

# Civil Liability Arising from the Incorrect Verdict, Emphasizing the Responsibility of Attorneys

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## ABSTRACT

Judges and lawyers, with any degree of concern for justice, and the intellectual and moral order, are fallible and may, intentionally or inadvertently, mistakenly Issuing a decree which led to the damage. Issuing a vote in the wrong, different factors are involved, and the responsibility of each individual can be realized by established rules: parties, administrative staff and a half-court (receptionist, office manager, etc.), the judge, the judge of the authenticity of the service the state apparatus, and in any case should be compensated for losses suffered as a result vote (Article 171), and a lawyer. In this paper, referring to the first type of warranty a few more attempts to address the responsibilities of an attorney permitted it. With the requirements of the lawyers involved in the litigation, the role of lawyers in Issuing a vote is highlighted, and consequently the issue of liability in this group, raises. Investigate the lawyer's responsibility to show that: (1) about the responsibility of the lawyer Tommy, the jurisdiction is derived from the client, (2) the lawyer responsible for recognition, it is conceivable number of factors: a) lack of skills and capabilities, scientific and technical the issue of representation, b) lack of integrity and honesty attorney, c) delay in performing an obligation which is time bound, d) failure to maintain client confidentiality. (3) The obligation of a lawyer is an obligation of means, his liability is based on the notion of fault, and is tenable. 4 malpractice lawyer may be charged in addition to the rights of third parties; impair these assumptions is the owner of debate. According to the above, the purpose of this project was to prove the theory and assess the following issues:

- Check responsible for knowing about knowing or innocent lawyer mistake in Issuing votes, and the protection of the limits to prevent the violation of rights lawyer;
- the need for formulation of codes of professional ethics of lawyers, the defendant and the judge;
- Legal liability insurance coverage required, the client.

**KEYWORDS:** wrong sentence, attorney, civic responsibility.

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## INTRODUCTION

After a preliminary investigation (criminal offenses), and Research Appropriate (the lawsuits), the case shall be determined by reference to Issuing vote. Error in judgment and execution, one of the most important civic responsibilities is fulfilled. This is the time of judging institutions, among people, especially in religious teachings, and judgment of Holiness Ali (AS) has been detected. During the investigation, the verdict, the judge handler jobs also may be involved with the fulfillment of the conditions conducive to the realization they are responsible. Some of these jobs can be a lawyer, an office manager, a court secretary noted. Votes issued pursuant to fulfill the responsibility, to a lawyer or the job that caused the violation of the rights of the client, or the client's rights are trampled definite end. These rights shall not be limited to logos, but also enshrined moral damage, civil liability legislation enacted in 1960 as well. It is the purpose of selecting the topic, despite its importance, can not be attributed solely Lost rights, but to the practical and common security concerns ease professional lawyers and attorneys, against unintended financial consequences arising from professional errors there. In this paper, we first define the ratings wrong about the pay issues and, secondly, the conditions and limits of liability of each of the employees, especially the lawyers dealt with. (Ghamami,2007)

### 2: Original Soundtrack

First part- the definition and scope of mistake Vote

Some lawyers, vote "decision that is taken for Advocate" define and maintain that "If the vote is about the nature of the dispute, and it totally or partially interrupted, the sentence would be. (Langroodi

, 2004)." Some scholars believe that the "court is a court decision in its broad sense, Advocate or in non-litigious matters or administrative decision, but their decision to vote in a certain sense, is Advocate affairs.( Sadrzadeh Afshar, 2004)." And in another place, "vote in a narrow sense of the term, which refers to a decision, verdict or not (Shams, 2005)." In France, some scholars have proposed the vote of two means: (1) In general, ratings are acting judge, after research and discussion, and more specifically the consideration of a case, to achieve the solution, and (2) this result is decided (it is a judicial act), the ratings say (Karimi, 2007). The votes from other jurisdictions (including the District of research and outcome), can be issued. For example Judgments branch of conciliation councils or courts as may be, will be responsible for the implementation of the verdict, the Supreme Court of the branches can guarantee is binding, and the only difference between them in terms of the unity or multiplicity of judgment, in the Reference is in part II of this article will come. In speaking of the votes tallied, the final decision of the judicial authority to the address that is set forth in accordance with the Civil Procedure Code can be issued or placed in a sentence. (Ghamami, 2009) The Supreme Court addressed the issue in dispute, in addition to the reasons cited by the parties to any investigative proceedings, and then announces that require termination of the proceedings taken, within one week, votes are willing to embark on. (Code of Civil Procedure Article 199) Every vote is eligible, and nature. Such conditions can be summarized in four cases:

