

A Jurisprudential-Legal Analysis of Responsibility and Enforcement Guarantees

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Abstract

Collusion between a lawyer and the opposing party, as a clear instance of conflict of interest, is one of the fundamental challenges in the legal and jurisprudential system that violates the client's rights and undermines public trust in the institution of advocacy. This research aims to safeguard the legal profession against this phenomenon, with an emphasis on analyzing the responsibility and enforcement guarantees governing it. By referencing ethical and legal principles in Islamic jurisprudence, Iranian statutory laws, the binding precedents of the Supreme Court, and the opinions of legal scholars, this study demonstrates that avoiding collusion and conflicts of interest is a fundamental requirement of the attorney-client relationship, rooted in the principle of trustworthiness, the principle of good faith, and the rule of no harm (Lā Ḍarar). An examination of the views of prominent Shia jurists, including Imam Khomeini, Makarem Shirazi, Muhaqqiq al-Hilli, Allamah al-Hilli, Shahid al-Thani, Shaykh al-Tusi, Muhaqqiq al-Ardabili, Sayyid Muhsin al-Hakim, Sayyid Ali al-Sistani, Muhammad Jawad Mughniyah, Muhammad Taqi al-Modarresi, Muhammad Fazil Muwahhidi Lankarani, Muhammad Jawad Fazil Lankarani, Sayyid Muhammad Kazim Tabatabai Yazdi, and Ahmad Naraqi, along with the analysis of relevant legal provisions, clarifies the jurisprudential and legal dimensions of this issue. The findings indicate that collusion, in addition to being religiously and legally prohibited, renders the lawyer's actions void or non-binding and entails severe enforcement guarantees, including civil, criminal, and disciplinary liability, as well as permanent disbarment. Finally, this research offers strategies for protecting the legal profession against conflicts of interest and collusion.

Keywords: Collusion, Advocacy, Conflict of Interest, Responsibility, Enforcement Guarantee, Shia Jurisprudence, Iranian Legal System.

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Introduction

Advocacy, as one of the pillars of the justice system, is based on trust and trustworthiness, and respect for the client's interest constitutes the legal foundation of representation. A lawyer, as the client's legal representative, must not only act within the framework of delegated authority but is also obligated to prioritize the client's interests and avoid any personal relationships or dealings with the opposing party at all stages. However, the phenomenon of "collusion between a lawyer and the opposing party" is one of the most significant challenges facing this profession, which has always been the subject of jurisprudential and legal scrutiny. Collusion fundamentally means a secret agreement between the lawyer and the opposing party to harm the client's interests. In such a case, the lawyer not only fails to fulfill their professional duties but also commits a blatant breach of trust and abuse of position, which is considered a serious professional and contractual violation.

In Shia jurisprudence, there are strong foundations for prohibiting collusion and the necessity of respecting the client's interest. Verses of the Noble Qur'an, narrations from the infallible Imams (peace be upon them), and jurisprudential rules such as the rule of trustworthiness, the rule of good faith (Ihsan), the rule of no harm (La Darar), and the necessity of fulfilling obligations and respecting the client's rights emphasize this. Prominent Shia jurists, including Shaykh Tusi, Muhaqqiq al-Hilli, Allamah al-Hilli, Shahid al-Thani, Imam Khomeini, and Makarem Shirazi, have explicitly addressed this issue and stated that a lawyer's actions contrary to the client's interest, especially in the case of collusion, entail liability and a guarantee.

In Iran's legal system, numerous laws have been enacted to protect the client's rights against a lawyer's misconduct. The Civil Code, in Articles 656 to 683, clearly explains the lawyer's duties, and Articles 663, 667, and 668 provide for the necessity of observing the limits of representation and the client's interest, as well as the criminalization of collusion and betrayal by the lawyer, and severe enforcement guarantees including permanent disbarment. Furthermore, the binding precedents of the Supreme Court, particularly Ruling No. 847 dated 1403/02/25, have affirmed that any action by a lawyer contrary to the client's interest, even with broad apparent authority, is unauthorized (fuduli) and void.

This research aims to analyze the jurisprudential and legal responsibility and enforcement guarantees arising from collusion between a lawyer and the opposing party. The main question is: What are the jurisprudential and legal consequences of collusion between a lawyer and the opposing party, and what enforcement guarantees are provided to prevent and counter it? In this regard, after conceptualizing collusion and advocacy, the jurisprudential foundations of the prohibition of collusion, the lawyer's responsibility and guarantee, the theory of non-enforcement and voidability of the lawyer's actions, the views of legal scholars, and binding precedents will be examined, and finally, strategies for safeguarding the legal profession will be presented. It is hoped that this article takes an effective step in clarifying the dimensions of this issue and strengthening the ethical and legal foundations of the legal profession.

1. Conceptualization

1-1. Lexical Meaning of Collusion (Tabani)

Collusion (Tabani) is lexically a word derived from the Arabic language, from the infinitive of the Bab Tafa'ul, and is taken from the trilateral root "Bana" which originally means to build a house and the like (Al-Farahidi, 1980, vol. 1, p. 382). However, in Persian, it means participation or cooperation between two or more people that takes place for a specific task or to achieve a common goal. In Persian, the word Tabani means plotting, preparation, and paving the way. Some have also considered it to mean complicity to undertake a matter or a collective pact against others (Dehkhoda, 1391).

1-2. Technical Meaning of Collusion

A secret agreement between two people against a third party (agreement), and in this sense, it has been discussed in chapters such as trade and pre-emption (Shuf'a). The ruling on collusion is subject to the ruling on the matter for which collusion took place. If the subject of collusion is a forbidden matter, the collusion is also forbidden, and if it is legitimate, it is permissible. Among the instances of forbidden collusion, one can mention "Najsh" in a transaction; meaning that a person, without intending to buy, based on a prior collusion with the seller, offers a high price for the offered goods so that another person hears and buys it at a higher price. The word Tabani is specifically used in legal, jurisprudential, and social contexts and may be permissible or forbidden. One instance of the permissibility of collusion is that someone, to prevent the exercise of the right of pre-emption by the pre-emptor, buys the partner's property at a higher price based on prior collusion, and the seller, after receiving part of the price, returns the rest and declares the buyer free. In this case, if the pre-emptor wishes to rescind the contract, they must pay the full price mentioned in the contract to the buyer (Hashimi Shahroudi, 1382 AH, vol. 2, p. 327).

