

## The Role of Forceful Power in the Civil Liability Insurance

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### ABSTRACT

In civil law of Iran, did not explicitly tell the Forceful power and only articles 227 and 229 and the exemption of payment of compensation are discussed in the event of accidents in this case the two features of these external events include, but are not able to predict avoidance task invariance principle but not been determined and contract liability principle. Civil liability insurance also look at these phenomena and they consider in particular loss the compensation. The method of this paper is to examine the role of forceful in civil liability insurance has been paid by describing and analyzing the relevant content deals and has been done with regard to legal resources and research and also through books published the study. Papers and researchers, as well as magazines and periodicals and databases and internet resources and... We collect related content after taking notes and writing up their networks using the internet to investigate this issue we finally, the various aspects of the reasoning and the conclusions we have to analyze the content. Results shown that if the forceful power is the only cause of the injury suffered, someone who appears to be responsible for losses and is exempt from liability under the contract of insurance, read causality between action and apparently suffered there, read cut and therefore is exempt from liability.

**KEYWORDS:** Forceful Strength, civil liability insurance, unexpected disaster

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### 1-INTRODUCTION

Contractual and non-contractual civil liability means liability is generally included. In contracting responsibilities party to the contract, undertakes the commitment by Lake of commitment (wholly or partially) or in connection with the performance of the contract, the damage to the other that it is an obligation to compensate the other hand, contractual liability, breach of the Between two or more persons and damage to the other party to the contract, attained, while the non-contractual liability has arrived the person, law, which requires compensation to another. However, if ever, seen between the tongue and the injury suffered, there is no agreement, or that if a contract exists between them, was given the loss without connection with the contract.

This article is discussing about the power of forceful and its impact on the civil liability issue, what is forceful? Which any accident accounts forceful power? What is the impact of the civil liability system in forceful? And whether this person is exempt from civil liability, or not?

After was taking responsibility upon the individual, basically, he is required to recover damages who else. Forceful powerful impact on the contractual liability; as a rule of law-that is known as the principle of "necessity" no contract is not terminated in accordance. But they are required to deliver the parties to any contract that its obligations to the extent that the contract is included, play If among them, and avoid the violation of its obligations to pay damages to the other party. The parties also try to properly fulfill its obligations to reach an agreement to change. However, they will sometimes cause beyond the control of and are not able to perform its obligations and therefore, violating or delay in implementing the commitments. In terms of rights, justice requires that any violation and breach of contract, causing damage to the other side, compensation and there are other sanctions if it is to be implemented; but if the breach of contract and will give to the causes and circumstances of the offender was paired off, condemning him to compensation itself is no justice.

Forceful power, including causing is actually leading to power of contract and therefore, the injury suffered by the other party to the contract-entry losses, not intentionally is absolved of responsibility perceived he was basically the responsibility. The non-contractual liability is also sometimes possible to exemption from liability that may rely to forceful system.

### 2- REVIEW OF LITERATURE

#### 2-1- The definition of civil liability

Life and property damage related to third parties caused by the activity everyday person or persons established and under the law, agent's responsibility to be called civil liability. In civil law is not the term "civil

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liability". The authors of the law, jurisprudence, the term liability for the expression of the legal requirement to have but the term civil liability in the current law, represents a set of rules. The importer of loss compensation is required for the injured party from another perspective, in any case where a person is forced compensation other damage, other side he said the "civil liability" is (Afshar, 2010: 124).

### **2-1-1- History**

In Kamnla, this responsibility discuss with specific topics such as rape and molestation and defamation and misrepresentation but theories proposed have tried the enclosed form and tradition out and to provide general theory of liability; old French authors who were influenced by church lawyers of the sixteenth century were to become law. Akola would in width the criminal trial that expressing as the king and lead to the punishment would be victim all of their losses by acts of civil litigation charge. French civil law, civil liability, were found including criminal liability separate from each other, that based on fault as guilty as the criminal act itself, at least commit recklessness, the guarantee will cover the fundamental basis of article 2003 of the civil was code of France (Katoziyan, 2008: 34-35).

From the late nineteenth century, since 1880 the theory of fault theory was fierce in civil liability. Thus was established a fault-based liability inherent foreign real responsibility (causality) that is based on physical action, article 2003 of the French civil code was changed and lawyers have extensive commentary and foreign have real responsibility. But did not find any viable theory of foreign real responsibilities and interpretation, extensive material was created, on the other hand, did not comply with moderate on the other hand, its compatibility with the spirit of the French civil code that public opinion in the writings of authors who were following the theory of fault, familiar was introduced, followed by another theory called "equity reasons" some were concerned that the law, like the law of April 9, 1898 ad on the job accidents.

