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(Review article)

Role of Ethics in Civil Liability Focusing on the Principles of Carrier's Civil Liability (A philosophical-Ethical Study)

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Abstract

Background: Ethics are closely tied to people's beliefs, values, and ideals, and custom assumes a special sacredness for morality. The present study attempts to investigate the role of ethics in civil liability law and the ethical aspects of fault and compensation of damages arising from faults. Through analyzing ethics and its philosophy as well as investigating the ethical theories, the present study also aims to investigate the effects of ethics on civil liability theories. Moreover, by examining the contents of the first part, this study examines the principles of civil liability of the transport operator.
Conclusion: Regarding human's ethical liability, there are two main views in ethical philosophy. First, there is a retrospective view stating that human is responsible for his decision-making power and voluntary actions. Second view is a prospective one holding human responsible for the consequences of his/her actions. Much of the theory of civil liability is inspired by these two views. In the field of transportation, the legal relationship between the sender and the operator of the multimodal transport, under a single contract, is called the multimodal transport contract. The basis of transport operator liability in single-mode conventions is diverse. The basis of liability in The Hague and Warsaw Conventions is based on fault. As for the liability of operators of shipping terminals in international trade (1994), the Hamburg, CMR, CIM, Montreal and the United Nations Conventions are based on presumed liability.

Keywords: Ethics, Civil liability, Principles, Carrier

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Introduction

Ethics is closely intertwined with the beliefs, values and ideals of people, and it is treated in common law with special deference. Moreover, the law, including civil liability law that acts to serve individuals and society, cannot underestimate ethics, since otherwise it will not protected by sanctions.

This article poses the fundamental question, "Does ethics play a role in giving directions to civil liability law?" and considering the fundamental importance of the role of fault in civil liability law, depicts its ethical aspect. Then, after examining its divisions, the ethical principles are investigated. Moreover, since ethics is such a comprehensive and broad topic that can be discussed from different angles, and many aspects of ethics have been ignored so far, along with examining good faith and malice of the party at fault, some of the ethical aspects of fault that have remained uncovered will also be examined.

Damages is also the most important objective of civil liability law, and civil liability whether in its general form which is based on fault or in exceptional cases where it is strict and absolute, aims to compensate for the loss. Obviously, whenever the defendant intentionally commits an act, the legislator takes strict measures, and since the malicious act is against socially accepted ethics, under no circumstances can the malicious perpetrator escape from liability. The conclusion of the points discussed in the first section, forms the basis for the introduction to the second section of the article.

Investigating on this issue in the field of transportation, as an example, can be enlightening

Obviously, transportation plays a significant role in domestic and foreign trade. Nowadays, economic development seems impossible without participation in global markets, without the use of modern competitive technology and without an efficient transportation network. This so important from the economists' viewpoint that they view it as the skeleton and backbone of development.

According to the issues raised, the purpose of the present study was investigating the role of ethics in civil liability with emphasis on the principles of civil liability of the transport operator.

The role of ethics in civil liability

1. The meaning of ethics

The word for ethics in Arabic is "akhlāq" which is the plural of "khulq" (mood). Man is a being composed of a material body and an incorporeal soul. "khalq" (creation) refers to the physical characteristics of mankind and "khulq" (mood) refers to his spiritual and psychic characteristics. Put it tersely, it can be argued that "khalq" is the external and surface aspect of man and "khulq" is the inner character and nature of man. Attributes such as beautiful, ugly, reward and reproach belong to the inner nature, and this has been stated repeatedly in numerous hadiths. Characterizing "akhlāq" (ethics) and "khulq" by attributes such as beautiful (good) and ugly (bad), indicates that literally ethics does not have any positive or negative connotation or association, but conventionally it only refers to good and acceptable deeds and characteristics. In its idiomatic sense, ethics is "a state that has penetrated into the soul and that state of the soul causes it to perform its actions easily and without thought or deliberation" (1). According to Aristotle, "ethics is the study of excellence of character that is incorporated in the virtues of conduct" (2). "Ethics concerns knowledge about norms and directive ethical rules and knowing which conduct is good, right and acceptable, so recognizing which behavior is ugly, unfavorable and wrong depends on the science of ethics" (3). "It is knowledge about what nature the human soul has and that man can understand all states and actions that are intentionally issued from him are nice and laudable" (4).

