

Civil Liabilities of Trustee in Iranian and Islamic Law

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Abstract: In this paper, we try to understand the concept of trustee in Iranian law, and offer an appropriate category to better understand his/her liabilities. Generally, whoever owns the property of someone else, is responsible for any damage or defects to the property, even because of force major conditions. However, the trustee, although being dominated on property of someone else, is not responsible for any damage or defects to the property he/she is trustee for. This lack of responsibility is based on several reasons, and would be eliminated in certain conditions. In Iranian and Islamic law, this lack of responsibility is removed through two ways. In this article we want to answer the question that what is the reason for lack of responsibility of trustee, and what is the foundation of civil liabilities of trustee.

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Introduction

One of the concepts raised both in law and ethics is "trustee". The range of discussion on trusteeship includes many certain agreements, and rules about trusteeship are observed in many agreements implicitly. The responsibility of trustee is very sensitive, since it is not warranty. Although it is said that domination on the property belonged to others without permission is confiscation, and the dominated person is responsible for any damage, but in trusteeship, the trustee would be considered as responsible only if his/her fault is proven.

In fact, today we deal with the concept of trustee knowingly or unknowingly. A common case in this regard is parking the cars in public parking lots or the agreement on renting properties.

Therefore, in the first part, we discuss the concept of trustee. Then, the basis for responsibility of trustee is discussed in the next section.

1. Who is trustee?

To talk about trustee, first we should see who is known as trustee. In the private law, this fundamental term is used in many certain contracts, and in criminal law, the crime of barratry is a crime against properties. Then it should be understood and recognized carefully.

1-1. definition of trustee

In literal terms, the word trustee is used in opposition with fear and dread.(Moin,1992) Trustee is someone who is trusted, and people have no fear of, and in legal terms, Iranian rules do not define trustee.(Jafari langrody,1978) But b the nature of

rules and regulations of Iranian law system, it can be found that whenever someone dominates on the properties belonged to others according to the permission of the owner, or the rule of law or religion, he/she is considered as trustee to the owner.(Katozayan,2006)

It should be said that ethical trustee is different from legal trustee, since in ethical trustee, the attribute of trustworthiness is belonged to someone without any need to be expressed by another person, while the criteria for being trustee in jurisprudence and law is custodianship of someone who receive property, whether he/she is morally trustee or not and other people consider him/her as trustee or do not trust on him/her. (Bagheri & Bahman poori,2008)

1-2. types of trustee

A. according to the depositor, deposit is divided into two categories of owner deposit and legal deposit:

1. owner deposit is the deposit in which the same property is deposited to the trustee with the request and permission of the owner, and has two types, first, the title of action is deposit, such as deposit (vadi'a), second, the action is something else like mortgage, or loan, or lease, in their contracts, the property is subject to one of these contracts is deposited to the trustee, since the owner has requested the trustee to preserve the same property.(Golpaigani,1989)

2. legal deposit is one in which seizure to the property belonged to someone else is not with the request and permission of the owner, but is not either illegal, and rather is coercive, such as the property

which is found by someone, or what is gain from the thief to be delivered to its owner, and this property should be delivered to the owner, even if is not requested by him/her. If this property is destructed in the hands of trustee, he/she is not responsible for, unless in case of negligence or other faults.

The usefulness of this division is that in the owner deposit, unless the depositor is not requested to receive the property, the trustee is not required to return the property, while in legal deposit, the trustee should return the property as soon as possible. (Ibid)

B. according to the benefits, whether it has any benefit for the trustee or not:

1. If the trustee is only expected to keep the deposit free of charge, the deposit contract is created, which is stated in article 607 of the Iranian civil code.

2. If the trustee has the right to use the same or benefits of the property, like mortgage or loan, or if the trustee receives charge.

2. Foundations of civil liability

In order to understand what theories of civil liability the responsibilities of trustee follow from, we will discuss foundations of his/her civil liability in this section. We know that in books related to civil liability, I order to answer the question that what justifies the responsibility of who makes loss against the victim, most responses are discussed in several theories of fault, absolute liability, assumption of fault, and risk, and we would answer the question due to what is stated in the law and jurisprudence. (Katozian, 2009-Ghasem zadeh,2009-Rahpeik,2009-Badini,2012)

Any seizure without permission in property belongs to other people leads to absolute responsibility of the seizer, but if he had the permission, he/she is not responsible for defects unless he/she makes fault. This rule is stated in Islamic law as "estiman". (Hoseini maraghy,1998)

In Iranian civil code, articles 951, 952 and 953 define fault as encroachment and negligence. Encroachment consists of conduct surpassing the limits of permission or ordinary usage, and negligence consists of omission of an act which is necessary for the protection of another's property. (Shahid sani,2004)Then, the difference is that negligence is almost unintentional and non-insidious, but encroachment has elements of intention and betrayal. (Mohaghegh,2012)

In order for fault to be realized, the knowledge or ignorance of the trustee, or even intention to excess the ordinary limits is not important. What is the reason of his/r liability is doing something against the contract or what is ordinary, whether intentional

and knowingly, or unintentional and unknowingly. (Lotfi, 2000)

Non-responsibility of trustee, is derived from the Sura 9, verse 91 of the Quran which states "there is no way of blame for benevolent", according to which besides a Hadith of Islamic prophet there is no liability for the trustees. (Hoseini maraghy,1998)

Another reason is that there is no reason to consider the trustee as liable, since the reason of liability is waste, which cannot be applied to the trustee.

