



How to cite this article:

Tavassoli, Z. (2027). The Conflict Between the Right to Compel Specific Performance and the Right of Rescission in Cases of Breach of a Stipulation as to Attribute in Sale. *Journal of Historical Research, Law and Policy*, 5(5), 1-14. <https://doi.org/10.61838/jhrp.387>



Article history:
Original Research

Dates:

Submission Date: 08 April 2026

Revision Date: 07 July 2026

Acceptance Date: 16 July 2026

First Publication Date: 05 September 2026

Final Publication Date: 01 September 2027

The Conflict Between the Right to Compel Specific Performance and the Right of Rescission in Cases of Breach of a Stipulation as to Attribute in Sale

1. Zahra. Tavassoli[✉]: MA, Department of Law, ShQ.C., Islamic Azad University, Tehran, Iran

*corresponding author's email: 1377tavasolizahra@gmail.com

ABSTRACT

A stipulation as to attribute, as one of the qualitative elements of a contract of sale, plays a decisive role in the parties' intention. Breach of this stipulation disrupts the contractual equilibrium. The main issue is whether the buyer has an absolute right to compel the seller to repair or replace the goods, or whether, where such action is impossible or entails substantial costs, the buyer must resort to rescission of the contract. This study examines this conflict in light of the principles of private law. The objective is to clarify objective criteria for resolving the conflict between the two remedies of compelling specific performance and rescission in cases of breach of a stipulation as to attribute, and to propose a solution for preserving contractual stability. Method: This study, using a descriptive-analytical method and drawing on library-based research and a comparative examination of legal foundations, with a focus on the general principles of contracts, analyzes judicial practice and legal doctrine. The findings of the study indicated that compelling specific performance, as the primary remedy, takes precedence where there are no economic obstacles, such as disproportionate costs, or physical impediments. The right of rescission is an exceptional remedy that is conditional upon a fundamental breach of contract. Judicial practice has tended toward economic efficiency, such that where the cost of performing the obligation is disproportionate to its value, there is a tendency to restrict the right to compel performance and to direct the buyer toward rescission or damages. The conclusion of the study was that the conflict between specific performance and rescission is not an absolute conflict, but rather one that requires a proportional approach. It is recommended that fundamental breach be institutionalized as the key criterion for distinguishing between these two remedies. Where the breach of the stipulated attribute is remediable and the cost of remedy is not disproportionate, compelling specific performance should prevail; otherwise, the buyer's right of rescission shall remain preserved.

Keywords: sale, stipulation as to attribute, compelling specific performance, right of rescission, fundamental breach, remedy.

Introduction

In the law of contracts, the contract of sale, as one of the most common commutative contracts, is based on the reciprocal obligations of the seller and the buyer. One of the important elements of these obligations is the quality of the subject matter of the transaction, which is manifested in the form of a stipulation as to attribute in the text of the contract or through the attributes agreed upon by the parties. Breach of this stipulation means the non-conformity of the sold item with the prescribed attributes, which raises fundamental questions concerning legal



remedies. In the case of breach of a stipulation as to attribute, legal systems are confronted with two different or complementary approaches: specific performance of the obligation in kind and the right of rescission. Specific performance of the obligation in kind is based on the principle of *pacta sunt servanda* and seeks to ensure that the buyer receives exactly what was contemplated in the contract. By contrast, the right of rescission, as a contract-dissolving remedy, allows the injured party to terminate the contract from its foundation where performance of the obligation is impossible or where continuation of the contractual relationship is no longer desired. The conflict between these two rights reaches its peak when the buyer is placed between receiving a sold item conforming to the agreed attributes, through compelling the seller to repair or replace it, and dissolving the contract. This challenge is important not only from jurisprudential and legal perspectives, but also from the perspective of the economic analysis of law, because the choice of either of these remedies may have different effects on contractual efficiency and the distribution of risk between the parties (1). In modern law, the concept of breach of condition, especially in international conventions such as the Convention on Contracts for the International Sale of Goods (CISG), is linked to the criterion of fundamental breach. This approach seeks to establish an objective standard that imposes limits on the exercise of the right of rescission, prevents the excessive dissolution of contracts, and preserves the principle of transactional stability. Therefore, a precise understanding of these concepts is a prerequisite for analyzing the conflict between the aforementioned remedies (2).

The background studies conducted in this field are as follows. Delfini, in a 2025 study entitled *Waiver of Rescission for Breach of Contract and the Practice of International Contracts*, examined the validity of clauses that exclude the right of rescission and restrict the injured party to specific performance or damages. The purpose of that study was to analyze the validity of such clauses under Italian law, and the findings indicate that such clauses are valid where other remedies are preserved; the conclusion is that such clauses function as an instrument of risk management in commercial contracts (3). Azimi Manesh and colleagues, in a 2024 article entitled *A Comparative Analysis of Cases of the Right of Termination Based on the Principle of Party Autonomy in Iranian Law and the Convention on the International Sale of Goods*, examined the theoretical foundations of the right of rescission in these two legal systems. The purpose of the study was to identify the foundations of the right of rescission in cases of breach of a stipulation as to attribute, and the findings show that party autonomy is the common foundation; the conclusion emphasizes the need for legislative reforms to clarify the foundations and effects of rescission (4). de Mascarenhas Ataide and Boura, in a 2025 study entitled *Termination of Commercial Sale Contracts under the OHADA Uniform Act Relating to General Commercial Law*, analyzed the legal regime governing rescission in commercial contracts. The purpose of that article was to examine the manner of exercising the right of rescission and its effects, and the findings show that these rules are influenced by French law and the CISG; the conclusion emphasizes the importance of these rules in reducing legal uncertainty in international trade (5). Plass, in a 2023 article entitled *Modernizing Notice of Breach Rules to Preserve Contract Remedies*, examined judicial approaches requiring buyers to give prompt notice of breach in order to preserve the right of rescission or damages. The purpose of the study was to criticize judicial strictness, and the findings show that these rules result in the loss of buyers' rights; the conclusion proposes that, in order to deprive the buyer of a remedy, the seller should be required to prove material harm resulting from the absence of notice (6). Khanderia, in a 2022 study entitled *Termination for Breach: The Prospects of the UNIDROIT Principles of International Commercial Contracts to Interpret and Supplement the Indian Law of Contract*, addressed the inefficiency of current Indian rules on termination. The purpose of that article was to examine the role of the UNIDROIT Principles in improving these rules, and the findings