2. Philosophy of ethics

Generally, the philosophy of ethics seeks to answer two main questions: First, what are the general principles that form the basis for such ethical concepts as good and bad? Secondly, what do they exactly mean? (5, 6)

According to a general classification that is traced back to the Greek philosophers, all human knowledge can be divided into two branches: theoretical and practical wisdom. Theoretical wisdom is the knowledge of the facts of things as they are.

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Theoretical wisdom concerns objects whose existence is outside the realm of human authority and free will; on the other hand, practical wisdom deals with objects whose existence depends on human will and authority. Thus, practical wisdom incorporates all knowledge that speaks of man's voluntary actions and which action of man is worthy of accomplishment and which one ought to be abandoned.

According to this popular classification into practical and theoretical wisdom, reason, which is at the top of perceptive faculties of man, is divided into theoretical and practical reason. Theoretical reason concerns knowledge about knowable issues that are not directly related to action. On the other hand, practical reason is concerned with knowing what things are proper and what things are improper, which is directly related to the field of human action.

With regard to practical reason, Kant holds that action means everything that is possible through freedom, a will that can only be compelled through lust, i.e. pathologically, is a purely animal will. However, a will that can act independently of lustful desires and through motives that only represent reason is called free will, and anything that depends on that will, whether as its basis or as its result, is called action.

Kant's philosophy of ethics is based on free will or freedom. The idea of freedom does not mean thorough and unconditional self-organization, but rather implies self-legislation in accordance with general law. Since Kant proposes a specific philosophical attitude towards man, in which freedom determines human destiny, he cannot be indifferent to the issue of responsibility. In fact, since the law of ethics is the epistemological dimension of freedom, and freedom is the ontological dimension of the ethical law, and the recognition and conception of the ethical law precedes freedom, and the existence of freedom and free will precedes the ethical law, man has a sense of duty immediately in his conscience and considers himself as having free will. Therefore, he must be accountable for his actions and intentions, both to himself and to others, and must experience responsibility as his intellect's capability to legislate. In other words, responsibility is the direct result of freedom (7, 8).

3. The role of ethical theories in orientating theories of

From the point of view of pure causality, everything in the world is destined and fixed; thus, freedom must inevitably be considered eliminated. Nothing happens in nature unless it is accompanied by a sufficient cause. From this perspective, even human actions, like natural phenomena, are necessarily fixed and determined. Accordingly, it does not make sense to judge people's behavior. Similarly, praising and commending people for their actions makes no sense. Because actually, it is not the person who performs the action, but nature is the primary cause behind the action and man is nothing but a simple instrument of natural necessity (9).

Nevertheless, most philosophers and ethicists have rejected this view, believing that, from an ethical point of view, human behaviors and deeds are either praiseworthy or reprehensible. All our actions, insofar as we view them as natural phenomena, that is, in their material sense, must necessarily take place and cannot be blamed or evaluated. Conversely, as soon as we attribute them to the conscious essence of man, the issue of evaluation makes sense.

Accordingly, in the philosophy of ethics, there are two major viewpoints regarding man's ethical responsibility:

From the first point of view, man is ethically responsible if, considering his behavior, character and personal traits, he deserves this. This retrospective view holds only those beings ethically responsible who have the authority to make decisions and whose character and behavior are voluntary. An action is voluntary insofar as it has two characteristics: first, it is done voluntarily, and second, it is not brought about by mistake and ignorance. In the philosophy of ethics, such an attitude is known as deontological ethics.

From the second point of view, man is deemed ethically responsible if his action brings about a change in him or his behavior, that is, it produces an outcome. This is a prospective view and always raises

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the question of what the future good of reproaching man is.

These two perspectives inspire much of the theory of civil liability. Some are retrospective and hold the defendant who caused damage liable for his misconduct and harmful acts in the past, and the aggrieved is entitled to damages because his or her ethical rights and interests have been violated. On the other hand, those with a prospective view believe that in civil liability, it is not a question of entitlement, but the ontological cause of civil liability that should be sought in its outcomes for society and the fulfillment of desirable and fruitful goals. Therefore, if it does not produce such outcomes, it should be abandoned.

