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Citing Responsibility for Enforcement Despite Contractual Liability in Compensation Expense, Injured in Jurisprudence and Iranian Law

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Abstract

Civil liability, contractual liability, and unconventional have two branches. If there is a contract between two or more persons and one of them committed a breach of contract (failure to perform, delay in performing the obligation) to and to harm the other party is incomplete and should the contract have contractual liability for damages cope. Where does harm to another person without a contract exists between them or if there is a contract, Inflict losses not related to the contract, the talk of non-contractual liability.

About whether contractual and non-contractual obligations is two different legal system or single legal system form, there is disagreement among the lawyers: Some distinguish these two systems from each other. But others believe that because the purpose of civil liability is to compensate for losses, these two are the single legal system.

By examining the different opinions, we see that both contractual and non-contractual liability system distinct from each other. And despite the contract, the victim can rely on the rules of non-contractual liability.

Keywords: civil liability, contractual liability, compulsory liability, fault, injured, damage

1. Introduction

In all of the legal system, it is wrong to say that the principle of compensation for losses, along with two other principle task of the community preventing harmful acts and measures to remedy damage caused by it. The power requirement of respect for property and contract, Summary of all civil rules into account, the word will not be exorbitant.

Civil liability constitutes an important part of civil rights the same commitment and legal obligation to compensate the losses are the result of his action and to celebrate acts harmful to others is which may be caused by breach of contract or violation of legal requirements and the essay will be an artifact.

One of the most important and controversial issues of civil liability Foundation unity or diversity of contractual and out of contract while if we consider that the purpose of establishing responsibility and compensate the losses are restored, There's no need for separation of these two responsibilities.

A) Choosing the motivation issue

While the setting is appropriate behavior and order in society the legislator rules and guidelines as legal requirements and contractual obligations and impose on individuals and this is me just expand the scope of civil liability under all features and dimensions are possible. Hence the necessity of explaining these issues, including responsibility system is of multiplicity or unity; the issue is motivation.

So why subject can be injurious to others and the need for compensation because the ban is approved that no law can be except on these principles as well as the issue of civil liability in the field of rights regarding its importance. To protect the legal relations between the parties on the one hand and the other obligations of legal regulations create rules, and general principles are given incentives for choice.

B) Care and research purposes

Developments civil liability creates the impression that there is a profound failure of the institution the rules relating to it should change itself with the new needs of society and harmonize compensation. Recognition based

on the analysis of the situation compensate for losses suffered by the aggrieved responsibility system and both of these responsibilities and Search base and a solution that can satisfy today's society. Among the objectives of the research and its importance was caused.

C) Questions and hypotheses

According to the article in its pursuit of goals, in discussing the accountability system is unity or diversity is considered to many questions, including questions:

1) Is the realization of civil liability based on the fault is committed?

2) Is civil liability arising from the breach of contract implementation is in principle no different from civil liability compulsory and, if different, its impact on the responsibility of the offender how?

3) Are the rules for the injured choice and responsibility between the two there?

About the questions raised above, will organize research hypotheses are as follows:

1) In the non-contractual liability fault liability, except in cases of the exceptional condition and contractual liability only fault is the lack of commitment and require no proof.

2) The legal liability arising from the breach of the commitment to the civil liability compulsory redundancy.

3) Total responsibility and allowed the injured right to choose between the two liability rules is not allowed.

D) Background research

Despite always the right choice in demanding damages suffered have been discussions among lawyers but Iran's rights under a written resources dedicated to this discussion and most detailed discussion on this issue compulsory liability doctor consistory has been mentioned in the book and treatises have been written on this subject is mainly derived from this source. Therefore our lawyers called in multiple threads or unity responsibility system; there are uncertainties examine issues related to it.

E) Research Methodology

The research for the conventional method in the humanities and the Methods library the analysis of content and through analytical research while finding the necessary and respond to the points and issues raised writing paperwork was completed.

2. Concept and Purpose of Civil Liability

2.1 The Concept of Civil Liability

Infinitive responsibility fake and the root of the "Year to years" means taking, and acting commitment and obligation of the states to do something.)Moin, 1371.4077)

In the Qur'an, the word responsibility means being accountable and punished for doing or failing to do something applied. As in verse 34 of Surah Al-Israa chapter 23 Safat word for the phrase "Aviva Bel Ahd of Al-Ahd Kahn responsible" and "Vague hum only Macula" and also in advise "Klum Ra and Klum responsible as Ruth" This sense of responsibility is in order. The legal term is to meet the person in charge for acts that are commonly cited and guarantee its implementation varies depending on the type of responsibility. (Bariklu, 2006, 22)

