




# Compensatory Approaches in Islamic Jurisprudence and Iranian Law Regarding Damages Arising from Unauthorized Transactions

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The unauthorized transaction (*mu'āmala fuḍūlī*), as one of the specific legal institutions in Islamic jurisprudence and Iranian law, has consistently been subject to extensive jurisprudential and legal debates. The primary consequence of such a transaction is the infliction of damage upon either the original owner or the contracting party. Accordingly, identifying and analyzing compensatory approaches to these damages within both the realm of Imāmī jurisprudence and Iranian private law can be an effective step toward ensuring contractual justice and protecting the injured parties. Using a descriptive–analytical method, this article examines the most significant compensatory mechanisms, including the obligation to return the property itself, its substitute, or its value; liability arising from causation (*tasbīb*); the civil liability of the unauthorized transactor (*fuḍūlī*); and even the possibility of invoking specific contractual options (*khiyārāt*) for the original party. Finally, by comparing jurisprudential doctrines with statutory provisions, the study evaluates the strengths and existing challenges of Iranian law in this area.

**Keywords:** Unauthorized transaction (*mu'āmala fuḍūlī*), damage, Imāmī jurisprudence, private law, strict liability (*ḍamān qahrī*).

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## 1. Introduction

The unauthorized transaction (*mu'āmala fuḍūlī*) has long been discussed in Imāmī jurisprudence, and the Iranian Civil Code also addresses it in Articles 247 to 263 (Islamic Republic of Iran, 1962). This type of transaction, which is concluded without the owner's permission or legal authority, may, if not ratified by the owner, cause damages to either party to the contract. The importance of examining this subject lies in the fact that the method of compensating the incurred damages plays a critical role in establishing legal justice and redressing undue harm. On the one hand, jurisprudential sources

have carefully examined the guarantees of liability in such circumstances (M. Ansari, 2019; Majlisi, 1981), and on the other, private law and statutory regulations, by relying on general principles of civil liability and specific compensatory institutions, have proposed certain approaches (Emami, 2017; Safaei, 2017).

Moreover, since the unauthorized transaction is among those cases that create significant challenges regarding the validity of contracts and civil liability, in many instances a third party, without any legal authority of representation, enters into a contract on behalf of another, often accompanied by the silence or unawareness of the other contracting party. In such



cases, the manner of protecting the injured parties has been a matter of attention not only in Imāmī jurisprudence and Iranian law but also in other legal systems (France, 1804; Germany, 1900).

This article attempts, through a comparative analysis of Imāmī jurisprudence and Iranian private law, to examine the compensatory approaches to damages in unauthorized transactions.

## 2. Concepts and Generalities

### 2.1. Definition of Unauthorized Transaction in Jurisprudence and the Civil Code

In Imāmī jurisprudence, an unauthorized transaction refers to the act of disposing of or transferring the property of another without permission or authority from the owner. Such disposal may take the form of sale, lease, compromise, or other onerous or gratuitous contracts. The central element in such transactions is the absence of prior permission or representation by the owner. Jurists such as Shaykh Ansari in *al-Makāsib* and Sahib Jawāhir in *Jawāhir al-Kalām* emphasized that the presumption is the lack of validity of such contracts unless ratified by the owner (M. Ansari, 2019; Majlisi, 1981).

From the perspective of Iranian Civil Code, Article 247 stipulates: “A transaction concerning another’s property, except by way of guardianship, agency, or representation, is not valid unless the owner subsequently permits it” (Islamic Republic of Iran, 1962). A careful reading of this article shows that the legislator also considers the basic principle to be the non-validity of unauthorized transactions, only rendering them valid upon the owner’s ratification (Katouzian, 2012).

### 2.2. Pillars and Conditions of Unauthorized Transaction

The realization of an unauthorized transaction is conditional upon certain elements:

- (a) the existence of property belonging to another;
- (b) the unauthorized person’s action without permission or legal representation (such as agency, guardianship, executorship, or custodianship);
- (c) the transaction must be one that would be valid if carried out by the owner; and
- (d) the possibility of ratification or rejection by the owner.

These conditions are also recognized in Imāmī jurisprudence. Imam Khomeini in *Tahrir al-Wasīla* states that if someone concludes a contract on behalf of another without permission, the validity of the contract depends on the owner’s ratification; thus, if the owner ratifies, the contract is valid, and if not, it is void or ineffective (Shahid Thani, 2020). Similarly, Muhaqqiq Hilli in *Sharāye’ al-Islām* and Allama Hilli in *Tadhkirat al-Fuqahā’* expressed the same view.

### 2.3. Comparison with Legal Representation and Guardianship

An unauthorized transaction should not be confused with those conducted by individuals holding a legal or contractual status, such as natural guardians, executors, custodians, or agents, who by law or contract possess the authority to dispose of another’s property (Islamic Republic of Iran, 1962). The essential distinction is that the unauthorized actor lacks any legitimacy or prior authorization, and the validity of his act depends solely on subsequent ratification by the owner.

It is noteworthy that some transactions, which outwardly appear unauthorized, may, owing to presumptions of authority or circumstantial evidence, fall under the presumption of validity. However, the basic principle remains that such transactions are ineffective unless proven otherwise, and the burden of proof of authorization rests on the claimant (Emami, 2017).

The following sections will examine the jurisprudential bases of unauthorized transactions and the liability arising therefrom.

