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The Effects of Floating Price in Iranian Civil Law

Mohammed Ahmad Shatti Saleh. Al Tamimi[1], Ali. Radan Jabali[2*], Hasanin. Zia[3], Pourkhaqan. Shahrezaee[2]

[1] Ph.D. student of Private Law, Isfahan (Khorasgan) Branch, Islamic Azad University, Iran
[2] Assistant Professor, Department of Law, Isfahan (Khorasgan) Branch, Islamic Azad University, Isfahan, Iran
[3] Assistant Professor, Department of Law, Maysan University, Iraq

*** Corresponding author email address**: dr.aliradan@gmail.com

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From a legislative history perspective, the requirement that the subject matter of a contract, particularly the price, be known and determined was a fundamental principle governing the law of obligations and, more specifically, an essential condition for the contract of sale. However, with the advancement of technology, the increasing complexity of economic and commercial relationships, and the necessity of expediting international transactions and exchanges, this principle has lost its rigidity. Consequently, regulations allowing the conclusion of sales contracts with a floating price have been codified in the legal systems of most economically and industrially advanced countries. The rapid expansion of international trade and the need for states to adapt to modern conditions have pushed the global community towards drafting uniform regulations, culminating in the adoption of the 1980 Vienna Convention on Contracts for the International Sale of Goods (CISG). This convention, recognized as an international law to which many developed countries have acceded, includes provisions concerning floating prices. Similarly, Iranian law also recognizes the possibility of concluding sales contracts with a floating price. According to the aforementioned legal sources—including the 1980 Vienna Convention and Iranian law—the contract of sale with a floating price manifests in various forms. One instance arises when the contracting parties, instead of explicitly specifying the price, establish methods and criteria for its determination. The most significant type of floating price occurs when the parties to the contract neither determine the price at all nor provide any mechanism for its determination. Notably, the primary disputes concerning floating prices pertain to this latter scenario, where no explicit or implied standard for determining the price exists. As a result, the acceptance of such an arrangement—where the price is entirely undetermined—has been conditioned on the fulfillment of certain requirements and characteristics under the aforementioned legal frameworks. Pursuant to the provisions of the 1980 Vienna Convention, if the parties enter into such a sales contract, the prevailing price in commercial practice at the time of contract formation serves as the criterion for determining the buyer's financial obligation.

Keywords: *Floating Price, Vienna Convention, International Trade Law, Iranian Law, Iraqi Law, English Law.*

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1. Introduction

Today, due to the evolution of social needs, particularly in commercial affairs, contracts in which the parties, at the time of conclusion, do not wish to or, in some cases, cannot precisely determine the consideration are increasingly prevalent. The necessities governing commercial transactions often prevent the parties from agreeing on a fixed price. In many legal systems, public necessity has outweighed legal logic, leading to the acceptance of contracts with floating prices. This type of pricing has been recognized in the legal systems of the United States, the United Kingdom, and the United Nations Convention on Contracts for the International Sale of Goods (CISG). However, in Iran's codified laws, contracts with floating considerations have not been explicitly addressed.

In other words, a different interpretation of the doctrine of Gharar (uncertainty) suggests that detailed knowledge of the price at the time of contract formation is not an absolute necessity. What is crucial is avoiding dangerous ignorance that leads to excessive loss. The 1980 Vienna Convention on Contracts for the International Sale of Goods (CISG) is the result of efforts to unify and standardize the laws governing international sales. Iran's accession to this convention could facilitate the expansion of its foreign trade and boost economic growth.

Regarding the 1980 Vienna Convention, it should be noted that, with the increase in intergovernmental trade in the late 20th century, the need for a harmonized international sales law became evident. It was anticipated that a unified legal framework would enhance international trade, promote fairness, and reduce negotiation costs in commercial transactions. In 1929, Ernst Rabel, in collaboration with the International Institute for the Unification of Private Law (UNIDROIT), sought to establish a uniform law for sales transactions. This effort led to the 1964 Hague Conventions, which resulted in two instruments: the Uniform Law on the International Sale of Goods (ULIS) and the Uniform Law on the Formation of Contracts for the International Sale of Goods (ULF).

These conventions came into force in 1972 but had limited success as uniform laws because they were generally considered too broad in scope and were perceived to favor industrialized nations. Consequently, only nine countries, mostly European, ratified them. The failure of these conventions highlighted the need for a more widely applicable uniform sales law that could be implemented across all states, regardless of their legal, social, or economic backgrounds. In 1966, the United Nations General Assembly established the United Nations Commission on International Trade Law (UNCITRAL).

A sales contract with a floating price is one in which the price is neither fixed nor determined at the time of formation. This means that, due to strategic considerations or constraints, the parties neither wish nor are able to specify the price at the time of concluding the contract. Instead, they agree on a basis for determining the price or leave the matter entirely open. The diversity of such contracts and their increasing prevalence, particularly in commercial transactions across various industries, coupled with the lack of detailed legal provisions and judicial familiarity, justify a thorough examination of their legal status.

In contemporary commercial practices, transactions in which the price is determined based on objective or subjective criteria are considered valid and free from Gharar. In cases where the price is left undetermined, circumstantial evidence or a pre-established standard for price determination is deemed sufficient. A legal analysis of Iran's Civil Code suggests that the actual determination of the subject matter of a contract at the time of its formation is not a strict requirement for validity. Instead, it suffices that the subject matter be determinable.

