Original Article: Damaging Due to Non-Contractual Fault or Unlawful Act

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Citation A. Khosravi*, A. Mahdavi Rad, **Damaging Due to Non-Contractual Fault or Unlawful Act**. *Int. J. Adv. Stu. Hum. Soc. Sci.* **2022**, 11(4): 251-256.

https://doi.org/10.22034/IJASHSS.2022.345367.1098

Article info
Received: 2022-05-02
Accepted: 2022-06-06
Available Online: 2022-07-08
Checked for Plagiarism: Yes
Peer Reviewers Approved by:
Dr. Nadereh Shirvani
Editor who Approved Publication:
Dr. Sediqeh Piri

Keywords:
civil liability, contractual liability, coercive liability, fault, loss, damage

ABSTRACT

Civil liability has two branches as the contractual and non-contractual liability. If there is a contract between two or more parties and one of them commits a breach of contract (non-performance; delay in fulfilling the obligation) and the other party suffers damage, the contract's violator has a contractual responsibility and should bear the damage. In some cases, where an individual inflicts damage on another without a contract between them, or if there is a contract, the loss is not related to the contract; there is talk of non-contractual liability. Civil liability in the law of obligations is a title to express the legal obligation to compensate for unlawful damages; whether it is a contract's breach or a violation of the public duty of non-damages otherwise, civil liability has two significant branches from the contract. The purpose of liability is to compensate for unjust loss, which it is a loss argued in the theoretical foundations of liability, and its criteria are based on liability. Compensation for unlawful loss depends on the existence on conditions, among which is the condition of "predictability of loss" and mentioned in both contractual and coercive liability (non-contractual obligations).

Introduction

One of the most prominent issues in the human history is truthfulness and the need to fulfill the covenant. Truthfulness is the necessity of fulfilling the covenant, and for this, Islam religion has strongly advised to fulfilling the covenant, which is a kind of truthfulness insofar as one of the famous rules of Islamic jurisprudence known as "Contract." Each prominent issue entails the guarantee of difficult performances for non-observance, and therefore in Islam, the guarantee of worldly and otherworldly performances is considered for breaking to break the covenant. In a variety of various ways, a commitment can be made and a person committed. A contractual obligation that arises as a result of arising from an agreement between two or more wills is one of its types. The obligee is also required by the contract to perform certain tasks or pay a fee. or failure Failure to perform the contractual obligations will lead to a breach of the obligation and will result in performance guarantees, of which compensation for the breach is one of its types.

Damage or Loss

Undoubtedly, the most profound and initial responsibility pillar is "loss or damage." Therefore, if someone moves at a high and

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unauthorized speed, however, this does not lead to an accident, he will not have "civil liability," even though he has committed a violation. The law does not define the word "damage" or "loss." but in However in the laws on civil liability in the Code of Civil Procedure and the Code of Criminal Procedure, its various instances under this heading or in other titles, such as damages, damages for late payment, damages for non-performance of damages, damages for delay in fulfillment of obligation or non-submission, the convict is entitled. The term "damage" is used in Civil Law in two main concepts: "legislator" sometimes uses it to mean "loss," in which there is no difference between "damage" and "loss" [1].

In some applications, the term hurt and damage has been used, which mainly refers to damage to the body and soul of a person and his (spiritual) personality, and sometimes "damage" means something which is paid to compensate for the loss [2].

In Articles 227 and 229 of the Civil Code, the "legislator" has used "damages" in an initial sense when he speaks of damages resulting from non-performance of obligations or compensation and has intended the second meaning when he discusses the payment of damages [3].

Conditions of Claimable Losses

"Claimable" loss must have conditions; it should be certain, direct, predictable, not previously compensated for, and resulting from harm to a person's right or legitimate interest.

Clause 1: The loss should be certain

A "certain" loss is a definite or definite loss, not a probable one, in the sense that it is either actual or achievable according to the ordinary course of events; that is, its occurrence in the future is certain; from the provisions of Articles 5 and 6 of the Law on Civil Liability, it can be deduced that a claim for damages is admissible compensation. The loss of the possibility of gaining profit can further be compensated if it is reasonable.

