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**TÍTULO:** El representante comercial en jurisprudencia y derecho.

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**RESUMEN:** El representante comercial es uno de los ejemplos de representación comercial que define el artículo 395 de la Ley Comercial: la naturaleza del representante y el abogado. Los abogados tienen derecho a efectuar matrimonio, incluidos los efectos de la liquidación por una de las partes; no obstante, el artículo 400 del Código de Comercio no prohíbe el representante comercial en caso de muerte o prominencia del representante comercial; sin embargo, si el representante es el abogado del director comercial, el artículo 400 entrará en conflicto con el artículo 678 del Código Civil. En este documento, la defensa del representante ha sido criticada por la justificación de esta inconsistencia, por lo que se propone una solución legal para resolverla.

**PALABRAS CLAVES:** Representante comercial, director comercial, abogado, renta.

**TITLE:** The Commercial Representative in Jurisprudence and Law.

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**ABSTRACT:** The commercial representative is one of the examples of business representation that defines article 395 of the trade law, the nature of the representative, and the lawyer. Lawyers have the right to marry, including the effects of liquidation by one of the parties. But then, Article 400 of the Commercial Code does not prohibit the commercial representative in the event of the death or prominence of commercial representative. However, if the representative is the lawyer of the commercial director, the Article 400 will be in conflict with Article 678 of the Civil Code. In this paper, the advocacy of the representative has been criticized for the justification of this inconsistency; then, a legal solution is proposed to resolve it.

**KEY WORDS:** commercial representative, chief commercial officer, lawyer, hire.

**INTRODUCTION.**

Representative person is someone who has been given a right or obligation due to a contract or legal act or due to a legal event (Jafari Langroudi, Legal Encyclopedia, Vol. 5, p. 2). According to Article 395 of the Commercial Law, "the commercial representative is the person who is the head of the trading company for the performance of all affairs relating to the trading company or one of its branches, and its signature is binding on the trading company". One of the most obvious examples is the issue of lawyers, and in accordance with the provisions of this Article and Article 399 of the Commercial Code, the nature of the commercial representative in this article is a representation. The

lawyer has the right to enter into an agreement and has agreed on its permission in jurisprudence (Najafi Esfahani, Sheikh Mohammad Hassan, Jawahar al-Klamm Volume 27, p. 356).

However, the law does not specify the lawfulness of the law, but in some materials (678 to 682) the works of the lawyer, including the dismissal of the lawyer by the client, the resignation of the attorney, dissolution due to death or insanity of the parties is stipulated by the legislator and in accordance with Article 954 of the same law regarding permissible contracts, it is quite inferred that the contract of a lawyer is permissible. However, Article 400 of the Commercial Code stipulates: "With the death or decree of the head of the trading company, no vice-president of the commercial ..." This article is in conflict with Article 678 of the Civil Code, because if we take it, the commercial vice president is the head of the commercial company, after the death of the head of the trade company (client), the commercial secretary (attorney) must be removed, but Article 400 of the Commercial Code is contrary to this issue.

In order to justify this failure, there are several theories about the relationship between the commercial representative and the head of the trading company, each of which will be examined separately:

A) The Commercial representative is an attorney of the commercial company, that is, a lawyer is a legal person, not a real person.

B) The representative of commerce has signed a contract with the head of the trading company.

***A) A representative is a lawyer.***

The Iranian Commercial Law provides for legal personality (Article 583 of the Commercial Code).

In that sense, the company has the right to have rights and duties, as well as the competence to enforce them; therefore, a legal person (company) has the right to have a lawyer who has the right to perform his or her own affairs. Since the self-employed person is not able to exercise this right, the

head of the trading company who has the right to own a business company does this, that is, as Article 395 of the Commercial Code states in the definition of the representative, the Chief Commercial Officer puts him in charge of affairs related to the business of the representative.

By accepting that the representative is a native and a lawyer of a legal person, namely the company, not the head of the trading company; with the chairman and the head of the company, he is not a commercial representative, because his main client, a legal person (trade company), will not be in full swing and will not be affected by the relationship between the deputy and the company. In particular, the second paragraph of Article 400 of the Commercial Code of Trade Law shall apply to the company upon dissolution of the company, not by the death of the head of the trading company, this confirms this theory.

This theory, although apparently contradicting Article 400 of the Commercial Code and Article 678 of the Civil Code, is faced with difficulties that weaken Article 400 justification.

