

Injured party's role to mitigate damages

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Abstract: The injured party's obligation to mitigate damages is an accepted principle in common law, which is a defense by the claimant's liability. The implication of this principle implies that the injured party has to officially prevent the damage or alleviate its expansion. If the claimant can prove their neglect, the claimant will be exempt of the compensation. On the one hand, this analysis of the agent in our law shows that the enforcement of this principle is logical and simple, and on the other hand, the main realm of the agreements would be unfeasible. The damage treatment principle includes the necessity of the agreed subject in our law and the main compensation instead of the main agreement in common law. One interpretation illustrates the common principle in two systems is different without affecting the necessity of the claimant's conventional treatment.

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Introduction

In all legal systems, the major task of law in society is the prevention of the harmful acts and the proper measures to compensate the damages, thus, if we say that the two other law principles in respect to tenure and enforcing of contracts, it is counted on the civil law, which is not exaggeration. Despite the legal protection objectives of the civil liability provisions of the injured party, there is the compensation for the damage under the civil liability on the amount of the loss by the injured party or its role in increasing it. One important and controversial issue is "social engineering" in the field of civic responsibility in the context of the time and particularly the formation of the Industrial Revolution and the subsequent increasing risks in the different legal systems.

Sometimes the damage is caused by the fault of responsibility (commitment) and the only damage causation is the external causes (third-party actions, blame on the injured party, Court of Cairo) and sometimes in multiple causes, the occurrence of losses is involved. The argument is that the entrance to the injured party's liability may play a role for compensation from other cautions or the fault of the injured party that is called the liability and shall be exempt. In other words, the claimant's loss could be attributed to the injured party's fault and their influence on the rate of losses rather than their deductible demand.

Here we point out how the injured party's fault and their agreement and the role of the injured party's measures to confront his actions (dealing with damage) and the doer's fault has harmful act in the event of damage to be compensated. Does the person provide their own urge in this regard to know the other party as liable and require compensation?

Our national legislator in relation to the subject of this study, however, pursuant to paragraph 3 of Article 4 of the Civil Liability Act 1339, without mandating on the courts has given the authority to the courts to provide facilitation on the damage for the injured party and intensifies the damage, for which the damage doer gets discount. The compensatory damages mitigate the loss rate under justice according to conditions of each event, but this indisputable benefit has some defects. On the other hand, Article 365 of the Islamic Penal Code enacted in December 1991, the legislator consider the effect rate on both injured party and loss agent given the occurrence of loss to the injured party, as notes that:

If some people get damaged or injured, they are equally liable for the damage.

Only in Article 165 of the marine law enacted in October 1964, the legislator knows the damage to the injured party's fault to compensate. This legislative multiplicity and the lack of clear explanation by the scholars of law not only has caused difficulty to get a general rule among the solutions, but in practice has led judges to decide ignoring the injured party's loss to themselves and the loss agent would wrongfully compensate the injured party for all losses incurred by the injured party and the loss agent is condemned to compensate all damages to the injured party unjustly and through this the justice goes wrong. But another rule in common law is universal and the theory is that the claimant cannot request for compensation that they could avoid the losses by common measures. Here it is in contrast of the previously mentioned cases as the liability disciplines are necessary and clear to compensate the losses resulted by fault or violation. Still the claimant may avoid totally or a part of the loss who is not commendable to receive the compensation.

First Discussion: Rule Concepts and Principles

According to the responsibility assignment, the damage mitigation rule obliges the injured party to avoid further damages by performing the conventional measures.

In examining the provisions of the rule, two main issues remain:

Where does the responsibility to avoid damage occur and what is the basis of this task?

What is the purpose of the conventional measures and what are the criteria to recognize it?

1. Responsibility assignment to prevent losses

The reliability defendant can reduce their liability by the claimant's called for the execution of the task to avoid damage.

In English law, the obligation or duty to the injured party is in doubt.

The first question that arises in our law is that where the obligation arises? Since the emergence of a duty or obligation would cause responsibility on violation. The issue of the question is brought in the rights of common law, as how the claimant's reliability (injured party) and there is no right for the defendant (injurer party) to oblige?

