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Legal Review of Liability Resulting from Fraud in Electronic Banking

Javad Vafadar[1]

[1]. PhD, Department of Law, Qom Branch, Islamic Azad University, Qom, Iran.

Abstract

The purpose of the article is to examine the legality of liability for fraud in electronic banking. This article examines the civil liability of bank employees towards customers and the bank, and since the negligence of bank employees may cause problems for the institution and also customers, its purpose is to examine a solution to reduce the errors of bank employees. Given that the present research was conducted in the field of banks and civil liability will be criticized and examined, various theories of civil liability of bank employees towards the institution and also towards customers have been discussed and examined, and exemptions from civil liability of bank employees have been mentioned. The results of the research showed that depending on the type of error and the type of fault that bank employees are aware of, their liability also increases or decreases, which indicates that the law has fully addressed this issue. The results of this article also showed that in addition to the fact that the law has considered civil liability for employees, it has also considered principles that in the absence of any mistake, employees are not held liable.

Keywords: Civil liability, employees, private bank, customer.

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Introduction

Currently, in the laws of most countries, civil liability plays a very important role in compensating for losses and damages, which can be studied in various cases. When banks undertake to do something for their customers and third parties, they must do these tasks assigned by customers and third parties in full and in full, and if they commit a fault, they must compensate for it appropriately. Therefore, the civil liability of the bank against the customer and third parties will be established if the conditions for civil liability are established, including the establishment of attribution of fault, establishment of causation and the existence of damage. Considering these cases, the effects that arise from the bank's fault on the customer are the occurrence of losses and damages and ultimately compensation for the damage by the bank; hence, the civil liability of the bank is formed within the framework of fault and its compensation. Certainly, the civil liability of the bank towards the customer will vary depending on the circumstances, because sometimes it is seen that due to the negligence or carelessness of the customer, the bank is not held liable and the relationship of attribution of fault is that the damage has been done to itself; therefore, the principle is that civil liability is to compensate for the loss that has multiple sides and is created by a single cause and is divisible by the victims or officials, unless the nature of the obligation is indivisible or there is a joint and several relationship. According to paragraph "c" of Article 35 of the country's Monetary and Banking Law, compensation for damage is fixed not only in the case of the bank, but also in the case of legal entities such as the CEO, the chairman of the board of directors, and members of the board of directors of each bank against shareholders and customers. Nevertheless, the civil liability system in the banking system, or rather, in the country's monetary and banking system, is an accepted matter and there is no doubt about it. Some experts believe that the civil liability stated in Article 35, Clause "C" of the country's Monetary and Banking Law is not based on the Civil Liability Law, and apart from that, in my opinion, this is contrary to the idea and reality, because the Monetary and Banking Law of the country and the aforementioned article do not state the method of compensation for damage and the criteria and criteria for attributing fault, as well as its conditions and effects, which in itself requires special laws such as the Civil Liability Law, which

will be explained in detail and with analysis and investigation in this research. So, it can be stated without delay that examining the Civil Liability Law regarding the civil liability of the bank against account holders and third parties is of fundamental importance.

-2Applying the theory of fault in the civil liability of bank managers and employees

Accordingly, the criterion for identifying the individual's liability is negligent behavior or the existence of a causal relationship between fault and loss. So, in order for the injured party to be able to claim damages from another, he must prove that his fault caused the damage. In contractual liability, the injured party only has to prove the failure to fulfill the obligation, but in tort liability, the injured party must prove fault (Katouzian, 2001: 381). In any case, in new theories of fault, instead of the personal criterion, a specific criterion is used. The purpose of the specific criterion is that fault, regardless of the culprit, is a specific behavior in which a departure from conventional standards is observed. In fact, in this view, unlike the personal criterion that mostly focused on examining the states of the culprit, more attention is paid to the fault than to the culprit. If the objectivity of a behavior is taken into account without looking into the states of its subject, and that behavior is behavior outside the rules and specific, it must be considered fault. Therefore, in Iranian law, a specific criterion is acceptable. (Rahpik, 2011: 27).

The civil liability of bank managers and employees based on the theory of fault can be referred to Article 11 of the Civil Liability Law. In this article, employees of the government and municipalities and their affiliated institutions who intentionally or recklessly cause damage to individuals in the course of performing their duties are personally responsible for compensating for the damage. However, if the damage is not due to their actions and is related to the defects of the equipment of the said departments or institutions, then the compensation for the damage is the responsibility of the relevant department or institution. However, in the case of exercising state sovereignty, if measures are taken as necessary to secure social benefits in accordance with the law and cause other damage, the state will not be obliged to pay damages. 1-2- Applying the theory of guarantee of rights in the civil liability of bank managers and employees

In this hypothesis, it is said that anyone who engages in an activity creates a dangerous environment for others and such a person who benefits from this environment must also compensate for the losses resulting from it. In other words, in order to hold a person responsible, it is not necessary to have committed a shortcoming; rather, as soon as a dangerous or harmful act results, the person who committed the act, whether or not he was at fault, is responsible and must bear the damage caused. The theory of risk has been criticized because it recognizes the reader as being responsible without fault and reprehensible behavior, and the harm to another cannot be recognized alone as the cause of the obligation to compensate for it (Katouzian 2008:25). From this point of view, in the liability of bank managers and employees, we can point out the unusual work of the manager and employee. In fact, unusual work, while not as severe and concentrated as "fault", is a type of negligence and a step towards the theory of creating danger. Article 21 of the Labor Code states: "Employers who are subject to labor law are responsible for compensating for damages caused by their administrative employees or workers during or in connection with the performance of work, unless it is proven that all precautions required by the circumstances of the case were taken or that if they had taken the aforementioned precautions, it would still not have been possible to prevent the damage".

According to Article 19 of the Labor Code of the Islamic Republic of Iran, “Employers and officials of all units subject to Article 85 of this law are obliged, based on the resolutions of the Supreme Council for Technical Protection, to provide the necessary equipment and devices to ensure the protection and health and hygiene of workers in the workplace, and to teach them how to use the above equipment.” However, according to critics, eliminating fault not only does not make the claim for damages easier, but also puts the judge in a valley full of ups and downs and a series of turns, because generally, there are causal factors that are effective in the occurrence of any damage. According to the theory of fault, the cause of the fault is considered responsible, but if civil liability is reduced to establishing a material causal relationship, in order to determine the responsible party, it must be possible to identify the cause of the damage among several

causes, and this is not so easy. Some lawyers have presented solutions to this problem, including proximate and immediate cause, probable cause in effect, common and main cause, which are often inconclusive in solving the problem (Drudian, 2005: 32).

-2-2Examining the principles of civil liability of bank managers and employees

In this topic, we will first examine the basis of civil liability of private and state-owned banks, then we will examine the principles of liability of bank employees and managers, and finally we will examine Article 35 of the Civil Code, which is one of the most important legal articles on the subject of civil liability of bank managers and employees.

-3-2Examining the Basis of Civil Liability of Private Banks

The most common and natural type of liability is personal liability, and what is logical, acceptable, and more consistent with legal principles is that every person is responsible for his own actions and whenever damage results from his actions, he must compensate for it, meaning that each person is only responsible for his own actions and mistakes, which refers to personal liability. However, in some cases, the legislator, in order to preserve social interests and protect the rights of the injured party, has made someone other than the perpetrator responsible for removing the damage. In most cases, the person responsible for the damage does not have sufficient means to compensate for the damage or is completely incapable of doing so, and like the employer's liability for damage resulting from the actions of workers and employees, we can refer to paragraph (c) of Article 35 of the Civil Code, which is an example of liability resulting from the act of another. According to Article 21 of the Civil Code, "Employers who are subject to the Labor Law are liable for compensation for damage caused by their administrative staff or workers during or in connection with the performance of their work, unless it is proven that they took all the precautions required by the circumstances of the case and still could not have prevented the damage. The employer may refer to the person who caused the damage if he is found liable in accordance with the law." As can be seen, employers subject to the Labor Law are found liable for the actions of their employees. Article 21 of the Labor Code is based on the theory of “risk” and has determined the scope of liability of employers subject to the Labor Law for the actions of their employees, more than what is foreseen in Article 11 of the Labor Code. While in Article 11 of the Labor Code, liability is based on the theory of “fault”. In the cases of Article 21 of the Labor Code, it is necessary to mention two points: First, although a large part of government agencies are excluded from the scope of the Labor Law due to their specific employment regulations, there are still numerous organizations that comply with the Labor Law. Second, it should not be assumed that because the responsibility of the government is explained in Article 11 of the Labor Code and it is not correct from the legislator’s point of view that part of the government’s responsibility is stipulated in one article and another part of it, with special conditions, in a separate article, then the provisions of Article 21 are not applicable to government organs and government agencies. Because, not considering the provisions of this article as negotiable towards the government, not only ignores the responsibility of a large part of the government organs and organizations that are subject to the labor law, but also causes discrimination in the rights of government and private liability. Therefore, the labor law has stipulated responsibilities for employers regarding accidents arising from work, including government employers. Therefore, part of the government's civil liability must be sought in the labor law.

According to Article 19 of the Civil Code of the Islamic Republic of Iran, "Employers and officials of all units subject to Article 58 of this law are obliged, based on the approvals of the Supreme Council for Technical Protection, to provide the necessary equipment and facilities to ensure the protection and health and hygiene of workers in the workplace, and to teach them how to use the above-mentioned equipment and to supervise compliance with the safety and hygiene regulations." In Article 95 of this law, while the responsibility for implementing technical and occupational health regulations and standards is placed on the employer or the officials of the relevant units; however, Note 2 of this article states: “If the employer or managers of the units subject to 85 of this law have provided the worker with the necessary equipment and facilities for technical protection and occupational health, and the worker, despite the necessary training and prior warnings, does not use them without paying attention to the existing instructions and regulations,

the employer will not be responsible." These provisions indicate that in many cases where the risk theory has been followed, the fault or neglect of duty of the respondent has also been taken into account.

Points to note about Article 21 of the Labor Code:

.1Employers subject to the Labor Law have this responsibility. In cases where the employer is not subject to the Labor Law, the injured party must refer to the person who caused the damage.

.2The damage caused to a third party must result from the act of the employer's employee or worker.

.3The employer's liability is subordinate to the worker's liability, and has been established to guarantee the right of the injured party.

.4After compensating the third party, the employer can refer to the guilty worker or employee.

Therefore, according to Article 12 of the Civil Code, the employer is responsible for compensating all damages caused by experts, and this article does not consider any exceptions for compensation. This aspect of liability has a protective aspect. Relying on compensation for the injured party causes fault to play a lesser role in such liabilities and sometimes it is not even considered. However, the role of fault is not eliminated and the reason for this can be summarized in two points.

.1A person is usually responsible for the work of those who work under his supervision and guidance. So if they cause undue damage to another. It is assumed that they were not properly guided and the person responsible was negligent in this regard.