1. verbal ratings must be willing to if the law of civil procedure, the composition of words vote on it later, be aware.
2. votes shall be notified in writing.
3. votes should contain information such as specifications Tribunal, petition number and classes of records, issue date, specifications and request parties, workflow, ways, reasons, and evidence-based principles and substances that have votes, and in the end characteristics of the judge or the judges are stated<sup>1</sup>.
4. votes must be signed by a judge or judges.

Substantive terms, the provisions of Article 166 of the constitution is unique. In this case, the court must be reasonable and justified. The judge is obliged by law to investigate the differences between the parties, and their votes and documented evidence of law (where appropriate sources and authentic fatwa), issue. However the court decided that, contrary to the above conditions, and nature, it is necessary, leading to litigation respecting the right hand, it will undoubtedly be a wrong decision. Or put in the wrong order is issued, regardless of rights leads to the violation of rights, the rights of the parties. Or the decision that led to the vicious effects to the right place or the right place to be revoked, without doubt, the vote illegitimate and wrong, and is therefore objectionable. In other words, these ratings can be, untrue call vote. With the passage of the Civil Procedure Code, 2000, Section 326 of the Act, the legislation was a mistake in judgment, and in accordance with Article 327 of the above mentioned law, the judge maintained that the issuer ratings, detailing a reasoned judgment error, file the court of appeals to address procedural and substantive defects vote for members to post. With the approval of the reform, the establishment of public and revolutionary courts in 2002, this regulation was abrogated, and the branches of alternative diagnoses to consider those things (contrary to the law and religion), they worked. It is noteworthy that, in fulfillment of a wrong decision, whether intentional or inadvertent issuance of the decision, it does not matter. Meanwhile, a decision that was taken the wrong way, and in accordance with the provisions of the Civil Procedure<sup>2</sup> Act corrected itself can not fulfill the responsibility to be the judge.

### **Part two - General Rules of the responsibilities imposed upon the civil liability of lawyers**

Civic Responsibility for the implementation of the three pillars or basic condition, it is essential that, in the absence of one of these three elements, civic responsibility dies. Elements of civil liability are as follows:

1. **Loss;**
2. **adverse action verb;**
3. **Causal relationship between the adverse action and damages.**

Responsibility of lawyers is necessary to examine each of these three cases investigated and implemented:

**1 loss-** in its definition can be considered are:

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<sup>1</sup> Article 296 of the Civil Procedure Code

<sup>2</sup> Article 309 of the Civil Procedure Code

Mania student have to define the(Naini1997): "absolute failure of the whole self, or a member or property, and prestige."

It seems the definition is comprehensive for our discussion, because the claims in court proceedings generally financial and no financial divided on financial claims ratable money, such demand for payment, failure to perform duty by the lawyer will typically result in financial losses. In other words, the material losses in these cases there is no doubt, but there is proof of harm, such as loss of intellectual property and would be more difficult than usual. Since the purpose and the basic approach of the legal system of Islam is that of Lost compensation, and to look Lost as someone who exposed the injustice and raped, and she knows entitled to compensation (Bariklo, 2010), you should talk to a lawyer's obligation to compensate all damages attributable to him, he said. Because that targeting Lost the situation before committing fault.