Some believe that the concept of civil liability in each case that someone else is responsible for the damages, He is against civil liability. (katuzian, 1995,48) And some it is the responsibility of the person that the individual or object protects against damage he does to others and also party liability due to infringement of contractual obligations are defined. (Jafari, langrudi, 1985,73)

2.2 The Purpose of Civil Liability

The purpose of civil liability is that this type of debate over the responsibility for what happens in practice fulfill the needs and goals. It is customary to say, "The purpose of civil liability to compensate the injured and comfort him, to punish sinners. And deter others from committing this subject and harmful act and the establishment of peace and stability, and establish specific moral in the society. "

(Badini, 2005,320)

2.2.1 The Satisfaction of the Aggrieved

Affected in many ways is the focus of civil liability and rights, In creating this kind of responsibility is more attentive to the agent causing harm suffered, So that some believe that the primary basis for civil liability guarantee the rights of the injured and supporting him. (Same, 90)

Contrary to what is usually thought to be compensation for the payment of a sum of money is not the sole purpose of civil liability connected with losses seen but offset and prevent future damage and to remove aggression towards one of the objectives of the inalienable rights calls for civil liability.

Legal redress the harm caused by the economic and financial nature and has enough spiritual, not possible. So to justify it must be considered another target for civil liability that is, satisfy or appease has suffered because and pay to the injured party only to mental and emotional balance will be affected. (Bariklu, 2006, 40)

Read the obligation to pay punitive damages verdict as a way to prove the legitimacy demanded that the rights of some countries used also pursues this goal. (A pay punitive damages when exceptional losses and the terms and conditions given by the court) (katuzian, 2002, 960)

2.2.2 The Purpose of Civil Liability about the Injury Suffered Factor

Another purpose of civil liability with regards punishing losses sustained by the responsibilities imposed on him by the investigator to be. Because he acts harmful to the legitimate interests has suffered rape and abuse and liability imposed on him under the first consequences will handle its destructive act secondly bear the consequences of this makes him more cautious and avoid such action. Many lawyers also believe in the law on the prevention of adverse events is greater than compensation Thus, although only persons responsible for the acts and civil liability provisions would it be more discreet the primary purpose of civil liability is not a place, but a civil liability requires people to be more discreet.

Hence the idea that deterrence is one of the essential functions of civil liability, there is no doubt. (Badini, 2005, 357)

2.2.3 Establish Order in Society by Preventing the Actions of Other Parties

Private law to guarantee the rights and freedoms of citizens in this way takes the role of public regulatory law. What is certain is that in the absence of a civil liability of persons consider only their interests and personal demands on the safety of others will prefer sanctions so people can motivate civil liability to consider the interests of others and always socially desirable behavior. It makes sense in the long-term damage caused by the disasters, and it will reduce significantly. (Same, 368)

It is worthy of contact with other sanctions such as criminal penalties, trade, financial and administrative action to ensure order in society. (Same, 372)

3. Types of Civil Liability

Based on the responsibility of a special religious relationship between the injured party and in charge there. The aggrieved creditor and the debtor and the debt issue compensation. Which is typically done with the money? But this loss arising from a breach of contract regarding the origin of the times.

And sometimes the material event is divided into two branches because of civil liability, contractual liability and responsibility enforced.

3.1 The Concept of Contractual Liability

Some are of the opinion that the contractual liability of the responsible person. Specific contracts or commitments given under the contract accepted and failure to perform or delay in performing its obligation to the obligee cause damage. In which case committed is required to compensate for damages.

Accordingly, contractual liability to compensate losses incurred as a result of non-performance of contractual obligations by committed. (Emami, 1973, 3)

Some also believe that responsibility for the committed contractual liability in the contract. Or obligations to do or that it is by the contract signed. In other words, the responsibility of the contract, the obligation arising from the contract does not fit. Whether in doing a dedication, commitment and will not do be committed by negligence. (Jafari, langrudi, 1993,288)

The contractual liability should not be confused with a contractual obligation. For contractual obligation rooted in the will of the essay and generating the will of the parties. Over the punishment of unfaithful contractual liability and civil liability that is part of the article will not make it. But also a breach of an obligation that is not practical because its realization is non-essay. Thus, according to the origins of the responsibility that is somehow associated with contract say it rests with the contractor. (katuzian, 1992,268)

3.2 The Nature of Contractual Liability

Some believed that the responsibility for contract work was as the French civil laws contractual liability in

Section IV of Chapter III and 1146 to the following material as a result of commitments. Also, the conventional theory was that these contractual liabilities of the engagement that the contract existed between the two sides and a violation of the engagement of the responsibility. This method is based on contractual liability arising out of consent and must be in the realm of marriage. (katuzian, 1989,307)

