

Statute of Limitations in Commercial Documents in Iranian, Iraqi, and International Law

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The statute of limitations is a debated and controversial issue in civil law and commercial documents within Iranian law. While this legal institution has significant implications in the legal realm, it remains a subject of ongoing discussion. Accordingly, the present article aims to examine the statute of limitations in commercial documents under Iranian, Iraqi, and international law. This study is descriptive-analytical and employs a library research method to address the research question. Findings indicate that the statute of limitations was removed from Iran's Civil Procedure Code due to the opinion of the Guardian Council; however, it continues to be applied in specific laws, including commercial law. According to the Commercial Code, commercial documents are subject to a statute of limitations after five years. Nevertheless, the applicability of the statute of limitations under Article 318 of the Commercial Code (1932) regarding the documents mentioned therein does not prevent the claim for their value under the general rules governing personal claims. In other words, if, due to the expiration of the statute of limitations, the payment of commercial documents cannot be demanded from those responsible under specific commercial regulations, this does not preclude the claim for the value of such documents under general legal provisions governing personal claims, such as the Civil Code. Similarly, in Iraq's Commercial Code, the statute of limitations for commercial claims is recognized as five years. Furthermore, in international instruments, the statute of limitations is acknowledged, though variations exist regarding the commencement and duration of the limitation period across different instruments.

Keywords: *Statute of Limitations, Iranian Law, Iraqi Law, International Instruments, Limitation Period, Commercial Documents.*

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1. Introduction

The statute of limitations in claims related to private law matters is one of the legal institutions that has been recognized over the past few centuries and is currently regulated in various legal systems worldwide (Jafari Langroudi, 2009). The statute of limitations refers

to the period prescribed by law after which a claim is no longer heard. In contemporary legal literature, the statute of limitations has become structured and possesses well-defined elements and components, with each legal system establishing its own conditions and restrictions for its implementation (Shams, 2015).



Undoubtedly, the statute of limitations means that after a relatively long period, the claimant loses the right to seek recourse from the governing authority for asserting or exercising their rights. Several reasons have been proposed for the rationale and necessity of this doctrine, while some have sought to refute these justifications. Based on the theory of civil statute of limitations, as well as its commercial and criminal applications and theoretical foundations, if an individual with a claim to a right fails to assert it within the legally prescribed period, judicial authorities will refuse to hear and adjudicate their claim, even if they have acquired possession of the right through unlawful means (Deilami, 2005).

Following the Constitutional Revolution and the codification of laws in Iran, a distinct type of statute of limitations was introduced in various laws, including the Code of Civil Procedure (1939), which, in terms of its concept and effects, differed somewhat from the previously mentioned types. This form, known as extinctive prescription, stipulated that after a certain period—such as one year, three years, ten years, or twenty years—the claim would not be heard in court, provided that the defendant invoked the statute of limitations. However, in 1982, the Guardian Council's jurists declared that Articles 731 and subsequent provisions of the Code of Civil Procedure—which barred the hearing of claims after a certain period—were inconsistent with Islamic law. Nevertheless, the Guardian Council did not address the statute of limitations in other legal contexts, including commercial documents.

Furthermore, the Code of Civil Procedure for General and Revolutionary Courts in Civil Matters (2000) remained silent on the statute of limitations, and Article 529 of this law repealed the provisions of the Code of Civil Procedure (1939) that were inconsistent with it. Neither the Guardian Council's ruling nor the 2000 Civil Procedure Code addressed the statute of limitations in commercial law, particularly concerning commercial documents. Therefore, a thorough examination of the statute of limitations in commercial documents remains necessary.

One of the essential principles of commercial law is the necessity of having a statute of limitations and ensuring that this period is relatively short. Modern legal and economic institutions have emerged due to evolving social relations and increasing economic complexity.

Among these institutions, banks play a significant role, necessitating attention to the statute of limitations in various aspects such as regulations governing document transfers, guarantees, and collateral.

The study of the statute of limitations in commercial transactions, particularly in banking, has numerous advantages. A short statute of limitations is efficient in commercial transactions for several reasons. First, document retention (for evidentiary purposes) is a costly burden for individuals engaged in continuous and large-scale commercial transactions. Long limitation periods impose additional costs on consumers. Second, it helps businesses reduce monthly and annual accounting costs (Shams, 2015).