But civil law of Iran, the second and third volume is devoted to the second chapter of the first volume civil liability. Current law has complied fully with the law. Theory of guilt, thoughts of lawyers who were influenced by French law and attention to itself and defects in the law of civil liability in the legs, it is proposed that the statutory civil liability to the legislature. Finally, the civil liability act 1960 was enacted on 16 low of the adoption of the Swiss obligations and changes appropriate to the situation in Iran is legal.

Loss of property other than that based on the theory of risk, particularly registered. So someone else's money wasted, although not committed a fault, however, he/she is guaranteed. Responsibility civil law to materials, referred to in article 331 q.m. Then the credit issue is whether, because up material is about waste property and civil liability as that stipulated in article I, on the right is recognized by law for persons. Civil liability act of 328-355 civil law, not abrogated. Thus, in the case of loss or defect, fault laws other property, following the theory of risk and causation And the damage to the rights of others to those established by law, fault theory has been followed (Emami, 1993: 563-574).

### **2-1-2- Creation condition of civil liability**

#### **2-1-2-1- commit the harmful act**

Harmful act is one of the pillars of civil liability, this action should be socially maladaptive and the law has not given permission for it. May be harmful act or omission of the first q.m. Says: anyone without a legal license deliberately or as a result of the life or health or property release carelessly or dignity or business reputation or to any other rights which the law established for the prejudice caused material damage or other intellectual property that is liable to compensate the damage caused by their actions

In this The matter was referred to the statement without legal authorization means if the action is done by license legal the person responsible for damage caused by it. Here in the broadest sense and includes: all laws, regulations, administrative guidelines, police and customary rules of verbal order. In addition to the legal, legitimate defense is also a factor to pass the responsibility, as stated in article 15 q.m.: Someone who is a legitimate defense to physical injury or financial loss of one variety is not responsible for any damages, provided that conventional terms proportional to the defense.

Articles 61 and 357 of the Penal Code has also been referred to self-defense. In illegal, harmful act is, attention to the nature of the action which should be intrinsically and inherently illegitimate, therefore, the waste that is not based on faith, squander their wealth by illegal actions (illegal) come, although it is not subject to liability based on fault cause (Dalvand, 2007: 21-22).

#### **2-1-2-2 -associated losses**

The purpose of the rules civil liability is compensation for the loss, in other words, it must be time to compensate for its loss, liability is established. then, there should count losses pillars of civil liability. Article first loss of civil liability associated with the term implies: anyone without a legal license deliberately or as a result of recklessness the life or health or property or reputation or liberty or business popular or to any other rights which the law provides for the creation of urinary prejudice material or other intangible losses that may be responsible for compensation damage is caused by their actions. The second article said: about the importer

loss act cause material or moral damage caused by the injured party after hearing the evidence the court, he shall be condemned to pay compensation if operation and importer of loss it is the cause of damage as the court sentenced him to compensate for the type of damage that will be entered. Civil liability issue is not subject to punishment for committing a compensation due loss in due to the combined action. Suggested that the expression of this act, where a defect in the property to be created or lose certain benefits or emotional health and personal dignity is prejudice, say the time has come to harm. Laws and legal writers tend to divide into three distinct groups: (1) material, (2) spiritual (3) body (Catoziyan 2007: 242-243).

Loss of material: the purpose of financial loss is loss of property as a result of the disappearance of objects (such as a burning house) or reduce the value of the property (such as the construction company, which reduce the value of adjacent property) and intellectual property (such as injury to reputation and brand name) or the loss of interest and legitimate rights of persons to whom it. In summary, we can say: Mitigate and prevent excess property, For each title, the harm to the person. The difference between current assets and assets he injured party losses, If that was not a harmful act occurred, (Catoziyan, 2007: 244-247).

Moral damages, moral damages are hard to define and to make sense of it, we can say: damage to the emotional and financial interests. It must be understood that the boundary between the material and spiritual losses cannot be so overwhelming, because many spiritual harms, personal financial relationships with other adverse effects are and the resulting financial losses (Catoziyan, 2007: 244-247).

