Original Research

The Issue of Penalty Clauses in Iranian and U.S. Law

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Received: 2024-06-11 **Revised:** 2024-08-16 **Accepted:** 2024-08-23 **Published:** 2024-08-30

In Iranian law, there is no specific prohibition on the determination of penalty clauses in contracts. However, sometimes one party to the contract may, under the pretext of provoking or manipulating the other party, include disproportionate penalty clauses. These penalty clauses, often referred to as "excessive" in judicial practice and among some legal scholars, are typically based on the abuse of the weaker party's position or the unfair exploitation of favorable contractual conditions. In certain legal systems, such penalty clauses have been opposed, and legislation has been enacted to reject conditions based on such excessive penalty clauses. A prominent example of such legal systems is the United States. Despite this, in some other legal systems, there is no explicit prohibition in the laws and regulations related to contract law, although such clauses are sometimes regarded in judicial practice, and particularly in legal analysis, as contrary to the principles of fairness and contractual justice. A clear example of such legal systems is Iran. The question that arises is: what is the approach of Iranian and U.S. law towards excessive penalty clauses in contracts and transactions? Given the importance of the issue, on the one hand, and the experiences and achievements of U.S. law regarding the prohibition of excessive penalty clauses in contracts and transactions, and the necessity of incorporating these experiences into Iranian law, on the other hand, this study aims to comparatively examine the approach and stance of Iranian and U.S. law regarding excessive penalty clauses and the inclusion of conditions based on such clauses in contract law.

Keywords: *Penalty Clause, Excessive, Iranian and U.S. Law*

How to cite this article:

Amra, G., Afsharnia, T., & Fallah, M. (2024). The Issue of Penalty Clauses in Iranian and U.S. Law. *Interdisciplinary Studies in Society, Law, and Politics, 3*(4), 153-162. https://doi.org/10.61838/kman.isslp.3.3.17

1. Introduction

In most legal systems, the general principle of honoring commitments is a well-established and accepted norm. This principle is also emphasized in Article 221 of the Iranian Civil Code, which states that every person is obligated to perform the action they have undertaken or refrain from doing something they are obligated to avoid. A party in breach of this principle is required to compensate for any damage resulting from their actions or failure to act. Unfortunately, in some cases, parties to a contract may include unfair conditions in the form of penalty clauses to prevent breaches or failure to fulfill obligations. If the inclusion of such a provision in the contract results in an imbalance of bargaining power, it may lead to the imposition of terms that contradict legal norms and, in some cases, violate established legal principles. On the other hand, under the principle of contractual freedom, the legislator recognizes the agreement of the parties, provided it does not conflict with mandatory laws, public order, or good morals (Salmanzadeh & Masjedsaraei, 2021).

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In contemporary times, the agreements outlined in contracts often result in unequal conditions for the parties involved. These contracts significantly influence the lives of individuals and cannot be ignored. For instance, capital owners and providers of goods and services often include unfair penalty clauses as damages in contracts. A legal examination of these unfair agreements, along with the possibility of their annulment or adjustment, requires thorough study. A penalty clause, or a stipulation for damages, in legal terms refers to an agreement where the contracting parties predefine the amount of compensation that must be paid in the event of non-performance or damage. The inclusion of any valid condition, such as an agreed-upon penalty clause, is permissible and accepted under Article 230 of the Civil Code, which stipulates that penalty clauses serve as a guarantee for the performance of obligations. For a penalty clause to be effective, the mutual consent of the contracting parties is necessary, and the amount must be determined in a manner that is non-negotiable and enforceable (Hosseinabadi, 2003).

