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Civil Liability of Banks for Employees' Actions toward Customers

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ABSTRACT

If, following legal scholars, the principal objective of civil liability rules is considered to be compensation of the injured party and reparation of the damage incurred, then the State and municipalities cannot be regarded as exceptions to this rule. In general, damages resulting from the activities of governmental and municipal institutions may be categorized into three types: violations of the fundamental and public rights of citizens, damages arising from the economic activities of the government, and damages caused by deficiencies in the provision of public services. Acceptance of the principle of governmental and municipal liability alone is insufficient, because the State and municipalities themselves consist of a collection of individuals and agents. Consequently, when unlawful damage results from the performance of this collective body or one of its components, the injured party faces uncertainty as to whom recourse should be made against: the direct tortfeasor, who may be an insolvent employee, or the governmental organization, which possesses institutional capacity and resources. Accordingly, this article examines which entity should bear responsibility for compensating damages resulting from the personal fault and administrative fault of employees.

Keywords: *Fault; Civil Liability; Banks; Act; Damage.*

Introduction

Various theories concerning the civil liability of the State and municipalities represent the intellectual achievements and valuable outcomes of scholarly interaction and debate among legal thinkers. All such efforts have been directed toward a single objective: ensuring that no injured party becomes unjustly victimized by the harmful actions of those exercising public authority (1, 2).

Where the State or a public institution causes damage to others through the actions of its employees, recognizing institutional liability does not appear ethically unjustified. In such circumstances, the fundamental question is whether a specific individual should bear the loss resulting from public services or whether the State, acting as representative of society as a whole, should compensate for the damage. Accordingly, this research seeks to answer the following question: What is the civil liability of banks regarding employees' actions toward customers?

To answer the principal research question, two hypotheses are proposed:



1. Banks bear liability for employees' actions toward customers only when the damage results from administrative fault and defects in administrative facilities or organizational mechanisms.
2. Banks are liable for employees' actions toward customers in all circumstances, whether the damage results from administrative fault or from the employee's personal fault.

Concept of Civil Liability

Any person who exercises a right or authority in a manner that causes damage to another is obligated to compensate the loss incurred; this obligation to repair harm is referred to as civil liability.

In its broad sense, civil liability encompasses both contractual liability arising from breach of contract and non-contractual liability resulting from harmful conduct (3).

The term "civil liability" itself is not expressly used in the Iranian Civil Code. Historically, the expression *quasi-guarantee (zeman-e qahri)* was employed instead; however, contemporary legal writings and doctrinal discussions predominantly employ the concept of civil liability as the governing terminology (4).

Among the theoretical foundations of civil liability, two principal doctrines have received particular attention, which are briefly examined below.

Foundations of Liability

Fault-Based Liability

Article 1 of the Civil Liability Act provides that any person who, without legal authorization, intentionally or through negligence causes harm to another's life, health, property, liberty, commercial reputation, or any legally recognized right shall be responsible for compensating the resulting material or moral damages.

Careful examination of this provision, together with Civil Code provisions relating to causation, demonstrates that Iranian law fundamentally adopts fault-based liability as its governing principle. The dominant and widely accepted view in Iranian legal doctrine holds that liability is, in principle, founded upon fault, whereas strict or no-fault liability constitutes an exception (5). According to the classical fault theory, liability arises only upon proof of fault. Consequently, the presumption favors non-liability, and because this presumption aligns with legal principles, the alleged tortfeasor is not initially required to present proof. The burden of proving fault rests upon the injured party. Therefore, absent proof of fault, neither liability nor compensation is recognized. However, once *prima facie* fault is established, the defendant may rebut liability by disproving fault or invoking an external cause in order to obtain exemption from responsibility (3).

