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Civil Liability of Arbitrators and Deputy Law in Transfer of Arbitration Contract

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Abstract: *One of the things individual notice when setting up contracts is to discuss how to emerge dispute after signing the contracts which how they would react at the time, and there are many legal remedies that can be offered in two ways including 1) judicial poceedings and 2) non-judicial proceedings. The arbitration is a matter of judicial poceedings and can be clearly understood by looking at legal and historical texts. There has been a long history of arbitration before the judiciary poceedings but with different names such as white intercession, compromise and so on. But over time, this esteemed legislator has defined the laws and regulations in this regard. And it has not put too much strain on the judicial poceedings. The arbitrator is not required to observe the civil procedure in the poceedings and the verdict process and is much more flexible and the will of the parties plays an important role in this poceedings. And in light of the foregoing, what should be the circumstances of the arbitrator and the types of arbitration to be determined, and to what extent is the arbitrator liability and how much the impact of the arbitration contract transfer on the condition of arbitration? Does arbitration verdict have an impact on deputy law? Will the arbitration contract remain valid when the base contract is transferred? To what extent is the arbitrator's civil liability by issuing verdict that would harm the parties or the deputy? Who is liable for damages if the arbitrator issues a verdict? And these things will be discussed in this paper, and in the end, there will be a general conclusion to this discussion.*

Keywords: *Civil Liability, Contract Transfer, Transferee Law, Deputy, Arbitration Verdict.*

INTRODUCTION

By looking at the historical and legal texts over time, people have always had a desire to settle their disputes more easily with the consent of the individual or individuals and avoid as far as possible the access to the judiciary authority. Because both the proceedings process was lengthy and costly, which could sometimes be settled by agreement that the arbitration body emerged. And over time, it grew and evolved, and the trustees had to enact laws and regulations for this not so new body, and to make the system of proceedings with it more lawful but simple. It is true that arbitration is a form of judicial proceeding, but the arbitrator (s) were not required to observe such proceedings rule and to be as flexible as possible and mostly based on intercession and settlement agreement. Now it should be seen what is the nature of this body and how much the parties' will is involved and how far the arbitrator or arbitrators are liable for issuing the contrary verdict. And if the original transfer agreement does the arbitration clause still exist and does the arbitration verdict has impact before the contract transfer have an impact on the deputy rights?

Or the type of contract transfer, for example, forced or optional, and verdict issued before it effective before the contract transfer is effective at the time after transfer?
This paper attempts to answer these questions and determine the extent of the arbitrators' liability.

Principles and Concepts

Defintion of Civil Liability:

Referring to Article 1 of the Civil Liability Act of 1960-4-27 which stated (Article 1- anyone without legal authorization deliberately or as a result of negligence damage the life or health or property or freedom or dignity or business reputation with any other right provided by law which is liable for compensation for damages resulting from his/her action and it can be concluded that: the necessity of compensation for damages (both real and legal) to a person, whether intentionally or inadvertently called civil liability, therefore several points can be deduced from this paper:

a) Compensation under any circumstances (whether intentionally or as a result of one's negligence)
b) The direct person liable for compensation is the offender.
c) Civil liability is where there is no contract, so-called out-of-contract requirements[1].

Here the criminal and civil laws should be separated[2].
There are two types of liability in civil law:

1. Liability arising from the compliance of obligation or breach of obligation is called a contractual liability.
2. Liability arising out of damages arising from the denial of interest to the right holder is respected by the legislator for non-contractual liability or out of contract obligations.

Evolution of Civil Liability in Iran and International Law

Until the 20th century, there was no significant change in civic liability. In all legal systems, liability was based on fault. In this theory, the injured party must prove his/her fault in order to be able to recover from the loss factor, because it is justified by a more ethical basis. Proponents of this theory believe that ethics does not hold anyone liable for harming another without any fault.
The French Civil Code, which was drafted in the early 19th century (1804) and adopted in Articles 1382 to 1386, declared fault and negligence as a condition for the fulfillment of civil liability.
With the onset of the Industrial Revolution in Europe and the setting up of large manufacturing workshops and factories, some of which employed hundreds of workers. The conventional theory lost the first tendency and could no longer be held accountable for the damages inflicted on them. The advances of new industry and technologies, although they have brought about human well-being, have also caused widespread damage.
It is true that the invention of the airplane has created tremendous convenience for passenger and cargo transportation, but the overturning of an aircraft also has severe financial and financial losses, which in turn is unbearable.
Such incidents create significant legal difficulties, especially in the field of compensation at national and international level, which cannot be accounted for by fault theory.
In France, the criticism of the theory of fault was introduced by Salailles for the first time in the late 19th century. As one of the eminent masters of the second half of the nineteenth century, he wrote in the journal of Trimestrielle de droit civil revue that the theory of fault was inadequate to compensate the world that day.

