Publisher homepage: www.universepg.com, ISSN: 2707-4668 (Online) & 2707-465X (Print)
https://doi.org/10.34104/ajssls.023.055061
Asian Journal of Social Sciences and Legal Studies
Journal homepage: www.universepg.com/journal/ajssls

Separation of Deliberate and Indirect Destruction in Iranian Law with an Emphasis on its Place in Jurisprudence

Amir Maasari Bonab*

Master of Private Law, Islamic Azad University, Maragheh, Pasdaran Ave., 9, Tehran, Iran.

*Correspondence: amoaserib@gmail.com (Amir Maasari Bonab, Master of Private Law, Islamic Azad University, Maragheh, Pasdaran Ave., 9, Tehran, Iran).

ABSTRACT

Civil liability is the obligation of a person to compensate for the damage caused to others, sometimes it is a violation of contractual obligations and sometimes it is a violation of a customary and legal obligation. In discussions about deliberate and indirect destruction and separation of relevant legal rulings, it is usually discussed under the title of discussion of harmful verbs, and lawyers and legislators based on this division proceed to extract the rulings on damages. One of the rules that have been legislated to create civil liability and compulsory guarantee, and the legislator has compiled the legal articles and payment of damages according to this rule, is the rule of deliberate and indirect destruction. The aim of the current research is to examine the distinctions between deliberate and indirect destruction in civil regulations and as elements of active responsibility from the point of view of jurists and jurists. It seems that it is difficult to solve the problem and prepare regulations, which include a necessary method to compensate for incidental losses to people's lives and property, depending on the Revision of all the different laws related to the issue and textual rewriting is based on the principles. The results of the research show that the rule of subrogation has a close relationship with the rule of loss and, like it, it is one of the effective jurisprudential rules in guarantee. And in cases where the cause is due to the fortiori from the steward, i.e. the general cause of deliberate destruction, instead of the rule of deliberate destruction, the rule of indirect destruction applies. In this article, various opinions and articles have been criticized and it has been shown how usual practice of lawyers can cause mistakes in extracting rulings.

Keywords: Civil liability, Deliberate and indirect destruction, causal relationship, and Deliberate destruction rule.

INTRODUCTION:

deliberate destruction in the word means to deliberate, to destroy and Also, according to Article 328 of the Civil Code, whoever wastes another's property is the guarantor of it and must pay the same or its price, regardless of whether he wasted it intentionally or unintentionally, and regardless of whether it was the same or a benefit and if he makes it incomplete or defective, he is the guarantor of the defective price of that property. From the point of view of the legal term, deliberate destruction is the waste of another's property by committing a positive action that immediately and directly leads to its loss (Haidari and Afzali Qadi, 2:1399). And its conditions are: A positive current action that directly and immediately causes damage and loss of another's property. Also, there is no need for fault, considering that the legislator in the mentioned article absolutely considers deliberating as a cause of responsibility, regardless of whether the subject has interprettation or not. In other words, the fact that an

individual's act is an example of loss causes the mentioned responsibility. And finally, the necessity of attributing the action to the subject in the case of waste, although the fault of the subject is not necessary, but the attribution of the action to the subject is necessary, that is, the action must come from the will of the subject (Katoozian 56:1380) indirect destruction in the word means to cause, and in the term indirect loss, it is a type of direct loss, with the difference that in direct loss, a person directly causes financial loss, but in indirect loss, the causative action indirectly causes that other people's property is lost (Researcher of Groom, 1399: 117). Guilt in the word means slacking off, under employment, and from the legal point of view, guilt means refraining from doing an action despite having the power to do it (Jaafari Langroudi, 66:1378) or not behaving the way it should be treated means not doing something that should be done or refraining from something that should be avoided (Bari, 2022; Imami, 454: 1391).

Civil liability as an independent and coherent branch of law does not have much history in Iranian law. Iranian jurists have established an independent legal framework as civil responsibility on the basis of legal regulations taken from jurisprudence texts and new laws and have tried to create a coherent theoretical system and by using these principles and theories, legal rules based on the law and justify the previous jurisprudence and extract new rules and rulings. In fact, in jurisprudence and the laws derived from it, there are several rulings regarding the issue of damages outside of contractual relations, which have been expressed sporadically in the chapters of guarantee, atonements, and usurpation, but a coherent theory about civil responsibility, similar to what is discussed in the discussions New civil liability is introduced, not created (Babaei, 84:1395).