indicate that current Indian law adopts a termination-oriented approach; the conclusion is that an approach favorable to the preservation of the contract should be adopted (7). Zdravkovic, in a 2023 article entitled *The Right to Suspend Performance in Case of Anticipatory Breach of Contract on International Sale of Goods*, examined the provisions of the Convention concerning the right to suspend performance and terminate the contract in cases of anticipatory breach. The purpose of the study was to explain the differences between suspension and rescission, and the findings show that suspension, unlike rescission, keeps the contract alive; the conclusion emphasizes the role of suspension as a mechanism for encouraging the parties to perform their obligations (8).

Despite extensive studies in different legal systems, Iranian law still contains ambiguities regarding the prioritization between specific performance of the obligation in kind and rescission in cases of breach of a stipulation as to attribute, and judicial practice in this area lacks sufficient coherence. By combining economic analyses of law with modern approaches in international conventions, this study proposes a model for prioritizing these two remedies, with the aim of preserving contractual stability while also protecting the interests of the injured party. Therefore, the main research question is as follows: what are the theoretical foundations of the conflict between the right to compel specific performance of the obligation in kind and the right of rescission in cases of breach of a stipulation as to attribute?

Foundations of the Right to Compel Performance of the Obligation

The principle of the binding force of contracts, as the cornerstone of contractual relations, is the first and most important basis for the right to compel specific performance of the obligation in kind. According to this principle, the parties to a contract are obliged to perform their obligations exactly as they have agreed. In the Iranian legal system, which is rooted in Imami jurisprudence, contracts, once concluded, produce definite and binding legal effects, and neither party may refuse to perform the obligation at will. Therefore, when a condition is inserted into the contract, including a stipulation as to attribute, that condition becomes part of the parties' intention and, consequently, part of the principal obligation, which must be performed in the exact quality agreed upon; deviation from it without legal authorization is regarded as breach of contract (9). In the Iranian legal system, unlike some legal systems, such as common law systems that recognize damages as the principal remedy, specific performance of the obligation in kind is recognized as the first and primary remedy for breach of contract. This approach means that the obligee initially has the right to compel the obligor to perform precisely what is stated in the contract. In the case of breach of a stipulation as to attribute in sale, before contemplating rescission of the contract, the buyer may rely on this legal foundation and compel the seller to deliver a sold item possessing that specific attribute, because the main purpose of concluding the contract is to obtain the desired object itself with the agreed characteristics (10). The nature of the stipulation as to attribute in a contract of sale is such that it determines the quality of the sold item as part of the substance of the obligation. When the seller sells an item with a specific attribute, that attribute plays an essential role in determining the value of the item and the buyer's intention. The basis of the right to compel performance here is the preservation of contractual equilibrium and respect for the parties' intention. If the seller delivers a sold item lacking the attribute, he has in fact performed his obligation imperfectly. Therefore, the buyer has the right, by relying on the necessity of full performance of the contract, to compel the seller to complete or repair the sold item so that it conforms to the stipulation as to attribute; this right to compel performance takes precedence over the right of rescission, which is raised as a last resort for exiting the contract where performance of the obligation is impossible or no longer desired (11). From the perspective of the economic analysis of law, the

right to compel specific performance of the obligation in kind may function as a mechanism for increasing contractual efficiency and reducing the costs arising from breach of obligation. This approach is based on the premise that performance of the obligation by the original obligor is often less costly and more reliable than replacing that party with a third person or resorting to damages. In the case of breach of a stipulation as to attribute, compelling the seller to deliver a sold item possessing the attribute not only prevents the waste of time and litigation costs associated with rescission and the conclusion of a new contract, but also strengthens confidence in the stability of contractual relations (12). Nevertheless, this economic foundation must be assessed in light of the actual conditions of performance so that it does not result in the imposition of abnormal and disproportionate costs on the obligor. The conflict between the right to compel specific performance of the obligation in kind and the right of rescission reaches its peak where performance in kind is practically impossible or extremely difficult. The basis for limiting the right to compel performance in such cases is the rule against harm and the principle that no one is obliged to perform what is beyond capacity. If the seller is in no way capable of supplying a sold item possessing the attribute, the right to compel specific performance of the obligation in kind, because of the absence of subject matter or the impossibility of performance, gives way to the right of rescission. Therefore, the right to compel performance, as a fundamental right, takes precedence over the right of rescission as long as its exercise is possible and reasonable, and rescission of the contract becomes legitimate as a substitute and final remedy only when no path remains for obtaining the very performance owed (13).