2. Concepts

2.1. Definition of Price and Its Distinction from the Sold Goods

A contract of sale is inherently a synallagmatic (bilateral) contract. The subject matter of the contract consists of the sold goods (mabi') and the price (thaman), which stand in reciprocal relation to one another. The primary purpose of the transaction for both parties is to obtain the consideration for the exchange. From a legal standpoint, an international sales contract, as defined, does not differ in essence from a domestic sales contract; both are based on the same fundamental elements. In other words, an international sales contract is simply a contract whose primary objective is the exchange of goods for consideration (Safa Taqi, 2017).

Today, the scope of international commercial relations has expanded significantly. The contracting parties may be nationals of different countries, or the sold goods may be delivered in a country other than the buyer's place of residence. This situation adds complexity to payment and delivery obligations, bringing about distinct legal consequences. International law provides principles and regulations to address these challenges, which are enforced in various jurisdictions concerning legal relations that involve an international element (Houria, 2018). The 1980 Vienna Convention on Contracts for the

International Sale of Goods (CISG) serves as a framework for uniform international sales law.

Due to the failure of the 1964 Hague Conventions, UNCITRAL was tasked with drafting a new proposal. After years of continuous work, the United Nations Conference on Contracts for the International Sale of Goods was convened in Vienna, Austria, on March 10, 1980. Representatives from 62 countries with diverse economic, political, and legal systems, as well as observers from various specialized organizations, governmental entities, and non-governmental organizations, participated in the conference (Mohammadi & Kavyar, 2017). This conference, conducted within the framework of UNCITRAL, incorporated provisions from the 1964 Hague Conventions and introduced new international sales law principles. The CISG was adopted on April 11, 1980, and entered into force on January 1, 1988.

Iran has not yet acceded to the 1980 Vienna Convention on Contracts for the International Sale of Goods. However, this does not render a legal analysis of its provisions unnecessary. The application of the CISG does not require both contracting parties' home states to be signatories (Daneshvar, 2020).

On one hand, the 1980 Vienna Convention serves primarily as an interpretative legal framework, meaning that parties are free to exclude its application in whole or in part. On the other hand, under Article 968 of the Iranian Civil Code, contractual obligations are governed by the law of the place where the contract was concluded, unless the contracting parties are foreign nationals and have explicitly or implicitly chosen another legal system to govern their contract (Meghdadi, 2017).

In other words, if one of the contracting parties is Iranian, and the contract is concluded in Iran, then Iranian law governs the contract, unless private international law rules or Iranian conflict of laws provisions lead to the selection of the CISG as the governing law. Similarly, if one or both contracting parties are Iranian and conclude the contract outside of Iran, they may expressly or implicitly choose a law other than Iranian law, such as the CISG, to govern their contract (Montazeri & Ebrahimi, 2014).

Consequently, even without Iran's formal accession to the 1980 Vienna Convention on Contracts for the International Sale of Goods, it remains possible for the CISG to govern international sales contracts involving an Iranian party.

2.2. The Concept of an Indeterminate Price

In a contract of sale, the parties typically determine the price of the transaction either explicitly or implicitly, or at the very least, they establish a clear standard or criterion for determining the price. It is rare for contracting parties to completely omit the determination of the price. However, there are instances where no indication of the price can be found in the contract of sale.

Economic necessities and the increasing importance of expediting commercial transactions have diminished the former significance of price determination. Furthermore, the awareness of the parties regarding regulations that apply in the absence of a determined price has contributed to shifting the primary intent of the transaction, particularly for the buyer, towards obtaining the desired goods rather than focusing on the price or the method of its determination at the time of contracting (Pashazadeh et al., 2021).

For example, in times of crisis, a steamship may become inoperative on the high seas due to the failure of certain spare parts. The shipowner may then order a replacement part via telegram or telephone without mentioning the price or establishing any provision for its determination (Kazem Zarzour, 2015).

Notwithstanding the above, it is important to note that there is still no universal consensus among legal systems regarding the issue of a completely indeterminate price. For instance, the approach of common law differs from that of French law on this matter. Under French law, a contract is void if the price is not definitively determined, whereas under English common law, such a contract is deemed valid, and the buyer is obligated to pay a reasonable and customary price.

As discussed earlier, the drafting committee of the 1980 Vienna Convention on Contracts for the International Sale of Goods (CISG) was divided on the issue of a completely indeterminate price. A brief examination of Articles 14 and 55 of the Convention reveals this divergence of opinion. However, as will be further explored, the CISG ultimately adopts a stance that permits contracts of sale with a completely indeterminate price (Kazem Zarzour, 2015).

Article 55 of the CISG states:

"If a contract has been validly concluded but does not expressly or implicitly fix or make provision for determining the price, in the absence of any indication to the contrary, it is presumed that the parties have implicitly agreed on the price generally charged at the time of the contract's conclusion for such goods sold under comparable circumstances in the relevant trade sector."

2.3. Lack of Price Determination

Once it has been established that the contract in question is valid and enforceable under the governing national law, the second condition for applying the price determination standard under Article 55 of the CISG is the absence of a fixed or determinable price.

