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Exploring the Conditions and Effects of Performance of Obligations: A Comparative Study in the Legal Systems of Iran and Iraq

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ABSTRACT

In light of the acceptance of the principle of performance of obligations and contracts as a necessary condition of religiosity and one of the most fundamental theoretical foundations of Islam, performance of obligation (fulfillment of contractual commitments) in both the Iranian and Iraqi legal systems is recognized as the most natural legal institution for the execution of obligations. This institution produces an effect that is interpreted in Iranian law as the extinction of obligation and in Iraqi law as the termination of obligation. The Iranian Civil Code regulates performance of obligation under Articles 265 to 282 as one of the causes of extinction of obligations, while the Iraqi Civil Code addresses performance of obligation in the first chapter of Book Five, entitled "Termination of Obligation," under Articles 375 to 398. Nevertheless, the civil codes of both countries remain silent regarding the legal nature of performance of obligation, thereby necessitating reliance on legal doctrine and judicial practice. Determining the legal nature of performance of obligation carries not only analytical and theoretical significance but also substantial practical consequences. If performance of obligation is classified as a juridical act, irrespective of whether it constitutes a contract or a unilateral juridical act, it requires the intention of the actor and a constitutive declaration of will; consequently, performance carried out by an incompetent person—such as a prodigal, an insane person, or any legally incapacitated individual—would lack legal effect. Conversely, if it is considered a legal transaction, identifying its specific type entails distinct legal conditions and implications. Accordingly, this study adopts a descriptive–analytical method to clarify the legal nature of performance of obligation in the Iranian and Iraqi legal systems. The findings indicate that, in both systems, what occurs in the course of performance of obligation is fundamentally the manifestation of human will, the result of which is the extinction of the obligation. The legal characterization of performance of obligation varies depending on the subject matter within each legal relationship. A simple performance of obligation constitutes a legal fact that, in principle, does not require a constitutive intention of the parties. However, where performance of obligation necessitates the execution of another juridical act, its nature depends on the accompanying legal act: if fulfillment of the debt requires mutual consent, performance of obligation takes the form of a contract; if it is accomplished solely through a single will, it constitutes a unilateral juridical act; and where no will influences its realization and it occurs solely by operation of law, it is classified as a legal fact.

Keywords: *Performance of obligation, extinction of obligations, obligations, Iranian law, Iraqi law.*



Introduction

Performance of obligation (fulfillment of covenant) is among the most frequently discussed and pervasive concepts in human life, particularly in light of Qur'anic verses and religious narrations. The principle of fidelity to promises and its profound role in providing meaning to individual life and human society can be examined from multiple perspectives. In Islamic law and other divine religions, fulfillment of commitments occupies a distinguished position; however, in Islam specifically, loyalty to one's covenant is treated as synonymous with faith and religiosity. In other words, a person who fails to honor commitments is regarded as lacking genuine faith. This concept has been considered so significant in human social life that even agreements concluded with enemies, polytheists, or hypocrites must be respected and fulfilled. Accordingly, one of the central moral behaviors contributing to ethical social order, social tolerance, and meaningful human existence is fidelity to promises (1-3).

Regardless of the subject matter of the obligation—whether delivery of a specific object, a generic object determined within a class, an object owed in obligation, a benefit, an act, or an omission—the performance of the obligation occurs upon execution by the obligor. Jurists, however, disagree regarding the legal nature of delivery and execution of obligations. Debate persists as to whether performance requires agreement between obligor and obligee, whether it may be realized solely through the unilateral will of the debtor, or whether constitutive intention plays no role in its realization. The delivery of generic property has attracted particular attention due to doctrinal disagreements concerning the legal nature of the sale of generic property. Examination of its juridical nature therefore demands a foundational, philosophically informed legal analysis (4-6).

