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A Comparative Study of the Lawyer's Contract with Himself in the Jurisprudence of the Five Islamic Schools of Thought

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Abstract

The financial and non-financial contract between the lawyer and himself has become a breeding ground for the various viewpoints of Imamiyyah, Hanafi, Maliki, Shafi'i and Hanbali jurists. This article, with descriptive-analytical method and collection of library materials, considers the opinion of jurists in the phrase "dependency of the validity and influence of the lawyer's financial contract with himself during the client's permission" to be approximate and reconcilable. As the jurisprudential theories depend on the validity and influence of the lawyer's non-financial contract with himself "about marriage with express permission or with explicit evidence" and "in the matter of adoption and custody (as well as surrogacy and borrowing based on the assumption of legitimacy) subject to absolute permission", it is symmetrical and consistent but this writing, in the financial contract, especially from a practical and objective point of view, due to the economic and social importance of the transactions, the observance of jurisprudence rules in emphasizing the interest of the client and a kind of rule on the preference of the lawyer's interest in the conflict of interests, considers "conventional permission beyond the application of attorney" as necessary when it is possible to use a lawyer, and of course, such an opinion is not without support in jurisprudence.

Keywords: *Self-Contract; Lawyer's Transaction; Lawyer's Marriage with Client; Foster Care Agency; Custody Agency; Client's Permission; Five Islamic Religions*

Introduction

Whenever a person holds a general or absolute power of attorney to form a certain contract, he enters into a contract in two roles (demander and acceptor) and as two parties to the contract (principal and attorney), this contract is called "contract of attorney with himself". In this contract, a person has two designations and in two directions; the designation of representation on the other side, and the designation of being authentic on his side. Such a contract in the jurisprudence of the five Islamic schools of thought (Imamiyah, Hanafi, Maliki, Shafi'i and Hanbali), in one hand, brings up the story of "incompatibility of interests", "man's temptation", "simultaneous gathering of two incompatible qualities of demand and acceptance in one person" and "inhibiting narrations" which places the lawyer's contract with himself in the forbidden area. On the other hand, the discussion of "facility of transactions and sovereignty of will", "the existence of express or implied permission of the client", "customary validity of the contract",

"sufficiency of direction multiplicity of the contract sides" and "verifiable traditions" are set forth which makes it enter the narrative valley. This is where the jurists of the five Islamic schools of thought have different doubts, reflections, and views regarding the authenticity and influence of the "lawyer contract with himself" and probably these doubts and reflections have led to the difference of views between financial and non-financial contracts. Indeed, "what is the ruling of a lawyer's contract with himself in the jurisprudence of the five Islamic schools"?

It seems that "the validity and influence of the lawyer's contract with himself, from the point of view of the jurisprudence of the five Islamic schools, in financial contracts depends on absolute permission, and in relation to non-financial contracts, it relies on explicit permission". Although there are different interpretations of financial and non-financial contracts, however contracts whose direct object is property and financial interests and whose main purpose is to provide for human material needs can be considered as "financial contracts" and the contracts in which the social and personal aspects are more clearly manifested and are created with the aim of providing the emotional and spiritual needs of a person are defined as "non-financial contracts". This article first deals with the re-examination of the "Financial contract between the lawyer and himself" (the first topic) and then it examines the "Non-financial contract between the lawyer and himself" (the second topic), from the point of view of the jurisprudence of the five Islamic religions.

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Topic 1: The Lawyer's Financial Contract with Himself

A group of jurists have presented different categories of financial and non-financial contracts. When the object of the contract is the object or interests of the nobles, it is called a real financial contract or a decree. It doesn't matter if it means transfer of property for consideration (such as sale and barter) or without consideration (such as: gift, loan and bequest of object), or an act related to object (such as farming, Irrigation contract, bailment of a capital) or transfer of benefit of object for consideration (renting of real estate). When the subject of the contract is a specific act without exchange (such as: attorney, guaranty and testament) or refraining from a specific act (a contract to stop fighting with people of war), the contract is non-financial. In the meantime, some of the contracts are financial on the one hand and non-financial on the other, such as marriage and peace contracts (Encyclopedia of Kuwaiti Jurisprudence, 1427 AH, vol. 3, p. 227; Zarkashi, 1405 AH, vol. 2, p. 402), but the jurists who have relied on the property and the direct purpose of the contract in the classification of contracts, have followed a more comfortable and acceptable way and more compatible with today's view (Zoheili, 2006, vol. 4q, p.

3141). Therefore, financial contracts are contracts whose direct object is property or financial benefits, and their main, immediate and dominant purpose is to provide for human material needs. It doesn't matter if this contract is based on "object", "benefit", "right" or "deed", and it is made for consideration, such as: sale or rent, or without exchange, such as bounty and gift. So, whenever a lawyer makes a contract with the client that is directly related to property or financial interests, and the direct and kind purpose of which is to provide material needs, then a "financial contract between the lawyer and herself" has been made.

The jurists of the five Islamic schools of thought are not in agreement regarding the validity and influence of "a lawyer's contract with himself in financial contracts". Their views in this context can be classified into three groups: "The view of the invalidity (corruption) of the lawyer's contract with himself" (section1), "The view of the legality of the lawyer's deal with himself when securing the client's goal" (seciton2) and "the correct and valid theory of the lawyer's transaction with himself in the absolute case of permission" (section3). Each of these views has arguments and citations.

Section1: Illegality of the Lawyer's Financial Contract with Himself

It is not far from the fact that jurists often discuss the general rule about selling. Then they make it current in other chapters of financial contracts and state its exceptions. The case of "lawyer's contract with himself" follows the same path, if the lawyer's sale to himself is not valid or valid, other financial transactions of the lawyer will also have the same ruling. In addition to the study of the Book of Sale in Islamic jurisprudence, one of the jurists refers to this customary practice (Ibn Najim, 1417 AH, vol.7, p.166). So dealing with the sale of a lawyer with herself, in fact, it will be a review of all the financial transactions of the lawyer with herself from the point of view of the jurists. In order to simplify the content, first "expression of this point of view" (a), and then "expression of the reasons for the point of view" (b) will be followed.

A) Expressing the Point of View of the Legality of the Lawyer's Financial Contract with Himself

Famous Hanafi jurists (Ghanimi Hanafi 1425, vol. 2, p. 146; Zilai Hanafi 1313, vol. 4, 270), Shafi'i (Novi, 1412 A.H., vol. 4, p. 305), some scholars of Imami jurisprudence (Tusi, 1387, vol. 2, p. 381), Hanbali (Uthaymeen, 142q. 2, vol. 9, p. 360) and Maliki (Qortobi, 1400 A.H., vol. 2, p. 791) believe: It is never permissible for a lawyer to make a financial transaction with himself, to sell the client's property to himself and to accept it on his behalf. For further explanation, firstly, the famous opinion of Hanafians and Shafi'is (1), then the non-famous opinion of Imamiyyah, Hanbali and Maliki (2) are mentioned:

1) The Famous View of the Hanafians and Shafi'is

According to the famous Hanafians, the sales attorney cannot sell his property to the client or buy property from the client for himself although the client ordered this action (Zilai, 1313 AH, Vol. 4, 270) or specified it (Tahmaz, 1430 AH, Vol. 2, p. 440). For this reason, when intercessor" makes the customer a lawyer in taking intercession, this power of attorney does not take place, because taking a "shafi'a" is like buying, a person cannot become another's lawyer in buying his own property (Sarakhsi, 1414 AH, Vol. 14, 165). From their point of view, the invalidity of "selling a lawyer for oneself" is one of the definitive matters and there is no debate, rather the point is to accept or prohibit the financial transaction of the lawyer for those who are in charge of their guardianship and for whom the lawyer's certificate is not accepted (such as: children, insane people, spouses and partners). The leader of the Hanafi religion, unlike his two famous friends (Abu Yusef and Hassan Shibani), does not allow it either (Ibn Najim, 1417 AH, vol.7, p.166). They are so adamant about this issue that they sometimes look for a solution. If a lawyer has a strong desire to buy the client's property for himself, he should first sell that property to another, then buy it from another (Tahmaz, 1430 AH, vol. 2, p. 440).

From the point of view of the famous Hanafi jurists, firstly, "not permissiblity" in the matter of "a contract between a lawyer and himself" apparently means "not valid and not forming a transaction" as some of them have specified this meaning (Ghanimi, 1425 AH, vol. 2, p. 146). Therefore, the lawyer's contract with himself does not occur at all, not that it is formed and its influence requires the client's permission. Secondly, explicit and implicit permission of the client has no effect on the validity of the lawyer's contract with himself (Lajna Ulama, 1310 A.H., Vol. 3, p. 589). His contract is dead and void from the root, and the client's permission cannot make it alive and valid.

Despite all this, a group of Hanafi jurists, contrary to their reputation, have considered the financial transactions of a lawyer with himself as valid if there is a client's permission (which will be mentioned in the future). Therefore, in Hanafi jurisprudence, there are at least two views regarding the lawyer's transaction with himself (absolute prohibition and prohibition in the absence of permission).

