

Deceit and Its Effect on Civil Liability (Comparative Study in Islamic Jurisprudence, Iranian Law with Approach Toward UK Law)

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Abstract

Term 'deceit' means fraudulence and fake and in Islamic Jurisprudence (Feqh) term 'deceit' has been observed as one of waivers for liability. Some elements have been mentioned for deceit in Feqh and Common Law if fulfilled, deceit is also realized. Whereas subject of deceit may be addressed from two perspectives (realities and requirements) thus we emphasize in this paradigm that one can assume deceit effect in two separate states of loss by perpetration and by causation based on study of juristic and legal sources. We have dealt with the fundamental and conditions of this rule with critical approach in this article and tried to examine dimensions of this legal subject with sharper view; of course, we have focused out effort on civil code at Shiite jurisprudence in this regard and we have implied this rule in Common Law.

Key words: Deceit, Civil liability, Liability of unlawful possession, Deceiver, Fault, Deceived

INTRODUCTION

Lexically, term „deceit’ means fraudulence and fake and term Place of Deceit is a nickname for this world because it deceives humans with its fine ornaments and beauties (Ghasemzadeh, p 72). Some scholars have expressed that from viewpoint of Islamic jurists „Deceit Rule’ denotes that someone may do something that is led to loss and damage for another and loss and damaging of the second one is because s/he has been deceived by the first one; even though, the first one has not willfully intended to deceive the latter person and at the same time he might have been also deceived and/or aware of it or did wrongly (Bojnoordi, 1984: 269).

First Topic: The Related Elements of Deceit

Unlike what some experts (Ghasemzadeh, 76) have assumed, 4 conditions are necessary for realization of this

liability in common law. It has been implied in this regard in UK Law that the deceit claimant shall prove six given items in the following: 1) The plaintiff should propose a false statement (in other words, s/he should tell lie); 2) S/he should show the said statement to be factual; 3) It should be identified that the plaintiff has known that statement was false and at least s/he had not yet any real belief in correctitude or falsehood of that statement; 4) The plaintiff has intended to act based on a misrepresentation; 5) The plaintiff has also acted according this misrepresentation; and 6) The harmful action has been done due to this misrepresentation (Eliot & Quinn, 2009: 217).

It can be implied in describing deceit that it is a voluntary action that is led to possession so that during possession the person imagines wrongly about legal quality of his/her possession while under normal condition of someone gives that property to another and this is led to civil liability for receiver of that party (JafariLangeroodi, 2013: 450-451). With respect to the given definition, a relationship should possess some elements in order to be assumed as deceitful. With integration of the following elements one could issue the order for the deceitful nature of an action.

The voluntary nature of action is the first elements assumed for presence of deceit whether it includes deceit

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in contractual liability or out of contract. For instance, if someone lends his/her coat to another person and other person puts his/her watch in it and gives back to the lender then prevailing of lender over this watch is not deemed as deceit because there was no free will in this regard.

The second element of deceit is that this voluntary action should be accompanied with possession (usurpation) of deceived object. If a person who sits in a session and owner of a house has put forward food to him/her and given person takes out some of food and put it in his/her plate but does not consume it this action is not assumed as possession but with presence of food owner, the owner may take it. In other words, term possession at this step means the irrevocable possession not any other type of possession so that with possession (usurpation) of this property, either the original given property is lost (e.g. it is eaten) or its benefits are improve over the time period in such a way that it can be appraised to calculate the rate of compensation for the loss and this is a point that has been overlooked in the elements, which have been assumed by Dr.Langeroodi while it should be considered as deceit elements.

The other element of deceit is that the usurper should imagine wrongly about legal quality at the beginning of usurpation. This element has been assumed as the strong cornerstone for deceit. The deceit has been considered as a separate source due to such ignorance or as some lawyers have expressed this element has been deemed as mandatory waivers. We have given more perfect explanation at next pages.