Bugs implying this theory:

1. According to Article 662 of the Civil Code, the lawyer must be given the work that the client can do. While a person of his own right cannot choose a representative, as well as perform the duties assigned to the representative as a lawyer, the company as a legal person cannot, in principle, be a commercial representative.
2. Assuming that the commercial representative is the lawyer of the company and the legal person, not the attorney of the head of the trading company, it should be noted that the head of the trading house itself is one of the pillars of the trading company. With all the pillars, the company will have a legal personality, and, despite the head of the trading company as a cornerstone of the company, will become a legal person. This means that the company would not have legal personality if it were not the head of the trading company; therefore, the head of the trading company, the company and the

legal person, would be shaken by the death or the stoning. However, there will be no justification for not leaving the deputy.

3. According to one of the contemporary lawyers, there is no commercial representative in commercial companies. According to this view, if the corporation is not a company, it has no legal personality and all the business of the company, the owner of the trading house (head of the trading company), who is the real person, and the head of the trading company, if he cannot personally carry out all business affairs, can appoint a representative on his behalf, the most important of these representatives is the commercial representative (as quoted by Jafari Langroudi, Legal Encyclopedia, Vol. 5; Deputy Advisor). According to this article, the trading company has no legal personality, which can be recognized for the right to appoint a lawyer and a deputy. In this way, this theory is not acceptable.

***B) Commercial representative of the commercial lawyer is dismissed.***

Unpaid Immigration Law is a theory posited to justify the dismissal of a commercial representative after the death of the head of the trading company.

The legislator in civil law has accepted the possibility of a non-cancellation of a lawyer's contract, as Article 679 of this law stipulates: "The client can rescind the attorney at any time, unless the lawyer's representation or non-waiver is conditional upon an obligatory contract". Therefore, if the lawyer's representation or not being dismissed as a condition, the client cannot at any time dismiss the attorney, who means that, the lawyer's representation is dismissed in this case. But is it possible to include these conditions in order to proclaim a lawyer's contract, either by admitting a contract or by entering into an agency contract?

There are many theories, that of course, not all of them will be possible but briefly reviewed.

Inclusion of the terms of attorney's representation and not being dismissed as admissible:

Regarding the general rules of law and freedom of will, it is possible to insert any conditions during the contract if it is not contrary to the rules of the public and the condition is necessary and the general rule of the law and the law of the court shall include this condition, therefore, the bet is obligatory as well as the admission, and it is not permissible to violate it. You should see, then, if there is a lawyer, whether or not the lawyer is entitled to a lawyer, or if he is not dismissed, will the lawyer be happy? With the inclusion of these terms, while accepting the contract, in fact, the client will deny the right to dismiss the lawyer, but it should be kept in mind that the strength of any condition in any respect is the function of the strength of the contract that is located therein, in this case, the durability of the bet is not permissible more than the contract itself; because practice is required, the contract is necessary (Tabataba'i Yazdi, Seyyed Mohammad Kazem, Al-Urvata al-Wuthqa, Volume 6, p. 189).

With the inclusion of these conditions, there is no possibility of dismissal of the attorney at the time of admission, and as previously stated, it is obligatory to pay the wages on condition that the contract is acceptable. Of course, it is not impossible to dismiss an attorney, but to dismiss it, it is necessary to have an introduction that the introduction is the termination of the main contract, by terminating the contract, the terms are also discredited. Therefore, the inclusion of the terms of the lawyer's representation and the absence of dismissal by him in the form of a lawyer cannot turn into a lawyer's statutory parental affairs.

**Agreeing the necessity and the absence of the attorney's deletion in the realm of the deal.**

Some believe that it is possible to contract a lawyer independently and without the need for another contractor, whether it is an agreement and another, but also the main agreement, in conjunction with the conclusion of the lawyer's contract, as necessary, so that the marriage contract is incurable and irrevocable.

Because, based on the principle of the rule of will and freedom of contract, the right holders can abolish their rights by free will and choice. Therefore, with the inclusion of the necessity and absence of the dismissal of a lawyer, a client and a lawyer, consent to the necessity and non-termination of the lawyer. In this way, the client will deprive the lawyer of the right to dismiss the lawyer, and the attorney will have the right to resign, and they do not need to make another deal for this. Of course, some jurists are of the opinion that such an agreement is null and void. Because, according to the famous promise, the condition for the necessity or lack of deportation, which is conditioned by the concession contract, this is because this condition is contrary to the law of the marriage contract (Shahid Thani, *Al-Urvata al-Wuthqa*, Volume 4, p. 213), and according to some, this agreement requires a far cry from the fact that it is necessary to insert the condition of non-dismissal, along with the lawyer's contract, which necessitates the conclusion of a lawyer; however, this condition takes its necessity from the original contract (Tabataba'i Yazdi, Seyyed Mohammad Kazem, *Al-Urvata al-Wuthqa*, Volume 6, p. 189).