Civil liability is the obligation of a person to compensate for the damage caused to others, and to create this liability, sometimes it is a breach of contractual obligations, and sometimes it is a violation of a customary and legal duty, so civil liability in its general sense includes both contractual and non-contractual responsibilities. However, civil liability in a special sense is useful for the obligation to repair and provide non-pecuniary damages for accidents outside of contractual relations, and it seems that most of the rules and principles governing this branch of responsibility also govern contractual liability (Salehi Rad, 37:1378). The theory of fault in civil responsibility is a traditional theory that prevailed in the West until the end of the 15th century According to this theory, civil liability is based on intentional or unintentional fault, and only someone who has committed a fault can be held responsible And proving it is basically the responsibility of the victim, so it follows from this theory that a person should be careful about his behavior and actions at the level of society so as not to be caught paying compensation and damages to others, and this is the rule of reason that every person is responsible for his actions and his own behavior (Bahmani *et al.,* 18:1393). Based on the general rules of civil responsibility of Iranian law, the principle is based on fault, and liability without fault is one of the exceptional cases and requires special rules. At the end of the 19th century, people's lives improved a lot, many factories were established, and various products were produced and marketed by them. But the acceptance of this theory, in the current complex life conditions, was not without flaws and problems and caused many losses to remain uncompensated. Due to these industrial developments, the effectiveness of the theory of blame was questioned and criticized, and that accepting this theory in the working conditions and activities of to-day's societies will not be enough to maintain order and resolve differences and treat social pains and problems caused by accidents and accidents (Katouzian, 1380: 195).

In fact, in the civil law, deliberate destruction and indirect destruction are mentioned as the causes of compulsory guarantee, although it does not seem that the conditions for the realization of responsibility due to loss and forfeiture are different, but it is well-known among lawyers that there is a difference in these two fields. According to this opinion, there is no need to prove the fault of the person responsible for the loss, but in the case of indirect destruction, it is necessary to prove the fault of the person causing the loss. Another group has not been satisfied with this and added that Iran's civil law has followed the theory of risk regarding direct loss But in the indirect loss of the theory of fault. In this article, an attempt has been made to ana-

lyze waste and attribution regarding civil responsibility and to clarify and specify the difference in their position in Iran's civil rights.

Distinction between deliberate and indirect destruction

In stating the rules of civil liability, articles 328 to 330 of the civil law are designated as direct loss and articles 331 to 335 are assigned as indirect destruction. Wasting is one of the causes of coercive guarantee. The meaning of this rule is that anyone who wastes or consumes or exploits another's property without his permission is the guarantor of the owner of the property. Wasting property means destroying the property and destroying it. Sometimes the destruction of property belongs to the essence of the property and sometimes it belongs to the property of the object with its essence remaining (Heidari and Afzali Qadi, 2019:5).

