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Validity and Functions of Custom in Iranian Contract Law and the UNIDROIT Principles of International Commercial Contracts: A Comparative Study

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ABSTRACT

Custom, as one of the factors influencing the formation, interpretation, and supplementation of contractual relationships, occupies different positions across legal systems. Given the increasing importance of commercial customs in regulating domestic and international contracts, the present study aims to examine and comparatively analyze the status and functions of custom in Iranian law and the UNIDROIT Principles of International Commercial Contracts. The principal research question is what status and functions custom has in each of these two legal frameworks and what capacities the UNIDROIT Principles offer for developing and systematizing the rules governing custom in Iranian contract law. The study employs a descriptive-analytical and comparative method based on an examination of statutory provisions, legal sources, and the provisions of the UNIDROIT Principles. The findings indicate that both systems recognize custom and commercial usages as influential in regulating contractual relationships, interpreting contractual terms, and filling contractual gaps or ambiguities. Under Iranian law, this role can primarily be explained on the basis of Articles 220, 224, and 225 of the Civil Code, whereas the UNIDROIT Principles, particularly Article 1.9, provide a more explicit and coherent framework for recognizing and applying usages and practices established between the parties. Furthermore, in both systems, custom is fundamentally connected with the parties' autonomy and cannot produce legal effects where it conflicts with their express agreement or with mandatory rules. The principal difference between the two systems lies not in the recognition of custom as such, but rather in the degree of legislative explicitness, the criteria for establishing its existence, and the manner in which the limits of its validity are determined. Accordingly, the UNIDROIT Principles may serve as a comparative model for formulating more coherent standards governing commercial custom in Iranian law. By distinguishing among custom, usage, and established practices and by defining criteria such as prevalence, consistency, recognition, and reasonableness, this model can contribute to the development and greater coherence of Iranian commercial contract law.

Keywords: *custom and usage, international commercial contracts, UNIDROIT Principles, Iranian law.*

Introduction

According to the findings of archaeologists, anthropologists, and sociologists, as well as inferences drawn from authoritative religious sources, the social nature of human beings is rooted in their very creation (fitrah). Human beings have always been social creatures and, in order to attain well-being and peaceful coexistence, have necessarily had to cooperate with others, participate in various spheres of social life, assume responsibility, and



contribute to the construction of their society. Undoubtedly, social life requires the “just regulation of collective relations” and the “equitable resolution of disputes arising from conflicts between individuals’ rights and duties,” objectives that have thus far been achieved through the establishment and application of various “legal rules.” Accordingly, certain binding legal propositions, such as the “obligation to fulfill promises” and the “obligation to return entrusted property,” have been regarded as rationally self-evident principles since the beginning of human existence. Other principles, however, such as the “prohibition of usury” and the “prohibition of excessive accumulation of wealth and hoarding,” owing to the limitations of human reason and their fundamental role in establishing sound social relations, have not been independently discoverable through reason and have instead been inspired by revelatory and religious concepts. Other social rules, which constitute the majority of social norms, have likewise arisen from specific, repetitive, and voluntary practices of the general public or particular groups thereof that came to be followed as binding. Thus, reason, religion, and custom have played almost simultaneous roles in the creation and establishment of various legal rules, contrary to the view of many legal scholars who regard the emergence of custom as preceding other sources of law (1, 2).

With the growth and development of societies and civil institutions and the diversification of social relationships, advanced legal systems began to employ objective instruments to facilitate and regulate social relations and to prevent disputes concerning the existence or absence of legal rules. These instruments—legislation and judicial precedent—may be regarded as comprehensive reflections of the substantive and original sources mentioned above. Although these two sources have acquired such significance in contemporary societies that they have even challenged the authority of earlier constitutive sources, they have never succeeded in eliminating them. This becomes even more evident in light of the diverse functions of custom in creating legal rules, identifying legal subjects, and determining the application of rules to particular instances. Indeed, even within international legal systems, considerable attention has been paid to the influential role of custom in the creation, proof, and application of legal rules. This role is particularly important in the field of contracts, especially in determining contractual terms, interpreting the parties’ intentions, and supplementing contractual obligations, where custom may operate alongside statutory rules and the express provisions of the contract in regulating contractual relations.

Given the position of custom in regulating contractual relations and its role in international commercial law, examining its status and functions under the UNIDROIT Principles is of particular importance. Accordingly, the examination of custom under the UNIDROIT Principles should not be confined merely to the rule contained in Article 1.9; its functions in the formation, interpretation, and supplementation of contractual relations must also be considered. On this basis, the principal research question of the present study is: What status and functions does custom have under Iranian law and the UNIDROIT Principles of International Commercial Contracts, and what similarities and differences exist between these two systems in this respect? In terms of its sources, the present study employs a library-based method, while its presentation and analysis are based on a descriptive-analytical approach. It seeks to identify the status and functions of custom within the Iranian legal system and the UNIDROIT Principles of International Commercial Contracts and to examine their points of convergence and divergence.

Terminology

Definition of Custom (Usage)

Custom is itself a concept whose meaning is determined by customary understanding. In the absence of a statutory definition, its technical meaning must therefore be identified with reference to custom itself. Legal scholars and jurists have offered various definitions. For example, custom has been defined as “a rule that gradually and spontaneously becomes established among all people or a group of them as a binding rule” (3). It has also been defined as “an act, method, or series of acts and methods that gradually, over time and through spontaneous repetition, without intervention by the legislative authority, becomes accepted and established among all members of society or a group of them, as a binding rule for regulating legal relations among members of society as a result of social needs” (4). It has further been described as “the mental familiarity of society or a particular group with a matter relating to legal relations” (5). Differences among these definitions are natural because a comprehensive definition of custom requires an understanding of its nature, elements, components, applications, the origin of customary phenomena, and the source of their binding force, all of which are matters of disagreement among scholars. This disagreement itself reflects the breadth of the role and scope of custom within the legal system. Five meanings of custom may be inferred from these views:

- (1) A category of legal rule, distinct from statutory rules, arising from public consciousness or recurrent social conduct.
- (2) A type of source of law that gives rise to numerous legal rules and is distinct from legislation, established principles of Islamic jurisprudence, judicial precedent, and legal doctrine.
- (3) A type of legal system based on the prevailing theories of jurists (common law) or judicial decisions (case law), as contrasted with a written statutory system (statute law).
- (4) The basis of the subject matter or legal consequence of legal rules.
- (5) A means of deriving religious or statutory legal rulings.

