



Civil Liability of the Commission Agent in the Iranian Legal System

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ABSTRACT

The commission has been accepted as a professional and technical career and as a business practice as well as a certain regulation has been developed for it. Basically the commission is the subject to the general agency regulations, except for the specific rules that have been stipulated for the commission in the Commercial Code. Thus, to explain and analyzes the civil liability of the commission agent, not only we should refer to the general provisions of the civil liability, but also in addition the specific provisions of the Commercial Code related to the obligations and responsibilities of the commission agent, we should also pay attention particularly to the general agency regulations in the civil law. Therefore, the civil liability of the commission agent analyzes based on the general provisions of the civil liability, the general agency regulations as well as specific provisions of the commission in the commercial code respectively. In this paper, after noting some general points about the commission and the civil liability, we will analyze then the issue of the civil liability of the commission agent based on any of the above arrangements.

Keywords: *Commission; civil liability; commercial code.*

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INTRODUCTION

A single basis has not been chosen for the civil liability in any legal system, and the result of this lack of choice arising from the public conscience, which believe the compensate for the injured party is necessary and other hand the justice refuse to condemn someone who has not committed any fault. Accordingly, the combination of these two subjects cannot simply be integrated, and it leads to create two theories on this subject, including the risk theory or liability theory without fault and fault-based liability theory. Based on these two theories, there is the recognition possibility of the civil liability for all members of a society, and naturally the commission agents and the latter persons do not have any attributes in this respect, that we can order for the lack of responsibility of them. The commission is naturally introduced as a commercial act in the Article 2 of the Commercial Code, and if the usual carrier of a person is the commission, he/she is considered as a merchant in accordance with Article 1 of the Commercial Code. The subsequent Articles after Article 357 of the Commercial Code related also to the commission regulation and the legislator has specified the rights and obligations of the commission agent. The commission agent is the transaction party itself, in addition to he/she is responsible for carrying out the accepted commitments, and also responsible for principal who assign the result of the transaction to him/her. So the commission agent has two direct obligations; first, in respect of the transaction party, regardless the principle accepts the deal or not, the commission agent is responsible for carrying out his or her commitments that it has undertaken and the commission agent is also responsible to inform the principal about the transaction and giving the result of the deal to him/her.

In this paper, after a brief review of commission and civil liability and its boundaries, we will discuss about the civil liability of the commission agent in many ways.

Commission

The definition of commission

The literal definition: commission literally means "fees or money, which is received from the product owner for selling a product", (Amid, 2002, p. 527).

Definition of the term: From a legal point of view "commission agent is someone who trades by other orders and, he/she receives remuneration in satisfaction of it. The commission is a kind of the agency for commercial affairs, but if the commission agent does it with his/her name, and for him/her, the title of the agency is not applied, but it can be considered applicable of the representation, because this term has a more general and broader conception of the law (Jafari, Langroodi, 2001, p. 225, No. 1799 and 1798).

In accordance with Article 357 of the Commercial Code, the commission agent is also someone who has traded with his own name but on the account of someone else (principal) and he/she receives a commission in satisfaction of it. Article 358 of the Commercial Code stipulates that: Regulations of the recourse to the agency are also considered for the commission, exception of the cases which are excluded according to following articles," But it should be noted that the commission has a great difference with the agency and the representation, because for the ordinary representation or agency, the agent or the representation acts in the name of his/her principal or client. In the event that, the commission agent conceals often the name of his principal and even the trading party of the commission agent does not know who other transaction party is, but he/she knows only the commission agent. On the other hand, the commission is a commercial act, and the paragraph 3 of Article 2 of the Commercial Code has named any kind of commission as a part of commercial transactions (Sotode Tehrani, 2001, vol. 4, p. 61).

