

# Comparative Study of the Characteristics of Monetary Obligations

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In the domain of obligations, various categories have been identified by the legislature as distinct types of commitments. One such category is the monetary obligation, under which the obligor is required to pay a sum of money to another party in order to perform the obligation. The separation of monetary obligations from other forms of obligations stems from the specific characteristics embedded within such contracts. The exclusivity of consideration in the form of money, the special form of compensation for loss known as delay damages, the perpetual enforceability of the obligation, the necessity of demanding performance in order to receive damages, the close relationship with economic public order, and the performance of the obligation based on the nominal value of money are among the distinctive features that place monetary obligations within a unique legal category. The primary reason for the uniqueness and distinctiveness of monetary obligations lies in their subject matter. Although money is legally considered property, its economic functions—serving as a medium of exchange, a unit of account, and a store of value—grant it a unique status in contracts, where it appears as the consideration and differentiates itself from the characteristics of a sold good. In contrast, such attributes are not observed in non-monetary obligations. In this study, the specific characteristics of money and monetary obligations are examined using an analytical–descriptive method.

**Keywords:** Money, Monetary Obligation, Delay Damages, Depreciation of Money.

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## 1. Introduction

Undoubtedly, the creation of money and its use as an economic instrument has produced significant effects in both the economic and legal spheres. The legal analysis of money is of considerable importance. Although from the very moment money was created and used by humans, its involvement— as a unique and exceptional type of property— in contracts and obligations has been prominent, the nature and function of money within the field of law have received relatively limited attention. Given the close connection between money and economic concepts, economists have made greater efforts to identify and analyze money. However,

due to the differences in foundational principles and research methodologies between these two disciplines, what economists have examined cannot, in the domain of law, be regarded as a comprehensive or sufficient body of research. Identifying money is essential because it directly affects the interpretation of conditions and effects of monetary obligations. In both common law and civil law systems, including Iranian law, legislators have imposed explicit and significant limitations and direct interventions when defining the rules governing money and monetary obligations. This intervention should be welcomed and viewed as a strength of the legal framework.



The purpose of this research is to offer a legal analysis of the nature of money and to define and explain monetary obligations. Insufficient attention to the distinction between monetary and non-monetary obligations has led to the inaccurate interpretation of their conditions and consequences. Recognizing this distinction prevents confusion and error in statutory interpretation and provides greater coherence in scholarly debates.

## 2. Identifying Money

Economists and jurists have each provided definitions and analyses of money based on the foundational principles of their respective fields. Defining money and examining its types throughout history is essential for the present study. From another perspective, money—based on its functions—has been recognized as a fungible good, which will be discussed in this section.

### 2.1. *The Concept of Money*

Regardless of the specific functions of money, from a broad perspective, money creates a unique form of connection among individuals; while owners of property have become astonishingly distanced from the social community, money acts like a chain that links them together and becomes the instrument through which individuals express their will and intent (Lapavitsas, 2003).

To understand the role of money in legal, social, and economic life, one must ask why money emerged in the first place. The answer is exchange. Exchange is the fundamental basis of economic life. Without exchange, economic existence would be impossible, and in practice, there would be no society. Exchange arises due to the diversity of goods and resources, differences in locations, skills, professions, and so forth.

For a better understanding of the subject, it is necessary to examine the views of economists and jurists separately.

#### 2.1.1. *The View of Economists*

The simplest and most basic definition of money in economics is to consider it a medium of exchange (Nelson, 1999; Von Mises, 2013). Economists also emphasize its role in facilitating credit transactions—meaning the exchange of present goods for future goods (Von Mises, 2013).

Economists generally prefer to understand money through its functions: it is a means of payment through which any good can be acquired, and it is a store of value, meaning a form of property that can be preserved and has complete liquidity (Lanksoy, 2000). Money has three essential legal functions: (a) it is a unit of account, (b) it is a means of payment, and (c) it is a form of property that can be stored in monetary instruments (Siddik Yurtcicek, 2013).

What matters most to economists is the universal acceptability of money; thus, anything through which goods and services can be obtained or debts can be repaid is considered money (Siddik Yurtcicek, 2013).

A central question consistently raised regarding the nature and function of money is whether money, in performing its exchange and accounting functions, possesses intrinsic value or whether it should be viewed merely as a sign or symbol devoid of inherent value (Simmel, 2004).

Two major theories have been proposed:

#### 1. **The Metallist Theory:**

This view considers the value and standard of money to be linked to commodities—particularly gold. Money is therefore a commodity created by the market, and anything used as a medium of exchange qualifies as money. According to this view, money must have use-value and intrinsic value (Siddik Yurtcicek, 2013).

In economics, the term “commodity” refers to any movable wealth or asset (excluding immovable property), whether raw materials or manufactured products. At first glance, money is also a commodity, but one that must possess universal acceptability for exchange. The best example of such a commodity is gold coins (Fisher, 1920).

#### 2. **The Chartalist Theory:**

This view regards money as a social symbol, independent of the material substance representing it. According to this theory, the value of money is always independent of its physical composition (whether metal or paper), and hence, the material of money is considered irrelevant and meaningless (Siddik Yurtcicek, 2013).

