

**‘CIVIL LIABILITY OF DEFECTIVE SALE OF GOODS**

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**ABSTRACT:** *In the age of capitalism and the struggle for liberation from the clutches of tyranny and the right people to achieve the government's but experience has shown that investors such as sovereign political power is dangerous if you do not give change only in ways that exceed so for justice and freedom in a way that will protect the weak against the strong domination. However, one of the issues raised in modern industrialized societies and many lawsuits has caused damage to goods imported into the country for people who have no contractual relationship with the manufacturers and their suppliers. One way to protect the consumers are injured, mostly artisans and merchants against the adverse consequences of the production cycle, Manufacturers have their own product to make it safe to profit from the production of such a high standard that no interest will be damaged, be held responsible. Supply industry in the world today, especially in the case of dangerous goods, the consumer is innocent and needs support. Because they could not prove the danger caused by the product, However, sometimes the fault is not caused unintended loss of compensation he would not, therefore, The benefits of the manufacturer or the manufacturer of consumer goods and the losses and just goes from here And safeguards to prevent undue damage and recover from it is a man's own life, the huge volume of goods the aircraft, automobiles and agricultural products to a variety of foods, beverages, paints, health products, medicines and technical tools that are available in the market have to use in this case is who is responsible for losses that might arise from such goods? Losses that may occur due to defects in the goods, who is responsible? It is essential that Iranian lawyers to re-examine the traditional institutions of their rights and recognition of their new, Deficiencies and problems that lead to the use of a consumer product may cause loss and compensation for the losses borne by the consumer fails to properly recognize and better regulation of the damages resulting from the defective goods shall The aim of this study was to define the extent and types of civil liability principles poor little civic responsibility in Iranian law, the rules and regulations this. Contractual and non-contractual liability of the goods, types of defects in the goods, defective goods other than sales contracts, civil liability of certain goods, such as (food, clothing and apparel, accessories, bottles, etc.) shall be explored . And the other half at contradictory in terms of choice of court and choice of law rules and legal systems of the world's top responsibility of the defective product as America legal system, in Europe and the legal systems Great Britain, Since the legal systems consumer ahead and try to manufacturers, importers, distributors and retailers worldwide, to encourage and to some extent forced on manufactured goods to protect consumers.*

**KEYWORDS:** Civil Liability, Defective Products, Manufacturers, Builders, Contractors Liability, Non-Contractual Liability.

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## **THE DEFINITION OF CIVIL LIABILITY**

As the person responsible for the damage objects under the protection of his or another person responsible for the breach of the obligations arising from the contract. Civil liability against the use of criminal responsibility.

### **Principles of civil liability law in Iran**

#### **Legal basis**

##### **Article 1 of the Civil Liability Act**

Any person who, without legal justification, intentionally or as a result of recklessness to life or health, or the United Nations or freedom or dignity or business reputation or business reputation, or any other right which the law was created for people prejudice that will result in financial losses or other intangible losses resulting from his act is liable to compensate.

##### **Article 12 of the Civil Liability Act**

Employers who are subject to the law are liable to compensate the damage by the administrative staff or their employees during work or occasion it is entered unless it is established that all the circumstances of the case warrant caution tried to have surgery or, if you take these precautions do they still would not be possible to prevent loss employers can be held accountable under the law if the importer claims refer.

#### **Jurisprudence**

Rule of "seeks and " rule "wasted" "I belong sponsor" rule Everyone else is responsible for causing damage to the subject of compensation.

#### **Types of civil liability**

##### **Responsibility Contractually**

Who is responsible for the contract of contracts, liability is accepted due to a delay in performing an obligation or commitment in other terms, the liability and responsibility arising from contract, contract is called.

##### **Contractual liability elements are:**

- 1 - violation of the obligation
- 2 - harm the promise enters the offense to
- 3 - The relationship between the breach and the loss causation.

##### **The question**

Where a person buys a car from the manufacturer due to a defect in the braking system of the car accident occurred and the purchaser will be affected. Between the producer and this assumption, there is a contractual relationship between the customer and the seller must make reparation.

Necessary based compensation of three have argued that this is the case.

