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The Concept and Foundations of Contract Avoidance in Common Law and the Feasibility of Its Adoption in Iranian Law

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ABSTRACT

This study aims to comparatively examine the concept and legal effects of voidable contracts in common law and to assess the feasibility of utilizing their functions within the Iranian legal system. The research employs a descriptive-analytical method and a comparative approach. In addition to examining the institution of the voidable contract in common-law contract law, it analyzes the corresponding concepts in Iranian law and Imamī jurisprudence. The findings indicate that, although both voidable contracts in common law and non-effective contracts in Iranian law are intended to protect parties whose consent has been impaired, they differ fundamentally in terms of their theoretical foundations, the point at which their legal effects arise, and the mechanisms through which the injured party is protected. Under common law, a voidable contract is valid and enforceable from the moment of its formation and retains all its legal effects until the right of avoidance is exercised. By contrast, under Iranian law, a non-effective contract lacks full legal effect from the outset, and the production of its legal effects is contingent upon ratification by the person entitled to grant it. Moreover, the broader protection afforded by common law to bona fide third parties, together with the limitation of the effects of avoidance in certain circumstances, has enhanced the security and stability of transactions, particularly in commercial relations. Iranian law, however, continues to rely on the traditional foundations of Imamī jurisprudence in this area, and the protection of third parties is generally recognized only in exceptional circumstances. The results demonstrate that the direct adoption of the institution of the voidable contract in Iranian law would encounter serious challenges due to the conceptual structure of the Civil Code, the distinction between nullity, non-effectiveness, and termination, and the jurisprudential principles governing contractual validity. Nevertheless, economic developments and the proliferation of complex contracts have revealed the need to expand certain existing legal institutions. Accordingly, this study concludes that, rather than fully transplanting the institution of the voidable contract, developing the capacities of institutions such as non-effectiveness and the doctrine of non-opposability, while strengthening the protection of bona fide third parties, could address the requirements of modern transactions and commercial relations without undermining the coherence of the underlying jurisprudential and legal principles.

Keywords: *voidable contract, non-effective contract, nullity, non-effectiveness, Iranian law, common law, comparative law, bona fide third parties.*

Introduction

Contract law is one of the most fundamental branches of private law because a substantial proportion of economic and commercial relations, as well as many social interactions, are formed on the basis of contracts. A contract is regarded as the principal instrument for realizing the parties' intentions, transferring wealth, creating obligations, and regulating private relations. Accordingly, the effectiveness of a legal system in ensuring transactional security depends largely on the rules governing the formation, validity, and dissolution of contracts. One of the most important challenges in contract law is therefore to establish a balance between two fundamental values: the binding force and stability of contracts, on the one hand, and the protection of free will and contractual justice, on the other. The greater the emphasis that a legal system places on the binding force of contracts, the more likely it is that persons who have entered into contracts under the influence of mistake, duress, fraud, or exploitation will be deprived of adequate protection. Conversely, the more broadly the parties' volition is protected, the greater the risk of instability in contractual relations and diminished transactional security. The manner in which these two values are balanced constitutes one of the principal distinctions among contemporary legal systems in the field of contract law. Among these systems, common law has developed the institution of the "voidable contract" as an intermediate solution to this conflict. Under this system, a defective contract is, in principle, considered valid and effective from the time of its formation and produces all its legal effects. Nevertheless, a person whose consent has been impaired by factors such as mistake, duress, misrepresentation, undue influence, or incapacity may elect either to affirm the contract or to set it aside by exercising the right of avoidance. Thus, unlike a void contract, which has no legal effect from the outset, a voidable contract remains valid until the right of avoidance is exercised and is extinguished only at the election of the protected party. This institution, which has its historical roots in the development of the courts of equity, is now considered one of the most important mechanisms for protecting contractual justice and legitimate reliance in common-law contract law (1, 2). By contrast, Iranian law, which is based on Imamī jurisprudence and the civil-law tradition, analyzes contractual validity through the tripartite classification of valid, void, and non-effective contracts. Under this system, where one of the essential elements of a contract is absent, the contract is void and produces no legal effect. Where, however, there is a defect in consent or authority, the contract is generally classified as non-effective, and its effectiveness depends on ratification by the entitled person. Consequently, a defective contract under Iranian law generally lacks full legal effect before ratification, whereas the same contract under common law is effective and enforceable until the right of avoidance is exercised. This distinction is not merely a difference in legal consequences; rather, it derives from differences in the philosophical, jurisprudential, and theoretical foundations of the two legal systems. The importance of examining this issue has increased with the development of international trade, the proliferation of complex contracts, and the growing interaction among legal systems. In contemporary commercial relations, the protection of bona fide third parties, the rapid circulation of capital, and the reduction of uncertainty in transactions have acquired considerable importance, and many international instruments have moved toward enhancing flexibility in contractual relations. In this context, the UNIDROIT Principles of International Commercial Contracts, by establishing separate rules on grounds for avoiding contracts, including mistake, fraud, duress, and gross disparity, have attempted to strike a balance between the binding force of contracts and the protection of the parties' genuine intentions (3). Furthermore, recent works in international contract law, including those of Bonell, Cavalieri and Salvatore, indicate that contract avoidance and the protection of the parties' genuine intentions are now regarded as fundamental issues in international commercial law (4-6).

