

# The Comparison of Civil Liability of a Parent of Insane Minor between Iran and England Laws

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## Abstract

Legal liability is the legal bound obligation to pay debts. In law, a person is legally liable when he/she is financially and legally responsible for something. Legal liability concerns both civil law and criminal law. Legal liability can arise from various areas of law, such as contracts, tort judgments or settlements, taxes, or fines given by government agencies. Liabilities may be covered by insurance, although typically insurance covers liability arising from negligent torts rather than intentional wrongs or breach of contract. Liability may also be imposed joint and severally in certain cases. Liabilities arising from a contract to borrow money are debt. Children's rights are provided by a large number of laws – some that specifically were enacted to protect children, and others that contain just a few sections that pertain to children but provide them with essential rights. There are numerous pieces of legislation that provide children with rights in the areas of education, medicine, employment and the justice system. Given the volume and complexity of these laws, this report provides a necessarily broad overview of the substantive pieces of legislation as they affect children's rights in these areas. Therefore daily-increase of using bicycle and other dangerous tools may cause real damages for others. Also it is because of mental diseases which may attract the attention of law makers and specialists of law for the importance of compensation of any damages resulted by interdicts. The issue is not stupid civil liability and/or any differences between stupid elders. Civil liability of any functions insane minor is the real aim of this paper. As a result, it is conditional for damaged person to prove any failure of supervisor in order to be entitled for any compensation of damages. In case of any refer to supervisor to discredit for receipt of damages; it seems that there is no more difference among Iranian, England and Switzerland Laws. In none of the mentioned laws it is accepted for any refer to discredit because of his/her faults as well.

**Keywords:** Civil liability; Insane minor; Law; Iran; England

## Introduction

Parents hold responsibility for a minor child's actions, and if one's child, supervised or unsupervised, commits destructive act that causes a loss to another, the parents may be liable. For example, if, one summer afternoon, a was playing with matches in a field and started a fire that severely burned a neighbor's garage. Because a child generally does not have the financial wherewithal to pay damages, in civil law a parent can be held financially liable if the child harms another person or damages another person's property. This legal concept is known as parental civil liability [1,2]. The wrongful or negligent act the child commits is called a tort. Parental civil liability is intended to compensate victims of torts and to encourage parental control and supervision. Parental civil liability begins when the minor generally is between 8 and 10 years old and ends at the age of majority, which is between 18 and 21, depending on state law. All 50 states have parental civil liability laws though they may vary from state to state. Some states have a limit on how much money a parent is liable for [3]. This can also depend on the severity of the wrongful or negligent conduct. The courts have upheld parental civil liability laws because the U.S. Supreme Court has held that parents have the duty to provide reasonable control and supervision of their [4,5].

Parents can be held responsible for their children's harmful actions much the same way that employers are responsible for the harmful actions of their employees. This legal concept is known as vicarious liability. The parent is vicariously liable, despite not being directly responsible for the injury. Historically, under English and U.S. common law, parents were not liable for their children's torts just based on the parent/child relationship alone. Some participation by the parent in the civil wrong was necessary to hold parents liable. The participation could include encouraging or condoning a child's misconduct, directing a

child to engage in the conduct that caused the injury, or turning a blind eye to a child's obviously dangerous conduct. However, the law, like so much in society, changed once the automobile and automotive injuries became commonplace [5,6].

In Ohio a "minor" is a person who is under the age of 18. When a minor breaks the law or causes damage or injury to another person, an animal or property, their parents may bear the liability. Many state statutes authorize courts to hold parents financially responsible for the damages caused by their minor children. Some states may even hold parents criminally liable for failing to supervise a child whom they know to be delinquent. In general, individuals who are injured or harmed by a minor may be able to file suit against both the minor and the minor's parents. The law surrounding liability of children is complex and susceptible to many arguments that can minimize a parent's exposure, and the liability of the child. Legal representation may minimize the financial exposure to the parent and the child. At the Law Offices of Jacob Rzepka we stand ready to assist you in navigating the legal process and avoiding unnecessary cost or liability [5,7].