### **- Safety guaranteed sales**

Ensure sales are always safe bets for collusion (= condition implicitly) assume the seller. This requirement is implicit in the common law systems to "guarantee the goods to market" is known to allow the buyer if the item is defective, damaged, compensation from the seller claim. The only thing the buyer must prove that the goods based on customary arbitration, is not healthy.

### **Assumption of the seller's defect and bad faith**

Some assume that professional sellers are aware of the flaws and dangers of the goods, so ill that they sell their goods. Others with a stylized "theory, symmetric ill" only "symmetry of the defect" have names, it is assumed that vendors are aware of the defect and thus the sale of goods, they have made a gross error in the criticism of the two bases have The theory of "bad faith context" with is unfair and in conflict with the principle of good faith. (Evo Rastak responsibility to dangerous goods manufacturer, no 43 and 44) Besides the presumption is invoked only against the dealer's expert.

### **Crossing the contract theory problem**

Possible without reference to the contractual relationship, the seller should hold the other harmless from Bob entry (the first article of the Civil Liability Act and Article 331 BC. M.) It is essential that the buyer's expense, in addition to proving causation relationship between defect and damage, the seller's fault for not observing caution in production or sell goods or awareness of his faults, to prove and this causes the most damage claims must fail. (Doctor Katouzian, 1371).

### **Non-contractual liability**

Lacking any legal liability that is a contractual liability out of the contract or non-contract claim the responsibility of the contract is contrary to public order related to contract liability and dismantled its intransigence is prohibited by law and the civil law enforcement responsibilities outside the guaranty contract called. (Jafari Langroodi, 1383, pp. 642-645).

### **A) The principle of relativity contract**

#### **1 - The problem of the relativity of contract**

Observance of the principle of relativity contract for goods damage litigation based on fault, it is necessary and suffered not a party to the contract with the manufacturer not to take legal action even if the fault is caused by accident, Because the contract is effective only with respect to persons who are not parties up its (Guinot and Gordon: liability arising out of goods, No. 36, Crowley: Liability units, p 696). The buyer and seller in a contract that are directly opposite each other responsible they can only deal with each other based on their litigation.

#### **2 - Trying to break free from the shackles of Relativity**

Relativity principle to compensate the lack of contractual damages would lead people out of the contract.

Which has suffered losses due to another's fault, could prove his guilt, his physical Compensation (Personal Injury) condemn is not even agreement among. Many courts losing material (Property Damage) of the fault that sentence.

### **B) Fault**

#### **1 - liability based on fault**

That of normal human behavior fault in an accident situation, the knocks. If damage occurs due to the action of individual anomalies, if he is sentenced to compensation for losses, blaming him and the relationship between guilt and loss causation to prove.

### **2 - a fault in the manufacture and sale of goods**

All the manufacturers in the production of goods and the seller in the sale, take the proper precautions are not, they are guilty; measures traditionally meets every manufacturer and dealer such care in making products from raw materials testing and inspection of goods, scientific and technical principle, the mere fact that the product itself is dangerous, production or sales at fault it does not possess.

### **3 - proving fault**

The argument based on fault, the affected consumer is faced with a major problem and that the burden of proof of guilt and manufacturer or vendor that has affected the, And perhaps the burden would discourage him from pursuing his case, because to prove fault, it is necessary to have sufficient technical knowledge and expertise. For example, the

How can consumers fault automobile manufacturer in the front window of the way to fix it?.

### **4 - the cause of the fault**

Due fulfillment of the condition, the cause of the fault. The loss of someone (= manager) immediately cause loss to another, makes it safe makes another glass stones may break it. According to the group, everyone is guaranteed the fault is not yours is not wasted. (Doctor Emami, 1382, pp. 390 ff). Liability of manufacturers and sellers of goods is also more consistent with the rule loss rule.

## **C) Ensure**

### **Guarantee against the latest consumer**

Each vendor sales contracts implied commitment that clients wares for safe operation. Recent consumer (Ultimate Consumer), also has no contractual relationship with the manufacturer, seller, it is a blessing to have this guarantee. Article 3 of the Consumer Rights Protection Act (passed in 1388) requires that manufacturers, suppliers of goods and services that the holder this article, the guarantee does not extend to the final consumer, but hearing can hear it ensures the required width.