Bodily injury: bodily harm have to category seen before the group, why is that both the material and spiritual figures, as well as the person's mental harm and medical and disability costs and imposes on her property. Physical damage is difficult to assess, Because the probability of guessing it is effective, For example, it can be difficult Was to cut the bones or brain trauma or complications brought, furthermore, physical damage caused by spiritual losses In this related that assessment issue become hard (catoziyan, 2007: 244-247).

Of course The loss is demanding and it is the situation as follows:

- 1) loss should be obvious, that the mere fact that harm is likely, could someone sentenced to compensation.
- 2) The loss must be direct, IE, between the harmful act and losses, another incident does not exist as far as to say the loss of custom, the same verb is derived.
- 3) Loss must be legitimate;
- 4) The loss must be the individual not the public;
- 5) The losses have not been compensated, i.e., In each case as a means of compensation for damaged, the damage is lost and cannot be charged again.
- 6) Losses should be predictable, i.e. The traitor is only responsible for damages he predicted that at least in view of the expected norm
- 7) Loss resulting from the action should not be lost; if the injured party can avoid the risk of loss and prevent its spread and the losses of the short, civil law and civil responsibility of the loss or reduction of the sentence clearly irreparable harm in the future if it is available according to the natural course of things, it will also demand a strong suspicion of it available valid (Darab Poor, 1387: 278-309).

### **2-1-2-3- kinship Relationship**

In terms of the cause and the cause of the non-existence, it has been suggested that the relationship between them. Existence and non-existence of causality is a type of between the two, it is also a requirement (object), the cause and necessary (subject), a known cause, like the faithful to mine, abuse or negligence and the harm is caused to enter the depositary or his action and incurred losses, is responsible (Hamshari News, 2008: 61).

For liability achieving to be established, have to determine that are causality relation exists between the loss and harmful act, the disadvantage of the current result. The causal relationship between the two phenomena is taking the harmful act and the damage (loss), respectively in cases where the fault condition is not caused primarily responsible and it is not kinship fault becomes more and more difficult to prove its existence. To make the event would be considered the event is one of the conditions necessary to achieve safe that was proven that without it, it's not safe. The need to establish causality relationship between the harmful act and the harm it is important that when several causes damage involved. To determine the cause of civil liability for violations of various theories and design is presented in three of these:

Theory of instruments, equity: based on the idea that all the causes and conditions that have caused the injury suffered provides equal. The last idea would close due to this theory, the oldest and simplest theory that is responsible for identifying the cause. According to this theory would last or nearest foot. Conventional main reason, according to this theory, all the circumstances and events that led to the loss are among the toys are not just cause is called traditionally resulted in the loss. Select lawyers and teachers would be responsible for the outcome reached and told of the discovery rule does not and shall in any case, given the circumstances

surrounding the incident harmful judge. But in general, the key in determining the cause of the common assignment causing damage to it (dalvand, 2007: 22-24).

In other words, for the injured party can claim damages from the injury suffered so there is kinship relation action must prove devastating losses incurred causality relation exists. Forceful contractual liability, in one case the liability is required to establish causality relation it loses composition of confiscation, so that grabbing property is lost or incomplete, the occupant is responsible for the third party also has wasted or incomplete, or losses as a result of the forceful power (article 317 BC) establish causality relation between the customary practice is committed and losses seen in the game. But sometimes cause injury suffered disclaimer for yourself, non-interference in the injury suffered as a result of a lack of causality relation proves (hamshari news, 2008: 61).

## **2-2- The definition of civil liability**

As a general principle, the person causing damage, It is responsible for compensation. In other words, Agent must compensate for damages to the injured party. The agent is responsible for identifying Compensation for the injured individual is not enough; Because it may be damaged completely lost faced with insolvency, without compensation damage to his left. Therefore requires a different mechanism Struck-binding with respect to the development of technology and industry support to the vulnerable population, and it cannot be anything other than insurance (Babai, 2001: 44).

According to the law of civil liability of Iran all members of society, including individuals and entities and others are responsible for the loss and damage and it should apply to compensation. Subject to civil liability, supply and compensation that are due to the fault or negligence of the insured realize risky activities of others.

### **2-2-1- General conditions of civil liability insurance**

Civil liability insurance, according to assume the contract type partly to relieve the needs of the insured and the powering him. Meanwhile, civil liability insurance is eligible as follows.

Article 1: insurance subject

Compensation for physical damage to the insured employees from civil responsibilities during operations in the workplace provided is established on the liability of the insurer.

1- The purpose of above the compensation body in the insurance policy, and providing compensation for medical expenses and compensation defects or death resulting from the accident insurance is covered by an insurance policy for loser issue.