In general, minors are liable for their misdeeds. However, when

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a minor acts intentionally or negligently in a manner that causes harm to another, it is difficult to collect damages from the minor. In such a situation, the minor's parents may also be held liable for their child's acts and/or ordered to pay for them. A "parent" can be anyone exercising parental authority over the child, but typically refers to the "custodial" parent [8]. Although they vary widely by state, most parental liability laws target intentional, malicious or reckless behavior and exclude pure accidents. Parental liability stems from the custodial parents' obligation to supervise and educate their children. Some parents who have been sued under parental responsibility laws have argued that the laws interfere with their right to parent as they see fit, because in the course of defining poor parental supervision, the laws necessarily define what a "good" parent is. While parents have a fundamental right to rear their children, as the Supreme Court has recognized, that right comes with the duty to exercise reasonable supervision and control over their children. Courts have routinely held that states have a compelling interest in promoting the public welfare by holding parents accountable when they fail to fulfill that duty. This is the basis upon which courts uphold parental responsibility laws [1,9].

### Requirements of any guardianship in Iranian Law

According to Civil Liability Law, followings are general requirements of any liabilities in current Iranian Laws: Applying of damages and finding out any cause and effect relation between fault and damages. Fault is the concerned discussion as follows. Also there are some private conditions for any guardianship as mentioned below [3,6].

### Liability for taking of an insane minor

In part I of article 7 we have: "Anybody who is legally obliged to take care of an insane or minor according to a contract". We have applied supervisor Instead of the mentioned definition. Some of the specialists of law believe that both "Taking Care" and "Maintenance" are similar in this article. The others believe that maintenance means taking care "either with taking care or supplying all required factors for the life of insane or minor including foods, clothing and housing". By the way, there is a wide meaning for part I of Art. 7 include anybody who is legally obliged to take care of an insane or minor [10]. Therefore it means father, mother, guardian who are responsible for guardianship of the interdicted, principal of the school and teachers who are legally entitled to take care of students, a nurse who is legally responsible for taking care of an insane of minor, a shopkeeper or industry man who is obliged to take care of a minor, a businessman who has accepted a minor to work with him/her and/or any other persons who are legally responsible against the minor all are subject to the mentioned part I of Art. 7. The mentioned contract is named as Care Obligation in replaced or free of charge, in written and/or oral forms could be short-term or long-term [11,12]. Legal persons are not of course subject to Part I of Art. 7. The term "anybody" as mentioned in this article is applied just for a natural person. When two or more persons are obliged to take care of a discredit (for instance both father and mother who are commonly responsible for guardianship and/or any bodies who accept a common child), in case of a common fault of discredit to others, all of them are responsible and obliged to compensate. But their liability is not a joint and several one. But they are responsible just for their own fault. Therefore the judge is obliged to specify any payment of damages in prorate of their effects in concerned fault. This is because the joint and several responsibilities are in contrast with the origin and needs a quotation which is not applied here. Of course when the faults of supervisors are considered as judicial crimes based upon notice II- Art.

1 of the law of financial punishments approved in 1972, both parents are obliged to compensate any damages [6,13].

### Discredit under the guardianship or take care

It means when the guardian is responsible against any faults of discredit. It seems that the term minor includes discerning or undiscerning with no more rules specifically related to undiscerning minor. By the way, some of the specialists of law allocate the mentioned rule in part I- Art. 7 for undiscerning insane minors. They interpret that in case of any damages by undiscerning minor to the other due to the faults of his/her guardians, in fact it is the guardian who has made damages as well. Therefore according to the Article 332 of Civil Law it is the guardian (supervisor) who is responsible for taking care of the minor. But since the discerning minor has no more recognition power, all persons who are responsible for his/her [12].

Keeping should not be considered as the responsible persons. It is not free from any further problems because of the followings:

Firstly- the term minor is an absolute term as mentioned in Article 7 of Civil Liability Law and includes discerning minor. Also it is not a reason for any allocation of the same for an undiscerning one.

Secondly- This article is not based upon civil law principles. But the basic goal is supporting of any damages from one side and making the guardian to apply more cares and attentions in his/her duties on the other. It means that any damages resulted by discerning minor, the supervisor is the first person who is obliged to compensate it because of his/her duty for taking care of minor [14].

Thirdly- There is not any difference between discerning or undiscerning minor in relevant laws of both Switzerland and France as mentioned in Article 7 of Iranian Civil Liability. Therefore the supervisor is responsible in both cases as it will be discussed later on. As a result, part I- Article 7 of Civil Liability Law creates a new and special rule as mentioned in Article 1216 of Civil Law [15]. Meanwhile discerning minor is himself/herself responsible against any damages. Therefore we should not consider the guardian of discerning minor even with any failures in his/her duties. According to the Civil Liability Law, in case of any shortage of supervisor in taking care or maintenance of discerning minor, firstly the responsible person is anybody who was obliged to take care or keeping him/her [15].

