

Comparative Study of Fulfillment of Obligation in Iranian Civil Code and Law of England

¹Mehdi Pirhaji and ²Sayyed Mohammad Hadi Mahdavi-Ardekani

¹Faculty of Human Science and Law, Islamic Azad University of Isfahan (Khorasgan),

²The Faculty of Law, Islamic Azad University, Najafabad Branch, Isfahan, Iran

Abstract: Fulfillment of obligation is one the most important legal issues. It is the simplest, as well as the most natural way in which the obligor can release him/herself from obligations which are upon him/her. The 1st note of Article 264 of Iranian Civil Code stipulates fulfillment of obligation as one of the causes of discharge of obligation. Therefore, the obligation will be discharged when the obligor fulfills his/her obligations. Articles 265-282 of Iranian Civil Code discuss the issue. There exit no separated section titled contract law in Iranian Civil Code and most of the articles related to this subject are discussed under the title of contracts and obligations from Article 183 onwards and legislator has examined it. This study makes a comparison between Iranian private law and English law, by examining the fulfillment of obligations as an important cause of discharge of obligations. The objective of this study, is to remove the ambiguities of contract law, reaching a better understanding of contract law in Iran and the quality of obligations which may be discharged by fulfillment of obligations. The data gathered for this study, are library type and the main instruments by which the data were gathered were: Books, journals, court judgments and internet data. This is an analytical, critical and comparative study.

Key words: England, performance of obligation, fulfilment of obligation, discharge of obligation, contract, Iran

INTRODUCTION

Iran literally means the land of Aryans. It is a country located in the Southwest of Asia, in Middle East. In 1928, following the establishment of Constitution regime and due to some legal, cultural and political reasons, Iranian Civil Code became closer to Western, especially French law. Although, keeping under the influence of Islamic law, it was placed in the Roman-Germanic family. In 1928, Davar completely transformed the Iranian judiciary structure and in form drew it closer to the French, Roman-Germanic, Switzerland and the Western law. There exit no separated section titled contract law in Iranian Civil Code and the most of the articles related to this subject are discussed under the title of contracts and obligations' from Article 183 onwards and legislator has examined them.

All legal systems have predicted some strategies-called causes of discharge of obligation-for termination of the obligor's legal liabilities and release from obligations. Performing or fulfilling obligations is the most common way for discharge of obligations. Some principles such as freedom of contracts, validity of contracts, privity of contracts and supremacy of custom are undeniable bases for Iranian private law. According to

Article 10, the principle of supremacy of will is accepted in Iranian Civil Code. However, Art 975 has explicitly restricted it to 3 factors of law, public order and public morals. The law determines the general conditions for the validity of contracts. A contract which has all the fundamental conditions for validity is considered as law in the relationship between 2 parties. That is not only none of the parties have the right to cancel the contract (principle of unilateral irrevocability) but also they are obliged to perform all the provisions of contract, as well as what they have undertaken to do (Article 219 of Iranian Civil Code).

Those obligations which are directly resulted from the contract must be performed after occurrence. In Iranian Civil Code, there is no specific definition for the fulfilment of obligation and it can be studied under the 2 separate articles: Voluntary and obligatory performance of contract. Parties to the contract can determine the manner, time and place of performance. Typically, fulfilment of obligation is a voluntary act which is performed upon the will of parties. When the debtor refuses to fulfill intentionally his/her obligations, she should be obliged to do so. This obligation is requested from the court and the legal enforcement of contract may appear in this stage.

In English law, contract may be defined as an agreement which is performed by law. Offer, acceptance and consideration are 3 necessary element of contract. Besides, parties to the contract must intend to enter into a transaction, so that it may have legal consequences. Furthermore, parties should have the ability to conclude the contract and full capacity as well. In English law, contractual liabilities are not eternal and may eventually end. Contract discharges in one of the following ways: Performance, agreement, breach of contract and impossibility of its performance.

