



## **The Principle of Dividing Damages Based on the Impact of the Behavior of the Preptrators; Legal Basics, Conditions of Executive Rules and It's Domain in Iranian Law**

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### **Abstract**

If two or more person cause damage, the loss is divided between them according to legal rules. By one of these rules, each person is responsible to the extent of the effect of his action. This rule is followed in the Islamic Penal code approved in 2013. Also, by some provisions of that law, it seems that the division of damages based on the degree of the effect of acts is the general rule for division of civil liability in Iranian law: according to Article 526, if the effect of the acts of the perpetrators is different, they are responsible for the effect of their acts and accordingly, damages should be apportioned differently. In addition, according to Article 527 that law, if the effect of the behavior is equal, the responsibility is divided equally.

It is necessary for the implementation of these provisions that the judge conducts sufficient research on the amount of each agent's behavior. So, if he decides without investigating, he has violated these articles. But, if by the necessary research, the degree of causation of each agent is not known, based on the principle of equality, the responsibility of all agents is equal.

Although these rules is considered doubtful in legal thought, the judicial procedure has been successful in enforcing the act. The unanimous decision No. 799 of the General Board of the Supreme Court confirms this claim. That decision refer to the partial distribution of financial losses based on the degree of causation of each agent. Thus, in the case of acquiring property through illegal ways, everyone has caused loss equal to the money that acquired. Also, in the case of other types of damages, the extent of the impact of the behavior of each of the agents could be determined with evidentiary reasons such as expert opinion.

In other word, the main goal of this research is to explain the principle of "distribution of responsibility based on the impact of behavior" and to provide a justified interpretation of articles 526 to 533 of the Islamic Penal Code (2013). According to Article 526 of this Code, if two or more factors intervene in the occurrence of a harmful incident and the damage is attributed to all of them, the division of damages is done based on the impact of each of the behaviors. Albeit, If the impact

of harmful behaviors is different, each agent is responsible for the amount of his behavior's impact. In addition, according to Article 527 of the said law, in the assumption that the effect of the behaviors is equal, the responsibility is divided equally.

Clearly, it is necessary to implement the aforementioned regulations to investigate the extent of the impact of the behavior of the perpetrators of damage. Therefore, if a decision is given without an investigation, the provisions of the above-mentioned articles have been violated. However, if the court cannot determine the degree of involvement and the effect of the action of each of the damage agents, according to the practical principles (=principle of equality), they are all equally responsible.

Despite this, the regulations of the mentioned legal articles is vague. Therefore, in order to remove the ambiguities and doubts in this regard, it is suggested to amend the Article 526 as follows: "Whenever two or more factors, some of them with directly and some of them indirect, have influence on the occurrence of a damage. The agent to whom the damage is attributed is the responsible, and if the damage is attributed to all of them, each is equally or differently responsible according to the extent of their behavior, depending on the case. However, if the extent of the influence of each behavior is not clear, they are all equally liable..."

However, according to the opinion of some authors, it is difficult and even impossible, practically, to divide the damages based on the impact of the behaviors. So, the second goal of this research is to solve this problem. Although the above-mentioned belief is famous in legal thought, judicial procedure has not stopped the implementation of the law. The General Board of the Supreme Court issued a unanimous decision on major financial losses in 799-15/7/1399, and provided an objective rule for the distribution of damages based on the impact of the behavior of the perpetrators. So we can say that in cases of acquiring property through illegal acts, such as theft, fraud and breach of trust, issuing checks, and other cases of unlawful enrichment, each of the perpetrators is liable to the amount of money that has acquired. However, in other cases such as destruction of property, forgery, physical injuries and moral damages, the degree of involvement could be evaluated and verified by the opinion of an expert.

**Key words:** Agent, Rule, Principle, Citation, Damage, Causality.



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