#### 2.1.2. *The View of Jurists*

While many authors speak of the disappearance of money due to the rise of new technologies, jurists recognize that money remains an unknown quantity: it is present everywhere in social relations, yet largely devoid

of legal theory (Lanksoy, 2000). Jurists examine money from the standpoint of legal rights and obligations in order to determine its legal nature (Lanksoy, 2000).

Others offer a simpler definition and describe money as a means of payment, while emphasizing that not every means of payment is money. Money has certain characteristics—among them the ability to extinguish claims arising from monetary debts (Lanksoy, 2000).

Today, money is increasingly viewed as a general means of performance and payment. A possible conflict may appear between money's primary function as a medium of exchange and this function as a means of discharging obligations. However, by distinguishing between the execution of the original obligation and obligations arising from delayed debts, the conflict can be resolved. The former relates to money's exchange function, while the latter relates to its function in fulfilling obligations (Von Mises, 2013).

Nevertheless, it may be argued that the second function is merely the result of the first: because money serves as a medium of exchange, it can also serve as a means of payment. Thus, the most important feature of money is that it has a discharging function; that is, monetary obligations—and indeed any legally enforceable obligation—may be discharged by means of money (Proctor, 2012).

## 2.2. Types of Money

Understanding the types of money emerges from examining its historical development. The adaptability of money to the needs of exchange over time has caused it to take various forms throughout history, culminating in modern credit money. This section discusses the types of money.

### 2.2.1. Commodity Money

Humans initially met their needs through barter. As production increased beyond personal consumption and goods were offered to others, barter no longer served the interests of producers, who sought only to sell their goods. This led to the need for an intermediary commodity, setting the stage for the emergence of money. For long periods, humans used goods as money—such as tobacco, salt, animal skins, shells, etc. The indivisibility of such goods for small transactions

and the lack of uniformity were significant weaknesses of commodity money (Siddik Yurtcicek, 2013).

### 2.2.2. Metallic Money

Throughout history, the form of money has changed, and there has always been a strong relationship between human needs and money. After the era of commodity money, metal became a suitable alternative. Early metallic money in Europe consisted of copper and bronze, but gold and silver proved to be the most suitable metals (Siddik Yurtcicek, 2013).

Unlike commodity money, metallic money possessed desirable qualities such as divisibility, uniformity, and value stability. These metals were accepted for long periods due to their inherent and intrinsic value (Siddik Yurtcicek, 2013). Their most notable feature was their independent value relative to other assets, which is why they are referred to as “primary” or “original” money (Fisher, 1920).

### 2.2.3. Paper Money

As a result of the growth and development of science and technology, the mass production of goods emerged, and the need for an easier and more reliable form of money was felt, until with the creation of paper instruments, paper money came into existence. The first paper money was used by the Chinese in 1016 CE as receipts for the storage of iron coins. In Western civilization, the first paper money was issued by the government of Massachusetts in 1690 CE (Siddik Yurtcicek, 2013).

Paper money has passed through two distinct periods. In the first period, paper money was convertible into gold or silver coins; that is, the banknote embodied the holder's claim against the issuing bank. In England, in 1797, the commitment to convert money receipts into gold was established (Lapavitsas, 2003). In France, under Article 17 of the 1806 law, the Bank of France was authorized to create and issue banknotes payable to the bearer on demand. Thus, printed banknotes circulated from hand to hand as transferable debt instruments, based on the belief that the holder could, at any time, demand gold or silver coins upon presentation. In this system, the banknote represented a personal financial right and was not itself considered property (Lanksoy, 2000).

In the second period, paper money lost its convertibility into gold or silver and, in other words, assumed a purely credit character. "Credit money" refers to money whose basis of validity and acceptability is the trust and reliance of society and commercial custom; in other words, members of society trust the issuer and use it as a medium of exchange. In the inconvertible system, which has been in force in France since 1 October 1936, legal tender is no longer convertible into gold, and this obligation was removed from the Bank of France; from that date, money shifted from being merely a financial claim to being movable property (Lanksoy, 2000). Under Article 5 of the 1993 law, the Bank of France is the sole authority empowered to issue legal tender, and anyone who owes a sum of money to another is discharged by paying banknotes equal to the amount of the debt, while the creditor is obligated and compelled to accept legal tender as a means of payment. With the enactment of similar laws in various countries, money in this period came to be recognized, in an imperative and sovereign manner, as property possessing value, and what is known as "fiat money" took shape. Since, in the second period, the link between money and its backing was severed, money no longer possessed inner physical and intrinsic value, and from that time, unbacked credit money emerged (Wolfgang, 2014).

In general, every form of money has exchange value. While metallic money, in addition to its exchange value, also has material and concrete value, the purchasing power of credit money is the only factor that produces its exchange value. Consequently, with the disappearance of metallic value, purchasing power is all that remains for modern money (Wolfgang, 2014). This development has led jurists to challenge the previously accepted theory and principle that money is a standard and instrument for measuring the value of goods; the argument is that this principle has a historical background and today must be reconsidered in light of the various forms of money, and that, at least with respect to some instances of money, this theory encounters serious obstacles (Wolfgang, 2014). For example, it is observed that today the exchange value or purchasing power of money is measured by comparing the quantity of goods that could be purchased or exchanged in the past with a given amount of money with the quantity that can be obtained at present. Past prices have a considerable impact on the purchasing power of money (Wolfgang, 2014). In other

