

Examination of the Parties' Freedom of Will in Determining the Time of Ownership Transfer in Sales Contracts under Iranian and Iraqi Law

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Determining the time of ownership transfer in sales contracts is one of the fundamental and complex issues in civil law, influenced by the parties' will and the contractual conditions. In the legal systems of Iran and Iraq, the principle of freedom of will plays an important role in this regard, although its scope and limitations differ in each system. Under Iranian law, the parties may freely determine the time of ownership transfer, provided that such agreement does not conflict with public order or good morals. In the absence of an explicit stipulation in the contract, the legislator presumes the time of delivery of the goods or performance of obligations as the moment of ownership transfer. In contrast, under Iraqi law, the parties' intention is also recognized; however, specific statutory provisions and judicial interpretations can restrict this freedom, particularly when the lack of a clearly defined transfer time may lead to the infringement of one party's rights or a breach of fairness. In such circumstances, courts may determine the time of ownership transfer based on the contractual terms and the prevailing circumstances. The main difference between these two legal systems lies in their approach to cases where the transfer time is not explicitly determined: Iranian law defaults to the time of delivery or fulfillment of obligations, whereas Iraqi law may leave the determination of this time to judicial interpretation.

Keywords: Comparative study, freedom of will, ownership transfer, sales contracts, Iran, Iraq

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1. Introduction

The time of ownership transfer in a contract of sale ('aqd al-bay') is one of the fundamental and challenging issues in various legal systems, including those of Iran and Iraq, with broad legal and economic consequences for the relationships between contracting parties (Emami, 2020; Niknejad & Naderi Samirmi, 2024). In practice, this subject can lead to disputes and divergent interpretations regarding the rights and

obligations of the parties, particularly when the time of delivery of the sold property (mabi') and the moment of ownership transfer do not coincide (Khosravi, 2023). Under Iranian law, consistent with the views of Imami jurists, a contract of sale is inherently conveyancing (tamlikī), meaning that once concluded, the ownership of the sold property transfers to the buyer and the ownership of the price transfers to the seller (Hasani, 2023; Katouzian, 2005). Nevertheless, the delivery (taslīm) of the sold property, as one of the seller's



primary obligations, plays an essential role in fully realizing the effects of the sale. While ownership formally transfers immediately, the practical execution of the contract depends on delivery; incidents before delivery may affect the fate of the contract (Hejazifar, 2021; Khaki Nejad, 2022). The Iranian Civil Code does not explicitly condition ownership transfer on delivery but allows the parties, by agreement, to alter the default time of transfer (Qasemzadeh & Ghorbani Jouybari, 2015b; Vahedi, 2019a).

In Iraqi law, the principle is that a contract of sale is perfected upon delivery of the goods (Al-Abadi, 2020; Al-Ansari, 2001b). However, similar to Iranian law, the Iraqi Commercial Code, especially in contexts such as international sales, recognizes that parties may contractually stipulate specific times and places for ownership transfer (Al-Qummi, 2000). This is evident in standard commercial arrangements such as FOB (Free on Board), CIF (Cost, Insurance, and Freight), and other variants. Under an FOB contract, the seller delivers the goods on board the ship at the port of shipment; from that moment, responsibility shifts to the buyer. Under CIF contracts, the seller, besides delivery, is obligated to insure and transport the goods to the destination port (Abu al-Saoud, 2010). These contractual structures explicitly address the timing and method of transferring ownership and risk.

A comparative review of this subject within the Iranian and Iraqi legal systems shows that both countries, influenced by Islamic jurisprudence, view sale as conveyancing by default but also provide flexibility for the parties to determine the timing of ownership transfer (Ghafouri, 2003a; Qasemi Ahd, 2019a). In Islamic law, although ownership generally transfers at the moment of the sale's formation, the practical execution through delivery retains great significance, and parties may stipulate conditions or a specific time for transfer (Mohammad, 2017; Pilva & Angouraj Taqavi, 2017). Given that some contractual forms—such as FOB, CIF, or sales with delivery at operational sites or specified airports—directly impact the time and place of ownership transfer, it becomes crucial to analyze how these conditions interact with the fundamental principles of sale under Iranian and Iraqi law (Qanavvati et al., 2000). Consequently, the pivotal research question arises: considering that ownership transfer is intrinsic to the contract of sale, is immediate transfer of ownership

upon the contract's conclusion presumed in Iranian and Iraqi law? Or is the mere eventual transfer of ownership—even if delayed—sufficient for the contract's validity? Furthermore, can the parties freely determine the time of transfer by agreement, or are there specific legal limitations?

The central aim of this study is to answer these questions by undertaking a comparative analysis of the Iranian and Iraqi legal systems and clarifying the place of party autonomy in determining the timing of ownership transfer in sale contracts (Gha'em Maqami & Abd al-Majid, 2015a; Vahedi, 2019b). Despite the practical and theoretical importance of this issue, it has not been comprehensively and independently addressed in domestic or international legal scholarship.