Thus, research in this area is crucial for all economic institutions due to its significant financial implications. The matter is even more sensitive in banking. The statute of limitations in commercial documents has numerous applications. The necessity of having a statute of limitations and ensuring its brevity is fundamental to commercial law. Moreover, challenges related to commercial documents persist both domestically and internationally, requiring legal and regulatory mechanisms, which are typically addressed in national legislation. Conflicts between these laws sometimes result in economic damages and losses.

Accordingly, the present study seeks to answer the following question: What is the status of the statute of limitations in commercial documents in Iranian, Iraqi, and international law, and what is the legislator's approach to this matter? To address this research question, the statute of limitations in commercial documents will first be examined under Iranian law, then under Iraqi law, and finally in international instruments.

2. Statute of Limitations in Commercial Documents in Iranian and Iraqi Law

This section examines the statute of limitations in commercial documents under Iranian and Iraqi law.

2.1. In Civil Law

The extinctive prescription of claims was recognized in the Code of Civil Procedure (1939). Article 731 of the former Code of Civil Procedure stated: "The statute of limitations refers to the passage of a period prescribed by law, after which a claim will not be heard." Thus, the

expiration of the limitation period merely barred the court from hearing and adjudicating the claim, but it did not affect the execution of enforceable instruments. Since the fundamental obligation did not lapse, the creditor could still enforce their claim as reflected in enforceable instruments. Even after the expiration of the limitation period, the claim related to such instruments could be pursued and collected through the Execution of Registration Office. Article 735 of the same code stated: "Although the statute of limitations extinguishes the right to bring a claim, if the debtor voluntarily pays the creditor, they cannot demand restitution on the grounds that the limitation period has expired. Such obligations, once fulfilled, are considered natural obligations, which lie between legal and moral obligations" (Katouzian, 1997).

Some scholars consider the voluntary payment of a debt by a defendant, who was previously declared not liable due to a lack of sufficient evidence or the plaintiff's failure to take an oath, as an example of a natural obligation (Jafari Langroudi, 1999). Other legal scholars view obligations subject to the statute of limitations as legal obligations that, due to considerations of public order, bar the defendant from raising a claim (Safae, 2003). "In the case of obligations where the creditor has a legal right to demand payment, if the debtor voluntarily fulfills the obligation, a claim for restitution will not be heard. During the period when the statute of limitations was recognized in Iran, this provision was a common example of rights subject to limitation" (Shahidi, 2010, 2016). Accordingly, if the defendant invoked the statute of limitations, the plaintiff's claim would not be heard, and likewise, if the debtor had voluntarily performed the obligation or made a payment, their claim for restitution would also be inadmissible.

According to Article 4 of the Constitution of the Islamic Republic of Iran, all laws and regulations—including civil, criminal, financial, economic, administrative, cultural, military, and political laws—must conform to Islamic principles. This article applies to all constitutional provisions and other legal regulations, and its interpretation falls under the jurisdiction of the Guardian Council's jurists. On February 6, 1983, the Guardian Council issued Opinion No. 7257, declaring that Article 731 and subsequent provisions of the Code of Civil Procedure, which barred the hearing of claims in court after the expiration of certain limitation periods

(e.g., ten years, twenty years, three years, or one year), were inconsistent with Islamic principles (Jafari Langroudi, 1999).

In response to an inquiry from the Supreme Judicial Council on January 17, 1983, which asked, "Is the hearing of debt-related claims in court, considering Article 731 of the Code of Civil Procedure and Article 12 of the Code of Criminal Procedure, contrary to Islamic principles?" the Guardian Council, in Opinion No. 7257 dated February 16, 1983, stated: "Articles 731 and subsequent provisions of the Code of Civil Procedure, which establish that claims will not be heard in court after a specified period (ten years, twenty years, three years, one year, etc.), were reviewed and discussed by the jurists of the Guardian Council, and the majority of the jurists determined that these provisions were inconsistent with Islamic principles" (Mehrpour, 1992).

However, in one case, the Guardian Council deviated from its previous stance regarding the statute of limitations for legal claims involving foreign nationals. In Response No. 7311, dated July 16, 1992, addressed to the President of Iran, the Guardian Council stated: "... The broad scope of Opinion No. 7257 dated February 16, 1983, does not apply to legal claims involving natural or legal persons whose national laws recognize the statute of limitations" (Mehrpour, 1992). While this opinion can be analyzed under private international law regarding conflict of laws, its issuance was influenced by practical considerations. Consequently, it can be inferred that all civil claims fall within the Guardian Council's ruling, except for claims filed by foreign nationals against Iranian citizens and commercial claims, which, despite being civil in nature, should be distinguished from other types of civil claims due to their unique characteristics and nature (Hatami & Zakari, 2000).

