

## REVIEW OF THE DETERRENT RULES GOVERNING TORTIOUS RESPONSIBILITY

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Abstract. Specific deterrence is a kind of function that civil liability can have to deter the imposer of harm from harming the victim again. On one hand, emergence of this type of insurance caused weakness of civil liability and increase in carelessness, since compensation of loss by the insurer can not result in deterrence of fault agent, but also it may encourage the doer and others for harmful and damaging actions. In this study, it has been tried to define firstly the concept of civil liability and especially tortious liability and to investigate the basis, nature and pillars of liability. Then, we have given some cases in field of committing harmful act and fault in tortious liability. Finally, this study has investigated deterrence cases in civil liability and the relationship between insurance and civil liability.

Key words: tortious liability, loss compensation, deterrence, civil liability, specific and general deterrence, insurance

### 1 Introduction

In all law systems, the main responsibility of law at the society is preventing commitment of harmful acts and making required decisions to compensate losses caused by such actions. Hence, it is competent to say that the principle of compensation for inadmissible losses, along with two other principles of ownership respect and contract binding power can be the summary of all civil rules. Civil liability that forms an important part of civil law is same legal liability and commitment of person to compensate losses inflicted on other party as a result of documented actions and as a result of taking harmful act, which may be caused by violation of contract and artifact of essay will of individuals or violation of legal obligations.

Civil liability includes two branches of contractual and non-contractual liabilities. If a contract is signed between two or more people and one of them has violated the contract (refuse to take action or delay in completing commitment) and a loss is inflicted on the other party, the violator of contract has contractual liability and should compensate the loss. When a person causes loss for the other party, whether there is a contract between them or not, the loss is not associated with the contract and this case is non-contractual liability.

The obligations out of the contract or civil liability refer to the liability created as a result of legitimate or illegitimate actions with no adequate contract. Civil Code has emphasized the obligations in articles 301-337 under the title of "obligations incurred without a contract"<sup>1</sup>. The foundation of obligations without a contract is the benefit created for a person or loss caused for the person; it means that these obligations are always caused by a benefiting or harming legal act. For example, if a person has caused loss on another party intentionally or as a result of carelessness, the person should compensate the loss. However, in this case, obligation without contract and mutual consent of parties is created<sup>2</sup>.

Till 18<sup>th</sup> century, civil liability was not separated from criminal liability and is used to be described as fault-based liability, tort or civil fault. Accordingly, two goals of deterrence and loss compensation were defined for civil liability. Although civil liability was separated from criminal liability since 18<sup>th</sup> century, its deterrence is still being regarded as one of the main goals of

civil liability even in presence of all criticisms (Can, 419, Williams, 1951, 137). Emergence and promotion of liability insurance could weaken civil liability deterrence on one hand and could strengthen its loss compensation on the other hand because of fast compensation of loss for the injured party and guaranteeing it and supplying expenses easily.

### 2 Concept of tortious liability

The origin of this kind of liability is the rule of law, which is out of framework of contractual relations. It could be mentioned that tortious liability refers to responsibility of person to compensate inflicted loss and harm for the other party based on rule of law because of taking harmful act or violation of property or service of the other party such as liability caused by confiscation, loss and inadmissible fault (Katuzian, 2006).

In Iran Law, Civil Code has given civil liability under the title of "obligations without contract" as an independent section and has investigated this issue under the title of tortious liability. By 1960, an act was approved under the title of Civil Liability, which was mainly associated with obligations without a contract. Hence civil liability in its specific sense refers to same obligations without a contract or tortious liability; although in its general sense, it includes both forms of liability (contractual and tortious).

In field of concept of tortious liability, if it is assumed that two people have signed no contract and one of them causes loss for the other party intentionally or by fault, the non-contractual liability or without contract is realized. Tortious liability is the liability to compensate loss caused by an act or leave an act that is fault and crime from perspective of law (An-Naqib, 1984). Moreover, it could be mentioned that tortious liability is the liability caused by violation of an obligation that was previously codified by law. Such obligation is general and violating it could be compensated through presenting lawsuit to ask for loss compensation (Badini, 2005).

#### 2.1 Nature of tortious liability

The lawyers believe that necessity to compensate losses in tortious liability is in line with legal events, which is considered in group of means to create commitment and includes events that their effects are determined by law. In Civil Code, these effects are called as obligations without a contract and tortious liability. Hence, some lawyers believe that no term can encompass various means of tortious liability such as legal events and they can infer on this basis (Katuzian, 1995).