3.3 The Concept of Coercive Responsibility

In the case that the person no alignment with each other and one of them intentionally or in error harm to another, Non-contractual or non-contractual liability of the investigator. Enforcement responsibility is responsibility for repairing damage arising from any act or omission that is wrong in law and practice. (Alnaghib, 1984, 30) It is said that the responsibility for enforcement, liability arising from the breach of duty that is primarily prescribed by law. Such a duty to the people as a whole, and its violation through a lawsuit for damages is not the calendar, can be remedied. (Badini, 2005, 37)

3.4 Responsibility Coercive Nature

Lawyers believe that requiring compensation liability is enforced by the legal events. The categories of toys listed and commitment it involves. The effects of events which is determined by law. As in civil law as a result of these events as out-of-contract requirements and compulsory liability mentioned. So some people believe that "no legal events cannot be a term like toys scattered and gather the various obligations in force and accordingly argue. (katuzian, 1995, 104)

4. Pillars of Non-Contractual Liability

4.1 Harmful Act

Accordingly, the agent responsible for compensation to another dangerous act that is detrimental actions attributed to him. If the agent responsible for his actions, as well as the harmful act is an act done without legal authorization person. (Serah and, 1974,147)

In Article 1 of the law of civil liability as well as the phrase "without authorization" is mentioned this means that if the legal action taken by the person responsible for the damage caused by it. (Anyone without a license intentionally or by negligence to life or health or property or freedom or dignity or business reputation or to any other rights which has been established by law for the damage which would be responsible for compensation for moral or material loss caused by your action is another.)

Some say: "indicating illegal, harmful act is without reason perhaps that person regarding the lack of foresight or willfully caused damage but no law banning such action, He can not be held responsible." (Aminfar, Bita, 427)

4.2 Prejudicing

In civil law, in any matter of civil liability for loss or damage as the primary element name is mentioned. However, in cases where such material has been used 221 and 226 and 227 words damage and in this respect, according to the definition of the term damage and silence of the law in this regard because the evidence was suspect. (katuzian, 1995,218)

In some sense be derived from the legal materials as prescribed in Article 1216: "If a minor or insane on Rashid losses, the sponsor is." And in Article 520 of the Civil Procedure Law states: "The claim for damages' going to have to prove it the loss immediately or delayed due to lack of commitment or lack of it has been asked to surrender. Otherwise, the court will reject the claim of damages. "

Also in Articles 1 and 2 of the Civil Liability Act has been referred to the existence of losses.

The loss must be ascertained damages to the injured party can require their operating losses, Must prove harm because of non-compliance and the possibility cannot be responsible for understanding and therefore the compensable loss is a condition that loss is ascertained. (Shahidi, 2003, 79)

What is essential is the appropriate reflection is still not created and later in an accident that happened there. (Emami, 1998, 7)

In this connection, some believe that the need to compensate for future losses on liability and contract enforcement is expected. (Alsahnuri, 1964, 681) And some also come with a breakdown between losses and probable losses, loss of the first type are compensated damage and injuries that are likely to present, or future is not inevitable, do not compensable. (Aminfar, Bita, 457)

4.3 Causality between the Act of Damaging and Prejudicing

To fulfill that responsibility should be established between harmless and harmful act causal relationship exists,

the loss is caused by the action. However, because the incident as an accident cause must be safe fulfill the necessary conditions that fact cannot be proven that no losses. (Katuzian, 1995, 451)

Such a relationship can be derived embryos in Article 328 of the Civil Code states. "Everyone waste is another person's property, surety and must like it or give it back whether intentionally or non-intentionally is lost" Accuracy in this article suggests that the norm for the realization of waste should direct causal relationship exists between the waste and steward. There also mentioned in Article 331 of this indirect relationship is emphasized. The last part of Article 1 of the law of civil liability of the person liable to compensate the damages caused by their action is known. And the first part of Article 2 the act that causes injury suffered if the work would be held responsible for the material or spiritual damage suggests the need for a causal link between the damage suffered losses.

4.4 Fault

Fault civil liability is one of the fundamental principles and rights at least as one of the essential foundations of responsibility taken into account. In Article 1 of the law of civil liability based on fault, liability principle put. According to this article, if the person intentionally or by negligence (failure) to another responsible for damage compensation. And without committing the fault of the liable person. The mistake, clean and no cleaning agent (individual elements) are unnecessary, and it should be considered a part of the conventional type and behavior. It is, therefore, rational and cautious behavior to detect the fault should be considered and follow the conventions of normal human behavior requires caution. (Ghasemzade, 2007, 212).