In obligation law of England, contract may be defined as an agreement between 2 or more parties which is legally binding. Therefore, contract is a legal act which creates some obligations and can be prosecuted in the court (Fong, 2010). According to the traditional classification in common law, contracts can be divided into 2 major groups: A, contracts by deed B, simple contracts. There should be 3 major elements for a simple contract to be considered as valid. Firstly, parties to the contract reach an agreement and have offer and acceptance. Secondly, they should have an intention to be legally binding. Thirdly, both parties should offer a valuable consideration. The parties may also enjoy legal capacity to conclude a contract and in some cases, they may observe some specific formalities. A contract may be nullified due to mistake or illegality. If the contract is concluded, as a result of misrepresentation, duress, undue influence, the innocent party has the right of revocation. General rule is that the third parties have no rights upon the contract (Duxbury, 2008).

In law of England, contractual obligations are based on agreements. Existence of a contract is ascertained by examining the will of parties (Gpercay Trentham Ltd. V. Archital Luxfer Ltd., 1993). In most of the cases, an obligation is the basis of contractual requirements (Kleinwort Benson Ltd. V. Malaysia Mining Corporation Berhad, 1989). Furthermore, contract is an agreement which is willingly concluded by parties (Norweb PLC V. Dixon, 1995). Contractual rights and duties may be applied only pro and con of parties to the contract. An oral contract is legally executable unless where the legal formalities are required (Jayaurimpex Ltd. V. Toaken Group Ltd., 1996). A legal contract may turn to an illegal one (Pearce V. Brooks, 1866), if one of the parties has an illegal intention in concluding the contract. If one of the contractual conditions is breached, the party in whose favor the condition is made can consider the contract as being ended. Additionally, if qualifications of the subject of contract are not the same as those upon which it is agreed in the contract and this causes the fundamental negligence in performing the contract, then the buyer only

has the right of revocation. If the contract is breached before it is performed, the contract is nullified and the innocent party can claim remedies upon the breach of contract. This study aims at revealing the similarities and differences between Iranian Civil Code and law of England in the subject matter of contract and trying to remove the ambiguities in the 1st clause of Article 264 in Iranian Civil Code. This is an analytical (Yaqin, 2007) and comparative study.

Analysis of fulfillment of obligation in law of Iran and England: Article 183 of Iranian Code defines the term agreement but has not offered any definition for contract. Imami, one of the prominent lawyers has considered contract and agreement as being synonymous. Katouzian supports this idea in his book under the title of general principles of contracts. According to Article 183 of Iranian Civil Code, a contract occurs when 1 or more persons undertake to do something against some other person (s) to which they consent. However, contract is a legal relationship by virtue of which one is obliged to transfer and submit the money to the other party or to a specific act or omission.

Fulfillment of obligation means to perform promise; it can be used interchangeably with terms, such as to pay the debt and to perform the obligation. Obligations are the central part and the most important subject matter in Iranian Civil Code. According to Article 264 of Iranian Civil Code, the obligations may be discharged in one of the following ways: Fulfillment of obligation, cancellation by mutual consent and release from obligations, substitution of obligation and offset or recoupment. Article 264 of Iranian Civil Code has been adopted from Article 1234 of French Civil Code and some changes are made in it. There is no definition for fulfillment of obligation in Iran law. Fulfillment of obligation is the simplest, as well as the most natural way in which the obligor can clear him/her self from obligations which are upon him/her. The 1st note of Article 264 of Iranian Civil Code stipulates fulfillment of obligations as one of the causes of discharge of obligation. Therefore, the obligation will be discharged when the obligor fulfills his/her obligations. In Iranian Civil Code obligations are divided into 2 groups: A, contractual obligations, B, natural (inherent) obligations such as usurpation, loss (indirect) causation and vindication. The principle of will sovereign has been accepted in Article 10 of Iranian Civil Code. However, Article 975 has explicitly restricted it to 3 factors of law, public order and public morals. Iranian law has, also determined the general conditions for a valid contract. A contract in which all the fundamental conditions for validity of a contract are integrated, acts as

law in the relationship between 2 parties. That is not only none of the parties have the right to cancel the contract (principle of unilateral irrevocability) but also they are obliged to perform all the provisions of contract as well as what they have undertaken to do (Article 219 of Iranian Civil Code). In Iranian Civil Code fulfilment of obligation is one of the causes of discharge of obligation (Article 264). However, the executive aspect of fulfilment of obligation has much more importance than its role in discharge of obligation.