Principles of Civil Liability

Doctrine-based diversity of principles

Civil liability is classified into the following types depending on whether the injured party ought to prove the guilt and causal relationship or not:

1. Liability based on proven fault

In which, firstly, the responsibility is based on the fault and secondly, the injured party must prove the fault of the agent causing the damage (10)

2. Liability based on presumed fault (presumption of fault)

In which civil liability is based on fault, but the fault of the perpetrator of the damage is presumed and the injured party does not need to prove it; instead, the burden of proof rests on the perpetrator of the damage. If he/she claims no fault, he/she must prove his/her innocence.

3. Strict liability (presumption of liability)

In this type of liability, which includes risk-based liability, not only is there no need for any fault and the liability is without fault, but also the legislator assumes the existence of a causal relationship and holds the apparent causal agent liable. If he claims to be unliable, he must prove the absence of a causal relationship, that is, prove that there was no causal relationship between his action or activity and the damage incurred, and this is possible only by proving act of God (10)

4. Absolute liability

In this case, the legislator assumes absolute liability for the agent causing the damage in such a way that even proving lack of causality does not absolve the defendant from liability. Hence, similar to the usurper liability in Iranian law, even by proving act of God the defendant may not be exempted from liability, (11).

In comparing the issues of obligation of means and obligation of result with the aforementioned types of liability, it should be said that in liability by means, the liability of the obligor is compatible with fault-based liability, in which it may be necessary to prove the fault of the obligor in breach of obligation or his fault may be presumed. However, obligation of result is compatible with absolute liability or presumed liability, because in obligation of result, it is argued that the obligor is liable as soon as the obligation is not fulfilled, unless he proves the presence of an external factor and act of God, which applies to strict liability too. Of course, if in obligation of result, the obligor guarantees that the result will be achieved, his liability is similar to absolute liability, and even proving act of God does not exempt him from liability (11)

Principles of carrier's liability

1. The Hague Convention (Brussels) 1924

Determining the principles of liability in The Hague Regulations is very complicated, as it contains examples of the presumption of fault and the presumption of liability. The first paragraph of Article 3 of this Convention obliges the carrier to exercise due diligence:

1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to:

(a) Make the ship seaworthy.

(b) Properly man, equip and supply the ship.

(c) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation." This leads liability towards presumption of fault and the first line of article 4 confirms this (10)

2. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy

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and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article 3. Whenever loss or damage has resulted from unseaworthiness the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this Article."

According to the second part of this paragraph, the carrier is presumed at fault in this Convention. In case of damage to the goods arising or resulting from unseaworthiness the carrier or other person shall be presumed to be at fault and thus shall be liable, unless he will be able to prove not to be at fault because of due diligence (12).

Some believe that the system of the Brussels Convention is a presumption of liability, because Article 4 of this Convention, in the second paragraph, lists seventeen cases, each of which proves that the carrier is exempt from liability and adds that if the carrier is to prove his innocence, he must prove one of the seventeen causes and circumstances, otherwise he will not be released from responsibility (13). This is not true, because first, according to paragraph 2 of Article 4 of this Convention, the carrier does not need to prove the occurrence of an external accident, but in the first place, only proving his innocence is sufficient for this purpose. Secondly, these seventeen cases of the second paragraph of Article 4 are included so that if the carrier could not prove his innocence, he would be allowed to be relieved of his responsibility by proving one of the seventeen factors (which are examples of the act of God).

2. Warsaw Convention 1929

Chapter 3 of this Convention is devoted to the liabilities of the air carrier. According to Articles 17-19 of this Convention, the air carrier is liable for damage during the carriage by air incurred to the passenger or cargo or the goods to be moved.

According to Article 20, paragraph 1, of the Convention: "The carrier is not liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures." Furthermore, according to the second paragraph of this article, "In the carriage of goods and luggage the carrier is not liable if he proves that the damage was occasioned by negligent pilotage or negligence in the handling of the aircraft or in navigation and that, in all other respects, he and his agents have taken all necessary measures to avoid the damage."

According to Article 20, it is clear that the carrier's obligation is an obligation of means and in case of any damage, he is presumed to be at fault and will be released from liability by proving his innocence (having taken all necessary measures to prevent damage) (14).