.2Observing this moral tradition that is not innocent has led the proponents of the theory of fault to secure the social goals of civil liability under this same view and to achieve their goal by shifting the position of the claimant and the defendant in lawsuits and creating a presumption of fault. Apart from the discussion of Article 53 of the Criminal Code, Article 21 of the Criminal Code can be considered as a model for the liability of private banks.

The second group (the first of which was mentioned in the previous discussion) are employees of private banks, whose performance can be evaluated according to Article 21 of the Labor Code, and it can be stated that in the event of any damage caused by employees of private banks, the bank is obliged to compensate the injured party. If the said damage is the result of the performance of employees of private banks, according to the last part of Article 21 of the Labor Code, the employees are held liable and the bank can refer to the person in charge. Of course, according to Note 2 of Article 59 of the Labor Code, if the employer or the managers of the relevant units have provided the worker with the necessary equipment and facilities for technical protection and occupational health, and the worker does not use them despite the necessary training and prior warnings, regardless of the existing instructions and regulations, the employer will not be liable. In the event that in Article 11 of the Labor Code, The responsibility for compensation is placed on the employee and the injured party must first refer to the employee, unless it is proven that the error was caused by a violation of administrative means, which poses many problems for the injured party because determining the responsible person in the departments is almost impossible due to the extensive and lengthy administrative system. However, considering paragraph (c) of Article 53 of the Civil Code of the Islamic Republic of Iran, which is a special law on the civil liability of banks, it has priority in implementation, the responsibility for compensation is first placed on the bank and it is the bank that must compensate for the damage and then, if the bank considers a person responsible, it can refer to him for the refund of what it has paid, which is in the interest of the injured party. However, in relation to Article 35 of the Civil Code of the Islamic Republic of Iran, this question remains, namely, whether, according to this article, the bank has a pure liability and is liable for the personal errors of the employee? Finally, considering the theories expressed and Articles 11 and 12 of the Civil Code of the Islamic Republic of Iran, M. and Article 53 of the Civil Code, we can reach this conclusion: The basis that jurists, and especially the proponents of the interpretative idea, have chosen to directly attribute responsibility for the harmful act of an employee to an organization or legal institution is the theory of liability of legal persons. The actions that employees of the office perform in the name of a legal person are considered acts related to this person

because employees are considered as organs of this person, so whenever an employee commits a mistake while performing his duty, this mistake (fault) will be the legal person's because every person is naturally responsible for the movements of his organs, just as a natural person is inevitably responsible for the movements of his hands. Therefore, if an official performs an action using the title of employee, it is in fact the legal person who has accomplished that action, the legal person acts through its organs and its actions belong to itself and must be responsible for it under this title. So whenever an employee commits an error, the responsibility falls on the administration. The most important result of this theory is to abandon the distinction between administrative error and personal error in terms of holding the legal entity responsible. Therefore, legal logic requires that in order to achieve as much justice as possible regarding the personal errors of the employee while performing his/her duties, we believe in the joint responsibility of the legal entity and the employee, instead of holding the legal entity responsible alone. As the second part of paragraph "C" of Article 53 of the Monetary and Banking Law of the country approved on 18/4/1351 has introduced the managing director and the person responsible for the damage that occurs due to their violation of the regulations. Therefore, it can be concluded that: whenever a loss is incurred by a customer, whether this loss is due to the employee's personal error, a defect in administrative equipment, or the result of another act, the injured party can directly refer to the bank itself and hold the bank responsible and demand compensation from it. After the loss is eliminated by the bank, if the bank determines that the loss was due to the employee's error, it can refer to that person for the refund of what it has paid. As stated in Article 12 of the Labor Code. Article 21 of the aforementioned law states: "Employers who are subject to the Labor Law are responsible for compensating for damages incurred by their administrative employees or workers during or on the occasion of their work, unless it is proven that they took all the precautions mentioned above, and it was still not possible to prevent the loss. The employer can refer to the person who caused the loss if he is found liable according to the law." Although the aforementioned article applies to employers who are subject to the Labor Law, this does not prevent us from applying the final part of the aforementioned article to other legal entities.

Because if we do not hold the employees of legal entities responsible for their personal errors and we make all compensation for any kind of damage, whether administrative or personal, the responsibility of the relevant institution, the employees will not feel any responsibility in performing their duties and will commit numerous and repeated errors, and social order will be disrupted. Therefore, the logic of justice requires that each person take responsibility for their actions. The provisions of paragraph "c" of Article 53 of the Civil Code are based on various social interests. The legislator has requested that those who suffer losses as a result of the bank's activities not be confronted with the employees in the position of compensation for damages, because it was possible that the employee would not be able to compensate for the damage with sufficient financial evidence, and as a result, the victim could not achieve his right. Also, social justice requires that the person who benefits from the activity bear the losses resulting from it. Besides, the bank management is with the bank itself and he must entrust the work to the employee and establish a system that prevents harm to others and take the necessary precautions in selecting competent, competent and expert employees to carry out the work so as not to cause harm to others. The aforementioned clause is a guarantee for bank customers against damages (the mutual liability of the bank and the customer thesis).

-4-2Examination of the basis of civil liability of state-owned banks

The aforementioned clause is contrary to Article 11 of the Civil Code. It is stipulated that: "Government or municipal employees and institutions affiliated with them who, in the course of performing their duties, intentionally or as a result of negligence, cause damage to persons are personally liable for compensation for the damages incurred. However, if the damages incurred are not documented by their actions and are related to the violation of the equipment of the said departments and institutions, then the compensation for the damages is the responsibility of the relevant department or institution. However, in the aforementioned article, the responsibility for compensation for the damages is placed on the employee and the person who suffered the damage must first refer to the employee. Unless it is proven that the error was caused by the defect of the administrative equipment. Of course, in the case of banks, it should be noted

that Article 11 of the Civil Service Law governs public institutions; (Katouzian, 2007: 582) This is when the government is in the position of exercising sovereignty; that is, acts that are called acts of sovereignty according to the Civil Service Law. If the government engages in trade or industry or has industrial and commercial institutions under its administration and supervision (such as banks and state-owned companies), they are subject to the general rules of civil liability and, as a result, companies and banks affiliated with the government are also responsible for the actions of their employees. This is because banking operations are considered part of the state's corporate activities and, as a result, banks are not subject to Article 11 and are obliged to compensate for the administrative errors of their employees and then refer to them after establishing a causal relationship in relation to the employee's harmful act.

Determining the responsible person in the departments is almost impossible due to the extensive and lengthy administrative system, but paragraph "c" of Article 53 of the Civil Code of Iran initially places the responsibility for compensation on the bank and it is the bank that must compensate for the damage and then, if the bank considers a person responsible, it can refer to him for the refund of what it has paid, which is in the interest of the injured party.

-5-2Review of the ruling on the subject of Article 53 of the Monetary and Banking Law

In the case of legal entities, the question may be raised that given that legal entities do not have a will independent of their members and that it is in fact real persons who make decisions for them, how can a legal entity be held liable? Furthermore, if we consider the ability to attribute and distinguish to be among the conditions for investigating the concept of fault, how can a legal entity be held liable? According to paragraph "c" of the country's banking and monetary law: "Every bank shall be liable and obligated to compensate for any losses incurred by its customers as a result of its operations. The managing director, the chairman of the board of directors, and the members of the board of directors of every bank shall also be liable to the shareholders and customers for any losses incurred by the shareholders or customers due to any of their violations of the provisions of the laws and regulations related to this law or the articles of association of that bank. What is stated in this paragraph consists of two separate parts and includes the liability of the bank and the bank managers. It seems that in the first paragraph, the bank's liability is a commitment to the result because the relationship between the bank and the customer is basically contractual. If their relationship is non-contractual, we can talk about pure liability. And this article states: Every bank shall be liable and obligated to compensate for any losses incurred by its customers as a result of its operations. As we know, banking operations are carried out by bank employees and the legislator in this regard The clause has made the bank responsible for compensating for the damage incurred, meaning that the injured party can refer to the bank itself from the beginning to eliminate the damage incurred and does not need to refer to the employee, although it is possible to refer to both, the bank and the employee. Of course, considering the liability as joint and several requires the legislator to clarify. The clause mentioned in this part has followed the direct liability of legal entities (the thesis of mutual liability of the bank and the customer). The second part of the clause has made the managing director, members of the board of directors, the chairman of the board of directors and members of the board of directors of each bank responsible against the shareholders of the bank and customers, if their violation is due to failure to comply with the regulations, laws and regulations related to the monetary and banking law of the country approved on 81/4/1351 or the articles of association of the relevant bank. For example, if the bank managers, without a valid excuse, do not submit the tax return to the Ministry of Finance on the specified date and due to failure to submit the tax return to the Ministry of Finance, they will be subject to criminal penalties. The bank is liable and the payment of the aforementioned fines causes a decrease in the shareholders' dividends. In this case, the managers are liable to compensate the shareholders for the damages. As a result, this liability is a liability arising from negligence and the managers are liable to compensate the shareholders for the damages incurred. As it can be seen, the aforementioned persons will also have personal liability to the shareholders and customers in the event of a violation (Masoudi, 2008: 90).

-6-2Examination of the basis of civil liability of the bank employee

According to paragraph a, article 13 of the Civil Code of Iran, "A - The formation of a bank will only be possible in the form of a public joint-stock company with registered shares." Therefore, the bank is necessarily a legal person, and this issue leads to the question of whether the bank can be recognized as liable separately from its employees and managers. Considering article 885 of the Civil Code, according to which a legal person is in principle exempt from all rights and obligations that exist for a natural person, the answer to the above question is certainly yes. It is positive. Of course, it should be noted that the bank's competence is limited to its statute (Eskini, 2001: 52). Since the bank is a legal entity and does not have the ability and intention to create, the management of the bank is expressed through the person or persons authorized in the statute. However, all legal actions are performed for the bank within the limits of the statute, and in principle, the bank will be responsible for its actions and results. Therefore, a change in the board of directors or the statute will not affect the rights and obligations that have been obtained for the bank before. The general rule of liability of legal entities is also applied to the bank and will have all its effects and results. Among other things, all actions and actions of the managers, the bank's CEO, are valid against third parties, and the bank cannot consider the actions taken invalid just on the pretext that the relevant formalities were not observed. Another argument can be made to this logic: if the liability of a bank employee towards the customer is the same as the liability of a lawyer towards the client, then It agreed that the client would fulfill all obligations that the attorney had made within the scope of his power of attorney (mutual liability agreement between the bank and the client). 7-2- Basis of civil liability of the bank manager

Since the bank is always a legal person according to the Commercial Code, it is inevitable that an individual or individuals will take over its management and considering that according to the same law, the formation of a bank is only possible in a public manner, the bank will be subject to the regulations regarding joint stock companies, except in cases where the law or custom states otherwise. Article 107 of the Commercial Code provides that "A joint stock company will be managed by a board of directors elected from among the shareholders and can be dismissed in whole or in part. The number of members of the board of directors in public joint stock companies should not be less than five people." Of course, it should be noted that according to Article 31 of the Commercial Code, a bank is considered legal if the commercial and banking laws are observed, otherwise any activity against the law is prohibited.