Custom, when understood as a legal rule, consists of material and psychological elements. The material element includes a specific act—whether an utterance, positive act, or omission—as the essential substance of custom; repetition; frequency and prevalence; continuity of repetition to such an extent that the time of its formation cannot be precisely delimited; the voluntary nature of the conduct; and the absence of its transformation into a statutory rule. The psychological element consists of the perceived binding character of the conduct. Significant disagreements exist concerning both the origins of customary practices and the source of their binding force. According to scholars, the factors responsible for the emergence of customary practices, namely the material element of custom, include the following:

Acts and directives of governmental authorities, including prophets, monarchs, and political and administrative systems: The conduct of rulers affects the conduct of the people (“people follow the religion of their rulers”), but this relationship is not one-directional, and historical experience demonstrates that rulers themselves have frequently been influenced by popular conduct. Government authorities have gradually formulated prevailing customs in the form of enacted laws and formally proclaimed them. The theory that regards the approval of the Lawgiver and the legal system as the criterion for the validity of custom presumably reduces the origin of custom to this factor.

The public conscience and collective will of the people: Members of society may, through the expression of a collective will, determine the rules governing social relations. Nevertheless, human beings are incapable of

perceiving certain needs, necessities, and realities of life, and collective will does not materialize in all circumstances. Legal systems therefore cannot dispense with other constitutive sources, such as religion and reason. Collective will is not necessarily identical to collective reason, and customs contrary to sound reason may arise, although collective reason is capable of distinguishing sound custom from corrupt custom. If public conscience and collective will are accepted as the origin of legal rules, the intervention of factors such as approval by the Lawgiver or reason should not be admitted at this stage, because the absence of their approval would, at least for a period, encounter resistance from the collective will.

Social needs and necessities and the natural demands of human beings: According to this view, custom is a social phenomenon arising from needs and necessities that members of society perceive by virtue of human nature and regard as essential to the preservation of life. The principal objection to this view is that it treats custom as innate, whereas, in explaining the elements of custom, the non-innate and non-instinctive nature of the conduct was identified as one of its characteristics.

Cultural and religious factors and ingrained attitudes, including religious emotions and beliefs, moral characteristics, national, ethnic, and tribal spirit, the tendency toward imitation, and respect for ancestral heritage: This theory describes the circumstances surrounding the formation of custom rather than its principal source. Accordingly, the effect of these factors is not to create custom but rather to determine its form and orientation.

Comparison with Similar Concepts

Practice

Unlike custom, practice encompasses not only collective conduct but also individual conduct. Articles 220, 225, 342, 344, 359, 521, and other provisions of the Iranian Civil Code indicate that occupational and professional practices, although binding when established and in the absence of an agreement to the contrary, do not yet possess all the characteristics of custom (6). A practice is a pattern of conduct repeatedly followed between two or more persons or within a particular occupational group in legal relations but which lacks the extended repetition and degree of prevalence necessary to constitute custom.

Under the UNIDROIT Principles, “usage,” in the sense of custom, is presented as equivalent to a long-continued practice. According to Comment 2 to Article 1.9 of the UNIDROIT Principles, practices established between the parties to a contract are automatically binding unless expressly excluded. The drafters of the Principles, rather than adopting an objective standard, left the determination of a practice to the circumstances of each particular case and do not regard conduct arising from only one previous transaction as an established practice. Some scholars have also described practices between the parties as “contractual custom” and, unlike established custom, which is regarded as a matter of law, consider it a question of fact whose proof rests with the contracting parties (7).

Customs

The terms *usage* and *custom* are accompanied by certain linguistic ambiguities. The term *usage* is sometimes used to refer to a practice or course of conduct and sometimes to a behavioral pattern that has developed into a binding rule. Traditionally, a distinction has been drawn between the two, although the bases for that distinction vary. In some accounts, *usage* refers to commercial, professional, or occupational practice, whereas *custom* refers to practice associated with a particular locality. In others, *usage* denotes merely a behavioral pattern, whereas

custom denotes the observance of that pattern accompanied by a belief in its binding force. In still other accounts, the two terms are treated as synonymous (8). It appears that the drafters of the UNIDROIT Principles have used *custom* to refer collectively to customary rules (*usages*) and practices established between contracting parties. This interpretation may be inferred from the expression “international commercial custom” in the Preamble to the UNIDROIT Principles, which is employed to describe the body of commercial usages and practices.

Practice of Rational Persons

Although, in the view of writers and Imami jurists, there is no conceptual incompatibility between custom and the practice of rational persons (*sīrat al-‘uqalā*), the latter, unlike custom, may originate either in conscious volition or in unconscious human nature, while custom, unlike the practice of rational persons, may be either sound or corrupt. Therefore, with respect to whether its origin is voluntary or innate, the practice of rational persons cannot simply be characterized as sound custom. The emphasis on the rational character of binding custom and the exclusion of irrational customs is among the distinguishing features of Imami jurisprudence compared with most legal systems and even Sunni jurisprudence, such that only a rational practice or custom may constitute a source of obligation. The UNIDROIT Principles likewise address this issue, although in a different manner. Whereas Imami jurisprudence treats rationality as a substantive condition for the validity of custom, the UNIDROIT Principles provide that a custom satisfying the substantive requirements will nevertheless not be binding where its application would be unreasonable (9). Thus, in Imami jurisprudence, rationality forms part of the constitutive basis of a customary rule, without which no customary rule can properly be conceived; whereas under the UNIDROIT Principles, unreasonableness operates as an impediment to the application of an otherwise valid customary rule, the removal of which in particular circumstances allows the usage to apply. According to Comment 5 to Article 1.9 of the Principles, a usage regularly observed by all traders in a particular branch of trade may nevertheless be inapplicable in a particular case because its application would be unreasonable.

The Relationship Between Usages and the UNIDROIT Principles

There are two intertwined forms of relationship between customary rules and the UNIDROIT Principles. On the one hand, the UNIDROIT Principles themselves derive from usages governing international commerce and have formulated a body of customary rules governing international trade—international commercial custom—in the form of the UNIDROIT Principles, which have been employed as a non-legislative instrument for the unification of law. On the other hand, the Principles themselves repeatedly affirm the legal validity of usage and practice in the contractual relationships of international traders, including subsequently developed usages. The present article concerns the latter relationship.

The Status of Custom in Legal Systems

The system governing the social relations of citizens through the establishment of a body of binding legal rules and the state’s guarantee of their enforcement is referred to as a “legal system.” These rules determine individuals’ rights and duties toward one another. While their binding force derives from factors known as the foundations of law, their existence is attributable to authorities referred to as the “sources of law.” Accordingly, the origins of the material element of legal rules—the proposition composed of a subject and a legal consequence—and their psychological element—their binding character—are respectively the “sources” and “foundations” of law. Every

legal rule also consists of two components, namely the subject and the legal consequence, which are discovered and derived through instruments known as the “methods of deriving legal rules.” Through analysis of the legal system, jurists have sought to identify the status of custom and have advanced various theories in this regard.

