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The Nature of Civil Liability of CapitalCompany Managers in the Legal Systems of Iran and Afghanistan

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Abstract
The civil liability of commercial capital company managers is a kind of liability arising from the act of a person. In this type of liability, in case of violation of the law and contract or providing the fault, error, negligence, and inattention of the manager and causing damages to the company, partners, and third parties, the companymanager is liable to compensate the incurred losses.
Protecting the interests of partners, companies, and third parties by capital company managers has long been the concern of legislators and jurists and has been officially accepted in civil law, civil liability, and commercial lawas a legal and contractual duty for the managers of capital companies.
The main question raised in this paperwhich the researcher tries to answer is: What is the nature of the civil liability of capital company managers in the laws of the Islamic Republic of Iran and Afghanistan?
Based on the hypotheses and contents compiled in this paper, it is obvious that the nature of the civil liability of capital company managers in two legal systems can be conceived legally and contractually, and in case of violation of laws or fault, error, and indiscretion, the culpritis liable for compensation.
The present research collected information by the library research method, and compiled data with a descriptive, analytical, and comparative approach.
The research findings show that the nature of the guardian's civil liability is reflected in two legal systems, sometimes legally and sometimes contractually.
Keywords: Capital companies; Civil liability; Managers; Nature of law; Contract.

Introduction

Capital companies play an important and valuable economic role in the country's commercial growth and development; Managers, who are the managers of these companies, must pay serious attention to the laws, approvals, and commitments made to protect the interests of the shareholders and the company.
The nature of the civil liability of managers, which is the main focus of this paper, has a significant role in the legal systems of Iran and Afghanistan, and each of the two legal systems has determined the nature and civil liability of capital company managerslegally and contractually. The legal nature means the responsibility established and enforceable according to the law, and the contractual nature means the responsibility resulting from the commitment of managers who, according to the contract, are responsible for protecting the interests of the company and partners.
To gain the trust of partners and third parties to invest in capital companies as per articles 142 and 143 of the partial amendment bill to the Commercial Law and article 221 of the Civil Code of Iran and paragraph 4 of articles 46 and 47 of the Afghanistan Limited Liability Companies Law and Articles 758, 759, 776, And 779 of the Civil Code of Afghanistan,the necessary provisions for the legal and contractual nature of the civil liability of managers has full clarity.
For the manager(s) of capital companies to be considered liable, they must have committed an act against the law or a contract, or it must be proven that their failure or fault has caused losses to the company and partners, and the causality relationship must also exist due to their performance.
The nature of the civil liability of managers (board of directors) has not been adequately addressed. Only in some Commercial Law books (e.g.Laws of Commercial Companies written by Dr. Mohammadreza Paseban; Laws of Commercial Companies, Volume II, written by Dr. Rabia

Eskini;and Laws of Commercial Companies, Volume II, written by Dr. Mahmoud Erfani) this issue is briefly presented without addressing the details.
This research aims to identify the scattered content specific to this discussion and provide solutions in this regard.

Definition of Civil Liability

The civil liability of managers means all the effects and damages that are imposed due to the managers' violation of legal and contractual provisions, the provisions of the article of association, and resolutions of general meetings, and even the failure and fault in performing their duties (Paseban, 2016, 219).
Liability is the legal obligation of a person to compensate for the incurred damages, whether this damage is caused by his own fault or by the activities of persons under his command (Jafari Langroudi, 2009, 642).
Civil liability represents a set of rules that obliges the party causing the damage to compensate the damaged party; In fact, it creates a religious relationship between the victim and the perpetrator; The damagedparty is a creditor and the party causing the damage is a debtor and the subject of the compensation debt. (Katouzian, Extracontractual Obligations, 2015, p 35).
Civil liability is defined as compensation for "damage" and this damage is sometimes caused by a material event and sometimes by non-performance of the contract (Katouzian, 1490, 34). It is worth noting that Article 51 of the former Commercial Law of Iran has clearly stated the position of the civil liability of managersas follows: "The responsibility of a company managerfor the company partners is the same as the responsibility of a lawyer for a client".