Famous Shafiian do not consider the financial transaction between the lawyer and himself valid even with "determining the price of the transaction by the client", and "prohibition of selling more than the determined amount", and "the presence of the client's permission for the financial transaction between the lawyer and himself" (Hitami, 1357 AH, vol.5, p. 318. Firouzabadi, 1403 AH, p. 109). Moreover, sales and other financial transactions, if they are not valid from one person (a person cannot sell her property to herself), it is also not valid as a proxy (a lawyer's transaction with herself) (Zoheili, 1432 AH, Vol. 3, p. 343). Of course, against the famous view of the Shafi'is, a group of them have stated that there will be no obstacle to the lawyer's transaction with himself, even with the permission or the provision of the client's consent (I will return to this view in the future).

2- Not Famous Opinion of Imamiyyah, Hanbali and Shafi'i

One of the old views in Imami jurisprudence is that a lawyer cannot conduct a financial transaction with himself. Although this opinion is related to sales, sales orders are often applied to other financial transactions. It has been mentioned that: six people can sell another's property: father, grandfather, the executor of both of them, the ruler, the trustee of the ruler and the lawyer. Meanwhile, with the exception of father and grandfather, it is not correct for others to trade with themselves the money that is from the "client" in the form of sale (or other financial transactions) (Tusi, 1407 AH, vol. 3, p. 347). And the lawyer cannot sell or buy the property of the client on his behalf (Tusi, 1387, vol. 2, p. 381). From the statement of the holders of this view (regardless of the justification that will come), two points can be received: firstly, as mentioned in the Hanafian point of view, it is not correct to sell a lawyer to oneself. Apparently, "non-permissibility" means "non-authenticity", and non-authenticity is also used in the real sense (invalidity), and they specified it (Ibn Idris, 1387, vol. 10, p. 136).

Secondly, the invalidity of the lawyer's financial transaction with himself" has been raised in the form of a "general principle", and the legality of the sale of the father and grandfather's property against their owner has been removed from this principle by consensus. In other cases, there is no proof of authenticity and they are in the forbidden area (according to the principle) (Tusi, 1387 A.H., Vol. 2, p. 381). Despite all the indications, the words of this group of Imami jurists are shaky and strained, and it is not possible to interpret them as a clear fatwa (Hosseini Ameli, 1419 AH, vol. 21, p. 159). Maybe the way to make words and deeds compatible is that the prohibition of "dealing with a lawyer" depends on "lack of permission". Whenever there is an explicit or implicit permission of the client for the lawyer to deal with himself, they will not doubt the authenticity and influence of the deal. With this documented justification in the words (Tusi, 1400 A.H., p. 374), this view goes back to the famous theory of the Imamiyya jurists and only one point of view is confirmed in Imami jurisprudence, that is, "the permission and influence of a lawyer's transaction with himself if there is permission".

In the unpopular view of the Hanbalis and Malikis, the lawyer cannot form a financial contract with himself on behalf of the client, even if he pays the final or the highest amount in the exchange transactions (Qortobi, 1400 AH, vol. 2, p. 792. Uthaymeen, 1422 AH, vol. 9, p. 360). Two prohibitions

are received from the point of view of some Malikis: one, the prohibition of the lawyer's financial transaction with herself at less than or equal to the conventional price: If the lawyer buys the client's property at a price less than or equal to the market value, the transaction is not correct, because when the transaction with the final price and more is illegal, with an equal and lower price, it does not receive validity as a priority. Another, the prohibition of the lawyer's free transaction with himself: where the attorney is general or absolute, the lawyer cannot give the client's property to himself as a bounty or gift or make a friendly transaction because in this case, advocacy becomes for securing the interests of the lawyer, not for the interests of the client.

B) The Reasons for the Invalidity of the Lawyer's Financial Contract with Himself

The jurists who consider the lawyer's financial contract with them to be invalid or unenforceable have cited and argued according to the understanding of custom (1), incompatibility of interests (2), the ratio of adversaries (3), the combination of two incompatible structures (4), the principle of illegal possession of another's property (5) and prohibitive traditions (6):

1- Custom Understanding

Whenever a person appoints another person as his substitute to perform a legal act, the meaning of its context from the perspective of custom is that the substitute performs this "legal act" on his behalf with another person, not for himself (Ibn Rajab 1417, p. 127) as the common and customary method among people in selling is to sell property to another. If he sells the property to himself, it is against the conventional method and it is wrong. This similar method of clarification prevents the lawyer from dealing with himself (Ibn Qadamah, 1417 AH, Vol. 7, p. 229; Nawi, 1421 AH, Vol. 14, p. 122).

2- Incompatibility of Interests

It is necessary to remember: regardless of accepting or not accepting this reason, "conflict of interest" unlike "contradiction of interest" has a jurisprudential origin and background. The jurists have proposed and solved it in various issues, such as: "Renting one person in one year to perform Hajj on behalf of two people" (Sandah 1426, Vol. 2, p. 42), "Ownership of conflicting interests" (Khoei, 1418 AH, Vol. 30, p. 314), "Renting a lactating woman without the husband's permission" (Collection of researchers, 1423 AH, Vol. 4, p. 326), acceptance of option in jurisprudence, especially the unfair option, fault and delay (Muqadas Ardabili, 1417 AH, vol. 8, pp. 403, 405 and 411), and "the father's purchase of the child's property for himself" Allameh Helli, 1414 AH, vol. 11, p. 224). In issues like this, they discussed the conflict and sometimes contradiction of interests and goals. The meaning of "conflict of interests" is "the state of incompatibility of the interests (material right or moral privilege) of the representative (a person who is trusted and the protector of another's interests through contractual representation in order to create a legal act), and it is the genuine interest (a person who trusts another for his interests and entrusts him with the authority to execute a legal act) that the representative decides to prioritize his own interest. In this case, the agent is responsible for the "guardianship of the principal's interests", but makes a decision that the fiduciary responsibility is damaged. In every contract, there are two parties, the real motivation of each party in the transaction is to achieve material and sometimes spiritual expediency and benefit.

And a look at people's trading and contractual life shows that each of them strives to gain benefits and ensure their interest from around the contract (Maverdi, 1414 AH, Vol. 6, p. 537; Omrani, 1421 AH, Vol. 6, p. 420; Zilaei, 1313 AH, Vol. 4, 270). Then, if the lawyer's transaction with herself is legitimate, the customary balance between gaining and maintaining the interests of both parties collapses, and it is not possible for the lawyer to reconcile two conflicting interests. Inevitably, he prioritizes his own interests and expediencies and ignores the conventional interests of the client while the proxy is for "protecting the interest of the client". This reason clarifies the status of the lawyer's dealings with those for whom his certificate is not accepted (such as his children, wife and financial partner) because their

interests are considered the interests of the lawyer and it leads to the sale of the lawyer to himself and the conflict of interests (Ibn Najim, 1417 AH, vol.7, p.166).

3- Greediness Relationship

In the transaction between the lawyer and himself, on the assumption that the lawyer can maintain the minimum balance of customary interests in the contract between himself and the client, the case should be of equal expediency and there should be no difference between the lawyer's transaction with himself or another or, contrary to convention and nature, the lawyer prefers the client's interest over his own interest, he cannot be freed from the accusation (betrayal and treason). Whatever he does, the judgment of the people is that he must have had an interest in this transaction that he did so (Zoheili, 1427 AH, Vol. 1, p. 361; Marghinani, 1414 AH, Vol. 3, 142; Mosuli, 1356 AH, Vol. 2, p. 162). The same "greery face" will be influential in his other jurisprudential and legal interactions. The Mohabat (friendly dealings) of a lawyer is considered a gift and forgiveness and he is not capable of such behavior (Tusi, 1387, Vol. 2, p. 381; Qaduri, 1427 AH, Vol. 6, p. 309; Qahtani, 1433 AH, Vol. 4, p. 365). Of course, in the eyes of the jurists, whenever a father or grandfather is represented by a child, he can make a deal with himself, because bot Some Imami jurists, whose opinion is shaped by the concept of some traditions, believe that the only reason for the prohibition of the transaction in question is "fear of slander and betrayal" (Bahrani, 1363, Vol. 22, pp. 99-102).h of them are full of kindness and benevolence and the ratio of temptation and greed to their children's property does not enter them (except in exceptional cases) (Royani, 2009, vol. 6, p. 54).

4- Alignment of Two Incompatible Structures

If the lawyer's transaction with himself is legitimate, it requires the gathering of two incompatible wills (requesting and accepting), two opposite attributes (requiring and accepting) and two incompatible actions (payer and receiver) in one person. A single person cannot imagine and express two types of will (demanding and accepting) at the same time, be both a demanding and an accepting person, and this is impossible (Kasani, 1406 AH, Vol. 6, p. 29; Sarakhsi, 1414 AH, Vol. 14, 165; Kommini Ulama, 1310 AH, Vol. 3, p. 589). After all, no one can give from hand or take from other hand (Ibn Rajab, 1417 AH, p. 127). Some authors have illustrated this issue in the form of a general rule (Sabki, 1411 AH, Vol. 1, p. 259). Despite the client's permission to sell the lawyer for himself and the invalidity of the attribution of the agent and negation of the slander of self-interest, the transaction is still not valid because it becomes a "demanding and accepting union" (Ghazali, 1417 AH, vol. 3, p. 285. Zaheili, 1432 AH, vol. 3, p. 343). Among these, only in the case of the father, the responsibility of both parties to the contract has been removed for some reason, and other cases will be prohibited (Hitami, 1357 A.H., Vol. 5, pp. 318 and 319).

