Educational Administration: Theory and Practice
2024, 30(5), 10126-10133
ISSN: 2148-2403
https://kuey.net/

Research Article

Explanation of aggravating liability clauses in contracts under the Iranian law

Faezeh Soltani Varnosfaderani[1], Fatemeh Soltani Varnosfaderani[2*], Dr. Azizullah Fahimi[3]

[1] Master's degree in Private Law, Faculty of Law, Qom University -Lawyer. f.soltani14@yahoo.com
[2*] Master's degree in Private Law, Faculty of Law, Shahid University –Lawyer. fsoltani541@gmail.com
[3] Associate Professor of Law Faculty of Qom University –Lawyer. aziz.fahimi@yahoo.com

Citation: Faezeh Soltani Varnosfadrani (2024), Explanation of aggravating liability clauses in contracts under the Iranian law *Educational Administration: Theory And Practice*, *30*(5), 10126-10133
Doi: 10.53555/kuey.v30i5.4715

ARTICLE INFO

ABSTRACT

Binding principle is considered a fundamental and essential factor in contracts and transactions under the laws of all countries, including Iran. The principle dictates that when contracting parties legally enter into the contract, it imposes certain obligations to them. Firstly, they are obliged to fulfill contractual obligations. Secondly, parties failure to fulfill their agreed upon obligations is deemed fault. Thirdly, pursuant to general rules of liability, the obligor is hold responsible to only compensate the same damages inflicted on the other party. However, contracting parties can mutually agree to increase contractual obligations of the obligor. As a result, the obligor holds responsible to compensate damages more than the agreed upon clauses.
The present paper aims to discuss all types of aggravating liability clauses, their features and clauses.
The central question in this research asks whether it is possible to aggravate contractual obligations above legal liability. The hypothesis that will be examined is the possibility of aggravating obligations within the scope of jurisprudence and law. This research is analytical and exploratory in terms of its purpose and the library method is used to collect data. This paper seeks to examine different types aggravating liability clauses for compensation of damages according to the Iranian law.

Keywords: Damages; Aggravating liability; Contractual obligations; Penalty Clause

Introduction

The fundamental purpose of every contract is to fulfill agreed terms, clauses, and obligations, and there is no substitute for it. However, in the event of any dispute, parties are expected to first seek execution of the contract, and if there is not a solution, the affected party has the right to claim for compensation.
Under the Iranian law, scholars believe that liability clauses in contracts and undertakings are mainly settled for two basic reasons. The first is to aggravate obligor's responsibilities in cases where, according to general rules, they have no obligation. Consequently, they hold responsible to compensate the affected party possible losses and damages. The second one is to decrease responsibilities of the obligor where, according to general rules, they are responsible to fulfill certain obligations, therefore these clauses protect them from the compensation of damages (Katouzian, 2001, p. 312-313).
Sometimes, contracting parties mutually agree upon aggravation of obligor's obligations. Take, for example, the cases where obligor's fault is presumed. Some scholars are of the opinion that although reaching an agreement on decreasing obligor's contractual obligations is contradicts to the public order, agreement on aggravation of obligations is legally binding.
Consequently, when it comes to aggravation of contractual obligation, it is legitimate to accept such an agreement according to Art. 10 of the Civil Law. Therefore, if the president of a chemicals and toxic material plant reaches an agreement with the local residents and holds the responsibility of any potential damages inflicted on them even if they are not at fault, or when they accept the responsibility of adverse effects of plant pollution on the region's climate even if these might be caused by events of Force Majeure, such an agreement shall be legally binding according to Art. 10 of the civil law.

Types of agreements on how to compensate damages:

Under the jurisprudential rule of "there is no detriment and detrimental act in Islam" (1960) as well as Article 1 of civil liability code, the obligor hold responsible to compensate the affected party for the incurred damages at anytime and anywhere.

Accordingly, the legal duty of the obligor is first to provide compensation in a manner that restores the damaged situation to its original state and fully rectifies the incurred losses. This principle is known as restitution integrum, which is the most appropriate way of providing compensation. However, when it comes to moral, physical, or specific types of financial damages, it is highly unlikely to restore the damaged situation to its original state. In this way, awarding compensatory damages to the affected party covers incurred financial losses as a direct result of the obligor's negligent actions. It can take two forms: monetary and non-monetary.