The Nature of the Legal Liability of CapitalCompany Managers

From the very beginning of the era of ijtihad, Islamic jurists have engaged in deriving jurisprudential rules regarding civil liability, and have considered the jurisprudential rules of possession under a vicious or defective title, the prohibition of detriment, loss, and indirect destruction from a subjective and objective point of view to liability (Gholamalizadeh, 2018, 18). The legal or tortious or non-contractual liability of managers is conceivable and realized in the assumption that the manager and the company did not interact on the basis of a mutual obligation and that the managerintentionally or culpably caused damage to the company, or that he violated his legal duties. In this regard, a major part of this liability is on the basis of fault, and Article 1382 of the French Law and Article 1 of the Civil Liability Law of Iran both prove this issue. Tortious liability is a liability that arises as a result of non-performance or violation of an obligation or legal requirement; The main instances of tortious liability include usurpation, demanding the fulfillment of a promise, loss, and indirect destruction. The best instanceoftortious liability is the violation of trafficlaw (Marie Noel Beshleet al., 27, 2013). It seems that the legal liability of the managers of capital companies is in question when the legislator has explicitly issued an order to act or not to act and the managers have acted contrary to the legislator's order. In such a case, the civil liability of managers is fixed as per the law. All managers of capital companies will have administrative, disciplinary, and criminal liabilities in addition to civil liability as per the law. Administrative and disciplinary liabilities are synonymous and refer to "the liabilitythat arises from disciplinary violation in administrative affairs" (Jafari Langroudi, 2018, 671). Paragraph 5, Article 46 of the Law on Limited Liability Companies provides the following regarding the administrative liability of managers: "5) The court, in compliance with other laws, has full jurisdiction to hear the above claims and can make decisions to disqualify and prevent the implementation of certain actions." Criminal liability and penal liability are synonymous and refer to "the liabilitythat arises from criminal conduct and its punishment is specified and determined in the criminal code" (JafariLangroudi, 2018, 673). Regarding the criminal liability of managers and inspectors of companies, Article 115 of Iran's Limited Liability Company Law stipulates their criminal liability as fraudsters in three sections: "The following people are considered fraudsters: 1) The founders and managers who have falsely declared the payment of all non-cash shares of the company in the papers and documents that must be submitted for company registration. 2) Those who have fraudulently calculated the non-cash share of the company more than its real price. 3)Managers

who, due to the absence of a statement of assets or by citing the said statement of assets, divide illusory interests between partners."

It seems that the administrative liability of managersarises in companies where one of the shareholders or the whole company is in the possession of the government and a person is a representative and manager or inspector who verifies and supervises that government company;Some of its effects for the manager or inspector include warning, dismissal, conversion, salary deduction, and dereliction of duty. Furthermore, the criminal liability of company managers and inspectors arises where their fraud is proven as per Article 115 of the Limited Liability Company Law. Regarding the administrative and criminal liabilities of capital company managers, the legislature of Afghanistan stipulates the following in paragraph 5, article 46 of the Limited Liability Company Law: "5) The court, in compliance with other laws, has full jurisdiction to hear the above claims and can make decisions for compensation of damages, payment of fines, disqualification, preventing the implementation of certain acts, confiscation, and imprisonment". Disqualification and preventing the implementation of certain acts are administrative liabilities, and confiscation and imprisonment are considered criminal liabilities for the manager.

Administrative or disciplinary liability and criminal or penalliability of company managersare a type of legal liability that in case of violation of law, civil liabilityarises for the relevant manager.

The Contractual Nature of Capital Company Managers

Contractual civil liability is the obligation to compensate damages that are caused as a result ofthe violation of the provisions of a private contract for parties, including managers of capital companies, etc. When an obligation is violated, it is called a primary obligation, and when an obligation is violated due to a breach of contract on the part of the debtor, it is called a secondary obligation.

The contractual liability of managersarisesunder two conditions: first, there must be a valid contract between the damaged party and the party causing the damage, and second, the damage must be caused by not performing the provisions of the contract (Al-Naqib, 1984, 350).