In Iranian law, some legal provisions allude to unfair penalty clauses, though no explicit definition is provided. Given the law and ethical considerations, it is natural that anyone who undertakes an obligation must fulfill it, a concept emphasized in both legal and jurisprudential sources. However, jurists, referring to certain jurisprudential principles, consider the imposition of terms that cause hardship for one party as contrary to the principle of contractual freedom, advocating for the adjustment of such unfair penalty clauses. It is worth noting that no specific legal provision in Iranian law addresses this issue in detail. The prevailing jurisprudential opinion supports the validity of such contracts. Accordingly, different legal systems exhibit varying approaches to this matter. Some legal scholars suggest that when penalty clauses result in unfair detriment to one party, the solution lies in intervention, particularly in cases where the penalty clause becomes an unrealistic guarantee, included solely to reassure the other party that the obligation will be fulfilled. This creates conditions where, despite the obligor's best efforts, the guarantee becomes practically impossible to fulfill. Consequently, in some cases, resolving disputes between the parties and the ambiguity in the legal system indicates that the issue has not been fully addressed within the legal framework. Given that the concept of unfair penalty clauses has a long history in jurisprudential sources, where jurists have sought balance and fairness between contracting parties using principles like la haraj (no hardship) and la zarar (no harm), applying their reasoning to the perspectives of legal scholars becomes particularly significant (Haeri, 1987).

The main research question in this study is how the legal systems of Iran and the United States approach the issue of excessive penalty clauses and their inclusion in contracts. The question is: what approaches have the legal systems of these two countries adopted regarding excessive penalty clauses and their incorporation into contracts?

2. Modification of Excessive Penalty Clauses in Light of the Relativity Theory of Contractual Freedom

Law, as a science, follows principles similar to other sciences, with these principles applicable across various branches such as civil law, criminal law, procedural law, commercial law, and so on. Each of these fields has its own specific set of principles. For example, in procedural law, there are principles like the principle of symmetry, the principle of impartiality, and the principle of authority. Contract law, like other areas of law, also has principles that govern all aspects of it. One of the oldest of these principles, relevant to contract law, is the principle of the relativity of contracts. According to this principle, a contract, which is the result of an agreement between two parties, only affects those parties and does not create any rights or obligations for anyone outside of this relationship. In fact, the principle of the relativity of contracts stems from the principle of the sovereignty of will, which holds that only an individual's will can create rights or impose obligations upon them. From the perspective of the sovereignty of individual will, the imposition of obligations and the creation of rights without an individual's consent is contrary to the principle of personal freedom and constitutes an unjust infringement upon individuals' rights (Saleh Abadi, 2006; Salmanzadeh & Masjedsaraei, 2021).

This principle is widely recognized in various legal systems as an accepted norm. In common law jurisdictions, such as England and the United States, it is referred to as the doctrine of "privity," which is based on the doctrine of "consideration." In the United States, the principle of the relativity of contracts has a very broad

scope, to the extent that certain cases in judicial practice have been raised as exceptions to this principle, which, from the perspective of Iranian law, can be justified through the principles of *substitution* or *representation*. In Shiite jurisprudence, the principle of the relativity of contracts has not been explicitly stated as a general rule; however, certain rules and jurisprudential principles imply its validity. For example, the rule of "necessity of mutual consent in transfers of property" indicates the principle's recognition. According to this rule, when transferring or acquiring property, the consent of two individuals is generally required—one whose property is being transferred and the other who is receiving it.

Another example in Shiite jurisprudence where the principle of relativity of contracts can be observed is in the discussion of "unauthorized transactions" (transactions made by an unauthorized third party). In bilateral contracts, to complete a transaction, the subject of the transaction must be transferred to the individual who will provide compensation in return. This idea is strikingly similar to the doctrine of "consideration" in American law. Some jurisprudential texts, particularly *Makasib* by Sheikh Ansari, contain extensive discussions on the obligation to benefit a third party, which indirectly relates to the issue of the relativity of contracts (Fauvargne & Mazeaud, 2008; O'Connor, 1990).