words, for a person to know how much money is needed today, they must know the actual exchange value of money in the previous day's market (Wolfgang, 2014). Since the value of different goods may be constant in some cases and variable in others, and the rate of change is not fixed, a solution known as the "basket of goods" has been devised to determine the quantity of goods that can be purchased with a certain amount of money, in which the overall changes in the purchasing power of money over time are reflected (Wolfgang, 2014). If money is the standard and means of measuring the value of goods, why must its exchange value or purchasing power be derived from within a basket of goods? It appears that today, instead of credit money being the instrument for measuring the value of other goods and services, it is these goods and services that have become the instrument for measuring the value of money. At the very least, the hypothesis that can be drawn from these data is that, at a single point in time, this function of money continues to operate correctly, but when two different time points are considered and the value of money has changed due to economic factors, one of money's well-known functions—namely, serving as a "measure of value"—becomes defective and inadequate.

#### 2.2.4. *Bank Money or Deposit Money*

Paper money is not the only form of legal tender in the contemporary era; deposit or bank money has also established its place in contracts and obligations as a type of money. This is the amount of money that is accumulated and recorded in bank accounts. The Belgian economist Ansiaux, who coined the French expression "monnaie scripturale," defined bank money as a type of money separate from banknotes and coins, which, instead of being transferred from hand to hand, is transferred from one account to another (Lanksoy, 2000). In terms of classification of the account holder's right to the funds in a bank account, the prevailing view in case law and doctrine is that the account holder is a creditor of the bank and no real right can be recognized for them over the bank money itself. In reality, since money is fungible property capable of substitution, the bank undertakes to return to the account holder the equivalent value of the monetary units, not the very same physical banknotes originally deposited (Lanksoy, 2000). Today, in England, most payments are made through bank account transfers, and bank transfers have

become the predominant means of payment and settlement. For this reason, recognizing bank money as an independent type of money in that country has been regarded as self-evident (Siddik Yurtcicek, 2013).

#### 2.2.5. *Electronic Money*

In general, money in the sense of legal tender, prior to the emergence of electronic money, took three forms: coins, banknotes, and bank money. Electronic money should be classified as intangible movable property (Lanksoy, 2000). Electronic money is a monetary value stored on a magnetic device that embodies a claim on the issuer and is issued as a receipt for receiving funds. Put more simply, it is an amount of money stored on a monetary device that is recognized as a means of payment (Proctor, 2012). To ensure that electronic money possesses the full function and characteristics of a form of money, the member states of the European Union have been expressly prohibited from granting interest or any form of benefit during the period in which the holder possesses electronic money. When the holder of electronic money purchases a good, the electronic units are transferred from the buyer's card to the seller's card, and the transaction does not create a transfer of debt or a claim; rather, the electronic money itself is transferred, payment is effected through it, and the debtor's obligation is discharged directly in relation to the seller (Lanksoy, 2000). Therefore, electronic money is recognizable as an independent form of money and as a type of credit money (Lanksoy, 2000; Proctor, 2012; Siddik Yurtcicek, 2013).

In its broad sense, electronic money also includes virtual currencies. However, given the specific nature, structure, and operation of virtual currencies, it seems that today we are faced with a new type of money called "virtual currency." These forms of money are created by computer programs and are, technically speaking, digital. They have no tangible or physical backing and exist notionally in digital and virtual space. The virtualization of phenomena and processes in the advanced contemporary world has extended to monetary instruments as well, giving rise to a new type of electronic money. Since such forms of money are not confined to a single society or state, they in practice appear as international currencies; hence, terms such as "digital currency" and "cryptocurrency" have also emerged alongside them. The ambiguity surrounding

these currencies in terms of their creation, their backing, and their structure has led some states to refuse to recognize them and others to regard them with suspicion. In fact, governments and banks have no role in the process of producing and issuing these currencies, and their developers are persons outside the sphere of public authority. Virtual currencies or encrypted monies were first proposed in 1998 with the aim of speeding up financial transactions and enabling individuals to create money without state or bank intervention, until in 2009 the first virtual currency unit, called Bitcoin, was introduced, followed later by others such as Litecoin, Ethereum, Ripple, and so on in the economic system. Virtual currencies are gaining an increasingly important position in international trade as they overcome existing challenges and seek to occupy a larger share of transactions. Of course, for this form of money to become legally prevalent, its recognition by the state and, consequently, by the courts is necessary. It appears that electronic money is witnessing the emergence of a new and unique offshoot of itself, which is an intangible, credit-based asset that creates a real right for its holder and has exchange value. It also has the discharging function of money and can be used to perform monetary obligations.

#### 2.3. *Analysis of Money*

In reality, modern money has no connection to any other inherently valuable substance or essence (Shahidi, 2012; Yousefi, 1996). Contemporary money is regarded as a form of credit-based property that functions as a medium of exchange and a means of discharging obligations. The source of this credit is the power and sovereignty of the state, which in practice is accompanied by customary acceptance by society (Ja'fari Langroudi, 2003). With this unique nature and function, money has entered the realm of contracts and obligations and has asserted its existence as a special type of property. It is special in the sense that, in conveyancing contracts, it typically serves as the counter-performance for other forms of property and is almost never defined as the "object of sale" or principal subject matter of the transaction, nor is it essentially capable of being such. This legal characteristic of money reflects its economic function as a medium or instrument of exchange. In other words, money's function as a medium of transactions in the economic sphere

corresponds, in the legal sphere, to its role as the counter-performance in contracts and obligations. In common commercial practice and economic relations, no one “sells” their money in order to obtain a car; rather, one sells the car and receives its counter-performance, namely money. In synallagmatic (bilateral) contracts as well, money is typically treated as the counter-performance of obligations, and through its discharging function, it extinguishes obligations; every creditor is obliged and compelled to accept it as the general means of fulfilling debts. Thus, money may be defined, in legal terms, as a credit-based form of property grounded in exchange value and endowed with a discharging function in contracts, whose primary role in the legal sphere is the extinction of obligations and the performance of debts.