If the obligation is fulfilled according to the law and contract and also its qualities, amount, time and place of fulfillment is compatible with the debt, the obligation will be performed and discharged naturally. The nature of fulfilment of obligation depends on the subject matter of contract. Islamic law has also commanded the believers to fulfil the obligations in many verses and hadith. The main reason for this has been stipulated in Quran, Ma'ede Surah which says:

O' you who believed in God, fulfil your contracts
which commands explicitly the believers to fulfil
their obligations and contracts

Decrees of fulfillment of obligation in Iranian Civil Code are formulated in Articles 265-282. Contractual liability means that promisor's obligation to compensate damages suffered by the other party due to non-performance of contract. Fulfilment of obligation or performance of obligation is the most common means of discharge of obligation because by fulfilling the obligation both parties can achieve what they have expected from concluding the contract. Parties to the contract can specify the time, place and manner in which the contract is to be performed. The impossibility of performance can be referred to Article 348 of Iranian Civil Code. Those contracts whose impossibility of fulfillments are obvious at the time of conclusion and both parties are also aware of this impossibility, is considered null and void by Iranian Civil Code, since delivery may become impossible. General principle in Iranian law is that the court may not perform those obligations which are illegitimate.

Typically, parties specify a time in which the contract is required to be performed. While, sometimes no specific time is mentioned for the performance of obligations and parties do not say anything about it and consequently the contract is concluded without duration. What can be inferred from the jurisprudents' views is that the time is an important factor in contracts, so that in some contracts nonexistence of a specific time for performance of contract may nullify the contract and in some other the existence of time specification may do the same.

In Iranian Civil Code, the urgency principle is established to avoid the prolongation of fulfillment of obligation. Otherwise, the obligation must be fulfilled at customary time and determining customary time is remained for typical criteria. If the obligation is not performed at the reasonable or customary time, the obligee can claim first for obliging the other party to perform its obligations and then for the revocation of contract. Islamic lawyers believe that the best solution for breach of contract is to oblige the parties to do the specific performance.

A minority of Iranian lawyers considered the right of cancellation for obligee. Iranian Civil Code has chosen the method of majority. Although, this method is accepted in domestic law, it has not broad application internationally. Furthermore in foreign business, Iran law is not able to compel and therefore replaced it with revocation and payment of damage. The obligor is free, whether to fulfil the obligation or to pay damage instead, in such a way that it put the obligee in a position in which they would be put if the contract were performed. The necessity of contracts principle is accepted in law of Iran and both parties are binding to what is specified in the contract. Some legal enforcement has been considered if the parties refuse to meet their obligations whether fully or in partial or if they meet them by delay. In Iranian legal system there are 3 ways to compensate damages, these methods are as follows:

- To determine explicitly the amount of damage before it is occurred
- To determine the method of measuring the amount of damages after its occurrence. This is the clearest method in Iranian legal system
- To determine the amount of damages and the way stipulated by law (such as court verdict) or by custom (implicit stipulation by the parties to the contract) to compensate it

Contracts law in England is the offspring of commerce which has been developed by the development of Britain, as an agriculture-based as well as trading industrial country (Beatson *et al.*, 1998). Contract law is the legal rules and regulations concerning to the agreements which are performed by the court. These rules and regulations determine whether a specific mutual action, such as purchasing a book is considered as a contract. In this way, they determine the conditions under which the agreements are to be performed. In the case of breach of contract, the ways of compensations are explained (Cartel and Gifford, 2001). In English law, resources and legal regulations of contracts are rules and precedents.

According to the traditional classification, contracts are classified into contracts by deed and simple contracts. Such contracts should be written, signed, certified and submitted. Those contracts which are performed by document require no consideration to be performable (Barker and Padfield, 1992). All the other contracts can be classified as simple, whether they are written, oral or by conduct (Treitel, 2003). Contract may be nullify due to mistake or illegality. In cases when the contract is concluded due to misrepresentation, duress and undue influence, the party has the right of revocation. Majority of contracts whether written or oral (given the evidence) are of the same validity and they are executive equally. Nevertheless, following formalities must be observed:

Conveyance of land and lease >3 years, transferring English vessels or their share, all require drawing up formal instrument (the instrument signed and sealed according to formalities).

Bill of exchange, promissory notes, marine insurance, bill of sale and agreements related to granting credit to the consumer, all are examples of written contracts.