A review of the literature also indicates that, although the present subject has received some scattered attention, significant gaps remain in comparative analysis and the examination of its theoretical foundations. In Iranian scholarship, Sharif and Safari and Tavassoli Naini and Behzadipour have focused primarily on hardship, contractual adjustment, and termination, examining the possibility of revising contractual obligations from the perspective of the Principles of European Contract Law, the UNIDROIT Principles, and Iranian law (7, 8). Karami and Maghsoudpour have also compared the rules governing contract formation in common-law and civil-law systems but have not independently analyzed voidable contracts (9). Among Iranian studies, the article by Ansaripour and Souhani was the first to examine the concept of voidable contracts in English, French, and Iranian law and Islamic jurisprudence. It demonstrated that, although this category is not expressly recognized in Iranian law, examples of it may be identified in legislation and jurisprudence (10). By contrast, Khoubiyari and Razi, adopting a critical approach, concluded that most instances of voidable contracts in common law can be explained through the institutions of "non-effectiveness" or "relative non-effectiveness" in Iranian law and that there is no need to recognize a separate institution (11). Zamaniyan and Vatani, using an economic-analysis approach, examined the capacity of supplementary rules and the UNIDROIT Principles to remedy incomplete contracts and emphasized the potential usefulness of certain mechanisms derived from other legal systems in Iranian law (12). Despite the scholarly value of these studies, their examination reveals that no comprehensive study has yet simultaneously analyzed the theoretical foundations, grounds, legal effects, and feasibility of adopting the institution of the voidable contract in light of common law, Iranian law, and the UNIDROIT Principles of International Commercial Contracts. Most previous studies have either addressed only one ground of avoidance or limited themselves to a general comparison of legal systems. They have paid less attention to a foundational analysis of the distinction between a "voidable contract" and a "non-effective contract" and to the implications of this distinction for transactional security, the protection of bona fide third parties, and the effectiveness of contract law. The existing research gap therefore necessitates an independent and comprehensive inquiry into this subject. Accordingly, the central question of this study is whether the institution of the voidable contract in common law is merely a product of the historical and structural characteristics of that legal system or whether its functions can also be explained and, to some extent, accepted within the framework of Iranian law and Imamī jurisprudence. A further question is whether the existing institutions of Iranian law, particularly non-effectiveness, termination, contractual options, and the doctrine of non-opposability, can perform the same practical functions as the voidable contract, or whether developments in contemporary commercial relations necessitate reconsideration of the traditional structure of contract law.