A lawyer's collusion with the opposing party against the client is one of the complex and sensitive issues in the legal and jurisprudential arena that has created serious challenges in the relations between lawyers and clients. Advocacy, as a contract based on trust and trustworthiness, has been established to protect the rights and interests of clients, but collusion and any relationship between the lawyer and the opposing party can cause serious harm to the client's rights. In fact, collusion means a breach of the client's trust and lack of respect for the professional balance that must always govern the lawyer's activities.

" A lawyer is not permitted to undertake an action that harms the client's interest unless the client has granted him absolute authority. In that case, too, the example is: if the lawyer is authorized to demand the entire debt from the debtor, the lawyer may reconcile for half of the amount in exchange for the termination of the dispute or the payment of the remainder of the debt" (Al-Modarresi, 1431 AH, vol. 3, p. 168).

" A lawyer has no right to perform any action that was not done for the client's interest, even if the action is also explicitly authorized by the client. For example: if a lawyer is someone's representative in a claim, the lawyer has no right to reconcile with the opposing party without the client's permission and receive an

amount that the client does not wish for him to receive; rather, the client's consent to the reconciliation must be obtained" (Shahid al-Thani, 1410 AH, vol. 4, p. 371).

Therefore, if the lawyer sells the client's property at a lower price than the market value, this is contrary to the client's interest. The lawyer is obligated to sell the property at a higher price than the market value. Observing the limits of representation and the scope of delegated authority is one of the other obligations of the lawyer. Muhaqqiq al-Hilli in *Shara'i' al-Islam* states: "The lawyer must confine himself in his actions to what he has been authorized to do and what the custom and habit indicate." (Al-Muhaqqiq al-Hilli, 1409 AH, vol. 2, p. 433). For example, if the client authorizes the lawyer to sell goods for one dinar, the sale by the lawyer for two dinars in cash, or one dinar in cash, is considered valid. However, if the client has authorized a cash sale, a credit sale by the lawyer will not be effective. Allamah al-Hilli also in *Tadhkirat al-Fuqaha*, while discussing similarly, states: "The lawyer must adhere to the limits set by the client and avoid transgressing them." (Allamah al-Hilli, n.d., vol. 2, p. 120). Therefore, the lawyer's actions within the framework of the client's will are valid and effective, and in case of contradiction, they are void.

2- The Lawyer as a Guarantor

With attention to the principles of Imami jurisprudence, the lawyer's responsibility towards the client, arising from non-observance of the client's interest, has always been the concern of jurists and legal scholars. In this regard, the lawyer is obligated to compensate for the damages and losses incurred by the client due to bad management or decisions contrary to the client's interest. This obligation, in addition to being a legal duty, is also a moral and professional duty. From the perspective of jurisprudential principles, the lawyer is obliged to accurately recognize the limits of delegated authority and act within the framework of the client's interests. Deviation from these principles and disregard for the client's interests will result in liability and compensation for damages. This issue has been discussed in the jurisprudential works of both early and contemporary jurists.

In explaining the scope of the lawyer's authority, Muhaqqiq al-Hilli in *Shara'i' al-Islam* states: "The lawyer must confine himself in his actions to the limits of the permission given and the requirements of custom and habit." (Al-Muhaqqiq al-Hilli, 1409 AH, vol. 2, p. 433). For example, if the client authorizes the lawyer to sell goods for one dinar, the sale by the lawyer for two dinars in cash, or one dinar in cash, is considered valid. However, if the client has authorized a cash sale, a credit sale by the lawyer will not be effective. Allamah al-Hilli also in *Tadhkirat al-Fuqaha*, while discussing similarly, states: "The lawyer must adhere to the limits set by the client and avoid transgressing them." (Allamah al-Hilli, n.d., vol. 2, p. 120). Therefore, the lawyer's actions within the framework of the client's will are valid and effective, and in case of contradiction, they are void. Determining the limits of representation may be explicit through words or implicit through circumstantial evidence. In the presence of strong evidence, the validity of the word will be lost. For example, the client's permission to buy dairy products in summer

will prevent the lawyer from buying them in winter. In case of conflict between the word and the evidence, a dispute will arise. This situation is similar to the case where the client authorizes the lawyer to sell goods but does not specify the price, whether cash or credit. In this case, the sale of goods by the lawyer at a non-customary price or in installments will be void; because custom interprets the absoluteness of the word as referring to cash and customary transactions. The lawyer cannot sell at more than the customary price. This is a matter of consensus among jurists, and since the lawyer only has the authority to sell at the customary price, his action at an exorbitant price will not be binding on the client. This rule is similar to representation in purchase, where if the lawyer purchases goods at an exorbitant price, the client will not be obligated to accept it. In sale transactions, if the word is absolute, the price is considered to be cash.

Allamah al-Hilli also states: "It is obligatory upon the lawyer to deliver what is in his possession to the client upon demand and without excuse. If he refuses without excuse, he is liable. If there is an excuse, he is not liable. If the excuse is removed and he delays delivery, he is liable. If after that he claims that the property was destroyed before the refusal, or claims that he returned it before the demand, his claim is not accepted, even if he provides evidence. The correct view is that it is accepted." (Al-Muhaqqiq al-Hilli, 1408 AH, vol. 2, p. 161).

"The nature of representation (Wakala) establishes a title for the lawyer by which he is responsible for the work and stands in the place of the client. The lawyer in sale and purchase must sell if the client's interest requires it, just as he must buy if the client's interest requires it. Otherwise, he has betrayed and acted contrary to the requirements of the title of representation. This does not apply to one authorized to sell and buy." (Hakim, 1374, vol. 12, p. 392).

