
The Civil Liability of the Notary Public in the Legal System of the IRI

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ABSTRACT

In the civil law, instead of official and liability, Guarantor or guarantee have been used because in Islam, the liability to compensating damages has been interpreted as guarantee and by guarantee, it means the credit confirmation something which has debts to someone by the decree of the legislator. In this line, the liability of notary public in the legal system of the IRI is investigated. The results indicate that the notary public in the form of the person liable to the Organization for Registration of Deeds and Properties, the civil liability of the notary public to legal and private persons, civil liability of the notary public for third parties and civil liability of the notary public to owners of documents and individuals benefiting civil liability.

Keywords: *Civil Liability, Notary Public*

Civil liability is a kind of liability which emerges to creating damages and makes the person causing damages to compensate damages. Civil liability means the liability of compensating damages. In this line, the organization of the present article is in the form that after the introduction, the theoretical framework and review of literature are presented and after that, the civil liability of the notary publics in the form of the liability of the notary public to the Organization for Registration of Deeds and Properties, civil liability to legal and private entities, civil liability towards third parties, and civil liability to owners of documents and beneficiaries, and finally, a conclusion is provided.

REVIEW OF LITERATURE

Liability means responsibility and refers to the responses of a person who has been burdened by some commitments and duties from which he or she should not deviated, whether these commitments are legal or moral and spiritual (Saffar, 1994).

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In the civil law, instead of official and liability, Guarantor or guarantee have been used because in Islam, the liability to compensating damages has been interpreted as guarantee and by guarantee, it means the credit confirmation something which has debts to someone by the decree of the legislator. Therefore, with a little thinking, it can be said that the issue of exemption from liability or immunity which is conventional in the legal literature has been used in the present study and is consistent with types of guarantee in jurisprudence (Rostami and BahadoriJahromi, 2009). In this line, civil liability is a kind of responsibility created for compensating damages and makes the producer of damages to compensate them. Civil liability means the responsibility of compensating damages (Jafari Langroudi, 1999).

KnorTabrizi (2007), in a study investigated a criticism of the liability of notary publics in the legal system of Iran. The results of his investigation indicated that there should be some strategies in order that a balanced status can be dominant over the legal system of notary publics in Iran and liability can be distributed among notary publics and the staff.

Razmi (2011) in a study investigated the civil liability of the notary publics. The results indicated that the liability of notary publics have been determined regarding Articles 22 and 23 of the Law of Registration of Deeds and relying on public principles of civil liability.

Therefore, everywhere a person is responsible for compensating the imposed damages, there is civil liability. The historical root of civil liability, as other fields of law, should be searched in Rome because the legal history of Romans started from the 8th century BC and continued up to 6th century AD at the time of Roman emperor Justinian.

HISTORY OF CIVIL LAW IN IRAN

Civil law in each country is the main axis of the legal system of that country based on which all rules related to contractual relations and outside the conventions of that society are founded. Criteria and decrees of civil law are even effective on penal affairs particularly in cases which penal liability results in civil liability and criteria accepted in the civil law are applied. A lot of principles of civil law are also referred to in public law and in general, it can be said that legal principles are reflected in the civil law of each country and is reflected in all legal fields of that country and in fact, criteria, principles, and decrees of civil law are like blood running in all limbs of the legal system of each country. And this task is burdened on the civil law which is considered as the hearth of the body. Accordingly, in all countries, in codification of civil law, a lot of accuracy is considered and therefore, greatest lawyers who are dominant over legal concepts and criteria and values of the society and even other legal systems are used. In a lot of cases, the highest authorities of each country supervise the process of codification of civil laws directly. In late 1920 (1305 AH), Ali Akbar Davar was appointed as the Minister of Justice in the amendment of Mirza Hassan Mostofi's cabinet and he dissolved the Justice of Tehran in the first day of his appointment (Agheli, 1990: 23). In May 1917, the new Department of Justice was set

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up in Tehran but not completely and at the same day, Reza Shah commanded Mostofi al-Mamalek to dissolve Capitulation in a year and several days later, Davar, Minister of Justice declared the decision of dissolving Capitulation to Germany, Italy, Nederland, Switzerland, and Spain and declared that this issue would be realized one year later in 1922. Therefore, until that date, the civil law of Iran should have been written (Legal Deputy of Assembly Affairs). In this line, civil law started its own current life with the codification of its first volume in 1918 regarding exchanges and then, in 1934 and 1935 about personal affairs and evidence of confirmation, something considered in codification of civil law with accuracy was reliance on rules of Islamic Law and Jurisprudence of Imam Jafar and 12-Imam Shia along with consideration of advances in technology, transportation, communication and urbanization on the one hand and the increase in social exchanges and deficits existing about civil liability in Iranian rules. Therefore, lawyers were to codify a law about civil liability whose function was to connect the above mentioned facts and prevent from their conflicts and suggest the law to the Assembly. At last, this law was approved by the National Assembly in April 1960.

