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BASICS OF MANAGERS' CIVIL LIABILITY EVALUATION AND ATTRIBUTION IN IRANIAN AND AMERICAN CORPORATIONS

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ABSTRACT

Managers of the corporations that are administrated publicly and privately might be required to compensate losses according to their areas of activity in the business affairs following the performance of default and, in this regard, various lawsuits can be filed to the judicial authorities. Loss compensation by the managers of the corporations can be studied in the laws of Iran according to its jurisprudential and legal sources based on the basics of civil liability such as the maxims of "no loss", "causation" and "wastage" as well as the theories of guilt, risk and guarantee and also a mixed array of them. Corresponding to articles 142 and 134 of the bill on the reformation of the business law, passed in 1968, the members of board of managers are responsible individually and in group before the shareholders and third persons in case of any default and carelessness as well as before all of the other members by the causing of damage and loss to the company as ruled in the laws of Iran. In the American laws the source of which is the judicial procedures of the common law system, the liability of the corporates' managers is evaluated according to the type, the amount and the degree of default; resultantly, the element of guilt is considered as the scale for identifying the civil liability of the managers of the corporates in both the legal systems of Iran and the US. However, there is no specific and comprehensive scale for the attribution of guilt and requiring the managers of the corporations to the compensation of the losses in the laws of Iran as in those of the US and various theories have been most often studied in line with the identification of default but no appropriate and unit solution has been offered so far.

INTRODUCTION

The subject of civil liability dates back to ancient times and then Islam and the periods after it. In every epoch, there are left documents thereof in such a way that this provision has been currently well developed and it is also studied along with the business firms, including corporates and joint stock companies. Therefore, the present article tries investigating the liabilities of the managers in the joint stock companies in the laws of Iran and the US considering its importance and the absence of any comparative research in this regard. Corresponding to article 1 of the bill on

the reformation of the business law, passed in 1968, a joint stock company is a corporation the capital of which has been divided into shares and the responsibility of shareholders in such corporations is limited to a nominal value of the amount of their shares. Corporations are divided into two kinds, namely public or joint stock and private companies. The former is a company the founders of which acquire part of the company's capital via selling shares to the people and the private corporation is a company the whole capital of which is supplied exclusively by the founders in the time of establishment. The share-owners of the corporations do not have the right to individually investigate and intervene in the company's affairs and, of course, this necessitates a good deal of proper supervision on the company's affairs and its decisions. According to this definition, every corporation has managers that may perform default and create liability; for example, corporation A may take possession of the profit of some partners when apportioning the partnership shares and this can be followed by criminal liability in addition to civil liability. Corresponding to articles 142 and 143 of the bill on the reformation of the business law, passed in 1968, the members of BoD (board of directors) can be held liable in individual or group manners before the shareholders and third persons in case of performing any default or carelessness that result in the imposition of losses onto the company. Therefore, the scale for the verification of this kind of liability can be evaluated in the laws of Iran and the US or the common law system based on various basics. In the laws of Iran, the criterion for the evaluation of the civil liability of the corporate managers is such maxims as no-loss, causation and others of the like as well as theories like guilt, risk and guarantee and also a combined array of them. This issue is assessed in the laws of the US based on the degrees of guilt. Thus, the question that can be raised in this regard is that whether the basics of the guilt and civil liability of the corporate managers are similar in the Iranian and American laws or not? The answer to the foresaid question should be studied under the titles of its basics. The present study aims at investigating this issue along with other matters based on library research and in the form of analysis and description. At first, we will get acquainted with the nature of the civil liability and corporations; then, the basics are investigated and the civil liability's attribution to the corporate managers is evaluated in the end.

1. Ontological Study of the Study Subjects:

Along with the study of the present study's subject, it is of a great importance to get familiar with the natures and concepts of civil liability and corporation in line with the study of the basics of the civil liability evaluation and its attribution to the managers of the corporations. These will be studied in the forthcoming sections under two independent titles.

1.1. The Nature and Meaning of Civil Liability:

At first, the nature of such a legal provision as civil liability will be evaluated in the written laws of Iran and the US.