No-Fault Liability

Proponents of the theory of no-fault liability draw inspiration from diverse philosophical and social foundations, yet they agree that fault is not a necessary element for establishing liability. According to this view, whenever a person causes damage, compensation must follow regardless of whether the conduct producing the harm was correct or erroneous. The decisive factor is attribution of the damage to the activity of the responsible party rather than proof of fault. The injured party need only demonstrate the occurrence of damage and its causal connection with the defendant's conduct; the judge's task is therefore to verify this causal relationship rather than investigate fault (6).

This approach is also known as the risk-creation theory. Under this theory, anyone engaging in an activity creates a sphere of risk for others, and the individual or institution benefiting from that risk-producing activity must also bear responsibility for resulting damages. One of the principal advantages attributed to this theory is that, by removing fault as a constituent element of liability, compensation claims become easier to establish, relieving the injured party from the difficult burden of proving negligence.

Types of Employee Fault

Administrative Fault

In general terms, administrative fault arises when there is a violation or breach of rules governing public law. Instances of deviation from public law principles may be derived from the substantive criteria traditionally associated with administrative legality, including:

- a) illegality of public administrative acts;
- b) violation of jurisdictional rules;
- c) abuse or excess of authority;
- d) improper execution of statutory and regulatory provisions;
- e) failure to perform official duties (7).

Personal Fault

Personal fault occurs when an employee, intentionally or through negligence, causes damage to a third party in circumstances unrelated to organizational instruments, administrative structure, or institutional management. In such cases, the wrongful act is attributable primarily to the individual employee, and it may be inferred that personal misconduct or bad faith existed in the commission of the harmful act.

Administrative Fault and State Liability (Administrative Fault of the Employee and Bank Liability toward the Customer)

Acceptance of the principle distinguishing administrative fault from personal fault has led, unlike private law, to a situation in administrative law where governmental liability is not absolutely dependent upon individual fault. Public institutions become liable only when an administrative fault can be attributed to them. Such fault arises from professional errors committed by public employees acting as organs of a public legal entity, through whom the fault is legally attributed to the institution itself, in a manner that prevents identification of a specific individual as the sole wrongdoer (7, 8).

Although the apparent wording of Article 11 of the Civil Liability Act does not initially treat administrative faults arising from employee misconduct as creating direct governmental liability, the final part of the provision obliges the State to compensate damages resulting from defects in administrative equipment or organizational structures. In other words, the provision generally considers damages caused by employee fault to entail personal liability; however, compensation becomes the responsibility of the State when the damage cannot be attributed to individual fault and instead originates from institutional deficiencies. Nevertheless, in situations where governmental fault is presumed—namely when the State, acting as employer, supervises and directs an operational environment and harm is caused to a third party through employee activity—the harmful act may occur even without identifiable employee negligence, yet governmental liability still arises because the State has created a hazardous environment

without adequate safeguards. Such circumstances are legally interpreted as organizational deficiency or defect in administrative arrangements (9).

According to Article 11 of the Civil Liability Act, administrative faults are those connected with deficiencies in administrative facilities. These deficiencies may be understood as failures of proper management or supervision that ultimately lead to damage suffered by service users. Although the immediate act may be committed by an employee, the occurrence of harm reflects inadequate institutional oversight and organizational negligence rather than purely individual misconduct (3).

Considering these principles, banks constitute institutions requiring a higher degree of supervision and monitoring than many other organizations because their operations directly involve financial assets. Even minor operational errors may result in substantial losses for customers or for the bank itself. Therefore, effective managerial structures and precise supervisory mechanisms must exist in every bank branch to prevent employee misconduct and operational errors.

The latter part of Article 11 of the Civil Liability Act provides that whenever damages are attributable to defects in the equipment or organizational structure of an institution, compensation shall be borne by the relevant organization. Accordingly, errors occurring within banks that stem from insufficient supervision or defective management systems must be compensated by the bank itself. Subsequently, the bank retains the right of recourse against the responsible employee or employees pursuant to Article 12 of the Civil Liability Act (5).

