

Examination of Specific Performance of Obligations in Iranian Law and the Uniform Commercial Code from the Perspective of Economic Efficiency

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Specific performance and damages are the two main remedies for breach of contractual obligations, and in different legal systems, depending on philosophical, legal, and moral perspectives, they are accorded differing levels of priority. Law and economics, as a consequentialist approach, introduces the optimal structure of these remedies and, considering environmental conditions, determines their prioritization. The most important outcome of such analyses is the clarification of the common objective of legal systems and the manner of its realization through different means, which ultimately leads to efficiency and legal convergence. One of the challenging issues in remedies for breach of obligations is the efficiency of specific performance and its relationship with contract termination and the award of damages. U.S. law tends to prefer damages as the general remedy and allows specific performance only in exceptional cases, whereas in Iranian law, specific performance constitutes the general rule, and termination of the contract is permitted only when performance by a third party is not possible. The theory of efficient breach of contract, which originates from the capitalist society of the United States, faces challenges from ethical, legal, and economic dimensions; ethically, the theory disregards the autonomy of human will, legally, it is inconsistent with the statutory laws of Iran and France, and economically, its efficiency is doubtful, as the social costs resulting from breach of contract are imposed on third parties while the benefits of the breach accrue to the obligor, with external costs being borne by the obligee who played no role in the breach.

Keywords: *economic analysis, efficiency, specific performance, contractual obligations, UCC*

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1. Introduction

Obligation refers to a legal relationship in which one party can demand the performance or non-performance of an act by another. Once an obligation is created, it remains binding until it is fulfilled, and performance is the means by which the obligation is extinguished and the obligational relationship ends. Performance of obligations is divided into voluntary and

compulsory performance. Voluntary performance occurs when the obligor performs the obligation by choice, while compulsory performance arises when the obligee petitions legal authorities to enforce the obligation either directly (such as delivery of the specific object of the contract) or indirectly (such as detention or financial compulsion). From the perspective of economic analysis, remedies for contractual obligations lead to efficient allocation of resources and increased social



wealth, playing an important role in the satisfaction of contracting parties, provided that each performs obligations with proper incentives and, in cases of refusal, can benefit from appropriate remedies at minimal cost (Aghapour, 2018).

Despite the significance of the issue, no comprehensive research with an economic approach has comparatively examined the principle of prioritizing specific performance over contract termination in Iranian law and the U.S. Uniform Commercial Code (UCC), particularly given the different characteristics of contracts, including civil, consumer, and commercial contracts. Furthermore, remedies of specific performance or contract termination must be analyzed and internalized based on the type of contract.

In the Iranian legal system and Islamic jurisprudence, performance of contractual obligations is mandatory, and non-performance carries multiple remedies, including judicial enforcement and rescission of the transaction. Enforcement may be applied directly or indirectly, depending on the type of obligation, and in cases where direct enforcement is not possible, indirect enforcement may be pursued. If the obligation remains unperformed, termination of the contract grants a right to the obligee (Aghapour, 2018).

The law of obligations, as a crucial part of legal science and law-and-economics, seeks to establish rules that advance economic objectives. Without demonstrating the economic efficiency of institutions and remedies in the law of obligations, the enforcement of such rules becomes futile, as legal rules lacking economic justification tend to be abandoned over time. Remedies must therefore be economically efficient and effective; without efficient remedies, legislative directives lack functionality. Accordingly, it is essential to evaluate methods and remedies of obligations law from an economic perspective, taking into account the type of obligation, method of performance, and enforcement costs (Posner, 2003; Tousi, 2014).

Different legal systems, including Iranian law and the UCC, regulate remedies based on differing economic justifications. In Iranian law, the rule is compulsory performance of the specific obligation, and other remedies are regarded as substitutes (Articles 221, 222, 237, and 238 of the Civil Code). In contrast, in U.S. law, enforcement is granted only in limited cases based on equitable principles, particularly where “damages are

inadequate” or enforcement is “reasonable.” From an economic standpoint, compulsory performance should not result in disproportionate harm to the obligor and, at the same time, must enhance social wealth (Parsapour & Hosseini, 2020).