Ambiguity regarding the legal nature of certain juridical institutions significantly affects the determination of their legal effects and conditions, and performance of obligation is no exception. Legal phenomena produce consequences according to their legal characterization: legal facts differ in their effects from juridical acts, and within juridical acts, unilateral legal acts produce consequences distinct from contracts. Consequently, identifying the legal nature of any institution plays a decisive role in determining its legal framework. In many legal systems, including major contemporary jurisdictions, the nature of performance of obligation has not been explicitly clarified, and legislative provisions often remain silent. In Iraqi law, for instance, some scholars consider performance of obligation fundamentally a contractual agreement between debtor and creditor, except where the creditor refuses acceptance, in which case the bilateral juridical act transforms into a unilateral juridical act. The absence of conceptual clarity and the divergence of opinions among domestic and comparative legal scholars, together with the practical implications of such classification, underscore the importance of scholarly investigation in this field (7-9).

The uncertain and ambiguous aspects of this topic constitute, in fact, its most significant analytical dimensions. Obligations existing solely within the sphere of morality lack enforceable legal sanction. For example, if a person voluntarily undertakes payment of a natural obligation and has previously discharged part of it informally, such conduct does not necessarily prevent subsequent legal payment. Under both Iranian and Iraqi law, where certain obligations lack legal enforceability for the creditor, voluntary performance by the debtor precludes restitution claims. Likewise, where a creditor lacks procedural standing to claim a debt, such obligation cannot merely be reduced to a purely moral duty resulting in automatic discharge of liability. From a research perspective, the elements and manifestations of performance of obligation within contracts, unilateral acts, and civil law structures of Iran and Iraq reveal both convergences and divergences. Comparative examination of evidentiary foundations and doctrinal ambiguities enables identification of normative gaps and structural weaknesses through comparative legal analysis.

Accordingly, the objective of this research is to explore the conditions and legal effects of performance of obligation within the legal systems of Iran and Iraq.

Research Method

The present study adopts a descriptive–analytical methodology. Data collection was conducted through library-based research utilizing systematic note-taking techniques.

Research Background

Rezaei (2015) argues, in a study concerning performance of obligation by third parties in enforcement proceedings, that third-party payment is not a newly established legal institution but rather possesses deep jurisprudential roots. Islamic jurisprudence recognizes the validity of third-party performance leading to discharge of the debtor's liability, and Article 267 of the Iranian Civil Code reflects this jurisprudential foundation. Judicial enforcement regulations and executive provisions relating to enforceable official documents likewise acknowledge this concept (10-12).

Akrami (2016) maintains that constitutive intention does not play a role in the essence of delivery; instead, non-constitutive intention merely determines the specific instance of generic property. The necessity of identifying the object or granting authorization should not create the misconception that delivery constitutes a juridical act. Western legal systems, influenced by material theories of obligation, have struggled to recognize the abstract concepts of generic property and patrimonial liability, often treating sales of generic property not as immediate transfers of ownership but as obligations. By contrast, Islamic law's broader conception of ownership and patrimony allows delivery in all its forms to be classified as a legal fact (4, 13, 14).

Herati (2022), in research examining the legal nature of penalty clauses and their modification in Iranian and French law, indirectly addresses performance of obligations by analyzing legal guarantees designed to secure contractual execution. The study explains that both Iranian and French civil law systems recognize various mechanisms ensuring contractual compliance, among which penalty clauses constitute a central instrument of enforcement (15-17).

Soltani and Lotfiani (2016), in their examination of performance of obligation using property belonging to another person in Iranian law, report divergent scholarly opinions. Some jurists regard execution of contractual obligations as constituting a new legal transaction, while others classify performance with third-party property as either a juridical act or a legal fact. Considerable disagreement also exists regarding whether execution of obligations should be characterized as a contract or a unilateral juridical act (18-20).

Performance of Obligation from the Perspective of the Holy Qur'an and Traditions

The issue of fidelity to covenant and promise constitutes one of the most fundamental prerequisites of collective human life. Without adherence to commitments, social cooperation becomes impossible, and humanity would effectively lose organized social existence and its benefits. For this reason, Islamic sources place strong emphasis on the obligation to honor agreements, as the absence of such commitment leads to social disorder and the erosion of public trust, which represents one of the gravest social harms. Hence, loyalty to promises functions as a cornerstone of social stability and ethical coexistence (1, 3).