Additionally, there is disagreement regarding the Guardian Council's authority to annul past legislation. Some scholars argue that, based on constitutional provisions such as Articles 91, 94, and 96, the Guardian Council's authority is limited only to supervising new legislation under consideration (Shams, 2015). Others, citing Article 4 of the Constitution, assert that the Guardian Council has broader authority, including the power to annul existing laws (Shahri, 2000).

Regardless of these theoretical debates regarding the Guardian Council's authority, the Code of Civil Procedure for General and Revolutionary Courts in Civil Matters

(2000) neither explicitly affirmed nor rejected provisions related to the statute of limitations. Moreover, Article 529 of the same law stated: "From the date this law comes into effect, the Code of Civil Procedure (1939) and its amendments, as well as Articles 18, 19, 21, 23, and 31 of the Law on the Establishment of General and Revolutionary Courts (1994) and any other conflicting laws and regulations, shall be repealed."

Some scholars, based on the language of Article 529, argue that all provisions of the Code of Civil Procedure (1939) must be considered repealed. They reason that if a qualifier follows multiple enumerated subjects, it should apply only to the last subject unless there is evidence to the contrary. Since Article 529 does not contain any indication that the qualifier "in cases of conflict" applies to all referenced provisions, it should be interpreted as referring only to "other laws and regulations" in a general sense, without specifying the particular laws being repealed. Consequently, they conclude that all provisions of the Code of Civil Procedure (1939) should be regarded as abrogated under Article 529 (Shahidi, 2010, 2016).

However, an alternative interpretation suggests that Article 529 implies that only the provisions of the Code of Civil Procedure (1939) that conflict with the new law should be considered repealed. Thus, since the 2000 Code of Civil Procedure does not contain any provisions regarding the statute of limitations, it cannot be said to conflict with the 1939 Code, and therefore, the repeal of the latter's statute of limitations provisions cannot be justified solely based on Article 529.

2.2. Statute of Limitations in Commercial Documents

Under Iraqi law, Article 238 of the Commercial Code states: "A claim for rectification of the contents of a current account shall not be heard after five years from the date of the disputed entry, even if the request is based on an error, omission, or duplication of entries, or if the customer proves that they did not receive their account statement within this period. In any case, a claim shall not be heard after five years from the closure of the account."

Under Iranian law, Chapter Four of Part Four of the Commercial Code is dedicated to the statute of limitations, with Articles 318 and 319 addressing the impact of limitation periods on the extinction of obligations contained in commercial documents. Article

318 of the Commercial Code states: "Claims related to bills of exchange, promissory notes, and checks issued by merchants or for commercial purposes shall not be heard in courts after five years from the date of the protest or the last judicial action, unless the debt has been formally acknowledged within this period, in which case the limitation period shall commence from the date of acknowledgment. In the absence of a protest, the limitation period shall begin from the expiration of the protest deadline."

"If a bill of exchange, promissory note, or check cannot be claimed due to the expiration of the five-year statute of limitations, or if the document lacks the essential legal conditions prescribed by the Commercial Code, the holder may claim the amount as a movable property debt from the party who has unjustly enriched themselves at their expense. In other words, for five years, bills of exchange, promissory notes, and checks retain the advantages of commercial instruments and are subject to the statute of limitations under the Commercial Code. After this period, they are treated as ordinary civil documents and are governed by the statute of limitations under civil procedure law. The same applies to commercial documents that do not conform to the formal requirements prescribed by the Commercial Code" (Shams, 2015).

Thus, for five years, bills of exchange, promissory notes, and checks enjoy the privileges of commercial instruments and are subject to the Commercial Code's statute of limitations. After this period, they are treated as ordinary civil documents and governed by the statute of limitations in the Code of Civil Procedure. Moreover, Article 319 of the Commercial Code states that commercial documents that do not comply with the prescribed formalities of the Commercial Code are similarly affected.

The question arises: Given the uncertainty surrounding the statute of limitations in the former Code of Civil Procedure, what is the status of the statute of limitations under the Commercial Code?