For monetary compensatory damages, payment should be done promptly and in full. However, judges may sentence the obligor to installment payment in exceptional circumstances. Moreover, it may be paid continuously, meaning the total compensation amount and number of installments remain undefined and it must be paid to the affected party for the duration of their lifetime.

Regarding non-monetary compensatory damages, the obligor is required to provide a replacement for the damaged item, where the payment option is no longer considered, because the replacement has the same features. However, not all property exist in the physical world, and it not always feasible to provide a comparable substitute.

Under Article 219 of civil law, contracting parties are required to respect the contract and adhere to terms agreed upon. If the promisor inflicts damages on the promisee due to failure to fulfill their obligations, damages incurred will be compensated via three solutions anticipated in Iranian legal system:

1) Contracting parties mutually consent on a fix amount of money as compensation for potential damages before any damages or infringement is occurred.
2) Determination of compensation is based on the extent of incurred losses and infringement.
3) Determination of the appropriate compensation is within the competent judge's discretion after contractual obligations are not fulfilled.

Regarding the third situation, as judge holds the authority to decide the value of compensation, it is beyond the scope of this paper. For the first two, parties' consent destroy civil law legal system and develop a new structure.

First, it is necessary to distinguish between contracts made between the obligor and the affected party to assess the extent of damages and how they must be compensated after actual losses incurred, and those made before any damages inflicts on potential affected party, where parties to the contract make decisions on possible losses that might be incurred in the near future. On other words, it is important whether aggravating liability clauses are negotiated before or after any damages incurred, because it affects their severity.

Subsequent contracts concerning losses and damages

Contracting parties sometimes enter into a contract to determine the extent of damages and how they should be compensated. No matter what the parties to the contract call it, these are referred to as contract of settlement. Because, the crucial purpose of such contracts is to establish the rights of the affected party and determine the manner of compensation. These contracts aim to either settle disputes or gain a mutual consent.

To put it simply, contracting parties are permitted to reach any agreement to mitigate or increase obligations of the obligor, as long as it does not violate the public order. These agreements are even true for cases where the cause of damage is considered a crime and their contents pose no harm to the society. Indeed, they are not contrary to the holy Quran and prophet's tradition, and are in accordance with the principle of freedom of will. Therefore, parties to the contract as adults and competent to occupy has right of interference and possession in their own property (Article 35 of Civil Law), thus aggravating liability clauses are within the scope of the abovementioned principle (Qasemzade, 2009. P. 71). Therefore, these types of contracts are legitimate and enforceable, and aim to settle disputes.

Another factor to consider is that agreements on increasing liabilities of the obligor depend on whether the affected party is an individual or the government. On other words, when the affected party is government or government-owned corporations, such agreement are valid and completely in favor of the aggrieved party. However, in cases where the affected party is the private sector and the liable party is organization that are required to respect public law, including municipalities, education department, environment protection organization, ministry of energy, ministry of agriculture, cultural heritage organization, etc., the approach to deal with the problem differs somewhat. Increasing legal obligations of the liable party and posing a real risk to public and state-owned properties, it is not authorized to make such contracts. To put it simply, the public sector, as protector of public rights, do not have permission to endanger public interests via entering into such a contract. Therefore, principle 139 of constitution can be amended to encompass the following option:

"Settlement of disputes related to public and state-owned properties or their submission to arbitration is subject to approval of cabinet and the matter ought to be brought to parliament's attention. In the event that opponent is a foreign identity, or in case of crucial domestic issues, parliament approval is necessary. Making

decision on major issues should be based on legal principles and law. Therefore, reaching a settlement agreement on increasing liability between the liable and aggrieved parties is legally binding.
Any agreement on aggravation of liability following the occurrence of losses and damages are not subject to agreed aggravating liability clauses, and it is referred to settlement concerning incurred losses by the aggrieved party. To clarify, the aggrieved party had considered the extent of incurred losses proportion to liability of the liable party prior to making any decision, so legitimacy of such an agreement is not questionable.

