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Impact of Foreseeable Damage on Civil Liability Dispute in Iran and France

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Abstract: *There is no doubt that the philosophy of civil responsibility in the sense of complete compensation for damages has been lost. At the same time, the personal obligation of the offender to compensate for the damage must be attributable to the will of the parties, the rationale of the custom, or the law. In this research, we are going to find out that liability is not limitless and limited to certain cases. The anticipation of a breach of contract is the fulfillment of a kind of awareness that, before the expiration of the one-party commitment, the other party concludes that the contract will not be made by the obligated party; in other words, after the conclusion of the contract, but before the due date, it turns out that one On the other hand, he will not perform a major part of his obligations at the due time, or he will commit a major contravention without any license. It can be said that the ability to predict damage is discussed in two areas. By comparative study in a descriptive-analytical manner one in the field of contractual liability and the other in the field of out-of-contract liability, but according to Article 1150 of the French Civil Code, it is a predictable loss in contractual liability. Therefore, according to the law of the country of France, the claim of unforeseen damages means the demand for the fulfillment of a commitment that has not been initially assumed and in that respect inconsistent with the principle of good faith. There are a lot of questions and questions about the foreseeable loss in the legal system of Iran and France. There are many similarities and, in some cases, significant differences between these two systems, which require planning for a comparative research project for explanation. There are common points and differences between these two laws.*

Keywords: *Civil Liability, Contract Breach, Good Faith, Predictable Loss, Compensation.*

INTRODUCTION

Prediction of violation of contract is the realization of a type of consciousness that before the deadline of obligation of one party, the other party comes to the conclusion that the contract will not be performed by obligor; in other words, after the conclusion of contract but before the eadline of its performance it becomes clear that one of the parties – seller or buyer – will not perform his obligation on time or without any permission will violate the contract as a whole. However, in non-contractual and tort liabilities, we cannot find any article in national codes which has been dealt with the principle or condition of foreseeability of damage. In Civil Code, no clear reference has been made to the condition of foreseeability of damage rather there are some implicit indications in this regard. Articles 731 and 734 of Civil Code are the examples of implicit presence of this condition in civil liability. Foreseeing the violation of contract can be done through the announcement of the obligor of his failure of accomplishment of his own contractual obligation on the determinate time and sometimes through the inference of the obligee that is made based on the chaotic

conditions of the obligor. Accordingly, obligee would infer from the dire conditions of the obligor like bankruptcy that he will not be able to perform his own obligation. Sometimes the obligor behaves in a way that causes every ordinary person to conclude that he does not intend to perform his obligation on time. Foreseeability of damage in some legal systems has its own relevant issues and has not been equally received by all legal systems. For example, in French law, foreseeability of damage has been mentioned not as a condition for restitution rather as one of the two limitations of the possibility of restitution of the unfair damage in the contractual liability. The second limitation is concerned with the number the people who has the right to ask for the damages. The article 1151 of French civil law has referred to this issue and writes: "If the contract is not implemented, the obligor is just responsible for the compensations that were foreseen or could have been foreseen in the time of conclusion of the contract". The word "just" refers to only or once and is of limiting implication. Thus conceived, the obligor is liable to restitute only those damages which have been foreseen in the time of signing the contract or were foreseeable. This means limiting the liability and guarantee.

Some research has been conducted in this regard. Rahimi (2005) has referred to the foreseeability of violation of contract; Nikbakht and Kazemi (2011) in an article have assayed the foundations of the principle of foreseeable violation. Rafei and Hosseini (2012) comparatively studied the executive sanctions of foreseeable violation of contract in Convention on International Sale of Goods, principles of international commercial contracts and Iranian law.

