“The Comparative analysis of guarantee versus regulations in Civil Code”

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Abstract

Term ‘guarantee’ has been defined variously. Guarantee is used as meaning of security, surety, collateral, and letter of indemnity. In one definition guarantee stands for services after sale of commodities and goods and this trend may not only warrant for survival of production and practitioners in manufacturing companies, but also it is one of the efficient foremost factors for competition in the world markets. Although guarantee is deemed as one life requisites, it stems from some of well-known traditional institutions. Also, Civil Code includes some regulations regarding option for defect/fault and guarantees to indemnify about assuming liability for defect and fault that is relatively similar to guarantee rules; however, there are also some distinct differences among both of them.

Keywords: Guarantee, Regulations of guarantee, Civil Code regulations.
Introduction

Advancement of industry and arising of new inventions and innovations which are based on very complicated techniques, have led to presentation of various types of unknown goods and products to society.

Each of manufacturers and suppliers of these commodities claim their products are better and in this regard they spare no effort to present various promotions about their products that may be sometimes against the real nature of their commodities. Under such climate, that person will succeed in attracting customer that can encourage the customer further.

One of the methods for attraction of customer is to present services plus guaranty for quality of commodity after concluding contract. The consumer, who pays cost to purchase goods, may prefer psychologically that commodity which is supplied with guaranty to ones without guaranty. The present article has dealt with comparative analysis on guarantee and the related regulations in Civil Code.

Guarantee and assuming liability

Law and norm and ethics assign the liability to compensate for loss to producer and or supplier of goods and services that may exert such loss to consumer. No loss should remain without compensation and this is a principle accepted by all legal systems.

Dr. Langeroodi has defined liability as follows: ‘Liability is legal obligation of a person in removal the loss s/he has exerted to others whether this loss caused by his/her fault and or due his/ her activity.’ [1]

Although civil liability has been mentioned in this definition, from public perspective of this subject when punishment has been stipulated for producer or supplier as wrong-doer; in fact, community has incurred the consequence of this damaging action.

Likewise, it is mentioned in another definition that ‘criminal liability is a responsibility for which the perpetrator of criminal action should possess the conscious will and malevolence or criminal intention in addition to complete knowledge about it so that one can attribute the given action to him/her.’ [2]

In addition to civil liability in Act regarding support from consumers, the criminal liability has been also recognized for perpetrator so that it seems this law assumed the committed action as crime that is defect of goods and or breach of regulations regarding production and supply goods and services.

Therefore, the realm of liability in guarantee is as follows:

1- Civil liability
2- Criminal liability

Where, in this regard the ethical liability should be taken into account as well.

In cases where there is certain legal consideration and doing certain action has been recognized as crime in production, supply, and sale of specific goods, only the given measures are assumed as crime and in the case of committing of crime whether consumer incurs any damage and or consuming of goods does not result in his/her loss, after taking legal action in competent court the punishment of perpetrator will be determined and enforced. [3]

Nonetheless, it should be noted that in Act of supporting from consumer in addition to civil liability, some penalties and punishments have been allocated to this action [4].

Some of liabilities include contractual root in which creating contractual relationship the presence of mutual agreement and conscious intention for commitment are deemed as essential condition. Both of parties shall determine consensually effect of obligation that is called crossover of wills. To realize contractual relationship, the private contracts should not be explicitly against law in addition to basic terms stipulated in law and especially regulations in Article 190 of IRI Civil Code.

Third party may conclude a contract as representative of one party. Thus, the effect of obligation contract will be attributed to someone the contract has been conclude by his/her representation.

Therefore, by assuming contractual liability, the victim of loss shall primarily prove the existence of a contract among his/her own and producer of goods the given loss caused by it and then prove some loss has been exerted to someone because of his/her produced goods by the given manufacturer and afterward s/he should demonstrate the given loss was due to the goods as subject of contract.

In the case of incurrence of loss by the customer, the presence of contractual relationship may cause process of realization of the damaged rights to encounter less difficulty. But in cases when there is no contractual relationship, the victim of loss shall be responsible for proving the given loss and relationship among this loss with defective goods as well as demonstration of fault for producer and or vendor of defective goods. This task is sometimes so difficult and complex that the victim of loss may not prove it. It is assumed in contractual liability that as usual liability of producer to be predicted versus the incurred damages by consumers. Hence, victim of loss may claim for receiving compensation for loss (implicit pledge for soundness of goods).

