

Research Article

Bases of the Mitigation Doctrine in Iranian Law and International sale of Goods convention (1980)

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ABSTRACT

An injured party or a party who may suffer damages to another party's fault has a duty to take reasonable steps to mitigate the loss or prevent the damage making that is likely to arise from the breach of contract or fault of another party, otherwise he or she is not entitled to remedy damages that were avoidable. The important question is that what is the basic principle of the injured party's duty? In this respect there are different notions including causation, contributory negligence, the principle of La zarar and voluntarily contested (eqdam). But none of these notions are considered as the basic principle. In fact, the most suitable doctrine justifying this principle in Iranian law and International Sale of Goods Convention (1980) is good faith and economic efficiency. It is noteworthy that good faith fair dealing requires that the injured party must take such measures as are reasonable in the circumstances to mitigate the loss in accordance with good faith. Another basis is to prevent the waste of resources in society. In other hand, legal rules must prevent the waste of resources or at least not supporting the party causing damages by negligence.

Keywords: Remedy, mitigation, principle of good faith, economic efficiency, Iranian law, International Sale of Goods convention

1. INTRODUCTION

When a person is faced with losses due in inadmissible act or breach of another, all rules in the field of civil responsibility are equipped to justice and not remain uncompensated losses inadmissibility. There are three main elements of damage are: 1. Existence of loss 2. Harmful act 3. Causality relationship, so in general, when these three factors come together, Operating losses, will be required, around laws and regulations to compensate damage. In some circumstances, the injured party will not be able to claim compensation: The injured party is required around regulations and practices with regard to

specific cases to reduce the losses incurred by their actions. This rule is known as: [Duty to mitigation of damages] and in international instruments, including the Convention on the International Sale of Goods and the principles of European contract law is reached. The main question is, what is the principle task in reduce the scope of the losses suffered?

In this study we have tried to study the opinions of lawyers and legal provisions which have referred to this rule. Provide a sound basis that is acceptable to both the Iranian legal system and the CISG.

2. Definition of Duty to mitigation of damage

In this principle, We will make clear that this task is not only to reduce the damage; Where a person who is prone to injury suffered by conventional measures to take to prevent losses, His actions is preventing the losses rather than diminishes, Some legal scholars have defined this rule: "Injured party is required to take reasonable measures to reduce the damage that has occurred as a result of breach of contract."¹ And others have wrote: The victim of the breach of contract (obligee) has a duty to take measures to reduce or prevent the spread of damage that may arise from breach of contract for him to do.² The scope of this the principle is not limited to the contractual responsibility of civil liability applies.³

In Article 77 of the Convention on the International Sale of Goods is expressed only deal with the loss of the contract, because the subject of Convention is the International Sale of Goods and its terms and conditions, not define the rule against the creating or reducing damage. In Article 4 of the Convention also explicitly mentioned: "The provisions of this Convention merely governs the contract of sale and the rights and obligations of the parties under such contract is created," In the aggrieved error before entering losses, Recklessness of injured party has been the side of negligence of the importer harmful act, And loss has occurred due in two reason. While at the base of reducing damage by committing a harmful act after, by a broken person of contract or commit harmful, Losses occurred gradually, And when the inevitable Losses occurs, the injured party is not committed another error. And only as a result of her former actuality, losses, was

growing⁴ In Britain, this tow rule of law have been separated since 1945 and the amendment of act of Contributory Negligence.⁵ Damages requested by the injured party decreased to degree of his intervention.⁶ The best definition of this rule:

A person who is injured and a person who is at risk for damage as a result of another's error: The task is necessary and reasonable measures to mitigate and prevent the widening of the loss or damage that may prevent the damaging action for his breach of contract, Otherwise, would not have entitled to claim compensation against the losses that are preventable,

3. Principles of Duty to mitigation of damage

Causes of responsibilities are different in Iran law.

