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### Studied jurisprudence, law, citing preemption

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#### ABSTRACT

Pre-emption, right of possession, and one of the two partners, the property is non-transferable, and pre-emption, the excesses and the pair is strengthened, and the evidence of that agreement, because of tradition and the public, and contrary to nature principle. Conditions, non-transferable, being capable of being divided, joint property, common to transfer shares to buy and sell, buy or sell a joint share transfer of common shares, the limited number of participants, not more than two persons, is due to be Muslim and be able to pay the price. For absent, ignorant, beggars, insane, kids, travelers and headed orphan, is fixed, and for being a neighbor to neighbor, is not constant, and also for those who are devoted to them, not as a pre-emptive. Qualities get it, be immediate, definite and certain to bring about the condition, and the purchase and sale (the authority and dominance of the demise of the person signing) flows, and how it is transmitted, is the inheritance, the heir to the size of each share would be before citing the preemption, the client do anything, could be due to demand, and is perfectly in sales, if before the violation, the customer is guaranteed and if a natural disaster, provided both are mediators, the catch and release it, and the difference in the price quote, the customer promises to share, and, in some cases, such as if the intermediary does not claim the power, and the transmission is not part through sales and property usurpation if preemption is void, and survivorship Eghaleh and terminate the transaction can not be canceled and the sales price is the same as the wedding date has been set.

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#### Introduction

In civil law, the possession of four causes may be drawn:

According to Article 140 of the Civil Code, these four causes are: 1 - to revive the barren lands, and And storing objects 2 - by contracts and commitments 3 - by virtue of the survivorship 4 - inheritance Citing the principle of preemption, among all Islamic sects, is common by any of the jurists, has been questioned and denied only by Jabir ibn Zeid, and has been quoted Ababkr Asm, they were denied the legal principle, the justify the pre-emptive, harm to the Lord's property. If the client knows, will he, will not apply to the transaction, and the other partners may not engage in trade, or negligence, underscores, and thus be affected owners. The Civil Code of the Islamic countries, the Syrian Civil Code, the doctrine of pre-emptive Mnkryn, and it is rejected. But according to the consensus of Muslim texts, the credit for the opposition's remains, and there is no doubt attributable to the pre-emptive right, is the Islamic Sharia, and thus, as noted above, none of the leading scholars of the Sunni, or Shia jurists in its principle, have no doubt.

#### The lexical definition of preemption:

Scientists vocabulary, have defined the term survivorship:

Survivorship, Alshafe, artificial, c Asha and Shofae, each pair or pairs (1) Raghib Isfahani, in Almofradat, preemption is defined as: Survivorship, the right to ask for anything that is traded, the partner must attach to their property. Amid Persian culture (2), survivorship, the right neighborhood, the right of the neighbor and partner in the property, the purchase of neighboring property or shares of the other partner, and means madness, madness.

Allama Hilli (RA) is defined, preemption is deserved by the partner, the partner's share of that, and by the transfer, and the ratio of sales cucumber Parliament, it cannot be fixed.

#### Lawyers comments (3)

Results and withdrawal citing preemption, the rules are quite different.

For example, vendor sales, so the two parties to the transaction may not be satisfied, the sales proceeds are not mutually satisfactory transaction conditions, but pre-emption, not satisfied with the condition of the seller, whether it is satisfied or not, survivorship veterans obtained and apply. And pre-emption, due to the customer's successor, after being bought and sold, and we conclude that the right of survivorship, a special rule, and unlike the original, because the original transaction, such as buying and selling, the consent of the parties, However, preemption, mutual consent is not a requirement.

Scholars also believe that the issue of preemption: the financial, the pre-emptive, so honored, proven sales, which is not transferable, walls and trees, sometimes attached to each tree sold, not alone like that, like wall, a group (two cases), no contract partner, then the partner is not pre-emptive, and the other wall, like a tree, attach the earth have to be pre-emptive. (4).

