COMPARATIVE STUDY ON "MARKET SHARE LIABILITY" IN IRAN LEGAL SYSTEM*

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Abstract

In the sixties, later the release of estrogenic drugs with various therapeutic purposes, for prevention of abortion, children born of the users of such drugs, got similar cancer, identified as the subsequent use; due to multiplicity of pharmacists and the inability of patients to identify the main manufacturers, they failed to prove damages and compensations against the principal makers in the first stage on the basis of traditional responsibility rules which requires proof of a causal relationship; latter, by use of principle of compensation and doctrine of "Market Share Liability" could lawsuit against the makers related to their market share and compensate their loss. Market share liability first introduced in the case *Sin dell v. Abbott Laboratories*; similar cases in the courts of the Roman systems like Germany accepted and grew in this period, which covered same legal issues in this area. Due to risk of similar legal disputes, this comparative study would examine market share liability concepts with jurisprudence rules, possible legal solutions in this area of medicals and insurances regulation, offering advanced solutions to probable similar disputes, in competition as well as the equality in comparative view.

Key words: Liability, Market-Share, Compensation, Succinct Cause.

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Introduction

Severe damages of medicines that reflect their selves later including abortion and certain cancers in next generations of consumer of these chemical drugs are expanded, With the improvement and development of medical science and being approvable , spreading these damages had been confirmed and approves by experts and specialists but the speed of related technology improvement and science is not consistent reasonably with the legislation of this subject, Science and rules (regulations) must simply control any damages of this subject and must support those who have been affected by these drugs in order to this fact that manufacturers and related markets couldn't evade from the response to the effects of their products due to their long-term effects . The example of this fact is importing and consuming blood products in 1360s which still after 30 years its cases are in juridical process, In Iran law system and initial approach in similar cases, although act 40 in constitutional law clearly defines the compensation of this subject, and states that no one can't reach to his right by damaging another party and considers Act 171 as the basis of this subject ,that is ,whenever due to the guarantee or judge error about a case or any special case, spiritual or material loss attribute to a party who is guilty, he/she will consider as a guilty party according to Islamic law, otherwise government has the responsibility to pay the loss.

Results and the comparing the long duration of the above case indicates the absence of updated and related regulations (rules)whether in the context of criminal law and punishment of possible intentional guilty parties in and out of country or in the context of law in losses compensation by unintentional parties and insurance for recovering similar losses for medicinal products.

regarding to the limitation of statistics and information about the cases related to the side-effects of medicines which are produced inside the country ,we can't consider this fact as the reason for the absence of their inappropriate effects on patients and consumers of medicines(Cheraghali anf Eahghi ,p 50)

Methodology

complaints against the pharmacy industry in developed countries firstly has a criminal aspect and in an emotional atmosphere which media will create , it is expected and anticipated that severe criminal sentences are issued against the guilty parties of these cases. But by decreasing and the

absence of updated rules and approaches, they forgot a few later. Comparative study of cases in another country will create an opportunity to revise the law system related to the responsibility of medicine producers and importer of these medicines to provent from the repeating of these cases (Gheraghali & Eshghi, 2009, p 46)

a) Background and the definition of the responsibility of market

First time, the concept of the responsibility of market developed in complaints about the distribution and introducing effective estrogenic medicines which were prescribed for women in 50 and 60s and had various purposes such as preventing from abortion (MARK A. GEISTFELD, 2006, p 36.).Children were born with cancer and they claimed that cancers resulted from the consuming of these medicines by their mothers. These individuals couldn't identify those who were sold medicines to them so according to traditional conventions about the responsibility -which didn't need to casual relation approval- they couldn't approved their claims and these case first proposed by an judge in California and were adopted according to the opinion of third-fourths of jury in the case called Sindell v. Abbott laboratories (1980). The claimant in this case had cancer because of consuming abortion pills by his mother(see Sayed AlVI ,2010,P 7),.Professionals recognized pill consumption of mother as the proximate cause of Reproductive Tract Cancer in order to preventing spontaneously abortion. In this case, claimant was a young woman who her mother took estrogenic medicines in order to preventing spontaneously abortion during her pregnancy and finally this ked to her cancer, but because of the abundance of manufacturers of these drugs in that period and passage of so many years , the possibility of finding the manufacturer of those pills was low ,so court decided to consider this case as the new kind of responsibility for market share (see Sindell v. Abbott Laboratories (1980)

Main elements the responsibility for market share

According to the foregoing and given the brevity of the Persian translation of English, general and reasonable, responsible for litigation on the theory of market share, four conditions are necessary:

1. Significant share of the market, was 2-breeding products,3-time and 4 natural inability to reckon readers that explain each of the following be brought in. (See Briefs)

1.1significant share of the market:

Based on this concept, all the defendants had "significant share of the market" can have, in other words all the defendants, all significant contributions and not the market share of their products were harmful. This differentiating factor theory is the responsibility of market share of alternative theories of liability.