To discuss the basis of liability of bank managers, the question must be answered: Does the civil liability of bank managers, who may be thousands of people, lie with the CEO and the board of directors. In other words, does the liability for the act of another, as exists, for example, in relation to workers and employers, in Article 21 of the Civil Liability Law, also apply to bank managers? For example, the presence of central offices of most banks in Tehran and the presence of senior managers in the aforementioned offices? If the head of a branch in one of the affiliated branches, for example, in Bojnourd, commits a violation, do the bank managers have civil liability for this violation? This question is raised from the perspective that the appointment and appointment of all employees and branch heads and the determination of jobs and employment conditions are among the duties and responsibilities of the bank's senior managers. Therefore, it may seem that holding managers responsible for the actions of employees requires them to be careful in hiring and managing correctly. In response, it should be said that the relationship between the bank and the managers is not that of an employee and an employer. Even in private banks, the relationship of an employee and an employer is created between the employee and the bank, not the employee and the bank manager. Therefore, Article 21 of the Civil Liability Law cannot be applied to the bank managers. In addition, liability for an act other than an exceptional case is not possible except for persons specified by law. The second part of Article 53 of the Civil Code of Iran holds managers responsible for damages resulting from their violations, and damages resulting from employees are considered indirect to the bank managers, and the manager cannot be held responsible for them. In Iranian law, the relationship between a bank and its managers is considered a fiduciary relationship, meaning that bank managers must perform their duties based on the law, good faith, and skill, and use their skills and characteristics, and in these circumstances, bank managers are not liable for any losses incurred by the bank or its customers. The Monetary and Banking Law does not have detailed regulations regarding the liability of bank managers, and only stipulates in Part Two, Clause C: "Each bank shall be liable and obligated to compensate its

customers for any losses incurred as a result of its operations". 8-2- Damages that can be claimed from bank managers and employees

Not every damage can be claimed. Many damages are considered common in the eyes of common custom and the person who suffers them is not said to have suffered damage in the real sense. Therefore, in order to be able to demand compensation for the damage caused by the actions of bank managers and employees, the general conditions of the general conditions of claimable damages are necessary. The meaning of the fact that the damage is certain does not mean that the damage currently exists and is realized at the same time as the harmful act occurs in the outside world, but rather it means that the common custom has no doubt or suspicion about the realization of the damage even in the future and does not evaluate the realization of the damage as doubtful, probable or imaginary. For example, when a bank employee loses a potential benefit in the future due to a violation of internal regulations or bylaws from a customer and the customer of the bank, according to Article 53 of the Civil Code, K which stipulated that "Every bank shall be liable and obligated to compensate its customers for losses incurred as a result of its operations". If the bank goes to the bank and receives its losses, the bank, in turn, can go to the offending employee in accordance with Article 12 of the Civil Code, and the employee cannot escape responsibility on the pretext of the possibility of profit because the loss of such a possibility is a loss in itself, but not to the extent that it is claimed to be lost, but the amount of the loss depends on the degree of its probability (Katouzian, 2007: 280). Of course, it is clear that the mere possibility of future profit does not create a right and only losses that are not considered to be a lack of profit and there is a strong suspicion of their collection and there is no doubt in the custom of creating them, but potentially creating a profit in the future.

The existence and recognition of insurance as a legitimate and binding contract is a sign that law considers the possibility and chance of loss and the achievement of benefit and financial value and accepts it as compensation for the insurance contract (Katouzian, 2007: 281). Among other conditions is the directness and immediacy of the loss, that there is no other incident between the harmful act and the loss, or if there is an incident, it is not effective in such a way that it can be said that the loss was caused by the same act in the eyes of custom (Ahmadvand, 2005: 40). In cases where the loss is caused by carelessness or a breach of the duty of care and not to harm others, in other words, he is guilty of negligence, he is sentenced to compensate for it if he typically had the ability to predict it. Therefore, only damages that were expected considering the circumstances of the accident are compensable.

On the other hand, it can be said that what, in the view of custom, results from a person's mistake in accordance with the natural and conventional course of affairs, is attributed to him, and what is caused by a sudden and unpredictable event or special circumstances that no one expects is not considered by custom to be caused by the perpetrator's act (Ghomami, 1376: 57). The ability to predict damage in civil liability, as one of the pillars of liability or one of the characteristics of compensable damage, has been accepted more or less in all legal systems. Civil liability, whether in its general form, which is based on the idea of fault, or in special and exceptional cases, which are pure and absolute, has its roots in the rules of social and civil morality and is confined to the boundaries that this morality determines. One of these boundaries is the limitation of liability to the expected and predictable results of normal human actions. This limitation is reflected in the rule of “foreseeability of damage in civil liability” and this rule should be considered an indication of the deep connection between law and morality. Certainly, a damage that has not been previously compensated is recoverable, because according to the law, any damage that occurs can only be compensated once. .

If several people are responsible for the same damage, compensation by each of them will lead to the exclusion of the responsibility of the other, and if the injured party also acquits one of them of liability, he will not have the right to resort to the others. In any case, if the damage is compensated by a means of compensation for the damage suffered, the damage disappears and cannot be claimed again. In support of this principle, it is said that the injured party cannot combine two or more means of compensation for the damage. Therefore, in the case where several people have caused damage or the legislator considers several people jointly liable for compensation, taking damage from one person exempts the others and in no case does the injured party have the right to take the damage again (Katouzian 1386:291).

Article 913 of the Civil Code stipulates in this regard: "If the owner takes all or part of the seized property from one of the usurpers, he does not have the right to return to the extent taken from the other usurpers." There is no room for doubt regarding this condition. However, sometimes, due to differences of opinion regarding the nature of the money that the injured party receives, there is doubt as to whether his damage has been compensated or whether some of it still remains uncompensated. For example, when a bank manager or employee causes a loss to a customer as a result of a violation and the bank is obliged to compensate the damage according to Article 53 of the Civil Code. And the bank can subsequently receive this damage from its manager and employee, and of course, this damage cannot be more than the damage paid by the bank to the customer.

Now let us examine the hypothesis that the bank insures its employees against unintentional violations. Of course, this assumption is not used by banks in practice, but considering Article 13 of the Civil Code, which stipulates: "Employers subject to Article 21 are obliged to insure all their workers and administrative staff against damage caused to third parties by them." It is conceivable. Now, as a result of this violation, the bank is obliged to compensate the customer according to Article 53 of the country's Monetary and Banking Law and cannot force the customer to collect from the insurance and can only refer to the insurance in its relations with the employee. In this hypothesis, the bank cannot refer to the employee to collect damages because this damage has already been compensated by the insurance.

Certainly, private bank employees will be included in this article, and it seems worthy of criticism and investigation as to why banks do not insure their employees against unintentional errors in practice, and what is certain is that an employee's error can cause serious losses that are beyond the power of a bank manager or employee.

Of course, this ruling is specific to damage insurance, not personal insurance; for example, in the event that a victim takes out life insurance for the benefit of his heir, the amount that the insurance company pays to the beneficiary after the death of the insured does not prevent the claimant from claiming moral damages from the person who caused the loss (Ghomami, 1376: 61). Another point that is not without merit is that the insurance of bank managers and employees does not prevent the bank from claiming other damages, such as moral damages or damages that are not covered by insurance, or intentional damages from its employees.

-9-2Examination of the harmful act of the bank manager and employee

Another pillar of civil liability is the harmful act. That is, in order for a person to be able to receive the damage that has been caused to him, in addition to proving the damage, he must also introduce a person as a defendant. Sometimes, there is damage, but there is no harmful act attributed to a person who can be considered responsible. For example, a house is caught on fire by lightning. Here, the act cannot be attributed to a specific person, but a force majeure factor has caused the damage. Therefore, here there is damage but there is no harmful act, or rather, there is a harmful act, but in a way, the harmful agent is missing. Here, the agent is someone who can be considered legally responsible.

In some laws, fault is equated with illegitimacy, because on the one hand, fault is recognized as the exclusive source of responsibility in those laws, and on the other hand, fault means an act that is against custom, undesirable, and worthy of reproach; while in legal systems where responsibility is seen without fault, fault alone cannot convey the illegitimacy of a harmful act. (Qasemzadeh, 1378: 165) 10-2- Characteristics of the harmful act of the bank manager and employee

As we mentioned in the previous discussion of the theoretical foundations and basis of civil liability of bank managers and employees, we presented various theories, including fault, danger, and as the basis of liability for this group. In order to explain the characteristics of the harmful act of this group, since the basis of liability in current laws and regulations, such as Article 1 of the Civil Code, is fault and other bases are exceptional, we will follow this opinion and explain the characteristics of this group. In order to hold bank managers and employees liable based on fault, the harmful acts of this group must have characteristics so that liability for these harmful acts can be attributed to them.

-11-2Pillars of Civil Liability of Bank Managers and Employees

.1Article 11 of the Civil Code M refers to public institutions (Katouzian, 2007:285); it is when the government is in the position of exercising sovereignty; that is, acts that are called acts of sovereignty according to the Civil Service Law. 11 In the event that the government engages in trade or industry or has industrial and commercial institutions under its administration and supervision (such as banks and state-owned companies), they are subject to the general rules of civil liability and, as a result, companies and banks affiliated with the government are also responsible for the acts of their employees and employees.

In conclusion of the discussion of Article 11 of the Civil Service Law, we come to the conclusion that banking operations are considered part of the acts of government administration and, as a result, banks are not subject to Article 11 and are obliged to compensate for the administrative errors of their employees and then refer to them after establishing a causal relationship in relation to the harmful act of the employee. The legislator in Article 21 of the Civil Service Law The Law on Civil Service Management, which is related to private sector employers, stipulates: "Employers who are subject to the Labor Law are responsible for compensating for damage caused by their administrative employees or workers during or in connection with the performance of work, unless it is proven that all precautions required by the circumstances of the case were taken, and it was still not possible to prevent the damage. The employer can refer to the person who caused the damage if he is found liable in accordance with the law".

11Article 8 of the Civil Service Management Law: Sovereignty Affairs: These are those matters whose realization leads to the authority and sovereignty of the country and whose benefits include all segments of society without limitation and the benefit of this type of service does not cause restrictions for the use of others. Such as:

.1Policy-making, planning and supervision in the economic, social, cultural and political sectors.

.2Establishing justice and social security and redistribution of income.

.3Creating a healthy environment for competition and preventing monopoly and violation of people's rights.

.4Providing the necessary conditions and advantages for the growth and development of the country and eliminating poverty and unemployment.

.5Legislation, registration affairs, establishing order and security, and administering judicial affairs.

