International Academic Institute for Science and Technology

International Academic Journal of Humanities Vol. 2, No. 2, 2015, pp. 45-51.
ISSN 2454-2245

International Academic Journal of Humanities

www.iaiest.com

Silence Study in the Iran and America and England

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Abstract

despite important role that has parties volition in the contract based on article 191,contract espousal will be achieve bused on advisable something that is under contract the important role that has silence in the contract may not be responsible but in practice has very legal effects for contract parties.

Legal volition is formant from implication and adoption since silence is not, silence only can be symbolic adoption with possess qualification in the country low like American and England not taken in to account silence ancient proverb adhesion mark as a legal low.And only silence cannot obligatory implication .

Key words: Silence, Agreement, Will, Intent, Contract, Espousal, Implication, Adoption

Introduction:

silence in legal sense ,is lack the explicit or implicit volition declaration , silence is privative because silence is not something except Naught in the Iran and American and England law silence is not same adhesion unless silence be accompanied with evidence that is expression person volition in the Iran ,American and England law is accepted this principle that silence cannot replace by volition And silence is not consent in the Iran rights, is acceptable this principle that silence is not same consent, but in the same cases ,silence can possess legal effects, like article 1062 that silence has three form or admit or deny or silence that libellee silence against assert ion like you do not know the judge tell him in the times three to an sewer at question and for refusing from swear to joule denies claims if he swore ,be fixed right .silence here is not an acceptable means, but there is this effect that with silence will be sentenced libellee and oath claim claimant person.

Other cases from silence in the Iran law are inclusive silence in the pay deals, silence against implication, silence into 504 article silence against additional land regulation laws, silence in the response to declaration, silence in the face of rules for law ,that all have legal effects, in American and England lows not taken into account old adage only that silence is can set as a legal rule and only silence

cannot obligatory implication .in this paper we study comparative silence in the Iran and American and Britain low.

Silences right in the punitive judgment rely on law:

one of the major issues that has created deferments among probers ,is culprit silence in the judgment studies particularly in the primary in resignations stage. In fact we must pay attention to this that culprit silence right in the inquiry course bale level have been consideration whether mostly there is legal and if there is this legal, it limited in the witch brother and whether can consider silence au criminate a person. And research references have what about duty this right. About judiciary security right description can quota that people must become security from aspersion and affliction and hetatism and so on and adperson cannot remonstrate at other persons. in this regard, number of con situational principles pointed out in the ensure and protect and judicially security right in Iran law, with regard to the latter part of article I 29 from criminal pro cadre code ,which provides if accused has refused from respond ,indicate his refusal in the house .

The culprit silence right is ace pated during interrogation and relevant persons also must observe this law. Thus culprit has not duty that answer at questions of police or interrogator and his guilt has no purpose other than to prove the answer and must an noun cede this right as soon as possible. according to this that can assumed dilation official announcement of competent au thirties based on existence unproven all gabions of the evidences .from crimes committed by a known person, there is right to silence when create direction .for capture according to criminal procedure code or transmit summons for culprit, for present unto judicial reference .this also must has proofs. because although according to article 118 of criminal procedure code, Jude can punish crime slow , death ,death and mutilation or defendants who have not given their resin dance or job and steps taken to achieve accused not resolve without receiving the summons the defendant s arrest is issued and other materials of the criminal .