In guarantee, presence of some cornerstones is necessary for fulfillment of obligation similar to other obligations. These cornerstones may be divided into promisor and promisee and subject of obligation.

The subject of liability in guarantee contract mainly refers to civil liability. Civil liability is deemed as contractual when it caused by breach of contractual obligation. Civil liability has defined as follows: ‘The contractual liability expresses an obligation caused for persons as

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consequence of breach of private contract. The violated obligation and caused by contract that is called major obligation and the pledge that is caused due to breach of contract and onus of debtor is called secondary or minor obligation to be distinguished from major obligation.’ Katoozian maintains: ‘If buyer or consumer, who incurs loss because of consumption of defective goods, may consider the loss agent based on sale-related contract for given commodity as responsible for compensation of the incurred loss. ’ [5]

In fact, regarding this theory in which it is supposed seller has knowledge about hidden defects of goods, in both statues, what it convinces and requires seller to compensate for loss is the breach of the given contract among seller and buyer. Therefore it is adequate that there is such a relationship among exerted loss and contract regarding sale of goods thereby it can be implied such loss was due to non-fulfillment of contract. In such actions, the plaintiff shall prove that:

Firstly, there was a contract concluded among him/her and defendant;

Secondly, s/he has incurred some loss;

Thirdly, the given loss was due to non-fulfillment of obligation regarding the purchased goods. [6]

We express two conditions about presence of contract and incurrence of loss for further interpretation in the following:

1- Presence of a contract

There should be a guarantee among victim of loss and seller or producer regarding contract thereby the promisor may be assumed as responsible for compensation of loss: ‘The liability that emerges before concluding contract is due to this assumption it lacks contractual feature for the sake of contract in future.’ [7]

Therefore, this assumption is not pledged by guaranty that before conclusion of contract this guarantee is undertaken for the possible damage to the sold goods among seller and buyer or manufacturer and buyer and this obligation will be realized according to the guarantee when the contract of guarantee is concluded between both of contract parties [8].

As a result, the contract among seller and or manufacturer with buyer of goods is related to both agreement of sale and contract for goods guaranty as subject of given contract and these two contract will be jointly followed by obligations of seller or manufacturer toward guaranty related obligations.

The seller may indemnify the losses caused by hidden defects and or safety of goods due to conclusion of sale agreement but here the damages resulting from effect of guaranty contract are taken into account for which the promisor will be liable. [9]
2- Presence of loss

Incurrence of loss is deemed as condition for realization of liability for manufacturer or seller against sold commodity in fulfillment of obligations listed in guaranty. Of course, it may be supposed that only damage caused by use of defective goods is considered as basis for claim but inversely this point should be noticed that what the buyer has conventionally intended for purchase of goods and the given goods have been produced for it normally and if not realized is the liability that promisor shall compensate for it. Sometimes incurrence of loss is the same as defect of goods due to manufacturing for which the promisor of guarantee may be sentenced to return the price or replace or repair the given goods and or compensate the related loss so that in both cases the incurred loss shall be compensated. [10]

Suppose an automotive manufacturer guarantees his product for two year upon sale of product that covers engine, body, parts, and use of it and then due to use of product by buyer after four months and because of technical defect in braking system that was related to manufacturer an accident takes place that is led to death. Here the guarantor should pay blood money and compensation to family of the late person in addition to repair and or replacement of the given automobile.

The bases of liability in guaranty

a) Fault- base liability

The fault (omission) is a behavior that is not committed by normal person during occurrence of an accident. If this action is done as the consequence of abnormal personal action and the given person is sentenced to compensation of loss, the victim of loss shall prove his/ her fault as well as causation relationship among fault and the incurred damage. [11]

Sometime proving breach of promise is adequate in contractual liabilities but regarding tortious liability, fault is always deemed against the original defect and it requires proving. If manufacturer does not take duly precautionary measures in production of goods and vendor in his/ her sale they are assumed as guilty. There cases include the measures which are observed normatively by any manufacturer and seller such as caution and care in manufacturing of products from appropriate raw materials, testing and inspection of goods, scientific and technical principles in employing experienced workers for production of goods, presentation of adequate and sufficient warning and guidelines, care in packaging goods and principally observance of the existing standards and regulations specifically and normally for each of manufacturing and commercial jobs. [12]

The manufacturer and supplier will be responsible for compensation of loss only because of production and supply of defective goods during guaranty period if the guaranty was absolute for goods. But if the guaranty is not absolute they are considered as liable to compensate for the loss incurred by consumer provided it was because of their fault.
The seller’s liability only covers those damages for which the probability of their occurrence is predictable and they are created by normal use of product. [13]

b) Absolute liability

The absolute liability is in fact is responsibility for consequence not action and it is variously justified by philosophy. Some group argues that right of consumer may be reserved that the right of soundness and safety of product. Later, right for soundness and safety of product was generalized that restricted to consumer so that all people have right to be secured from the risks of consuming the goods. [14]

It has been mentioned in another justification that the absolute liability is based on unrighteous risk created for others by effort of defendant.

