

## **The Concept of Fault Conditions and a Variety of Jurisprudence and Law in Iran**

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**Abstract:** Fault is a moral and social sense that its instances are different in terms of common law and social ethics and general living conditions. Iranian lawyers have provided definitions of various fault. Iranian Civil Code Articles 951 and 952 of the Civil Code of the defines the fault as: "The fault is that the person should not act committed (the victim) or omission that person should do (wastage)". Islamic scholars have stated only instances of abuse and wastage with words such as the expression of oppression have said that abuses' current performance is said that it is necessary to leave" and in the definition of wastage have said that "leaving the action that should be taken. And the fault has been defined with regard to the material and spiritual rights as well as contractual and non-contractual or leave it and be divided into types in Iran.

**Keywords:** Fault, Recklessness, Injured, Responsibility, Fault, Negligence, Manslaughter, Abuse, Wastage, Intentional Fault

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### **Introduction**

Iran's legal system is a comprehensive legal framework. In Iran's law, the rights of any other person who blamed his loss and will be responsible for compensation under the circumstances. This is one of the causal relationship. There must be a way to achieve sustained losses attributed to the offender. Iranian legislator also protects to social justice and development to the public from such rules, especially since Iran is a theocracy and Islamic religions has not allowed harm to others and has underlined the detriment will be responsible for compensation. Accordingly, you can lose money as the demand of judicial litigation with this description of the fault and determine the damages suit was filed to capacity the official expert opinion demand of the make compensation. And judicial authorities analyze in the first phase of the applicant's interest expense. And secondly evaluate that if there is the relationship between loss and claim or whether the offending entry loss is called? In the case of loss or causal relationships between the loss and the decision to continue the criminal proceedings and in the absence of causal relationship incorporates claim will be rejected.

### **1-Definition of Fault in the Iranian Law and Jurisprudence**

#### **1-1 fault defined in Iranian law**

One of the Iranian lawyer Hossein Banan about fault Safai said: "The fault is a moral and social sense that instances of it in terms of the common law

and social ethics and general living conditions vary, part of it from individual psychology and behavior and the will of the person and other details derived from sociology and public opinion environment where there's practically done". With referring to Articles 951 and 952 of the Civil Code with understanding of the definition of fault "The fault is that the person should not act committed (the victim) or omission that person should do (wastage)"[1].

Another Iranian lawyer, Emami defined fault as: "blame the credit status of the person committing the act without legal authorization willfully or the result of personal Bourne with such a situation is found blame"[2].

Another Iranian lawyer called a Katusyan held that "rape is the fault of normal human behavior. And to distinguish fault in the accident conditions, must do what has been done compared to the normal human behavior, is not but kind, but when the accident occurred. The purpose of external conditions and not internal" [3].

Other lawyers also defined it as "blame avoidance of tasks that have harmed other major element in this definition is the duty of the injured have to prove that his first task was to blame. Secondly culprit in doing this task he has damage. Third, how much is the cost returning situation to what it was at

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first (the cost of restoring the former status) and the fourth the amount of damages based on any of the factors that led to the injury indicators have been set [4].

### 2.1 Concept of Fault in Fiqh

There was no clear definition fault in Islamic jurisprudence. But Islamic scholars blame instances of abuse and wastage have expressed with words such as the expression of oppression have said that abuses' current performance is said that it is necessary to leave "and the definition of wastage also said it would "leave the action that should be taken" [5].

Despite the claims of some fault in the jurisprudence as an important criterion of responsibility is applied [6]. and others have suggested that it is an "assignment editor 's fault if the kind of significant Ayatollah Fazel fiqhi repeatedly stressed, liability Ghahri basically, the law is based on fault" [7].

The fault is based on common sense in Jurisprudence and this is evident through traditions, for example, the swimming teacher's responsibility. In cases where the teacher teaches the receiver the adult swimming pool will sponsor [8] it seems that the lack of responsibility swim teacher in this case is that the common fault to him by does not work.

Another example; in the case of possession of property that is done to the detriment of the neighbors, if there is knowledge or suspicion to harm neighbor, the owner is responsible for determining the existence of suspicion or knowledge, practice is the criterion [9].

## 2- Types of Fault

The fault can be found with regard to the *mens rea* (intention) and material element divided into several types, and also with regard to jobs and social groups will be divided into a variety of persons trespassing fault. In other words, by taking responsibility for professional and business people will have different types of fault.

### 2-1 Intentional and Unintentional Fault (by *mens rea*)

A number of Iranian lawyers of the Katuszian, Safai and Langroodi, blame on intentional and unintentional fault division and "intentionally" but one of the forms mentioned fault in civil law and civil responsibility of this division is not seen. However, under Article 335 of the Civil Code, "intentionally" in addition to "negligence" mentioned in Article 1 of the law of civil responsibility has described "intentionally" in the "indiscretion".