The Concept, Nature, and Theoretical Foundations of the Voidable Contract in Common Law

One of the most important characteristics of the common-law system in the field of contracts is its distinction among different forms of contractual validity and its avoidance of a simple binary classification into "valid" and "void." Under this system, contractual validity is analyzed through three principal concepts: void contracts, voidable contracts, and unenforceable contracts. This classification is not merely terminological; rather, it reflects the distinctive common-law understanding of the nature of consent, the role of intention in contract formation, and the means of protecting contractual justice. Whereas many legal systems based on the Romano-Germanic tradition, including Iranian law, rely on a logical and conceptual analysis of contractual validity, common law is primarily concerned with the practical effects of a contract and the need to balance transactional stability against the protection of the parties' intentions. Accordingly, a contract may be fully valid and binding when concluded, while the law nevertheless permits one party to set it aside subsequently if certain defects exist (1).

The distinction among these three categories is based on the quality of consent and the enforceability of the contract. A void contract is regarded as having no legal existence from the outset because one of the essential elements of contract formation, such as intention, subject matter, or legality, is absent, or because the contract conflicts with mandatory rules or public policy. In such circumstances, the law does not recognize the contract at all, and no legal consequences arise from it. By contrast, an unenforceable contract is substantively valid, but the court refuses to enforce it because of non-compliance with statutory formalities, the expiry of a limitation period, or procedural impediments. The defect in this category therefore concerns judicial enforceability rather than validity. Between these two categories lies the voidable contract: a contract in which all constitutive elements are present and which is valid and effective at the time of formation, but in relation to which the law recognizes a right of avoidance in favor of the protected party because of a defect in that party's consent or capacity. Until this right is exercised, the contract retains all its effects, and the parties remain bound to perform it (13).

The foundation of this classification must be sought in the historical development of English law. Unlike many legal systems produced through systematic legislation, the common-law system emerged from the gradual interaction between two separate judicial institutions: the common-law courts and the courts of equity. The common-law courts, relying on formal rules and rigid procedures, declared a contract void only where a complete absence of consent or a conflict with law was established. Although this approach largely ensured transactional security, it frequently resulted in the enforcement of contracts that were formally valid but were not founded on free and genuine consent from the standpoint of justice. For this reason, the courts of equity developed mechanisms to prevent inequitable outcomes and to permit persons affected by mistake, duress, undue influence, or the abuse of superior bargaining power to rescind or, more precisely, avoid the contract. The institution of the voidable contract therefore did not result from theoretical design but from the gradual development of judicial practice and the attempt to balance legal rules with equitable justice (1).

From a theoretical perspective, voidability rests on three principal foundations. The first is the will theory, which makes contractual validity dependent on the existence of the parties' free and informed consent. According to this view, although consent exists in a voidable contract, it is not entirely free and independent because it has been affected by factors such as mistake, duress, or undue influence. Justice therefore requires that the injured party be given an opportunity to reconsider the decision. Under this analysis, rather than treating the contract as nonexistent from the outset, the law entrusts the party whose consent was defective with the choice of affirming or terminating it.

The second foundation is the doctrine of equity, which has played a decisive role in the development of common-law contract law. The philosophy of the courts of equity was based on the proposition that the mechanical application of common-law rules does not always produce just outcomes and that judicial intervention may sometimes be necessary to prevent the abuse of contractual rights. From this perspective, voidability is a means of protecting the weaker contracting party, not because the contract was invalid from the beginning, but because its enforcement in particular circumstances would be inconsistent with justice. For this reason, the right of avoidance belongs exclusively to the party whose consent was impaired, and neither third parties nor the court may invoke it on their own initiative, except in exceptional circumstances.

The third foundation is the functional analysis, which has acquired a distinctive position in modern contract-law scholarship. According to this view, voidability is a mechanism for introducing flexibility into the contractual system. If every defect in consent resulted in the absolute nullity of the contract, economic security and public confidence in transactions would be seriously impaired because no person could be certain that a contract would remain effective. Conversely, if all contracts were treated as binding regardless of the quality of consent, contractual justice and freedom of will would be undermined. Voidability provides an intermediate solution: the contract remains valid until the right of avoidance is exercised, while the injured party may affirm or terminate it if doing so is considered advantageous. For this reason, many authors have described this institution as a “safety valve” within the contractual system, allowing transactional stability to coexist with the protection of the parties’ genuine intentions (13).