[1] Articles 301 to 338 of the Civil Code concerning the out-of-contract requirements.
[2] Of course, it should be explained that some jurists and law books use the term of legal law rather than civil law, which seems to be a problem because the legal term is general compared the civil and criminal laws that are better to use civil and criminal laws than legal terms. Because civil law-civil code and law on civil procedure has more to do with the relationship between individuals if the criminal law-penal code and law on criminal procedure focuses more on the control and oversight of the government and oversight on people's relationships for the sake of order and justice, not the complete consent of injured party.

After a while, Josserand as one of his students and a close associate of Josser defended his teaching. The foundations of the Risk or Risque theory that led to the development of civil liability should be sought in these articles

As such, the evolution of civil liability that has been in recession for centuries has begun in the early twentieth century and has progressed to such an extent in the last hundred years that it is possible to claim that none of the civil Law debates has been so progressive.

In France, the evolution and development of civil liability is owed first to the judiciary and then to the doctrines of law scholars, and the legislature has little share. This is not a matter of civic liability, but in other legal matters the first step is taken by the judicial process and the law scholars cultivate it.

Stark, who was one of France's foremost professors of civil Law, drafted his thesis in 1947, in which he first advocated and defended the theory of guaranteed right.

It is not an exaggeration to say that rights must conform to social needs and can be seen clearly in civil liability. One has to go beyond that, rights arise from social needs[1].

Civil Liability in Iranian Law

The first volume of Iranian civil code, which addresses some of the issues of civil liability, was adopted in 1928. At the time of its adoption, however, other theories, including the risque theory, had a prominent place in the French judicial system and in the writings of French lawyers. And although some civil law makers have become familiar with European law, especially French law, no trace of this change in civil law has been found.

Our civil code, as adopted by French Civil Code from Article 301 onwards, deals with the requirements that are achieved without a contract and states in the first chapter that it includes usurpation, loss, favor and obedience (Articles 301 to 337). And of these four topics we must separate usurpation and resignation from civil liability in its specific sense. As a result, only waste and appropriation remained in the realm of civil liability. Prior to 1960, a lawsuit was also filed in a judicial proceeding with one of the cases being a waste or affidavit.

According to Article 328 of the Civil Code, the loss only includes the object or interest and does not include financial rights, it may be said to be incomplete. For this reason, the drafters of the civil liability law, while drafting it in the legislature, have been pushing for the completion of the civil law, claiming that it has eliminated the shortcomings of the civil law regarding civil liability.

The Civil Liability Act, which was enacted in May 1960, is adapted from the Swiss Obligations Act and contains new points of liability, including. In this law, the fault was acknowledged as the main basis of liability, but Article 1[2] made it liable for any damage to the right created by law for individuals to be liable and compensable.

Another important point in this law are the recognition of spiritual damages. However, many years before the Civil Liability Act, the Code of Criminal Procedure, Article 9(2) had adopted a spiritual harm, which included deduction of prestige or credit of persons or mental injuries.

Another important point of this law is Article 4[3] that allows the court to mitigate damages under certain circumstances. Article 5 of this code also seeks to order the court to determine compensation by observing the circumstances of the case by means of a pension or one-time unit.

[1] Hossein Ebadi, Amir, posted in Dr. Katouzian's legal blog (2010) www.drkatouzian.blogfa.com/post/13

[2] Article 1- Anyone without legal authorization intentionally or as a result of negligence or health or property or liberty or dignity or business reputation or any other right established by law to cause harm to another person causing material or moral damage, it is liable from his/her own practice.

[3] Article 4- The court may discount damages in the following cases.

1- Whenever it has effectively rendered effective assistance and assistance after the loss has occurred.

2- Whenever damage is caused by negligence which is grossly negligent and its reparation may cause the importer pain and suffering.

3- When the loss has in some way facilitated or contributed to the loss, or aggravated the loss or the situation of the importer of the loss. And one of the important legal points of this article is that it has allowed the court to disregard the validity of the arbitration and have the right to appeal against it for up to two years from the date of its issuance.

Article[1] 12 of the liability code has deviated from the general principle of proving fault and has accepted liability without fault. This Article states: Employers who are subject to labor law are liable for damages, provided by office workers or their employees in the course of, or on the occasion of, the work unless all precautions required by the circumstances of the case have been fulfilled, Or, if such precautions were taken, it would still not be possible to prevent the loss from coming in. The employer may refer the damager if it is recognized by law.
This article, which is new to our law is one of the most prominent examples of liability arising from non-verbs. The employer has been held liable for the damage without interfering with the entry, and there is no need to prove that he/she was the cause of the damage.
It is well understood from this article that the legislator held that the employee's entry of damages while performing the job or on account of the employer's fault and held him liable for damages. If the employer can prove otherwise, he / she shall be exempted from payment of damages.
French authors in justifying the legal basis of employer liability Various ideas, including fault in the selection of the worker, fault in the care and protection of the employee, liability against profit (the theory of risk to profit), representation theory and finally the employer's verbal assurance that Professor Katouzian has carefully analyzed all of these ideas and those interested can refer to them.
Article 14[2] of the Civil Liability Act also stated two important legal points:

1. Accepting liability insurance in compensation where several persons have jointly brought it.
2. Determining the extent of the liability of each of them by the court regarding the manner in which they intervened in the damages.