The guarantee regarding the destruction and destruction of the wealth of the property is different from the destruction and destruction of the essence of the property itself. The deliberate destruction is sometimes direct or steward and sometimes indirect or indirect destruction. Direct waste is done by the person himself and without the intervention of a voluntary or involuntary agent (Mousavi Bojnordi, 2012: pages 11-17). Therefore, if someone wastes another's property or the benefits derived from it without the owner's permission, he is the guarantor and responsible to the owner, whether the waste is intentional or not. Therefore, if someone wastes another's property or the benefits derived from it without the owner's permission, he is the guarantor and responsible to the owner, whether the loss is intentional or not. The jurists have referred to this rule in the cases of errors in various jurisprudential chapters, and some have considered it as one of the absolute rules among all Muslims (Danesh Nihad et al., 2017: pages 111-127). As it is stated in Sunni sources, in Article 912 of the Book of Sharh al-Mujla: If someone wastes another's property that is in his hands or in the hands of a trustee on his behalf, he is a guarantor and in this context, the intention or lack of it has no effect, and even if he thinks that someone else's property is his own and wastes it, he is still a guarantor because ignorance negates the sin of waste, but it does not negate the guarantee of the lost property (Rostam Baz, 1304 AH: 508). The steward has also been regarded as a guarantor, although there was no intention (Zahili, 1388:196). In such a way that if a person makes a mistake and destroys another's property, he is the guarantor. Regarding the role of the cause, it is also mentioned in the guaranty that if he destroys the property of another in a way that causes the destruction If it is owned, it is a guarantor. In this regard, some have also specified the condition of intentionality and trespass to be the guarantor of the cause. The doctrine of civil responsibility also interprets the statement of the rulings in the above way by separating the harmful verb element in the discussion of the conditions of realization of civil responsibility into waste and attribution. In fact, many legal writers, in terms of distinguishing between destruction and indirect destruction, divided the way of causing damage into direct and indirect to explain the conditions and rulings of civil responsibility (Babaei, 2015: 87). Based on this, this idea has been instilled among legal scholars that in the case of loss, proof of fault is not a condition for liability, and regardless of the way the person causing the damage acts and commits a fault on his part, the responsibility of the damage is created. But in the matter of indirect destruction, recognition of the responsibility of the causer is deferred to the proof of committing a fault or an aggressive act on his part, and therefore, without proving the fault or aggression of the harming party, there will be no responsibility towards him. (Katouzian, 1374: pages 204-209). This opinion is more than reflected in the relevant legal books and texts, it has become rumoured popular among lawyers and many professors and students consider this separation and difference to be obvious. (Babaei, 2015: 88). It seems that the separation of loss into direct loss and consequential loss is based on the practical consideration of impromptu attribution of the cause of damage to a person or initial doubt in this attribution in terms of the number of probable causes. But over the years, the result of observation itself has been considered as a criterion that includes works, and finally, it has become such that sometimes the combination between these two forms, which was loss, has been removed as indirect destruction, and the titles of loss and indirect destruction have been replaced by two separate categories and some people have distinguished the fulfillment of indirect destruction and the condition of responsibility resulting from it from loss

and have listed the difference between the two as mentioned above (Salehi Rad, 1378:46). In legal books, the discussion of the elements and conditions of realization of civil liability is analyzed in three parts: damage and compensable loss, harmful action and causation relationship and the harmful verb is discussed depending on whether it is direct and related to loss or indirect and related to attribution. In some books, discussions about waste and attribution are mainly discussed in the section on the basics of civil liability, which is considered to be a part of the discussion of harmful verbs, because the discussion of harmful verbs refers to the conditions where the act causes damage in order to create civil liability and In other words, this is the discussion of the basis of civil liability, which means the need to establish fault, or create responsibility without the need to establish fault or absolute responsibility. The mistake in the proper place of separation of loss and indirect destruction in civil liability issues has caused mistakes in determining civil liability rulings and misunderstandings among lawyers. mistakes that did not occur on their part due to the different approach of the jurists to the issues and were not considered by the legislator. In the civil law, loss is considered as one of the causes of compulsory guarantee and there are two opinions regarding the basis of compulsory guarantee:

- The theory of fault means that the agent is responsible for the damages caused by his action when he is at fault in committing it. Therefore, according to this theory, fault is the basic condition of civil responsibility.
- Theory of responsibility: But the second theory does not consider fault as a condition of the subject's responsibility, but whoever causes damage to another is responsible for compensating that damage. According to this theory, in order to claim damages, it is enough for the victim to prove that the damage is caused by the actions of the other party.

In deliberate destruction, the positive verb that comes from the subject, without any intermediary, causes loss of property and attention to harm to others, like someone who breaks the glass of a room with a stone. Therefore, in case of deliberate destruction, if someone wastes money intentionally or unintentionally, he is responsible, even though he did not commit any fault and followed the necessary precautions. In other words, loss is based on the theory of responsibility. Therefore, if a person did not commit an act that resulted in the loss of property, but the property in his hands is lost due to supernatural causes, then the loss cannot be attributed to him, and as a result, the guarantee will not be fulfilled. In other words, the meaning of intention and intent is the will and determination to loss and harm others that such an element is not necessary in the emergence of a deliberate destruction guarantee, But without a doubt, agency is necessary in the act and realization of attribution, as well as the connection of the agent with the phenomenon of loss (Haidari and Afzali Qadi, 2019: 6).