The absolute liability is also visible in some of rules in Iran including Act of guild system that generally implies theory of absolute or mere liability regarding manufacturers and vendors.

Regarding liability of manufacturer and seller, Provision 4 of Article 15 from the aforesaid law holds: ‘The guild businessman is responsible for compliance of quality and quantity for any type of supplied goods or services that were sold by receiving fund or money listed in invoice.’ In this provision, the liability is absolute. Therefore, absolute liability does not require for presence of contract among victim of loss and agent of damage. Thus, even third party as victim of loss caused by defective goods will be entitled to refer to manufacturer and supplier of the defective goods. In addition, the victim of loss has no obligation to prove fault of loss agent but the liability for compensation of loss will be determined exclusively by incurrence of loss.

The effect of guaranty on rights caused by defects of goods in Civil Code

1- Option of defect

Guarantee and option of defect have some commonalities including lack of soundness in the given goods that gives the customer right for revocation or taking claim for compensation. The customer may remove the damage by fulfillment of either of both rights. Also returning of goods to seller in guarantee is due to emerging of technical defect and fault. The receiver of guarantee may dispense with his/her right. Customer has also right to waive his/her option of loss. The criterion of distinction of defective goods is related to sale and typical guarantee and it varies based on time and place.

Article 2 of Act for support of consumers’ rights holds: ‘All suppliers of goods and services shall be severally or jointly responsible for soundness and precision of the given goods and services in accordance with the regulations and conditions listed in the related contract rules or terms with respect to norm in transactions. The customer has right exclusively to request for the sound product/service if subject of transaction is general and in the case of presence of defect or non-compliance of goods with the determined qualifications and seller shall provide it. If subject of contract is partial (certain object), the customer may revoke the contract or ask compensation for
defective goods and sound product and seller shall pay for it. In the case of revocation of contract by customer, the supplier will not be obliged to pay compensation for loss.’

According to Article 423 of IRI Civil Code, the option of defect is deemed for customer when the defect in contract object is hidden and embedded in goods during conclusion of contract. For this reason, the existing defects are divided into two classes during guaranty period.

a) The existing defects during conclusion of contract

b) The defects created after conclusion of contract

The guaranty and the attributive cases of option of defects coincided with each other only regarding defects existing in goods during conclusion of contract and therefore it can be implied that the relationship among guaranty and the relevant cases of option of defect is general and specific to the given case where they only agree unanimously in one case when the related defect exist during conclusion of contract so that presence of these defects create right for buyer regarding option of defect and buyer may resort to option of defect by virtue of existing hidden defect upon conclusion of contract. In this case, buyer may either revoke the contract and or be satisfied with receiving compensation to resume object of sale. Likewise, s/he can request for repair of sale object with respect to guarantee for requirement of product manufacturer.

Overall, there are some differences among guarantee and option of defect briefly as follows:

1- Sanction for option of defect is revocation of contract or asking for compensation and execution of these rights is emergent. But regarding guaranty the customer may ask for conversion and replacement of goods and fulfillment of aforesaid right may be also possible with postponement.

2- The goods may be returned in option of defect by revocation of contract and in guaranty with resuming of contract.

3- Guaranty includes the defects after receiving of product. But option of defect is specified to the defect existing before receiving of goods. And this rule applies to defects after receiving of product when the given defect caused by former defects.

4- Defect is determined for all types of properties but guarantee is usually related to moveable properties.

5- Option of defect may be waived in some cases but guaranty will be in force to expiry date.

6- Guaranty needs to independent agreement but option of defect is exclusively obtained by sale.