Uncertainty about the time of ownership transfer in sale contracts can lead to legal disputes and disrupt commercial relations (Emami, 2020). A comparative examination of Iranian and Iraqi legal perspectives helps clarify regulations, reduce conflicts, and strengthen legal and economic cooperation between the two countries (Alizadeh, 2005; Katouzian, 2005). The issue remains insufficiently analyzed; thus, this research fills an important gap and can lay the groundwork for future legislative reform (Najafi, 2015; Qasemzadeh et al., 2018).

2. Literature Review

Niknejad and Naderi Samirmi (2024) analyzed the jurisprudential-legal status of transactions conflicting with the buyer's rights in implied sales, offering a detailed perspective on conditional ownership retention (Niknejad & Naderi Samirmi, 2024). Khosravi and colleagues (2023) examined the effect of delivering immovable property on the timing of ownership transfer under Article 62 of the Law on Permanent Programs of the Country's Development Provisions, emphasizing the essential role of delivery (Khosravi, 2023).

Hasani and co-researchers (2023) investigated ownership transfer in generic sales (*kullī fī al-dhimma*) and showed that ownership depends on specific conditions while aligning generally with Imami jurisprudence (Hasani, 2023). Khaki Nejad and associates (2022) analyzed destruction of the sold property before delivery (*talf al-mabī' qabl al-qabd*) and concluded that such destruction may nullify the contract and prevent ownership transfer (Khaki Nejad, 2022).

Hejazifar and colleagues (2021) studied the legal effects and characteristics of contracts, highlighting the importance of sale instruments such as preliminary agreements and promises to sell in safeguarding property markets (Hejazifar, 2021). Hosseini Lorgani et al. (2020) compared Iranian law, the 1980 Vienna Convention on Contracts for the International Sale of Goods (CISG), and European law, showing that the timing of ownership transfer largely depends on party agreement (Hosseini Lorgani, 2020).

Kheiri Jabr et al. (2018) examined the application of rescission in cases of contractual breach under the 1980 CISG, Iranian law, and Iraqi law, identifying key differences and similarities (Kheiri Jabr, 2018). These collective studies offer a comprehensive picture of ownership transfer issues in sale and the role of contractual stipulations (Ghafouri, 2003b; Rajji, 2000). The present research advances the field in three main ways: (1) by focusing specifically on a comparative study of Iranian and Iraqi systems, which most previous works have overlooked; (2) by critically analyzing the question of whether immediate ownership transfer is intrinsic to the contract of sale; and (3) by thoroughly investigating the extent of party autonomy in setting the timing of transfer. Ultimately, this study seeks to clarify whether Iranian and Iraqi law implicitly require immediate ownership transfer or allow the parties to defer it by agreement.

3. Theoretical Foundations

3.1. Immediate Transfer of Ownership upon Conclusion of the Sale Contract

The Iranian Civil Code, particularly Article 362, provides that upon the conclusion of a sale contract, the ownership of the sold property (mabīʿ) transfers to the buyer. This principle, known as the “immediate transfer of ownership rule,” is rooted in Shiʿa jurisprudence (Katouzian, 2005; Qanavvati et al., 2000). Jurists such as Shaykh Muḥammad Ḥasan Najafi and Shaykh Murtaḍā Anṣārī have recognized this principle as an accepted rule. Similarly, the Iraqi Civil Code, under Article 176, states that ownership passes immediately to the buyer once the sale contract is formed unless the parties have agreed otherwise (Jaʿfari Langaroudi, 2002; Najafi, 2015).

3.2. The Concept of Immediate Ownership Transfer in Sale Contracts

Both Iranian and Iraqi legal systems accept that ownership transfers at the moment the sale contract is concluded. In Iran, this concept is reflected in Article 362, as well as Articles 459, 363, and 364 of the Civil Code, and is rooted in Islamic jurisprudence (Qasemzadeh & Ghorbani Jouybari, 2015b; Vahedi, 2019a). However, in specific cases such as conditional sales or agreements with a right of redemption, the transfer may be postponed. Iraq similarly recognizes immediate transfer unless the parties stipulate another time (Jaʿfari Langaroudi, 2002; Najafi, 2015).

3.3. Historical Development of Sale and Ownership in Iranian and Iraqi Law

This rule in Iranian law originates from Shiʿa jurisprudence and in Iraq is derived from Islamic law, especially Imami and Hanafi schools (Al-Qummi, 2000; Emami, 2020). Over time and with social changes, this principle has been codified into the Iranian and Iraqi Civil Codes—Article 176 of the Iraqi Civil Code and Articles 362–364 of the Iranian Civil Code—reflecting both the protection of party rights and adaptation to practical commercial needs (Alizadeh, 2005; Katouzian, 2005).

