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Examining the conditions of loss in civil liability in Iranian and English law

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Abstract

Undoubtedly, common sense dictates that anyone who causes harm to another under any name and under any circumstances must compensate the harm caused to the injured party by taking into account the governing principles of civil liability and support for the injured party, except in cases where the harm caused to another is based on the law or the harm caused to the individual appears to be illegal and unusual. On the one hand, not every harm that causes civil liability can be claimed, but rather its claimability is conditional on the existence of the conditions that the lawmakers of the legal systems studied have examined in various subjects. On the other hand, given that the occurrence of harmful events for humans is inevitable; therefore, humans have always sought to establish rules based on which to impose responsibility on the person who played the greatest role in the harmful event. Therefore, the entire mission of civil liability is to identify such rules. Therefore, the purpose of the present study is to examine the conditions of loss in civil liability in Iran, England, the European Principles of Civil Liability Law and the Declarations of Civil Liability in the United States; and the question raised about each of the laws will be regarding the issue of loss. The research method in this study is descriptive-analytical and the findings show that in discussing the conditions of loss in each of the aforementioned legal systems, there are similarities in some cases and differences in some cases.

Keywords: loss, liability, civil liability, compensation

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Introduction

The importance of compensating for the losses that a person causes is to the extent that all legal scholars have considered loss as one of the pillars of civil liability and have stated the need to compensate for it as one of the most important goals of civil liability. The occurrence of loss is also one of the most important pillars of contractual civil liability, and as long as the obligor does not suffer any loss due to the failure to fulfill contractual obligations, he does not have the right to claim compensation from the obligor who breaks the contract, but not every loss can be claimed, but only a loss that can be compensated can be claimed.

In Iranian law, the conditions for damages in civil liability are stated in several parts: The first condition of compensable damages is the certainty of the damage. Directness is the second condition of compensable damages. The third condition is non-compensation. And the last condition is predictability. Therefore, in Iranian law, we witness a complete explanation of the conditions for damages in civil liability. In English

law, the types of civil liabilities can be divided into three categories: 1- Liability due to negligence 2- Liability due to intent 3- Liability without fault. With these explanations, it should be stated that this article attempts to fully examine the conditions for damages in civil liability in Iran and England.

Conceptology of Civil Liability

In the absence of a legal description, jurists have explained civil liability with various terms:

Liability (civil), the legal obligation of a person to remove the damage he has caused to another, whether this damage is due to his own fault or to his activity. (Jurisprudence) has used the word "guarantee" in the same sense, and its meaning is any type of responsibility, including financial responsibility and criminal responsibility (Jafari Langroodi, 2018: 642). In any situation where a person is forced to compensate another's loss, it is said that he has "civil responsibility" in dealing with him. Based on this obligation, a special religious relationship is created between the injured party and the responsible party: the injured party becomes the creditor and the responsible party becomes the debtor, and the subject of the debt is compensation for the damage, which is usually done by giving money. (Katouzian, 2007: 6).

Civil liability... is the obligation of a person to compensate for the loss that has been caused to another as a result of an illegitimate act (except usurpation) (Safaei and Rahimi, 2018: 52).

Conceptualization of harm

"Sahih al-Laghah considers harm to be the opposite of benefit, and the author of Mu'jam, "Su' al-Masalah", "Hada'dah" and Nahiya Ibn Athir and Mu'jam al-Bahraini have considered it "deficiency in the right". (Qurayshi, 2018: 29). The legal concept of harm has gone far beyond its literal meaning to the point where in its legal concept it is called "prevention of the benefit resulting from its existence". (Jafari Langroodi, 2018: 415)