Juristic Theories Concerning the Status of Custom in the Legal System

A. Custom as a foundation of legal rules: The foundation of law refers to the binding force and authority that confers value on legal rules and provides the basis for their enforcement; more precisely, the origin of the validity of legal rules is called the foundation of law. “Public conscience and collective belief” are among the concepts introduced as the foundation and source of the binding force of legal rules. Proponents of this idea attribute a legal consciousness to society and maintain that legal rules emerge from this collective consciousness. Following the formation of society, the aggregation of individuals generates a superior force that prevents the manifestation of contrary private will and enables collective legal belief to become effective (10). In criticism of this view, it has been argued that such a belief cannot explain secondary legal principles and rules. Moreover, the existence of similar ideas among members of a nation concerning the same matter does not necessarily prove the existence of a collective legal belief independent of individual beliefs, because collective conscience cannot be conceived independently of the conscience of individuals. It is therefore highly doubtful that the concept of a “collective legal consciousness” can be expressed with sufficient clarity to provide a sound foundation for law (10).

B. Custom as an independent source of legal rules: Phenomena from which the rules governing the rights and duties of persons and society originate are referred to as the “sources of law.” Supporters of this theory maintain that human beings, in response to the requirements of social life, establish the boundaries and rules necessary to satisfy those requirements, and observance of these rules becomes so necessary for members of society that deviation from them is regarded as impermissible. Over time, such rules acquire sanctions and develop into customary rules, later forming the foundation of many legal rules within different legal systems. Accordingly, in all legal systems of the world, whether religious or secular, custom has, to a greater or lesser extent, significance as an independent source of law, and in some systems it has even been regarded as the sole source of law and the vital force of legal institutions (11, 12).

Acceptance of this theory raises fundamental questions: Are the sources of law—including legislation, custom, judicial precedent, reason, and Islamic jurisprudence—equal in their capacity to generate legal rules? If differences exist among them, do such differences affect the legal value and degree of binding force of the rules derived from them, and if so, which source takes precedence? These questions are important in such areas as the “conflict of legal rules” and the “Guardian Council’s review of legislation enacted by the Islamic Consultative Assembly.” A review of existing legal literature shows that jurists have generally addressed these issues only briefly and that they require independent examination. One example is the conflict between statutory and customary rules, which is often incorrectly described as a “conflict between custom and statute.” According to one scholar, where custom conflicts with the express text of a statute, the statute prevails; where custom conflicts with the underlying rationale of a supplementary rule, custom prevails; and where custom conflicts with the rationale of a mandatory rule, the two must be compared and the more firmly established principle should form the basis of interpretation (3).

C. Custom as both a source and a foundation: Some legal scholars, in light of the arguments advanced under the preceding theories and the normative character of the concept of custom, have accepted the possibility that custom may simultaneously be treated as both a source and a foundation of legal rules. On this view, many legal

rules derive both their material existence and their binding force from custom. In certain Eastern legal schools, custom, identified with the public conscience of society, is regarded on the one hand as a foundation of law, while on the other hand the people, through their psychological acceptance, confer binding force upon it. Thus, the same psychological factor makes custom both the source of binding force and a source of legal rules (13).

D. Custom as evidence for deriving legal rules: Some jurists maintain that although custom is a heritage transmitted imperceptibly from generation to generation and plays a constructive role in the formation and preservation of law (14), it is incapable of creating a legal rule or conferring enforceability upon it. They therefore regard discussion of custom as either a foundation or a source of law as unnecessary (14). In their view, custom is neither a fundamental principle nor a creator of legal rules; rather, it represents principles and rules originating from reason, revelation, or other sources that public consciousness has recognized as necessary for social life. The coercive force of custom and usage exists only insofar as customary practices prescribe the methods and means through which legal principles are realized and guaranteed. For example, the prohibition of theft or homicide does not derive from custom; rather, the mechanisms for ensuring and enforcing these rules may emerge from custom and usage. Under this view, custom is merely a means of apprehending legal rules and a technical instrument for giving them practical effect.

The observations of one scholar of jurisprudence and law likewise support this position. According to this scholar, the legislative role of reason and custom does not arise at the stage of the formation of Islamic law, but rather at the stage of its formulation and within jurisprudence. Accordingly: (1) the judgment of reason does not, in principle, amount to legislation; (2) a customary rule is equivalent to sustained rational judgment and cannot be attributed an independent legislative character; and (3) with respect to clear and definitive rational perceptions and unequivocal customary practices, the Sharia has not regarded direct intervention and obligatory religious prescription as necessary and has instead relied upon them (15).

Critique of the Theories

An examination of the foregoing theories demonstrates that each contains an element of truth, but none expresses the whole truth. Given the multiplicity of the functions of custom, in addition to its three positions as a “source,” a “foundation,” and “evidence for deriving legal rules,” other roles may also be attributed to it. On the one hand, custom has led to the emergence of many legal rules, and on the other, it has facilitated the implementation of many of them. Moreover, while custom serves as a constitutive source for certain rules, it serves as an evidentiary source for others. Some customary rules are independent, whereas others depend upon non-customary rules and are referred to as “customary implications of non-customary rules.” Where legislation or contracts are silent, the words and expressions used by legislators or contracting parties are interpreted according to their customary meanings, thereby entrusting the identification of the subject matter of legal rules to custom. The determination of the external instances to which legal rules apply is also substantially influenced by custom.

The principal area of disagreement among jurists concerning the status of custom relates to the determination of the legal consequence in its strict sense. Some legal systems, because of defects attributed to custom as well as religious sensitivities and beliefs, have denied or restricted this role. One scholar, under the title “Custom as a Dynamic Source of Islamic Jurisprudence and Law,” has emphasized the multiple functions of custom and states that although in many legal systems custom constitutes a source of rules, and in some others it constitutes both their foundation and their binding force because it embodies the collective will of society, revelation is regarded in

Islam as the principal source of jurisprudential and legal rules. Legislation belongs exclusively to God, and individuals have no right to interfere with the destiny of others or impose their own laws upon them. Nevertheless, because divine will has ordained human freedom and autonomy in conduct and destiny, custom has in practice been accepted as a “dynamic and variable source of Islamic jurisprudence and law” (16). Accordingly, this scholar in fact attributes to custom a supplementary and interpretative role, such that in cases of silence, ambiguity, or indeterminacy, custom is employed as a source, foundation, means of derivation, and supplementary interpretative instrument.

Functions of Custom in Iranian Law

Across various sources, six functions have in total been identified for custom. Of these, two are specific to general legal rules, three are shared by general and contractual rules, and one is specific to contractual rules. These functions are examined below in that order.

