

AN INVESTIGATION INTO THE SPECIFIC PERFORMANCE REMEDY FOR BREACH OF CONTRACTS: A COMPARATIVE STUDY OF THE ISLAMIC IRANIAN LEGAL SYSTEM AND COMMON LAW

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ABSTRACT

Specific performance is among the legal remedies for damages caused by contractual infringement. This remedy is sometimes adopted as a “primary” remedy by different legal systems (e.g., the Iranian legal system) and sometimes as the “secondary” and “exceptional” remedy (e.g., the common law. In this respect, considering the remedy as the primary or secondary way to protect the benefits of the aggrieved parties from the breach of contract affects the coverage of the different range of damages caused to them. Therefore, one may ask why the common law uses this method as a secondary and exceptional remedy while the Iranian legal system uses it as the primary remedy for contractual damages. Accordingly, the present paper aimed to answer this question and determine a better approach for adopting this remedy using the analytical method. Overall, it was concluded that the main reason for considering this remedy as secondary and exceptional in the common law is the “loss mitigation” principle. Besides, the main reason why it is considered the primary remedy in Imami jurisprudence and the Iranian legal system is the “requirement” rule. As this remedy is considered

secondary in the common law, this legal system is completely incapable of covering all contractual benefits of the aggrieved party. Therefore, the approach adopted by the Iranian legal system for the breach of contracts is better than the one adopted by the common law.

Keywords: *contractual damages, contractual damage compensation, remedies for contractual damages, primary remedies for contractual damages, specific performance*

INTRODUCTION

Legislators have devised solutions called remedies to protect the contractual benefits of the parties to the contract when a contractual obligation is breached by one of the parties. Among these remedies is specific performance and payment of money damages. In protecting the contractual benefits of the aggrieved party, different legal systems have adopted one of these two remedies as the primary remedy for contractual damages. The primary remedy in the common law is money damages, while that in the legal jurisprudential system of Iran is specific performance. Therefore, the specific performance remedy is a secondary and exceptional remedy for contractual damages in the common law, but the primary remedy in the Iranian jurisprudential-legal system where compensating the damages is considered a secondary and exceptional remedy.

Given this difference of approach in the legal systems of common law and Iran, the challenging issue is why the specific performance remedy for contractual damages is a secondary remedy in the common law but the primary remedy in the jurisprudential legal system of Iran. In an effort to answer this question, the present article seeks to explain the principles and reasons that have led to differences of approach in these two legal systems.

It is necessary to consider this issue because using either of these two approaches covers a different range of benefits of the obligee. In addition, it serves as a guide for courts to adopt a more reasonable remedy to prevent the prolongation of proceedings and full compensation of contractual damages in the best possible way. Regarding scant research on this issue, we investigate it using the library analysis, in reliance of the rational reasoning method for the coming purposes. After a brief review of the specific performance remedy in the common law and the Iranian legal system, this paper will provide the reasons and principles that caused this difference of approach in these two legal systems. Eventually, this paper aims to determine the best remedy in this regard by providing logical reasons.

SPECIFIC PERFORMANCE IN COMMON LAW AND EQUITY

In common law, when a contract is breached, the first remedy is to pay money due to breaching the obligation. In this way, the court does not oblige the defendants to fulfill the obligation but obliges them to pay money to the plaintiff to compensate their contractual damages caused by the breach of the obligation as much as possible (Mckendrick, 2000: 395). Therefore, the specific performance is considered a secondary and exceptional remedy in the common law. In contrast, the Iranian legal system, which is derived from the system of Imami jurisprudence, regards that remedy as the primary remedy for contractual damages. This study described the specific performance remedy in this legal system by mentioning some exceptional cases where the courts first used this remedy.

In equity law, as the complement of common law, also, specific performance is a judicial command to the committed in order to do his contractual obligation as well as determined in the convention. In equity, Specific performance, in personal contracts, i.e “the obligation just done correctly by the promisor act, not others or money payment, because the effect of his character on well performance” is the premier damage, but in other contracts with money replace, it is assumed as a substitutional remedy (Treitel, 2003: 1019). So in equity like in common law, except of personal contracts in which specific performance is the premier¹, in the others, the main contractual damage is money payment