One of the most important consequences of this analysis is the recognition of the initial validity of the voidable contract. Unlike a non-effective contract under Iranian law, which lacks legal effect until ratified, a voidable contract under common law is valid from the time of formation and produces all its legal effects. Nevertheless, the exercise of the right of avoidance generally has retroactive effect, meaning that, following avoidance, the contract is treated as having been ineffective from the outset, and the parties must, insofar as possible, be restored to their pre-contractual positions. This restoration is achieved through the remedy of restitutio in integrum and the restitution of exchanged performances (14). To preserve transactional security, however, common law does not treat this principle as absolute. Restrictions may apply where the property has been transferred to a bona fide third party, where the injured party has implicitly affirmed the contract, or where restoration to the previous position is impossible. These limitations demonstrate that the ultimate purpose of voidability is not to disrupt contractual relations but to establish a balance between individual justice and the stability of the transactional system. This balance is one of the defining characteristics of common-law contract law.

Instances of Voidable Contracts in Common Law

The institution of the voidable contract in common law acquires its meaning less as an abstract concept than through practical instances and judicial precedents. Its underlying rationale is to protect a person who has manifested an intention to conclude a contract but whose intention lacked the necessary freedom or awareness because of mistake, misrepresentation, duress, undue influence, or incapacity. In all such cases, the contract possesses initial validity at the time of formation, but the law grants the injured party the option to affirm or avoid it. The common feature of these instances is that none entails a complete absence of intention; rather, they impair the quality of consent or the person’s legal competence to assume obligations. Accordingly, the appropriate remedy under common law is not absolute nullity but the voidability of the contract.

A. Mistake

Mistake is one of the oldest grounds of voidability in common-law contract law. Nevertheless, not every mistake renders a contract void or voidable. Common law distinguishes between mistakes that prevent the formation of genuine agreement and mistakes that merely affect the quality of consent. The principal criterion is the effect of the mistake on the formation of actual agreement between the parties. Where the mistake prevents a genuine “meeting of the minds,” no contract is formed in principle, and the consequence is absolute nullity. For example, where the parties have entirely different understandings of the nature of the subject matter or the identity of the other contracting party, their intentions have never converged on the same matter. By contrast, where the mistake merely impairs the quality of consent, the courts of equity have adopted a more flexible approach and treated the contract as voidable (1). In contemporary English law, the scope of legally operative mistake has been narrowed by judicial developments and statutory reforms because courts have attempted to balance the protection of genuine intention against transactional security. From this perspective, mistake must not become a means of easy escape from disadvantageous contracts; it justifies avoidance only where it relates to a fundamental basis of the mistaken party's consent. Common law has therefore moved away from a purely subjective approach and has increasingly emphasized the objective assessment of the parties' conduct and the economic consequences of the contract.

B. Misrepresentation

One of the most important instances of a voidable contract is misrepresentation, or the making of a false statement. Misrepresentation occurs where one party induces the other to enter into a contract by making a false assertion or presenting misleading information. In such circumstances, consent exists, but it has been formed on the basis of inaccurate information. The law therefore recognizes a right of avoidance in favor of the misled party. Misrepresentation differs from mistake in its nature. Mistake generally has an internal origin and arises from a person's own erroneous understanding, whereas misrepresentation has an external origin and results from the conduct or statement of the other party. Reliance is consequently of particular significance in misrepresentation because the injured party has relied on the accuracy of the information provided and has decided to enter into the contract on that basis. An important development in this field occurred with the enactment of the Misrepresentation Act 1967 in English law. In addition to fraudulent misrepresentation, this Act extended protection to negligent misrepresentation and permitted the injured party, in certain circumstances, to claim damages in addition to avoiding the contract. The scope of protection for genuine consent was thereby expanded, and courts were given greater flexibility in compensating losses caused by inaccurate information. From the perspective of legal philosophy, misrepresentation constitutes a violation of good faith during contractual negotiations. Although common law has not recognized a general principle of good faith in the same manner as certain civil-law systems, it has considered the protection of the other party's legitimate reliance indispensable in cases of misrepresentation. Voidability in this context is therefore founded less on the absence of consent than on the need to protect legitimate reliance and prevent unfair exploitation (13).