Imam Khomeini also, referring to the lawyer's transgression and negligence, states the lawyer's responsibility as follows: "If the lawyer does not transgress or neglect in what is the subject of his representation and under his control, and that thing is destroyed, he is not liable. If he transgresses, such as wearing a garment that was given to him to sell without permission, or riding an animal without permission, or placing a load on it, he will be liable, but his representation is not invalidated." (Isfahani, 1380, vol. 1, p. 515).

Imam Khomeini also, referring to Hadith 29 of Wasa'il al-Shi'a, "Every worker to whom you give a wage to do a job and he corrupts it is liable," says: Every worker to whom you give a wage to perform a task and reform it, if he corrupts it, he is liable. (Mahmoudi Dashti, 1373, vol. 1, p. 127).

Naser Makarem Shirazi in his book "Al-Qawa'id al-Fiqhiyya" has specifically addressed the issue of observing the client's interest. He examines various dimensions of representation and the lawyer's responsibilities towards clients and emphasizes that observing the client's interest is one of the fundamental and foundational principles in this relationship. He emphasizes that the lawyer must seriously fulfill his obligations to the client and prioritize his interests over everything else. He says that the lawyer must consider the client's interest in his decisions and take actions that lead to the realization of this interest. This interest

can include preserving the client's capital, rights, and legitimate interests. Consequences of non-observance of interest: Makarem points out that non-observance of the client's interest can lead to negative consequences and losses for the client, and this involves not only legal issues but also moral issues. Therefore, the lawyer must exercise necessary care in his behavior and decision-making. He emphasizes that observing the client's interest is in a way related to the principle of benevolence and goodness, and the lawyer must consider this principle at all stages of representation. Makarem Shirazi refers to the religious and legal responsibilities of the lawyer in this regard and says that if lawyers do not fulfill their duties regarding the client's interest, they may face legal and religious consequences.

In sum, Makarem Shirazi in "*Al-Qawa'id al-Fiqhiyya*" clearly states that observing the client's interest is not only a religious and legal duty but is also of special importance from moral and social aspects. He emphasizes the necessity of the lawyer's attention to the interests of his clients and says that this issue must be considered as a key principle at all stages of representation. He says: And in this regard, some scholars have considered the lawyer's guarantee in case of non-observance of the client's interest and his transgression and negligence, even in void contracts, as deserving of the lawyer's guarantee of the hand. "In trust-based and gratuitous contracts, such as representation, mortgage, deposit, *Mudaraba*, loan, and gift, it applies. Of course, in trust matters, the negation of guarantee in case of non-transgression or negligence of the trustee; because in the valid form of these contracts, if the property is destroyed with the trustee due to transgression or negligence, he is liable; therefore, in their void forms too, in case of transgression or negligence, the trustee will be liable." (Makarem al-Shirazi, 1370, vol. 2, p. 216).

If the lawyer sells or buys and has the authority, he is obligated to observe the interest in choosing to rescind or maintain. If the interest is in maintaining and he violates and rescinds, his rescission will not be valid; because he has acted contrary to the client's interest. If the interest is in rescission and he does not rescind, he has only committed a sin and the transaction remains valid. It appears that he is liable for the loss caused by not rescinding; because the loss is attributed to him; of course, it may be said that there is no guarantee. Similarly, if the transaction is at the client's discretion and he appoints someone to exercise the option of rescission or signing the transaction and he acts contrary to the interest, the same ruling applies. (Yazdi, 1421 AH, vol. 4, p. 195).

"Sahib al-Jawahir says: There is no disagreement among Muslims and there is no doubt in this matter, whether representation (*Wakala*) is with a fee or without a fee, because the lawyer is one of the trustees for whom no guarantee is established according to the texts and consensus." (Mughniyah, 1379, vol. 4, p. 248).

3- Revocability

The contract of representation is one of the types of specific contracts in Islamic jurisprudence by which one party (the principal or client) grants the other party (the agent or lawyer) the permission to manage and perform certain affairs. The importance of this contract lies in the role that the lawyer plays in vindicating the client's rights. Since granting representation requires the client's trust in the

lawyer, observing the client's interest is one of the essential pillars of this contract. Shia jurists have clearly pointed out that the lawyer must not neglect the client's interest in performing his duties. If the lawyer cannot observe the client's interest, the representation is revocable. This issue is of special importance due to the lawyer's responsibility to protect the client's rights and perform affairs in his favor. For example, if the lawyer takes an action that is to the client's detriment or, due to negligence of his interests, takes actions whose result is financial or other loss for the client, undoubtedly the client's trust is questioned, and it can be said that the client has the right to revoke. The nature of the representation contract, because it is a permissive contract; therefore, its revocation by the client due to the lawyer's non-observance of his interest can be realized at any time. "The contract of representation is permissive, and each of the contracting parties may revoke it whenever he wishes. If this is established, there is no difference between saying: I revoked the representation, or I invalidated the representation, or I annulled it, or I dismissed you from it, or I removed you from it, and similar expressions that require revocation and dismissal and clearly indicate its meaning and convey its purport." (Institute of the Encyclopedia of Islamic Jurisprudence, 1424 AH, vol. 4, p. 525).