In common usage, harm is the loss of money, honor or life and other losses related to the existential dimension of man; and the reduction of an individual's wealth and the prevention of the increase and in some cases the loss of property; And the real conditions and the loss of the ability to work and also the elimination of the possibility of using the conditions that have a special value in the eyes of tradition; as luck: such as a lucky ticket or participating in a university entrance exam; and sometimes the lack of benefit and "the reason for the obligation" have also been considered losses. The discussion of what is loss and what is not loss is not a legal and jurisprudential discussion, but a discussion related to vocabulary and custom. Whatever custom considers loss, that is loss. (Katouzian, 2006: 143-146)

Jafari Langroodi says in the Legal Encyclopedia: "Harm has no legal definition" and in legal terminology only the practical meaning of loss is referred to and in the book Legal History, loss is introduced as a legal characteristic and Ara Mustafad considers absolute Islamic laws as financial and non-financial aggression.

Conditions for Claimable Damage in the Iranian Legal System

The occurrence of damage is one of the main elements of contractual civil liability, and as long as the debtor has not suffered damage as a result of the breach of contract, he does not have the right to claim damages from the debtor who has breached the contract, but not every loss is claimable, but only loss that can be compensated is claimable.

-1Certainty

There is no doubt about proving the damage, but should the court be sure of the amount of damage? Such confidence is not possible in all cases. Explanation: If a loss has occurred and its impact is determined, its amount can be determined. For example, if an animal dies or a building is damaged, the amount of damage can be determined with certainty, but if the consequences of the damage depend on the future, in some cases its exact amount cannot be determined. For example, if a worker loses his labor force in an accident, the amount of damage he will suffer in the future cannot be determined precisely. Because this worker may die in the meantime or develop another condition or gain wealth that does not require working or his labor power may become more valuable. Therefore, in these cases, the court must determine the value of the

damage with a doubt, but a doubt that is considered likely to occur, not its absence. The loss of an opportunity to obtain benefits or privileges may also be considered a compensable loss if this opportunity is reasonable. Therefore, a lawyer who refrains from appealing the verdict and thereby deprives his client of appealing the verdict in a higher court must compensate his client for the loss, but the percentage of the probability of the verdict being overturned must be such that the expectation of the verdict being overturned seems reasonable or the mere participation in an event is considered a privilege in itself, such as participating in a painting exhibition or participating in a seminar that is of special importance in terms of science, art, or sports, and the like. Deprivation of this opportunity can be considered moral damage. (Bahrami, 2014: 210-211)

-2Directness

The second condition for compensable damage is that the damage was caused directly by the defendant's action. This point is defined in Article 728 of the previous Civil Procedure Code and Article 520 of the new Civil Procedure Code approved in 1379. This article stipulates: "Regarding the claim for damages, the plaintiff must prove that the damage was directly caused by the failure to fulfill the obligation or its delay or the failure to submit the request. Otherwise, the court will reject the claim for damages." This article uses the phrase "without mediation", which is the same as the direct meaning in Article 728 of the previous law.

The reason for this is that if the damage is indirect, there is no ordinary causal relationship between the person's behavior and the damage caused by it, meaning that the damage cannot be attributed to the defendant's behavior and he cannot be held responsible for compensating the claim for damages; For example, a creditor whose claim has not been paid due to the murder of a debtor cannot sue for damages. Because the damage he suffered is not a direct result of the murder and is only remotely related to it. It should be remembered that direct damage does not mean that there is no connection between the person's actions and the damage suffered. If this is the intention, the problem of causation is completely eliminated; in this case, there is always a person or animal or something between the action and the damage suffered, and the agent only causes the loss and is therefore liable. In general, the majority of damages attributable to individuals are due to attribution and causation (compensation obligations). Therefore, direct or immediate damage means that there is a customary causal relationship between the loss and the act of the defendant. (Safaei and Rahimi, 2018: 103-104). 3- Non-compensation

A loss cannot be compensated twice, because there is no more than one duty to compensate for a loss. Even in cases where there is more than one responsible or obligated party for a single loss, if one of them compensates all or part of the loss, the injured party does not have the right to appeal to other responsible parties to the extent of the compensation. For this reason, Article 319 of the Civil Code states: "If the owner takes all or part of the property of the offended party from one of the usurpers, he does not have the right to appeal to the other usurpers to the extent taken." If the owner acquits one of the usurpers of the liability, he does not have the right to appeal to the other usurpers. In this regard, Article 321 of the Civil Code states: "Whenever the owner acquits one of the usurpers of the liability, he does not have the right to appeal to the other usurpers".