Certainly, one could not say that the claimant has the right to ask the court to have the defendant's obligation to perform the conventional measures on the damage. If the defendant does not have this right, how could we speak of the defendant's right? Such problem is based on the writers' definition for the definition of the liability.

If the obligee's obligation right for the definition is mentioned, we cannot speak of the claimant's liability. Therefore, some authors have known it wrong and emphasized on the claimant's obligation to mitigate damages and they have warned that the injured party's sanction to inaction that does not allow for compensations and this liability is avoided.

Judge Pearson's lawsuit against Varan decided in this regard: It is necessary to assess the true nature to rectify the task of mitigating the damages:

The claimant under any contractual obligation would not adopt for the cheaper methods.

If they want to choose a more expensive and absolutely free way, by doing this, they have not committed any fault or any other person.

The real meaning of this rule is that the claimant cannot consider reasonably adjusting losses to impose compensation, and in other words, they are perfectly entitled to any excessive and wasteful paid amount, but they cannot do that by their own expense.

2. Liability limits to avoid losses

The injured party shall perform some measures to avoid and prevent damages. However, this task is not

unlimited and unconditional. These measures should not be costly with adverse risks or ethical effects.

Subject to paragraph 1 of Section 3.5 of the developed rules of the US Law 1979:

The compensation claim is for the damages, which the injured party could avoid without risk, hardship or undue humiliation. The conventional issue is the matter in all conditions and circumstances on one case, hence the injured party's financial resources and his knowledge on any breach of contract or harmful act, would incur the cost to sustain the damage avoidance particularly.

Since the emphasis of the loss mitigation rule, the defendant claims that the claimant has had sufficient time to avoid loss and has neglected and is subject to the burden of proving the claim.

It is not easy to provide proof, because at first the defendant is in the agreement breach situation and cannot expect the rightful claimant to perform special measure. Therefore, it is reasonable to act to mitigate the damage narrowly.

Second, the proof on the conventional measure is subject to the knowledge of all conditions and circumstances on the defendant, it is particularly difficult in these economic relations and contracts.

The rights of the common law mainly rely on the rule due to the conventional demand. The study on the judicial decision and analysis generally implies that the legal system is based on the precedence of the legal records. The illustration of what the courts face in the particular circumstances of each case, the conventional principles are considered as guidelines for the parties and the jury and the main competent reference is the avoidance of the damage.

Second discussion: Scope of Rule Enforcement

The rights of the common law, whatsoever, rely on the general agreed responsibility, but the jurisprudence process is performed in both cases and some authors have described the regulations in both areas.

1. Scope of coercive liability

The liability enforcement mitigates the damages in the scope of the coercive liabilities which means that the signified damage and the civil liability of the doer has proved and in some cases the damage signification chain has begun.

The civil liability is examined due to the incurred damage to persons and properties to perform the rule separately.

A) Physical damage

The rule of avoidable damage implies in the case of the physical damage that requires the injured party to induce the conventional provisions on medical services and apply the medical advices to regain health and prevent damage development. The diagnostic

criterion for the medical care is the same conventional reasonable human behavior.

There is no need for the defendant to provide the best possible care by employing the best available individuals, means, and methods to improve and eliminate the harm. Also it is not important that the effective decision would improve them or not and the other methods could have better results. This criterion is used to choose the physician and the applied methods. What the defendant must attend is the conventional principles to choose the consulting physician or surgeon, although the physician or surgeon would be mistaken or negligent.

The requisite of the normal behavior is different due to the cultural growth to apply the medical services the provided quantity. In one society, the high standards may include the medical care and the public knowledge on the provided method and its consequences, which would enhance the conventional behavioral standard in the counseling services, while some other countries have public unawareness and high risk of using the medical services, especially surgical services with lower trustability that reduces the service-availability.

B) Property damage

If the financial owner due to the defendant's violation is exposed to damage, the conventional cares with the reasonable costs protect the properties and the compensation would not be requested. For example, if the property is present in the building exposed to loss due to moisture (which occurred by another person's negligence); and the property owner avoids to transfer it to another location, they cannot request the defendant for this compensation. Also, if any injured party's property has been damaged or defective or even destroyed by another harmful act, the product owner must fix defects and, if necessary, replace; otherwise they cannot request for compensation on damage development or defect or failure to use the property at the time after fixation or replacement.