Some commercial law scholars argue, based on Opinion No. 7257 issued by the Guardian Council on February 16, 1983, that the statute of limitations under the Commercial Code has been implicitly repealed, although legal doctrine and judicial practice insist on its defense and implementation whenever possible (Saghari, 1999). Others interpret the Guardian Council's opinion as

strictly applying to the statute of limitations in the former Code of Civil Procedure, excluding commercial limitation periods (Eskini, 1995).

It appears that the statute of limitations in the Commercial Code differs from the limitation periods in the former Code of Civil Procedure for the following reasons:

1. The statute of limitations in the former Code of Civil Procedure extinguished the right to bring a claim before the courts, whereas the limitation periods in the Commercial Code apply to the extinction of recourse rights against the issuer, endorser, and other liable parties in commercial transactions.
2. Under the former Code of Civil Procedure, the statute of limitations was invoked at the discretion of the defendant, whereas the limitation periods in the Commercial Code relate to public order and must be considered by the court ex officio, without requiring a defense from the debtor.

A review of the Commercial Code reveals two distinct types of commercial limitation periods.

Some legal scholars have asserted that the Guardian Council's opinion applies only to Article 731 and subsequent provisions of the former Code of Civil Procedure and should not be extended to the statute of limitations in the Commercial Code (Eskini, 1995). One legal scholar argued that since the Guardian Council's opinion specifically referenced Article 731 and subsequent provisions of the Code of Civil Procedure, it does not apply to commercial limitation periods. To support this interpretation, they cited Opinion No. 3506, dated August 2, 1992, which stated that the 1983 opinion does not apply to cases involving natural or legal persons whose national laws recognize the statute of limitations (Sotoudeh Tehrani, 1996).

Ultimately, it has been asserted that "the Guardian Council's 1983 opinion should be interpreted strictly within the scope of the wording of that opinion and applies only to cases explicitly mentioned in the Code of Civil Procedure. Since the Guardian Council has not explicitly declared the statute of limitations in the Commercial Code to be un-Islamic, and since no authority other than the Guardian Council has the right to declare laws unconstitutional or non-compliant with

Sharia, the statute of limitations in the Commercial Code should be upheld in courts" (Eskini, 1995).

A second view argues that the special rules of limitation in the Commercial Code are no longer applicable. To justify this position, it has been argued that "it is difficult to assert that the specific limitation periods in commercial law remain valid and have not been repealed by the Code of Civil Procedure" (Kaviani, 2004).

"However, this scholar did not clarify whether they were referring to the former or the new Code of Civil Procedure as the repealing legislation. It appears that they were referring to the new Code of Civil Procedure, because under the former code, not only was there no restriction on limitation periods, but their validity was explicitly affirmed. In any case, discussing repeal in this context appears to be incorrect, because the new Code of Civil Procedure contains no provisions on limitation periods that would conflict with the limitation periods in the Commercial Code. Thus, it cannot be argued that the new Code repealed the statute of limitations under the Commercial Code. Perhaps the intent behind arguing for its repeal is based on the Guardian Council's opinion, which deemed limitation periods to be un-Islamic, thereby rendering any provisions in the Commercial Code that establish limitation periods inapplicable" (Sokooti, 2005).

2.2.1. *One-Year, Two-Year, and Five-Year Statute of Limitations*

Under Iraqi law, Article 132 states: "After the expiration of three years from the due date, claims arising from remittances against the drawee shall not be heard." Additionally, recourse claims are inadmissible if one year has elapsed from the date of protest or if one year has passed from the due date when the recourse clause without expenses is included in the bill. Furthermore, after six months from the date of payment of the remittance by the endorser, or six months from the date of initiating recourse proceedings against them, endorsers' claims against each other or their claims against the drawer shall not be heard.

Additionally, Article 101 of the Iraqi Commercial Code provides that the guarantee stipulated in Articles 96 and 97 of the same law expires and becomes void if three years pass without a complaint or claim. Under Articles 96 and 97 of this law, if a remittance is issued in multiple copies and the copy containing the acceptance

endorsement is lost, the amount of the remittance cannot be claimed through other copies unless authorized by the court and subject to the provision of adequate security. A person who has lost their remittance and is unable to present other copies may request the court to issue an order for payment, provided they prove their ownership and provide sufficient security.

Under Iranian law, Articles 286, 287, 288, 289, and 290 of the Commercial Code state that, for a bill of exchange payable in Iran or abroad, which has been protested for non-payment, the holder and any prior endorsers may bring a claim only within one or two years from the date of protest. Otherwise, they will lose the privilege granted by Article 249 of the Commercial Code. However, the claim of the holder and endorsers against the drawer remains valid unless the drawer proves that they have provided funds to the drawee.

