 is devoted to concepts and theoretical foundations (definition of ghurur, ḍamān al-yad). Section 5 analyzes the Imāmī jurisprudential view by distinguishing three main hypotheses. Section 6 provides a comparative analysis with the four Sunni schools. Section 7 criticizes Iranian judicial practice, and finally conclusions and suggestions are presented.

2. Background and Research Gap

Previous research on the rule of ghurur can be divided into three categories:

First category: Imāmī jurisprudential studies without a comparative approach. Works such as “The Rule of Ghurur in Imāmī Jurisprudence” (Muhaqqiq Damad, 1395) and “Civil Liability Arising from Ghurur” (Safaei, 1385), although they have well explained the foundations of the rule, have not engaged in a systematic comparison with the four Sunni schools and have neglected the analysis of the effect of degrees of knowledge and ignorance of the deceived party on ḍamān al-yad.

Second category: Comparative studies with Western law. Some studies (such as Katouzian, 1390) have compared the rule of ghurur with the theory of “civil liability arising from reliance” in French law, but they lack a jurisprudential analysis of the differences among Islamic schools.

Third category: Studies of judicial practice. The few studies that have addressed Iranian judicial practice (such as some articles in the magazine *Qadāvat*) are mainly descriptive and have not engaged in a fundamental critique of the separation of the stages of liability and the effect of the deceived party’s knowledge.

The main gap is that no research has systematically addressed the relationship between the rule of ghurur, the rule of itlāf, and the rulings of ḍamān al-yad, taking into account the epistemic state of the deceived party (detailed knowledge, general knowledge, invincible ignorance, culpable ignorance) in a comparative study of the five schools, and has also not criticized Iranian judicial practice from the perspective of distinguishing “initial possessory liability” and “ultimate responsibility of the deceiver.” The present study seeks to fill this gap.

3. Research Method

The present study is fundamental-applied in terms of purpose and qualitative in terms of the nature of the data. The research method is descriptive-analytical with an inferential and comparative approach. Data were collected through library (documentary) methods by referring to primary jurisprudential sources of the five schools (Imāmī, Ḥanafī, Mālikī, Shāfi‘ī, Ḥanbalī), Iranian statutory laws (Civil Code, Civil Liability Law), and judicial rulings (binding precedents and scattered rulings of Iranian civil and criminal courts from 1380 to 1402).

The study population included authoritative jurisprudential books of each school on ghurur, ḍamān al-yad, and itlāf, as well as judicial rulings related to claims arising from deception and ghurur. The analysis method was comparative;

that is, first the view of each school was extracted separately, then their differences and commonalities regarding the effect of the deceived party's knowledge and ignorance on the deceiver's liability were compared, and finally they were assessed against Iranian judicial practice.

The temporal scope of the research extends from the era of classical jurisprudence to contemporary judicial rulings (1402). The evaluation of data validity was based on the authenticity of the source, the fame of the jurist, and conformity with other texts of the same school.

4. Concepts and Theoretical Foundations

4-1. Definition of Ghurur and Its Elements

Ghurur linguistically means deception, trickery, and misleading. In jurisprudential terminology, ghurur is "creating trust in something contrary to reality in another in a way that causes a harmful act" (Najafi, 1362, vol. 37, p. 82). The main basis of the rule of ghurur is the prophetic tradition "man gharra ghayrahu fa-huwa dāmin," which has been narrated in the sources of both sects (Hurr Amili, 1409 AH, vol. 25, p. 420). Also, the rule "al-ghurūr lā yusqīṭ al-ḍamān" is recognized as an independent jurisprudential rule.

The elements of the realization of ghurur are:

1. Ghārr (deceiver): the person who, by his act or word, deceives another.
2. Maghrūr (deceived): the person who, relying on the deceiver, undertakes a harmful act.
3. Act of the deceiver: whether word (such as stating something contrary to fact) or act (such as presenting a forged document).
4. Loss suffered by the deceived: whether financial, physical, or reputational.
5. Customary causal relationship: a customary causal relationship must exist between the act of the deceiver and the loss suffered.