The Holy Qur'an, as the final divine guidance addressing individual, social, material, and spiritual dimensions of human life, repeatedly commands believers to remain faithful to their covenants and refrain from breaching agreements.

First Verse: One of the most widely cited Qur'anic injunctions concerning fidelity to contracts appears in the opening verse of Surah al-Ma'idah: "*O you who believe, fulfill your contracts.*" This concise command underscores the significance of honoring commitments and calls upon believers not to treat agreements, covenants, and contracts with indifference. As the Creator, God emphasizes that abandonment of commitments produces severe worldly and spiritual consequences, disrupting both individual integrity and collective order (2, 3).

Second Verse: In verse 35 of Surah al-Isra, the Qur'an declares: "*And fulfill the covenant; indeed, the covenant shall be questioned.*" The covenant is metaphorically presented as if it were a living entity whose observance will be examined on the Day of Judgment. Human conduct toward promises—whether characterized by negligence or by faithful observance—becomes a matter of moral accountability. Those who neglect commitments face divine punishment, whereas those who remain faithful may expect divine reward and spiritual fulfillment (3, 11).

Third Verse: Verse 76 of Surah Al-Imran states: "*Yes, whoever fulfills his covenant and fears God—indeed, God loves the righteous.*" Here, fulfillment of obligations is identified as a pathway toward attaining the status of the righteous. Individuals who honor their commitments and observe moral restraint receive divine favor, while disregard for promises removes a person from the circle of the righteous. Such individuals must either repent and reform or face the moral consequences of continued breach of covenant (1, 3).

Conditions of Performance of Obligation in the Iranian Legal System

Ownership or Authorization by the Owner

According to Article 269 of the Iranian Civil Code, performance of obligation is realized only when the obligor transfers property that he owns or is authorized by the owner to transfer, provided that the obligor also possesses legal capacity. Similarly, French civil law requires that the debtor must own the property delivered in fulfillment of the obligation. Legal doctrine emphasizes that ownership or valid authorization constitutes a fundamental condition for valid performance (5, 9).

Legal Capacity

Possession of legal capacity for performance presupposes the existence of discernment and intellectual competence, since juridical acts require conscious expression of will. Where such capacity is deficient, a person may participate only in limited legal affairs. For example, a prodigal person is restricted from independently managing financial matters. Comparative legal doctrine likewise recognizes that a debtor must possess legal capacity to validly discharge an obligation (6, 16).

Judicial practice further clarifies this principle. According to decisions of the Supreme Court, insanity results in legal incapacity only where it leads to complete disruption of reasoning and volition; otherwise, incapacity cannot be presumed. Courts are obliged to issue a judgment of interdiction only when mental disorder is uncontrollable or incurable, demonstrating the judiciary's cautious approach toward restricting civil capacity (21, 22).

Necessity of Payment to the Creditor or His Representative

Article 271 of the Iranian Civil Code provides that payment must be made to the creditor, the creditor's authorized agent, or any person legally entitled to receive payment. Accordingly, delivery of performance to the creditor's legal representative or competent authority results in discharge of the debtor's obligation. Payment to the creditor's transferee or authorized representative equally produces release from liability (9, 13, 16).

The debtor is required to perform the obligation at the agreed time, and liability for delay rests upon the obligor. The holder of a claim is not limited to the physical possessor of the claim document; individuals capable of exercising the creditor's legal rights may also qualify as legitimate recipients of payment (9).

Within Imamiyyah jurisprudence, delivery of property to anyone other than the owner is invalid unless that person acts as an agent or is recognized by customary practice as the owner's representative. Discharge of liability occurs only when the creditor actually receives the claim; merely separating the creditor's share and reserving it pending his return does not release the debtor from obligation. Where the creditor cannot be located or his survival is uncertain, investigation must be conducted so that payment may ultimately be delivered either to the creditor or to his heirs (12, 23, 24).