The contractual civil liability of managers is the liability of amanagerwho, through a written contract, has accepted the obligation to perform or refrain from an act that causes damage to the obligee due to non-performance or delay in performance, or at the time of performance, or the performance of the obligor. This liability is called contractual liability and the basis of this liability is non-fulfillment of the contractual obligation. It seems that to conceive legal and contractual civil liabilities, it is necessary to briefly introduce the differences between the two. For example, imagine that by concluding a marriage contract, the duties of husband and wife are established towards each other. The husband is obliged to pay alimony and the wife is obliged to obey the husband; Each of the spouses who commits a fault or neglects to fulfill their obligation or acts contrary to their obligation will be liable to the other party or obligee. In other words, contractual liability is the liability that is caused by non-performance of the contract, delay in the performance of the contract or violation of the contract. It is worth mentioning that three conditions are necessary for the realization of contractual liability: the existence of a contract, the occurrence of a loss, and the causal relationship between the incurred loss and non-performance or delay in the performance of the contract (Eghdami, 2018, 26). Thus, this contractual liability arises when the obligor's fault is based on the violation of the contractual obligation.

As a result, contractual liability is one of the important terms in legal science. It is a civil liability that arises as a result of the violation of a binding agreement, and according to this liability, whenever, as a result of the non-fulfillment of the obligation of the company manager, a loss is caused to the obligee, including the partners and the company, they can file a lawsuit in court and ask for compensation. The essence of this liability is the contractual relationship and the condition for its realizationis the existence of a contract and the causal relationship between the incurred damage and the breach of the contract, the delay in the performance of the contract, or the incomplete performance or non-performance of the contract.

Differences between Tortious or Legal Liability and Contractual or Covenantal Liability of Capital Company Managers

In the past, legal scholars have made a fundamental difference between contractual liability and extracontractual liabilityand ortortiousliability. They defined legal liability as a liability arising from theviolation of the law and contractual liability as a liability arising from the violation of the contract. However, today, in various countries, there is a trend toward the fundamental unity of these two liabilities, and most law professors are in favor of the theory of the unity of legal and contractual liabilities (Safaei& Rahimi, 2020, 39).

In Islamic jurisprudence, there is no independent discussion about contractual liability, and this liability, like tortious liability, is subject to the rules of loss and indirect destruction; Also, in Imami jurisprudence, which is the main source of the Iranian Civil Code, there is no distinction between contractual liability and tortious liability (Safaei& Rahimi, 2020, 40). In Sunni jurisprudence, the fundamental unity of contractual and tortiousliabilities is also supported, even though some Muslim jurists have emphasized the separation of two liabilities in Sunni jurisprudence, which is debatable (Zuhayli, 1982, 78).

Iran's civil code,following the French civil code, distinguishes between legal civil liability and contractual civil liability and has assigned a separate topic for each.

In the civil code of Afghanistan, it seems that the separation between legal and contractual liabilities is also visible, like the civil code of Iran, from article 497 regarding contracts (elements of a contract, terms, and conditions of a contract, and effects of a contract) to article 758.

And the third chapter of this law, under the title of legal incidents, from articles 758 to 773, has mentioned the harmful act that happens to the property, including lossand indirect destruction, and the second topic, from articles 773 onwards, has addressed the harmful act that happens to the self.

In the researcher's opinion, it is better not to distinguish between legal and contractual civil liabilities because in case of non-performance of the contract, non-compliance with the law, illegal enforcement of the law, and illegal performance of the contract causing damage, the liability arises with the difference that the basis of this liability is the contract and the basis of the subsequent liability is the law. Ultimately, a person, whether a manager or a non-manager, who has left or performed an action against the law or a contract that causes material or moral damage to another, must compensate for the damage; Thus, there is no need to distinguish between legal and contractual liabilities in terms of compensation.

It seems that there is not much difference between the legal and contractual liabilities of managers and inspectors, although some differences between these two have been listed. But,the contractual liabilityarises as per the law, i.e. the law that holds the non-performance of the contract, violation of the contract, and delay in the performance of the contract responsible for the loss of the contracting party. However, there is a slight difference in form between these two liabilities, which are briefly mentioned below.

1) The basis and nature of legal liability is the law; However, the basis and nature of contractual liability is a contract created by the converging will of the parties.