Guarantees (when someone says that she is responsible for the negligence of the others) and contracts of sale or other forms of land transfer need written evidence before they can be performed through court procedure. Traditionally, obligations are divided into 2 groups: Voluntary obligations which are indebted to specific persons and tort obligations which are created by mistakenly imposing loss upon the supported interests (Cracknell, 2003). Recently, it is accepted that there is another class of obligation which is known, as compensational obligations and it is based on making the defendant rich illegally and at the expense of plaintiff's loss (Lipkin Gorman V. Karpnale Ltd., 1991; 2 A.C. 548 Klein wort Benson Ltd. V. Glasgow City Council 1997; 3 W.L.R. 959), such as the cases where plaintiff pays by mistake an amount to the defendant or discharges the debt of the defendant. Contractual liabilities reflect the constitution-based functions of contract.

When parties performed their obligations, the contract is terminated. The general principle is that the performance must be full and precise (Leong, 1998). Kurt A. Becher G.m.b. H Co.K.G.V. Roplake Enterprises S.A. The World Navigators, 1991; 2 Lloyd's Rep. 23 Pagnan S p A.V. Tradax Ocean Transportation SA. 1987; 3 All E.R. 565. In common law, the obligations and implied terms, the quality of sale and also supply of goods are stipulated (Sale of Goods Act 1979, ss. 12, 14 (as amended), ante, p 150; Supply of Goods and Services Act, 1982). In such cases, as the contracts for services, only reasonable care, e.g., Lester V. Romford Ice and Cold

Storage Co. Ltd. (1957) A.C. 555 Samuels V. Davis (1943) 1 K.B. 526 and appropriate effort Union of India V.N.V. Reederij Amsterdam (1962) 2 Lloyd's Rep. 233 (H.L.) are required.

The agreement between parties to the contract is a necessary but not sufficient condition for its performance. If the condition relating to the time of performance is not meet, the other party has the right of revocation. The place of performance depends on the explicit or implicit intention of the parties to contract and it may be judged based on the nature and conditions of the contract (Charles Duval Co. Ltd. V. Gans (1904) 2 K.B. 685). If a party suffers loss due to the breach of contract from the other party, the suffered party is entitled to receive compensation.

By considering the aforementioned discussions the question is that whether the performance of the provisions of contract or fulfilment of contract may cause discharge of obligations. Generally, the answer is yes. However, the question is that how the factors of discharge of obligations may be classified. In contract law of England, 4 factors are mentioned for the discharge of obligations: Performance, impossibility, agreement and breach of contract (Fong, 2010). Iranian Civil Code stipulates 6 factors for the discharge of obligations: Fulfilment of obligation, cancellation by mutual consent, release from obligation, substitution of obligation, offset and recoupment. The codifiers of Iranian Civil Code have adopted 5 of these factors from the Article 1234 of French Civil Code. Decrees of fulfillment of obligation in Iranian Civil Code are formulated in Articles 265-282. It is defined as an act by virtue of which one is obliged to perform what has undertaken under the contract. According to this definition, fulfilment of obligation means to perform the contract. The parties to contract not only can determine the subject matter of contract by mutual consent but also they can stipulate the time, place and manner in which the contract is to be performed.

Frustration of contract means the destruction of basis contract whether fully or partially and it may have some effects such as the spent expenses, imposed damages and acquired profits. Regarding that the void contracts are not effective; the effects of impossibility of contract may be justified only through relying on the general rules of civil liabilities. Reviewing the English proceeding and rules of Iranian civil liabilities proves this. If only some parts of the contract are frustrated, the existence of other parts may justify the submission or performance on the part of the obligee. However, if a part of the property or the subject of transaction is not submitted to the obligee and the contract is frustrated before submission, then justification about the damages imposed upon the obligee may be difficult.

It should be noted that contrary to English law, no regulations are predicted in Iranian law for the performance and the current regulations stipulated in Articles 227-229 of Civil Code are just to monitor the impossibility of performance of contract. The impossibility of performance is referred to Article 348 of Iranian Civil Code. Those contracts whose impossibility of fulfilment is clear at the time of conclusion and both parties are, also aware of this impossibility is considered null and void by Iranian Civil Code, since delivery would be impossible.