### **Strict Liability**

Safety guaranteed sales responsibility is upon the broadest sense, whether liability is based on breach of contract sometime soon guarantee and is sometimes responsibility as responsibility, blame, and the manufacturer or seller, even if all precautions are taken back to the responsible know. This theory is another trap to lure the consumers who can not protect themselves against a surge in commodities. Constructive expose their wares to sell or buy shares and is expected to provide its health.

## **THE TYPES OF DEFECTS IN GOODS**

### **- Faulty or dangerous goods**

When the courts are inherently dangerous goods must not know the contractual relationship .And it is not enough to warn and advise, is flawed.

Goods which risk is evident, sometimes not considered dangerous. For example, use of tobacco and cigarettes cause lung cancer and a danger to everyone today has revealed. It seems that the act of cigarette smoking on their own, the relationship between loss causation and undermine

manufacturer. The manufacturer or the manufacturer is not responsible for the projects that it has proposed. (Brown liability arising from goods, p 89)

### **- Demonstrate the flaw in the design**

At common law, but if you want to accept the responsibility as producers, Commodity design defect claim must prove it in other words, a product design defect claim is not based on fault, who handle the task of producing wares designed with the latest and most advanced safety plans, according to the custom view, but it is essential that kind of wares are not dangerous and defective. If the manufacturer later changes the design of their products to be safe, good reason for the previous design was not defective.

### **- Criteria for the diagnosis of Good Design**

There are three criteria for diagnosis:

1) standard consumer expectations: Shipping is a dangerous risk when it exceeds consumer expectations and conventional buyer.

Forms: the purchase of goods not know anything about what to expect can be attributed to him?

2) benefit-risk criteria: the size of the threat of dangerous goods on its utility is increasing. Example: Rabies vaccine is harmful, but the importance of social values.

3) double standard: it is a combination of the above two methods, using either of the two criteria at the discretion of the hearing Iran's rights (consistory, 1369, p 58): The three-fold criteria can utilize.

Right on, flaws, flaws that detract from the value of the goods or the exploitation of its conventional definition includes the standard is three-fold.

### **B) Defects in the production stage**

#### **- The distinction between defects in manufacturing and design flaws**

Sometimes the manufacturers factory products, the production of one or more samples of defective products marketed as treats. For example automotive factory cars, the problem becomes one of the troubleshooting steps thus

Produced goods and good design is safe, but the building was a failure. But the flaw in the product (product design) are all kinds of manufactured goods during production, even if all the necessary precautions are taken. To see whether they comply with the required standards?

### **C) Troubleshooting tips and warnings**

#### **- Lack of guidance and warning defects such goods**

Dangerous and defective products, no warnings this flaw to cause trouble even cucumbers. No fault of the manufacturer or seller to warn of the risk of the goods this task is not only defective goods but sometimes dangerous goods that are safe, the manufacturer and the seller is fixed.

#### **- Pretending to be alert**

Instructions and warnings are not always the entrepreneur, the manufacturer should be able to otherwise good design that reduces the risk and responsibility of the court to produce this issue. Other words: WARNING, for additional warranty and the manufacturer with no warning, their goods Salem has become a commodity.

#### **- Tips and warnings, such as a contractual obligation**

When submitting sales salesperson must inform the buyer about the use and potential risks or is not fulfilling its commitments. In 367 BC. M: One of the submission of health conditions, affluent customers of ways to capture and profit.

### **ii) defective products other than sales contracts**

#### **1 – Rental**

To verify the lease, should benefit from the same it is possible the survival the matter of health safety while commitment to safety is a special contract of sale and the rent is true. What is the difference between defective cars that will be sold or rented?

#### **2 - gift and deposit**

At common law: have responsibilities towards the third party.

Rights in Iran, If the result of technical or non-compliance with the rules and principles apply and inappropriate materials or negligence or recklessness and Structural Engineers, Technical Supervisors, architects and general contractors who undertake responsibility for the accuracy of the building, the mass is located, Failure to comply with National Building Regulations and Building regulations and carelessness or negligence in carrying out professional work or correct preventive measures are not taken.

#### **Third, civil liability and other defective goods**

##### **– foodstuffs**

Common Law: Liability as: manufacturing, distribution and sale of spoiled food, the offense does not require proof. Manufacturer and seller should be cautious about testing the safety of consumer products must be installed on.

