

Bank's Civil and Criminal Liability (responsibility) against a Cheque Holder

Abstract

By definition, civil liability (responsibility) means that there is civil liability (responsibility) wherever a person is liable for damages. Civil Liability (responsibility) Law Adopted on April 26, 1960, has no definition of liability (responsibility) and the liability (responsibility) of the individual is subject to the will or fault of any natural or legal person, whether public or private. Therefore, everyone is responsible for their own actions and behaviors, and organizations and legal entities are no exception. Banks also have civil liability (responsibility) as a legal entity for their continuous interaction with natural and legal persons and if they cause loss or damage to persons, and they shall be liable for damages. Banks may, in some cases, cause damages to customers during their interaction with their customers by issuing internal bylaws and regulations. To this end, banks also have criminal and civil liability (responsibility) as legal entities. The present research was conducted through a library-documentary approach, which evaluated in the field of bank's civil and criminal liability (responsibility) with the Cheque holder. The results indicated that the bank is required to pay the Cheque holder, issue a notice of non-payment, observe due date, and so on. The present study deals with library research and studies in this field.

Keyword

Bank, Cheque, Civil Liability (responsibility), Criminal Responsibility, Bank, Cheque Holder, Nonsufficient Fund cheque

Introduction

Most of the time, business documents such as cheque and promissory notes are used due to the developments in trade relations to expedite the payment of the price and trading contracts. For this reason, the use of cheque in financial relationships and business transactions, even among non-business people, has become commonplace. This has led to a large number of cheque being handled daily by the public, and numerous cheque-related cases are filed daily in the Registry and the judiciary. This has led people who use the cheque to face legal problems arising from improper use of the cheque due to lack of knowledge of the laws. Therefore, the legislator has enacted laws to protect the rights of those who somehow deal with cheque. The holder or holders of a cheque are also the persons sponsored by the legislator who must qualify for legal benefits and have duties. Given that the bank acts as a payment gateway for cheques issued by current account holders, banks also have civil and criminal liability (responsibility) to their customers including the holder (the person who is given the cheque after it is issued) and the issuer of the cheque (the current account holder who issues the cheque for a specified amount). Civil liability (responsibility) refers to losses that are incurred by someone outside the contract between the parties. Thus, civil liability (responsibility) is both a rational principle, a religious law, and a legal rule that ensures the potential losses arising from the failure or fault of persons in the transactions and contracts, as well as the damages resulting from the damaging actions

outside the contract. Criminal liability (responsibility) is the liability (responsibility) for damages inflicted on persons causing criminal offenses. Now, the main question is how the bank is liable for cheques provided on the market to current account holders. How far is the bank's criminal and civil liability (responsibility)? Therefore, this paper seeks to find a reasonable answer to the ambiguities

1- Definition of cheques

The literal definition of cheque is "a letter by which individuals transfer it to another person from the money they have in the bank" (Moin, 1983, 1299). Amid dictionary considers a cheque as the rule, charter, treaty, and law (Amid, 1978, 405). Article 310 of Iran's Trade Law in 1932 states, "cheque is a writ whereby the issuer returns or assigns funds for assignee, in whole or in part." Subsequent laws, adopted in 1933, 1952, 1958, 1965, 19876, and 1993 as well as the law adopted in August 24, 2003, the legislature did not define the cheque, but the definition derived from the provisions of these rules differs slightly from the definition in Article 310 of the Commercial Code. This is because, first, cheque is explicitly recognized as a binding document in the laws adopted in 1952 to 1993. Second, the concept of cheque is limited to the written order to pay or refund to a legal bank, not to any real or legal person who has been issued a cheque against it. Third, regardless of the legal and credit aspect of the cheque, the document must have a form that has been approved by the authorities in accordance with the rules and regulations of the bank (Jalilvand, 2009, 9).