Functions Specific to General Legal Rules

A. Deriving a general religious or apparent rule as an established jurisprudential rule: With respect to whether custom may be relied upon as the major premise of a religious rule, whether substantive or apparent, Imami jurists are generally divided into two groups. Some regard such reliance as contrary to principle because they consider the probative force of custom dependent upon the approval of the Lawgiver and regard such approval as incompatible with the independence of custom. Accordingly, in the absence of religious approval, custom cannot independently be relied upon for deriving divine rules (17). It is therefore necessary, according to this view, to confine reliance upon custom to those cases that are certainly approved by the Lawgiver. By contrast, a large number of scholars assign custom an independent role in discovering and deriving religious rules. In their view, in the absence of a textual source and a specific rule, custom constitutes a major source for establishing binding rules and determining their details, and in cases of silence it may be used to discover both substantive religious rules and general apparent rules. One prominent Imami jurist states in this respect: “Custom and practice are authoritative in the absence of a religious rule” (18). This role is not confined to declaratory rules but also extends to prescriptive rules (19). Furthermore, rules independently derived from custom are considered primary rather than secondary rules. Accordingly, the view that a rule derived from custom constitutes a secondary rule (10) cannot be accepted. Proponents of the independent role of custom in deriving religious rules have also criticized the view that custom may disclose a religious rule only if it is general, has continuously existed in all times and places, and can be traced back to the period of the Imams (19). In their view, if these requirements are imposed, custom ceases to be an independent source capable of revealing a rule in cases of silence and instead becomes a form of Sunnah; yet where Sunnah exists, there is no genuine silence.

B. Determining a general legal rule in cases of silence under Iranian law: Because the present study examines the role of custom in determining legal rules within the Iranian legal system, and jurisprudential issues are discussed insofar as established principles of Islamic jurisprudence constitute sources of Iranian law, the following question arises: where no specific rule exists in legislation, judicial precedent, or Imami jurisprudence, and assuming that a religious rule may not be derived solely from custom, can custom independently create a legal rule? If custom is independently capable of revealing a religious rule under Imami jurisprudence, this question becomes unnecessary; however, given the significant disagreement on this matter, the independent role of custom

requires separate examination. Before the establishment of the Islamic Republic, custom unquestionably constituted one of the sources of Iranian law. Articles 27 and 75 of the Supplement to the Constitutional Law, enacted on December 30, 1906, alongside religious courts, provided for civil courts to adjudicate matters of customary law and established the Court of Cassation for distinguishing between them. In addition, Article 3 of the former Code of Civil Procedure, enacted in 1939, provided that where legislation was absent, defective, or ambiguous, courts should resolve the dispute in accordance with the spirit and content of the laws and “established custom and usage.” Accordingly, in addition to cases where legislation expressly or impliedly delegated the determination of the rule to custom, custom itself independently constituted a source for determining legal rules. For example, Article 220 of the Civil Code binds contracting parties to the customary consequences and implications of their contract, while Article 975 implicitly recognizes customary rules as legal rules, because good morals—which prohibit the enforcement of private contracts and foreign laws contrary thereto—are nothing other than the custom of morally upright persons (3). Moreover, in certain limited cases, customary rules independent of legislation have emerged and been applied, including the right to goodwill and business tenancy in commercial premises. Although neither its title nor its legal consequences appeared in the Civil Code, and despite the apparent inconsistency between compelling an owner and respect for ownership rights, social necessity and repeated transactions led to its acceptance to such an extent that compliance with it came to be regarded as mandatory, and it was ultimately recognized by legislation enacted in 1960. This constitutes a clear illustration of the power of custom (3). The scarcity of examples of rule-creating custom in legal scholarship and judicial precedent may therefore be explained by the fact that legislators have often responded rapidly to customary developments by transforming customary rules into statutory provisions. If the independent authority of custom is accepted, a further question arises as to whether a customary rule may be regarded as the presumed or implied will of the legislator or the Lawgiver. In response, it must be observed that custom and legislation mutually influence one another. Sometimes the legislator transforms an existing custom into legislation, while at other times the legislator independently establishes a rule in light of social, economic, political, and cultural considerations. In still other cases, a custom develops but the legislator does not intervene.

In the first situation, custom constitutes the constitutive source of the rule and legislation constitutes its evidentiary source; the legislator’s will therefore has merely an evidentiary character and follows and reveals the collective will of those who created the custom. In the second situation, legislation is the constitutive source and the legislator’s will independently constitutes the source of the rule. Nevertheless, where a custom influenced the circumstances surrounding the adoption of the rule, it may be regarded as interpreting or supplementing the legislator’s will. However, because the legislator’s actual knowledge of that custom is ordinarily not established, it generally cannot be characterized as the legislator’s implied will. In the third situation, where custom independently establishes a rule and the legislator takes no action concerning it, custom cannot be regarded as the presumed or implied will of the legislator, given the constitutive nature of custom and the predominantly evidentiary character of legislation.

Following the change in the political system and the foundation of Iran’s legal and judicial system upon Imami jurisprudence, Article 167 of the Constitution of the Islamic Republic of Iran, adopted in 1979, provided: “The judge is required to endeavor to find the ruling applicable to every dispute in codified laws and, if such a ruling cannot be found, to issue judgment on the basis of authoritative Islamic sources or valid fatwas; the judge may not refrain from hearing the case and rendering judgment under the pretext of silence, deficiency, ambiguity, or conflict in codified

laws.” This provision was repeated, with modifications, in Article 3 of the Code of Civil Procedure of the General and Revolutionary Courts in Civil Matters, enacted in 2000. Under that provision, in the event of absence, deficiency, ambiguity, or conflict in the laws, a judge must rule by reference to authoritative Islamic sources, valid fatwas, and “legal principles that are not contrary to Sharia standards.” Thus, the Constitution omitted the phrase “established custom and usage,” while ordinary legislation replaced it with “legal principles that are not contrary to Sharia standards,” thereby casting doubt upon the status of custom as an independent source for determining legal rules. This raises the question of the relationship between “established custom and usage” and “legal principles that are not contrary to Sharia standards”: Are these two categories mutually exclusive, do they partially overlap, or is one wholly contained within the other? Every general legal principle constitutes a broad rule and a basis for the creation of more specific rules. Legal principles are general, enduring, and abstract concepts representing the values governing a legal system and have diverse origins, including reason and logic, morality and religion, political and economic developments, judicial precedent, juristic thought, social demands, and the historical and civilizational foundations of nations. Some are expressly stated in legislation, while others are supra-statutory; some are shared among legal systems, while others are specific to a particular system. Legal principles interact with all sources of law: they guide legislators in enacting legislation, interpret statutes in cases of ambiguity, and fill legislative gaps; they assist judges in interpreting statutes equitably and provide standards for evaluating judicial decisions; judicial precedent contributes to the creation and identification of principles; principles serve as standards for distinguishing valid from invalid custom and may themselves create custom, while custom may likewise create, interpret, or modify legal principles. Legal doctrine may also either generate or reveal such principles. Today, legal principles are recognized as sources of law in common-law, Romano-Germanic, and Islamic legal systems, while jurisprudential maxims perform a comparable role within Islamic jurisprudence. In Iranian law, legal principles may also be regarded as authoritative sources: Article 3 of the Code of Civil Procedure recognizes them alongside jurisprudential sources and fatwas as supplementary and interpretative sources of legislation, while numerous examples of such principles are found in statutes and judicial decisions. Some scholars have regarded the relationship between custom and legal principles as one of complete inclusion and have maintained that the expression “legal principles that are not contrary to Sharia standards” encompasses custom (17). This view permits the continued authority of custom in independently determining legal rules. Nevertheless, it appears that the inclusion of “authoritative Islamic sources or valid fatwas” in Article 167 of the Constitution and Article 3 of the Code of Civil Procedure, given the opposition of many jurists to the independent role of custom in determining rules, may eliminate this function of custom. Furthermore, in light of the foregoing discussion, custom cannot properly be subsumed under the category of general principles of law. Consequently, under current conditions, custom within the Iranian legal system can create a rule and determine a legal consequence only where this is expressly or implicitly authorized by enacted legislation or is in some manner approved by Sharia and Imami jurisprudence. Accordingly, although the customary implications of contractual rules are binding and enforceable pursuant to the express authorization of Article 356 of the Civil Code, the same conclusion cannot be accepted with respect to the customary implications of statutory rules.