Although civil liability law contains many innovations and positive points, it has unfortunately not received much attention in the judiciary, and has been less widely used and cited in the courts' arbitrations after 45 years of its adoption, and there is a concern that it will fall into disrepute[3].

Contract Transfer Methods

The contract is transferred in two ways: a) optional, b) forced

a) Optional: Contract
b) Forced: Inheritance

Definition of Arbitration

Arbitration literally means mediation and settlement. Iran's law, and in particular the Code of Civil Procedure, has spoken in detail about its rules. In fact, arbitration is one of the types of contract dispute resolution that has many advantages over other methods.
In this paper, the concept of arbitration in contracts for start-ups was examined.

Types of Arbitration in Contracts

1. In general, arbitration is conceived in four forms in contracts.
2. The arbitrator shall specify, that is, the name and identity of the arbitrator in the contract, and specify that he/she has liability over the contract.
3. The identity of the arbitrator is not mentioned and is merely an indication of his/her finding in the contract.
4. Simply mention the arbitrator to the parties and leave the matter to the parties.
5. The choice of arbitration may be left to the court or other competent authority.

[1] Article 12- Employers who are subject to labor law shall be liable for damages incurred by or on behalf of administrative staff or workers in the performance of or in connection with the work, unless all the precautions required by the circumstances and circumstances so require. Or, if such precautions were taken, it would still not be possible to prevent the loss from coming in. The employer may refer the damager if it is recognized by law
[2] Article 14- In respect of Article 12, whenever several persons are aggrieved, they shall be liable for damages. In this case, the level of liability of each of them will be determined by the manner in which each court intervenes.
[3] Hossein Ebadi, Amir, posted in Dr. Katouzian's legal blog (2010) www.drkatouzian.blogfa.com/post/13

6. The choice of arbitration may be left to the court or other competent authority.

Conditions where the court cannot select persons for arbitration unless with the consent of the parties

1. All people under the age of 25 years old.
2. Those who are interested in the lawsuit.
3. Those who are married or relatives on both parties of the case.
4. Those who are a lawyer, guardian, guardian or steward of one of the parties to the case.
5. Those who themselves or their spouse are the heirs of one of the parties to the lawsuit.
6. Those who have, before or in the present case, filed a criminal case with one of the parties of lawsuit or their relatives.
7. Those who, themselves or their spouses or relatives, have a civil lawsuit with themselves or their spouses or relatives.
8. All those who are government employees and that file is within their mission.

Only if the court cannot select a person for the arbitration should that person be an arbitrator or staff of the judiciary in particular.
It should be noted that after the appointment of an arbitrator, the parties alone have no right to dismiss her unless they agree.

Cases of Disappearance of Arbitration

1. Both parties agree in writing to this.
2. In case of death or disability of one of the parties to the contract.

Cases of Revocation of Arbitrator Verdict

The arbitrator's verdict is invalid in the following cases and cannot be enforced in any way.

1. The verdict issued by the arbitrator contradicts the law creating the right.
2. The arbitrator has ruled on issues that have not been arbitratord.
3. The arbitrator has ruled outside his jurisdiction. In that case only that part of the verdict that is outside the jurisdiction of the arbitrator shall be invalidated.
4. The arbitrator's verdict shall be issued and submitted after the expiration of the term of the arbitration.
5. Arbitrator's verdict is against any property registered or filed by a notary in a notary and has legal validity.
6. The verdict was issued by arbitrators who were not authorized to issue the verdict.
7. The contract referred to in the arbitration shall be invalid

Cases where the case cannot be referred to arbitration:

1. All bankruptcy lawsuits
2. The lawsuit concerning the principle of contract, its termination and divorce.

Nature of the Arbitration Contract[1]

Four Contractual Theories about the Nature of Arbitration Body

There are four different theories about the nature of the arbitration body. The arbitration is a contract entered into with the intention and consent of the parties, and the parties to the dispute commit themselves to informally resolving their dispute and dispute. One of the fundamental questions in arbitration is the question

[1] - Homayoun Mafi; Mohammad Hossein Taghipour Darzi Naqibi, The Legal Nature of Arbitration, Volume 6, Number 21, Winter 2016, pp. 177-204

of the legal nature of arbitration. In other words, what is the nature of arbitration to see? In fact, where does the arbitration authority find itself in the hearing and adjudication?

The arbitration sometimes comes close to a contractual act and sometimes to a litigation or quasi-litigation where each of these situations can have different effects on the arbitration and the arbitrators and the arbitrator verdict because if the nature of the arbitration is contractual, the parties to the dispute will, in principle, be able to conclude any dispute with their chosen arbitrator. The purpose of contractual or voluntary arbitration is that the parties to the dispute shall agree to settle the dispute by means of arbitration and to elect a person or persons as arbitrators or arbitrators and to submit themselves to the dispute in their jurisdiction.