Procedure cued defendant summons or arrest, If they have reason to exist article 124 from this law provides: judge wouldn't summon someone or dew unless there are good reasons for a summons or arrest article 130 from criminal procedure act cud fixated in the seven chapters and 558 articles for preparation and approval ,parliament also defendant known and enjoy from silence right .despite what was raised, must, particularly about silence right, were allowed to separate between time of arrest and served with the summons thus at the time of arrest, accused came to escape the situation ,may be raise ill-advised remarks that subsequent, and in the his tongue. as some believe that it makes lawyer unable this compensate in the later stages from proceeding .so enforcers must do their duty during arrest operation from the summons, accession however at the time of notify caution from the summons, accused with measures that are his rights and freedom s hot faces but must be present within dealing by judicial authority and thus assignment with no right to remain silence .after silence right declaration ,other duty that there is for court bailiff, is warn in culprit, if any express statement may be court used from this against him this warnings now is accepted in many countries with common law. this is because this case that then of dilation realization in the arrest time, cannot expected from culprit that be silent and has not raise anything for defend from himself according to what was proposed, it seems criminal procedure code unable guarantees this rights because in article 199 of this low , states that "judge firstly must express identity and characteristics from culprit .thus perhaps this unstained only reason for Judi rail authority eighth

accused silence right but warning that if accused make a statement on the current language ,may be used against him in court .however, in some cases ,such as that provided in article 113 from criminal procedure code, does not mention to the reason, for summons, thus ,culprit until when that pro sent unto judge unaware from him dilation and with consider article 123 also eliminated possibility lawyer preset .in some cases that arrested first accused, is not proposed regulation about silence right by enforce .unlike the criminal procedure code in note if article 168 from criminal procedure code provides, magistrate before starting at study, realized in culprit that can be silent in clouted 3 from this article, violation from this obligation, talc into account.

Police prosecution and conviction until tier, thus, after many years in the bill has been accepted known procedure in the word regarding to judicial authority duty with silence .right.

Article 129 from punitive judgment procedure law and article 168 from pities judgment procedure law bill, have been banned empathy quay stains and deception accused compulsion .only with this difference that unlike current law that sanctions for non com pliancy with the provisions from this article police prosecution and conviction led to grade 4. Apart from the sanction of law, article 578 from the penal code this provision state that every one of the servant and agents of the judicial or governmental nice sassily judicial order for the accused to confess. he would be persecuted in addition to retribution or payment of blood money as case that may be sentenced to imprisonment of six months to three years .

Silence in front of voyeur:

according to the article 249,the owner silence even with attended in the care money ,let's not Because silence cannot evidence from owner s satisfaction that means acceptance and lack of will and with owner the Iranian legislator never, someone transactions other properties then property transferred in some way to pry traders regardless of ownership ,under influence of the transaction will be history. so, mere possession of the evidence to pry the tacit contract that was signed in the past ,do not a implement for diffusion in transaction thus mere silence is not let and approbation.

Silence in the 504 article:

In the emission and following this article, are seen two sentences: first sentence? From an exceptional sentence and is contrary to the legal rules ,and this is if lease duration is not explicitly mentioned and are property unknown ,from day or month or year that a certain amount ,rent for a day or month or year would be correct. if the text did not exist, according to the general rules ,especially for 216 and 468 .this lease was void ,but it authenticity with the exception from article 501 that state if same ten ant lease hold nature over time and compared the results to rest of the time agreed between parties will be entitled to wages for this situation represents a rethinking rent .but anthers against the owner of silence as assign of renewal of the lease the tenant is not seen and said the issue of consent is that as long as the tenant continues to benefit from the rent. for example to pay rent certainly does not renew lease contract after expiry of the lease term from tenant occupation of com promise on both side to continue to pay the same wage pay mints due between the parties not to renew contract. This compromise also comes from the soul, but does not silence the expiration of the lease term. And not two sides of the same surrender of lease suggesting they will not silence of course ,because this is exceptional its provisions not be extended to other case but should suffice to ensure long term lease contract given time and it is dues to tenant and lease term stay he should not discharge the landlord must pay wages for example .this may be some more or less fee is silence in the face of demand respect and considered binding provided that consent

principle is clear and obvious .such as when his longtime publisher from provide calescent to customer and here ceiled no reply ,he must pay price for it but if sender to unilaterally declare that silence as a sign of the recipients acceptance

Follows that parties remain silence in the face complementary legislation and practice the tow have accepted sides expressed their resolve to accept the provisions of these regulative in relation with silence.