In Iran, compulsory performance as the primary remedy in cases of non-performance is not excluded except in exceptional cases. In the UCC, however, contract termination is more narrowly confined, particularly to cases where performance becomes unreasonable or impossible (Dadgar & Ehsani, 2020). Moreover, the doctrine of unconscionability under UCC § 2-302, which must be analyzed in terms of economic efficiency, serves as a limiting factor on specific performance.

According to economic theories, efficiency in law must result in the maximization of overall social wealth and should adhere to principles such as Pareto efficiency and Kaldor-Hicks efficiency. Hence, compulsory performance should be preferred when damages cannot be accurately assessed or when enforcement costs are lower; it must also be prioritized in obligations concerning the transfer of property (Amini & Shukouhian, 2019; Shavell, 2006). The necessity of this study lies in the absence of comprehensive and comparative research on the economic efficiency of compulsory performance of obligations, particularly considering the varied features of contracts. A comparative analysis between Iranian law and the U.S. UCC helps to clarify the boundaries and exceptions of remedies, contributing to improved efficiency and fairness in the enforcement of obligations (Ansari et al., 2017).

On the international level, preserving the principle of party autonomy and considering economic efficiency in the performance of contractual obligations are of great importance. Compulsory performance is often costly and, in some cases, impractical; therefore, its precise legal and economic analysis is essential for the development of the law of obligations (Baker, 2008; Lehmann, 2008).

In summary, this study seeks, through an economic and comparative approach, to examine the efficiency of compulsory performance of obligations in Iranian law and the U.S. Uniform Commercial Code, in order to propose efficient remedies tailored to the type and nature of obligations and to achieve optimal legal-economic balance in this domain.

2. Research Background

The present subject, as a comparative study of a specific institution entitled compulsory performance of obligations, while also analyzing it from the perspective of economic efficiency, does not have a direct precedent in this exact form. Instead, previous research, articles, and legal books have addressed similar and related issues in scattered ways, some of which are noted below. Mafi and Taghipour (2015) discussed *the applicable law to contractual obligations in European Union and U.S. law*. This study explains that in EU law and U.S. law, the principle of party autonomy is recognized. Under the Rome I Regulation of the EU, aimed at harmonizing conflict-of-law rules, parties may select a governing law that has no connection with the contract. By contrast, in U.S. law, the chosen law by the parties must generally have a substantial or reasonable connection with the contract. Although this article is comparative in nature, it does not cover Iranian law and focuses only on applicable law to obligations, which itself can be drawn upon as one of the references in the present research (Mafi & Taghipour, 2015).

Safaei (1972; 2012) and other jurists have emphasized that in many legal systems, the mechanism of specific performance of obligations is established. It appears that while specific performance after breach may, in certain cases, be regarded as fulfillment of the contract, this interpretation of the principle of *pacta sunt servanda* is not entirely accurate. Furthermore, today the doctrine of specific performance does not always have the required efficiency. Therefore, the principle must be reinterpreted as “fulfilling reasonable and customary expectations at the time of contract,” with the obligor being free to choose among remedies such as rescission, damages, and specific performance. This study partially addresses the two remedies of rescission and specific performance and compares them in terms of priority (Safaei, 1972, 2012). Ansari, Badini, and Shahi (2017) investigated the *efficacy of prioritizing specific performance over rescission in U.S. and Iranian law*. Their research analyzes and explains the arguments of those supporting either priority, demonstrating an economic correlation between these remedies. They conclude that the efficiency of prioritizing specific performance or rescission cannot be absolutely derived from the reasons cited by either side; instead, a differentiated theory must be adopted.

Depending on the type of contract—civil, consumer, or commercial—one must determine whether specific performance or rescission is preferable (Ansari et al., 2017; Badini, 2012).

Amini and Shukouhian (2019) conducted an *economic analysis of remedies for breach of obligation*, with particular emphasis on specific performance. Their study enumerates the situations in which this remedy is superior to damages and offers suggestions to legal systems regarding its application (Amini & Shukouhian, 2019).

Aghapour (2018) examined *the method of compelling the performance of contractual obligations in Iranian law and Imami jurisprudence*. He argues that compulsion refers to a ruling or order from a court or other legal authority that obliges the obligor to perform exactly what was promised. If the obligor refuses, the court, through its enforcement agents or third parties, or where performance is still possible by the obligor himself, applies financial, material, or physical pressure to compel performance (Aghapour, 2018).