1.1.1. Iran's Laws:

The Arabic term "Mas'uliat" [responsibility] has been derived of the root "Sa'ala/Yas'al" meaning being obliged to perform a task (Moeen, 1992, p.4077). It also means being reproached for something and this

concept makes it clear that there should have been a duty and commitment in the beginning (Yazdanian, 2000, p.26). Therefore, in its broad sense, civil liability incorporates the liabilities stemming from the violation of the contract with the noncontractual liabilities being the responsibility stemming from harmful behavior because, disregarding the similar and common basics of these two kinds of liabilities, their nature can be also considered as being identical. In specific terms, civil liability refers to noncontractual responsibility. In its general meaning, civil liability includes the responsibility for the compensation of the harms stemming from the harmful behaviors (Rahpeyk, 2009, p.22). This issue also holds true in line with the managers' responsibility in the corporations, as well, in such a way that if a company's manager causes losses to the other partners by his or her harmful behavior, s/he can be held liable.

If a person damages the personal or familial prestige and credibility or the financial rights and properties of another person in the course of a business affair in the corporations, can the loss-incurred demand the compensation of the imposed losses from the loss-causer? The theory of civil liability provides an answer to this question and explicitly mentions the conditions under which the compensation of the losses can be demanded from the loss-causer. Put differently, in the legal language and except for certain cases, civil liability means commitment to the compensation of the losses (Hekmatnia, 2010, p.27). thus, the legal sanction for the violation of the rules and regulations that cause damages to the citizens is the civil liability or, in other words, the commitment and requirement to the compensation of the losses imposed on others is termed civil liability (Yazdanian, 2007, p.64).

The term "civil liability" has also been called "obligatio ex delicto", "extra-contractual requirements" and "noncontractual responsibility" with its French translation being "responsabilite Civile". However, the term "civil liability" has been occasionally used in a broader sense in which case it encompasses both the contractual civil liability and the noncontractual civil liability (Hayati, 2013, p.18). In another definition, as well, civil liability includes "legal commitment and requirement of an individual to the compensation of the loss or damage imposed on another as a result of an action that has been attributed to him or her in a well-documented manner" (Bariklou, 2014, p.24). civil liability reminds of concepts like damage, damage reparation and compensation of the losses incurred (Jordan, 2012, p.31).

However, the term "civil liability" is deployed against the term "criminal liability" and it means the responsibility of a person for the compensation of the losses s/he or other individuals or objects under his or her supervision have caused to the others or their properties (Ja'afari Langarudi, 2013, p.645). Put it another way, in any case that a person is obliged to compensate another's losses, it is said that s/he is held civilly liable before another person for the compensation of his or her losses and it is based on this responsibility that the harmer is required to compensate the losses incurred by the loser. This type of responsibility is created between the loser and loss-causer based on a debt relationship hence terms like debtor and creditor and payment of debt can be applied for this type of liability (Katouziyan, 1996, pp.9-10). However, the nature of the civil liability in regard of the corporations can be conceptualized in the following

words: in case of the default and justification of the pillars of civil liability for the managers or each of the shareholders, the person exercising default should be required to compensate the losses.

1.1.2. Laws of the US:

In order to identify the concept of civil liability in the laws of the US, the frequently used concept of guilt should be made known because this term is utilized instead of the term "civil liability". In common law system (the US and the UK), similar and equivalent words like loss, injury and detriment of any types are applied. A loss may be imposed to a person or to properties belonging to him or her. These terms are usually pluralized in the term "damages" which is distinct from its singular form and meaning the pecuniary compensation to which an individual is sentenced for the compensation of the losses imposed on a person or his or her properties as a result of his or her perpetration of an unlawful act, omission or wrong act and these can be performed by a partner to his or her corporate shareholders[1] (George, 1989, p.20). Thus, civil liability is used in the common law system, especially that practiced in the US, for any action in which an individual's performance or nonperformance or default is well-verified. Loss compensation follows the verification of an individual's guilt and responsibility.