Furthermore, considering the trustee as liable is damaging him without logical reason, especially in cases the deposit is in his/her hands in legal way.

2-1. when the trustee is responsible?

In order to defy the rule, and consider the act of trustee as betrayal, as mentioned above, he/she should be faulty, and fault in Iranian law is in ways of encroachment and negligence.

a. encroachment or negligence: this faulty behavior is blameworthy and wrong. In Arabic and Persian languages, the most important literal meaning of fault is negligence in doing something. (Dekhoda,2000)

The relationship between fault and liability has risen since nineteenth century.(katozian,2009B) In this century, it became pervasive that responsibility is associated with fault. In law terms, we have two types of fault: personal fault and typical fault. Both are discussed in the following section.

A-1. Personal fault is doing something or leaving something which can be blameworthy for who has done it. (Alain Sériaux,2009)

The person is responsible for his/her behavior when he/she has defied a rule, or has omitted an act which is necessary. The first criteria for fault in this meaning were the base for civil liability in former traditional societies, and lawyers have related the responsibility to compensation to the fault.(Saul Levmore,1994) After industrial revolution, this concept of fault could not solve the problems arisen from civil liability in industrial society, since it cannot be proved. The presence of civil liability was linked to proving of personal fault, while its proving was impossible or at least very difficult in most cases. With these criteria, the range of liability is too limited, and people are considered as liable only if they are blameful in moral terms.

A-2. Typical fault

In legal systems, for the difficulty of evaluation and realization of moral blame and consideration of social justice, the criteria to recognize the fault in civil liability found typical aspect. In most cases, the

behavior of one who makes loss is evaluated in this way. This pattern is called reasonable person in common law, le bon pere de famille in France, ordinary person in German, and encroachment of ordinary behavior in Iranian and Islamic law, and ordinary man in law of Arabic countries. (badini, 2010) According to the criteria of reasonable person, in this type, fault is doing something that the reasonable person would not do in ordinary conditions, or omission of something h/she would do in those conditions. Therefore, reasonable and ordinary person is anthropomorphic conception of justice in relation with the fault and victim. Review of legal systems show that the characteristics and behaviors a reasonable person has, and expected to have, more has typical aspects. Thus, the principle is having equal treatment with all persons. Despite this fact, in some cases the special characteristics and conditions of the people and the specific conditions in which the damage has occurred are also regarded. Therefore, we cannot simply consider objective aspects and ignore personal ones.

In typical definitions of fault, one has defined it as: doing or omission of something a cautious and ordinary person does not do if being in the social conditions of the one who has do it. However, it should be considered that other interpretations of fault ignore the custom and only consist of reasonable aspect.(badini,2005)

To conclude this discussion it can be said that by “ordinary” and “reasonable person” in civil liability rules, we mean the approach of wise people not common sense.(Mazeaud,1985) In this regard, the criteria for evaluation are the behavior of a “sympathetic and ordinary owner”.(Katozyan,2006-Ghasemzadeh,2008)

2-2-. Refusal of returning the property:

In Quran, it is stated that “return the deposits to their owners” (Sura 4, verse 58), and according to article 616 of Iranian civil code, “if the returning of the thing deposited be requested, and the trustee refuses to return it, the rules as to trustee will case to apply to him from the date of his refusal, and he will become a guarantor in respect of any defect or depreciation which supervenes in the thing deposited.”(Rahpeik,2009)

However, there are some exceptions including deposit gold and silver, where the borrower is guarantor, even if he/she has not done encroachment or negligence, and the liability is not conditioned.

Conclusion

It is found by the spirit of Iranian legal system that someone who has dominated the property belonged to other people with the permission of the

owner, or through jurisprudence or legal rules, is considered as trustee.

The trustee is sometimes discussed independently and sometimes besides other contracts including tenant in rental contract and lawyer in representing contract.

The deposit is divided in two ways: according to the depositor is divided into owner and legal deposit, and based on benefits of trustee is divided into beneficiary and non-beneficiary deposit.

In owner deposit, someone dominates the property due to permission and consent of the owner, while in legal deposit; someone dominates the property of someone else, without informing the owner, and according to the jurisprudence and law, such as finding a property which is wanted to be returned to its owner.

The trustee is not liable for loss in property, unless he/she is faulty, or does not return the property to its owner. When the trustee is liable, he/she is liable for compensating all losses and damages, even if they are not for his/her action, and external factors are the reason of losses. However, some believe that the trustee is liable only if there is causal relationship between loss and trustee.

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