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The basis of civil responsibility of the owners of land motor vehicles in the legal system of Iran and Afghanistan

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Abstract

Civil liability caused by land motor vehicles is one of the most important and widely used topics in the field of law. Especially in the current era, the emergence of these devices, which is known as the era of industrial and technological revolution, has brought about a huge transformation in human life, which on the one hand has brought comfort and social welfare to mankind, and on the other hand, caused many losses. It has entered into the body of the society, which is considered as the limitation of social life. For this reason, the civil liability arising from these devices has always been the concern of jurists and they presented various views and theories regarding its basis. The most important of them are the presumption of fault, failure to protect, absolute responsibility and group guarantee theory. But today these differences have faded. According to the opinion of the majority of Iranian jurists, the basis of the civil liability of the owner of the vehicle is "pure liability" without fault. But in Afghan law, the responsibility of the keeper of the land motor vehicle is based on assumed fault. In Islamic jurisprudence, from the very beginning, the Prophet (peace be upon him) has established responsibility without fault, i.e., objective responsibility, with his beautiful words (No harm and no harm). The method of this research is analytical, descriptive and comparative, and the library method was used to collect its contents.

Keywords: Civil liability; Legal perspectives;Pure liability;Assumed fault; Objective responsibility; Islamic jurisprudence,

Introduction

Civil responsibility is one of the important topics of law, the basis of which has had a changing and eventful history throughout history, which means that responsibility in the past was referred to under a single title, gradually civil responsibility was separated from criminal responsibility. Then, civil liability was divided into contractual liability and compulsory liability or compulsory guarantee, and special rules were established for each of them. During the evolution period, its basis has also been considered and various bases have been proposed in it; For the first time, the laws of Rome during the era of the republic accepted the theory of fault as the main basis of responsibility. But this theory lost its position with the passage of time and human progress in the field of technology and industry, and the theory of risk was proposed, which is close to the theory of pure responsibility. In the same way, for the first time, the laws of the Islamic Republic of Iran established the civil liability resulting from the accident of land motor vehicles on the basis of fault, and then in 1347, it approved an independent law regarding the owners of land motor vehicles, which established pure liability, and then This law was amended in two periods, once in 1387 and again in 1395, which also accepted pure responsibility. According to Article 797 of the Civil Code, the law of Afghanistan accepts responsibility based on assumed fault for the owners of "technical, technical, mechanical and machinery" technical objects. But in Islamic law, from the very beginning, the Holy Prophet (PBUH) established responsibility on the basis of pure responsibility with the hadith (no

harm and no harm). In fact, Islam once traveled the century-long path that European law had slowly traveled. . Therefore, the current research seeks to find such a question that; What is the basis of civil liability that is imposed on the owner of the vehicle?

Since the topic of this article is to examine the basis of the civil responsibility of the owner of the vehicle, we will first refer to the concept of civil responsibility and the owner, then we will discuss the juridical and legal basis of the owner.

The basic concept

In the word base, it means the place of building, the root of something, the basis, foundation, and anti-demolition and destruction (Omid, 1373, p. 1048 and Ali Akbar, Dehkhoda, 1377, p. 20119. Al-Firouzabadi, 2007, p. 1632). It is also used in jurisprudence to mean foundation, principle, evidence and general principles (Abdullah, 2010 p. 52 and others). In the philosophy of law, the basis and essence of the legal rule is called the basis, which means that when facing a legal rule, the first question is why and the necessity of obedience. In fact, the binding force and hidden attraction behind legal rules is called the legal basis of that rule. Therefore, the reason for the legitimacy, validity and necessity of legal rules originates from the foundations; Therefore, jurists have defined this word as follows:

Basis in law refers to the principles and rules that the laws and regulations of a system derive their legitimacy and the necessity of their implementation from those principles (Khoeini, 2013, p. 60). In the sense that the basis is the principles or rules on which the legal system is based and legal regulations are established based on it; Therefore, some law professors have said that they interpreted all the rules as the basis of the basic rights and justifying the obligation arising from it (Katouzian, 2017, vol. 1, p. 39). In other words, it means a solid foundation for legal rules that make them legitimate and legal so that they can be given an imposing status in social relations (Rezai Bigdali, 2011, p. 55).