Functions Specific to Contractual Rules

A. Determining the intention of one or both contracting parties where the contract is silent as to its terms (identifying the customary implications of the contract): By recognizing the autonomy of individuals in personal

matters and their ability to exercise that autonomy through legal acts, Iranian law leaves the regulation of private relationships to the parties insofar as this does not conflict with public order or good morals. Contracts consist of interrelated rules and obligations, the entirety of which cannot always be anticipated by the parties, and they may sometimes contain ambiguity, incompleteness, or conflict. In such cases, interpretation of the legal act is necessary to determine unprovided-for consequences or to resolve ambiguity, incompleteness, and inconsistency. Interpretation may be subjective or objective. In subjective interpretation, the court relies on internal factors to discover the parties' common intention and situational intent, which may be express or implied. Under objective interpretation, where the actual intention cannot be established, external factors and the conduct of a reasonable, fair, and equitable person acting in good faith are applied under the concept of "presumed intention." Custom is relevant to both forms of interpretation: custom known to the parties constitutes an internal factor, while unknown custom constitutes an external factor. Thus, reliance upon known custom is justified by reference to "implied internal intention," whereas reliance upon unknown custom is justified by "presumed intention." Custom cannot, however, constitute a means of expressing an express intention. Article 225 of the Civil Code provides that "where a matter is so customary in custom and usage that the contract, even without express reference, is understood to include it, it shall be deemed to have been stipulated in the contract," while Article 220 of the Civil Code renders custom binding upon the contracting parties. Determining the basis for the validity of custom is important for resolving conflicts between custom and supplementary statutes, mandatory statutes, and express or implied contractual terms. In the formation of legal acts, express, implied, and presumed intentions have priority in that order. One jurist maintains that, where custom conflicts with implied intention, if the basis for the validity of custom is the command of the legislator or the presumed intention of the parties, implied intention prevails; but if the basis for custom itself is implied intention, the court must identify the parties' actual intention in light of the circumstances and the terms of the contract. Some jurists maintain that, because custom may be objectively binding even without the parties' awareness, as may be inferred from Article 356 of the Civil Code, implied intention takes precedence over custom unless legislation gives custom priority (6). Under various provisions of the Civil Code, including Article 220, customs concerning the implications of express contractual and statutory rules are valid. In litigation, the identification of customary implications of contracts or statutes, because they constitute questions of law, is the responsibility of judges rather than the parties.

B. Formation of the elements of the contract (offer and acceptance): A contract results from the agreement of at least two persons, namely the offeror and the offeree, and agreement is the product of the concurrence of their intentions. Given the consensual nature of contracts as a general principle, intention may be communicated through any customary or even non-customary means. Because such methods may themselves be customary, custom plays a role not only in determining certain contractual obligations but also in the formation of the contract itself. Nevertheless, an examination of Iranian law indicates that the legislature has not enacted any specific provision on this matter, and jurists and legal scholars have likewise not addressed it in a systematic manner.

Functions Common to General and Contractual Rules

A. Identifying, defining, and determining the subject matter of a rule: Sometimes custom, without participating in the formulation of the legal consequence itself, identifies and clarifies its subject matter. Where the Lawgiver, legislator, or contracting parties have not adopted a special technical meaning for concepts and subjects referred to in a religious text, statute, or contract, custom determines the subject matter. Fundamentally, the speech

of the Lawgiver or legislator must be comprehensible to customary understanding, and contracting parties likewise formulate contractual provisions on the basis of ordinary customary understanding. Customary determination of subject matter may be either purely factual or interpretative. In the first type, custom establishes the subject matter without reliance on external verbal evidence, such as determining the customary amount of maintenance payable to a wife. In the second type, custom establishes the subject matter with the assistance of the wording of the relevant evidence and surrounding indications, such as disregarding the specific reference to a nosebleed or garment in the narration "blood from a nosebleed came into contact with my garment," because customary understanding attributes no special significance to nosebleed blood or garments and extends the rule to blood generally and to the body. From another perspective, determination of subject matter may be constitutive or evidentiary. In constitutive determination, custom creates the actual subject matter of the rule, and subsequent changes at the level of interpretation do not alter it; for example, the requirement to "maintain one's wife according to what is customary" determines the amount of maintenance in accordance with the custom prevailing at each period. Consequently, the characteristics of the subject matter change as intellectual, economic, and social conditions change, and custom affects the formation of the religious rule by expanding or narrowing its scope. In evidentiary determination, custom operates only at the stage of discovering and proving the subject matter, such as determining whether goods ordinarily sold by measure or weight fall within the prohibition against their sale by estimation. The practical significance of this distinction is that, in constitutive determination, an individual's departure from custom does not alter the rule, because custom has created the actual legal subject matter. In evidentiary determination, however, custom merely reveals intention, and an express departure from custom may therefore displace the rule (20). The authority of this category of custom follows from general principles and requires no independent justification. As a general matter, the actual identification of the subject matter of religious and legal rules belongs to custom, and where customary understanding of a subject changes after a rule has been established, the former rule will not govern the newly understood subject matter. The Civil Code likewise contains numerous provisions in which the identification of the subject matter and objects of rules is entrusted to custom, including Articles 417 (determination of gross disparity), 385 (determination of accessories to the subject of sale), 427 (identification of defects), 524 (determination of the type of cultivation), 141 (determination of reclamation), and 1107 (determination of items constituting spousal maintenance).

