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External Cause and Its Impact on Defendant's Civil Liability in Compensation for Damages to the Injured Party

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Abstract: *The present study is considered one of civil issues which differ among lawyers theoretically and practically. To identify the cause of liability, a single criterion must be used to avoid conflicting results in similar cases. Adverse events always do not happen simply, but more often together with defendant's act, other factors are involved in damage. These factors are called "causes" or "conditions".*
Key words: *cause, civil liability, cause, condition, fault, external causes, frequency, damage, force majeure*

INTRODUCTION

Freedom in act and conduct has always been a principle for human. Evolution of human from the early life in which he relied on nature and had limited contacts and had not commercial exchange with others, to the era of civilization that embodies the rise of industry and science and technology, owes human's freedom, will, and action.[1] However, the nature of social life requires that man's freedom and sovereignty will be limited to conditions, and a border is determined for it.

Cause in damage

The term "cause" has been applied in some civil texts, such as Articles 331 and 332, but no definition is provided for it. However, the Penal Code defines cause as follows: cause in crime is that human causes a loss or crime against another and does not directly commit a crime; so that if he did not present, the crime or loss would have not been provided. In other words, cause is a factor that normally leads to damage; however, if a factor, both in negative direction and positive, be effective in damage; that is, if it is necessary and inadequate condition, it cannot be considered as the cause of damage; because such factor merely creates the ground for damage and has no impact on its creation.[2]

The concept and conditions of external cause

Sometimes, civil liability is fault-based. In this case, the injured party must prove defendant's fault and causal relation between damage and the defendant's fault. The defendant is not obliged to prove something. However, authentication of external cause prevents the assignment of fault to the defendant, and sometimes interrupts the causal relationship between the defendant's fault and damage. So, provided that liability is fault-based, the defendant is not absolutely liable; because the causality between damage and harmful act - whether in strict liability (liability assumed) - is one of the basic conditions and foundations for civil liability; and the lack of mentioned element, results in lack of liability except in some cases where the law does not consider the interruption of causality relationship between fault and liability as effective negate of liability.

[2] - Hasan Ali Droodian, civil rights booklet, Faculty of Law and Political Science Press, 1992

The concept of external cause

Despite the fact that the term "external cause" has been introduced in Article 227 of Iran's Civil Code, no definition has been presented about it. Some lawyers also have provided classifications and conditions of external cause without offering a definition for it.[3] However, some others have defined the term; here some definitions are provided:[4]

"External cause is an event or condition that absolutely prevents the foreman to act willingly and so makes impossible doing the task or commitment. In these circumstances, the person who causes loss is not committed any fault. Thus, the commitment is removed from the perpetrator.[5]

"External cause of civil rights is defined as any event independent of undertaker's will which is out of possession and is not disposal and predictable".[6]

"External causes is an event that disrupts the causal relationship which the injured party has proven between damage and act."[7]

The conditions of external cause

Special descriptions and conditions must be completed so that external cause has an exemption effect.

Article 229 of the Civil Code states that "if through an event that disposal of it is outside the scope of authority, the perpetrator cannot afford its commitment, will not be sentenced to pay for compensation." Article 227 of the above Act provides: "When the offender is convicted of paying for compensation that he could not prove the lack of performing the commitment was due to external causes". Two mentioned articles refer to exemption from payment for compensation due to external causes unrelated to the perpetrator.

The external cause leads to exemptions from liability when two below conditions are satisfied:

1) Unpredictability
2) inevitability

If the external cause lacks these two conditions, it cannot interrupt the causal relationship between damage and harmful act. Thus, the loss remains attributable to the defendant and will not result in full removal of liability from him.[8]

Sorts of external cause

In civil law of some countries, kinds of external cause have been mentioned, but in some others, just the term "external cause" led to the exemption from liability has been stated without expressing kinds of it. Hence, the legal doctrine and judicial procedure sought to determine the types of external cause:

From clear wording of some laws, legal doctrine, and judicial procedure, it appears that kinds of external causes are as follows: 1) Sudden event or force major, 2) fault of the injured party, 3) the act of other person (the third party).