5- The Principle of Illegal Possession of Another's Property

The way of the wise and basically the practical reason is the ugliness of taking possession of another's property without the permission of the owner (real or legal) (Collection of researchers, 1423 A.H., vol. 2, p. 135). In the financial transaction between the lawyer and herself, in the conventional atmosphere of decency and simplicity, there is no confidence in the client's permission. Such permission is not received from the absolute power of attorney, so this transaction does not have the necessary perfection in contracts (Bahrani, 1363, vol. 22, p. 99). In other words, this transaction is one of the examples of taking possession of another's property without the permission of the owner, which is prohibited based on common sense.

6- Inhibitory Narratives

Some of the hadiths prevent the lawyer from dealing with herself, such as: "Whenever a person wants, buy something for her, do not pay her from your own property, even if your property is better than

the property of the market" (Cliny, 1407 AH, Vol. 5, p. 151). In another narration, Masoum is asked: A person asks someone else to buy a product for him, the lawyer buys a market product similar to his product. and surrenders his goods to him. Imam says: "One should not approach this behavior and one should not lower one's self-esteem" (Hoor Aamili 1409, Vol. 17, pp. 389 and 390). A person had made a will for another, the testator wanted to sell the horse to himself from the estate, Ibn Masoud said: "It is not permissible" (Maverdi, 1414 AH, Vol. 6, p. 537). Although the mentioned narrative is related to the "act of the testator", the invalidity of the successor's contract with himself, with the exception of the father, the testator and the lawyer, due to the prohibition of the transaction shows the same. Narratives like this show the invalidity of the lawyer's financial contract with himself. Criticism of the reasons for this point of view will come in a way in the reasons for the third point of view (section3).

Section2: Legality Depending of the Lawyer's Financial Contract with Himself to the Client's Goal Ensure

This view sees "the client's permission to conclude a financial contract with the lawyer" as a sign of "securing the client's goal". It is important that the lawyer fulfills the client's goal, whether it is through permission or public offering or paying a higher price. It is better to first mention the point of view (a) and then its reasons (b):

A) Expressing the Legality of the Lawyer's Financial Contract with Himself Depending on the Client's Goal

The leader of the Hanbalis in a narration, and a group of Hanbali jurists, consider it valid to sell a lawyer for himself and made this validity dependent on "respecting the client's goal". If the lawyer pays more than the price offered by others, or the client makes one of the buyers the selling lawyer, in these two cases, the client's intention is acquired and his transaction will be the same as a transaction with a foreigner (not a lawyer) (Ibn Qadamah, 1417 AH, Vol. 7, p. 229). Some of them have seen the provision of the client's goal by providing two conditions: one is to add to the price of the item during the supply of the transaction, and the other is that the supply (offering the goods for sale at a higher price) is in charge of the supply (ibid., pp. 228 and 229). These conditions are not specific to sales, they will also apply to other transactions and contracts. It is important to provide the client's goal. If the client's goal is fulfilled in the lawyer's transaction with himself, the contract is valid and otherwise any contract will not have the necessary influence. By examining the cases, they wrote: a person is either a lawyer in buying or a lawyer is in selling. The first is to buy one of his cars for his client, like a lawyer owning a car shop. The second one, such as: a person acts as a substitute for the client in a car shop, and sells a car to himself from the same shop. In both cases, one should distinguish between two forms: The first case: the presence of the client's permission: whenever there is a real permission or an order from the client for the lawyer, selling and buying is valid. The reason for this is that the prohibition was for the sake of caution against the client, despite his permission, there is no obstacle to the lawyer's dealings with himself that is, "observing the interest of the client" is not a condition, but "non-observance" has an obstacle, with the absence of an obstacle, the transaction will be complete and does not need the permission of the client.

The second case is the absence of the client's permission: in the absence of the client's permission to deal with the lawyer, one must distinguish between two situations: One, determining the price of the item: if the client has determined the price of the transaction, the lawyer can buy it for himself. Because the reason for banning the transaction was the "proportion of greediness = slander" which does not exist in this case. Second: Failure to determine the price of the item: If the client has not determined the value of the transaction, whenever the transaction takes place in a public offering, the lawyer's transaction with himself is valid because there is no "accusation of buying with a lower value for yourself or selling with a higher value for the client" that prevented you. Public offering determines the "price of the item", but where the client has not determined the price and the transaction does not take place in the market and public arena, the lawyer's transaction with himself is not valid because the ratio of selfishness and

betrayal of the lawyer hinders you. It is possible that a lawyer with a desire for his own benefit ignores the interest of the client, increases or decreases the price in selling or buying for his own benefit (Lahem, 1429 AH, Vol. 3, pp. 452-455).

However, even though the Hanbalis do not see any obstacle to "execution of both sides of the contract by a single person", some Hanbali writers emphasize that the lawyer's transaction with himself is valid only if the client gives his permission. Without permission, even with a higher price, the transaction will not have influence (Zoheili, 1418 AH, Vol. 2, pp. 395 and 402). Basically, the lawyer's transaction with himself will not be authorized (Tayyar, 1431 AH, Vol. 4, p. 205). Therefore, only in Hanbali jurisprudence, four opinions can be observed: " Permissibility of a lawyer's transaction with himself absolutely", "Permissibility in the case of the client's permission", "Permissibility in the case of securing the client's goal", "Permissibility during an open and conventional transaction".

B) Reasons for the Legality of the Lawyer's Financial Contract with Himself Depending on the Client's Goal

Most of the designers and followers of this point of view sometimes rely on the suitability of the customary transaction and lack of slander (1), sometimes on the realization of the client's transactional intention (2) and sometimes on "fulfilling the duty of representation and fulfilling the object of representation (3):

1- Absence of Suspicion Ground

The most important reason for prohibiting a lawyer's financial contract with himself is "the existence of slander and suspicion" and "customary arbitration in dealing with another". If the lawyer trades the client's property with himself, he will be slandered and suspected, or it will cause him to distance himself from the customary transaction (lawyer's transaction with another) (Basri, 1417 AH, Vol. 2, p. 223) but when the lawyer fulfills the client's transactional intent, the accusation of selfishness is dropped and agreement with custom is also provided (Baghdadi, 1423 AH, Vol. 3, p. 635). With the collapse of the obstacle (the presence of slander), the aforementioned transaction is valid and effective.

2- Realization of the Transactional Purpose

Basically, in exchange contracts, achieving commitment is the spirit of the exchange and the practical meaning of the contracts. If the lawyer, when entering into a financial contract with himself, secures the client's purpose of the transaction, there is no difference between this contract and other contracts and there is no reason to prohibit it (Qahtani, 1433 AH, Vol. 4, p. 366). Contracts have various effects, the main purpose and the real purpose of the contract is to achieve its results and effects (Kuwaiti Encyclopedia of Jurisprudence, 1427 BC, vol. 30, p. 239).

3- Performing the Duty of Attorney

Due to the legal representation contract, the lawyer had the duty to fulfill the "lawyer case". Due to the legal representation contract, the lawyer had the duty to fulfill the "lawyer case". The case of representation is realized in two ways: the transaction of the lawyer with another or with himself. If the client's goal is met, there is no difference in these two paths (Qahtani, 1433 AH, Vol. 4, p. 366). In the short review of this view, it is enough to mention that the general rule and general principle are not taken from it. Each case should be checked separately to see if the client's goal has been met or not. Such solutions not only do not reduce the difficulty of the trading world, but also lead to an increase in disputes and suspicions because the representative simply claims that he has fulfilled the original purpose, the client can also declare the transaction invalid for any reason claiming that his purpose has not been fulfilled. The instability of transactions and the extent of litigation are not small damages. Of course, in

the end, this point of view leads to the third point of view (validity of the transaction with existence of permission). Then it will be according to the rule.

Section3: The Legality of the Lawyer's Financial Contract with Himself When the Client Gives Permission

In order to avoid the mixing of viewpoints, first it is addressed to "expressing the viewpoint" (a), and then to "expressing the reasons for the viewpoint" (b):

A) Expressing the Legality of the Lawyer's Financial Contract with Himself When the Client Gives Permission

Based on this point of view, if there is explicit or implied permission, the financial contract with the lawyer is valid and valid. Famous Imami jurists (1), a group of other jurists (2) have proposed and argued this point of view

1- The Famous View of the Imamiyyah

From the point of view of the well-known Imami jurists, there are three possible situations in the financial contract between a lawyer and himself:

-The state of explicit permission of the client: Whenever there is an explicit permission from the client in "dealing with the lawyer with himself" and he says: "You can also make a contract with yourself", Imamiya jurists agree on the validity and influence of the lawyer's deal with himself because the required influence of the contract (permission) is present, and the obstacle is missing (Hashmi Shahroudi, 1432 AH, vol. 6, p. 173; Mohaghegh Sabzevari, 1381 AH, vol. 1, p. 674). In fact the appearance of the words of some jurists that shows a sign of opposition on the issue (Tousi, 1387 AH, Vol. 2, p. 381. Ibn Idris, 1387 A.H., Vol. 10, p. 136), this opposition is related to the absolute status of the power of attorney, not in the case of explicit permission (Bahrani, 1998, Vol. 22, p. 98).