According to Article 172 of the proposed Bill of Trade Law, "cheque is a document whereby an issuer receives or transfers money from its bank account." However, in terms of legal doctrine cheque is "a particular sheet that one of the banks has given to the owner or owners of the account for the purpose of repayment or usable credit or transfer to another" (Goldouzian, 2009, 175). Some have also stated that "cheque is a document in which the issuer orders the bank against the bank to withdraw its funds or credit in that bank in whole or in part or to repay the bankruptcy" (Mir Mohammad Sadeghi, 2013, 332). Therefore, it can be said that a cheque is a document for the payment of a certain amount that is in the owner's account and is drawn on the bank to be paid in cash or transfer (with the right to transfer to the non-holder or carrier).

2- Bank Criminal Liability (responsibility)

One of the most controversial issues in criminal law is the issue of criminal liability (responsibility) of legal entities. Criminal liability (responsibility) refers to the responsibility for committing a crime under the law and the person responsible will receive one of the penalties provided for by law. The community is harmed by crime, unlike the civil liability (responsibility) of those responsible for the act, are individuals. (Jafari Langroodi, 2004, 642). Some have argued that "The term criminal responsibility has different meanings; the desired meaning here (legal criminology) implies a concept in the light of which it can be assured that who are responsible for violations of the criminal law, what the meaning of this requirement is, and what is its content and to what extent? Every state's substantive criminal law rests its organization on the relatively complex principle of criminal responsibility (Gesson, 1991, 61)". Thus, it can be said that requirement for a person to respond to an attack on others is referred to as "criminal responsibility" whether in support of individual rights or in defense of society." With these definitions, there is still no single doctrine of criminal responsibility for legal entities, which has led the laws of the countries, and consequently the courts, to adopt different and sometimes conflicting procedures in dealing with this issue and thus, to go to extremes.

Sometimes the legal person is held criminally liable and sometimes the natural person is liable to the legal entity. In this case, two theories about the legal responsibility of legal entities have been put forward. Theory One: Theory of Criminal Liability (responsibility) of Legal Persons, Theory Two: Theory of the lack of Criminal Liability (responsibility) of Legal Persons

2-1- Bank's Criminal Responsibility in Iranian Law

Iran's criminal justice system has never explicitly provided for criminal liability of legal entities. As Dr. Ardebili has pointed out, "the individualistic nature of criminal law has prevented law enforcement from spreading to a single group" (Ardebili, 2014, 23). The existing judicial and legal doctrine and jurisprudence have never referred to a legal person in criminal law, but the laws in force in the country can provide for the punishment of legal persons.

1. Article 220 of the Commercial Code has referred to a cash fine for conviction of a company.
2. Article 173 of the Iranian Constitution considers the Court of Administrative Justice to be the source for investigating violations of legal persons. Article 11 of the Administrative Justice Act, adopted on January 24, 1982, provides for the jurisdiction and authorities of the Tribunal as, "Handling complaints and protests and protests by natural or legal persons from the decisions or actions of government departments, including ministries, agencies, institutions, corporations, municipalities, revolutionary organizations, and revolutionary institutions and their affiliates"
3. Article 4 of the Medical, Pharmaceutical, Food, and Drinking Laws Act on June 20, 1955, has listed the closure of the institution as a guarantee of infringement of legal persons.
4. Article 17 of the Government Exemptions Act, adopted on March 14, 1988 by the Expediency Council has set the penal system as a punishment for a legal person.
5. Article 15 of protective measures, adopted on May 1, 1960, has set cash fine and closure of the institution as a punishment for infringement of legal persons.

It is important to note that the legislature's statements are not the same in all cases and in some cases, the responsibility and penalties for legal persons are attributed to natural persons:

1. According to Article 76 of Trade Union Law adopted on July 4, 1980, "In all cases pursuant to this Act, the responsibility lies with legal entities, the CEO, or chief executive of the legal entity that has ordered the perpetrator to be executed and punished will be executed."
2. According to Article 8 of Law on Translation of Books adopted on December 27, 1973, "Whenever a legal person is in breach of this law, the natural person responsible for the crime resulting from his or her decision will be recovered from the private plaintiff's property."
3. According to Article 109 of Social Security Act adopted on July 4, 1975, "In the event that the employer is a legal person, the penal liability provided for in this Act shall lie with the company or any other person who may have suffered damage or loss as a result of his act or omission."

