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CIVIL LIABILITY OF THE STAFF OF NOTARY PUBLICS IN DRAWING UP FORGED  
AND ERRONEOUS DOCUMENTS: ANALYSIS OF TRADITIONAL REGISTRATION  
AND ELECTRONIC SYSTEM OF DOCUMENT REGISTRATION

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**ABSTRACT**

The purpose of this study was to examine the civil liability of the employees of the Real Estate Registry in drawing up forged and erroneous documents and drawing up documents in the traditional registration and electronic registration system.

Forgery of documents, in particular in recent years owing to the economic turmoil of the country, have significantly turned heads in the judiciary, and the Property and Deeds Registration Organization as a subset thereto. In interactions of any quality among individuals, countless documents are often drawn up in a plethora of ways, the provisions of which result in accountability. In order for the various activities of the community to have their normal effect, drawn up documents need to be a reliable means of maintaining the relationships of individuals, a primary prerequisite of which is being free from fraud and deception. Forgery of documents is one of the main crimes causing the deprivation of the public trust and disruption of the country's economic, and hence is one of the most important roots of social inefficiencies in society. Considering the development of domestic and international communication and exchange networks, the need for speed and ease in concluding contracts and transactions, as well as maintaining the validity of documents and their vital role in all aspects of human life, the relevant authorities are recommended to provide certainty and security for individuals, companies and organizations by providing distinct rules and regulations.

This research employed analytical, library-based method and collected data through taking notes from books, journals and articles, legal sites, the opinion of university professors, and when the need arose, seminary scholars, as well as the authorities involved in legal affairs.

## INTRODUCTION

Pursuant to the Article 1284 et seq. of the Civil Code, a document is any writing that can be cited in the position of a litigation or defense and is divided into formal and ordinary types.

An official document is a document that has been drawn up in accordance with the law in the Real Estate Registry or notary public offices or with the supervision of other authorized officials within the scope of their competence. Documents that are not official according to this definition are ordinary document. Many scholars argue that this definition is to some extent ambiguous and needs structural elaboration. A writing is a line or symbol that is drawn on paper or something else and indicates the expression of something. The writing must be usable in litigation or defense thereof, that is, first, it must be issued by either one of the litigants, those whom the litigants have considered rights for, or a third party whom one of the defendants has vowed for, and secondly, it must be legally binding on the plaintiffs, i.e., a commitment has been made in favor of the other party. As such, not every writing can be considered a document, as it is possible that a writing only indicates being informed of something that, of course, is not considered a document (Goldozian, p. 554).

Among the all evidenced provided for claims, none is as solid and reliable as the document, although in recent years the views of the Guardian Council and reference to ancient jurisprudential sources have distorted the validity of the documents, causing a plethora of challenges for everyone in the process.

With the expansion of population and human societies in line with it, the issuance of registration and identification documents for the purposes of identifying members of society, ensuring their social rights and duties, and last but not least, establishing social order and security has become one of the most basic record-keeping measures of any society. The strength of a country's social, economic and even political relations requires that exchanges and interaction between members of society be secure and reliable within the framework of the law and away hence from any deception and fraud, a necessity which heavily relies on the integrity and accuracy of the writings and documents that are exchanged between the members for various purposes.

As the mother of all documents, and the basis of identification of individuals in society, identification documents have always been at the forefront of violation, the forgery of which is an effective method for perpetrators to commit their while hiding their real identities behind them. Therefore, infringement on an identity document such as a birth certificate is not only a violation of the rights of its owner and other persons who are victims of criminal acts, but also deals a hammering blow to the public trust, often leading to the disturbance of public order and dynamics, Although the society has sought to fight back these issues by enacting criminal laws, as it is safe to argue that the necessary provisions have been drawn to some extent in the laws of the country, the perpetration of such crimes is still at-large. Therefore, it seems that punitive measures alone are not enough and further attention to the causes of its occurrence based on principled, scientific and logical approaches is of paramount importance.

Forgery of documents, their exploitation and the subsequent perpetration of corresponding violations against properties is highly avoidable by adopting strict preventive measures. Among the more important factors in regulating the various interactions in the society are documents and writings that are used to express the will and intention of people, to which people lend their trust. Yet unfortunately, these documents have been abused by some, which will deprive the community of trust and confidence in regulatory documents and will disrupt social security and order.