1. Contractual Nature

The first view is the contractual theory that the arbitration body is necessarily based on the intention of the parties to constitute the origin of the jurisdiction of the arbitration itself. In contractual theory, the arbitration body is in the field of contract law, and the principle of freedom of the parties prevails. Because the arbitration body is exclusively based on the theory of sovereignty, some regard it as contractual.

2. Judicial or Jurisdictional Nature

Known as jurisprudence theory, the arbitration body is qualified to have jurisdiction and the sovereignty of the government is above the contractual consent of the parties. This is a reflection of the fact that arbitration can only take place within the jurisdiction of a state, subject to the law governing the arbitration. In other words, arbitration is beneficial to and supervised by legal systems. The sovereignty of the will has little or only limited effect on the choice of arbitration as a method of dispute resolution.

3. Mixed or Hybrid Nature

According to this theory, neither jurisdictional theory nor contractual theory of arbitration expresses the true and fundamental nature of the arbitration body. Therefore, it is suggested that the arbitration entity be of a mixed and dual nature. This theory recognizes features of the contractual and judicial effects of the arbitration entity in addition to its specific characteristics. According to this theory, the arbitration entity consists of two elements. The rule of local law and the agreement of the parties.

4. Autonomous Nature

The fourth view is special or Autonomous t theory and is believed to be a combination of both theories, meaning that the arbitration entity consists of contract and arbitration. The arbitration is a complex system that begins with a contract and ends with a verdict. The nature of this system requires the fulfillment of the norms of the contractual system and the rules of the judicial system. The arbitration is a special system that requires considerations of a mechanism independent of contractual and judicial elements.

As a result, the arbitrator verdict is excluded from the supervision of the law of jurisdiction and the law does not apply to it. It is the ritual consequences of international arbitration to abandon the process of arbitration from the supervision of the law and the domestic court. Therefore, arbitration exists in a different space, namely non-national or international territory and scope. The effects of arbitration autonomous can be summarized as follows:

1. The process of arbitration is not subject to the formalities of domestic law.
2. The domestic courts only have to enter the judging process in exceptional circumstances. This theory is a combination of both previous theories, meaning that the arbitration body consists of contract and arbitration. The nature of this system requires the fulfillment of the norms of the contractual system and the rules of the judicial system. The arbitration body has neither a judicial nor a contractual nature, but has a specific autonomous nature that requires a mechanism independent of contract and judicial system. By recognizing that the arbitration body is a self-governing and self-disciplined approach, this

theory holds that it has an independent and self-reliant nature. Despite its importance, the principle of the sovereignty of the will is not a decisive factor.

Types of Arbitration[1]

The arbitration is divided into two types:

1. Organizational or institutional arbitration: It is an arbitration conducted under the supervision of an organization or entity, for example, under the supervision of the International Chamber of Commerce located in Paris.
2. Case or proprietary arbitration: It is not supervised by a particular organization. The possibility of information leaking out is very low. The disadvantage: it all depends on the will of the parties and this can interfere with the work of the arbitration.

Definition of Contract

The contract under Article 183 of the Civil Code is that: one or more persons make a commitment to and accept from one or more other persons.

As a result of the contract between the two parties, a new legal relationship will be established and the parties will have to make commitments regarding the subject of the contract.

In non-specialized language the contract means one thing, but in the science of law it means the the specific contract (those contracts and conditions that are mentioned in civil law such as the contract of sale, the contract of lease, the attorney, the contract of bailment of a capital and so on). And the word of contract applies to all contracts (whether specific contract or not).

The agreement of two or more people is a central component of the contract definition. For example, when purchasing a property or apartment, two people agree that one (seller) will give the property to another (purchaser) and the other will pay the seller for that. The parties' internal intent and consent are sufficient to transfer the property or to do the work of a contract, and when both parties are willing to agree on a matter, they are bound to comply. And then it also affects the parties and their subrogations (the legal deputy) and does not need any formalities, but the important point is that the legislator has added social conditions to the foregoing that sometimes the legal authorities will refuse to accept the contract without regard to those conditions.

Principal

Principal refers to what is original to something else.

Principal Application in Jurisprudence Sections

The principal in jurisprudence refer to the principal debtor (principal debt), the alternate, non-hire, client, owner or purchaser, and the transducer to the guarantor, vice, hire, lawyer, prudent, and alternate, but most of its use is against unauthorized and has been used in subjects such as zakat, khums, trade, guarantee, rent, power of attorney, and the like, which are examples of its use.