.6Preserving the country's territorial integrity and establishing defense readiness and national defense

.7Promoting Islamic ethics, culture, and principles and safeguarding the Iranian and Islamic identity

.8Managing internal affairs, public finance, regulating labor relations and foreign relations

.9Preserving the environment and protecting natural resources and cultural heritage

.10Fundamental research, national statistics and information, and managing the country

.11Promoting public health and education, controlling and preventing infectious diseases and pests, confronting and reducing the effects of natural disasters and public crises

.12Some of the matters listed in Articles 9, 10, and 11 of this law, such as those mentioned in the twenty-ninth and thirty-ninth principles of the Constitution, which cannot be carried out by the private and cooperative sectors and non-governmental public institutions and institutions with the approval of the Council of Ministers.

.13Other matters that are included in ordinary laws in accordance with the general policies approved by the Supreme Leader in accordance with the Constitution.

In this article, unlike Article 11 of this law, it clearly states the necessity of the condition of "relationship and relevance of the act to the administrative duty" and explicitly obliges employers to compensate for damages resulting from the harmful administrative act of their employees, which, as stated above, does not

exist in relation to government employees. Although the provisions of this article regarding the civil liability of employers are subject to the labor law, since the relationship of the government with its employees is also subject to the labor law in some cases, and on the one hand, the illogical provision of Article 11 of this law should be considered an exception. (Ghomami, 1376: 65) And on the other hand, to modify this exceptional provision, we should make the government subject to the provision of Article 21 of this law when it is in the position of an employer (Tabatabai Motamani, 1389: 416).

Finally, it should be said that the government is not responsible for the administrative errors of its employees, unless the employment relationship between the employee and the government is subject to labor law, that is, the government performs tasks that the private sector can also undertake and, in other words, is in a position of authority (such as banks and state-owned companies, etc.). In this case, the government is responsible for all losses from the administrative errors of its employees.

Also, Article 53 of the Civil Code, which stipulates: "Every bank shall be responsible and obligated to compensate its customers for the losses it incurs as a result of its operations," ends this discussion and explicitly holds the bank responsible for the administrative violations of its employees. As a result of this discussion, it can be said that the general rules of civil liability and Article 35 of the Civil Code do not differentiate between state and private banks in terms of the recourse of losses to the bank, and both types of banks are obligated to compensate the administrative errors of their employees, and Article 35 K is a kind of emphasis on the general rules of civil liability.

The question that comes to mind in the meantime and its examination in this topic is not without grace is whether the personal errors of the bank employee are included in Article 35 of the Civil Code? That is, if a personal violation occurs on the part of a bank employee against a customer, for example, a bank employee and a customer fight after an argument, is the bank obliged to pay damages or is the customer obliged to refer to the bank employee? It seems that both Article 11 of the Civil Code and the general rules of this law lead to the conclusion that the bank is only responsible for the administrative errors of its employee, just as Article 35 of the Civil Code and the use of the word "banking operations" lead to the conclusion that the personal errors of the employee are not the responsibility of the bank according to the general rules of liability and the Civil Code, and this issue is the same between private and public bank employees. Of course, it should be noted that the legislator sets conditions for administrative error and the mere commission of a harmful act by an employee in relation to the performance of his/her duties is not considered an administrative error, which we will refer to in detail below.

-12-2Temporal relationship of the harmful act with the performance of an administrative duty

In the above discussion, it was mentioned that the harmful act must be an administrative error in order to have the ability to prevent the bank customer from directly contacting the employee. And this alone is not enough, and another characteristic of a harmful administrative act is the temporal relationship of the harmful act with the performance of an administrative duty. This condition means that the harmful act must be committed while performing an administrative activity. For example, if a bank employee causes a loss to a customer outside of office hours or outside the bank's premises on vacation, the bank will certainly not compensate for this loss.

For example, in a case where a bank employee introduced himself as a high-ranking bank manager and claimed that he could provide low-interest loans to agricultural applicants and collected money from them for registration. The bank would not be held liable because the employee's actions occurred outside the bank, and the victims would have to go directly to the employee; however, if the bank employee had done this in the branch itself and collected money from the applicants for registration, the situation would be different and the bank would be obligated to compensate the customers and would then go to the offending employee.

Now, a question can be raised here, and that is, who should prove this condition, that is, prove that the harmful act had a temporal connection or that it had no temporal connection with the harmful act? If an act is committed by an employee and results in damage to another person, in order to hold the bank

responsible, it is necessary to prove whether the employee committed the harmful act while performing his/her duty or not. Some jurists have proposed solutions to remove the burden of proof from the injured party and place it on the administrative organizations, which they referred to as the theory of appearance. In this theory, whenever the apparent circumstances are such that the injured party believes that the employee is performing his/her duty, the administrative organization will be responsible for compensating for the damage (Ghomami, 1376: 67). In this matter, as soon as the customer believes that the employee is performing his/her duty, it is considered an administrative act and the bank will be obliged to compensate for the damage, and the bank will have to prove the contrary. 13-2- Relationship of the act with the purpose of the service

Not all losses that arise from the actions of a bank employee while performing his/her administrative duties will result in the bank's liability; rather, the bank is liable for the errors of its employee when that action is necessary for performing the service, meaning that the action must be with the intention of providing the service and performing the administrative task and in order to achieve the goal for which the employee was appointed (Ghomami, 1376: 68). Such an action can be called administrative and the bank can be considered directly liable for the excessive amount of damage, unless the disproportionate nature of the employee's error is so gross that there is a suspicion of intent in causing the damage, in which case the bank will not be liable for the errors of its employee.

In a case where a bank employee took large sums of money from opportunists under the pretext of providing reference currency and then fled after a while, the bank will certainly not be held liable for the victims because in this case the employee did not intend to provide service and perform administrative duties in order to achieve the goal for which he was appointed, and the victims should refer directly to the employee himself.

-14-2Examining the element of fault in the civil liability of bank managers and employees

Civil liability does not arise in every case where harm is caused to others by doing something, but the harmful act must be illegitimate in the eyes of society and public morality considers it unseemly. In some legal systems (such as French civil law), the concept of fault has been considered sufficient for the illegitimate nature of the harmful act; because committing the fault is unacceptable and worthy of reproach according to law or custom. To realize fault, there must be behavior in the external world, but just as harmful behavior can result from a positive action, a negative action (omission to act) can also have the same result.

In the discussion of fault in vicarious liability, since, by assumption, there is no predetermined contractual relationship between the parties to the dispute to which one can refer, it must be said that the meaning of fault being personal is to consider the personal characteristics of the harming party in committing the harmful act and to compare this person's action with the standard of a typical and normal person.

It seems that the criterion and basis for identifying the fault of the harming party from the perspective of the Iranian legislator in compulsory responsibilities is basically the same as the qualitative criterion, and the harmful behavior is compared with the behavior of a normal person (Katouzian, 2007: 190) except in special and specific cases where the legislator has stipulated otherwise. The reason for this claim is that in the field of non-contractual obligations, from the sum of the provisions of Articles 951, 952, and 359 of the Civil Code, it follows that fault is an act or omission that does not comply with what is customary (acceptable by custom). In fact, if the legislator considered the criterion of fault to be the internal and psychological states and characteristics of the perpetrator, he would have referred to them in these articles, but despite being in the position of expression, he has refrained from doing so and has only limited himself to comparing the act with the conventional act (Aslani, 2005: 73).

The provisions of articles 951, 952 and 359 BC, which are the only legal definitions of fault, explicitly consider the necessity of the act being unconventional (referring to custom) as a condition for establishing fault; hence, it can be concluded that in Iranian law, the criterion for distinguishing fault is a kind and in any case, legal; with the explanation that the law itself, by referring the matter to custom, has paved the

way for its reliance. Based on this, it can be claimed that in Iranian law, fault in the field of compulsory civil liability is a violation of a person's legal obligations, which include performing an act in accordance with conventional law (Aslani, 2005: 74).

As stated in the above discussion, the criterion for distinguishing fault in the view of our legislator is a specific criterion and the norm is based on the normal action of man. However, what is certain is that in technical and specialized matters, the behavior of a normal person cannot be considered a criterion for distinguishing between right and wrong because these people have special techniques and skills that are accustomed to scientific concepts and technical skills and they cannot be expected to react like ordinary people.

Article 11 of the Civil Code can be called the rule of civil liability of government employees, which considers the administrative fault of its employee as the basis, and also the complement of this rule is written in Article 12 of this law, which considers the basis to be the assumption of fault. In this article, which refers to both government employees whose employment relationship is based on labor law relations and private sector employees. This article refers to those private and government employees whose employment relationship is subject to labor law. Government and private employers will be responsible for compensating for any damage caused to third parties because the legislator assumes that the employer in question has not taken the necessary precautions to avoid the damage, an assumption that cannot be called anything other than fault. Sometimes the employer is also required to compensate for damage caused by the mistakes of its employees while performing their duties, although the right of recourse is reserved for him (Ghomami, 1376: 78). As stated above, fault is the failure to fulfill legal obligations (including obligations that are traditionally required of a person) by the person causing the damage in a way that such behavior would not be expected from a normal person under the same circumstances. The need to prove fault is only necessary in cases of civil liability where the legislator has made its realization a condition of liability, or, to put it more precisely, in cases where the law has not introduced proof of fault as a condition of liability, there is no need to prove it. Considering the above introduction and in order to explain the situation of the burden of proving fault in this type of liability, it should be said that since the Iranian legal system is based on a rule-based system, therefore, in all issues where the legislator himself has not explicitly specified a duty, an acceptable solution must be reached with the help of the basic principles and rules governing this system. In the present discussion, there is no explicit legal text that has determined who bears the burden of proof. (Aslani, 2005: 64).

According to the primary principle of innocence and non-liability, no person is liable to another unless proven otherwise. On the other hand, according to the "rule of evidence", establishing evidence is the duty of the party who is in the position of claim and we also know that the claimant is a person who speaks contrary to the essence or appearance. Therefore, the summary of the conclusion that can be said is this: Since the primary principle is innocence and the injured party claims the opposite in the position of a plaintiff, then the duty of proving and providing evidence is his duty.

Employees covered by Article 21 of the Civil Code. That is, both private sector employees and government employees subject to the labor law, if they cause damage to third parties while performing their work and in connection with the performance of their duties, the employer will be responsible for compensating for it. Now a question arises here, is the employee's fault secondary to the bank's fault, in other words, should the employee's fault be proven first in order to be able to refer to the bank? It may be said that the bank's liability is secondary to the employee's liability and the bank's liability is to guarantee the rights of the injured party, and the bank must first prove the employee's fault in order to be able to refer to the bank on that basis. In other words, the bank's liability should be considered a reflection of the employee's liability, and he is liable if he is at fault. For this reason, the bank can refer to the guilty employee after compensating third parties.