In compensation for this loss, all moral damage caused by the harmful act committed, must also be compensated. It should be noted that, although Article 10 of the law of civil liability claim against the spiritual forecasts, but the law allows you to claim the moral losses, the difference between the jurists. Guardian Council, and conflict resolution, as stated in Article 30 of the Press Law of 1985 notes, calendar moral damage to property, contrary to the Sharia was diagnosed. Indeed, in some cases, compensation for moral damage (damage to the reputation, character and freedom of body and spirit of individuals), Collateral Damage is far more important, for example in the case of offenses subject of chastity, if the lawyer's representation, but any direction (for example, non-payment of honorarium), laxity and negligence in duty to defend the world, against spiritual that his client is entered, it is difficult to compensate. Share this damage is not valid and nonsense. (Bariklo, 2011)

**2 harmful act:** As a lawyer representing a client, resulting in a jurisdiction, the process will contribute to the proceedings. In other words, the lawyer responsible for the design, prosecution, issuance and enforcement vote on Tommy to his jurisdiction, and the balance of the liability can be harmful act is committed. For example, a lawyer, the right to deny the other party has no doubts about the document can not be convicted, you've been brought judgment on the basis of this document, because the power of attorney and offensive ability than the other documents not it is. Therefore, it can be seen, the police investigation into the claims in court, lawyers, and the first thing to recognize the jurisdiction reservation is made. In a general classification, can be assigned duties as counsel in a case, be divided into two categories:

1. the tasks they perform, the time bound is explained in accordance with the Civil Procedure Code, the issues that the court will ask the parties may be bound to a particular time and in the manner desired unification of the court is this term can be documented by law or court order document.
2. tasks to do, is not bound by time: the words are charged desired frequency is desired. Failure to perform these tasks, thereby respecting the right is absolutely not my client, but the lawyer will be able to restore the rights of the client, because it is not time-bound tasks, however, caused a prolongation of the proceedings, and the delay in issuing a final decision will be . Obviously for this delay if the damage is the client login, the lawyer will be responsible for compensation.

Specific legislation (Law in 1312 and practiced law, independence of the Bar Association bylaws, adopted in 1332), and the number of cases of violations Fault lawyers among them, can foster this question in mind, is a measure of responsibility for the lawyer's fault? In other words, the general law of civil liability, including liability lawyer will? In response to said attorney as agent (with a tolerance) can be considered a client. His commitment to the (obligation to exercise care and competence, and working for justice), it is assumed, except in cases where the parties' commitment to the outcome (client to obtain the desired result) to make, have agreed<sup>1</sup>. In other words, the client is considered Attorney, except in cases where abuse or negligence to prove he is not deemed to be responsible. Lawyers as a faithful, caring, and gratuitous nature of this relationship by proxy shall not, nevertheless solidify the lawyer's trustworthiness<sup>2</sup>.

**3 the causal relationship** The third element is the element in the realization of civic responsibility. Best defense counsel represented to the court to be punished. So about commitment, in addition to the contract will be represented. However, commitments may be that, even though the contract does not fit, but the customary obligation of a lawyer. In this section, would be a violation of the commitments that lead to wrong judgment can be divided into two parts:

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<sup>1</sup> Although the validity of this condition (the result of the conversion obligation), lawyers have not disputed, yet it seems that this condition is contrary to the obligation of professional ethics and should be common.

<sup>2</sup> As the responsible physician, despite the high cost of treatment, Mohsen know him until his guilt is proven, we can not be responsible.

1. breach of contractual obligations: breach of these obligations, the lawyer will lead to contractual liability, and proof of lack of commitment (not at fault), will be sufficient to fulfill the responsibility because the lack of a conditional verbs (such as requesting issuance, executive order request immediate provisional), is a violation of obligation and guilt.
2. breach of contractual obligations that are not represented in this case, the attorney's fault Lost that should fix it.
3. breach of obligations that, although the contract is not a law, but it can be a reasonable and knowledgeable lawyers expect: for example, in addition to contract law, the request does not meet the specified requirements, the lawyer is one months prior to the certainty vote to take Client handle this task, and thus a waste of time, resulting in the loss of property of the debtor. Given that the garnishment, before uncertainties can vote, but by an attorney familiar, we can not expect such action was unreasonable. Therefore, in these cases, it seems, just to prove the lack perform this action pursuant to fulfill responsibilities, although not stated in the contract.