4-2. Ḍamān al-Yad and Its Relation to Ghurur

The famous jurisprudential rule "alā al-yad mā akhadhat ḥattā tu'addī" (Hurr Amili, 1409 AH, vol. 25, p. 420) requires that whoever takes property (i.e., gains possession of it) is liable for its substance and usufruct until he returns it to its owner. This rule is famously accepted in Imāmī jurisprudence and the four Sunni schools. In ghurur, the deceived party may initially dominate the property as a "hand" (for example, a buyer from a deceptive seller). Here there are two stages of responsibility whose separation is jurisprudentially and judicially necessary:

First stage – initial possessory liability: The deceived party is liable toward the original owner for the substance and usufruct and must compensate him. This responsibility arises from the rule "alā al-yad" and is unrelated to the deceived party's knowledge or ignorance.

Second stage – ultimate responsibility of the deceiver toward the deceived: If the deceived party undertook the possession due to the deceiver's deception, then after compensating the owner, he can have recourse to the deceiver. But this right of recourse is conditional on the non-culpable ignorance of the deceived party. The main problem of Iranian judicial practice is that it does not properly distinguish these two stages and sometimes ignores one responsibility.

5. The View of Imāmī Jurisprudence on the Effect of the Deceived Party's Knowledge and Ignorance

In Imāmī jurisprudence, given the foundations of the rule of ghurur and the rule of itlāf, three main hypotheses can be imagined regarding the epistemic state of the deceived party. These three hypotheses have different effects on the deceiver's liability and the deceived party's right of recourse.

5-1. First Hypothesis: Non-Culpable Ignorance (Invincible Ignorance) of the Deceived Party

Invincible ignorance is a state in which the deceived party was not aware of the truth of the matter and the possibility of awareness did not exist for him under normal conditions. In other words, despite customary cautious behavior, the deceived party could not have discovered the deception. For example, a person trusts a seller who enjoys public trust in the local market and purchases property, but later discovers that the property was stolen.

In this hypothesis, Imāmī jurists are unanimously agreed that:

- The initial possessory liability is established on the deceived party toward the original owner (the rule “alā al-yad”).
- The ultimate responsibility is on the deceiver, and the deceived party, after compensating the owner, can have recourse to the deceiver.

The evidence for this view is the prophetic tradition “man gharra ghayrahu fa-huwa dāmin” and the practice of the wise. Imam Khomeini in *Tahrīr al-Wasīla* states: “If a person deceives another into possessing someone else's property, the deceiver is liable unless the deceived party was aware of the situation” (Khomeini, 1378, vol. 2, p. 19). Shaykh Ansari in *Makāsib* also considers the rule “al-ghurūr lā yusqī al-damān” as confirming this matter (Ansari, 1375, p. 345).

5-2. Second Hypothesis: Detailed Knowledge of the Deceived Party

If the deceived party had detailed knowledge of the truth of the matter from the beginning (i.e., he knew that the property he was possessing belonged to another or knew that the deceiver's act was contrary to fact), then the subject of ghurur is no longer applicable. In this hypothesis, “deception” has no meaning because the deceived party acted with full knowledge and awareness. In Imāmī jurisprudence, in the hypothesis of the deceived party's detailed knowledge: initial possessory liability remains on the deceived party because possession has dominated another's property; and the right of recourse to the deceiver falls, and the deceived party cannot, after compensating the owner, have recourse to the deceiver.

The reason is that the rule of ghurur finds meaning with the “ignorance” of the deceived party. The rule “lā ḍarar” also requires the non-transfer of liability, because the loss suffered by the deceived party is attributed to his own act, not the act of the deceiver (Muhaqqiq Damad, 1395, p. 45). Sahib al-Jawahir in *Jawāhir al-Kalām* also writes: “If the deceived party is aware, no ghurur is realized and there is no liability on the deceiver” (Najafi, 1362, vol. 37, p. 85).

5-3. Third Hypothesis: Culpable Ignorance or Ignorance Arising from Failure to Investigate

Many complex cases in judicial practice relate to culpable ignorance. Culpable ignorance is a state in which the deceived party was not directly aware of the truth, but by conducting customary and simple investigation he could have become aware of the truth, but he refrained from this investigation. In other words, his ignorance is attributed to his own negligence.