1.2. The Nature of the Corporations:

1.2.1. Iran's Laws:

Iran's business law rules that the corporations should be formed based on the contracts and private contracts' freedom and no prior permission has been predicted therein for the establishment of such firms but this theory that the corporations are formed as a result of a contract of partnership between the partners and keeps on striving is not supported by many because the corporations, in their real sense, are established by the individuals who are mostly not known to one another and the shareholders are constantly changing and, after the establishment, the charter and the regulations are approved hence changed by the majority of the shareholders; these corporations might be administrated based on the law by various persons that are not the representatives of the partners but the agents of the company in its legally independent sense. Due to the same reason, the theory that the corporation is an independent legal organization established under certain circumstances is presently supported by many (Sotudeh Tehrani, 2008, pp.15-16). However, there is a possibility of sustaining losses and the managers of these companies are required to compensate them in case of exercising default and following the verification of their guilt.

It is worth mentioning that the civil liability of the managers in the public and private corporations has been stipulated in article 270 of the business law and the legislator expresses that the corporations or their operations or decisions are invalidated based on the request of any interested party by the order of a court whenever the legal regulations on the formation of the corporations or their operations or the decisions made

[1] In Latin literature and in English, the term "damage" is equivalent to "Damnum" hence the material damages are called damnum emergenso and the prevention of gaining profit and taking interest is called lucrum cassans.

by each of their pillars are violated. However, the managers of the corporations cannot take advantage of such invalidation order in respect to the third persons. As it is seen, the civil liability of the corporate managers is well-evident in this article.

1.2.2. American Laws:

In the US, the corporations cannot have a legal personality unless their charter is registered. In the American laws, the shareholders enjoy a lot of freedoms for the administration of the corporation though the establishment and the administration of it obeys the US laws. As for the corporations that are formed in line with the partnership of various persons, the guilt of any of the partners and managers can cause civil liability. As it was explained before, the guilt and its degree can determine the amount of the civil liability in the US laws.

2. Basics:

The basics of the managers' civil liability in the corporations differs according to the jurisprudential source and the extant judicial procedures of every written laws hence vast studies can be carried out in line with the identification or the recognition of the basics of such a type of responsibility. The upcoming sections independently deal with these basics in the laws of Iran and the US.

2.1.1. Iran's Laws:

The basics of the managers' civil liability in the corporations as ruled in the laws of Iran can be evaluated from the jurisprudential and legal perspectives.

2.1.1.1. Jurisprudential Perspective:

2.1.1.1.1. Maxim of No-Loss:

Unlike in Sunnis' jurisprudence, the Imamiyyeh Jurisprudence uses the maxim of no-loss in a vast sense for the compensation of losses and justification of guarantees. It is a controversial maxim and it has many meanings (Darabpour, 2011, pp.274-275). Assuming the governance of the no-loss maxim over the civil liability of the corporate managers, it has to be noted that the principle is that the managers should make no loss. The maxim of no-loss has been frequently mentioned in the books of the two sects (Sunnism and Shiism) and it can be applied for the study of the civil liability of the corporations' managers. In the book "Kafi" and in the story of Samorah Ibn Jondab, Kolaini (PBUH) narrates it from Ibn Bakir from Zerareh from Abi Ja'afar (PBUH) after expressing the story of the Ansari (assistor) and Samorah Ibn Jondab and the command by the great prophet (may Allah bestow him and his sacred progeny the best of His regards). He states that the prophet (may Allah bestow him and his sacred progeny the best of His regards) has ordered it to the Ansari that "Ezhab Fa Eqla'ahā Wa Eram Behā Elayh Fa Ennahū La Zarara Wa Lā Zerār". In one of the other methods of hadith, it has been narrated from Abdullah Ibn Maskan from Zerareh from Abi Ja'afar (PBUH) that "Qāla Rasūl Allah (Sall Allah Alayhe Wa Āleh) 'Ennaka Yā Samorah Rajolon Mozār Wa Lā Zarara Wa Lā Zerār Alā Al-Mo'men'". In the book "Man Lā Yahzarahū Al-Faqih" and on the heritages of the citizens of various nations, Saduq (PBUH) adds the