Therefore, maintaining and observing the integrity of the provisions and contents of documents is of utmost significance in preserving public trust. Forgery, and the subsequent exploitation of the ensuing documents is one of the important crimes that has arisen following the increasing development and progress of social, economic, cultural, and arenas of interaction. It is a crime that has seen meteoric rise in complexity, delicacy, and importance is increasing day by day, one that is highly detrimental to public security and comfort.

Given the significant need to study its various sources as much as possible, and in order to explain the different dimensions, elements and components involved therein, a plethora of sources, laws and judicial procedures, especially the votes of the General Assembly, were reviewed to extract the criminal rules and legal and technical aspects of this infringement should be extracted and to analyze its specific elements based on the principles and rules governing the penal system of the country.

Establishing social, economic, political, cultural and legal relations among individuals and organizations along with a wide network of communication, providing efficiency of affairs, and development of exchanges and trade, all require that individuals have full confidence of all the documents that are exchanged at different functional tiers of the society.

Forgery of documents and use of forged documents is an important factor in depriving the public of comfort, reducing the level of trust of individuals and organizations, destroying the security and health of society and also causing many material and spiritual losses to individuals and legal entities and organizations. It also damages the cultural, scientific and economic prestige of the country and is one of the main factors of economic and social inefficiency in society.

According to Article (1) of the Registration Law approved in 1923, registration of all immovable property, including arable and real estate in the registration office is optional and in places where real estate registration offices have been established, a window of 3 years from the date of approval of the law has been considered for the registration, while in other places, that is districts that are yet to have an official registration office, this window starts from the date of establishment of the registration office.

Regarding the registration of documents, it should be noted that it was obligatory per the first registration laws, but in the subsequent laws, the registration of documents became mandatory only in certain cases (i.e., laws of 1323, 1328, 1331).

The nature of normal registration gave the public the right to register their property out of their own free will. Therefore, people were not

required by law to apply for registration of their property. In normal registration, the formalities of the periodic announcement and the restrictive announcement of every property was performed separately (Adabi, 2012, p. 16).

In the law approved in 1933, the previous method of registration was abolished and a new method was instated, by which the owners are invited to register their property by means of a registration notice, which led to the formation of the public or compulsory registration. Pursuant to Article (9) of the Law on Registration of Deeds and Property, in the areas where an office has been previously established, from the date of implementation of this law, and in other area without already-established offices, after the establishment of the such, the Ministry of Justice had the duty of determining the geographical scope of registry offices to have the properties falling into the jurisdiction of that office registered. Therefore, in the public registration method, property registration is mandatory and obligatory, and the request for registration is made through a declaration and in a general and public manner. In the current era, managing electronic documents and sending and receiving electronic information makes up the majority of administrative correspondence and executive practices. The use of computer-based information is expected to expand significantly worldwide, guiding the flow of most practice to its capacities. In drawing up documents, countless correspondences can be easily exchanged on the Internet and mainly through e-mails, as the technological framework is embraced with a high speed and very low cost, a feature that both parties of transaction can reap its efficiency. Ordinary correspondence and contracts can often be referred to without any problems, but there are various pitfalls and challenges to the electronic correspondences, as they lack the required signature, or the main seal and letterhead of the company, hence necessitating a solution for prospective implementation.

Gradually but surely, paper, which has always been the main instrument of exchanging important information, is now giving way to other ways of exchanging information. As such, paper has some drawbacks to its function, such as slow and costly transfer of documents. Information storage methods are also changing rapidly, as electronic methods are now progressively being employed instead of massive paper archiving. Novel technologies, new methods of information exchange and the subsequent use of computer document management systems have made generating, sending and storing information far easier, faster and even more secure. Definitely one of the most important prerequisites and basic infrastructures in national models is the development and formulation of legal laws governing extensible cases. Likewise, cyberspace also has to follow certain legal rules due to the connection that it forms between persons, both real and legal (Ali Akbari, 2012, p. 31).

Electronic registration is a relatively emerging concept. Consequently, lack of proper infrastructure for electronic registration offices in our country has left scholars with no option but to examine the rights and practices of leading countries in this field. It is noteworthy, however, that “electronic certification service offices” (Alsan, 2009: 90-88) is envisaged in Articles 31 and 32 of the Electronic Commerce Law, the

pertaining criteria for which can also be used for electronic registration offices. According to Article 31, “Electronic certification service offices are offices established for the purposes of providing services of electronic signature issuance in the country. These services include the production, issuance, storage, transmission, verification, revocation and maintenance of electronic certificates of authenticity, a.k.a signatures. Electronic notaries are not separate entities from official notaries, and any notary can become an electronic notary by receiving the necessary license and training. Of course, registrars have no obligation to do so.