## 3. Jurisprudential Bases of Unauthorized Transactions and Resulting Liability

### 3.1. Analysis of the Majority View Among Jurists

Liability arising from unauthorized transactions in Imāmī jurisprudence is based on the principle prohibiting unlawful interference with another’s property. According to the majority view, if the unauthorized actor disposes of another’s property without permission and thereby causes destruction of the property or loss of its benefits, he is liable, whether or not he intended harm. The maxim “Whoever destroys another’s property is liable” is the foundation of this responsibility (M. Ansari, 2019; Majlisi, 1981).

Allama Hilli in *Qawā'id al-Ahkām* held that the unauthorized person is akin to one who destroys property and, if the contract is invalid or the owner does not ratify it, he is liable for the property. Shahid I also explicitly described the unauthorized actor as liable in the absence of ratification (Shahid Thani, 2020). This view has gained consensus among both earlier and later jurists of Imāmī jurisprudence.

### 3.2. Examination of Qur'anic and Hadith Evidence

The jurisprudential foundation of liability in unauthorized transactions is rooted in several Qur'anic verses. The most significant is the verse: "O you who believe! Do not consume one another's wealth unjustly, unless it is through trade by mutual consent among you" (Qur'an 4:29), which prohibits unauthorized disposition. In addition, numerous hadiths support this principle, including the saying of Imam al-Sadiq: "It is not lawful to dispose of another's property except with his consent" and the saying of the Prophet: "Whoever takes another's property is liable for it" (Sheikh Hurr, 1979). Together with fundamental principles such as *no harm* (*lā ḍarar*) and *causation* (*tasbīb*), these evidences establish the obligation of the unauthorized actor to compensate damages. Shaykh Ansari employed the rule of *lā ḍarar* in *al-Makāsib* to prove the civil liability of the unauthorized actor, affirming protection of the owner against unlawful harm (M. Ansari, 2019).

### 3.3. Distinction Between Possessory Liability (*ḍamān al-yad*) and Causation Liability (*ḍamān al-tasbīb*)

In Imāmī jurisprudence, a distinction is made between two forms of liability:

(a) *Possessory liability* (*ḍamān al-yad*): This refers to direct control and possession of another's property. The maxim "On the hand is what it takes until it returns it" establishes that mere possession, even without fault, entails liability. Thus, even in cases of good faith, the unauthorized possessor is liable (M. Ansari, 2019; Sheikh Hurr, 1979).

(b) *Causation liability* (*ḍamān al-tasbīb*): This applies where the unauthorized actor, without directly possessing the property, causes its destruction, for instance by enabling another to destroy it. In such cases, liability is based on causation, provided that a proximate causal link exists (Shahid Thani, 2020).

The crucial point in this jurisprudential analysis is that while possessory liability is based on direct destruction, Imāmī jurisprudence has extended the scope of liability through causation to include indirect harms. Hence, by combining the doctrines of *ḍamān al-yad* and *tasbīb*, Imāmī jurisprudence constructs a robust framework for liability in unauthorized transactions.

Accordingly, the jurisprudential foundations of unauthorized transactions emphasize the prohibition of unauthorized interference and the necessity of compensation by the actor. These foundations, grounded in authoritative texts, juristic consensus, and general principles, provide a sound basis for explaining the civil liability of the unauthorized person in legal analysis (Katouzian, 2018; Safaei, 2017).

### 3.4. Jurisprudential Foundations of the Liability of the Unauthorized Actor

As repeatedly noted in this article, in Imāmī jurisprudence, interference with another's property without the owner's permission or consent is deemed unlawful and gives rise to liability. Accordingly, a person who interferes in another's property without authorization or representation—whether through sale, lease, or any other form of disposition—is referred to in jurisprudential and legal terminology as the "unauthorized actor" (*fuḍūlī*), and is considered responsible for the consequences of such actions (M. Ansari, 2019; Safaei, 2017). The foundations of this liability are rooted in several well-established jurisprudential principles, including the rule of *'alā al-yad* (liability of the hand), which establishes possessory liability; the rules of *itlāf* (destruction) and *tasbīb* (causation), which pertain to direct and indirect destruction of another's property; as well as the well-known narration "It is not lawful to interfere with another's property except with his consent," which conditions legitimacy of disposition on the owner's approval (Majlisi, 1981; Sheikh Hurr, 1979). Collectively, these principles shape the jurisprudential foundation of the liability of the unauthorized actor, which is also directly or implicitly reflected in various provisions of the Iranian Civil Code (Islamic Republic of Iran, 1962).

#### 1. The Rule of *'Alā al-Yad mā akhadat ḥattā tu'addih* Relevance to the liability of the unauthorized actor:

This rule forms the basis of possessory liability (*ḍamān al-yad*). The unauthorized actor who removes another's

property from the owner's control or interferes with it without permission becomes liable merely by virtue of such possession, even if the property is not destroyed. In effect, as long as the property remains in his control, he is liable for returning the object itself, its equivalent, or its value, regardless of whether he acted gratuitously or with good intentions (M. Ansari, 2019; Katouzian, 2018).

## 2. The Rule of *Man atlaf māl al-ghayr fahuwa lahu dāmin*

*Relevance to the liability of the unauthorized actor:*

In cases where the unauthorized actor, through his actions, causes the destruction or damage of another's property—for instance, by selling it to a buyer who then destroys it, or through loss during the course of disposition—this rule applies. Even if the destruction occurs unintentionally and without malice, the unauthorized actor remains liable for the equivalent or value of the property. Thus, whenever the property is destroyed as a result of the unauthorized act, liability is certain because the transaction has resulted in destruction (M. H. Ansari, 2019; Majlisi, 1981).