Nature and Function of the Right of Rescission

The nature of the right of rescission in private law is understood as a unilateral legal act that allows the holder of the right to dissolve the contract unilaterally. This right is in fact a form of legal self-help that allows the obligee injured by breach of contract to express, without the need for direct judicial intervention at the initial stage, the intention to bring the contractual relationship to an end. Through the exercise of this right, the legal bond between the parties is severed, and the contract is extinguished from the time of rescission, or, in some cases, with retroactive effect (14). The principal function of the right of rescission is release from the constraints of the contract in circumstances where continuation of the contractual relationship, because of breach of essential obligations by the other party, no longer has utility or economic justification for the obligee. In the case of breach of a stipulation as to attribute in sale, the function of rescission is to allow the buyer to be freed from being burdened with a sold item that lacks the agreed characteristics. In fact, rescission operates as a mechanism for restoring the situation to the pre-contractual state, or at least preventing the continuation of its harmful effects, and allows the obligee to be released from reciprocal obligations, such as payment of the price (15). In terms of its substantive nature, rescission of a contract for breach of obligation is applied differently across legal systems. In some systems, rescission requires a court judgment, that is, judicial rescission, whereas in other systems, including Iranian law, rescission is recognized as an option, namely a legal power, that is realized through the direct intention of the holder of the right. In Iranian law, a stipulation as to attribute in sale gives the buyer the option for breach of condition, which has a dissolving nature and, once exercised, completely dissolves the contract, unless the law or the parties' agreement gives priority to the right to compel performance of the obligation (16). Another function of the right of rescission is to exert pressure on the obligor to perform contractual obligations precisely. Although rescission means bringing the contract to an end, the threat of rescission can act as a deterrent mechanism compelling the obligor to correct the situation and perform the stipulation as to attribute. In fact, the right of rescission and the right to compel specific

performance of the obligation in kind are two sides of the same coin, enabling the obligee to choose the best legal strategy for protecting his interests according to the gravity of the breach and the feasibility of performance (17). It should be noted that the right of rescission, as a final remedy, is subject to limitations and cannot be exercised absolutely and under all circumstances. In the case of breach of a stipulation as to attribute, if it is possible to compel the seller to deliver a sold item possessing the attribute, some legal systems and doctrinal views give priority to the right to compel performance over the right of rescission in order to preserve the principle of the binding force of contracts. Therefore, the function of the right of rescission becomes fully legitimate when the breach of the stipulation as to attribute is so fundamental that it renders performance of the principal obligation impossible or useless, or when the obligor refuses to perform it (18).

The Position of the Stipulation as to Attribute in the Contract of Sale

In the Iranian legal system, the stipulation as to attribute, as one of the most important conditions within a contract, has a special position in the contract of sale and means a specific description or characteristic agreed upon by the parties with respect to the subject matter of the transaction, namely the sold item. This stipulation is not merely a simple description of the goods; rather, as an ancillary but binding obligation, it stands alongside the principal obligation, namely the transfer of ownership in exchange for the price, and shapes the parties' intention in such a way that the existence or absence of that attribute directly affects the economic value of the sold item and the buyer's principal motive for concluding the contract (19). In fact, the stipulation as to attribute is attached to the sold item in order to guarantee the quality expected by the buyer and thereby enhance contractual security in transactions (20). The distinction between attribute in the general sense and stipulation as to attribute in its legal sense is necessary for understanding the position of this institution in the contract of sale. If the intended characteristic remains merely a general description and is not inserted into the contract as a condition, it may be regarded only as a simple description and may not entail the legal remedy of the option for breach of condition. However, when this characteristic becomes a condition within the contract, its legal nature changes and it is transformed into a contractual obligation whose breach creates for the obligee the right of rescission or the right to compel performance of the obligation. Therefore, the position of the stipulation as to attribute in the contract of sale goes beyond a simple description and falls within the category of implied principal obligations (4). From the perspective of legal foundations, the stipulation as to attribute has relative independence from the main contract, in the sense that although it depends on the contract, its existence as an independent obligation guides the parties' intention in determining the price and the terms of the transaction. In fact, the buyer pays part of the price in exchange for the existence of that specific attribute, and if the sold item lacks that attribute, the economic equilibrium of the contract is disturbed in favor of the seller and to the detriment of the buyer. This dependence and, at the same time, independence of the stipulation as to attribute causes the legislator to provide special remedies to protect the parties' intention and prevent deception or lesion, so that the parties may attain their ultimate purpose from the transaction (21). Consequently, the position of the stipulation as to attribute in the contract of sale may be defined as a guarantee of the expected quality, which plays a key role in creating trust and stability in commercial relations. This stipulation, as part of the parties' common intention, determines the scope of the seller's obligations and assures the buyer that the goods will be delivered with the agreed attributes. Without such an institution in the law of contracts, many transactions would face high risk because of uncertainty about the quality of goods, and the

principle of the binding force of contracts alone could not guarantee the buyer's interests against the seller's possible breaches concerning the attributes of the goods (22).