From the principle of not allowing two compensations for the same loss, it can be concluded that a risk cannot be insured more than once, and it is in accordance with this principle that in property insurance, the insured cannot refer to the cause of the loss for compensation in addition to the damage he receives from the insurer. However, if the damage is greater than the excess, there is a right to refer to the cause of the loss, and for this reason, Article 30 of the Insurance Law approved in Ardabehesht, 1316, states: "To the extent that the insurer accepts or pays the damage incurred, he will be the insured's representative against the persons who are responsible for the occurrence of the accident or damage, and if the insured takes an action that is contrary to the aforementioned right, he will be liable to the insurer." Note 2 of Article 66 of the Social Security Law also states the same, but this is not the case in life insurance, because in life insurance, the amount paid by the insurer does not depend on the amount of damage, but rather it is the insurer's job. In fact, it is a form of investment, and in the event of a car accident, his heirs can, in addition to receiving life insurance from the insurance company, also refer to the driver who caused the accident or

receive a blood money. Receiving help from benefactors does not prevent compensation from the loss agent or the insurance company. (Bahrami, 2014: 94-95)

-4Predictability

The meaning of predictability of damage is that the limit of compensable damage is damages that were foreseeable by contract and the damage agent is not responsible for unpredictable and completely exceptional and accidental damages. For example, a driver accidentally hits a pedestrian and breaks his leg. The passerby had some valuables in his pocket that were lost in this accident. Now, is the driver responsible for compensating for the lost goods in addition to paying for the pedestrian's leg? Also, if a businessman is deprived of a certain customary benefit due to the fault of the airline and the failure to operate the flight and the loss of a contract, can he compensate for the loss resulting from the failure to conclude a contract in addition to the usual costs resulting from the cancellation of the flight, such as the cost of tickets, accommodation, transportation and food? The answer to the above questions is related to the condition of foreseeability.

Therefore, the damage incurred is also foreseeable and can only be claimed to a reasonable extent. In fact, even in a contract, this expression is conditional on the fact that the violation was not committed intentionally and with bad faith. However, in non-contractual obligations where there is no contract, it is more difficult to use the condition of impossibility, unless the law specifies it. (Rah Peek, 2016: 66-67)

Predictability of loss in Iranian law

Civil liability in the broad sense includes contractual and non-contractual liability, the main subject of which is compensation for undue loss. Undue loss, according to the rules governing civil liability, must first be certain and certain; secondly, it must be direct and immediate; Thirdly, it must not be compensated, and fourthly, it must be foreseeable. There is much discussion about the fourth condition. In contractual liability, in searching for an explicit text that states this condition for claiming damages, no such text can be found in Iranian law. Therefore, by referring to the generality and applying some articles and also combining them with other articles, such a condition can be considered valid. The opinion of legal scholars is also that in contractual liability, the loss must be foreseen.

-1Contractual liability

As we have stated before, there is no explicit provision in the Civil Code regarding the obligation to foresee losses in contractual liability. However, the aforementioned provision has been explained from Articles 379 and 386 of the Commercial Code, Paragraph 2 of Article 55 of the Maritime Code, Article 614 of the Civil Investment Law, and Article 4 of the Resolution on the Establishment of Public Warehouses. (Ghomami, 2009: 62-65)

Law scholars have concluded that in the last paragraph of Article 221 of the Civil Code, which is defined conditionally, contractual liability is limited to foreseeable and expected losses of the parties. Therefore, in the event of a breach of contract, only the anticipated damages can be claimed. (Katouzian, 1400: 257)