The lawyer is the client's trustee, and the subject of representation is a trust that has been entrusted to him; therefore, in the Noble Qur'an, God has clearly referred to the importance of trustworthiness and trust, and in the noble verse "Indeed, Allah commands you to render trusts to whom they are due" (Qur'an 4:58), He refers to the preservation of trusts and commitments, which itself can be evidence for the permissibility of representation. Another reason for the permissibility of representation is the consensus of jurists, and most Islamic jurists believe that the representation contract is a permissive contract and can be revoked in case of disagreement. Consensus, as one of the sources of jurisprudence, is strong evidence for the permissibility of this contract. Another reason for the permissibility of the representation contract and the client's ability to revoke it due to non-observance of the client's interest is the rule of no harm (Qa'idat al-Darar), which is one of the main rules in Islamic jurisprudence that emphasizes the non-infliction of harm on others. The rule of no harm is a jurisprudential rule derived from the text of the prophetic tradition "There is no harm and no reciprocating harm in Islam." (Al-Kulayni, 1407 AH, vol. 5, p. 294), which indicates the negation of harm and damage to oneself and others in the religion of Islam and its prohibition. The rule of no harm is one of the famous rules that is used in most jurisprudential chapters, and it has been said about its importance that it is one of the five rules upon which jurisprudential issues are based. The creation of the representation contract gives individuals the possibility to better manage their affairs and, as a result, observes this rule. The rational reason can also be considered as a reason for revoking the representation contract in this regard, that the people's need to have a lawyer to perform various affairs, including buying and selling, lawsuits, and other activities, requires the existence of a lawyer to undertake and accomplish these actions, and if the client's interest is disregarded, there

will no longer be a reason for the continuation and remaining of the representation contract. The wise also recognize this type of action. Therefore, in explaining the rulings and conditions of the representation contract, attention to the issue of the interest of the represented party as well as reliance on relevant verses and narrations can lead to a deeper understanding of this contract and its conditions of revocation.

4- The Theory of Non-Enforcement

In Islamic jurisprudence, especially in Shia jurisprudential texts, important points have been raised regarding the conditions for the validity of representation and the necessity of observing the client's interest and welfare. One of the most fundamental discussions related to the representation contract is the issue of its "non-enforcement" in the case where the lawyer cannot consider the client's interest and welfare or transgresses it. This concept becomes doubly important, especially in cases where the client's financial or moral dignity is at risk. Jurists, relying on Islamic verses and narrations, emphasize that the lawyer must consider the client's interest in all his activities and do not permit actions that cause harm to the client. In other words, the lawyer must act in such a way as to not only respect the client's will and desire but also make his utmost effort to protect his interests and benefits. Non-observance of the client's interest and welfare can lead to the non-enforcement of the representation contract.

"By authorizing the husband or spouse, if both are mature, or by authorizing their guardians, if both are incapacitated, and it is obligatory upon the lawyer not to transgress what the client has determined, in terms of the person, dower, and other characteristics. If he transgresses, his action is unauthorized (fuduli) and contingent upon permission. It is also obligatory upon him to observe the client's interest. If he transgresses and takes actions contrary to the interest, that too will be unauthorized. Yes, if the client specifies a characteristic, that characteristic is obligatory and the lawyer's action is executed, even if it is contrary to the client's interest." (Al-Muwahhidi Al-Lankarani, 1421 AH, p. 77).

"Representation in marriage on behalf of one party or both parties by authorizing the husband or spouse, or both if they are mature, or by authorizing their guardian if they are incapacitated, is permissible. It is obligatory upon the lawyer not to transgress what the client has determined, in terms of the person, dower, and other characteristics, even if these matters are contrary to the client's interest. If he transgresses, that action is unauthorized and contingent upon the client's permission. Also, it is obligatory upon the lawyer to observe the client's interest in the characteristics delegated to him. If he transgresses and takes actions contrary to the interest, that too will be unauthorized." (Sistani, 1415 AH, vol. 3, pp. 21-22).

"If the lawyer's action is based on interest... we regulate the permissibility of the lawyer's action based on interest, so whatever has no interest in it, the lawyer's action is not effective." (Ardabili, 1379, vol. 1, pp. 523-524).

Therefore, in cases such as "selling the client's property at a price below the actual value despite the possibility of selling it at the actual value," the lawyer's

action will not be effective; because undoubtedly such a transaction is contrary to the client's interest. (Fazil Lankarani, 1396, p. 399).

Zayd has been in possession of a property as owner for years, and some people from another province claim ownership of that property. They have introduced Amr as their lawyer to represent them in this dispute with Zayd. Amr acts as a lawyer in negotiations and reconciliations and in any way he deems expedient. He comes to Zayd and brings their claims to an agreement with Zayd and determines an amount equivalent to two hundred dinars and one man of wheat. But before the final agreement with Zayd is made, they set a condition that he receive a significant amount for his clients. However, the final agreement is based on the same two hundred dinars and wheat. Can it be said that this reconciliation is not in the clients' interest or not, and whether this reconciliation is binding?

The issue depends on several points:

First: It should be known that the lawyer is obligated to consider the client's interest, and without observing it, his actions are not valid. Custom and habit also emphasize the necessity of this issue, because according to custom and the client, the lawyer's intention must be in accordance with the interest. Some have also emphasized the existence of consensus in this regard; therefore, if the lawyer performs an action for the client in which interest is not considered, that action is not valid. Even if an agreement is made contrary to the interest, it will not be binding, and some have said that this action is considered unauthorized and its correctness is clearly questionable.

But what has been said regarding the binding nature of observing interest is not absolute, but applies in certain specific conditions. Because the client's authorization may be general, such as saying: "I appoint you as my lawyer in selling my house," or general, such as: "I appoint you as my lawyer in selling my house at any price you want," or specific, such as: "I appoint you as my lawyer in selling my house for ten tomans." The binding nature of observing interest is only limited to the first case, but in the second and third cases, the necessity of observing interest in general or specific matters is not necessary.

