Original Article

Documents Forcing a Guarantee

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ABSTRACT

One of the most important rules of jurisprudence that causes coercive guarantee is the rule of Ali al-Aid, which is known by famous jurists, both Shiites and Sunnis, as narrated from the Prophet. Among the Shiite narration societies, this narration has been quoted in the book Mustadrak al-La'ali, quoting the commentary of Abu al-Futuh al-Razi and Awali al-Lali al-'Aziziyya, as follows: It's going to take what it takes until it returns. Ibn Abi al-Jumhur al-Ehsa'I (2018) has narrated this narration in three cases in his book Awali al-Laali al-Aziziyah. In the first case, he has quoted it without specifying the name of the Prophet, and in the second case, by specifying the name of the Prophet, but in the first way, without mentioning the intermediary, and in the third case, he has quoted it from the Prophet through Samra. There is a difference of opinion among jurists in explaining and interpreting the provisions of this rule. In examining the provisions of this rule, the question arises whether the provisions of the rule are an obligatory ruling on the necessity of rejecting other people's property, or the guarantee and responsibility of a person in charge of other people's property.

Introduction

According to Khorasani [1], in connection with the fact that in the aftermath of Ayadi, if the owner refers to the former iodine, he can also refer to the subsequent iodine; he says: And it confirms its validity and the news has not denied it, so it must be legally bound by it.

This matter, i.e. customary and rational, is valid in most of the provisions of the guarantee.

Here, first, the provisions and documents of this rule are examined. Naraghi in Al-Anawin says, "In that loss is a guarantee, there is no need to mention the evidence and the necessity, consensus and many texts that property, action, Because there is no way in them except through custom and since the Shari'ah has not rejected it, this non-rejection in any case where the absolute reason for the guarantee is given, is the discoverer of the Shari'a's signature [2].

Loss Rule

Another jurisprudential rule that is cited as a guarantee is the rule of waste, which is well-known among jurists.

width and respect the blood of Muslims, as well as the evidence of denial of harm is sufficient for guarantee. In connection with this rule, the jurists have accepted its ostracism and have argued it based on verses and hadiths, and it

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has been less claimed that in the book Al-Fiqh Al-Qawa'id Al-Fiqhiyyah, the verses of "I'tida", "Fon Aqbatam" and "Jaza 'Siya" have been cited.

Fazel Lankarani (2018) also considers this rule to be famous and common to all jurists of all sects and considers it a necessity of jurisprudence. He continues that apparently this rule has not been included in any narration with this phrase and has apparently been found in hadith books. Bojnourd (2013) considers it to be common among Muslims and a necessity of religion. Regarding the narration of this rule, he says: We did not find the same phrase of the rule in the books of hadith, perhaps the researcher has found or will find an opinion [3].

The point to be considered in the writings of the above-mentioned jurist is to consider the realm of the rational building in this regard as broader than the Shari'a rule of Ali al-'Alid. Probably, his words refer to such things as guaranteeing the interests of the free man and responsibility for the deviations, based on which, according to the rational people, the loser is responsible [4].

Rule of Tasbib

In the intercession section, the challenges and conversations are more than the other sections. The most important issue is the title of Tasbeeb itself, since this title is not explicitly mentioned in the narrations of the Imams (AS) and what is mentioned in the narrations are examples of this title such as harm by Muslims. On the other hand, its philosophical and lexical meaning is different from its customary meaning. One of the ambiguous cases in jurisprudential books is the meaning of the word cause [5].

In the words of jurists, there are cases that make it difficult to arrive at the meaning of the word common cause. For example, Rashti (2009) in his book Al-Ghassab, citing the phrase "creating the obligatory cause", believes: Occurrence in a well is the cause of destruction. Because this cause requires the well in which the fall was realized, because this occurrence is only documented in the well, as opposed to the deadly personal hunger (the starving of the sheep child caused by the usurpation of the mother) which is causally causal alternatively, it can be both the mother's anger and the child's lack of nutrition in other ways [6].

The point is that whenever something has multiple causes, its absence is not a documented one, especially one of them (Rashti, 2009, 108). This expression is used in such a way that the jurists who have used the term creation of obligatory cause in the definition of cause, mean cause in the philosophical and lexical sense, and from the existence of which there is a cause and from its absence, the absence of a cause is necessary. Since the absence of the various causes that can alternatively cause the cause, the absence of each of the causes in particular does not cause the cause. Therefore, such items have been considered outside the realm of responsibility.