-General state of attorney: When there is a general attorney, the extent of the transaction should be expressed by words and the text should include that lawyer. When there is a general attorney, the extent of the transaction should be expressed by words and the text should include that lawyer; Although some of the old Imami jurists apparently denied the general attorney (Ibn Baraj, 1411 AH, p. 80; Fakhr al-Muhaqqin, 1397 AH, vol. 2, p. 341), a group of earlier scholars (Mofid, 1410 AH, p. 816. Mohagheq Hali, 1412 AH, vol. 2, p. 41. Abul Salah Halabi, p. 337), and famous jurists Late Shiites have considered the general attorney in possession as correct (Bahrani, 1363, vol. 22, p. 43). It can be mentioned: Sunni jurists have been caught in a dispute in accepting the general attorney, while the Hanafians and Malikis have accepted it. The Shafi'is and the Hanbalis, if the object of the representation is known (in a way that removes deception), they accept it (Kuwaiti Jurisprudence Encyclopedia, 1427 AH, vol. 45, pp. 27 and 28).

-The absolute state of attorney: It seems that the difference of opinion among Imamiyyah jurists is in this case. A group of jurists consider the lawyer's contract with himself in the case of absoluteness of attorney (for the reasons stated in the first point of view) invalid (Tusi, 1387, vol. 2, p. 381. Ibn Idris, 1387, vol. 10, p. 136). or they consider it non-binding and attributed it to "most of the late and early ones", but also to "the famous jurists of the Imamiyyah" (Mohaghegh Sabzevari, 1381 A.H., Vol. 1, p. 674; Bahrani, 1363 AH, vol.22, pp. 102-99). It seems that a group of jurisprudence scholars have seen "the client's consent to the lawyer's contract with himself" in the lap of "absolute state of attorney" and consider the said contract to be complete and valid although some believe that they turned the absoluteness back to generality and did not see the

permission of the client as observable in the lap of absolute power of attorney (Allameh Helli, 1374 A.H., vol. 6, p. 32).

2- Non-Famous View of Hanafians and Malikis

In Hanafi jurisprudence, there is a tendency towards "influence of the attorney's financial contract with himself", especially when it is a general attorney (do whatever you want) or where there is an order and permission for the transaction for the attorney's minor children (Kasani 1406, vol. 6, p. 31). One of the renowned Hanafi jurists has stated that there are at least two views (absolute prohibition and prohibition in the absence of permission) regarding the financial transactions of a lawyer with himself (Ibn Abedin, 1412 AH, Vol. 3, p. 97. Vol. 5, p. 522). It was mentioned that it is famous from Maliki's religion that the financial contract between the lawyer and the client is not valid (Damiri Maliki, 2013, vol. 3, p. 649) and some of them have considered this transaction as not permissible even in non-mohabbat situations (Shanqiti, 2015, vol. 10, p. 208) and in the presence of the client (Azhari, 1995, vol. 2, p. 230) and at the highest price in the case of no price determination by the client (Khorshi, 2015, vol. 6, p. 77) because such a transaction based on slander is forbidden (Mazari, 2008, vol.2, p.352), but a group of them considered the lawyer's non-maleficence contract (a situation in which the lawyer does not have an obvious and conventional tendency in his own interest) and in the case of "absence of utilitarianism of the lawyer" (absence of the accusation of solicitation) complete (Baghdadi, 1420, vol.2, p.609) that is, if the financial contract is not "Mabahati", the lawyer can enter into a transaction with himself on behalf of the client.

B) Stating the Reasons for the Legality of the Lawyer's Financial Contract with Himself When the Client Gives Permission

The designers and followers of "the validity of the financial contract between the lawyer and himself when there is permission" have various reasons for the stability and acceptability of their point of view. Such as: the customary truth (1), Sufficiency of credit multiplicity (2), the relationship of the contract to the original (3), the legality of possession of another's property with permission (4), the justifiability of restraining traditions (5) and the compatibility of interests (6) have cited:

1- The Validity of Customary Contract

Whenever a lawyer forms a contract with himself, the custom considers it as a "contract" and then, the proofs of the validity and influence of the contracts are also included (Naraghi 1415, vol. 14, p. 303) and the addressee is in generality or in the absoluteness of attorney (Meshkini, 2013, vol. 3, p. 287). Conventional understanding and witness does not exist to withdraw the scope of representation other than the contract of the lawyer with himself. The illusion of initial withdrawal declines with reflection and the appearance of confirmation and cannot damage the principle of application (Najafi, 1404 AH, Vol. 29, p. 196). The illusion of initial withdrawal declines with reflection and the appearance of confirmation and cannot damage the principle of absoluteness (Najafi, 1404 AH, Vol. 29, p. 196).

2- Sufficiency of Credit Multiplicity

It is not forbidden for one person to perform demand and acceptance in Imamiyyah jurisprudence, and credit multiplicity is sufficient (Tabatabaei, 1418 AH, vol. 11, p. 102. Sadr, 1430 AH, vol. 5, p. 50). Some law professors have written: It is true that for them the contract is an agreement between two wills, the plurality of wills represents the real plurality of contract parties. And a person cannot be on both sides of the contract in the real sense, but because the contract is a "credit asset" and the cause of the will to create a credit contract, Therefore, the multiplicity of credit of the will and the creator of the contract is enough to form a contract, and a person can have two independent wills with two credits. Therefore, there is absolutely no legal prohibition to deal with oneself (Shahidi, 2013, p. 130).

3- The Relevance of the Contract Rights to the Original

Contrary to the belief of the Hanafians (Kasani, 1406 AH, vol. 2, p. 232), from the perspective of Imamiyya jurists, the rights of marriage do not return to the contract (Allameh Helli, 1414 AH, vol. 21, p. 161). So that in the transaction between the lawyer and himself, a person becomes the processor and receiver, rather, the rights of the contract belong to the principal, and when the lawyer sells the property of the client to himself, the rights of the contract are realized for both real parties (the client and the principal). Or at least, the rights of the contract will be returned to the lawyer in two roles (requiring and accepting) and two credits (principal and lawyer) (Mohagheq Karki, 1414 AH, Vol. 8, p. 204).

4- The Legality of Seizing Someone Else's Property Despite Permission

There is no mention of the "principle of the sanctity of seizing another's property without the permission of the owner or the law", the discussion is about whether the client's permission is received from the generality or the application of power of attorney for "the lawyer's contract with herself" or not (Hosseini Aamili, 1419 A.H., Vol. 12, pp. 679 and 680)? Some have written: despite the generality of power of attorney, taking possession of another's property is not without permission (Naraghi, 1415 AH, vol. 14, p. 303). That is, with the formation of the power of attorney contract, the "principle of legal possession of the client's property" is fixed, and the generality of the validity of the power of attorney does not leave a path for the sanctity of possession of another's property, when the principle of the transaction is valid, there is no obstacle to the transaction itself, unless there is a reason to prohibit it, which it does not.

5- The Justification of Restraining Narratives

Traditions that apparently prevent a person from dealing with himself, in addition to the difficulty of documenting some of them, and confronting a group of other traditions, do not imply the prohibition and incorrectness of a lawyer's transaction with himself. Finally, "it is better to stay away from this type of transaction" or "disgusting" such a transaction. The signs, such as: "He shall not defile himself" or "He should not approach it" point to this point (Hosseini Ameli 1419, vol. 12, p. 680).

In some viewpoints, relying on some traditions, "slander" was taken as the sole or main reason for banning the aforementioned transaction, the following answer is accepted: First of all, they themselves have pointed out: the prohibition of the aforementioned transaction is based on "the existence of slander" and its validity in the case of "lack of accusation and deterioration of tact". Therefore, when the permission is provided by any means, one should not doubt the validity of the lawyer's financial contract with himself (Bahrani, 1363 A.H., Vol. 22, pp. 102-99). Secondly, slander is used in the meaning of "bad opinion" (Ibn Manzoor, 1414 AH, Vol. 12, p. 644), "an unpleasant quality that is suspected in a person or an undesirable trait that is attributed to a person" (Askari, 1400 AH, p. 92). It is true that in the hadiths, "avoid suspicion" (Klini, 1407 AH, vol. 2, p. 361) and "stay away from slanderous countries" (Majlesi, 1403 AH, vol. 72, p. 90 and 91) has been ordered; "One who steps in the places of suspicion should not blame the person who is suspicious of him" (Nahj al-Balaghah, 1372, p. 437). Its content is current in the proverb "Fear the places of accusation" among people (Makarem Shirazi, 1388, vol. 19, p. 149), but from the point of view of a large group of jurists, ignoring the fact that "prohibition in transactions does not imply corruption", as mentioned. It is possible to take the restraining narrations as an abomination and a guide to the unworthiness of doing something that reveals the meanness and humiliation of a person's soul. Of course, if the product that the client likes is only with the lawyer or no one other than the lawyer buys the client's product, then there is no unpleasantness in this case because there is no defamation, unless the lawyer's financial contract has an inherent disgust with him (Ashkuri, 1422 AH, vol.2, p.36). Of course, "defamation" is not a "definite measure" in terms of the case, it is influenced by the characteristics of the person and external affairs. This shows that even the religious scholars' basis for rejecting the certificate when suspicious is often another reason along with slander (Naraghi, 1415 AH, vol. 18, p. 332). In a Sahih narration (based on the criteria of Rejali Maliki) it is stated from Uqbah bin

Amer: The Prophet (PBUH) had given him some sheep to distribute among the Companions. A scapegoat remained and I reported the matter. The Prophet (PBUH) said: "Sacrifice it on your behalf" (Bukhari, 1410 AH, vol. 4, p. 269, p. 2249). From this narration, they understood that it refers to permission and approval (Ghariani, 1423 AH, Vol. 4, p. 141).