#### 2.4. *The Fungible Nature of Money*

Many types of property are fungible, in the sense that they possess similar qualities—for example, wheat, gold bullion, and money (Wood, 1995). Money is inherently a fungible asset and can therefore be exchanged for an equivalent amount of the same currency (Siddik Yurtcicek, 2013). The possibility of substituting the deposited bank money received from the customer at the time of deposit with other money that the bank later returns upon demand is justified precisely by this fungible nature of money. In fact, if money were not fungible and if its units did not exhibit homogeneity and uniformity in quality and quantity, the bank would be obliged to return the very same banknotes that were originally deposited, whereas banking practice is to the contrary. Likewise, when a particular currency is removed from the economic system, monetary obligations remain enforceable by means of the replacement currency (Proctor, 2012). The substitutability and fungibility of money are the result of its function throughout history: for money to circulate repeatedly and continuously among members of society and be passed from hand to hand, it must be fungible and replaceable. The moment this characteristic and function ceases marks the end of that money’s economic life. Before the invention of money, when humans exchanged goods to satisfy their needs and, due to the difficulties of barter, gradually shifted to an intermediary commodity, the creation of money made this substitution far easier. Thus, it can confidently be asserted that money represents the highest degree and capacity of

substitutability (Anderson, 1917). The foregoing analysis has been established by reference to money’s principal function as a “medium of exchange.”

It is also worth noting that money’s other function, namely serving as a “store of value,” likewise confirms its fungible nature. For this function to be realized, money must maintain its value over time (Siddik Yurtcicek, 2013). Money is regarded as a standard for determining value and, because it possesses purchasing power, it is desirable; consequently, its value should remain more or less stable (Siddik Yurtcicek, 2013). This relative stability of value is the very principle of the nominal value of money. Under this principle, an obligation to pay 100 units of a given legal currency is discharged by paying the same 100 units, regardless of whether fluctuations in purchasing power or external value have occurred between the time of the contract and the date of payment. When the state establishes a legal tender, its units manifest their independent legal value, irrespective of any economic effects that may influence them (Proctor, 2012).

In Islamic jurisprudence and Iranian law, the prevailing view likewise treats money as fungible property (Davoudi & et al., 2011; Hashemi Shahroudi, 1996). Two banknotes of ten thousand units each carry the same monetary value and credit. Indeed, two banknotes of five thousand units may be regarded as equivalent to one ten-thousand-unit banknote (Yousefi, 2010). Some scholars, however, argue that the “equivalent” of money is determined solely by its outward form and the nominal figure printed on it (Davoudi & et al., 2011), while others define the “equivalent” of money in terms of its purchasing power and exchange value (Yousefi, 2010). A third group adopts an intermediate position, arguing that within a single time frame, units of money are fungible relative to one another, but across different time frames, due to factors such as inflation and substantial changes in value, money may lose its fungible character (Assefi, 1996; Tavassoli, 2012).

### 3. **Explaining the Position of Monetary Obligations within the General Rules of Contracts**

Within the legal system, the realm of monetary obligations possesses particular characteristics that justify placing such obligations in a distinct and privileged category. Just as obligations may be classified in various ways—as absolute or conditional, suspensive

or immediate, unilateral or bilateral, due (current) or continuing, principal or accessory, onerous or gratuitous, and so on (Shahidi, 2011)—a division of obligations into monetary and non-monetary may also be conceptually and doctrinally justified. Although legal writings have paid limited or no attention to this classification, the continuous and stable presence of monetary obligations can readily be discerned in legal and economic relations. Accordingly, this study seeks to identify and analyze monetary obligations as an independent category.

A monetary obligation is an obligation whose subject matter is the payment of a sum of legal tender (Katouzian, 2013). In international trade, however, the concept of a monetary obligation is broader, and the term “cash” may be used instead of “legal tender.” Thus, under domestic law, a commitment to pay a sum in dollars, euros, or pounds is not regarded as a monetary obligation, whereas in international commercial law, such a commitment is deemed a monetary obligation and produces the consequences associated with such obligations (Katouzian, 2013).