Some other scholars stated that the purpose of specifying the parties to the contract of damages in Article 221 was to explain the legal cause of contractual liability and not to determine the conditions and characteristics of this liability, and they concluded that this article alone does not imply the rule of foreseeability of loss in contractual liability. (Ghamami, 1388: 58)

However, regardless of this difference of opinion, which is in justifying the condition of foreseeability of damage and its removal from Article 221 of the Civil Code, some jurists believe that the criterion of contractual liability based on the causal relationship is that the damage resulting from the violation (non-performance or delay in performance) and its quantity and quality must be observed by the obligor within normal and reasonable limits at the time of the contract formation; otherwise, the obligor cannot be considered obligated to compensate for it. (Shahidi, 1401: 80)

Some other scholars have also stated that the basis for predictability of damage is the ugliness of the eagle's eloquence and believe that if the contracting party, knowing the unusual result, refrains from timely performance, he is liable. (Katouzian, 1400: 252)

Also, some other scholars, without commenting on the basis and documentation of the necessity of such a condition, only stated that the criterion of predictability is a typical criterion, meaning that in these cases, we should consider the obligated party as a reasonable and reasonable person. (Jaffari Langroodi, 2017: 399)

In confirmation of the above opinions that introduce the criterion of predictability of damage as a type, it can be stated that whenever, during the preparation of the contract or afterwards, the obligor becomes aware of a special situation through the other party, he will undoubtedly be liable for the damage resulting from his breach of his obligation, otherwise the guarantee that will be considered for such an obligor is limited to the damage that seems worthy of consideration in the perspective of a reasonable person. In other words, "In contracts, the damage resulting from the breach of the contract in normal and expected conditions of the parties is the responsibility of the obligor; but in the case of liability arising from the special and unique circumstances of the case, a distinction must be made. Between the knowledge and ignorance of the person who caused the possible damage. (Katouzian, 1400: 256)

Reflection on Article 221 of the Islamic Civil Code, which is one of the most important legal articles in the issue under discussion, also leads to the conclusion that the liability of the debtor who breaches the contract is subject to and limited to the losses that were foreseen when the contract was concluded, but of course the criterion and standard of this prediction is not a personal criterion, because this criterion alone is not effective and it is possible that despite the debtor's lack of foresight, the loss incurred may be conventionally foreseeable. Therefore, the liability will still lie with the lazy debtor.

Lawyers have also established a rule in this regard and stated: "There should be no doubt about this rule that losses that are far from expected and foreseeable by both parties, which depend on unusual and special causes of the dispute, do not fall within the scope of contractual liability." (Katouzian, 1400: 257)

Some legal writers who consider the causal relationship as their chosen basis for the condition of foreseeability of loss and do not consider foreseeable loss as direct loss, state that: “Foreseeable loss is the only loss that can be attributed to the breach of promise, and loss that is not conventionally foreseeable is not conventionally attributable to the fault of the obligor.” (Taqizadeh and Hashemi, 1397: 76)

Therefore, the liability of the violator in contractual obligations will only be for the losses that are expected for him or ordinary people, because unexpected and unusual losses will not be subject to contractual liability. The judge must also determine, taking into account all the specific circumstances at the time of drafting the contract and customary judgment, whether a reasonable person who is the same in terms of knowledge and ability as the obligor and the debtor has the ability to foresee the claimed loss or not?

According to some jurists, "unforeseen damage is excluded from the perpetrator's liability if it is unexpected and related to an emergency situation in terms of custom, and it is not enough for the defendant to consider it unlikely due to negligence or deficiency. In other words, the criterion for distinguishing unforeseen damage is informed and conventional human judgment in the circumstances in which the accident occurred." (Katouzian, 2007: 301)

-2Non-contractual liability

In tortious liabilities, the Civil Code has not provided a clear ruling on the conditions for establishing civil liability, and has merely addressed cases such as usurpation, loss, attribution, and restitution. Therefore, the question arises as to whether foreseeability of loss is also a condition for compensation in non-contractual liabilities, or is the person responsible for any loss he has caused or caused? The reason for such a question is that non-contractual liability is not based on the will of individuals and is considered imposed, and therefore, perhaps, there is no necessity for foreseeability of loss.