Remedies for Breach of Condition

In the Iranian legal system, remedies for breach of contract, especially in the case of breach of a stipulation as to attribute in a contract of sale, comprise a set of legal instruments designed to preserve contractual equilibrium and compensate the damage suffered by the obligee. These remedies are based on the principle of the binding force of contracts and respect for the parties' intention, and they are situated within a hierarchy that begins with specific performance of the obligation in kind and, where that is impossible or insufficient, leads to rescission of the contract and compensation for damages. A precise understanding of these remedies requires familiarity with the jurisprudential and legal foundations governing contracts, which regard exact performance of the obligation as the primary rule and rescission as an exceptional and secondary measure. The first and most fundamental remedy in Iranian law is the right to compel specific performance of the obligation in kind. When the seller breaches the stipulation as to attribute, the buyer initially has the right to compel the seller to deliver a sold item possessing that specific attribute. This approach is adopted because the principal aim of the parties in concluding the contract is to obtain the desired object itself with the agreed characteristics. In the Iranian legal system, unlike some legal systems that regard damages as the principal substitute, specific performance of the obligation in kind is recognized as the general and primary rule, and only when performance by the obligor or a third party is impossible do other remedies become relevant (10). Where compelling specific performance of the obligation in kind is not possible or is infeasible for reasons including the rule against harm or the principle that no one is obliged to perform what is beyond capacity, the obligee may resort to the right of rescission. The right of rescission, as a dissolving remedy, allows the buyer to be freed from the constraints of a contract that has lost its utility because of the seller's breach of the stipulation as to attribute. This right is in fact a type of legal self-help that enables the holder of the right, without the need for initial judicial intervention, to dissolve the contractual relationship and restore the situation to the pre-contractual state (4). In addition to specific performance and rescission, compensation for damages is also raised as a supplementary remedy in cases of breach of a stipulation as to attribute. Although rescission of the contract may to some extent prevent future losses, the buyer may have suffered losses because of the seller's breach of obligation that are not compensated by rescission alone. In Iranian law, although there are no explicit rules for precisely determining the types of damages, under the general rules of civil liability, the buyer has the right, in addition to rescission or specific performance, to claim damages suffered as a result of the breach of the condition from the seller (23). The interaction among these remedies requires a precise analysis of the terms of the contract and the nature of the stipulation as to attribute. The right of rescission, as a final remedy, becomes fully legitimate when the breach of the stipulation as to attribute is so fundamental that it makes performance of the principal obligation impossible or useless. Therefore, by prioritizing preservation of the contract through specific performance and by limiting rescission to necessary cases, the Iranian legal system seeks to strike a balance between the interests of the parties and to prevent the unjustified instability of contractual relations (24).

The Challenge of the Conflict Between the Right to Compel Performance and Rescission

The challenge of the conflict between the right to compel specific performance of the obligation in kind and the right of rescission is one of the fundamental and, at the same time, complex issues in private law, which becomes

especially concrete in cases of breach of a stipulation as to attribute in a contract of sale. This conflict is in fact rooted in the tension between two different approaches in legal systems: one approach regards the binding force of contracts and *pacta sunt servanda* as the rule and gives priority to the exact performance of contractual terms, while the other allows the obligee to terminate the legal relationship unilaterally where the principal purpose of the contract is not achieved. In Iranian law, this challenge has special dimensions because of the priority given to specific performance of the obligation in kind, and it requires a precise explanation of the boundaries between these two remedies. One of the principal challenges in this conflict is identifying the obligee's threshold of tolerance for accepting defective performance of the obligation. When the seller breaches the stipulation as to attribute, the question arises whether the buyer may immediately rescind the contract or whether he must first compel the seller to repair the sold item or deliver a sold item possessing the attribute. If the right to compel performance is treated as the general rule, the buyer is placed in a legal predicament in which he is forced, for the sake of preserving the contract, to accept incomplete or corrective performance, even if this conflicts with his economic interests. This challenge intensifies where performance in kind requires abnormal costs or a long period of time, which may itself cause additional loss to the buyer (1). Another challenge is the dissolving nature of the right of rescission as opposed to the contract-preserving nature of the right to compel performance, which can lead to uncertainty in the legal status of the sold item. While the buyer is examining the possibility or impossibility of compelling the seller to perform the obligation, the status of ownership of the sold item and the responsibilities arising from it remain uncertain. This uncertainty, especially in commercial transactions where speed and clarity in the transfer of ownership are vital, may harm the parties and even third parties. Therefore, precise determination of the point at which the right to compel performance, because of the seller's inability or unwillingness, gives way to the right of rescission is among the most difficult issues in the theory of contractual remedies. From an economic perspective, this conflict is also linked to the theory of efficient breach of contract. If the cost of specific performance for the seller is much higher than the loss caused to the buyer by breach of the stipulation as to attribute, compelling specific performance of the obligation in kind is economically inefficient. Nevertheless, the Iranian legal system, by emphasizing contractual morality and *pacta sunt servanda*, often refrains from expressly accepting this theory and insists on the buyer's right to compel the seller. This tension between economic efficiency and the ethical principles of law is the principal challenge in interpreting and applying rules relating to breach of a stipulation as to attribute, and it requires careful balancing by the judge. Ultimately, the challenge of the conflict between these two rights lies in determining the obligee's right of choice in moving from specific performance to rescission. May the buyer resort directly to rescission without proving the impossibility of performance? The answer to this question differs across legal systems. In Iranian law, it appears that rescission becomes legitimate as a final remedy only where compulsion to perform is impossible or does not lead to a result. Therefore, the main challenge for researchers and judges in this field is to draw precise boundaries within which the buyer's right to rescind the contract because of breach of the stipulation as to attribute, as a legitimate mechanism for exiting the contract, prevails over the seller's right to continue performance of the obligation (2).