As discussed in relation to Article 14 of the CISG, the contracting parties in an international sale of goods may adopt various methods for determining the price. The most common approach is the explicit specification of the price within the contract itself (Teymouri Sandesi, 2012).

Another approach occurs when the price is not explicitly mentioned within the contract, but it can be inferred from the overall circumstances surrounding the transaction, including negotiations between the parties, trade customs, and prior commercial practices.

A further method of price determination is when the contracting parties establish specific criteria for setting the price. These criteria may include various mechanisms, such as:

- Delegating price determination to a third party.
- Basing the price on the market rate on the date of delivery.
- Deferring price determination to a later agreement between the parties or one of them.

In all the above scenarios, it is evident that the price is, in some form, ascertainable, and the CISG recognizes all three methods as sufficient for determining the price (Daryai, 2019).

Article 55 of the CISG establishes that one of the essential conditions for applying the price determination standard is the absence of a specified price by any of the three aforementioned methods. This requirement is both logical and necessary, as a contract of sale with a determinable price does not qualify as a contract with an indeterminate price, thereby negating the need to apply any further standards for price determination.

The phrase *"in the absence of any indication to the contrary"* in Article 55 of the CISG supports this interpretation. It means that where there is evidence within the contract suggesting that the parties—or one of them—have explicitly or implicitly excluded the application of the prevailing market price at the time of contracting, the standard in Article 55 does not apply. In such cases, the price must be determined through one of the methods outlined in Article 14, which serves as contradictory evidence to the application of the Article 55 standard (Ojani, 2015).

Additionally, in some instances, not only is the price left undetermined, but one or both parties may explicitly prohibit reference to the prevailing market price at the time of contracting (Bilali Kooshsefhani, 2019).

In such cases, since the parties have expressed their intention to exclude the application of the standard in Article 55, the price cannot be determined, and the contract will not be enforceable.

Another example of contradictory evidence preventing the application of Article 55 of the CISG is when the buyer, prior to the conclusion of the contract, refuses to accept the delivery of goods without prior agreement on the price.

2.4. Floating Price

2.4.1. In the Vienna Convention

The determination of the price is one of the essential conditions for the conclusion of a contract of sale. However, due to various factors, including price fluctuations in the market and the inability of the parties to specify all contractual terms at the time of contract formation, merchants today prefer flexibility in contracts, particularly by incorporating a floating price in sales contracts. While legal scholars worldwide have identified advantages in not determining the price at the time of contract formation, legislators have not adopted a uniform approach to this issue (Mato, 2012).

Particular attention should be given to the position of the United Nations Convention on Contracts for the International Sale of Goods (CISG) regarding floating prices, as there appears to be a conflict and inconsistency between Articles 14 and 55 of the Convention concerning price determination (Ghasemi, 2014). However, it can be argued that Articles 14 and 55 are actually harmonized and compatible within the framework of the CISG. The

Convention allows for the conclusion of contracts without a fixed or determined price or without a mechanism for price determination, relying instead on the principle of party autonomy in contractual agreements.

The conclusion of sales contracts in which the price is not determined at the time of contract formation originates from customary commercial law. In some situations, determining the price at the time of contracting may be impractical or even detrimental to the commercial interests of the parties. In such contracts, the parties either determine the price upon formation and include a price adjustment clause or conclude the contract without specifying the price. While the use of a price adjustment clause appears to be a straightforward solution, it also presents challenges. In some cases, the parties may fail to agree on the adjustment mechanism or disagree on the adjusted price, leading to judicial intervention for price determination, which can be both time-consuming and costly (Boyle, 2022).

Despite these challenges, in certain situations, the parties, while specifying some aspects of the contract, leave the determination of other matters, such as the price, to the future. In legal literature, a sale contract in which the price is not determined at the time of formation is referred to as a "sale with a floating price."

The history of contracts of sale without a predetermined price dates back to the 11th and 12th centuries, following the commercial renaissance in Europe. During this period, customary commercial law, as a body of merchant practices, governed trade relations among merchants in markets and ports and distinguished itself from local, ecclesiastical, and feudal laws. These customary commercial rules quickly gained recognition because they were transnational, rooted in merchant customs, enforced by merchants themselves, featured swift and informal procedures, and emphasized fairness and equity.

Since customary law inherently contains a degree of ambiguity, merchants demanded clearer rules to regulate their commercial relationships. Consequently, legislators recognized the necessity of codifying regulations alongside reliance on customary trade practices.

Gradually, with the codification of national laws, customary commercial law lost its dominance over contracts of sale, and commercial law acquired a national character, separating itself from merchant customs in England, the United States, France, Germany, and other European countries. National laws overrode customary commercial law in many jurisdictions. However, despite the nationalization of commercial law, numerous principles of customary commercial law—such as permitting the conclusion of sales contracts without a predetermined price—were incorporated into national commercial regulations. These principles continue to play a crucial role in resolving commercial disputes.