It should be stated about the final element of deceit that the deceiver is generally deemed as a mediator among main owner and the deceived person thereby s/he reaches to third party. The mediator person should do an action that type of his activity to create liability. Namely, the type of usurpation by the mediator person should not in such a way that creates any liability for him/her so that s/he may deposit that object before third party as a result deceitful action has not taken place since the third party is pledged here to keep the property where s/he is the owner of it or otherwise. Of course, this element overlaps with subject of possession.

These elements are deemed as criteria to identify values of pious ones. Therefore in the case when there is some doubt about presence of other elements it should be avoided from assuming it as relevant element. For example, this issue is not clear if the deceiver is aware of this issue or not. Thus, we do not refer to this awareness in deceiver. Nevertheless, presence of such discussion will be helpful in this regard. One can employ a type of deduction called lexical reasoning.

It is noted that term „deceit“ has been called as a juristic subject and at the same time they have called the existing characters in this rule so that the mediator person is called „deceiver“ or and one who has been ignorantly affected in path of liability is called „The deceived“. Nonetheless, Arabic term (deceiver) is a subjective noun and s/he has provided the deceitful operation and also whereas s/he has been called mainly by many subjects about deceit and their examples therefore this rule should employed and the mediator person should be considered as aware or conscious person.

It seems that such reasoning is not proper because at first place the element of awareness is not latent in word “deceiver”. In other words, a person may be deceiver while given assuming oneself as possessor, s/he may enter third party in this trend and impose liability to his/her own. On the other hand, under the same conditions, usurpation does not necessarily include deceiver without mediation. Suppose a usurper has seized a property and deceived his/her first party. Now assuming him/her as owner of this property, this person has given it to other one while s/he has been deemed as example of deceiver and due this rule the other persons may refer to this person. It is noted that based on this assumption there are several examples of deceivers as equal as numbers of assignors of the usurped property in addition to the original usurper while except the main usurper none of them may be aware of usurped nature of given property. Looking at Article 325 of Civil Code may strengthen this reasoning.

Second Topic: Fundamental of Deceit Rule

It has been mentioned (Darvishpoor, 194) that deceit possesses two origins of which one of them is basis of rational people. According to their primary nature, if the rational people are subjected to loss in their contracts due to deception they refer to someone, who has deceived them. In fact, one can claim that this basis and conduct exist in all of rational communities and this conduct may be deemed as one of the praiseful views and acceptable for all rational people at all ages and eras. Here, if it said that basis and conduct of the rational people requires to be signed and approved by the legislator and whereas there is no certain Islamic narrative in this regard and it has been deemed as indefinite rule therefore it should be clarified that with what reasoning the legislator has signed approved this basis and conduct of the rational group. We will respond this question that we have dealt with this issue and said that the conduct of rational group does not need to certain signature or approval; namely, lack of banning (barrier) is deemed as approval. As a result, if the holy legislator (Sharia) did the same conduct with rational group and there was no new conduct versus the rational people and when there was certain basis and conduct among

the rational group and the sacred legislator (Sharia) does not renounce it then such lack of banning is considered as signature and confirmation since the given conduct is based on viewpoint and perspective of the holy Sharia and nevertheless the legislator has no comment in this regard. In fact, if there was any alternative, the legislator should express it (MoosaviBojnoordi, 1987: 14).

The conduct basis of rational people is in that if someone was subjected to loss due to being deceived by behavior and statement of other person, if the agent committed it deliberately with deception and fraudulence, the deceived person has any right to refer to the deceiver to compensate for his/her incurred losses and request for it from the deceiver and this conduct has been assumed among world rational people since past time. We intend to discuss slightly about authenticity of such claim. In author's opinion, firstly the given description about deceit is not complete so no one can refer to it. In other words, at first place the element of deceiver has been implied in the given description and we currently proved that this trend is in different order based on what it has been excerpted from jurisprudence by our Civil Code and typically in this series of subjects. Given that the next usurpation parties are not aware of usurpation trend they are included in concept of usurpation and title of deceiver(s) applies to them. Therefore specifying this issue to assuming action as deliberative is deemed as impartial subject and it does not cover all deceitful assumptions for this reason we attach no importance for this claim. On the other hand, the fact that there is such rational basis among all of world national people is subjected to doubt and pondering since the usurpation rules are not visible in any part of the world as it mentioned in this way in Islamic jurisprudence. Even the Sunnites from which Islamic tradition (Hadith) about identifying usurpations has been derived by Shiites do not have such a claim so that how we can attribute this topic to the rational scientists that it may also oppose to Islam. In legal systems of European countries, they assume some rights for the receiver with legal bona fide regarding the conducted transactions for the usurped property while here and based on rule of deceit, the next parties have right to refer to the previous parties of their contract even if they are aware of usurpation trend of contract and or to be assumed as deceived person for another party. It was identified by this explanation that when it is discussed about deceit rule, it should be implied about this subject calmly free of excitation and based on rational reasoning and not exclusively a claim.