The words of Boroujerdi (2017) are also used, which is probably the reason for his lexical and philosophical meaning. After quoting one or two quotes about the cause, he says: Some have taken the intention as current and some as dignity. And he adds: But reflecting on the news related to this issue, creates the view that any act that causes the loss of property, the perpetrator will be responsible, whether he intends to lose or does not have such an intention. Whether the loss is due to proximity or due to unlikely. From the words of Fakhr al-Muhaqiqin (2017) in explaining the benefits, it also follows that there is no consensus on the meaning that the meaning of cause is cause in the conventional sense. According to him: If someone confines a sheep or prevents the owner from protecting it and as a result the sheep is lost, or if the sheep usurps the mother and the child goes after the mother [7].

The difference in the guarantee of the first case arises from the fact that the child of the sheep was lost due to the imprisonment of his mother, because traditionally, the death of the child is documented in the imprisonment of the mother, and that it is the cause of the action that the loss accompanies and for another reason. It is obtained and this is the interpretation of some jurists [8].

Some conditions have been added to the definition of cause and this interpretation is better. According to this interpretation, the

mother's confinement is not the cause of the sheep's offspring, as another cause could replace it. Since the cause of loss is imprisonment, imprisonment cannot be considered a cause. Another doubt that exists in the responsibility of the second case is due to the fact that on the one hand, the act of confinement is not the seizure of property but the seizure of the owner, but it is a customary cause.

In the third case, the existence of responsibility is due to the fact that the usurpation of the mother in the baby sheep creates a desire similar to involuntary and involuntary desire. Because the child is naturally drawn to the mother, then the mother's rage causes the loss of the child, but on the other hand, there is doubt that this cause of guarantee has been accepted by the sharia. Moreover, the principle is innocence of guarantee.

As can be seen, in all three cases, there is a guarantee of a customary cause, and no one has doubted that the existing cause is customary. There is a doubt that the realm is the cause of guaranteeing something more than its customary realm, that is, the lexical realm of the word, and in the third case, the doubt is that the criterion of guarantee is something more than the customary meaning of the word. It seems that there is no significant difference between the customary meaning and the lexical meaning of the cause, except for the realization of the guarantee.

Different Forms of Fault in Coercive Guarantees

Types of faults are similar in nature from one perspective, fault can be divided into "action" and "omission" in terms of their nature. In cases where the offender is customarily or legally obliged to refrain from taking action, ignoring this legal obligation and the occurrence of damage resulting from this violation of the obligation will be a guarantee for him. However, in cases where the subject of the person's duty is to perform a positive act prescribed for him by custom or law, the omission of the act and the refusal to fulfill the said obligation shall be the source of the guarantee.

Articles 951, 952, and 953 of the civil code define each of these two forms of fault under different headings. In these legal articles, the legislature has defined each without forcing aggression (deed) and debauchery (omission) or fault (deed or omission) into coercive liability. In order to make it clear in the case of harm that the harmful act is necessary for the fulfillment of responsibility or to abandon his action, the nature of the obligation must be determined so that, consequently, the nature of the fault becomes clear. For example, if a person's duty is not to place an object in a public passage, his positive action (that is, placing that object in the passage) is considered a fault. Identifying the nature of the fault is useful in the sense that in some sources of coercive guarantee, both the act and the omission of the injurious act are responsible (such as causation), but in some cases, only the positive act can be a guarantee (such as loss).

Therefore, if the injured party wants to compensate for the damages by referring to the rules of loss, he must necessarily prove the commission of a harmful act (violation) of the harm, but if he acts according to the rules of causation, the proof of omission may also be proved.

Types of Fault in Terms of Degree

In addition to the division of guilt into the act and omission of the act under consideration, this concept is intentional in terms of the severity and weakness of the harmful spiritual element, as well as the degree of conformity of the act with the accepted customary or legal criteria; and lack of skills and non-observance of government systems are divisible.

Intent

According to the definition contained in Articles 951, 952 and 953 BC. Also, Article 1 of the Civil Liability Law does not doubt that the intentional harmful act is guaranteed, and in most cases, in addition to guaranteeing civil enforcement, the legislator has resorted to criminal enforcement to counteract such acts. Comparing the evidence of intentional fault in coercive civil liability with contractual, shows that in contractual guarantee, the involvement

of the intentional element in committing fault, i.e. the general concept of contractual fault, in the principle and extent of contractual liability is not obligatory. Intentionally, the injured party is exempted from providing another reason to prove the damage of the injured party; except in special cases, such as the usurper guarantee, which, like a contractual guarantee of proof or failure to prove intentionally, does not interfere in his civil liability.