2- whenever the provisions of the insurance policy or rider has not complied with agreements between the parties to the action the insurer is obliged within ten days from the date of issuance, modification or correction securities and insurance rider to be documented otherwise, the securities will be deemed conclusive article 2: exceptions

a) Damages caused by the following factors, even though the insurer is liable to be excluded from the coverage of liability insurance:

(1) Intentional and fraud of insured: employees and their representatives;  
(2) dispute and conflict or accidents causing intoxicants drinking, drug use by the insured, his staff, contractors, sub-consultants, supervisors and all the factors that are involved in the project.

(3) Previously disadvantaged diseases such as diabetes, hemophilia, herniated disc, arthritis, cancer, epilepsy, heart disease and stroke, and the like due to accidents thread insurance, resulting in a cost of treatment, injury or death is caused unless the defect or died of disease exacerbation due to the accident, the coroner or is determined medical doctor trusted insurer in which case liability insurer will calculate and pay the same amount.

(4) Nuclear explosions, radiation and pollution caused by it.

(5) War, revolution, riot, strike, riot and other such factors.

(6) the Forceful including floods, earthquakes, lightning, landslides and subsidence of land and other natural disasters.

(7) employees staff with less 15 years of age.

(8) Using foreign workers without residence permits and work in Iran.

(9) Damage and defects due to tooth fracture without damage to other parts of the body and human head and face injuries caused by improper heating install and use a non-standard

### **2-2-2- Types of civil liability insurance**

According to the law of civil liability of all members of society, including individual entities are responsible for any losses and damages to others and it should apply to compensation. Subject to civil liability or supply and compensation that due to the fault or negligence of the insured realize risky activities of others. Civil liability in damages for physical damage coverage includes financial harm. Common types of insurance of civil liability as follows:

1) Civil liability of the employer for the employee

- 2) Civil liability towards third parties arising from construction operations
- 3) Professional liability insurance engineers design, building calculations Supervisor
- 4) comprehensive liability insurance C.G.L
- 5) Professional liability insurance for physicians, paramedical, dental, laboratory, medical and Radiology
- 6) Technical officers liability insurance, hospital
- 7) Responsibility, Civil insurance, elevator owners
- 8) The liability of directors of sports clubs
- 9) The liability insurance of directors of hotels and entertainment venues
- 10) The liability insurance of transport
- 11) Transportation insurance officers liability insurance (internal)
- 12) Aviation officers liability insurance

### **2-3- Definition of the forceful power**

In civil law, the definition of the forceful power that had taken article q.m 264 provides that the obligation falls' ways; but in different materials referred to explicitly or implicitly.

There is in French civil law a definition of the forceful power, and only in 1147 and 1148 to the forceful power of the law referred to as the disclaimer. Article 1147 of the French civil code provides that: "due to lack of commitment or obligation or delay in the performance of the obligation, when sentenced to pay damages that could prove lack of commitment as a result of external causes that can be related to him.

Also, there should be no ill of him. " Article 1148 of the civil code also states lyrics when committed by forceful power or disaster, fails to perform its obligations or to be which he is prohibited, is exempt from the payment of damages. As you can see that the 227 and 229 of the civil code of France is inspired by two of the above mentioned laws. What 227 q.m. Under article of the obligation to pay compensation when he is sentenced and can prove that the lack of commitment by the foreign which can be related. If committed by an accident. According to article q.m 229 of the disposal authority is unable to meet its commitment to cope surrounding it out, will not be subject to payment of damages.

In legal terms of the Forceful power Blix definition reads:

"French is a term commonly used in insurance law incomparable force is wonderful. The term is usually used in construction contracts as its purpose is to form part of the contract due to events beyond the control of the parties and can be avoided by applying the necessary care cannot be performed, support of the parties. "(Afshar Ghouchani, 2010: 129).

Some people in the definition have said that of the Forceful power does not have the power to dispose of and could not have avoided it in this case, a person is not liable because the rule is that it is not possible to avoid as yearbook of international law commission are not binding liability system is known incident forceful the unforeseeable or unavoidable or unforeseen but is irresistible the implementation of the commitment to become impossible as some of the forceful power will have unpredictable events committee, it has no power of disposal (samavati, 2001: 46).

But the doctor Jafar Langueroudi right terminology, the definition of the Forceful power, said: "forceful power is not something that is predictable and avoidable and committed to the state's lack of authority to fulfill its obligations or cause someone to inability less has committed or otherwise damaged, be exempt from liability arising from it "(Jafari langroodi, 1967: 553).