Clause 2: The loss should be direct

"Lawyers" divide the damage into two types "Préjudice direct" and "Préjudice indirect" is responsible for direct damages; however, it is not liable for indirect damages. Article 520 of the Code of Civil Procedure stipulates: "Regarding the claim for damages, the plaintiff should prove which the damage was caused directly by the non-fulfillment of the obligation or its delay or non-submission of the claim." Although this provision is a contractual responsibility, but with the same basis of "unity" of the two mentioned responsibilities, it does not matter whether the responsibility is contractual or forced [4].

Of course, it has been mentioned that the immediate significance of the loss does not mean that no other cause is involved in the entry between the harmful act and the damage of the "customary causal relationship" of the damage, yet rather the criterion of attainment [4]. The injured party can claim damages from the injured party if he /or she traditionally causes the damage, but in indirect damage, there is no customary causal relationship. Custom has the same viewpoint and holds the direct cause responsible unless the farther cause is stronger more potent, in which case the stronger more substantial cause breaks the causal relationship between the direct cause and the loss; In any case, what matters is the "customary causal relationship" [3].

Clause 3: Damage should be predictable

One of the conditions in civil liability is that to fulfill the liability, the damage should have "normal predictability."

Préjudice direct is divided into two groups: predictable (for the parties) and unpredictable damages. The first group is undoubtedly compensable, but in the second, there is doubt about the contract responsibility and it. It is stated that there is no such limitation in liability outside the contract. This difference has even been suggested as one of the factors separating contractual and non-contractual liabilities. In the contract. According to the principle of the rule of will, the demands and predictions of the parties are the criteria, and. If the damage is not predictable, it has not actually entered the

realm of agreement and contract, and its compensation cannot be attributed to the agreement. In addition, if the loss is not predictable, the causal relationship between the loss and the non-performance of the contract is further questionable [3].

In "European Law," in contractual liability, the obligor is solely responsible for the damages foreseen at the time of the contract. It is argued that this sentence was extracted from the works of famous French jurists such as "Putie" which is taken from the ancient text of "Rome" which is included in the "Digest" collection in the law. In French law, some consider the certainty and directness of the damage to be indeed the condition of predictability and believe that the essential and direct consequences of a harmful fault are the losses that generally result from a harmful act and the damage that is an expected result. Natural is not a fault; it is a loss whose occurrence is typically unpredictable or not certain. Common-Law has raised the issue of predictability of damages in the famous Hadley Baxendal lawsuit [5].

Obligation and legitimacy of the right to claim damages

Damage is compensable if the legitimate and legal financial or non-financial right has been damaged. Therefore, if the plaintiff is under the guardianship or obligatory alimony of the deceased in a legitimately and lawfully; and the individual who is obliged to pay the property or alimony is killed by a third party A third party kills the individual who is obliged to pay the property or alimony and it is not possible to continue the payment, the right holder can claim damages from the third party due to the impossibility of payment, but if there is no obligation, but according to a moral or conscientious promise, if there are any obligations, or if there is no legal relationship between the deceased and the injured party, the consequences of violating this obligation cannot be pursued. [2].

According to some jurists, if the legitimate interest of an individual is harmed, it can be compensated from the instances of harm, and the legitimate benefit, that is, the benefit that is not prohibited by law and has been approved by "custom" and "good morals"; therefore, if a party is under the care of a deceased man, whether he/she is obliged to pay alimony or not, he/she has the right to claim damages, provided that he/she has regular and continuous financial assistance because this financial support is regular and constitutes a legal status [3].

However, it seems that this loss is in fact an instance of non-profit, the causes of which are not perfect, and it is possible that a party would cut off his help during his lifetime; hence, these benefits have a possible aspect and are different from the case where a person is required by law to pay confederation.

Material loss is also called "positive loss," and the loss of definite non-benefit is also called "negative one." However, in any case, both are disadvantages and can lead to liability if the conditions are met.

Article 728 of the former ADM Law provided: "The loss may be due to financial loss or to the loss of the benefit resulting from the performance of the obligation." There is nothing wrong with compensating for such losses, and the Civil Code and the Law on Civil Liability emphasize the compensation of such losses. Material damage is further envisaged in the contractual liability, such as the construction materials of the obligee being lost due to non-fulfillment of the obligation [6].

