



2528-9705



LEGAL NATURE AND EFFECTS OF CONSUMER GOODS GAURANTEE

Samaneh FEYZI AFSHAR, Mehdi AGHAPOUR*

Department of Law, Kaleibar Branch, Islamic Azad University, Kaleibar, Iran.

*Corresponding Author

ABSTRACT

Goods gaurantee is of specific significance in trade and its type and duration plays a remarkable role in the client's decision as regards purchasing the goods. In many countries' statutes and legal procedure, it is stipulated that the seller is responsible for the safety and soundness of the good before its delivery. Although gaurantee is not clearly discussed in jurisprudential texts in an independent form, it was always one of the issues that had been dealt with under the title of Dhiman (gauranty) by Muslim scholars and jurists since the very dawn of Islamic jurisprudence. The necessity of satisfaction of the costumer or consumer who buys the good is the reciprocal concern of the producer and purchaser that aims at increasing the profit. Muslim legal scholars and jurists express various ideas regarding costumer supporting rules from an Islamic point of view all of which are discussed under the general title of guaranty – that is the closest issue to the modern issue of gauranty. The jurisprudential and legal debates all endorse that the buyer or the one who is subject to the guarantee has the right to terminate the trade due to the existing complications and oppositely the man who provides the guarantee is liable to fix or change the sold piece and compensate the possible loss and damages.

Keywords: *Gaurantee, Consumer Goods, Defected Goods, Non-Consumer Goods, Dangerous Goods, Wholesaler, Retailer.*

INTRODUCTION

It takes a relatively long time that a certain good to be produced and delivered to the costumer. Meanwhile, the good might become defected or deformed or basically be produced in deficient form. In the positive law and legal procedure of amy countries it is stipulated that the seller is responsible for the soundness of the good before delivering it to the costumer (Katoozian, 1992: 243). Today producing companies ensure the buyers that they not only gauranty to fix the defects and deformities of the sold good rather they also offer services that are beyond fixing the defects and deformities. Accordingly, if any one of those warranties that are considered the preliminary requirements and based on the Article 10 of Civil Code are necessarily binding, is breached by the warranter the buyer has the right to ask for the warranted services. Because every transaction, which is seen as a contract by the rational people and the common reason, is subject to the principle of promise keeping and represents an example of the trade based bilateral consent and thus is taken to be valid and correct (Qanavati et al., Contracts Law in Imamyah Jurisprudence, 1: 213).

Gaurantee is one of the newly emerged issues of the modern world that has not been independently discussed in jurisprudence and positive law. Nevertheless, this issue is generally embraced by the community insofar as the majority of people are ready to accept and implement it. Promotion and expabsion of guarantee in our society demonstrates the necessity and importance of legal analysis of this new phenomenon. To put it otherwise, "Taking advantage of

foreign cultures and absorbing it into the moral and religious values is not only reproachable, rather it is a necessity as such” (Katoozian, 1992: 8).

In previous literature, only such issues as right to cancel the transaction due to existing defects, defect-free condition, soundness warranty condition, and so on and so forth, are explained and the nature of this new institution has not been compared with the traditional institutions. While regardless of the currency of this contract in our country, in some cases we see that the companies that provide the guarantee are not committed as regards their obligations and the judge should match it with the positive law (current statutes) when a lawsuit is filed regarding the guarantee condition or contract.

Moreover, no sufficient discussion has been made as to the guarantee of consumer good and all these necessitate the implementation of a comprehensive research in this regard.

Research Objectives

Recognition of jurisprudential and legal aspects of guarantee

Comparing the guarantee of consumer good and durable good (basic good)

Research Questions

What are the legal aspects of guarantee in Iranian law?

With which jurisprudential rules is the word guarantee more compatible?

What differences do the conditions of consumer goods guarantee have with the conditions of non-consumer goods guarantee?