Some lawyers have stated that external cause typically includes the three mentioned types; however, even if the above three kinds have presented in law, do not limit external cause to the three mentioned kinds.[9] As the proceedings of the Egyptian civil law states: "external cause generally includes: sudden event or force majeure, fault of the injured party, and fault of the third party, but these types are not limited; if the injured party becomes ill or defect and loss has been incurred, these are considered the external cause".

Force majeure and its conditions

The term "force majeure" which comes from French, is used or referenced in some national laws explicitly. In general sense, the external force majeure event is unpredictable and unavoidable. In particular sense, force majeure can be referred to as unpredictable and unavoidable events which are not attributed to a certain person, but are raised from natural forces[10].

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[3] - Naser Katoozian, non-contractual obligations, Faculty of Law and Political Science Press, P. 488

[4] - Seyed Hussain Safaie, Civil Rights Foundation, P. 566

[5] - Hosseingholi Hosseini nejad, civil liability, First Edition, Tehran, 1999

[6] - Mohammad Jafar Jafari Langroodi, detailed in the terminology of Law, vol. 4, P. 2615

[7] - Seyyed Morteza Ghasemi Zadeh, Fundamentals of civil liability, Second Edition, Tehran, 2005

[8] - Seyyed Hussain Safaie, Civil Rights Foundation, p. 566

[9] - Seyyed Hasan Emami, Civil Rights, Vol. 1, Twenty-fourth Edition, Tehran, 2005

[10] - Seyyed Hussain Safaie, "articles on civil rights, force majeure", First Edition, Tehran, Mizan publication, P. 395

Islamic Penal Code which is derived from the opinion of jurists, states that: "in cases where the collision of two vehicles is outside driver's control, such as that caused by landslides or hurricanes and other natural factors, there is no guarantee."[11]

To realize the force majeure, event must be unpredictable. Unpredictable criterion is a "typical" one;[12] that is, if normal human is placed in defendant's conditions and circumstances, cannot predict the event. If the event is typically predictable, but due to low knowledge, recklessness, and negligence, the defendant is not able to predict it, citing to force majeure to remove defendant's liability is not possible. In this regard, some lawyers did not consider even normal human behavior adequate and stated that the event should be unpredictable for the most intelligent and the most knowledgeable people.[13] If there is no particular reason to think that when doing a task, such an event will occur, event is considered unpredictable; in other words, something unpredictable that its occurrence is unusual, sudden, and rare.[14]

Another condition of force majeure is the externality of harmful event, that is, harmful event cannot be assigned to the defendant or person and things responsible for it. However, there are two interpretations about the meaning of externality cause of damage:

1. Externality means that harmful event cannot be attributed to the defendant's fault and therefore damage cannot be attributable to the defendant.
2. Externality means that harmful event is out of defendant's activity scope. Hence, if the harmful event occurred in defendant's activity scope, even if defendant does not commit a crime, the event is not considered external[15].

The concept of fault

Iranian Civil Code has defined fault. Article 953 presents that: "fault is ranging from waste to abuse." Legislator defines abuse and waste, respectively, in two articles 951 and 952 of the Civil Code as follows: "abuse is aggression from permission or conventional against others' property or rights." "Waste is omission that by contract or conventional is required to maintain a person's property." In addition to carelessness, recklessness, and lack of experience, Islamic Penal Code has regarded failure to comply with government regulations as "fault".[16] In civil and foreign rights, many different definitions have been stated for fault. The definitions are based on personal and moral theory or on social and typical one.[17]

"Fault is defined as doing or not doing what is contrary to the conventional." Conventional diagnostic criteria would include: normal human behavior according to terms and conditions that the perpetrator is engaged in it.[18] The above criterion is an accurate one based on which there is no need that the perpetrator to be examined carefully and his internal conditions, awareness, consciousness, personality, and habits are taken into account; alternatively, the same treatment is described transgression for one person and non-transgression for another one. "Typical" criterion gives the same answer for all people; guilty about all people has unique concept; and is considered a social phenomenon, not a personal one; and accordingly, legal relations are organized. Having defined the fault, now we will summarize its elements.