Personal Fault and Employee Liability (Personal Fault of the Employee and Bank Responsibility toward the Customer)

Within the legal framework derived from the distinction between administrative and personal fault, personal fault refers to conduct that is non-professional in nature—namely, actions lacking any connection with the employee's occupational duties or the provision of public services, or professional conduct that involves intentional wrongdoing or fault equivalent to intent. In such cases, if damage results from this conduct, the offending employee bears personal responsibility for compensation. Where the State has compensated the injured party on behalf of the employee pursuant to Article 12 of the Civil Liability Act, it may subsequently seek reimbursement from the employee concerned (10).

Although the first part of Article 11 of the Civil Liability Act appears to treat administrative and personal faults similarly, the second part—assigning responsibility for damages arising from organizational deficiencies to the State—supports the interpretation that non-intentional professional faults ultimately relate to structural weaknesses of the public institution. Consequently, employee liability should, in principle, be confined to cases of genuine personal fault (11).

Under Article 11 of the Civil Liability Act, employees of governmental bodies and affiliated institutions are personally liable when, during performance of assigned duties, they intentionally or negligently cause damage to third parties. Legal responsibility of the employee arises only where the harm results from intentional misconduct or negligence; in other words, liability materializes upon proof of personal fault (5).

Personal faults committed by bank employees frequently occur due to customers' lack of awareness or excessive trust placed in individual staff members. For example, banking practice consistently emphasizes the invalidity of non-perforated or non-authenticated documents. Customers must ensure that any receipt issued by the bank is

officially perforated and stamped; otherwise, such a document lacks legal validity, a warning that is typically stated on the receipt itself.

This situation raises an important question: what responsibility does a bank assume when intentional misconduct is committed by an employee? Should the bank deny liability on the ground that the conduct constitutes a purely personal fault, leaving compensation solely to the employee?

Reference to relevant legal provisions assists in answering this question. Article 171 of the Constitution establishes that when damage results from judicial fault or error, the wrongdoer bears liability if fault exists; otherwise, compensation shall be paid by the State. Likewise, Article 328 of the Civil Code provides that anyone who destroys another's property is liable to compensate for it regardless of intent, and Article 1 of the Civil Liability Act imposes liability upon any person who unlawfully causes material or moral damage through intentional conduct or negligence (6, 12).

Based on these provisions and the first part of Article 11 of the Civil Liability Act—which declares that public employees who intentionally or negligently cause damage are personally responsible—it may initially appear that a bank bears no liability for damages arising from employees' personal faults and that compensation must be sought directly from the offending employee. However, a practical difficulty emerges where the employee lacks financial capacity to compensate the injured party. In such circumstances, denying institutional responsibility would undermine public confidence in banking institutions, discouraging customers from entrusting their funds to banks due to fear of uncompensated loss.

Considering paragraph (c) of Article 35 of the Monetary and Banking Law, which provides that banks are responsible for damages caused to customers through banking operations, a more balanced interpretation is that banks should compensate customers for losses and subsequently exercise recourse against the offending employee under Article 12 of the Civil Liability Act. In practice, banks have adopted preventive mechanisms such as requiring cashiers to execute official guarantee undertakings supported by one or more guarantors, enabling the bank to recover losses from guarantors where employee misconduct results in financial damage.

Characteristics of the Harmful Act

Connection Between the Act and the Performance of Administrative Duties

A harmful act committed by an employee of the State or municipalities that causes damage to others must be connected to the administrative service or duty assigned to that employee. In other words, the employee must cause the damage during the course of professional activity and within the framework of public service delivery. For this reason, employee misconduct is generally regarded as a professional or occupational fault.

The logical consequence of this analysis would be that an administrative fault committed by an employee should result in governmental or municipal liability, because the employee acts as an agent of a legal entity and the fault is legally attributable to that entity. Nevertheless, Article 11 of the Civil Liability Act does not fully adopt this conclusion (6).

Temporal Connection Between the Occurrence of Damage and the Performance of Duty

The harmful act must occur during the execution of public service or administrative activity. Therefore, an employee who causes damage while on leave or outside official working hours bears personal responsibility for

compensation. A practical question arises regarding the burden of proof in liability claims: must the injured party prove that the employee acted within the scope of duty, or must the State demonstrate the contrary?