C. Duress

Duress is one of the clearest examples of defective consent in common law. It refers to the application of illegitimate pressure or threats that deprive a person of freedom of decision and compel that person to conclude a contract that would not otherwise have been made. The essential characteristic of duress is that consent is not completely eliminated; rather, freedom of will is impaired. The contract therefore legally exists, but the coerced party is entitled to avoid it (15).

Historically, common law largely restricted duress to physical threats or threats against life and liberty. Modern judicial decisions, however, have expanded its scope. Economic duress is now recognized as an important ground of voidability in addition to physical duress. Economic duress occurs where one party abuses a superior economic position to compel the other party to accept terms that would never have been accepted under ordinary circumstances. A prominent example is a threat to breach an existing contract for the purpose of imposing a new price or different contractual terms. In determining whether duress exists, courts generally consider three elements: illegitimate pressure, a causal connection between that pressure and the conclusion of the contract, and the absence of a reasonable alternative for the injured party. These criteria demonstrate that the mere existence of economic or psychological pressure is insufficient; the pressure must be so serious that it effectively deprives the person of freedom of decision.

D. Undue Influence

Whereas duress is based on an express threat, undue influence is founded on psychological domination and the abuse of relationships of trust. Undue influence arises where one party, by virtue of a superior moral, social, familial, or professional position, affects the will of the other party to such an extent that the latter's decision can no longer be regarded as the product of independent choice (16).

Common law distinguishes between actual and presumed undue influence. In the first category, the exercise of influence must be directly proved. In the second, the law presumes the possibility of influence in certain relationships, such as those between solicitor and client, physician and patient, financial adviser and customer, or parent and child. In such cases, the burden of proof rests on the party who benefited from the contract to establish that it was concluded with free consent and following independent advice. The principal distinction between duress and undue influence is that, in duress, the will is affected by direct threats, whereas, in undue influence, dependency, trust, or psychological domination is the principal factor. Despite this distinction, both doctrines pursue the same objective: the protection of genuine freedom of will. Accordingly, the remedy in both cases under common law is the voidability of the contract.

E. Incapacity

The final category of voidable contracts concerns persons who lack full capacity for legal decision-making, including minors, persons with mental disorders, and intoxicated persons. In these cases, the central issue is not the existence or absence of consent but the person's ability to understand the nature and legal consequences of the contract. In relation to minors, English law distinguishes among contracts for necessaries, beneficial contracts, and other contracts. Contracts relating to the basic necessities of life or to education and employment are recognized as valid in order to support the minor's ordinary life. Contracts that may impose substantial financial obligations, however, are generally voidable, and the minor may affirm or reject them upon attaining the age of majority. This policy seeks to balance the protection of young persons against the legitimate expectations of those who contract with them. In relation to persons with mental disorders, the contract is presumed valid unless it is proved that the person lacked the capacity to understand the nature of the transaction at the time of formation and that the other party knew or ought to have known of that condition. The latter requirement is particularly important for preserving transactional security because, if every mental disorder rendered a contract invalid irrespective of whether it was ascertainable, public confidence in contractual relations would be seriously destabilized. A similar criterion applies to intoxicated persons. Where intoxication is so severe that the person is unable to understand the nature and consequences of the contract and the other party has taken advantage of that condition, the contract will be voidable. Common law therefore also balances the protection of vulnerable persons against transactional stability in this area (11).