1. Causation

"The rule of reducing the the loss is not an independent rule but an example of the implementation of a broad theory of Causation is yet unclear. Plaintiff can only claim damages for losses that have been caused by an act of unlawful respondents. In both contracts and civil responsibility⁷ Causation, is a customary allocation a result, to agent or agents so that they do not remain uncompensated the inadmissibility loss. In common law Divided Cause has also been used. And treat the injured, whether as an act or omission, or just leave as soon as the act of not preventing the development of the loss, considered the reason that remote the loss of the action from defendant's act. And as factor that the loss is can be attributed, alternative defendant action. In civil responsibility of the state of in elements of loss are discussed and one of the pillars of the situation demands loss, is because it's

¹ Rafiey, MT et al., 1388, legal culture Majd, ninth edition, Tehran, Majd, p. 334, Mr. Bahman, 2006, the legal culture February, Third Edition, Tehran, Treasure of Knowledge, p. 835; Aryanpur Kashani, M., 1384, Culture leading Aryanpur, published twenty-eighth, Tehran, publication PC world, p. 918

² - Darabpour, Mehrab, 1998, the principle coping with losses, First Edition, Tehran, Treasure of Knowledge, vol. 3, p. 9

³ Turner.C,op.cit,p. 209.

⁴ Ribeiro.R,Commercial Litigation,Thorogood Publishing,London,2005,p.48-49.

⁵ Law Reform (Contributory Negligence) Act 1945

⁶ samuel.G,Source Book on Obligations and Legal Remedies,Cavendish Publishing,2nd Ed,London,2000,p.360

⁷ Bridg-michael.G,Mitigation of Damages in Contract and Meaning of Avoidable Loos,The Law Quarterny,Review.V.105,198,p400

directly.⁸ Our assumption is that the person breached a contract, and his breach has been caused by the damage. In the case that the victim could reduce losses and does not act 'does his inaction can be considered as causing damage?

According to an essential point is essential, if in the contract due to not to give 'object of sale ' losses entered to customer, in the assumption that by buying other object of sale, As substitute goods, The damage can be reduced, However, the purchase substitute goods, the damage is not compensated, It is an attempt for the customer will benefit of the interests of substitute goods, And obviously this succession should not make an assignment for a client, Why we should consider, in the hypothetical loss of damages arising from the breach, the injured party as, close causation? Some have considered this very obvious⁹. Therefore, any common person in breach of contract or loss of innocence does not know and the person responsible for causing damage to the victim knows.

4. Contributory Negligence

Another rule responsibility for the losses and operating losses fell to avoidable losses expressed, is Contributory Negligence.¹⁰ The institution of civil responsibility for damage in the case the injured party proves that the error was involved in the creation of loss. This intervention should have been before or simultaneously with damage, while the rule is to describe the state of recklessness losses suffered after the harmful act or breach of contract and it is the only way of preventing the entry or expansion works. In Iranian law has been due to the fault of the injured also. Article 165 of the Law of the Sea Act 1343 provides: "If two or more vessels are guilty of responsibility for each of the vessels is commensurate with the importance fault, the ship did. However, if the

evidence is not possible to recognize the importance fault or the fault of both parties appear to be identical to the responsible will be equal. "

It is especially marine losses and cannot be used as a general rule.¹¹ Some authors believe that, in the part of the losses, the lack of avoidable entitled to claim damages, the aggrieved error.¹² "The similarities between these two principles so that the two sides should consider implementing a rule. The first similarity: plaintiff commits a foul that led to the injury suffered, both rule, imposes on all losses suffered by their participation has provided the cause the injury suffered, Neither of these two rules are not attention to the relative fault to determine who should accept responsibility for loss,¹³

In contrast, we can say that the scope of the implementation of the two entities are different. The aggrieved error is basically a concept of responsibility is out of contract. Responsibility may be out of contract, negligence cause losses to cite and prove the injured, the accident has caused losses. As a result of common recklessness of him and injured party.¹⁴ In the scope of the contract cannot justify the violation of non-performance or breach of contract committed by recklessness on the other hand, and shirk its responsibilities arising from. As a result, we can express: In the aggrieved error before the arrival of losses, injured Recklessness, located on the side of recklessness prejudicial, and damage was caused as two causes. While at the base of the injured after committing a harmful act by reducing damages, losses occurred gradually. And at a time when avoidable losses are takes place, injured is not committed another error. And is only growing, due to his former act. So this theory is not a sound basis for this rule.