Legal position of the commission agent

By virtue of the Article 357 of the Commercial Code, the commission agent is the mediator of a transaction. He deals in the name of him/herself and on the account of the principal and receives the commission in satisfaction of it. So, in connection with the transaction party, the commission agent is genuine and in the contrast, the transaction party will be committed in the name of the him /herself and in case of any trade disputes, the other party has not the direct right of recourse, and the litigation in respect of the principal, and also the principal cannot directly seek recourse the transaction party or the commission agent. Doing the transaction in the name of the commission agent means that he/she must deal with the third-party by his own name (contract party). Therefore, the commission agent is genuine in the contract with the transaction party. In the other words, the creative will of the commission agent has been effective for creating the legal nature of the contract and hence, the commission agent is considered as the transaction party in respect of the third-party. One of the major works of this discussion is the commitment of the commission agent in respect of the third-party. As a result the principal has not responsibility for the third-party (transaction party or the commission agent) (Skini, 1999, p. 76).

The nature of the commission contract

Many Iranian jurists on the subject of the legal nature of the commission have followed the Romano-Germanic theory of French law and they consider the nature of this contract as the agency and representation based on the text of Article 358 of the Commercial Code, and have been analyzed it in the contract of mandate framework and the civil law code provisions in this context. (Sotodeh Tehrani, 2001, vol. 4, p. 57 and JafariLangroodi, 2010, p. 99)

However, some jurists believe the contract of mandate in Iran law is conflict with the commission mechanism unlike the French law.

In French law, since the representation is not the main effect of the contract of mandate, the attributes of the agency nature are possible for the contract of the commission agency. But in Iran law by virtue of Article 656 of the Civil Code, the main effect of the contract of mandate is the representation. The existent analysis in French law is difficult and also leads practically to heterogeneous results, because the agency without full representation does not exist in Iran. In other words, the general and particular proportion is absolute law in Iran, unlike the French law that the general and particular proportion is established between the contract of mandate and the representation. In addition, the contract of the commission attributes is not like the contract of mandate attributes, as a result the contract of the commission has not the agency nature. Because, the agency, unlike the commission is a bare, permissive, authorized and indulgence contract. So the contract commission structure does not conform to the contract of mandate. Given the obvious differences between the descriptions of the contract of commission and the contract of mandate, the contract of commission nature will not be the contract of mandate. Also by virtue of Article 656 of the Civil Code, the main and substantial effect of the advocacy is the representation; the commission is not justified in the framework of the contract of mandate, because, there are not the proxy and representation on the commission agency. The result of the representation is; after the contract between the agent and the third-party (transaction party) the conventional direct relationship is established between the principal and the third-party, but such a result cannot be obtained during the commission. In fact, in terms of the attributes and existential

elements of the commission contract, this institution will be examples of the lease contract of the persons (Skini, 2011, p. 169).

Regardless of how we analyze the nature of the contract commission, It is obvious that by virtue of Article 358 of the Commercial Code: "Unless the items has been excluded exception by virtue of the following Articles, recourse regulations to the advocacy will be also considered in the commission." "Therefore, if the commercial Code has not an article to determine the obligations and responsibilities of the commission agent, it should be referred to the provisions of the Civil Code about the power of authority and we should recognize the ordinances and the effects of the contract of mandate in this field.

Civil liability

Concept of the civil liability

The Civil (Madany in Persian language) literally means the urban, this attribute name has been derived from the Medina¹ (Ansari, 2004, vol. 3, p 1771), it is said in the legal and jurisprudence terms of what that related to the legal or civil claim (opposed to criminal) in financial and legal damage compensation. It is said that he/she has the civil liability in respect of him/her in any case that the person is forced to compensate other damages. This liability arises from the will and the disposal of mankind (Katoziyan, 1999, vol. I, p. 72).

The civil liability includes generally the contractual responsibilities of the persons, but what is considered in this article include the civil liability in the special sense and it can be where that there is no treaty or contract between two persons and one of them damages to another intentionally or in error. In these cases are said the civil liability or non-contractual obligations.