Although in an overview both liabilities end in compensation of loss for the harmed party, in contractual liability, parties are limited and in tortious liability, commitment is general. In terms of amount of the loss in contractual liability, just direct and predictable losses can be demanded while conclusion of the contract. However, in tortious liability, the loss caused by any kind of direct loss can be demanded, whether it is predictable while conclusion of contract or not (Al-Sanhuri, 1998).

#### 2.2 Foundation of tortious liability

Searching for foundation of tortious liability should be in collection of regulations and not in expressions of parties as a title referring to non-contractual liability. It means that tort refers to this issue that in relations of parties after the realization of loss is impossible in position of need for interpretation or other obligations of following the contract. This is because; there is no will at all for realization of the liability. According to one expert in this field, contractual liability is violation of commitment caused by contract and the sign of obligation without a contract is violation of commitment by law. This difference is enough to separate the two types of liability and to consider independent identifies for them (Yazdaniyan, 2000).

<sup>1</sup> In addition to the mentioned articles, Civil Liability Act, Law on compulsory insurance of liability of owners of vehicles against third party (edition of 2008) and articles 316-366 of Criminal Law approved in 1991 have also played key role to define tortious liability in Iran Legal System.

<sup>2</sup> Droit civil, carbonnier, 20ed, t.2, no198

Contractual liability is caused by violation of commitment between limited entities and these entities have created the commitment by themselves; although in tortious liability, the law creates the commitment and the commitment is against everyone.

### 2.2.1 Fault

Fault is one basis of civil liability and in Iran Law; it is at least one important basis and foundation of liability. In article 1 of civil liability act, liability is mainly defined on basis of fault. Whereby this article, if a person inflicts loss on another party as a result of carelessness (fault), the person is responsible to compensate the loss and no responsibility is existed for the person without commitment of fault. In fault, differentiation and lack of differentiation of the doer (individual element) is not obligatory, but also typical element and common personal behavior should be considered. Hence, to determine the fault, reasonable and careful human behavior should be considered and following common human behavior is required for carefulness.

In an assumption that there is no reliable contractual relationship to regulate mutual relations or the victim has no tendency to follow the lawsuit based on tortious liability, solving the dispute and determining the probable liability of the doer would be based on regulations of tortious civil liability according to opinion of majority. Hence, 3 elements are required to achieve this liability:

### 2.2.2 Harmful act

Accordingly, doer of harmful act is responsible to compensate the inflicted loss, when the harmful act is attributed to him/her. Also, the doer is responsible for compensation of loss, when the act is taken without legal permission (Sepahvand, 1974). In article 1 of Civil Liability Act, the term "without legal permission" is referred; meaning that the person is not responsible to compensate loss if the action is taken with legal permission. Every person who causes loss or harm for property, life or freedom of another person as a result of carelessness and without legal permission or causes harm or dignity or commercial fame of a person that results in material or spiritual loss, the person would be responsible to compensate the loss caused by that action.

Some lawyers believe that referring to "against law" in harmful act is for this reason that although person can cause loss because of lack of prediction or intentionally, the person can't be considered as an entity with liability, since his/her action is not prohibited by law (Aminfar, 2005).

### 2.2.3 Loss infliction

In Iran Civil Code, no article has referred to loss and harm as the main element in civil liability; although in articles such as 221, 226 and 227, the term "loss" is used and from this perspective, lack of definition of these terms seems to be because of evidence of the issue (Katuzian, 1995). In some articles, this meaning can be derived. According to article 1216, "In case the minor child, lunatic or immature person, causes loss to another person, he shall be considered a guarantor for the same". According to article 520 of Civil Procedure Law, "in field of demanding for inflicted loss, the plaintiff shall prove this that the inflicted loss is created immediately by lack of acting to commitment or delay in it or lack of submission of demand; otherwise, the court will reject the claim of demanding for compensation of loss". Moreover, articles 1 and 2 of Civil Liability Act have referred to principle of harm.

Harm should be certain and absolute. Hence, in order to make the harmed party to demand for the loss compensation, the harm shall be proved, since according to principle of absence or based on probability, no one can be liable and hence, one condition for compensable loss is certainty of the loss and harm (Shahidi, 2003). Now, an issue considered here is the harm that is not created till now and may be happen in future as a result an accident that is already happened (Emami, 1998). In this field,

some lawyers believe that necessity of compensating future losses are imagined in both tortious and contractual liabilities (Al-Sanhuri, 1964). Also, some others have separated the future and probable loss and believe that the first type loss is compensable and the probable loss in present time and future is not compensable (Aminfar, 2005).