1.2parable of products:

Consumer products have to be of fungible (similar), which here means, their composition is identical. In similar cases, the Court asked them due to the use of different chemical composition or the amount it has been rejected.

1.3times the market:

All defendants should be given time, the market had appeared above.

1.4natural inability to reckon defendants:

Inability counted for one of the defendants, the case should be shortcomings; this is especially relevant in the field of pharmacy only drug that gene for consumption and consumer awareness of its suppliers is determined. (Epstein, Richard A., 2004)

Four of the top market share form the basis for the theory of responsibility and competence in the different courts and the courts will not allow defendants to dismiss them from the burden of cutting them. (Allen Rostron, 1995, p151) The provisions of the It should be understood that in the following years of the sixties and seventies, many courts due to the lack of any of them have refused to accept similar claims. (Gilberti, 1999, p719)

1.Define the responsibility of the theory of market share

Today, civil liability, insurance and social security are the three principal partners to compensate losses incurred. If the loss of civil liability and compensation of one or both of the other, the issue of how the total amount payable by the insurance and social security benefits and the right to compensation through the civil liability arises. (Badini, 2008, p. 45)

1-2The principle of compensation:

It can be considered the most prominent legal issue "compensation principle" the main international conventions relating to international law and also in some countries such as Sweden and Austria as well as legal materials and jurisprudence as well as sporadic accepted (Assyrian, 1974, p. 14), he said.

B) The comparative analysis of the legal foundations of the theory of liability market share

Comparative studies indicate that the problem is that the rules of rule and rule that waste will continue as it was in terms of approach and solutions are most similar to the idea of responsibility for market share.

1.A comparative study of the theory of responsibility for loss of market share and the base layer:

One of the famous rules of jurisprudence that jurisprudence works take many different topics. The rule of "no harm" is. On the rule of jurists on different issues and some aspects of independent and have examined it carefully. As one of the fundamental principles of the rule to the extent that more chapters to the transactions cited jurisprudence of worship and used. From the perspective of legal resources including legal principle that no loss of hadith of the Prophet, "no injury loss Fyalaslam" is understood to issue an interpretation so that no harm should be no provision of compensation, according to. (Kavyani 2014, 102) The infliction of harm or damage to others caused the liability and civil liability and operating loss to be required to compensate the woman. A comparative study of the theory of liability and market share loss rule:

The study of Islamic law and significant responsibilities in terms of Islamic scholars and scientists is responsible in law relied only on a base in different And according to the responsibility of the various situations is also different. Since the principle of the responsibility in law is based on solid waste and it should be noted that the jurists waste to waste stewardship and waste division to drawn for each case to establish liability is considered necessary, it can be said that the legal system of compensation compensation for damage suffered over the factors it considered. The legislator did not compensate for the loss of leaves, though also not guilty of entry.

Result

Despite the risk of liability claims with elements similar to the theory of market share despite its perceived similarities between the frequency and legal aspects of the legal principles and jurisprudence as well as the main source of legislation in the Islamic Republic of Iran, some sort of neglect of its kind.An approximate market share of legal responsibility is a term that has its English equivalent and similar did not use it this way, there is, according to the previous analysis, the tendency is Iranian lawyers damages and acceptance of any necessity compensation of the legal foundations contradict theory the general principles governing the law is no advantage of the views of jurists on the basis of their responsibilities is to say, all the accepted theories, but each of them have taken place particularly applicable.Given the lack of legal instruments necessary to follow up the possible responsibilities of these cases, the responsibility of the theory of market share and also the necessity of such discussions in the seminaries and universities, as well as society and courts on the other hand the lack of research in this respect, be sure to issues of this kind, began to be raised in discussions and academic seminary after obtaining the necessary knowledge in this field and the development of its research platform, into the legislative and added to it.

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