Rousseau, Professor of International Law, Public International Law in the first volume of his this chapter explains:

"Force majeure means an unavoidable obstacle is caused by external events either to perform or is prevented comply with a rule of international law obligation. Domestic legal systems, disclaimer person that the power of forceful, it is absolutely impossible to enforce a contractual obligation to accept. In international law, the effect of force majeure, the exemption of responsibility. Swiped it is usually due to lack of implementation of the convention. "

The Forceful power means sorrow, any incident or reason committed to the exterior and not too predictable and disposal and the performance of the obligation to prevent or cause injury suffered and means for particular events caused by natural forces and human beings are not involved and at the same time is unpredictable and unavoidable.

#### **2-3-1- the Forceful power description**

Articles 227 and 229 of the civil code of the forceful power enumerated attributes. Of article 227 and article 229 of the forceful power of the external description yet non-disposal become a deduction of forceful power is completed so the incident in question is unpredictable yet, although this is not mentioned explicitly in the civil code, but it can be deduced from the law so dedicated to its obligations not to be able to release from liability by virtue of the power of his forceful there must demonstrate the absence of the that the domestic legal system and international law have mentioned it this way:

- 1) Being outside of the incident.
- 2) Unpredictable event.
- 3) Non-utilization of the incident.

### **2-3-2-Foreign – accident**

The fault committed by the commitment couldn't to say that he was alleged non-performance of its obligation to prevent foreign once committed to the cause of the implementation of its foreign that an event outside the scope of activities and responsibilities he is committed. This comment has been accepted by most legal scholars. Some say that it's ok to be abroad, it is the event cannot be considered to be attributable to commit. Therefore, any events that are not attributable to yet thought the scope of his activities occur, it is external (Safai, 2001: 125).

But foreigners are not always necessary with no intervening act committed in the incident. In other words, it may not be committed to the lack of commitment and involvement, but it is still the responsibility of commitment. However, the external necessity of an event which is a power of forceful, is accepted by most scholars, some authors are mentioned in the writings of legal and only said that the accident or power is predicted forceful power (Sanhory, 1967: 130).

But it seems that this condition is evident, these authors otherwise, it is needless to say it has no doubt that the system is and should be attributable is forceful power. Sometimes the lack of commitment committed his fault, but the fault is small enough which resists external, is very poor, and vice versa, so severe that it prevents it from binding commitment ignored in this case, it is fair to be accepted so external barrier has prevented the implementation of commitment and fault committed no role in it. The rights of other countries, the external condition, however the forceful power of the elements and is said to have considered if a person can claim an external event, the forceful power of the incident was beyond his control, the cause of which is completely unknown.

The Napoleonic code accepted expressly.

Because it is based on a commitment to be, responsible for damages to the premises unless it is proved that the lack of commitment is due to external causes not attributable to him. In this context, the case law in France clean court has accepted the case. However, the external criterion of an accident, there is considerable debate and controversy.

According to one view, the external event is an event that will be out of the committed him well. In addition, can be attributed to the intentional or her fault. The incident occurred in the area of activity is undertaken. Another view, on the external event, event occurred which are outside the scope of activities. So if an incident occurred in the workplace and is committed to working to prevent the implementation of the commitment, he shall be responsible for the incident, although he caused the accident, intentionally or not committed any fault. (Cutoziyan, 2006: 206-207).

He just seems logical that it is none of the above terms couldn't accept and rejected another absolutely. An event that prevents the implementation of commitments if somehow related commitment or it can be attributed to his fault, is not foreign, whether they occur inside or outside the scope of his activities and forceful power is alleged to be committed although is committed within the scope of the activity occurred.

### **2-3-3-unpredictable of event**

Some law authors, an event known as the forceful power that actually matter is unpredictable, it does not have the power to dispose of (samavati, 2001: 46). Yet it is impossible to avoid some have spoken and that they cannot be predicted (Moadel, 1972: 73). Commitments under article q.m 227. The phase when sentenced to pay damages can prove that the lack of virtue, commitment external causes that can be related to him. However, if the event is predictable foreign despite this, undertakes an obligation to take, what can be said of the external causes is not committed and definition of the forceful power. In laws other sometimes, instead of words, the forceful power of catastrophes unexpected or unpredictable events mentioned in the same effect is an effect of the forceful power, in other words, these expressions are synonymous forceful power. Including article 347 of the penal code act 1991 provides that: "everyone has something to put on your wall and unforeseen accidents happen and cause damage to the public thoroughfare will not be responsible. " Or article 348 the act provides that: "If the gutters or balcony door and the like are not allowed to put it on the thoroughfare, Injury or damage is caused by the collapse of the homeowner will be responsible for it If allowed to install it and accidentally fall and cause damage or injury responsible owner's home. "