The concept of civil responsibility

Whenever a person is required to compensate for the damage caused to another person, whether this damage is caused by the actions of the responsible person or caused by the actions of people related to him or caused by objects and property under his possession and ownership, it is called civil liability (Hosseinijad , 1370, p. 13). Therefore, whenever a person is obliged to compensate for the damage caused to another person due to his own actions, or due to the actions of others, or due to his property and objects, the civil liability is realized.

The concept of holder

Owner means protector, maintainer, owner and possessor (Moin, 1371, p. 148). In terms of law, a person is said to have the ability to have spiritual authority over the vehicle during an accident (Abadi, 2019, p. 116). In other words, the owner of the vehicle is a person who is responsible for maintaining and managing the vehicle.

In Iran's "approved 1374" law, the term "owner" was not defined, so there was a difference of opinion among jurists about its meaning: according to some, the owner of a vehicle is the owner of a car or any person who, with his permission or permission, drives and uses the car in any way. He is in charge of the vehicle (Janali, 1372, p. 72). According to some, the owner is the custodian or the person who has control over the vehicle, including the owner of the vehicle, the driver, and other persons who have the vehicle in some way (MaboudiNeishabouri, 2013). Some consider the owner as a person who has physical possession of the vehicle, whether he is the owner or another person (Abbaslu, 2017, p. 152). Some are of the opinion that the owner means the owner of the same vehicle (Abbaslu, 2017, p. 152).

The law approved in 1387 and the new amendment law approved in 1395 have put an end to this dispute and stated that the holder, both the owner and the occupier of the vehicle, that each of these acquires the vehicle of the insurance policy, the duty of the other is discharged; Therefore, the owner is the one who is responsible for maintaining it. Usually, it is the responsibility of the owner to protect and maintain his vehicle. If the protection and maintenance of the vehicle is transferred to someone else in a way such as rent, loan, even usurpation and theft, the legal responsibility of protection or possession is placed on the other person. Therefore, it should be considered that the owner of the vehicle is responsible

for the physical control and supervision due to his dominion over the vehicle, whether he is the owner or the occupier or just the driver, so it can be said that the criterion for ownership is material possession from the legislator's point of view. Abbasloo, 2014, pp. 75-77).

In Afghan law, the road traffic law has used the terms owner and occupier from the very beginning and has made both of them responsible for the damage caused by vehicles, and also the civil law of this country has considered the person responsible for the damage caused by the vehicle to be the one who drives the vehicle in It has its own authority and control, in this sense it includes the owner, the driver and anyone else who somehow has the permission of the owner of these devices. Article 797 of this law states: "A person who owns technical devices or other objects has at his disposal that the prevention of their loss requires special attention, in case of loss from the mentioned objects and tools, he will be held responsible unless he proves that he has used sufficient caution in preventing the loss." That is, the mentioned article specifies the use of the word "authority" or "responsible protector"; Because based on the above article, every person who protects and maintains these objects is also responsible for the damages caused by those objects.

In the laws of Arab countries, including Egypt and Algeria, the civil responsibility of the owner of the vehicle is considered as the responsibility of the guardian of objects. According to the jurists of these countries, the custodian means the person who has the current authority to preserve and take care of the object, so the custodian is the owner, lessee, borrower, transporter, driver, broker, seller before surrender and driving instructor. Al-Zahili, year 7, number 9 and Al-Zahili, 2012, p. 13). In other words, in the Egyptian legal system, the theory of material dominance is known as the criterion for determining the protector and watcher.

Jurisprudential basis of the civil responsibility of the owner of the vehicle.