French law does not directly accept the foreseeability of damage in tort or non-contractual liability rather this condition has been implicitly accepted in some special cases; therefore, the issue of influence of foreseeable damage in civil liability and necessity of the public consciousness of this type of liabilities and its practical use as well as the significant legal effects which are attributed to it persuaded the author to conduct the current study in a detailed manner. However, influence of foreseeable damage on the dispute of civil liability in Iranian law despite its advantages, is seen from one single angle and its pros and cons are not perceived in a good manner unless we undertake a comparative study of this liability from various points of view and discuss its weakness and strengths. Since French law is the primary pattern of Iranian legal system it seems that we have to take it as the other part of the comparison.

Theoretical Foundations of Research

Civil Liability and Necessity of Restitution of Damages in Legal Systems of Iran and France

Civil Liability consists of legal commitment and obligation of a person before the restitution of the damages that have been incurred as a result of an action taken by him or others (Bariklou, 2010). Some scholars have defined civil liability in terms of compensation of damages resulted from harmful behaviors (Rahpeyk, 2011); and some others consider civil liability as a responsibility that has been assigned to someone to restitute the incurred damages (Jordan, 2006). Therefore, damage is recompensable and a matter of liability that has been incurred unjustly and for this reason in the definition of civil liability the condition of "unjust incurrence" must be included (Ghumami, 2009). On the other hand, the person is just responsible for recompensation of the damage which is attributed to him. Then, attributability should also be included in the definition.

1- Iranian Law:

In Iranian legal system despite the stipulation of some of the principles governing contracts in the civil code, like principle of veracity in the article 219 of the latter code, no independent allusion is seen to the principle of good will or obligation of its observation. For this reason, some scholars believe that basically in Iranian law the good will or bad will or people do not have any decisive effect on contract (Babaei, 2006). Nevertheless, lack of a clear general text regarding the observation of good will cannot be considered as tantamount to its complete denial in Iranian law. A cursory evaluation of various laws shows that the principle of good will has been predicted in some rules in a scattered fashion. Perhaps the only issue that remains is the study of the

comprehensiveness of it as a general rule. If good will is accepted in Iranian law as a maxim, it will be applicable to various branches of contracts law including pre-contract period and if it is considered to be an exception we have to suffice to written cases in its acceptance.

2- French Law:

In French Law the principle of *bonne foi* (good will) did not have any place until the end of fifteenth century; the interest in this principle started to grow in sixteenth century following the expansion of commercial relations. Although the concept of good will can be seen in scattered form through various codes of this country, this principle has not been codified as a general maxim so far (Qasemi, 1996).

Goals of Civil Liability in Legal Systems of Iran and France

In general, three goals of restitution of the damage of the injured party and attraction of his consent, punitive aspect and deterrence and establishment of peace and stability and securing the order in the society are considered to be the main objectives of the liability (Badini, 2005).

I. Damage Restitution:

It is argued that civil liability is a liability that is created before creation of damage and makes liable the one who has caused the damage; wherever someone is liable for restitution before another person, there is civil liability (Jafari Langeroodi, 1993). According to this liability, there is a special relationship between the one who causes the damage and the one who suffers it and it is damage restitution; therefore, civil liability in its general sense covers both contractual liability and extra-contractual liability, because in both cases the damage restitution is at issue but the basic difference between these two liabilities lies in the existence or lack of a contract between the two parties. In fact, civil liability starts where there is no contract between the parties.

II. Deterrence

In jurisprudence and Iranian law we cannot claim that this theory has been clearly accepted; however, we may take the assertions of some jurists and jurisprudential sources as an endorsement of this theory. For example, "some scholars have referred to the reasons of violation and retaliation for proving the legitimacy of civil liability, e.g. verse 40 of Surah Al Shura that speaks of the retaliation of an evil act with an evil act or the verse 194 of Surah Al Baqarah that suggests that when you are punishing the violator you must punish him as much as he deserves". Of course, it seems that we cannot use the aforementioned verses as a basis for criminalization of damage restitution rather these verses just insist on the necessity of recompensation of all damages.