"The right to file a claim against the drawee and the drawer is generally five years, unless the drawer proves that they have provided the funds to the drawee. Article 318 of the Commercial Code states that claims related to bills of exchange, promissory notes, and checks issued by merchants or for commercial purposes shall not be heard in court after five years from the date of the protest or the last judicial action" (Jafari Langroudi, 2006).

Negotiable instruments, depending on the case, contain either an order to pay (for bills of exchange and checks) or a promise to pay (for promissory notes) a sum of money on demand or at a specified or determinable future date. Generally, these instruments have short payment terms. Article 241 of the Commercial Code provides that: "A bill of exchange may be payable on demand, at a term of one or several days, or one or several months from sight, or at a term of one or several days or months from the date of the bill. Payment may also be set for a specific day."

The explicit wording of this article refers to terms of one or several days or months. However, some scholars have inferred that a bill of exchange cannot have a maturity period of one or several years (Akhlaghi). Moreover, the use of the word "several" in the article may suggest that, since in Persian, "several" typically refers to numbers between three and nine, the maturity of a bill should not exceed several months from the date of sight or issuance. Although the Commercial Code does not explicitly prohibit a one-year or multi-year maturity period, long payment terms can undermine the negotiability and

substitutability of commercial instruments for cash (Akhlaghi). As previously mentioned, speed is an essential characteristic of commercial transactions, which applies not only to the payment period but also to the statute of limitations for claims arising from commercial instruments.

Regardless of debates over the statute of limitations in the former Code of Civil Procedure, the legislator has determined that claims arising from commercial instruments must be initiated and resolved within a short period. Claims related to the commercial aspects of negotiable instruments must be brought before the courts within five years from the date of protest. Otherwise, the right of recourse against the parties named in the instrument (drawer, endorsers, etc.) will be forfeited.

However, the right to claim based on the underlying obligation (causal relationship) may either be extinguished or remain indefinitely. After the forfeiture of the right to sue based on the negotiable instrument, if the underlying right remains, the holder may file a different claim against a person who has wrongfully benefited from the instrument, made a claim based on an expired obligation, or created a fictitious claim.

2.2.2. *Starting Point and Calculation of the Statute of Limitations*

The starting point of the statute of limitations in commercial law depends on the legal system in question. In French law, the limitation period varies based on the type of claim. The statute of limitations for claims by the holder against the drawer and endorsers begins from the date of protest, and if no protest is required, from the due date (Eskini, 1995).

A notable difference in foreign legal systems is that the rights of the holder of a negotiable instrument vary depending on whom the claim is filed against, affecting the starting point of the statute of limitations. However, Iranian law does not differentiate based on the defendant, and the starting point remains the same in all cases (Eskini, 1995).

A general principle for determining the beginning of the limitation period is that it should start from the day the creditor's right to claim is established, which is the day the creditor becomes entitled to file a lawsuit. Therefore, if the claimant does not yet have the right to sue, the statute of limitations does not commence. The date on

which the claim becomes due should be considered the starting point of the limitation period.

Regarding commercial companies, Article 219 states: "The limitation period begins on the day the dissolution of the company, withdrawal of a partner, or expulsion of a partner is registered with the Commercial Registry and announced in the Official Gazette. If the claim was not due at the time of registration and announcement, the limitation period begins from the day the creditor gains the right to demand payment."

A fundamental condition for the statute of limitations to take effect is the passage of the legally prescribed time period. Once this period expires, the creditor can no longer seek legal recourse to claim their rights. Thus, determining the starting point of the limitation period is crucial, as the expiration of the period bars the creditor from filing a claim, and if the defendant invokes the statute of limitations, the court will dismiss the claim. The statute of limitations serves as a procedural bar against claims.

Logically, a limitation defense is only relevant if the claim was initially actionable. This means that the claim must have arisen and the creditor must have had the right to demand payment. Otherwise, as long as the claim has not yet matured, the statute of limitations does not apply. The existence of a substantive right and the corresponding right to demand it arise when the legal cause of action is established (Sheikh Nia, 1996).

In determining the starting point of the statute of limitations, two points must be considered:

1. Any deadline or time limit must have a clear starting point, as the calculation of days depends on a defined beginning; otherwise, the limitation period will have no legal effect.
2. The starting point should be the date on which the creditor's right to claim becomes enforceable, as this marks the date the creditor can initiate a lawsuit. If the creditor has no right to sue, the statute of limitations does not begin (Sheikh Nia, 1996).