Main elements of the civil liability

Basically, the civil liability arising from the recklessness of persons, but for the realization of the civil liability, the existence of 3 main elements is essential:

- The existence of damage: The purpose of the civil liability provisions is compensation for damage; therefore, the existence of the damage precedes naturally its compensation. In this regard, it is stated in Article 1 of the civil liability law: "Anyone damages another person without an enabling clause... That lead to a financial loss or a moral damage to another person, he/she is liable to compensate for the damages arising from his/her actions."
- Committing a harmful or unlawful act: For compensation damage to another, it should be inflicted by an unlawful act. Article 1 of the civil liability code says in this regard: "Anyone does an act which leads to damage to another without an enabling clause... He/she is the guarantor", but if the act is legitimate such as the self-defense and it leads to a damage, the person will not be responsible for damages, as Article 15 of the Civil Liability code confirms it.
- Causal link: The mere existence of the damage and the unlawful act does not lead to compensation for damage. But the causal link must be attained between the incurred damage, agents and the harmful activity, so that the customary law testifies to it as well. (Amid Zanjani, 2004, p. 57)

Therefore, for ascertaining the civil liability in a most proper concept, not only a physical and moral damage must be

¹Medina in Persian and Arabic language means city

ascertained in the outside world, but incurred damages must have been taken place as a result of committing a harmful act. In other words, there must be a causal link between the harmful act and the obtained results.

Civil liability of Commission agent

In this chapter, according to the general discussion that was discussed, we attempt to express the civil liability of commission agent in different ways. As we know the general rules related to the civil liability is enforceable according to the case in relation to all people in the community and regardless of what type of theory is dominant on unconventional liabilities of the persons, this issue is applicable about all people regardless of their gender and positions. Therefore, this rule is also acceptable about commission agents and they could be recognized the responsible based on the general rules of the civil liability and be required for compensation. On the other hand the relationship between the commission agent and the principal is subject to the rules of the agency, according to Article 358 of the Commercial Code with the exception of special cases that have been predicted in the Commercial Code. Therefore, there is possibility of recognition the commission agent as an agency. For example, derived from Article 667 of the Civil Code, the commission agent must consider the interest of the principal during the transaction; in particular, the commission agent has no right to deal for her/himself a transaction that the principal orders to do it to the commission agent. In addition, according to Article 672 of the Civil Code, he/she cannot appoint another commission agent for the transaction, unless he/she takes the permission of the principal. Finally, the commission agent has specific obligations and responsibilities for his/her principal in the Commercial Code, in the case of violation of it; he/she will be recognized as a responsible for it. In other words, in the latter assumption, the civil liability of the commission agent is applicable because this person is a commission agent and it is a particular reason. One of the obligations of the commission agent is to inform about the process of his/her operations (Article 359 of the Commercial Code), and to protect the possibility rights of the principal, he/she must do the necessary implementations for asking the possibility damages from the carrier (Article 361 of the Commercial Code). The principal is also obligated to pay the commission (Article 357 of the Commercial Code) and the expenses which the commission agent spent and these expenses have been necessary for the transaction and the benefit of the principal as well as the warehousing and transportation costs and so on (Article 368 of the Commercial Code).

Therefore, the civil liability of the commission agent is analyzable in the three states:

- Responsibility based on the general rules of the civil liability
- Responsibility within the framework of the agency
- The special responsibility as the commission agent

The following explanation and analysis are about the different aspects of the civil liability of the commission agent in each of the above states.

Responsibility based on general rules of civil liability

In general, various theories have been proposed about the fundamentals of civil liability as follows:

- Theory of fault: The culprit person must compensate for damages to others.
- Theory of risk: In this theory, the person who sets up the risk is recognized as the responsible of the compensation for damages to others, even if he/she is not the culprit.