Jurisprudential Analysis of the Conflict Between Remedies

In legal systems, when the seller commits a breach of a stipulation as to attribute, namely quality, in delivering the goods, the buyer faces a set of remedies. One of the fundamental challenges is determining the priority of, or the possibility of combining, specific performance of the obligation in kind and the right of rescission. From a

theoretical perspective, specific performance of the obligation in kind is based on the premise that contractual obligations must be performed precisely so that the legitimate expectation of the other party is realized, whereas the right of rescission is regarded as a mechanism for release from the contract in the event of fundamental breach or impossibility of performance (25). In analyzing this conflict, it should be noted that the right of rescission is generally recognized as a final remedy in cases where the breach of contract is so serious that it affects the principal purpose of the transaction. By contrast, specific performance of the obligation in kind is presented as a direct mechanism for achieving the result agreed upon in the contract. In some legal systems, the parties may, where the desired quality is not achieved, have the right to choose between compelling repair and rescinding the contract; however, this choice is often limited to specific circumstances provided for in the contract or determined by law (26). From the perspective of economics and efficiency in contract law, the choice between these two remedies often depends on the costs of performance and the value of the goods forming the subject matter of the transaction. In contracts involving existing goods, compelling specific performance of the obligation in kind, namely delivery of goods conforming to the attribute, may be less costly, whereas in manufacturing contracts, rescission of the contract and receipt of damages may be considered a more efficient remedy. Therefore, the conflict between these two rights is not merely a legal issue, but also a matter related to economic efficiency in the management of breach of contract (1). Resolving this conflict requires careful examination of the nature of the stipulation as to attribute in the contract. If the breach of the attribute is such that it undermines the foundation of the transaction, the right of rescission takes priority as a mechanism for protecting the buyer's interests. However, if it is possible to cure the defect in the attribute without imposing abnormal costs on the seller, legal systems tend to direct the buyer first toward specific performance of the obligation in kind in order to preserve contractual stability.

The Approach of Iranian Positive Law

The approach of Iranian positive law toward breach of a stipulation as to attribute in a contract of sale is based on a combination of jurisprudential principles and codified rules of the Civil Code, seeking to establish a logical balance between the principle of the binding force of contracts and protection of the obligee's rights. In the Iranian legal system, the contract of sale, as a binding contract, obliges the parties to perform their obligations precisely, and the legislator, in various articles of the Civil Code, including Articles 235, 236, and 379, has emphasized the need to observe the agreed attributes in the sold item. Accordingly, if the sold item lacks the stipulated attributes, the legislator initially directs the obligee toward use of the right to compel specific performance of the obligation in kind, where possible, so that the contract may be preserved and its premature dissolution prevented. Where specific performance of the obligation in kind, that is, delivery of a sold item possessing the agreed attributes, is impossible or the obligor refuses to perform it, the Iranian Civil Code grants the obligee the right to rescind the contract under the title of the option for breach of a stipulation as to attribute. This right of rescission is designed as a secondary remedy for protecting the parties' intention and preventing unjust harm to the buyer, because the absence of the desired attribute may seriously disturb the economic equilibrium of the contract and eliminate the buyer's motive for concluding it. Nevertheless, exercise of this right of rescission is subject to special rules and should not be interpreted in a manner that endangers the security and stability of transactions; rather, it should be regarded as a mechanism for remedying a fundamental breach of promise (27). The principal challenge in the Iranian legal approach is the precise clarification of the boundary between the right to compel specific performance of the obligation in kind and the right of rescission. Thus, in judicial practice and legal doctrine, priority is given to

compelling the obligor to perform the obligation, namely repair or replacement of the sold item, and rescission is accepted only as the last resort, or *ultima ratio*, where compelling the obligor to perform the obligation is technically impossible or results in abnormal harm to the parties. This hierarchy of remedies reflects the tendency of the Iranian legal system to preserve contracts and prevent instability in commercial relations, in which rescission, as an exception to the principle of binding force, becomes legitimate only in cases of fundamental breach that impairs the principal purpose of the contract (28). The approach of Iranian positive law to compensation for damages resulting from breach of a stipulation as to attribute emphasizes the principle of full compensation, such that even where the right of rescission or specific performance is exercised, the obligee may, in addition to the principal remedy, claim damages arising from non-performance or defective performance of the obligation. This comprehensive approach is designed to restore the obligee to the position in which he would have been had the contract been properly performed, and it reflects the legislator's effort to create an efficient legal system in which the parties' intention is respected and their economic rights are protected against possible breaches (29).