Bringing in hand-offs, such as the condition of the necessity of sale, is the separation of the participants of the contract. In selling a lawyer for himself, there is no difference and it does not harm the influence of the mentioned contract because the difference is the reason for the necessity of the contract where it is possible, the necessity of the lawyer's transaction with himself is completed with his signature as by abolishing the option of termination, the sale of acquisition becomes obligatory (Hosseini Ameli, 1419 AH, vol. 21, pp. 100 and 101) and from the beginning, the sale becomes necessary, and there is no at all, until the need to uproot it.

6- Compatibility of Interests

It is true that every contract has two parties and each party strives to achieve their own interests, but this effort is not such as to harm the customary balance of interests in the lawyer's contract with himself because on the one hand, the power of attorney structure is an atmosphere of trust, and the client gives power of attorney to the trusted person, not to any person. On the other hand, the lawyer is obliged to respect the interest of the client (Maghniyeh, 1379 AH, vol. 4, p. 245). In the lawyer's contract with himself, respecting the interests of the client is not against creation and beyond his ability. On the third side, usually, the client's intention is to fulfill the contract. The character of the party in financial contracts is often not the main cause of the contract, on its assumption, the lawyer's transaction with himself will be the same as other such transactions. On the fourth hand, whenever the lawyer ignores the interest of the client, it means not complying with the rules of lawyering and his transaction depends on the permission of the client, as in any case where he behaves against the rules. Apart from all the mentioned cases, the security and stability of transactions cannot be left to the possibility of a friendly contract. These reasons also clarify the situation of "probation ratio" that if the lawyer follows the legal requirements, he will not be accused of utilitarianism and treason. These reasons also clarify the situation of "probation ratio" that if the lawyer follows the legal requirements, he will not be accused of utilitarianism and treason. In other places, the jurists have invalidated the transaction, such as renting one person for two people at the same time or renting a nursing woman without the husband's permission to breastfeed the child, due to the conflict of interests and the conflicting purposes of the fatwa (Sand, 1426 AH, Vol. 2, p. 42; A group of researchers, 1423 AH, Vol. 4, p. 326). As some jurists and law professors have pointed out, two things are important in representative transactions: one, the social and economic purpose of having legal acts. The lawyer's financial contract with himself, in addition to the logical aspect and theoretical analysis, also has a social and economic direction. It is very dangerous to entrust the fate of one's economic interests and social interests to another. Second: Respecting the interests of the client: Based on jurisprudence, the lawyer is obliged to "guard the interest of the client". In the financial contract between the lawyer and himself, "respecting the interest of the client" is far from the normal life because the trading market is not the passage of charity and the circulation of angels and pious people, where "altruism" prevails over "selfishness", but the scene of transactions is the battleground of interests by ordinary people. Thought and experience show that normal and market people cannot ignore their selfishness and extravagance because of the utilitarianism and expediency of others and in order to secure the interest of the client, they sent their benefit to the altar (Katouzian, 2013, vol. 2, pp. 89, 92-94. Shahid I, 1430 AH, vol. 14, p. 256). In this case, although they have not found a "general and definite solution", they have left the judgment of each case to the investigation of the situation and conditions, but they have made a difference between two assumptions in terms of setting the context:

1- The impossibility of the lawyer's opportunism: sometimes, from an economic, social, and moral point of view, the personality of the transaction party is not important for the client, and the goods and financial documents in the market have a certain price and are traded in cash. In this case, the role of

the lawyer is not important, with general and absolute power of attorney, the lawyer can sign a contract on his behalf. Nevertheless, the client's permission is bound to the fact that the representative is the guardian of his interests. 2- The possibility of using a lawyer: the lawyer's decision may have an effect on securing the interests of the client. In such a case, Asil does not want the representative to confront him. Under normal circumstances, no normal person leaves the fate of his interests to the decision of his counterpart. With the appearance of doubt in the client's permission, the principle of incompetence of the lawyer is opened and the agent cannot enter into a financial contract with himself (Katouzian, 2013, Vol. 2, pp. 98 and 99). Therefore, despite the existence of "conflict of interests" and "conflict of purposes", and the fact that the representative cannot ignore her "financial interests and material purposes", the lawyer's financial contract with herself is inevitably limited to the existence of conventional permission from the client.

2- At the end of this section, it is necessary to remember the following, so that there is no need to bring a number of financial contracts:

The jurists of Islamic schools of law have usually stated three conditions in the matter of representation: "the case being admissible from the point of view of Sharia", "the case being known to the extent of the loss of dignity" and "the client being able to be the case" (Naraghi, 1380, pp. 448-454). And they have added: Studying the words of religious scholars shows that "the principle of permissibility of representation is in everything, unless there is a special condition for representation" (Najafi, 1404 AH, Vol. 27, pp. 377 and 378). In fact, sometimes "creating an action and result" is important and sometimes "doing an action by a specific doer"; The first case can be the subject of representation (Sadr, 1430 AH, vol. 5, p. 53). Therefore, all legal actions (contracts and events) have the ability to be delegated unless there is a special reason for the ban. So the principle is that all financial contracts have the ability to be represented (Encyclopedia of Kuwaiti Jurisprudence, 1427 AH, vol. 45, p. 29). Of course, in relation to the lawyer's financial contract with himself, among benevolent contracts (such as: gift, endowment, and bequest) or the contract of placing the item under responsibility with contracts in which the subject exchange is important. An important difference can be seen in terms of "verifying the client's permission". In the first category, it is necessary to obtain permission and in case of power of attorney, the lawyer cannot form a contract with himself.

Topic 2: The Lawyer's Non-Financial Contract with Himself

According to the classification of contracts from the point of view of some jurists, the marriage contract is placed in the middle group, it is considered non-financial on the part of the man and financial on the part of the woman, because she receives "marriage portion" (ibid., vol. 30, p. 227) but the view of jurists is more acceptable who consider the "marriage contract" as one of the non-financial contracts, and see its sanctity and honor beyond property (Zoheili, 2006, vol. 4, p. 3141). That is, it is true that in marriage, there is also a financial direction (marriage portion, alimony, inheritance, and dowry), in such a way that it is considered "the boundary of worship and transactions", but the main purpose of the marriage contract is not financial affairs rather, it is in those spiritual and human aspects that financial affairs pale in comparison. For this reason, they have considered the marriage contract as one of the non-financial contracts (in which there is a financial obligation) and most of the rights arising from marriage have been taken as non-transferable and inalienable (Al-Kashif al-Ghata, 1426 AH, p. 135). Indeed, a person is not subject to a contract and dowry in marriage is a secondary aspect and a sign of sincerity and kindness, it is neither a substitute nor the main motivation for marriage. For this reason, jurists do not consider invalidity of dowry as the reason for invalidity of marriage (Najafi, 1404 AH, vol. 31, p. 11). On the other hand, non-financial contracts are contracts with a social and personal aspect, and their direct and main purpose is to provide emotional and spiritual needs of people although there is a financial obligation in it. Whenever a lawyer forms a contract with a client whose purpose and subject is not directly related to property or financial interests, a "non-financial contract between the lawyer and himself" has emerged. The most important non-financial contract between the representative and himself is related to marriage (section1), another important item is the non-financial contract regarding adoption and custody (section

2). Of course, the contract of surrogacy has not been legitimized from the point of view of most jurists, so a short word about it will come at the end.

Section1: The Lawyer's Contract with Himself about Marriage

First, a point of view is expressed that considers the contract between a lawyer and himself as permissible for the purpose of marriage (a). Then, according to the theory of "failing to visualize the contract between the lawyer and himself regarding the marriage" (b), then, the viewpoint that considers it illegal for the lawyer to execute the client's marriage contract for himself even in the presence of explicit permission (c), And finally, the theory that considers explicit permission or accompanied by proofs necessary in the marriage of the client with the lawyer (d) is discussed:

A) Validity of the Lawyer's Contract with Himself Regarding Marriage

In Hanafi jurisprudence, a free, sane adult woman has the right to execute a marriage contract, which can both form a marriage contract for herself and is competent to form it on behalf of another party. Therefore, a woman can hire a man as a lawyer to execute the marriage contract (Mosli, 1356 AH, Vol. 3, p. 90). If this man solemnizes the marriage of that woman for himself, apparently, even in the case of generality and application of power of attorney and without specifying a lawyer, such a contract is valid from the point of view of the famous Hanafians. In financial contracts, such as sale, they did not accept the lawyer's contract with them, but according to the special situation of marriage, they made a difference between "sale contract" and "marriage contract" and considered the second one (lawyer's contract, the client for himself) correct and valid (Ibn Abedin, 1412 AH, vol. 5, p. 517) and they have reasons:

1- Marriage Is Not Included in the Category of Corrupt Contract

Sale is "the exchange of a desirable object for a desirable object", this title includes valid and corrupted contracts. While the title of marriage does not include "corrupt contract" (the division of the contract into valid, void and corrupt is not valid in marriage), since the purpose of marriage is "validity and validity", corrupt marriage does not bring validity and privacy. While the meaning of sale is ownership, ownership is also proven due to a corrupt contract (Kasani, 1406 AH, vol. 6, p. 29). Marriage is either valid or invalid. The principle will be correct. Therefore, if the lawyer brings the client to his marriage, the marriage is valid and does not become corrupted.