General principle in Iranian and English law is that the court may not perform those obligations which are illegitimate. Although, Iran and England have distinct legal systems, general order has a special status in these 2 systems. These 2 systems have some differences in qualities and effects. However, they are similar in that the performance of those provisions which are contrary to the public order is impossible. They have, also some differences in the claiming for the damages resulted from the impossibility of performance for such contracts. The principle of public order in English law is among the factors that make the contract illegitimate. However in Iranian contracts contrary to the public order are not necessarily illegitimate. This is because of the differences in the nature of 2 legal systems. Legal enforcement of those contracts which are contrary to public order causes the nullification of contract in both legal systems.

Good faith in performing the contract means fulfilment of contract, sayings and cooperation in performing the contractual obligations. Like law of England in Iranian law, there is no general principle named good faith in the process of performing obligations. However, the rules of exchange guaranty, option of delayed payment of the price, option of fraud, impossibility of the meeting the condition after the conclusion of contract and also Articles 15 and 16 of insurance law show the observations of good faith in performance of contract. However, it cannot be inferred as a general rule because Iranian legislator has omitted the term good faith or lack of dishonesty from Articles 225 and 227 of Iranian Civil Code which are adopted from French law, indicating the rejection of this principle from legislator.

Performing contractual obligations at the duly and appropriate time is the concern of parties to the contract and one of the most important issues in daily life. Typically, parties specify a time in which the contract is required to be performed. While, sometimes no specific time is mentioned for the performance of obligations and parties do not consider it and consequently the contract is concluded without duration. In English law, time is not

considered as a factor for validity (or invalidity) of a contract and its importance depends on the will of contracting parties. While in Iranian law what can be inferred from Islamic lawyers sayings is that the issue of time is an important factor in contracts, so that in some contracts nonexistence of a specific time for performance of contract may nullify the contract and in some other the existence of time specification may do the same. In Iranian Civil Code, the urgency principle is established to avoid the prolongation of obligation. Otherwise, the obligation must be fulfilled at customary time and determining customary time is remained for typical criteria.

However in English law reasonable time is taken into account. Although in law of England, at first it has stipulated that time may not be considered, as a major factor, obligee has the right, for the maintenance of the rights of the injured party and avoiding the fulfilment of obligation from being, so long to send notification to the other party, turning time to an important factor in contract and thereby release themselves from the obligations and receive compensation from the other party. On the other hand, in Iranian law if the obligation is not performed at the reasonable or customary time, the obligee can claim first for obliging the other party to perform his/her obligations and then for the revocation of contract. Islamic lawyers believe that the best solution for breach of contract is to oblige the parties to do the specific performance. Minority of lawyers considered a right of cancellation for obligee. Iranian Civil Code has chosen the method of majority. The 1st method is to compel, as much as possible the obligee to perform his/her obligations.

Although, this method has been accepted in Iranian Civil Code, it has undesirable consequences in international trading. In many legal systems, even by assuming undesirable effects, compel the obligee to perform his/her obligations is neither economical nor useful and is considered contrary to the personal freedom. Although, this method is accepted in domestic law of Iran, in many cases the legislator is forced to deviate from it and rely on some other methods. This method has no application in international trading. Iranian law, also in foreign business replaced it with revocation and payment of remedies because of impossibility of compulsion.

Legal systems of both Iran and England are similar in their legal enforcement for failure to fulfil the contractual obligations and the delay in its performance. Because in both systems, there are legal enforcements which have roots in law and ones which have roots in contract. Penal clause and fixed damages are allowed in both systems if they have been stipulated as an condition with the difference that in England legal system, predetermined

damage is considered, as valid as a condition which necessitates the payment of a specific amount in the case of breach of contract, provided that the amount is not unreal and has not punitive aspects. In the other words, as it was mentioned earlier, in English law this condition is known as Liquidated or agreed damages. In Iranian law, to claim for damage is done in cases where the obligations are not fulfilled while in English law it is not the case. Damages resulted from the lack of profit are not accepted in English law but in Iranian legal system, according to the 2nd note of Article 515 of Civil Procedure damages resulted from lack of profit cannot be claimed.