2)A judge refers to the law to prove the tortious liability; While in the case of contractual liability, an unexpired contract is referred.

3) All members of the society are obliged to be legally responsible; While in the face of contractual liability, only the parties to the contract are the addressees and obligees.

4) In tortious or legal liability, the duties are determined by law, while in contractual or covenantal liability, the duties are determined by the parties themselves (Safaei& Rahimi, 2020, 41). As a result, there is no independent debate between legal and contractual liabilities in Islamic jurisprudence, while this issue is debatable among legal scholars.

Instances of Legal Liability of Capital Company Managers

Managers of capital companies are individually and jointly liable for the actions and operations they perform in the name of the company and on behalf of the shareholders, according to the rules and regulations stipulated in commercial law, civil law, and other legal documents. The mentioned liability has two aspects, civil and criminal, and in this paper,the civil aspect is discussed in detail.

If a company manager causes damage to the company or third parties contrary to the company's decisions or due to his action, he will be personally liable for compensation. The individual liability of

the company managerarises when other managersdo not accept his actions and prevent him; Otherwise, all managers will be liable for compensation (Kazemi, 2018, 83). Article 142 of the partial amendment bill to the Commercial Lawstipulates that "the managers and CEO of the company are individually or jointly responsible for the company and third parties for the violation of legal provisions or the company's article of association or the resolutions of the general meeting, as the case may be, and the court will determine the limits of each person's liability for compensation."To confirm and emphasize the sentence stipulated in the above article, Article 143 of the mentioned law acknowledges that "if the company goes bankrupt or after liquidation, it is found that the assets of the company are not enough to pay its debts, the competent court can, at the request of any beneficiary, condemn any of the managers and or the CEO, whose company's bankruptcy or insufficient assets were somehow caused by his violations, individually or jointly, to pay that part of the debt that cannot be paid from the company's assets."

The joint civil liability means that the liability is divided equally among the members of the board of directors. If one of the managers goes bankrupt, the beneficiary or the injured party must be included in compensation to collect their shares (Kazemi, 2017, 87). The term"joint liability" is used against the term"joint and several liability". In joint liability, the court specifies the share of each of the managers and CEO who committed the violation together; For instance, if one of the managers has committed an illegal act and the other managers have put a seal of approval on it, or if the CEO has committed illegal acts and the other managers have turned a blind eye to it, then, each of the managers will be sentenced to pay part of the incurred damages. While, in the joint and several liability, each of the offending managers isobliged to pay all the damages (Eskini, 2016, 171).

Among the articles related to the legal nature of the civil liability of managers in Iran's Civil Code, article 328 of the Civil Code, states:"Whoever wastes another's property is liable." Also, in Article 331, in case of impeachment of managers, it is specified: "Anyone who causes financial loss to someone must pay the equivalent or the price...". Likewise, Article 1 of the Civil Liability Law states: "Anyone who, without legal permission, intentionally or as a result of carelessness causes damage to life or health or property or freedom or dignity or commercial reputation or any other right created for individuals as per the law, leading to material or spiritual damage to another, is responsible for compensation for the damage caused by his actions." The Islamic Penal Code has specified the necessity of ascertaining the causal relationship: "In all cases where the fault causes civil or criminal liability, the court is obliged to confirm the effectof the perpetrator's fault." Or, Article 531 of the Islamic Penal Codestates: "In collision cases, whenever the incident is documented against one of the parties (e.g. when the movement of one of the parties is so weak that it has no effect), only the party to whom the incident is documented is liable for compensation". From the mentioned articles, the nature of the civil liability of company managers in these laws is generally inferable.

The nature of the civil liability of managersis specified in the partial amendment bill to the Commercial Law approved in 1968, which governs joint-stock companies. In the Iranian Civil Code, this issue is mentioned in two articles in the amendment bill to the Commercial Law as follows:

1)The managers and CEO of the company are individually or jointly responsible for the company and third parties for the violation of legal provisions or the company's article of association or the resolutions of the general meeting, as the case may be, and the court will determine the limits of each person's liability for compensation (Article 142).