Fait Damageable

In fulfilling the responsibility, there should be an "act of negligence," and without the act of negligence, the damage cannot be attributed to others. Likewise, sometimes leaving act causes responsibility, which, depending on the variety of the act , compulsory responsibility arises from both "positive act" and "negative act", yet in "contractual liability" it is often negative, so for a harmful act in contractual liability, they use "breach of contract" or "non-fulfillment of obligation" or "breach of conducting an obligation", of course, this term is used to overcome, because "contractual responsibility" is sometimes formed with a positive act ; it is as if someone deliberately loses the property of

the subject of the contract, but it can be called "non-fulfillment of the obligation" on the credit that he has not finally fulfilled the subject of his obligation, of course, any refusal to do so is not a "fault", because the imposition of malicious duties on members of society is contrary to their individual and personal freedoms, unless the person has made an obligation under a contract or if such an obligation exists by law or "custom". In other words, the current abandonment creates a responsibility in which the act is possible, and there is an obligation to perform it according to the contract, law, or "custom," and its refusal becomes a (brief) breach. Article 952 of the Civil Code stipulates: Breach is the abandonment of an action that is not necessary by contract or custom to preserve property. In the following, we examine the harmful act in coercive and contractual liability.

The First Speech: Leaving the act during the action (leaving the act due to the act)

In this type of omission, the omission of a particular act by the person causes responsibility, which is the refusal to perform a duty. For instance, a driver avoids braking promptly while driving or a contractor who digs a well or pits in a public thoroughfare without any warning signs such as a hazard light or proper guard. In such cases, speeding up or digging the well, even if it is against the rules and regulations, is not harmful, but not braking in time or not installing a warning sign during the day and a special light at night, as well as not installing a suitable guard (crack). The act has caused other harms, and the observance of these is duties and responsibilities that have been left behind by the harmful person the harmful person has left behind, and it is a kind of "fault" of the type of negligence and negligence [7].

In contrast, it seems that in such cases, a positive act causes harm to others, not an omission; for instance, speeding or digging wells, which are positive actions, cause damage. It is possible not to leave the act. Likewise, the jurists in the matter of the wall, if the owner has built it in his own property wishing for the property of others, or builds it in another's property, or builds it in his own property without wanting to one side, and gradually inclines to the other. For the owner, the world is in danger of falling, and at the same time that it has the ability to can repair and repair it and refrain from taking appropriate measures; they consider it a guarantor. The meaning of this sentence is this sentence means that leaving the act if it is the cause of loss, is a guarantee [8].

The Second Speech: Refusal to perform a legal duty

This responsibility arises when the law obliges a person to perform a certain action, such as the duty of custody of the child (custody) for to the parents[1], or the duty and obligation of the officials of the traffic department traffic department officials and the municipality to install special warning signs at the intersection of roads and certain roads and places. In this case, whenever the officer does not perform his legal duty, he is indeed to blame since he has not performed his the duty. The source of such duties is the law in the strict sense of the word, valid regulations, and instructions.

Thus, if there is a special rule in the form of law, a party should perform that legal duty, otherwise, he will be responsible, such as the duty of a physician to treat a patient promptly or the duty of firefighters to extinguish a fire and rescue by the lifeguard and that the objection of the officer is considered a fault in such cases and in addition to civil liability may also have criminal liability. For instance, Article 1176 of the Civil Code states: "A mother is not obliged to breastfeed her child unless it is not possible to feed the child other than breast milk." Therefore, in cases where it is not possible to feed the baby other than breast milk, the mother is obliged to breastfeed the baby. If she leaves breastfeeding, the perpetrator will be deprived of the act and subject to damages. Article 293 of the Islamic Penal Code (approved in 1390) stipulates: "Whenever a person leaves the act he has

[1]According to Article 1168 of the Civil Code: "The custody of children is both the right and the duty of parents."

undertaken to perform, or the specific duty assigned to him by law and a crime is committed as a result of it, if he can perform that act, the resulting crime shall be documented to him and depending on the case, it is intentional, quasi-intentional, or a pure mistake, such as the mother or midwife who is breastfeeding not breastfeeding the baby or the doctor or nurse leaving her legal duty" [9].