## 3. The Rule of *Man tasabbaba fī itlāf māl al-ghayr fahuwa lahu dāmin*

*Relevance to the liability of the unauthorized actor:*

If the unauthorized actor indirectly causes the destruction or damage of property—for example, by creating the conditions for its destruction or enabling a third party to seize and destroy it—he is still liable. In such cases, the unauthorized actor is not the direct agent of destruction but the cause of it. Therefore, even if he has not directly destroyed the property, he remains responsible as the principal cause of the loss (Katouzian, 2012; Shahid Thani, 2020).

## 4. The Narration “It is Not Lawful to Interfere with Another's Property Except with His Consent”

*Relevance to the liability of the unauthorized actor:*

This narration establishes the prohibition of disposition of another's property without consent. Any act of the unauthorized actor—whether sale, lease, or material or legal interference—is unlawful in the absence of the owner's approval, thereby generating liability. Since the unauthorized actor operates without the owner's consent, the legitimacy of the disposition is undermined, making him accountable for the consequences of his act, even if no actual harm occurs (Sheikh Hurr, 1979).

## 5. Civil Liability and Liability Arising from Unauthorized Transactions

In Imāmī jurisprudence, civil liability and liability arising from unauthorized transactions can be analyzed in two general categories: *possessory liability* (*damān al-yad*) and *causation liability* (*damān al-tasbīb*). This distinction is important in terms of jurisprudential foundations, scope of application, and practical consequences, particularly in cases of property destruction or loss.

Possessory liability is objective and arises from unauthorized control over property, based on the firmly established rule of *‘alā al-yad*. According to this rule, any person who takes another's property without legal or religious authorization is liable for the object, its equivalent, or its value, unless it is returned intact to the owner (M. Ansari, 2019; Sheikh Hurr, 1979). In the case of an unauthorized transaction, if the unauthorized actor takes possession of the property subject to the contract without the owner's permission, he remains liable under this rule even if the destruction is not due to his negligence or misconduct. The nature of this liability is material and arises from unlawful possession, not fault or omission (Emami, 2017; Katouzian, 2018).

On the other hand, causation liability—unlike possessory liability, which pertains to direct control—applies in situations where an individual indirectly causes the destruction or damage of another's property. The rule of causation is one of the most widely applied principles in jurisprudential chapters on liability, usurpation, lease, and sale, and is discussed extensively in classical sources (M. Ansari, 2019; Shahid Thani, 2020). If the unauthorized actor, through an effective causal act, results in the destruction of another's property—even without direct possession—jurists unanimously hold him liable for its equivalent or value (Majlisi, 1981).

Prominent jurists, including Sahib Jawāhir and Imam Khomeini, emphasized that causation liability arises from the necessity of compensation and the safeguarding of lawful ownership, and can also be justified through rational principles such as *no harm* and *self-commitment* (M. H. Ansari, 2019; Katouzian, 2012).

Thus, two distinct forms of liability apply to unauthorized acts: possessory liability and causation liability. Accordingly, even when an unauthorized transaction results in destruction or damage caused indirectly, the liability of the unauthorized actor remains intact. This reflects the rigorous attention of Imāmī



jurisprudence to the protection of private ownership and the imperative of compensation for harm.

In conclusion, the jurisprudential foundations of unauthorized transactions unanimously affirm that in cases of harm to another's property, the unauthorized actor is liable, whether the destruction occurs directly or indirectly. These foundations are supported by Qur'anic, hadith, and jurisprudential principles and provide a robust basis for legal examination of the liability of the unauthorized actor (Katouzian, 2018; Safaei, 2017).

#### 4. Legal Analysis of Compensation for Damages in Unauthorized Transactions

##### 4.1. *The Position of Unauthorized Transactions in the Iranian Civil Liability System*

According to the principles governing Iranian civil law, any unlawful harm inflicted upon another, without legal authorization, gives rise to civil liability for the injurious actor. This principle is clearly set forth in Article 1 of the Civil Liability Law of 1960: *"Whoever, without legal authorization, intentionally or as a result of negligence, causes harm to the life, health, property, freedom, dignity, commercial reputation, or any other right established by law for individuals, thereby inflicting material or moral damage upon another, shall be responsible for compensating the damages arising from his act"* (Islamic Republic of Iran, 1960).

An unauthorized transaction, concluded without the owner's permission, constitutes, under this article, a paradigmatic instance of unlawful harmful conduct. Consequently, the unauthorized actor is obliged to compensate damages resulting therefrom. Thus, in Iranian civil law, the unauthorized transaction is not merely a formal matter of contractual validity but a substantive issue within the framework of damage compensation (Emami, 2017; Safaei, 2017).

##### 4.2. *Analysis of Iranian Judicial Practice Regarding Compensation in Unauthorized Transactions*

An examination of judicial practice concerning damages arising from unauthorized transactions reveals that Iranian courts, despite interpretive divergences, have generally moved toward protecting the injured party and expanding the liability of the unauthorized actor (Judiciary's Legal Deputy, 2002).

Case law demonstrates that courts frequently invoke Articles 258, 261, and 263 of the Civil Code (Islamic Republic of Iran, 1962) to hold the unauthorized actor liable toward the injured party (whether the contracting party or the owner) and to order compensation. For example, in a judgment of the Tehran Court of Appeal (Branch 9, Ruling No. 9209970222700813, dated January 15, 2014), the court held that since the owner had not ratified the transaction and the unauthorized actor had received the price without legal authority, he was obliged to return it and was responsible for the resulting damage.

Similarly, in another ruling by the Tehran Civil Court (Branch 3, Ruling No. 140057390002034909, dated February 24, 2022), the court declared: *"Given that the defendant, as the seller, lacked ownership and authority to transfer, and the true owner did not ratify the transaction, the court, upon verifying the occurrence of an unauthorized transaction and the resulting damage to the buyer, orders restitution of the price and payment of statutory damages."* This demonstrates the judiciary's acknowledgment that damages arising from the invalidity of unauthorized transactions are compensable based on the liability of the unauthorized actor.