Contracts with the possibility of damages and losses

For this contracts, contracting parties negotiate on incurred potential damages in the future to determine whether to fully release the obligor from their responsibilities, or decide to what extent the liabilities of the responsible party should be decreased or increased (Izanlou, 2011, p. 22). Indeed, responsibilities of the liable party are modifies in ways not originally anticipated in the law.
Contrary to the first group contracts, which focused on incurred losses in the past, the aforementioned contracts take into account possible losses that may occur in the near future.
Making inferences from international air, maritime and road transportation rules, as well as opinions of jurists, it is safe to say that any agreement on increasing or decreasing liabilities of the violator obligor should be made before determining responsibilities of the liable party. Therefore, aggravating liability clause may be drafted concurrent with the main contract, allowing for its inclusion as a secondary provision within the same agreement. Alternatively, after entering into the main contract, the parties may mutually agree to amend certain clauses and provisions, such as the extent of liability, to increase the liabilities of the defaulting party. It is thought of as partial Rescission, where certain provisions from the original contract are replaced with new legally binding terms.
The following are types of aggravating liability clauses:

1. Criminal clause and penalty sum

Inclusion of a penalty sum or criminal clause to the contract is one way to aggravate liability of the obligor. The word penalty means “punishment”, and the word sum means “money”. The term “penalty sum” lexically means a proviso included in contracts to guarantee performance of obligations agree upon. Iranian law lacks a clear definition of such clauses, because jurists has defined penalty sum, by considering its features and effects, as follows:
All parties involved in the contract at the point of agreement, after that or before occurrence of any violation, can mutually consent to a provision that imposes a fixed monetary penalty on the liable party in case of non-performance or delayed fulfillment of their obligations. The predetermined amount is intended to estimate the potential losses that might be incurred in the near future, and it is explicitly stated in the contract that the obligor holds responsible to compensate for the affected party the incurred damages.
By the term “penalty clause” is meant a provision that one party undertakes to perform rather than the fulfillment of the agreed upon obligations, which might take the form of paying money, performing or refraining a specific action.
Due to their similar nature, there is no significant difference between penalty clause and penalty sum in Iranian law. However, according to definitions provided so far, penalty sum refers only to a predetermined amount of money, but penalty clause have a broader meaning and includes paying money, fulfilling or refraining an action. Thus, it is safe to say that the logic relationship between these two concepts is absolute generality and peculiarity. Consequently, although every penalty sum is inherently a penalty clause, not all penalty clauses requiring performance or refrainment of an action are considered a penalty sum. Despite the slight difference, these two concepts considered equivalent in this paper.
Historically, these provisions can be traced back to Roman law, where applied to guarantee non-mandatory obligations. in the legal system of Arab states, the term “Penalty sum” is often associated with Band al-Ja’za, Jiza al-Toaqidi, Jiza al-Itefagh, and Ta’wis al-Nakoul.
Penalty sum is commonly used in various contracts, especially possessory ones. It takes two forms: a mutual consent as a proviso, or an independent agreement outside the original contract.
Penalty clauses are recognized by their three main distinguishing features (Mohaghegh Damad, 2022, p. 10):

1. Predetermining compensation for infraction of obligation
2. Determining punishment for violator promisor
3. Ensuring the fulfillment of obligations by the responsible party

There is a debate among jurists as to whether the primary purpose of a penalty sum is to penalize the violator party or to compensate the affected party’s for incurred damages. However, a penalty sum appears to possess both characteristics, as a fixed amount of money is deducted from the liable party’s assets to penalize them, while the same amount is transferred to the asset of promisee to compensate their incurred damages.
Under the Iranian law, the strongest reason affirming authenticity of penalty sum is Article 230 of civil law, stipulating if paying back certain amount of money as compensation to cover damages incurred by the probable affected party has been stated in the contract, the judge is not allowed to condemn the obligor more or less than the amount agreed upon.