In Iranian law, this principle is known as the "effect of contracts' relativity" or "relativity of contract effects," and is reflected in Article 231 of the Civil Code: "Transactions and contracts are only effective for the contracting parties and their legal successors..." Despite the acceptance of this principle in various legal systems, all these systems, over time and in response to emerging needs, have sought to modify its effects, particularly in light of conflicts with modern commercial needs, as well as with contemporary social and ethical considerations. In fact, commercial needs and advancements fall under the category of social interests, and the basis for modifying this principle, through collective agreements and their acceptance in legal systems, may be an example of this adjustment (Deilami, 2010).

3. Penalty Clauses and Modification of Excessive Penalty Clauses in U.S. Law

Parties to a transaction sometimes include penalty clauses to compensate for damages resulting from a breach of contract, and other times to reinforce the commitment and ensure that the contracting parties, especially the obligor, adhere more strictly to their obligations. In fact, in this case, the penalty clause serves a punitive function and is considered a penalty for the breach. On the other hand, in some cases, the parties to the contract may intend to include a penalty clause in the event of a delay in fulfilling the obligation, while in other cases, it may be intended as a penalty for the non-performance of the obligation. The parties may stipulate a fixed amount of damages for non-performance of the contract, so that the beneficiary of the penalty can receive the agreed-upon amount without the need to prove the extent of the damages. This institution is known as "penalty clauses" in Iranian law (Stone, 2002). Furthermore, the injured party is expected to prevent or minimize the damage, and failure to do so would be considered abnormal behavior and a breach of customary obligations. This is known in U.S. law as the "duty to mitigate damages."

4. Position and Function of the Rule of Mitigation of Damages in U.S. Law in the Context of Modifying Excessive Penalty Clauses

According to the rule of mitigation of damages, a party suffering from a breach of contract is obligated to take necessary actions to reduce or prevent the expansion of damages that may arise from the breach. Although a fixed damage clause in a contract may contradict the rule of mitigation, there is no doctrine requiring a non-breaching party to actively mitigate the damages. The doctrine of mitigation of damages, also known as the doctrine of avoidable harms, simply states that damages which the injured party can avoid without risk, liability, or humiliation are not compensable.

This rule is interpreted as imposing both positive and negative obligations on the non-breaching party. First, the non-breaching party must refrain from any activity that would increase the damages (i.e., an omission of action). Second, the non-breaching party must take positive steps to minimize the damages (i.e., an action).

However, there is no requirement for the injured party to successfully mitigate the damages. The policy endorsed by the doctrine of mitigation is simply to encourage the injured party to make reasonable efforts to minimize the damages. Corbin states that the efforts or lack of efforts by the injured party to prevent or mitigate damages will be treated equally with regard to

the defendant. However, if the claimant fails or refuses to take reasonable steps to prevent or mitigate damages and, as a result, the damages increase, they cannot claim compensation for the increased damages caused by their failure to mitigate. Under U.S. law, there is no penalty or fine for a claimant's failure to act. Only those damages that could have been reduced or prevented by the claimant's action, but were allowed to grow due to the claimant's negligence, are not imposed on the breaching party (Fransworth, 1987).

In other words, avoidable damages are not compensable or legally supported. The rule does not focus on the success or failure of the efforts, but rather on the reasonable and customary steps taken by the injured party to protect their interests, even if those steps do not result in reduced damages or prevent further harm.

It should be noted that the injured party is not required to take unreasonable or costly actions to mitigate the damages. Therefore, the rule does not place the responsibility for minimizing damages on the injured party, but if they make an effort to mitigate damages and damages are still incurred, the entire loss may be claimed from the breaching party. The advantages of applying the rule of mitigation include economic considerations, preventing double recovery, avoiding punitive damages, and promoting good faith. One of the main objectives of the doctrine of mitigation is to prevent the waste of economic resources. Economic waste occurs when only one party uses an asset in a way that is considered wasteful under the common standards of society (Fauvargne & Mazeaud, 2008).

The rule of mitigation of damages prevents actions that would increase the damages. In the case of *Wakina* state, a contract was made for the construction of a bridge on a highway, which was unilaterally canceled by the claimant halfway through the project. Despite the cancellation, the defendant continued working on the bridge, resulting in damage to the defendant and no benefit for the claimant. The court stated that despite the cancellation of the contract and the potential futility of continuing the work for the defendant, the defendant was forced to accept goods or services that were not needed and might not be useful in the market.