Assessing the Feasibility of Adopting the Institution of Avoidance in Iranian Law

Assessing the possibility of adopting the institution of the voidable contract in Iranian law is not merely a comparative study of two legal systems; it requires an evaluation of the theoretical, jurisprudential, and functional foundations of two distinct systems. The institution of voidability in common law is the product of the historical development of the courts of equity and is based on the proposition that, notwithstanding certain defects in the parties' intentions or personal status, a contract is valid and enforceable when concluded, while the law grants the injured party the power to set it aside retroactively (2, 6). By contrast, Iranian law, which is founded on Imamī jurisprudence, analyzes contracts through the three institutions of validity, nullity, and non-effectiveness and generally makes contractual validity dependent on the complete fulfillment of the essential requirements set forth in Article 190 of the Civil Code (17). The central question is therefore whether the conceptual structure of Iranian law is capable of accommodating an institution under which a contract is considered effective at the time of formation but may subsequently be rendered ineffective from the outset through the unilateral exercise of a right by one party. Answering this question requires consideration of jurisprudential principles, the structure of the Civil Code, scholarly doctrine, and the practical needs of contemporary commerce.

The first obstacle to adopting the institution of avoidance is the fundamental distinction between "non-effectiveness" in Imamī jurisprudence and "voidability" in common law. Under Iranian law, a non-effective contract is one whose essential elements have been formed but which, because of a defect in consent or the absence of legal authority, does not yet produce its full legal effects; its effectiveness depends on ratification by the entitled person (17). A non-effective contract therefore lacks full effect from the outset and produces its effects only upon subsequent ratification. By contrast, a voidable contract under English law is considered valid and enforceable from the moment of its conclusion and produces all its legal effects unless the protected party exercises the right of avoidance (18). The fundamental distinction between the two institutions thus concerns the time at which legal effects arise. Under Iranian law, a defective contract lacks complete effectiveness until ratification, whereas under common law it remains valid until avoided.

Ghabouli Dorafshan and Mohseni similarly concluded, through a comparison of these two institutions, that although non-effectiveness bears certain functional similarities to voidability in terms of its protective purpose, the two cannot be fully equated with respect to their theoretical foundations and the time at which their legal effects arise (19).

From the perspective of Imamī jurisprudence, contractual validity is a normative construct created through the complete realization of a legally recognized cause. Where the elements of the contract exist, the contract is valid and effective; where one of the essential requirements is absent, the contract is either void or non-effective. Within this framework, the possibility of a contract that is valid but may subsequently be extinguished retroactively is difficult to reconcile with traditional jurisprudential analysis (20). Imamī jurists regard contractual validity as dependent on the realization of its legal cause, and that cause either exists from the outset or does not. It therefore appears analytically difficult to recognize an institution whose validity depends on a future decision by one of the parties. Katouzian similarly emphasizes that, under Iranian law, contractual effectiveness cannot remain indefinitely suspended: a contract is either effective or non-effective, and the law does not recognize an intermediate category between these two states (17).

This analysis is also consistent with the philosophical principle of the "impossibility of transformation of essence," according to which something that has come into existence cannot subsequently be treated as having been nonexistent in the past. Although this principle is not directly a legal rule, its influence is clearly visible in Imamī jurists' analysis of the causes that produce legal effects.

One important feature of Iranian law that reduces the need to adopt the institution of voidability is the precise distinction between "intention" and "consent." Article 190 of the Civil Code identifies intention and consent as two independent requirements for the validity of transactions and attributes different legal consequences to the absence or impairment of each.

Accordingly, the absence of intention renders a contract void because no juridical act has been created, whereas a defect in consent generally results in non-effectiveness because the declaratory intention exists but genuine consent is impaired (21).

For this reason, a mistake affecting intention generally results in nullity, duress results in non-effectiveness, fraud gives rise to a right of termination, and incapacity results in either nullity or non-effectiveness depending on its nature. This distinction means that many circumstances examined under the general category of voidable contracts in English law are addressed in Iranian law through separate institutions with different legal consequences (17).

As Jafari Langaroudi explains, instead of grouping all defects of will under a single category, Iranian law analyzes each defect according to its source and nature and provides a remedy proportionate to it (20).

Although the institution of non-effectiveness adequately resolves many disputes arising from defects of consent in traditional relations, its effectiveness has been questioned in complex commercial transactions, particularly international contracts, capital markets, and successive transfers of property.