5. Pillar Fulfillment of Contractual Liability

5.1 The Existence of a Valid Contract

An essential condition for the fulfillment of contractual liability must be established a contractual relationship between agents and the injured are correct. Otherwise, no contractual liability. (katuzian, 1995, 86) In this respect, the first pillar is the responsibility of the contractor contract. Its main effect is that the commitment of the parties to the provisions of Article 219 of the Civil Code, as signified by the words "contracts, which is located on the law, Between dealers and their successors binding is "the same meaning is clear. After a valid contract, exists is necessary to fulfill the contractual responsibility of carrying out the necessary commitment but has refused to commit to its implementation. (Alsanhuri, 1968, 654)

5.2 Prejudicing

To fulfill contractual responsibility is also entering the detriment of the necessary conditions. Possible between the parties, a valid contract, exists and one party has not fulfilled its pledge to act or delayed but the failure to perform or delay in performing its obligation not to harm the other party. In this case, the conditions that the two conditions of contract (there are valid and breach of contract) is available, However, because of the arrival of loss, the incomplete contract is not responsible. (katuzian, 2002, 38)

6. Unity or Duality of Responsibility

Responsible for the contract before entering a contractual relationship between losses and operating losses suffered as a result while the responsibility for enforcement of such communication such as there is between them. Additionally, the rules relating to responsibility for enforcement in seeking a balance between individual freedoms whereas the rules relating to contractual liability, Rights, and obligations to a minimum of one against another to perform or refrain from performing work has pledged to do, determines. In this respect at the outset entirely responsible, despite sharing some foundations and pillars between the two there are differences.

7. Duality Theory (Duality) Responsibility System

Notwithstanding the denial of collective Cabinet responsibility of lawyers said some of the measures to defend the traditional theory of liability regimes have duality.

7.1 Differences in Baseline

The force responsibility assignments will be determined by law while their duties in the contract the parties are entitled. In the classical notion of liability is the responsibility of enforcement of obligations that the requirements of the law, but the responsibility for breach of contract by the will of the parties. (Tune, 1983, 20) Differences like the contract but the responsibility doctrine is to create and regulations that contractual obligation is binding only on the parties but the responsibility for enforcement such a rule, because there is already a contract between two parties to turn about the base effect, will have no place. (Harlow, 1987, 11)

In Iranian law, some lawyers have admitted the inherent duality of responsibility and believe that the opinion of

the majority of legal scholars, Nature contractual liability, and tort liability are different whether the contractual liability of the funds commitments that arise from the contract. As a result of a violation of the obligation, the obligation shape for civil liability determination will be compensation. That's why the right place to explain the contractual liability of legal work contract. (Amiri, 1993, 15)

Some authors also acknowledge the fundamental contrast between the two responsibilities are of the opinion the similarities between the two is responsible for enforcement and breach of contract. Finally, signs contractual liability arising from breach of contract, breach of contract and symbols responsibility outside of the law. This difference is enough that we know the two types of liability has two separate nature, although the common situation in many works. (Jafari, Langrudi, 1963, 29)

Whether in Islamic jurisprudence tortuous liability and contractual nature or separated from their unity, Must be distinguished among Shiite and Sunni scholars and said:

1) The Sunni scholars contractual liability is based on the will of the parties and the subject of their mutual contract and may increase or decrease is and even if the situation is such that consent can be completely ruined responsibility but coercive guarantee the same function compiled and does not require prior approval. (Saraj, 1410,60)

2) In Jurisprudence from the various branches of civil liability under "guarantees" the responsibility that comes from the viewpoint of this category is divided into two kinds: natural and conventional. But in the words of the majority of jurists, this responsibility are known, and enforced contractual liability because it is said In Islamic law are the responsibility of the physician liability carrier is the contractual responsibility along with enforcement responsibilities, such as confiscation and destruction caused is discussed. (Bariklu,2006,31)

7.2 Differences in Interpretation and Prove It

In some contracts, committed in violation of the commitment is not responsible unless they commit a serious fault. And in another part of the various contracts in any case (guilty of committing or heavy) is responsible for and in others are very light, even on the assumption that the fault is also held responsible. While the responsibility for enforcement of contracts, there is no possibility of such categories. (Zenun, Bita, 32) Some also believe that the only fault is the lack of commitment, however, when commitments can be obligated to compensate for damage caused by delay or non-performance construction failure to do so is a commitment by the fault. (Shahidi, 2003, 68)