On the other hand, there is no causal relationship between a person's action and the loss that was not foreseeable, and custom does not consider it to be due to his action. Also, Iranian scholars who support the theory of fault believe that an act in which the offender knows for sure that he will suffer harm is a crime or an intentional decision, and committing an act that is more or less likely to harm others is not worthy of normal and conscious human behavior and is considered fault; However, doing something that does not normally cause harm to another or the probability of harm is so low that a normal person would ignore it is not fault and does not create liability for the perpetrator. Therefore, the ability to foresee harm is not specific to contractual liabilities and also exists in non-contractual liabilities. (Katouzian, 2007: 298)

Of course, the Islamic Penal Code also includes articles from which the ability to foresee harm and the criteria for determining it can be inferred.

Article 516 stipulates: "Whenever someone places something in a place such as a wall or balcony of his property where it is permissible to place things, and as a result of unforeseen events it falls onto a public thoroughfare or another property and causes damage or loss, the warranty is void unless he has placed it in such a way that it is typically susceptible to damage or loss".

The above article refers to the condition of foreseeability of a type of damage and does not consider the perpetrator liable otherwise. Some jurists have also considered an act of a person that is typically foreseeable as an act of aggression: "If a person places a container on his wall and the container causes the death or property of someone to be lost, he is liable for aggression due to the act of causing this incident." (Shahid Sani, 1419 AH: 374)

Article 518 also stipulates: "If a person constructs a building or wall on a solid foundation and in compliance with the regulations required for the strength of the building and safety, but due to unforeseen events, such as an earthquake or flood, it collapses and causes damage, he is not liable. And if he constructs a wall or building towards his property, which if it falls, will naturally fall on his property, but by chance it falls in another direction and causes damage, he is not liable".

The last part of the above article also directly refers to the predictability of a type of damage; And in Article 521 of the Islamic Penal Code, it is also stated: "If a person lights a fire on his property or in another authorized place and knows that it will not spread anywhere and usually does not spread, but it happens to spread to another place and causes damage and injury, the guarantee is not fixed and otherwise it is a guarantor".

In the above article, the responsibility of the arsonist to compensate for the damage depends on the ability of the fire-starter to predict (to some extent) the spread of the fire, otherwise the damage caused by unpredictability is irreparable. (Katouzian, 2007: 300).

It is also inferred from the words of the jurists that the criterion for realizing responsibility is unusual behavior and contrary to the habits of wise people. In some cases, they have even used the existence of "typical suspicion," which means that from the perspective of custom and habit, such a result cannot be assumed. (Najafi, 1404 AH: 122)

Some jurists, comparing fault-based responsibilities with pure responsibilities and those based on creating risk and assigning the condition of foreseeability to the first type of responsibilities, use an expression that directly refers to the criterion of foreseeability: "... A normal and reasonable person cannot be expected to avoid foreseeable harm, and unexpected and accidental harm should not be attributed to his fault or error." (Katouzian, 1386: 301).

By carefully interpreting the legal provisions as well as the interpretations of jurists and comparing this responsibility with contractual responsibility, it can be explained that the scale of determining unforeseen harm is the judgment of an expert and common person in the circumstances in which the event occurred. Similarly, some scholars, mindful of the fact that in compulsory liability, unlike contractual liability, which is preceded by a prior relationship created by the agreement between the plaintiff and the defendant, there will be no prior relationship, and therefore no more than reasonable behavior is expected from the

defendant, consider the application of the standard rule in non-contractual obligations to be valid and justified in the first place.