Our law seems to cause loss or loss of custodian's property that hurts another individual's financial conditions and any further increase of the prices and the lack of interest on the possibility to replace the injured party's property or fix defects which cannot be accounted on behalf of the defendant, since when the injured party has the exclusive right to seek compensation, the direct logical justification does not apply despite of the expected loss development and the increased damage. But the story changes at the property loss, e.g. the damage prediction and prevention, while they can wait for the request and all of the losses are accounted.

2. Scope of contractual liability

The rights in the common law on the enforcement of the rule include the scope of contractual liability.

The problem statement is that if the contract is breached, there is no fault on the other party when they have reasonable measures to mitigate losses from violation; otherwise, the requested damage is mitigated due to the avoidable damage. In order to evaluate the performance of the scope of the contractual liability, particularly on the rights of the two conventional methods in Iran, the other party of the breach is expected to be separated:

A) Sometimes the conventional measure is expected from the non-negligent party and this does not conflict with any other party's liability in the two cases:

1. Sometimes there is no obligation on invalidity or disrupted contract that the other party is responsible for and the obligation is not possible.

In this case, despite the responsibility of the contractor, the indirect party easily performs the necessary measures upon the target issue. Similar to the certain store lease, the tenant faces the discarded rent due to non-ownership of the other party and the goods are exposed to damage banned in store. It is obvious the damage has extremity that the defendant has failed at conventional measures, e.g. renting another build to protect the goods.

2. Sometimes the contract and the consequent obligations remain, but the expected measures by the wary party do not conflict with the issue. For example, the store rent has delay to deliver the landlord and the landlord has tenant's obligation to do the reasonable measures to avoid the unconventional damage.

Similarly in the case of rainfall, the temporary cover and the like should be. In our law, there is no doubt that the defendant must do measures without conflict with the obligation.

B) Sometimes, the conventional measures are expected by the wary party that is the same expected commitment, while the contract remains in force and they are expected to commit on the desired goals related to the other party.

The typical expected case is the sale contract as the most important case of the rule.

If the purchaser refuses to receipt the reference and beaches the contract, the seller has to sell their goods and the difference between the contract price and the received price for the second contract - and the additional costs - requested by the buyer as damage. If they delay unconventionally in this regard and the expected commodity prices reduce, the only price difference is requested in the case violation. The next cost reduction is the inevitable damage that the seller does not apply to surmount.

As it can be observed in the above case, the wary party is expected to be entitled in the subject of the contract and the equivalent price of the contract is requested from the contract violator. In our law, this expectation is unconventional to survive the contract

and it is inconsistent with the explicit liability. But in the common law, the definition of the contractual liability necessitates the payment on liability or its equivalent. The committed party primarily is obliged to pay one of them:

He is obliged to surrender the liability or if they do not agree for any reason to require commitment (breach of contract), they should pay the equivalent compensation. Because it is assumed that the obligee is deprived of the equivalent price to pay the monetary compensation. Since the moment of violation, neither the obligee can undertake the obligation, nor can they commit the same liability.

Now that the committed case is paid by its equivalent value, any obligee's commitment against the interests of the violation is accounted by the obligee in spite of the contract to gain the target benefits. The general idea and legal subject show the results very logically. The buyer, who cannot submit to the breach of the seller and can only request all reference value at the commitment time (violation time), so there is no logic of the buyer's survival and their expectation to sign the contract, now if the seller waits in this context, the target goods would bear the risk, because there is no interest to wait on the damage to have its equivalent. The first question in mind is that what is the wrong attitude to wait? Because the person who is the damage doer can commit the liability to stop more loss, the former is suffers the loss as no one is negligent anyway.

The loss incurred by the doer is the source of loss to burden the obligee that has no more obstacles. The truth is that this problem in the legal system enforces the obligation to fix the problem, but in the legal system, the principle is the equivalent payment. In fact, this problem has been answered for other reasons for the same commitment in the after the violation that is not necessary and its execution is not possible for the parties. Thus its survival is not conventional. But the principle of our law enforces the obligation on the obligee and also the commitment of the parties, otherwise the heavy responsibility is due to the economic conditions on the obliged party who has not paid the equivalent for their own interest (or that has no legal commitment) that is unconventional.