Research methodology

In this research, we take advantage of a deductive approach based on the mental creativity and prior knowledge and information of existing files, the library method is used for data collection and using analytical and logical methods to present new theoretical ideas and these can be used experimentally and practically inform the addresses of the files and legal articles. The data collection method used in the current research is chiefly based on websites and computer files, and through the application of computer cyberspace the author seeks to ask questions and discuss with experts. Since this research analyzes the data in a qualitative way, it is in contrast to the quantitative method. Therefore, there is no statistical population and the criterion of data analysis is the method of reason and logic and reasoning. Thus, in this method, based on the study and inference from the rules we analyze the doctrine theory of hypotheses and data.

The Concept of Guarantee

Terminologically speaking, guarantee or guaranty implies a formal assurance (typically in writing) that certain conditions as stipulated in a contract will be fulfilled. In legal parlance, guarantee is understood in various ways depending on its different applications. In the domain of production and supplying goods, the guarantee is a type of assurance offered by the producer or supplier of a certain good or service that the provided good or service is of the described qualities and its quality and efficiency is warranted in the determined period of time otherwise necessary steps will be taken for the repairing or replacing the sold item along with additional services.

In English legal literature the concept of warranty is conceptually close to guarantee and sometimes it is used as a replacement and equivalent for guarantee. However, in trade affairs sometimes certain distinctions are made between these two notions and usually guarantee is considered to be an ancillary assurance and conditioned upon a negligence or an event in the future while warranty is taken to be a currently effective and complete obligation and



undertaking regarding the defects of the sold item both in view of the quality and quantity as mentioned in the contract signed by the parties. The warranted description or quality (explicit or implicit) should exist in the time when the contract is sealed otherwise the warranty is breached in the very moment that it is signed; if it is proven that the realities are not the way that they have been mentioned the warranty loses its validity. Warranties are irrevocable and effective; even if they are in oral form.

Guarantee is a contract or undertaking that is of an ancillary nature as compared to the main contract and until the time that no breach or negligence is made in future it is not nullified. Despite the aforementioned distinctions, the obligations undertaken by the sellers and suppliers of goods in terms of repairing or replacing the defected items are called guarantee in European law and in American commercial law they are known as warranty or extended warranty. (Brian, 2009, p.1725; Mullis & Oliphant, 2003, p. 535).

The seller's responsibility before the consumer good

Since guarantee as a term has not been independently discussed in jurisprudential and legal documents of Iran and it is often referred to as civil liability we first take a cursory look at the definition of civil liability and mention its differences with other types of liabilities; and in the next part we will discuss civil liability in full length.

Before the expansion of industrial revolution, commercial transactions were relatively considered personal and the goods were produced manually and in a traditional unmechanistic fashion. The consumer was usually informed of the production process as well as the identity of the producer, and if a defect or a problem occurred he knew to whom should he refer. In this period of legal system known as American common law the Emptor Caveat (the principle that the buyer alone is responsible for checking the quality and suitability of goods before a purchase is made) governed the commercial transactions and the buyer was responsible alone as regards the possible defects and problems. But with the expansion of industrial revolution, development and extension of industrial machines, replacement of manual production with mass mechanistic production, and consequently the emergence of new players including suppliers, importers, brokers, retailers and wholesalers, new problems were brought about for the consumers in terms of goods supply, on the one hand, and the unprecedented consumption of consumer goods both by the buyers and consumers, on the other. Naturally, in such conditions more complicated and technical goods come into the production cycle and are guided to the consumption market and thus the ordinary consumer does not have the possibility to check the soundness and appropriate working of the good.

Obligatory Nature of Guarantee

Guarantees are usually divided into two types of commercial and legal guarantees. The first type which is normally known as voluntary guarantee is used as a comparative advantage in the marketing process in order to persuade more costumers to buy a special brand. (Van Bar et al., 200^v, v.2, p. 1390).

In European systems before the aforementioned instruction, the general rules of contracts including the rules of unjust contractual conditions were used as regards the validity of voluntary guarantees.

Today, legal and common norms cause certain limitations for the freedom of guarantee provider in respect of the proposal process, form and content of the guarantee and the scope and obligations resulted from the guarantee and some conditions and requirements have been taken



into consideration as to the guarantee provider himself. The second type of guarantees are obligatory and the producers and suppliers are obliged by law to provide such a guarantee for their offered goods and services. Then this guarantee is legal and mandatory. This type of guarantee is offered to a particular series of consumer goods and services and seek to ensure the rights of consumers based on certain rules that are determined in advance¹.