2.2.3. Extinction of Special Privileges in Commercial Claims

The Commercial Code grants certain privileges to commercial transactions to ensure stability, speed, and security in commerce. However, the legislator has limited the duration of these privileges, making their

continuation dependent on filing a claim within the prescribed time frame. Once the statute of limitations expires, these privileges are eliminated.

For instance, in claims arising from commercial instruments, all signatories bear joint and several liability toward the holder, who may file a claim against any or all of them. Similarly, in general partnerships, partners share joint liability, allowing creditors to pursue claims against any of them. The expiration of the statute of limitations in commercial law results in the loss of these special privileges, reducing the claim to a simple civil claim.

According to the draft Commercial Procedure Code, after the expiration of the statute of limitations, claims must be brought before a civil court. To understand why commercial courts have greater advantages than civil courts, it is necessary to examine the differences between their proceedings.

A commercial court is a judicial body affiliated with the judiciary, which may function in different forms. The draft Commercial Code designates commercial courts as the competent forum for commercial disputes and mandates the judiciary to draft the necessary procedural laws. The primary function of commercial courts, as inferred from the draft Commercial Procedure Code, is to facilitate and expedite the resolution of commercial disputes.

Commercial courts may exist in two forms:

(a) Dedicated branches within general courts, where commercial cases take priority over other cases. This is reflected in Article 10 of the Commercial Procedure Code, which states: *"The designation of a specialized branch within the appellate or supreme court to review commercial cases does not preclude its jurisdiction over other cases within its competence."*

(b) Fully specialized commercial courts, which only handle commercial cases. This approach is suggested by Articles 1 and 2 of the draft Commercial Code.

One of the exceptional procedures provided in this draft is the immediate default judgment mechanism. Legal scholars classify this procedure as administrative adjudication, a summary, informal, and exceptional method of dispute resolution. The key features of this procedure are:

1. No formal hearing or summons is required. The court may render its decision during office

hours or even after hours without a pre-scheduled hearing.

2. The decision, unlike provisional measures, fully resolves the dispute but remains subject to appeal.
3. The decision lacks enforceability until the objection period expires.
4. This procedure is primarily used for monetary claims supported by private documents.
5. The claim may also be filed through a formal notice, and the defendant's silence or acknowledgment may be taken as implicit consent.

The draft Commercial Procedure Code incorporates this mechanism in Article 32, stating: *"Before filing a claim, the plaintiff must formally demand the debt by serving a notice to the prospective defendant. If the claim concerns a sum of money based on a private document, and the plaintiff has demanded payment via a formal notice, the following procedure applies:"*

"If the debtor fails to pay within ten days of receiving the notice, does not deposit the amount with the judiciary, or does not deny the debt within ten days, the creditor may petition the competent court to issue a ruling confirming the debt."

The requirement that the demand be based on a private document is due to the fact that claims based on official documents do not require court intervention, as enforcement offices execute them directly.

3. Statute of Limitations for Contractual Claims in International Instruments

This section examines the statute of limitations for contractual claims in international legal instruments.

3.1. Recognition of the Statute of Limitations

Traditionally, the statute of limitations has two meanings:

- (a) Acquisitive prescription, which refers to acquiring ownership of property through the passage of time.
- (b) Extinctive prescription, which refers to losing a right due to the expiration of a legally prescribed period.

Each of these concepts follows distinct legal rules. In international legal instruments, including the Principles of European Contract Law (PECL), the UNIDROIT Principles of International Commercial Contracts (PICC),

and the United Nations Convention on the Limitation Period in the International Sale of Goods (UN Limitation Convention), only the second type—extinctive prescription—is addressed.

These international instruments do not extinguish the right itself; rather, they allow the obligor to refuse performance after the limitation period expires. The most suitable legal term for this concept, as used in Scottish law, is negative prescription. Another appropriate term is liberative prescription, which emphasizes the debtor's release from liability (Shoarian & Torabi, 2010).

Chapter 14 of the Principles of European Contract Law is dedicated to the statute of limitations. Article 14:101 states:

"The right to enforce an obligation (a claim) is subject to a limitation period prescribed by these principles."

In these principles, the statute of limitations applies only to claims for performance. In other words, it does not affect other rights, such as ownership claims or rights arising from a contract, such as the right to terminate a contract (Danny, 2006).