In terms of jurisprudence, citing preemption of unilateral obligations, as has been said, because unilateral obligation born of the will, and the will of the other, it has no effect, therefore, cannot be foreign explorers in research to be effective, and unilateral obligation, discovered only aspect Ashhady has announced that its pre-emptive actions, Saman paid by the

customer, the salesperson has given to Him, and then portion being Sabieh is, therefore, to study the unilateral obligation there explorer essential's .

Scholars in their work, citing the nature of preemption, several changes have been applied, including Shahid Second, the exchange force, Which can be interpreted, whereby instead of relying on customer, without his consent takes place, and the elsewhere, citing preemption, as soon as the Exchanges . ( 5 ).

Kerki Researcher, so it represents, in reference to survivorship, customer satisfaction is not a requirement, the citing of survivorship, meaning Swaps knows, and knows that it is because of this story, the pre-emptive sales functions. ( 6 ).

#### **The purpose of this study**

The main objective of this study jurisprudence and legal opinions, the right to invoke preemption, Shiite jurisprudence and civil rights, as well as explaining the work and associated provisions on the subject and it is argued that, in addition to this study, answering some questions, perhaps about the issue, there will be .

#### **Research questions**

Questions in connection with the issue, citing preemption, there are:

- 1 - citing preemption is?
- 2 - What are the conditions ?
- 3-What works and orders citation survivorship ?
- 4 - In the case of pre-emption is void ?
- 5 - Quality of survivorship How to cite ?

#### **Hypothesis :**

Citing preemption, must be based on several criteria will include:

- Survivorship property is non-transferable, and survivorship is transferred through the sales, and the share attributable to the preemption of ...

Citing preemption, ie enforcement priority shares, the shares sold to others

Pre-emption, in some cases, voluntarily or forcibly, are void .

Citing survivorship, which depends on the medium itself should exist.

#### **Materials and Methods**

The research method of this paper is to define and describe the books and visiting libraries and using multiple sources, and the use of computers and the Internet, information is collected, and the paper has been.

#### **Survivorship in the non-transferable property**

##### **- Non- transfer of property**

It is the creation of pre-emption clause, Shafi or partner in an immovable property, the partnership may have. In partnership real issues like cars, although other terms of preemption, but preemption does not apply .

Of immovable property, may be of two types

Is inherent in the mining, forestry and ...

##### **Artificial immovable, such as land building**

Scholars, in relation to immovable property essential and irreplaceable synthetic, have different opinions, some pre-emptive in artificial immovable property, do not, and some believe in both .

But renowned jurists, the Estate is inherent.

Saduq Sheikh (RA) said, in Ship, track, baths, Mill, South, dressed in what is divided, there is no preemption,, there is no preemption, and preemption means other than these, such as animals, land and slave and other property real estate is essential ( 7 ) . And in Those who do not attend Fakih, hadith from Imam Sadiq (as ) has narrated that said : " The Messenger of Allah may Allah bless him and his family Beshafah between the

partners and the needy in Alardin " The Messenger of Allah (SAW ), the land and buildings, the ruling partners to have pre-emptive .

Shaikh Tusi (ra ), who is on the ship and everything . Delivered, such as dresses, grain ships and animals, and the rest of it, the majority of Shia scholars, there is no preemption . And another said, anything that is transferable ( 8 ) . And delivered is not connected to anything, such as pet clothes, cereals, ships that are not pre-emptive .

Imam Khomeini ( ra ) : In the first issue written Alvasileh, it is said, is not the real thing, if it is divisible, without preemption bug is fixed, such as land, orchards, houses and the like, and the proof of survivorship, such as clothing and goods, ships, animals and also in narrow roads, wells, and most mills and baths, as well as palm trees and the fruit of that tree, palm, and other trees, alright.

#### **Survivorship in the citation**

In this regard, the opposition is also given, as well as pre-emptive in this citation, here are some of the comments we get, then we conclude .

Shaikh Tusi (ra ) said elsewhere, any number between the two partners, the earth, the animals, the fixed property, or goods, then sell one of the partners shall be entitled to survivorship, and this requires

Will require the citation of survivorship ( 9 ).