The majority of Imāmī jurists believe that in the hypothesis of culpable ignorance, the deceived party is treated as knowledgeable and has no right of recourse to the deceiver. Shaykh Ansari in *Makāsib al-Muḥarramah* writes: “If a person could have realized the truth with a little investigation but neglected it, he is treated as knowledgeable and has no right of recourse to the deceiver” (Ansari, 1375, p. 345). The basis of this view is that the deceived party’s negligence cuts the causal relationship between the deceiver’s act and the loss suffered, and the loss is attributed to the deceived party himself.

In contrast, some jurists (such as Shahid al-Thani in *Masālik*) have held for apportionment of responsibility. According to them, in culpable ignorance, both the deceiver (due to deception) and the deceived party (due to negligence in investigation) are responsible, and the loss is divided equally between them. However, the famous opinion in Imāmī jurisprudence is non-recourse, and Iranian judicial practice also often follows this opinion.

5-4. Summary of the Imāmī Jurisprudential View

Based on the analysis of the three above hypotheses, the Imāmī jurisprudential view on the effect of the deceived party’s knowledge and ignorance on the deceiver’s liability can be summarized as follows:

In the first hypothesis, i.e., invincible (non-culpable) ignorance of the deceived party, the rule of *ghurur* is fully applied. In this case, although the deceived party is liable as a “hand” toward the original owner and must compensate him, ultimate responsibility is on the deceiver. In other words, after compensating the owner, the deceived party will have a full right of recourse to the deceiver. The reason for this ruling is the prophetic tradition “*man gharra ghayrahu fa-huwa dāmin*” and also the practice of the wise on not imposing loss on one who has been deceived in a customary manner and without negligence. In this hypothesis, both the initial possessory liability on the deceived party and the ultimate responsibility of the deceiver are established, and the right of recourse for the deceived party remains preserved.

In the second hypothesis, i.e., detailed knowledge of the deceived party, the situation is completely different. In this case, since the deceived party acted with full knowledge of the truth in possessing the property, the subject of “*ghurur*” and “deception” is no longer applicable. Therefore, although the initial possessory liability remains on the deceived party (because possession has dominated another’s property), the ultimate responsibility of the deceiver is negated and the deceived party will have no right of recourse to the deceiver. The jurisprudential basis of this ruling is that the rule of *ghurur* finds meaning with “ignorance,” and the rule “*lā ḍarar*” also requires that a loss that the deceived party has inflicted upon himself with full knowledge cannot be transferred to another.

In the third hypothesis, i.e., culpable ignorance of the deceived party, the majority of Imāmī jurists believe that the deceived party is treated as knowledgeable. Therefore, although the deceived party was not directly aware of the truth, due to leaving a customary and simple investigation that could have guided him to the truth, he loses the right of recourse to the deceiver. In this hypothesis, too, the initial possessory liability is established on the deceived party, but the ultimate responsibility of the deceiver (and consequently the right of recourse) does not exist. In contrast, some jurists (such as Shahid al-Thani) have held for apportionment of responsibility; meaning that in culpable ignorance, both the deceiver and the deceived party share equally in the loss, and the loss is divided equally between them. However, the famous opinion in Imāmī jurisprudence is absolute non-recourse, and Iranian judicial practice also often follows this opinion.

Thus, in a final summary of the Imāmī jurisprudential view, it can be said that invincible (non-culpable) ignorance is the strongest cause for the complete transfer of ultimate liability to the deceiver and the preservation of the right of recourse for the deceived party. In contrast, detailed knowledge and culpable ignorance (according to the famous opinion) both cause the fall of the deceived party's right of recourse to the deceiver; although in culpable ignorance, some jurists have held for division of responsibility. Also, in all hypotheses, the initial possessory liability of the deceived party toward the original owner is always established, and none of the mentioned hypotheses releases the deceived party from initial responsibility toward the owner.

6. Comparative Analysis with the Four Sunni Schools (Ḥanafī, Mālikī, Shāfiʿī, Ḥanbalī)

In this section, we examine the views of the four Sunni schools on the effect of the deceived party's knowledge and ignorance on the deceiver's liability. The central point in these schools is the concept of "generic deception" (*taghrīr naw'ī* or customary deception based on situation), which is more prominent in Ḥanafī and Mālikī jurisprudence than in Shāfiʿī and Ḥanbalī.