term "Islam" [submission] and narrates that "Qāl Rassul Allah (Sall Allah Alayh Wa Āleh) 'Lā Zarara Wa Lā Zerār Fi Al-Islam'". Disregarding the verbal proofs on the maxim of no-loss, it seems that the intellectuals' way of conduct can be considered as a robust support for this maxim. Undoubtedly, the intellectuals' way of conduct is actualized in this issue that the harming of the others is seminally inappropriate in the social and civic life and, secondly, the causer of the loss is obliged to compensate the losses of the loser. So, this maxim has been accepted in all of the legal systems and no disapproval and rejection thereof can be found anywhere hence it is also endorsed by the sacred canonical ruler. Of course, it should be also noted that many of the problems about the no-loss maxim are overcome considering the foresaid proof. For instance, the discussion about the idea that can the no-loss maxim set a sanction or not stems from the interpretation of the negative-maker "Lā" in the statement "Lā Zarara Wa Lā Zerār" [neither doing harm nor receiving harm is permitted] but the answer would become perfectly vivid when resorting to the sages' way of conduct (Mohaqqeq Damad, 2009, p.151). However, the important foundation of the managers' civil liability in the corporations should be taken into account in respect to the no-loss maxim and this foundation reminds of the idea that should a manager do harm in a corporation, s/he would be held liable. Most of the jurists and jurisprudents realize the no-loss maxim as the best foundation for the civil liability and the foresaid foundation also holds true for the civil liability of the managers of the business firms.

2.1.1.1.2. Maxim of Wastage:

Inspired by the aforesaid maxim, the Iranian legislator announces in the article 328 of the civil law that "should anyone waste another's property, s/he is liable and has to pay its price or its equivalent price whether s/he has intentionally or inadvertently done so and whether be it a specific property or an interest thereof; such a person is required to pay for the defected part should s/he cause defections in the property". It is observed that no reference has been made in this article to the element of guilt for the actualization of the civil liability because there is a relationship between the harmful action and the wastage of a property and the common laws do not realize it necessary for another intention to be existent for perceiving the element of attribution (Gholamalizadeh, 2014, p.67). Therefore, if the manager of a corporation wastes the properties of the partners or their movable shares, s/he is naturally liable for the wastage. The wastage maxim can be studied as one of the causes of guarantee in the civil liability of the corporate managers. The maxim is substantiated on the honorable ĀYA mentioned by some of the antecedents, including Sheikh Tusi in his Al-Mabsūt: "Fa Man E'etadā Alaykom Fa E'etadū Alayh Bi Mithl Mā E'etadā Alaykom …" (BAQARAH, ĀYA 190) meaning "if anyone abused you, you should abuse him or her in the same way". This maxim has also been substantiated on some narrations. Sheikh Tusi presents a narration from Abdullah Ibn Mas'ud who quotes the great prophet (may Allah bestow him and his sacred progeny the best of His regards) in the following words: "Harramahū Māl Al-Moslem La Hormahū Damahū" (Tusi, 1972, p.59) meaning "the Muslims' properties and their own selves are to be equally venerated". If the importance of a Muslim's

properties be the same as that of his or her blood, the wasted properties can bring about liability (Mohaqqeq Damad, 2009, p.11). Therefore, according to this basis of civil liability, it can be declared that the wastage maxim does not accept all sorts of damages caused by the managers of the corporations but it sentences all the damages to compensation as it has been confirmed in various abovementioned narrations.

2.1.1.1.3. Causation Maxim:

Alongside the maxim of joint wastage, the jurisprudents have spoken of the causation maxim (intermediated wastage) in regard of civil liability (Gholamalizadeh, 2014, p.68). After the no-loss and wastage maxims, the causation maxim can be also studied as a basis of the civil liability for the managers of the corporations. The causation maxim can be evaluated as an attribution for the identification of the guiltiness in regard of civil liability of the corporate managers. As an example, it has been stated regarding the civil liability of the corporate managers that the longitudinal and transversal causation relationship is of a great importance for the identification of the guilty party; in the meanwhile, figuring out this relationship entails scrutiny in the subject and method of guilt in terms of the means thereof. The causation topic is posited corresponding to the common procedures of the jurisprudents immediately under the title of wastage because causation is actually a sort of wastage with the interpretation being that the wastage is done directly or by someone's intervention but the causation includes an intermediated damage to a property. As a specimen, the manager of a corporation may take part in setting the movable or immovable property of another person on fire and cause its wastage; the same manager may take an action and prevent the company from gaining profit and cause losses to the partners; in this latter case she is the causer. As for the cause, it has been stated that it is anything the existence of which suffices the absence of another thing but its absence causes the existence of another thing. It is used along with "reason" in such a way that when the relationship between two things be in such a way that the existence or the nonexistence of one causes the existence or nonexistence of another, that "one thing" is called the total reason. So, the total reason and cause differ though being somewhat similar (Mohaqqeq Damad, 2009, p.117). However, the causality relationship should be feasible for attributing the civil liability to the corporate managers.