Anyway, punishment of the one who has caused the damage is amongthe secondary objectives of civil liability and its major difference with the punishment stipulated in the criminal law is that in criminal regulations if a fine is determined for the convict it because of a crime that has been already criminalized in the law but civil liability is not always due to commitment of a crime. In fact, the major goal of civil liability is the recompensation of the damage that has been incurred by someone.

III. Preservation of Social Order

Certain legal rules and principles like justice and fairness administration, principle of respecting other people's rights and such maxims as no harm, ground the foundation of a purposeful and organized soceity. The subcategories of these principles and rules are the regulations that are adopted by the legislator in the form of law so that everyone knows the scope of his own rights as well as the rights of other people and do not do anything that lies outside the circle of his own rights. In fact, regulation of material and financial affairs and transactions between various people of a soceity pursue this objective.

4- Diversity or Unity of Liabilities System

Generally speaking, liability is either due to the violation of agreed obligations that have been previously created or in a spontaneous way and as a result of daily actions of individuals who cause damages due to their

negligence. Some legal experts consider the nature and effects of contractual liability to be different from those of non-contractual liability; but the current procedure seeks to take these two liabilities as one.

Foreseeability of Damage in Contractual Liability

1- Iranian Law

The issue of foreseeability is raised when the conditions of contractual liability have been realized. For emergence of contractual liability two conditions are required: firstly, existence of a contract. It is needless to say that until the time when a contract has not been concluded among two sides contractual liability is meaningless. Of course, by contract we refer to a correct and valid agreement that is concluded among the obligor who has evaded his obligation and the obligee; then the corrupted or ineffective contract does not have an influential existence in the legal world in order to be able to have a legal effect and establish a contractual liability for the obligor. Nevertheless, whenever a doubt is casted about the conclusion of a contract, the existence of one of the foundations of contractual liability becomes suspicious and due to the suspicious nature of the contract, contractual liability will be also irrelevant. Secondly, avoidance of the obligor from fulfillment of his contractual obligation; the requirement of realization of contractual liability is that the obligor to commit a violation of the contract regardless of its being refusal of doing an obligation or delay in accomplishment of the obligation as compared to the decided time (Shahidi, 2010). If these conditions exist the issue of conditions of recompensable damage is raised. One of these conditions is foreseeability of the damage. Foreseeability of damage implies that the defendant of the dispute of contractual liability should be only accountable before the foreseeable results of his own action and it does not include the restitution of unforeseeable damages.

2- French Law:

The article 1150 of French Civil Law suggests of the foreseeability of the damage in contractual liability: *Le debiterure nest tenu que des dommages et interets qui ont ete prevus ou qu on a puprevoir lors du contact, lorsque ce nest point par son dol que lobiligation nest point executee* [The debtor is not responsible for restitution of the damages that were not foreseen or foreseeable in the time of conclusion of contract provided that refusal of performance of obligation is not due to intentional mistake].

Pothier the renowned French legal expert offers an example in this regard referring to an ancient Roman principle to the effect that if a seller sold an ill cow that caused the cattle of the buyer to be destroyed due to the pandemics the seller will be liable to pay the difference between the price of a healthy cow and ill cow and he is not responsible to pay the price of whole cattle.[1]

Michael Lorasa is the other French legal expert who considers the principle of foreseeability of damage in contractual liabilities to be in line with the common sense and states that in this foreseeing both the cause and scale of damage to be foreseen (Lorasa, 1996).

Legal Foundation of Necessity of Foreseeability of Damage

First Issue: Party Autonomy

1- Iranian Law

The reason of unrecompensability of unforeseeable contractual damage lies in the fact that it is not within the contractual domain and common intention of the parties.[2] This basis has been offered under the influence of individualism and autonomism and indeed has considered the necessity of restitution of damage to be a result of the mutual consent of the parties. As an endorsement of this basis it has been argued that the obligor should be able to evaluate the dangers resulted from the contract because if these dangers are huge the obligor might evade them or may want more prices to cover these dangers.[3] Some other scholars have argued