However, considering the provisions of Article 21 of the Civil Code, this possibility is weak because, assuming that the damage is caused by defects in the work tools or tools provided to the employee by the bank, the employee may not be liable, but the bank is liable for the damage. At the end of Article 12 of the

Civil Code, The employer's recourse to the employee after compensation for the damage is considered possible only in cases where the employee is responsible for the harmful incident, and the existence of this condition indicates that it is possible that in some cases the employee was not responsible for the incident, but the bank is still considered responsible for the damage. In fact, the liability of the bank and the employee is not related, but nevertheless it should be known that the bank's recourse to the employee is conditional on the employee being recognized as responsible according to the general rules of liability. On the other hand, Article 21 of the Civil Code does not mention the need to file a lawsuit against the employee, and the employer's liability is considered regardless of the employee's liability, and there is no connection between the two (Ghomami, 1376: 59). 15-2- Combination of administrative and personal fault

An employee may cause damage during or on the occasion of work that is simultaneously caused by the employee's personal fault and his/her administrative fault, such as when the damage is caused by the personal fault of a driver who drove while intoxicated and also by the administrative fault of a government institution that failed to maintain and repair the vehicle's brakes (ibid.).

Sometimes we encounter a combination of two personal and administrative responsibilities resulting from a single fault, such as when a bank employee enters a number of counterfeit travel documents into the banking system and the bank, due to a defect in the banknote authenticity control system, cannot inform the customer of this violation, causing counterfeit banknotes to enter the market and causing damage to others. In this example, two errors have occurred, the first of which is due to the intentionality of the employee's action, which is a personal error, and as mentioned in the previous material, banks are not responsible for the personal error of their employees, and the other error occurred due to a defect in the banknote authenticity control system, which is an administrative error, and as a rule, the bank is responsible for the error in its system. Now the question arises as to whom the injured party should refer. To the bank, due to a defect in the system, or to the erring employee, due to a personal error and intentional violation?

The legislator's goal in distinguishing between personal and administrative errors is to make the administrative organization responsible for the defects of its organization and the employee responsible for his personal errors, and to draw a boundary between these two responsibilities (Katouzian, 2007:765). And if administrative and personal errors cause damage, then only the employee should be obliged to compensate for the damage. Therefore, it must be accepted that, whenever damage occurs as a result of a combination of administrative and personal fault, both the employee and the administrative institution are considered responsible for the damage caused, making the issue subject to the case that multiple causes of damage have created it.

Consequently, in the example presented, the injured party can refer to both the bank employee due to personal misconduct and the bank due to a defect in the administrative system and means (administrative error), or to both of them simultaneously. In the relationship between the officials, i.e. the employee and the bank, the choice of the injured party is not decisive as in the above assumption, i.e. the damage that has occurred must be divided between them in proportion to the involvement that each of them had in creating the liability and the degree of fault that they have committed. For example, in the example presented, if the bank's fault in the defect of administrative equipment and the employee's fault in the entry of counterfeit banknotes caused the same amount of loss and the bank is sued and ordered to compensate for all the damage, in the second stage the bank has the right to turn to its employee to recover half of what it gave to the customer.

-16-2Fault resulting from the defect of banking devices and systems

A legal entity is an entity that was created to achieve specific goals and has the authority to assume rights and obligations and to execute them through its legal representative. Article 885 of the Civil Code states in this regard: A legal entity can . . . According to this definition, a bank, as a legal entity, has the authority to assume rights and obligations, perform obligations, file lawsuits, conclude contracts, etc., just like a natural person, and may cause damage to another.

In the above example, due to the malfunction of the devices and the banking system, the money that the customer gave to the counter operator for paying his electricity bills and was also deposited by the operator using the existing computer system was not credited to the account of the relevant department, and as a result, the customer's electricity is cut off on the suspicion of not paying the bill on time. It should be considered that the separation should be considered. If the damage is the result of the employee's fault and the device's fault, both the bank employee and the bank employee are responsible for the damage suffered. The case in question is subject to a case where multiple causes cause damage, in which both (both the banking system and the erring employee) are jointly and severally liable for the damaged customer, but in the relationship between themselves, each of them is liable for compensation to the extent of their involvement in the occurrence of the accident. In cases where: Due to the combination of personal and administrative fault, both the government and the employee are responsible for the damage suffered. It is possible to determine the person or authority that must pay the damages to the injured party, meaning that the injured party can demand full compensation from the government or the guilty employee, but in the relationship between the officials, the choice of the injured party is not decisive. The damage caused must be divided between them according to the involvement of each in causing the damage and the degree of fault they have committed. So, if the fault of the employee and the defect of the administrative means have contributed equally to causing the damage, the government will be a party to the lawsuit and will be ordered to compensate for the full damage. In the second stage: the government has the right to appeal to the employee to recover half of what it has given.

In the above cases, the damage caused to the customer was caused by the fault of the bank employee and the defects of the banking devices and system, but there is also a hypothesis that the damage to the customer is caused solely by the defects of the banking devices, in which case the responsibility resulting from the fault of the bank or the defects of the banking system devices and structures lies with the bank, and the bank, as a legal entity, must compensate the damage caused to the customer. Referring to Article 11 of the Civil Code, it is rarely responsible for the actions of its employees, and the best way to compensate is to rely on the alleged fault of the bank in paragraph “c” of Article 53 of the Civil Code and then refer to Articles 1, 12, 14 of the Civil Code in this regard. 3- Examples of Bank Managers and Employees' Faults

This section will refer to examples of bank managers and employees' fault, and each will be examined in order of importance.

-1-3Abuse and misuse of legal authority

Abuse of authority occurs when the authorities or responsible officials use their administrative and executive power in making decisions and taking relevant actions beyond the permitted or customary limits, and therefore cause harm to the rights or harm to individuals. Abuse of authority occurs when the decisions taken or actions taken are usually illegitimate and disproportionate, harmful (Mo'tamin Tabatabai, 2010:426). The difference is that whenever the abuse or misuse of authority is accompanied by malicious intent and malice and is the result of personal error, civil liability will be imposed on him, and if there is no personal fault, the administrative organization will be liable, with the right to appeal to the offending employee reserved. State and private banks also state these powers and authorities of each of their employees in their executive and supervisory regulations and specify its framework in relation to other employees and current duties. Therefore, no employee has the right to intervene in matters that are not within their jurisdiction, and these decisions will be null and void because they were not issued by a competent authority. This is because the phrase “in connection with the performance of work” in Article 21 of the Labor Code states: “Employers who are subject to the Labor Law are responsible for compensating for damage caused by their administrative employees or workers during or in connection with the performance of work, unless “certainly, an employee who acts outside his or her authority and competence is considered to be not appointed for this work.” For example, the supervisory regulations clearly state the duties and powers of branch managers, and if the branch manager acts outside his or her authority, these matters will be ineffective and void and cannot result in the bank’s obligation. As stated, exceeding legal authority will result in the invalidation of banking operations. Now, a question arises here, and that is, what is the customer’s duty in relation to the invalidation of banking operations? And can he or she refer to the

bank in accordance with Article 53 of the Civil Code? Of course, the invalidation of banking operations does not mean that the bank has no obligation to the customer, why, in addition to Article 53 of the Civil Code, Which stipulates that "Every bank shall be liable and obligated to compensate its customers for losses incurred as a result of its operations." The apparent theory, which is an accepted principle in relation to workers and employees, states that if the circumstances and conditions are such that the injured party believes that the officer is performing his duty, the administrative organization will be liable for compensation. (Ghomami, 1376:76) As a result, the bank is liable for the losses to the customer and the person who receives them will have the right to sue his employee. Regarding the abuse of the right, it is certain that the legislator has not made the employer liable for the intentional losses of his employee. In this regard, if the employee intentionally abuses his authority, he cannot benefit from the privileges of Article 21 of the Labor Code. What is important in this regard is that whenever there is a normal relationship between performing a duty and incurring a loss, the employer is liable, even if the worker has violated his order and misused his position. For example, if a driver changes his route against the employer's order and causes damage as a result of a collision, the employer is liable for it, even if the collision occurred as a result of the driver's fault and disobedience (Katouzian 2007:543). Consequently, in the abuse of rights, what is important is that it is not intentional and that it occurred in a normal relationship between performing a duty.

Considering Article 53 of the Civil Code, which stipulates that "Every bank shall be liable and obligated to compensate its customers for losses incurred as a result of its operations." A question arises as to whether the term "loss" in the aforementioned article also includes intentional errors and the personal fault of the bank employee? In other words, did the legislator want all losses incurred by the customer to be compensated by the bank, even if they were due to the employee's intentional error and personal fault? If the answer to this question is yes, the result is that the legislator wanted to make no distinction between the employee's personal error and administrative error and to hold the bank responsible in any case. However, this answer does not seem correct because the legislator was in a position of expression and if he wanted to exempt bank employees from the general rules of liability, he would have mentioned it.

-2-3Violation of the implementation of laws

Violation in the implementation of laws and regulations, which is itself a specific type of illegal acts, refers to cases in which administrative organizations or their officials perform their legal duties and responsibilities contrary to the formal and substantive criteria and conditions in question, in such a way that the effects and results obtained do not comply with the legislator's purpose and cause loss of rights and damage (Mosizadeh 2009:274,). In paragraph 2 of Article 8 of Administrative Violations, the legislator has also referred to this issue and considered it to be part of administrative violations.

If the bank suffers damage as a result of violating the implementation of laws and regulations, the employee is responsible for the damage incurred because violating the laws and regulations is itself a fault. In this regard, it should be noted that the government has no exceptional rule in relation to the employee and the injured party, meaning that neither his fault is assumed nor is there any objective liability. Therefore, the injured party must prove the employee's fault, and this will create liability according to the general rules of civil liability. Now, if the injured party is the bank, it must prove the fault of its employee according to Article 1 of the Civil Liability Act. If it is a customer, it must prove the fault of the employee as a prerequisite for referring to the employer, that is, the bank. Therefore, both the bank in its capacity as the employer and the customer in its capacity as the employer must prove the employee's violation of the laws in accordance with the general rules of civil liability.

-3-3Negligence from performing a duty

Civil liability does not only arise from a harmful act, but it is also possible that harm and damage may be caused to individuals as a result of the act. In other words, if the necessary conditions and facilities for performing an administrative duty are available, if a government official refuses to perform his duty and causes damage to others, he will be liable. (Mosizadeh, 2009:274) Article 8 of the Administrative Offenses

Law refers to this type of violation and holds the employee responsible for the losses resulting from his failure to act.