### The child as tortfeasor

With regard to tort liability of children there are at least four crucial questions which must be examined in the different legal systems:

- 1) Whether children are directly liable for the damage they cause and whether there is any age limit below which they have no tortious capacity and, therefore, they are exonerated from liability;
- 2) If in spite of their lack of tortious capacity, for reasons of equity can children be held liable in exceptional conditions and which are or should be these conditions?
- 3) What is the relationship between liability of children and liability of other persons, such as parents or guardians, who will be held responsible for them and how are their corresponding liabilities organised (whether it is a subsidiary or a direct liability, and in this last case, whether these persons are held jointly and severally liable with the child who has caused the damage).
- 4) Finally, whether the general answers that the legal systems give to these questions are kept up in all areas of tort liability and in

all situations or, on the contrary, follow different rules in areas that have special features (for instance, when specific dangerous or risky activities are carried out) or when damages are covered by a certain sort of insurance. A different step in the analysis will investigate whether technological changes and a shift to an expanding information society is, or is not, asking for changes of the legal paradigm too [10].

### Minority and lack of tortious capacity

One of the first questions that arise is whether the trend of adopting child-friendly rules that can be observed in other areas of law applies also to tort law. In order to ascertain whether this trend exists several aspects must be taken into account [10].

### Age limit versus individual maturity of the child

Speaking generally, it seems that one must admit that the general attitude towards children in the continental European legal systems is protective. Bearing in mind the lack of capacity of children who cause damage, there is a general trend that in order to protect children tries to exempt them from liability. However, beyond this general trend there is no common accepted age limit below which this exemption occurs. Moreover, not all European legal systems include in their laws a fixed age limit and, when they do, this limit is not the same. Thus, for instance England fix this minimum age at 7 (although only to reverse the burden of proof of capacity). In Greece the limit is set at the age of 10 (Art. 916 Greek Civil code), whereas in The Netherlands (Art. 6:164 BW) it is established at the age of 14 [13].

On an opposite position, the starting point of some European legal systems is the absolute or almost absolute tort liability of children. So in France, for instance, after a set of decisions issued in 1984, children are held liable in tort although they have no ability to reason. Their ability “to distinguish between good and evil” (*discernment*) is of no relevance, as their acts must not be measured up to the regular behaviour of other children of the same age but to the standard of a reasonable adult person. As long as the act committed can be considered negligent under this objective point of view they will be liable in tort [3].

A different and intricate question arises in those legal systems, such as the England or Iran one, where their Penal Code contains a different regulation and, in contrast to their Civil Code regulation, establishes a fixed age limit (for instance 14 years old according to Art. 97 of the Italian Penal Code). In these cases legal writing and courts have serious problems when trying solving the puzzle of fitting one regulation in the other. In Spain the question is specifically complex and has given rise to an endless legal debate. Unfortunately, the recent *Ley Orgánica de responsabilidad penal de los menores* (Organic Act about Criminal Liability of Minors [LORPM]) has not solved the problem. Even after this Act tort law, unlike criminal law has no fixed age for capacity. The tortious capacity of children depends on their maturity of judgement. However, there is some agreement that a certain capacity must be presupposed in those minors who are close to the legal age, although no clear borderline is drawn and legal doctrine refers the solution of the problem to the circumstances of the case. If the wrongful act amounts also to a crime or to a misdemeanour the Organic Act about Criminal Liability of Minors [LORPM] provides that, according to this Act, minors are liable in tort for the damage caused —jointly and severally with their parents, guardians, keepers or custodians— but only if they are over 14 years old (art. 61.3 in connection with art. 1.1 LORPM). If minors are under 14 the provisions of the Act do not apply, but this does not mean that minors are not liable in tort but only that their tort liability will be established then according to the general provisions [3,16].