In the third case, if the lawyer wants to sell the house for ten tomans while he can sell it for one hundred tomans, this sale is valid. Also in the second case, if the lawyer wants to sell the house for ten tomans and actually sells it for that price, this is also correct; because in cases where a matter is referred to generally or explicitly, there is no customary agreement contrary to it, and there is no consensus against it, and it appears that the consensus is against it. The principle here, according to the evidence, is the validity of the lawyer's action in the matter for which representation was given. Yes, general and specific cases are also divided into two categories: one in the manner explained and not conditional on interest, and the other conditional on interest, such as saying: "I have representation in selling my house at any price that such person says if you deem it expedient," or "I have representation in selling it for ten tomans if you deem it appropriate," or "in selling at any price between one toman and one hundred tomans, whatever you deem appropriate." These cases are also like the general case in which observing interest is necessary and without attention to it, the action is not valid. If

he says: "I have representation in buying and selling, reconciliation and gift, whichever you deem appropriate," in this case, the choice of one of these options is conditional on interest, but regarding the type of each of them, i.e., the manner of buying and selling, reconciliation or gift, it is without condition, and here too observing interest is necessary, because it is clear that in the general case, observing interest is necessary. From this, it becomes clear that if he says: "I have representation in buying and selling, reconciliation and gift in any manner you deem appropriate," again observing interest is necessary, because the condition relates to the choice of one of these matters, but the manner of each is not conditional; therefore, in both cases, observing the client's interest is necessary.

Second: The interest to which reference is made in the general or conditional case must be the interest specified for the lawyer or the actual interest according to the lawyer's knowledge, not the actual interest absolutely, or the interest according to the client's knowledge, as Muhaqqiq Ardabili has explicitly stated in *Sharh Irshad* regarding the issue of representation in purchase. The common denominator of the evidence is also this type of interest. In fact, the command to observe the actual interest absolutely and without considering the lawyer's knowledge is a demand that is not accessible.

Third: Note that to understand what is in accordance with interest and what is not, one must pay attention to all aspects of the action. Anything that, considering all aspects, is in the client's favor should not be neglected. Sometimes a matter is in one person's interest and not another's. For example, if someone has a claim against another person that requires an oath and the lawyer reconciles it for ten tomans, paying ten tomans is better than an oath for some people, but not for others. Also, selling a house for ten tomans may be appropriate for one person at a time, but not for another person or at another time. Also, the lawyer may conclude that selling his client's house at a lower price is in his interest. For example, if a person has two simultaneous claims for a thousand tomans, reconciling the first claim for fifty tomans is in his interest, while reconciling the second claim for three hundred tomans is not in his interest, for example, because the first claim lacks sufficient evidence or proving it is difficult, or obtaining money from the opposing party is difficult, or other conditions exist.

Fourth: The noteworthy point is that the interest that must be considered relates to the time of the action, not after it. For example, if someone has a claim against another person that is difficult to prove, such as not knowing whether there are witnesses or not, and the lawyer reconciles it for a specific amount, if after the reconciliation it becomes clear that several people witnessed that matter and he did not have access to them initially, the reconciliation is valid, even if after knowing the existence of witnesses, that action is not in the client's interest, provided that the lawyer initially searched as much as possible and did not have access to the witnesses.

Fifth: It must be emphasized that the interest that the lawyer must consider is the actual interest according to the lawyer's knowledge, not the absolute actual interest. If the lawyer performs an action without awareness of the interest, that action is either impermissible or void. If he is aware of the interest, meaning he

knows that at the time of the action there is interest and later it becomes clear that at that time there was no interest and the lawyer was mistaken, in this case, the lawyer's action will be valid and effective, because the necessity of observing interest more than what is in accordance with the lawyer's knowledge has not been established, and the action performed was with observance of interest. If this action includes buying and selling or reconciliation and the lawyer's mistake leads to harm to the client, based on the evidence of prohibition of harm, compensation for the client's loss must be made through payment of the difference by the buyer and the reconciler or the client's right to revoke the transaction. But if the matter relates to matters such as slaughter or divorce, no harm is obligatory on the person. For example, if someone appoints a lawyer to divorce his wife or slaughter his cow, if he decides and does this and later it becomes clear that he made a mistake in diagnosing the interest, here both divorce and slaughter are correct and no harm is obligatory on anyone and no compensation is needed.

Finally, if it becomes clear that the matter in question is conditional on "whatever you deem appropriate," the lawyer's action must be consistent with his clients' interest, and otherwise, his action will not be valid; therefore, if the lawyer's action is consistent with the interest of one party (for example, Zayd or Amr), it is valid. The meaning of Zayd's or Amr's interest is also the evidence he has for expediency. Regarding whether the action performed, for example, reconciliation for two hundred dinars and one man of wheat, is consistent with the clients' interest, this matter relates to custom and habit. To determine this, the scholar's duty is to refer to experts and the current time, and in case of disagreement, the religious judge must rule after hearing the parties' views and having full knowledge by referring to custom and habit. (Naraq, 1380, vol. 1, pp. 318-320). Whenever a person authorizes another absolutely in performing a matter, whether marriage or otherwise, the lawyer must observe the client's interest in his actions and measures, and in case of non-observance of the client's welfare and interest, the contract concluded by the lawyer is unauthorized and contingent upon the client's ratification. In this issue, representation in marriage is no different from other cases of representation. (Hakim, 1404 AH, vol. 14, p. 485).

5- The Theory of Voidability of the Lawyer's Actions

If the lawyer does not consider the client's interest in performing his duties and takes actions that are not in the client's interest, this non-observance can lead to the voidability of the representation and the invalidation of his action. For example, if the lawyer sells the client's property at a very low price or participates in unfair transactions, the client has the right to object to the non-enforcement of the lawyer's actions and declare them void. In Islamic jurisprudence, the principle "Muslims are bound by their conditions" specifically means that Muslims must adhere to the contracts and conditions they have agreed upon; therefore, if the lawyer transgresses the limits of authority and conditions set and disregards the client's interest, this action is contrary to the rule and consequently, the representation will be voidable. In other words, any transgression of the set limits and non-observance of the client's interest causes the jurisprudential and moral

facts to be violated and the validity of the representation to be questioned. In Islamic jurisprudence, non-observance of the client's interest is tantamount to violating the fundamental principles of representation and can lead to the voidability of the representation.