Nevertheless, some other jurists agree to such an agreement, and believe that it is possible to independently sign up to a lawyer and, at the same time, concluding the main agreement as necessary, and so-called advocacy, because firstly the condition of necessity or non-dismissal, contrary to the fact that the contract is based on the lawyer's contract, not in spite of the condition of its essence; secondly, if this condition were to be followed, then the validity of it in the other contract was not correct. While in Article 679 of the Civil Code, the law stipulates that the lawyer should not be dismissed as well as the necessary contract (Emami, Seyyed Hassan, *Civil Rights*, Vol. 2, p. 234).

The condition for not dismissal during the contract is not distant, since the necessity of the condition is not to stop the survival and the need for a lawyer, but to stop the conclusion of the lawyer's

contract; therefore, such a suspension will not go away (Tabataba'i Yazdi, Seyyed Mohammad Kazem, *Al-Urvata al-Wuthqa*, Volume 6, p. 189).

However, since the marriage contract is permissible, it is imperative and unenforceable, this is unlike the rule. Therefore, evangelizing it requires a statement to be given to it, Article 679 of the Civil Code explicitly refers to the proclamation of lawyers, however, this clause indicates the waiving of the conditions for the representation of a lawyer or the non-dismissal of a lawyer; thus, it is required that if the condition for not being dismissed or resigned, at the same time, entering into a lawyer's license or other legal agreement, the authority of the client or lawyer shall not be waived in relation to the exercise of the right of cancellation, nor shall the lawyers of dismissal be concluded. Now that you cannot enter into a lawyer's right or not to dismiss the lawyer while making a contract, as well as in the self-proclaimed lawyer's office, to represent the lawyer, therefore, the expulsion of these terms, in the form of an agreement for the theory of dismissal, is explained in the explanation and justification of Article 400 of the Commercial Code.

According to Article 679 of the Civil Code, the lawyer can be dismissed in two ways:

1. Attorney's lawyer must make the necessary contractual arrangements.
2. Failure to dismiss the attorney as well as the necessary contractual arrangements.

***1. Attorney's lawyer must make the necessary contractual arrangements.***

One of the ways in which the law anticipates law enforcement, bet is required as well.

The attorney is twofold: the first one is conditioned as a condition of the result; the other form is conditioned as the condition of the verb.

First, the lawyer's representation is as a condition for the outcome of the contract. In this case, the marriage contract is an essential part of the contract and it requires acquisition and, as long as the original contract remains, the condition cannot be overcome. As stated above, the condition in any

respect is the function of the strength of the contract which is located along it. It should be noted that if the conditions of the lawyer are in the same way as the necessary contract for the benefit of both parties, the conclusion of the lawyer's agreement with the two is as necessary and non-dissolving; Otherwise, that is, if the terms of the lawyer are in favor of one of the parties, convicted may terminate the contract and cancel the contract, although it is not satisfied with the conditional condition. The condition of the paraphrasing of the condition is also discussed in this way, since under the condition of the lawyer, which is entitled to marry, the necessary agreement is unaltered, and the result is the need for a lawyer, which is based on the principles of this theory, contrary to the nature of the lawyer's contract. Here too, the same answer is given, that is, it is said, the discussion of the permission and the necessity of the necessity of the relation of the contract is the condition that it does not invalidate the contract.

Second, the lawyer's representation in the form of the condition of the verb is required. What about this kind of affiliation, will the lawyer be happy? Or can the client dismiss the lawyer? Some jurists have expressed two things:

1. The client can dismiss the attorney because the soul of Touquile is conditional and conditional against (the client) is obliged to implement it and there is no obligation to survive the lawyer because what is conditional is conditional on the obligation to install a lawyer, so there is no reason to be unprotected attorney.
2. The client cannot dismiss the attorney because the purpose of the condition with the survival of the lawyer; in other words, the lawyer is in such a case anxiety, like the two parties have bet on two things: one is the lawyer, and the other is the survival of the lawyer (Tabataba'i Yazdi, Seyyed Mohammad Kazem, *Al-Urvata al-Wuthqa*, Volume 6, p. 189).