In other cases, where the unauthorized actor merely facilitated the transaction without directly receiving property, courts have applied jurisprudential rules such as *ghurūr* (inducement) and *tasbīb* (causation) to impose liability. For instance, in a ruling of the Mashhad Civil Court (Branch 12, Ruling No. 9809975111500423), the court stated: *"The defendant's claim of lack of material benefit does not absolve him of liability, because the harm suffered by the claimant resulted from the defendant's misleading conduct, and his fault in creating an ineffective legal relationship is established."*

Nevertheless, in some cases, courts have hesitated to impose liability on the unauthorized actor—particularly where the owner benefitted from the transaction or where ambiguity existed concerning the extent of the unauthorized actor's authority. Such divergences indicate the need for clearer legislative articulation and judicial unification (Supreme Court of Iran, 1984, 1997). Overall, judicial practice is transitioning from a cautious stance toward greater accountability of the unauthorized actor. This approach strengthens trust in contractual relations, reinforces legal certainty, and enhances protection of injured parties (Katouzian, 2018).

#### 4.3. Statutory Provisions Concerning Compensation

The Iranian Civil Code addresses unauthorized transactions in Articles 247 to 263 (Islamic Republic of Iran, 1962). The most significant provisions are as follows:

(a) **Article 258** states: *“With respect to the benefits of the property subject to an unauthorized transaction, and also with respect to the benefits derived from its substitute, ratification or rejection by the owner shall be effective from the date of contract.”* This reflects recognition of the unauthorized actor’s liability if the property is lost.

(b) **Articles 261 and 262** explicitly provide that:

- *Article 261:* If the unauthorized property is delivered to the buyer, and the owner does not ratify the transaction, the buyer is liable for the property and the benefits during the period of possession, even if the benefits were not used, as well as for any defects arising during that period.
- *Article 262:* In this case, the buyer has the right to claim restitution of the price from the unauthorized seller, whether in kind, equivalent, or value.

These provisions establish the unauthorized actor’s strict liability, especially where he knowingly interferes with another’s property (M. H. Ansari, 2019; Emami, 2017).

(c) **Article 328** provides more generally: *“Whoever destroys another’s property is liable and must return its equivalent or value, whether the destruction was intentional or unintentional, and whether it concerned the object itself or its benefit. If he diminishes or damages the property, he is liable for the reduction in value.”* This article reinforces the liability of the unauthorized actor in cases of destruction (Islamic Republic of Iran, 1962).

(d) **Civil Liability of the Unauthorized Actor:** Where the unauthorized actor commits fault or causation in inflicting harm, Articles 1 and 3 of the Civil Liability Law apply (Islamic Republic of Iran, 1960).

(e) **Right of Recourse Against the Unauthorized Actor:** If the injured party suffers loss due to reliance on the unauthorized transaction, he may seek compensation under the jurisprudential rule of *ghurūr* (inducement liability).

(f) **No Recourse Against the Owner Without Ratification:** The contracting party cannot seek

recourse against the owner unless the owner has appropriated or destroyed the property (Katouzian, 2012).

Accordingly, the Iranian Civil Code, drawing upon jurisprudential foundations, establishes the principle of compensation in unauthorized transactions where ratification is absent and harm has occurred. However, the guarantees are scattered across different provisions, which creates complexity in implementation and underscores the need for legislative consolidation (Katouzian, 2018; Safaei, 2017).

#### 4.4. Analysis of the Relationship Between the Owner’s Will and the Emergence of Civil Liability

A central issue in Iranian civil law is whether the unauthorized actor’s liability depends on the owner’s non-ratification, or whether it exists independently. In the Iranian legal system, the answer is relative and depends on the circumstances. First, where the owner ratifies the transaction, the contract is deemed valid and takes legal effect from the time of conclusion; accordingly, Article 249 of the Civil Code specifies that “the owner’s silence—even in the presence of the contract session—does not constitute ratification.” In this situation, liability arising from disposition is absorbed into the framework of a valid contract, and the unauthorized actor’s strict (tort-type) liability is negated (Islamic Republic of Iran, 1962).

Second, where the owner does not ratify and the property is destroyed before ratification or rejection, the unauthorized actor’s liability arises. This point is confirmed in Advisory Opinion No. 71841 of the Legal Deputy of the Judiciary, dated May 8, 2002, which states in substance that “...in the absence of ratification and upon destruction of the property, the liability of the unauthorized actor is clear and enforceable before the courts” (Judiciary’s Legal Deputy, 2002).

#### 4.5. Civil Liability of the Unauthorized Actor Under the Civil Liability Law

In Iranian law, the unauthorized actor’s liability may be analyzed both under the general rules of civil liability and the specific provisions of the Civil Code regarding unauthorized transactions. The Civil Liability Law of 1960, as the most important statutory source on non-contractual liability, recognizes a general principle of reparation that is extendable to cases such as

unauthorized transactions ([Islamic Republic of Iran, 1960](#)).

Pursuant to Article 1 of that Law: “Whoever, without legal authorization, intentionally or through negligence, causes harm to life, health, property, freedom, dignity, commercial reputation, or any other right established by law for individuals—thereby inflicting material or moral damage upon another—shall be responsible for compensating the damages arising from his act.” This provision is apt for application to unauthorized transactions, because in such cases the unauthorized actor, without legal authorization, contracts over another’s property and thereby causes loss to the counterparty ([Safaei, 2017](#)).