Deliberate elimination of the subject of the contract

Breach of obligation means that the obligor does not fulfill the obligation resulting from the contract, whether the non-fulfillment of the obligation is intentional or due to negligence and error, or due to his actions; even if there is no intent or negligence disappear as if the cloth given to the tailor were burned. Has the contractual obligation been fulfilled or not? The issue should be distinguished: whenever the obligee intentionally removes the subject of the obligation and rejects the performance of the obligation, a contractual breach has occurred, but whenever as a result of the act of the "oblige" and without the act of the obligee being involved. , The subject of the obligation is eliminated, or the subject of the obligation is destroyed spontaneously so that it cannot be attributed to the obligor; it will not be responsible. In "Iranian Law," the articles of the civil law regarding rent and other articles such as articles 481, 482, and 486 are used, which if the loss of the subject of the obligation is without the fault of the parties, will cause the obligation to be terminated and no liability will be created. According to Article 1383 of the French Civil Code, the harmful intent is not important essential in establishing civil liability, and the crime and quasi-crime are compensated in one way; However, "intentional fault" in contractual liability has certain effects that do not exist in the coercive liability of such effects; In "grave fault," for instance, the jurisprudence considers it to be intentional fault. Likewise, the intentional fault prevents the injured party from using Article 1150 of the French Civil Code, which is limited to foreseeable damages, and which are in principle valid, are invalidated in the intentional fault. Furthermore, in case of non-fulfillment of the obligation, it is time to compensate for the damage, which it is not possible to fulfill [3].

Otherwise, if the performance of the obligation is possible and damages have been incurred, the claimed damages will not be "damages due to non-performance of the obligation", however, the damages will be due to delay in execution, which the obligee, while obliging the obligor to fulfill, also he demands in his claim [2].

Conclusion

The creation of new values in civil liability law has led to changes that are the root of all values and developments, the need for social interests, and justice in the implementation of implementing legal principles and laws. The instances in justice change according to the conditions of time and place, and the change of the conditions of economic life causes the transformation of social relations. This transformation also changes the need for justice. Of course, the initial step in ensuring social justice is the existence of a correct and mere law that guarantees the material and spiritual interests of all people equally and is in harmony with the mysteries of human existence and the principles governing human social relations; until everyone knows his right and hopes to obtain what he deserves, and the owner of the right is sure that he will get his right. Thus, exploring laws and regulations is a prelude to achieving social justice. Based on what has been mentioned, it can be argued that the main issue in obtaining social justice is determining the responsible cause for compensating the injured party. One of the most important cases that can be mentioned in this regard is if there is a general knowledge that the entry of damage through an indefinite an undetermined cause is among the several causes that are presented in different theories and each of these theories and procedures adopted with aspects its own drawbacks; in such a way that none of them can be regarded a comprehensive method, and following the principles of law and justice.

Nevertheless, it seems that in all respects, it is possible to adopt a method from a variety of various perspectives that is more compatible with the principles and foundations of our law. Hence, the division of liability into equality and the claim for damages from all the aggregate causes with certainty which several causes have played a role in the occurrence of the loss so that the damage is obtained from the sum of these causes and conditions and the causal relationship between all those causes and losses. Has been created, and considering the involvement of all causes in the occurrence of damage, the preference of one of them over the other is an unjustified and unjustified preference; all the mentioned causes should be regarded as responsible, and compensation that should be left to all of them. In cases in which the judge cannot invite the defendants to compromise, such as indivisible damages such as death and injury, which cannot be stated that each of the causes has caused a certain part of the loss, one of the final solutions is to invoke the guardianship of the judge can order the distribution of compensation for damages; in this case, he can hold each of them responsible for compensating a part of the damages to avoid chaos and for the purpose of the season of hostility, assuming joint responsibility for the readers. "Civil liability" is a party's obligation to compensate others.

The creation of this responsibility is sometimes due to the violation of contractual obligations and sometimes is a violation of customary and legal obligations, so "civil liability," in the general sense, includes contractual and non-contractual responsibility; however, "civil liability," in a specific sense, means the obligation to repair and compensate for damages outside the contractual relationship.

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