In this line, in the legal system of Iran, the first law of Registration of Deeds was approved in the National Assembly in 1920, according to which offices of registration of deeds were responsible for registering individuals' exchanges without any name of notary publics in the law. At last, in the January 1929, the first law of setting up offices of notary publics was approved in 20 Acts and the Ministry of Justice was allowed to set up notary publics in some regions. But in exchanges related to registered non-movable properties was under the exclusive control of the registration of deeds offices. At last, according to the law approved in 1938 and then, the law approved in 1975, the duty of regulating documents was burdened on notary publics. After selecting a person as the notary public and during a ceremony as well as depositing guarantees according to Article 9 of the Law of Notary Public and Registration Deeds approved in 22 January 1975, and regarding Article 75 of Law of Registration Deeds and Paragraph 1 of the set of registration regulations, the notary public must set up his or her office during 3 months and start working. According to Paragraph 16 of the same regulations, he or she should be at work except in vacations and holydays (KnorTabrizi, 2007). Referring to history, in first days of the history, law in its current sense was not dominant over social relations and individuals observed the right of each other to some extent (SoltaniNejad, 2001: 105). But after the advent of schools having emphasized the role of law, rights and duties of individuals were determined and regulated under the law. Therefore, each duty is based on law and therefore, theoretical basics of legal institutions were considered.

CIVIL LIABILITY OF NOTARY PUBLICS

The principle of the necessity of compensating damages

The loss or damages can be demanded which the custom or law considers it as loss, while to what loss the notary public is liable can be answered by considering the act under Article 22 of Law of Notary Publics (the claim related to damages caused by deviations of notary publics or

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the staff will be under general rules and regulations) stating that the possible damages must be compensable both in terms of convention and the law and the loss caused by violating the legitimate rights can be demanded (Katouzian, 1999).

Civil liability of notary publics to owners of documents and beneficiaries

The duty burdened on notary publics is totally based on legal regulations and the specific and proper results of those who refer to notary publics depends on the observation of the duties which the law has assigned for notary publics (Article 30 of Law of Notary Publics, 1975).

Civil liability of notary publics to third parties

Sometimes persons involved in regulating documents are legal agents such as advocates or guardians. Therefore, notary public should have liability to the legal agents of persons, but this right is merely a single right as indicted in the case of legal persons (Ghahramani, 1998), and owners of rights are in line with each other and have no right to claim separately and independently. In addition, legal agents have original rights and as soon as they intervene in the subject, they have no right to claim.

Therefore, if legal agents have no required conditions, the notary public have no liability to them. However, the legal basis of liability of notary publics to legal agents does not refer to the liability of notary publics to the original and is not a separate issue (Naebi, 2004).

Civil liability of notary publics to legal and private persons

No difference should be about civil liability of notary publics to legal and private persons and this liability is general in such a way that each person who is damaged due to regulating documents in notary publics, regarding the principles of liability, has right to claim compensation of the damage (Ghahramani, 1998).

Civil liability of notary publics to Organization for Registration of Deeds and Properties

The civil liability of notary publics to Organization for Registration of Deeds and Properties is the commitment to observing rules and regulation which assigned in the framework of legal regulations for him or her including systems, regulation, supervision, and investigation of performances of notary publics and pursuit of them because of violations and deviations, guarantees which notary publics are to observe them (Naebi, 2004).

CONCLUSION

Civil liability is a kind of responsibility for creating damages and losses and the imposer of damages must compensate losses. Civil liability means the responsibility of compensating damages in such a way that at late 1926, it was presented and in 1960 it was approved and performed. The first law of Registration deeds was approved by the second Assembly of Constitution in 1911, according which the first law of setting up offices of notary publics was

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approved in 20 Acts and the Ministry of Justice was allowed to set up notary publics in some regions. But in exchanges related to registered non-movable properties was under the exclusive control of the registration of deeds offices. In this line and according to civil liability, notary publics have been burdened by civil liabilities to the Organization for Registration of Deeds and Properties, civil liability to legal and private entities, civil liability to third parties, and civil liability to the owners of deeds and beneficiaries.

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Conflict of Interests

The author declared no conflict of interests.

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