Since there is no duty to mitigate the damages, and despite knowing that the contract party had no interest in such services, the defendant continued their work. Waste not only includes the physical materials used in the construction project, but also includes the hours the defendant could have spent on other projects. Regarding the sale of goods, it is likely that someone else in the open market would purchase the goods. This encourages sellers to reduce their damages by entering into replacement contracts (Smith, 2013; Stone, 2002).

This theory aims to prevent capital waste, as clearly expressed in the case of *Harvard v. Daly*, where it was stated that someone who loses their job for any reason should not remain idle; if offered, they should work elsewhere. The concept of constructive services is not only contrary to principles but also contradicts economic and political laws, as it encourages idleness and compensates those who voluntarily stop working with unemployment benefits equal to those who are actively working. This law is neither correct nor fair as it allows individuals who voluntarily remain idle to receive full wages. Therefore, the rule of mitigation encourages claimants to make reasonable efforts to minimize their damages, thereby preventing unemployment and inefficiency.

The absence of this rule would allow damages to increase because claimants would know that full compensation could be obtained in court. The provision of fixed contractual damages could also lead to similar consequences, as it exempts the claimant from the duty to mitigate damages. For example, in the *LLC, NPS* case, if they had not decided to mitigate the damages, the significant profit from the club's seats would have remained unused for the entire remaining term of the 10-season license. They likely decided to resell the seats to avoid losing this profit. However, since mitigation efforts are futile if a contractual damage clause exists, they received double recovery.

Allowing these seats to remain vacant for 9 seasons is considered waste according to common societal standards. As mentioned, it is likely that someone in the open market would be willing to buy the license due to its benefits. However, if no substitute buyer exists, and the claimant fails to mitigate the damages, they are entitled to receive full compensation for their losses.

Mitigation efforts are not justifiable in contrast to a fixed damage clause, as it eliminates the opportunity for other consumers to benefit from the breach of law, thereby undermining the application of the rule of mitigation. The purpose of awarding damages is to prevent unjust losses from remaining uncompensated, without the

intention to punish the party causing the harm. Consequently, preventing harm takes precedence over compensating for it, and for this reason, the law should encourage the injured party to prevent further harm.

On the other hand, protecting national wealth and ensuring economic growth requires that efforts are made to prevent the loss and waste of assets, without allowing claims for compensation against others under the pretext of loss. Issuing judgments that incentivize harm to the community's economic interests should not contribute to this goal. Preventing waste or loss contradicts the idea of allowing compensation for someone who engages in such behavior. In other words, it is not appropriate to prevent waste while simultaneously providing the right to seek compensation for someone who engages in it. Courts are not equipped for actions aimed at protecting the economic interests of society, as they focus on resolving disputes between claimants and defendants and enforcing obligations between the two.

In our law, it seems that such a broad basis for enforcing the rule cannot be considered, unless there is a mandatory prohibition against waste and a consequent legal framework for compensation based on the harm to society. However, such an extensive application of the rule of mitigation is not envisaged in our legal system.

5. Modification of Penalty Clauses in U.S. Law in Light of the Theory of Contractual Balance

The modification of excessive penalty clauses in U.S. law has been realized through legislative developments within the legal system of this country, in light of the theory of contractual balance. This issue can be examined in two sub-sections:

- **Prevention of the Formation and Execution of Harmful Transactions:** In Western law, contracts involving excessive risk, identified by a term that originates in Islamic law, are not recognized by this name. Instead, such contracts are referred to as "contingent contracts." Article 1104 of the French Civil Code states, "If the contract is based on an uncertain or unknown gain or loss, the contract is contingent..." In contingent contracts, each party accepts unforeseeable gains or losses. For example, in the sale of property in exchange for lifetime benefits, if the seller (the creditor of the benefits) dies early, the buyer will benefit greatly. However, if the seller is long-lived, the buyer will not receive significant benefits.