Producing food, their food quality to each consumer in the form of implicit contract, though not guaranteed. Food manufacturers are responsible for all risks that can be obtained from their wares. Provided that the goods are in the nature of these risks, and take them to the truth, the meaning of identity change is good.

Several companies are responsible for the deterioration of the teeth because there is no sugar.

Fish restaurant order and fish bone in the throat is not responsible for the restaurant to be ordered unless the fish is boneless. Break the teeth of the person responsible could s rock until the dough from the bread to be separated. Law the Food and Beverage and Cosmetics (1346).

Article 3: Even in death penalty cases where the producer or mixer for eating and drinking, substance abuser can lead to death, has predicted., Even if the feed is polluting the seller is responsible for meal or forage.

##### **- Household Appliances**

Manufacturers design phase should be properly designed according to scientific advances and industrial-day choices . 's Soda pop bottle just because of the fault. is not damaged.

##### **-Tobacco**

Tobacco manufacturers must try their products have any defect or safety hazard and to give adequate warning of the dangers latent in now on the other hand the dangers of smoking are well known and the person acting on his own responsibility and not productive.

##### **-Industrial Tools**

Manufacturers of these devices must be conventional in design and production of goods to be cautious.

Manufacturers are not required to make commodity producer is responsible for the damage resulting from the flaw is good .There is as much the responsibility of the manufacturer.

Article 2 of the draft technical Protection Act (1334): Technical and Industrial Supplies manufacturers, owners of industrial enterprises and factories are obliged to operate prior to the sale of its industrial products, technical testing and receive certificate., Or Article 4: Employers and officers and officials.

### **-Cars and Planes**

Events of the fault planes or ships bring great humanitarian disasters occur it is expected that the makers of this vehicle safety standards with great caution and apply. Magistrate responsible sellers and brokers can deal and any person found to have participated in the manufacture and sale of knowing. Article 3 Vehicle Consumer Protection Act (passed in 1386), the supplier is responsible for financial losses and Johnny consumers and third parties during the warranty period of one year is known.

Article 1 supplier is a person who, directly or through intermediaries generated sales of new cars sold in or imported from abroad .fault of the manufacturer or dealer. Vendor who had a phenomenal sales and repair as well as not useful, it is necessary to inform the client or the magistrate in charge of the second-hand cars.

### **Lack of responsibility for producing goods**

Before the industrial revolution, the relative trade personal goods mainly perceived and hand traditionally and non car was produced. Consumers generally aware of the source of goods and manufacturers knew, and therefore the result of using the item, may face a problem or defect, he knew who to turn to .It is possible to find. But with the development of the industrial revolution, the growth of industrial machines, replacement of goods produced by hand with mass production machine should identify who is responsible for more. Producing goods lost or dealer blamed it on the side.

## **LEGAL ANALYSIS OF THE WORLD'S TOP THREE**

### **Part I: America's legal system**

United States of America as a platform Genesis responsibility "produced goods" in the contemporary world, the responsibility for defective products according to the legal doctrine of "absolute liability" stipulates, without having to prove fault of the manufacturer, importer, distributor or seller .Supply of goods to market on the one hand, and the other unutterable increasing demand for consumer goods and colorful fickle buyers and consumers, brings new problems for the consumers.

### **contractual liability of producers of goods**

Relative principle of contract manufacturers sorry that enables consumers to avoid excessive and exorbitant amounts of claims because the contract was limited to just compensation., was attributable exclusively to the contracting parties. Note that this principle requires that the contract only obliged to compensate for damages caused by the breach of the condition are contract, express or implied. Call this file (driver) for driving a car was hired by the Post Office, Postal shipments delivered to the customer .The contract did not comply with the court, the alleged scheme not only by calling (driver who was under contract with that company) but also any other person, including

passengers, sidewalks, and other unidentified parties who may in some way or another were overturning cars.

### **Non-contractual liability (civil liability)**

Governing America in the late nineteenth century, a new solution was designed to counter the damage done by faulty goods upon which liability or civil liability Non-contractual should be considered in resolving disputes. The article mainly towards those producers or suppliers disadvantage compared to the existing knowledge and it was marketed although contractual liability for damages related to defective goods were also used. Production flaw: it is believed that defects in manufacturing, distribution, packaging or consumption there, and the initial condition of the goods, which the manufacturer intended when it has been produced, out, for example, the goods if the product defective, damaged or faulty goods after production, and be faulty due to poor packaging or incorrect.