There are also words that describe Islamic Jurisprudence in the heart of forceful power is unpredictable and is mentioned sometimes unexpected incident. For example, someone in a container wherein the blowing open, its contents spilled and lost, while if he was the same person will be opening the container for and sunshine, it's ruined, he is responsible because guarantee sunrise and light and wind is predictably unpredictable. Under French law the provisions of the civil code of the is taken forceful power in case of doubt as to whether or not an incident shall be the responsibility of commitment, responsibility should be aligned left (Safai, 2001: 123).

So in all cases suggest that an unpredictable event condition is necessary for the fulfillment of the forceful power pattern of predictable time contract (civil responsibility) or the occurrence of its adverse events (in charge of enforcement). There are also some legal writers in unpredictable, that considering conventional static behavior as common and are commitment from liability if they which prevents performance of the obligation of things that are not predictable otherwise, if the obstacle, generally committed by negligence or recklessness or inexperience or carelessly anticipated, it is not anticipated, responsible for damages resulting from failure to perform obligations. Because of negligence, recklessness, and in general, multiple fault should cause the promise loser (Emami, 1993: 242).

#### **2-3-4- Inevitability of disaster**

In article q.m 229 is. "... Its disposal outside of his authority." The exterior of the incident are not sufficient to meet the liability. If the forceful power is considered an external event that cannot be stopped or the impact it will stop, and when it was to prevent the accident, forceful is not a system event and if its obligation not to commit such an event, the culprit and is responsible for compensation for damages. Because the incident was avoidable commitments and arrangements as are necessary to implement the commitment (Imami, 1993: 241).

Some have described irresistible spoke and said for those who are able to rely on the system in forceful as an excuse, must prove that the incident that was beyond his control and irresistible performance of the obligation is impossible for him. Other scholars, however rights also considered necessary to achieve the forceful power (Moadel, 1972: 74). In the event of the disposal of non-discrimination, some of the criteria are committed to act pattern (Emami, 1993: 243).

Under the same terms that are not able to repel external event and because it does not fulfill its obligation, not his responsibility. Although other people without commitment it can be disposed of and avoid the accident. Others believe that it is accepted in French law that is something that prevented the implementation of the commitment, should be strictly avoided whether one cannot avoid external event. So if you are only able to avert disaster, but others can avoid it, such an event is not a power of forceful (Momeni, 1989: 23).

According to advocated to Article Q.m 229. Resulted to master appears to be an unjust result. Because if you can commit, is a measure of whether the incident is disposed in the case of a person capable for this there will be more responsible. In other words, accepting it resulting to person has a weak commitment to undertake, less responsibility. In one respect, while it will take the commitment, has less be responsible. So to avoid such injustice should appear q.m article 229. If an external event forceful power, and shall not be responsible for the disposal of conventional the only criteria is the ability of a person to commit to act pattern.

This can be a criterion deduced of Q.t 386. V civil liability law. What article q.t 386 states: "if the merchandise is lost or missing transport operator is responsible for the price it will prove. That it dead or missing merchandise related to their gender or documentary fault submitter or training that they have or for which no charge lookout events it prevents..." And stated in article 12 of the law of civil liability "employers who are subject to labor law

Compensation for the damage which the workers learn their staff in doing the work or occasion it is, unless it is obvious that all the circumstances of the case may require caution was precautions shall be taken, or if it has provided again prevent loss would not be possible. " So if ordinary people cannot be blocked by external events shall be responsible for its disposal, even the exceptionally strong human by squatters.

Because it could not of commitment expected that such a man is a legend in the performance of its obligations, although unavoidable as the forceful power means, including natural disasters is specifically defined to come, but the inevitability this event criterion, applied carefully standard is to avoid accidents (Cutoziyan, 2006: 216-218).