Although in jurisprudence, the basis of civil liability or guarantee has not been discussed in the way that has been proposed in legal systems, but there are general and general reasons and rules that these rules can be a proof of the legitimacy of civil liability and related issues. to solve it The most important of these rules are the rule of no harm and the rule of waste and gratification; Therefore, the aforementioned rules will be briefly discussed here.

The no-harm rule is the most important, the most famous and the most common jurisprudential rule, and it is considered one of the important foundations of civil responsibility. Jurists have used this rule in various contexts as a shari'i reason to prove a shari'i ruling, and they have derived rulings for many new events and issues from it. In this sense, the jurists consider it necessary to compensate and eliminate the loss, and therefore they established the rule of "Al-DharrYazul" (Al-Zarqa, 1988, p. 166). That is, if harm is caused to others, that harm must be compensated, and they still believe that this rule regulates and organizes the basis of human actions and teaches what a person should do and what not to do and what to do with others. to be interactive (Al-Saadi Bicha).

Lawyers also consider this rule as a solid basis for civil responsibility and a suitable means to respond to the new and increasing needs of society (Bahrami Ahmadi, 2013, p. 141). According to Dr. Katouzian's opinion, provision for a harm caused is one of the necessities and necessities of the negation of the ruling on harm (rule of harm); Because; The main goal is to compensate the loss, and the liquidation of the judgment of loss is also used as one of the means of compensating the loss (Katouzian, 2017, p. 154).

The rule of loss

The content of this rule is taken from the famous saying "I have wasted the property of another person, it is a guarantor" and it is documented by the Qur'an, the Sunnah and the consensus of the jurists. This rule is one of the important rules of jurisprudence that the jurists do not disagree about the fact that the loss of property is not a cause of guarantee, but they consider this rule as one of the important rules in various cases to prove civil liability, and the verdict is for the guarantee of the person who wastes another's property. They give (Kaddash 1531, p. 164). Therefore, in terms of the fact that the

responsibility of the vehicle owner is based on no-fault responsibility, this rule can be considered as one of the foundations of civil responsibility.

The rule of glorification

In Tasbib, a person does not directly cause the loss of property, but his action along with another intermediary causes the loss of another person's property (Bali, 2013, p. 126; and Al-Zahili, p. 164). In other words, in tasbib, a person does not waste money directly, but to cause and prepare a slow introduction to waste, his work is called a waste of tasbib (Katouzian, p. 163). For example; Jurisprudence, if a vehicle while moving on the street collides with another vehicle and stops it, and in the meantime, a third vehicle collides with the stopped vehicle, according to Article 4 of the Road and Railway Safety Law, the stopped vehicle is responsible, but Considering that this action is not attributed to him, the responsibility lies with the owner of the vehicle that is the main cause of the stop. In this case, who is the guarantor and responsible for compensating the damage? In response to that, it is stated in Article 90 of Al-Ahkam Journal that when the steward and the guilty party gather together, the ruling and responsibility is attributed to the steward. Therefore, the trustee is considered the guarantor and responsible for compensation. In this regard, jurists also write: "In our opinion, the relationship of the steward of the loss is stronger than the cause of the loss, and for this reason only the steward is responsible" (Katouzian, 2017, p. 163). In the law of Afghanistan, in the case of joint responsibility of the responsible and the causer, the liability is placed on the shoulders of the person responsible and the willful. Article 763 In the case of the association of the responsible and the causer, each of them, who is committed or willful, is recognized as a surety. be. In this article, the lawgiver has put the guarantee in the responsibility of the transitory or intentional because, in principle, the act is attributed to the steward and he is considered responsible, but sometimes the cause is from the trustee, or the cause is intentional or transitive, in this case, the guarantee is the responsibility of the trustee. will cause The jurists have also attributed the guarantee exclusively to the person responsible if the cause is from the guardian of Aqwa; And sometimes on both the manager and the cause. For example, the causative is transitive, and the relationship and guarantee of the steward is inexcusable due to its irresponsibility, non-existence, and unknown nature. For example, if someone throws a knife at a child, and that child holds the knife, the child gets a wound as a result of it, they are considered to be a guarantor (Al-Zahili, p. 166). Or that he is the steward of makrā. However, in this case, there is a difference between the jurists, some of them consider both the agent and the causer to be guarantors, and some consider only the causer to be the guarantor, because; They believe that reluctance destroys the guarantor's guarantee (Al-Zahili, p. 166; and Ibn Rushd, 1975 316. Abbas Ali, 2016, p. 64; and Katouzian, p. 165).