Where the owner does not ratify and the contracting party (the “original party”) suffers loss, the unauthorized actor’s civil liability may be justified as fault in concluding a contract without authority. The unauthorized actor’s conduct amounts to “legal imprudence” and is, in customary assessment, a ground of liability ([Katouzian, 2012](#)).

In addition to Article 1, Article 2 of the Civil Liability Law governs the assessment of damages and authorizes the court to determine the amount of compensation considering the circumstances of the case. In applying this article, courts may, upon establishing the unauthorized actor’s fault and the causal link, order restitution of the price, payment of delay damages, or reimbursement of expenditures ([Islamic Republic of Iran, 1960](#)).

Moreover, where the unauthorized actor, with bad faith or deception, induces the counterparty to contract, liability may also arise under the specific doctrine of fraud or inducement (*ghurūr*), which in civil law operates within a fault-based framework ([M. H. Ansari, 2019](#)).

The Supreme Court has also recognized the applicability of the Civil Liability Law’s general principles to private and contractual relations. Although Unifying Verdict No. 620 dated July 8, 1997 does not address unauthorized transactions directly, it affirms the principle that the Civil Liability Law may extend to private transactions where appropriate ([Supreme Court of Iran, 1997](#)).

Taken together, the Civil Liability Law functions as a complement to the Civil Code, enabling the establishment and reinforcement of the unauthorized actor’s civil liability where the counterparty to the

unauthorized transaction suffers loss—especially in cases lacking a valid contractual nexus yet presenting a need for compensation ([Emami, 2017](#); [Safaei, 2017](#)).

#### 4.6. *Examination of Exceptions and the Buyer’s Liability*

One of the most challenging issues in Iranian law is determining the buyer’s liability in an unauthorized transaction, particularly where the buyer was unaware of the lack of authority. Article 263 of the Civil Code provides: where the owner does not ratify and the buyer was ignorant of the unauthorized nature of the transaction, the buyer may seek recourse against the unauthorized seller for the price and all consequential losses; if the buyer was aware, recourse is limited to the price ([Islamic Republic of Iran, 1962](#)). Against this, in the event of certain unauthorizedness and non-ratification, the question arises whether the buyer is liable.

Katouzian argues that when the buyer knew of the unauthorized nature of the transaction, the buyer may also be liable for benefits (fruits) or even for destruction of the property; but if the buyer acted in good faith, liability reverts to the unauthorized actor ([Katouzian, 2018](#)). Moreover, Unifying Verdict No. 31 of the General Assembly of the Supreme Court dated November 26, 1984 affirms the unauthorized actor’s liability where the transaction is concluded and the property is destroyed prior to ratification ([Supreme Court of Iran, 1984](#)).

Accordingly, in light of the statutory texts and judicial precedents, the Iranian legal system—drawing on Imāmī jurisprudence—has sought to clarify compensatory guarantees in unauthorized transactions. Nonetheless, the dispersion of provisions and the absence of a fully coherent regime governing the liability of the unauthorized actor, and in some scenarios the buyer, remain serious challenges that call for systematic legislative clarification ([Emami, 2017](#); [Katouzian, 2018](#)).

#### 4.7. *Possibility of Claiming Against the Owner in Cases of Unjust Enrichment*

An important question in compensating losses from unauthorized transactions is whether the original party (the counterparty to the unauthorized contract) may claim against the owner in cases where the owner has been enriched. In Imāmī jurisprudence, the rule “Whoever benefits from another’s property is liable” (*man istawfā māl al-ghayr fahuwa lahu dāmin*) is a

settled ground of liability; whoever benefits from another's property or its fruits is liable for remuneration or its equivalent, even absent prior permission or contract (Majlisi, 1981; Shahid Thani, 2020). Thus, if the owner has benefitted from the outcome of the unauthorized transaction—e.g., by receiving the property or enjoying its fruits—the owner is, according to the prevalent view of Imāmī jurists, liable, and the original party may seek the equivalent or damages from the owner (Sheikh Hurr, 1979).

Under Iranian law, Article 336 of the Civil Code provides that a person who performs an act at another's request that is customarily remunerated is entitled to a reasonable fee, and the broader logic of unjust enrichment supports recourse where the owner has been enriched by the transaction's results (Islamic Republic of Iran, 1962). Read together with Article 263 (cited above), where the owner has benefitted from the unauthorized transaction, the obligation to compensate may also fall upon the owner. This position is likewise accepted in doctrine (M. H. Ansari, 2019; Emami, 2017).

#### 4.8. Recourse Against the Contracting Counterparty

Where the owner does not ratify, the remaining issue is whether the original party (buyer or seller) may seek compensation for losses resulting from the invalidity of the transaction from the other contracting counterparty (i.e., the unauthorized actor). In Iranian law, and in view of Articles 258 and 261 of the Civil Code, the answer is affirmative. Article 247 provides that a transaction concerning another's property is not valid except by guardianship, executorship, or agency—yet it becomes valid if ratified by the owner or successor after the fact (Islamic Republic of Iran, 1962). Although this provision addresses the owner's relationship with the unauthorized actor, it may be extended to the latter's liability toward the original party: customarily, one who, lacking authority, induces another to contract and thereby causes loss is liable (Katouzian, 2012).

Furthermore, Article 261 states that if the unauthorized property is delivered to the buyer and the owner does not ratify, the buyer is liable for the property and for the fruits during possession—even if not used—as well as for defects arising during that period; and Article 262 grants the buyer a right of recourse against the unauthorized seller for restitution of the price in kind, equivalent, or value (Islamic Republic of Iran, 1962).