Mandatory nature of guarantee and additional obligations of the seller or producer of the good

The second clause of article 1 of European law and article 6:151 of the fourth book of DCFR have described guarantee as an undertaking. Anyway, guarantee whether as a stipulation, an independent contract, or a unilateral undertaking contains certain obligations for the guarantee provider. Thus, European law in the article 6 has insisted on the obligatory nature of guarantee without any clear reference to the legal nature of the guarantee. In other words, guarantee even in its voluntary form will be mandatory and like every other voluntary undertaking is self-imposed. Guarantee is different from the good compatibility and soundness condition in terms of its nature and content and no doubt the rights and obligations resulted from it is completely different from the rights, obligations and responsibilities resulted from the non-compatibility of the good. It is far too clear that the buyer's rights resulting from the guarantee do not deprive him from resorting to the legal sanctions of the non-compatibility of the good and the rights resulting from sale contract particularly the privileges of consumer sales.

Analysis of guarantee as a stipulation

According to the themes discussed before, the obligations of the guarantee provider are of two general types: first type, assurance of the existence of certain qualities in the sold items or ensuring the claimed endurance and function; the second type is concerned with the repairing, replacing and finally refunding the whole payment or part of it. While if the guarantee is analyzed as a stipulation, the description of this stipulation will be different according to the case.

Description of guarantee as the quality condition

In Iranian positive law if the first type of obligations are regulated as the stipulation in view of the jurisprudential principles they can be analyzed in two ways; first analysis, they would be taken as the quality condition and accordingly based on the article 234 of Civil Code the existence of a certain quality has been stipulated as the transaction condition; in the sense that it is said that certain quality will continue to exist in the sold item. In other words, the good is capable of having the mentioned quality. According to the current theory of Imamyah jurisprudence that is based on the condition of "stipulation", assurance of a particular quality in the good is an obligation that is to be undertaken by the seller.

According to some of the jurists, the quality condition should be analyzed in a way that stipulates the right to annul the transaction in the event of inexistence of the mentioned quality; because

¹Such as article 11/2 Spain's consumer rights act, article 33 of Greece consumer rights act and the second clause of article 15 of Slovenia's consumer rights act and the regulations number 73 of commerce department of Slovenia passed in 2003. In the first clause of article 3 of Iranian consumer rights act and the third clause of the same article the issuance of guarantee for the sold product or service is considered mandatory for the suppliers and producers. According to the content of clause 3 of the article 3 of the same act, guarantee is obligatory for sixteen groups of goods and services and extra references are made to the chapters 84 to 91 of the book of export and import rules. In the executive rules of the clause 4 of article 3, medical appliances are also considered as items requiring obligatory guarantee. It is notable that this procedure is visible in the regulations of many countries!; such as Polish department of internal commerce enacted in 1987 that consider the guarantee of 275 goods mandatory.



the obligation of seller to ensure the existence of a certain quality in the sold item is not sensible in transaction. According to their view to the effect that stipulation in general leads to suspension or annulment, in such cases as quality condition in which the subject of condition is outside the will of the one who is undertaking the condition, the reality of condition is suspension of obligation towards the contract upon the fulfilment of condition in the outside world. In other words, in such cases the contract is not suspended rather the one who is undertaking the obligation has conditioned the fulfilment of the condition to its external realization.

Anyway, according to the jurisprudential view that is reflected in article 235 of civil code, whenever it becomes revealed that the sold item does not contain the mentioned quality or it did not have the capability of having this quality during the guarantee term, the one whose bought item is guaranteed has the right to annul the transaction; but other ways of recompensation like repairing or replacing cannot be taken as the executive sanction of the breaching of quality; of course, this is the case based on the idea that grounds the quality condition upon the determined object (Emami, 1973, 282).

In a general trade if the delivered item lacks the quality mentioned in the contract, the buyer has the right to ask the seller to replace it with a new one or provide a similar item based on the contract; but he does not have the right to annul the transaction unless the seller could not be forced to meet the obligation (Article 239 of Civil Code).