3. CMR Convention

Chapter 4 of this Convention, from Article 17 onwards, concerns the carrier's liability. According to Article 17,

"1. The carrier shall be liable for the total or partial loss of the goods and for damage thereto occurring between the time when he takes over the goods and the time of delivery, as well as for any delay in delivery.

2. The carrier shall, however, be relieved of liability if the loss, damage or delay was caused by the wrongful act or neglect of the claimant, by the instructions of the claimant given otherwise than as the result of a wrongful act or neglect on the part of the carrier, by inherent vice of the goods or through circumstances which the carrier could not avoid and the consequences of which he was unable to prevent."

Since the proof of each of the above cases is the responsibility of the carrier and he must prove that the damage was caused by one of the factors mentioned in Paragraph 2 of Article 17, in this Convention, according to Paragraph 1 of Article 17, the carrier's liability is presumed. In other words, as soon as the goods in question are damaged, the carrier will be considered liable and if he wants to be relieved of liability, but not to prove innocence, he needs to prove the occurrence of one of the above factors, which are considered Act of God with regard to the carrier.

4. Montreal Convention (1999)

This convention is a comprehensive text incorporating the Warsaw Convention and its amend-

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ments, along with changes and innovations in international aviation. Chapter 3 of this Convention, in Articles 17 to 37, deals with the air carrier's liability. According to paragraphs 1 and 2 of Article 17 and paragraph 1 of Article 18 of the Convention "The carrier is liable for damage sustained in case of death or bodily injury of a passenger … for damage sustained in case of destruction or loss of, or of damage to, checked baggage … upon condition only that the accident which caused the death or injury or damage took place on board the aircraft or in the course of any of the operations of embarking or disembarking." (15)

However, based on Article 20 of the Convention, "If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage." Therefore, in this Convention, the carrier is presumed to be liable and merely proving that he was not at default, does not relieve him of responsibility. (15)

First, in spite of the rule laid down above concerning the damage incurred by the delay in the carriage by air, the carrier is presumed to be at fault, not liable. Because if the carrier proves that he and his servants and agents took all measures that were required to avoid the damage he will be exonerated from his liability (Article 19 of the Convention) (15)

Second: Regarding the damage to the baggage, this Convention distinguishes between two cases. If the baggage has been checked before shipment, like the cases for the passenger and other goods subject to shipment, the carrier is presumed liable for the damage, but in the case of unchecked baggage, the carrier is liable if the damage resulted from his fault or that of his servants or agents. Hence, in the latter case, the claimant must prove the fault of the carrier (paragraph 2, Article 17 of the Convention). (15)

Responsibility of the transport operator in Iranian law

The resources available in Iranian law, regarding transportation and the carrier's liabilities are Civil Code, Commercial Code, Maritime Code and the law specifying the limits of liability of Iranian airlines in domestic flights, etc. Since these laws have laid down different principles for the carrier's liability, they should be explored one by one.

Before examining these laws, it should be noted that while discussing the principles of the carrier's liability in Iranian law, we must distinguish between domestic and international transport. With regard to international transportation, Iran has entered into several international conventions. Therefore, if a lawsuit is filed in the Iranian court regarding the carrier's liability in international transportation, the court must consider the lawsuit and make a decision based on the international conventions ratified by Iran. However, in domestic transport cases, international conventions are not applicable and domestic law and regulations must be applied. Therefore, the main subject of this article is the principles of the carrier's liability, regardless of the provisions of the conventions to which Iran is a party, which are binding in the country like the domestic law.

1. Civil Code

The Civil Code mentions the transportation contract in issues related to hire of persons and considers it as a kind of hire, which is an irrevocable contract in nature and neither party can terminate it without the consent of the other, unless options are included (16), According to Article 513 of Civil Code, "The principal divisions of contracts of hire of persons are the following: 1) The hiring of servants and workers of all kinds; 2) Contracts for the employment of persons who contract for the carriage of goods, whether by land or sea or air."