It should also be noted that today, there is less rigidity regarding the necessity of a known price. For example, in the International Sale of Goods Convention and in the laws of many countries, the strict requirement for a fixed and known price no longer applies, and "negotiable price" is also accepted. The definition of a floating price is stated as: "The consideration of the exchange in a contract, the amount of which is not determined at the time of the contract's formation and will be determined at a future date."

In other words, in contracts with floating prices, the consideration for the sale is not precisely determined but is fixed according to certain criteria after the contract's formation. In U.S. law, the lack of a fixed price does not invalidate the contract. When the intention to buy and sell is clear, the details of the transaction can be determined in the future by conventional standards or legal rules. According to Section 8, Clause 1 of the English Sale of Goods Act (1979), the sale price may either be fixed in the contract, determined by an agreed-upon method in the future, or set based on the negotiation between the parties. According to Clause 2 of the same Act, if the price cannot be determined based on the above methods, the buyer must pay the reasonable price.

However, it should not be assumed that U.S. law accepts unfairness towards the affected party. It can be said that, rather than making the formation of contracts subject to obligations that could deter the parties from forming an agreement, U.S. law permits contracts to be concluded with details to be finalized in the future. However, it is not intended that either party should suffer a loss. What is now accepted in U.S. law under the term "contract adjustment" is a reference to reducing the loss and minimizing the gap between the parties to the transaction (Kaviani, 2012).

For instance, in Section 15 of the U.S. Uniform Commercial Code, enacted in 1982, it is stated: "When the consideration for services provided under a contract is not determined and is left to a method agreed upon or to negotiation between the parties, an implied term exists requiring the party to pay a reasonable amount."

In U.S. law, under Section 2-305 of the Uniform Commercial Code, the parties may conclude a sale contract without specifying the price. In such a case, the

prevailing price at the time of delivery will be used. The parties may also determine the price based on the market price or another specified standard. In Clause 2 of this regulation, adherence to the principle of good faith is required when the determination of price is assigned to either the seller or the buyer. It is clear that the emphasis and specification on the two rules of "acceptability" and "good faith" indicate that the legislator pays attention to the necessity of avoiding inequality between the contracting parties.

- **Prevention of Abuse of Emergency Conditions:** The development of trade and economic liberalism, and consequently the emergence of economic powers, has created a deep gap between affluent and needy classes. The opportunity to benefit from economic power has allowed the strong to exploit the weak. The need to meet basic traditional needs, such as healthcare, food, and clothing, or modern needs, such as education and employment, forces the weak classes to enter into transactions with powerful parties, which, although seemingly voluntary, in essence, due to the weakness and urgency of the weaker party, result in unequal contracts. The imposition of unequal economic terms in contracts, especially to the disadvantage of the vulnerable party, has led justice advocates to react. While supporting the vulnerable party requires recognizing the contract they have entered, if the contract appears to be unjust or unequal, support for the vulnerable party may manifest in other forms.

6. Good Faith Performance of Contracts and Contractual Clauses

Good faith is an ethical and conscientious principle that has always been emphasized in religious teachings. Although this principle has played a significant role in regulating personal and social relationships for centuries, it was primarily considered from the perspective of moral virtue, lacking external enforcement. With societal developments and the emergence of complex disputes between individuals, the concept of good faith has evolved into an essential legal principle, bridging rigid legal norms with justice and fairness. Today, it is recognized as a fundamental principle at the international level and forms the basis of many other obligations.

Although good faith originates from ethics and conscience, what makes its observance particularly important today is not the moral nature of human beings or their conscientious teachings but rather the self-interested modern individual, who has learned through experience that relationships grounded in good faith foster commercial success and facilitate wealth exchange in society. Therefore, the principle of good faith can be considered today as both an ethical and legal concept and has become one of the fundamental and important elements in commercial and contractual relationships. This challenges the view that good faith is becoming increasingly irrelevant in contemporary business and civil law. Social relationships, including contractual ones, are based on correctness and fairness, indicating that good faith governs societal relationships, including transactional relations (Qasemi, 2007).