The other reasoning case about the bases for accepting deceit rule is subject of reference of Islamic narrative to this issue. This well-known axiom that was narrated from Holy Prophet (PBUH) expressed „the deceiver

refers to what s/he has been deceived by" ² has been assumed as origin for producing topics about deceit. It has been mentioned about this Hadith (narrative) that it has obviously denoted this issue so we did not find any jurist who has criticized this subject. Unless the critique has been proposed to documentation of that narrative that firstly this narrative might not be the original one but it could be inferred and derived from other narratives not the primary one. However, the jurists have frequently referred to this narrative and compensated its weakness with such references. Secondly, this narrative is second-hand narration so no one can refer to it (Darvishpoor, 195).

Of course, Ayatollah Boroojerdi has implied in this regard that the important point is the reliable issuance of this narrative while such reliability may be achieved any way. And this may be achieved sometimes by conduct of Prophet's companions and here also practice of Prophet's companions is considered as definitive in referring to this narrative i.e. „the deceiver refers to what s/he has been deceived by" over the history. Therefore, practical repute of a narrative is deemed as supporter for its reference weakness (MoosaviBojnoordi, 234).

But with accepting all these statements one should imply this important point that this narrative is not adequate potential to impose such wide issues to it. In other words, they have overloaded the capacity to this prophet's narrative while they have explained in this regard in details where enclosing approval of world rational people unilaterally to it is subjected to a lot of pondering.

Third Topic: Deceit Cornerstones in Respective of Civil Liability

In many cases, they have confused among these elements and cornerstones (Lotfi, 72; Darvishpoor, 197) while we have mentioned the elements under the given titles and now we also tend to explain about the conditions, which led to formation of deceit rule in this part. It should be noted that it is stipulated to assume effect of deceit on civil liability therefore we advance conditions of this topic by looking at civil liability.

Incurrence of loss

Incurrence of loss is one of the cornerstones in deceit rule (Bojnoordi, 227). In other words, if we assume the aforesaid prophet's narrative (Hadith) as one of the important fundamentals of deceit rule the possible reference of the deceived party to the deceiver to take compensations (or the same loss or damage) may be accepted. Although some of Islamic jurists do not accept the loss as basis for deceit rule (TabatabaeiYazdi, 178). Whereas it is intended to examine civil liability due to effect of deceit thus this

type of responsibility may not be created without presence of loss. In other words, one can imply the deceit as a basis for civil liability when some loss is created and we tend to compensate for it by virtue of civil liability.

Harmful action

Being deceived is an internal, spiritual, and mental state along with the specific mental imaginations in which the deceived party does some activities for which s/he incurs losses. For this reason, this is a condition in deceit liability that the loss victim or deceived subject to be ignorant about the reality since it lacks deception with such knowledge. Being deceived is considered as foremost element for realization of deceit liability that has been referred in statement of Islamic jurists. For example, author of book of (Jewels of words) writes about referral of customer in unauthorized sale with seller that the customer may refer to the unauthorized seller only when s/he is ignorant to non-ownership of the seller and when s/he has been deceived with appearance the action of seller although the seller did not intend to deceive him/her since application of deceit is not subjected to deliberative intention. And he implies in another place: we mean that reference of ignorant usurper to non-ignorant one occurs when the loss victim refers to him/her to compensate for the given loss if s/he has been deceived but if s/he was not deceived s/he has no right for reference since under this condition s/he is assumed as knower of this trend (Chahkandinejad, 2007: 43).