Given above article, penalty sum is a certain amount of money agreed by contracting parties as definite compensation for probable non-performance of obligor, provided that main obligation of the contract is not paying cash money.
Considering penalty sum as a pecuniary punishment agreed by parties to the contract, focus of the article has seemed to be more on compensation.
Given contents of Article 230 of civil law, basic elements constituting penalty clause are as follows:

- Although compensation agreed upon in the contract should be a certain amount of money, it is also possible to agree on properties of the obligor as compensation. The payment shall be in a cash or in some agreements, including contract works or transportation contracts, could be deducted from debts of defaulting party, such as rent payment to lease animals or machineries (refer to Arts. 509 & 517 of civil law).
- The penalty sum must be fixed, meaning contracting parties need to carefully assess and anticipate possibility of damages and then set out a certain amount as compensation, because the amount of money is unchangeable and in cases where the agreed upon money is less than damages, the affected party could not be reimbursed completely.
- In accordance with the strict letter of the article, contracting parties must decide on the compensatory amount at the time of making the contract or before happening any default (Katouzian, 2007, 241).
- Penalty sum may be assigned for certain contractual violations, including omission. Therefore, the promisee is entitled to receive penalty sum only for issues agreed upon in the contract rather than all violations. In addition, a variety of penalty sums may be set for different violations. For example, the agreed upon amount for non-performance can be higher than those decided for delay in performance of obligations. However, the promisee has right to demand compensation for delay in performance or non-performance of obligations stated in the contract when no term has been decided about these probable occasions.
- When the penalty clause is set in a binding and valid contract, the contract will be still enforce even if the clause is nullified. However, the penalty clause will be void if the contract is terminated. On the other hand, when in an authorized contract the penalty clause is decided, it still remains valid and binding even if both parties agree upon termination of the contract. As a result, the affected party will be entitled to be compensated for contractual violations.
- Lastly, under Iranian legal system, penalty sum is only set for contracts and agreement not legal acts or legal facts. Therefore, it is illegitimate to determine penalty sum for divorce, revocation of divorce, revocation of donation, or for death of obligor before meeting their obligations.

The advantage of assigning penalty sum and criminal clause in a contract is that promisee can demand for compensation after the obligor violates agreed upon terms. What's more, proving non-performance of obligation(s) agreed upon in the contract will suffice to claim for compensation and there is not necessary to refer an expert. While, in accordance with general rules of civil liability, in the absence of penalty clause, the affected party is first required to prove causal link between non-performances of obligation (s) and value of damage they have incurred. In addition, making reference to Article 230 of civil law, alteration or adjustment the amount of predetermined penalty sum is beyond authority of judges.
Although the value of predetermined penalty sum does not need to match that of actual damages incurred, this freedom of will is not absolute, meaning parties to the contract should not agree on considerable amount of money.
However, in some contracts, penalty sum is so heavy, as if there is no reasonable and conventional proportion between these two.
To put it simply, some obligors have neither actual nor potential solvency to afford stated penalty sum due to their poor fiscal status and conditions governing the contract. In this case, there are two positions in Iranian law:

- Some jurists verify absolute authenticity of penalty clause, even if it is unfair, believing judges has no right of interference. They allude to articles 10, 183, 219, and 220 of civil law, principle of "freedom of contracts", the rule "muslims are bound to their obligations", and apparent meaning of article 230 of civil law, indicating non-interference of judges in the predetermined penalty sum.

In contrary, other jurists holds the view that judges has right to modify penalty clause, claiming heavy penalty sum is considered impossible condition, meaning the obligor cannot afford it, and it is against the public order. Hence, they oppose Article 230 of civil law.
Moreover, in accordance with the rule "there is no detriment and detrimental act in Islam", articles 277, 652, and 494 of civil law, as well as Article 9 of liability, judges are permitted to abate heavy penalty sums.
The disagreement among jurists has adversely affected state's judicial precedent, causing divergence of opinions and issuance of contradictory judgments.
Article 1152 of French civil law stipulates that the affected party is not entitle to receive compensation higher or lower than the amount specified in the contract.
Under this law, the value of penalty sum stayed unchanged throughout the contract's duration. For a long time, judicial decisions in France have consistently drawn upon this law, until January 1985 it was amended to specify that the penalty sum constitutes a fixed compensation, except in the following circumstances:

1. The predetermined penalty sum is either notably high or law.

Although article 230 of Iranian constitution has been derived from the French law, judges still relay on the same law to pass their judgment. As a result, the legislator is expected to resolve discrepancies among judges by amending the relevant article.
Another ambiguity concerning penalty sum in Iranian law arises when the obligor fulfills some, but not all, of their contractual duties, as it remains uncertain whether the obligor must pay the penalty sum in full or only a part of it.
Under Article 1231 of French civil law, in cases where contractual obligations are met partially, it is reasonable to decrease the penalty sum proportionally to the extent of fulfillment.
However, there is no legal stipulation in Iranian law for such circumstances. In accordance with Article 230 of civil law, despite their limited authority, judges can modify the value of penalty sum considering the nature of contractual obligations and interpreting contracting parties' Latent Will, while it is still agree to Article 230 of civil law.
To clarify, in situations involving severable obligations where fulfillment a portion of contract provides some benefits to the promisee, penalty sum shall be modified accordingly. However, in cases of unseverable obligations, since fulfillment of only a portion of the contract offers no advantages to the promisee, the violator obligor must pay penalty sum in full.
Furthermore, there are two ways in which an obligor may breach the contract:

1. The obligor completely fails to fulfill their obligations entirely. In such cases, there might be a predetermined penalty sum, and the promisor cannot claim both the performance of the original obligations and penalty sum, because the compensation serves as a substitute for the original obligation.
2. The obligor fulfills their obligations but does so belatedly. In such instances, there might be predetermined penalty sum for each day of delay, which refers to a penalty for the delayed performance of obligation. Consequently, the promisee is entitled to claim both compensation for the delay in performance of obligation and fulfillment of the original contract.

Article 39, pertaining to the adherence to contents of executory authentic documents and handling of complaints regarding execution operations (1976) establishes that when a predetermined penalty sum is stated in a contract for delayed performance of obligations, the promisee has the right to claim both penalty sum and the fulfilment of obligations. However, in contracts where a predetermined penalty sum is designated for non-performance of obligations, the promisee is entitled to demand either penalty sum or fulfilment of obligations, but not both.
Traditionally, courts and lawyers differentiated between penalty sums for monetary and non-monetary obligations.
To clarify, when the original obligation involves the performing a beneficial action or refraining a harmful one for the promisee, and a penalty sum is determined in the contract, Article 230 of civil law permits contracting parties to determine the amount of penalty sum without any constraints.
However, if the original obligation involves monetary payment, the determination of penalty sum becomes subject to Article 522 of civil law. In such cases, the value of penalty sum must align with the inflation rate, requiring contracting parties to set the penalty sum in accordance with the inflation rate, otherwise, in case of non-performance of obligations, courts do not enforce the predetermined penalty sum. This law prevailed until 2000, when the following judgment changed the approach of determining the value of penalty sum for monetary obligations.

Supreme Court uniform practice code No. 16/10/1399-805

Fixing a contractual penalty sum to compensate for effects of delay in performance of monetary obligations is subject to Article 230 of civil law and the phrase stated in the last section of Article 522 of procedures of courts of general jurisdiction and the revolutionary courts for civil matters (2000), and considering Article 6 of the aforementioned law, the penal sum agreed upon in the contract would be valid and without legal objection even if it exceeds inflation rate, provided that it does not contradict imperative rules of law, including monetary ones.

By accepting possibility of fixing penal sum above inflation rate for monetary obligations, the dicision abolished segregation between monetary and non-monetary obligations. Penal sum fixed for compensation of damages resulting from delays in performance of monetary obligations subject to Article 230 of civil law and the last section of article 522 of civil procedure code acknowledges and affirms mutual consent of parties to the contract for monetary obligations. Therefore, considering Article 6 of civil procedure code, it has no legal objection to fix penalty sum in contracts above inflation rate stated by central bank.
However, the abovementioned uniform practice code has set out a special clauses to determine the penalty sum above inflation rate in contracts, meaning it must not contradict to imperative rules of law, and it is only applicable for state's legal tender rather than foreign currency obligations.