Third discussion: The injured party's behavior on the level of the civic responsibility in the different legal systems can be handled by the injured party for the loss factor may influence the amount of civil liability

And thus the stories of all or part of the damages to the injured party,

Due to their being attributed to him are dropped, accumulating conditions.

The condition can be stated this way:

1. Injured party's negligence: The injured party's behavior applies to the condition that can be considered as negligent (Of course, in the legal systems, the negligence of the agent includes the necessary conditions for the realization of the responsibility, as the injured party's negligence is not the case).

2. Action assignment to the injured party: The act of influencing to produce damage from the injured party or any individual that the injured party is responsible for their actions.

3. Causation relationship: It expresses the injured party's behavior and the incurred losses to them in the causation relationship (secular).

1. Injured party's negligence

A) Definition of injured party's negligence

Although in the ethics world, sacrificing others blames the self, but according to this issue in our jurisprudence and law, the attention and caring the life and property, so we can say that it is our religious duty in such manner that the jurisconsults have stated that "the defense of life and property is a religious duty."

Therefore, we can say that every person is responsible to protect their life and property reasonably and conventionally and we should not expect others to behave or care collectively; therefore one should keep their eyes open and care to protect their life and property.

The rights of the common law states the common law judges that:

In order to condemn the claimant for their negligence, the caring role for the defendant is not required, when someone walks in the street, their duty is to care and protect themselves and if they do not do this, they have neglected."

Or it is said, although a motorcycle has no duty to wear helmet to protect other motorists, but if he has an accident and injure his head, he has committed fault. Of course, the subject is that the injured party shall protect themselves and if they violate it, we can say that he has committed fault. Therefore, it can be the fault of the injured party defined as bellow:

Individual's negligence to their own party's failure to preserve and protect their life and property, so that such negligence leads to their loss.

B) Injured party's sloth to avoid or mitigate losses

One of the doubtful cases is the legal causation assignment observing the relevant behavior to incur damage, although the injured party has the opportunity to prevent losses, if they leave the action, they allow the prohibited result. For example, during the harvest season, a person drops cigarette butt in a field and triggers fire in crop in one corner of farmland and the fire slowly develops. The farmland owner sits and watches the fire spread without being frightened. Now the doubt is whether the action of the farm owner for extinguishing has causal assignment to the fire

inducer? Although the person has become injured by another person's fault, the injured person has no medical treatment and the infection and ulcers exist and the amputation becomes necessary.

Here the question arises to what extent is the inducer's responsibility? Is the harm avoidable and could the damage be mitigated?

Here the reason is that we examine the specific and independent agent separate from the injured party. Hence this case includes the principles of the injured party, shouldn't we know it as a special and independent case?

Because despite the basis of both fault and sloth rules are used to avoid or mitigate losses on the injured party, the both have the same effect, as the legislator's policy relies on claimant's conventional care on their own interests and both rules do not expect the person to overact but rather a rational and conventional act.

For example, the injured party is not expected to overact extraordinarily and dangerously. But the fault commitment rule relates to the injured party's behavior before the initial damage, while the injured party sloth rule avoids or mitigates losses related to the injured party's next behavior.

In Islamic jurisprudence, the jurisconsults have considered this issue in the murder discussion and most of them believe that if the murdered person could have the power to rescue themselves from death and, despite this, leaving the action, due to the necessity and lack of act, the murdered person is the murderer of themselves. The martyr Sani has stated about the murdered person who is no observant drowning in water or in fire and if they have the possibility to go out and they do not rescue themselves, the defendant is not guilty of murder and the murdered person will be known as the self-homicide.

Because this jurisconsult believes after leaving or departure from water or fire, a new burning or drowning occurs.

In our legal system, our country has ambiguous injured party's action effect in the causal responsibility of the loss agent, but according to the general rules and Article 355 of the Islamic Penal Code and paragraph 3 of Article 4 of the Civil Liability Act and Article 15 of the Insurance Act, one could say everyone has to have reasonable and conventional human action to mitigate or avoid losses and in case of negligence, they eliminate the causation relationship between the subsequent losses and agent and therefore the losses or damages are mitigated.