An action should cause a loss in order to occur. Doubtlessly, commitment of action is considered as cornerstone for creating it in civil liability law while the lawyer has also attached omission of that action to it. Nevertheless, a question that is raised about our given subject is that if omission of an action is also effective in deceit that led to civil liability or not. We will explain it by some reasons. Firstly, it is inferred from word (deception) in the aforesaid Prophet's narrative that someone deceives another person and deception is not generally realized by a neutral action and ad lib. Suppose that someone has usurped property from other one and has delegated to third part with his/her action- where aware or unaware and this will be led to deceiving third party. But this issue is more difficult regarding omission of action since this event rarely takes place that third party to be deceived without perpetration of an action by a mediator. But one can find some examples in which imagination of deception to lead to assuming civil liability based on omission of action by the deceiver as well. We suppose that in a hospital the head of surgery team in operation room notices the mistake of his/her subordinate in doing surgery on wrong subject during operation but s/he remains silent. Or during battery and beating of a person by his troop, a military man finds that they beat wrong person but he does not order to stop.

On these occasions, it seems that the deceitful action of subordinate physician and or military officers has been affected by omission of duly action of their superiors so that we will resume discussion about referral of these losses to the perpetrators in these assumptions in chapter of third cornerstone i.e. causation relationship.

In UK law, the origin for harmful action caused by deception is generally explored within framework of unreal statements and loss occurs due the same statements. Of course, this does not mean that they should be necessarily embedded in these statements but behavior may also lead to formation of harmful action. However, written or oral forms of words are not deemed as source of difference in effect. This rule is proposed to support from this point that there is no task for disclosure in English law as usual (Cooke, 2009: 471).

The other subject that may be discussed about deceit in UK law is silence. It has been implied in UK law that principally silence is not considered as false representation (lie) unless in exceptional cases; for example, where the speaker declares only a half of truth and this may be assumed as deception. The other assumption is when deliberate concealment is committed. Namely, speaker hides some information that may lead to a false representation (or lie). The other assumption is the failure to meet statutory requirements. Under some conditions, there is a legal duty to disclose certain information and in these cases omission of this task may be considered as false representation (Elliot & Quinn, *ibid*, p217).

The other interesting issue is about ambiguous representation; namely, someone declare something that can be followed two different impressions. For example, in legal case of Smith versus Chadwick (1884), they issued corporate notice in which it was declared that the present value of financial turnover and or output was greater than 1"000"000\$ per year. This statement may be considered in this way that with this business the given company will be able to make this money per annum (proper concept) and or in fact the company has earned that fund at certain financial year (i.e. improper concept). The court held that in order to posit a claim and prove it the plaintiff shall either prove the defendant has considered false representation by that statement or it has declared ambiguous statement in order not to be official recognized (*Ibid*, 220).

Causation relationship

Presence of fault is not exclusively adequate for compensation of loss but there should be causal relationship among the created loss and harmful action that is claimed by plaintiff against defendant. This relationship is in fact based on cause-and-effect relationship.

Basically, if it is identified that the fault has been necessary condition for loss then most of courts will give award for presence of causal relationship. This principal solution complies with theory of parity of causes. Therefore, if a few faults are sequentially committed and it is clarified that the given loss did not occur without the first fault thus the court will have no doubt to give award to existing causal relationship among fault and loss (Jordan, 2012: 105).

Some experts (Lotfi, *ibid*: 77) have expressed in this regard that two assumptions may be proposed: first is concerned with causation relationship among deceitful action and loss incurrence and the second one is causal relationship among deception with deceived victim. In our opinion, it is better in this regard to classify them alternately and to separate these two assumptions. The first assumption is that a property is lost with action of deceived and at this situation the issue should be addressed with respect to reason for presence of loss rule and liability of unlawful possession and as we implied under these assumptions and based on rules of liability of unlawful possession even though the coercive power is led to loss of property- where coercive power usually disrupts causation relationship- it will be ineffective in liability of the deceived subject since it is treated with holder of liability of unlawful possession at most aggravated level in Shiite jurisprudence and s/he is assumed as liable even if the coercive power is led to creation of loss. And the second assumption is related to case other than this state with respect to this point that causation relationship is not assumed as deception based on fault.