The influence of customary commercial law on legislative regulations can be explained by the goal of facilitating lawful commercial relations and removing barriers to trade (Akhlaghi & Imam, 2017). Given the indispensable role of customary commercial law in the past and present in facilitating trade, it is only natural for legislators to consider these principles when drafting legal frameworks governing commerce. A prominent example of a legal system derived from customary commercial law is the Uniform Commercial Code (UCC) of the United States, adopted in 1952.

2.4.2. In Iranian Law

A floating price can prevent opportunistic behavior by contracting parties in response to changing circumstances. Opportunism is defined as "an attempt by one party to exploit the vulnerability of the other party arising from the contract itself." In certain situations, a contracting party may attempt to gain more than what they were originally entitled to under the contract, resulting in financial loss to the other party and a reduction in the expected mutual benefits of the contract (Barikloo, 2015).

Some legal scholars argue that the floating price mechanism is an effective tool for mitigating losses in contractual relationships. They contend that if parties agree on a fixed price, they may, due to a lack of market awareness, settle on an inappropriate price, leading to financial harm to one of the parties.

In Iranian law, a contract with a floating price refers to contracts in which the price is not determined at the time of formation, and its determination is deferred to a future date or left to a third party's decision. Such contracts are considered invalid under Iranian law. According to the Iranian Civil Code, in all synallagmatic financial contracts, both the subject matter and the price must be determined (Shiravi, 2021).

In this regard, Articles 190 and 216 of the Iranian Civil Code establish general provisions applicable to all contracts, except for those in which general knowledge of the subject matter suffices (such as gifts, settlements in dispute resolution, or contracts involving disparity in consideration). Similar provisions exist in the regulations governing contracts of sale, as found in Articles 338 and 342 of the Iranian Civil Code, which are also applied to other financial contracts.

In the context of sales contracts, if the price of goods is not definitively established, there is a greater likelihood of cooperation between the parties, potentially leading to higher overall benefits. For example, if the price for goods sold by the manufacturer to a retailer is based on a fixed price per unit plus a percentage of the retailer's sales revenue, the manufacturer would have a strong incentive to assist in timely delivery, after-sales service, and even product marketing to increase sales revenue and thereby enhance their share of the profits (Islami & Mohammadzadeh Rahni, 2019). Conversely, if the price is fixed, the incentive for such cooperative efforts significantly diminishes.

The Sale of Goods Act 1979 is formally simple and easy to apply. Some of its provisions, particularly those concerning the quality of goods delivered under the contract, are well-established. However, its apparent simplicity can be misleading and may give rise to complexities. Many of these challenges stem from the fact that the 1979 Act is based on the earlier 1898 legislation (Amini, 2018).

In English law, as in many other legal systems, price is an essential element of a sales contract. The requirement for agreement to conclude a contract is discussed under the principles of offer and acceptance, which establish mutual consent between the parties (Daneshvar, 2020). Moreover, under all legal systems, for an offer to be valid and capable of acceptance, thereby leading to the formation of a contract, the offeror must have a clear contractual intention, and the offer itself must be sufficiently complete and precise.

3. The Principle of Eliminating Ambiguity from the Subject Matter of the Contract

Although commercial activities today have expanded significantly, encompassing various fields such as services, financial activities, and transportation, contracts for the sale of goods remain highly significant and constitute a substantial portion of legal transactions, particularly in the international sphere (Dadashi, 2019). The prevalence and importance of sales contracts necessitated the establishment of a uniform international law governing the sale of goods, ultimately leading to the adoption of the 1980 Vienna Convention on Contracts for the International Sale of Goods (CISG).

With the adoption of this convention, its provisions became the governing law for sales contracts falling within its scope, thereby significantly reducing disputes regarding the applicable law (Ebrahimi Dehaqani, 2021). However, like other national and international regulations, the CISG contains ambiguities and, in some cases, conflicting provisions, which have raised questions among legal scholars regarding its interpretation and application.

This has ultimately led to uncertainty in judicial assessments regarding the CISG's approach to specific issues. One of the most controversial and ambiguous issues pertains to the requirement of price determination in sales contracts and the CISG's stance on the absence of price determination at the time of contract formation and its effect on contract validity.

Historically, legal scholars have generally advocated for the necessity of determining the price at the time of contract formation for several reasons, including preventing exploitation by one party and ensuring that both parties can assess the contract's potential profitability or loss. However, contemporary views emphasize the need for contractual flexibility, including the non-requirement of price determination at the time of contract formation. This perspective is supported by various arguments, such as preventing opportunistic behavior in fluctuating market conditions and enhancing cooperation between the parties (Noori, 2013).

While less developed socialist countries have historically favored the first approach, which is reflected in their legal systems, developed countries such as the United States and the United Kingdom have generally adopted the second approach, with slight variations. Within this debate, the position of the CISG is particularly noteworthy.

3.1. The Rational Basis for the Principle of Eliminating Ambiguity

One of the primary analytical foundations of the principle of eliminating ambiguity from the subject matter of a contract is rational customary practice. It is important to note that, in Islamic jurisprudence and legal principles, rational customary practice is sometimes used interchangeably with general custom and practice.

In essence, rational customary practice refers to the established practical methods followed by people, regardless of their adherence to religious law, and applies universally to both Muslims and non-Muslims (Mirjamali & Basiri, 2020).

Throughout history, people have exercised utmost caution in their commercial transactions, ensuring clarity in contractual terms to avoid disputes and conflicts.