Elements of fault

Some consider two elements of "mens rea" and "actus reus" for fault and some others consider a third element, named legal element for it:

1. The actus reus is manifested in behavior of the perpetrator. It is an act principally conducted by him.
2. The mens rea is perpetrator's will and, the power to change the course of affairs is at its discretion.
3. Performing legal element that can be called "act illegitimacy" is considered unacceptable in society and the people blame and scold the person who does that act.

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[11] - Mahmoud Najib Hoseini, Alagheh Al-sababieyh, 1983

[12] - Amiri Ghaem Maghami, the obligations rights foundations, legal events, Vol. 1, First Edition, Tehran, 2000

[13] - Hosseingholi Hosseini nejad, civil liability, First Edition, Tehran, 1999

[14] - Seyyed Hussain Safaie, articles on civil rights, force majeure, 1997

[15] - Naser Katoozian, General rules of contract, P. 207

[16] - Seyyed Hussain Safaie, Foundation of civil rights, obligations and contracts, vol. 2, Tehran, 1973

[17] - Seyyed Morteza Ghasemi Zadeh, Fundamentals of civil liability, Second Edition, Tehran, 2005

[18] - Ibid

Act of the third party

Act of the third party refers to behavior of someone who is involved in the occurrence of harmful event. A third party means a person other than the injured party, defendant, and everyone who is accountable and responsible for their acts. Therefore, worker to employer, servant to client, beginner to teacher, and.... are not considered the third party. As a result, employer, client, teacher, and so, cannot be cited as third party to be exempted from responsibility in terms of involvement of them.[19] For the act of third party is realized, it must be done by a given person.

The effects of external cause

The basic purpose of civil liability is full compensation for damages of the injured party; but this does not mean that to achieve this important, justice is ignored, leading to injustice. In other words, liability has two fundamental prerequisites:

1. The liable party must fully compensate for damages of the injured party[20].
2. Only the damage he has caused shall be compensated.[21]

Frequency of causes

Total multiple causes join hands and create damage. The role of each cause is such that if one of them does not exist, basically there will be no damageIf there are multiple causes and liable parties, compensation [22]. cannot be assigned to one of perpetrators, but it is allocated to all persons who caused damage, and all of them are responsible for it.[23] Frequency of causes and liable parties follows two issues: the first one is related to nature of responsibility of each cause and its basis and that how can the injured party ask for compensation from different causes: is it right to claim compensation by any person only to the extent that he had effective role in damage? Basically, it can be argued that each cause has created only part of the loss. So, if going to any loss cause is not possible, such as damage has emerged from force major and defendant's fault, the defendant is solely responsible for the part of damage that he has caused it.[24] The second issue is that supposing that each cause compensates for all damages of the injured party does not mean that each cause alone should bear all the losses; because despite that other causes has been involved in the creation of damage, legal logic and justice require other causes shared with him in compensation for damage; that is, payer is allowed to refer all damages. Here the second issue which is division of damage among multiple causes is presented.

The nature and legal basis for the obligation to compensate if the causes are multiple

After that causal role of each factor involved in damaging was proved, undoubtedly, the perpetrator is responsible for compensation for the injured party. But the main question is that to which extent is subject of the harmful act responsible? "Complete responsibility", meaning that the number of causes would not be exempt from responsibility even for minor.[25]

"Responsibility for the injured party", with the sense that the multitude of causes leads to exemption and decrease in part of the responsibility of each liable party; That is, each liable party is only obliged to compensate for part of the loss that had role in creation of itSo, in case of the multitude of causes, legal [26]. nature of the liable's obligation to compensate for damages is determined and explained as full or partial responsibility (that is, reduce liability and exemption is some part of liability). Full responsibility means that the multitude of causes does not lead to an exemption from responsibility, even partly.[27] By contrast, in partial responsibility, the multitude of causes leads to exemption and reduction of part of the responsibility of each liable party.