What does a principal or lawyer mean?[2]

Among the legal terms, one of the most commonly used terms in the field of registration is the principal or lawyer. This term generally means whether the person himself is acting in a legal or registrarial capacity or has a lawyer appointed to do so, which it call the principal, and the latter certainly the lawyer. A lawyer can be either a lawyer with a power of attorney (with the right of attorney) or a lawyer or representative who is actually a member of the company and with a letter of introduction from the legal record company such as the delivery of essential documents and performs the signature below the registry offices.

[1] - https://gvbazargan.com/types-judgment
[2] - https://eliya.ir

In general, a lawyer is a person who is assigned by a person, whether legal or real, to contract to perform a task. Attorney is a permissible contract, whereby one party appoints the other party to do its part. The client is called a lawyer, and the client is called a lawyer. A lawyer is not entitled to exceed the limits of the power of attorney, and any transaction that is about the power of attorney is called and is in the client's account unless proven otherwise.

The legal sources of principal civil and legal liability can be divided into two parts, depending on the type of financial or life damage. Damage may be inflicted by the lawyer on the life and body of the third party, in which case the Islamic penal code should be referred to the monetary compensations. The legislator does not pay much attention to the actual damages and damages inflicted on the injured party, but specifies the extent of the damage beforehand and does not allow it, even though the injured party is entitled. This type of damage is nominal and is more like penalties and punishments, which is proof of the criminal nature of the monetary compensation. Of course, the legislator has not done enough to determine the amount of damages, but has also tried to explain how the fault was paid and how it should be paid so that the arbitrator would not need to resort to other legal sources, especially the Civil Liability Act adopted in 1960.

Principal and Lawyer Liabilities to Third Parties

In this regard, it is important to distinguish a lawyer from a hired person or contractor, which is not an easy task. It is not enough for him to acquit himself and another liability if he pleads faulty or even pleads faulty under the name. The court is required to determine the side of the complaint based on the evidence, the reasons and the type of operation. First, in many cases there is no written contract, and second, if there is a written contract, it is not valid for the third party.

Many employers tend to shrug off the heavy burden of contracting and place the burden of liability on a contract that appears to be contracting or attorneying. It is not unreasonable that a considerable amount of arbitrations in industrialized countries is deruled to identifying each other by finding the legal and practical remedies of the contractor and the lawyer.

Difference between Deputy and Representative

The deputy is the person who substitutes for another subrogation with his rights and duties. Several instances of deputy. 1. Heir is the deputy of heritage. 2. Transferee: This is the transmitter deputy. 3. Filtration Manager: It is bankrupt deputy. Representation is the title by which a person performs a legal action on behalf of another person on his/her behalf and for the purpose of attaining his/her goals. Types of Representation: 1. Legal: such as representing a father or paternal grandfather of a child. 2. Judicial: Like a minor or insane dealer. 3. Contractor: Like a lawyer representing his/her client.

Transferee

Transferee is (the term of jurisprudence) a person who, in contract, and transferred personis the transferor of the same property. It is also if the property is transferred by law, such as inheritance.

Causes of Ownership in Civil Code

By virtue of Article 140 of the Civil Code, ownership is acquired by:

1. Reclamation of waste lands and possession of possessible objects
2. Contracts and obligations
3. Pre-emption
4. Inheritance

In addition to the above, one of causes of ownership can be considered in the possessive compliance.

The waste land reclamation is an operation to convert the dead land into usable land in a manner that is traditionally known as reclaimed land.

The waste lands are considered to be lands that are lands that are not privately owned and are not exploited, such as swampy or paddy fields or lands that have been or have been previously or have been deforested due to owner discharges or for any other reason.
The possession of any possessible is in the tenant and sense of being in a bad state or providing the means of control over the business.
In general, possessible can be divided in terms of civil law:

1. The waste lands and possessibles that can be redeveloped.
2. Waters, both surface and sub-surface
3. Mines, both surface and sub-surface
4. Missing objects and animals
5. Buried treasure
6. Hunting

Since each of the issues has been subject to specific rules in addition to the provisions of the Civil Code, it is also necessary to refer to the text of the said laws (see Article 45 of the Constitution) for information on how to apply them correctly and lawfully.