3.4. General Concepts of Ownership and Sale

In both legal systems, “mabīʿ” refers to the subject matter of the sale. For a sale to be valid, the subject must be defined and deliverable. Article 355 of the Iranian Civil Code requires the sold property to be deliverable for the contract’s validity; similarly, Article 944 of the Iraqi Civil Code emphasizes specificity (Al-Abadi, 2020; Emami, 2020). Both systems distinguish between specified (muʿayyan) and generic (kullī) goods, with immediate transfer applying more clearly to specified goods (Vahedi, 2019b).

3.5. The Concept and Role of Counter-Performances (ʿAwḍayn) and Its Impact on Ownership Transfer

The concept of the exchanged values (ʿawḍayn)—the sold property and the price—forms the core of sale contracts and directly influences ownership transfer and party rights (Hasani, 2023; Khorasani, 2021). Since sale involves reciprocal obligations (delivery of goods versus

payment of price), the legal status of each party's performance may affect when and how ownership is deemed transferred (Qasemi Ahd, 2019a).

3.6. *Delivery of Goods and Ownership Transfer*

The relationship between delivery (*taslīm*) and ownership transfer is fundamental in contract and property law. Delivery refers to the physical or symbolic handover of goods, while ownership transfer signifies the legal passage of property rights (Hosseini Lorgani, 2020; Khosravi, 2023). Some systems link them closely, but in many cases, the two acts can occur at different times. Contracts may stipulate immediate transfer upon delivery or condition transfer on full payment or other agreed terms (Abu al-Saoud, 2010).

4. Analysis and Discussion

In Iranian law, although the Civil Code does not explicitly regulate contractual determination of ownership transfer timing, Article 10 affirms party autonomy by validating private agreements that do not contravene mandatory law or public order (Emami, 2020). Thus, parties may agree to postpone transfer to a specific time, and this is consistent with the general enforceability of sale agreements (Gha'em Maqami & Abd al-Majid, 2015a; Vahedi, 2019b). Similarly, in Iraqi law, Article 508 of the Civil Code provides that ownership normally transfers upon consent, but it also recognizes exceptions where law or contract stipulate otherwise; Article 513 explicitly permits suspending transfer until conditions like full payment are met (Al-Abadi, 2020; Al-Ansari, 2001b).

A comparative analysis shows that both Iranian and Iraqi legal systems, while presuming immediate transfer as the natural effect of sale, allow the parties to modify this default through express contractual terms (Katouzian, 2005; Qasemzadeh et al., 2018). This flexibility is particularly important for immovable property or assets requiring formal registration, where contractual control over the transfer moment is practically and legally significant (Gha'em Maqami & Abd al-Majid, 2015b). Moreover, a contractual clause delaying ownership transfer, if explicit and not contrary to mandatory rules, is fully enforceable under Iranian Article 219 (binding force of contracts) and Article 516 of the Iraqi Civil Code (Ghafouri, 2003b; Qasemi Ahd, 2019b).

In conditional (option-bearing) sales, Iranian law suggests that the presence of an option (*khyār*) can delay or make ownership transfer precarious; Article 453 of the Civil Code limits the buyer's disposition during the option period (Qasemi Ahd, 2019a). Iraqi law parallels this approach; Article 507 affirms immediate transfer for specified goods but Article 512 keeps the risk with the seller during the buyer's option period, implying that ownership's full stability is suspended (Abu al-Saoud, 2010).

Thus, both systems treat option-based sales and conditional terms as justifiable grounds to delay or suspend ownership transfer without negating the sale itself (Ghafouri, 2003a; Rajij, 2000). These shared principles show that immediate transfer is the rule but not an absolute one; party autonomy and contractual conditions can validly modify it in Iranian and Iraqi law (Hasani, 2023; Niknejad & Naderi Samirmi, 2024).

Section One: Party Autonomy and Its Freedom in Iranian and Iraqi Law

In the Iranian legal system, the principle of freedom of will is recognized as one of the foundational pillars of contracts; accordingly, Article 10 of the Civil Code provides: "Private agreements between those who have concluded them are effective, provided they are not in explicit conflict with the law." This provision, which reflects the principle of party autonomy in contracts, acknowledges the independence of the parties' will except where statutory text imposes limitations. Nevertheless, freedom of will is constrained by public order and good morals (Articles 975 and 966 of the Civil Code), a constraint that reflects the social, religious, and economic considerations governing the legal framework of the Islamic Republic of Iran (Katouzian, 2005). In Iraqi law, a similar rule appears in Article 130 of the Iraqi Civil Code (Law No. 40 of 1951), which states: "The contract is the law of the parties; it may not be rescinded or modified except by agreement of the parties or for reasons provided by law." The tenor of this article likewise embodies the acceptance of party autonomy; however, as in Iranian law, its application is conditioned upon non-conflict with mandatory rules and public order, as specified elsewhere in the same Code—particularly in Article 135, which denies validity to clauses contrary to public order or public morals (Al-Ansari, 2001b).

