

ACQUISITION of RIGHT AND BONA FIDE THE ROLE OF BONA FIDE IN ACQUISITION of RIGHT**Mariam MAKHZON**

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Subjective Bona Fide: It is an excusable unawareness or misinformation of a person regarding the existence of a matter that prevents to acquire a right or the absences of a matter that is necessary to acquire a right. Subjective bona fide arises during the acquisition of a right. Subjective bona fide is seen in family law, law of obligations, law of property and law of inheritance.

Subjective Bona Fide in Law of Property:

Book, automobile, animals, watch, furniture, coal, electric, air gas, and natural gases are personal assets. Whether the property right on personal assets can be acquired by means of the subjective bona fide is determined as the disposal way of that asset by the owner.

For assets which are disposed without the will of owner: Assets which are disposed without the will of owner are stolen, lost or usurped assets. Right of property cannot be acquired for this type of assets with subjective bona fide. For example, Mehmet finds the book that Ahmet has forgot in the class and sells it to Murat, Murat cannot acquire the right of property for this book. Because the book is disposed without the will of Ahmet, the owner of the book.

However, third parties acquire the right of property over money and bearer papers with subjective bona fide even if they are disposed without the will of owner.

If third parties with subjective bona fide buy the asset, disposed without the will of owner, from an auction or market or a place from which this type of assets can be bought, bona fide purchaser cannot acquire the right of property over this asset. However, the first owner of the asset can reclaim it by giving money, paid by the bona fide purchaser. This is called refund against remuneration.

Acquisition of Right of Property on Real Estates:

1. Land 2. Perdurable and Self Contained Rights, Registered on Land Registry, 3. Mines, and 4. Single Space of Incomplete Building are assumed as real estates. Acquisition of right of property or any other real right over real estates is possible with the registration on land registry. Land registry is an official register. There is an ordinary presumption regarding the correctness of registers in land registry. Real rights on real estates can be acquired with subjective bona fide.

The Nature of Subjective Bona Fide: Our Civil Law accepts that everyone has subjective bona fide. Here, subjective bona fide has gained presumption nature.

Presumption: Existing and known phenomena result in unknown consequences. The most important function of presumptions is saving a person, who attributes his/her claim to a presumption, from burden of proof.

LOSS OF A RIGHT:

It means the separation of a right from its owner, disposal from him/her.

Right is lost with a legal event (for example, latest term, death), or a legal act (for example, abandonment) or a legal transaction (for example, transfer of an automobile by sale).

Examples of loss of a right as a result of legal acts, if someone tosses his/her old shoes out or leaves his/her cat that s/he is tired of having, it means that s/he loses the right of property over it. This is called abandonment. Inheritor, who kills his/her deceased, cannot inherit. This is called disinheritance. If one of the spouses fornicates, s/he has right to sue for a divorce to the other. However, if the spouse, who has the right to sue, forgives the other, then the right is lost.

THE ROLE OF BONA FIDE IN EXERCISE OF A RIGHT

In accordance with the 2nd article of Civil Law, everyone is liable to exercise rights and abide by the rules of bona fide in discharge of obligation. This rule is called objective bona fide= objective good faith.

Theory of Imprevison = Theory of Unpredictability, If a contract is drew up, the requirements of this contract should be fulfilled. This is called pacta sunt servanda. However, extraordinary conditions sometimes occur and the fulfilment of execution of debtor causes him/her to be ruined. Justice can change the contract with the demand of debtor or terminate it completely. This is called theory of imprevison=theory if unpredictability.

PROTECTION OF RIGHTS:

Right can be protected by the state or the owner. Personally vigilantism is forbidden.

Protection of Right by the State: It means the indictment of right owner. Demanding from the state to take action for the protection and acquisition of a right of a person is called suit. It is called right to demand that a person requests a person to acquire his/her right or ensure the right to be respected. Right to demand can be used in written or spoken. Mediums like telephone, letter, notary, telegram can be used for right to demand.

Protection of Right by the Owner: It occurs in three ways:

1. Self Defence
2. State of Necessity
3. Force Entry (Personal Vigilantism)

1. Self Defence: It is the temperate and proper defence which is used to expel an illegal and still-continuing assault against one's personality or property or someone else's personality or property. Indemnity is not paid for self-defence.

SUMMARY: Attributing a right to someone occurs with a legal event or a legal act or a legal transaction. Rights can be acquired in two types of way, one is "essentially" and the other is "by transfer". Essentially acquisition of a right means that someone acquires a right, which does not belong to someone else until then, with his/her action. The acquisition of a right by transfer means that someone acquires a right, which belongs to someone else until then, from the owner.

Subjective bona fide (good faith) has a role in the acquisition of right. Subjective bona fide is an excusable unawareness or misinformation of a person regarding the existence of a matter that prevents to acquire a right or the absences of a matter that is necessary to acquire a right.

Loss of right means the separation of a right from its owner, disposal from him/her. As in the acquisition of right, legal events, legal acts and legal transaction play role in loss of right.

How does someone, who has a right, use it? Our Constitution and Civil Law have inserted special provisions regarding this issue. However, our Civil Law establishes a general rule regarding how a right should be used, which this rule is called "objective bona fide" or "good faith".

Objective bona fide rule means that a right owner acts properly while using his/her right or fulfilment of execution, in other words, acting in an honest, sensible, being aware of the outcomes of his/her behaviour, and following the way on which a person with a n average intelligence way. As long as a right is used by its owner for a good cause, it is protected by legal order. If someone abuses his/her right, it is not protected by legal order.

Abusing a right means that a right is used in a way that is notoriously against the rules of objective bona fide and especially misusing, and that other people may be harmed or have the risk of being harmed as a consequence of this abusing.

The protection of right is ensured by the state in modern legal systems. To protect his/her owner by the state, right owner files a suit. Exceptionally, rights are sometimes protected by their owners. For example, this is the case in case of self-defence and state of necessity.

Burden of proof has importance in the protection of right. Who proves the claims in a law suit? This is called the burden of proof. Unless indicated otherwise, our Civil Law states that every party is liable to prove his/her own claim. Only people, who attribute their claim to a presumption, get rid of burden of proof.