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[19] - Naser Katoozian, non-contractual obligations, Compulsory liability, vol. 1, Sixth Edition, 2008

[20] - Naser Katoozian, General rules of contract, vol. 4, Third Edition, Tehran, 2002

[21] - Asado-Allah Lotfi, compulsory liability, First edition, Tehran, Majd publication, 2001

[22] - Seyyed Hussain Safaie, Foundation of civil rights, obligations and contracts, vol. 2, Tehran, 1973

[23] - Naser Katoozian, non-contractual obligations, Compulsory liability, vol. 1, Sixth Edition, 2008

[24] - Majid Ghamami, predicting loss in civil liability, First Edition, Tehran, 2005

[25] - Mohammad Jafar Jafari Langroodi, "Legacy, inheritance", Fourth Edition, Tehran, 1996

[26] - Seyed Morteza Ghasemi Zadeh, Fundamentals of civil liability, Second Edition, Tehran, 2005

[27] - Asado-Allah Lotfi, compulsory liability, First edition, Tehran, Majd publication, 2001

Theory of partial causation (full responsibility, guarantying interests of the injured party)

Divisibility of causality is an important principle that partial causality theory is based upon it. In logical and practical terms, there is no obstacle to the implementation of this principle. Because each cause only plays role in part of damage, it is just responsible for that part, not all damages.[28]

The legal basis for two theories of full and partial causations in Iranian law

In cases where any one of multiple causes is effective in creation of damage and the collection of two or more causes leads to damage, the lawyers have different views for the quality of liables involved. Some accept "liability partnership" of each of multiple causes and believe that through referring each of them, the injured party can claim all damages.

This solution firstly is compatible with legal logic, because it is assumed that multiple causes create damages together and each cause affects another one. So, it cannot be said that a cause has led to only part of damage[29].

Secondly, in the case of multiple causes, each cause that is involved in damage is considered legal cause. Also, based on assumption, there is a causal relationship between the cause and damage. Again, any cause does not interrupt the relationship between damage and the other cause. So, each cause is alone liable for all damages to the injured party.

Others believe that the liability is divided between multiple causes and factors and each one is only required to pay part of the damages that has played a role in its creation.

To justify this opinion, below reasons can be considered:

Firstly, liability partnership is contrary to the principle and needs the legal letter; while there is no letter for multiple causes. So, liability partnership is not applicable for multiple causes.[30]

Secondly, although supposedly there is causal relationship between multiple causes and damage, this does not mean the creation of causation and impact of each cause on another lead to entire damage, because it is assumed that numerous causes create damage, totally. So, causation for all the causes is as a whole, and although a cause is effective in damage apart from other ones, does not lead to damage, alone.

Thirdly, proof of liability partnership for the persons who have caused harm together _ with the assumption that each cause is the final part of the complete cause_ is not correct; because this philosophical argument is not suitable to establish the actus reus of liability.[31] In addition, in charge of civil liability in multitude of causes which is true in three cases including accumulation in waste, accumulation in causality, and accumulation in causality and waste, the jurists have shown tendency towards the idea of "sharing" meaning "division of responsibility and compensation"; that is, whenever two or more people participate in damage, all are responsible for the injured party, but each one compensate for the injured party according to his share, with respect for the effectiveness of his act.

However, although the liability partnership has the advantage that if one of liable parties is absent, the injured party does not remain without compensation, but accepting it is not simply possible in Iranian law, because firstly, liability partnership is contrary to the principle and has exceptional character; so, it has not expandability. Hence, it can be only relied on cases where the regulator stipulates to the responsibility by virtue of necessity.

Secondly, assuming the responsibility for each cause is not accompanied with full responsibility for him, because each cause is responsible only to the extent that it was effective in damage. Based on assumption, in multitude of causes, all damages are not attributable to one cause as long as he is responsible for all damages.

Thirdly, according to the prevailing opinion of jurisprudence and acceptance of shared responsibility for multiple causes of injury, the current Islamic Penal Code has primarily finished the discuss and has bound all the people involved in the creation of damage to compensate for the injured party, equally. Islamic Penal Code states: "Whenever several persons cause injury or damage, they will be responsible for the compensation, equally."

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[28] - Abolghasem Gorgi, legal papers, V. 1, Second Edition, Tehran, 1994

[29] - Naser Katoozian, non-contractual obligations, Faculty of Law and Political Science Press, P. 495

[30] -Seyyed Hasan Emami, Civil Rights, Vol. 1, Twenty-fourth Edition, Tehran, 2005, p. 601

[31] - Abbas Ali Amidzanjany, causes of guarantee, P. 89

The impact of force majeure on civil liability

Force majeure is involved in damage in two forms:

1. Force majeure is the unique cause of harmful event; such that all damages are attributable to it and human factors do not interfere in it[32].