Therefore, the main objectives of this article are to examine the civil liability of the staff of the Registry and Property Office in drawing up forged and erroneous documents and to draw up documents in the traditional registration and electronic document registration system, for which it seeks to address the following issues

1. Investigating the civil liability of the head registrar, assistant registrar and the staff in drawing up forged documents.
2. Examining forged and erroneous documents.
3. Examining the documents in the traditional and electronic registration system
4. Reviewing registration circulars and instructions and procedures in document registration.

## **THEORETICAL FOUNDATIONS OF RESEARCH**

Forgery is assumed as one of the most important crimes perpetrated on official documents, which is defined as follows:

“drawing up something against the reality on purpose, that is forging documents and creating false identity (Jafari Langroudi, 2012). It has also been defined as “making or altering one writing to the detrimental effect on another” (Mir Mohammad Sadeghi, 2010). Article 523 of the Islamic Penal Code, Section of Penalties and Deterrent Punishments, approved in 1996, and amended in 2013, as quoted by the official journal No. 19837, states that forgery involves drawing up writings or documents with the intention of fraud by (1) making a stamp or signature of official or unofficial persons, (2) scratching, scraping, inking, adding or removing contents therein, (3) blackening, postponing or preponing of the date of the document from the actual date, or (4) attaching a writing to another by using another stamp without the permission of its owner, among others

In legal terms, forgery has a broad meaning and a narrow one. In the broad sense, forgery refers to any fraudulent practice, such as making counterfeit coins, counterfeit weights and scales, but in the narrow sense, forgery solely refers to drawing up counterfeit (Soleimanpour, 1982, p. 6).

Article 523 defines forgery as drawing up a writing or a document, making a seal or signature of official or unofficial persons, scratching, scraping, inking, adding or removing contents therein, blackening, postponing or preponing of the date of the document from the actual date, or attaching a writing to another by using another stamp without the permission of its owner, among others. In view of the above legal definition, it seems that the legislator has referred to the term in its broadest sense, and as a result, each of the criminal acts subject to the fifth chapter

are included as the subject of infringement. However, examining the provisions of the definition, the similarity of the meaning and the closeness of the applications in applying the crimes to the legal materials indicates that it is highly susceptible to errors of judgement. Forgery literally means to lay down, build, and place something contrary to the truth, and the notion remains the same in the realm of law. In the fifth chapter of the Islamic Penal Code, from Articles 524 to 529, and in Article 538, where the word term is used alone and without the often-accompanying term fraud, it is used to refer to the lattermost meaning, that is, no manipulation of texts, change, or distortion. When the initial foundation of the deed and property registration institution was being laid in the country, the legislators were rather engaged in providing the proper incentives for people to give up the traditional methods for the sake of the modern registration procedure. It is abundantly clear that in that climate, expecting the provision of regulations on civil liability by the registrars is rather far-fetched, while the issue of civil liability at that time was not raised as a fundamental issue as it is in the current era (Nayebi, p. 31). However, Article 81 of the Law on Registration of Documents approved in 1911 stipulated that "If a document has been invalidated due to the fault of the registrar, the perpetrator must bear the costs of registering that document in addition to the prescribed punishment." Therefore, the reimbursement of the costs of document registration is the burden of the registrar. In 1928, the first law on the establishment of notaries was approved in 20 articles, but it did not contain any article on the liability of the owner or the head registrar. With the approval of the Law on Registration of Deeds and Real Estate in 1931, Articles 46-69 addressed the duties and responsibilities of the officials of notaries. Article 68 of the said law has provided better protection on the rights of document owners compared to the Article 81 of the 1911. According to this article, if a document is invalidated due to the fault or negligence of the head registrar, the said person must bear all the damages in addition to the prescribed penalties. In 1937, the Law on Notaries was approved by the National Assembly. Pursuant to the Article 25 of the said law, notaries and clerks are responsible to the interested persons for the infringements they commit in the performance of their duties, and if such violation harms those persons, either legally or financially, they must be held accountable. Claims related to damages resulting from the violations of notaries and clerks are subject to the laws of the principles of legal proceedings, and in terms of the passage of time are also subject to the passage of time of legal claims. In 1975, the Law on Notaries and the Association of Registrars and Clerks replaced the 1937 Law approved, and Article 25 of the former law was reiterated with slight modification in Article 22 of the new law, according to which, registrars and clerks who commit violations in the performance of their duties against the beneficiaries will be liable - to the prescribed penalties and the damages the have cost- in case any document is invalidated in part or in whole owing to their fault or violation of the relevant laws and regulations, hence inflicting damages to the parties to the documents. As such, claims pertaining to damages resulting from the violations of notaries and clerks will be subject to public laws and regulations. Article 23 of the same also stipulates that