-4-3Disclosure of customer information

Banks learn many secrets from customers in the course of their profession. Bank secrets have long been considered professional secrets and banks are committed to protecting their customers' information. Unfair disclosure of commercial and economic data violates healthy economic competition and causes material and moral commercial damage. Typically, customer information is disclosed by bank employees. So why should the bank be responsible for compensating for the disclosure of a secret by another party (a bank employee)? Lawyers respond: The bank's obligation to the customer is also an obligation to maintain the honesty and trustworthiness of the bank's employees, and the bank is also responsible for the actions of its own employees. Because employees work in the bank and in the name of the bank. There are parallels in our law that the bank is liable for the actions of employees (Article 21 of the Civil Liability Law). In this case, the bank can, in turn, turn to the offending employee to compensate for the damage paid. Article 53 of the Civil Code of Iran is explicit about the bank's liability in such cases (Masoudi, 1378: 31). Banks, due to their job and profession, always have access to the most important information and secrets of individuals, which include: the financial status and balance of bank accounts and the financial transactions of the individual. This duty for banks was issued through a circular from the Deputy Minister of Tax Revenues of the Ministry of Economic Affairs and Finance No. M 6362 dated 6/5/68 attached to the letter M / 6893 dated 42/7/68 and subsequently in two advisory opinions of the judiciary Nos. 7/71217 dated 7/11/74 and 8/2/75 that banks are not allowed to give customer information to third parties in any way and are only obliged to answer the question posed in response to an inquiry by a judicial authority. "Given that any type of facility is provided to bank customers based on information obtained from documents and records, as well as their trust, reliability, reputation, and payment methods, it is therefore necessary to prepare a "credit information" report before making any decision and granting facilities." As a common practice, banks usually prepare an information report tailored to the applicants' requests before granting bank facilities. This report is used to determine the exact identity of the applicant and assess the trust and reliability, as well as the financial capacity, credit and technical flexibility of the applicants, and how the bank's resources can be repaid. Maintaining the information obtained in this way is one of the basic duties of banks. One of the most important functions of banks is to maintain funds belonging to customers. Depositing money to the bank is based on a contract concluded between the bank and the customer. An important and fundamental principle governs the relationship between a bank and a customer, and that is that the bank is committed to protecting the customer's secrets and information. In fact, the basis of the relationship between the parties is this commitment of the bank, which causes the customer's trust and confidence in the bank. Disclosure of information that is made available to the bank in connection with the business relationship between the bank and the customer (such as: information about the financial and credit status of a person, which is made available to the bank in order to obtain a loan), causes irreparable damage to the person. As a result, if information about the customer is illegally disclosed by the bank, the customer can file a lawsuit against the bank to compensate for the damage caused to him.

In Iranian law, Article 403 of the former Civil Code, while requiring government departments and organizations and municipalities to submit documents and information related to the dispute to the court, exempted banks. In the new law, Article 212 and subsequent articles, it does not exempt banks from the duties related to providing information and documents and explicitly places such a duty on the bank. In the set of laws and regulations governing banking operations in Iran, Article 41 of the Civil Code of Iran, Section 01, considers the investigation of operations, accounts, documents and records of banks and obtaining any information and statistics from banks as among the cases through which the Central Bank can intervene and supervise monetary and banking affairs. However, it is further stated: "Given the need to maintain professional secrets." This means that in these cases, the secrets of customers must be protected and their disclosure must be avoided. However, the law has not mentioned its limits.

In Iranian law, by inducing various laws, one can reach the undisputed principle of the necessity of maintaining professional secrets in the case of banks. Paragraph 1 of Article 14 of the Monetary and

Banking Law also explicitly speaks of the necessity (and the duty of banks to) maintain professional secrets of customers. In our current legal system, sometimes the violation of the duty of confidentiality and the disclosure of the customer's professional secrets is also accompanied by a guarantee of criminal execution.

Normally, customer information is disclosed by bank employees. The bank's obligation to the customer is in fact the obligation to maintain the honesty and trustworthiness of the bank's employees, and the bank is also responsible for the actions of its own employees. Because employees work in the bank and in the name of the bank, and the responsibility arising from the actions of the employees falls on the bank, in this case the bank can, in turn, refer to the guilty employee to compensate for the damage paid. And as previously stated, Article 53, Clause C of the country's Monetary and Banking Law is explicit about the bank's responsibility in such matters (Masoudi, 1378: 79).

-4Examples of banking secrets

What information is confidential? What are the proofs or links of the customer's banking secrets and what information is prohibited from being disclosed. It seems that: the clear examples of the customer's banking secrets with the bank can be considered as follows: All accounts, deposits, safes, contents of safes and similar transactions regarding these matters are confidential. Information about the above accounts and safes, or commenting on them, directly or indirectly, is prohibited. It does not matter whether the accounts of ordinary customers are current, civil or commercial. Whatever the type of account, it is confidential, regardless of its nature. Confidentiality includes bank guarantees, letters of credit, and all types of deposits, whether these items are submitted to the bank within the framework of banking operations or are deposited with the bank as a trust, such as financial securities and commercial documents (Zare, 2011).

-1-4Who are the persons obligated to maintain confidentiality? The disclosure of information by all persons and institutions that the law has authorized to obtain information or obtain documents or receive statements that are confidential is prohibited in accordance with the provisions of the laws and regulations or the established banking customs of each country, and the aforementioned prohibition remains in effect even if the relationship between the customer and the bank ends for any reason. The heads and members of the board of directors of banks, and their managers or agents, are prohibited from giving or disclosing any information or statements about the customers of banks or their accounts, or their deposits and trusts or their transactions related to the aforementioned matters, and from accompanying or otherwise obtaining information about them, except as permitted or exempted by law. This prohibition applies to all those who, by virtue of their profession, duty or agency, directly or indirectly become aware of the aforementioned statements and information. The prohibition on disclosure also applies to all bank employees such as security guards, drivers and secretaries, and it is not necessary that the information was obtained through their duties. Rather, persons subject to the law, for whatever reason, who become aware of the accounts and trade secrets of a bank customer through participation and cooperation with the bank, are subject to this prohibition. In some cases, the legislator punishes bank employees. Article 506 of the Penal Code refers to this issue. According to this article, the perpetrator must have certain characteristics, including:

.1Be a government official.

.2Be an official responsible for information protection.

.3The official must have received the necessary training in this regard.

This article is an example of an unintentional crime, so if the government official has not received the necessary training, he cannot be held responsible for the damages incurred. (Golduzian, 2014: 460). Article 5 of the Computer Crimes Law also refers to this issue and does not hold the official liable for the damages incurred under the conditions mentioned above. By combining these materials, we can reach the conclusion that an employee who has not received the necessary training from the department or institution is not responsible for the damage caused, because in these circumstances, the damage is not attributable to the employee and is caused by the error of the institution or department.

-2-4Exceptions to the Bank's Obligation to Keep Information Confidential

It is clear that whenever the customer agrees to reveal his secrets, the bank's duty is lifted. However, other cases have also been listed that are called exceptions to the confidentiality obligation: Disclosure that is made to prevent financial crimes and fight money laundering has been accepted as an exception. If the exchange of information is necessary for the stability of banking transactions and services, and especially to create credibility for the bank, it is outside the confidentiality obligation. It is also accepted in banking practice that information related to customers (their financial situation and facilities) is freely exchanged between banks (Zare, 2011).

-3-4Causality and cases of exemption from liability The necessity of a causal relationship

To justify civil liability, it is not enough to prove that the damage occurred to the injured party and that the defendant committed a fault, but rather a causal relationship between the two factors of the damage and the harmful act must be proven. In other words, in order for the injured party to be able to file a lawsuit on behalf of someone and demand compensation for his/her damage; in addition to proving the occurrence of a fault or act on the part of the defendant or on the part of persons or objects for whose actions he/she is responsible and the occurrence of the damage, he/she must prove the existence of a cause and effect relationship between the two. Thus, if the existence of a causal relationship is not established, the defendant is not liable for compensation.

The difficulty of establishing a causal relationship becomes apparent when fault is not a condition for establishing liability, so that, considering the incidents resulting from the person’s carelessness and negligence, the person responsible for compensation can be identified. In these cases, the judge is forced to determine the person responsible for compensation from among the multiple causes that together caused the damage. In other words; In principle, in cases where fault is not a condition for liability, the causal relationship becomes more important and proving its existence becomes more difficult. In order for an incident to be considered a cause, that incident must be among the necessary conditions for the loss to occur; that is, it must be established that without it, the loss would not have occurred (Barricello, 2006:60). Proving the causal relationship in the case of bank employees is not difficult because the civil liability of employees is based on fault and the claimant of civil liability, in addition to proving the loss and the fault of the cause of the loss, must prove that there is a causal relationship between the loss and the fault. In such a way that it is established that the cause of the loss was the employee's behavior, so that the liability of the administrative institution is proven.

-4-4Proving the causal relationship

Proving the causal relationship is with the injured party and it must be shown in court that there is a cause and effect relationship between the defendant's act and the loss. This is a general rule of "al-bain al-mudayyah". Therefore, in a claim for damages, the general principle is that the bank must prove the employee's fault and negligence and show in court that there is a causal relationship between the element of violating the rules of liability and administrative rules and causing the damage. However, it should be remembered that this rule is not universal, but has exceptions; in cases such as loss, the bank does not need to prove fault "which includes intentional fault and negligence that includes lack of accuracy and skill, carelessness and negligence" and it is only sufficient for the bank to prove the causal relationship between its employee and the loss of property. According to Article 21 of the Civil Liability Law, the employer is responsible for compensating for the damage caused, because in such cases his fault is assumed. And after proving the occurrence of the loss and the causal relationship between the damage and the employee's action, the claimant no longer needs to prove the existence of a causal relationship between the loss and the employer's fault, because the existence of this relationship is presupposed (Ghomami, 1376:99). As a result, the customer does not need to prove the bank's fault, but as long as the causal relationship between the erring employee and the loss is proven, the bank's fault is presumed.

When the employee's obligation is an obligation to a result, if a specific result is not achieved, it exempts the claimant from proving fault. For example, in bank depositors, they are obligated to show their financial

statements as zero by the end of the office hours, and if they cannot compensate for the deficit by the end of the office hours, they are responsible and their obligation is to the result and they can only be exempted from the obligation when they eliminate the evidence of the existence of the causal relationship. In an obligation to a result, the bank's exemption also includes proving the causal relationship; That is, in such cases, what the plaintiff must prove is the existence of an obligation, because the claim of non-fulfillment of an obligation after proving its existence is in accordance with the principle. And the defendant must prove that the obligation was fulfilled or that its non-fulfillment was due to external factors and that the loss resulting from this non-fulfillment of the obligation had another cause (Katouzian, 2007:451). The main forms of the causal relationship are where it is established that multiple causes have been involved in the occurrence of the damage, therefore, identifying the effective cause in the occurrence of the damage in such cases is of particular importance.

-5-4Distribution of responsibility (interference of causes)

Distribution of responsibility is one of the functions of causation in the assumption of the involvement of at least two causes in the occurrence of a harmful incident, and this function is reflected in the system of liability based on fault. In our law, the distributional role of causation in civil liability of administrative law is not a specific regulation, but the existing regulations are part of the common system of civil liability, which is reflected in Article 14 of the Civil Code (Zarkosh, 2010:335). In this speech, we will refer to the dimensions of distributing the responsibilities of bank employees with various factors. 6-4- Employee and Bank

The condition for this situation to occur is that the acts leading to the loss are compound. In this case, it occurs when a loss is caused by several acts and the judicial authority considers some of the losses to be the employee's actions and others to be the bank's actions. This situation is usually conceivable when the act leading to the loss is a continuous act, then this characteristic can be imagined. Because in the case of an instantaneous harmful act that occurs all at once, it is difficult to consider a single act to have both personal and administrative characteristics. For example, in the case of the introduction of counterfeit banknotes into the market, which was described in the previous material, it arose from the combination of two acts. In this case, the loss occurred due to both the employee's personal fault in the introduction of counterfeit banknotes and the bank's administrative fault in the defect in the means of controlling the banknotes, and this combination of two causes caused a single loss. In our law, this aggregation between the causes of damage in the case under consideration is the subject of Article 14 of the Civil Liability Law, which stipulates: "Whenever several people jointly cause damage, they are jointly and severally liable for compensating for the damage caused".