Liabiliy of the Arbitrator

An arbitrator is a private judge who accepts a judicial assignment under a contract. Accordingly, the contract is concluded between the arbitrator and the parties. In all legal systems around the world, there is an agreement to delegate the task of resolving a dispute to an arbitrator, and failure to perform the task of arbitration can lead to legal, criminal and civil liability.
Article 501 of the Act stated: Whenever one person or parties is lossed for dissimulation, fraud or fault in the performance of the duty of arbitrators, the arbitrators shall be subject to the statutory rules of liability for damages. Arbitrator liability lawsuits are rarely brought up in a judicial procedure; the author, after consulting with many respected court arbitrators, has not obtained a sample of an arbitrator liability lawsuits. Therefore, this liability is summarized briefly by raising some questions and assumptions that are more theoretical because our purpose is to examine arbitration issues with respect to judicial practice. But asking some questions can be a start for other researchers. If we were to believe in purely theoretical discussions, we would certainly not have easily gone past these questions, but we would never have sought a writing that is devoid of native legal practice. Questions like: 1- Is the arbitrator's liability similar to that of a judge (in terms of realization, notion of fault, compensation for the misdemeanor, etc.); 2- Is financial lossonly recoverable, as it appears from Article 501? 3- Is the liability of the arbitrator exclusively realized through the devices mentioned in this article (dissimulation, fraud or fault), and is the meaning of fault simply the word or and associated with dissimulation or fraud is only an intentional fault? And in that case, wouldn't the objection be raised as to why in the case of a judge, the fault is also heavily on the property, but not in the case of the arbitrator? And finally, what is the relationship between this article and Article 1 of the Civil Liability Act? 4- Is it possible to conceive of an arbitrator's contractual liability as well as his general liability? In a way that because the arbitrator has failed to reach an agreement by accepting the arbitration, pledging to adjudicate or by giving the parties confidence in not going to court and delaying the settlement of the dispute for the failure of agreement, is he/she liable for this? 5- Is the arbitrator also liable for the verdict itself or because it is possible to file a cancellation claim? And any postponement in this regard is condemned by the act and cuts off the relationship with the arbitrator. Can't imagine the liability of the arbitrator? In this respect, cannot it be said that because the power of revocation of an arbitrator's verdict is limited and the court cannot fully inspect the verdict, while there is always the possibility of the arbitrator's verdict itself being impaired if it is delayed or faulted? 6- What is the quality of the division of loss for multiple arbitrators? 7- Is there any discussion of the right to abuse an arbitrator, such as the right to resign or refuse to adjudicate, and has he/she civil liability?

But it should be noted that the world's legal systems disagree with the principle of arbitrator civil liability. For example, in the law of England the arbitrator enjoys the principle of impunity in the exercise of the duty of arbitration as a state judge. Unless he has malicious intent or leaves the judiciary without a license, in countries such as Iran and France the principle of civil liability has been accepted by the arbitrator and, as with any contractual obligation, he is liable for his actions and obligations.

Legal Materials Related to Arbitration Liability under Civil Procedure Code

Article 501 of the Code of Civil Procedure provided: Whenever a person or parties to a dispute are sued for dissimulation, fraud or fault to perform the duty of an arbitrator, the arbitrators shall be liable to legal redress.
Article 473 of the above law also provided: If the arbitrator does not attend or resign or refuses to verdict, without justification, such as travel, illness and the like, he shall be deprived to select as arbitrator up to five in addition to compensation for damages years.
According to the different legal provisions in the area of liability and with regard to the above two articles, the liability of the arbitrator is divided into three categories: criminal, policy and civil liability, which we will deal with below:

Criminal Liability of Arbitrator

In Iranian law, where judges may be subject to criminal prosecution for offenses committed in the performance of their duties, the arbitrator is not subject to the jurisdiction of the offenses assigned to the judge because it does not have the power of a judge.
Notwithstanding this arbitration, as determined by the court or parties, if it decides against the payment of money or property in favor of one of the parties Pursuant to Article 588 of the Islamic Penal Code (Tazirat, 1996), he/she is sentenced to six months to two years' imprisonment or a fine of three to twelve million riyals and his/her confiscation is in the interest of the state.

Policy Liability of Arbitrator

The arbitrator has not policy liability with precisely meaning the word, but a kind of quasi-policy liability is provided for in Article 473 of the Code of Civil Procedure, which is outlined above.
In addition, pursuant to Article 466 (2), the deprivation of an arbitrator from the arbitration in this regard requires judicial review and a final verdict.

Civil Liability of Arbitrator

In Iranian law, which is explicitly stated in Principle 171 of the Constitution, even arbitrators are not immune from civil liability, so arbitrators are not free from this liability.
At the same time, in accordance with Article 501 of the Code of Civil Procedure mentioned above, any of the acts of an arbitrator specified in Article 473 of the said Code shall also result in the civil liability of the arbitrator.
According to the laws of our country, arbitrator has civil, policy and criminal liability

Generality

The discussion of compensation and all kinds of compensatory damages has long been and has been in the legal circles. According to the arbitrator's contractual view, the arbitrator civil liability is one of the terms agreed upon in the arbitration agreement between the parties and the arbitrator, and thus the arbitrator's liability limits can be changed and adjusted by the parties in accordance with domestic law.
Some of the verdicts have argued that estrangement against arbitrator civil liability does not have any significant effect on arbitrator liability.

For example: the German Supreme Court has ruled that even if the arbitrators have not expressly stated a lack of liability condition since their acceptance of the arbitration is based on the understanding that their liability will not go beyond the liability of a judge. Therefore, the conditions set out in the arbitration letter must be interpreted as giving the arbitrators pseudo-judicial immunity. Similarly, one of the English judges commenting on the contractual view stated that the arbitrator would not accept civil liability for his mistakes or violations in his/her employment contract. Obviously, arbitrators can insist on the stipulating the impunity condition of of liability in their employment contract.