“The Registrar is responsible for all the affairs of the Office, and the assistant registrar is responsible for matters assigned to him in accordance with the regulations or delegated to him by the head registrar within the limits of the regulations. In the latter case, the registrar and the assistant registrar will have shared liabilities in case of any wrongdoing. The above-mentioned legal articles and Article 68 of the Law on Registration of Deeds and Property, approved in 1931, are still valid and can be invoked regarding the civil liability of the Registrar. In the following, internal research related to the research topic are reviewed and discussed.

In an article entitled “Authentication of electronic documents”, Jashfaqani et al. (2018) argued that the development of information technology in all aspects of human life in the current era has highly impacted practices in various fields, and legal and financial systems are no exception. The use of messaging data has spread in cyberspace. Despite the difficulty of attributing data message and verifying its authenticity, the Iranian legislature has accepted the positive value of such evidences in various laws, including the Computer Crime Law and the Electronic Commerce Law, and the integrity of data messages has been accepted in the courts. However, as per the credibility of the electronic evidence of message data and electronic documents, the Iranian legal system is currently seeking to address the corresponding challenges, for which improving the level of technical knowledge in the methods of collecting, documenting and presenting electronic evidence can be of paramount importance. In this study, the challenge of attributing electronic documents, the conditions for authentication of virtual documents by judicial authorities and the claim of forging digital documents were examined.

In an article entitled “A Review on Forged Written Documents and Methods of Identifying Them”, Tajik Ismaili et al. (2018) stated that forgery occurs when a person knowingly alters something to deceive natural or legal persons. Although counterfeiting dates back to ancient history, it has witnessed significant increase in volume during the twentieth century and with the non-stop advancement of technology. Among the various types of forgery, this paper primarily seeks to review those pertaining to documents. In forging written documents, three scenarios are more likely, namely (1) Scratching or disrupting the text, (2) appending to the text, and (3) misinterpretation of the lines. Mastering the knowledge and obtaining the ability to identify each of these three is of great values in preventing potential abuse. One of the cases related to document forgery in court cases is the recognition of ink and inking sequences. The methods applied thus far in this regard are often perceived to be plagued with a plethora of challenges, which has led to the expansion of research for application in real cases. The purpose of aforementioned article was to get acquainted with the types of forgery and some methods of detecting forged documents.

Salehi et al. (2018) argued that along with the rapid development of information and communication technologies, a wide range of data and electronic documents have been subjected to forgery and distortion as well. Article 6 of the Cybercrime Law, which addresses the criminalization of cyberspace and digital computer forgery, has mentioned the subject of this

crime as “attributable data”. Contrary to the traditional forgery, which the legislature has almost specified, such as writing, handwriting, document, signature and seal, Article 6 does not specify the type and characteristics of data subject to computer forgery. This deficiency has created ambiguities in practice. The massive volume and variety of data, on the one hand, and the ambiguity of the concept of “attributable data”, on the other, make it difficult to determine whether the data is subject to crime of cyber forgery.

Ghasebi (2017) sought to analytically study traditional forgery of identity documents and to provide efficient solutions to prevent forgery of documents. The research was an applied study which employed descriptive-analytical design for its purposes. The author analyzed the traditional forgery of identity documents and presented appropriate solutions to prevent the forgery of documents. The obtained data were collected from library archives and through interviews with experts. In the introduction, a briefing on crime and forgery of identity documents were stated. then, solutions to prevent forgery of documents were discussed, followed by structural analysis of the obtained data.