Payment to Persons Other Than the Above-Mentioned Individuals

Under Article 272 of the Iranian Civil Code, payment made to a person other than those specified is valid only if the creditor subsequently consents. Where the creditor has previously approved receipt of payment by a third party, such approval is equivalent to authorizing an agent to receive payment. The creditor's ratification, however, requires that he himself possess legal capacity at the time of approval (6, 8).

For example, delivery of a judgment debt to an attorney who lacks authority to receive payment does not discharge the debtor unless the creditor later ratifies the payment. Likewise, payment made to a person falsely claiming representation of the creditor produces no legal effect absent ratification. The provisions of Article 272 are considered to have been influenced by earlier French civil law regulations governing payment to unauthorized recipients (9, 17).

Judicial precedents further affirm that even if a debtor claims payment to a relative of the creditor, such person cannot be presumed authorized without proof. Similarly, an individual responsible for collecting funds may not transfer them elsewhere without the owners' consent; otherwise, liability arises for unauthorized disposition of property (22).

Release of the Obligation Instrument

It is evident that once the obligor fully performs the obligation, no legal justification remains for the obligee to retain the document evidencing the obligation. Upon request of the obligor, the obligee must either return the original instrument or deliver another document confirming performance and acceptance of payment—such as a receipt—to the debtor who has discharged the obligation, thereby preventing potential misuse or repeated claims. Commercial regulations governing negotiable instruments likewise reflect this requirement. Nevertheless, retention of the obligation document after performance may, in certain circumstances, serve legitimate and protected interests of the obligee. For example, the obligee may wish to preserve records of prior transactions as evidence of an established course of dealing between the parties, a practice widely recognized in domestic and international

commercial customs and considered one of the sources of commercial law. In any event, protection of the debtor's interests and reconciliation of the parties' respective rights may be achieved by issuing a payment receipt or returning the original document while preserving a copy or photocopy reflecting fulfillment of the obligation (5, 19).

Release of Securities and Guarantees of the Debt (Obligation)

When an obligation is completely performed within the agreed period and fulfillment occurs fully and properly, continuation of pledged or mortgaged property loses its legal justification, since security rights exist solely as accessory rights dependent upon the underlying obligation. With extinction of the principal debt, the accessory right necessarily ceases to exist. Consequently, the obligee must return pledged or mortgaged property to the former obligor or to a third-party owner. Where negotiable instruments have been provided as collateral, they must be released and returned to their owner. If immovable or movable property has been registered as security in official registries, formal release and cancellation of the security must likewise be recorded.

Because the right of pledge constitutes an accessory real right and the contract of pledge is an accessory contract, extinction of the principal obligation through performance automatically results in termination of the pledge itself. Iranian law recognizes payment of debt as one of the primary mechanisms for release of mortgage and security rights, and the same principle applies to contracts of guarantee and suretyship, which likewise cease upon performance of the principal obligation, given their dependent character (5, 9, 19).

Extinction of the Right of Retention (Right of Withholding Performance)

The rule concerning extinction of the right of retention derives from the reciprocal relationship between counter-performances and the requirement of commutative justice. Some jurists have emphasized that simultaneous performance of reciprocal obligations is presumed from the parties' agreement where the contract remains silent. Because reciprocal obligations are causally interconnected, the right of retention originates from this interdependence; therefore, once one party performs its obligation, the other party's right of retention terminates and performance becomes mandatory. Accordingly, performance of obligation constitutes one of the principal causes for extinction of the right of retention (11, 19).

Effects of Performance of Obligation in the Iraqi Legal System

Termination of Obligation

Performance of obligation results in termination of the obligation. Upon complete execution by the debtor, the legal relationship between creditor and debtor ends, and no further liability remains. The Iraqi Civil Code explicitly reflects this effect by addressing performance of obligation within the chapter devoted to termination of obligations.

Discharge of the Debtor

Through performance, the debtor's liability is extinguished. The debtor is released from responsibility toward the creditor, and the creditor loses the right to pursue further claims relating to the discharged obligation.

Transfer of Ownership (in Monetary Obligations)

In obligations involving transfer of ownership or payment of a sum of money, performance leads to transfer of ownership from debtor to creditor. For instance, where the obligation concerns delivery of goods or payment of money, ownership passes to the creditor upon fulfillment.