Considering all the above it can be concluded that the laws in Iran are generally held responsible for the material steward of the crime and those who have been involved in the decision that lead to the criminal outcome are actually responsible and the partner of the crime.

2-2- Assignment of criminal responsibility to the bank

During the possibility of assigning criminal responsibility to legal entities, there must be conditions such as committing a criminal act, having a criminal status, and being a criminal liability person to be recognized as a responsible legal entity.

1. **Committing a criminal act:** A person who intends to commit a crime, from the moment the thought of committing the crime to the actual criminal act abroad, goes through steps that, according to former jurists, are the so-called "path of crime, and from the perspective of current criminal law scholars, different stages of criminal practice." Therefore, in order to commit a crime in the outside world, it is necessary for the individual or individuals to manifest the criminal act objectively because it is not mere criminal thought to be criminal and punishable (Sanei, 2003, 52). It is therefore imperative that there be three legal, psychological, and material elements of the crime for the crime to take place. The legal element of the criminal act must be specified by the legislator in the legal texts before committing the act. The material element is in fact the conduct of criminal behavior, meaning that the realization of the material element depends on the actual act or omission for which the legislator has imposed a punishment by a human being. According to the spiritual element, the offender must have deliberate intention to commit in committing a crime or has behaved in a manner that would result in a punishable criminal error such as negligence failure to comply, lack of skills, etc., so that he/she may be mentally reprimanded and ready to accept criminal responsibility.
2. **Criminal competence:** competence means being competent for something, competence, and merit. Disputes arise in the broad sense, that is, the right to refer to competent authorities for claiming the right vested in any adult, immature, wise or insane, real or legal. Litigation means the exercise of that right requires that conditions exist, though it is always possible to pursue a "litigation" even in the absence of any one. However, without a condition or conditions, the Court may be barred from dealing with the nature of the proceedings, though it enters into proceedings namely the examination of the existence or absence of the principal right alleged and its denial or denial and the ordering of legal effects in the form of a judgment. The result of such a situation is usually the issue of whether or not to hear a lawsuit.
3. **Personalization of Criminal Responsibility:** According to Article 141 of the Islamic Penal Code, "criminal responsibility is personal" and this is one of the basic principles of criminal law. On the one hand, human "individuals" commit deliberate and unintentional blame subject to criminal law because of the mental interactions that occur in them. Criminal responsibility also monitors to "natural" persons and "legal entities" that individuals act on their behalf are exempt from criminal liability, except in exceptional cases. Although various legal systems around the world have taken steps to accept the legal responsibility of legal persons through the imposition of specific penalties on such persons, this is an exception to the "principle of individual criminal responsibility" in which always and in principle "human beings" or "natural persons" responsible for the crimes committed. The principle of personalization of criminal responsibility is one of the prevailing principles of law and is nowadays a valid principle of criminal law. Iran's penal code, derived from the sacred law of Islam, has been adopted by studying the legal system of Iran and the principle of personal

responsibility of criminal responsibility. Of course, this principle has some exceptions, such as the guaranty kin (agheleh) that carries the responsibility of the principal perpetrator and, more importantly, the expression of features that are examined in line with the exception that is necessary to the principle. The objectives of this research are scientific, explaining the principle of personal responsibility for criminal offenses and referring to supportive aspects of either removing or justifying this responsibility and examining the provision and repair of damages (Zamanifard, 2013, 1). If the offender is one of the bank's employees or executives who holds a position in the bank concerned, and made a criminal error in this regard, he will be liable to the holder of the cheque for criminal and civil liability. However, if the error is due to the rules and regulations governing banking or by order of senior bank officials on the main bank night, it is the responsibility of the bank as a legal entity that could lead to the bank itself being penalized as an independent legal entity.