Prioritization Between the Two Remedies

In Iranian private law, the issue of conflict between the right to compel specific performance of the obligation in kind and the right of rescission in cases of breach of a stipulation as to attribute in a contract of sale is one of the challenging and fundamental debates in the field of contractual remedies. When the goods forming the subject matter of the transaction lack the stipulated attribute, the buyer faces two different legal approaches: first, resort to the option for breach of a stipulation as to attribute, which allows him to rescind the contract; and second, a claim for specific performance of the obligation in kind, meaning compelling the seller to provide goods possessing the prescribed attributes. In the Iranian legal system, the rule is the necessity of *pacta sunt servanda* and performance of the contract; therefore, specific performance of the obligation in kind is recognized as the first and principal remedy. Nevertheless, the right of rescission is provided as a protective instrument for the buyer in cases where specific performance is impossible or burdensome for him. This conflict is in fact a confrontation between two objectives: preserving the continuity of the contract and protecting the intention and interests of the injured party, for which different approaches to prioritization have been proposed in the economic analysis of law. In prioritization, it should be noted that the dominant approach in Iranian law views the right of rescission as the last resort, or *ultima ratio*, in response to breach of contractual obligations. Where it is possible to compel the seller to deliver a sold item possessing the attribute, the buyer may not dissolve the contract without a justified reason and solely by invoking the right of rescission, because dissolution of the contract conflicts with the principle of binding force and the stability of transactions. Nevertheless, if the breach of the stipulation as to attribute is such that it undermines the basis of consent, or if specific performance of the obligation in kind requires the seller to bear abnormal and unreasonable costs, or if the buyer, because of the nature of the goods, no longer wishes to receive them, the right of rescission appears to be the more efficient remedy. Therefore, the relationship between these two remedies is not one of free and equivalent choice, but rather a logical hierarchy in which the right to compel specific performance of the obligation in kind takes precedence over the right of rescission, unless special circumstances prevent specific performance or the buyer, because of a fundamental breach, prefers dissolution over preservation of the contract (30).

Limitations on Specific Performance of the Obligation in Kind

In the legal system, although compelling specific performance of the obligation in kind is recognized as one of the principal remedies for breach of contract, this right is not absolute and, when confronted with practical realities and the foundations of contractual justice, faces numerous limitations. In cases of breach of a stipulation as to attribute in a contract of sale, courts and legal systems, before issuing an order compelling the seller to deliver goods conforming to the agreed attribute, must examine whether performance of such an order is physically, legally, and economically possible and reasonable. These limitations are applied to prevent the imposition of abnormal costs on the seller and to ensure efficiency in commercial relations. The first and most obvious limitation is the impossibility of specific performance, which may arise from physical or legal causes. Where the goods forming the subject matter of the transaction are such that correction of their attribute or replacement with conforming goods is practically impossible, for example because of destruction of the original goods or the impossibility of producing goods with those specific characteristics, the court cannot issue an order whose enforcement is impossible in reality. In such circumstances, specific performance of the obligation in kind gives way to substitute remedies, such as rescission of the contract and damages, in order to avoid the issuance of futile judicial orders (31). The second important limitation is abnormal costs and economic disproportionality. In many legal systems, if the cost of specific performance of the obligation in kind, namely the cost of repairing or replacing the goods, is grossly higher than its actual value to the buyer or the benefit obtained from its performance, the court refuses to order specific performance. This approach is based on the economic analysis that imposing heavy costs on the seller in order to secure a minor benefit for the buyer results in a waste of resources and reduces contractual economic efficiency; therefore, in such cases, payment of damages is preferred as a more efficient substitute (1). The third limitation concerns the nature of the goods and their substitutability. If the goods forming the subject matter of the sale are fungible and easily replaceable in the market, courts are usually less inclined to issue an order for specific performance of the obligation in kind, because the buyer can achieve the same desired result by receiving damages and purchasing similar goods from the market. By contrast, specific performance of the obligation in kind is more applicable in cases where the goods have unique characteristics and cannot easily be replaced in the market; thus, with respect to ordinary and commercial goods, greater limitations exist on the application of this remedy. Ultimately, the conflict between the right to compel specific performance of the obligation in kind and the right of rescission in cases of breach of a stipulation as to attribute is sometimes resolved by imposing limitations on the right to compel performance. If the breach of the stipulation as to attribute is so serious that it constitutes a fundamental breach and deprives the buyer of the principal purpose of the contract, legal systems may prefer the right of rescission over the right to compel specific performance of the obligation in kind. In these circumstances, compelling the seller to perform the obligation despite a fundamental breach may lead to the continuation of a defective contractual relationship that conflicts with the buyer's interests and contractual stability. Therefore, in cases of fundamental breach, judicial limitations are imposed on the right to compel performance in order to pave the way for rescission and the buyer's release from the contract (25).

Critical Review of Judicial Practice

In examining judicial practice concerning the conflict between the right to compel specific performance of the obligation in kind and the right of rescission in cases of breach of a stipulation as to attribute in sale, we encounter