Under Iranian law, until a non-effective contract is either ratified or rejected, the legal status of the transaction and subsequent transfers remains uncertain. This may undermine the security of the circulation of property (19). By contrast, under common law, the presumption is that the contract is valid, and third parties can rely more confidently on the apparent validity of transactions because the contract remains effective until the right of avoidance is exercised (6).

For this reason, some common-law scholars regard voidability as an institution that reduces transaction costs and enhances economic security because the continued validity of the contract is presumed and invalidity arises only through the exercise of the protected party's right (22).

One of the most important advantages of common law is its broad protection of bona fide third parties. Under equitable rules, where the subject matter of the contract has been transferred to a bona fide third party before the right of avoidance is exercised, the avoidance of the original contract will, in many cases, not be enforceable against the third party's rights (1).

Iranian law does not provide such comprehensive protection. Although indications of protection for bona fide third parties can be found in certain special legislation, such as the rules governing negotiable instruments and registered immovable property, no general doctrine has yet been developed in this regard (17).

For this reason, some scholars have proposed that, instead of fully adopting the institution of voidability, the doctrine of "non-opposability," which has developed in French law and modern international contractual instruments, should be expanded in Iranian law. This doctrine could preserve jurisprudential foundations while providing more effective protection to third parties (4, 5).

Two principal approaches to the adoption of voidability may be identified among Iranian legal scholars. The first maintains that the existing institutions of nullity, non-effectiveness, termination, contractual options, and rejection of unauthorized transactions already perform nearly all the functions of the voidable contract and that introducing a new institution would merely create conceptual confusion (17, 21).

The second approach, taking into account changes in economic relations and the expansion of international commerce, argues that Iranian law requires greater flexibility in regulating the consequences of defective contracts and that certain functions of voidability, particularly the protection of third parties and the preservation of transactional security, may be beneficial (19). Even the proponents of this approach generally do not advocate the wholesale transplantation of the common-law model but regard gradual reform of existing rules as more appropriate.

In view of the foundations of Imamī jurisprudence, the structure of the Civil Code, and the opinions of legal scholars, the direct adoption of the institution of the voidable contract in Iranian law appears to face substantial theoretical obstacles. The Iranian legal system is based on a precise distinction among nullity, non-effectiveness, and termination, and this classification is consistent with its jurisprudential foundations. Nevertheless, comparative analysis demonstrates that certain practical functions of voidability, particularly the protection of bona fide third parties, the reduction of transactional uncertainty, and the enhancement of security in the circulation of property, may inspire future reforms of the Civil Code. The development of the doctrines of “relative non-effectiveness” and “non-opposability” therefore appears more compatible with the structure of Iranian law than the complete transplantation of the voidable-contract doctrine. Such development could respond to the needs of contemporary commercial contracts while maintaining jurisprudential coherence.

The comparative analysis demonstrated that the institution of the voidable contract in common law is the product of the historical development of the courts of equity and is based on a functional approach to contracts. Under this system, a defective contract continues to be regarded as valid, and the law merely grants the injured party a right to avoid it. This approach enhances transactional security while providing considerable flexibility in responding to the needs of modern commerce (2, 6).

By contrast, Iranian law, relying on the foundations of Imamī jurisprudence, makes contractual validity dependent on the complete fulfillment of the essential conditions of the transaction and independently regulates the consequences of each defect in consent through the institutions of nullity, non-effectiveness, termination, and contractual options. Although this structure is theoretically more coherent, it faces challenges in certain areas, particularly the protection of bona fide third parties and the reduction of uncertainty in transactions (17, 19).

Consequently, the full adoption of the voidable-contract doctrine in Iranian law appears neither feasible nor necessary because it is not entirely compatible with the jurisprudential foundations and structure of the Iranian Civil Code. Comparative analysis nevertheless demonstrates that some of its functions, particularly the preservation of transactional security, the protection of bona fide third parties, the reduction of transaction costs, and the enhancement of contractual flexibility, can be utilized in Iranian law. The most appropriate solution is therefore the gradual reform of existing institutions through the development of the doctrines of “relative non-effectiveness” and “non-opposability” and the strengthening of statutory protection for bona fide third parties, rather than the direct transplantation of the common-law model.