**Design flaw:** It is believed that defects exist in product design, which means it's designed to be incorrect or faulty conduct, although the item without any manipulation in the design and production standards, and precautions must be taken to produce it. Naturally, the design was modified before production was possible risks or potential risks could prevent the use of consumer goods.

## **Part II: Europe Union**

Talk responsibility for defective products subject to consumer protection in Europe in 1985, The size of the United States of America were not much developed. However, a few cases in domestic courts on the issue of commodity-producing countries investigated and was found to be responsible for the damage.

### **- European Directive 85/374/EEC**

Under the European Directive, the consumer can file a lawsuit against the producers and claim compensation for losses incurred, the three things to announce:

One. Despite flaws

Two. Existence or causal relationship between the defect in the goods and pictures Tsbyb losses

Three. Login losses

However, according to Article 7 of the European Directive, the producer is responsible for the following:

One. Since the goods are not placed on the market in the distribution chain;

Two. Fault when there is no commodity production cycles would be distributed;

Three. Goods not produced in the trade or business is not distributed;

4. The compensation of the defect in the regulation of peremptory enforcement is necessary;

5. Existing knowledge was not discovered flaw; (Compliance with this requirement is optional for Member States)

The period of notice calling the manufacturer damage or defects, and understanding begins.

Directives 1999/44 / EC Parliament and the Council of Europe concerning certain aspects of the sale of consumer goods and guarantees relevant

not professional or other purposes. In these instructions, means an individual producer or manufacturer, importer or any person who has a name, trademark, or trade encrypt certain commodities on time. Appropriate safeguards also mean accepting any responsibility in this instruction means that.



### **Resolution of the Council of Europe**

According to the Resolution dated 19 December 2002 concerning the reform of the Council of Europe guidelines on the responsibilities of produced goods be defective, the manufacturer of goods is not known, suppliers and dealers will be responsible for damaged goods against consumers.

### **The legal system of Great Britain**

Manufactured product liability legal system has long been Great Britain to undermine the principle of relativity of contracts and manufacturers of defective products are held accountable only to damages in contract in 1932 was a departure from the principle based on the principle of neighborliness, in addition to producing damage to the contracting parties towards friends and neighbors who have suffered from its use was also found liable Consumer protection law in 1987, followed by the European Union guidelines adopted in 1985, responsibility for defective goods manufacturers have not only lost their contractual aspects, but not the responsibility rests on the theory of neglect such as those in the It happened a few years ago, America was legally accepted.

### **Great Britain Europe EU duty to follow instructions**

Until 1987, the legal status of Great Britain in relation to the identification of civil liability arising from the use of defective products, similar to the period before 1916 AD in the United States of America. Changes in the legal system governing the liability of goods manufactured in Great Britain since 1985, after the adoption of the European Directive on Product Liability produced by the Council of the European Community, was started. According to the instructions that obliges EU Member States to Europe to adopt similar measures to protect consumers, the government of Great Britain, as well as instructions Europe through consumer protection law imposed in 1987. Notes that certain provisions of the guidelines established by the optionally member States based on their interests can make a decision about it great Britain's legal system is being introduced in the arts and crafts goods producers are absolved of responsibility for the production of goods subject to the risks merchandise is not known in the art or science of hand and it was not possible at the time of production.

### **CONCLUSION**

Reviews of books and articles on civil liability for such goods suggests that people use in their daily lives toward a commodity like clothing and clothing, vehicles, consumption of food and agricultural products and medicines and sanitary materials and technical tools are in markets and the losses suffered by the consumers of the goods are defective and sub-standard due to the absence of a guarantee to compensate the losses goods manufacturers are as each vendor sales contracts, which are implicitly committed their wares to consumers is safe to operate and customers enjoy the blessed assurance of the seller some of the responsibilities of the manufacturer or seller, Even if all the necessary precautions to be done again responsible for protecting consumers know that these ideas are another trap to lure the surge in commodity market their wares in such constructive sale will buy and education are expected to benefit the health product needs.

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