These provisions explicitly enable recourse against the contracting counterparty and recognize each party's responsibility toward the other. Accordingly, the original party may sue the unauthorized actor to recover the price, the property, or consequential damages (Emami, 2017).

Imāmī jurisprudence, relying on the rules of causation (*tasbīb*) and inducement (*ghurūr*), confirms this possibility: where the unauthorized actor presents himself as authorized or as the owner and the counterparty relies on that representation, the counterparty's deception strengthens the unauthorized actor's liability (M. Ansari, 2019; Shahid Thani, 2020). From the perspective of civil liability, the unauthorized actor's conduct constitutes fault in creating a defective contractual relationship; if it results in damage, the duty to compensate follows (Safaei, 2017). In this respect, courts have repeatedly imposed liability on the unauthorized actor vis-à-vis the original party—particularly where the unauthorized actor received the price and then failed to deliver the object or fulfill his undertaking (Supreme Court of Iran, 1997).

### 5. Compensation for Damages in Unauthorized Transactions Concerning Immovable Property

Immovable property—especially real estate—because of its significant economic and social importance, presents distinctive and more complex dimensions in unauthorized transactions. Unauthorized transactions involving immovables typically carry greater risks, and compensatory relief in this area requires closer legal analysis and attention to judicial practice.

#### 5.1. The Importance of Unauthorized Transactions Involving Immovables

Given their fixed nature and the impact on rights of ownership and exploitation, immovables require special formalities and conditions for the transfer of title. Under Article 22 of the Law on Registration of Deeds and Real Estate (1931), any transfer of immovable property must be registered with notarial offices; oral transfers or transactions lacking an official instrument are invalid (Islamic Republic of Iran, 1961). In unauthorized transactions of immovable property, noncompliance with these formalities results in nullity or ineffectiveness of the transaction (Katouzian, 2012). Consequently, the damages arising from such transactions usually extend



beyond simple pecuniary aspects and undermine the security of proprietary rights.

### 5.2. *Liability of the Unauthorized Actor in Transactions Involving Immovables*

Because of their broader repercussions, unauthorized dealings with immovable property impose a heavier liability on the unauthorized actor. The Civil Code provides that any person who transfers another's property without permission, if the transaction is void, is liable for the resulting damages (see Civil Code generally) (Islamic Republic of Iran, 1962). In Iranian law, the prevailing doctrinal view and judicial practice hold that the unauthorized actor must compensate not only pecuniary loss but also losses resulting from delay in conveyance, lost investment opportunities, and legal expenses (Emami, 2017; Safaei, 2017).

### 5.3. *Judicial Practice Relating to Unauthorized Transactions in Immovables*

A review of court decisions shows that, in disputes concerning unauthorized sales of real estate, courts have ordered—in addition to restitution of the price—payment of delay damages, court costs, and even nonpecuniary damages. For example, appellate and trial rulings have obliged the unauthorized actor to refund amounts paid by the buyer and to compensate for delay, where the actor sold property without lawful title or authority. This trajectory reflects a protective stance toward injured parties and is consistent with unifying precedents of the Supreme Court that reinforce compensatory principles in private transactions (Supreme Court of Iran, 1984, 1997).

### 5.4. *Practical Recommendations to Mitigate Losses*

- a) The original party should obtain necessary verifications from notarial offices and the Registration Organization before any transaction.
- b) Contracts with the unauthorized actor should be robustly drafted, with clear enforcement and indemnity clauses.
- c) Parties should seek specialized legal advice in real estate transactions.
- d) Judicial oversight and formal registration of transactions should be strengthened to prevent unauthorized dealings.

## 6. **Practical and Comparative Mechanisms for Compensation in Unauthorized Transactions**

### 6.1. *Requiring the Unauthorized Actor to Return the Specific Property, Its Equivalent, or Its Value*

One of the most fundamental compensatory approaches is to require the unauthorized actor to return the specific property if it still exists, or its equivalent or value if it has been destroyed. This approach is rooted in Imāmī jurisprudence and statutory provisions—including Civil Code rules on restitution and liability for destruction (Islamic Republic of Iran, 1962). The jurisprudential maxim of *itlāf* (destruction) undergirds this rule (M. Ansari, 2019). If the property remains, the original party may demand its restitution from any possessor (the buyer or the unauthorized actor). If the property has been destroyed—for example, consumed by the buyer or otherwise perished—the unauthorized actor is liable for its equivalent or value, with valuation ordinarily determined as of the date of destruction, absent contrary agreement (Emami, 2017).

### 6.2. *Buyer's Recourse Against the Unauthorized Actor or the Original Owner*

If the owner does not ratify, the buyer also suffers loss; to protect the buyer's rights, the legislator has enabled recourse against the unauthorized actor. This is reflected, inter alia, in the Civil Code's treatment of mixed transfers (one's own property and another's property under a single contract) and the division between effective and unauthorized parts, together with the buyer's remedial recourse (Islamic Republic of Iran, 1962). Even where the unauthorized actor lacked knowledge, his liability toward the buyer is justifiable on grounds of fault or the creation of a deceptive appearance (Katouzian, 2018).

### 6.3. *Exercise of Contractual Options (Khayārāt) by the Buyer*

In unauthorized transactions, the buyer may face non-ratification by the owner. In such cases, Imāmī jurisprudence recognizes the buyer's right to rescind and to reclaim what was paid, and modern Iranian law allows application of options such as *khiyār al-ta'abbud* variants, *khiyār ta'abbudī/tab'uḍ al-ṣafqa* (partial failure of consideration), and *khiyār ghubn* (lesion), particularly

where the buyer unknowingly contracted and suffered loss (Emami, 2017; Majlisi, 1981).