Second analysis, guarantee and verification of the item's quality to be taken as a warranty. That is to say that the seller "assures the buyer of the existence of a certain quality or even the continuation of that quality for a determined period". This type of assurance is not denoting the ordinary sense of obligation and undertaking another man's debt in the event of default on his behalf. Guarantee in this context refers to undertaking the compensation of the lack of the guaranteed quality. In other words, the seller or guarantee provider is warranting the existence and continuation of a certain quality or function in the sold item for a certain period of time (guarantee term) and this undertaking is in fact the warranter's obligation that if the sold item does not have the mentioned quality or this quality does not continue to exist in the good, he should recompense the damages incurred to the costumer either via free repairing the item or changing the damaged item with a new one.

Description of guarantee as the action condition

Although guarantee in the first sight is the assurance of the existence of certain quality or qualities in the sold item; in fact, the obligations undertaken by the man who provides the guarantee cover the repair and reform, replacelement and refunding the whole price or part of the price. In all these cases, the obligation or obligations of guarantee provider if stipulated in the sale contract could be analyzed as the condition of positive action. The condition of the action at issue could be a material action condition like providing repair services and it can also be legal and material condition. If the repair operation requires replacing certain parts of the item or the whole replacement of the good it is not a mere material action rather it is concerned with the ownership rights that fall under the category of replacing the defected item with the new item. In this case, guarantee is an action condition whose implementation requires new transaction or replacement between the parties.

All triple analyses and descriptions regarding guarantee do not have any problem as such and is compatible with legal rules and jurisprudential principles; but two complications remain in this description or analysis; first complication is concerned with the description of guarantee as a



stipulation that is offered by the supplier or producer not the final seller of the item; then if the undertaken guarantee is with the buyer, such an analysis is the case in those occasions where the guarantee provider is the seller. Unless it is analyzed and justified in a way that in those cases that the guarantee is provided by the producer or the major supplier (that is mostly the case), the obligations of guarantee as an undertaking or a stipulation is mentioned in the first sale contract among the producer and supplier; in other words such an obligation can be transferred as a right in relation to ownership. To put it otherwise, the rights resulting from the guarantee is transferred from the seller to the customer who buys the item.² The other analysis reads that guarantee (in the sense of the producer's assurance and undertaking) in the first sale contract to be described as the undertaking or a condition in favor of the third party and it is clear that the third party could own the guarantee as the general owner in the guarantee term; then in the distribution and sale chain after transferring the ownership of the good to the final buyer and delivering the sold item to him along with its guarantee the obligations stipulated in the guarantee in favor of the consumer are enforced.

The second difficulty is more serious and it is concerned with the anonymity of the scope of obligations stipulated in the guarantee known as the unknown state of the stipulation. Although the type of obligations is clearly stipulated in the guarantee and in various legal codes it is mentioned that the guarantee provider should explain the conditions and undertaken obligations in a very transparent fashion and even determine the exceptions that lie outside the scope of guarantee (Von Bar, 2007, v.2, p 1405); however, since these obligations should be implemented in a determined period of time (guarantee term) and depending on the item condition and its function it is possible in practice the guaranteed item be repaired or replaced for several times and in every stage the repair is different due to the materials used for repairing, as a result the scope of the obligations is not indeed clear and this ignorance is both as to the desirable amount of action and the repair intervals. Anyway, this difficulty not only is at stake as to the "guarantee as the stipulation" rather as to guarantee as independent contract more seriously. Regarding the stipulation it is discussed by the jurists and legal experts that if the determinateness principle is obligatory as regards the contracts and stipulations? Some jurists have given positive answer to this question and believe: the ancillary state of the condition does not change the basic essence of it and the conditions stipulated in the article 190 of Civil Code is at work regarding all types of contracts and obligations and stipulation does not have any advantage over other obligations (Katoozian, 1989, vol. 3: 167).

On the other hand, some other jurists believe that no reason exists as to the requirement of detailed determinateness of the condition and general knowledge is enough in this regard. The major document of the article 232 of Civil Code that seeks to express the wrong conditions does not speak of any detailed undetermined (Emami, 1973: 272).