-3Indirect losses in tort liability

Damages to property and persons are either caused by a contractual relationship or by a legislative decree (non-contractual liability). In any case, loss requires conditions to be compensable, and without these conditions, it is not possible to compensate for the loss. Directness of loss is one of the conditions that jurists have introduced as a requirement for proving a civil liability claim. In Iranian law, whenever there is no customary causal relationship between the loss and the harmful act, the loss is called "indirect and indirect." Therefore, indirect loss has a meaningful relationship with the element of causation. Customary causality is also not a fixed and absolute matter, but rather relative and changeable. For this reason, in Iranian law, it is not possible to provide a fixed and specific criterion for identifying indirect loss and determine its examples. (Zamani and Rezvan Talab, 2019: 158-180)

In the majority of jurisprudence, indirect losses are referred to as lack of benefit. But it is clear that examples of indirect damage are not limited to loss of benefit. On the other hand, jurists do not agree on the definition of loss of benefit. There is no specific category for indirect damage in Iranian jurisprudence and law, and the statements of jurists show that indirect damage in jurisprudence is included in the title of loss of benefit. The approach of jurists towards damage caused by loss of benefit is different from the jurisprudential approach. This is because with the development of civil liability law, the scope of compensable damage has also expanded, and each of these losses may be considered an example of indirect damage. (Zamani and Rezvan Talab, 2019: 158-180)

Conditions of damage in civil liability in English law

-1The role of damage

In general, in common law, indirect damage is usually studied under the topic of "remote damage". The directness of the damage along with its predictability are criteria that have always been used to identify "remote damage" from close damage. In English law, according to the rule derived from the Hadley and Baxendale case, the injured party may claim two types of damages from the defendant; first, losses that are directly and naturally the result of the breach of the covenant. Second, indirect damages that do not arise naturally and in the ordinary course of affairs, but were taken into account by the parties at the time of the conclusion of the contract. These damages are consequential damages that, although they may not occur in the ordinary course of affairs, are recoverable because they were known to the parties at the time of the conclusion of the contract. (2014: 262, Ashley & Others)

The parties can foresee these losses as a possible result of the breach of contract. The initial assumption is that in English law, both the losses included in the Hadley and Baxendale rule, whether direct or indirect, will be recoverable; but there is also the possibility of non-compensation. (2017, Jarva)

Therefore, in the English legal system, we are faced with two types of indirect damages; One category of indirect damages is compensable damages, known as special or consequential damages. The other category, which is not compensable, is called remote or unlikely damages. (2017, Coulthcard & Cifell)

In English jurisprudence, it has been accepted that the type of damage must be foreseeable. However, "not remote" has always been applied and accepted as one of the framework rules governing compensatory damages awards in all common law judicial systems. In some books or by judges, "not remote" has been placed alongside the condition of certainty and sometimes the title of foreseeability has been replaced by it, which has led to confusion of titles such as the condition of certainty and foreseeability of damage with indirect damage, to the point that in current English practice it cannot be said with certainty that directness is a condition of compensable language. Although this condition has not been completely eliminated from the English legal system, it has been greatly weakened and, despite the condition of foreseeability, it gains meaning and meaning. (2009:170, Harpwood)

The fact is that foreseeability is a criterion for identifying compensable indirect losses. Thus, remote or indirect losses are exceptional and unusual language that, if not normally foreseeable, cannot be compensated. (2000:118, Suff)

-2Reparability

According to English law, the injured party will not always recover all damages resulting from the breach; since the breacher is not liable for unusual and remote losses, even if it is proven that these losses were incurred as a result of the breach of contract. However, if it is proven that the breacher was aware of the special and unusual circumstances that would cause the other party's loss at the time of the contract, these losses can be compensated as indirect losses. (Jarva, 2017).

In common law, the requirement for direct loss is specific to losses that are not intentional. In the case of intentional losses, the person who caused the loss is responsible for all the consequences of his harmful act, both direct and indirect. (Honore, 1995: 102).