- Complex theory: Proponents of this theory have made a contribution for both above theories.
- Guarantee theory: Proponents of this theory believe that everyone has a right in society, and this right is protected by the current legislation; therefore, they do not recognize above theories as the correct ones. (Ghasemzadeh, 1999, p. 20).

What that is accepted more in our civil liability code is the theory of fault. By virtue of Article 1: " If anyone damages to another life, health, property, freedom, dignity, business reputation, or any other right without a legal license, intentionally or as a result of recklessness that the damage causes the moral or material harm of anyone, he/she is responsible to compensate for damages arising from his/her act." In fact, the responsibility for damage is liable for compensation to another when he/she has done his/her action intentionally or it is the result of recklessness, and this stipulation confirms the theory of fault. However, in certain cases the legislator withdraws from the theory of fault and in some activities, the legislator has selected the theory of risk and the theory of guarantee especially in matters of the work accidents and traffic accidents. In fact, when the public interests are considered and the issues of the social supports are raised by more severe manner the civil liability has been accepted based on the theory of risk.

According to what is stated, it is clear that if the commission agent damages to his/her principal and there is the causal relationship between the act and the incurred losses, the civil liability of the is ascertained and he/she will be required for compensation. The ambit of such responsibility is not solely performed between the commission agent and principal, but it is performed between the commission agent and the third parties as well.

Responsibility in framework of the powers of attorney regulations

In fault-based liability, seemingly there is no contradiction to the responsibilities of the commission agent against the principal, because the fault has been accepted by our law and it is supported by law in case of divulging the loss of immediate perception in generalities of civil liability subject. The point is that, according to the specializing of many jobs that is arising from the development of the science and technology, the society expects of the professional employees more precision in performing their job duties. They are professional in their carriers, as a result, they can predict the factors to some extent, and yet with regard to this issue, it seems their strict liability is not considered somewhat by the common people and it get pale.

To understand the civil liability of commission agent job in the framework of the agency regulations, we should understand better the obligations and responsibilities of a lawyer. In the Iran law in addition the necessity to perform the obligation of lawyers in terms of the conditions as an integral part of the contract of mandate, just the realization of mandate leads to the responsibility of the lawyer to perform his/her obligations against the client.

Among the most important legal obligations (original commitments) that force a lawyer to do them due to the nature of the mandate; including the lawyer commitment to perform the object of agency, lawyer commitment to consider the interest of the client, the lawyer commitment to protect the client secrets, lawyer commitment to provide the account of the mandate period and restitution of the property and documents of the client.

The first clause: lawyer commitment to perform the object of agency

This issue will be considered in two parts which include "to perform the object of agency according to the contract" and "to perform performance of preliminaries and essential preparations of the agency object" that they are explained as follows:

A) To perform the object of the agency in accordance with the contract: When we discuss the lawyer's obligations to the client, the performance of the mandate object is the first and most important obligation of a lawyer and include many related legal issues. In general, it can be said that the lawyer is required to perform the object of the mandate with considering the agency limitation and this limitation with considering the quality of the mandate intention and its types, by virtue of article 660 of the civil code is assigned that: The agency can be absolutely and for all the client's cases or it can be bound to a particular matter (s)".

B) Performance of the preliminaries and essential preparations of the agency object: including the derived discussion on the performance of the agency object is the issue of the performance necessity of the preliminaries and essential preparations of the agency object action without the need of stipulation and independent permission of the client. Article 671 of the Civil Code expressly provides: "Agency in any matter requires also the agency of the preliminaries and essential preparations of the contract of mandate, unless it is clear about the lack of the agency." The preliminaries and essential preparations of the contract of mandate are two kinds:

- Inherent preliminaries and essential preparations of the agency: inherent preliminaries and essential preparations of the agency are the formed elements and the estimator components of it. This kind of the essential preparations are not an inseparable part of the contract of mandate, Their deterioration is as the deterioration of the agency; as a result, the lack of these essential preparations cannot be a term in the contract of mandate, because by virtue of Article 233 of the Civil Code, a term which is contrary to the requirements of the substance of contract causes to cancel it.