Jurisprudential doctrine is unanimous regarding the annulment of the unknown condition one's ignorance of which cause ignorance in return; but as regards the necessity of clarity of

² It is noteworthy that the transferability of guarantee of consumer goods is accepted as a maxim in the European legal system. According to the article 1615 of Belgium's Civil Code and article 6: 251 of Holland's Civil Code the rights of guarantee are transferred to the next owner provided that all conditions stipulated in the guarantee to be implemented right the way it has been mentioned. This very principle is found both in Scotland and England Civil Codes (Treitel, 2003, p.250).



condition in general and the validity of unknown condition and the possible effect of it on contract there is difference of opinion. The master of jurists Sheikh Morteza Ansari state:

This issue is disputable and the jurists ideas in this regard are not unanimous. Many of the jurists are of the belief that stipulation is effective on the value of sold item and the satisfaction of the transaction depends on the fulfilment of the stipulation; the requirement of this analysis is the harmfulness of ignorance in condition.

Anyway, some of the jurists believe that in all transactions the stipulation should be taken into consideration and the sold item is not necessarily part of the financial consideration; but no one doubts that it is involved in the increase of the price and the sold item and the price that is paid in lieu of the item along with the stipulation is not returned for the sold item without condition; then the unknown state of the stipulation makes the transaction hazardous.

The alternative stance believes that if the unknown state of the stipulation does not permeate through the transaction, there is no reason for the annulment of the condition let alone the annulment of the transaction, unless someone claims that the Prophet has warned the Muslim community of deception in transaction via ambiguity and demonstration of this claim is so difficult or it might be claimed that the rational people recommend us not to be involved in the transaction that is shrouded in ambiguities and the demonstration of this claim is hard either and even if we take it for granted we cannot tackle such significant reasons as the necessity of loyalty to the stipulation or contract.

Some jurists are divided as to the various extensions of the ambiguity condition and even they declare a number of ambiguous cases correct even despite their ambiguity while others declare them unlawful because ambiguity in their view is overshadowing. The author of *Makasib* states after quotation of the ideas of jurists:

It is much more conforming with these principles to say that there is no difference between the condition and part in view of the damage done due to ignorance; but they reach the conclusion that if the condition is commonly ancillary and is not part of the transacted item it lies outside the jurisprudential debate of the damaged transaction.

Anyway, as to guarantee condition one can say that those parts of the guarantee content that endorse and warrant the existence of a certain quality in the good are basically determined and there is no possible ignorance or damage resulted from it; but as to that part of the guarantee content that the undertaking is concerned with action (repairing, replacing and so on and so forth), the conditioned case is not clear in a detailed fashion³ and we do not have but two ways to correct it; either based on the view of some jurists and legal experts, we should consider the undetailed knowledge implicit in the stipulation and declare the latter correct. Particularly in those cases that the general public considers it to be ancillary and not inside the transacted item and the rational people believe that here we should be tolerant; or it might be said that there is no ignorance here that would lead to damage; because the producers and suppliers of the goods

³ In such cases, the quality of conditioned item is clear; but it is possible that the man who is given the guarantee would not be conscious of its existence in the purchased item rather he would be doubtful of it. In such a case, although the conditioned item is unknown; but such an ignorance does not incur any damage to the transaction; because damage and risk are not rooted in that degree of ignorance; since if it becomes clear after contract that the transacted item lacks the quality the man who is given the guarantee has the right to annul the transaction and ask for refunding (Khoei, 1996: 349).



design the guarantee services based on the statistics and probabilities and this denies the damage and reduces the risk in transaction that is commonly tolerable.

Analysis of guarantee as a “unilateral obligation”

According to clause 1 of article 13 of Polish Act of Consumer Transaction it is guarantee provider's will that authorizes the guarantee; but this act does not provide any further explanation regarding the legal nature of it; however, based on some cases of the Civil Code that are applied as to common transactions, depending on conditions a guarantee can be classified as a contract, contractual condition or a unilateral obligation or undertaking (Von Bar et al., 200^v, v.2, p. 1399).