Extinction of Securities

Performance also eliminates securities established to guarantee execution of the obligation, such as pledge, guarantee, or collateral. After fulfillment, the creditor no longer possesses the right to rely upon these guarantees.

Proof of Performance

The debtor bears the burden of proving performance. Such proof may be established through written documents, witness testimony, or other legally recognized evidence. In the absence of proof, the debtor remains legally responsible for execution of the obligation.

Creditor's Duty to Issue a Certificate of Discharge

After performance, the creditor is obligated to issue a document confirming discharge of the debtor. This certificate evidences fulfillment and extinction of liability. Should the creditor refuse to issue such documentation, the debtor may seek judicial intervention.

Partial Performance

Where the debtor performs only part of the obligation, the obligation is reduced proportionally to the extent performed. The creditor retains the right to pursue legal remedies concerning the remaining portion.

Performance by a Third Party

Under Iraqi law, performance may also be carried out by a third party on behalf of the debtor. If the creditor accepts such performance, the debtor is discharged from liability. This principle reflects the broader doctrinal acceptance of third-party performance within civil law systems (10, 20).

Release of the Obligor from Liability Regarding the Subject of Obligation

If the debtor refuses to perform, the creditor may resort to judicial authorities to compel performance or claim damages. Legal liability therefore persists until proper performance occurs or compensation is granted, consistent with general principles governing contractual responsibility (5, 15).

Conclusion

The purpose of this study was to explore the conditions and legal effects of performance of obligation within the legal systems of Iran and Iraq. The Iranian Civil Code regulates performance of obligation under Articles 265 to 282 as one of the causes of extinction of obligations, while the Iraqi Civil Code addresses the same concept in the first chapter of Book Five under the title "Termination of Obligation," encompassing Articles 375 to 398. Despite this

detailed legislative treatment, neither legal system has provided an explicit statutory definition of performance of obligation.

Islamic jurisprudence—both Sunni and Shi'i—plays a significant role in interpreting and applying Iraqi civil law, whereas in Iran performance of obligation is regarded simultaneously as a legal and religious principle arising from contractual or statutory commitments. Although the Iranian Civil Code was drafted under the influence of Imamiyyah jurisprudence and, to some extent, French civil law, the Iranian legal system fundamentally rests upon Shi'i jurisprudence integrated into statutory law. Consequently, foundational juristic principles, including the obligation to honor contracts, are directly reflected in Iranian legislation. It is therefore natural that the doctrine of performance of obligation in Iran remains deeply shaped by Shi'i jurisprudential principles and Islamic legal thought. In contrast, Iraqi law reflects a hybrid structure in which performance of obligation is influenced by both the civil law tradition of the Romano–Germanic legal family and Islamic jurisprudence drawn from both Sunni and Shi'i schools.

Furthermore, Shi'i jurisprudence exerts a direct and extensive influence on interpretation and enforcement of rules governing performance of obligation in Iran. In Iraq, although Islamic jurisprudence remains influential, its impact is comparatively less dominant, and civil law methodology assumes a more prominent role. Judicial practice also demonstrates divergence between the two systems: Iranian judicial reasoning tends to rely more heavily on juristic opinions and classical jurisprudential principles, whereas Iraqi judicial practice generally reflects stronger reliance on modern legal interpretation and doctrinal analysis. Nevertheless, in both legal systems a variety of scholarly viewpoints have been expressed regarding the legal nature of performance of obligation.

Given the absence of a precise legislative definition and the lack of explicit clarification concerning the legal nature of performance of obligation in both the Iranian and Iraqi civil codes, diverse interpretations have emerged regarding its concept and juridical classification. Accordingly, it is advisable for legislators in both jurisdictions to provide a clear statutory definition and explicit doctrinal characterization of performance of obligation within the relevant legal provisions, thereby reducing interpretative uncertainty and promoting greater legal coherence and predictability.

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Authors' Contributions

All authors equally contributed to this study.

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The authors of this article declared no conflict of interest.

Ethical Considerations

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Transparency of Data

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