B. Determining the concepts and meanings of words and discovering the speaker's intention, whether that of the legislator or contracting parties: Where customary and lexical meanings conflict, religious, statutory, and contractual words and expressions are, at the level of their ordinary mental implication, interpreted according to customary meanings, namely verbal custom. One scholar of jurisprudence and legal theory states in this regard that the reference point for concepts and intended meanings of words is general custom, whether or not lexicographical meaning corresponds to it, because words naturally convey their customary meanings and concepts such as wheat, raisins, and grapes must therefore be identified by reference to custom (21). The authority of custom in determining concepts extends to doubtful cases, while interpretative presumptions such as the presumption of apparent meaning, the presumption of unrestricted meaning, the presumption of generality, and the presumption of literal meaning explain the customary method of interpretation. In understanding the text and language of legal rules, such custom effectively functions as an implicit contextual indication connected with the words of the Lawgiver or legislator, capable of expanding or narrowing the scope of the text. Once the authority of apparent meaning is established, the validity of this form of custom follows as a matter of principle and requires no additional justification.

Its difference from the preceding function is that the relevant custom must have existed at the time when the text was issued or the legal rule was formulated, because what is authoritative is the apparent meaning of the text or enacted rule at that time. Verbal custom—whether conversational, usage-based, or linguistic—is also recognized under Article 224 of the Civil Code.

C. Applying concepts to particular instances: Jurisprudential, statutory, and contractual texts contain numerous rules whose subject matters are customary, such as the prohibition of usurping another's property, the invalidity of a transaction by an insane person, the prohibition of intoxicants, and the validity of a guardian's disposition of the ward's assets where the ward's interests are observed. As stated above, custom serves as the reference point for interpreting and determining the meaning of such concepts. The question, however, is which authority is responsible for applying customary concepts to external facts: the legally obligated person, the rule-maker, the jurist, the judge, the expert, reason, custom, or another institution? Two principal positions exist among jurists in this regard. One writer, in defending the authority of custom, argues as follows: first, whenever a rule attaches to a subject and no specific indication exists to the contrary, the legislator intends the actual external reality of that subject; second, the authority charged with identifying the relevant instance is merely instrumental rather than constitutive, and where it errs, its application is invalid; third, leniency in applying concepts to instances is unacceptable because it conflicts with both the creation and purpose of the rule. Accordingly, under ordinary conditions and in the absence of hardship or harm, whichever institution operates with the greatest accuracy and reliability should take precedence. On this basis, there is no foundation for denying the usefulness of custom in applying customary concepts to external instances. Neither reason, the jurist, the expert, nor general custom has intrinsic priority; precedence instead belongs to the authority that provides the most reliable means of discovering reality. Accordingly, where the subject is specialized and complex, the judgment of general custom or ordinary reason cannot be accepted. Ultimately, the authority responsible for application must provide the most accurate judgment without any right to tolerate approximation, while general custom may in many cases constitute the simplest and most reliable solution, particularly with respect to matters readily understandable by the general public (22).

Functions of Custom Under the UNIDROIT Principles

In addition to Article 1.9 of the UNIDROIT Principles, which establishes the general rule governing the validity of usages and practices in international commercial contracts, other provisions specifically recognize the validity and functions of custom. These include Article 2.1.6(3), concerning the significance of usage in determining whether silence or inactivity may constitute acceptance; Article 4.3, concerning the role of usage in ascertaining the parties' intention and interpreting their statements and conduct (9); and Article 5.1.2, concerning the role of usage in creating implied obligations of the parties. Nevertheless, as indicated by Comment 1 to Article 1.9, the application of these specific provisions is likewise subject to satisfaction of the requirements prescribed by the general rule in Article 1.9. Accordingly, the functions of custom under the UNIDROIT Principles may be examined as follows:

Determining the Intention of One or Both Parties Where the Contract Is Silent as to Its Terms

Article 1.9 of the UNIDROIT Principles assigns custom a role in determining part of the parties' obligations in two circumstances which, depending on whether the parties are aware of the existence of the usage, represent two forms of custom:

A. Known usage: The parties are bound by any usage to which they have agreed and by any practice that they have established between themselves. Article 1.9(1) in fact represents an application of the principle of freedom of contract, because parties may negotiate all terms of their contract or refer particular matters to other sources, including usage. They may even agree to apply a usage prevailing in a branch of trade to which neither party belongs, a usage relating to another type of contract, or what is sometimes, somewhat misleadingly, referred to as custom. Known usage essentially performs a guiding function by directing the parties' will toward particular obligations.

B. Unknown usage: The parties are bound by any usage that is widely known in international trade and regularly observed by parties in the particular trade concerned. Accordingly, two requirements—being “widely known in international trade” and “regularly observed by parties in the relevant particular trade”—are necessary for the application of an unknown usage, irrespective of whether the usage is international in scope or merely national or local. The qualification “in international trade” is intended to exclude usages confined to domestic transactions as well as usages invoked only in dealings involving foreign parties, as stated in Comment 2 to Article 1.9. This qualification reflects the international commercial character of the UNIDROIT Principles rather than any substantive distinction between domestic and international usage. Nevertheless, certain usages originate at the local or national level, such as usages prevailing on particular commodity exchanges, at trade fairs, or in commercial ports. Comment 4 to Article 1.9 of the UNIDROIT Principles exempts such cases from the internationality requirement, provided that the usage in question has previously been regularly observed in transactions involving foreign parties. A further exception concerns a trader who has previously concluded similar contracts in a foreign country and who should therefore be expected to observe usages established in that country. It appears, however, that this should properly be classified as an instance of known usage rather than unknown usage lacking the prescribed conditions. The only express exception under Article 1.9(2) is where application of the usage would be unreasonable.

Formation of the Contract (Offer and Acceptance)

The UNIDROIT Principles recognize the role of usage in the formation of an offer or acceptance in several provisions:

A. The consent of the addressee of a communication may be inferred from an applicable usage, as stated in Comment 1 to Article 1.10.

B. Uncertainty in an offer may be resolved by reference to usage, as stated in Comment 1 to Article 2.1.2.

C. Where usage permits the offeree to indicate assent by performing an act without giving notice, acceptance becomes effective when the act is performed, pursuant to Article 2.1.6(3) and Comment 4 thereto.

D. In exceptional circumstances, usage may justify treating mere silence or inactivity by the offeree as indicating assent, as stated in Comment 3 to Article 2.1.6.

E. Standard terms may be incorporated into a contract implicitly by means of usage governing their application, pursuant to Article 2.1.19(3).

F. The conferral of authority upon an agent by a principal may be inferred implicitly from circumstances arising out of general commercial usage, as stated in Comment 1 to Article 2.2.2.