### 1-1-2 Concept of Intentional Fault in the Iranian Law

Some legal experts like Emami believe fault or crime is a deliberate act to cause damage without authorization to commit to another does not sufficiently committed to predict the probability of damage done. To judge it, he should give recognition intentional act committed by the perpetrator of the sensual tested and the circumstances of the case, the act of lost motivation win [10].

Others due to deliberate action have said they intend to result in the definition of fault that "The fault deliberate harmful act done intentionally done and there is going to result in harm. Sometimes it is possible that the results of his act without thinking deliberately to do something brutal" [11].

According to the definitions provided by the definition of "intentionally" in Iranian law, it could be said that the fault intentional fault against unintentionally entering the detriment of another (action plans) exists.

### 2.1.2 Concept of Unintentional Fault in the Iranian Law

Dr Emami, Iranian lawyer writes unintentional fault or tort action without legal authority to commit the imprudence resulting to do and another is hurt by that action [12] Another lawyer in comparison intentional and unintentional fault in the definition of unintentional fault says: "the unintentional fault does or refrain from doing its administrative aspects, but that action has been taken to carry losses" [13].

Several Iranian lawyers have also said that "in unintentional fault, the person does not aim to damage the tape, do not expect there will be other unintentional fault, but does not realize the damage [14]. Thus, according to the definitions of Iranian lawyers' unintentional fault, it can be concluded that:

Although the offender has the will in unintentional fault, but he had no will to realize the harmful result. In assessing, the fault criterion is the reasonable person standard. The culprit is the possibility of damage to a fault but it is likely not intentional. Sign loss except by negligence, recklessness, lack of skill and lack of compliance with the system of government has come.

#### Recklessness

It was used in the first civil responsibility law enacted in 1942 in front of intentional fault. In Article 336 and Article 616 of the Penal Code, reckless imprudence and lack of skill and lack of compliance with the state regulations. Some lawyers have introduced four elements for recklessness:

1. The act or omission

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2. The intention of the act or omission that although the cost to result 3. without enthusiasm and confidence that is entered the act or omission.

In Fiqh or Islamic law, so much as the practice could be attributed harm to anyone, he is the guarantor of compensation. It should be noted that in its definition of fault, saying the Iranian Civil Code is intended only to unintentional fault. While the fault in general include both intentional and unintentional fault.

### 2-2 Vocational and Profession Fault

In this type of fault, normal human behavior in the profession is and standards compared with the standard operation. In this case the issue is of interest to lawyers. One is that the commitment of businesses is based on contract or enforcement? Some Iranian lawmakers believe as guilty of this kind of contract. Because the relationship suffered by businesses on the basis of written or oral, explicit or implicit contract has been made and obligations of both sides in terms of compromise and common parts and has seen its legal responsibility if the contractor is at fault, they will be respected. And the injured party cannot invoke their rights to contract and law. And this seems to be more accurate. The second issue is whether an obligation or commitment by businesses is a commitment to the result? In other words, the business performance of the contract shall result in your practice proper implementation and common commitment or merely the result of their contract commitment, and they do not have responsibility? It must be said that in this case some jobs such as working in Iran obligation is by law. And some businesses are committed to results. So as the judge, he deals with the fault as the matter with legal citations standard practice.

### 3-2 Dividing Fault Based on actus reus (act or omission)

Iranian lawmakers in the 951 and 952 of the Civil Code violations, negligence causes responsibility as it was told. Encroachment is that the act that the person must not commit and dissipation is the omission which one must do. To determine the act or omission is guilty of causing loss must be determined months of duty and consequently the nature of the fault and the benefit of this is that in some and in others an act of omission is a fault.

Outside the contract territory usually fault is caused by work as in social life and in relationships between individuals, there is no contractual link them to each other because everyone should be avoided the inaction of the harm to others [15].

The result is that there is no question of lost sinners or whether just the act or omission of the person or persons responsible will not hurt. Legislator in civil

responsibility Act passed in 1942 stipulates in Article 1: "Anyone without a license, intentionally or by negligence, the life or health or property or freedom or dignity or business reputation or any other right that is established by law for the harm that it has caused material loss or other intellectual, he or she would be responsible for damages resulting from its operation."

### Conclusion

Given the definitions of fault, it seems to be void of any research in this area, although in some cases, there are some cases in which Iranian Law is from French law and its implementation with Islamic law and a complete legal system is codified. As it was mentioned in the definition of fault as intentional and unintentional and this maybe not true. As mentioned, the will has no deliberate in intentional fault, therefore, mistake should be used instead of fault. Although some will say there is a harmful practice but has no role in realizing the harmful result and the same is true for painting unintentional fault.

As some researchers and university graduates have noted, the lawmaker has to consider some degree of fault to administer properly justice and punish the guilty so the rules would be applied better every day and more properly.

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