Islamic law also in most cases the cause of the fault based liability the difference is that the responsibility for waste is directly enforced. If the steward of the losses attributed read fault condition of the referent of the rule and not the responsibility of waste. If an agent acts only created the field of waste so the waste would not have happened if not for committing the act. In other words, liability if the damage is done, but because of the damage it is another example of the rule of causality is and in these cases, the liability is subject to obtaining the fault will be operating otherwise he will not be held liable. (Najafi, 1986, 305)

7.3 Differences in the Nature and Amount of Damage Claims

Although in general a definition of liability to compensate damages sustained both leads are enclosed Furthermore, the contractual responsibility but in general obligation is the responsibility of enforcement, according to this, Enforced commitment is the person responsible for the damages that come to others without damages arising from breach of contract. (Katuzian, 1995, 74) Contractual liability obligation is a party to compensation as a result of non-performance of contractual obligations is entered into the other party of the contract. The contractual liability in most contracts, the vindication of qualification is valid, but the responsibility is sufficient coercive capacity enjoyment. Some damages claimed responsibility for the contract only in direct losses and predictable Redeemable at the time of his marriage. While the responsibility for enforcement, damages arising from any direct loss can be asked, whether foreseeable or not at the date of the wedding. (Alsanhuri, 1998, 2-10)

The question that arises here is whether the demand is also a condition of the fulfillment of contractual liability? Demand a ritual and specific contractual liability and responsibility for enforcement, compliance is not a prerequisite. (Same, 851)

7.4 Differences in Other Features

Attributes the duality of liability also believe that the liability system and contract enforcement are different in other cases, such as:

a) The contractual liability in the event of a multiplicity of authorities is axiomatic that the authorities should

provide compensation to the size of its share. However, responsibility for the forcible principle of solidarity in such a situation, each responsible for affected must compensate all losses incurred and yet to contractual liability; sympathy comes only with the agreement of both sides while the responsibility for law enforcement and the rule of law is a constant source of solidarity. (Same,10)

b) The tradition of liability, as well as other possible contractual liability, is the difference between the two systems no explanation as to exclude any liability for general liability contractual liability against violence is permissible. (Same,10)

First, block or delete the clauses responsibility. Second, provided that the obligation to evaluate and determine the number of damages which also means that legally is not to say primarily, the law has been approved. (Inserted in Article 230 of the Civil Code of the legality of such a condition is stipulated. The Article reads: "If the deal also stipulated that if offenders pay a fee as compensation, His ruling cannot be sentenced to more or less than what is required."

c) The responsibility for proper implementation of the contract and the contract only support the expectations of the parties to the contract. But coercive responsibility for the supremacy of the will of the parties. But to establish order in a society where each person has different desires and interests, and the goal is to provide more responsibility for public order and prevent injurious to others. In other words, the goal Compulsory ensure the freedom of all citizens and set responsible limits and boundaries it. (Katuzian,1995,113)

8.

8.1 Evidence to the Unity of the System Attributes

Some lawyers confessed that although the dichotomy of responsibilities by the traditional view. The rights of the majority of the country have been unaffected believes in this theory. Also, there is a fundamental difference between the two responsibilities and the commitment of both the need for compensation to another addition with the belief that they are the source of both the obligation. To disrupt the prior commitment, Have come to the conclusion that the differences that there is too many attribute responsibility system emphasized all bogus and appearance there are two major differences between the two. (Bariklu, 2006, 750)

8.2 Identical Regarding Meaning and Concept of Fault

It advocates the unity of the responsibility system, no different regarding base and there is no concept of failure among two responsibilities.

8.2.1 Same as the Base

In a general overview of the law that defines the rights and obligations of the parties and although the contractual obligations of the parties will make a commitment to yourself but contracts are somewhat affected the binding force of law (Katuzian, 1993, 3). The team thinks that one is on both liability and contractual liability on the will and consent is not relevant. However, on that breach and returned to a law and what would be the responsibility of breach of commitment and if an offense is said to be wrong, it does not matter, the roots have law or contract. (Tune, 1964, 25)

8.2.2 The Same as the Concept of Fault and Prove It

Supporters of the idea of unity by denying the difference between the two systems fault liability believe. It is said that the burden of proof commitment in contractual liability if the promise and the responsibility for such a task force there that is because the legislator principle of non-injurious to others as a general obligation on the shoulders of all calls. Thus, if the commitment is proved, Only one thing remains the same proven its violation sometimes it is and sometimes the creditor on the debtor to prove, However, this duality is not a cause for it to say that responsibility, subject to the provisions of the contract or enforcement and proof of this commitment.