Another analytical foundation of the principle of eliminating ambiguity is the principle of precision in transactions. Islamic law, as a comprehensive legal system, provides detailed regulations governing contractual relations and commercial transactions (Katouzian, 2018).

One of the fundamental principles in Islamic contracts, which serves as a basis for prohibiting uncertain transactions, is the principle of precision in transactions. This principle emphasizes that individuals must exercise diligence in their dealings, as negligence and ambiguity may lead to risk (Gharar) and contractual disputes (Estadi, 2018).

Thus, one of the philosophical justifications for prohibiting uncertain transactions is the need to prevent ambiguity and disputes in contractual relationships.

3.2. *The Qur'anic Perspective on the Principle of Eliminating Ambiguity*

The Qur'an also refers to this principle. Generally, Qur'anic injunctions are delivered in two forms: detailed rulings on specific, unchanging matters and broad, general rules applicable across different times and places.

There is no specific Qur'anic verse explicitly prohibiting uncertain transactions. However, an overarching legal principle governing commercial transactions exists, which Islamic jurists have consistently relied upon in their rulings on uncertain transactions (Orouji, 2016).

One such general Qur'anic ruling is found in verses 188 of Surah Al-Nisa and 36 of Surah Al-Tawbah, which prohibit unjust enrichment and acquiring wealth through wrongful means.

3.3. *Prophetic and Jurisprudential Perspectives on Uncertain Transactions*

The primary hadith (Prophetic tradition) on uncertain transactions is:

"The Prophet (PBUH) prohibited Gharar sales."

This is the only hadith in both Sunni and Shia sources that explicitly prohibits uncertain sales. The legal foundation of the principle of eliminating ambiguity in Islamic law originates from this hadith.

Other reports from Imam Ali (AS) provide examples of prohibited uncertain sales, such as selling fish in water, unmilked livestock, or wool on a sheep's back, as these transactions involve uncertainty and variability.

Additional Prophetic traditions reinforce the prohibition of uncertain transactions, including the hadith:

"Do not sell what you do not own."

3.4. *Linguistic and Jurisprudential Definitions of Gharar*

The term "Gharar" has multiple linguistic interpretations. Some linguists define Gharar as risk or exposure to loss, while others derive it from "Gharara," meaning deception or ignorance.

Early Islamic scholars defined Gharar as transactions with an attractive outward appearance but an undesirable hidden reality. The renowned lexicographer Al-Jawhari interpreted Gharar as risk, while also acknowledging its meanings of deception and ignorance (Soltaniyan, 2016).

From a legal perspective, Gharar is not synonymous with mere ignorance. Instead, the Prophetic prohibition of Gharar-based transactions extends to all sales or contracts that involve deception or substantial risk. This risk or deception may arise from uncertainty regarding the subject matter of the contract or uncertainty about the ability to deliver the item.

3.5. *The Status of the Gharar Prohibition in Islamic Law and Iranian Civil Law*

The main textual basis for the principle of eliminating ambiguity in contracts is the Prophetic hadith prohibiting Gharar sales.

However, jurists disagree on the authenticity and legal weight of this hadith. Some Shia scholars argue that, due to ambiguity in its chain of narrators, the hadith lacks sufficient credibility and is therefore weak (Da'if) and unreliable (Fazlali Sarkani, 2012).

Nonetheless, according to the science of hadith methodology, a weak narration may gain legal credibility if the majority of jurists issue rulings based on it. Since numerous Sunni and Shia jurists have relied on this hadith to invalidate uncertain transactions, its legal authority is generally accepted (Karami Saad Abadi, 2023).

3.6. The Scope of Gharar in Islamic Law and Iranian Civil Law

An examination of Islamic jurisprudential sources reveals that uncertain transactions fall into three main categories (Ghasemi, 2014):

1. Uncertainty regarding the existence of the subject matter, where there is doubt about whether the object of sale exists at all.
2. Uncertainty regarding the ability to deliver the subject matter, such as selling fish still in the sea.
3. Uncertainty regarding the characteristics of the subject matter, including ambiguity about its quantity, type, or quality.

Iranian civil law does not explicitly define "Gharar" or uncertain transactions. However, given that Iran's Civil Code is heavily influenced by Islamic jurisprudence, many legal provisions based on the Gharar principle are incorporated within it.

The absence of a statutory definition for Gharar transactions likely stems from two factors (Mansouri Lotfali, 2017):

1. Islamic jurisprudence does not provide a precise definition of Gharar transactions.
2. Providing a comprehensive legal definition of Gharar is difficult, as it could exclude certain cases and create legal inconsistencies.

3.7. The Necessity of Price Determination in a Contract of Sale

The majority of Imamiyyah jurists consider knowledge of the price amount before concluding a contract of sale as a condition for its validity. Some have even claimed consensus on this matter. Similarly, most Sunni jurists emphasize the necessity of knowing the price at the time of concluding the contract of sale.

For instance, one jurist states:

"Knowledge of the price characteristics is required just as knowledge of the sold item's characteristics is required because a sale in which the price is unknown in terms of its characteristics constitutes Gharar (uncertainty)." (Safaei & Soltan Ahmadi, 2019).