### 2.2.4 Causal relationship between harmful act and loss infliction

To realize the liability, it shall be authenticated that there is causal relation between loss and harmful act, meaning that the loss is caused by the harmful act. However, to create an accident, the accident should be in dominance of binding conditions of realization of loss; it means that it should be authenticated that the loss is not created.

Such relationship can be extracted as it is mentioned in article 328 of Civil Code: " If anyone destroys the property of another person, he will be held responsible and must either produce its equivalent or its value, whether or not the property was destroyed intentionally and whether it was the actual property or profits there on that were destroyed; if he causes defect or damage to such property, he is responsible for the depreciation in price". Noting to this article shows that in law, to realize loss, direct causal relations should be created between loss and the act of doer. In article 331 of the said law, existence of this relation indirectly is emphasized. The later section of article 1 of Civil Liability Act has also mentioned that person is responsible for compensation of loss caused by harmful action, if the action has caused material or spiritual loss and this can refer to necessity of causal relation between harmful act and loss inflicted.

### 2.3 Factors affecting civil liability

In regard with factors affecting civil liability, 4 factors are mentioned as follows: a) ethical aspect of behavior of the defendant b) ease of enforcement c) loss tolerability and d) deterrence and punishment. Hence, this study has mentioned just two factors based on necessity.

#### 2.3.1 Ethical aspect of behavior of the defendant

One factor affecting civil liability is ethical aspect of behavior of the defendant. In other words, ethical fault or criticism attributed to the defendant and mental status of the defendant by the society can be one of the mentioned factors.

Personal behavior and ethics are issues that there are various beliefs and opinions on them; although it should be accepted that in every society, there are actions and motivations recognized as proper ethical actions and there are also some other acts and motivations that are wrong ethically and morally and are regarded as fault and certainly, beliefs can affect decisions made by courts. About the Tyrant, guilty, liar, rascal, traducer and rumors maker and a person who inflicts loss on a neighbor for his/her own benefit, a selfish person violated rights of a neighbor as a result of carelessness and intentional inattentiveness, it is expected that courts sentence such person based on public opinions. On one general hand, the law related to civil liability can be a reflection of moral thoughts and beliefs and has preserved its adjustment with change in the mentioned beliefs; although the theory has not been always right and there are basically disputes on this issue that how the mentioned laws are begun.

#### 2.3 deterrence and punishment

The deterrent factor of loss infliction in future in cases related to civil liability is also very important and hence, the courts pay not only attention to compensation of loss for the harmed party, but also they consider punishment of the guilty. When the result of decisions made by the court are cleared and the defendant is informed that he/she may be responsible for the action, this sense

of responsibility can be a strong stimulant to prevent causing loss in future.

Liability of successor is considered more than other cases and the liability of good manufacturer against the consumer is considered more than other types of liability, since the liability of manufacturer can cause achievement of good in best manner by the consumer. Although such idea is less considered, it can be valuable cause to consider liability for the defendant. The theory of prevention of loss infliction is similar to crime punishment. Because of the crime committed, the punishment can be one of the most accepted goals and destinations by the civilized governments to deter recidivism (William Prosser, the obligations, 1965).

#### 2.4 Fourth discussion: liability for compensation

To determine compensation, the criterion is the amount of inflicted loss to the harmed party and not the amount of fault of the doer and this is one item for separation of civil and criminal liabilities. In tortious liability, the assumption of giving compensation or paying in cash may be done using brand and causing loss for the owner of the brand, which can be compensated with some money. In contractual liability, most of the times the compensation are done in same manner and this approach the most common approach. One of the most important elements of liability if loss infliction. If there is a contract and if the loss is not caused by it, the liability is obligation without a contract.

For example, a ship causes damage for the seafront and the loss is caused by contract; although is not related to lack of acting based on contractual commitments, since the commitment of custodian has been shipping the good that is fulfilled and the loss has been result of violation of a contract that has no contractual source (Jordan, 2007).

Another example is transportation of passengers for free. The lawsuit is presented in cases that it is hard to recognize that is there any contract or not. Some lawyers believe that the act is similar to contract; although the liability of the custodian is not contractual liability (Hosseini Nejad, 2009).