And the reason for the impermissibility of transgressing what the client has determined is that Muslims are bound by their conditions, and also due to the absence of permission from the client in cases of transgression. Additionally, there is evidence that emphasizes the validity of permission from the one who has authority in the validity of permissive contracts in terms of limits and survival. But regarding the obligation to observe the client's interest, its basis is rational, which is based on contracts and unilateral obligations in various chapters of transactions and has been endorsed by the Lawgiver. This rationality means that in contracts such as representation, executorship, guardianship, and authority, the interest of the client, the executor, and the person under guardianship must be observed. Based on these rational principles, the Lawgiver has endorsed these contracts, and otherwise, they have no legitimacy. (Sayfi, 1429 AH, vol. 1, p. 617).

Whenever a person authorizes another absolutely in performing a matter, whether marriage or otherwise, the lawyer must observe the client's interest in his actions and measures, and in case of non-observance of the client's welfare and interest, the contract concluded by the lawyer is unauthorized and contingent upon the client's ratification. In this issue, representation in marriage is no different from other cases of representation. (Muhaqqiq Damad, vol. 1, p. 205).

Also, regarding interest and corruption, if the lawyer acts based on interests and later it becomes clear that there was corruption contrary to interest, due to the hidden aspects of the matter, the transaction is not ruled void, and ultimately, only the right of option is established for the client. (Tabatabai Yazdi, 1414 AH, vol. 1, p. 127).

"It is upon the lawyer to carefully attend to the client's interest and not to transgress in his action the subject of representation, for if he does so, it is unauthorized. Yes, if the current evidence indicates transgression, it is valid and effective." (Mughniyah, 1379, vol. 4, p. 245).

"The lawyer must carefully attend to the client's interest and not exceed the limits of his authority in actions beyond that, because otherwise his action will be unauthorized. Of course, if there is evidence indicating the conditions of transgression, his action is valid and effective."

Imam Khomeini says: "It is obligatory upon the lawyer not to transgress what the client has determined in terms of the person, dower, and other characteristics. If he transgresses, it is unauthorized and contingent upon permission." (Imam Khomeini, 1392, vol. 2, p. 251). The lawyer must act within the same scope for which he has been appointed as a lawyer; he has no right to go beyond the subject and scope of representation. Whatever the client has determined for him, he must perform the same.

6- Views of Legal Scholars

In the field of law and advocacy, observing the client's interest is recognized as a fundamental principle. This principle gives the lawyer the responsibility to not only pay attention to the client's immediate interests but also to consider his long-term and general interests. In the following, we examine the views of some legal scholars in this regard:

Naser Katouzian, one of the most important legal figures in Iran, strongly emphasizes the importance of observing the client's interest. He believes that the lawyer must consider moral and legal aspects in all the consultations he provides and the actions he takes. According to him, the lawyer is obligated to transparency, honesty, and respect for the client's consent. This principle requires that the lawyer have sufficient and accurate information in his decisions and seek to make decisions that are in the client's overall interest. Katouzian's discussion of observing the client's interest relates to explaining the moral and legal principles of advocacy and the lawyer's responsibility in facing clients' interests. He believes that the lawyer must consider not only the client's immediate interests but also his long-term interest in all his actions and consultations. This view refers to the importance of transparency, honesty, and respect for the client's consent and obligates the lawyer to make informed and wise decisions in line with the client's overall interests.

Katouzian, regarding the observance of the limits and scope of representation under the Civil Code, declares the enforcement guarantee of transgression of the limits of representation to be the unauthorized nature of the lawyer's action and the non-enforcement of the transaction. He discusses the observance of the client's interest under Article 667 of the Civil Code and considers several assumptions. He considers the lawyer's action in case of intentional disregard of the client's interest, if he has acted in his own favor, as unauthorized, and a fortiori, by stating the word (especially) if he has colluded with the other party, he points to its unauthorized nature. In another assumption, he states that if the client has given the lawyer the authority to transact in any way he deems appropriate, he considers observing the client's interest necessary. In the third assumption, where the lawyer has acted within customary limits and despite this the transaction does not materialize in the client's interest, he considers the transaction effective. In another assumption, where the lawyer does not intend betrayal or transgression but as a result of lack of care and necessary caution performs a legal act that is not in the interest, there is disagreement regarding its enforcement or non-enforcement, and Katouzian's view is that. (Katouzian, 1395, pp. 442-). The diagnosis of interest in the contract is with the client himself, and the law has no prohibition on the parties' mutual consent and the authority that the client gives to his deputy. (Katouzian, 1389, vol. 4, pp. 181-). In the case where the lawyer intentionally disregards the client's interest and acts in his own favor, his action is unauthorized, especially if he colludes with the other party to abuse the authority. (Ibid., No. 103). In the assumption that the lawyer does not intend betrayal and transgression, but as a result of lack of care and necessary caution performs

a legal act that is not in the interest, there is disagreement regarding the enforcement of the transaction, and its enforcement is preferred. (Katouzian, 1389, vol. 1, p. 327).

Hassan Emami in his civil law book, regarding the observance of the client's interest under the relevant articles, explains the lawyer's obligations in detail as follows: According to Article [667] of the Civil Code: "The lawyer cannot perform an action that is outside the limits of his representation." Article [668] of the Civil Code also emphasizes that the lawyer must not transgress what the client has explicitly authorized him to do or what is within his authority according to evidence, custom, and habit. Any action that the lawyer performs outside the limits of representation is unauthorized (fuduli) in relation to the client, and the client can accept or reject it. According to Article 668 of the Civil Code: "The lawyer must give an account of the period of his representation to the client and return to him what he has received on his behalf," and likewise regarding the property and documents that the client has entrusted to the lawyer for performing the matters of representation. As is inferred from the apparent meaning of the above article, the deadline for giving an account by the lawyer is after the completion of the representation work, unless the representation is dissolved for some reason, in which case it will be after the dissolution of the representation, because the deadline for settling the account is customarily after the completion of the work. This is in the case where custom, due to the nature of the work, does not require another deadline, otherwise, it will be acted upon according to custom, just as whenever the lawyer has representation in collecting the client's claims, he must deliver any amount he receives from the debtors immediately to the client or his successor. (Emami, 1340, vol. 2, pp. 225-226).