2- The Generality of the Reason for Marriage

The reason for the marriage contract (Nur/32) is absolute and general, and he did not specify whether the contract of marriage was entered into for himself or for another. Therefore, the lawyer can execute the client's marriage contract for himself and there is no prohibition (Kasani, 1406 AH, vol.2, p.232).

3- Being an Ambassador of a Lawyer in Marriage

Any contract whose rights do not return to the executor of the contract, the executor is the only ambassador and conveyer of the terms (Ibn Abedin, 1412 AH, Vol. 3, p. 812). In the matter of marriage, the lawyer is actually the messenger and the expresser of the words of the bridegroom (not the bridegroom himself), because the rights of the marriage and the marriage contract go back to the client (not the lawyer), so the word of the lawyer is the same as the word of the client and his words are considered the words of two persons. Requesting a lawyer is expressing the wife's will to make a decision, accepting the lawyer in the decision is expressing the couple's will, proof of a decision is the same as real proof (Qaduri, 1427 AH, Vol. 9, pp. 4343 and 4347). In the issue of selling a lawyer for himself, if the founder of the contract of sale has guardianship, he is the successor of two persons, such

as: a father who buys the child's property for himself. In the issue of selling a lawyer for himself, if the founder of the contract of sale has guardianship, he is the successor of two persons, such as: a father who buys the child's property for himself. Here, the request is to the province (not to the contract). If it is a proxy, it is not a substitute for two people, because the rights of the contract belong only to the "contractor". As a result, the words of one person cannot be justified by the words of two persons (ibid., vol. 6, pp. 2823 and 2824).

4- Absence of Conflicting Rulings in Marriage

There are conflicting and irreconcilable orders in the sale, such as delivery and surrender, if a person is responsible for the contract of sale, it requires that the same person is both the payer and the receiver. And this is refused, there are no such irreconcilable rulings in marriage, because the rights of marriage always return to two persons (husband and wife) (Kasani, 1406 AH, Vol. 2, p. 232. Ibn Abedin, 1412 AH, Vol. 3, p. 97).

Criticism of this view comes in the examination of the reasons of the fourth theory (d). The strictness in the financial contract between the lawyer and himself and the ease in the marriage contract will depend on the sanctity and social and moral aspect of the marriage contract, the importance of the character of the contracting party and the continuity of the life of the husband and wife, with a justification beyond the understanding of ordinary people.

B) Not Finding the Image of the Lawyer's Contract with Himself Regarding Marriage

According to the majority of Sunni jurists (Maliki, Shafi'i, and Hanbali), with the exception of Hanafi, a woman does not have the capacity and competence to execute a marriage contract for herself or someone else, so she cannot represent a man to form a marriage contract with her (Encyclopedia of Kuwaiti Jurisprudence, 1427 AH, Vol. 41, pp. 288 and 289), rather, a woman's marriage is always dependent on the "man's province" (Tirmidhi, 1419 AH, Vol. 3, p. 264). As a result, an issue called "lawyer-client marriage contract" does not arise. But the fact that a woman does not have the capacity and competence to execute a marriage contract is documented for two reasons:

1- Impossibility of Marriage on the Part of the Woman

Nikah (in verse 230 of Surah Al-Baqarah) means "submission and acceptance of a woman for marital affairs", not "closeness", because closeness from a woman is impossible (Qarafi, 1994, vol. 4, p. 201). If it is impossible, then the woman cannot get a lawyer or become a lawyer in this case, inevitably the marriage contract of the woman is always under the control of the male guardian.

2- Prohibition of Execution of Marriage Contract by a Woman

A correct narration from the Prophet of Islam (PBUH) (according to the criteria of the Sunni majority) says: "A woman does not marry herself to a man nor another woman, if she marries herself to a man, she is immoral" (Ibn Majah, 1418 AH, Vol. 3, p. 329). However, the fact that a woman does not have the capacity and ability to be represented in the execution of the marriage contract is based on the Shari'i and rational rule, "the one who lacks an object cannot be the giver of an object" (Beyhaqi, 1424 AH, Vol. 7, 167. Zaheili, 1432, Vol. 3, p. 330). Nevertheless, some Maliki jurists, in one case, have allowed a woman to hire a man as a lawyer in marriage: If a foreigner downstream woman is in a city, without a guardian and without access to the sultan, she can represent a man to get her married to someone (Qarafi, 1994, vol. 4, p. 240). In this case, "a contract between the lawyer and herself regarding marriage" is conceivable, but there is no explicit fatwa that the lawyer can conclude a marriage contract with the client herself. The Shafi'is have drawn four situations regarding the non-mandatory guardian (relatives other than the father and paternal grandfather) and the woman not being a virgin: The Shafi'is have drawn four situations regarding the non-mandatory guardian (relatives other than the father and

paternal grandfather) and the woman not being a virgin: The first case: the woman should say to a non-compulsory guardian (for example, a cousin): "Marry me and give him the right to trust". In this case, marriage and trust arise. The first case: the woman should say to a non-compulsory guardian (for example, a cousin): "Marry me and give him the right to trust". In this case, marriage and trust arise. The third case: the woman makes a non-compulsory guardian a lawyer in the marriage, and according to the more correct word, this guardian can make her marry.

The fourth case: a woman gives permission to a non-compulsory guardian in marriage, according to one point of view, she also has the power of entrustment. Of course, a woman cannot (according to the Shafi'is) leave the matter of marriage to a representative, because the woman herself did not have ownership over her marriage, and how can she grant the right she does not have to someone else?! The four states are drawn with respect to the non-mandatory guardian (not any person) (Sherbini, 1432 AH, Vol. 2, p. 217. Qahiri, 1432 AH, Vol. 2, p. 94 and 95). All the mentioned states are subject to criticism by Hanbalis and Malikis, because "guardian" cannot become "lawyer", otherwise the woman will be able to dismiss him like in other cases of representation, while she does not have the power to remove a non-compulsory guardian, so the agency will not be realized (Azhari, 1415, vol. 2, p. 6. Ibn Qudamah, 1419, vol. 3, p. 174. Bhuti, 1421, vol. 11, p. 283). There is no need to criticize and talk about how to justify women's character and life today with such a view. Ignoring a person's will, leaving the fate of his life in the hands of another, requires a stronger reason than the literal meaning (the first mentioned reason).

The narration of the Prophet (PBUH) is very acceptable, but another interpretation (the same as the Hanafian interpretation) is also accepted. Ignoring a person's will, leaving the fate of his life in the hands of another, requires a stronger reason than the literal meaning (the first mentioned reason). The narration of the Prophet (PBUH) is very acceptable, but another interpretation (the same as the Hanafian interpretation) is also accepted.

C) Invalidity of the Lawyer's Contract with Himself Regarding Marriage Despite the Permission

The wording of some Imamiyyah jurists is arranged in such a way that a lawyer cannot contract the client even in the case of explicit permission (Bahrani, 1363, vol. 23, pp. 251-253). Inevitably, in order to execute such a contract, another person (other than the man who intends to marry the client) must execute the form of the marriage contract. The most important and perhaps the only reason for them is Ammar Sabati's narration: "A woman wants to make a marriage contract secretly from her family, can she hire a lawyer for the man she wants to marry this woman and say: "I made you my representative to be the witness (executor) of my marriage contract"? Imam (a.s.) answers: "No". He asks again: "Even if that woman is a widow." Imam's answer is negative. Then he asks: "If someone else hires a lawyer to get this woman married to that man"? The Imam (a.s.) replied: "Yes, it is true"" (Hor Amli, 1409 AH, vol. 20, p. 288). From this narration, it can be understood that the difficulty of the mentioned marriage contract is that the man cannot be the lawyer himself in the execution of the contract of marriage by the client (Bahrani, 1363, vol. 23, pp. 251-253). This prohibition is related to the state of "specific power of attorney and permission specification", it implies that it is not permissible in the general state and the application of power of attorney has the concept of priority. Regarding the examination of the mentioned point of view, it is worth mentioning: most of the Imamiyyah jurists have considered the source of the said narration to be weak (Shahid Sani, 1413 AH, vol.7, p.153). And in its implication, they said that it was "representation in the certificate of marriage", not "representation in the execution of the marriage contract" (Sabhani, 1416 AH, Vol. 1, p. 212). Or, the meaning of "prohibition" in the aforementioned narration is the prevention of punishment and disgust, as a means of slander or taqiyyah, not "prohibition of sanctions" (Najafi, 1404 A.H., vol. 29, p. 196).