In an article entitled “Document forgery in Iran”, Mobasheri et al. (2017) argued that forgery of documents is one of the main crimes of depriving the public of trust and disrupting the country's economic system, and is one of the important causes of social inefficiencies. Considering the development of the network of domestic and international communications and exchanges, and the need for speed and ease in concluding contracts and transactions, maintaining the validity of documents and their vital role in all aspects of human life, it is worthwhile to ensure that relevant officials formulate specific rules and regulations. As such, this article seeks to outline forgery of documents in the legal precedents, laws and regulations of the country. For this purpose, the author has sought to examine the general concepts of documents, forgery and its types, followed by a brief overview on the elements of forgery and the pitfalls in its punishments. The paper concludes with the author recommending a plethora of solutions for preventing or mitigating the crimes of this nature.

## RESEARCH METHODOLOGY

This research employed analytical, library-based method and collected data through taking notes from books, journals and articles, legal sites, the opinion of university professors, and when the need arose, seminary scholars, as well as the authorities involved in legal affair

## CONCLUSION

According to Article 22 of the Law on Notaries, approved in 1975, civil liability of the head of the notary public is based on fault, and the criterion for determining his fault is the observance of laws, regulations, by-laws, circulars, and notices. owing to the fact that there have been rare cases of significant losses in the performance of notaries and registrar, the issue has not been subject to much attention and stricter regulations. The provisions of this section of civil liability, although containing a special article, are mostly like other regulations of general civil liability that are based on fault. Also, According to Article 12 of the Civil Liability Law



approved in 1960, the Registrar is responsible for the attitude and performance of his/her staff with the terms and conditions related to the said article. The legal punishment for the use of forged documents has been established in various articles of the law. For example, Pursuant to the Article 535 of the Islamic Penal Code of the Penal Code approved in 1996, anyone using forged writings and documents in cases where Articles 532, 533 and 534 of the same code has mentioned, with previous knowledge of their fraudulent nature, will be sentenced to imprisonment from six months to three years or a fine of three to eighteen million rials. According to the Article 98 of the Penal Code of the Armed Forces, any military man or woman who forges the seal of one of the armed forces of the Islamic Republic of Iran, or uses it knowing that the seal is forged, will be sentenced to one to ten years in prison. Contrary to the arguments of some scholar, who argue that forged documents can be considered absolutely revocable by the legislator, and this revocability does not in any way undermine the validity of the official document; Rather, this establishes its absolute value in proofs of evidence. Accordingly, any infringement on documents, including form and substance, is conceivable, and Article 73 of the Law on Registration of Deeds and Property does not in any way preclude litigation related to the invalidity of ownership documents and their request for annulment, as the ownership document is the confirmer and the custodian of the right, and not its essence. The legislature only respects the title deed issued in accordance with the law. In Islamic jurisprudence, no document has been considered as the source of right, but rather an evidence of the transaction and as a means of proof, and naturally it is possible to prove otherwise. As a result, in Iranian law, especially after the enactment of the law on registration errors and conflicting ownership documents, the ownership document can be revoked if it has been issued in violation of the law and the truth. To gain a clearer understanding, consider the scenario in which someone has passed away and various Individuals seek to obtain a certificate of inheritance and seek to obtain deeds on the inherited property by relying on the certificate, and then it is proved that the certificate of inheritance was not valid and legal at the first place. In such case, the owner documents would also be revoked. It should be noted that according to Article 70 of the Law on Registration of Deeds and Property, as well as the initial legal presumption contained in paragraph 1 of Article 3 of the Bill on Registration Errors and conflicting Property Documents adopted in 1954, a document that was registered temporally earlier is considered valid in principle until annulled by a final court decision, and the document that was registered later is the conflicting ownership document, which is considered invalid until the final verdict affirming its integrity is issued by the court. Therefore, logically and according to legal principles, the invalidation of official documents should not be considered an absolute practice. That is, in cases of forgery or the issuance of conflicting ownership documents, they are revocable at the request of interested parties. As a result, if a person grants a certificate of inheritance and obtains an official document by falsely introducing him/her self as an heir, he/she is assumed to have performed fraud and will be sentenced to the prescribed punishments. Yet the ensuing documents cannot be simply annulled. On the

other hand, Article 114 of the law Registration of documents and property stipulates that in cases subject to Articles 105, 106, 107, 108 and 109, with the exception of the case mentioned in paragraph (b) of Article 108, the offender, in addition to the punishment for fraud, will remain in custody until having compensated the damages caused to the party directly by the application for registration and issuance of the title deed and which the private plaintiff has claimed by filing a petition, pending the verification by a private plaintiff in the Registry or other means therein.

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