In addition, Article 15 of the general rules and the Insurance Act, the injured party prevents or mitigates the loss reasonably and conventionally. Therefore in our legal system, according to the authorized prominent lawyers as Dr. Katoozian, the positive or negative

negligence (if the loss is not avoided) has two different impacts in the result rule and the action sub rules.

2. Causation relationship between the injured party and the losses

A) Causation relationship

The causation relationship in the civil liability includes the causality relationship between two phenomena, which means the harmful act and the damage. Thus, it should not be confused with philosophical sense, whether the philosophy of causation on the basis of the known phenomenon and the unknown causation.

In this regard, Judge Reid English as one of prominent judges in UK writes:

"We do not rely on rational or philosophical causation, but a human's approach and the practical behavior to understand the daily routines normally."

Also the harmful act as assumption about causation relationship between both should be proved; however, the defendant should prove that the necessary consequence of the loss may be direct and predictable to prove defendant's negligence. Thus the injured party's negligence must prove the relationship between the injured party and the loss based on the theory in the legal system.

although the current and evolving principles of the civic responsibility support the injured party increasingly, the judges seriously inspect the causation relationship between the defendant's fault and the incurred loss and the defendant must prove the causation relationship between the claimant's fault and the incurred loss, otherwise the prove of the claimant's fault has no effect. For example, if the injured party because of not belting the seatbelt is thrown out of the car, undoubtedly, they were effective in the rate of the damage. But if a car accident occurs due to a driver's over speed and something comes into the car and pushes the injured party backward and damage occurs, no belting has nothing to do with the damage, even if the door was closed, the same damage could occur. Also one case in one of the US courts in 1890, the employer prohibited the workers working on slippery surfaces unequipped with safety devices, but one of the workers defied the order and worked, but was damaged because of a brick hit. The court sentenced the employer to compensate all the damage to the worker.

B) Predictability of loss

In the contractual liabilities, there is no doubt on the necessity of this condition to fulfill the responsibility. But the civil liability this condition is discussed. However, it can be said as a result whether the fault or causality relationship between the loss agent and the loss, the loss predictability is one of the responsibility conditions (of course, it could have exceptions). Accordingly, one could say that the injured party is responsible for the interference in

losses that is predictable but the predictability of the damage type and extent is not important.

C) Causation resolving agent

In some cases, if the defendant's action and the resulting damage can be observed in a causation relationship, however, in reality this relationship is an imaginative relationship by another factor that later comes to the scene and interrupts the defendant's responsibility, there will be no relationship between the resulting loss and the defendant's action and as a result the relationship has been broken. Of course, every matter may not break the relationship, but the interfering factor should have so strong effect that the judge breaks the causation relationship, but if the interfering factor has not this strong behavior, it can along the first factor have multiple causes in the damage at maximum.

The factors that could cause to break the causation relationship:

1. Natural disaster
2. Third action
3. Injured party's behavior.

Whether these factors have caused to break the causation relationship, the judge is in charge in each case according to the case conditions, especially considering how the new behavior occurred.

D) Causation of accident or damage

Sometimes the injured party's fault does not cause in the accident but aggravates damage, now does this effect on compensation?

For example, we assume that the injured party is not faulty in car accident but the agent is faulty. However, the injured party by not belting is thrown out of the car and gets a lot of damage, or for example, the injured party has violated the limited speed (fault) and, by the other driver's fault, the accident occurs and the high speed had no significant effect in the incident, but increased damages. The answer is: what is important is not the result of the damage caused by accident, because an accident may occur, but no loss incurs. Therefore, what is important in terms of the civil liability is not the accident rather the loss. So in the law of England, France and many other countries, if the injured party is involved in the damage, although not involved in the incident, they cause to mitigate the loss.

One of the most important issues in this discussion is the issue of not belting on the resulted loss. As we know, many countries apart from mandatory law of belt fastening, the violation will punish the person (typically financial). However, if the person does not fasten belt and has accident, though no faulty of accident, the effect of not fastening will increase loss or damage and reduces the accident agent's responsibility. It could be applied on motorcyclist's helmet wearing.