In both legal systems, the principle of freedom of will interacts with other principles such as the necessity of a lawful purpose (in Iran, Article 190 of the Civil Code; in Iraq, Article 131 of the Civil Code) and the legal capacity of the parties (Articles 211 and 212 of the Iranian Civil Code; Articles 105 and 106 of the Iraqi Civil Code). Thus, a will lacking a lawful purpose or issued by a party without the requisite legal capacity will be devoid of legal effect (Qasemi Ahd, 2019a). Moreover, in Iranian law, some contracts are not entirely subject to the parties' will because the legislature has prescribed their rules in a mandatory fashion. For example, in nominate contracts such as sale, lease, or marriage, although mutual consent governs, the legislature has stipulated certain terms and conditions whose non-observance may, at times, invalidate the contract (as in Articles 466, 472, and 1062 of the Iranian Civil Code). In Iraqi law—a system broadly similar in structure—the scope of mandatory intervention in certain contexts appears comparatively narrower, owing to a more customary and pragmatic outlook (Ghafouri, 2003a). Especially in obligations and contracts, Iraq's tendency to adopt modern theories on the role of will, such as equity (al-'adālah) and balance of obligations, has rendered party autonomy more flexible than in Iranian law; this is reflected in some judicial decisions and interpretive approaches of Iraqi courts, particularly regarding onerous (oppressive) terms (al-shurūṭ al-ta'assufiyyah), which are reassessed in light of the rules of good faith in the performance and interpretation of contracts (Ghafouri, 2003a).

Although party autonomy is accepted as a settled principle in both legal systems, constraints arising from public order, good morals, lawful purpose, and mandatory rules of nominate contracts limit this freedom. However, cultural, jurisprudential, and social differences between the two countries—especially in perceptions of state and religious intervention in the contractual sphere—have resulted in a more stringent supervisory posture toward party autonomy in Iranian law, whereas Iraqi law exhibits relatively greater flexibility in certain areas (Al-Qummi, 2000).

Section Two: Can the Parties' Will Determine the Time of Ownership Transfer?

To answer whether the parties' will can determine the time of ownership transfer, one must analyze the governing rules of transactions in Iranian and Iraqi law, not merely from the standpoint of general theoretical

foundations but by relying on the legislative and jurisprudential frameworks of both countries in a detailed, doctrinal manner (Ghafouri, 2003a). In Iranian law, the principle of party autonomy is enshrined in Article 10 of the Civil Code, which states that "private agreements between those who have concluded them are effective, provided they are not in explicit conflict with the law." From this it follows that, within the confines of mandatory rules, the parties may agree on ancillary matters—including the timing of ownership transfer (Emami, 2020). This is particularly salient in conveyancing (tamlīkī) contracts such as sale. Pursuant to Article 338 of the Civil Code, a sale is defined as the transfer of a specific property for a known consideration. Based on the wording of this article and the approach of Imami jurisprudence—on which the Iranian Civil Code is modeled—transfer (tamlīk) occurs upon mutual consent; yet, since ownership transfer pertains to the essence of the sale, an explicit or implicit agreement to have transfer occur at a specific time is legally valid, provided it does not contravene mandatory norms (Ghafouri, 2003a). In Imami jurisprudence, it is also accepted that the parties may, within the contract or by way of an ancillary stipulation, defer the effect of the contract or condition it upon certain events. The well-known position of Imami jurists permits suspension of effects (mashruṭiyyat al-athar) rather than of formation (inshā'). Thus, if the sale is concluded unconditionally, but its effect—ownership transfer—is set by agreement or condition to occur at a particular time, that agreement is valid. This typifies a promissory stipulation (sharṭ al-fi'l) within the sale, which is enforceable under Article 234 of the Iranian Civil Code (Ghafouri, 2003a).

In Iraqi law—shaped by Imami jurisprudence and Egyptian codification—party autonomy is likewise emphasized in the first paragraph of Article 130 of the Civil Code: "The contract is the law of the parties." Under this rule, the parties may also agree upon the manner and time of ownership transfer. Furthermore, Article 508 of the Iraqi Civil Code provides that "a sale is concluded by the mutual consent of the parties regarding the sold item and the price," signaling the centrality of consent in contract formation; the subsequent provisions on delivery and receipt (Articles 510–515) recognize the possibility of deferring ownership transfer until delivery. Hence, when the parties agree that delivery—and, consequently, ownership transfer—shall occur at a

specified time, that agreement is binding (Hammadi Al-Jubouri, 2009b). Importantly, in both systems, in the absence of a special agreement, ownership in conveyancing contracts transfers upon the contract's conclusion and the fulfillment of its essential conditions. However, if the parties explicitly or implicitly agree to delay transfer, such agreement—whether formulated as an ancillary stipulation or as a condition as to qualities—is enforceable, absent any legal impediment. Far from conflicting with the essence of sale, such a clause exemplifies reasonable and lawful party autonomy within the general law of contracts (Katouzian, 2005).