Theoretically speaking, it is possible that one person undertakes an affair in a unilateral fashion without considering the acceptance of the other side; but in practice, most of the legal systems cautiously approach unilateral obligations. Some legal systems do not consider unilateral undertakings influential and irrevocable, even if the warrantor has intended to accept an undertaking without any legal force. Some systems consider unilateral obligations necessary to follow, provided that they are not for free or to be registered in official form. Previously legal systems were afraid that unilateral undertakings would lead to results that might be socially undesirable; but today such obligations typically are of legitimate commercial objectives. For the time being, some unilateral obligations are taken in the process of commerce that lack the acceptance and no one doubts their practical significance and the most striking example of it is bonds in international payments. (Von Bar et al., 2007, v.1, p.133).

In some European legal systems, unilateral undertakings can be forcing and obligatory without acceptance; when it is expressed in such way or it is inferred from the contract itself. This trend is visible in the legal systems of Germany, Austria, Slovenia and Stonia. In some legal systems like what has been stipulated in the article 1987 of Italian Civil Code, the unilateral undertaking that does not need acceptance is not obligatory, unless in special cases that are mentioned in law; like obligation for payment and endorsing a debt (article 1988). Anyway, both from theoretical point of view and according to positive law there seems to be no obstacle before accepting and analyzing guarantee as a unilateral obligation that comes to existence following the announcement of the good and service supplier in the form of guarantee document in favor of purchasers and users; particularly in the European instruction and laws it has been strongly emphasized on the obligatory nature of guarantee regardless of its form. Such a description of guarantee paves the ground for its realization from legal point of view. In Scotland's law, guarantee might be essentially a contract, although it is possible that some guarantees to be declared unilateral undertaking that in such cases they will be obligatory without acceptance.

In Iran's positive law analyzing guarantee as a unilateral undertaking by the guarantee provider (warrantor) is facing the problem that the validity and importance of such obligations is not recognized as official particularly the view of majority of Imamyah jurists is not conforming with independent obligation that is essentially forcing; although some jurists has certain views regarding the validity and influence of such conditions and obligations.

Analysis of Guarantee as independent contract

Few numbers of laws have discussed the legal nature and form of guarantee. According to the clause A of article 7:6 of Holland's civil law, guarantee is a unilateral contract. In British law, guarantee is also of a contractual nature; that is to say, the producer or supplier proposes the



guarantee and the consumer accepts it. Of course, accepting the obligatory nature of guarantee would implicitly infer the acceptance of the good itself. Anyway, analysis of guarantee nature as an independent obligatory contract is consistent with legal logic; particularly in such cases that the initial guarantee term expires and the guarantee is extended; the only possible option would be describing the extended guarantee as an independent contract of transaction; because in this stage guarantee and the obligation resulted from it cannot be declared as a stipulation related to the transaction contract and since the extension of guarantee takes place in lieu of paying an amount as the price of service it needs bilateral agreement.

Anyway, if the initial guarantee is extended as a contract independent of sale contract. The first side of the contract is the warrantor or guarantee provider who is either the producer or the supplier of the good while the other side is the guarantee user or buyer. Of course, in practice the seller gives the guarantee representing the supplier or guarantee provider and by giving the guarantee announces the obligatory nature of the contract and its acceptance is realized by receiving the guarantee card. But as to the nature of this contract and its legal description there are three hypotheses; first, analysis of guarantee in the form of one of the existing determined contracts; second, analysis of guarantee as a determined contract with a special nature of its own; third, analysis of guarantee as an indetermined contract (contract article 10).

CONCLUSION

The condition of assurance of the soundness of good as stipulated in the guarantee lets the purchaser to repair the possible damages for free without giving any extra explanation to the seller.

It seems that Iranian law has not discussed the issue of the producer's responsibility under the title of consumer protection act in a detailed and exact fashion and only in the article 2 of this act all suppliers and producers are declared responsible in a shared form. EU Instruction is more complete than the protection act and then we had to pay more attention to EU Instruction in codification of this act.