#### 6.4. Strengthening Legal Structures to Protect the Owner

A notable shortcoming of the Iranian system is the absence of a dedicated structural regime to protect owners against transactions concluded without their permission. Practical proposals include: (a) creating a centralized registry of real estate enabling pre-transaction ownership checks; (b) requiring notarial offices and real estate brokers to verify title authenticity through registration systems; and (c) revising rules to facilitate provisional measures to prevent transfers suspected of being unauthorized. These measures align with the philosophy of civil liability and the preventive principle—summarized in the maxim “preventing harm is preferable to removing it after the fact” (Shahid Thani, 2020).

#### 6.5. Comparative Law

In English law, where a person contracts without authority, the contract is ineffective against the principal unless ratified; however, a third party who relied on the unauthorized representation may claim damages under theories such as misrepresentation, breach of warranty of authority, or promissory estoppel (comparative reference). In French law, the institution of *gestion d'affaires* (negotiorum gestio) addresses management of another's affairs without mandate; while beneficial acts may receive protection, the general principle is that the manager is liable for resulting harm (France, 1804). In German law, Section 812 of the BGB (unjust enrichment) addresses unauthorized transfers and supports restitutionary and compensatory remedies against the transferor, irrespective of good or bad faith (Germany, 1900). This comparison illustrates the close consonance between Imāmī jurisprudential rules on unauthorized acting and modern civil law systems.

#### 6.6. The Influence of Jurisprudential Rules on Legislative Compensation Schemes

By drawing on rules such as *ḍamān al-yad* (possessory liability), *tasbīb* (causation), *man atlaf* (destruction), and *lā ḍarar* (no-harm), Imāmī jurisprudence provides a theoretical foundation for strict liability of the unauthorized actor, whose effects are clearly visible in

Iranian legislation. Civil Code Article 328—“whoever destroys another's property is liable for its equivalent or value”—is a plain legislative reflection of the *man atlaf* rule (Islamic Republic of Iran, 1962). Likewise, the Civil Code's presumption regarding non-gratuitous delivery supports restitution claims where gratuitous intent is not proven, indirectly exposing the unauthorized actor to a duty of return absent proof of liberality (Islamic Republic of Iran, 1962). Moreover, the jurisprudential distinction between *ḍamān al-yad* and *ḍamān al-tasbīb* has extended the scope of liability to cases in which the unauthorized actor did not directly possess the property but caused the loss; fuller legislative articulation of this distinction would clarify judicial practice (M. Ansari, 2019; Safaei, 2017). The buyer's recourse against the unauthorized actor upon the owner's rejection is grounded in the rule *al-ghār ḍāmin* (the deceiver is liable), a principle reflected in Iranian law and reinforced by unifying precedent confirming the unauthorized actor's liability where the property is destroyed without the owner's permission (Supreme Court of Iran, 1984). Finally, practical compensatory solutions in Iranian law can be grouped into contractual devices, judicial remedies, and legislative reforms, all aimed at supplying effective guarantees where unauthorized transactions occur.

#### 6.7. Contractual Mechanisms

One effective method to prevent damages arising from unauthorized transactions is the use of pre-negotiated contracts between the original party and the unauthorized actor. Such contracts may include clauses on liability and guarantees of proper performance by the unauthorized actor. In this regard, Article 10 of the Iranian Civil Code provides: “Contracts are binding where the essential conditions of validity are met.” Based on this article, a contractual clause stipulating liability for damages is enforceable (Islamic Republic of Iran, 1962). Accordingly, the original party may, before any transaction, conclude a contract with the unauthorized actor expressly stipulating compensation for damages arising from unauthorized dealings. Such a clause, being part of the contract, is judicially enforceable and also serves a deterrent role, restraining the unauthorized actor within the limits of authority (Katouzian, 2012).

### 6.8. *Judicial Mechanisms*

From a judicial standpoint, various remedies exist in Iranian law for compensating damages from unauthorized transactions:

- **Ratification or Declaration of Nullity of the Transaction:** Pursuant to Articles 261, 262, and 263 of the Civil Code, the owner may ratify or reject the unauthorized transaction. In the absence of ratification, the original party may seek damages through the courts ([Islamic Republic of Iran, 1962](#)).
- **Action for Damages:** Under Articles 1 and 2 of the Civil Liability Law ([Islamic Republic of Iran, 1960](#)) and Civil Code Article 258 ([Islamic Republic of Iran, 1962](#)), the original party may claim material and moral damages from the unauthorized actor for harm caused by the transaction.
- **Evidentiary and Protective Measures:** In the event of disputes, legal tools such as securing evidence, requesting ownership verification, and proving the lack of authority of the unauthorized actor facilitate the litigation process and support claims for damages ([Safaei, 2017](#)).

### 6.9. *Proposed Legislative Reforms*

Given existing gaps in legislation, some jurists have proposed reforms to facilitate compensation for damages arising from unauthorized transactions:

- **Explicit Provision in the Civil Code:** Insertion of a specific article clearly defining the unauthorized actor's liability and the original party's rights, together with mechanisms for compensation.
- **Development of Non-Contractual Compensation Mechanisms:** Expansion of civil liability doctrines to cover unauthorized transactions, emphasizing joint liability of the unauthorized actor and the owner where the latter benefits from the transaction.
- **Strengthening Protection of the Original Party:** Legal measures such as granting prompt rights of objection to unauthorized transactions and simplifying judicial procedures for damages claims.

These reforms aim to balance the interests of the owner, the unauthorized actor, and the original party, while enhancing legal certainty in contractual relations ([M. H. Ansari, 2019](#); [Katouzian, 2012](#)).