[1] Robert Pothier. Traite de obligations. Nos 161-162.
[2] Weill et Terré. Droit Civil. Les Obligations, N. 392,2°éd. Dalloz, 1980; I. Souleau, op.cit. N. 423: Le Tourneau et Cadiet, op.cit. N. 356.
[3] Weillet Terré, op.cit

that the principle of unrecompensability of unforeseeable damage expresses an implicit condition that demarcates the contractual liability.[4]

However, following objections are raised against this basis:

- The trade parties basically do not pay any attention to the issue of damage restitution and their obligation of recompensation the incurred damages is not resulted from the main obligation and its attribution to the traders is baseless (Katoozian, 1999; Katoozian, 2011); one's liability before restitution of a damage is a legal effect of the violation of contracts.
- Today individual will is not the only exclusive interpretation or explanation of contracts and is taken into account along with the considerations concerning political, social, and economic order as well as justice, fairness, and good will insofar as one can state that contemporary era is the age of socialization of contractual rights (Schmidt, 1982).

2- French Law:

Pothier as the founder of the principle of foreseeability of damage has explained the meaning of this principle as follows: "The debtor is not responsible for restitution of the damages that were not foreseen or foreseeable in the time of conclusion of contract provided that refusal of performance of obligation is not due to intentional mistake"(Ferrari). Pothier considers "acceptance by the debtor" or precisely speaking, the debtor's will, to be the basis of necessity of foreseeability of the damage. Accordingly, the first theory that comes to one's mind for explanation of the basis of the principle of foreseeability of damage is reference to the autonomy of parties in the contracts.

The principle of autonomy of parties which is the intellectual-philosophical product of individualists of nineteenth century is considered to be a significant principle in the contracts law called freedom of autonomy. Individuals are free to conclude their desirable contract and arrange their content the way they like and determine the punishment of the violation of contract in advance. The responsibility of the parties to the contract is not just the implementation of the contractual obligations rather it ranges to the restitution of the damage resulted from the violation of the contract too.

Second Section: Causal Relation

1- Iranian Law:

Since there is no causal relationship between unforeseeable damage and the failure accomplishment of the obligations in common sense the legislator has considered foreseeability of the contractual damage as the condition of the liability of the party whwo has violated the contract (Planiol et Ripert, 1930; Savatier, 1951).

Another probability which has been raised as to the basis of principle of foreseeability of damage is the justification of the principle via the concept of "causal relation". The damage which is not foreseeable in the time of conclusion of the contract is not indeed direct damage and is not resitutable for this reason. The proponents of the theory of common cause in the field of identification of effective cause in the occurrence of damage believe in this theory and contend that what leads to damage incurrence through the normal course of affairs is considered to be its cause and on the contrary, the damage that is not incurred by the defendant due to the natural course of events is not considered to be the result of it. According to this idea, foreseeable damage is the damage that is normally expected to happen as a result of the violation of the contract and we can only consider this type of damage to be directly attributed to the violation of contract.

2- French Law:

If the basis of the principle of contractual liability is the causal relation it will face a significant objection to the effect that why the damage which is foreseeable in the time of violation of obligation but has not been

[4] Le Tourneau et Cadiet, op.cit.

foreseeable in the time of conclusion of the contract, is not restitutable and the injured party cannot ask for compensation in return of it?

The other objection that has been raised by some French scholars as to this idea based on the French civil law is that if we accept the article 1150 of French Civil Code regarding the existence of causal relation and the foreseeable damage is the direct damage, then a clear contradiction between the implication of this article and that of the article 1151 of the same law. Thus, according to the article 1150, the debtor who has committed an intentional mistake is liable for restitution of foreseeable and unforeseeable damage. In other words, he is responsible for recompenation of indirect damage. However, such a debtor, according to the article 1151, is merely responsible for restitution of the direct damage; therefore, though article 1150 suggests that the one who has committed an intentional mistake is responsible for compensation of the unforeseeable damage, the article 1151 exempts him from the recompensation of the indirect damage which in this theory has no sense but the unforeseeable damage.