E) Number of loss objects

As we know in our discussion on the role of the injured party to reduce the civil liability we face the number of loss objects (injured party and agent), which are usually involved and all of these factors are not responsible, whatever the reasons that even involves the divinity.

For example, the following factors may be involved in a car accident:

Driver's state, passer's state, vehicle condition, road condition, and many other things, hence the scientists have proposed various theories to identify the liable cause or objects as the most famous ones are:

1. The close causation theory
2. The theory of objects & conditions equality
3. The conventional causation theory
4. The theory of the precedence causation on effect.

It should be noted that this significant discussion has effect on the role of the injured party's fault or behavior in the responsibility depending on what theory is accepted in the legal system and the injured party's fault can vary. Currently the jurisprudence in France has the theory of objects & conditions equality as an important case and the conventional theory has an important status in the UK law. Except that unlike the French legal system the conventional causation was applied in the past, but nowadays all objects are considered on losses, while in France, the courts tend towards the conventional causation. In jurisdiction, if the loss is caused by an agent or causation, the loss is attributed only to the agent, for example, if someone else throws stone at someone else's glass or dug a well to kill someone and these cause damages, that person is obligee. However, if some loss has several factors it depends on the different laws.

Fourth discussion:

The investigation deals with the losses in subjective law of Iran. Although the rule does not explicitly deal with the loss in a legal principle, the various laws seem to include this rule. Now it is time to briefly study some laws to deal with the damages. Among these laws, we only consider the Insurance Act, civil and marine liability and finally the labor laws and the direct taxes.

1. Dealing with loss in Insurance Law

The article 15 of the Insurance Act 1316 confirms the theory of dealing with damages. This article says: "the insured agent must prevent the care damage that is normally done by anyone about their property subject to the insurance object and by the approach or the occurrence of the event relies some measures to prevent the damage expansion and development, otherwise the insurer would not be liable."

This article is expressed to rely on the insured's duty to deal with the damage that exempts us from further explanation.

The only problem is that whether the insured agent is liable to deal with specific damage or violation or breach of contract?

In fact, although this article is particularly on the insured agent, the above rule is not included and since this rule is consistent with the legal principles governing contracts, it can also be applicable to other contracts.

2. Dealing with the loss in the Civil Liability Act

The Civil Liability Act has another duty to "deal with damage" that is on behalf of the defendant. The injured party (claimant) should not facilitate the loss or damages. Article 4 of the Civil Liability Act 1339 provides:

"The court can alleviate damages in these cases. When the injured party provides or facilitates the loss or caused aggravated loss", therefore, if the injured party facilitates the loss or his act or omission causes damage, either during or after loss or aggravated loss, the court may therefore mitigate the damages payable to him. Obviously, the term "in any way has caused the loss" is well applied on the loss, which may be caused of the conventional action taken or not taken reasonably to prevent damages. It may assign Article 4 of the Civil Liability Act exclusively to the injured party's act or omission at the time of loss, while the "deal with damage" principle overcomes losses. But the reason on dealing with the loss does not exist, and the article relies on aggravated damages to be avoided. Thus we cannot say that after some losses, the claimant's damage should not prevent the other damages. According to the unity criterion, we can say that this article applies on rights of contracts, especially when the contract is violated and there is no opposed condition, which means the applicant should not be idle on their own losses. In other words, he cannot claim on compensation when the damages could be avoided.

3. Dealing with loss in Civil Code

One could hardly conclude explicitly the "deal with damage" principle. But in some cases of the mentioned law, the common practice may be referred to as a part of the contract. If we consider the traders practices particularly in the international business arena, it is also a part of the contract and the parties when signing the contract implicitly as the claimant would violate to deal with the damages and the principle of "dealing with damage" would be obvious in the Civil Code. Certainly, the first approach of the compensation in Civil Code of Iran demands the precise attention on contract in court and when there is such right, dealing with damages is not considered. But it is clear that it is not true in the international trade and the compensation approach is limited to compensation and this case is not that the defendants must deal with damages.