We have referred to causation relationship in discussion about some examples in UK law and implied that if all six given elements are realized it is inevitable to judge based on civil liability caused by deceit in this country. In other words, whenever other person commits harmful action due to false representation that is led to his/her own loss or others the causation relationship is realized. On the other hand, it has not been assumed separation difference among loss by perpetration and by causation. Therefore it is different from Islamic jurisprudence in this part. Particularly, such a separation was posited by Paul Loderk as Belgium judge for several years but no one supported it.

Fourth Topic: Is Deceit as Origin of Liability or its Waiver?

Titles of deceit have been mentioned in juristic books as waivers of liability since given that someone is deceived by a mediator after the owner refers to him/her that person can also refer to the mediator to receive what s/he has paid plus compensation. But regarding this point that if deceit also acts as factor of liability or not, fault-based deceit of loss factor has been separated from assumption of non-fault for the given subject (Safayee&Rahimi, 2013: 192-193)⁶ noting

that if it is assumed the deceived party has no fault s/he will be responsible for compensation of loss if rules of loss or liability of unlawful possession apply to him/her; for instance, if s/he is given the usurped fruit of owner and s/he has eaten it. With respect to this point that this property has been lost s/he will be liable whether committed any fault or not. It should be noted about the loss that basically the fault is not deemed as condition; particularly in Islamic jurisprudence the conventional reference relationship has been preferred to the fault. The reason of this issue is whatever it is slightly comprehensible. While based on rules of liability of unlawful possession that govern over the properties, the person will be responsible against period of his/her liability to property even if the given property is eliminated by coercive power. Nevertheless, the regulations of financial liability are more strict and rigid than criminal liability and they are so-called absolute. But if liability of perpetrator of loss is based on fault, it is inappropriate to suffice with deceit rule and consequently it is judged for deceit liability. This analysis applies when that case is rather than cases relating to loss or the governing rules of liability of unlawful possession since there is no need to fault in those cases.

Regardless of this point that harmful action of the deceived subject may be implemented against him/her, principally his harmful action is perpetrated against third party or through loss by perpetration and or within loss by causation. In the cases of loss by perpetration, the jurists and lawyers agree unanimously in that based on rational and narrative documentations and evidences, fault by loss subject has no role in establishment of his/her liability and only perpetration of the person in wasting the properties of other may prove the causation relationship among his/her harmful action and the incurred loss and typically only presence of causal relationship for the given loss is referred to the loss subject and this is led to his/her civil liability. In this sense, the jurists and thus lawyers have assumed two different theories: Some of them have considered independent nature for fault and argued that one of the independent elements in liability system is the fault. Based on this theory and due to acceptance of fault as basis for liability in order to realize civil liability of loss subject it necessitates essentially proving his/her fault. In other words, in addition to necessity for presence of proved fault it is also required to prove existing victim of loss. In contrast to Shiite well-known group and following of them, the lawyers believe that the fault only plays role of a criterion. With referring to evidences of causation rule and particularly the given narratives in examples of loss by causation such as loss by perpetration as well, this group only assumes loss incurrence and proving causation relationship among the created loss and harmful action of the loss subject as basis for his/her liability and the only

difference that they assumed between these two forms of loss regarding liability is in that in causation of loss object, the fault is assumed as criterion for ascertainment of the given causation relationship. In other words, this group assumes the fault of causation subject exclusively as a criterion for ascertainment of normal attribution of loss to him/her. Therefore, all of above issues in examples of the deceived subject's perpetration are realized in his/her civil liability against the loss victim and in order to escape from civil liability the deceived person may not refer to deceit and non-perpetration of the given fault. But, according to the viewpoint from first group due to deception and non-perpetration of fault as causation examples of the deceived person in creating loss s/he is indemnified from civil liability and only the third party (deceiver) is assumed as liable against the loss victim. According to perspective of second group, if the only attribution of the created loss to the deceived person leads to realization of his/her civil liability therefore his/her referring to this deception and non-committing of fault may not waive his/her civil liability and responsibility. It is obvious that right of reference to the deceiver will be reserved for the deceived subject.