fundamental challenges arising from the confrontation between the classical principles of contract law and contemporary commercial realities. Courts, when faced with this conflict, are often placed in a difficult position. On the one hand, they are required to observe the principle of the binding force of contracts and to realize the buyer's legitimate expectations, which entails issuing an order for specific performance of the obligation in kind. On the other hand, they face practical limitations in imposing defective or costly performance on the seller, which leads them toward acceptance of the right of rescission. This fluctuation in judicial practice results from the absence of clear and unified criteria for distinguishing remediable breaches from fundamental breaches, which leads to contradictory judgments in similar cases (32). The judicial approach in different legal systems reveals a deep gap between theory and practice. Although in many legal systems, especially in the civil law tradition, specific performance of the obligation in kind is recognized as the primary remedy, in practice judicial practice shows an increasing tendency to limit this right and to prefer rescission or payment of damages. This shift in judicial practice is often not based on changes in statutory texts, but rather on practical considerations, including the length of judicial proceedings and the difficulty of supervising precise performance of qualitative obligations, which in practice reduces the efficiency of specific performance in the eyes of the judge (33). One of the main weaknesses in judicial practice is the absence of a precise and operational interpretation of the concept of fundamental breach in cases of breach of a stipulation as to attribute. Judges often encounter uncertainty in determining the boundary between minor breaches, which only justify damages, and fundamental breaches, which authorize rescission. This ambiguity causes the right of rescission, in some cases, to be used as a mechanism for release from the contract even where the goods have only remediable defects. This conflicts with the principle of contractual stability and reflects an imbalance in judicial practice in protecting the rights of the parties to the transaction (34). Economic analysis of judicial practice shows that judges are unconsciously moving toward economic efficiency. In cases where the cost of repairing the attribute or replacing the goods is abnormally higher for the seller than its economic value to the buyer, judicial practice rarely orders specific performance of the obligation in kind and prefers to direct the buyer toward rescission or damages. Although this approach is defensible from an economic perspective, from a legal perspective it amounts to indirect coercion of the buyer to accept rescission of the contract against his will and contrary to the express terms of the contract, and it therefore requires serious criticism from the perspective of the foundations of private law (1). In addition, judicial practice in dealing with the stipulation as to attribute sometimes suffers from extremes. In some cases, judges adopt an overly strict approach and regard every breach of attribute as giving rise to the right of rescission, while in other cases, even in the presence of serious breaches, they limit the buyer solely to damages. This unpredictability in judicial decisions seriously threatens the legal security of transactions. To resolve this problem, judicial practice requires the development of more objective criteria, such as the effect of the breach on the principal purpose of the contract and the relative cost of performance, so that the conflict between these two remedies can be resolved on the basis of logical principles rather than judicial preferences. Current judicial practice in resolving the conflict between specific performance of the obligation in kind and the right of rescission relies more on pragmatic and practical considerations than on firm legal foundations. This situation further demonstrates the need to reconsider the manner in which judicial decisions are issued and to develop more precise guidelines for judges, so that the buyer's rights in obtaining goods conforming to the stipulated attribute are preserved while abnormal pressure on the seller and unnecessary instability in contractual relations are avoided (18).

Conclusion

The conflict between the right to compel specific performance of the obligation in kind and the right of rescission in cases of breach of a stipulation as to attribute is one of the fundamental challenges in contract law, rooted in the tension between the principle of *pacta sunt servanda* and protection of the party injured by breach. Whereas specific performance emphasizes the preservation and stability of the contract, the right of rescission seeks to restore the pre-contractual situation for the party harmed by the non-conformity of the sold item with the prescribed attributes. The findings of this study show that an absolute approach to either of these two remedies, without regard to the nature of the breach and the specific circumstances of the contract, may lead to unjust results and economic inefficiency. Comparative examination shows that advanced legal systems, moving beyond traditional approaches, have turned toward the criterion of fundamental breach in order to make the scope of the right of rescission more limited and more targeted. In Iranian law, ambiguity in the prioritization of these remedies and the absence of explicit objective criteria for determining when rescission is permissible have led to inconsistent judicial approaches. This situation not only endangers the legal security of the contracting parties, but also causes rescission, instead of being a last resort, to become the first instrument for exiting loss-making contracts. To resolve these challenges, it is proposed that the legislator, in future reforms of the Civil Code, redefine the hierarchy of remedies with emphasis on the principle of favoring the preservation of the contract. Accordingly, it should be expressly provided that in cases of breach of a stipulation as to attribute, the buyer must initially claim repair or replacement of the sold item, namely specific performance of the obligation in kind, and only where these measures are impossible, disproportionate, or accompanied by unjustified delay should the right of rescission arise. From the perspective of judicial practice, it is proposed that courts, by relying on the economic analysis of law, consider transaction costs and economic efficiency in examining rescission claims. This means that if the cost of repairing the sold item is significantly lower than the loss resulting from dissolution of the entire contract, the court should encourage the buyer to accept specific performance of the obligation in kind and refrain from issuing a rescission judgment, unless the breach of the attribute is such that it fundamentally destroys the buyer's principal purpose in concluding the contract. At the contractual level, litigants and legal advisers are advised to rely on the principle of party autonomy and carefully provide for the consequences of breach of stipulations as to attribute in the text of the contract. By determining express rescission clauses or corrective clauses, the parties can define the scope of their powers in the event of breach, so that when a dispute arises there is no need to rely on ambiguous general rules and referral of the case to courts can be avoided. Finally, it should be noted that transition from a rescission-oriented approach to a performance-oriented approach requires a change in the legal culture of the country. This change does not mean weakening the buyer's rights; rather, it means creating a stable balance in which the contract, as an instrument for the exchange of value, is preserved as far as possible, and dissolving remedies are applied only in necessary cases and as a last resort.

Acknowledgments

We would like to express our appreciation and gratitude to all those who helped us carrying out this study.

Authors' Contributions

All authors equally contributed to this study.

Declaration of Interest

The authors of this article declared no conflict of interest.

Ethical Considerations

All ethical principles were adhered in conducting and writing this article.

Transparency of Data

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

Funding

This research was carried out independently with personal funding and without the financial support of any governmental or private institution or organization.