⁸ Katozian, N, coercive liability, previous, volume 1, page 297

⁹ Poursaeid, B., 1998, rule against damage, Monthly Journal of Social Sciences, No. 11, p. 8

¹⁰ Treitel.G.H, Law of Contract, 9th.Ed, London, 1995, p. 886.

¹¹ Katozian, Nasser, former, vol. 1, p. 507

¹² Mohammadi, Mohammad Reza, the task of coping with damage in the jurisprudence and comparative study with English law, Master's thesis, martyr Beheshti University, 1380, p

¹³ - Kelly,Micheal.B,**Living Without the Avoidable Consequence Doctrine in Contract Remedies**,Sun Diego Law Review,v.33,1995,p263

¹⁴ Treitel.G.H,op.cit,p886

5. The rule of no harm

The rule of no harm, is One of the most famous and most important legal rules, The importance of this rule is broad administrative domains, And wherever the rule of law would, personal prejudicing, The rule denies, that decision, The rule, has this capability, the counterfeiting sentence, thereby negate the losses incurred. The main role, have considered a jurists to the rule, as a secondary reason, eliminate the original sentences Containing losses for A person who has a duty to do something,¹⁵ Would you say that the lack of conventional measures of losses caused by damage to the operating loss, On the other hand the detriment of others, is rejection in The rule, So The rule can be used as a basis for rule to reduce the loss. Enter this argument is wrong with that, is that the argument based on an interpretation of The rule is very wide; Interpretive The rule under which any losses will be entered by any means which negates,¹⁶ However, in the discussion of The rule, scholars have used more than the rule for fixing rules involving harm to a person is obliged, For example, if the necessary transaction that is a party to the swindle has caused harm, the sentence should be removed. So with such a broad interpretation of the judgment shall The rule, the rule cannot be damaged task is to reduce the amplitude loss, The other role of The rule, is a ductile verdict of liability, in cases where no assumption of liability for a person makes, caused losses to the other side, According to this rule may be said that the role: This rule verdict could be imposed on avoidable losses to injured. This means that if the injured party is not responsible, avoidable losses, these losses should be compensated, importer losses, this requires the input of more losses to Defendant, It is faced with

¹⁵ Bahram Ahmadi, Hamid, 1389, the rules of law (The rule), First Edition, Tehran, University of Imam Sadeq (AS), vol. 2, p. 309

¹⁶ Damad, mohaghegh, Seyyed Mostafa Jafari Khosrow Abadi, Nasrallah, in 1389, the rule dealing with compensation based on Islamic jurisprudence and Iranian Law, Jurisprudence and Principles of Islamic Law Journal, No. 2, forty-third year, Page 111

two strong objection, The first most scholars believe that The rule, denies, only the basic sentences safety, issued by the Sharia, And in cases where no verdict of liability would be a personal loss, this rule does not of liability proof.¹⁷ Secondly, in the discussion of civil responsibility for any losses importer is responsible for damages, And for being wiped out his responsibilities, strong reason is needed, to destroy, loss attributable to the importer losses, so in verdict to prove the status of the rule of liability towards the injured party is not correct. The result: The rule cannot be the basis of rule, in terms of the verdict imposed.