The importance of the principle of good faith and its dominance over contractual relationships is so significant that some have considered it the central axis of all contractual interactions. A very important point regarding good faith and its relationship with the theory of balance in contracts is that it has been argued that adherence to this principle, and all its requirements, ensures that the most favorable contractual positions are created for both parties, such that neither party considers themselves in a disadvantaged position compared to the other. Therefore, the principle of good faith can be seen as closely linked to the theory of contractual balance (Deilami, 2010).

Although good faith is recognized in various legal systems and has even entered the legislative domain in some countries, there is no clear and precise definition of it. Some have described it as a concept that is easy to understand but difficult to define, while others have emphasized that it is a subjective and qualitative concept, making its definition quite challenging. On the other hand, it has been argued that good faith is a combination of the words "good" and "faith," both of which are clear in meaning, and their overall meaning can be understood in relation to "fair conduct."

Today, it is rare to find a treaty or contract that does not mention good faith. Observance of good faith in contracts and agreements is so widespread that even if it is not explicitly stated in the contract, it is considered an

accepted principle, and any party acting in contradiction to it is held accountable.

Good faith is the foundation for establishing and maintaining continuous business relationships. The importance of this principle in international trade is greater than in domestic trade because international trade, with its geographical distances, often deprives parties of the ability to oversee and scrutinize many issues. Although the increasing exchange of information and market transparency may reduce this issue to some extent, the personal integrity of the parties involved in business decisions and future actions is still crucial. Therefore, each party to a contract must rely, to some extent, on the good faith performance of the other party. In the context of business and transactional relationships, it is very important for the parties to know where they stand and in what position. If courts excessively intervene in contractual relations, which can sometimes lead to unexpected outcomes, the commercial order may be disrupted, and parties will be unable to plan for future transactions. Hence, ambiguity in understanding the concept of good faith and its effects in commercial and transactional relationships could undermine commercial structures and purchasing practices, leading to significant risks (O'Connor, 1990; Qasemi, 2007).

The principle of good faith is one of the rules that completes the principle of fulfilling contractual obligations. The performance of a contract in good faith is essential for the agreement's fulfillment, and any actions contrary to good faith are incompatible with the binding nature of contracts. Therefore, the principle of respecting contracts must always be considered in relation to the rule and principle of good faith. Thus, not only must the contracting parties perform their obligations with good faith, but each party must also make efforts to fulfill their obligations in an optimal manner. In fact, the rule of requiring good faith performance in contracts represents the connection between ethics and law, and based on this connection, both parties must behave in good faith toward each other and therefore demand the fulfillment of the contract terms.

Regarding the close relationship between the principle of good faith in contract performance and the fundamental principle of fulfilling obligations, it has been stated: "The principle of good faith is a central and foundational principle that arises from the rule of fulfilling obligations and other legal norms directly related to honesty, fairness, and reasonableness, and its application is determined by the standards of honesty, fairness, and reasonableness that govern the business community at a specific time."

Although common law countries have been quite firm in their position on recognizing good faith, particularly in the UK, this approach is even more prominent in U.S. law, which currently leads the countries following common law. The mandatory nature of good faith in contract performance and its legal enforceability is explicitly stated in the Uniform Commercial Code and the Restatement (Second) of Contracts.

The Uniform Commercial Code, as a model law across all U.S. states, refers to the principle of good faith in Section 1-203. Section 205 of the Restatement (Second) of Contracts, which relates to contracts, influenced by this law, provides: "Every contract imposes an obligation of good faith and fair dealing in its performance and enforcement." The addition of the phrase "fair dealing" in this section further clarifies and specifies the duty of performing contracts in good faith and fairness. Subsection (a) of Section 205 also states: "Performance of a contract in good faith emphasizes adherence to the common purpose and alignment with the other party's reasonable expectations, excluding conduct recognized by courts as bad faith, which involves behavior violating the standards of honesty, fairness, or reasonableness." In subsection (2) of this section, it is stated that: "While a complete list of bad faith behaviors is not possible, examples recognized by courts include: avoidance of contractual obligations, neglect, lack of seriousness, and abuse of discretion in determining certain contractual matters."