In the case of traffic accidents, the issue of the responsible society and the reason is imaginable, for example, if the owner of the vehicle gives his vehicle to another person, in this case, the driver is usually the guarantor, but if the owner of the vehicle gives his vehicle to another person, that If he knows that he cannot drive, or the vehicle has a technical violation, he gives it to someone else despite knowing about it, and he is not aware of the technical violation or vehicle defect, and if a collision occurs while driving, in this case, the owner is considered the cause. Aqwa will be recognized as the responsible and guarantor of the driver. In paragraph 2 of article 46 of the traffic law, the following provision is made in this regard: "If the owner or occupier, despite knowing that the person does not have a driver's license, has given the motor vehicle to the driver, the owner or occupier is obliged to compensate for the damage." It turns."

The jurists cited these rules in their books regarding the civil liability caused by animals and objects, but can it be inferred from these rules regarding the civil liability of the vehicle owner or protector? In response to this question, it can be said that although the jurists of the era of the Imams of the religions, which is the era of the flourishing of Islamic sciences, did not enter into the field of civil responsibility arising from these devices, which had not yet been created at that time, but considering the universality of the mentioned rules, Regarding the civil liability caused by these devices, these rules can also be invoked and the protector and the holder are obliged to compensate the damage caused to others. It should be noted that Islamic law does not follow from a single source and the basis of argument is not discussed as

it is in other legal systems, but the jurists in the traditional way in their issues and fatwas relied on narrated reasons such as verses and hadiths.

The Legal Basis Of The Civil Liability Of The Vehicle Owner

In the field of the basis of the civil responsibility of the owners of motor vehicles, various theories have been proposed, including: the assumption of fault, failure to protect, the theory of pure responsibility and the theory of group guarantee. Each of the mentioned theories will be discussed below.