Thus, the views of Islamic jurists and scholars indicate that ignorance of the price at the time of contract formation leads to contract invalidity. The legal basis for this invalidity is the doctrine of Gharar, according to which the uncertainty of the subject matter in contracts, particularly in synallagmatic (bilateral) contracts such as a contract of sale, results in its invalidity.

In Iranian Civil Law, following Imamiyyah jurisprudence, various provisions emphasize the necessity of the subject matter being known and determined. Article 216 of the Civil Code establishes the general requirement for clarity in the subject matter of contracts. In a contract of sale, the price constitutes one of the counter-values, and it must be clearly defined.

The Civil Code, in its chapter on the rules of sale, explicitly refers to the necessity of price determination. Article 338 states that a sale is the transfer of ownership of an object for a known consideration. Additionally, Article 339 stipulates that a contract of sale is concluded once the seller and buyer agree on the subject matter and the price.

As seen, these provisions explicitly require price determination in a contract of sale (Mohammadi & Kavyar, 2017).

The legal consequence of price ambiguity, both in Islamic jurisprudence and in Iranian Civil Law, is the contract's invalidity. The rationale for invalidity lies in the presence of Gharar, which involves the potential risk and harm inherent in such a transaction. This principle is based on the Prophetic narration (Hadith): "The Prophet (PBUH) prohibited sales involving Gharar."

3.8. The Legal Status of a Contract of Sale with a Floating Price

The majority of Islamic scholars regard a contract of sale with an unknown price as invalid, arguing that its invalidity is due to the presence of Gharar.

To explain why the prohibition of Gharar implies contract invalidity, it is important to distinguish between two types of prohibitions in Islamic law:

1. A prohibition on the act of contracting itself, such as the prohibition of sales during Friday prayers, which imposes a moral or religious restriction but does not affect contract validity.

2. A prohibition intended to indicate a condition for contract validity, such as prohibiting sales by an insane person or a legally incompetent individual. In such cases, the prohibition implies contract invalidity (Meghdadi, 2017).

The issue that arises is whether a contract of sale with an unknown or floating price can be valid under Islamic jurisprudence and Iranian civil law. Given that the determination of Gharar is essentially left to customary practice (Urf), and Islamic law grants validity to customary recognition of Gharar, it appears that such a contract may be valid (Noori, 2013).

Customary practice is not static over time. For instance, at the time of the Iranian Civil Code's enactment, customary practice may have considered certain ambiguities in contracts as instances of Gharar. However, in contemporary practice, those same ambiguities may no longer be viewed as invalidating the contract, and a sale contract with an ambiguous subject matter may be deemed valid.

Nevertheless, customary practice, whether from an Islamic legal or statutory perspective, is only considered a legal source when it has become a well-established and indisputable practice. Thus, if established commercial customs at the time of the transaction do not consider price uncertainty as Gharar, then such a contract of sale is valid and legally enforceable (Yahyapour & Alhoyi Nazari, 2017).

In some cases, the price may be implicitly determined, either through prior negotiations and business practices or through a formula within the contract that determines the price based on logical and pre-defined factors. In such cases, even if the price is not explicitly stated, the contract is not considered uncertain or invalid.

From the majority view of Islamic jurists and scholars, if the price is unknown at the time of contract formation, the contract is invalid due to its uncertain nature. The Iranian Civil Code, following this jurisprudential stance, explicitly states in Article 339 that the price must be known and determined.

However, since the basis for invalidity is the presence of Gharar, and the determination of Gharar depends on customary recognition, there is a possibility that customary practices may consider a floating price as valid, thus negating the contract's invalidity under both Islamic jurisprudence and Iranian civil law.

A notable point is that in some cases, the contracting parties may deliberately refrain from explicitly stating the price, yet, due to prior negotiations or correspondence, both parties are fully aware of the price. In such cases, the price is considered implicitly determined, and the transaction does not involve Gharar, meaning it should not be deemed invalid.

This is because ignorance of the price only invalidates a contract if it leads to disputes or hinders the performance of the contract. Simply omitting the price from the contract does not necessarily render it void. Instead, efforts should be made to interpret the contract based on surrounding circumstances, customary practice, and commercial norms to preserve the stability of social and economic transactions (Darabpour, 2018).

Moreover, Article 223 of the Iranian Civil Code, which establishes the presumption of validity for contracts (Istishab al-Sihha), supports this view.

Additionally, in some cases, although the price is not explicitly stated in the contract, it can be inferred from commercial customs and prior dealings between the parties. In such instances, the omission of the price does not constitute Gharar and does not invalidate the contract.

Parties may also define price determination based on specific formulas or criteria. In such cases, the validity of the contract depends on whether the applied price determination method results in uncertainty (Gharar) (Shoariyan, 2012).

If customary practice considers the level of price ambiguity to be excessive and likely to cause disputes, then the contract is deemed uncertain and invalid. However, if, according to commercial practices, the price determination method is sufficiently precise to prevent disputes, then the contract remains valid.

Given the complexity of modern economic transactions and the necessity of speed in both domestic and international trade, it appears that Gharar, to the extent that it justifies contract invalidation, is no longer applicable.