Agreements concluded between the parties and the arbitrators for compensation and costs incurred, including payment of the fees in case of litigation against the arbitrators are also accepted under the laws, and the inclusion of such conditions in the arbitration contract, as with any other contractual provision, is a matter which depends on the bargaining power of each party. However, if the arbitrator has been able to directly or indirectly include the requirement of lack of liability condition in the letter, the question arises: what kind of arbitration violations can be excluded from the arbitrator's civil liability by the contract? Is the arbitrator's wrongdoing merely subject to impunity, or is it exacerbated by gross wrongdoing or deliberate acts of damaging? According to the laws in most countries and subject to copyright law, such as Iran, for example, it cannot pre-empt civil liability for gross wrongdoing or intentional misconduct by virtue of the following contract, and this general principle also applies to agreements on the arbitrator civil liability.

On the contrary, in countries such as the US, for example, it appears that the terms of liability exemption are even applicable to intentional pseudo-crimes.

However, it may not be correct to assume that the imposition of impunity in the current arbitrator's actions is in the absence of explicit agreement on the subject of the arbitrator's civil liability in the contract or the arbitration rules.

The principle is that in the event of the parties 'silence on a particular issue, the courts usually go to the parties' intentions to find a solution to the case, and what has been said to benefit from open immunity in favor of the arbitrator cannot be readily accepted. The parties to the dispute intend to dismiss in their own right, claiming damages, as a result of misconduct and misconduct. Therefore, in the event of a conflict of interest in the absence of any express agreement, the Examining Tribunal must interpret and clarify the matter in each case.

If the arbitrator has voluntarily participated in the adjudication of the dispute and has otherwise rendered his services free or without substantial compensation to the parties. Courts, in their interpretation, tend to exempt the arbitrator from the rules behind the document as well as when deciding whether the arbitration contract entails the arbitrator's civil liability, or should it be inferred from the liability of the arbitrator, in their interpretation, courts use the indicator of how important and important the arbitration is in the traditional way of resolving a dispute, in the legal system governing the arbitration. As arbitration becomes more widely accepted in a legal system, it is more likely that the courts will be inclined to interpret it in their interpretation of the arbitration contract, which the intent of the parties was to apply the same rules and criteria to the arbitrator's liability as to the arbitrators of the tribunal.

Finally, the result is that they begin to move in two different directions in determining the criteria and liabilities of Iranian law and law. Kamen La, however, emphasizes that arbitrators have quasi-judicial duties and should therefore be covered by judicial immunity.

Iranian law essentially views the arbitrator as a professional expert who should bear the liability for his/her wrongdoing, although both systems agree that the arbitrator actually plays a role, and the arbitrator is also an expert or a judge.

On the other hand, US courts have somewhat restricted the application of the judicial immunity doctrine to arbitrators.

The courts of the states of the copyright system have likened and approximated, through legal interpretation, the rules of absolute liability for arbitrators to a more limited degree of judicial liability.

Under other contractual liability issues with the arbitrator's civil liability, the terms of this liability stem from the bargaining power of the litigant and the arbitrator, and in most cases the costs of the arbitrator's liability insurance against his potential violations will be borne by the litigants.
The theorem that, in view of the rules of public order, an arbitrator should enjoy quasi-judicial immunity, we need to examine the impartiality of the arbitrator a little and explain in some way the relationship between judicial immunity and arbitration.

Faults of Arbitrator to Determine Liability[1]

Types of Arbitrator Misbehavior

1. Faults of an arbitrator to disclose a conflict of interest

Iran's rights to the arbitrator have made it a public duty to refuse to accept an arbitration if they find a conflict of interest with a party to the dispute and declare themselves ineligible. For example, arbitration was aware of the conflicting interests of one of the litigants and did not state or arbitration lengthy and costly litigation on the subject of litigation, and the arbitration was dismissed because of the arbitrator's silence in disclosing his interest in the litigation. And it makes the whole arbitration go away and the litigants have to start all over again, even if the arbitrator had done his/her contractual duty, the arbitration could have been conducted by another impartial arbitrator without such undesirable consequences.
The question is, what kind of administrative guarantee will there be for such a departure from the arbitrator? In response some legal authors have argued that the arbitrator should not receive any remuneration, and that the legislator in Article 501 Q.A.D.M may assign the assignment in a manner that whenever it is due to teaching, dissimulation or fraud in the discretion of the Arbitrator to make a financial loss to one of the parties to the dispute. Arbitrators will be liable for damages, and if the conflict of interest is obvious, the arbitrator should be liable for any costs that would not have been incurred had his/her relationship with a litigant been disclosed.