CONCLUSION

Fulfilment of obligation means to perform promise. It can be used interchangeably with terms of paying the debt and performing the obligation. Obligation is the central part and most important subject matter in Iranian Civil Code. According to Article 264 of Iranian Civil Code, the obligations may be discharged in one of the following ways: Fulfilment of obligation, cancellation by mutual consent and release from obligation, substitution of obligation and offset or recoupment. Fulfilment of obligation is the simplest as well as the most natural way in which the obligor can release him/herself from obligations which are upon him/her. That is by fulfilling the obligations, the parties to the contract will terminate the contract in a way that they had expected from the beginning.

The 1st note of Article 264 of Iranian Civil Code stipulates fulfilment of obligations as one of the causes of discharge of obligations. In Iranian Civil Code, fulfilment of obligation can be studied under the 2 separate articles: Voluntary and obligatory performance of contract. Parties to the contract can specify the time, place and manner in which the contract is to be performed. When the debtor refuses to fulfill intentionally their obligations, she should be obliged to do so. This obligation is requested from the court. Decrees of fulfillment of obligation in Iranian Civil Code are formulated in Articles 265-282. The impossibility of performance can be referred to Article 348 of Iranian Civil Code. General principle in Iranian law is that the court may not perform those obligations which are illegitimate. Performing contractual obligations at the appropriate time is the concern of parties to the contract and one of the most important issues in daily life. Therefore, special attention must be paid to the time of fulfilment of obligation. In Iranian Civil Code, the urgency principle is established to avoid the prolongation of fulfillment of obligation. Otherwise, the obligation must be fulfilled at customary time.

In Iranian legal system there are 3 ways to compensate damages, these ways are as follows:

- To determine explicitly the amount of damage before it is occurred
- To determine the method of measuring the amount of damages after its occurrence. This is the clearest method in Iranian legal system
- To determine the amount of damages and the way stipulated by law (such as court verdict) or by custom (implicit stipulation by the parties to the contract) to compensate it

Some principles, such as freedom of contracts, validity of contracts, privity of contracts and supremacy of custom are undeniable bases for Iranian private law. Iran and England have stipulated some ways for discharge of contractual obligations and this provides the consolidation of contracts between legal and natural persons.

In law of England, contract may be defined as an agreement which is performed by law. Offer, acceptance and consideration are 3 necessary elements of contract. Besides, parties to the contract must have the intention to enter into transaction, so that it may have legal consequences. Furthermore, parties should have the ability to conclude the contract and full capacity as well. In law of England, contractual liabilities are not eternal and may eventually end. Contract will be discharged in one of the ways of performance, agreement, breach of contract and impossibility of its performance. Contract may be nullified due to mistake or illegality. In cases when the contract is concluded due to misrepresentation, duress and undue influence, the party has the right of revocation. The general principle is that the third parties have no right based on the obligation. In law of England, contractual obligations are based on agreement. That is when the parties act as they have agreed in the contract, the contract will be terminated.

By scrutinizing in English law, it is recognized that what is closer to the fulfilment of obligations in Iranian law is the factor of performance because when the parties to the contract fulfil their obligations, the contract will be terminated. General principle is that it must be performed fully and precisely. However, it should be noted that in law of England, complete contracts are exception not principle because contracts can be dissolved only if some of the obligations stipulated in the contract can be performed independently. Determining whether the contracts are complete or dissolvable depends on the interpretation of the contract.

In Iranian law, fulfilment of obligation or performance of the contract may cause the discharge of obligations. However, the question remains open that how the factors of discharge of obligations may be classified. In contract law of England, 4 factors are mentioned for discharge of obligations: Performance, impossibility, agreement and breach of contract. Iranian Civil Code stipulates 6 factors for the discharge of obligations: Fulfilment of obligation, cancellation by mutual consent, release from obligation, substitution of obligation, offset and recoupment. The codifiers of Iranian Civil Code have adopted 5 of these factors from the Article 1234 of French Civil Code, adding cancellation by mutual consent to it. Decrees of fulfilment of obligation in Iranian Civil Code are formulated in Articles 265-282. It is defined, as an act by virtue of which one is obliged to perform what has undertaken under the contract. The parties to the contract can determine the time, place and manner in which the contract is to be performed.

Frustrations of obligation, impossibility of performance, illegitimate contracts and claim for remedies are resulted from the impossibility of contract. Good faith of parties in observing fair behavior to compel obligor to do the specific performance and to violate the

performance in the specified time are among the shared issues in law of Iran and England which have been examined in this study.

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