Syed Murtaza (RA ) also believes that pre-emption in everything Realty, goods concubine, animals can be here, or not, here Junaid ibn Abu Salah also have to comply with the Syed Murtaza .

Men have criticized this hadith, some scholars Yunus himself, and they also quoted from Imam Sadiq (as ) has narrated from Imam Sadiq (as ), in relation to quality Shafi, was asked Imam said, preemption allowed every thing, such as land animals and goods.

There are hadith that Imam Sadiq (AS ), the question of preemption for whom, and in what has jurisdiction, whether the animal is pre-emptive, and how, the Prophet said in each thing preemption is allowed .

First promise: he says yes preemption on the number of partners is an absolute constant.

Second promise: on the pitch with a lot of partners, survivorship is constant, and the servant of survivorship, not constant, except for a partner.

Third promise: preemption, in nothing more than a partner, not fixed, and it is more accurate . And the third word in popular jewelry, but also a famous celebrity, close to agreement. Martyr Sani (RA ) in Masalek : Our scholars differ on whether preemption, the presence of more than two partners is fixed or not., And Syed Murtaza and its citizens, no differences have been banned, even though Ibn Idris the claim has agreed to, and Ibn Junaid believes that, despite the plurality of absolute survivorship is constant, and the number of three, after the popular belief, it has strengthened, and Ibn Idris in claim settlement, is wrong, and Sheikh Saduq (RA ), the book he is leader, to establish preemption, a plurality of non- animal partner .

Comments lawyers, too, is taken from the above .

As a result of withdrawal of pre-emptive other situation, the limited number of partners .

The Note states that the land and House for preemption is

Father Sheikh Saduq (RA ) : survivorship in everything, including animals, property, fixed or slave, if it is between two partners is constant .

Hosseini Shirazi : survivorship in commodities permitted to know.

Translator Sharaye : the most promising initiality, and mass lastly that have allowed it to establish any sales, movable or immovable, is divisible, and Ibn Abi Aqeel, the actual divisor will also be made to establish survivorship's .

**Results and picked up:** a pre-emption clause in place, being immovable, the famous Imami scholars, such as land that is innate, and in others, such as trees, houses, walls and gardens that are non-essential, conditionally granted pre-emptive should be sold along with the land, if sold alone, which most are not entitled to pre-emptive, but others such as Syed Murtaza and ... Believe that anything is permissible preemption, however, many Shia books, claiming to have been agreed .

#### Term of survivorship

Shaikh Tusi (ra ) in Nahayeh : thus, if the price is deferred, the pre-emption, at the same time to take pre-emptive, and the price of his term stays, and if not deferred, the sponsor filed, but the comprehensive book, and unlike say, Between the current price of give and take, or whether to wait until a certain time, and the prices specified period, give or take (10).

Allama Hilli (ra ) : The immediate pre-emption, if not ask for a certain period, this delay is to seek, and the preemption, squeezes . Shaykh Mufid (ra ), Ibn Braj (RA ), Ibn Idris (RA ), saying that the extended Sheikh said, that the liberty of survivorship is currently buys or should have confirmed . Result of withdrawal if the exercise of pre-emption, the price is deferred, it is pre-emptive Shafi Meanwhile, his term was over priced, and the price of liberty Shafi's term, give or wait for the price, and the to a certain time, and if you have time can Shafi, while taking pre-emptive, and if the money is paid, the customer does not have to take it, and Shafi liberty, which is the current price to preemption or delay long-term, the famous and the price is deferred and immediate preemption invoked, for the term of the related costs are not attributable to survivorship, Allama Hilli (ra ), imam believes that it is delayed, causing preemption is falling, but what has been seen, most scholars as the first price, the term Shafi buy their favor .