- Conventional preliminaries and essential preparations of the agency: This kind of the essential preparations as their name suggests are out of the estimator elements of the agency and account as the derivatives, but performing them, by virtue of law or common law is necessary or custom to be sure. What on the expression station of the absoluteness exigency of the agency has been expressed in the legal articles and legal doctrine are such as these.

The second clause: Duty of the agent to act in the interests of his principal

According to the legal provisions of the Civil Code, the Civil Procedure Code, the agency law and its executive regulations and... the agency is required the performances act in the interests of his principal and must not exceed the limits of the authority. Article 667 of the Civil Code expressly provides: "*The agent must, in his handlings and performances act in the interests of his principal, and must not exceed the limits of the authority which the principal has explicitly given him, or the authority which is inferred by custom, usage, and circumstantial evidence*"

Article 41 of the agency Law, the Article 666 of the civil code and the clause 3 of Article 82 of the legal Bill regulation of the Iranian Independence by Bar Association consider kindly the lack of performances act in the interests of the principal and stipulates "*If it is proven the treachery of the agent to the principal such as the conspiracy of the agent with the opposing party of the principal, and consequently it leads to infringement of the principal right, he/she will be condemned to permanent exclusion from his/her job and the principal can claim the*

incurred damages from him/her." Article 663 of the civil code says the order: "An agent cannot execute a matter which exceeds the limits of his agency and by virtue of the article 667 of the Civil Code, the agent must, at his handlings and performances act in the interests of his principal", But Iranian civil law. Unlike the civil law of some countries is in silence for a case that performances act in the interests of his principal requires to exceed the limits of the agency or the exceeding of the agency is more useful in terms of new occurred conditions than the previous and certain articles that was stipulated in the letter of attorney and it is objectionable in this way.

Clause 3: Obligation of agent for protection of the principal secrets' information

Article 30 of the law provides: "Lawyers must protect the secrets information that his/her client has informed him/her through the agency as well as the secrets of dignity and honor and credit of the client."

Article 81 of the legal Bill regulation of Independence by Bar Association says that for the sanctionstatus of the non-compliance the mentioned obligation, a lawyer who have been informed the secrets' information of the client through the agency and she discloses these secrets, is prosecutable and punishable under the law, whether the secrets are related to the agency or the dignity and prestige of the client.

It is noteworthy, that bring an action against an agent who has revealed the secrets of his client is not merely documented the legal order, But the agent is criminal and civil actionable from the other direction. As Article 89 the mentioned regulations states explicitly "disciplinary prosecution cannot prevent the civil or criminal prosecution" Therefore, in addition to that the agent bound to protect the client secrets ethically, she is also required to consider this duty legally, unless in case of violation, she will be punished.

Clause 4: Agent obligation for providing an account of the time of hisagency and give up to principal that which he has received for his principal

A) The obligation of lawyer for providing an account of the time of hisagency: According to this that the lawyer acts on behalf of his client all the financial activities and transactions that she does during his attorney was attributed to the client. According to the text of article 668 of the civil code that stipulated: "The agent must give to his principal an account of the time of his agency, and must give up on him that which he has received for his principal."

It is clear that the client can exempt the agent to give up the account for him/her. The settle accounts time is often after termination of the agency period, but in some cases, this time may be before the deadline in accordance with the nature of the agency that in this case, it will be act by the "common usage" based on the unconditional agency for obtaining the client claims that the agent in terms of the agency absoluteness's requirement is obliged to return any payments that she has received from debtors to the client and she is not any right for holding the recovered claims unto him/herself until the termination of his/her agency.