Although contractual liability burden of proof to demonstrate commitment or lack of commitment committed in the external incident, it is not without reason that the contractual responsibility is allocated task is to prove. Since that is often what, provisions commitment is an act of liability on the same kind of engagement. If it is negative, the burden of proof rests is not committed to the responsibility for enforcement of the principle of non-injurious to others is always a matter of commitment. Therefore, contrary to the applicant and proof that no liability and is subject to negative or positive depends on the nature of the subject of pledge. (Alnaghib, 1984, 40)

8.3 Qualification and Condition Exemption from Liability

Said capacity on condition that contractual responsibility but the responsibility is not the natural state and power clean is sufficient, is not correct. And with the distinction between these, in fact, the contract terms and

conditions, liability or responsibility arising from its non-performance of contractual been confused and hence, although the capacity of the parties in the contract condition for the validity of the contract but in fulfillment of contractual liability charge capacity, not a condition. (Alsnhvry, 1998, 11)

According to this view, the separation of responsibilities Based on contractual liability and lack of necessary qualifications necessary responsibility for enforcement to distinguish the two systems and there is no capacity in both responsibility and only requires qualifications that are in the contract.

8.4 Unity in Other Specifications

From the perspective of attributes to unity, because those who believe that the obligations arising from this type of ink have different responsibilities and therefore cannot be considered the same commitment. The conflict between the two responsibilities is understood and say there are no differences in the essence of what is that. Firstly, topics such as substance and accident in philosophy has to mean and in the jurisprudence that mere credit commitments this title does not make sense and, secondly, non-contractual obligations arising from liability resulting from the contractual liability is similar commitment and both the requirement to compensate the other party and disturbing source of both commitment and dedication.

9. The Works and the Practical Consequences of Separation or Unity Responsibilities

Questions about segregation of responsibilities or their unity arises are whether the separation of responsibility system impacts and benefits or not? In this context, it should be noted that the separation between the fundamental and contractual responsibility is accepted in different countries and legal systems to follow and mostly it has been approved.

9.1 Positive and Adverse Effects of Separation Responsibility System

Since it cannot be a practical measure to make the distinction between the two types of liability provided the reason for the apparent separation of the two systems seem somewhat artificial and creates problems who are believed to lawyers (Prosser , 1964 , 381)

"The relationship between liability and contract enforcement is complicated and does not allow for the distinction and separation between the two was responsible for certainty." Lawyers (Vahdati, Shobeiri, 2006, 144) also criticized the separation of the problems mentioned and said. "Differences between the two fundamental responsibilities is not enough because its effects are secondary and have them double as a legislator. Therefore, when a person looks at the practical consequences of the separation of responsibilities the truth is that the differences between the results tradition and virtually no reason or justification for this difference are meaningless."

9.2 Unity Responsibility System Works

One of damage may not be coercive and arbitrary in nature and accordingly even if we accept a contract is always a combination of free will and involvement of the public powers in an agreement between them. Also, if we take that element of the contract increasingly, it has become important again not escape from the fact that some conventional and some other items to clear alien contralateral as some classical and some other responsibilities apparently they seem perfectly natural.

The perfect fusion between the two responsibilities is never possible on the accrual basis, for example, a seller to deliver the goods is the subject of the contract, if the commitment is a contractual obligation to refrain from implementing the other contractual party will be unmistakable. Also, if the driver's foot is injured lawsuit is possible only by compulsory liability so although it cannot be denied that the responsibility for compensation due to non-performance of the principal obligation is privileged nature, and it 's hard to claim that it is the turn of the trail. But this responsibility as a result of a breach of contract exists and it is not novel. (Katuzian, 1995, 113) Despite some lawyers have tried the broad definition of commitment and understanding of the concept of fault liability without regard to their different characteristics are close to each other. (Ghasemzadeh, 2006, 875)

10. Choosing the Right Suffered in Responsibility

According to the general rules of contract enforcement responsibilities based on what we have already stated the differences between the two systems cannot be denied responsibility, in this respect, the principle of separation of the two primary responsibility is derived primarily, the rules of liability applicable to each other. But the question that arises is whether this principle has exceptions? Does that compensate for the loss suffered choice offered to each of the two systems rely on responsibility?

11. The Right to Choose and the Reasons for It

One of the ideas proposed is that contractual and non-contractual liability if the conditions had affected the lawsuit is based on one of the two systems.

11.1 Optional Called for in the Determination of the Case

The role of damages paid to injured people due to lack of implementation of commitment and responsibility for the enforcement of losses implementation of violations and ignoring a legal obligation that has to be said that In both cases, the purpose is merely compensate for the loss. If attached to a common goal for both the responsibility that we compensate for the loss, so why compensation for losses suffered as a track for it, do not leave and give him the right choice. So when contractual liability and enforcement, we believe in the same goal, choose one of these two despite differences in effects, conditions and scope of any distinctive justified. (Shivayi, Bita, 113)

Recall that the injured party has the right to resort to the rules of contractual liability, especially in a place that impede the full restoration of their rights and the desire to opt out of this situation and resorting to mechanisms of responsibility is enforced.