Saduq Sheikh (RA ), the Alsaer said : Our companions upon all of the property before the contract, the transaction is transferred from the seller to the buyer, not to lay ( disposal and destruction dominate the person signing ) and its duration, and not all of pre-emption clause, is void . Sheikh (RA ), in detail, saying: Whenever a piece of the condition (optional and dominate person in the dissolution of marriage ) to sell, so if the ( person in authority and dominance of dissolution of marriage ), for both the seller and may, for the preemption, preemption is not because preemption, only if the customer's property, the transfer was necessary, and if ( and domination of the person providing the dissolution of marriage ) is for the customer, for Shafi preemption is necessary because the property through the contract, the customer is fixed, and the pre-emptive, after the end of ( one's authority and dominance in the dissolution of marriage ), can claim, and a warrant ( authority and dominance in the demise of the person signing ) assembly, and ( authority and dominance the demise of the person signing ) condition, according to what we have explained, is equal to the ( authority and dominance in the demise of the marriage party ) visible to Shafi, is two words, not an accurate quote, and the quote is correct, it is superior Thus, the preemption, when the sale started, for he ( the person in authority and dominance dissolution of marriage ) is visible, so if you were happy, holds, and if Disliked customer returns and price falls .

#### Legal opinion

As a result of withdrawal of the property upon sale of the vendor contract, is transferred to the buyer . Although it is the buyer, and consequently pre-emption is also available . But some jurists believe that, if ( and domination of the person providing the dissolution of marriage ) for both ( vendor and purchaser ), pre-emption may be revoked, so the term ( in the person of authority and dominance dissolution of marriage ), spent, but if ( and domination of the person providing the dissolution of marriage ), to the customer, pre-emption applies . Of course, it's poorly known, and have been attributed to ( a person of authority and dominance in the dissolution of marriage ), whether for one or for two, or for another, survivorship is constant, and (optional and dominate the person's demise contract ) Shafi is visible for all to see sales times, and if Npsndd, and can be returned to the customer, and if they were satisfied holds, then all of ( one's authority and dominance in the dissolution of marriage ) is provided, and the sale ( provided and a mastery of the dissolution of marriage ) with the right Shf is no contradiction, and it is most Imami jurists .

- How to cite quality of survivorship
- How to invoke preemption
- In the immediate pre-emptive
- The length of having pre-emption
- Referring to the pre-emptive sale ( disposal and destruction dominate the person signing ) the
- Responsibility understood in reference to pre-emptive sales

#### The immediate pre-emptive

Shaikh Tusi (ra), in contrast to (issue four), ordered the immediate pre-emption, if the power was in want of it, not acting, its preemption will be revoked.

Because what we have said, the group agreed that he could appeal to survivorship, and other than that, there is no reason for it .

Ayatollah Khoei (RA ), Mehajoasalehin book, it says ( on the quad ), It is stronger, be sure to take pre-emptive action, without excuse, delay, and delay pre-emptive, lapses.

The first martyr (RA) in Lome : the immediate pre-emption, so if he neglect, preemption will be revoked, in Imam Tahriroalvasile, the seventh issue, reads as follows: If the Sale Shafi find information, while the right to demand and receive property, to survivorship, with no motive of procrastination and delay, intellectual, and rational excuses, the religious or lay her survivorship, will be revoked .

**The result:** a hassle and there is no preemption Momatel and Hareb, and believes that the pre-emptive, as soon as realized, be pre-emptive to demand that someone purposely delay, preemption to invalidate his, but it is no excuse, you must be a lawyer, but also the legal power, it does not invalidate his survivorship, and they are, believe them, because His hallucinations if the price is high, or that the price of gold, or His address for him, the problem is, the later it is, it can not see, and he believed that the baby news, unfaithful, and one is just an excuse . Allama rule book ( s ), then any losses pre-emptive reach him, so crave to go looking, so if you can prevent illness or imprisonment shall be an attorney, provided the cost is not legal, and if you do not find a lawyer, take control, and if left to take control, it is, does not override the individual survivorship .

#### Legally

Obligation to understand sales, to invoke preemption :

How to determine the sponsor, the understanding of survivorship

Shaikh Tusi (ra ), the detail and contrast : the seller and buyer, to trade piece, and Shafi is guaranteed, the price for the seller, and the customer's property time on dealing with their own contract, the condition ( authority and dominance in the demise of the person signing ) that, ( a person of authority and dominance in the dissolution of marriage ) is the intercessor, does not invalidate his survivorship .