6. Voluntarily Contested (eqdam).

Avoidable losses, related to the aggrieved action, because if acted, injured to do their duty, did not enter any such damage to her. Voluntarily Contested (eqdam). Include: person that do with their losses does not the right, refer into another to compensate for the losses suffered.¹⁸ Is the rule, could be the basis for imposing avoidable losses to injure. Obviously, in the absence of any assignment, the action cannot be considered examples of the rule,¹⁹ So, unlike other lawyers think, there is no concomitant, between the base and the reduction of losses, It is not provided by any of jurists and there is no basis for it in law and Islamic jurisprudence, Pursued, B., 1998, rule against damage, Monthly Journal of Social Sciences, No. 11, p. 8

7. Good Faith and Fair Dealing

Professor Black, believed, goodwill : Internal state based on the true intent and belief, Which has the dual positive and negative, Positive aspects, meaning intention and belief true and good and negative aspects, not sense of cunning, deception and concealment of fact and abstain from attending any of the other points is irrational,²⁰

¹⁷ Bahram Ahmadi, Hamid, former Page 309

¹⁸ Darabpour, Mehrab, former Page 89.

¹⁹ Poursaeid, B., 1998, the rule against damage, Monthly Journal of Social Sciences, No. 11, p. 8

²⁰ According to Mr. Mashhadi Asghari, Fakhr al-Din Aboueye, HR, 1389, Journal of Law, fortieth period, Issue 2, Page 2

House of Lords, good faith is a fair treatment, is described, clear and without any secrecy, We can defined the goodwill as: "Honest, fair and reasonable to the parties in their relations to each other or even third parties were involved in a relationship or are subsequently linked to expect." CISG Article 7 concerning the interpretation of the Convention's rules, the "principle of good faith", mentions. According to this clause, shall be interpreted and applied in a manner that will promote the observance of good faith in international trade. Most lawyers believe that this principle has dominated on all articles of the Convention, and such materials are referred to Article 77 of the Convention is to reduce the losses suffered no homework has surpassed projections.²¹ Some commentators believe that the Convention: "Article 77 is in fact a manifestation of the principle of good faith (Article 7)."²² In conjunction with the principle of good faith in the legal system and Iran's Shiite It should be noted that, Topics and principles in the legal systems of many Shiite Iran that the acceptance of the principle good faith and fair dealing implied in contracts. God commanded the people, in many verses in the Quran, including 224 and 225 of (Surah Baqarah) verse 89 of Surah Al-, honest, trades and lives. Also in the section on trade, Quran deception) Fraud) and prohibits fraudulent transactions and from this prohibition, obligation of good faith in trade is generally the result.²³ In legal books also been raised by scholars, topics and many topics such as the need to uphold

²¹ Eighteen of the world's scientists, 1391, commentary on international sales rights, translations doctor Mehrab Darabpour, Second Edition, Tehran, Treasure of Knowledge, vol. 1, p. 132

²² ²² -Huber.P,Mullis.A, Huber.P,Mullis.A.,op.cit,p289; - Felemegas.J,The United Nations Convention on Contracts for the International Sale of Goods: Article 7 and Uniform Interpretation,Thesis for the degree of Doctor of Philosophy, University of Nottingham 2000,p79

²³ Mousavi Boroujerdi, M., 1386, the goodwill contracts in Jurisprudence and Law, Journal of Law and Political Science, No. 2, p. 10

integrity and avoid deception, the need for justice and fairness, the need to capture the R. of vindication inadmissible, avoiding inflict undue abstain from selling Deception (Gharar) deal in order to avoid debt, deal with the intent to deprive the heirs of the inheritance, the responsibility of the seller to bill. All indicate the need for the observance of good faith and fair dealing in trading. In Iranian law most lawyers have considered good faith examples, such as Exchange Guarantee swap contracts, the failing condition of the contract, the same general set of good faith, and the insurance contract.²⁴ One of the laws that explicitly refers to goodwill, is, electronic commerce law passed in 1382. Article 3 provides that: "In the interpretation of this law should always international character of the need for coordination between countries in the application and noted the need to observe good faith" Article 35 of the law also provides for the " information notification and approval of released information to the consumer on interface durable, clear and at the right time and with the appropriate means of communication at a certain time and the necessity of goodwill in transactions, including the necessity for people with disabilities and children offered" This material is written in a way that implies acceptance of the principle of good faith in the general rules of deals. You've acknowledged that this principle can be considered as the legal basis for this rule.²⁵ Although goodwill is not mentioned explicitly in law the observance of good faith can be seen from parts of customary execution of the contract. It can be believed that: Magistrate, has the power