11.2 The Pros Choice Theory

Most of those who believe in the unity of natural and contractual responsibilities have been granted the right to demand that each seeks to invoke his own responsibility. Although the theory of liability rules enforced public order and successor to the terms of the agreement on the withdrawal or limitation it is not permissible but this means limiting the liability of the beneficiary of the contract to withdraw from the contract and not resorting to non-contractual liability. Thus, if the violation of an agreement, the depreciation is committed by negligence, the injured party has the right to reach his contractual liability; you can complete adherence to the rule of causality to recoup their losses achieve. (Katuzian, 1995, 130)

Attributes believe also argue that such laws are not enforced contractual liability within the rules particularly relating to liability and the length of the contract, It cannot be a party to the contract with the excuse that he has been deprived of the protection that the law and forced to bear losses. Moreover, the rules relating to the liability associated with public order and the degree of violence is higher therefore, contrary to the rules of the relationship is not permissible. (carbon niner , 1976 , 694)

This view of the law and the jurisprudence of other countries have also been supported by legal writers in German law and judges it as a principle for the victim of a contract the right to be recognized and In addition to Germany in the Italian legal system to provide the basis for a claim by the injured party and in case law, this solution has been accepted.

11.3 Wrong Choice Theory

Although the selection of attributes coherentism injured, denying want to provide the basis for a lawsuit, In fact, depriving the victim of the use of all means that is provided in order to prepare and compensate for the loss but this theory is criticized Iran's rights are not acceptable. First, when the parties signed the legal relations between their sets and responsibility system have made an agreement governing their relationship however, according to the rules of compulsory liability is contrary to the agreement of the parties. Secondly, in terms of proving liability there is a difference between the two systems. As mentioned in contractual liability, basically, as soon as the breach is committed to responsible dialogue will be exempt from liability only by proving force majeure could while the non-contractual responsibility of the injury suffered by the injured party is primarily proved. Thirdly, the legislation in force in each aggrieved responsibility is an obstacle to select this means that contractual obligations since its creation is always subject to commitment But responsibility for the forcible Since the creation of an act is illegitimate and loss responsibility is also the result of this action, according to the law governing the claim for damages must be at the same time. Fourthly, the applicant's right to choose law enforcement responsibilities governing the case with what is different contractual liability And on this basis will not be the responsibility of first choice for the parties and will not be relevant in determining the applicable law however, due to the optional contractual liability of the provisions of this responsibility, the principle of conflict resolution and parties are also optional responsibility to determine the law governing the contract.

12. Held Theory of Demand

Another proposed theory is that if the terms of contractual and non-contractual liability have suffered not have a choice the lawsuit is based on one of the two systems.

12.1 Called Theory of Non-Disposal

According to this theory, the a contract is not allowed to gather all necessary conditions for the fulfillment of contractual liability to invoke compulsory liability rules because the responsibility by the latter type, where there is a contract, on the basis of:

a) Oblige, are known only through marriage, then every relationship that exists between them on the basis of contracts placed under contract and when committed to the implementation of the commitment refuses to be anything but egalitarian rules of contractual liability in the case the new fault-based liability and cannot be invoked. (Almasi, 1991, 194)

b) This is the will of the separation of legislative responsibilities is opposed and legislators tend to break this relationship and follow all links to the special rules associated with it. (Katuzian, 1995, 197)

c) When the parties with respect to liability arising from the breach of performance of the obligation and its limits are decided according to the general rules and waste can cause, scope of responsibility expanded otherwise what are called into question the principle of autonomy and the balance is disturbed contract (Same, 136)

12.2 Criticisms of the Theory of Choice

The theory of choice of the law of some countries and some authors have also defended it. But sometimes circumstances are such that resorting to coercive rules and scope of guarantee agreement between the parties and the legislative will is not incompatible. . Where the seller before the sale cannot eliminate it intentionally forced the buyer pays the contractor according to contractual liability to rely because lawmakers that the seller pays the contractor responsible for the loss of sales to In the case that the product sold itself wiped out with this assumption can be considered primarily for the seller two separate commitment: first commitment for overseeing the delivery of healthy sales and otherwise he has against the buyer pays the contractor, will be responsible for overseeing the case that the second commitment legally obliged to be cautious in dealing with others' and it did not work in this regard to its legal obligations as it would be so committed to giving back. So here are two obligations have been violated because the aggrieved can appeal to any desired way. In this case, if the contract price is more than the market price is less than the contractual liability and if the general rules of waste and causality is invoked. (Katuzian, 1999, 196)