2)If the company goes bankrupt or after liquidation, it is found that the assets of the company are not enough to pay its debts, the competent court can, at the request of any beneficiary, condemn any of the managers and or the CEO, whose company's bankruptcy or insufficient assets were somehow caused by his violations, individually or jointly, to pay that part of the debt that cannot be paid from the company's assets (Article 143).

As a result, the best source for the civil liability of managers is the partial amendment bill to the Commercial Lawin particular and the civil liability law in general.

Afghanistan's Limited Liability Company Law has mentioned the legal and individual liabilities of managers in several articles, which are briefly mentioned below.

(1) Paragraph 4 of article 45, under the title "Responsibilities of Board of Directors), acknowledges the following about the civil liability of company managers: "… 4) If a member of the board of directors does not perform the assigned duties following the conditions outlined in paragraphs 1 and 3

of this article, he is responsible to the limited liability company and the shareholders for the damage caused to the limited liability company as a result of his failure to perform his duty."
(2) Also,the limited liability companylaw states in paragraph 4 of article 46: "4) The member of the board of directors is responsible to the following people:
1. Limited liability company, even if the claim is filed as a derivative claim;
2. Shareholder who has filed a derivative claim, provided that the said shareholder has suffered damage or been discriminated against.
5) In compliance with other laws, the court has full authority to hear the above claims and can decide for compensation of damages, payment of fines, disqualification, preventing the execution of certain acts, confiscation, and imprisonment.
(3) Also, Article 47 of Afghanistan'sLimited Liability Company Law states the following about the civil liabilities of the members of the board of directors: "1)If the members of the board of directors of a limited liability company illegally distribute the assets of the company without complying with Article 77 of this law and the related article of association, they are personally liable. 2) In paragraph 1 of this article, the members of the board of directors are obliged to request any shareholder who received an amount in this way to return the received amount, provided that the shareholder already knew or logically should have known about the illegality of asset distribution."
According to paragraph 1 of the above article,managers are not only required to comply with the limited liability company lawbut also are required to comply with the provisions of the company's article of association. The company's article of association defines the framework, nature, and goals of the company and provides the dos and don'ts for the companymanagers. Violation of the provisions of the article of association by the managers cannot be cited against third parties,but they are liable for the damages caused to the shareholders and the company.
(4) In the same way, if a member of the board of managers is involved in a conflict of interest transaction, he must inform the board of directors of the company as soon as possible, otherwise, as per paragraph 4 of Article 48 of the Limited Liability Company Law, he will be liable to compensate for the damage caused.

Instances of Contractual Liability of Capital Company Managers

Contractual liability is a liability written in a contract permanently or temporarily between amanager and a company. According to this liability, the contract is the basis of liability, and in case of violation of its provisions and harm to others, the manager will be obliged to compensate for the damage caused by the violation of the contract.
If we consider the managers' liabilities to be contractual, the limits of their authorities and duties must already be determined in a contract, so, if managers cause damage to the company, shareholders, or third parties by performing actions outside the authorities provided in the contract, the violation of law and damage to the beneficiaries are proved without the need to prove their faults. But if we assume their liability to be non-contractual, then these damaged people must prove that the managers of the company have committed a fault in performing their duties, from which the damage has also been caused to them (Katouzian, 1993, 96).
As per Article 12 of the partial amendment bill to the Commercial Law, the positions of managers and inspectors of the company must be specified in writing, and the acceptance of the position in itself is proof that the company manager has accepted the liability with knowledge of the duties and responsibilities of his position. Now that the manager has agreed to accept such a commitment in writing, it seems logical to assume his commitment in the form of one of the private contracts subject to Article 11 of the Civil Liability Law, because according to this article, private contracts are binding for those who have concluded it in case they are not explicitly contrary to the law. Insuch a contract, it is not necessary for the agreement and consent of the parties to be established in a certain way and the contract is concluded in any form and is subject to the general rules of the contract, unlike nominate contracts which have a specific name in the law and the conditions of conclusion and its effects are determined by the law. Predetermines. These contracts do not have a specific title and form, and the principle is based on the authority of will, which determines its conditions and effects according to the authority of will (Katouzian, 1993, 96).