Monetary obligations that directly require the payment of a specific sum are “primary monetary obligations,” whether they arise from contract or from extra-contractual sources. Thus, an obligation to pay the purchase price under a contract of sale, or a debt arising from a lease, a loan, and similar contracts, constitutes a “primary contractual monetary obligation,” while an obligation to pay money corresponding to misappropriated or destroyed property is a “primary non-contractual monetary obligation.” By contrast, “secondary monetary obligations” are those in which the subject matter is indirectly the payment of a sum of money, again regardless of whether the source is contractual or extra-contractual. Accordingly, an obligation to pay an amount for key money (goodwill) or for commercial tenancy rights is a “secondary contractual monetary obligation,” while an obligation to pay an amount as compensation for unlawful occupation (ajrat al-mithl) or as damages for the destruction of another’s property is a “secondary non-contractual monetary obligation.” It must be emphasized that, in principle, the liability of a person who destroys property is to restore the situation to its prior state, and specific (in-kind) reparation has priority. If specific reparation is not possible, discharge of the obligation occurs through

the provision of an equivalent—either in non-monetary form (such as delivering a substitute thing) or in monetary form (paying its price) (Safa’i & Rahimi, 2013). Thus, if the debtor refuses to perform, a court judgment ordering compensation for damage or payment of ajrat al-mithl may be converted into an order to pay a sum of money, thereby establishing a secondary monetary obligation (Katouzian, 2012). In other words, in extra-contractual or statutory obligations (such as an obligation to pay spousal maintenance), the initial obligation is not monetary; rather, a secondary monetary obligation is created when the court issues a judgment. This distinction between the two spheres can also be observed in judicial practice. For example, in a case concerning a claim for delay damages on unpaid spousal maintenance, the court rejected the request and made liability for delay damages contingent upon the existence of a prior judgment establishing the obligation to pay maintenance and subsequent delay in performance.

The conclusion to be drawn from the foregoing is that the cause of a monetary obligation may be either a contract or extra-contractual liability. The use of the broad term “debt” in Article 522 of the Code of Civil Procedure (Shams, 2006), the recognition of the injured party’s right from the time the damage occurs and becomes capable of monetary valuation (Safa’i & Rahimi, 2013), and the lack of any difference in the nature and substance of monetary obligations in the two systems of contractual and non-contractual liability (Katouzian, 2013; Mohseni & Mirshekari, 2016) are among the reasons that have led jurists to correctly conclude that monetary obligations also extend to debts arising from tort (non-contractual liability). Now that the concept of monetary obligations has been clarified, it is necessary in the following section to identify the unique characteristics of such obligations, in order to justify the classification of obligations into monetary and non-monetary.

### 3.1. *Payment of a Sum of Money as the Subject of the Obligation*

As explained above, in domestic law the subject matter of these obligations is the payment of a sum of legal tender, whereas in international law and foreign transactions it is the payment of a sum of money in any currency, such as rial, dollar, euro, and so on. This obligation may, from the outset and by its very nature, be

placed on the debtor's liability (a primary monetary obligation), or it may acquire determinacy and actuality as a result of judicial proceedings and the issuance of a court judgment (a secondary monetary obligation). In other words, whenever the subject matter of an obligation, after the occurrence of a legal act or event and following judicial review, is converted into the payment of money—whether in contractual obligations (such as paying contractual damages in lieu of specific performance with the assistance of an expert opinion, or unliquidated claims arising from construction contracts, or claims for key money/goodwill assessed by experts) or in extra-contractual obligations (such as compensating for the destruction of another's property or paying the rental value for the period of unlawful occupation of seized property)—a secondary or substituted monetary obligation comes into existence.

A serious and substantive difference between primary and secondary monetary obligations is that, in the event of refusal to pay a primary monetary obligation, delay damages (interest for late payment) are, if the other conditions are met, calculated and paid from the time the debt is created.<sup>1</sup> In contrast, in secondary monetary obligations, the court must first adjudicate the dispute and, after the judgment becomes final and the loss is definitively established, and the debtor continues to refuse performance, delay damages become calculable and payable from that point in time (and not from the time the cause of the debt arose) (Katouzian, 2013; Mohseni & Mirshekari, 2016).

In English law, a distinction is drawn between a monetary debt and damages. Although in both cases a sum of money may be payable, a monetary obligation arises when a person undertakes, as a result of a contract, to pay a fixed or ascertainable sum. Likewise, an obligation arising from damage caused by the breach of an extra-contractual obligation or the breach of a non-monetary obligation results in the creation of a monetary obligation (Proctor, 2012). Although in both types of claim the plaintiff ultimately seeks a sum of money, in the first case the claim is for the performance of the original obligation—in other words, for payment of the debt—

whereas in the second case the claim is for damages as a substitute for non-performance, or delay in performance, and the entitlement to damages itself creates the obligation to pay money. The monetary nature of such obligations is not undermined by the fact that the exact amount has not yet been fixed, or that no agreement exists on the amount, or that the obligation to pay arises because the debtor was unable to perform a non-monetary obligation. It is, of course, correct that the debtor cannot be said to “owe” the creditor until the parties reach agreement or the matter is resolved by a court, and it is also correct that, before that point, the debtor cannot validly tender payment. However, these differences between debt and damages do not alter the reality that in both cases a sum of money must ultimately be paid; in both situations, the court may award interest as part of the monetary relief. For this reason, English jurists consider it justified to treat both types of claims under the heading of monetary obligations (Proctor, 2012). Accordingly, it has been held that expenditures incurred by a tenant in order to benefit from leased premises are not in the nature of “damages”; a claim for reimbursement of such expenditures is treated as a debt claim. Thus, in this and all other cases where the obligor is required to pay a sum of money in legal tender, the amount in dispute is determined in advance, and the claimant in such actions is not required to prove loss; the general rules governing compensation for damage—such as remoteness, causation, or mitigation of damages—do not apply to these claims (Ribeiro, 2002). Furthermore, the subject matter of the trial is generally not complex, and there is a specific procedural mechanism for unpaid debt claims known as summary judgment (Elliott & Quinn, 2009). In addition, English law distinguishes between contractual interest and interest arising from breach of contract. It has been expressly stated that contractual interest does not conflict with the rules governing contractual penalties, such as penalty clauses, because in the case of contractual interest there is no question of breach of contract at all. Interest arising from breach of contract, however, is subject to the rules applicable to contractual