In French Law, some lawyers believe that according to article 1105, charity contracts are existed; although others believe that the relations are just on basis of politeness and customs and out of contract.

It seems that one can consider this type of liability as contractual liability, since even in this case, transporter take the passengers for free and safely. Although safety commitment is in kind of commitment by vehicle, the liability of the driver is based on strict liability according to Compulsory Insurance Law and is a loss is caused, there is no need to prove fault of the driver and it is in benefit of the harmed party to refer to tortious liability of the driver.

The law dominated on tortious liability is the low dominated on the place of accident, since it is created as a result of liability of a religious relationship. In such relationship, adequate law is the law by religious origin. In the American Law, the dominant law in tortious liability is law of place of committing a crime and the adequate law is the dominant law of contractual liability, which can be place of conclusion of contract or the law agreed by both parties (Loubser, 1977). In U.K Law, the conditions are absolutely different.

### 3 The amount of compensable loss in tortious liability

#### 3.1 Predictable and non-predictable

Popular opinion is that as predictability of loss is a condition in contractual liability, the liability can be limited to predictable losses; although in tortious liability, the person is liable for any kind of loss. The problem with tortious liability is that the loss is

not on basis of will of parties and the liability is imposed based on law.

In legal terms, it could be mentioned that something happened by natural affairs as a result of a fault is attributed to doer and unexpected affairs are not attributed to action taken by the doer. In French Law, article 1150 of Civil Code mentions that "A debtor is liable only for damages which were foreseen or which could have been foreseen at the time of the contract, where it is not through his own intentional breach that the obligation is not fulfilled" (Mazeaud et al., 1965). The discussion is considered under the title of farness of loss and predictability in Common Law. In obligations without a contract, the criterion for predictability is time of taking a fault and in contract, the date of agreement is considered and not the date of fault (violation of contract).

#### 3.2 Punitive damage

This kind of damage in Common Law is not considered for loss compensation, but also it is considered to amend or prohibit the defendant from taking actions causing loss for the plaintiff. This kind of damage can be demanded just in tortious liability; although the procedure is different in different countries of Common Law. For example, in Australia, only the guilty and in U.K, only some agents of fault may be sentenced (Loubser, 1997). Moreover, in case that violation of contract is regarded as tortious liability, the doer is competent to get punitive compensation. Punitive compensation can be more than loss compensation. This kind of compensation is existed in England, Commonwealth states, the United States, Japan and New Zealand.

#### 3.3 Spiritual damage

In many legal systems, spiritual compensation could be received just in lawsuits of tortious liability. According to Common Law, if violation of contract causes physical or mental harm or anxiety, spiritual damage may be considered in addition to material damage caused by the contract. In French system, spiritual damage is considered with no difference in contractual and tortious requirements. Moreover, limiting attitude of spiritual damage on attribution to tortious lawsuits was rejected in lawsuit "jarris. vs. swanstours ltd" on 1973. Same result is also obtained in negligence of attorney to present the lawsuit<sup>3</sup>. This kind of separation is not applicable in Iran Law.

#### 4 Role of deterrence in tortious liability

In Iran Law, this issue is investigated implicitly. For example, article 386 of Commerce Law shows that an important issue is attempting to make required decisions and accident prevention precautions. In Iran Law, some lawyers have not considered same role for unpredictability.

Regarding note of article 337 of Islamic Penal Code shows that the legislator in this law believes that Inevitability is the binding condition of Force majeure, since it has declared explicitly that force and tort factors are factors out of limit of power and authority.

If the aim of civil liability is deterring the harmed party to have harmful act in future, it is required for the party to pay compensation to an extent that is enough for this purpose, although it is not true in practice and the cost that the doer is charged to pay as compensation may be more than this amount or too low that may have no effective deterrent effect. The act of the harmed party is a case of external cause that can remove the liability of the defendant with realization of force majeure or reduce it and there is no necessity to consider fault in conditions of force majeure for disclaimer of the defendant.

<sup>3</sup> Damages for vexation and distress were also awarded in a case where a solicitor failed to institute proceeding to restrain molestation of the plaintiff by a particular individual, with the result that the molestation continued

To make civil liability as adequate mechanism for deterrence, it is required to create direct relationship between degree of fault of the doer of fault and intentional or unintentional nature of the action and the amount of compensation of loss. However, the relationship is not existed in practice and no attention is paid to degree of fault or intentional or unintentional nature of the act in field of issuing sentence for loss compensation.