The prominent Egyptian jurist Sanhouri argues that with the evolution of the global economic system, the strict application of the doctrine of Gharar should be reconsidered. He contends that transactions previously classified as involving Gharar should now be regarded as minor uncertainties and tolerated within modern legal systems (Shahidi, 2017).

Thus, the legal status of floating-price contracts in Iranian civil law depends on the extent to which rational customary practices mitigate contractual uncertainty.
Some Iranian legal scholars, recognizing the increasing complexity of economic relations and evolving commercial necessities, argue that the strict requirement of eliminating contractual ambiguity should be relaxed to better align with contemporary trade practices.

4. The Impact of Floating Price in Contracts under Iranian Law

The absence of price determination at the time of contract formation has various benefits, which have been highlighted by international trade experts. The principle of "joint maximization" suggests that contracting parties should make agreements that, after considering all foreseeable risks, yield the highest possible return for both parties. In essence, the ultimate objective of a contract is to maximize the expected joint benefits derived from the contract.
To examine whether fixed or floating price clauses are more effective in maximizing the parties' benefits, some scholars designed an experiment. This experiment was based on forming an agency contract where each principal was randomly assigned to an agent. The principal had to choose between:

1. A complete contract with a fixed wage clause for the agent, or
2. An incomplete contract without a fixed wage but with a mechanism for determining the wage in the future based on the agent's performance.

The results showed that in incomplete contracts, agents exerted greater effort in fulfilling their obligations. Due to this increased effort, both the agent and the principal received higher returns (Shoariyan, 2012).
Overall, empirical evidence suggests that efforts exerted in contracts with floating price terms are two and a half times greater than in contracts with fixed price terms.

4.1. The Role of Floating Price Clauses in Cost-Effectiveness

The use of floating price clauses enhances cost-effectiveness because when a fixed price is not required in the contract, the parties are not obligated to invest excessive time and financial resources in negotiations or in predicting potential price fluctuations. Merchants receive hundreds of purchase offers weekly and do not have sufficient time to negotiate the details of each transaction (Salehi Asfich et al., 2014). By incorporating floating price clauses, there is no need for extensive review, scrutiny, or lengthy negotiations.
For instance, if a contract stipulates that the price will be determined based on the prevailing market price at the time of delivery, the parties do not need to predict future price fluctuations, reducing transaction costs and risks.

4.2. Floating Price in Pre-Sale Contracts

In many pre-sale contracts, the price is not fixed, and its determination is deferred to the future.
This occurs in some cases due to the dominance of one party over the other, such as in adhesion contracts. In other instances, it results from uncertainties that could create excessive risks for the obligated party—for example, severe and unpredictable price fluctuations that may cause significant financial harm.
In certain cases, it is simply impossible to determine the price at the time of contracting. Regardless of the underlying reason, the legal status of an undetermined price in pre-sale contracts must be analyzed (Ojani, 2015).
Contracting parties can, within legal boundaries and depending on specific circumstances, include particular conditions in their agreements. However, since some contractual terms may undermine essential elements of a transaction, legislators have provided legal restrictions.

4.3. Legal Restrictions on Floating Price Clauses

According to Iranian Civil Law, certain contractual conditions are deemed invalid under Article 232 and subsequent provisions. While some invalid terms do not necessarily affect the validity of the overall contract, in cases where a contractual term contradicts the fundamental elements of the transaction, its invalidity extends to the entire contract.
One such provision is Clause 2 of Article 233, which states:
"A contractual condition that is unknown, leading to uncertainty in the counter-values, is invalid and renders the contract void."
One of the fundamental conditions for the validity of any contract is the existence and clarity of the subject matter.

The requirement for clarity means that both parties must be aware of the essential characteristics and scope of their obligations, so that, after the contract is formed, performance can be specifically demanded, independent of either party's discretion.
Awareness of contractual obligations can be established through:

- Observation and perception
- Explicit description
- Contractual stipulations
- Providing criteria for future determination

Thus, the price of a contract of sale, as one of the two counter-values in the transaction, must be known and determined.

4.4. The Civil Code's Approach to Price Determination

According to Clause 3 of Article 190 and Articles 216, 312, and 315 of the Iranian Civil Code, the price must be definitively determined.
However, the method of price determination varies depending on the circumstances:

- If the price concerns a specific asset, its individual characteristics must be explicitly identified.
- If the price is a general obligation (Kulli fi al-Dhimmah), then, under Article 351 of the Civil Code, the amount, type, and quality must be specified within the contract.

Some legal scholars, referring to Article 339 of the Civil Code, argue that the price must be determined before the contract is formed (Emami, 2019).
If the price is unknown, the contract is considered void, and pre-sale contracts are no exception—the price must still be clearly defined.
Moreover, general awareness of the price is insufficient in pre-sale contracts, because such contracts fall within the category of synallagmatic (bilateral) contracts. Unlike gratuitous contracts, in bilateral contracts, general awareness of the price is not enough to ensure contract validity.
However, some jurists argue that if the subject matter of the contract is considered known based on customary practices, there is no need for explicit description or observation.
For example, if the price is determined exclusively by a specific market, then silence on price determination is interpreted as a reference to that market price, which is considered customary and legally valid.