In sum, in both Iranian and Iraqi law, the parties' will to determine the time of ownership transfer is recognized within the general framework of contract law and subject to the formal and substantive requirements of the contract; jurisprudentially, the distinction between formation (*inshā*) and the production of effects (*athar*) supports this result. This flexibility regarding the time at which the contract's legal effect is realized demonstrates that these legal systems—while faithful to traditional jurisprudential principles—possess sufficient capacity to respond to diverse and complex contemporary contractual needs (Katouzian, 2005).

Section Three: Theoretical Bases for Determining the Time of Ownership Transfer by the Parties' Will

In the legal systems of Iran and Iraq, the transfer of ownership is a fundamental matter, particularly in contracts that effectuate ownership transfer, such as sale, lease, and gift. One significant issue concerns the timing of ownership transfer as determined by the parties' will. Various theoretical approaches address this, and it can be analyzed from different legal perspectives (Ghafouri, 2003b). In Iranian law, Article 346 of the Civil Code explicitly provides that "a sale, upon its valid conclusion, transfers ownership of the sold property to the buyer." However, this transfer is effective only when the parties' agreement is clear and unambiguous. Thus, in Iran, the default rule is immediate transfer upon contract formation, except when the parties agree otherwise or the contract has specific features such as cancellation conditions or suspensive clauses (Qanavvati et al., 2000). Article 347 of the Iranian Civil Code states: "If it is stipulated that the buyer shall become the owner of the sold property only after full payment of the price, ownership shall not pass to the buyer until the price is fully paid." Such clauses may

directly affect and delay the timing of ownership transfer (Ghafouri, 2003a). Another doctrinal basis is the concept of suspension: if the parties stipulate that ownership transfer depends on fulfillment of certain conditions, ownership does not pass definitively until those conditions are met. These may relate to the parties' will or to unforeseen events. Such concepts are reflected in several provisions of the Iranian Civil Code and Article 238 of the Iraqi Civil Code (Al-Qummi, 2000).

In Iraqi law, similar to Iranian law, ownership transfer in principal contracts such as sale, lease, and gift is arranged according to the parties' will. Article 435 of the Iraqi Civil Code explicitly states that ownership does not transfer at the moment of contract formation unless the parties have specifically agreed otherwise. In other words, Iraqi law also allows the parties to determine the timing of ownership transfer according to their needs and agreements, subject to compliance with other legal requirements (Emami, 2020). Thus, in both Iranian and Iraqi legal systems, ownership transfer is fundamentally governed by the parties' will, especially when suspensive or conditional agreements exist. This principle shows the legal flexibility that allows complex and tailored contracts while requiring adherence to general principles and specific statutory provisions (Abu al-Saoud, 2010).

Section Four: The Effect of Party Agreements on Determining the Time of Ownership Transfer in Iranian and Iraqi Law

The effect of party agreements on ownership transfer timing is especially important in contracts such as sale and conveyancing. In Iranian law, rules on ownership transfer are mainly found in the Civil Code, notably Articles 332–334. According to Article 332 of the Iranian Civil Code, the time of ownership transfer to the buyer can follow party agreement, provided that such agreement conforms to legal principles (Katouzian, 2005). Paragraph one of Article 332 states: "In a sale, ownership of the sold property does not transfer upon the mere conclusion of the contract unless otherwise provided in the contract or by law." This means that if the parties agree on a different timing, that agreement should be respected so long as it does not conflict with public order or fundamental legal principles (Qanavvati et al., 2000).

Similarly, in Iraqi law, the Civil Code emphasizes party autonomy regarding ownership transfer timing. Article

449 of the Iraqi Civil Code parallels Article 332 of the Iranian Civil Code by addressing ownership transfer in sale. It provides that ownership transfers to the buyer when the parties so agree or when it is naturally inferred from the contract (Qanavvati et al., 2000). Article 449 expressly states: "When the contracting parties agree on the time of ownership transfer, their chosen time shall be respected." Thus, in Iraq, agreements on timing are enforceable unless contrary to statutory provisions or public order (Abu al-Saoud, 2010). Both systems assume that in the absence of such agreements, ownership transfers automatically upon contract formation and delivery. In Iran, if delivery is delayed, ownership does not pass unless another agreement exists (Article 334 Iranian Civil Code). In Iraq, delivery normally triggers ownership transfer if no other stipulation is made (Al-Ansari, 2001a). Therefore, both legal systems consistently allow parties to determine the timing of ownership transfer within the limits of mandatory law and public policy, reflecting the principle of party autonomy (Hammadi Al-Jubouri, 2009b).