2. Guarantee clause for force majeure events or restricting other similar occurrences

Under Iranian civil law, force majeure refers to an extraordinary event or circumstance that is beyond control, including earthquakes, floods, or such situations as legal and administrative impediments or obstructions created by the promisee which all inhibit performance of contract.

Article 227 of civil law stipulates the obligor is adjudged to pay damage when they fail to prove delay or non-performance due to factors beyond their control, namely collapse of a bridge because of floods. Obligors might be exempted from meeting their respective obligations agreed upon in the contract owing to Force Majeure, because such events break causal link between fault and damage, resulting one basic element and condition for demanding compensation would be no longer applicable.
Since supplementary rules cover terms concerning force majeure and its features, agreement and mutual consents against these clauses are legally true.
Parties to the contract can agree on force majeure in variety of ways as follows:
1. Contracting parties can either exclude force majeure clauses from their contracts and legal relationships or set out a guarantee clause for the obligor in case of happening force majeure.
Under this term, either force majeure term is specified and then extinguished or it never sets out. According to the author, there is disagreement between legal scholars on this issue, thus it can be said that this term inhibits realization of force majeure.
B) Another contractual term for aggravation of obligation is to further restrict typical specimens of force majeure events, that is, some happenings and circumstances should be considered common events without having adverse effects on performance of obligations. Take, for example, excluding earthquake from the list force majeure events in earthquake-prone areas.
C) In addition to typical features of force majeure events, namely being unforeseeable and beyond the control, contracting parties may include an additional clause in the contract for further clarification. For example, the contract might specify that events such as draught, famine, the summer heat, or sanctions should not affect performance of obligations. Take, for example, a contract between Khozestan governor's official and a private corporation for installing new plumbing in several villages lacking access to potable water. If the corporation later refuse to fulfill its obligation due to sanctions on importing necessary equipment and tools, the governor's office could argue that sanctions are not a valid excuse and the corporation is still obliged to fulfil its agreed upon obligations.
D) In contracts with multiple parts, it is important to specify the applicability of force majeure events to a particular obligation or section, rather than applying them broadly to the entire agreement. Take, for example, a contract between a private corporation and Golestan governor's office to plant 1.000 new saplings in Alangdare Forest, pave a road for Vehicles and construct shelters for visitors. If the section of the contract concerning road parties exclude the force majeure clause, the corporation cannot invoke force majeure as a reason to stop paving the road under any circumstances. However, the force majeure clause would still be valid and enforceable for other sections of the contract.
Consequently, the obligor is responsible to compensate the affected party for any incurred damages in aggravating liability contracts. This principle is explicitly outlines in Article 642 of civil law:
"If a liability clause is included in the contract, the obligor is liable for any fault, even if it is unrelated to their actions. Apart from instances where liability clause is mandated by law, contracting parties may also incorporate this clause in their agreements. By doing so, the obligor assumes responsibility for the fulfillment of the contract and address unforeseen events. As a result, such a clause make it impossible for them to refuse their contractual obligations.
All forms of force majeure events might be incorporated in the original contract or added through a supplementary agreement. Indeed, these events might be stated explicitly or implicitly; however, disagreements arises from interpreting the implicit terms (Katouzian, 2001, p. 313). In general, the promisor plays the role of insurer for the promisee, resulting in promisor's responsibility for force majeure events being considered an aggravating liability clause. This is in contrast to the general rules that exempt the promisor from paying compensation for damages arising from outside factors (Katouzian, 2001, p. 315).
Indeed, the liability clause mentioned above serves as a force majeure clause as per Item A. similarly, a guarantee of result clause has the same effect, meaning occurrence of force majeure events cannot excuse the obligor from fulfilling their contractual obligations or compensating the affected party for damages. This hold true even if such events as floods, earthquakes, storms, lightings, volcanos, etc., make it impossible for the obligor to fulfill their obligations (Bayat, 2017, p. 160).

The primary effect of such an agreement is that the promisor guarantees compensation to the promisee for possible damages arising from the force majeure events. Consequently, in this situation, the impossibility of fulfilling agreed upon obligations does not result in contract termination. Instead, the obligor must either provide compensation or perform an alternative obligation.