Regulations of Execution of Principle of Foreseeability of Damage

The Foreseeing Person

In Iranian law two analyses can be presented in this regard: typical or personal criteria; the question is that whether we must take the typical measure into account in the foreseeability of the damage or the personal measure. From the article 1150 of French civil law the typical measure is inferred and some scholars have insisted on it.[5] In the article 1150 of French Civil Code two states have been foreseen.

1. Limits of the liability of the one who has violated the contractual obligation;
2. Its foreseeability;

If each one of these states exist the obligor will be liable for the restitution of the possible damage resulted from the violation of the contract; on the other hand, the objective and subjective aspects of the liability of the obligor have been confused and the foreseeability is now used today by French law as the condition of demonstration of the liability. Thus, if the obligor claims that contrary to the foreseeable codnition the limits of his obligation have not been foreseen his claim will be denied.

However, in Iranian law based on the theory of autonomy of parties the foreseeing of the damage should be handled by the obligor who has violated a contract in his mind. This demonstration might be realized via evaluation of the issue in the normal conditions (Shahidi, 2003).

1- Personal Maxim:

According to this analysis, whenever the limits of the obligation are foreseen by the obligor in the time of contract he must accomplish his own obligations within the determined limits. However, these limits of obligation might be normally unforeseeable as compared to other persons in the same conditions. Moreover, if the limits of the obligation are not foreseen by the obligor, the latter person will not be liable for the restitution of the possible damage though this damage would be foreseeable for the ordinary people.

2- Typical Maxim:

The typeical maxim implies the centrality of common law in determination of the limits and contractual obligations and there is no doubt that when a contradiction occurs between the wills of the parties the common law is of priority over the wills of the both parties (Shahidi, 2010). In French law the article 1150 of Civil Code of this country suggests that "... Were Foreseen or which could have been Foreseen" and this is indeed an endorsement of the both maxims.

Then, the analysis proposed in Iranian law concerning the acceptance of personal maxim must be strengthened and on the other hand we should criticize the codifiers of the international conventions and

[5] Mazo, Civil Liability, vol. 3.

documents who have declared the typical maxim to be of the same level with the personal maxim and we must consider it to be the result of confusion of the objective and subjective aspects of the issue.

3- Time of Foreseeability of Damage

The article 1150 of French Civil Law has clearly taken the time of conclusion of the contract as the basis for identification of the foresseability of the damage. The same fact has been endorsed in the article 82 of The Hague Convention 1964 and the articles 25 and 74 of Vienna Convention. In fact, time is a vital factor in evaluation of the foreseeability of damage.

In Iranian law the same issue is discussed. If a higher damage is incurred than what he had foreseen in the time of conclusion of the contract, this damage will be outside the foreseen limits and obligation of the obligor and this would not be a reason for his liability; therefore, we need to accept that what is needed for the liability of the party who violates the contract is foreseeing the damae in the time of conclusion of the contract (Shahidi, 1998).

4- Degree of Foreseeability of the Damage

In French Law though the article 1150 of Civil Code of this country stipulates nothing in this regard, from the analysis of the dependency of contractual obligations on the consent of the parties we can infer that mere possibility of occurrence of a damage by the one who violates the contract does not lie in the domain of his will; then, the incurred damage must be foreseeable for the one who has violated the contract with a high probability. In Iranian law given the jurisprudential[6] and legal[7] foundations there is no doubt that the issue of foreseeability of the damage is inferred from the analysis of the dependency of contractual obligations on the creation intention as a constitutive and creative element of the contract; therefore, the principle of autonomy of the parties and the key role of intention in the conclusion of the contract require the damage to be taken as a serious and powerful probability in the domain of thought and intention so that the parties to be forced to restitute the damage. Then, the damage whose occurrence is less probable does not lie in the domain of the will of the obligor and the latter does never intend to be committed to it.