The approach adopted in German law amounts to a mixture of all of the elements explained above. To begin with, § 828 para 1 BGB stipulates the age of 7 as the ultimate threshold below which a child is not liable for damages it caused, regardless of its mental capacities and capabilities. Currently, a new federal regulation exists at the parliamentary level pursuant to which the age limit would be raised from 7 to 10 years with respect to minors involved in motor accidents as well as accidents involving trains and cable railways (*Zweites Gesetz zur Änderung schadensersatzrechtlicher Vorschriften* (19 February 2001)). However, it would be incorrect to conclude that a child older than seven is always held accountable for its tortious behaviour. Rather, between ages 7 and 18, during which the minor matures towards adulthood, the question of liability for damages resulting from tortious conduct is based upon the particular child’s capacity to understand the wrongfulness of its behaviour and to act accordingly (Cretney, 2013). The German criminal law adopts the same two-tier-approach to minors but stipulates a different age as the threshold for criminal liability. Pursuant to Sec. 19 of the Penal Code (*Strafgesetzbuch*), the relevant age is 14, while offenders between 14 and 18 years of age are to be scrutinized on a case by case basis in order to establish responsibility for their criminal acts. These rules of criminal law are also relevant for tort law since Sec. 823 para 2 BGB establishes private liability on a person offending a criminal law aimed at protecting individual rights [3].

### Ability of reason and required standard of care

**Ability of reason:** A fundamental precondition of fault liability of children is in all systems the proof of the ability of reason of the child, i.e. of a sufficient *capacita d’intendere o di volere*, as it is understood by Arts. 2046 and 2047 *Codice civile italiano*. However this point raises the question of what must be understood under “ability of reason”. Whereas in some systems it would seem that the ability to reason refers only to the ability to act voluntarily in accordance with this intellectual understanding in others it seems to be more strict and require also the ability to see his or her responsibility as a result of his dangerous conduct, i. e. that the child recognizes somehow that he has the duty of taking responsibility for his actions. The answer to this question is not petty, for in the second case the tendency is to confine liability of children to children who have already reached adolescence, as these will be the only ones who, due to their maturity of judgement, will be really aware of the results of their actions [7,16].

### Applicable standard of care

A different question arises in relation to the standard of care that children have to meet in order to escape liability. If their behaviour is measured up according to the general standard of the reasonable person that is required from an adult, i. e. that of the *bonus paterfamilias*, it seems clear that the law places on them a burden that might be too heavy [7]. Other systems, as the English one, relate the standard of care that the defendant child has to meet to the behaviour of a child of a similar age and acting in similar circumstances. In this system a young child will probably escape liability for negligence unless he acted in a way other than that in which an “ordinary” child of the same age might be expected to act. Moreover, he will probably be incapable of forming the necessary state of mind for liability in torts involving negligence or malice. For this reason it will be necessary to ascertain whether to answer given by the English system is more acceptable and to what extent it would be the most convincing one in order to foster his protection [7,17].

## Liability in equity

The researchers of this Project will have to consider whether the so called *liability in equity* is useful or not and to what extent. Liability in equity has a legal regulation in some European systems and, under certain circumstances, allows the victim to obtain some sort of compensation from the tortfeasor child in spite of his lack of tortious capacity and taking into account that otherwise the victim would go uncompensated [4,7]. The acceptance of liability in equity entails the necessity to analyse which are its conditions and which are the circumstances in which it should apply. Moreover, considering that it does not amount to full compensation of the damage sustained but only to a fair compensation in equity the study of the different elements that will have to be taken into account by courts when assessing its amount becomes compelling. So for instance the weight that must be given to the degree of causal contribution of the child, the magnitude of the damage sustained by the victim, the financial situation of both parties, the existing coverage of the damage sustained by other devices such as liability insurance covering the minor or indemnity insurance or social security insurance of the victim, the bearing of an eventual contributory negligence of the victim, etc [4].

## Relationship between liability of children and liability of parents and other persons who supervise the child

When analysing the different legal systems it seems clear that under certain circumstances liability of children entails also liability of those persons who have the duty to supervise them. Among these persons there are not only the parents but also tutors, guardians, teaching institutions and other persons who take care of the child either on a permanent or on a temporary basis. Therefore it will be necessary in this Project to study the liability regimes of all these groups of persons who are bound up with these duties of supervision, as well as the relationships between their liability and an eventual liability of the child itself for the causation of the same damage [1]. In practice the question is quite problematic, mainly if we bear in mind that what happens more often is that parents, tutors, guardians and other persons who have a duty of supervision are finally held liable either because the child has no capacity or because, even being capable, he has no solvency to meet the obligation of compensating the victim. In these cases:

- How is the relationship between the child and the supervising persons who have to compensate the damage?
- How do the different legal systems deal with those cases where together with the liability of the parents, tutors or guardians the teaching institutions in charge of the child when the damage occurred could also be held liable?
- What is the rule of liability in these cases: are all of them primarily liable and if so jointly or severally liable or not?
- Are some of them only secondary liable?
- Which is the best liability rule considering the need of protecting childhood?
- Would this solution be compatible with the necessary protection of the victims?
- Can parents and other supervisors recoup the compensation that they have paid from the child?
- Are these actions of recoupment carried out in practice?
- With regard to recoupment, should there be any difference

between parents and other supervisors (guardians, teaching institutions, etc)?