Section Five: The Role of Contractual Stipulations (Shurūt Dīm al-'Aqd) in Determining Ownership Transfer Timing

Contractual stipulations play a critical role in determining the timing of ownership transfer in both Iranian and Iraqi law. Ownership transfer is a core issue in civil law, generally achieved through contracts such as sale, gift, or lease. Typically, the transfer's timing and conditions—including performance of obligations and enjoyment of benefits—are governed by explicit or implicit stipulations in the contract (Rajji, 2000).

In Iranian law, Article 332 provides that, generally, ownership passes when the sale contract is validly concluded and the subject is delivered, unless a different condition is stated. If the contract stipulates delayed ownership transfer, that clause binds the parties. Even if the buyer physically possesses the property, ownership will not pass unless the contract provides otherwise. Additionally, Article 333 states that if the sale includes a clause deferring ownership until after performance of a specific act or at a fixed time, this clause is mandatory and defines the timing of transfer (Hammadi Al-Jubouri, 2009a).

The Iraqi Civil Code takes a similar approach. Article 423 provides that ownership passes upon conclusion and delivery but recognizes that if the contract includes a

clause deferring transfer until a particular event, that clause is binding. For example, parties may agree that ownership will not pass until the full price is paid or a specific act is performed by one party, directly affecting timing (Rajji, 2000). Both systems presume that ownership transfers according to contractual agreements and stipulations. Such clauses are particularly useful in complex transactions or when performance is delayed; they enable precise timing of transfer and reduce future disputes. Moreover, both Iranian and Iraqi contract law emphasizes that when contractual stipulations conflict with general rules, party agreements prevail so long as they do not contravene public order or good morals (Rajji, 2000).

These mechanisms empower parties to control the exact moment when legal title passes, tailoring contracts to their commercial and legal needs while still respecting the overarching mandatory norms and public interest (Qasemzadeh & Ghorbani Jouybari, 2015b).

Section Six: Legal Challenges and Constraints in Determining the Time of Ownership Transfer

The legal challenges and constraints in determining the time of ownership transfer—especially regarding the lawful transfer of property and assets under domestic regulations in Iran and Iraq—relate to several aspects, including party agreements, enforcement guarantees, conditions for the validity of contracts, and various statutory requirements (Qasemzadeh & Ghorbani Jouybari, 2015a).

One fundamental challenge is the lack of clarity and the potential overlap between domestic and international rules, which can affect the precise determination of the time of ownership transfer. In Iranian law, Article 10 of the Civil Code clearly states the conditions for the validity of contracts and their requirements, indicating that every contract must be formed by the agreement of the parties and remains subject to particular laws and regulations. By virtue of this article, the time of ownership transfer should also be expressly stated in the contract; if there is no such agreement, the general principles of the Civil Code concerning ownership will apply. In this regard, various provisions—including paragraph 3 of Article 30 of the Civil Code—also refer to the parties' will and the operational conditions of the contract; where the time of ownership transfer is not specified, the general rules on sale and transfer of

ownership will govern (Qasemzadeh & Ghorbani Jouybari, 2015b).

On the other hand, the Iraqi Civil Code, in Article 75, addresses similar matters and provides that ownership must be clearly determined by the parties' agreement. Where the time of ownership transfer is not specified in the contract, Article 79 of the Iraqi Civil Code conditions the transfer of ownership upon actual possession. Thus, while the two legal systems share similarities, they may differ in certain operational details regarding how precisely the time of transfer is determined (Qasemzadeh & Ghorbani Jouybari, 2015a). At the international level, a major challenge arises when the contracting parties are situated in different countries and multiple legal regimes potentially govern the time of ownership transfer. In such cases, practical difficulties may emerge in harmonizing different legal frameworks, particularly where the transfer is intertwined with specific rules of international trade or commercial agreements (Al-Ansari, 2001a). Overall, in both Iran and Iraq, there is a clear need for precision in stipulating the time of ownership transfer in contracts, since neglecting this issue can result in legal disputes and enforcement problems. Accordingly, drafting precise and transparent contracts that rely on statutory provisions and observe local requirements in each country is necessary and unavoidable for determining the time of ownership transfer (Qasemzadeh & Ghorbani Jouybari, 2015b).

Section Seven: Analysis of Differences Between Iranian and Iraqi Legal Perspectives on This Issue

Differences between Iranian and Iraqi legal perspectives—particularly in human rights, civil law, and criminal law—reflect substantial divergences originating from the historical, cultural, and legal distinctions between the two countries. These differences can be analyzed from various angles and, in many cases, stem from the internal structures of each country's legal system (Vahedi, 2019a).

Subsection One: Sources and Legal Character

Iran's legal system rests upon Islamic jurisprudential principles, especially Twelver Shi'ism. Consequently, Iranian laws—particularly in civil and criminal domains—are largely derived from jurisprudential sources. By contrast, Iraq employs a hybrid legal system influenced by Islamic law as well as Western legal systems, especially in recent periods. Notably, the Iraqi Civil Code (enacted in 1951) bears the imprint of the

French civil law tradition, even while jurisprudential principles continue to play a role (Vahedi, 2019b).