In Article 222 of the Civil Code: "if the above article is not applied, the governor can allow the liable person to condemn the opposed agent to compensate on it." Therefore if any goods are purchased or sold this measure is the same except the obligee can act by the agreement of the court, for example, to purchase or sell the target goods. This measure is the same as the principle of "dealing with damage", with the exception that the obligee has held high burden on the court and deals with the hearing problems and often does not receive any response and is obliged to compensate the losses.

4. Dealing with losses in marine law

Article 114 of the Maritime Law settles: "If the carrier proves the death or bodily injury caused by the passenger's fault or neglect, or any passenger's action that could affect the court, the carrier will be entirely or partially exempt from responsibility."

In other words, if the defendant does not want to refrain from paying damages, they must prove that the claimant has been guilty and therefore the fault could not deal with losses. The question is whether the defendant should deal with damages to oppose and is such damage incurs this measure? There should be no doubt that the fault liability is on the carrier, unless the opposition is proved. Therefore at the time of the loss, the defendant, for example, avoids taking drugs and causes more losses. Therefore, it is necessary that the claimant deals with the damages.

5. Dealing with the loss in labor law

Labor law is a special law to protect workers. For this reason, it is attempted not to burden workers with the ordinary task (claimant). If the task of dealing with loss was charged by workers, the employer was persuaded to lay off workers and also resort to this rule to reduce the damages payable to the worker. Thereby on Labor Code enacted 15/4/1990, Article 158 settles: "the worker should be fired according to the board's vote, and has the right to refer the dispute resolution board and have lawsuit."

If the dispute resolution board decides on unjustified dismissal of worker according to Article 165 of this law, the imprisonment judgment and the records are pay back (one month for each year of service).

The labor law is a special law to protect workers. Therefore it is not necessary to deal with loss during the last months since dismissal. The employer is liable due to the illegal dismissal of workers to pay the wages since the date of dismissal to the date of return to work. If the worker long after dismissal has no lawsuit against the employer in "inspection board", the general principles governing the compensation will affect, because the worker by the right of claim acts and nobody will be responsible other than him/her.

Although the Act is silent in this case, but the Islamic rules would impose losses on the employer.

6. Dealing with loss in direct tax rule

According to articles 6, 10 and 12 of the "direct taxes", it can be understood in the principle of deal with loss that it is accepted in this law in the sub-definition. When the owner does not have the legal barriers, as a result it may not burden the tax payment on the government to force the tax payment. Here the state is beneficiary in the contract with the third person. The owner may refrain to sign such contract and in fact such measure would cause loss to the beneficiary and is responsible for paying taxes. Similar to this act, the annual estate tax and barren land tax are also considered. If the owner avoids managing the land and does not avoid the losses on the unpaid taxes to the government or does not deal with it, they should pay the taxes required by law.

Conclusion

There are several intellectual and legal regulations in different countries, which are popular and accepted reasonably and have common sense among lawyers and merchants. The judges in the International Arbitration Claims try to keep the claim parties consent to resort the mutually accepted principles and rights in various countries. These common principles are inclusive and universal. It is not necessary to explicitly state the accepted principles in the legal systems and it is enough that the principles are accepted in every system and not obsolete. These principles are essentially accepted in all legal systems and known as common principles and if the lawyers of any legal system are not aware of the other legal systems, undoubtedly this principle belongs to one legal system to respond in the imperative legal system. Good faith principle in transactions is the compensation principle in case of contract breach, and unfair possession, as the validity of this proposition relies on the condemned price in such principle. The brief view on various legal systems, we observe that all legal systems have clear and reasonable principle of deal with damage.

The merchants' best practice around the world has accepted it and the international arbitration has relied on it for many times. Therefore, undoubtedly we can consider the civilized international principles or transnational commercial legal rules. According to the law of Iran, many rules as causation, damageless, offence, dealing with damage directly, are emphasized. It means that if the injured party, the necessary concepts and measures are not used to mitigate or

overcome damages or the offence is related to them and the contract violator cannot be responsible to compensate, while the "common law" rule is an undertaken unified principle on wise measures, i.e. administrators' customs, routines, traditions, manner, and traditions, because one cannot stand against such offense and if this position is taken, it will not last, even when the supporters are the influential scholars.

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