²⁴ Asghari Qmshhdy, Fakhr al-Din Aboueye, HR, former Page 15, Ansari, Ali, 1388, the meaning of good faith in Iran and France, magazine lecturer in humanities studies Comparative Law, Volume 13, Issue 4, Pages 30-35: Abraham, Yahya, 1388, a comparative study of the effects of good faith at the conclusion, interpretation and enforcement of contracts, Journal of international law (president), Vol. VI, No. 41, Ss78-77

²⁵ Asghari Qmshhdy, Fakhr al-Din Aboueye, HR, former Page 8

and authority, citing articles 220 and 225 of the Civil Code requires the aggrieved party to prevention loss or reduction of loss to know. The judge can, according to Article 167 of the constitution and on the sources of Islamic law that have been made to identify the principle of good faith, about the difference aforementioned have. Fair and legal decisions,

8. Economic Efficiency

Economic goals dominate the cultural, legal and political attitudes of modern societies, especially after the emergence of "law and economics" Legal and legislative system causes more serious engagement with the economic goals. In view of economics, law, rules and legal institutions based on "economic efficiency" will be evaluated. It is said that people have always trying to maximizing their benefits, The behavior and reactions of the rights and legal rules applies; So it must be clear at first that what is the economic efficiency? And what People are trying to maximize?

In defining economics professor Samolson stated: Economics is the study of how Choose people and society of limited resources, that using different possibility²⁶, The efficiency of existing facilities due to limitations and shortcomings, in ways that ensure the highest ideal. The identification of the grounds in the Convention on the International Sale of Goods must be acknowledged that the purpose of trade at the international level in order to make a profit and benefit is, and the rights and obligations of the parties on the basis of these criteria are measured. Principles and rules of customary manner has been expanded to avoid wasting resources and assets, and most of them comes to action. On this basis we can say that unity substantive rules in the International Sale solution for achieving this goal is valuable. Ratified the Convention on the International Sale of Goods in 1980 was also affected by these

goals.²⁷ But the overwhelming acceptance of Iran's economic analysis of law is difficult because in many scientific circles yet associated with anonymity or perhaps ignorance. However, knowing it is essential that civil responsibility in different ways can bring about economic efficiency. One of these ways is to motivate people to adopt those measures that are cost-justified (aimed at economic deterrence)²⁸ In other words, deterrence based on the principle of civil responsibility should impose economic responsibility for the people who can be cost effectively prevents the risk of non-economic loss prevented.²⁹ So another legal basis for the rule to reduce the harm suffered what can be offered, avoid wasting economic resources of society.³⁰ Failure to prevention of loss, it's no difference to costs how, it is a waste of economic resources such as capital and labor. Legal rules should prevent the waste of resources, or at least the person who committed the imprudence of such behavior is not supported, some legal experts have gone so far as to say no duty to reduce the harm suffered where there is no economic justification³¹ In common law, the majority of lawyers believe, This rule is based on the principle of economic exchanges and to avoid waste of financial resources.³² For example, assume that the owner of a factory for the production of raw materials purchased in the first month after delivery. If the seller on time delivery of raw materials to refrain, the buyer must instead of expectations and requirements of the raw material, drawing up from

²⁶ Babaei, I., 2006, Theoretical Foundations of Economic Analysis of Law, Law Journal, Vol. IX, Issue 23, p. 41.

²⁷ Safai, Hussain, A., M., Mahmoud, Kazemi, Myrzanzhad, A., 1387, a comparative study of international sales rights, Second Edition, Tehran, Tehran University Press, p. 2.

²⁸ - Badini, H., 1384, philosophy, civic responsibility, first printing, Tehran, publishing holding company, Page 396

²⁹ Ibid, p 428.

³⁰ Kazemi, Mahmoud rule against damage, former Page 211

³¹ Darabpour, Mehrab, former Page 14.