Governing Law and Specific Methods for Restitution of the Damage

In French law most of the authors and even the judicial procedure strongly believe that the foreseeable limitation of the damage specially belongs to contractual liability and as to extra-contractual liability such a condition cannot be raised because the contractual liability is the result of the intention of the parties and this condition is only realized in such liability. French judicial procedure has also considered this condition valid.

The article 1151 of French civil law suggests that if a contract is violated due to an intentional mistake the obligor is to be taken liable for the damage that is directly or indirectly the result of violation of the contract without making it contingent upon the foreseeability. This principle seemingly belongs to contractual liability but French judicial procedure and legal authors have considered it to be shared by the contractual and tort liabilities.

Article 221 of Civil Code of Iran reads as follows: "If any party undertakes to perform or to abstain from any act, he is responsible to pay compensation to the other party in the event of his not carrying out his undertaking provided the compensation for such losses is specified in the contract or is understood in the contract according to customary law or provided such compensation is by law regarded as guaranteed." This condition is inferred from the articles 379 and 386 of Commercial Code as well as the article 614 of Civil Code; anyway, although these articles are related to contractual liability, by searching in Iranian law and jurisprudence we can find some cases where this condition has been propounded as regard tort liability. Even with comparison of the priority we can generalize the cases related to this condition in Islamic Penal Code to contractual liability.

[6] In authentic jurisprudential sources there is a a phrase like this: "contracts must be interpreted based on the will of the parties and their intention for conclusion of the contract".

[7] Article 191, Civil Code.

Given the aforementioned issues, it becomes completely clear that the judgement of restitution of the damage can be executed based on existing legal norms. However, there are differences between the legal experts as regards its amount. In other words, in contractual liability only the foreseeable damage is considered to be restitutable but in non-contractual liability the normal damage is generally foreseeable.

Law Governing the Damage Restitution

In the field of contractual liability there are two perspectives in French Law. Some consider the liability resulted from the contract to be a function of the laws of the country about which the parties have reached an agreement and if no indication of the law has been made in the contract given the existing evidence the law that is inferred from the implicit will of the parties will govern the contract.

In French Law various laws have filled the gap between contractual and non-contractual liabilities. Of course, two types of liabilities are still a function of different principles each one of which has its own logic and particular support. However, each one of these two liabilities in view of their interests and particular nature are subject to specific rules that have to be taken into account.

In Iranian law the article 968 of Civil Law suggests: "Obligation arising out of contracts subject to the laws of the place of the performance of the transaction except in cases where the parties to the contract are both foreign nationals and have explicitly or impliedly declared the transaction to be subject to the laws of another country". This article seems to be influenced in one sense by the article 183 of Civil Code (definition of contract) and as it has defined the promise based contracts in this article, in the article 968 only the obligations resulted from the contract are taken into account by the legislator. Of course, one of the legal experts (Katoozian, 1994) is of the view that since article 968 is categorical then it includes all issues related to the contractual obligations.

Therefore, there is a difference between two liabilities in view of having the autonomy in determination of the governing law. However, if no agreement is reached both liabilities will be a function of the place where the damage has occurred. As to the tort liability, the place of occurrence of damage or crime is intended while as to the contractual liabilities the place of violation of the contract is meant.

Right of Damage Restitution

The principle of necessity of restitution of the damage based on the Sharia, law, reason and the public norms is a means for preservation of the social interests and recompensation of the incurred damage as it has been stipulated in the article one of civil code. The condition of restitution of the damage in French legal system is similar to the normal regulations in Iranian law. According to the article 1382 of French civil code, although every real or legal person can refer to the Justice Court for asking his compensation, the payment of damages is hinged upon first, proving that the one who has caused the damage is responsible for a mistake, secondly, the damage is the direct result of the same mistake, and thirdly, the acquisition and presentation of the aforementioned reasons are up to the claimant.

When the necessity of payment of the damages is proven, the damage must be wholly recompensed so that the situation of the injured party to return to the previous state as much as possible. In other words, complete restitution of the damage means that after this recompensation the injured party feels like before the incurrence of the damage.