Subsection Two: Human Rights and Individual Freedoms

With respect to human rights and individual freedoms, Iranian law is influenced by the principle of the Guardianship of the Jurist (*velāyat-e faqīh*) and Islamic jurisprudential norms. For instance, the Constitution of the Islamic Republic of Iran requires that all laws and regulations conform to Islamic principles. As a result, certain individual freedoms and human rights in Iran are subject to particular jurisprudential constraints. In Iraq, by contrast, the Constitution adopted in 2005 accords greater attention to individual rights and human rights, with specific reference to minority rights and religious freedoms. For example, Article 43 of the Iraqi Constitution recognizes freedom of religion and minority rights, whereas in Iran religious minority rights operate under Islamic jurisprudential oversight (Alizadeh, 2005).

Subsection Three: Criminal Law

In criminal law, Iranian statutes are particularly influenced by Islamic criminal jurisprudence. For example, the Islamic Penal Code of Iran—grounded in Islamic jurisprudence—contains specific rules regarding crimes such as theft, homicide, and adultery; under Article 1 of the 2013 (1392) Islamic Penal Code, punishments must conform to jurisprudential standards. Iraq, by contrast, follows a general penal code that combines principles of Islamic jurisprudence with those of Western civil law. Punishments are generally determined according to the type and gravity of the offense, without necessarily adhering strictly to jurisprudential doctrines (Pilva & Angouraj Taqavi, 2017).

Subsection Four: Family Law

In family law, Iran's legal system, grounded in Shi'a jurisprudence, heavily shapes issues related to marriage, divorce, inheritance, and custody. For example, Article 1041 of the Iranian Civil Code addresses conditions for the marriage of girls and allows marriage under 13 years with the consent of the guardian and the court. In Iraq, although Islamic jurisprudence influences family matters, the system is more affected by civil and human-rights norms; accordingly, certain family-law provisions may differ from those in Iran (Alavi & Asadlou, 2015).

Subsection Five: Property and Contract Law

In the realms of property and contracts, the laws of Iran and Iraq exhibit many similarities because both systems draw upon Islamic jurisprudential principles relevant to ownership. In Iran, property rights are influenced by Islamic law; particularly in contracts, civil and commercial codes are framed according to jurisprudential rules. The Iranian Civil Code addresses ownership and contracts across multiple articles, including Articles 190–215 on the general rules of contracts. In Iraq, contract rules are likewise influenced by Islamic jurisprudence and civil law; however, owing to Western legal influence, Iraq's structure more closely resembles civil-law principles (Qasemzadeh et al., 2018).

Subsection Six: Public and Administrative Law

Iran's public and administrative law is strongly influenced by jurisprudential principles. For example, the Iranian Constitution organizes state institutions based on Islamic principles, shaping the governmental structure. Iraq, in contrast, given its complex political and social composition, structures its public and administrative laws more in line with Western legal systems alongside certain Islamic influences. The Iraqi Constitution, in provisions such as Article 56, addresses the separation of powers and citizens' rights vis-à-vis the state (Shahidi, 2014). Legal differences between Iran and Iraq across many areas—including human rights, criminal law, family law, and contracts—are thus clearly visible. These divergences stem from differing jurisprudential, cultural, and historical influences shaping the legal orders of the two countries. Iran relies more heavily on Islamic jurisprudential principles and its post-1979 constitutional framework, while Iraq employs a composite structure that integrates Islamic doctrines with Western civil-law elements (Katouzian, 2005).

Section Eight: The Effect of the Parties' Status on Determining the Time of Ownership Transfer

The effect of the parties' status on determining the time of ownership transfer in Iranian and Iraqi law directly relates to the general principles of contracts and property transfer under the civil law of both countries (Shahidi, 2014). In Iranian law, based on Article 366 of the Civil Code, ownership transfer is accomplished through the agreement of the parties. This article provides that a sale contract is complete when the parties agree on transferring the subject of the sale. However, the actual timing of ownership transfer may

depend on the parties' status, such as their legal capacity and specific contractual conditions. For instance, if a party lacks the ability to perform obligations, the transfer may be delayed or may not occur at all (Qasemzadeh et al., 2018). Article 366 generally assumes transfer upon consent, but if one party is in a special legal condition (e.g., under guardianship or lacking legal capacity), ownership transfer may be postponed or invalidated. Likewise, the presence of suspensive or conditional terms means transfer will only occur once the specified condition is fulfilled. Article 218 also elaborates on the effects of conditions in contracts and their influence on ownership transfer (Katouzian, 2005). In Iraqi law, as in Iran, the general principle is that ownership transfer depends on party consent and compliance with legal and contractual requirements. Article 319 of the Iraqi Civil Code provides that ownership may be subject to certain conditions. Thus, the parties' status can directly affect the timing of ownership transfer. Where a party lacks capacity or fails to meet initial contractual prerequisites, transfer can be delayed (Ja'fari Langaroudi, 2002). Article 318 states that if a party is under a special legal status (such as bankruptcy or inability to perform), the time of transfer may change or be prevented. Especially in conditional or suspensive sales, the parties' status becomes critical to determining when transfer occurs. Article 320(1) specifically refers to the obligations of the parties and their effect on ownership transfer (Ja'fari Langaroudi, 2002).