3. Research Methodology

Given the legal nature of the subject, this study adopts a descriptive-analytical approach. In the first step, the concepts related to performance of obligations and similar notions are comprehensively and precisely explained. Then, these concepts are analyzed within the framework of the Iranian legal system as well as the U.S. Uniform Commercial Code (UCC).

The required information for the study has been collected through note-taking from library sources and online materials. The primary resources include specialized books, theses, and scholarly articles in the relevant field.

In the analysis stage, due to the qualitative nature of the data and the absence of statistical dimensions, quantitative methods were not applied. Legal and theoretical research is primarily qualitative, and its analysis is based on reasoning, logic, and critical thinking. The analytical process takes place on three levels: description, causal explanation, and interpretive analysis. The conclusions and findings of the research are derived through legal reasoning methods such as analogy, distinguishing differences, and comparison of concepts and laws, relying on logic and rational

argumentation. In this way, the collected data are carefully examined, and the final conclusions are drawn.

4. Research Literature and Concepts

4.1. The Concept of Contract in Iranian Law

In Iranian law, according to Article 183 of the Civil Code, a contract is an agreement established between two or more persons that creates binding obligations for the parties. In legal literature, *'aqd* is a more specific term than “contract” and refers only to nominate contracts enumerated in the Civil Code, such as sale, lease, mortgage, and agency, while “contract” encompasses all binding agreements, whether nominate or innominate (Ahmadi, 2009; Bahrami Ahmadi, 2011).

A contract generally contains certain elements and stages: offer, acceptance, legal capacity, free consent, and compliance with the law. Some contracts may also be valid in oral form; however, financial and real estate contracts, for the purposes of proof and enforceability, generally require a written form (Talebian & Isaei, 2023).

4.2. The Concept of Obligation and Its Dimensions

Obligation, derived from the word *'ahd*, denotes legal binding and commitment. In legal terminology, an obligation is a relationship between an obligor and an obligee, the subject of which may be the transfer of property, the performance of an act, or forbearance from an act (Abdi Pour, 2012; Shahidi, 2005).

Obligation is used in two senses:

- **General sense:** covering all legal duties, whether contractual or non-contractual, such as tortious liability and statutory duties (Katouzian, 1991).
- **Specific sense:** referring only to debts arising from a contract, which the creditor may demand performance of from the obligor (Ahmadi, 2009).

Some jurists consider obligation as composed of two elements: *debt* (the moral and legal duty of the obligor) and *liability* (the legal authority of the obligee to compel the obligor to perform). Thus, legal obligations are enforceable, and if the obligor refuses, the obligee may seek judicial enforcement (Abdi Pour, 2012).

4.3. Elements and Characteristics of Obligation

An obligation has three essential elements: the parties (obligor and obligee), the subject matter (transfer of property, performance, or forbearance), and the binding legal relationship. This is a personal right, enforceable only against the obligor and not against others (Kaffash & Sadeghi, 2019).

Among the key characteristics of obligation are its binding force and enforceability. Obligations may arise from *binding contracts*, which carry definite legal force, or from *revocable contracts*, which remain binding until rescinded (Ahmadi, 2009).

4.4. Economic Foundations of Performance of Obligations

The economic analysis of law emphasizes that remedies for breach of contract must primarily lead to economic efficiency and optimal resource allocation. Three principles of this approach are:

- **Principle of indifference:** the obligee should, in case of breach, be placed in the position they would have been in if the contract had been performed. This principle underlies specific performance and damages (Ahmadi, 2009).
- **Principle of reliance on contract:** the parties, at the time of contracting, incur costs and investments relying on its performance. Therefore, breach without full compensation leads to inefficiency.
- **Moral dimension of performance:** beyond its economic role, contract performance also carries a moral foundation, and mere damages are not always a suitable substitute for *pacta sunt servanda* (Marshall, 2012; Shavell, 2003).

4.5. Contractual Obligations in U.S. Law and the UCC

In U.S. law, the principle of party autonomy in choosing the governing law of a contract is fully recognized. According to the *Restatement (Second) of Conflict of Laws (1991)* and the Uniform Commercial Code (UCC), parties may select the governing law (Mafi & Taghipour, 2015).

- Under the Restatement, the chosen law must have a “substantial connection” with the parties or the subject of the contract (Baker, 2008).
- Under the UCC, the choice of law must have a “reasonable relation,” but in the 2001 and 2008

amendments, party autonomy was expanded so that in international transactions, even unrelated laws may be recognized (Lehmann, 2008).