Presumption Of Guilt

As stated earlier, in the traditional view, responsibility had a moral color, which means that civil responsibility in many countries was justified on the basis of fault. In the law of Iran, the legislator, by approving the civil liability law, has made fault the basis of civil liability; But since it was difficult to prove it, perhaps the losses will remain uncompensated, the legislator has established the theory of assumption of fault for the owner of the land motor vehicle. This assumption, like other assumptions, is based on the dominant ruling; Because in most of the driving accidents, the owner of the car has been more or less careless, which means that the vehicle is the subject of "driving a vehicle" and therefore driving is careless; Also, in the past, it was thought that road accidents occur as a result of random and unpredictable events, but today it is estimated that in developing countries between 64 and 95 percent of all the causes of traffic accidents It occurs due to human error (Reh Pik, Bicha, p. 35). In other words, the responsibility of the owner of the vehicle is based on the assumption of fault, not fault in the traditional sense; Because; If the basis of responsibility was the fault of the owner, by proving that he did not make any mistake, he should be exempted from responsibility, while only proving that he is not at fault is not enough and the owner of the vehicle must prove the involvement of external factors (Khodabakhshi, 1390, p. 99). In law, the theory of presumption of fault has been proposed as the basis of the holder's civil responsibility (Abdi, 2019, p. 63). Some jurists have proposed this theory as a hypothetical theory (Katouzian, 2017, p. 104). But the drawback of this theory is that Article 2 of the Compulsory Insurance Law approved in 2015 obliges the holder to acquire insurance "before the occurrence of a harmful accident" and deprives the holder of the possibility to prove his innocence and Liability be waived. While in the theory of presumption of guilt, a person can be freed from responsibility by proving his innocence. Also, this theory contradicts the basis accepted in Islamic law; Because the basis of responsibility is based on the no-harm rule of a kind of responsibility; Therefore, it is unlikely that this theory has been accepted in Iranian law regarding the civil liability of the vehicle owner. According to articles 776 to 789 and article 9 of the Civil Code of Afghanistan, which is the general and general rule of civil responsibility, the civil responsibility is generally based on fault; And in the same way, from the sum of the responsibilities caused by tasbib, the responsibilities caused by the actions of non-animals and animate and inanimate objects, the subject of Articles 793 and 795 of the Civil Code and the subject of Article 95 of the Al-Ahkam Journal, it is obtained that fault is accepted as the principle. Is. But despite all these disturbances, our country has not fallen behind the industrial revolution and machine inventions. Many cars entered the country, with the introduction of these devices and the increase in damage caused by them, the theory of fault was not able to support the victims against the vehicles, many of the damages caused to them remain uncompensated, and proving the fault of the owners of the vehicles. The vehicle was impossible in most cases; Therefore, according to the current situation, the legislators of this country tried to consider a more suitable basis for the civil responsibility of vehicle owners, and that theory is the presumption of fault. In Article 797 of the Civil Code, the legislator specifies as follows: "A person who has technical devices (mechanical devices) or other objects that require special attention to prevent them from causing damage, in case of damage from the mentioned objects and devices, he is responsible. Is known. unless he proves that he has used sufficient caution to prevent the loss..."; Therefore, according to this article, the liability arising from the technical devices whose protection requires special effort is based on the assumption of fault, that is, by proving that the person is the protector of the mechanical devices and also by proving that

the damage caused by said devices it is enough to recognize the protector as responsible and there is no need to prove his fault, which means that as soon as the aforementioned things are proven, the protector is recognized as responsible for compensating the damage; But on the other hand, the presumed fault of the protector of the said equipment in Afghan law, contrary to Egyptian law, can also be proved in the opposite way, in such a way that whenever the protector proves that he has done all his efforts to preserve and protect from the occurrence of damage, and that he is at fault in its defect He has not been released from responsibility.

Lack Of Protection

Another theory that has been proposed in the field of the basis of the civil liability of the vehicle owner is the theory of short in protection. According to this theory, the owner of the vehicle has an implicit obligation, and his obligation is a type of obligation to result, which means that he protects and maintains the vehicle in such a way that it does not harm others, and if it harms others, it means that he has not fulfilled his obligation. . This obligation is sometimes caused by a contract such as a sales contract, transportation contract, and like any other contract, and sometimes it may have a legal origin, such as the obligation of the owner of the vehicle. According to Articles 227 and 229 of the Civil Code, the obligee's obligation is of the type of obligation to the result, if he can prove that the damage was caused by external factors and its disposal was beyond his control, he is exempted from responsibility. The mentioned articles provide as follows: "The person who violates the obligation is sentenced to pay damages when he cannot prove that the non-fulfilment was due to an external cause that cannot be related to him." And the obligor cannot fulfill his obligation due to an accident that is beyond his authority, he will not be condemned to pay damages. Therefore, if the fault of the owner of the vehicle in the protection and maintenance of the vehicle is found, he is responsible for compensating the damages; But whether this theory is accepted in Iranian law or not is a matter of debate.