B) Obligation of the agent to give up to principal that which he has received for his principal:

The agent after the performance of the agency and giving up the accounts by the way that is mentioned before, she is obliged to give up to principal all property, securities and entrusted documents of the client. In general, the lawyer is obligated to give up everything as the property that she has as a trustee, each time when the client demands them and if she delays this task without a reasonable excuse, his/her "trust possession"

becomes "possessor mala fide", consequently, even without fault, she is the indemnitor.

There is no necessary order to return the property and documents of the client on demand or following the termination of the agency clearly and independently in Iran, on the other hand, there is no a legal order which implies the right of the lien permit of the agent. Therefore, in a situation of doubt, it is required to take hold of the certain legal principles and rules governing on the issue and with performance of the principle of "non-existence of the right of lien", we know applicable all the legal orders governing on the trustee. Because Article 631 of the Civil Code provides that "If a person is in possession of a thing in a capacity position, in respect of that thing, equivalent to that of a trustee...". Therefore, the trustee has not also the right of the lien on his/her deposited properties in the assumption that the trustee is a creditor, and the rightful agent has the same order as well.

The legislator has not any orders about the types of claimable detriments from the agent. It has not been explicitly determined this issue in Iranian law, and the judicial precedent is silent in this regard as well. But lawyers follow somewhat French lawyers who believe the injured party has such right that if she could not reach to his/her right through the contractual liability, she can compensate the detriments according to the rules of the causation with this argumentation that if the possibility of changing the base of the claim for damages from the contractual liability to the forcible liability is prohibited due to it unbalances the balance of the contract (Katoziyan, 1999, p. 201).

At the end, it should be mentioned that the commission as a professional and specialized career has the special rules and the above responsibilities are raised as long as that a specific order is not predicted against it in the Commercial Code. Therefore, in the next subject, we will particularly discuss the responsibilities of the commission agent in the framework of the Commercial Code.

Special responsibility of the commission agent

Some lawyers believe about the responsibility of the commission agent, first, the commission agent must do his/her mission properly, otherwise, in addition she is not entitled to receive the remuneration, and she is actionable as the abuse of confidence. Secondly, the commission agent must charge to the principal's account his/her purchase and sales, if a price charges of the principal's account plus of the purchase or a price lower than the sale, she is not entitled to receive the commission and must pay the difference of the price to the principal. Thirdly, if the commission agent fails in its duty without malice and this failure leads to damage the principal she is responsible for the compensation of the principal. Fourthly, if the commission agent sells the merchandise lower than the minimum price that the principal determines it, she will be responsible for the difference, unless she can prove that this action has been for avoiding the more losses. Finally, the commission agent is not responsible for the performance of the transaction, unless she has personally guaranteed the transaction party or the custom of the trade recognizes his/him as the guarantor or she has failed in her duty (Sotodeh Tehrani, 2004, vol. 4, pp. 73-72).

Nevertheless, according to the legal obligations of the commission agent in the commercial code, the civil liability of the commission agent as follows:

- The commission agent is required to do the transactions which the principal orders to him/her, and in the event of non-performance of the principal's orders or failure or neglecting of doing

the commands, the commission agent is responsible. In this case, there is no stipulated text in the Commercial Code, only the Article 364 predicts: "If the commission agent is the culprit, she must compensate all of the damages which arising from the non-compliance of the principal's orders."