On the other hand, a person with intentional or heavy fault may be charged to pay insignificant cost as compensation; although the other one with insignificant fault may have to pay a lot as compensation (Gibson, 1993; Waldron, 1995).

If liability of a person is considered on basis of objective fault, it may have no deterrent effect in some cases, since the criterion for being guilty is same in this case and individual properties are not considered.

In relation with the losses caused by accidents and human mistakes that are common today, deterrent effect may not be considerable, since in most cases of the current world, accident and human mistakes are inevitable effects of human faults and use of machinery and can't be prevented<sup>4</sup>.

Hence, it should be mentioned that issuance of sentence to compensate losses can not only deter the doer of fault from harmful and antisocial acts in future, but also is can be a lesson for other members of society, especially those who are more talented to make loss for others because of their special position and there are many lawsuits against them.

In other words, civil liability can be pressure leverage on them who have political, economic and thinking power at the society and can change their behavior in such manner that they feel responsible against the society members. In fact, private law plays supervisory role through this with guaranteeing rights and freedom of citizens (Rogers, 2002).

If deterrent regulations of civil liability are not existed, people consider only their own benefit and prefer their personal desire to safety of others. Sanctions of civil liability force individuals pay attention to interests of others too and show behavior that is accepted socially. This issue can reduce accidents and losses caused by the accidents to considerable level in long-term (Sugerman, 1992).

More importantly, civil liability today plays controlling role through the theory of abuse of rights in social relations and can make individuals violate social foundations to apply some regulations (Delbecque, 2001).

Certainly, civil liability can play key role in general deterrence and even social reforms and legislation and in some cases and lawsuits, the harmed parties may take such action for money (even in tortious liability) and not for the principles and ideals that lead to effective deterrence and reforms and also ignoring lawsuit by them may not be because of deterrent rules and ethics, but also it may be because of high costs of trial. Moreover, similar to specific deterrence, this type of deterrence can also affect only the behaviors that are needed by subjective state and not every kind of behavior (Cane, 1996).

Therefore, it seems that criminal, labor, administrative and disciplinary sanctions can play this role in better manner.

On the other hand, in some laws, there is another type of deterrence that is applied under the title of specific deterrence. The aim by specific deterrence is the role that civil liability can have to deter the doer of fault to inflict more losses. This type of deterrence is against general deterrence, which means prevention and deterrence in social level and preventing other people of the

society from taking harmful act in future. The general deterrence is also divided to two types of general deterrence in economic sense and general deterrence in noneconomic sense (Cooke, 1999).

Deterrence in noneconomic sense is creation of safety regulations and standards and determining sanctions for violation of the standards. On the other hand, if the injured party has not observed the standards, the amount of compensation to him/her would be reduced. Through this, the law has created some encouragements for safe behavior. Based on economic sense and concept of deterrence, the cost of losses caused by an economic activity should be paid by the individuals involved in that act. If the cost of preventive actions is less than the compensation paid by the doer of fault on the injured party, the doer of fault will take deterrent measures to prevent the damages (Cane, 2006).

Hence, in some legal systems, typical insurance plays deterrent role in civil liabilities (and some examples of tortious liabilities). However, it seems that despite to existence of liability insurance, deterrent role of civil liability is still remained strongly. The person can only be insured against the damages caused by unintentional faults and the civil liability insurance of intentional fault is illegal and may be regarded against public order and even there are some doubts in field of civil liability insurance of heavy faults (Mazeaud, et al., 1965).

With the emergence of liability insurance, civil liability deterrence was weakened and using strategies innovated by insurers and legislators to reduce behavioral risk can't recover deterrence of civil liability at all. On the other hand, supporting the injured parties and fast compensation of losses and reduction of social damages caused by accidents and development of insurance institute is a social requirement. Hence, in Compulsory Insurance Law (2016), efficient regulations are codified to create relative deterrence and prevention of increased carelessness and emergence of behavioral risk of insurance. In new legal economic analysis that supports the principle of fault and applying it, one can't observe denial of advantages of liability insurance with behavioral control tools.