2.1.1.1.4. Entrustment Maxim:

As for the trustee, the general principle in Iranian laws is that "s/he is not held liable as far as s/he has performed no abuse and negligence; if the corporations are presumed to be entrusted, the guarantee cannot be considered as being well-established according to the aforementioned maxim. The jurists believe that "when a person is permitted by the owner or the sacred canonical ruler to take possession of and keep a property whether for protecting it for the owner (such as deposit or prepayment) or for its use (such as borrowed money, rentals, advocacy, mortgage, bailment of capital, shared irrigation, testaments and partnership) and the property is wasted without the authorized person's abuse and negligence, the person cannot be held liable for the loss compensation (Darabpour, 2011, p.2652). This

maxim has been mentioned in the jurisprudential texts in the following words.

"A trustee is not to be held liable unless in case of his or her performance of abuse and negligence". The term "unless" has been used here to mean that his or her negligence and abuse makes him liable and the wastage or defection of the property placed under his or her entrusted possession would be naturally needed to be compensated. Therefore, the entrustment maxim can be one of the most important jurisprudential axioms for the civil liability of the corporate managers in such a way that the managers are trustees of the corporation and they cannot be held liable in case of their trusteeship's justification.

2.1.1.2. Legal Perspective:

2.1.1.2.1. Theory of Guilt:

In response to this question that why the managers of the corporations are liable for compensating their imposed losses, the followers of the guilt theory have stated that the person having performed a thing ethically reproachable should be held liable. Based on this theory, the liability is an ethical concept.

Considering this subject, the managers of the corporates are required to compensate the losses in case of their guilt's verification based on the aforesaid theory. Everybody is a guarantor of his or her actions and wrongdoings and no judgment can be typically made in this regard. Based on the theory of guilt and in order to demand the compensation of losses, the loss-incurred should be able to prove that his or her guilt has caused the imposition of the damage. For verifying the guilt, the loss-incurred plays the role of claimant and s/he has to provide his or her proofs. In contractual liabilities, the justification of non-performance naturally suffices this goal and the committed party is exempted from the responsibility by proving that s/he has been prevented from the fulfillment of the contractual obligations by an inevitable and compulsory and unpredictable barrier (force majeure). As for the obligatory responsibilities, the guilt is always against the principle and it has to be proved and the loss-incurred party is considered as the claimant (Katouziyan, 2013, pp.21-22). Thus, one of the most important theories is the theory of guilt. In this theory, the responsibility has been placed on the foundation of interpretation. Like the doers of harm, the corporate managers should compensate the losses when being found guilty and when their guiltiness is proved by the loss-incurred. Based on this theory, the responsibility of the defendant comes about for his or her guilt and the loss-incurred should, as a claimant, prove the guilt and the causal relationship between the doer of the harm and the losses (Ghasemzadeh, 2011, p.25). According to this theory, the reason and the main aspect of the corporate managers' liability is the harmful action done to the shareholders and their being found guilty. The proponents of this theory intended to satisfy others and make them persuaded in their conscience about the harmful action and its doer and remark that it is the conscience that finds a person liable for the compensation of the losses and additionally that the legislator's ruling for the liability and necessity of compensating the losses imposed to others is in the same line as the ruling of the conscience (Bariklou, 2014, p.49). However, considering the theory of guilt and in case of the verification of the corporate managers' guilt, the

manager of the guilty company can be required to the compensation of losses based on this theory. This theory has been the basis of substantiations in some articles of the civil law. It has also been taken into consideration simultaneously along with the theory of risk in the laws of Iran.