Ibn Idris (RA ), the Srayr also follows

Allama Hilli (ra ), and several have to cancel it, because, the sale is approved .

Allama (ra ), the rules are : the provision of a customer 's neck remains.

Religious laws : the preemption provision, there is the customer 's neck .

Javaherkalam it to the preemption provision, through the fault after cancellation Shafi, with his survivorship, the pieces were terminated, the preemption provision, there is a return customer, it is cancellation being terminated .

#### Comment Lawyers

Javher master : So, Shafi customer takes the Seller, for the sale to the customer is transferred, and seller, it is disconnected.

However, if it is assumed that, Shafi preemption claim, and a piece of land is in the hands of the seller, to be told Shafi, the seller may, or leave, as many scholars, the catalyst, and the client is not required . If the seller, the seller demands, and although Shafi wants it, it do not see any difference . Resolution achieved in Religious laws : it preemption Shafi, the client is, and it is the customer, and the vendor does not . Alghavaedolfaghih Bojnourdi : Clearly, it is the pre-emption, pre-emptive right to the customer after the sale, and its accuracy, and transfer of share purchase, the customer and the owner of survivorship, the property is received from the customer, and because of this, the price of the pre-emptive customer, transmitted, not the seller.

Martyr Sani (RA ), the Lomeh Description : The client is pre-emptive, not the seller, because the current property, the customer, and the customer is responsible for providing the material .

Mohammed Taha in Alansaf book : the pre-emptive, it will cancel the sale and get the customer .

Shaikh Tusi (ra ) on the contrary : whenever the preemption, the part of the customer or the vendor to the customer whether or not they receive, understand and responsibility, it is the responsibility of the customer, not the seller, and the seller never preemption preemption is not, the property of the owner, and the owner will have to explain that, according Religious laws, if the pre-emptive, to refrain from paying the price, the customer is not necessarily the type to surrender Shafi, until the price take, and according Masalek, if the seller does admit that the price has been paid to the order of the holder preemption because he deserves it, and no one claims it does not.

Results and impressions : After the sale, and tell him to take pre-emptive action Shafi, Shafi sale of what is to be shared, not the vendor, the vendor out of ownership, and the ownership is shared, and common has the duty to submit sales Shf, and understand that the responsibility is shared, the price will be provided, but do not give up if the price Shafi, customer and job submission is not selling, it is the consensus of Shiite ulama .

#### Conclusions

1 - preemption means a lot, even being strengthened and Shafai, and Shafai is proceeding.

2 - In terms of survivorship, which means both partners, if you sell one share to another, for Other partner, or associate clauses future right to possession of the part will be .

3 - Due to invoke preemption, conditions, including Muslims, both sides being able to Delivery of sales, citing emergency, pre-emption for the missing passenger, crazy and ...

4 - pre-emption in the purchase and sale, is now optional .

5 - pre-emption can be inherited .

6 - In case of discrepancy between the broker and the customer, the price, the customer 's acceptable.

7 - pro- seller than the buyer, not the rebate forms, and much of its religious aspect Not, and is under contract day .

8 - preemption is also qualified as being non-transferable, joint property, transfer all Shares, limited partners and all ....

#### Suggestions

1 - preemption generally, non-transferable property, which normally are divisible .

2 - in survivorship, according to the infallible, and quotations should be addressed .

3 - Comments infallible, dust, aging, usually they do not exist and are applied at all times .

4 - Conditions of survivorship, by virtue of its quality, people should be aware .

5 - Comments mujtahids of our time, to be considered in relation to survivorship .

6 - In case of discrepancy between agency and client sides due to the conditions of the deal, pre-emptive right to cancel .

7 - If the sale of the property by the buyer, the intermediary shall have the right, to cancel the sale, and the buyer of first and second, to be able to invoke preemption .

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