Such an approach would preserve the theoretical coherence of Iranian law and fidelity to the foundations of Imamī jurisprudence while enabling the use of comparative-law achievements and responding to the growing needs of contemporary contractual and commercial relations. This conclusion is also consistent with modern contract-law instruments, which emphasize the preservation of contracts, the protection of legitimate reliance, and security in the circulation of transactions rather than the absolute invalidity of contracts (3-5).

Conclusion

The present study sought to explain the concept of the "voidable contract" in common law and to examine the possibility of adopting it in Iranian law. An examination of English legal sources demonstrated that voidability is one of the most important institutions of common-law contract law. It emerged from the historical development of the courts of equity and rests on the proposition that, despite certain defects in the parties' intentions or personal status, a contract is valid and enforceable at the time of formation, while the law grants the injured party the power to set it aside retroactively by exercising the right of avoidance. Common law therefore draws a clear distinction between the "initial validity of the contract" and the "right to set it aside," a characteristic that provides considerable flexibility in responding to the needs of economic relations. The examination of voidable contracts also demonstrated that mistake, fraud, duress, undue influence, misrepresentation, and incapacity are the principal circumstances in which English law or judicial precedent grants the injured party a right of avoidance in order to protect the parties' genuine intentions. The exercise of this right, however, is not absolute and may be barred by factors such as affirmation of the contract, unreasonable delay, or transfer of the subject matter to a bona fide third party. These limitations demonstrate that the primary objective of the institution is to balance the protection of individual volition against transactional security. By contrast, an examination of the foundations of Iranian law demonstrated that the Civil Code, under the influence of Imamī jurisprudence, analyzes contracts through the tripartite classification of "valid," "void," and "non-effective" and, unlike common law, does not recognize the concept of "defeasible validity." Under this system, each defect in consent or contractual deficiency is analyzed through a separate institution, including nullity, non-effectiveness, termination, contractual options, and the rejection or ratification of unauthorized transactions. Many of the functions of the voidable contract are thus performed without recognition of an independent category. Nevertheless, comparative analysis demonstrated that, although the "non-effective contract" under Iranian law and the "voidable contract" under common law share similarities in protecting the injured party, they differ fundamentally in their theoretical foundations, the time at which legal effects arise, and the manner in which third parties are protected. Under Iranian law, a non-effective contract lacks complete legal effect until ratified, whereas under common law a voidable contract remains fully valid and enforceable until the right of avoidance is exercised. From a functional perspective, the study also demonstrated that common law offers more effective mechanisms for protecting bona fide third parties, reducing transactional uncertainty, and securing the circulation of property. By contrast, under Iranian law, the uncertain status of certain non-effective transactions, particularly in complex commercial relations and chains of successive transfers, may reduce legal certainty and increase transaction costs. This distinction results less from deficiencies in Iranian law than from the different theoretical foundations of the two legal systems. In response to the principal research question, it may be concluded that the direct adoption of the institution of the voidable contract in Iranian law is neither theoretically feasible nor legislatively necessary in view of the foundations of Imamī jurisprudence, the structure of the Civil Code, and the logic underlying the classification of contracts. This conclusion, however, does not imply that Iranian law has no need to benefit from the achievements of comparative law. The experience of common law and modern contract-law instruments demonstrates that, without departing from jurisprudential principles, certain useful functions of this institution may be realized within the Iranian legal system through the development of existing rules, particularly by strengthening the protection of bona fide third parties, developing the doctrine of "non-opposability," limiting the uncertainty caused by non-effective transactions, and introducing greater flexibility into contractual relations. The most important finding of this study is therefore that the appropriate solution for Iranian law is not to adopt the label of the "voidable contract" but to employ its philosophy and functions through domestic institutions compatible with the foundations of Imamī jurisprudence. Such an approach would preserve the theoretical coherence of the Civil Code while enhancing transactional security, protecting legitimate reliance, improving the effectiveness of the contractual system in meeting the needs of domestic and international commerce, and providing a basis for gradual and targeted reforms in Iranian contract law.

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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.

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