But silence is a privation which could indicate a positive event that is binge accepted but will be in the form of an outstanding collection of foreign parties and without any stipulation to give to this work in other ,words ,in these cases breath work silent by ,but silence is evidence that suggests the will of the parties.

Plaintiff Salience:

Offer silent given that two side's fights are examined silence on the plaintiff and defendant.

Plaintiff in the proper sense, is litigation that also is personal, When libellant all egged read and sees hare son to deny his claim and defendant claimed that ruling requested by the defendant if defendant oath claim lapses .but if it was not clinked by claimant returns meaning that it is explicitly stated I swear , will not answer if claim that it is true.

In this case, if swear claim, claiming ,to be fixed , if you refrain from oath and in fact been silent, hot tube right to sentence.

Also if he required explanations in the court, if accepted court explanations, there is no silence and will be issued, annulment partition.

Defendant silence:

After pleading on behalf of plaintiff, judge read change response. If out of four is not to react or respond that in this case ,provisions of reply or rejection of science is debatable and states that do not know or deny it or admit it or not answer and is silent. if answer is read and express rejection of science idiot know, this claim is true or false, they judge asks from plaintiff defendant from acknowledge the claim of ignorance or denial to incident? In case of verification, he law accepted only with claims .if you want to say.ido not know when there to read or ignorance has really knows. but if they jay she has his ignorance or- knows the reality, can .be read on the negation of the oath.

in this case if you read oath and se swear to want to refuse to return a sentence issued against him and if you swear warrant be issued against him but he fights about this that, I do not cues to be but temporary file will be closed until the clamant my claim weakly. On appeal, in which case be could be re-filed .if defendant want to deny claim.

Claim must be filed his claim that according to bidet ,and if they did not rule in his favor bidet ,swore read request for in accuracy of his claim, as a result, case is void and cannot claim their right to demand back pay and even read them.

Silence in confession:

The word confession ,that literary source means of proof and place and confess and a know ledge having the same meaning .legislator in article 1259 from civil code state that definition confession is: confessed the news to detriment of the right to non-self.in all legal systems, a known ledge the crucial role from evidence. to prove cues and with certain interpretation .special exercise that right to non-neuronal lass in the brain page reflects can not alone be reason. but by something outside that implies ,he said .therefore article 1260 stipulates that any verbal confession is actually an indication from its intention. there are

certain terms in this article that do not acknowledge and confess that every word be valid because it re lies on the avidity term for mental relaxation. Article .suggests that written word in arrow and thereby also must examine a acknowledge .based an article 1280 written confession ruled as an oral confession so wrote author or signatory to be suggesting confession against him will be valid .article 1251 from civil code provides :refers explicitly says dumb person, who is admitted it is true.

Rule whether the silence of confession is not without exception, as in jurisprudent once and consequently also in article 1162 from civil code father confessed to child ration is most apparent in this exception.

Silence in the oath:

Oath menus which the will of god to witness his sincerity where by a person is expressed in the statements and commitments.

If you read silence ouch and refusal, opposed his silence and in. accordance with article 1328 and 274 and 276 from civil procedure code, court can noted at understatement legal consequences, and warns at him in three time ,if you want refuse from say the true ,that many vie used in court against you.

Silence effects in England and America law:

In England and America law ,the old adage about this that silence means consent ,is not a legal rule but as a rule ,invalidity from expression will be accepted silence alone cannot legally required to not binding .but in some cases ,court for example in the case of tenant offer, requires a new lease rents continua to increase their resident in the boards agreed ,it was sealed accepted that he required his silence land owner.

But it seems that his behavior is not accept their rent.in similar cases have been referred to courts, to silence ,silence by refusal from lesion ,is not acceptable and price is right for transmitter.