According to Article 1 of the Compulsory Insurance Law approved in 1347, some jurists of this country consider the responsibility of the owner of the vehicle to be closer to this theory on the basis that every owner is obliged to take care of his property in a way that does not harm others. It does not reach (Abdi, 2019, p. 65). Some law professors have also discussed and examined it as one of the hypothetical theories and consider this theory useful and logical due to the unification of the responsibility system, and on the other hand, according to them, the obligation to protect them is also the type of obligation to The result of a particular type of responsibility is a type of holder. Therefore, they do not accept that the responsibility of the owner is based on the commitment to protection (Katouzian, 2017, vol. 2, p. 105).

In Afghan law, Article 797 of the Civil Code, which expresses the civil responsibility of the protector of a motor vehicle, refers to this theory in a way, which means that the legislator obliges the protector to take care of his vehicle in case of damage to the vehicle. The other is responsible. The mentioned article stipulates as follows: "A person who has technical devices (mechanical devices) or other objects that require special attention to prevent them from causing damage, will be held responsible in the event of damage from the said objects and devices." .

The problem with this theory is that the owner is not always the driver, when the responsibility is imposed on the owner if the vehicle is under his control, otherwise the responsibility of the owner cannot be justified with this theory. On the other hand, in Iranian law, the holder's obligation is of the type of obligation to the result, by proving that he is not at fault, he is not exempted from responsibility unless he proves the external cause that is the cause of the damage. Regarding the responsibility of the owner of the vehicle, according to the interests of the society, based on the theory of pure responsibility, therefore; According to the above considerations, it cannot be said that the responsibility of the owner of a land motor vehicle is based on this theory.

Pure Responsibility

According to the majority of jurists, the responsibility of the owners of land motor vehicles is based on the compulsory insurance law, the old and new law of no-fault liability. According to them, the compulsory insurance law is the end line for the theory of fault. This is because the compensator of

responsibility, that is, the insurer, is not only at fault, but has no role in the loss. Therefore, the legislator's goal of liability insurance legislation is to ensure that no damage remains uncompensated and the relationship between responsibility and fault is completely destroyed (Bahrami Ahmadi, pp. 543 and 559. MaboudiNeishabouri and Haddad Khodaparast 2013).

Dr. Katouzian, a famous Iranian lawyer, believes that in the mandatory insurance law, the civil liability of the owners of land motor vehicles is based on the theory of risk; That is, the legislator wants to guarantee the compensation of the damages caused by driving a car and to simplify the claims arising from it. For this reason, it created responsibility for the vehicle owner without fault and did not consider the proof of his faultlessness to be effective; However, he does not completely reject the theory of assumption of fault and the theory of obligation to protect, and he equates the mentioned theory in the insurance law with the risk theory of the "conventional theory" and writes: "The law makes the car owner, in terms of the dangerous environment that created, responsible for the losses caused by it, and it is similar to the theory of risk in terms of creating "type of responsibility". But in the sense that the responsibility is not based on the intention of making profit, it departs from the conventional theory of "creating danger" - in addition, we will see that the responsibility is not absolute, whenever it is found that an external cause has caused the harmful incident, the responsibility of the holder is eliminated. goes It is to express this fact that owning a motor vehicle is considered "proof of responsibility" or "proof of causation". Katouzian, pp. 611-613). In other words, in the opinion of this lawyer, he considers all the above three theories regarding the basis of the civil liability of the vehicle owner, but he does not accept any of the theories definitively. In his opinion, even though the compulsory insurance law did not follow all the results of the risk theory, he considers this theory to be more compatible with the spirit of the compulsory insurance law. According to his interpretation, the obligation to protect is a type of obligation as a result of a new interpretation of the responsibility of a type of holder (Katouzian, 2017, p. 611-613). Dr. Hassan Badini believes that the vehicle owner's responsibility is based on absolute responsibility, but he does not deny the role of fault in the entire system of civil responsibility (KhakshurQarasu, 2016). Also, according to Dr. Abedi, the mention of the words "cause", the driver causing the accident and the vehicle causing the accident in the new compulsory insurance law approved in 2015 are proofs of accepting the theory of pure responsibility (Abedi, 2019). Therefore, most Iranian jurists consider the basis of the civil liability of the owner of the vehicle. Responsibility without fault has been called "pure responsibility" (Gholam Alizadeh, 2013, p. 60)