4.5. The Prohibition of Gharar in Islamic Jurisprudence

This issue has been extensively discussed in Islamic jurisprudence under the doctrine of Gharar. Both Sunni and Shia jurists consider such transactions void, citing the Prophetic Hadith:
"The Prophet (PBUH) prohibited sales involving Gharar."
One form of prohibited transactions under Gharar is a contract in which there is uncertainty about the counter-values (Thaman or Muthman).
In other words, if the buyer does not know the price of the goods being purchased, the transaction contains excessive uncertainty.
Some jurists argue that the price must be determined before the contract is formed, and if a contract is concluded with the price to be determined later by the parties or a third party, it is invalid due to Gharar.
According to Bidayat al-Mujtahid, ignorance regarding the description and quantity of the price constitutes Gharar and invalidates the contract. Similarly, in Fiqh ʻala al-Madhahib al-Arbaʻah, it is emphasized that for a valid contract, the price or the subject matter must be clearly known to prevent future disputes.
Additionally, it is not permissible to grant one party the exclusive right to determine the price unilaterally, as this would lead to contract invalidity.

4.6. The Legal Perspective on Floating Price in Iran

From a legal standpoint, Clause 2 of Article 233 of the Civil Code, which has been derived from Imamiyyah jurisprudence, leaves no doubt about the invalidity of contracts where price uncertainty leads to counter-value ambiguity.
Legal scholars also emphasize that Article 233 is a mandatory rule, meaning that parties cannot override its effect through mutual agreement.
In contracts of sale, both the buyer and seller carefully assess their profits and risks, and tolerance or leniency is not applicable. Thus, general awareness of the counter-values is insufficient to validate the transaction.
While price determination is essential for the validity of any contract, in pre-sale contracts, determining a fixed price is often impractical (Katouzian, 2018).

For example, in a 1994 announcement by Iran Khodro regarding pre-sale car contracts, the contractual terms specified that the final price at delivery would be one million rials lower than the market price at that time.
Given that these contracts are widely used in practice, the question arises: Are such agreements legally and religiously valid?
The initial response would be that such contracts are invalid, as uncertainty regarding the price constitutes Gharar.
However, such a strict interpretation disregards economic realities, as these contracts are widely practiced and fulfill essential economic needs.

5. Conclusion

The transfer of ownership and the parties' agreement on its timing is a significant legal issue that has not been extensively studied in a comparative manner. This article aimed to examine the parties' agreement on determining the time of ownership transfer in Iranian law, the 1980 Vienna Convention on Contracts for the International Sale of Goods (CISG), and European legal systems.
The 1980 Vienna Convention refers the issue of ownership transfer to national law, as its function is to establish uniform regulations for international sales contracts. The convention was adopted to harmonize and unify international trade law within a modern commercial legal framework.
Regarding the possibility of agreement on the timing of ownership transfer, it can be stated that modifying the ownership transfer process through a sales contract is not contrary to Islamic law. Therefore, such agreements are valid and enforceable under the general Islamic principles of fulfilling contracts ("Awfu bil-'Uqud") and honoring conditions ("Al-Mu'minun 'inda Shurutihim").
European legal systems also prioritize the parties' agreement regarding the timing of ownership transfer, and in the absence of such an agreement, they establish default rules for determining the moment of ownership transfer.
In conclusion, both Iranian law and the legal systems of England and Iraq allow the timing of ownership transfer to be determined by the parties' agreement.
One of the innovative approaches in modern commerce is the use of floating price contracts by merchants. A contract of sale where the price is not determined at the time of contract formation has become prevalent in contemporary international trade due to various factors such as time constraints, the need to utilize modern technology in production, and extreme price fluctuations in raw materials and production costs.
Although this method of contracting is widely accepted in international trade, there are legal uncertainties regarding its acceptance in Iranian law and its compatibility with Islamic jurisprudence. The primary obstacle to its acceptance in Islamic jurisprudence is the prohibition of Gharar (excessive uncertainty) in transactions.
However, it appears that if Gharar is understood as a transaction involving a significant risk of loss, then customary practice (Urf) determines whether such a risk exists. In the case of floating price transactions, customary practice does not recognize such a risk. This claim is supported by the large number of prevalent contracts in modern commerce where the price is not determined at the time of contract formation.
Additionally, if Gharar is interpreted as ignorance (Jahl), then floating price contracts do not fall under this category, because the initial uncertainty in these transactions ultimately leads to certainty upon price determination.
It can even be argued that in some cases, not using a floating price mechanism results in a contract becoming excessively uncertain (Gharari).
Furthermore, the principle of precision in transactions ("Itqan fil-Amal") and rational customary practice (Bina' al-'Uqala) could serve as justifications for recognizing such contracts within Islamic jurisprudence.
A floating price contract is one in which the price is not fixed or determined at the time of contract formation. This means that the contracting parties, due to specific interests or constraints, do not wish or are unable to determine the price at the time of concluding the contract. Instead, they agree on a method for price determination or leave the price entirely undetermined in the contract.
The diversity and prevalence of such contracts, particularly in commercial transactions across various industries, combined with the lack of explicit legal provisions and the unfamiliarity of the judiciary with these contracts, highlight the importance of thoroughly analyzing their legal status.

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.

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Declaration of Interest

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