³² Mak.V, Performance-Oriented Remedies in European Sale of Good Law, Studies of the Oxford Institute of European and Comparative Law, v.10, 2009., p62

other sources, and keep its total economy, active. And In this case what he deserves, Finally, the difference prices of goods in the second contract and the price of the first contract, As well as economic losses caused by freezes collection, In a conventional for the purchase of raw material from another source is required. This basis there also in compulsory liability, If you a house is on fire and the owner, saw its development, rather than prevention of the spread of fire, And then demanding compensation for losses make it, Can be said, Lack of support from his face takes place, with the aim of motivating prevent damage and loss of property.

In conjunction with the objective of deterrence and important source of economic law can be considered to Article 43 of constitution,³³ This principle has decreed: To ensure the economic independence of the society and the eradication of poverty and deprivation, and fulfilling human needs during growth, while maintaining his release, the Islamic Republic of Iran on the basis of the following criteria is based: 6 - prohibition of extravagance and wastefulness in all matters related to the economy, including consumption, investment, production, distribution and service, So In each of these criteria must be met, otherwise the law is inconsistent with the constitution.³⁴ Islam also considers lawful, legitimate operation of divine grace and beauty of life, and unlawful and unjust knows the extravagance and indulgence. This is because the Muslims in proportion to the facilities and the ability and efficiency, is responsible to society. In this case, the prodigal, back left, to force the implementation of its social responsibilities, and thereby harm the community.

³³ Read more cf. Abolhasani Hstyany, A., 1388, the economic constitution of Islamic Republic of Iran from the perspective of economic imbalances, Journal of the University of Imam Sadeq (AS), 13 and 14

³⁴ Darabpour, Mehrab, former, p. 13; Khalilian Ashkezar, MJ, 1380, the economic principles of the constitution with a view to sustainable development, knowledge Magazine, Issue 41, p. 40

One of the most prominent theory of economic performance in Iranian law is Article 595 of the Civil Code. In this matter it is decreed that " If the division involves dropping all or part of one or more of the partners of the Value, division is prohibited, although the consent of their partners." In fact, the ban division in this ARTICLE, nothing, except the prohibition of extravagance and waste of property. The legislator shows, property and resources are very important. So in Iranian law and jurisprudence should also be considered to this opinion. That is a waste of economic resources, is indecent and unfavorable ones. So injured, who were at risk of harm, must take reasonable measures to establish or reduce the amount of losses incurred.

CONCLUSION

Based on the principle of Duty to mitigation of damage, the person who placed at risk of damage as a result of another's error, Is required at reasonable attempt, to prevent the damage or at least, prevent from expanding it. Regarding the basis of creating such a duty to the injured, were proposed different theories, including causality, injured error, the principle of action and no harm principle. Which made clear, by analyzing these theories, none of them can be considered as the basis for this principle. The principle of this rule In Iranian law, as well as the Convention on the International Sale of Goods: is principle of good faith and the theory of economic efficiency. The principle of good faith and fair dealing principles generally accepted in the legal systems of the world has always been of interest to lawyers, If data consistency to this theory, are examined In specific heading and independent, Can better take advantage of the benefits of this principle, Also with relying on, we could solve, Conflict between, freedom with justice and equity deal. The principle of good faith and fair behavior, accepted In Shi'ite Iran's legal system could be introduced better to other legal systems. Theory of economic efficiency, which is always based on the profit and preservation of resources and property, the goal is

to prevent the waste of material and spiritual assets. Economic viability theory can be consistent with Iranian law and jurisprudence. Numerous verses of evil and sinful extravagance and waste of resources on the part of God is revealed. In addition, it has been suggested that many traditions of the infallible Imams, Have a special emphasis on the lack of extravagance on the part of believers and have also prohibited the waste of economic resources. So in Iranian law and jurisprudence should also consider the view that: a waste of economic resources is indecent and unfavorable ones. So the injured, is at risk of losses, Should do. Reasonable measures to establish or reduce the amount of losses incurred

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