#### **2-3-5- Instances of the Forceful power**

##### **2-3-5-1- Issue waste**

In Iranian law, the general rule of waste subject to the obligation in article 387 BC in sale topics mentioned, in which: "if sales without fault or negligence on behalf of the vendor before submitting to be wasted..." This provision is also available to rent, whether under article 483 BC if by accident totally or partially lost during event the amount of wasted time is wasted. There are many disputes and discussions on article 287. The different the sentence is considered an exceptional sentence have taken contrary to the general rules and rules of transactions he is deduction contract is owned and with the agreement of the parties and upon conclusion of the contract, sales to customer property becomes if the vendor fails, trust is a vendor, purchaser is and ensure that waste is inevitable (Emami, 1993: 467).

Others, the sentence is considered a general order and in accordance with the general rules of contracts. Their argument is that the real purpose of the parties to the contract are only transferring sales or someone aim of buyer is to pay to the vendor is installation be able to use it and the vendor The transfer of the sales price to capture. However, the transfer of ownership alone will not achieve this goal If the salesperson and the customer know that the sales price or not dominant ,do not be willing to enter into a sale.

So justice this is just a rule whereby the obligations of the parties aborting wasting of the contract or commitment the general rule is exempt from the general rules. (Cutoziyan, 2006: 207). However, according to recent arguments mentioned and particularly the legislators in the context of the waste subject to rent, rent due to dissolution of marriage, it seems article 387 was of the judgment general and all applicable rules and regulations is gratuitous.

### **2-3-5-2- legal ban**

Legislative act or public order may be forceful 's power comes as the action or command, run, the commitment illegal and therefore impossible to implement commitments and it consequently become impossible normal physical or legal public the performance of the contract when it involves rights or governmental public command, when contract cannot be required in such cases, considered detrimental to public order (Safai, 2001: 633) and even opposed the inclusion of the clause in the contract is canceled due to public opposition to the proposed order.

Notably, if the ban introduced by the government was causing temporary suspension of performance of the obligation and, if not permanent, the fall was due to expiry of the contract or commitment (Momeni, 1989: 279). Citing legal ban on the ability of natural or legal the parties there is no doubt true in privacy policy and laws prohibiting such persons may be cited as the forceful power.

But whether the legal entities of lay persons mean public corporations or state law may be declared and cited to the forceful power of the government or no? If a company or government agency is a legal entity separate from the government and new legislation to stop as it can rely on the power of forceful, is exempt from execution of contractual obligations. In this case, if the aim of the new laws and regulations will non-fulfillment of obligations of the state: the state cannot rely on the forceful power, but if reading regulation is to protect the public interest, it seems the government can rely on the power of forceful (Safai, 2001: 143).

What seems fair that the state is reading law, however, for real. Because in this case, accident (law) has no external aspect. The laws and regulations by the government, an outer barrier does not count, nor the government can in such cases until full implementation of the agreement, is avoided event (legislation).

### **2-3-6- war**

War is not an end to the forceful power itself, but is committed to must prove the war has resulted in the impossibility of performance of the obligation. So if the cause of the difficulty of implementing commitment for example, the effects of war, scarce raw materials needed for manufacturing commitment and become impossible implementation of the forceful power has completed, commitment destroyed and committed person he/she is not the lack of commitment (Cutoziyan, 2006: 312).

### **2-3-3- The scope of Forceful power in the civil responsibility**

#### **2-3-3-1- The contractual liability**

In the realm of contractual civil liability, upon failure to perform obligations under the contract valid alone, deemed at fault and committed liable to civil liability. The effect of forceful power as the case may not be, collapse and dissolution of the contract or suspend commitment.

1) Collapse and dissolution of the contract commitment: If the Forceful the lack of a permanent contract enforcement is sought, in the case of dissolution of the contract will lead to the collapse of commitment, forceful power led to the acquittal of his exemption from the obligation and responsibility the promise cannot claim harm for the contract.

2) Suspension of contract: If an event occurs that causes the lack of implementation of commitments, Temporary, contract and then break the forceful led to the suspension, as their effect on the performance of the contract, retains its usefulness and is consistent with the will of the parties.

Recognizing that if after the expiration of the suspension duration contract retains its usefulness contract implementation is consistent with sesame parties or not, the court, if the court determines that completely changed the nature of the contract and its performance against the will of the parties at the time of signing the joint, it will dissolve sentence. Article (79) united nations convention on contracts for international shipping, female (74) sale of uniform international law, the realization of the power of forceful, methods of dealing with it specifically stated. The impact of international trade agreements forceful power liquidation obligations if you run it permanently prohibit, or suspend the obligation, if the performance of the contract, temporarily, it is not possible (Afshar Ghojani, 2010: 142).