13. The Possibility or Impossibility of Responsibilities between the Two

In many cases provided evidence of coercive liability and contractual conditions are the same. In this connection, lawyers, reasons for taking responsibility between the permissible total lacks of responsibility between the two have expressed. (Alsnhvry, 1998, 1/17)

13.1 Require Two Separate Damage

One implication of responsibility between the two is that in order for the right to be aggrieved that their compensation once the contractual liability of the harmful agent wants and once again the responsibility of enforcement. (Same, 17/1) If the purpose of the collection is the responsibility of the aggrieved non-contractual and contractual responsibility on each of two separate damage claim and on both occasions it would be contrary to legal principles and axioms damage is common. As well as common law is clear that the loss of license to charge two separate damage therefore, it is not permissible in any way. (Same, 17/1) For the purpose of civil liability is to punish the guilty but to compensate for the loss and in this case not to enter suffered a further loss, although it may be the fault occurred after two aspects of demand compensation for losses is not permitted units. (Alnaghib, 1984, 46)

13.2 Ability to Re-Claim Liability

Between the two there is another sense of responsibility that if you want to litigate and it failed, It's another fight and reduce their compensation. This feeling of responsibility not only in terms of legal principle credit Tucked between two value proposition is rejected and condemned by delivering the sealing faces why not just parties but is also an issue and even caused (Thread on both offset losses brought about in both soul is a harmful act or a breach of whether the dangerous act is a legal obligation or resulting from a breach of a contractual obligation) But also fights with the plan again and same thing, is not consistent with the speed and legal security and undermine the credibility of the judge's ruling. (Alsanhuri, 1998, 18)

14. Result

If a person has committed harmful acts would be prejudicing others are required to compensate for losses in accordance with the rules of civil liability on the basis of:

a) Compensation for damages sustained as a major purpose of civil liability is limited to the standards of reason, fairness and logic is outside of these limits, Unpleasant and unjust sentence compensation and profit and financial gain is seen as a means of expression.

b) Although contractual liability arising from violation and disregard the contract that has been created by consent and in this respect should be taken into account in the realm of marriage and among legal acts but the impact of contract and legal action contractual obligation and the responsibility to effect the separation of the contract and the nature of the legal action.

c) Although non-contractual liability arising from the law and should probably due to lack of involvement essay will be among legal events however, the legal responsibility of coercive event but rather a result of a legal event that the rule of law and no interference will be caused

d) The force responsibility for fault conditions must first establish responsibility and accordingly suffered harm self-Second, the error committed by the Third risk factors and causal relationship between them to prove, whereas contractual liability spend on committing presumption of guilt and lack of commitment in this respect require no proof.

e) Whereas the commitment violation of its implementation has been the source of responsibility the contractual liability of an obligation arising from the contract and the responsibility for enforcement of the rule of law is a legal obligation therefore, differences in the source of trust between the two systems, it is essential two are separated. Thus, in principle, cannot be rules for each of the two responsibilities extend to another.

f) Despite the difference in terms of the nature and basis of responsibility, having qualified in terms of contractual liability, such as liability, including liability is not compulsory and capacity requirement in contractual liability of the duality of attributes liability arising from the incorporation of the concept of a contractual obligation and tort liability.

g) Although there is no legal prohibition on the basis of no liability on the part of the injured party. However, considering the fact that the first person to contract the liability regime implied enforced dispenses and rules governing contractual liability on its relations with the contract makes and second, due to the separation of liability rules relating to contractual liability in the context of enforcement of existing standards as well as particular requirements for balancing relations between the parties, as seem as there is no option to choose from among two responsibilities for the injured, and he cannot arbitrarily determine the liability regime.

h) Although the right of the wounded party in the case, but together with the uncertainties facing liability in a lawsuit between the two rules was not allowed and the injured party is not entitled according to a claim rule-based materials and contract enforcement. This action may not collect damages suffered due to frequent claim of responsibility and plan to re-fight between features two types of responsibility and originally sentenced credit value proposition doomed to rejection.

Offers

According to the legislative silence about the unity or diversity of contractual and non-contractual liability of differences of opinion between lawyers in this field is better legislator of the regulation firstly clear that the two systems are different responsibilities.

Second, if there is a breach of contract and crushed it and prejudicing committed, he merely has the right to claim for damages based on contractual liability and cannot deal with the rules of non-contractual liability (compulsory) cited.

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