6-1. Ḥanafī Jurisprudence

The Ḥanafīs, unlike the Imāmīs, consider the element of "generic deception" sufficient. By generic deception is meant that if the act of the deceiver is, in custom and the practice of the wise, such that it habitually causes trust and deception, then even if the deceived party is aware of the truth from the beginning, the deceiver is still liable. Sarakhsī in *al-Mabsūṭ* writes: "Generic deception is sufficient for the establishment of liability even if the deceived party is aware of the situation" (Sarakhsī, 1420 AH, vol. 11, p. 124).

In Ḥanafī jurisprudence, if a scholar issues a fatwa that a certain property is lawful and another acts with knowledge to the contrary—i.e., he knows it is unlawful—the scholar is still liable. The reason is that "generic deception" has been realized and customary reliance on the fatwa is not removed even by the addressee's knowledge (Kāsānī, 1406 AH, vol. 7, p. 234). This view is justified by the basis of "custom and conduct." In Ḥanafī jurisprudence, only if the deceived party has detailed knowledge of the invalidity of the deceiver's act and nevertheless

acts, some jurists have held for the fall of liability, but the famous Ḥanafī opinion is non-fall.

6-2. Mālikī Jurisprudence

The Mālikīs in this regard hold for a distinction based on the customary position of the deceiver. In other words, the main criterion is the “trust-creating situation of the deceiver.” In *al-Mukhtaṣar* of Khalīl (vol. 3, p. 89), it is stated that if the deceiver is an ordinary person (non-specialist), the deceived party’s knowledge prevents liability. But if the deceiver has a trust-creating position (such as a judge, physician, religious scholar, market trustee), liability remains even with the deceived party’s knowledge. Qurtubī in *al-Jāmi‘ li-Aḥkām al-Qur’ān* quotes Mālik as saying: “Whoever is deceived by one who has a position of truthfulness with him, [the deceiver] is liable even if the deceived is aware” (Qurtubī, 1420 AH, vol. 5, p. 212). The basis of this view is that reliance on holders of social positions is customary and cannot be neutralized, and even the deceived party’s knowledge cannot neutralize this reliance.

6-3. Shāfi‘ī Jurisprudence

The Shāfi‘īs in this regard have a view close to Imāmī jurisprudence. Nawawī in *al-Majmū‘* writes: “If the deceived party knows that the deceiver is informing him contrary to reality, liability is not established on the deceiver” (Nawawī, 1425 AH, vol. 14, p. 212). In other words, the deceived party’s detailed knowledge causes the deceiver’s liability to fall. In the hypothesis of invincible ignorance, the deceiver is ultimately liable. In culpable ignorance, too, the Shāfi‘ī school holds for non-recourse, unless the deceiver has committed “stronger causation” (deliberate and manifest crime).

6-4. Ḥanbalī Jurisprudence

The Ḥanbalīs also have a view close to Imāmī and Shāfi‘ī jurisprudence. Ibn Qudāmah in *al-Mughnī* states: “Ghurur is not established with knowledge; so whoever knows that he is a deceiver, there is no liability” (Ibn Qudāmah, 1415 AH, vol. 5, p. 302). In invincible ignorance, the deceiver is liable, and in culpable ignorance, the right of recourse falls. The basis of the Ḥanbalīs is the rule “lā ḍarar” and the rule of “direct causation”; because in the hypothesis of the deceived party’s knowledge, the loss is attributed to the deceived party’s own act, not the deceiver’s act.

6-5. Comparative Summary

To clarify the differences among the five schools regarding the effect of the deceived party’s knowledge and ignorance on the deceiver’s liability, a comparative summary is presented as follows:

In the hypothesis of the deceived party’s detailed knowledge, the views of the five schools differ. The Imāmīs hold for the absolute fall of the deceiver’s liability. The Ḥanafīs believe that if “generic deception” is realized, the deceiver’s liability does not fall (famous opinion). The Mālikīs hold for distinction: if the deceiver is an ordinary person, liability falls; but if the deceiver is in a customary trusted position (judge, physician, religious scholar), liability remains. The Shāfi‘īs and Ḥanbalīs, like the Imāmīs, hold for the absolute fall of the deceiver’s liability in the hypothesis of the deceived party’s detailed knowledge. In the hypothesis of the

deceived party's invincible (non-culpable) ignorance, all five schools agree that the deceiver's liability is established and the deceived party has a full right of recourse. In the hypothesis of the deceived party's culpable ignorance, there is also disagreement among the schools. The Imāmīs, according to the famous opinion, have accepted non-recourse (although some hold for apportionment of responsibility). The Ḥanafīs, due to generic deception, hold for the establishment of the deceiver's liability. The Mālikīs also, depending on the deceiver's position, consider liability established. The Shāfi'īs hold for non-recourse, except in the hypothesis of "stronger causation." The Ḥanbalīs also hold for absolute non-recourse.

7. Critique of Iranian Judicial Practice

After searching and examining the rulings of appellate courts and the Supreme Court, three categories of practice can be identified that show inconsistency and sometimes deviation from jurisprudential foundations.

7-1. First Category: Conflation of *ʿamān al-Yad* and *ʿamān al-Ghurur*

Ruling of Branch 12 of the Tehran Court of Appeals No. 9709972122300085: In this ruling, a person purchased a stolen car from a thief (the deceiver) and, after the car was returned to the original owner, had recourse to the thief. The court, without examining the buyer's knowledge or ignorance (whether he knew the car was stolen or not), merely based on the rule of ghurur, ruled for the thief's liability.

Jurisprudential critique: The court has committed a conflation of the two stages of responsibility. In this case, first the "initial possessory liability" of the buyer toward the original owner should have been determined (which was practically done by returning the car). Then, at the stage of the buyer's recourse to the thief, the buyer's epistemic state (invincible or culpable ignorance) should have been examined. Without this distinction, the court has simply considered the deceiver liable. If the buyer had knowledge of the car being stolen, then according to Imāmī, Shāfi'ī, and Ḥanbalī jurisprudence, he would have no right of recourse. Therefore, the aforementioned ruling is jurisprudentially hasty and imprecise.

7-2. Second Category: Incorrect Fall of the Right of Recourse Due to Simple Shortcoming

Ruling of Branch 2 of the Supreme Court No. 4010654: In this ruling, the buyer, in purchasing a property for which the seller (the deceiver) presented an ordinary written contract, proceeded to purchase without registry inquiry. After it became clear that the seller was not the owner of the property and the property belonged to someone else, the buyer had recourse to the seller. The Supreme Court, relying on the buyer's "self-causation" (failure to make registry inquiry), caused the right of recourse to fall.

Jurisprudential critique: This ruling is in conflict with Imāmī jurisprudence, which does not consider ignorance arising from reliance on the deceiver (especially in cases where the deceiver is in a customary trusted position) as negligence. In Imāmī jurisprudence, the mere possibility of investigation (such as registry inquiry) does not turn invincible ignorance into culpable ignorance, unless

the investigation is so easy and customary that leaving it is customarily considered negligent. In this ruling, the court has set a very high standard for investigation that is not consistent with the practice of the wise in everyday transactions.

7-3. Third Category: Joint Liability Without Distinction

Binding Precedent No. 789 dated 1395/4/20 of the Supreme Court: In this binding precedent, the Supreme Court applied the rule of joint liability in ghurur and declared that both the deceiver and the deceived are jointly liable toward the original owner. This ruling has been cited as binding practice in numerous cases.

Jurisprudential critique: The rule of joint liability in Imāmī jurisprudence and the four Sunni schools is relevant only in the hypothesis of “the deceived party’s knowledge of the deceiver’s indebtedness.” While in the hypothesis of invincible ignorance, ultimate responsibility is unilaterally with the deceiver and the deceived party is only temporarily responsible as a “hand.” Binding Precedent No. 789, by equating all hypotheses, has practically introduced the invincibly ignorant deceived party as jointly liable, which is contrary to the rule “al-ghurūr lā yusqī al-ḍamān” and the tradition “man gharra ghayrahu fa-huwa ḍāmin.” In this ruling, it is as if the deceiver has shirked his main responsibility and the burden of responsibility has been placed equally on the deceived party.

7-4. Summary of the Critique of Judicial Practice

Iranian judicial practice can be criticized from three perspectives:

First critique – Failure to distinguish stages: There is a conflation between “the deceived party’s possessory liability toward the owner” and “the deceiver’s responsibility toward the deceived.” Many rulings, without determining the first stage, directly enter the second stage.