-7-4Bank employee and defective means and tools under control

To realize the fault of the bank, there are no subjective concepts such as "inaccuracy", "negligence" and "negligence", but specifically the fault of the bank refers to cases where the damage caused is due to defective means and tools of control that the bank uses to perform its duties. Fault in the sense of equipment deficiency has an objective form, because the judicial authority will investigate whether the administrative authority had the necessary tools and facilities to provide services or not without needing to analyze the behavior of the employees (Zargush, 2010: 165). Defects are considered in both quantitative and qualitative terms, as mentioned in the first section. The quantitative term means the lack of necessary tools to perform duties, and the qualitative term means the deficiency in the functioning of the necessary tools to provide services, and both will be examples of defects. Our law has paid great attention to this issue and has addressed this issue in numerous laws. Article 11 of the Civil Liability Law states: "Whenever the damage caused is related to the deficiency of equipment, departments, and institutions, compensation for the damage is the responsibility of the relevant department and institution." Article 87 of the Electronic Commerce Law also mentions this and stipulates: “If, in the context of electronic exchanges, damage occurs due to a defect or weakness in the institutions’ systems, the institutions in question are responsible for compensating for the damage.” Note 2 of Article 59 of the Civil Code stipulates: “If the employer or managers of the units subject to Article 58 of this law have placed the necessary tools and facilities at the

disposal of the worker for technical protection and occupational health, and the worker, despite the necessary training and prior warnings, does not use them without regard to the existing instructions and regulations, the employer will not be liable." As previously mentioned, the employer's liability is to guarantee the worker's debt and we have considered the employer's liability to be due to the act of another person; But when the employer does not provide the necessary tools to his worker and does not teach him how to use the tools correctly, his responsibility should not be considered as a result of the act of another, but rather his responsibility in these circumstances is due to fault. (Katouzian, 2007: 552) And this fault is due to the defect of the tools in its general sense.

-8-4Reasons for exemption from liability of bank managers and employees

The employee's exemption from civil liability may be due to the intervention of external factors or as a result of justifying factors and as a result of the occurrence of an emergency that requires the occurrence of a harmful act to avoid a more significant loss. We will examine how this exemption of employees works in these cases.

-9-4Intervention of external factors

The Civil Code has examined the external factors of exemption from civil liability in articles. Article 722 of the Islamic Revolution The Civil Code stipulates: "A person who fails to fulfill an obligation shall be liable to pay damages if he cannot prove that the failure to fulfill it was due to an external cause that cannot be attributed to him." Article 922 also stipulates in this regard: "If the obligor is unable to fulfill his obligation due to an event that is beyond his control, he shall not be liable to pay damages." In light of these articles, whenever it is proven that the effective cause of the loss was an external cause not attributable to the employee's actions, the employee shall be released from liability. We will examine these causes below.

-10-4Force of Expulsion

The Iranian Civil Code does not explicitly mention the force of expulsion and only in Articles 227 and 922 does it state the conditions under which the obligor is exempted from paying damages, and commentators have interpreted it as the force of expulsion (Naghizadeh, 1390: 53). In defining the force of expulsion, it can be said that the force of expulsion refers to those forces and factors that cannot be overcome and that human power cannot withstand, such as floods, earthquakes, lightning... (Momeni Tabatabaei, 1373: 420). The necessity of the force of expulsion being external is clearly evident from the appearance of Article 227 of the Civil Code. In this article, the externality of the cause is considered a condition for exemption from paying damages. The externality of the force of expulsion means that the event in question, from a material point of view, has no connection with the defendant's action or the objects and people under his supervision; (Ghomami, 1376:601) Therefore, whenever this incident is caused by the fault of the defendant or his dependents, it is attributed to him and is no longer considered external to him (Katouzian, 1386:489). One example of the Cairo force is theft; certainly, bank employees are not responsible for losses resulting from bank robbery because, as stated, robbery is an external incident that a bank employee is not normally able to prevent. In its employee protection regulations, the bank obliges its employees to implement measures to protect them from external incidents such as theft as much as possible; for example, in the National Bank's security regulations, it requires its employees not to keep more than a certain amount of money in cash deposit counters. Now, the bank employee violates this law and at that moment, the robbery occurs. In this case, the Cairo force and the employee's violation are the causes of the damage. Now, who is responsible for the damage? It seems that when the Cairo Force is one of the causes of the damage and the other cause is the defendant's fault, the guilty party will be responsible for compensating for all the damages (Ghomami, 1376: 110). Because in our system, fault is accepted as the basis of civil liability, and the judge must consider a cause that is mixed with error among the causes and conditions of the accident. On the other hand, what criterion can determine how much the bank employee's fault was in maintaining the liquidity limit in advance against an external accident (theft). Of course, we must consider this point that if the defendant's fault only aggravates the damage, he will only be responsible to the extent that he has increased the damage.

-11-4Third party action

The third party action can be an ordinary person or another government employee, and he may be involved in the occurrence of the damage in two ways.

A: When the act of a third party is the sole cause of the loss, in this case the act of the third party caused the loss and he is the one who must be responsible for compensating for the loss. Of course, it should be noted that the act of the third party must have the characteristics of force majeure towards the employee, that is, it must be unpredictable and unavoidable for him. For example, after receiving cash, the customer requests the bank employee to provide him with a travel authenticity testing device to check the authenticity of the travel documents, and suddenly the device hits the ground from the customer's hand and is destroyed. Here, the employee had no involvement in the loss, and therefore the customer, who is considered a third party in our assumption, must be responsible for the loss. An important point in this regard is that the act of the third party must be considered external to the employee and must be unpredictable and unavoidable for him. That is, in this assumption, the act of the third party must have the characteristics of force majeure for the defendant. In this case, a causal relationship is established between the third party's act and the harm (Ghamami, 1376: 311) .B: In cases where the actions of a third party and the actions of an employee together cause damage, in this case the civil law provides a solution. The final means is the distribution of responsibility between the employee and the third party. Of course, provided that the actions of the third party are tainted with fault, because as stated, liability is based on fault.

Article 41 of the Civil Liability Law states that in the case where several employees together cause damage, they are jointly and severally liable for compensating for the damage incurred. In this case, the extent of each person's responsibility will be determined by the court, taking into account the manner in which each person intervened. Of course, if one of the perpetrators pays all the damage, he can refer to the other perpetrator for another part of it. And this referral is determined in proportion to the degree of influence of each of them in causing the accident (Katouzian, 2007: 235).

-12-4The involvement of factors justifying the harmful act

A harmful act only gives rise to the responsibility of its perpetrator if it is illegitimate; meaning that the act is either mixed with administrative fault or if the law imposes compensation on the administration based on the danger it has created or the social inequality resulting from it (Ghomami, 1376: 113). In discussing the involvement of factors justifying the harmful act, two categories can be mentioned: one is "acts of sovereignty" and the other is "acts resulting from urgency". The study of acts of sovereignty is more related to public and administrative law and its application is when the government is in the position of exercising sovereignty, while banking is essentially outside this area, and therefore in this discussion we will limit ourselves to discussing urgency. Acts resulting from necessity are actions that any normal person would take in the event of an accident, such as throwing cargo into the sea during a storm to save it from sinking (Katouzian, 2007: 280). Therefore, the state of necessity makes it clear that the act committed lacks an element of fault and, as a result, justifies the illegitimacy of the act committed. In such cases, the harmful act is performed to avoid the occurrence of a more significant or severe loss. Two assumptions are considered in causing damage on the part of the person who has acted in a state of necessity. In the first assumption, the person in need has acted with the intention of preventing more serious damage to himself or his property. And in the second assumption, the act of necessity has acted for the benefit of another and has sought to prevent the occurrence of more significant damage to the life or property of another.

First assumption: In this assumption, the person in need causes less significant damage to another in order to prevent significant damage to himself or his property. Here it can be said that since the circumstances and circumstances were considered urgent, the person in need had no choice but to cause less significant damage to prevent more serious damage. An example is someone whose property is at risk of fire and, in order to prevent significant damage to his property, uses a blanket, axe, or other equipment belonging to another and causes damage to him. It is important to note that the lack of responsibility of the person in need will not prevent the loss from being partially compensated based on the theory of "unjust possession" and "management of another's property".

Second assumption: In this assumption, the distressed person acts for the benefit of another, but by doing so, he causes harm to the interests of a third party. That is, the distressed person comes to his aid as a matter of duty. However, his actions and behavior, although they prevent serious damage, cause harm to the third party.

In fact, in the previous assumption, there was a conflict between the interests of the distressed person and his social duty (not causing harm to others), and the distressed person chose the lesser of the two losses. But here, the conflict is between two duties. One is the duty to help a person who is in mortal and financial danger, and the other is the duty to respect the financial rights of individuals. Since neglecting any of these duties is considered a fault and entails liability, the person in need must inevitably choose one of the two duties and naturally must respond to the duty that causes less damage. In this case, he can claim a state of emergency and be exempted from liability. As a result of this discussion, it was observed that emergency, under certain conditions, removes fault and leads to the person in need being exempted from liability. The person in need will only be liable if he has committed a major mistake and fault (Ghafourian, 1360: 134).

In the case of bank employees, the occurrence of an emergency can also relieve them of liability because their liability is essentially limited to fault, and as mentioned above, emergency causes the elimination of fault in two cases. Now, with this description, for example, if a bank employee has an accident while transporting money and the employee is forced to transport the money with a pickup truck to prevent it from being lost, and in this case, if the money is damaged or part of it is lost during transportation, the employee cannot be held liable for the damage; because the state of emergency prevails and the emergency causes the elimination of fault because this action was taken to prevent further loss.

-5Effects of civil liability of bank managers and employees

The purpose of civil liability is to determine who is responsible for paying the damage so that the damage that has been wrongfully caused to the person of the person is compensated. Therefore, the definitive principle in civil liability is the obligation of the guilty party to compensate for the damage, and without observing this principle, civil liability is irrelevant; Rather, the only difference between civil liability and moral liability is this principle. In this chapter, we will examine the method of compensation and the means of providing compensation.

-1-5Compensation

The most important and main effect of civil liability is the obligation to compensate the injured party, which is stated in Article 1 of the Civil Liability Law as follows: "Any person who, without legal authorization, intentionally or as a result of negligence, causes damage to life, health, property, freedom, honor, commercial reputation, or any other right created for individuals by law, which causes material or moral damage to another, is responsible for compensating for the damage resulting from his act".