An employee formally employed by a public institution is generally presumed to act in an official capacity during administrative working hours and, in some cases, even beyond such hours—particularly where the employee personally invokes official status. Consequently, a legal presumption of mission (*presumption of official duty*) exists: any act performed during administrative working hours is presumed to be connected with official duties. The injured party may rely on this presumption before the court, and the governmental institution must rebut it by proving otherwise (13).

Connection Between the Act, Its Purpose, and the Means of Public Service

Not every loss arising from an employee's conduct during working hours results in governmental or municipal liability. Beyond temporal coincidence, a substantive relationship must exist between the objective of the wrongful act, the means employed, and the administrative service itself. The act must be performed with the intention of providing public service, fulfilling an administrative obligation, or achieving the purpose for which the employee was appointed, using appropriate means directed toward that objective.

Such conduct constitutes an administrative act; therefore, if the employee commits a professional fault during its execution, the State assumes responsibility for compensation. However, where the employee's conduct is so disproportionate to the legitimate objective or customary means of performing the duty that intentional harm may be inferred—such as unlawfully detaining an individual under the pretext of stopping unauthorized construction—the act will be characterized as personal misconduct rather than administrative fault (10).

Employees Subject to Article 11 of the Civil Liability Act

Article 11 of the Civil Liability Act establishes a general rule according to which all employees of the State and municipalities who, even while performing their duties, cause damage through fault are personally liable for the harmful consequences of their actions. Subject to statutory exceptions, the provision encompasses all public employees regardless of the type of employment relationship. Thus, it makes no difference whether the employee's relationship with the State is governed by the Civil Service Law or by special employment regulations. The essential requirement is the existence of an employment relationship between the damaging actor and a public legal entity (14, 15).

Employees Subject to Article 12 of the Civil Liability Act

Under Article 12 of the Civil Liability Act, employers governed by labor law are liable for damages caused to third parties by their employees or workers during or on the occasion of performing assigned duties. Although the State is not always liable for harmful faults committed by its personnel, in situations where it acts as an employer subject to labor regulations and hires workers or employees under labor law provisions, it assumes responsibility for damages arising from their actions, provided that a customary causal connection between the act and the resulting harm is established.

Accordingly, Article 12 functions as a qualification or limitation upon the general rule expressed in Article 11 of the Civil Liability Act (5).

Application of Articles 11 and 12 of the Civil Liability Act and Their Relation to Bank Liability

Proof and Concurrence of Fault

Analysis of Articles 11 and 12 of the Civil Liability Act leads to the conclusion that banks, as profit-seeking institutions, must assume greater operational risks than many other organizations and consequently bear broader responsibilities. As previously explained, under Article 1 and paragraph one of Article 11 of the Civil Liability Act, an employee who commits fault is personally responsible for the damage caused. However, the practical issue concerns the employee's financial capacity to compensate the loss. If the employee lacks such capacity, the question arises as to who should ultimately bear the burden of compensation.

In the context of banking institutions, Article 11—particularly its first paragraph—does not adequately protect customers. Instead, Article 12 provides the more appropriate framework: the bank should compensate the customer and subsequently exercise recourse against the offending employee. Where the employee is partially capable of compensation, the bank may recover the payable amount from the employee and cover the remaining loss through institutional resources before seeking reimbursement. Such an approach ensures depositor confidence and removes anxiety concerning the safety of entrusted funds (9).

Concurrence of Administrative and Personal Fault and Final Allocation of Liability

Modern legal thought increasingly accepts that the State, as a legal person, bears responsibility for compensating damages arising from the acts and faults of its employees, regardless of whether strict separation between administrative and personal fault is initially required, because employees function as organs of the legal entity itself (8).