The rule of indirect destruction and the role of fault in creating liability arising from it indirect destruction is a kind of loss; In this sense, in destruction, a person directly and directly causes financial loss, but in indirect destruction, the causative act indirectly causes other property to be destroyed. For example, if a person deliberately sets fire to another's movable or immovable property, or kills an animal belonging to another, it is considered a crime But if he digs a well on the public road and an animal belonging to another falls into it and dies, he is responsible (Hydari and Afzali Qadi, 2019: 8). Regarding the said cause, anything from whose existence another existence is not necessary, but from its absence another non-existence is a necessary cause. Against the cause. In such a way that whenever the relationship between two things is such that the existence of one causes the existence of another and the absence of one causes the absence of the other, that one is called the generl cause of the other. Therefore, the cause of Tameh and the cause are different from each other despite the similarity. In indirect destruction, a person's action does not directly and directly destroy another's property, but the relationship between a person's action and the loss of property is such that if that action does not occur, the loss of property does not occur (Researcher Damad, 1399: 117). Whenever an act or deed causes the loss of property, but it is not the cause of general loss or the last part of the cause of general loss, but it is such that if this action is not issued by a person, loss and loss of property will not occur. In this case, indirect loss has

occurred. But glorification is based on the theory of guilt. It means that the person who caused the loss of property and other damages is responsible if he is at fault in his actions.It means that he did not take the necessary precautions, and that is in the case that he did not consider the consequences of his action, which are usually foreseen, or he committed an action that caused damage. But indirect loss is based on the theory of guilt. It means that the person who caused the loss of property and other damages is responsible if he is at fault in his actions It means that he did not take the necessary precautions, and that is in the case that he did not consider the consequences of his action, which are usually foreseen, or he committed an action that caused damage.

One of the common aspects of the rule of deliberate destruction and indirect destruction is that knowledge of the subject and ruling is not a condition in either of these two rules; Therefore, whether the loss is with knowledge of the ruling and the matter, in the sense that the person who caused the loss knows that his action causes loss, responsibility, and guarantee. And whether it is without knowledge and out of ignorance towards both or one of them, responsibility and guarantee will arise.

What is the opinion of jurists about the two rules of waste and attribution?

The study of numerous jurisprudential documents somehow indicates the involvement of fault as the fourth pillar of civil liability resulting from indirect destruction in Imamiyyah jurisprudence. With this description, you should forget it; Because the fact is that the application of hadiths is such that it is difficult to accept the addition of fault to the elements of civil responsibility caused by indirect destruction. Therefore, in the cases where we find the warranty caused by the indirect destruction to be based on fault, we must pay attention to whether there was a special reason for bringing fault in each of the mentioned cases or not? In particular, many jurists not only attribute the separation of waste to stewardship and attribution outside of traditions and to custom, but also believe that in many cases, what is attributed to the cause is the act of stewardship and vice versa (Hydari and Afzali Qadi, 2019: 8). So, how can guarantee be tied to a description that is a possibility in cases of indirect destruction? The importance of this statement becomes greater when we know that assigning a ruling to a certain amount is only possible if the reason for the rule of guarantee is the oral evidence of consensus; However, the reason for the rule of non-guarantee of the owner is the rule of subordination to the rule of guarantee, and only in case of fault, they consider him as the guarantor (Hydari and Afzali Qadi, 2019: 8). In jurisprudence, text is the basis of responsibility for a single matter, where the provisions of loss and compensation are extracted from the same text, and two legal bases cannot be included in a single text (Jaafari Langroudi, 2008: 88). For this reason, in jurisprudence, loss due to indirect destruction and stewardship do not differ from each other in terms of rulings and effects, and in the end, the realization of the correctness of attributing the damage to the owner is the establishment of the guarantee (Salehi Rad, 1378:49). In addition, if the realization of tasbib depends on the opinion of the custom, then this judgment cannot be dual, where the custom considers a minor or an insane person who is not responsible for the damages due to the lack of discernment and the ability to be responsible how does he consider the responsibility of causing the loss to be deferred to prove his fault? (Salehi Rad, 1378:49). On the other hand, since the damage is not caused except through causation, the legislator cannot consider one form of causation compensable without proof of fault and another form of it with the same origin with proof of fault (Article 331 of the Civil Code). Professor Jafari Langroudi in legal terminology, while equating the basis of responsibility for loss and indirect destruction, and wrongly considering the belief that attributing fault is a condition of responsebility, stated that what is true is that in the case of loss, the indirect destruction of damages is possible without the presence of fault. But in indirect destructtion the existence of fault, the customary condition is the attribution of damages. One of the rules that allocates the circle of the rule of absolute guarantee is the rule of beneficence. According to the works of beneficence rule,Imamiyyah jurists do not consider the trustee as a guarantor because they believe that when a person, with the permission of the owner or legal occupier, in order to secure the interests of the owner and not for his own benefit, or both the owner and the benefactor, takes possession that causes loss to the owner of the