2.1.1.2.2. Theory of Risk:

Apparently, the concept of risk is deemed evident in regard of the civil liability of the corporate managers because risk, as well, like guilt, is a common law's concept but, as it will be shown, the jurists are at odd in the elaboration of its concept. However, it has to be noted that the risk is an affirmative not privative concept. Therefore, every guiltless responsibility is not based on risk. Amongst the most important factors influencing the evolution and embodiment of the theory of risk is the doer of the action with it being difficult for the loss-incurred to prove the guilt. This difficulty has, specifically in the aforementioned cases, caused the removal of the element of guilt from the area of the civil liability and the omission of the element of guilt from the pillars of the civil liability in line with the facilitation of the liability justification and easing of the loss compensation (Ghasemzadeh, 2011, p.30). Based on this theory, every corporate manager performing an activity or another creates a dangerous environment for the others and the individuals taking advantage of this environment should compensate the losses stemming thereof. This way, the guilt is not the basis of the civil liability hence punishment with the exchange of such a dangerous environment's creation being the profit gained by some individuals. In cases that a person engages in a legitimate activity and does not perform default but another person sustains a loss of a type, they are both non-liable. The damage should be imposed on one of them. The consensus has chosen the loss-incurred party but the laws should make up for this injustice because the individual who engages in an activity to gain profits is more deserving than the person who has done nothing and has not gained anything for sustaining the loss compensation (Katouziyan, 2013, pp.23-24). Resultantly, it has to be expressed that the theory of risk is comprised of two aspects: one is refuting and the other is proving. The refuting aspect of this theory is that there is no need for guilt to be existent for the actualization of civil liability hence guilt should be omitted from amongst the conditions of civil liability. In this regard, Salley believes that "the civil liability relationship is the relationship between two assets not between two persons and the jurists have mistakenly imagined the civil liability's relationship as being established between two persons and the result of this incorrect imagination has been their entanglement with the psychological factors that they realize as being effective in the actualization of responsibility whereas the civil liability's relationship is to be conjectured as established between two assets and this relationship is typical and nonpersonal and it has nothing to do with the psychological and internal factors. Thus, guilt does not play any role in the actualization of the civil liability (Bariklou, 2014, p.50).

Based on theory of risk, the doer (corporate managers) are responsible for the compensation of the losses in case of imposing losses. In other words, the principle is the liability and compensation in this theory and, due to the fact that this theory is not laid on the foundation of guilt, the justification of non-guiltiness or observance of the necessary cares does not

influence the liability. The only way for exoneration from liability is the justification of the external reason because it is in this case that the relationship assumed between the doer (owner) and the damage is cut and s/he is exempted from liability and loss compensation. The examples of this theory are numerous and different. In some of the cases, an individual can be held liable for his or her creation of a dangerous environment. In some other times, as well, a person's liability is augmented with the increase in the amount of profit s/he gains. Occasionally, due to the close relationship between the doer and the damage, the necessity of the guilt verification is dismissed and the objective relationship gains importance. The wastage maxim is compared with the theory of risk and objective responsibility (Rahpeyk, 2009, p.93). As for this theory, some believe that the person who is benefited from an activity should tolerate the losses stemming thereof and this is a natural issue in agreement with ethics and justice. This theory is known as the theory risk-interest. Based on this theory, financial and economic profit is intended by interest-risk and the profitable economic activity is the cause of liability even though there is no guilt. Therefore, it is not necessary to prove guiltiness or even assume default guiltiness for demanding loss compensation and the victim should just prove that the loss has been imposed by the defendant's profitable activity. This theory has been the inspiration source of the regulations on the work accidents and social security that have accepted the guiltless liability of the employers. Amongst the oldest regulations inspiring this theory is France's 1898 law about work accidents which was supplemented and replaced later on by 1946 social security law. This law is comparable with Iran's social security law, approved in 1975, based on which it can be stated that the liability has been laid on the foundation of the risk theory. On the other hand, this theory is not to be envisioned as being imposed on the employers because the employers pay premiums and calculate it amongst their cost of production as well as amongst the finished price of the goods with the loss compensation being shouldered by the social security organization (Safa'ei and Rahimi, 2014, pp.68-69). According to this subject, this theory can be studied in line with the civil liability of the corporate managers because the risk theory holds that the individuals work in an environment and the damages incurred by them should be compensated by the individuals responsible for the environment or the managers of the corporations even if they cannot be ascribed to them.