Additionally, an important clarification regarding this article is that the right to waive performance does not expire due to the statute of limitations. This means that, even if the claim is time-barred, the right to refuse performance remains intact. Similarly, the right to reduce the payment amount is not affected by the statute of limitations.

These principles also include certain time restrictions, such as:

- Article 2:206: Time limit for acceptance.
- Article 4:113: Time limit for notice of avoidance.
- Article 9:303(2): Time limit for notice of contract termination.
- Article 9:102(3): Other procedural time limits.

These time restrictions are not considered statutes of limitations but are procedural deadlines for specific contractual rights (Shoarian & Torabi, 2010).

3.2. Commencement of the Statute of Limitations

The United Nations Convention on the Limitation Period in the International Sale of Goods states in Article 1(1): *"This Convention shall determine the date from which claims of the seller and buyer against each other—arising from a contract for the international sale of goods or*

related to its breach, termination, or nullity—shall no longer be enforceable due to the expiration of an applicable time period. Such a time period shall hereinafter be referred to as the limitation period."

Article 1(2) of the Convention further clarifies:

"This Convention shall not affect any period within which one party must, as a condition for acquiring or exercising a claim, give notice to the other party or perform any act other than the commencement of legal proceedings."

The Convention establishes a single limitation period for all claims arising from contracts for the international sale of goods.

Chapter 10 of the UNIDROIT Principles of International Commercial Contracts also addresses the statute of limitations. Article 10.1(1) states:

"The expiration of a period referred to as the limitation period under this Chapter precludes the enforcement of rights governed by these Principles."

Article 10.1(2) adds:

"The provisions of this Chapter do not govern periods within which a party, under these Principles, must give notice to another party or perform an act other than initiating legal proceedings as a condition for acquiring or exercising rights."

This article broadly refers to rights governed by these Principles, meaning that not only can a claim for performance be barred, but also rights directly affecting a contract, such as the right to terminate the contract or the right to reduce the agreed price, can be extinguished by the statute of limitations.

Under the UNIDROIT Principles, if a party fails to give notice or perform an act that must be completed within a reasonable time without undue delay, or within a specified period, they will lose the corresponding right. Although these provisions function similarly to the statute of limitations, the specific time limits and their effects are not governed by the prescribed limitation periods because they are designed to address specific needs (Akhlaghi & Emam, 2009).

3.3. Duration of the Limitation Period

International instruments concerning contracts—including the Principles of European Contract Law (PECL), the UNIDROIT Principles of International Commercial Contracts (PICC), and the 1974 United Nations Convention on the Limitation Period in the

International Sale of Goods (as amended in 1980)—adopt different limitation periods.

To ensure simplicity, clarity, and uniformity, the Principles of European Contract Law establish a general limitation period for all contractual obligations. Article 14.201 states:

"The general limitation period is three years."

Similarly, Article 10.2 of the UNIDROIT Principles states:

"1. The general limitation period is three years, commencing on the day following the date when the obligee knew or ought to have known the facts giving rise to the right to enforce a claim.

7. However, the maximum limitation period is ten years, starting from the day following the date when the obligee's right could have been exercised."

The general limitation period begins the day after the obligee knows or should have known the facts giving rise to their claim. The term "facts" in this article refers to events such as contract formation, delivery of goods, assumption of services, or non-performance of an obligation. Before the general limitation period begins, the obligee must have knowledge of the facts establishing their right or claim, or at least have had the ability to acquire such knowledge.

The identity of the obligor may also be uncertain in some cases, such as those involving agency, debt transfers, assignment of entire contracts, dissolution of companies, or third-party beneficiary contracts. In such cases, before the obligee can be criticized for failing to pursue their claim, they must know the identity of the person against whom they should initiate legal proceedings or have reasonable grounds to determine it. However, knowledge of the legal consequences of these facts is not required. If the obligee misunderstands their legal rights despite full knowledge of the facts, the three-year limitation period still commences (Akhlaghi & Emam, 2009).

The United Nations Convention on the Limitation Period in the International Sale of Goods establishes a four-year limitation period, which cannot be modified by agreement between the parties. However, it may be extended by a written declaration from the debtor. This period allows parties to initiate claims related to the international sale of goods in a timely manner. Under certain circumstances specified in the Convention, the limitation period may be extended or restarted.