They have responded to the documentary and denotative forms of the mentioned narration and considered it as "reliable news" and wrote: the appearance of the narration, especially with the context and the final phrase, questions and answers that there was an explicit power of attorney in the marriage

and the prohibition is in "prohibition", there is no justification for abandoning the appearance and carrying the narration on the basis of disgust or brevi However, although there is a group of "aftahiya" in the document of the mentioned narration, and they are "reliable", but in the implication of the narration, it can be seen that it is related to "certificate of marriage" or "disgust and piety" or "prohibition of marrying a lawyer with a client".ty, and in the final judgment, they conclude that the narration should be followed. In other words, the lawyer cannot get the client to marry him, even in the explicit state, someone else must execute the marriage contract between the two (Rohani, 1435 A.H., Vol. 31, pp. 251 and 252). Therefore, due to the famous jurists turning their backs on the said narration and the confusion of its text, it is not possible to follow its provisions, although there is a possibility that in this case, another person will be responsible for the execution of the marriage contract (Makaram Shirazi, 1390, vol. 1, pp. 231 and 232).

D) Invalidity of the Lawyer's Contract with Himself Regarding Marriage with the Application of Power of Attorney

In Imami jurisprudence, there is no difference between male and female representation in marriage and other contracts (in terms of the woman's eligibility for representation) (Har Ameli, 1412 A.H., Vol. 7, p. 141). A woman has the authority and Shariah competence to execute the marriage contract by virtue of her authority and authority (Hakim, 1374, vol. 14, p. 389). Also, from the point of view of famous Imamiyyah jurists, "one person's obligation to execute a marriage contract on behalf of two people" is not prohibited and they have taken it for granted (Makarem Shirazi, 1390, vol. 1, p. 226). In any case, the jurists of the Imamiyyah have described and examined five situations regarding the "contract between a lawyer and himself regarding marriage" (Shahid Sani, 1413 AH, Vol. 7, p. 152):

The first case: appointing someone other than a lawyer for marriage: the lawyer's contract for himself is outside the scope of the lawyer and is not valid (Naraghi, 1415 AH, vol. 16, p. 146).

The second case: Existence of explicit permission in marriage with a lawyer: the marriage contract is valid and there is no obstacle. The reason for that is the principle of validity of marriage, which is received from the generality of attorneys (Naraghi, 1415 AH, vol. 16, p. 146). Of course, some jurists, citing traditions, have criticized this situation in terms of "the lawyer's responsibility to execute the client's marriage contract for himself" (Bahrani, 1363, vol. 22, p. 102). The third state: the generality of representation in the form of inclusion of a lawyer by text or analogy: from the point of view of a group of jurists, there is an implicit permission to marry a lawyer and there is no prohibition in the marriage contract (Tabatabai, 1418 AH, vol. 11, p. 102. Ansari, 1415 AH, p. 168. Sistani, 1415 AH, vol. 3, p. 21), but in the eyes of some jurists, similar to the previous situation, it cannot be separated from narrative forms.

The fourth state: Generality: It is a general power of attorney expression that covers the lawyer in general (without the meaning of the text or analogy). A group of jurists have considered this type of public to be the same as "application". Although the general implication is stronger than the absolute, because the word includes all of its people, but the principle of inclusiveness here is against the testimony of the present, so they will not be different from the application of proxy (Shaheed Sani, 1413 AH, Vol. 7, p. 152).

The fifth case: application of power of attorney: when absolute power of attorney is given, a woman gives absolute power of attorney to a man or a man gives absolute power of attorney to a woman in forming a marriage contract, can the lawyer perform his marriage for himself? The jurists have proposed this issue in the absolute representation of women to men. According to the well-known Imami jurists, in absolute power of attorney, if the lawyer himself contracts the client, the marriage contract is not valid. Their most important reasons are:

1- Customary Arbitration

If a woman gives absolute power of attorney to a man who makes him enter into a contract with someone, his power of attorney is invalid for forming a marriage contract with a non-lawyer due to its multiple uses. The witness of the present and the relative of an official indicates that marriage with a non-lawyer is meant (Shaheed Sani, 1413 AH, Vol. 7, p. 152). Therefore, "definite withdrawal" destroys the application of attorney, or at least "indefinite withdrawal" casts doubt on the principle of application and inevitably documents the principle of not being allowed to marry a lawyer (Naraghi, 1415 AH, vol. 16, p. 146).

They have criticized this reason: if the "narrative of prohibition" is not accepted, it is not possible to ignore the application (validity of the marriage contract between the lawyer and the client) with a preliminary and fleeting and invalid withdrawal that deteriorates with delay and the appearance of confirmation. In addition, in credit matters, the same initial cancellation is not provided. So the generality and application of evidence will be without deficiency (Hakim, 1374, vol. 14, p. 486. Rouhani, 1435 AH, vol. 31, p. 252). This criticism is not acceptable, because the very concept of power of attorney in the matter of marriage shows "permission to form a marriage with a non-lawyer" and there is "tabadr" and when hearing the power of attorney, "making a marriage contract with a non-contractual representative" comes to mind (Shahid Sani, 1410 AH, Vol. 5, p. 122). So the emergence of an imperishable confirmation is available; If a lawyer executes a marriage contract between his client and himself, he depends on the client's permission.

2- Absence of Contrary Belief

Some scholars of Imamiyyah jurisprudence have cited the non-contradiction (Shaheed Sani, 1413 AH, Vol. 7, p. 152) and fame (Tabatabai, 1418 AH, Vol. 11, p. 102) in the illegality of the "contract of marriage between the client and the attorney in absolute power of attorney". Basically, despite the existence of customary evidences on the cancellation of the application of attorney in the matter of marriage to a marriage contract with a non-lawyer, there is no need for consensus for this reason and beyond.

3- The Importance of the Character of the Contracting Party

In one category, contracts are divided into two groups: one, contracts in which the character and character of the party is the foundation of the contract, such as: non-financial or benevolent contracts (donation, endowment, bequest, and peace of mind) or covenant contracts and placing the item under obligation. Other, the contracts that are important, not the parties, such as: sale and rent (Hosseini Haeri, 1423 AH, vol. 1, p. 505. Najafi, 1387, vol. 5, p. 105). Undoubtedly, the parties to the marriage contract cannot be unimportant, the husband and wife are one of the pillars of the marriage contract (Najafi, 2007, Vol. 5, p. 105). When applying power of attorney in contracts where the character of the party is desired, such as marriage, the lawyer cannot form the contract for himself. Of course, this statement is not specific to marriage, it also applies to other ehsan contracts (and covenants: placing the property under obligation) (Mohaqeq Damad, 2014, p. 201).

It is true that the undeniable superiority of marriage over other contracts is not a sign of the narrowness of its cause, because it is suitable for the important and desirable thing, the development and facilitation of its cause. For this reason, promiscuous marriage is also accepted (Khoei, 1418 AH, vol. 36, p. 388) but here the main word is in "character of the contracting party". The custom of the religious people is judgmental: the use of power of attorney in the matter of marriage is a sign that the "lawyer" is not a "personality liked by the client" and is rejected by "other than her". In addition, with this point of view, the field of ignoring the limits of representation by the lawyer is closed and Asil is more supported, especially when sometimes moral considerations and social issues explicitly limit the ability to expel a

lawyer from the circle of being on the side of marriage. Therefore, with the application of power of attorney, if the lawyer marries the client, this contract will not be valid.

It should be mentioned: if a man appoints a woman as a lawyer in marriage, can that woman make a marriage contract with him? The appearance of the rule is that the five cases mentioned also apply in this issue (Makarem Shirazi, 2013, vol. 1, p. 231). Nevertheless, one should not ignore the social atmosphere, the evidence of position and the purpose of protection, probably the application of power of attorney by a man also gives the permission to marry a woman.

Relying on the mentioned reasons, this view is more acceptable and compatible with jurisprudence rules and human life.

Section2: Non-Financial Agreement Between the Lawyer and Himself Regarding Foster Care and Custody

According to the jurists, every right can be represented and represented, and every contract that a person can conclude by herself, she can delegate to a lawyer. On the other hand, the principle is that a woman can hire a lawyer or become another lawyer in performing legal actions. According to the majority of Sunni jurists (Malikis, Shafi'is, and Hanbalis), there is a special reason for the "prohibition of taking or becoming a representative of a woman" in only some cases. In other cases, a woman has the same ability and competence to represent a man. According to Imamiyya and Hanafi belief, a woman has the same power of attorney as a man (Qahtani, 1433 AH, Vol. 4, pp. 317 and 350). If the woman's power of attorney is valid, sometimes a "non-financial contract of the representative with herself" occurs in the case of Riza' (a) and sometimes in the case of custody the story of "a non-financial contract of the lawyer with herself" occurs (b).