2.1.1.2.3. Mixed Theories:

According to mixed theories, none of the guilt and risk theories can alone form the foundation of the civil liability of the corporate managers and respond to all the society's essential needs in all of the grounds rather the enforcement of the theory of guilt, in some of the cases, and the enforcement of the theory of risk, in some of the other cases, is more appropriate (Ghasemzadeh, 2011, p.40). Considering the shortfalls of the theories of guilt and risk and their inadequacy for the elimination of the society's needs, the mixed or dual theories that are the amalgamations of the two aforementioned theories were created in different forms: "1) as believed by some scholars of law, guilt is the most just foundation and source of liability and its primary origin and the risk theory enters the area of action as a secondary and ancillary foundation when it is envisaged

expedient by fairness. These authors want to preserve the foundation of guilt that they realize as being based on ethics and, in the meantime and having accepted the theory of risk, prove it as the secondary foundation of the numerous cases of guiltless liability as seen in the statutory provisions; 2) many of the authors, including Jusran, the great French jurist, believe that the liability has two poles, namely guilt and risk, and none of them can be preferred to the other so their realms should be specified; the border between them is demarcated by distinguishing between the responsibility stemming from the personal action and the responsibility stemming from the objects and others' actions with the explanation being that the foundation of the responsibility being guilt in the first assumption and risk in the second assumption. The proponents of this theory substantiate their reasons for the confirmation of their notion on the article 1382 of France's civil law for the liability stemming from personal action and articles 1386 to 1438 for the liability stemming from the objects and others' actions" (Safa'ei and Rahimi, 2014, pp.70-71). Therefore, based on the aforesaid theory, the civil liability of the corporate managers can be evaluated according to the two theories of risk and guilt. The foresaid theory is supported by many in the laws of Iran.

2.1.1.2.4. Theory of Right Guarantee:

This theory has been offered by the well-known French jurist, Boris Starck. Unlike the proposers and proponents of the theories of risk and guilt and instead of paying attention to and evaluating the action by the doer of the harm, he considers the lost interests of the loss-incurred party and his or her wasted rights and spends all his efforts on the guarantee of the loss-incurred party's rights. According to Starck, every member of the society has the right to live a comfortable and sage life and "s/he has right of life and physical integrity for him or herself and his or her relatives" and s/he can benefit from his or her own properties and assets and take advantage of their interests. He realizes the mission of the rules and regulations as being the support of these rights and devising proper sanctions for the violators of them. This guarantee is under any circumstances the compensation of the losses caused by the doer of a harm of a type. In other words, the duty of the doer of the harm is the compensation of the losses in line with guaranteeing the loss-incurred party's right of security (Ghasemzadeh, 2011, pp.37-38). It has to be noted that the above theories are all proposed as the basics of the civil liability of the corporate managers hence they can have a lot of essential importance though the corporate managers' civil liability can be per se studied based on the abovementioned theories independently.

2.1.2. American Laws:

The basics governing the civil liability of the corporate managers in the American laws can be studied based on various theories as investigated below.

2.1.2.1. Predictability of the Loss:

In cases that the damage is the direct result of the harmful action, the judicial procedures of the American legal system realizes the losses' predictability as a precondition for the demanding of compensation

(Ne'ematollahi and Sadat Sayed Ali Ruteh, 2019, p.796). This theory is comparable in the Iranian laws with the idea holding that the losses' predictability is a prerequisite for demanding the compensation in the guiltless liability (partnered wastage), as well (Khayyati Gargari, 2016, p.80). Based thereon, the basis of the corporate managers' civil liability in the US laws can be evaluated based on the predictability of the loss which cannot be compensated when the predictability of it be verifiable.

2.1.2.2. Verification of the Guilty Party's Default:

Amongst the cases and basics of the guilt-based civil liability, this one can be viewed as the headline of the civil liability cases existent in the laws of the US. In fact, the most complete structure of guilt-based liability has been manifested in this title and incorporates many cases of the civil liability lawsuits, including those filed against the managers of the corporations (Ibid, p.63). From other perspectives, as well, and in line with the guilt-based liability, the main principle of the civil liability in the US and common law system is based on default (Kazemi, 2014, p.263). This subject can also be of a great importance regarding the corporate managers' civil liability for if a manager performs default and be guilty at the same time, s/he would be held liable based on this theory.