One of the fundamental principles of civil liability is that each person is accountable for the consequences of his or her actions. Accordingly, situations arise in which the employee is genuinely responsible for the damage, yet the State—either under the organ theory or through principles of indirect or vicarious liability—is obligated to compensate the injured party. In such cases, dual liability emerges from a single harmful act.

Although the literal wording of Article 11 of the Civil Liability Act appears to exclude governmental liability when damage results from employee conduct rather than administrative deficiencies, a broader interpretation is required. First, it is entirely plausible that damage may simultaneously result from employee fault and organizational defects. Second, the legislator's intention was not to restrict governmental liability solely to cases of defective administrative equipment. Courts may therefore identify the State as the stronger causal factor and hold it liable for compensation. Furthermore, the concept of organizational deficiency is sufficiently broad to include mismanagement and erroneous decision-making by employees, thereby merging personal and administrative fault (6, 7).

For this reason, even in cases where personal fault is clearly distinguishable from administrative fault—such as liability arrangements recognized under Article 171 of the Constitution—both forms of responsibility may coexist. Consequently, within the legal framework derived from Article 11 of the Civil Liability Act and Article 171 of the Constitution, whenever damage results from both employee fault and administrative organizational conditions, both the employee and the State bear liability toward the injured party. This situation resembles cases involving multiple causes of damage: Article 12 of the Civil Liability Act confirms that when harm results from the fault of a worker, both employer and worker are liable toward the injured party, who may choose either party for litigation. Employer liability in such cases functions primarily as a guarantee mechanism intended to protect the injured party's rights.

Nevertheless, allocation of responsibility between the employee and the State ultimately depends upon the degree of each party's contribution to the occurrence of damage (3).

Conclusion

Under the legal framework derived from Article 11 of the Civil Liability Act, the injured party or claimant must, as a preliminary step in bringing a claim, establish the administrative fault of the employee so that such fault may be regarded as a defect in administrative equipment or organizational structure and consequently attributed to the State. The same approach applies where damage results from the administrative fault of a judge. However, Article 12 of the same Act establishes a different arrangement, according to which the State is responsible for all damages caused to others by the acts of its workers. This liability is based on a presumed fault attributed to the governmental employer, and once the occurrence of damage is proven, the presumption becomes effective. Therefore, proof of the worker's fault is not required to establish the presumed liability of the State.

Where damage results from the concurrence of administrative fault and personal fault, the liability of the State and the employee toward the injured party becomes joint and several, allowing the injured party to seek compensation from either of them at his or her discretion. Nevertheless, in the internal relationship between the responsible parties, liability is apportioned according to the degree of each party's contribution to the occurrence of the damage.

It was observed that when the fault is administrative in nature and the administration is regarded as the stronger causal factor responsible for compensation, the administration, as a rule, may not seek recourse against the employee who directly caused the harm. Conversely, when the employee's personal fault constitutes the sole cause or one of the contributing causes of the damage, the State has the right to claim reimbursement from the offending employee for the amount it has paid in compensation.

Considering the foregoing analysis and relying on Articles 11 and 12 of the Civil Liability Act as well as paragraph (c) of Article 35 of the Monetary and Banking Law, banks bear responsibility for the actions of their employees and must compensate customers for damages incurred, whether such damages arise from administrative fault and organizational deficiencies or from the personal fault of employees. In all circumstances, the bank must remain accountable, and once employee fault is established, the bank may, after compensating the customer, pursue recourse against the offending employee to recover the losses paid. If injured individuals were required to pursue claims directly against individual employees, public trust in banks would be undermined and customers would hesitate to entrust their funds to banking institutions, fearing uncompensated losses caused by employee misconduct. Accordingly, the most effective mechanism for protecting customers and preserving confidence in the banking system is for banks to assume primary responsibility for compensation, thereby enabling customers to deposit their funds with assurance and without concern over the potential loss of their capital.

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Authors' Contributions

All authors equally contributed to this study.

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The authors of this article declared no conflict of interest.

Ethical Considerations

All ethical principles were adhered in conducting and writing this article.

Transparency of Data

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

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