Until the bad faith of the obligee is proven, their behavior cannot be considered as contrary to good faith. In the famous case *Carter v. Boom* in 1966, Judge Fosfield remarked in relation to an insurance contract: "Insurance is a contract based on mutual obligations... the insurer relies on the statements of the insured... the insurance contract is based on trust, where the insured does not conceal the circumstances and conditions of the insured event from the insurer. If concealing such conditions misleads the insurer in assessing the risk, such concealment is considered fraudulent, and

consequently, the insurance policy is void, even if the concealment was unintentional and not fraudulent."

In conclusion, it can be said that in England, the contract of sale is the most important reciprocal contract. There is always concern that due to the breach of one party in the contract, the reciprocal nature of the contract may be questioned, and consequently, the balance of the contractual relationship between the parties could be disrupted. At the same time, the parties may consider legal execution guarantees insufficient and wish to include other guarantees in the form of contract terms to ensure the performance of the other party's obligations, thereby preserving the balance between them. One of these terms is the condition of non-transfer of ownership to the buyer. Such a condition can prevent the transfer of ownership of the goods to the buyer until the full price or other debts of the buyer to the seller are paid. The use of this condition as a tool to protect the rights of a seller whose price has not been fully paid has become common in English law and has been recognized by the judicial practice of this country.

The main and significant application of this condition occurs when the buyer goes bankrupt before paying the price. The implementation of this condition exempts the seller from being part of the bankrupt estate and grants him the right to reclaim the goods. This condition is further subdivided into five types:

1. A simple condition under which the seller retains ownership of the delivered goods against the buyer until the full price is paid.
2. A condition of continued retention of ownership, where the seller retains ownership of the delivered goods in relation to the buyer and any subsequent buyers until the full price or all other debts of the buyer to the seller are paid. The purpose of this condition is to extend the retention of ownership not only to the relationship between the seller and buyer but also to any subsequent purchasers of the goods, such that they will not acquire ownership until the price is paid to the seller.
3. A condition granting the right to follow the proceeds from the sale to the buyer, whereby the seller retains ownership of the delivered goods against the buyer until the price or all other obligations of the buyer are fulfilled, but allows the buyer to resell the goods before paying his debts. If the goods are sold to another buyer, the original seller acquires a right to the proceeds of the sale or is granted the right to claim the proceeds from the subsequent buyer.
4. A comprehensive condition under which the seller retains ownership of the delivered goods against the buyer until the price is paid, but if the goods are used in the production of another product, whether or not this requires adding other goods, the seller will acquire ownership over the finished product in proportion to the value of the goods consumed (the subject of the ownership). In addition to the retention of ownership condition, the determination of price in English law must also be mentioned. In the first paragraph of Section 8 of Part 2 of the Sale of Goods Act 1979, the possibility of determining the price is legislated. According to this provision, "The price may be fixed in the contract, determined in a manner agreed upon by the parties, or based on the previous dealings between the parties." In the second paragraph of the same section, it is stated, "If the price is not determined in the above manner, the buyer must pay a reasonable price." Section 15 of the Supply of Goods and Services Act 1982 also states, "Where the consideration for services is not fixed by the contract or determined in a manner agreed upon by the parties or based on previous dealings, there is an implied term that the parties will pay a reasonable rate." Considering these regulations, firstly, in English law, the price can be fixed or determinable, meaning the parties can agree on a method of determining it, or it can be based on what is customary between them. Secondly, the failure to determine the price does not result in the non-recognition or unenforceability of the contract, as a reasonable and customary standard is implied in the contract, which is ultimately enforced. The term "reasonable price" corresponds to what is referred to in Islamic jurisprudence and law as "price equivalent", "current price," or "market price". The fact that the English legislator explicitly states that if the price is not fixed in a sale, the buyer must pay a reasonable price seemingly

includes the assumption that no agreement was made to fix the price.