In the 19th century, the courts exercising common law system made efforts to transform the laws of faults to the laws of fault with one of these methods being the expansion and corroboration of the realm of negligence or default and its transformation into one general principle for liability (Carol, 2005, pp.50-51). In the laws of the US, no single principle has been put at the basis of the liability and, in the same way that the guilt-based liability has not been accepted for all of the cases, the guiltlessness-based liability has not been replaced for it. It appears that the liability has been essentially laid on the foundation of guilt in common law in the cases of negligence and default with the guiltlessness-based liability having been accepted in special cases, including the keeping of dangerous objects or taking actions that need special expertise. In the common law system, default and negligence mean avoiding the performance of a task that is also avoided by a normal and reasonable person under the same conditions and doing the action that would have been done by a normal and reasonable person and it has been considered as being nearly equivalent to fault in the written laws except this that it does not include intentional fault. In the lawsuits for the compensation of the losses based on carelessness or guilt or negligence, it has to be proved that the defendant has had certain commitments towards the plaintiff with the guilty person having violated this duty regarding the necessity of exercising due care. In line with this, a maxim was formed under the title of the principle of neighborhood and it was practiced when a commitment to exercise care was existed meaning that the individuals should exercise logical care thereby to avoid or do actions that they rationally predict to possibly cause harms to the others. As for who is the neighbor, it has to be stated that the individuals who are so close and under likely direct impact should be considered as the individuals who might be influenced and the necessary actions should be taken with due care in respect to them. In this maxim, there should be sufficient relationship and normal sequence between the parties of the relationship and the intention is the close and non-intermediated relationships in which

an individual is influenced by the actions of the person exercising default (Musavi, 2009, p.44). Thus, in every predictable case, the sequence and reasonability are the necessary conditions for the verifying that the person has exercised due care. Resultantly, the liability might be based on the intention and purposefulness as well as negligence or default or absolute responsibility in the common law system. In these three kinds of responsibility, the liability stemming from intention and purposefulness and negligence is based on guilt (Amini and Mohammadinejad, 2012, pp.10-11). However, it has to be pointed out that causality also plays a role in some of the cases for the identification of the civil liability of the corporate managers (Amini and Enayat Tabar, 2018, p.14). It appears that the corporate managers' civil liability is laid on the foundation of the losses' predictability in the laws of the US as well as on the verification of the guilt and all of the cases include one of these two types of liability.

CONCLUSION:

The results obtained from this study can be presented as below:

First of all, various basics can be studied in every legal system regarding the liabilities and responsibilities of the corporate managers and, in this area, various pillars can be enumerated amongst the civil liabilities of the corporation managers. For the actualization of the corporate managers' civil liability, the loss imposition, guilt and causality relationship should be verified and, in case of the verification of the three foresaid pillars, it can be stated that a manager can be held civilly liable; but the present study's subject was the study of the foundations of the corporate managers' civil liability in the laws of Iran and the US and it was expressed that the basics differ according to their sources in each of these two studied written laws for, firstly, the basics of the corporate managers' civil liability stem in the laws of Iran from jurisprudence, law and the legal and judicial notions and procedures and, secondly, in the laws of the US, as well, the law and the judicial procedures form the two important foundations in line with the identification of the corporate managers' civil liability and this has caused the absence of a unit procedure in the laws of Iran for the evaluation of the basics of corporate managers' civil liability and this has to be viewed as an essential flaw and objection.

Second of all, the basics of the corporate managers' civil liability such as those introduced in the articles 142 and 143 of the bill on the reformation of the business law, passed in 1968, originate from important maxims like no-loss, causation, wastage and so forth and this has caused the jurisprudential source to prevail the legal source or judicial procedures. In the meanwhile, most of the theories proposed in the laws of Iran in regard of the corporate managers' civil liability stem from jurisprudential sources and this makes the issue appear somewhat different from that in the laws of the US. In the American laws, the scale for assessing the civil liability of corporate managers evaluates the losses' predictability and the extent of guilt and this has also been problematic in the laws of the US for the predictability of the losses is more a matter of common law than the written law. However, it cannot be stated that the predictability is a well-defined scale and it is the judge who reaches the final decision in the courts about whether the actions of a corporate manager have been prone to liability or not?! Anyway, regarding the civil liability of the corporate

managers, various scales and basics can be found in both of the foresaid laws.

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