property, he is not responsible and guarantor (Haidari and Afzali Qadi, 2019: 12). Therefore, whenever property is lost in the hands of artisans, shipping companies, sailors, doctors, etc., they should be held responsible; because they have not only acted for the benefit of the owner, but they have done such work in exchange for a wage, and the owner has not entrusted it to them for the sake of protecting the property and rather, he gave them the money for the purpose of repair and correction, etc. and for this reason, whenever they cause damage, they are guarantors (Hosseini Maragheh, 1418 AH, 477). Based on the above explanations, it is clear that the logical place of the distinction between loss and indirect destruction in the logic of new civil liability rights is in the dis-cussion of the relationship of causation and not in the discussion of harmful actions. In fact, direct and indi-rect damage claims are two different assumptions of how to establish the causality relationship, and this difference does not change the rules of responsibility in terms of the way the damage is claimed (Babaei, 2015: 97). The most obvious discussion about causal relationship can be mentioned in the book of Hart and Honore under the title of causal relationship. In their book, these two authors have examined in detail how to determine the causality relationship, and in the ways of determining the causality relationship, the different role of the problem of damage that directly results from the actions of people and they have paid the damage that is caused indirectly and in which fault and unusual things play a decisive role (Babaei, 2015: 97). It can be concluded according to the jurisprudential logic that was explained, if the relationship of causation is established regardless of whether it is caused by the direct or indirect action of the person, according to the general rules of civil responsibility recognized in civil law and Imami jurisprudence, there is no more room for further investigation in establishing fault and responsibility is established. Of course, the legal system can defer the recognition of civil liability to the commission of a fault in accordance with the policy and specific rules of responsibility, in specific contexts and cases (Babaei, 2015: 97). The existence of a causal relationship is one of the rational requirements for the establishment of responsibility. This condition manifests itself in the responsibility stage and in a positive way in such a way that the injured party must prove the existence of a causal relationship between the damage and the matter for which the law has burdened the responsibility (Salehi Rad, 1378: 51).

CONCLUSION:

Contemporary jurists in the issue of guarantee, based on the inferences from the legal articles of Iran's civil law, differentiate between the responsibility due to loss and the responsibility due to indirect destruction and believe that there is no element of fault in the deliberate destruction. Howeve, the main element of fault is the cause, and if the cause is not the fault, the person will not be responsible. Contrary to what has become known among many Iranian jurists, it is not possible to derive special rules and conditions of civil liability from the distinction between stewardship and compensation in the case of damage that there is no need to prove fault in stewardship, but it is necessary to prove fault in the case of giving a suspended guarantee. In general, in all types of indirect destruction in Islamic law, fault is not one of the elements of responsibility, but what is important is the existence of a customary relationship between the cause of action and harm to another. And the owner of the responsibility, attribution and attribution of the harmful act is to the harming person, and the element of fault can play a role only where it causes the realization of The element of citation and attribution. If we believe that fault is a separate element and plays a role independently along with other elements, it should be said that such a claim needs to be proven, which is not evident from the content of the cited rules. The people of common sense consider the destruction of another's property without the owner's permission to be the cause of the damage. Meanwhile, there is no distinction between its different parts. It seems that placing fault as the basis for the realization of the guarantee is a redundant and unspecified matter. In the new logic of Iran's civil liability law, according to the method of the written legal system, the elements of creating civil liability are proposed under three headings: existence of loss, link of causation, and harmful action, and the logic of discussion is different in each of these categories.