Consequently, the contracting parties mutually agree to modify the effects of force majeure event, making the obligor liable for any resulting damages. Therefore, the force majeure can no longer be considered a barrier to claim compensation. Thus, the obligor remains responsible to compensate the affected party for possible damages, even if they fail to fulfill their contractual obligations due to force majeure. To put it simply, although general rules typically imposes no liability on the obligor for damages incurred by the effected party, they are still assumed responsible (Izanlou; Torkamnan, 2016, p. 83-100).

3. Aggravating liability clause in contracts

Binding principle is considered a fundamental and essential factor in contracts and transactions under the laws of all countries, including Iran. Pursuant to this principle, when a contract with some obligations is legally established between parties:

Firstly; the contracting parties are obliged to fulfill contractual obligations. Secondly; According to this principle, parties failure to fulfill their agreed upon obligations is deemed fault. Thirdly, pursuant to general rules of liability, the obligor is hold responsible to only compensate the same damages inflicted on the other party.

Sometimes, however, the obligor may unwittingly be unable to fulfill their contractual obligations. Take, for example, when an unforeseen and unavoidable obstacle might prevent the obligor from fulfilling their contractual obligations, or the non-performance may be attributable to a third party's actions. In both cases, imposing compensation on the obligor may contradict principles of fairness and established legal rules. Furthermore, sometimes the non-performance of agreed upon obligations results from the promisee actions, in which according to the principle of assumption of risk and Article 114 of the Maritime Law, Article 15 of the Insurance Law (1927), and Articles 227-229 of the Civil Code, the promisee shall be held responsible for the incurred losses or damages.

Consequently, if an individual has completely fulfilled their contractual obligations, they may not be required to compensate possible damages. However, they must prove their innocence in a court. In such a case, if an individual successfully prove their non-negligence in the court, they might not be hold responsible to compensate the other contracting party for incurred damages. In accordance with Article 10 of the Civil Law, and principle of freedom of will regarding entering into transactions and accepting contractual provisions, it is possible for the obligor to mutually agree to a provision stipulating that they might be responsible to compensate the affected party for damages resulting from non-performance, no matter whether the obligor was guilty or not. Under such circumstances, the obligor is required to fulfill their contractual obligations, even if non-performance is attributable to the actions of the promisee, a third party, or force majeure events.

By any means, the obligor would be held responsible for compensating the affected party. Although it may seem unfair and unreasonable, it is the direct effect of agree upon clauses. These type of agreement and clauses refer to as “aggravating liability clauses”, where the obligor increase their obligations. By doing so, the obligor accepts to compensate the affected party for possible damages and losses, even if they are not at fault or where the law typically exempt them from compensation. Under the Iranian law, not all contractual clauses are deemed binding enforceable. Therefore, all provisos, including aggravating liability clauses, need to have certain feature for being consider valid. In the following, the clauses are examined:

****

Conclusion

1) When it comes to provide compensation for incurred damages, the most appropriate way would be exclude the cause of loss and restore the situation to its original state. In addition, when either the obligor or probable affected party enters into a contract before any losses incurred, even if they are at no fault, these clauses are referred to as aggravating liability clause which increases liabilities of the obligor.
2) The current study found that the purpose of inserting any aggravating liability clause in contracts would be incur certain liabilities to the obligor where there is no guarantee in accordance with the general rules. Take, for example, clauses where the insurer shall undertake to compensate for damages resulting from the war. There is no doubt about validity of clauses broadening the scope of obligor’s liability, because they guarantee performance of legal and common liabilities by the obligor.
3) Under the Iranian law, civil liability is based on the doctrine of fault, that is to say, it is necessary to prove the fault of obligor in the court in order to establish their civil liability, otherwise, they would be absolve of responsibility. Therefore, if this clause has been anticipated in the contract, the burden of proof shall not fall on the injured party.
4) If any aggravating liability clauses have been anticipated in the contract, they would be enforceable upon the breach of contract, therefore it would not be necessary to prove that damages incurred by the affected party have been due to the breach of contract.
5) Under the law, judges are not allowed to change, mitigate or intervene in aggravating liability clauses and their judgment must be in accordance with conditions stated in the original contract.
6) Conditions aggravating liability of the obligor are penalty clause, guarantee condition and aggravating liability clauses.
7) As these conditions are not against the public order and Iranian imperative law, then, according to Articles 10, 223 and 230 of the civil law, they are valid.