Civil liability is a very detailed debate and one can dare to say that it is based on individuals who live in the society and we all are concerned in some way with them. Then this act is comprehensive and flawless. The general conclusion that can be drawn from these discussions is that the producers and importers of the imported goods are the men who are responsible for any type of damage resulted from defect before the people who have bought the item and suffered the damage. The wholesalers and retailers are responsible in the second place and have the right to question the major responsible ones as to the possible damages.

The role of the secondary responsible people is like a bridge that take the responsibility finally to the chief responsible ones. To this very reason, if the goods of a valid producer are bought by the costumers in packed form and a damage is detected in the good the law should take the side of costumers and instead of questioning the seller should sue the chief producer.

Defect in the civil liability of the producer is a completely different notion in the contracts law to the effect that in this branch of civil liability a product is defected when it lacks the security that is normally expected from it in ordinary conditions.

Demonstration of civil liability resulted from consumption of the damaging goods for the damaged consumer is not simple because the consumer who is not conscious of the process of the production of certain good is under the protection of law and can sue the producer for all



probable damages. Since he is considered the man who has suffered an irreparable damage and should provide the reason to defend himself against the producer and this is a tough condition. One should struggle to defend the rights of the consumer and the basis of the responsibility is grounded in the assurance of his right. The authorities must seek to moderate the general rules in two respects:

1. The responsibility of the producers and buyers should not be limited to the contractual relation and they have to be considered responsible before all types of defects.
2. The man who has suffered the damage must be exempted from proving the damage and the producer should be taken as the only entity responsible for the damage.

Mere responsibility is the best legal basis for the producer's liability before the goods. In Iranian legal system, responsibility based on fault has retained its place as a principle in the relationship between the producer and consumer. This cannot protect the rights of the consumer and it is better to move towards the mere responsibility of the producer in order to repair the possible damages.

Suggestions

As it was mentioned before, in contractual relation the responsibility of the seller and producer is based on the examinable defect option and in fact if a man has suffered a damage due to the defected good he can annul the transaction or ask for refunding. The legislator has accepted the same basis in the article 2 of the Act of Protection of Consumer Rights enacted in 2009. Insofar as according to this article, all suppliers of the goods and services are individually or collectively responsible for the soundness of the supplied goods and services based on the principles stipulated in the contract. If the transaction subject is general, it will be the right of the customer to ask for repair or replacement due to the existence of a defect or inconformity. However, if the transaction subject is particular and determined object the customer can ask for annulment and refunding. In such a case if the contract is annulled by the consumer the compensation will not be paid by the supplier. In fact, in contractual relations the theory of assurance of soundness of goods is always the case.

But in extra-contractual relations or in those cases in which the term responsibility is resulted from production in front of other consumers, one should say that the producer can no longer be regarded responsible based on the emergence of a defect in the product rather in such cases the causal relation should be obtained between the damaging act of the producer in producing a damaged product based on the general principles of civil liability. To demonstrate such a causal relation between the producer's act and the incurred damages there is no necessity for a contract to be sealed between plaintiff and defendant. In fact, according to the criterion of article 132 of civil code, no one can impose any harm to others. The producer of a defected product can predict well that the defect in a product can cause damage in all times and there is no necessity for affinity between the producer and consumer. If mediating sellers cause a change in a product or do not sell the product with their own assurance this causal relation will not be cut. Therefore, in the extra-contractual relations the seller not only can be responsible based on the acceptance of the condition of assurance of the soundness of the product. By demonstration of the damage he can also be the responsible one for the incurred damage.

References

Brian, George; Deborah, Carlin, Brian and Deborah on Tort. Sweet and Maxwell, 2009.



Emami, Seyyed Hassan, Civil Law, vol. 3, Islamyah Press, first edition, 1973.

Katoozian, Nasir, Civil Law, General Principles of Contracts, vol. 4, Behnashr Press, First Edition, 1989.

Katoozian, Nasir, Civil Law, Legal Actions (Contract), Enteshar Press, 1992.

Mullis, Alastair and Oliphant, Ken.2003: p 204-. Malaurie, Philippe et Aynes, Laurent, et Stoffel-Munck, Philippe.2003: p. 157.

Van Bar, Willem H; Lukas, Meinhard; Kissling, Christa, Tort and. Regulatory Law, Springer-Verlag/Wien, 2007.