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<sup>1</sup> From Article 522 of the Code of Civil Procedure, in addition to the requirement that the debt be due, a requirement of “demand” (formal claim) is inferred as a condition for entitlement to delay damages (although this point is disputed among jurists). In any case, the purpose of the above classification is to emphasize the

starting point of delay damages from the standpoint of the initial entitlement and the basis for calculating such damages; determining whether a demand has been made is a separate matter that must be considered among the conditions for claiming delay damages.

penalties, because it applies only in the event of non-performance of the contract (Ribeiro, 2002). At times, a monetary claim may arise from a right of restitution. The basis of restitution is the prevention of unjust enrichment. Where money has been paid under a contract or similar arrangement and no performance has been provided in return, or the performance is inadequate, the payer is entitled to claim and recover what was paid. In such cases, the restitutionary action is not a claim for damages for breach of contract; rather, the claim for repayment of money is independent (Elliott & Quinn, 2009).

### 3.2. *Enforceability of the Obligation and the Permanent Possibility of Compulsory Performance*

This characteristic of monetary obligations can be examined from two perspectives:

#### 3.2.1. *The Subject of the Obligation Is Always Capable of Performance*

An obligation whose subject is the payment of a sum of legal tender never becomes incapable of performance. This is because, if the legal tender changes—i.e., if it is invalidated by the state—performance remains possible by substituting the new currency and discharging the obligation with the new legal tender (Proctor, 2012). In Imami jurisprudence, this issue has also been addressed, and there are narrations from which the substitution of former currency that has been eliminated from the economic system with new money in circulation can be inferred. One narration, transmitted by Muhammad ibn Ya'qub from Ali ibn Ibrahim from Muhammad ibn 'Isa from Yunus, reports that Yunus wrote to Imam al-Rida (peace be upon him) stating that he had three thousand dirhams owed to him from a man, and that those dirhams were current in transactions at that time but had since ceased to circulate; he asked whether he was entitled to those very same dirhams or to the dirhams currently in

use among people. The Imam replied that he was entitled to receive the money that was then current among people, just as he had originally given the debtor money that was current among people (Hurr Amili, 1989; Musavi Khomeini, 1993). On this basis, it has been stated that if the ruler or government invalidates modern currencies and strips them of legal value, such money can no longer be used to discharge debts, and repayment must be made in the replacement currency (Makarem Shirazi, 2001)<sup>1</sup>.

#### 3.2.2. *The Permanent Possibility of Compulsory Performance*

Non-monetary obligations may, in some cases, become incapable of performance, so that the obligee, after seeking specific performance and the assistance of a third party and finding performance impossible, has no choice but to rescind the contract. In contrast, monetary obligations are always capable of performance. That is, in the event of breach and delay by the debtor, it is always possible to compel him to perform his obligation, and there is no room for performance by a third party or performance by the creditor on behalf of the debtor; rather, by seizing and selling the debtor's assets, the subject of the obligation is realized and collected. As a result, in monetary obligations, damages for non-performance as such are never conceivable; instead, the creditor always claims, in addition to compulsory performance, damages for delay in payment of the debt (Ghasemzadeh, 2009; Safa'i, 2014).<sup>2</sup> The reason for this distinctive feature lies in the principle that damages are generally a substitute for performance and are awarded when the original obligation cannot be performed. In monetary obligations, however, the creditor obtains satisfaction by seizing and selling the debtor's property (Katouzian, 2013).

<sup>1</sup> There are, however, other narrations that state, "You are entitled to the first dirhams," suggesting that repayment must be made in the original currency. To reconcile the apparent conflict, some have argued that where invalidation of the currency is gradual and incomplete, the latter narration applies and the original dirhams remain the standard; but where the currency is completely and abruptly invalidated, the narration that requires payment in current dirhams governs (Hurr Amili, 1989; Makarem Shirazi, 2001). Imam Khomeini, rejecting the existence of a real conflict between the narrations, holds that the first narration concerns cases where the currency has been entirely removed from circulation, whereas

the second applies where invalidation is partial and incomplete (Musavi Khomeini, 1993). For a review of the different opinions and methods of harmonizing these narrations, reference may be made to the detailed discussions of later jurists (Makarem Shirazi, 2001).

<sup>2</sup> Moreover, under Article 3 of the Law on the Enforcement of Financial Judgments, enacted in 2014, a solvent debtor whose assets cannot be located may, at the request of the judgment creditor, be imprisoned until the judgment is executed, whereas an insolvent debtor must pay the monetary obligation in instalments.