Second critique – Unjustified expansion of negligence: Sometimes the mere possibility of investigation (such as registry inquiry or the simplest check) is equated with knowledge, and the deceived party’s ignorance is considered culpable. This approach is incompatible with the principle of customary reliance in transactions and the practice of the wise.

Third critique – Neglect of the doctrine of generic deception in the four Sunni schools: Although Iranian law is influenced by Imāmī jurisprudence, in cases where the deceived party is invincibly ignorant, sometimes rulings are issued in favor of the deceiver (such as Ruling No. 4010654), which is contrary to Imāmī jurisprudence. Also, the capacities available in Ḥanafī and Mālikī jurisprudence (generic deception, the deceiver’s trusted position), which can be a good interpretive source for protecting the deceived party, have been completely ignored.

8. Conclusion and Suggestions

8-1. Findings

1. In Imāmī jurisprudence and the four Sunni schools (except the Ḥanafis in some hypotheses), the “non-culpable ignorance of the deceived party” is the strongest cause for the complete transfer of ultimate liability to the deceiver. In this hypothesis, the deceived party first compensates the possessory liability toward the original owner, then with a full right of recourse, can refer to the deceiver.

2. "Detailed knowledge of the deceived party" in Imāmī, Shāfi'ī, and Ḥanbalī jurisprudence causes the fall of the right of recourse. In Ḥanafī jurisprudence, even with the deceived party's knowledge in the hypothesis of the realization of "generic deception," the deceiver's liability remains. In Mālikī jurisprudence, too, if the deceiver is in a customary trusted position, liability remains.

3. The Ḥanafī and Mālikī schools, by accepting "generic deception" and the "deceiver's trusted position," have expanded the scope of the deceiver's liability. These doctrines can be used as an interpretive source in Iranian law, especially in cases where the deceived party is invincibly ignorant and the deceiver has a trust-creating position (real estate advisor, trusted intermediary, physician, etc.).

4. Iranian judicial practice, due to conflation between "initial possessory liability" and "ultimate responsibility of the deceiver" and failure to precisely consider degrees of knowledge and ignorance (invincible ignorance, culpable ignorance, general knowledge, detailed knowledge), suffers from inconsistency and sometimes deviation from jurisprudential foundations. Binding Precedent No. 789, which applied joint liability in ghurur, is not consistent with the jurisprudential foundations of the five schools (except in specific hypotheses).

8-2. Reform Suggestions

Legislative suggestions:

A. It is suggested that the legislator add a note to Article 311 of the Civil Code (or Article 1 of the Civil Liability Law) as follows: "In ghurur, if the deceived party is invincibly ignorant (non-culpable), ultimate liability is on the deceiver, and the deceived party's right of recourse to the deceiver is conditional upon compensating the original owner. In the case of the deceived party's detailed knowledge, the right of recourse falls. Culpable ignorance is treated as knowledge unless the deceiver is in a customary trusted position, in which case even with the deceived party's general knowledge, the deceiver is liable."

B. Drafting a judicial circular by the Judicial Deputy of the Supreme Court to distinguish the stages of proceedings in claims arising from ghurur (distinguishing the owner's claim against the deceived and the deceived's claim of recourse against the deceiver).

Research suggestions:

A. Conducting supplementary research on the rule of "generic deception" and the possibility of accepting it in Iranian law, inspired by Ḥanafī and Mālikī jurisprudence, especially in the field of civil liability of professionals (physicians, engineers, legal advisors).

B. Comparative study of Iranian judicial practice with the judicial practice of other Islamic countries (Egypt, Jordan, Saudi Arabia) regarding the effect of the deceived party's knowledge on the deceiver's liability.

C. Feasibility study of accepting limited joint liability in ghurur, inspired by Binding Precedent No. 789 and its jurisprudential critique.

8-3. Research Limitations

Lack of access to all unpublished judicial rulings (especially rulings of different branches of the Supreme Court that are not public) and also differences in jurisprudential interpretations in new instances (such as ghurur in cyberspace, online

transactions, and cryptocurrencies) were among the main limitations of this research. It is suggested that future research address these emerging instances.

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