In Afghan law, the road traffic law has established the civil liability of the vehicle owner based on this theory, which means that this law obliges the vehicle owner to insure his vehicle with the insurance company. Article 52 of this law stipulates as follows: "Intermediate owners of motor vehicles, including domestic and foreign natural and legal entities, are obliged to insure their vehicles"; Also, based on Article 54 of the aforementioned law, the violator or the owner or occupier is responsible for the damage caused to the victim due to the failure of the legal duty of "not insuring the vehicle". The aforementioned article stipulates: "At a distance where the motor vehicle is not insured, in the event of a traffic accident, compensation for the resulting damage is the responsibility of the violator, owner or occupier." That is, if the vehicle is not insured, the violator is responsible for compensating it, and if there is no violator, the owner must compensate it. According to Article 3 of the Insurance Regulations, which is in accordance with the subject of Article 52 of the Road Traffic Law, the owner of the vehicle is required to obtain insurance, and it is stated as follows: "Owners of motor vehicles, both domestic and foreign natural persons, are required to take responsibility to insure against the third party in connection with the use of motor vehicles." In this way, it can be said that the legislator has placed the responsibility of the owner of the vehicle on the basis of pure responsibility. But despite the ruling of the law, this theory has not found a place in our laws. Courts do not resolve claims arising from vehicles based on the road traffic law and insurance regulations, and the judicial practice is silent in this regard, and the jurists have not mentioned that the civil liability of the vehicle owner is pure liability. And even some law professors, without analyzing and examining the mentioned laws, refer to Article 797 of the Civil Code and consider the theory of presumption of fault as the basis of the civil liability of the vehicle owner.

Group Guarantee Theory

Some jurists consider the liability of the owners of land motor vehicles to be the group guarantee theory. After researching, they note that the main purpose of the compulsory civil liability insurance law was to compensate the damages caused to third parties through insurance, so according to them, The basis of this law is the group guarantee theory (Safaei and Rahimi, pp. 487 and 74). Although Dr. Reh Peik also believes in the unified theory, it means that in his opinion, on the one hand, the general view of the law is political protection of the victims against third parties, so the responsibility of the owner of the vehicle is implicitly absolute responsibility, on the other hand, it is possible with Referring to the general theory of external factors, the existence of the power of Cairo can be considered exempt from compensation. The basis of the holder's civil liability is the guarantee theory, except for the cases of external causes and human causes .

Conclusion

Examining the basis of civil liability in the current era is very important due to the increase in traffic accidents. Regarding the basis of the responsibility of the owner of a land motor vehicle in Iranian law, various assumptions have been proposed, including: presumption of fault, failure to protect, pure responsibility and group guarantee theory. However, according to the provisions of Article (2) of the law approved in 2015, which obliges the owner to insure, it is clearly seen that the civil responsibility of the owner of a land motor vehicle is based on pure responsibility, and the obligation to insure without pure responsibility has no meaning. And most of the lawyers also believe in this theory. It means the owner, owner and occupier of a land motor vehicle; Because in the first step, the maintenance of the vehicle is the responsibility of its owner and occupier. According to Article 797, the responsibility of the owner or custodian of the vehicle in Afghan law is based on the assumption of fault, so the owner or occupier is the guarantor of compensation for the damage caused by his vehicle. However, Article 52 of the Road Traffic Law, which is considered a special law, obliges the owner or occupier of the vehicle to have insurance, and according to this law, the responsibility of the vehicle protector is pure responsibility, but this theory was never accepted for some reason. But in Islamic law, according to the harmless rule, which is one of the important sources and foundations of civil responsibility, the responsibility of the vehicle keeper is pure responsibility. The jurists consider the provisions of this rule to compensate the loss and fix it.

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