7- Guarantee is in favor of buyer but in option of defect both of parties have right toward commutative contract.
Dr. Katoozian believes that according to norm, occurrence of technical defect is not problematic during guaranty period and it does not create option of defect because it takes place after contract and delivery of goods. But as the condition requires, lack of duration of soundness for product may create option for revocation and or requirement for seller to remove defect. Similarly, it is said that if the current defect is the consequence of previous defect, the customer has only right for replacement and conversion of the defective goods (Based on guaranty term) not enforcement of right of revocation due to option of defect. [15]

Nonetheless, it seems if guarantee condition is stipulated in a contract and defect is created in the goods after receiving it that was due to former defect the customer may revoke the contract or ask for compensation with respect to defect in given goods or request for conversion and replacement of defective goods with respect to goods guarantee.

2- Condition to guarantee soundness

Seller is obliged to deliver sound and intact goods without defect to customer. This obligation is due to implicit condition among seller and customer accordingly the sold object should lack any defect. Otherwise, the seller shall pay compensation to customer for the loss due to defect of the sold object. In other words, the obligation of seller toward safe and sound product is type of pledge for outcome and only coercive force may indemnify him for the liability. [16]

This condition may be properly implied in contract and seller explicitly guarantees soundness of contract object. Therefore, in both of contracts (either guaranty or condition to ensure from soundness), seller or manufacturer guarantees soundness of contract object for the given use and in both cases additional obligations are assigned to him/her and in favor of consumer. Also in guarantee contract or terms, seller will be implicitly liable for delivery of sound goods without defect to buyer. Nevertheless, it should be considered that the seller is undertaken in guaranty contract for conversion or replacement of defective goods not compensation of loss caused by use of defective goods. In fact, in guarantee contract in the case of defect in goods, buyer can ask for replacement and conversion of defective goods in accordance with contractual obligations (including terms or guaranty contract) while request for compensation caused by defect in goods may be asked by rules of tortious liability. The sanction of term for guaranty of soundness of goods is to create option for revocation from a person in whose condition is made. However, the initial consequence of guarantee is to remove defect or replacement of contract object without termination of contract. Moreover, the soundness of contract object (in term of guarantee for soundness) is measured upon conclusion of contract. But guarantee is restricted to specific period of exploitation from contract object. Similarly, it should be noticed that term of guarantee for soundness possesses high potential; as an implicit condition in contract. Whereas any condition, which is not against preemptory norms, may be listed as a term in the contract thus it is possible to embed all terms of guarantee in the contract.

According to Article 221 of IRI Civil code that holds: “If any party undertakes to perform or to abstain from any act, he is responsible to pay compensation to the other party in the event of his not carrying out his undertaking provided the compensation for such losses is specified in the
contract or is understood in the contract according to customary law or provided such compensation is by law regarded as guaranteed”, if manufacturer or seller of goods rejects from fulfillment of obligations for which s/he is responsible within guarantee, the party for whom s/he is obliged may ask the court to require him/her for fulfillment of obligation. Therefore, the manufacturing company has guaranteed for removal defect or to give some services this is deemed as his/her obligation and non-commitment to obligation caused by guaranty for duration of soundness of goods or giving services may give this right to the opposite party to ask the court to require that party to execute obligations.

3- Guarantee and indemnity from defects

Article 436 of IRI Civil Cod holds: “If the seller accepts no responsibility for the defect in such way that he can establish the fact that he was not responsible therefore, or if he sells the object with all its defects, the purchaser will have no right to recourse against the seller when a defect appears; and if the seller makes reservations against one particular defect, he will be relieved of liability only in respect of that particular defect”.

Here, this question may be raised that is only guarantee for removal of defect and or replacement of parts of goods by manufacturer or seller during guarantee period assumed as a type of indemnity for other defects? In other words, is it not true that manufacturer or seller have assumed their own indemnified for other obligation as their implicit condition by acceptance of specific obligations in such a way that his/her liability against buyer is exclusively restricted to the limits specified in the guarantee?

The term of indemnification principally refers to the existing defects at time of conclusion of contract and deemed as one type of lack of liability and it may remove liability against loss due to goods defect when the seller is not aware of the given defect unless it only waives option of defect. [17]

It seems that giving guarantee may not cause indemnity for defects as an implicit condition.

Article 422 of IRI Civil Code has principally predicted revocation of contract or asking for compensation as effective sanction for unconventional loss where the cause of option of defect is proved that is fixed as soon as proving of defect. It is obvious that along right of revocation and or request for compensation, the owner of this option has right for requirement to accept effects of contract by the given party as well. Therefore, the other contract party may not assume the contract as annulled because of emerging a cause of the occurrence of related options.