## Liability of parents

In this area it will be necessary to analyse the liability regimes of the parents in the different legal systems and whether these systems operate according to the traditional fault liability for *culpa in vigilando* or *in educando* or whether they introduce corrective measures to increase the number of situations in which parents will be held liable. So, for instance, by introducing a rebuttable presumption of fault liability, as England law does in § 823 II BGB, or by making the conditions of their liability (something which courts in some countries do) or by making their conditions of liability so harsh that they can hardly ever escape from liability, being thus in practice a sort of strict liability [2].

It must also be found out whether liability of the parents is related or not to the tortious capacity of the child and which are the possible results of this connection (for instance, liability of parents only when children have capacity or, the other way round, only when they have no capacity).

A last question in this part will be to analyse how the different legal systems deal with the problem of ascertaining who is the person who will be held liable for the child when the parents are separated or divorced, or when children are temporarily together with other relatives such as grandparents or adult brothers or sisters. In a similar way it must be examined who will be liable for the damage caused for children during the time that they are not under the protection of any adult or institution.

## Liability of tutors and guardians

Under this point the research team should analyse the answers that the different legal systems give to the cases of liability of tutors and guardians for the acts of their wards and give answer to the questions that it raises, such as:

- Do all legal systems under consideration offer a similar answer?
- Are these the same answers as in the case of liability of the parents for their children?
- What are their conditions?
- Is there any difference between the liability of tutors and guardians of children and tutors and guardians of insane persons?
- Are the answers the same when the tutor or guardian is a legal entity (the so called “institutional tutorship”)?

In this last case it is also important to ascertain whether the liability regime of tutors and guardians is different when the person in charge of the child is a public institution as, for instance, occurs in Spain, where liability of public institutions acting as tutors is governed by the general rules of public authorities set forth in Arts. 139 et seq. of the Ley 30/1992, de *Régimen Jurídico de las Administraciones Públicas y Procedimiento Administrativo Común* (LRJAP), which establishes a strict liability regime. Similarly, in Austria state liability for the wrongs of public servants is governed by a specific statute, the Official Liability Act (Amtshaftungsgesetz); but liability is based on the misconduct of the public servants [1].

## Liability of teaching institutions for the damage caused by their pupils

As in the previous case this Project will analyse which is the liability

regime of teaching institutions for the damage caused by their underage pupils. In this area it is of relevance to establish the scope of this liability [18].

- Whether teaching staff is personally liable or not and if so, according to which liability regime (strict liability, fault liability for *culpa in vigilando* [with/without reversal of the burden of proof]).

Whether the teaching institution is primarily or subsidiary liable and, in the first case, whether it can recoup from the teacher who caused the damage and under which conditions (for instance, in Spain, according to Art. 1904.2 Código civil, recoupment is only possible if the teacher acted with intent or gross negligence).

With regard to the scope of liability it is important to specify the extent of the liability of the teaching institutions:

Are they liable only for damage caused in the course of activities carried out in the school or also for other activities carried out outside the school premises?

Are they liable for the damage caused by children while being transported from their homes to the school?

Is it possible that parents and teaching institutions are held jointly and severally liable for fault (*culpa in vigilando* or *in educando*)?

Finally it must also be analysed whether the liability regime is the same for private teaching institutions as for public ones or, as it happens in Spain and Germany, whether it differs to a significant degree. So, for instance, in Spain when the teaching institutions depend on public authorities their liability for damage caused by children is strict and governed by Arts. 139 et seq. of the Ley 30/1992, *de Régimen Jurídico de las Administraciones Públicas y Procedimiento Administrativo Común* (LRJAP), as amended by Ley 4/1999, of 13th. Of January. In Germany, the liability of private schools is governed by the general provision of § 832 para 2 BGB, conferring liability upon any entity which has contractually assumed responsibility for the supervision of the child. In contrast, public schools and universities are subject to the provisions governing the tortious liability of the state and other public entities, i.e. § 839 BGB, Art. 34 Grundgesetz. As of yet, this asymmetry has not been the focus of research, and thus it remains to be explored whether the differences in approach also yield different results.