#### **2-3-3-2- on non-contractual liability**

In the non-contractual civil liability, although recognition of the forceful power of the same concepts such as self-defense, it may seem compelling but do not be mistaken legal concepts together. However, due to legal and judicial regime is same. For example, under emergency conditions, shall be guilty and no responsibility



shall be liable only if in distress to seek emergent that is wrong and emerged about the impact of non-responsibility system in forceful contractor shall be a distinction between the two cases:

1) Sometimes the Forceful power is the input language only. In this case, the defendant is exempt from liability. Because of the proof of the Forceful power causality relation between the current system called for the recognition of losses is lost and cannot read. Read the case that responsibility is based exempt from responsibility by proving system in forceful power because in this case, to prove that he committed the fault system in forceful power and it is not known and therefore not responsible. However, in such cases, because usually the commitment is a commitment by care and caution are necessary in order to achieve the result of applying the and achievement of results does not guarantee, does not prove the forceful power and promise must and prove his guilt perfunctory that with the interference forceful power it is hard to fault prove that blame him.

2) Sometimes the Forceful power is one of the injury suffered by the injured party. In this area French law, it accepted the number of votes, the supreme court because losses has suffered operating must act with forceful power and shared responsibility between them. Some law professors have also accepted this view, but other masters of French law, as well as lawyers we accepted this view. It seems that in this case a risk factor for injury suffered have to between mode of agent responsibilities according to the law, which is assumed to be faulted-based liability, distinguish; in which case the responsibility is assumed, a responsibility only where it is exempt from liability the forceful power destroy causality between activity and damage. Otherwise, his responsibilities will remain the same. But if the power in forceful with his fault caused the damage, causality between the operation and operating losses are available and so he continued to remain and the other, division of responsibilities between forceful and the operating system will not recoup any of the losses and hence may be the division of responsibility and in the case of fault is based responsibility so that was taking the blame for the injury suffered, he is responsible (Afshar Ghochani, 2010: 142).

### **3-Conclusion**

Forceful power is " external events that are unpredictable and inevitable " after you have suffered an accident that resulted in a lack of commitment or, or due to committed to come by due to his fault, as forceful power cannot remain the forceful power is deduction of Article 227 q.m of the external description. What, according to the article, "the violation of the obligation, when he is sentenced to pay compensation that fails to demonstrate that the lack of commitment by the foreign which cannot be related to him. "One of another forceful power description is an external event is unexpected, however, this is described not explicitly in the civil code; however, the authors believe that the legal system to take place in forceful, events is the unpredictable time of contacting contractors (contractual liability) or the occurrence time is adverse events (non-contractual liability). Of course the incident that is forceful power must be committed to a person familiar with the situation, is unpredictable.

Yet another description of forceful power is unavoidable. Means it is the non-blocked and cannot be used to avoid or resist this description clearly interpreted article 229 q.m.ba "... It expressed and disposed outside of his authority" in this study, we examined the role of forceful power in civil liability Including the contractual and non-contractual civil contracting responsibility it is between two people, a contract is signed and the effect of non-implementation, implementation delays or ill administration, obligations in administration commitment due to area one of the parties, the other party has entered into a loss. If no failure or delay in the performance of the contract is the result of the forceful power, who did not perform the contract or to delay their implementation, are exempt from liability. However, when implementing the commitment of the parties to be impossible due to the forceful power, opposite the aborting due contrasting commitment and solidarity between the obligations of the parties. Non-contractual liability, the contract was not available anywhere between two people and one of them there are other losses or contracting, damage to one of them has no connection with the contract.

In the case of The effect of the Forceful power of the responsibility should be separated from the state, sometimes the only operating system suffered in Forceful power. In this case, there is no doubt that the power of forceful, who is apparently responsible for the losses incurred because this system is exempt from responsibility forceful power interference read causality between action and apparently suffered there, read cut and therefore is exempt from liability. Sometimes the power of forceful is one of the factors of loss. It should also be divided, sometimes responsible for the injury suffered, according to the law, it is assumed that in this case, if the agent is exempt from liability to prove causality between his arrival in forceful power losses are eliminated. Where the read operation and the forceful power, resulting in losses, the causality between the read operation and power losses and therefore remained in forceful, shall not be responsible. Sometimes the fault-based liability. In this case, the various factors involved in arriving of loss if the read operation and the forceful power, have resulted in loss read the fault has been committed, responsible forceful power and therefore does not exempt him from responsibility.

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