In some cases, intentional proof also proves full liability for the offender and deprives him of recourse for reasons or legal excuses for exemption from liability. For example, a person who intentionally damages another person's car parked in an unauthorized place with an excavator is unable to absolve himself of responsibility or reduce it to the detrimental fault of parking a car in the area. In lighter offenses such as negligence, proving a damaged fault can help moderate the liability of the injured party.

Negligence and Carelessness

These two are much lighter faults that in most cases where fault is a condition of coercive civil liability, by achieving it, the detrimental guarantee is realized. The definition can be found in Articles 951, 952 and 953 BC. In the definition of fault and its fissure, because the criterion has established a way to distinguish fault, it is applicable to this form of fault; because although various criteria have been proposed for the recognition of the act of error (fault) from a legal point of view, the criterion is more common than other agreed theories. Article 1 of the Civil Liability Law introduces the idea of recklessness along with intent, one of the forms of fault that is a condition of harmful liability. In Article 335 of the Civil Code, negligence is intentionally used as one of the forms of fault. Therefore, negligence or carelessness can undoubtedly be considered as a form of fault in the valley of coercive responsibilities.

Incompetence

This instance, in some cases, may be considered a fault and be the responsibility of the perpetrator. In fact, incompetence seems to be a kind of guilt in the sense of recklessness. In fact, it can be said that an unskilled person usually does not do something in which he is not skilled. Thus, it is determined that although the criterion for identifying a skill or lack of skill is personality, after acquiring a skill, it is a kind of criterion that determines whether such a person can perform an action or not. Therefore, in defining guilt from the tone of articles 951-953 of the civil code, it is clear that the concept of guilt in coercive liability has a kind of aspect, meaning that we compare the work of the cause of harm with the behavior of a normal human being.

Exceptions and Justified Causes of Fault in Coercive Guarantees

Although fault, in the sense that has passed, is essentially a condition for the realization of civil liability under coercive guarantees, there are cases in which the occurrence of which eliminates harmful civil liability. In some cases, this eliminates the element of fault and in this respect is an exception to the detailed forms of fault. In some cases, without affecting the element of fault, it eliminates the causal relationship between the harmful act and the damage done and thus eliminates responsibility.

Cases Considered Under the Two Assumptions

Whenever a person inevitably inflicts harm on another in order to repay the loss, the question is whether, in such a case called urgency, i.e. the choice of the least harmful, the coercive guarantee of the infringer is eliminated or not. Doubts arise from the fact that, on the one hand, the imposition of compensation for such damage on the offender is incompatible with the rules of morality and reason, which are essentially the basis of legal rules, and, on the other hand, without compensating the injured party. The occurrence of harm has no role, only on the grounds that the harmful act was committed to avoid a greater loss. Of course, according to Iranian law, the legislator in a position, in accordance with Islamic jurisprudence, despite accepting urgency as a factor justifying a harmful act and stipulating

that in a state of emergency, if a person commits a crime, he will not be punished but has ruled on the needy guarantee and the need to compensate the damage caused to another.

Legitimate Defense

Legitimate defense eliminates the element of fault; because custom, which is the criterion for determining fault, does not consider anyone who, in the position of defending his property or life, to harm a transgressor, guilty, or coercion, which is the condition of liability. There is no doubt that harm to the assailant results in the termination of the liability and consequently the termination of liability. Also, since Article 15 of the Civil Liability Law, without any reference to specific clauses of the causes of liability, stipulates: "A person who, in the position of legitimate defense, causes bodily or financial damage to a particular person, is not liable for damages." "It should normally be commensurate with the defense." Therefore, in other cases where fault is not a condition of civil liability, such as loss, according to the application of this provision, the liability of the injured party with the community of other conditions is also eliminated.

Cairo Force

The concept of Cairo power has already been explored in the field of contractual civil liability. An external, unpredictable, and unavoidable event that causes one person to harm another constitutes a Cairo force in coercive civil liability. In the issue of coercive guarantee and the law of civil liability, there is no mention of the intervention of the Cairo power and the degree of its impact on the exemption from liability, but in the contract of guarantee in Articles 227 and 229, it is specifically addressed.