2. Early withdrawal of an arbitrator from an arbitration proceedings:

As soon as an individual has accepted an arbitration in a dispute, he/she shall generally undertake to conduct a fair arbitration until the verdict is reached. Either not completing the arbitration process of single arbitrators or failing to attend court sessions, the arbitrator not only fails to do so, but will also lead to the ultimate goal of appealing to the judiciary, which is to end the dispute by the parties. On the other hand, with regard to just about any provision for appointing a subrogation to an arbitrator after the commencement of the arbitration, the whole process of judging, usually initiated at the expense and expense of the parties, will be fruitless. The disadvantage of such a situation is the re-operation and resumption of arbitration at the expense of the new parties bearing the costs. . A premature resignation of an arbitrator is a refusal to exercise its right. As a result, the parties are denied the opportunity to contest the verdict, which in the view of the courts is one of the safeguards that justify judicial and arbitration immunity, so that the arbitrator should be held liable for damages if the arbitrator is unable to justify his action. Otherwise, any arbitrator elected by one of the parties, can easily block the proceeding of the case as soon as he/she feels that the arbitration will not be in his/her favor. In this case, the liability is for arbitration that is not interested in the process of arbitration, and other arbitrators participating in the arbitration will be held liable only if they have violated their duty to appoint a substitute arbitrator.

3. Failure to timely issue an arbitrator's verdict

The arbitrator is in another decision to fulfill its obligations in a timely manner, such as the failure of the arbitrator to disclose its interest in litigation where the parties can file an arbitration award, it has not issued itself in a timely manner. While delaying the verdict by the arbitrator has been recognized as one of the undisputed avenues of verdict in Iranian law, the Article 473 Q.A.D.M. also in civil affairs stated. If an

[1] - https://www.vekalatonline.ir/articles/29628

arbitrator does not attend, resign, or refuse to verdict, after accepting arbitration without a reasonable excuse, the arbitrator shall be sentenced to five years' imprisonment for the right to be elected.
In view of this, it should be borne in mind that the unjustified delay in voting cannot be regarded as a judicial act and should therefore be held liable.
Therefore, arbitrators who feel unable to adjudicate urgently on the case should refuse to accept the arbitration.

Conclusions

It is unknown to anyone that the arbitration body has become very belligerent due to problems such as the inclination of the constitutional guidance to deal with the purely judicial authority and on the other hand the urgent need for it is increasing.
Throughout the discussions, the liability of the arbitrator and the limits of immunity has dealt, and thus in the law of the country has set a certain framework for the arbitrator, which does not in any dispute in the realization of liability and non-liability. And the arbitrator is liable under the law of prohibition of detriment, according to which no harm shall be left without compensation.
Therefore, there is no reason for the person currently acting as an arbitrator to settle disputes. The principle is exempt from this rule and we must be held liability for it, and according to the recent theory that is the dominant opinion of our country's jurists, the person is liable for the fault. And it must be accountable for the damages it has caused so that there is also a legal remedies for the civil liability of arbitrators when awarding damages to a litigant who, when mistaken by an arbitrator, should be compensated. It divides itself into two groups.
Mode 1: When the judge has inadvertently committed a mistake and is not deliberate in his/her conduct, the necessity of treasury shall be compensated.
Mode 2: When the judge has actually committed a mistake in which case the judge himself shall be compensated
And in extending the judge's liability to the arbitrator, who also serves as the arbitrator duties, as well as the provisions of the Code of Civil Procedure and Article 501 of the Code of Civil Procedure which expressly stated that the arbitrator has a civil liability in dissimulation and fraud and must be compensated.
Despite the elements of civil liability and the causal relationship between the act of the arbitrator and the damage inflicted on the parties to the dispute, the arbitrator is liable for his/her own compensation. In many countries, unwritten and common law consider absolute immunity for arbitrators' willingness and willingness to settle disputes in such a way that the arbitrator is free from any liability under any circumstance that criticizes this theory including corruption and abuse of some of the profiteers themselves through arbitration, as well as some litigants by referring litigation to arbitration.
In any case where the person is liable to compensate another, it shall be said that the person shall be civil liability for any loss to other. This rational and fair rule has been from old that anyone who loses to someone else must compensate for it, unless the harm is otherwise unlawful or the harm done to the person does not appear to be inappropriate. It seems that the arbitrator on civil liability law has set out a clear framework to prevent possible abuses in this way. And for the sake of arbitration, the arbitrator has decided to pay a fee to get out of free which there is more civil liability and no one will accept liability because he has done something.

References

1. Hossein Ebadi, Amir, posted in Dr. Katouzian's legal blog (2010) www.drkatouzian.blogfa.com/post/13
2. Homayoun Mafi; Mohammad Hossein Taghipour Darzi Naqibi, The Legal Nature of Arbitration, Volume 6, Number 21, Winter 2016, pp. 177-204 (In persian)
3. https://gvbazargan.com/types-judgment
4. https://www.vekalatonline.ir/articles/29628
5. Iran Civil Code Adopted 09/03/1928 (In persian)

6. The Civil Liability Act adopted 04/26/1960 (In persian)
7. The Code of Civil Procedure enacted 04/09/2000