In English law, even if no agreement is made on the price, a reasonable price is implied in the contract. This is justified by the principle that "the intent to be bound" holds great importance, especially in commercial contracts, where the intent of the parties governs the relationship between them. The lack of agreement on even relatively significant issues is not necessarily damaging, provided the intent to be bound is clear. Some argue that such a provision is entirely in line with the idea of "balance between the parties in a contract of sale." It is noteworthy that in English law, using a standard or criterion in contracts as a tool for determining incomplete aspects is common, and the court is authorized to validate the contract.

According to the first paragraph of Section 9 of Part 2 of the Sale of Goods Act, in England, the price can also be determined by a third party. If the third party is unable or unwilling to determine the price, the contract becomes void to avoid harm to either party, unless all or part of the goods have been delivered to and are in the possession of the buyer, in which case the buyer must pay a reasonable price. If either party fails to have the price determined by a third party, the other party has the right to claim damages in this regard.

Finally, regarding the guarantees in English law concerning the enforcement of the theory of balance between the parties in a contract of sale, we refer to another issue that is a general rule applicable to both the seller and the buyer, concerning the balance between them. This concerns the issue of "potential breach of contract." In legal terms, and according to established English case law, whenever, before the time of fulfilling the contractual obligation, the obligor declares that they will not perform their legal or contractual duties by the due date, or signs of their inability or unwillingness to perform their obligations become evident, if this inability or unwillingness is sufficiently serious, a breach of contract at the due date is foreseeable.

This breach can either be explicit, where the obligor directly declares that they will not perform the obligation by the due date, or implicit, such as when someone promises to sell certain goods in the future but sells them to another party before the due date. In such circumstances, the counterparty's response will be the cancellation of the contract and a claim for the damages incurred. Some believe the purpose of predicting the potential breach of contract is to maintain the balance between the parties in a sale contract and to ensure that neither party is placed in an unfair or illegitimate advantageous position.

7. Conclusion

Delay damages in the performance of an obligation can coexist with the execution of the obligation, but damages for non-performance of an obligation are clearly a substitute for the original obligation and cannot coexist with it. This is because if the obligation is fulfilled, no damages are incurred in this regard, and if the original obligation is not performed, the damages that are awarded are separate from the primary obligation. The ruling in case 805 of the Supreme Court's Public Assembly does not aim to prioritize monetary debts over non-monetary obligations, and as stated in the ruling, in the case of penalty amounts, if they do not conflict with mandatory factors such as monetary regulations, the clause is valid and free from defects.

The principle of compensation for damage is recognized as a fundamental legal rule and a well-established custom in international law. Its provisions are nearly justifiable in all legal systems. The absence of this rule in Iranian law does not negate it, as the Islamic jurisprudential rules such as lâ darar (no harm) and tasbīb (causation) clearly reflect the outcomes of this principle. If the purpose of the compensation rule can be found among its Islamic jurisprudential examples, then the lack of explicit mention of this rule cannot be used as an excuse for a gap in this area. Since the related discussions do not contradict the principles accepted in Islamic legal systems, this gap can be compensated for in Iranian law, considering the discussed rules. In the U.S. legal system, if the agreed amount is deemed unfair, the court has the authority to adjust the damages, and even if a penalty clause is considered invalid, traditional calculations under the compensation principle are applied to determine the amount of damages.

Authors' Contributions

Authors contributed equally to this article.

Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

Acknowledgments

We would like to express our gratitude to all individuals helped us to do the project.

Declaration of Interest

The authors report no conflict of interest.

Funding

According to the authors, this article has no financial support.

Ethical Considerations

Not applicable.

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