Determining the Parties' Intention from Their Language, Statements, and Conduct

Pursuant to Article 4.3 of the UNIDROIT Principles, all relevant circumstances must be considered when interpreting the parties' intention, statements, and other conduct. Usage is expressly included among those circumstances that objectively assist in determining the parties' intention from their statements and conduct, as stated in Comment 2 to Article 4.3 (9). One distinction between the UNIDROIT Principles and Iranian law lies in the Principles' express recognition of the role of usage in interpreting the parties' intention as manifested through their conduct, a matter that has received less explicit attention in Iranian law. By recognizing commercial usages and incorporating them into the process of contractual interpretation, the UNIDROIT Principles provide an appropriate framework for identifying and enforcing obligations arising from commercial practices (23).

Similarities and Differences Between Iranian Law and the UNIDROIT Framework

An examination of the status and functions of custom under Iranian law and the UNIDROIT Principles demonstrates that, although these two systems differ in their foundations, scope, and methods of identifying and applying custom, they follow relatively similar patterns regarding many of its most important functions, particularly in contractual relations.

Similarities

A. Recognition of custom as a factor influencing the regulation of contractual relations: The first similarity is that both systems recognize custom as influential in regulating contractual relations. Under Iranian law, Articles 220, 224, and 225 of the Civil Code provide the basis for recognizing custom and usage in determining the implications of contracts, interpreting contractual terms, and supplementing contractual provisions. Pursuant to Article 225, a matter so established by custom and usage that the contract is understood to include it even without express reference is deemed to have been stipulated in the contract. Article 220 likewise binds the parties to consequences and implications arising from the contract by virtue of custom, usage, or law. Under the UNIDROIT Principles, Article 1.9 similarly recognizes usages and practices in contractual relations and gives them binding effect. Other provisions of the Principles also employ usage in determining the content of obligations, the formation of contracts, and the interpretation of the parties' statements and conduct. Thus, in both systems, a contract is not confined solely to the expressly stated intentions of the parties, and custom may influence the determination of contractual rights and obligations.

B. The role of custom in supplementing contractual silence: Both systems recognize a supplementary role for custom where a contract is silent. Contracts cannot anticipate every detail of the parties' relationship; accordingly, where they are silent, custom may supplement their terms. Under Iranian law, this function may be inferred from Articles 220 and 225 of the Civil Code, because customary implications of a contract form part of its effects even in the absence of express stipulation. Under the UNIDROIT Principles, Article 1.9 similarly recognizes usage as relevant to determining part of the parties' obligations. In particular, known usage and practices established between the parties are binding, while unknown usage may also apply, provided that the prescribed conditions are fulfilled, without proof of the parties' prior knowledge.

C. The role of custom in contractual interpretation: In both systems, custom not only supplements contracts but also assists in understanding and interpreting their terms. Under Iranian law, verbal custom and the ordinary

understanding of contractual expressions may contribute to determining the meaning of words and discovering the parties' intention, while Article 224 of the Civil Code requires contractual terms to be interpreted according to their customary meanings. Under the UNIDROIT Principles, this role is expressed more explicitly: pursuant to Article 4.3, usage is among the circumstances considered in interpreting the parties' statements and conduct. Thus, custom affects not only the consequences of contractual silence but also the identification of the parties' intention from contractual language, statements, and conduct. The difference between the two systems in this respect concerns primarily the degree of explicit recognition rather than the underlying acceptance of the principle.

D. Recognition of the role of custom in contract formation: Both systems, although to different degrees and with different levels of explicitness, recognize the effect of custom at the stage of contract formation. In Iranian law, the consensual nature of contracts and the possibility of communicating intention through customary methods make it possible for customary conduct to assist in determining offer and acceptance. Nevertheless, the legislature has enacted no specific rules on this issue, and it has received comparatively little attention in jurisprudential and legal scholarship. By contrast, the UNIDROIT Principles expressly address a number of situations, including the effect of usage on determining an offeree's consent, establishing the definiteness of an offer, determining when acceptance occurs, and, exceptionally, treating silence or inactivity as acceptance. The principal difference therefore lies in the explicitness and systematic character of the applicable rules.

E. Recognition of professional and specialized usages: In both systems, custom is not confined to general societal custom; professional, commercial, and specialized usages may also regulate legal relationships. Under Iranian law, occupational and professional customs and practices are recognized in various provisions of the Civil Code and may influence the content and consequences of contracts. The UNIDROIT Principles similarly give particular attention to commercial and professional usages. Even local or national usages may, where the relevant requirements are satisfied, apply in international commercial relationships, including usages associated with commodity exchanges, trade fairs, and commercial ports.

Differences

A. Difference in the scope and purpose of the rules governing custom: The most important difference concerns the scope of the relevant rules. Under Iranian law, custom is a general legal institution and performs functions in general legal rules, contractual relationships, and the identification of legal subjects and concepts. This article identifies several functions of custom, some specific to general rules, some common to general and contractual rules, and others specific to contractual rules. By contrast, the UNIDROIT Principles are essentially a body of rules governing international commercial contracts. Their provisions on usage therefore operate primarily within international commercial contractual relations. Accordingly, many of the broader functions attributed to custom under Iranian law do not fall within the scope of the Principles, and the comparison is therefore between a comprehensive national legal system and a specialized body of contractual rules.

B. Difference in the basis of the validity of custom: Under Iranian law, the basis for the validity of custom remains disputed among legal scholars, and different theories characterize custom as a source, a foundation, or evidence for deriving legal rules. In light of the current structure of the Iranian legal system, this article considers the independent authority of custom in determining general legal rules to be subject to limitations and regards its validity in certain cases as dependent upon statutory authorization or approval under Sharia and Imami jurisprudence. In the contractual sphere, because the legislator expressly recognizes custom in provisions such as

Articles 220 and 225 of the Civil Code, the validity of customary contractual implications is clearer. Under the UNIDROIT Principles, by contrast, the validity of usage is expressly structured within the context of international commercial contracts through Article 1.9, and even an unknown usage may become binding where the prescribed conditions are met, without requiring actual prior knowledge by the parties. Accordingly, insofar as actual awareness by the parties is concerned, the operation of usage under the UNIDROIT Principles is broader and more systematically regulated than under the traditional Iranian framework.

C. Difference in the treatment of usages unknown to the parties: One of the most significant distinctions lies in the UNIDROIT Principles' express differentiation between known and unknown usage. Under Article 1.9, usages known and agreed upon by the parties, as well as practices established between them, are binding. In addition, a usage unknown to the parties may also apply if it is widely known in international trade and regularly observed in the relevant particular trade. Under Iranian law, although custom may operate without express stipulation and Article 225 treats a customary matter in certain circumstances as if it had been expressly included in the contract, no systematic distinction exists between known and unknown usages with effects equivalent to those specified in Article 1.9. The UNIDROIT Principles therefore provide clearer criteria for determining the scope of obligations arising from usage.