### 3.3. *Delay Damages as the Specific Civil Liability Regime Governing Monetary Obligations*

Delay in performing a monetary obligation gives rise to a special form of liability and compensation known as delay damages (interest for late payment) (Silvestre & Rustel, 2015; Yazdani, 2007). The distinct nature of delay damages, as compared with other compensable losses in the sphere of contractual and tortious liability, lies in several points. First, the amount of such damages is predetermined or at least objectively ascertainable. A predetermined amount is exemplified by the former Article 719 of the old Code of Civil Procedure, which fixed delay damages at 12% per year of the judgment sum; an objectively ascertainable amount is exemplified by Article 522 of the current Code of Civil Procedure, which ties delay damages to changes in the price index, i.e., inflation. Second, unlike the general rules of civil liability—where proof of loss is the primary and fundamental condition for establishing liability—delay damages do not require proof of loss.<sup>1</sup> Moreover, the contrary cannot be proven: the debtor is not permitted to argue that the creditor has not suffered any loss due to the delay in payment in order to escape liability for delay damages.<sup>2</sup>

Third, in Iranian law, based on the apparent meaning of the relevant statutory provisions, delay damages constitute the specific and exclusive remedy for breach of monetary obligations, and no additional or separate damages may be claimed beyond that, except in cases where intentional breach can be proven—a task that is very difficult in practice. By contrast, in many other legal systems, special forms of damage resulting from the breach of monetary obligations are recognized alongside

delay damages in various ways. For example, where the loss arises from conduct that is lawful in itself (*damnum sine injuria*), the monetary obligation in question is limited to the actual loss (*damnum emergens*), which is calculable at the time of occurrence, plus interest until payment; but where the loss results from an unlawful and wrongful act, the obligation is extended to include consequential loss and loss of profit (*lucrum cessans*) (Silvestre & Rustel, 2015).

Fourth, in Iranian law, in light of Article 522 of the Code of Civil Procedure, the source and nature of delay damages is the loss arising from the reduction in the value of money.<sup>3</sup> In most other legal systems, by contrast, loss of profit or deprivation of the benefits of money forms the basis and substance of this type of damage.

### 3.4. *Demanding Performance of the Obligation as a Condition for Recovering Damages*

In non-monetary obligations, whether the obligation is due immediately or has a fixed maturity date, breach of the obligation entitles the obligee to claim damages. In other words, under the general rules of obligations, the mere arrival of the due date and non-performance of the obligation is sufficient to establish the debtor's refusal and liability, and there is no need for a prior demand for performance (Katouzian, 2013; Shahidi, 2012; Yazdani, 2007). Only in obligations that are payable "on demand" is a demand for performance a condition for claiming damages.<sup>4</sup> This is because, by agreement of the parties, the obligation to perform has not yet become actually incumbent upon the obligor, so that non-performance could give rise to a claim for damages.

By contrast, in monetary obligations, the broad wording of Article 522 of the Code of Civil Procedure clearly

<sup>1</sup> Former Article 725 of the old Code of Civil Procedure provided that "delay damages do not require proof; mere delay in payment is sufficient for claiming and awarding them." Although the current Code of Civil Procedure, enacted in 2000, does not reproduce this provision, the broad language of Article 522 and the legislature's failure to require proof of loss—despite enumerating all other conditions for claiming delay damages—together with the generally recognized and presumed nature of such loss, support the conclusion that proving actual loss is not required for claiming delay damages (Katouzian, 2013).

<sup>2</sup> Some jurists have seen this as a departure from the traditional basis of liability (Katouzian, 2013), but it seems that refusal to hear such arguments is justified by the fact that, in cases of breach of monetary obligations, the loss is an objective and external reality inherent in the delay itself.

<sup>3</sup> However, under the Law on the Recovery of Bank Claims enacted in 1989, and the Law Adding Two Notes to Article 15 of the

Amended Law on Interest-Free Banking Operations enacted in 1997, in the case of breach of monetary obligations arising from bank claims, delay damages—described as a contractual penalty for late payment of debt—are calculated on the basis of loss of profit or the benefits of money. In such cases, the damages are not measured by inflation or changes in the price index but, pursuant to Article 17 of the Bylaw on the Recovery of Non-Performing Claims of Credit Institutions adopted on September 1, 2015, are equal to the contractual interest plus six percentage points, regardless of any reduction in the value of money.

<sup>4</sup> The final part of Article 226 of the Civil Code provides: "If no time has been specified for performance of the obligation, the obligee may only claim damages when the time of performance was left to his discretion and he proves that he has demanded performance of the obligation."

indicates that, whether the monetary obligation is due immediately or at a fixed maturity date, delay damages (interest for late payment) are not recoverable upon breach unless performance of the obligation has been demanded. Thus, a demand for performance of the principal obligation is a condition for entitlement to delay damages (Katouzian, 2013), and this important difference is another reason for distinguishing monetary obligations from non-monetary ones.

### 3.5. *The Close Connection Between Monetary Obligations and Economic Public Order*

In the sphere of monetary obligations, reliance on the principle of freedom of contract and party autonomy is more limited than in the domain of non-monetary obligations. This distinctive feature of monetary obligations arises from the traditional and constant linkage of money with economic variables and the public economic order associated with them, a linkage that is more pronounced and serious than in other fields. Consequently, party autonomy and freedom of contract in determining the effects of monetary obligations and the contractual clauses related to them will be invalid to the extent that they conflict with economic public order (Katouzian, 2013; Safa'i, 2014).