7- Binding Precedents

Ruling of Branch 9 of the Supreme Court, No. 908 - 29/3/1363

The final ruling relied on the basis that the diagnosis of the client's interest (considering the phrase "at any amount and in any manner he deems appropriate") is placed at the lawyer's discretion is not logically justified; because accepting this is contrary to the content of Article 667 of the Civil Code, and its application in absolute terms would be a type of transgression of authority according to evidence, custom, and habit and contrary to the last part of the mentioned article. And since when the claim of non-observance of the principle of the client's interest is raised by the appellant (Farjam Khah) and to prove it, reference was made to investigation and inspection of the location and obtaining the expert's opinion, issuing a judgment without considering this claim and addressing it is contrary to right and law, and without considering it, it is not logically acceptable.

Ruling of Branch 21 of the Supreme Court, No. 542 - 28/10/1372

Although the plaintiff, after drafting an ordinary contract dated 17/10/1369, during a power of attorney regarding the transfer of the subject of the transaction with the condition "(to anyone even to himself and at any price and condition and quality that the lawyer deems appropriate)," has given the defendant representation, but the mentioned power of attorney is in relation to the said contract and based on it. According to Article 247 of the Civil Code approved on 18/2/1307,

conducting a transaction regarding another's property through representation is permitted. On the other hand, according to Article 667 of the same law, the lawyer is obligated to observe the client's interest in his actions and measures and not to transgress what the client has explicitly authorized him to do or what is within his authority according to evidence, custom, and habit. Therefore, whenever a person delegates the representation of selling his property to another and states in the power of attorney that the lawyer has the authority to transact his property at any price, the phrase "at any price or to any person even to himself" will be construed as the customary price. And if the lawyer sells that property at a low price that is customarily considered a fraction and unacceptable to himself or another, his action is considered unauthorized, and based on the criterion of Article 1073 of the Civil Code, the transaction conducted without the client's ratification is ruled void. Obviously, the subject of the ruling does not include cases where a transaction was conducted before the drafting of the power of attorney. Accordingly, the ruling of Branch Five of the Court of Appeals of Kohgiluyeh and Boyer-Ahmad Province, to the extent that it conforms to this view, is recognized as correct and legal by the majority of the members of the General Board, and this ruling, according to Article 471 of the Criminal Procedure Code approved in 1392 with subsequent amendments and additions, is binding in similar cases for branches of the Supreme Court, courts, and other authorities, whether judicial or otherwise.

Collusion and Its Effects and the Determined Enforcement Guarantee

From the aspect of the mission of advocacy, which is based on trust and trustworthiness and has obligated the lawyer to observe this pillar as a requirement of representation, it can be stated that in a contract whose rulings clearly insist on observing the client's interest, a fortiori, betrayal in it by the lawyer and his collusion with the opposing party is considered one of the greatest threats to the legitimacy of this contract and the client's rights. This action not only causes damage to trust in advocacy but can also have unfortunate legal and religious consequences for the lawyer. In Shia jurisprudence, collusion has been severely condemned, and its negative effects on the social and legal structures of society have been fully considered. The lawyer must clearly avoid conflicts between his interests and the client's interests and at all stages of representation make his utmost effort to...

8- Conclusion

This study was conducted with the aim of conceptualizing the lawyer's collusion with the opposing party, its consequences, and related enforcement mechanisms from the perspective of Shia jurisprudence and the Iranian legal system. The results of the research indicate that the lawyer's collusion with the opposing party, as one of the fundamental challenges in representation relations, is considered a serious threat to the validity of the representation contract and the client's rights and has been severely criticized in the Shia jurisprudential school as well as the Iranian legal system. From the perspective of Shia jurisprudence, this action is considered a breach of trust and betrayal in responsibility, and jurists, re-

lying on religious foundations and moral principles, have emphasized the lawyer's obligation to preserve and protect the client's interest and prevent behavior contrary to this duty. In this regard, Imam Khomeini and Makarem Shirazi are among the jurists who consider transgression of the limits of representation to be non-effective.

In the Iranian legal system, the laws and regulations governing the legal profession have also considered collusion an illegitimate act deserving of strict enforcement guarantees. Specifically, Article 41 of the Law on Advocacy and Clause 3 of Article 82 of the Executive Regulation of the Legal Bill of the Independence of the Bar Association have criminalized this behavior and provided for punishments such as permanent disbarment for the perpetrator. Furthermore, the binding precedents of the Supreme Court, including Binding Precedent No. 847 of the Supreme Court, emphasize that the lawyer is obligated to adhere to the client's interest in all his actions. In this ruling, any action contrary to the client's interest or leading to his loss is considered void. Therefore, observing the client's interest must be considered in all contracts and legal interactions, and any unjustified action by the lawyer will not be recognized. In this regard, prominent legal scholars including Naser Katouzian have considered collusion an act contrary to the moral and professional principles of advocacy and a violation of the lawyer's legal duties. The consequences of collusion, beyond violating the client's rights and causing financial and legal damages to him, endanger public trust in the legal profession and the legal system. This reprehensible phenomenon can have irreparable social damages, including reducing social trust in benefiting from legal services and weakening the position of advocacy as an institution based on the principles of trust and trustworthiness.

With attention to this issue, the following strategies are proposed to prevent collusion and strengthen the foundations of the legal system:

1- Improving the system of supervision over the professional performance of lawyers: Supervisory institutions, including the Bar Association, the Center for Lawyers and Advisors of the Judiciary, must evaluate the professional performance of lawyers regularly and continuously by designing precise and efficient mechanisms.

2- Developing specialized training programs in the field of ethics and legal training courses based on the moral and professional principles of advocacy, revising and clarifying the laws and regulations governing advocacy so that by removing ambiguity in the area of the lawyer's responsibilities and enforcement guarantees of violations, greater transparency and decisiveness is created in this field.