This article considers the carrier as hireling (ajir) hired by the owner of the goods and considers the owner of the goods as the hirer (musta'jir). Article 516 of Civil Code holds, "Contracts for carriage whether by land or sea or air, involve the same engagements in regard to the protection and the care of the things entrusted to the carrier as those laid down for contracts of bailment; therefore if excessive usage or abuse takes place, (that person) shall be responsible for the destruction or the damage to the thing who received the thing for transporting;

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and this responsibility shall attach to him from the date of delivery of the things." In this Article, the career is held as a trustee; accordingly, the possession by the carrier, like any other hired party, is considered as trustee possession and is subject to the rules related to deposit. So, in case of loss, vice or defect of the merchandise, it has no responsibility towards the consignor, except in case of excessive usage or abuse. This is generally a characteristic of trustee possession. Thus, it should be noted that the non-liability of the carrier is taken as a presumed principle, unless excessive usage or abuse is proven. So, in any case of an owner of the goods versus a carrier, in order to prove the carrier's liability, the consignor must provide evidence demonstrating excessive usage or abuse by the carrier and must prove the fault of the carrier in order to be compensated (17)

Also, in Articles 1015 (responsibility of the trustee), 1238 (responsibility of the guardian) and 640 (responsibility of the borrower) of Civil Code, the legislator has presumed fault as the basis for civil liability. In Article 953 of Civil Code "Fault includes excessive use and abuse." Therefore, in case of excessive usage or abuse, the carrier will be liable for the loss or damage of the items delivered to him for transportation, and this liability begins from the date of delivery of the items.

Article 335 of Civil Code, also, involves shared mistakes and faults, and holds, "If a collision occurs between two ships, trains, motor other vehicles responsibility will lie with the person whose intentional act or carelessness caused the collision, and if two parties were so responsible for the collision the responsibility will attach to both of them." In this collision, responsibility is based on fault and the plaintiff needs to prove the fault.

2. Commercial Code

The Commercial Code has taken a completely different approach from the Civil Code. While in Article 516 of the Civil Code, the non-liability of the carrier is the principle and presumed unless his excessive usage or abuse is proven, in Commercial Code, the principle is the carrier's liability, unless his innocence is proven (16)

Article 386 of Commercial Code on carriage contract determines the carriers' liabilities: "If the goods have perished or are lost, the carrier is responsible for their value, unless he can establish that the loss or destruction resulted either from inherent defect in the goods, or from a fault of the consignor or consignee, or from instructions given by one of them, or from an act of God."

Based on this article, if the owner of the goods proves that his goods have been damaged, the carrier is presumed responsible. To prove the carrier's liability, proof of his fault is not required, and proof of innocence does not absolve him from responsibility. However, he only needs to prove that the cause of the damage was an external factor that cannot be attributed to him or to prove that it was due to an incident that even a careful carrier was not able to prevent (an unpredictable accident) and thus he can be relieved of responsibility. Therefore, this Article presumes liability for the carrier (10).

Another different approach in Commercial Code is that while the Civil Code (Article 513) considers undertaking carriage as a type of hire of persons, the Commercial Code considers it as a subdivision of the agency contract (18).

Apparently, the consignor is considered as the principal, and the carrier is regarded as the agent, which, in principle, leads a revocable carriage contract that can be rescinded by either party. As is stated in Article 382 of the Commercial Code, "The consignor may retake the goods as long as they are in the hands of the carrier, by paying the latter's expenses and any loss he has suffered." The contents of this Article refer back to the revocability of the carriage contract and are in accordance with the provisions of the agency contract because the principal can rescind the agency contract during the action of the agent, but he is obliged to pay all the expenses as well as any damage to the agent, which were incurred by the agency contract. On the other hand, in some related Articles, this contract, in relation to some effects and judgments, is differentiated from the provisions of the agency contract and is given a special status. To sum up, it can be said that except for postal transportation, the lease contract has neither the nature of a lease nor the nature of an agency contract. Rather, it is in its own right a particular type of contract established in modern Commercial Code. In the absence of a particular

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text, the lease contract is subject to the provisions of the agency contract and derives its effects and judgments from this contract in cases not specified by the Commercial Code (Articles 383, 384 and 394 of the Commercial Code).

The analysis of this article (Article 386 of the Commercial Code) should be done according to the contractual nature of the relationship between the carrier and the owner of the goods. In this article, the carrier's obligation is an obligation of result, that is, the carrier undertakes the delivery of the goods safely at the destination point, and therefore if they are lost, vice or damaged at the time of delivery, it is presumed that the carrier has not fulfilled his obligation and will therefore be liable (17). In order to be released from liability, it is necessary for the carrier to prove the presence of an external factor or incident, and not only is it not necessary to prove his fault, but proving his innocence does not absolve him of responsibility.