## 7. Preventive and Educational Approaches to Reducing Unauthorized Transactions

Given the adverse financial and legal consequences of unauthorized transactions, preventive measures and legal education play a crucial role in reducing their occurrence. These approaches, while safeguarding legal security, promote legal literacy and reduce litigation.

### 7.1. *General and Specialized Legal Education*

- **Public Legal Education:** Raising public awareness of property rights, formalities of valid transactions, and the consequences of unauthorized dealings through media, educational programs, and community outreach can significantly reduce such practices.
- **Specialized Training for Market Participants:** Providing legal education for real estate agents, lawyers, and legal experts regarding the rules, risks, and indicators of unauthorized transactions is essential. Such training reduces unauthorized transactions and their legal harms ([M. H. Ansari, 2019](#)).

### 7.2. *Strengthening Registration and Ownership Verification*

- Enhancing the real estate registration system through modern technologies, such as online databases and ownership verification platforms, increases the reliability of transactions.
- Updating and optimizing real estate registration laws to improve access to ownership information and facilitate early detection of unauthorized transactions ([Islamic Republic of Iran, 1961](#)).

### 7.3. *Creating Supervisory and Regulatory Mechanisms*

- Strengthening oversight of notarial offices and real estate agencies by relevant authorities to prevent issuance of invalid contracts.

- Imposing stricter regulations and penalties for offenders involved in unauthorized transactions, including both the unauthorized actor and accomplices (Supreme Court of Iran, 1997).

#### 7.4. Legal and Judicial Protection of Injured Parties

- Establishing expedited judicial procedures for adjudicating claims related to unauthorized transactions and compensating damages.
- Creating specialized arbitration and mediation systems in real estate transactions to resolve disputes more efficiently and reduce litigation burdens.

### 8. Conclusion

The unauthorized transaction (*mu'āmalah fuḍūlī*), as an institution situated at the boundary between validity and non-effectiveness, occupies a highly contested position both in Imami jurisprudence and in Iranian law. Analysis of this institution demonstrates that foundational jurisprudential maxims such as *man atlaf* ("he who destroys another's property is liable"), *ḍamān al-yad* ("liability of possession"), and *al-ghār ḍāmin* ("the deceiver is liable") provide a solid theoretical basis for obliging the unauthorized actor to compensate damages. In Iranian statutory law, while explicit provisions exist in the Civil Code dealing with unauthorized transactions, significant legislative and procedural gaps remain (Katouzian, 2012).

From a comparative perspective, although legal systems such as England, France, and Germany have envisaged similar principles for compensating damages arising from such transactions, fundamental differences exist in the scope of liability and the manner of protecting the original party and the buyer. These differences can serve as legislative inspiration for strengthening Iranian law. Legal analysis of unauthorized transactions and compensatory approaches in Iranian law reveals that the subject entails multiple legal and judicial dimensions requiring serious attention from the legislature, judiciary, and the legal community. On the one hand, the lack of legal representation by the unauthorized actor and the non-ratification of the transaction by the owner generate both material and moral damages to the original party or true owner. On the other hand,

legislative gaps and inconsistent judicial practices create difficulties in securing remedies for injured parties (Katouzian, 2012).

Civil liability rules and the Civil Code, despite certain limitations, have provided a firm basis for obligating the unauthorized actor to compensate damages. Nonetheless, clarification and reform of related laws and the establishment of judicial uniformity are necessary to facilitate the process of compensation (Safaei, 2017).

Contractual, judicial, and legislative reform mechanisms can, by enhancing legal guarantees, reinforce transactional security and protect individuals' rights when facing unauthorized transactions. Legal education of both the public and real estate market participants is also a fundamental preventive tool (M. H. Ansari, 2019). Ultimately, strengthening legal and judicial oversight and establishing specialized protective mechanisms for injured parties would be effective steps in fortifying the Iranian legal system in this area.

Based on the findings of this study, the following recommendations are proposed:

1. **Codifying explicit guarantees for unauthorized transactions in the event of non-ratification:** It is suggested that a specific chapter of the Civil Code be devoted to liabilities and guarantees arising from unauthorized transactions, in order to avoid the present dispersion of provisions.
2. **Creating a national ownership verification system prior to transactions:** Similar to systems implemented in developed countries, automatic and mandatory verification of ownership in notarial offices and real estate agencies is necessary to prevent unauthorized transactions.
3. **Expanding joint liability between the unauthorized actor and the buyer in cases of knowledge:** Where the buyer is aware of the unauthorized nature of the transaction, the legislature may, drawing upon the doctrines of *ghurūr* (deception) and *tashīb* (causation), recognize joint liability.
4. **Enhancing public legal education to prevent unauthorized transactions:** Through mass media, universities, and legal centers, society should be made aware of the nature and risks of unauthorized transactions.



5. **Establishing specialized arbitration bodies for resolving disputes from unauthorized transactions:** Given the complexity of these disputes and the urgency of compensation, specialized arbitral tribunals could reduce judicial caseloads and expedite resolution.

In conclusion, what is most necessary is a balance between jurisprudential principles and the requirements of modern law. Achieving such balance, through continuous *ijtihad* and intelligent legislation, is possible. Compensatory mechanisms for unauthorized transactions in both Imami jurisprudence and Iranian law rest on strong doctrinal foundations. Nevertheless, reform of administrative and legislative practices remains necessary to prevent the occurrence of such transactions and to guarantee the rights of the original party and the buyer. Comparative engagement with advanced legal systems may further strengthen contractual justice in this domain.

#### 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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