Principle 167 of Constitution states in this regard: "The judge is obliged to find the judgement of every dispute in the codified laws and if he fails to find he must issue the verdict based on the authentic Islamic resources and he is not allowed to suspend the trail under the pretext of the silence, deficiency or succinctness of the codified laws".

Necessity of Observation of Capability and Costs of Damaging Action

Article 227 of Civil Code states: "The party who fails to carry out the undertaking will only be sentenced to pay damages when be is unable to prove that his failure was due to some outside cause for which be could not be held responsible". This article gives the jurisdiction to the court to consider the financial conditions of the convict when it is supposed to fine him. The judicial procedure has also stipulated this issue and in many

cases the same action has been taken. For example, the cases related to dowry are clear examples of these cases.

Although according to the article 4 of Civil Liability law the judge is free to evaluate these costs, the current procedure in Iran is in a form that in physical damages the judge considers such costs. Nevertheless, although the judge takes the financial conditions of the convict the latter undertakes some extra costs during such trials.

Conclusion

In Iranian law, there is no clear stipulation of the necessity of foreseeability of damage in the field of the civil liability. From jurisprudential point of view, there is also no considerable discussions in this regard and there is no particular analysis in authentic jurisprudential works. Some legal experts have described the article 221 of Civil Code as the legal basis of necessity of foreseeability of damage in civil liability from the point of view of positive law. However upon a correct analysis of the issue, we find out that article 221 of Civil Code does not contain any implication regarding the necessity of principle foreseeability of damage and in fact this article only expresses the source of liability, not its limits because the goal of legislator from codification of this article seems to have been the tackling of jurisprudential doubts as regards the possibility of restitution of the damages resulted from the violation of the contract and attribution of this judgement to common law; in other words, this article shortly discusses the necessity of the compensation of contractual damages and does not have any implication of the principle of foreseeability.

Article 191 of Civil Code considers intention as a constitutive element and has given an aspect of creativity to it; to put it otherwise, a contract is grounded on the realization of subjective conditions, i.e. intention of conclusion of the contract. Having said these, determination of the rights and obligations of the parties must be done based on the intension of the conclusion as a creative and constitutive element. Then, necessity of foreseeability of damage due to the relationship of contractual obligations and real intention of the parties can be justified. In other words, the parties to a transaction are obliged by something that belongs to their intention and will. No doubt, unforeseeable damages are not within the acess of the intention and will of the parties so that they can obligate them to recompense; therefore, the obligor is not obliged to restitute the damages. Consequently, in Iranain law the judgement of the foreseeability of damage is inferred from the dependency of the contractual obligations on the intention of conclusion.

Among the legal systems of the western countries, French Law is known by the principle of necessity of restitution of all damages. In French law relying on the public notion of damage which has undergone through numerous legal and social changes in the course of time, any financial damges – including the property loss in the form of destruction of the profit or increase of consts and economic damage – physical integration – including body damages and pain and suffering resulted from the body damages and also losing one's life due to physical proble, - and personal rights (causing damage to the freedom, honor and personal rights of someone like name and private life secrets) have been considered recompensable in extensive aspects.

As to the basis of the necessity of compensation of the damage in legal systems of Iran and France one needs to say that the principle of no harm in Islam has been the source of inspiration for the principle of necessity of compensation of damages in Iranian and French laws. Then, this principle has existed long ago under another title.

In French law the foreseeability of damage is described not as a condition of restitution of damage rather as one of the two limitations of the compensation of the illicit damage in the domain of contractual liability. The second limitation belongs to the number of those who have the right to ask for the damages. The article 1151 of French civil law indicates this issue. Today in French judicial procedure this idea has been established that the quantity of the damage and its extent are also an important part of the issue foreseeability and this issue

is not restricted to the cause of damage and even in some ideas the cause of damage has not been considered to be part of the issue of foreseeability.

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