A) The Lawyer's Non-Financial Contract with Himself Regarding Riza'

Riza' (sucking of a woman's milk by a child at the age of infancy) is one of the legitimate rights of the child (Encyclopedia of Kuwaiti Jurisprudence, 1427 AH, vol. 22, p. 238). In jurisprudence, Riza' is considered a non-financial right (of course, a non-financial right with a financial obligation). The jurists do not disagree on the obligation to breastfeed the child when it is needed and at the age of infancy, but there are different trends regarding whom the obligation belongs to: Shafi'is and Hanbalis consider it the father's duty to provide milk during childhood and they believe that breastfeeding is not obligatory on the mother. The husband cannot force the child's mother to breastfeed (Jovini, 1428 AH, vol. 15, p. 540; Sharbini, 1415 AH, vol. 5, p. 187 and 188; Ibn Qudama, 1405 AH, vol. 8, p. 199). The Hanafians considered breastfeeding a child to be a religious and moral (not judicial and legal) duty of the mother (Mola Khosrow, 1417 AH, Vol. 1, p. 208. Zilaei, 1313 AH, Vol. 1, p. 336). The Malikis oblige the mother to breastfeed the child if she has not separated from her husband, and breastfeeding is in her honor (Rū'aini, 1412 AH, vol. 4, p. 163. Qairani, 1432 AH, vol. 2, p. 752). In Imamiyyah jurisprudence, Reza' is collective obligation, and the mother can receive wages for it from the property of the child or his father (Tusi, 1387, vol. 3, p. 238). A lactating woman, even the mother of a child, can rent herself to breastfeed the child (Hashmi Shahroudi, 1429 AH, vol. 2, p. 267. Ansari, 1415 AH, vol. 1, p. 439). The appearance of the phrase of a group of Imamiyyah jurists shows "determining the milk-giver" in the validity of the lease (Mohaqeq Helli, 1408 AH, vol. 2, p. 146). Some have considered it sufficient to determine the nurse with the description (Yazdi, 1388, vol. 14, p. 30), some of them have not considered "determining the nurse" to be necessary (Najafi, 1404 A.H., vol. 27, p. 299).

Relying on the mentioned materials, in the view of the Shafi'is and Hanbalis (who do not consider breast-feeding a child to be obligatory on the mother), from the perspective of the Hanafians (who consider breast-feeding a child to be morally obligatory) and Maliki's point of view (who do not consider breastfeeding to be obligatory on a mother separated from her husband), and according to the second and third views of Imamiyyah jurisprudence (the sufficiency of defining a nursing woman with a description

or not being necessary to define it), If the "child's father" authorizes his mother to hire a "nurse woman" to breastfeed her child; If the child's mother rents herself for breastfeeding, a "lawyer's non-financial contract with herself" has emerged. The child's mother has entered into a lease contract on behalf of the child's father on behalf of the representative and on her own behalf as the principal. In the case of explicit permission or obtaining permission from the generality and absoluteness of power of attorney, the lawyer's non-financial contract with herself will be valid. If the mother of an infant child has died, the father of the child will hire a trusted woman as a lawyer to hire a woman who has the conditions to breastfeed. If a lawyer hires himself for breastfeeding, a "non-financial contract between the lawyer and himself" has occurred, and apparently, according to the jurists of the five religions, this contract is valid despite the explicit or implicit permission of the client. Of course, the woman's advocacy regarding foster care is acceptable for the following reasons:

1- Possession capacity: A woman has the capacity to perform her legal actions, so she will have the competence to perform other legal actions through representation.

2- The need for women's representation: society needs women's representation to perform legal and material actions, and in some cases, women can do things on behalf of men better than men. Especially in the case of foster care, women are more knowledgeable and only women can be a part of the rental contract as foster care.

3- Legality of work for someone else: Hiring a woman to perform a legitimate act is legal, so her representation by someone else is also permissible.

4- Achieving the result: with a woman's representation, similar to a man's representation, the client achieves his goal. Therefore, there is no reason to ban women from being lawyers. Then, the navigation in the path of the rule also shows: any contract that a woman has the authority to manage, she will also have the competence to represent it (Qahtani, 1433 AH, vol. 4, pp. 351, 351 and 356; Hosseini Ameli, 1419 AH, vol. 21, 80). Therefore, in the matter of foster care, both the woman's representation and her rent as foster care will be correct.

B) The Lawyer's Non-Financial Contract with Himself Regarding Custody

Custody (responsibility to support, protect and educate a child [or a helpless person]) in jurisprudence is one of the objective or sufficient obligations according to the unity or plurality of the custodian (Encyclopedia of Kuwaiti jurisprudence, 1427 AH, vol. 17, p. 300). The custody of children has been accepted by all the jurists, the majority of Sunni scholars (Hanafis, Shafi'is, Hanbalis and some Malikis) have also extended it to the insane and the slow-moving (Matuwa) (Sharbini, 1417 AH, vol. 2, p. 486; Tayar, 1429 AH, vol.7, p.94). In Sunni jurisprudence, custody is the right of both the custodian and the immediate family, it is the right of the custodian (relatives of the child).

In Sunni jurisprudence, custody is the right of both the custodian and the immediate family, it is the right of the custodian (relatives of the child). In Sunni jurisprudence, custody is the right of both the guardian and the people who need custody. It is the right of the custodian (relatives of the child), in the sense that if he refuses to accept custody, he will not be forced to accept it, and if he revokes it, it will decline, and whenever he wants and has the capacity, this right will return and be renewed over time. Custody is the right of a child because if someone does not take care of him, his mother should accept the guardianship of her child (Encyclopedia of Kuwaiti Jurisprudence, 1427 AH, vol. 17, p. 302).

According to Hanafians, if the child's mother is not separated from his father, he has the right to receive wages (Effendi, 1419 AH, Vol. 2, pp. 170 and 194). More than the Malikis, they did not consider the salary of guarding a child permissible, and some of their scholars have acknowledged that the salary of a guard is taken from the child's property (Abu Abdullah, 1409 AD, Vol. 6, p. 432). In Imamiyyah jurisprudence, custody of a child, with the exception of special cases, is one of the sufficient obligations,

the holders of the right of custody have a rank (Ansari, 1429 AH, Vol. 1, pp. 313, 319, 372). It is also permissible for the child's father to hire the child's mother herself for nursing and custody of her infant child because the benefits of nursing and custody do not belong to the husband, and he cannot force the mother to breastfeed and guard the child, and the mother can receive wages for both tasks (Ansari, 1415 AH, Vol. 1, p. 439).

In any case, from the point of view of jurists, custody is non-financial rights (Zoheili, 2006, vol. 4, p. 2850; Zarei Sabzevari, 1430 AH, vol. 7, p. 235). In fact, custody is a mixture of right and duty, first of all, the right or duty of the parents, then it is the turn of other relatives. According to all the viewpoints about custody, when the guardians of the child (or the guardians of the insane or the slow-witted) are multiple persons, all of them ask for custody or they all refuse to accept custody, although sometimes the solution is by drawing lots, but they can hire a lawyer to choose one of them. If that person chooses himself for custody, the lawyer's non-financial contract with himself has appeared. This determination can be considered a contract, because there is a wage in it and it is based on the agreement of the depositors. This issue becomes clearer in another case, when the child's father gives someone a representative to hire someone to guard the child. The representative should conclude a child care contract with himself. With permission, such a contract will not be difficult.

The lawyer's non-financial contract with himself can also be depicted in "rented womb" and "borrowed womb" according to their legitimacy. A man hires a female doctor as a lawyer to rent or borrow a woman's uterus for "maintenance and growth of the fetus", If the act is legitimate, the lady can rent or borrow her womb and arrange a lawyer’ non-financial contract with him (Momen Qomi, 1415 AH, Vol. 1, p. 333).

Conclusion

The analysis of the previously collected materials from Imamiyyah, Hanafi, Maliki, Shafi'i and Hanbali jurisprudence, regarding the financial and non-financial contract between the lawyer and himself, leads to the following conclusions:

1- The six reasons of "the view that the lawyer's financial contract with himself is not absolutely valid" the three references of "the theory of the legality of the lawyer's financial contract with himself depending on the client's goal" and the six documentaries of "the view of legality of the lawyer's financial contract with himself when the client's absolute permission" are based on "the permission of the lawyer's financial contract with himself in the presence of the client's permission" and the theories of the jurists of the five Islamic schools of thought can be summarized as follows: "The financial contract between the lawyer and himself is correct and valid when there is permission."

2- The legality and influence of the lawyer's financial contract with himself in the case of power of attorney is acceptable from a theoretical and analytical point of view, but from a practical point of view and objective reality, due to the necessity of "respecting the social and economic direction of transactions, observing jurisprudence rules in emphasizing the expediency of the client and a kind of rule over the superiority of the lawyer's interest in the conflict of interests" is difficult. Therefore, in the case of the possibility of using a lawyer, "conventional permission beyond the absoluteness of attorney" is needed.

3- Of the four theories proposed in Islamic jurisprudence, regarding the non-financial contract between the lawyer and himself regarding marriage ("the legality of the marriage of the lawyer of the client to himself", "Invalidation of the marriage between the lawyer and the client", "The invalidity of the marriage between the lawyer and the client despite the permission" and "The invalidity of the marriage between the lawyer and the client for herself in case of power of

attorney"), based on "Arbitration of custom and the social and personal importance of the marriage contract", this contract is valid when there is explicit permission or accompanied by explicit evidence from the client.

4- A lawyer's contract with himself in foster care and custody even with the absoluteness of power of attorney (if other conditions are met), from the perspective of famous Islamic jurists, is permissible and influential for the reasons (the woman's capacity to possess, the need for the woman's power of attorney, and achieving a legitimate transactional result). The same basis and point of view is also valid in the case of renting and borrowing if these two can receive a certificate of legitimacy from the jurisprudence.

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