2. Force majeure is one of the causes of damage, and other factors are involved in result[33].

In each of these two cases, force majeure has a particular impact on civil liability. So, each case should be studied separately.

Force majeure as the unique cause of damage

If it is proven that damage claimed is solely a result of force majeure and defendant's act has not been effective in it, defendant's liability to pay damage is excluded.[34] According to the verdict, even if force majeure is the unique cause of damage, does not entail lack of responsibility for defendant. As in "non-contractual obligations" argument in civil law is stipulated: the violator is liable for any defect has caused at the time of appropriation of property, although is not documented by his act.

The effect of the injured party's fault on the civil liability in Iranian law

In Iranian law, the injured party's fault affects the defendant's responsibility. However, this effect is varied based on the type of defendant's responsibility. Hence, the impact of injured party's fault will be studied (1) in terms of the hypothesis according to which defendant's responsibility is based on fault, assuming that he has deemed responsibility, on the one hand and (2) in cases where the injured party himself or his relatives proceeds lawsuit, on the other hand.

The effect of the injured party's fault when the defendant commits a fault

If the injured party and the defendant both have committed a fault, liability is divided between them. There are two exceptions to this rule:

1. The case where the injured party's fault is considered as force majeure for the defendant, is exempted of the rule and must bear all the damages, because the injured party's fault interrupts causal relationship between the defendant's fault and damage, and it becomes clear that despite the fact that the defendant committed a fault, the fault did not have role in causing the damage and the injured party himself has created damage.

2. The case where the custom takes into account the injured party's behavior stronger and as the main cause.

The effect of the injured party's fault despite the assumed liability of the defendant

Here, it is assumed that the based on legal jurisdiction, the defendant is responsible for the harmful event, while he has not committed a fault, such as transport operators' responsibility for implicit commitment to deliver goods in a health manner. However, fault of the injured party is the unique cause of damage or one of the causes for damage. These two cases are reviewed below.

The injured party's fault as the unique cause of damage

If someone who has the assumed responsibility can be able to prove the fault of the injured party is the unique cause of damage, completely exempts from liability against the injured party. However, some authors believe that in this case, the injured party's fault must be characterized by force majeure in order for the defendant's responsibility can be completely negated; Otherwise, the responsibility will be divided between the injured party and the defendant.

The impact of third party act on civil liability

Third party's intervention in damage is possible in various forms. Sometimes this happens directly over personal act, whether through commission a faulting act or doing a non-faulting act which has causing role in damage. And sometimes this happens indirectly through other person's act; that is, by objects or persons.

Conclusion

In this paper, it was shown that conventional cause theory is the most appropriate criteria relying on which cause can be defined as follows: "cause" is a factor causing damage to another, normally and in accordance with the ordinary course of affairs; so that predicting damage is typically possible based on the experiences of everyday life. Therefore, when factors (such as condition and cause) are examples of this definition, are considered as "cause". Given the definition, sense of external cause can be achieved. It can be said that the

[32] - Seyyed Mostafa Mohaghegh Damad, Rules of law (civil sector), vol. 1, Third Edition, Tehran, 1992

[33] - Naser Katoozian, non-contractual obligations, Faculty of Law and Political Science Press

[34] - ibid, P.490

external cause is independent of the liable party and interrupts the proved causal relationship between harmful act and damage or at least undermines it. In the former case, the defendant is completely exempt from liability, and in the latter one, it becomes clear that the damage has two different causes; in this case, the external cause reduces defendant's responsibility. Thus, the role of external cause limits the scope of civil liability.

Force majeure is considered as the defendant's fault and the third party's act is regarded of external causes' kinds.

Externality in external cause means that external cause is non-assignment to the defendant, whether it is internal or external. Force majeure should also be unavoidable and unpredictable; however, this requirement is not necessary in other sorts of external cause, because in the presence of these circumstances, fault of the injured party and act of the third party are regarded force majeure in a general sense and are of its kinds.

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