- A major limitation to this principle is public policy; particularly in consumer and insurance contracts, courts may bar the application of laws contrary to mandatory rules and fundamental state principles (Shavell, 2006).

4.6. Remedies for Breach of Contract

Legal systems such as Iran and the U.S. provide multiple remedies for breach of contract:

- **Specific performance:** the primary remedy, recognized in both Iranian law and in the CISG.
- **Termination of contract:** restoring parties to the pre-contractual state, usually applied in cases of fundamental breach (Katouzian, 2010).
- **Damages:** when specific performance is not possible, the injured party has the right to claim damages.

From the perspective of economic analysis, specific performance is usually more efficient than termination or mere damages, as it fosters greater trust in contracts and promotes optimal allocation of resources on a macroeconomic scale (Posner, 2003).

5. Theoretical Framework of the Efficiency of Compulsory Performance

Compulsory performance of obligations, as one of the primary remedies for breach, has advantages over damages that can be explained through both legal experience and economic hypotheses. Studies indicate that in certain situations, specific performance is preferable to damages. This superiority sometimes arises due to deficiencies in the damages system and judicial assessment of losses, and sometimes due to the inherent advantages of specific performance (Eisenberg & Miller, 2013).

For example, when the court cannot accurately measure the expected damages of the obligee, specific performance gains value. In addition, the economic analysis of law—particularly concepts such as reliance on contract and reduction of court enforcement costs—supports the superiority of specific performance in

contracts such as property transfer agreements (Ansari et al., 2017; Shavell, 2006).

Behavioral economics also suggests that if contracting parties act rationally and transaction costs are low, compulsory performance is more efficient than damages. Conversely, when transaction costs are high, the legal system should adopt damages as the default remedy (Amini & Shukouhian, 2019; Tousi, 2014).

5.1. Compulsory Performance in Iranian Law and the UCC

Compulsory performance of obligations in Iranian law is carried out under various provisions of the Civil Code and the Law on Enforcement of Civil Judgments. This includes delivery of specific property, delivery of generic property, transfer of ownership, payment of money, performance of an act, and abstention from an act (Bahrami Ahmadi, 2015; Katouzian, 2010). Under these laws, if the obligor refuses to perform, the court may enforce performance through judicial officers or third parties, and the obligor has no discretion in the matter. By contrast, the U.S. Uniform Commercial Code (UCC) also recognizes compulsory performance under certain conditions. It respects the parties' choice between specific performance and damages, thereby affirming the principle of party autonomy (Hillman, 2014).

5.2. Economic Analysis and Challenges of Compulsory Performance

Despite its advantages, compulsory performance faces serious challenges, such as procedural barriers, the limits of social norms, and potential judicial errors in defining the scope of obligations (Dadgar & Ehsani, 2020; Shavell, 2006).

Moreover, specific performance in some cases may lead to opportunistic behavior by obligees, encouraging delay or neglect in mitigating damages, which is inefficient from an economic perspective (Eisenberg & Miller, 2013).

To address these challenges in both Iranian and U.S. law, proposed solutions include distinguishing among types of contracts (consumer, commercial, civil), internalizing the external costs of contractual remedies, and improving dispute-resolution bodies and methods (Badini, 2012; Shavell, 2003).

The conclusion is that contractual obligations must be enforced with an economically efficient approach that

preserves the rights of the parties, minimizes social and judicial costs, and reduces opportunities for abuse and opportunism.

6. Conclusion

One of the fundamental issues in the economic analysis of contract law is the position of specific performance as a remedy and its relationship with termination of contract and the award of damages. Common law and civil law systems have adopted different regulations in this regard. According to some scholars of the economic approach to law, principles such as indifference, reliance on contract, the moral dimension of specific performance, informational outcomes, and the possibility of contracting for damages in cases of impossibility of performance prove the efficiency of prioritizing specific performance over termination. On the other hand, supporters of prioritizing termination over specific performance have invoked reasons such as customary and equitable considerations in contractual remedies, the incentive-generating nature of remedies, and the principle of self-reliance of the obligee in remedies. An examination of the arguments of both sides is therefore necessary in order to arrive at a conclusion consistent with the elements of the economic analysis of law.