3- Civil liability of the bank towards the Cheque holder

The bank will be required to pay the amount stated in the cheque if the holder visits it after checking the accuracy of the information contained in the cheque sheet, as well as the conformity of the issuer's signature with the sample of the bank's signature and the due time of payment. In case of lack of funds in the issuing bank account, it will be required to issue a notice of non-payment to the holder of the cheque for legal follow-up at the request of the cheque holder whether natural or legal persons or the carrier of the cheque. However, what if the bank refuses to issue a non-payment notice? Although the legislator has been silent in this regard, the bank is required to issue a notice of non-payment by the order of the cheque holder since the bank has failed to pay the cheque. Therefore, there is a legal requirement for the bank to refuse to issue a notice, whether it is a bank officer or employee, whether or not the bank's head office or a letter of intent has failed to issue a notice. In this case, if the notice of non-payment is made by a bank branch employee, it will be both administratively and civilly liable for damages to the customer. It will also be held criminally responsible for violating the law. On the other hand, if the notice of non-payment was due to banking affairs, circulars, and internal regulations, the bank itself will be responsible and accountable and in any case, the rights holder is protected.

3-1- Cheque Payment

According to Paragraph 1 Article 264 of the Civil Code, which provides for covenantal loyalty in cases of breach of obligations and this principle also applies to commercial regulations, so the bank debt shall be annulled by the issuer of the cheque or the legal representative of the aforementioned legal entity after payment of the cheque by the bank to its holder. The issuer of the cheque from the issuer to the holder of the cheque is the sole exporter of the cheque against the issuer. Thus, debt repayments are realized when the cheque is paid to the creditor. Therefore, the legislature has provided that in the event of non-payment of the cheque by the bank, the holder of the is entitled to the privileges of this document and must apply for a cheque in the case within 15 and 45 days or four months as set forth in Articles 315 and 317 of the Commercial Code. Otherwise, he/she will be deprived of access to the draftsmen and guarantors as well as the issuer of the cheque (if the aforementioned makes the cheque impossible). The cheque must be offered in cash as soon as it is provided (Article 313 of the Commercial Code) since the cheque is made to due time, because as known due time in the document will not remove it from the cheque form. If the due time was after its issuance and

the carrier carries it before the due date for payment, the aforementioned deadlines will start from the date of submission of the cheque and if the date after the said date is provided in the document the said deadline shall be stated in the cheque.

3-2- Bank's liability for Nonsufficient Fund cheque

Nonsufficient Fund cheque is a cheque sheet that has no money in the liable bank, or the bank refuses to pay for some reason. In fact, it should be talked about "unpayable cheque" of talking about nonsufficient Fund cheque (skini, 2000, 6). According to the law, the place of payment can be banks, public and private institutions, or ordinary persons. Only cheques that are deemed to be valid documents are punishable if they are free of charge. According to Article 1 and 6 adopted on August 10, 1976, authorized banks of the country are responsible for the issuance of cheques. Therefore, if a cheque is issued by a person other than authorized banks and the bank refuses to pay for it, the holder of such a cheque shall only comply with the provisions of Article 315 of the Commercial Code and the formalities regarding the objection by means of a lawsuit and a referral to the competent courts.

3-2-1- Notice of non-payment

The Bank shall issue a notice of non-Payment upon the cheque holder's referral for the payment due in the cheque in accordance with the requirements (set forth below). The bank is required to issue a notice of non-payment regarding the cheques that are bounced. Regarding the notice of non-Payment, the reason for the non-payment of the cheque and the issuer's address should be specified according to the address of the bank and the conformity or non-conformity of the issuer's signature with the sample of the signature presented to the bank to be certified in accordance with the banking standard, submit the notice of non-payment to the cheque holder, and the third copy of this leaflet must be sent to the account holder. If the account balance is less than the cheque amount, the bank must pay the cheque amount to the cheque holder by his/her request and the cheque holder receives a certificate certifying the name of the cheque and the amount not paid to the cheque holder from the bank by stating the amount received behind the cheque and submitting it to the bank. Cheque is considered nonsufficient fund for the amount not paid and the bank certificate in this case will be a substitute for the holder of the original cheque.

1. Non-insertion of the contents of the cheque in accordance with the law governing the cheque.
2. Cheque cross out and non-verification of value in the cross out. On the back of the cheque sheet a description of the issuer must be provided.
3. Lack of account balance.
4. Blockage of current account funds by other judicial authorities.
5. Declaring the name of the account owner, cheque beneficiaries, or other authorities based on missing, scams, forgery, theft for specific cheques or the entire customer cheque category
6. Mismatch of the issuer's signature with the bank's signature sample.