The only specific and exceptional limitation period provided in the Principles of European Contract Law applies to rights established through judicial proceedings, which are considered less susceptible to time-based changes. Thus, a special limitation period is necessary. Article 14.202 states:

"The limitation period for a right established by a judicial decision is ten years. The same rule applies to rights established by arbitral awards or other enforceable instruments equivalent to judicial decisions." (Shoarian & Torabi, 2010).

Additionally, Article 14.601 of the Principles of European Contract Law states:

"1. The statute of limitations may be modified by agreement between the parties, particularly by shortening or extending the limitation periods.

2. However, after the limitation period commences under Article 14.203, it cannot be reduced to less than one year or extended beyond 30 years."

Parties may wish to exclude themselves from the rules governing the statute of limitations, and this can be achieved in several ways. They may shorten or extend the limitation period applicable to their rights, alter the starting date, or specify particular conditions for suspending or delaying the limitation period. However, most limitation rules are designed to protect the obligor, meaning that when the obligor waives this protection, such private agreements take precedence over public interests (Shoarian & Torabi, 2010). Nevertheless, such agreements remain valid only as long as they do not extend the limitation period beyond 30 years.

3.4. *Interruption or Renewal of the Limitation Period in International Instruments*

Civil law systems traditionally distinguish between "interruption" and "suspension" of the limitation period. When a limitation period is interrupted, the time elapsed before the event causing the interruption is disregarded, and a new limitation period begins. In contrast, suspension means that the time elapsed during the suspension period is not counted, and once the reason for suspension ends, the prior limitation period resumes. If the limitation period had not yet commenced, it starts from the end of the suspension period. Therefore, suspension extends the fixed limitation period.

Another factor that may extend the limitation period is the deferral of the expiration date. In this case, the

limitation period continues to run, but it ends only after an additional specified period has elapsed (Lando et al., 2003).

If the parties modify the general limitation period under Article 10.2(1) of the UNIDROIT Principles, an acknowledgment of the claim restarts the limitation period based on the modified term. For example, if the parties reduce the general limitation period to one year, an acknowledgment of the claim will restart a new one-year limitation period.

Example:

"A and B agreed to reduce the limitation period for claims arising from A's defective performance to two years. After nine and a half years, B discovers defects in A's performance, and A acknowledges their obligation to remedy them. Before B's claim becomes time-barred under Article 10.2(1), B has an additional two years to pursue the claim." (UNIDROIT, 2010).

4. Conclusion

Based on the analysis presented, it is evident that the statute of limitations for commercial instruments is explicitly recognized in both Iranian law and international legal instruments, without any ambiguity. Regarding Iranian law, it can be concluded that the Guardian Council's authority is limited to reviewing the conformity of parliamentary legislation with the Constitution and Islamic principles before such legislation becomes law. According to most legal scholars, the Guardian Council's declaration that an existing law contradicts Islamic principles does not, by itself, render the law void. Instead, for such laws to be repealed, the legislature must formally abolish them through legal procedures, including obtaining the Guardian Council's approval for the repeal.

Furthermore, the silence of the 2000 Code of Civil Procedure regarding the statute of limitations does not necessarily imply its abolition. According to the phrase "in cases of conflict" in Article 529 of the 2000 Code of Civil Procedure, only those provisions of the 1939 Code of Civil Procedure that conflict with the current procedural law are repealed, not the entire Code.

Moreover, the statute of limitations for commercial instruments is fundamentally different from the statute of limitations for civil claims. Unlike civil claims, where the defendant must invoke the statute of limitations, commercial limitation periods bind the court, requiring

it to reject time-barred claims even without a plea from the defendant.

Even if the Guardian Council's opinion is interpreted as declaring the statute of limitations un-Islamic, this does not extend to commercial claims. This is because the Guardian Council's 1983 opinion specifically addressed Article 731 and subsequent provisions of the former Code of Civil Procedure and did not explicitly declare the statute of limitations in the Commercial Code to be un-Islamic.

Additionally, in commercial transactions, invoking the statute of limitations does not eliminate rights altogether but rather modifies the legal framework governing the relationship. It removes the special obligations, privileges, and regulatory framework applicable to commercial claims but does not prevent the holder of a commercial instrument from asserting their rights under civil law principles.

In other words, a person against whom the statute of limitations has been invoked in a commercial dispute may still seek redress under general civil law provisions to reclaim their rights.

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

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Ethical Considerations

In this research, ethical standards including obtaining informed consent, ensuring privacy and confidentiality were observed.

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