Although the nature of most civil liabilitiesis based onlegal guidelines, in contractual liability, this authority is with the parties to the contract, who are committed to performingor stoppinganaction. In contractual liability, before the loss occurs, there is a contractual relationship between the party causing the damage and the damaged party.

Thus, the following conditions are necessary for a civil liability to arise:

1. There must be a contract between the manager and the company.
2. The damage must be caused by the violation of this contract (Emami, 2019, 25).

In addition to the fact that there must be a contract between the party causing the damage and the damaged party, the concluded contract must be correct and valid because no obligation arises from a void or non-enforceable contract. If the concluded contract is void, the possible liability of the parties toward each other is considered acivil liability in its special sense, and until the concluded contract is not binding, the parties' relations are not subject to contractual liability (Bariklo, 2018, 25).

Sometimes, the managers of capital companies have civil liability arising from the contract they have made with the other party; In other words,a contract is a binding agreement between people that assigns rights and duties to the parties to the contract. Article 1504 of Afghanistan's Civil Code stipulates that "A contract is a commitment to perform an actionand is terminated according to the agreement of the parties and the provisions of the law." Contracts between people have legal support and executive guarantee, and the obligor must fulfill his obligation unless the subject to the obligation is lost due to unforeseen events." Article 535 of the Civil Code of Afghanistan, which deals with the liability of the obligor to the contract, states: "The person who originally performs the contract shall have the rights and obligations related to the contract."

Article 697 of the Civil Code of Afghanistan also addresses the liabilityarising froma contract and stipulates: "The contract shall be enforced on what is included in it and the good faith required by it. Also, the contractobliges the parties to perform the terms of the contract according to the law, custom, and justice. Similarly, according to Articles 821, 822, and 823 of the Civil Code of Afghanistan, whenever a person is committed to doing something in exchange for receiving an amount from the other party, he is obliged to fulfill what he has promised, otherwise, the court decision is enforceable for the obligor if the nature of the transaction requires it. Whenever guarding or managing something or special caution is necessary for performing an action by the obligor,the obligation is considered fulfilled when the obligor observes the usual cautionunless otherwise has been stipulated in the law or agreed by the parties. In all cases, if the obligor commits fraud or a big mistake, he will be held responsible. When the obligor commits a violation or refuses to act, the other party (obligee) can cancel what was performed contrary to the obligation and, if necessary, demand compensation from the obligor.

Conclusion

According to the abovementioned content, it is concluded that:

The drafters and authors of specific rules in the science of law, especially civil and commercial laws, have attempted to provide justified and legal solutions so that the managers of capital companies do not cause material and moral damage to the partners, the company, and third parties. In case of damage caused by the performance of managers and inspectors of the company to shareholders, the company, and third parties, the drafters and authors tried to facilitate the payment of compensation to the damaged parties. For this reason, civil liability and guarantee for the loss and indirect destruction of another's property, both tortious and contractual, have been given special attention in the civil liability law.

The nature of the civil liability of managers in the legal system of the Islamic Republic of Iran and Afghanistan is reflected sometimes legally and sometimes contractually.

In the Civil Code of Iran and Afghanistan, the contents are arranged in such a way that in terms of nature, it implies the separation of legal and contractual civil liabilities; While today's jurists reflect on the non-separation of these two liabilities.

From paragraph 4 of Article 45, paragraph 4 of Article 46, paragraphs 1 and 2 of Article 47, and paragraph 2 of Article 33 of Afghanistan'sLimited Liability CompanyLaw, it is clear that in case of violation of the law, the company's article of association, and resolutions of general meetings and breach of contracts, the members of the board of directors are responsible for their harmful actions

against the company and shareholders, and in case of loss, their fault and causal relationship will be fixed according to the legal and contractual nature of their civil liability. According to the principle of contract necessity, the parties to the contract, including the manager and inspector, are required to comply with the provisions of the contract and all its conditions, including the conditions mentioned in the text of the contract or the terms stipulated in the contract, concerning the company and shareholders. In case of refusal to perform the contract, violation of the contract, or violation of the quality, the quantity, the terms of the contract, delay of the contract, or premature completion of the contract which causes loss, the contractual civil liability will arise.

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