Given that there was no restriction on the due time of the cheque and claiming the bank against it was not foreseen in the law of issuance of cheque and in the law of trade, Article 318 and 319 of the Commercial Code also state time-lapses related to cheques that is not related the bank's action of paying cheques. Therefore, the beneficiary of the cheque may apply to the

bank for the payment in the period of five to ten years, as provided by the Banking Law Commission. Therefore, the holder of the cheque is entitled to return to the bank for a period of ten years to cash the cheque.

3-2-2- Account Blocking

In Iranian law, banks usually block the cheque issuer's account according to law and only in the field of judicial orders as following:

1. According to Article 21 of the cheque Law, adopted in 1993, "Banks are obliged to block all current accounts of individuals who have issued a nonsufficient fund cheque more than once and may not open another account in their name for up to three years." This part of Article 21 is in fact the same as that provided for in Article 20 of the cheque Law, adopted in 1976, with a slight difference that the period of deprivation of the issuer of a cheque is effectively reduced from five years to three years. On the other hand, part of former Article 20, which anticipated that in the event of an acquittal in court after the indictment has been issued, the prosecution must notify the central bank of the defendant's request for the central bank to issue direct debits to other banks about the inaccuracy of the current account opening, was removed from Article 21 and replaced in Article 5 with an unknown reason.
2. The Central Bank of the Islamic Republic of Iran is required to regularly record and maintain records of all persons subject to the enforcement of this law to all banks in the country. These provisions, as envisaged in Note 1 to Article 21 of the U Nonsufficient Fund cheque Law, are reproduced in Article 3 of the By-Laws on the Opening of the Current Account are explained as "The list should be prepared at the end of each month and sent to the national banks during the letter section."

3-2-3- Account completion announcement

Lack of balance or deficit of the cheque issuer's account is the most common type of nonsufficient fund cheque in Iran. According to Article 3 of the issuance of a corrective According in 2003, it does not matter whether the issuer has no funds in the bank or that the amount in the account is less than the amount of the cheque. Pursuant to Article 5 of the mentioned law, the bank is obliged to pay the amount in the account to the holder and upon receipt of the cheque, issue a notice containing the specification of the cheque and the amount received from the bank. Cheque is considered nonsufficient fund for the amount not paid and the bank certificate in this case will be a substitute for the holder of the original cheque (Shambayaati, 2014, 298).

Conclusion

A cheque means a dated and financial valued sheet, which is used for purchases rather than cash payments. The cheque signs the signs the after writing down its value and the due date. On the due date, the person who received the cheque will go to the bank and receive the specified amount from the issuer's current account.

1. The bank has both civil and criminal liability to the holder. Therefore, the bank is required to pay the cheque, issue a notice of non-payment, declare to the holder to complete the balance against the holder of the cheque and check the credit, payment

order, non-payment order, authentication of the holder and the issuer's signature matching against the owner of the cheque.

2. Article 35 of the Monetary and Banking Law states that "Each bank will be responsible and liable for any damages it may cause to its customers." This general rule is not very different from the general rules of civil liability, and it is not an easy means of establishing the bank's error and conviction for indemnifying holders of inalienable checks provided by the bank's offending customers, even assuming that the bank has made a mistake in selecting the customer. In this particular case, the legislator should take special action to make the bank's fear of forcing the bank to full compensation for the holders of nonsufficient fund cheques to make them more careful in their choice of customers. The bank needs to play a more effective role after opening an account and handing over cheques to customers. Since the liability of the legal person has been accepted in the case of criminal liability of the bank to the holder, this may result in the imposition of penalties according to the conditions of the legal person. Therefore, in the event that the bank employee or the bank itself damages the holder of the cheque, which means that the bank is in breach of the holder's interest, the bank will also be subject to criminal liability as a legal entity that can even lead to the liquidation of a legal person, such as compensation, confiscation of property, and in more severe cases, even the dissolution of the legal entity