Today, where the loss is caused by a breach of duty of care, the living language is responsible for compensation for indirect losses and in such cases, the foreseeability of the loss is also irrelevant. However, if the damages are not the result of the defendant's breach of duty, they are only recoverable if they were foreseeable.

Personal safety, financial interests and purely economic interests are among the indirect interests protected by law in English law. In the common law, the statutes determine the boundaries of lawful and unlawful commercial practices. Therefore, the courts must award economic damages within the framework of the statutes. Economic interests arising from damage to property and persons must be distinguished from pure economic losses; for example, in Spartan Steel v. Martin, the distinction between indirect property losses and pure economic losses can be seen. In this case, due to the defendant's negligence, the power cable of the plaintiff's factory, which was engaged in the production and sale of steel containers, was cut. As a result of the defendant's negligence, the factory's iron smelting furnaces stopped working and the molten iron in it cooled and contracted. The plaintiff brought an action against the defendant, claiming damages for the hardening of the furnace iron, the loss of profit from the sale of the vessels produced with molten iron, and the expected loss that the factory had been deprived of during the power outage. However, the court only awarded the defendant compensation for the first two losses and did not consider the third loss to be compensable. Of course, there is usually no single procedure for compensation for indirect losses in common law. (2017, Coulhard & Cifelli)

In England, if the cause of the loss is unique, the standard used to determine whether the defendant is liable or not is the "if it had not been" standard. (Harpwood, 2009: 162).

This standard implies that the loss would not have occurred but for the defendant's intervention. If, by applying this standard, the defendant is found to have caused the harmful event, he is liable for compensation for the loss resulting from his failure to exercise reasonable and customary caution. However, the parties may limit their liability to compensation for indirect losses. This is done by including a "limitation clause" for consequential or special damages. If one of the parties wishes to be exempt from liability for indirect or consequential damages, it must limit its liability by anticipating such damages and including a limiting clause. It is obvious that failure to pay attention to this and neglecting to include such a clause may deprive the injured party of receiving damages; for example, loss of profit resulting from a breach of contract is not always indirect damage, but can be recognized by the court as direct damage. That is, even though the parties have waived the liability of the breaching party for compensation for indirect damage, he may still be forced to compensate for the said damages. (2017, Coulthard & Cifelli).

Including a clause excluding consequential damages means that the parties have eliminated their right to claim damages under Part II of the Hadley Rule. The parties may think that by including this clause, the loss of profit is also eliminated; While loss of profit is generally considered a direct loss, as the court stated in the DePark case, the inclusion of a clause excluding consequential loss does not eliminate the claimant's fixed costs and key expenses resulting from the explosion at the methanol plant (Eldridge & Rudd, 2009).

Conclusion

The occurrence of damage is considered one of the most fundamental elements of contractual civil liability, and as long as the obligor does not suffer any loss due to the failure to fulfill contractual obligations, he will not have the right to claim damage from the obligor who has broken the promise. However, not every loss will be worthy of being questioned, but rather it will be a claimable loss that has the characteristics of compensation.

As mentioned in the first hypothesis, the conditions of damage in Iranian civil liability have been explained under headings such as certainty, directness, non-compensation, and predictability:

Certainty: There is no doubt in proving the damage, but should the court be sure of the amount of damage? Such confidence is not possible in all cases. Explanation: If a loss has occurred and its impact is determined, its amount can be determined. For example, if an animal dies or a building is damaged, the amount of damage can be determined with certainty, but if the consequences of the damage depend on the future, in some cases its exact amount cannot be determined. For example, if a worker loses his labor force in an accident, the amount of damage he will suffer in the future cannot be determined precisely. Because this worker may die in the meantime or develop another condition or gain wealth that does not require work or his labor power may become more valuable. Therefore, the court in such cases must determine the amount of damage by suspicion and conjecture, but a suspicion that considers the possibility of occurrence to be more likely than not. The loss of the possibility of obtaining a benefit or privilege can also be considered a compensable loss if this possibility is reasonable and logical. Therefore, a lawyer who refrains from filing a petition for review of a judgment and thus deprives his client of the possibility of overturning the judgment in a higher court must compensate his client for the loss, but the percentage of the probability of the judgment being overturned must be such that the expectation of the judgment being overturned appears reasonable. Or the mere fact of participating in an event is considered a privilege, such as participating in a painting exhibition or participating in a seminar that is of special importance from a scientific, artistic, or sports perspective, etc., the deprivation of this opportunity can be considered moral damage.

Directness: The second condition for compensable damage is that the damage was caused directly as a result of the defendant's action. This point is defined in Article 728 of the previous Civil Procedure Code and Article 520 of the new Civil Procedure Code approved in 1379. This article stipulates: "With regard to the claim for damages, the plaintiff must prove that the damage was directly caused by the failure to fulfill the obligation or its delay or the failure to submit the request. Otherwise, the court will reject the claim for damages." In this article, the phrase "without intermediary" is used, which has the same direct meaning as in Article 728 of the previous law. The reason for this condition is that if the damage is indirect, there is no customary causal relationship between the person's act and the damage suffered. In other words, it is customary not to attribute the damage to the defendant's act and hold him liable for compensation; for example, a creditor whose claim is not paid due to the murder of a debtor cannot sue for damages on the basis of the murder; because the damage suffered by him is not a direct result of the murder and is distantly related to it. It should be noted that the meaning of the direct nature of the damage does not mean that there is no intermediary between the person's act and the damage suffered. If this were the meaning, the issue of causation would be completely eliminated; because in this regard, a human or animal or something is always the intermediary between the act and the damage suffered, and the perpetrator only provides the cause of the damage and is therefore liable. Many losses that are customary to be attributed to a person are due to causation and the causer (who is obliged to compensate for the damage). Therefore, the meaning of direct or immediate damage is that there is a customary causal relationship between the damage and the defendant's act.

Non-compensation: A loss cannot be compensated twice, because there is no more than one duty to compensate for a loss. Even in cases where there is more than one responsible or obligated party for a single loss, if one of them compensates all or part of the loss, the injured party does not have the right to resort to other responsible parties to the extent of the compensation. For this reason, Article 319 of the

Civil Code states: "If the owner takes all or part of the property of the offended party from one of the usurpers, he does not have the right to resort to the other usurpers to the extent taken." If the owner acquits one of the usurpers of the liability, he does not have the right to resort to the other usurpers. In this regard, Article 321 of the Civil Code states: "Whenever the owner acquits one of the usurpers of the liability, he does not have the right to resort to the other usurpers in relation to the equivalent or value of the offended property".

From the principle of not allowing two compensations for the same loss, it can be concluded that a risk cannot be insured more than once, and it is in accordance with this principle that in property insurance, the insured cannot refer to the cause of the loss for compensation in addition to the damage he receives from the insurer. However, if the damage is greater than the excess, there is a right to refer to the cause of the loss, and for this reason, Article 30 of the Insurance Law approved in Ardabehesht, 1316, states: "To the extent that the insurer accepts or pays the damage incurred, he will be the representative of the insured against the persons who are responsible for the occurrence of the accident or damage, and if the insured takes an action that is contrary to the aforementioned right, he will be liable to the insurer." Note 2 of Article 66 of the Social Security Law also accepts the same arrangement, but this is not the case in life insurance, because in life insurance, the money paid by the insurer has no connection with the damage and the work of the insured is actually a kind of investment. Therefore, if someone has life insurance and dies in a car accident, his heirs can, in addition to receiving life insurance from the insurance company, also go to the driver who caused the accident or receive blood money. Getting help from benefactors does not prevent compensation from the injured party or the insurance company.

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