Thus, in both Iran and Iraq, the time of ownership transfer is closely tied to the parties' legal status and their ability to fulfill contractual obligations. If either party is under a special legal disability or restriction, transfer may be postponed or altered. This underscores the importance of verifying legal capacity and compliance with mandatory conditions when drafting contracts to ensure predictable and enforceable ownership transfer (Qasemi Ahd, 2019b).

Section Nine: Comparative Review Across Different Legal Systems

Comparative legal analysis between Iran and Iraq requires examining their civil, criminal, family, and human rights frameworks due to their historical and cultural similarities and differences (Vahedi, 2019b). In civil law, both Iran and Iraq rely heavily on Islamic jurisprudence. Iran's Civil Code, deeply rooted in Imami

(Twelver Shi'a) jurisprudence, governs ownership, contracts, and civil liability. For example, Article 190 emphasizes party autonomy, provided it does not contradict statutory provisions. Iraq's Civil Code is broadly similar but differs in interpretive details and the application of some articles (Ja'fari Langaroudi, 2002).

In criminal law, both states use Islamic principles but diverge in codification. Iran's Islamic Penal Code, grounded in Imami doctrine, strictly regulates punishments such as retribution (qisās), blood money (diyah), and hudud crimes. Article 1 of Iran's Islamic Penal Code codifies this framework. Iraq's Penal Code (1969), while influenced by Islamic norms, is more blended with Western criminal law and focuses on the nature and severity of offenses (Pilva & Angouraj Taqavi, 2017).

In family law, the systems share Islamic underpinnings but diverge in details. Iran's Civil Code, e.g., Article 1119 on marriage guardianship and Article 1133 granting divorce rights to men, strictly follows Imami rules. Iraq's Personal Status Law, though Islamic in nature, reflects more civil law influence and human-rights considerations, resulting in some differences from Iranian practice (Alavi & Asadlou, 2015).

Regarding human rights, both Iran and Iraq have challenges in applying international standards. Iran's Constitution, while guaranteeing rights such as freedom of speech and assembly (Article 20), conditions them on Islamic principles. Iraq, despite being party to human rights conventions, struggles with issues such as media freedom and minority protection (Shahidi, 2014).

Property and contract law show substantial overlap: both systems integrate Islamic jurisprudence in ownership and contracts but Iraq's system incorporates more Western civil-law structures. Iranian law codifies ownership and contract rules in Articles 190–215; Iraq applies similar provisions but often with modernized interpretations (Qasemzadeh et al., 2018).

In sum, Iran and Iraq both root their property and contract regimes in Islamic law yet diverge due to differing legislative developments and historical influences. Iran remains more tightly bound to post-revolutionary Islamic constitutional principles, while Iraq has blended Islamic doctrine with Western civil-law elements to achieve greater adaptability in contemporary transactions (Katouzian, 2005).

5. Conclusion

This study shows that although Iran and Iraq share many similarities in their jurisprudential and legal principles regarding the transfer of ownership, there are fundamental differences in the way these principles are implemented and interpreted, which can lead to practical challenges. In the Iranian legal system, ownership transfer is generally linked to the delivery and physical possession of the sold property by the buyer. This means that ownership is considered fully transferred only when the buyer takes possession of the goods, not before. If the parties agree that ownership should pass before delivery, the seller legally retains ownership until actual delivery occurs.

By contrast, Iraqi law follows similar principles but differs in some practical applications due to specific legal and jurisprudential interpretations unique to Iraq. These differences in understanding the timing of ownership transfer can create complications, especially when the contracting parties are from different countries.

Given that contractual conditions play a critical role in determining the time of ownership transfer in both legal systems, this research emphasizes the necessity of drafting clear and detailed agreements in sales contracts, particularly in international transactions and situations where the timing of transfer directly affects ownership rights. Special attention should be paid to specifying the exact time of transfer and its implications for the rights and obligations of the parties when delays are part of the agreement.

Such precision and clarity in contract drafting can help avoid legal disputes. Ultimately, despite the legal and jurisprudential differences between the two countries, the importance of detailed and explicit contractual terms remains high. To reduce international conflicts and facilitate ownership transfer, it is advisable for contracting parties, especially when planning delayed transfer of ownership, to seek specialized legal counsel. Additionally, organizing training programs and professional workshops in this area could enhance understanding of relevant laws and reduce disputes during legal processes.

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

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