Involvement of Other Persons in the Occurrence of Damage

What is meant by this title here is the total or partial intervention of any person other than the injured party, even the injured party, in the occurrence of all or part of the loss. Such an assumption is made because it essentially eliminates all or part of the causal relationship between the harmful act committed by the harmful and the inflicted. Therefore, the reduction of his responsibility follows. Of course, such a relationship is examined in jurisprudence and, of course, the law of civil liability under the general title of "interference of causes", which is beyond the scope of this study.

Proof of Fault in Coercive Liability

The concept of various forms of fault in coercive responsibilities has already been examined and we have seen that fault in this sense, in simple terms, means the non-fulfillment of legal obligations, including obligations that are traditionally required to be fulfilled by a person. Such behavior does not occur to a normal human being under the same circumstances. On the other hand, as said earlier, the need to prove guilt is necessary only in cases of civil liability which the legislature has made a condition of liability, or in other words, better and more accurate. In cases where the law does not make proof of fault a condition of liability, there is no need to prove it, and the present discussion refrains from such cases.

In view of the above premise and in order to explain the burden of proving guilt in such liability, it should be said that since the Iranian legal system is based on a system of rules, in all matters where the legislature has not explicitly specified the task, with the help of the basic principles and rules governing this system, an acceptable solution must be found. In the present discussion, there is no explicit legal text that has determined the bearer of the burden of proof. Therefore, it must be said that innocence is based on the basic principle. No person shall be liable to another unless proven otherwise.

On the other hand, according to the "rule of evidence", the establishment of evidence is the duty of the party who is in the position of claim, and we also know that it is a personal claimant who speaks contrary to the principle or appearance. Therefore, it can be said is that since the original principle is innocence and the injured party claims otherwise in the position

of the plaintiff, then it is his duty to prove and prepare the reason.

It is necessary to note two points here: First, what has been said was a requirement of the basic rules and principles, and this does not mean that, from the beginning to the end of the trial, the task of preparing all the evidence used in the trial is the responsibility of the injured party. On the part of the party who claims to be contrary to the principle or appearance, it is his responsibility to prepare the evidence, and this does not contradict what has been said before. For example, if the plaintiff alleges that the aggressor (the defendant) behaved unconventionally or recklessly, and the defendant alleges that his conduct was the result of coercion by a third party, it is his duty to provide evidence for such an apparent allegation. Secondly, what has been said is a requirement of the rules and principles of the debate, and in any case where the legislature itself, explicitly or through the establishment of a legal emirate, has the duty to bear the burden of proof, and it must be in accordance with these provisions.

Conclusion

In the field of contractual liability, fault is conceivable in two senses: First, the general concept of fault, which means the mere non-performance of the contractual obligation, including at least five assumptions: Non-performance of the obligation in general, non-performance commitment with the promised quantity, non-fulfillment of the commitment with the promised quality, non-fulfillment of the obligation at the appointed time and finally non-fulfillment of the obligation at the appointed place. The second is the specific concept of guilt, which in fact includes non-fulfillment of an obligation if it is accompanied by at least one spiritual element or error. In coercive civil liability, fault is in the sense of an actual act or omission that a normal human being avoids in the same circumstances, so it is divided by nature into an actual act or omission. Therefore, it can be said that in contractual civil liability, the realization of fault in its general sense is a condition of liability, but fault in the specific sense has no role in the realization of the guarantee and the obligee does not need to prove the fault of the obligee in the position of non-fulfillment.

The legislator has introduced the realization of fault as a condition of the liability of the obligee, such as trust contracts and in coercive civil liability, fault has a dual status and role in the specific sense, explaining that fault has no role in the loss of liability.

Therefore, proving the innocence of the perpetrator is ineffective in his guarantee, but in principle, in establishing the fault, the condition of responsibility is and without faul; the causal guarantee is eliminated, unless otherwise explicitly provided by the legislator, hence the concept of fault in exercising liability in two branches of coercive and contractual civil liability are fundamentally two different concepts.

In connection with the question of whether the injured party can leave the contract in spite of the contract to compensate for his language and invoke the principles of coercive guarantee, it can be said that if the contract and the terms of the agreement are not rendered useless by invoking the principles of coercive guarantee, the injured party can leave the contract and rely on coercive guarantee to compensate for his loss, but if the situation is such. In this case, it is not possible to leave the contract and go to a coercive guarantee to compensate the damage, whether the two principles of liability can be considered according to the common principles. Fundamental unity of contractual responsibility and coercive responsibility in Iranian law can be considered fundamental unity of contractual responsibility and coercive responsibility, while this unity can be justified by the principles of Islamic law because in these laws, a special chapter is not dedicated to contractual liability and these two types of liability are not separated.

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