### **The third part of the civic responsibility of the government (sovereign judgment task)**

Since the judges, although independent opinion and decision making under the supervision of the judiciary, which is a government agency, regardless of the specific responsibilities of the government, its employees and the error in the administrative functions (based on the Basic Law (Article 11 civic responsibility Act)), if a judge is responsible for what, in fact, we believe the government is responsible for, and this is not the responsibility of government, based on public law and errors caused by their employees, but also a matter of civic responsibility, as a legal entity of private law with respect to activities outside of the country does. So when an activity area, there is no loss, civil liability, and the liability according to specific rules, it is possible, he is responsible for a fault-based or not. As if the government is the owner of the car in an accident caused harm to a third party shall, on the basis of a liability and compulsory insurance pursuant to Article 1 of Law 2008, responsible for compensation (Qamami, 2009). Also, if the result of the collapse of the wall of a government building, someone will harm the state (as the wall), despite the maintenance of the fault, will be responsible for compensation (Katoozian, 2008). In our discussion, the task of judging the ruling supreme, the judges are vested (a division of the province), and in other words, the task of the judge is limited to the authority, the responsibility of compensation for any losses that of the votes of the judges, the parties, and the party entered. In Iranian law, Article 177 of the constitution seems verify. Government responsibility in such cases, in principle, based on the fault. It is important that, if the government is taking the blame for one of the officials (Attorney, Office Manager, Office of Clerk of Court), after compensation Lost right, it is customary to refer to the causative agent.

### **Four Part - Responsibility for others**

The parties must act according to the rules, they will be considered responsible for damages, and the others go to be overlooked. An obvious example is the case, seek counsel despite the warning, the documents do not appear in court, and because they had no other evidence of his petition, his petition for revocation, resulting in a loss of face is the high cost of litigation. Office manager, secretary, courts, and administrative staff in the branch, the branch is under the President. What is certain is that, if a fault can be attributed to one of them, no doubt he would have a civic responsibility, but whether you can be chairman of the Chamber (Judge or Magistrate) as responsible for the act or omission the person knew, rather than doubtful. It seems that, as an employee of the government officials, marking the tasks that are responsible for the damage, the result of intentional or careless person who enters, and in accordance with Article 11 of the law of civil liability, if they could be damages, for the civil relativity the relevant department will be forced to pay damages (Qamami, 2009). Principles of contract law in Europe<sup>1</sup>, customary causal relationship is accepted. And where, several factors contribute to the occurrence of loss, the partnership responsible for Lost accepted but this approach is that our rights, because we are familiar with a particular unit. What comes out of our laws, it is not impossible that we would extend common to several causes. Article 1247 of the Civil Code is the evidence we have, in the exercise of supervision over the mole on your property can be verified by the parties to the contract, and they will be responsible for compensation. (Ghahramani, 2005)

Therefore, it seems to compensation from Lost, few would blame can be attributed, in our case, a semi-professional office, administrative and legal issues, court secretary and archivist, should be

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<sup>1</sup> The principles of European torts law

enough to keep documents and evidence of the parties, in their efforts, and thus a violation of these obligations (implicit and explicit), can lead to the realization of the common causality.

**The result:**

- Advocacy for critical jobs in many communities (especially developed) is, similar restrictions governing the country with proof of this claim is critical jobs. Today Lost compensation in the form of the traditional rules of civic responsibility, is very difficult, and the classes of weak and strong, the fact occur. Including the relationships between lawyer and client is, deserves a special policy of creating "Compensation Fund" in the legal community, the social dangers of such a relationship.
- Meanwhile, one of the difficulties of compensation, the inability (insolvency) the absolute or relative damage is nasty, as a suggestion, it seems, by identifying "Civil Responsibility Insurance Lawyers" in various fields (such as in France civil, criminal, public, international), also helped to offset the loss of damage, and is harmful agent in some cases, to the direction of light and negligible fault he did not abandon his support.
- The procedure of recognition, the common cause is unique and as a result, but Article 1247 of the Civil Code, shall not prevent that, where it would be normal in a few one researcher described it liable to compensate Implies- Understand, and therefore where the head office, with the collusion of parties, documents related to the case on its eradication, and attorney at the hearing on the bill submitted document does not mention it, and thus contrary to the trial judge to wrong, the new issue, if the customary causal relationship can be attributed to the lawyer, the lawyer is permitted office manager in charge of the partnership is not recognized.
- As proposed, can be represented by the adoption of codes of professional ethics (including codes of medical ethics), prevented the realization of civil strife and the resulting responsibility for the owners of the legal profession. It parallels the moral law, the power and durability that helps, and joined the cause of the dignity and sanctity of it.

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