ACKNOWLEDGEMENT:

I'm grateful to all the dear Professors for providing their information regarding this research.

CONFLICTS OF INTEREST:

The author of this manuscript declare their agreement with the statements. Authors also state separately that they have all read the manuscript and have no conflict of interest.

REFERENCES:

1) Al-Najafi al-Jawaheri, Muhammad Hassan bin Baqir, (1406 AH). Jawaher al-Kalam fi Sharh Shari'i al-Islam, Dar al-Ahiya al-Tratah al-Arabi, **27**, *Beirut*. https://www.worldcat.org/title/977495957
2) Babaei, Iraj, (2015). the place of separation of loss and compensation in civil liability law, *Legal Research Quarterly*, **76**.
3) Bari SM. (2022). The legal journey-from legal education to lawyering in Bangladesh: a boon or a menace, *Asian J. Soc. Sci. Leg. Stud*., **4**(2), 39-50. https://doi.org/10.34104/ajssls.022.039050
4) Bahmani Majid, and Mavi Mohammad, (2013). Comparison of fault in civil and criminal liability, two legal research quarterly, third year, **3**(2). https://doi.org/10.22055/AJKRL.2014.11808
5) Danesh Nihad Mohammad, Alishahi Ghale Jooqi Abolfazl, (2017). A delay in the role of the rule of deliberate destruction in the civil responsibility of the government, *J. of Jurisprudential and Philosophical Studies*, 9th year, **n**(35).
6) Emami, Hassan (2012). Civil Rights , Vol. **1**, *Islamia Publishing House, Tehran*.
7) Heydari Mohammad, Afzali Qadi Farhanaz (2019). The place of fault in civil and criminal regulations (an analysis of the rule of deliberate destruction and indirect destruction), theology magazine, 13(51), 1-16. https://jt.ntb.iau.ir/article_681100.html?lang=en
8) Hosseini Maragheh, Abdul Fattah bin Ali, (1418 AH). al-Anawin al-Fiqhiyyah, **2**, *Islamic Publication Institute, Qom*.
9) Jafari Langroudi, Mohammad Jafar, (1999). Legal Terminology, *Ganj Danesh Publications*, *Tehran*.
10) Katouzian, Nasser, (1374). civil rights, non-contractual requirements: forced guarantee, Tehran.
11) Katouzian, Nasser, (2008). Civil Rights: Compulsory Warranty - Civil Liability, *University of Tehran Printing & Publishing Institute, Tehran*. https://odad.org/article/liability-of-the-multimodal-transport
12) Mohagheq Damad, Seyyed Mustafa, (2019). Jurisprudence Rules (Civil Section), *Islamic Sciences Publishing Center*, 56th edition.
13) Mousavi Bejnordi, Mohammad, (2012). Jurisprudential Rules, **1**, *Majd Publications, Tehran*.
14) Rostam Baz Lebanese, Salim, (1304 AD). Sharh al-Majlah. Ihya al-Trath al-Arabi *Publishing House, Beirut.*
15) Salehi Rad, Mohammad, (1378). indirect destruction and its aspects, *Judiciary Legal J*., **28**(29), Autumn and Winter.
16) Zaheili, Vahba, (2008). The Theory of Necessity in Islamic Jurisprudence, translated by Hossein Sabri. *Khorasan Razavi Publications Office, Khorasan Razavi*.

Citation: Bonab AM. (2023). Separation of deliberate and indirect destruction in Iranian law with an emphasis on its place in jurisprudence, *Asian J. Soc. Sci. Leg. Stud.*, **5**(2), 55-61. https://doi.org/10.34104/ajssls.023.055061