References

1. Shavell S. Specific Performance versus Damages for Breach of Contract. Harvard Law and Economics Discussion Paper, 2005.
2. Jovicic K. The Concept of the Fundamental Breach of Contract in the CISG. *Strani Pravni Zivot*. 2018(4):39-50.
3. Delfini F. La Renuncia a la Resolucion por Incumplimiento y la Practica de los Contratos Internacionales. *Milan Law Review*. 2025;6(1):1-9.
4. Azimi Manesh M, Jafari Fesharaki M, Ghorbani Far M. A Comparative Analysis of Cases of the Right of Termination Based on the Principle of Party Autonomy in Iranian Law and the Convention on the International Sale of Goods. *Encyclopedia of Comparative Jurisprudence and Law*. 2024:1-23.
5. de Mascarenhas Ataide RPC, Boura M. Termination of Commercial Sale Contracts under the OHADA Uniform Act Relating to General Commercial Law. *European Business Law Review*. 2025;36(6).
6. Plass S. Modernizing Notice of Breach Rules to Preserve Contract Remedies. *University of Michigan Journal of Law Reform*. 2023;57(1):57-108.
7. Khanderia S. Termination for Breach: The Prospects of the Unidroit Principles of International Commercial Contracts to Interpret and Supplement the Indian Law of Contract. *Uniform Law Review*. 2022;27(4):512-42.
8. Zdravkovic U. The Right to Suspend Performance in Case of Anticipatory Breach of Contract on International Sale of Goods. *Zbornik Radova Pravnog Fakulteta u Nisu*. 2023;62(99):189-206.
9. Al-Shammari ANA. The Technical Foundations of the Theory of Termination. 2015.
10. Shakiba AH, Qasmi M. An Investigation into the Specific Performance Remedy for Breach of Contracts: A Comparative Study of the Islamic Iranian Legal System and Common Law. *Journal of Shariah Law Research*. 2022;7(1):43-62.
11. Marandi MR, Homayonnia P. Effects and Consequences of Termination of Contract in Iranian Law. *Journal of Social Sciences and Humanities Research*. 2019;7(02):22-5.
12. Riahi, Sadeghi, Parsapour. Priority of the Right to Compel Performance over the Right of Termination in Iranian Court Judgments and a Critique of It. *Scientific Journal*. 2019;15(2):241-59.
13. Guyvan PD. The Duration of the Civil Obligation, the Termination of the Contract. *Reality of Politics Estimates-Comments-Forecasts*. 2022;22(4):42-55.
14. O'Sullivan J. Rescission as a Self-Help Remedy: A Critical Analysis. *The Cambridge Law Journal*. 2000;59(3):509-43.
15. Gibson A. Discharge and Breach of Contract. *Introduction to Business Law in Papua New Guinea* 2024.
16. Emadi Z, Mazarei A. The Non-Rescindable Definite Contracts in Islamic Sharia and Iranian Law. *International Journal*. 2015.
17. Asgari J, Esmaili M. The Longitudinal or Parallel Relationship between the Right to Compel Performance and the Right of Termination as a Result of Breach of Condition. 2016.
18. Stannard JE, Capper D. Termination for Breach of Contract: Oxford University Press; 2020.

19. Tavakkolinia O. Stipulation of Quality Regarding the Parties to a Sale Contract and the Legal Sanction for Its Breach. *Studies in Islamic Jurisprudence and Legal Principles*. 2020;41(14):85-112.
20. Sheikh F, Cafa MA, Bahremand M. Examining Conditions Contrary to the Nature of the Contract in Imami Jurisprudence and Iranian Statutory Laws. *Comparative Studies in Jurisprudence, Law, and Politics*. 2023;5(3):41-68.
21. Baladehi AE, Niknejad J. Evaluating Legal Status of Inconsistent Possessions with Stipulation. *Review of European Studies*. 2017;9:271.
22. Pirhaji M, Eskandari-Pudeh MR. Role of Custom in Contract Principles: Approaching towards Iranian Law. *Asian Social Science*. 2014;10(7):79.
23. Zareshahi A. A Comparative Study of Damages and Price Reduction Remedy for Breach of Sale Contract under CISG, English and Iranian Laws. *Journal of Politics and Law*. 2016;9(10).
24. Beale H, Dugdale T. *Contracts between Businessmen: Planning and the Use of Contractual Remedies*. *British Journal of Law and Society*. 1975;2(1):45-60.
25. Stremitzer A. Standard Breach Remedies, Quality Thresholds, and Cooperative Investments. *The Journal of Law, Economics, & Organization*. 2012;28(2):337-59.
26. Bradgate R, White F, Llewelyn M. *Commercial Law*: Oxford University Press; 2012.
27. Fatemi SMGS. Autonomy and Equal Right to Divorce with Specific Reference to Shi'i Fiqh and the Iranian Legal System. *Islam and Christian-Muslim Relations*. 2006;17(3):281-94.
28. Treitel GH. *Remedies for Breach of Contract: A Comparative Account*: Oxford University Press; 1988.
29. Abadi MH, Kalkoshki AA. Loss Compensation Practices in International Sales. *Journal of Politics and Law*. 2017;10:118.
30. Kim IH. Warranty and the Pay-to-Be-Paid Rule in Korea. *Journal of Maritime Law and Commerce*. 2012;43(4):9.
31. Lando H, Rose C. On the Enforcement of Specific Performance in Civil Law Countries. *International Review of Law and Economics*. 2004;24(4):473-87.
32. Schwartz A. The Case for Specific Performance. *The Yale Law Journal*. 1979;89(2):271-306.
33. Anidjar LY, Katz O, Zamir E. Enforced Performance in Common Law versus Civil Law Systems: An Empirical Study of a Legal Transformation. *The American Journal of Comparative Law*. 2020;68(1):1-54.
34. Rowan S. *Remedies for Breach of Contract: A Comparative Analysis of the Protection of Performance*: OUP Oxford; 2012.