D. Difference in the role of rationality and unreasonableness of custom: In Imami jurisprudence, the validity of binding custom is connected with its rational character, and reference is made to the "practice of rational persons" rather than to every existing custom. Rationality therefore plays a substantive role in the formation and validity of custom. Under the UNIDROIT Principles, a usage satisfying the requirements of Article 1.9 is in principle capable of application; however, it is not binding where its application would be unreasonable in the particular circumstances. Thus, according to the analysis adopted in this article, rationality in Imami jurisprudence operates primarily at the stage of determining the validity of the custom itself, whereas under the UNIDROIT Principles, unreasonableness constitutes a bar to the application of an otherwise valid usage in a particular case.

E. Difference in the explicit recognition of the role of usage in interpreting the parties' conduct: Compared with Iranian law, the UNIDROIT Principles more expressly recognize the role of usage in interpreting contractual conduct. Pursuant to Article 4.3, usage may be considered alongside other relevant circumstances in determining the parties' intention from their conduct. The article identifies this as a distinguishing feature of the UNIDROIT Principles because, although Iranian law recognizes custom in the interpretation of contractual language and terms, its independent and express role in discovering the parties' intention from contractual conduct has not been articulated as clearly as under the UNIDROIT Principles.

F. Difference in the role of usage in constituting offer and acceptance: Under Iranian law, the role of custom at the stage of contract formation is not systematically or expressly regulated by the Civil Code. The article concludes that although, given the consensual nature of most contracts, custom may influence the formation of offer and acceptance, the legislature has enacted no specific rules in this regard and neither jurisprudential nor legal sources have addressed the matter comprehensively. By contrast, the UNIDROIT Principles expressly recognize this role in such matters as determining the offeree's consent, resolving uncertainty in an offer, determining the effective time of acceptance, and identifying circumstances in which silence or inactivity may constitute acceptance. The principal distinction therefore concerns the explicitness, detail, and systematic nature of the rules.

G. Difference in regulating the relationship between custom and the parties' intention: Under Iranian law, the priority of custom over the parties' express or implied intention and the basis of its binding force are important and somewhat disputed matters. In the analysis presented in this article, express, implied, and presumed intentions may be distinguished in contractual interpretation, and the consequences of a conflict between custom and the parties' implied intention may vary depending on the basis attributed to the validity of custom. Determining that basis is therefore important for defining the relationship between custom and express or implied contractual terms. Under the UNIDROIT Principles, freedom of contract constitutes an important basis for recognizing usage, while usages and practices established between the parties, as well as usages satisfying Article 1.9, may be recognized as implied terms or sources of contractual obligations. The UNIDROIT Principles thus regulate the relationship between custom and contractual intention through more clearly defined criteria.

Conclusion

The comparative examination of the status of custom under Iranian law and the UNIDROIT Principles of International Commercial Contracts demonstrates that both systems recognize custom as relevant to the regulation and interpretation of contractual relationships. Nevertheless, the UNIDROIT Principles adopt a more explicit and systematic approach to the recognition, validity, and application of usage.

The foregoing discussion supports the following conclusions:

A. Custom produces legal effects in contractual relationships under both systems. In Iranian law, Articles 220, 224, and 225 of the Civil Code constitute the principal statutory bases for this role, whereas Article 1.9 of the UNIDROIT Principles provides the express basis for recognizing usages, commercial practices, and practices established between the parties. Accordingly, the determination of contractual terms and effects is not confined to the wording of the contract, and the circumstances and usages governing the transaction may also be relevant.

B. Custom performs both interpretative and supplementary functions in both systems and may contribute to resolving ambiguity, filling contractual gaps, and determining the effects reasonably expected by the parties. Nevertheless, the UNIDROIT Principles provide a clearer framework for distinguishing among practices established between the parties, agreed usages, and generally recognized commercial usages (9), a distinction that has not been systematically codified in Iranian law.

C. The relationship between custom and the parties' intention is of fundamental importance in both systems. Custom may reflect the parties' implied intention and reasonable expectations, but it should not become a means of disregarding their express agreement. The status of custom must therefore be analyzed in interaction with contractual terms, the parties' intention, and applicable legal rules.

D. The scope of custom under Iranian law is broader than under the UNIDROIT Principles because, within the Iranian legal system, custom is not confined to international commercial contracts and may be invoked across different areas of legal relations. Consequently, the UNIDROIT Principles cannot directly replace the rules governing custom in Iranian law (24); rather, they may serve as a model for systematizing commercial custom and developing contract law.

E. One of the most significant deficiencies of Iranian law is the absence of coherent criteria for establishing and evaluating commercial custom. Under the UNIDROIT Principles, prevalence, recognition, and the relationship of the usage to the type of transaction and commercial environment are significant, whereas Iranian law provides only scattered criteria. Accordingly, a mere allegation of the existence of custom should not suffice to produce legal

effects; its prevalence, stability, specialized character, connection with the transaction, and consistency with legislation, public order, and the parties' express agreement should be established.

The cumulative implication of these findings is that the principal problem in Iranian law is not whether custom is recognized in principle, but rather the absence of a coherent framework for determining its limits, hierarchy, and manner of application in contractual relationships, particularly commercial contracts. Accordingly, custom should be analyzed within a balanced relationship among the parties' intention, the contractual terms, custom and usage, supplementary rules, and mandatory rules.

Recommendations

In light of the findings of the study, the following recommendations are proposed:

A. In legislation governing commercial contracts, criteria for identifying, proving, and applying usage should be specified by drawing comparatively upon Article 1.9 of the UNIDROIT Principles.

B. A distinction should be drawn, in terms of origin and degree of binding force, among general commercial custom, specialized trade usage, practices established between the parties, and transactional practices.

C. The relationship between custom and the parties' express agreement, supplementary rules, and mandatory rules should be clearly defined, with priority generally accorded to the parties' express agreement unless legislation or the nature of the usage requires otherwise.

D. Objective criteria should be adopted for evaluating custom, including prevalence, stability, recognition, specialized character, compatibility with the type of transaction and commercial environment, and the reasonableness of the usage.

E. In commercial contracts, particularly cross-border transactions, usages of the relevant profession or industry and international commercial usages should be considered alongside general custom.

F. The UNIDROIT Principles should be utilized in the interpretation and development of Iranian contract law because, where domestic legislation is silent or ambiguous, the solutions offered by the Principles may serve as comparative and interpretative sources for judges, arbitrators, legal scholars, and legislators, without thereby acquiring direct binding force under domestic law.

Ultimately, the preferable approach for Iranian law is neither the unrestricted acceptance nor the general restriction of custom, but rather the systematization of its status and functions in such a manner that, while custom continues to perform its role in interpreting, supplementing, and determining the effects of contracts, it remains subject to clear criteria governing its establishment and application and is at the same time constrained by law and the express intention of the parties. In this process, the UNIDROIT Principles may provide an appropriate model for developing and enhancing the coherence of rules governing commercial custom within Iranian contract law.

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All authors equally contributed to this study.

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The authors of this article declared no conflict of interest.

Ethical Considerations

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Transparency of Data

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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