From the perspective of economic analysis of law, the arguments of either group cannot, in absolute terms, establish the efficiency of specific performance or termination. Accordingly, in order to reconcile these arguments, a differentiated theory must be adopted. In the same manner, the U.S. legislator in Section 2-716 of the Uniform Commercial Code does not recognize specific performance as a general remedy for breach of contract. Instead, it considers the priority of specific performance over damages to be conditional on the specific circumstances of each case and leaves the decision to judicial discretion. Likewise, legislative developments in other jurisdictions have moved toward acceptance of a differentiated theory with respect to the priority of specific performance or termination.

Economic factors such as efficiency, optimal allocation and use of resources, increased social wealth, and internalization of external costs arising from breach of obligations require the legislator, while revising and amending Articles 237 to 239 of the Iranian Civil Code (which provide for priority of specific performance over

termination), to determine the priority of remedies according to the type of contract. Instead of dispersing these rules across various laws such as trade law, consumer protection law, and others, a general rule consistent with the characteristics of contracts should be codified in the Civil Code to prevent practical confusion in judicial interpretation.

Specific performance and damages are the main remedies for breach of contract, and each legal system, according to its philosophical, legal, and moral perspectives, prioritizes one of them while using the other as an exceptional or discretionary remedy. Economic analysis of law, with its consequentialist outlook, proposes an optimal structure for contractual remedies and, depending on prevailing circumstances, prioritizes one over the other. Beyond this, economic analyses perform an even more important function: they demonstrate to legal systems that their ultimate objective is the same, and that they merely follow different paths toward achieving that objective. Thus, efficiency and convergence of legal systems may be considered two major contributions of economic analysis.

Contract law in the United States, based on equitable principles aimed at full compensation of contractual losses and preservation of transactions, expressly recognizes strict liability in contract law in the Restatement (Second). A finding of breach of contractual obligations, regardless of the reason for breach and without regard to fault, results in liability for the breaching party. Exceptions to this principle are provided, containing the concept of fault, but they do not shift the basis of liability away from strict liability. In Iranian law, under general rules of contractual liability, proof of non-performance or delay in performance gives rise to liability, and the obligor is exempt only if causation is severed through attribution of the non-performance to unavoidable external forces.

Despite different scholarly views on the basis of contractual liability, it appears that the general rules of contractual liability, following the rules of liability in Islamic jurisprudence, are drafted based on the criterion of customary attribution. Accordingly, the opinion of those jurists who base liability on causation and the criterion of attribution is more consistent with statutory law and prevailing custom. Liability is created upon proof of breach of contractual obligations, without

consideration of fault, and exemption arises only by severance of causation through attribution to external factors. This strict liability regime, similar to U.S. law, provides greater protection for contractual obligees and more comprehensive compensation for their losses. In U.S. law, courts calculate only compensable contractual damages, including reliance damages and expectation damages that the obligee would have certainly benefited from had the contract been performed. In Iranian law, the award of contractual damages, in light of differing views among jurists on the meaning of “loss,” is subject to either express agreement of the parties or prevailing custom. Today, in addition to the fact that some jurists recognize losses arising from breach of contractual obligations as compensable, custom also regards them as definite losses. Therefore, express legislative recognition of such damages, in addition to consistency with the rule of *la darar* and the principle of full compensation, and in harmony with current economic and social conditions, would reduce the volume of court cases and save time and litigation costs.

It is suggested that in consumer contracts, if suppliers of goods and services fail to deliver in accordance with statutory conditions, contractual terms, or prevailing trade custom, consumers should have the option to choose between specific performance or termination of the contract. Likewise, in commercial contracts, in order to align with the exigencies of business, priority should be given to allowing the merchant-obligee to choose between specific performance and termination.

With regard to ordinary contracts, which Articles 237 to 239 of the Civil Code primarily address, priority should be given to specific performance or termination depending on the subject matter. In contracts involving transfer of existing and available goods, priority should be given to specific performance. In contracts for production and manufacture of goods or for provision of services, the obligee should have the choice between specific performance and termination. However, if in such ordinary contracts, performance of the obligation becomes technically unbearable—for instance, when specific performance is rendered unreasonably burdensome due to extraordinary costs of materials, to the point that performance would ruin the obligor’s livelihood—the obligor should be entitled to terminate the contract.

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

The authors report no conflict of interest.

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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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