Suggestions

Despite their countless effects and advantages in Iranian legal system, clauses discussed in this paper are not commonly used because there is not such a legal term in Iranian law and no act has been passed yet. As a result, numerous cases concerning civil liability and how the obligor has to compensate the affected party for

damages bring to the courts. Therefore, it is suggested that the legislator codify a comprehensive law by resorting to jurisprudential principles and rules, constitution, civil law, and other available doctrines about clauses for aggravation of obligations and their application in such fields as bank affairs, insurance, companies etc. It may provide individuals with a useful window on drawing up contracts and building legal relationships.

References

1. Imami, Asadollah; Abdi, Sadegh. An analysis of jurisprudential, legal fundamentals of contractual non-responsibility clause. Journal of Qom higher education institute. 1999.
2. Ansari, Mortaza. Al-Makasib. Vols. 2 & 3. Beirut: Al-Na'man, 1990.
3. Ansari, Masoud; Taheri, Mohammad Ali. Encyclopedia of private law. Vol. 1, 1st ed., Tehran: Mehrabe Fekr, 2005.
4. Izanlou, Mohsen. Extinguishing and limiting clauses in contracts. Enteshar joint stock company 2011.
5. Izanlou, Mohsen; Torkaman, Hussein. Contractual sanction on obligation to third action. Journal of Iran and international comparative law research. No. 43, 2016.
6. Bojnourdi, Mirza Hasan. Al-Qawaid al-Fiqhiyyah (jurisprudential rules). Vol.3, 2017.
7. Bayat, Farhad. Comprehensive description of civil law. 12th ed., Arshad. 2017.
8. Ja'fari Langroudi, Mohammad Ja'far. An introduction to Law. Ganje Danesh, 1983.
9. Ja'fari Langroudi, Mohammad Ja'far. Terminology of law. 21st ed., vol.1, Ganje Danesh. 2013.
10. Haeri, Masoud. An analysis of Article 10 of civil law: principle of freedom of contracts. 2nd ed., Keyhan. 1998.
11. Safaei, Sayyed Hussein; Rahimi, Habibullah. Civil liability: tortious liability. SAMT. 2nd ed., 2011.
12. Gharibe, Ali. Effects of violations committed by the carrier in an international and domestic contract of road transportation. 5 (12). 2009.
13. Qasemzade. Civil law: principles of contracts and liabilities. Dadgostar. Vol.1, 2010.
14. Ghabouli Dorafshan, Mohammad Mahdi. Concept and fundamentals of invoking to a contract. Tehran University of law. 40 (1). 2010.
15. Katouzian, Naser. Tortious liability. Ganje Dansh. 2014.
16. Katouzian, Naser; Ansari, Mahdi. Liability resulting from environmental damages. Studies of private law. 2. 2008.
17. Katouzian, Naser; Izanlou, Mohsen. Limiting and extinguishing liability in contracts. Publishing Joint Stock Company. 2014.
18. Katouzian, Naser. Tortious liability (extra contractual obligations). vol. 1, Tehran: Tehran university press. 2006.
19. Katouzian, Naser. General rules of contracts. vol.4, 4th Ed., Tehran: publishing joint stock company. 2004.
20. Katouzian, Naser. Civil rights regarding general rules of contracts. vol.3, Tehran: publishing joint stock company. 1997.
21. Katouzian, Naser. Civil rights regarding general rules of contracts. vol.4, 3rd Ed., Tehran: publishing joint stock company. 2001.
22. Mohaghegh Damad, Mostafa. General theory of clauses and obligations in Islamic law. Center for publication of Islamic sciences. 2001.
23. Mansour, Mohammad Hussein. Al-Nadhariyah al-Ammah lil-Iltizam Masadir al-Iltizam (General theory of obligations: sources of commitment). Dar-Aljami'ah Jadidah, Alexandria, 2006.