In Article 388 of the Commercial Code, "The carrier is liable for all loss or damage during carriage whether incurred by him personally or another carrier employed by him." In this article, in addition to being responsible for accidents during transportation, the carrier is also responsible for the actions of his agents and workers. Thus, the carrier, whether the actions of his agents and workers are intentional or accidental, is responsible for their actions towards the owner or consignor. At the end, after paying the damages to the owner of the goods, the carrier can refer to his agents and workers (15).

Apparently, the Civil Code (Article 516) and the Commercial Code (Article 386) have followed different principles. In the Civil Code, liability is based on proven fault and in the Commercial Code, presumed liability is set. Therefore, some scholars, considering that undertaking transportation is a commercial matter, have considered Article 386 of the Constitution as a countermand to Article 516 of the Civil Code. Some other scholars (ibid. 415) argue that putting together these two principles, according to public law, whenever a contract obliges a person to do something and he does not fulfill his obligation, non-fulfillment of the contract is a kind of fault. Hence, the law holds anyone who does not comply with the terms of the contract, at fault and liable for the damages incurred, unless he proves that he was not at fault and that an external accident prevented him from fulfilling the promise (Articles 227 and 229 of the Civil Code).

Therefore, whenever someone promises to deliver property safely to a place, if the property is lost, he has not actually fulfilled his promise and it is presumed that he is at fault, unless he proves otherwise. The Civil Code follows the customs, especially international customs, related to the carriers, and considers the carrier to have an implicit obligation to deliver the goods safely to the destination. Because according to Article 225, "If certain points that are customarily understood in a contract by customary law or practice are not specified therein, they are nevertheless to be considered as mentioned in the contract." Thus, because the carrier has not fulfilled his obligation in case of loss of goods, he is at fault due to violating the provisions of the contract, unless proven otherwise, that is, there is no difference between Civil Code and Commercial Code regarding principles. Both of them consider the party at fault, as liable, and both presume the person who has not fulfilled his obligation is at fault. The only difference is that the Commercial Code considers the obligation to transport the goods to be implicitly contained in the obligation to deliver the goods safe and sound, and based on this premise; it also presumes the carrier at fault, unless proving otherwise (17).

Furthermore, if we believe in the theory of countermand, countermand will be a partial one and will replace the Civil Code only in commercial transportation, so in non-commercial transportation, Civil Code still applies (10)

3. Maritime Code

The Maritime Code (enacted in 1964) is similar to Brussels Convention (The Hague Regulations) in terms of the principles of liability, since it derives its provisions on liability directly from that Convention.

According to Article 54 of the Maritime Law, the carrier shall be bound before and at the beginning of the voyage to exercise due diligence to make the ship seaworthy, properly man, equip and supply the ship, and make the holds, refrigerating and cool chambers, and all other parts of the ship in which

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goods are carried, fit and safe for their reception, carriage and preservation.

According to Article 55 of the same law, the carrier shall be liable for loss or damage arising or resulting from unseaworthiness and not exercising due diligence to prepare the ship for navigation, and meet its needs. This paragraph also adds, "Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier." In the second paragraph of this article, a series of factors and conditions are foreseen that by proving them, the carrier is released from responsibility. These factors are similar to act of God. Putting together these provisions, scholars have not reached a distinct conclusion. Some consider the liability of the sea carrier to be based on fault as stipulated in the Civil Code. Others argue that in the Maritime Code, as in the Commercial Code, there is a presumption of liability for the carrier, because in a consignor or consignee's lawsuit against the carrier, it is not enough for the carrier to prove that he was not at fault, but must prove that the incident has resulted from an external factor that is not related to him (11).

As stated earlier while discussing the Brussels Convention, and in the Iranian Maritime Code, the obligation of the sea carrier is the obligation of means. However, the law presumes fault in the event of incurring damage. Therefore, liability is based on presumed fault and the carrier is exempted from liability by proving the exercise of due diligence to prevent damage (i.e. innocence). Paragraph 2 of Article 54 deals with the cases in which the carrier cannot or will not want to prove innocence. In this case, by proving one of the factors mentioned in that article, he will be released from responsibility.