### Liability for damages caused using electronic means

It is clear that all the above lines of investigation should be tested also with regards to technological developments and education of minors. Indeed, the expanding role of computer usage also in teaching, education and entertaining open room to different ways of causing damages. Once again, children are the target of the most possible damage both as material source and as victims of it [1].

### The child as a victim

When the child is considered from the point of view of a victim who has suffered damage the question that arises is how his capacity will affect his relationship with the tortfeasor. In this area one of the main issues will arise when the conduct of the child has also contributed to the damaging result, i.e. when there is contributory negligence of the child as a victim. The bearing of his ability of reason on his or her contributory negligence will increase the hurdles that the exam of contributory negligence already presents.

### The contributory negligence rule and the plurality of standards

Firstly it should be tested whether it is possible to establish a general rule in this area and if so, whether it should stand for relevance or for irrelevance of contributory negligence of the child. However it is very likely that the existence of a general rule does not entail an absolute rule and thus that it allows exceptions. Rule and exceptions should be analysed in detail, bearing in mind that whereas in some legal systems the regulation is set forth by legislation in others the rules have been developed by the courts. Even in the first case, i. e. when statutory rules are available, it will be necessary to check to what extent the courts has developed these rules and whether this development is fully in accordance with the primary statutory provisions.

In those legal systems that admit the relevance of the contributory negligence of an underage victim it will be necessary to verify which is the standard of care that applies in these cases. Or in other words, whether it will be sufficient to assess that the child has acted in a manner that can be qualified as “objectively negligent”, regardless of his actual ability of reason or whether his ability of reason becomes a condition of liability of paramount importance. In the first case, as it occurs under current England Law, the rule will be that it is irrelevant whether the minor was subjectively capable of discerning the consequences of his actions and his standard of care will be defined objectively, i.e. with regard to that of an ordinary adult reasonable person, in order to assess his conduct. In the second case it will be necessary to check whether the devices that the legal systems use when dealing with tortious liability of children are also suitable for the problems arise when the child is the victim.

### Contributory negligence of children and strict liability

Finally the team working on this Project should consider whether it would be necessary to establish specific rules for contributory negligence of children in the framework of strict liability regimes. The basic issue at stake here is to discern whether the fact that the tortfeasor is strictly liable has no relevance with regard to contributory negligence of the underage victim and, accordingly, it does not prevent the application of the general rules on the subject or, on the contrary, whether it calls for specific rules that exclude contributory negligence. In this last case it must be examined whether contributory negligence of children should be governed by general specific rules in all cases of strict liability or whether these specific provisions should refer only to accidents that stem from certain sources of danger [18,19]. Special attention will be paid in this point to regulation of road-traffic liability. Under the present German law, contributory negligence of children is a defence even if the tortfeasor is strictly liable, as it is with respect to cases involving motor accidents. However, the proposed legislation of the *Zweite Schadensrechtsänderungs-gesetz* is meant to mitigate the detrimental effects this approach carries for the victim child. This result is to be achieved in a rather indirect way: Since the standard of capacity is the same, both for the issue of liability and for the issue of contributory negligence, children below the age of 10 will no longer be held accountable for their negligent behaviour contributing to the accident. The driver subject to the strict liability standard maintains a defence against the victim only if the child acted with intent [1].

### Comparative Laws

#### Switzerland law

According to the Part 1-Article 333 of Civil Law approved in 1907, the head of family is responsible for any damages resulted by minors

or insane members under his guardianship, only when he could prove his normal power in taking care the situations. As a result, the head of family is entitled for any damages of insane which are based upon lack of care. Of course any failure in duty performance, as stated by Switzerland lawyers is supposed. In other words, there is a fault presumption in this case without any need in any proves [18]. But the head of family may prove that he/she has performed all duties of care with no more failures. Switzerland Civil Law is only speaking about responsibilities of the family head without any pointing out to others' duties in guardianship. But judicial procedure has removed any shortage of Civil Law [19]. Therefore in case that a discredit has been deposited to an institute or a natural person and is living out of a family, the guardian is considered as the head of family and responsible for any functions of him/her. It means the manager of a hospital or a dormitory or entertainment place of children at holidays and so on. Furthermore according to the judicial procedure of Switzerland, a child may be accepted repeatedly by various heads of family: like a child who is living with his/her employer but it may spend his/her weekend with family. Of course, a short-term absence is not enough for transfer of any responsibility from one person to another. This is because such an absence could not be stopped basically as well.