Most lawyers, including Emami, have chosen the second one, and they consider that the parties' intention is based on the terms of the lawyer's contract, the survival of the lawyer, and they did not

provide the necessary legal representation on condition. In other words, the lawyer who is obligated to make a contract is in fact an adventure and it is like a proxy made as a condition of the result.

***2. Failure to dismiss the attorney as well as the necessary contractual arrangements.***

In such a way that the lawyer's contract is independently established, then the client will be required to waive the lawyer's waiver. In this case, the condition of not being canceled is the necessary part of the contract, as a result of the conclusion of the lawyer, in this case, the effect of the necessary contract is found, and as long as the original contract remains, the lawyer will be non-removable. The purpose of the non-dissolution condition came under Article 679 of the Civil Code. In fact, the non-fulfillment of the termination is conditional upon the result of the conclusion of the necessary contract, whereas, if this failure is not conditional as a condition of the verb, the client can dismiss the lawyer, but a conditional or a lawyer can terminate the essential contract due to conditional violation against the condition. Now, in detail, it can be said that by applying Article 679 of the Civil Code in order to proclaim a lawyer and convert it into a contract, the contradiction in Article 400 of the Commercial Code with civil law is resolved.

As a commercial vice president, by virtue of one of the two methods envisaged in Article 679 of the Civil Code, it is not permissible to conclude a lawyer's contract between the two contracts, but the contract is a proxy requiring the necessary contract and the effect of the necessary contract. So, with the death of the Chief Commercial Officer (Client), the Commercial representative (attorney) is not concerned.

Bugs implying this theory: The fundamental and fully justified grounds of this theory, which weakens this theory (lawlessness law), justify Article 400 of the Commercial Code, is that, the effect of the condition of the lawyer as well as the condition for not being dismissed, while entering into the contract, is the lawyer's contract, the effect of the necessary contract, and therefore the credit, the

parties cannot terminate the lawyer, but this does not mean that the nature of the marriage will be made possible by the right to enter into a marriage; this is not the case, and other rules of the marriage contract, such as the dissolution of the marriage to the death or the madness of the parties in the current lawyer (Emami, Seyyed Hassan, Civil Rights, Vol. 2, p. 234).

Famous jurists and lawyers also admit to this: Under Article 399 of the Commercial Code, the Chief Commercial Officer seems to be able to dismiss his deputy, but this deportation must be filed and made public. Nevertheless, the theory of adventures is not relevant at all, because in this theory, the relationship between the vice president and the head of the trading company was considered as an adventure lawyer to justify the failure of the vice chairman after the death of the head of the trading company. Although at the beginning of the discussion it seemed that this theory could overcome our contradiction, but now, despite these bugs, this theory can certainly be rejected.

Justifications of some lawyers on Article 400 of the Commercial Code: This article is required in trade, because in the event of the death of the owner of the trading house, if it is handled in accordance with the principles of the Civil Code, the trading company will be shut down for a while and therefore may incur irreparable damage if, in accordance with the provisions of Article 400 of the Commercial Code of Commerce Act, it administers the affairs of the trading company in accordance with its discretion, so that the owner of the trading company becomes aware. The new owner can dismiss the commercial vicegerent (Jafari Langroudi, Legal Encyclopedia, Vol. 5, p. 11).

The nature of the vice president, advocate, and lawyer; however, the particular requirements and requirements of the law of commerce and trade have led the legislator to make special laws in line with the principles governing trade (speed, trust) to foresee the establishment of such principles as the failure of the dismissal of a commercial vice-president in the event of the death or demolition of the head of the trade company (DeMarchili, Commercial Law in the Current Legal Order, p. 728).

The commercial vice-president is a lawyer, but according to Article 678 of the Civil Code, a lawyer or a lawyer or a clerk will be suspended. Therefore, Article 400 of the Commercial Code is completely contrary to this principle, but since the Commercial Code has been passed after the Civil Code, therefore, it can be argued that in the case of a commercial vice-president, the provisions of Article 400 of the Commercial Code are valid (Sotoudeh Tehrani, Commercial Law, p. 1, p. 37).

Review of justices' justification: A brief look at these justifications seems to be that no one is in the position to provide a solution to the failure of the deputy to be removed, but these justifications and opinions are somehow accompanied by the law of law; also, by examining the bugs on the lawyer's theory, some of these justifications will not really matter. Therefore, the absence of removal from the deputy, in the event of the death or hijacking of the head of the trading house, remains a question!, and accepting that "their relationship is of a kind of lawyer, but in some cases there is an exception as to the rule of law", as most lawyers have to admit, is not justified. Because the absence of the deputy's deputy, in the event of the death or the hijacking of the head of the trading company, is necessary, including the effects of the contract, this work is not adhered to, but as an exception. Considerably, jurisprudential and legal sources provide a solution that seems to conflict with Article 400 of the Trade Law.