Conclusion

In the civil liability law of Iran and several other countries, fault has constantly been considered as a crucial principle. With regard to the motivation and intention of the party causing damage, there have been divisions of fault based on good faith and malice, and this, results from its adherence to ethical standards. In cases where a person intentionally harms another, he/she is criminally liable due to his/her malice and is obliged to compensate all financial and emotional harm. In some countries, the actions of the person at fault increase the scope of civil liability. Obviously, considering such arrangements is an immediate effect of ethical principles.

In the modern theory of fault, by substituting social criteria for personal criteria, there has been more emphasis on struggling against oppression, egalitarianism, and non-exploitation of individuals and finally the realization of social justice in order to meet the major and basic goals of ethics. Hence, not only has the new theory of fault not moved away from ethical concepts, but also using new mechanisms, it has played a significant role in further flourishing of goals of ethics. Accordingly, in all the developments that have taken place in the theory of fault, in the formation of the theory, the role of ethics as an important basis is undeniable.

Regardless of the ethical basis of fault, compensation for emotional harm is inherently an ethical act, and violating rights related to emotional dimensions such as dignity, freedom, honor, and so on, is obviously unethical.

Civil liability may be divided into the following types considering whether the burden of proving the fault and the causality rest on the injured party:

- Liability based on proven fault,
- Liability based on presumed fault,
- Fault based on strict liability (presumption of liability) and,
- Absolute liability.

The principles of carrier's liability in unimodal conventions are diverse. The principle of liability in the Hague Convention (Brussels) 1924, and the Warsaw Convention 1929 is based on fault. The Hamburg Convention1976, the CMR Convention, the CIM Convention, the Montreal Convention1999, and the United Nations Convention on the Liability of Operators of Transport Terminals in International Trade 1994, are based on presumed liability.

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Article 16 of the Combined Transport Convention is based on the theory of presumed fault. According to this article, liability rests on the carrier if the occurrence which caused the loss, or damage took place while the goods were in his charge and there was a causal relationship between his fault and the factors causing damage, and it is proven that the harmful event was the result of an act of the carrier and not the result of an external factor. However, the need to prove the inevitability of the external accident that caused the damage makes the principle of liability closer to the presumption of liability and turns it into the presumption of liability.

In Iranian law, the available resources regarding transportation and the carrier's liability are the Civil Code, the Commercial Code, the Maritime Code and the law determining the limits of responsibility of Iranian airlines in domestic flights. The Commercial Code and the Civil Code have taken completely different approaches. While in Article 516 of the Civil Code, non-liability of the carrier is a principle and is presumed, unless his excessive usage or abuse is proven, in the Commercial Code the carrier's liability is the principle, unless his innocence is proven. Apparently, these two articles (Articles 516 of the Civil Code and 386 of the Commercial Code) have followed different principles, but the content of Article 386 of the Commercial Code is also included in Articles 227 and 229 of the Civil Code. This article, which generally applies to all obligations, holds that the violator of the obligation will be sentenced to pay damages when he fails to prove that violation of the obligation was due to an external cause, i.e. an incident that was beyond his authority, and hence unavoidable. Therefore, putting together these two articles, it can be said that whenever a person is obliged to do something according to a contract and does not fulfill his obligation, non-performance of the contract is a kind of fault and the law considers the person who does not comply with the provisions of the contract, at fault and liable for the damage incurred, unless he proves that he is not at fault and an external incident has prevented him from fulfilling his obligation.

The Commercial Code complies with the customs, especially international customs, related to the carriers, and considers the carrier to have an implicit obligation to deliver the goods safely to the destination. Thus, there is no difference between Civil Code and Commercial Code regarding principles. Both of them consider the party at fault, liable, and both presume that the person who has not fulfilled his obligation is at fault. The only difference is that the Commercial Code considers the obligation to transport the goods to be implicitly contained in the obligation to deliver the goods safe and sound, and based on this premise, it also presumes the carrier at fault, unless proving otherwise. The principle of liability in special regulations of Iranian Maritime Code and the law specifying limits of Iranian airlines in domestic flights is presumed fault.

Ethical Consideration

Ethical issues (such as plagiarism, conscious satisfaction, misleading, making and or forging data, publishing or sending to two places, redundancy, etc.) have been fully considered by the writers.

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