- Although the commission agent acts for the principal. But she must do the transaction through his/her name and she cannot disclose the name of the principal, unless the principal allows him/her. And even in some cases she must hide the name of the principal in terms of the principal's job. As it is mentioned in the previous subject, there is such a responsibility in the framework of the legal regulations for the commission agent.
- The commission agent cannot be a transaction party personally, because in this event, she may prefer her interest than the principal's interest, that in the case of it, the commission is terminated. Given the Article 373 of the Commercial Code, Only in cases that the goods has the stock market fee, the commission agent can personally trade as a transaction party, and in other cases she is not allowed for it. Certainly, in the case of breach of the mentioned duty, she will be required to compensate the damages.
- According to the article 359 of the Commercial Code: "The commission agent must inform the principal about his/her actions, and especially in the case of doing the mission, she must immediately inform the principal". "This issue is so important in the commission, because the price of goods is not always constant, and it may be rise and fall, and in the case of increasing the price of the goods, if she does not notice immediately, she may be tempted to deal for its own benefit, however, if she has immediately informed about the transaction, cannot keep the transaction for herself.
- The commission agent must do the utmost care and attempt to protect the merchandise and the possible rights of the principal. In this regard, Article 361 of the Commercial Code stipulates: "If a merchandise which has been sent to the commission agent has the apparent defects, the commission agent must do the necessary measures to protect the merchandise with appropriate means and inform to the principal for the right of the return against the carrier and determination of the amount of the avarie damages otherwise he is liable for any damages arising from this neglect."
- According to Article 360 of the Commercial Code "the commission agent is not obliged to insure the property that is the subject of the transaction, unless the principal order about it." "Therefore, if the commission agent does not insure the merchandise, the principal has no right for abjection in terms of the legal obligations, because he is not responsible in this field. Obviously, if the goods which are the subject of the transaction are damaged from the lack of the insurance, the principal cannot object to the commission agent. But if the principal order the commission agent for the insurance of the goods and the commission agent admit it as well, in this case, he has committed to do the task and in the event of breach of duty, she will be responsible.

- The commission agent does the transaction behalf of the principal. So all the benefits and loses belong to the principal that will be resulted from the transaction. As a result, if the commission agent does transactions and more benefits are achieved, these belong to the principal and the commission agent cannot charge of his/her own account. That is why. Article 365 of the Commercial Code stipulates: "If the commission agent purchases the merchandise less than the price that the principal would determine or sell it more than the price that would have given by the principal sell, she has not the right to use the difference of the price and she must charge of the principal's account" "Thus, if the commission agent acts contrary to the above article, she is obliged to substitute The price difference, and if the principal is lost by this action, the commission agent is obliged to compensate.
- In the case of the credit transactions Article 366 of the Commercial Code also stipulates. "If the commission agent sells goods on credit or with a down payment without the consent of the principal, the losses arising from it will be his own. However, if the sales on credit is a local trade practice, the commission agent is considered the permitted to it, unless in the case of the opposite of the principal's order." It can be seen principally the commission agent does not have the right to conclude the credit transactions and if he sells goods on credit or by the payment by installments get the purchase money of the transaction, if any losses occur, the commission agent will be responsible. Still, if the principal gives the permission of the credit transactions of the commission agent, the commission agent won't be responsible in this case.

CONCLUSION

Generally, about the civil liability has not been considered a certain and systematically method in all countries and this branch of the responsibility has still conflicted by multilateral uncertainty about the removing the loss completely from the damaged party and mere existence of the fault from the injurious party etc. Given the legal doctrine's theory and the judicial precedent in Iran the gathering between the contractual liability and the forcible liability is impossible, but selecting one of the two methods as the desirable manner of the damaged party is evident. And about the employees in the professional jobs like commission agents, it seems a great number of items are not clearly mentioned in the commercial code and the agency law, but the performance of the end result is required the action and measure or omission of it that has been implicitly agreed or otherwise it takes place customarily in the realm of the civil liability of the commission agent. Therefore, not only there is possibility of civil liability fulfillment based on general rules of the civil liability for the commission agent, but she must do her prescribed duties in the commercial code, and in addition, she must consider the general regulations of the agency law in the cases in abeyance of the Commercial Code. In some cases, it may be interference between the contractual liability and non-contractual liability of the commission agent. This issue can create a problem for understanding the responsibility of the commission agent. Because there is no need to prove the loss from the commission agent in contractual liability and merely the breach of the obligation is enough for knowing the commission agent as the responsible and obligated person for the compensation. Therefore, the civil liability of the commission

agent is related to his/her contractual liability and we should have enough attention to identify his responsibility.

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