## **CONCLUSIONS.**

After reviewing the ideas of the past, now another theory is presented as the last opinion and outcome of the discussion, which seems to be, in any sense, justifies the relationship between the vice chairman and the head of the trading company in accordance with jurisprudence and law, and conflicts with Article 400 of the Commercial Law with them (jurisprudence and law). The first step to resolve the conflict is to find out the relationship between the vice president and the head of the

trading company in the form of an agreement, because the necessary agreement with the dead or the stones of the parties does not disappear. The most suitable form that can be imagined for such a relationship is the rental agreement, because a marriage is necessary and, if necessary, between jurists and jurists, there is no theoretical difference, and the pillars of it are in any way consistent with such a relationship, and the famous promise among the jurists is that, with the death or the illness of one of the parties, the rent cannot be waived (Najafi, Sheikh Mohammed Hassan, Jawahar al-Klamm, 27, 207, Shahid Sani, Al-Rawzat al-Babae, 4, p. 330- Kashif al-Khatha, Mohammad Hussein, Tahrir al-Maghaj, 2, p. 207) - Ibn , Abdullah, Al-Moghani, vol. 6, p. 42. Mosaleh Faghii, p. 1, p. 274).

In the case of non-nullity of rent, there are differences of opinion among jurisprudents due to the death of the perpetrators (Imams and Sunnis): Some scholars of the Imamiyy believe that the rent will be eroded by the perpetrators (Sheikh Mohammad Hassan Najafi, Jahehr Allah, Volume 27, p. 206 - Sheikh Moody, Al-Maqnahah, p. 640 - Sheikh Tusi, al-Nahyah, p. 444 - Al-Halabi, Ibn zohrea, the richness of the nation, p. 287), which some of the Sunni jurisprudents (Hanafiyya) also believe (Alkashayani, Abu Bakr, Badaea al-Sana'a, vol. 4, p. 222 - Mosallah jurisprudence, p. 1, p. 273). And some of the Imams' jurists consider the renegotiation of the rent to be due to the tenant's death (Sheikh Tusi, al-Mubsouth, p. 3, p. 224 - Judge ibn Baraj, al-Mustaq, p. 1, p. 501).

Of course, according to what was said, the invalidity of such statements is clear, also, in accordance with Article 497 of the Civil Code, the rental agreement shall not be revoked by the death of the perpetrators.

If we consider the relationship between the vice president and the head of the trading company in the form of a lease:

1. This relationship is the type of person's rent (Article 467 of the Civil Code).

2. Lease of persons in terms of the conditions of concluding and correcting the contract is subject to the normal rules of the lease (Katozian, *Lessons from Certain Contracts*, p. 1, p. 246).

Therefore, the components of the rental agreement are consistent with such a relationship. Because the head of the trading house hires as a tenant to carry out all affairs related to the trading house or one of its branches, and is not deprived of the right to become a commercial vice chairman by the death (Article 400 of the Commercial Code).

Although the relationship between the vice president and the head of the trading house is required, due to the fact that some lawyers with death or ancestor, the relationship between them disappears, this view seems justified in some ways, but it does not call into question the necessity of renting a lease, and it is necessary to accept this opinion of the rental. In the event of death or stoning, the head of the trading company is not. Further explanation is that in the lease of hired persons, there are two types of hire: the special tenant and the hired, absolute or joint the special tenant is the person who hires him to do something, provided that he himself does so.

The absolute or common owner is the person who does not satisfy the tenant for doing his duty (Kashf al-Ghatha, *Tahrir al-Maghaj*, p. 2, p. 18); therefore, if the vicegerent was the absolute hireman of the head of the trading company, so that his stewardship would not be conditional, then even with the death or the hijacker of the tenant (the hired) the relationship remained and the rental agreement remained, however, in our capacity as a deputy governor, a special tenant has been provided with a guarantee from the head of the trading company, therefore, with the death or the deputy of the deceased, the lease of the two will be dissolved, lease has not been canceled due to the death of the head of the trading company (tenant) and the vice-president is not dismissed. By accepting this theory, there is no need to adapt the lawyer's contract (by imposing an exception) on the relationship between the vice president and the head of the trading company, as well as the justifications for this relationship.

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