3- Improving the general level in the field of law and duties of lawyers: Educational and informational programs through media and public workshops can increase public awareness of the rights and duties of lawyers and clients and reduce such actions and help strengthen public trust.

In conclusion, adherence to moral and professional principles in the legal profession not only provides the basis for protecting clients' rights and realizing legal justice but also strengthens the position of advocacy as one of the fundamental

pillars of the legal system. It is suggested that future research, with a comparative perspective, examine this issue in other legal and jurisprudential systems and thereby help to advance knowledge and provide new solutions in this area.

References

The Noble Qur'an

Persian Sources

- Emami, Hassan. (1340). Civil Law. Tehran: Islamiyyah Bookstore, Vol. 2.
- Dehkhoda, Ali Akbar. (1391). Dehkhoda Dictionary. Tehran: Tehran University Press and Printing Institute, 5th Edition.
- Katouzian, Naser. (1389). Civil Law: Specific Contracts. Tehran: Mizan, Vol. 4.
- Katouzian, Naser. (1395). Civil Law in the Current Order. Tehran: Mizan, 40th Edition.
- Muhaqqiq Damad, Mustafa. (1384). A Study of Family Jurisprudence. Tehran: Center for the Publication of Islamic Sciences.
- Mahmoudi Dashti, Ali Akbar. (1373). Evidence for Claims. Qom: Islamic Fiqh Assembly, Vol. 1.
- Hashimi Shahroudi, Mahmoud. (1382). Dictionary of Islamic Jurisprudence According to the Ahl al-Bayt School. Qom: Institute of the Encyclopedia of Islamic Jurisprudence According to the Ahl al-Bayt (peace be upon them), Vol. 2.

Arabic Sources

- Ardabili, Ahmad. (1379). Majma' al-Fa'ida wa al-Burhan. Qom: Islamic Publications Office, affiliated with the Seminary Teachers Association, Vol. 9.
- Isfahani, Abu al-Hasan. (1380). Wasilat al-Najat (with the annotations of Imam Khomeini). Qom: Vol. 1.
- Al-Hakim, Al-Sayyid Muhsin. (1404). Mustamsak al-'Urwat al-Wuthqa. Qom - Iran: Library of the Grand Ayatollah al-Mar'ashi al-Najafi, Vol. 14.
- Khomeini, Al-Sayyid Ruhollah. (1392). Tahrir al-Wasila. Tehran: Institute for the Organization and Publication of the Works of Imam Khomeini, Vol. 2.
- Sistani, Ali. (1415). Minhaj al-Salihin. Qom: Library of the Grand Ayatollah al-Sayyid al-Sistani, Vol. 3.
- Sayfi, Ali Akbar. (1429). Dalil Tahrir al-Wasila (Marriage). Qom: Institute for the Organization and Publication of the Works of Imam Khomeini, Vol. 1.
- Al-Shahid al-Thani. (1410). Al-Rawdat al-Bahiyya fi Sharh al-Lum'at al-Dimashqiyya. Qom: Davari Publications, Vol. 4.

- Al-Shaykh al-Kulayni. (1407). *Al-Kafi*. Tehran: Dar al-Kutub al-Islamiyya, Vol. 5.
- Al-Shaykh Hurr al-'Amili. (1403). *Wasa'il al-Shi'a*. Vol. 13.
- Al-Tabatabai al-Yazdi, Al-Sayyid Muhammad Kazim. (1414). *Takmilat al-'Urwat al-Wuthqa*. Qom: Davari Library, Vol. 1.
- Allamah al-Hilli, Hassan ibn Yusuf. *Tadhkirat al-Fuqaha*. Qom: Maktabat al-Murtadawiyya, Vol. 2.
- Fazil Lankarani, Muhammad Jawad. (1396). *Qa'idat Maysur*. Qom: Jurisprudential Center of the Imams of the Purified (peace be upon them).
- Fazil Muwahhidi Lankarani, Muhammad. (1421). *Tafsil al-Shari'a (Marriage)*. Qom: Center for the Jurisprudence of the Pure Imams (peace be upon them).
- Al-Farahidi al-Basri, Abu Abd al-Rahman al-Khalil ibn Ahmad ibn Amr ibn Tamim. (1980). *Kitab al-'Ayn*. Beirut: Dar wa Maktabat al-Hilal, Vol. 1.
- Al-Muhaqqiq al-Hilli. (1409). *Shara'i' al-Islam*. Tehran: Istiqlal, Vol. 2.
- Al-Muhaqqiq al-Hilli. (1408). *Shara'i' al-Islam fi Masa'il al-Halal wa al-Haram*. Qom: Isma'iliyan, Vol. 2.
- Al-Modarresi, Al-Sayyid Muhammad Taqi. (1431). *Al-Fiqh al-Islami (Al-Risala al-'Amaliyya)*. Beirut: Center of the Era, Vol. 3.
- Mughnayah, Muhammad Jawad. (1379). *Fiqh al-Imam Ja'far al-Sadiq*. Vol. 4.
- Makarem al-Shirazi, Al-Shaykh Naser. (1370). *Al-Qawa'id al-Fiqhiyya*. Qom: School of Imam Ali ibn Abi Talib (peace be upon him), Vol. 2.
- Institute of the Encyclopedia of Islamic Jurisprudence. (1424). *Al-Mu'jam al-Fiqhi li-Kutub al-Shaykh al-Tusi*. Qom: Iran, Vol. 6.
- Naraqi, Ahmad ibn Muhammad Mahdi. (1380). *Rasa'il wa Masa'il*. Qom: Congress for the Commemoration of the Researchers Mulla Mahdi and Mulla Ahmad Naraqi, Vol. 1.
- Yazdi, Muhammad Kazim ibn Abd al-Azim. (1421). *Al-'Urwat al-Wuthqa*. Qom: Seminary Teachers Association, Islamic Publishing Institute, Vol. 6.