One significant consequence of this characteristic of monetary obligations is the invalidity of agreements between the parties that stipulate delay damages in excess of the amount provided for in Article 522 of the Code of Civil Procedure.<sup>1</sup>

### 3.6. *The Governing Principle of the Nominal Value of Money in Monetary Obligations*

The performance of monetary obligations is governed by the principle of the nominal value of money (nominalism) (Silvestre & Rustel, 2015). This is because money, as a means of storing value, should not lose its value over time (Siddik Yurtcicek, 2013). As noted

earlier, the nominal value of money refers to recognizing and determining monetary units such as the rial or the dollar as independent, predefined units, without regard to external economic events and effects impacting those monetary units (Proctor, 2012). In other words, the legislature, by enacting the relevant statute, determines what the value of the monetary unit is.<sup>2</sup>

Under this theory, the value of money is viewed as normative (legal) rather than real (economic). Monetary obligations are discharged by payment of the nominal amount of money, and external changes affecting money—usually manifesting as inflation and a decrease in purchasing power—are not taken into account during the term of the contract; the debtor bears no liability for possible losses arising from the reduction in the purchasing power of money or its discharging capacity at the time of performance. In English law, courts are not permitted to imply terms that would conflict with this principle. At most, if severe inflation causes the contractual price to approach the point of collapse, courts—unable to interfere with the nominal value of money—may declare the contract frustrated and bring it to an end (Proctor, 2012).

In United States law, the same principle is accepted as an implied term: by agreeing on a particular currency in the contract, the parties are deemed to have assumed the risks associated with a potential decrease in its value (Proctor, 2012). The position of German law regarding the payment of monetary obligations is similar: courts are prohibited from increasing or modifying statutory or contractual payment amounts on account of inflation, and even if the value of money increases, the debtor is not allowed to reduce the nominal amount of his monetary obligation (Proctor, 2012). Nominalism is thus a mandatory rule that governs all monetary obligations (Kashani, 2002).

An important consequence of this feature of money's nominal value is that the nature of Article 522 of the

<sup>1</sup> Although some courts have recognized the validity of such agreements, the prevailing and widespread judicial practice is to deny them effect. Many courts that strike down these clauses rely on the claim that receiving amounts beyond those permitted by Article 522 constitutes usury; however, this reasoning is not convincing, as the concept of usury is distinct from that of delay damages. The better justification for invalidating such agreements is their conflict with economic public order and the mandatory nature of Article 522 in this respect.

<sup>2</sup> For example, Section (a) of Article 1 of the Monetary and Banking Law of Iran, enacted in 1972, states: "The monetary unit of Iran is

the rial. One rial equals one hundred dinars." Section (b) of the same article then defines the rial by reference to a specific quantity of pure gold. It is also provided in another section of this law that "the nominal value, form, substance, colour, dimensions, design, and other features of banknotes and circulating coins shall be determined on the proposal of the Governor of the Central Bank of the Islamic Republic of Iran and with the approval of the Minister of Economic Affairs and Finance, in conformity with the provisions of this law."

Iranian Code of Civil Procedure is compensatory and rests on civil liability; its content must therefore be interpreted in light of the general rules of tort and contractual liability (Babaei, 2017).<sup>1</sup>

#### 4. Conclusion

In economics, “money” is anything that performs its essential functions—that is, anything that serves as a medium of exchange, a measure of value, and a store of value. From this perspective, money is not “property” or “goods” in the narrow sense. In law, however, the nature of money is different: this material or credit-based phenomenon is regarded as property. Historically, money initially appeared in tangible, physical form, but as societies and economies evolved, it gradually became purely credit-based. Nevertheless, its abstract and credit-based character does not prevent it from being recognized as property; its destruction or loss accordingly falls under the general rules of guarantee and civil liability. Delay in performing a monetary obligation gives rise to a form of compensation that, in legal practice, is known as delay damages. These damages are compensatory in nature. Thus, although their recovery in addition to the principal obligation results numerically in a higher total for the creditor, this excess derives from the debtor’s fault and from the loss caused by the breach of the obligation; in other words, it has an independent cause that justifies the payment of this additional amount.

Even so, unlimited freedom in determining the manner of compensation is not acceptable. One cannot, under the pretext of party agreement, freedom of contract, or party autonomy, consider any level of damages stipulated by the parties as recoverable. Compensation for damage has a restorative function, not an investment function. No party is entitled, under the guise of claiming damages, to receive huge sums that bear no reasonable relation to the circumstances of the contract. A contractual penalty (liquidated damages) under the general rules of contracts has a compensatory, not punitive, nature. Therefore, delay damages that are disconnected from the contractual framework and impose an unfair and

disproportionate burden on the party in breach are not legally recognizable.

In any event, in order to avoid divergent interpretations and to prevent confusion on the part of plaintiffs and defendants before the courts, it is essential to determine with precision the amount of delay damages. Through clear legislation in this area, the legislature can enhance the order and reliability of contracts and, by making the losses arising from breach more predictable, increase the effectiveness of the performance of obligations.

#### 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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#### Ethical Considerations

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

#### References

provision as a mechanism for paying the principal in real terms rather than a separate head of damage (Aghaee, 2017; Shahidi, 2012).

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<sup>1</sup> A contrary opinion holds that what is described in Article 522 as compensation for the reduction in the value of money is not “damages” at all, but merely the performance of the original debt; for this view, see, for example, the analyses that interpret the

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