CONCLUSION

- According to viewpoint of Islamic jurisprudent, the deceit rule signifies that someone does an action, which leads to loss for other one and incurrance of loss by the second person is due to being deceived by the first one. Basically, in UK Law the concept of deceit is deemed as one of examples for deceitful misrepresentation that is divided into two types namely negligent misrepresentation and ignorant misrepresentation.
- It has been implied about the deceit in Islamic jurisprudent that the deceit is one of liability causes therefore when someone deceives the other person s/he will be liable for what s/he created loss for that person while deceit is included in liability waivers for the deceived person.
- In a classification, one can incorporate the harmful action caused by deception in one of two frameworks of loss or causation. With given loss, s/he will be liable in whatsoever and there is no need to element of fault in this part. But regarding causation, the fault is deemed as the only way to identify causation relationship and it is subjected to this issue.
- It has been always mentioned that the assumption basis of rational people is deemed as cornerstones for deceit since the reaction of the rational people is identical throughout the world. But we proved that this doctrine was posited in the west and attracted no supporter. And the related regulations for usurpation about this matter include a very harsh reaction, which originated from the deceit. Also the documentary narratives lacks the adequate reason and criterion- or at least to this intensity and absoluteness- in this regard.
- Also silence or equivocal and ambiguous comment may be considered as examples of deceit that has been implied in UK Law.

REFERENCES

1. Ghasemzadeh, SeyedMorteza, Relationship among deceit and fault, Journal of legal attitudes, 1998.
2. Katoozian, Nasser, Contract outside requirements, vol. 1, Tehran University Publication, 2010.
3. Safayee, SeyedHossein, Rahimi, Habibollah, Civil liability, SAMT Pub, 2013.
4. JafariLangeroodi, Mohammad Jafar, Glossary of elements knowledge, Ganj-Danesh Pub, 2014.
5. Oxford Legal Dictionary, Oxford University Pub, 2011.
6. Mirza Hassan Bojnoordi, (Jurisprudential rules), Ismailian Press Institute, Qom, 1984.
7. MoosaviBojnoordi, Two juristic rules, Journal of Hagh (Right) legal and judicial studies, summer 1987, vol. 10.
8. HosseiniMaraghi, Mir Abdul Fattah (The titles), Islamic publication institute, 1988.
9. Darvishpoor, Mohammad Vafa, An investigation in deceit as juristic rule, Specialized Journal of Islamic Jurisprudence and Law Fundamentals, Babol Unit, 2006.
10. ShafiyeeAlavijeh, Ghasem, Deceit conditions creating civil liability in Iranian and Britain Laws, Journal of public law, summer 2011, vol. 33.
11. Lotfi, Asadollah, Deceit rule, Journal of law and political sciences, 2000.
12. SeyedKazemTabatabaeiYazdi, (Commentary on book of businesses), Islamic teachings institute, 2008.
13. Jordan, Patrice, Principles of civil liability, Mizan Pub, 20.
14. Charles M. K. (Chuck) Loopstra, Liability for Negligent Misrepresentation and Other.
15. Employee Errors and Omissions, 4th Annual Provincial/Municipal Liability Conference by The Canadian Institute, Toronto, 1998.
16. Catherine Elliott and Frances Quinn, Tort Law, 7th edition, person longman, 2009.
17. CF Pedfield, et al, Law made simple, London, 1975.
18. Harvey mc Gregor, McGregor damage, sweet Maxwell, 2003.
19. Basil S. Markesinis And HannesUnberath The German Law of Torts, A Comparative Treatise Fourth Edition Entirely Revised and Updated, 2002, HART PUBLISHING OXFORD AND PORTLAND, OREGON 19. John Cooke, law of tort, 9th edition, person longman, 2009.

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