-2-5Determining the amount of damage in multiple causes

The division of damage and its distribution to each of the harmful causes is a discussion whereby, after the intervention of various factors with degrees of fault, degrees of impact, method of work and other various characteristics and the damage being attributed to all of them, the share of each of the losses is determined and they are responsible for fulfilling the obligation to the same extent. For example, if the destruction of a house is due to the negligence of the owner and the action of a neighbor in unauthorized possession, or a worker is injured while working due to the employer's failure to comply with customary rules or regulations and his own carelessness, or the employees of a branch have caused damage to the bank due to violation of regulatory and banking regulations, how should the extent of each's responsibility be determined? Legal doctrine has proposed a theoretical solution to find a solution: the division of damages based on the degree of fault, with the explanation that the greater the fault, the greater the damage is borne by the guilty party. For example, if it is proven that the injured party was 60 percent involved in the damage, the same amount of damage is received from him. The theory of the manner of intervention In this theory, all the circumstances and circumstances governing the person's involvement in causing the damage are evaluated. In this solution, the degree of fault plays an equal role with other factors, and the judge's

intervention in assessing the degree of intervention or causation gives each case a special face. In this theory, the judge's role is a pivotal one because the meaning of "manner of intervention" is nothing more than leaving all aspects to the judge.

In the theory that mentions the "degree of impact" of each person's harmful act, it distributes the damage based on the effectiveness or dependency of the factors. This view is closely related to the second approach, and in both, judicial intervention is significant for the effect or manner of intervention, and both views consider the degree of fault as one of the secondary elements and equal to the other elements, but they differ in that the effect of the manner of intervention not only refers to the strength of the causality of the agent, but also considers the conditions governing the realization of the damage, including time, place, subject of the damage, and other elements, while the criterion of the effect of the harmful act pays more attention to the starting point of responsibility or the committed act. In other words, the method of intervention, the beginning and the end of responsibility in its three stages are the same, while in the criterion of the effect of the harmful act, the beginning and the end of responsibility play a superior role. (Khodabakhshi, 2011:24) Another theory is the equality of causes, which states that responsibility arises from attributing the result to the totality of factors, and all causes, regardless of the degrees of effect or fault and the strength of causality, must bear the damage equally. In Article 21 of the Criminal Code, The Law on the Protection of Human Rights and Fundamental Freedoms has spoken of the need to compensate for damage caused by the activities of workers and administrative staff, and in Article 41 of this law it is stipulated: “In the case of Article 21, whenever several people jointly cause damage, they are jointly and severally liable for the damage caused. In this case, the extent of each of their liability will be determined by the court based on the manner in which each of them intervened.” Also, in Article 241 of the Commercial Code Amendment Bill, it is stipulated regarding joint-stock companies: “The directors and the CEO of the company are individually or jointly liable to the company and third parties for violating legal regulations or the company’s articles of association or the resolutions of the general assembly, as the case may be.” As it was observed, the legislator has written that the liability of the factors causing damage for the damage is joint and several, but has not acted in this manner in the final establishment of liability and distribution of the guarantee, and has made the final distribution of liability equal. However, it should be noted that this equality in ultimate responsibility does not contradict the solidarity of those responsible for the damage suffered. (Katouzian, 2007: 703)

Following this idea, Article 335 of the Civil Code of 2931, in the case of interference of causes, stipulates:

“Whenever two or more persons jointly cause a crime or damage to another, in such a way that the crime or damage is attributable to both or all of them, they are equally liable.” The final part of Article 21 of the Civil Code of 2931 has followed this procedure, and the legislator has determined in this article the extent of the responsibility of each of them according to the manner of intervention of each of them by the court, which seems to be inconsistent with the rules of civil liability and the Islamic Penal Code, as we have examined above. Similarly, the unanimous decision of the procedure No. 718-13/2/1390 stipulates in this regard: “Based on the provisions of Article 733 of the Civil Code of 2931, If a collision between two or more vehicles results in the death of a passenger or passengers, the liability of each driver in case of fault - to whatever extent - will be equal. . . . . "As a result, the legislator regarding the relations between the worker and the employer in the private sector and also the government, when it is in the position of the employer, contrary to the rules of civil liability and the Islamic Penal Code, does not believe in equality in the final establishment of liability and has left it to the judicial authority with regard to some kind of intervention.

-3-5Means of ensuring compensation

In order to ensure that no damage remains uncompensated, the legislator has thought of various measures that we will examine in this section.

-1-3-5Commitment and guarantee

To the extent that the legislator has foreseen joint and several liability for compensation, it is itself a kind of commitment and guarantee to pay the damage (Katouzian, 2007:705). The provision of such liability

allows the injured party to turn to several debtors to collect a debt and to face less insolvency of those responsible for the damage. Of course, it should be kept in mind that the creation of such liability does not mean that the injured party can receive more than the damage he suffered, but rather this type of liability is a type of guarantee that the legislator has thought of to cover the damage.

-2-3-5Liability insurance

The most important goal of liability insurance is to prevent insolvency and miscalculation of the perpetrators of the damage, and by establishing an insurance institution, the legislator allows the injured party to turn directly to the insurer, and in this way there is no need for the insurer to intervene. Article 3 of the Social Security Law stipulates: “Employers are obliged to insure their workers with the organization, regardless of the type of work, employment arrangement, and method of payment of wages or salaries (both cash and non-cash). "According to this law, the employer is obliged to pay insurance premiums, and this insurance is automatically created by this law. Article 31 of the Civil Code of Iran stipulates regarding compulsory insurance: "Employers covered by Article 21 are obliged to insure all their workers and administrative staff against damages caused by them to third parties." As previously mentioned, banks, whether public or private, are not exempt from the general rules of liability. Banks, as employers, are responsible for insuring their employees, but in practice this method is not practiced. Due to the sensitivity of banking operations, bank employees are responsible for their violations to the bank, which, in our opinion, is contrary to the rules of civil liability and the Social Security Law.

-6Extraordinary payment of deductions (Executive regulations of clauses "G" and "H" of Article (93) of the National Employment Law)

The legislator, in the executive regulations of the Civil Service Law, pays an amount for a possible deficit for employees who are engaged in the profession of receiving and disbursing funds. Since this law includes government employees, it will include employees of state banks. The executive regulations of clauses “G” and “H” of Article (93) of the Civil Employment Law stipulate: “Article 1: To compensate for a possible deficit in cash at the disposal of employees who are engaged in disbursing cash, an extraordinary deficit fund shall be paid.

Article 2: The receipt and disbursement officers mentioned in Article (1) shall be selected from among the competent and trustworthy official employees, and the extraordinary deficit fund shall be paid only to the receipt and disbursement officers who have deposited the necessary guarantee in accordance with this regulation, in compliance with the regulations. "This law is not limited to bank employees, but includes all official government employees who are responsible for receiving and disbursing funds, and as a result, according to this regulation, it includes government employees who are responsible for receiving and disbursing funds, who are considered to be so-called depositors according to banking regulations. 7-Conclusion Finally, considering the theories expressed and Articles 11 and 12 of the Civil Code and Article 53 of the Civil Code, it can be concluded that the actions that employees of the office perform in the name of a legal person are considered actions related to this person because employees are considered as organs of this person. Therefore, whenever an employee commits a mistake while performing his duty, this mistake (fault) will be the legal person because every person is naturally responsible for the movements of his organs, just as a natural person is inevitably responsible for the movements of his hands. Therefore, if an official performs an action using the title of employee, in fact, this is the legal person who has accomplished that action, the legal person acts through its organs and its actions belong to itself and must be responsible for it under this title. In the second part of paragraph "c" of Article 53 of the Law of the Islamic Republic of Iran, approved on 81/4/1351, the managing director and the person responsible for the damage that occurs due to their violation of the regulations have been introduced. Therefore, it can be concluded that whenever a loss occurs to the customer, whether this loss is due to the personal error of the employee and the defect of the administrative equipment or due to another act, the person who suffered the loss can directly refer to the bank itself and consider the bank responsible and demand the damage from it. After the loss is eliminated by the bank, the bank, if it knows that the loss occurred was due to the employee's error, can refer to that person for the refund of what it has paid. As stated in Article 21 of the

Islamic Republic of Iran Law M. has been stated. Article 12 of the aforementioned law states: “Employers who are subject to the Labor Law are responsible for compensating for damages caused by their administrative employees or workers during or in connection with the performance of their duties, unless it is proven that they took all the aforementioned precautions, and yet it was not possible to prevent the damage. The employer can refer to the person who caused the damage if he is found liable in accordance with the law”.

Although the aforementioned article refers to employers who are subject to the Labor Law, this does not prevent us from applying the final part of the aforementioned article to other legal entities. Because if we do not hold employees of legal entities liable for their personal errors and make all compensation for any type of damage, whether administrative or personal, the responsibility of the relevant institution,

employees will not feel any responsibility in performing their duties and will commit numerous and repeated errors, and social order will be disrupted. Therefore, the logic of justice requires that each person take responsibility for his actions. The provisions of paragraph "c" of Article 53 of the Civil Code of the Islamic Republic of Iran require that those who suffer losses as a result of the bank's activities not face employees in the position of compensation, because it was possible that the employee could not afford to compensate for the damage through sufficient financial evidence and as a result, the victim could not get his right. Besides, the bank's management is with the bank itself and it must entrust the work to the employees and establish a system that prevents damage to others and take the necessary precautions in selecting competent employees who are competent and skilled in carrying out the work so as not to cause damage to others. The aforementioned paragraph is a guarantee for bank customers against losses.

If the damage to the customer is solely due to the defect of the banking system, in which case the liability arising from the fault of the bank or the defect of the equipment and structures of the banking system lies with the bank, and the bank, as a legal entity, must compensate the customer for the damage. Referring to Article 11 of the Civil Code, it is rarely liable for the actions of its employees, and the best way to compensate is to insist on the bank's presumed fault in paragraph "c" of Article 53 of the Civil Code and then refer to Articles 1, 12, 14 of the Civil Code in this regard.

In Article 11 of the Civil Code, the employee is held liable for the damage, and the person who has suffered the damage must first refer to the employee. Unless it is proven that the error was due to the defect of the administrative equipment. Of course, in the case of banks, it should be noted that Article 11 of the Civil Code refers to public institutions, that is, when the government is in the position of exercising sovereignty; That is, acts that are called acts of sovereignty according to the Civil Service Law. In the event that the government engages in trade or industry or has industrial and commercial institutions under its administration and supervision (such as banks and state-owned companies), they are subject to the general rules of civil liability and, as a result, companies and banks affiliated with the government are also responsible for the acts of their employees. Because banking operations are considered part of the acts of government administration and, as a result, banks are not subject to Article 11 and are obliged to compensate for the administrative errors of their employees and then refer to them after establishing a causal relationship in relation to the harmful act of the employee.

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