Silence effects in Iran law united states of American the family law system from common law and legal system is rooted in the history of the domination from thriven colonies have children the colonies in the sixteen the and seventh tenth centuries on the basis of legal principles governing political and great British domination were established at d ever offer independence also continued to follow the common law system he main lassies of the common law legal system is based an briar judicial opinions and ruling by its judge.in fact case law or legal riles when they are considered as one of American legal systems and courts interpret them executed if there is not history and judges must extract legal arguments ,despite commonalities from common law in England and common law system in the united states ,that Americans legal system has unique ,differentiating between the right of federal government and state government that would occur actually two parallel judicial organization in the united states .based on the separation from power and authority of federal judges speared from each other to truly understand Americans legal system to legal system of each state must be considered along with the federal legal system.

Procedure act in 1789 attempted a rule of common law be stablished as federal common law based on the bearing, only when there is a federal law ,judge must rely in common law otherwise federal law will not enter into force.

Despite these efforts, jurisdiction from federal law takes precedence order state law and legal multiplicity of comadification in United States. Currently in implementation from many cavil and criminal law there are differences between states. The death penalty is legal in state and the other states may be prohibit or even are different driving, marriage, inheritance laws, a taxes.

Further to these differences in citizenship rights among their seats as federal common law, but ratter general public and civil laws and procedures and sanctions in the state are based on cultural and historical roots of legal and law in united states ,a court had to coordinate the be accessory legal. It is also duty of court appeals issued final sentence casing federal common law system and bring unity to hank complaints that have been proposed on the basis of the laws from several states.

Judicial organization from united states of American is contained and unlike other federal countries in the world Americans federal courts are not necessarily at the top hierarchy of court but courts are able to apply only in number of cases filed to handle their differences in a primitive strafe .at state level ,each state has its own judicial organization and not a single hierarchy drawn to them .but normally there are hierarch y degree 3 that includes lawyer courts ,courts of appeal in the united state of American and state event of disagreement between courts but in number of states there is no any law for grouping courts.

A wide variety of courts in civil and criminal matters, are often different federal court against state judicial is paramount institutions of higher order a federal level, there are 12 groups of court. Traditional federal court and federal court especially have been established various federal laws on the top traditional federal court is federal supreme court. District court s, courts of appeal and then placed in lower classes. In fact, these courts play important role in United States.

Conclusion:

In Iran and other foreign countries silence alone is as a principle that one person and situation can hot understand this world and in exceptional cases silence is acceptance and can be an expression but silence evidence always is not assign rejection or satisfaction .

In the exceptional cases. Silence is acceptance and is a expression will from man. but evidence always is not a good sign and sometimes is a sign from rejection and apposition .silence of soul is available evidence as mentioned .when a person under a contract or by law required at silence ,expression of consensus and commitment are an expression from silence so breathless silence, stillness and immobility is something that means .and this case that what means refusing from speak is an expression that cannot be silence because silence means consent and without evidence or is indication from value that is attached in evidence and in this case silence means refrain from speech or action generally about credit, it will be expressed(explicit or implicit) breaks silence and resulting legal effect that this will not affect validity from silence.

Source:

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Body of Principe for the Protection. On of All Persons under Any Form of Detention or Imprisonment",op.cit., Principle 14.

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Ibid.,Acording to those cases,an offer of abandontment can be accepted by reacting to it,not merly by inactivity,but also bysome further conduct:eg.by closing or disposing of relevant files...it is very hard to distinguish between"inactivity"or silence ... and "conduct" ...Ibid.

Kessler and Gilmore,Contracts,Cases and Materials,Second edition, Little Brown and Company,Law school Caesbook Series,0791,p.271.

Roberts V.Hayward,Ibid.

The general rule thet an offeree is not bound by silence.G.H.Treitel, Treitel Law of contract,Internttional student editions,Sweet and Maxwell,1991,p.43.

The Parties are bound by any usage to which they hawe agreed and by any practices which they have estabilished between themselves.