### England law

According to Article 1384 of Civil Law at France there are three bases for any responsibilities against defaults of minors as follows:

Parents, Managers and Teachers from which the first case requires to make any damages of minor but in next two others the bases are any damages resulted by minors. Here we will speak about parents' duty. According to Part IV-Article 1384 of Civil Law and pursuant to the approved law on 04.June.1970, we have: "Both parents are responsible for any damages of their minors living with each other due to their guardianship right". Therefore their duty is resulted from their guardianship right and they have supposed a fault in case of any damages by their children to others without any need of proves. In fact it is assumed that they have caused bad behavior in their child and/or they failed in his/her care and are in break of their duties. Followings are any requirements in performing of Part IV-Article 1384 and assumption any faults of parents: Firstly- Both parents are obliged to be guardian of children and therefore are obliged to take care of their minors. Minor means in England Law (from 1974) a person below 18 years old (Amendment Article No. 448 of England Civil Law). Meanwhile the majority is still 20 years old. Therefore when a minor is major just after he/she is completely 16 years old then it is impossible to consider any faults for his/her parents [18]. Of course according to eh public rules of Civil Liability, damaged person could prove that concerned parents are responsible for damages because of granting non-matured independency to their child (Amendment Article No. 448 of England Civil Law on 14.Dec.1964) [19]. Secondly- common living is a conditional rule; When a child is not living with his/her parents, their fault is not supposed except when their lack of common life is due to lack of taking care of child. Then if the parents are divorced and leave their child and/or any bad conduct of them caused the escape of child, if lack of common life is legal, then parents deposited the child to a school, any resulted damages could not be related to them while the child was under guardianship of others. Thirdly- if there is an illegal function caused for any damages, as it was mentioned for Switzerland law, there is no more duties for the parents if it is because of a powerful intend or faults of damaged person. Basically it is necessary to have all requirements of a minor in order to consider it as the failure of his/her parents. Regarding an undiscerning minor and/or a non-responsible

minor both parents are responsible as well. Therefore their duties are resulted from any breakage of their minor which is basically illegal either from mental or therapeutic viewpoints. According to the idea of some specialists of England Law, any faults in these cases are types of Social Faults (Social Faute) meaning an abnormal behavior out of public expectations. Even they have proposed that fault has a typical meaning without any similarity with mental or behavioral disorders as the base of Civil Liability [19].

### Conclusion

It is obvious that in contrast with Iranian Law, both Iran and England law the fault of minor is supposed and it is not necessary to prove the case. This is mostly for more supports of damaged person. The other differences are between Iranian Law from one side and Switzerland and England from the other in a way that we have this phrase in Iranian Law as: "A person who is responsible for taking care and maintenance of him/her". Meanwhile we have "Head of Family" in Switzerland's Law and also "Parents" in England law. Undoubtedly Iranian Law has more generalities for those who are responsible for any damaging functions of a insane minor. Although Switzerland judicial procedures provide more meaning for Head of Family accompanied with mentioned responsibilities of managers as mentioned in Switzerland's law. Also we have the responsibility of managers in England law and also teachers for any failure of students either discredit or not. Then there is a wide range of responsibilities for any duties against any faults in both England and Iran law. By the way there is specific definition in Iranian Law about any responsibilities resulted from discredit functions either with similar cases in England and Switzerland laws. Such a difference is probably because of rejection of any fault assumption in Iranian Law and /or duties of guardianship based upon acceptable and general rules. Therefore there is not any shortage in its scope but in more responsibilities made by policy maker in Switzerland Law. In both Iranian and Switzerland Laws, we have the supervisor or head of family as the responsible for any functions of minor and also any insane under their guardianship. But there is no law about insane conditions in England Law. Any responsibility of his/her guardian is based upon general rules of guardianship. As a result, it is conditional for damaged person to prove any failure of supervisor in order to be entitled for any compensation of damages. In case of any refer to supervisor to discredit for receipt of damages; it seems that there is no more difference among Iranian, England and Switzerland Laws. In none of the mentioned laws it is accepted for any refer to discredit because of his/her faults as well.

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