According to law, in the case of existing hidden defect right of revocation of contract is also proved for the customer as victim of loss in addition to right of asking for compensation. But in guarantee, right of requirement to replace the contract object and right of requirement for repair have been anticipated as two efficient sanctions.

With respect to legal regulations about hidden defects in sold object and given the rules of guarantee we may conclude that what type of appearance exists in a defect causes right of legal
option and this matter does not depend on specific motives and goals of two parties and for this reason description of soundness does not need to any condition and it is requisite for any contract without constraint (as it duly requires) while term of soundness of contracted goods does not add anything to effect of defect and it is emphasized.

Breakdown of sold goods is assumed as a defect when its origin is hidden at time of concluding contract in goods, Article 430 of IRI Civil Codes holds in this regard: “If the defect which takes place after delivery arises as the result of a former defect, the purchaser will also have the right to return the object of sale.”

But, if defect occurs completely it follows the condition not the governing rule over defect.

According to Civil Code, option of defect is mentioned where the customer finds a defect in goods so despite of the existing defect; buyer has one alternative out of three selection’ namely, his/her consent for contract, and or revoking it and or receiving the spread amount among sound and defective goods i.e. compensation. And customer has this option as long as s/he has not waived the contract by verbal emphasis and or any action that refers to revocation of contract and also has not exert any possession in defective goods to transform the sold object and also no new defect did not take place in goods before buyer. As option of defect is proved for customer, it will be also proved for seller if he finds goods defective with respect to the fixed value of goods. Also, defect signifies any condition that excludes something from the natural trend and original creation status.

But with respect to regulations of guarantee, we implied that guarantee is unilateral obligation pledged by manufacturer or seller of goods or services in favor of customer during definite period of time since purchase of goods or services during which if any defect occurs in the given product that may not be attributed to user, the seller or manufacturer will be liable for it.

The existing defects in guarantee period are divided into two groups:

1- The existing defects during conclusion of contract

2- The defects occurred after conclusion of contract

If defect exists in goods or services during conclusion of contract, the buyer may revoke the contract and or ask for compensation by resorting to Civil Code and use of option of defect and or by virtue of guarantee, s/he may require seller for replacement and or repair of the defective goods. The buyer has option to exploit from advantages of option of defect as well as guaranty. Also, buyer of a commodity with guarantee may enjoy more rights compared to a buyer who purchases a product without guarantee and may enforce each of those rights that may be more beneficent and profitable for him/ her. Alternately, regarding option of defect, if manufacturer (or seller) of goods can prove all of the needed cautions have been made in manufacturing of goods and the existing defect in sold object caused by external accident and not related to manufacturer then assuming manufacturer as liable will lack any legal justification. But it does
not apply to guarantee. As the given defect is not attributed to buyer, the buyer can use advantages of guarantee within certain period.

Therefore, if the given defect exists during conclusion of contract and also goods enjoy advantage of guarantee, the buyer will enjoy more rights proportional to his/her option.

If the defect has occurred after conclusion of contract, given the sold object is still delivered to seller and in the case of having guaranty, the former assumption applies to it and buyer may still use one of legal (option of defect, revocation of sale, and or request for compensation) and or contractual advantages i.e. guaranty.

But if defect is created after conclusion of contract and delivery of sold object to buyer, benefitting from the related legal advantages will be cancelled i.e. use of option of defect based on legislator’s definition in Article 422-425 of IRI Civil Code. However, buyer of goods with guaranty may even exempt from burden of proving fault of seller and or manufacturer if we know guarantee as condition to ensure from soundness of goods by creating this advantage for buyer since liability of manufacturer or seller of goods to explicit or implicit guarantee for sound goods will be in favor of buyer and it makes buyer free from proving fault of seller so s/he can use advantages of guarantee and ask to require manufacturer and or seller for replacement and or repair of defective goods.

Therefore it can be implied that the rule of Civil Code about defect of sold goods may be integrated into regulations of guarantee and it can be enforced according to buyer’s discerning for either of them. Likewise, if the given defect exists at time of conclusion of contract and before delivery of goods during guarantee period, buyer will be entitled to prefer to enforcement of right of revocation and or request for compensation.

And also with respect to what it mentioned, given cancellation of law enforcement after delivery of goods and in the case of existing defect before delivery it completely obvious this will not create any conflict in execution of regulations of guarantee with similar articles in IRI Civil Code.
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