For example, if one tends to use same regulations of traditional legal system for the accidents arising from traffic and if the intention is to make the injured party to prove the fault, this would be impossible in some difficult and complicated cases. To prevent such conditions and to adjudicate rights of the injured party, despite to traditional system foundations, civil liability of Compulsory Insurance Law has assumed liability of the holder or the driver and if the fault is not proved because of force majeure or proving fault of third party or fault of the injured party by the driver, the driver or holder would be innocent; otherwise, the driver should compensate the loss of the injured party (Dehghan, 2013).

This is because of typical liability that holders of vehicles are recognized as liable party and should compensate the losses without proving their fault by the injured party. The legislator has made it binding for holders of vehicles to have Third Party Insurance and insurance company can decrease many difficulties and problems through facilitating loss compensation. Hence, it could be found simply that insurance has facilitated compensation of losses through regarding liability of holders as typical liability and through making third party insurance compulsory and through ignoring personal loss compensation and considering a common system of loss compensation (paying by insurance companies).

Many doers of fault are not covered by liability insurance even in some fields such as traffic accidents that insurance is obligatory and hence, they have to compensate losses in person<sup>5</sup>. Because

<sup>4</sup> This issue is mostly true for traffic accidents. It is proved that people make a mistake in average per mile and as a conclusion; every common driver in Washington makes 9 driving faults per 5 minutes (Markesinis, & Deakin, 1999).

<sup>5</sup> In compulsory insurance, having no insurance while accident may lead to deprivation from driving and this issue is indirect effect of civil liability and can be regarded as an important deterrent factor. Through codifying some driving and traffic rules such as fastening seatbelt while driving that is a kind of tortious liability can also play key deterrent role in this field.

of being beneficiary in field of reduction of accidents, insurance companies consider some approaches to encourage and punish the insured parties (such as attributing insurance fee of everyone to history of accidents), which can be a deterrent factor. In cases that compensation of loss is taken by social security or projects of loss compensation or funds and special regulations, deputy of insurance institutes and the government on behalf of the injured party to refer to the guilty can preserve deterrent role of civil liability and tortious liability<sup>6</sup>.

## 5 Conclusion

Civil liability has two branches including contractual liability and non-contractual liability. If there is a contract between two or more parties and one of them violates the contractual provisions and loss is inflicted on the other party, the violator of the contract has contractual liability and should compensate the losses. In cases that a person inflicts loss on another party without existence of contract or in presence of contract, the loss is not attributed to the contract and the discussion here is related to non-contractual liability.

In Iran Law, Civil Code has presented civil liability under the title of obligations without a contract and has investigated its specific issues under the title of tortious liability. By 1960, a law was approved under the title of "Civil Liability Act", which was mainly related to obligations without a contract. Hence, civil liability in its specific sense refers to same obligations without a contract or tortious liability; although in its general sense, it includes both types of liability (contractual and tortious).

Fault is one of the foundations of civil liability and in Iran Law; it is at least one of the most important bases of liability. In article 1 of Civil Liability Act, the liability is mainly considered based on fault. To realize such liability, 3 elements are required as follows: a) harmful act: on this basis, doer of harmful act is responsible to compensate the loss inflicted on other party to whom the harmful act is attributed b) loss infliction: loss shall be certain and absolute and hence, to ask for compensation of loss, the injured party shall prove the fault of the doer, since according to the principle of no harm and based on probabilities, no one can't be liable c) causal relation between harmful act and loss infliction: to realize liability, it should be authenticated that there is casual relation between loss and harmful act; meaning that the loss is caused by the harmful act.

Preserving liability based on fault is required because of its deterrent effect. However, extension of systems based on strict liability such as strict liability caused by objects and dangerous activities can result in social welfare and efficient allocation of resources with the aim of providing coverage of private insurance and internalization of social costs of accidents.

With the emergence of liability insurance, civil liability deterrence was weakened and using strategies innovated by insurers and legislators to reduce behavioral risk can't recover deterrence of civil liability at all. On the other hand, supporting the injured parties and fast compensation of losses and reduction of social damages caused by accidents and development of insurance institute is a social requirement. Hence, in Compulsory Insurance Law (2016), efficient regulations are codified to create relative deterrence and prevention of increased carelessness and emergence of behavioral risk of insurance. In new legal economic analysis that supports the principle of fault and applying it, one can't observe denial of advantages of liability insurance with behavioral control tools.

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<sup>6</sup> For example, in U.K, the government can refer to guilty to pay the advantages of social security back paid to the injured party. In article 66 of Social Security Act of Islamic Republic of Iran approval of 1975 on accident at work same arrangement is used.

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## Primary Paper Section: A

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