¹ Case *Beswick v Beswick* (1968) quoted exactly relating to specific performance court judgment. The deceased, being 70 years old and became ill, decided to step back from his business. He agreed with the defendant to transfer his business' goodwill and tools to the defendant. In return, the defendant would employ the deceased as a consultant for the remainder of his life. After his death, the defendant was to pay the deceased's wife £5 a week. The wife was not a party to this contract. When the man died, the defendant paid the wife one sum of £5 and then refused to make further payments. The wife sued for specific performance of the agreement. She did this both in her capacity as executor of the deceased's estate and in her own right. The defendant argued that the wife could not enforce the contract in her own name because she was not a party to it. He also argued that the deceased's estate had not suffered any loss from his breach of contract. As such, the estate was only entitled to nominal damages. At last, The House of Lords held in the wife's favor. The wife could not sue in her own right, but she could sue in her capacity as executor of the deceased's estate. That estate was entitled to sue for specific performance of the agreement. It was not limited to suing for nominal damages. This was a case in which damages would be an inadequate remedy and justice would not be served by nominal damages. Therefore, the Lords granted the estate an order for specific performance.

and specific performance assumed as its substitutional remedy using in exceptional cases which described in the next title after the background of specific performance in English law. According to the top content, common law relying on equity can applicate specific performance in personal contracts as the premier damage to be closer to imامية system in this matter.

BACKGROUND OF SPECIFIC PERFORMANCE UNDER THE ENGLISH LAW

In the legal system of Britain, specific performance is an exceptional remedy when the premier remedy, i.e money payment, wont adequately compensate the other party. If a legal remedy can compensate all damages of other party, i.e it can put the injured party in the situation he or she would have been if the contract been completely done, then specific performance is the secondary one. However, when the matter of a contract is unique and no remedy unless specific performance can compensate his or her damages completely, the Britain courts grant specific performance to him or her. Also, when a matter of money is not the main challenge or where the true amount of damages is vague, England courts tend to grant specific performance.

In order to clear this matter much more, the case *Co-operative Insurance Soc Ltd v Argyll Stores (Holdings) Ltd.*:

“A leased the largest unit in its shopping centre to C for 35 years, with a requirement that C keep the store open during usual office hours. C started to make a loss and stopped operating the unit, stripped it out and ceased trading. As the largest unit and largest attraction of the store it was likely to have a massive impact on the business of the shopping centre. HL denied a claim for specific action. HL refused to accept CA’s claim that damages were inadequate due to difficulty of proving what loss had been caused by A’s departure and denied the relevance of C’s cynical nature. Instead HL said that there was a general rule of not ordering specific performance where it would involve the carrying on of a duty rather than one single act. It also said that it was oppressive to force C to run a business under threat of imprisonment from contempt of court. Thirdly it would require constant supervision which is a waste of resources; Fourthly the contract itself was fairly uncertain so it is hard to tell what C should do (e.g. requirement to maintain a good-quality shop window display);

Fifthly it would force C to accept enormous losses. Seems to put the balance too far in favour of the contract breaker.”²

1. Exceptional Cases of the Use of the Specific Performance Remedy for Contractual Damages

As mentioned before, in common law, the first remedy for contractual damages is to pay money to compensate for the damages caused to the plaintiff. However, if paying money damages as a remedy is not considered an adequate remedy for compensating the whole damages caused to the plaintiff, then the specific performance order is issued for that (Webb, 2006: 12)

The criterion of whether or not paying money can be considered a comprehensive and adequate remedy for all damages to the plaintiff and a suitable alternative for the specific performance remedy is the plaintiff's objective satisfaction (Treitel, 2003: 930). In this vein, if the court issued an order for payment of money damages to the plaintiff instead of specific performance and if we assumed someone else instead of him, would they be satisfied with that amount of money instead of specific performance?

In this regard, the common law in land and property contracts has assumed that paying money damages is not an adequate alternative for specific performance. Therefore, the obligee in land and property contracts can first ask the court to issue the specific performance order for the obligor. Nevertheless, some lawyers of the common law system argue that if the contract is not related to the property or land itself, but concerning granting a license to own a property or house, whether by renting or other for-profit rights, the obligee can use the specific performance remedy. It is noteworthy that the possibility of using the specific performance remedy is not specific to the purchasers. The reason is that the payment cannot satisfy them as an adequate alternative for specific performance (i.e., acquiring the original land or property). Instead, the seller can ask the court to issue the specific performance order if the purchaser breaches the contract (i.e., they refuse to pay the price). Although paying money can be an adequate and suitable alternative for the specific performance by the purchaser, such a right is given to the sellers, as they are not different from the purchaser in terms of receiving the right (Treitel, 2003: 930).

This consideration is because a contract is a bilateral act and the violation and the rights arising from it must be bilateral as well. Therefore, just as the

² Quoted exactly from the site of https://www.oxbridgenotes.co.uk/law_cases/co-operative-insurance-soc-ltd-v-argyll-stores-holdings-ltd

purchaser, in case of breach of obligation by the seller, has the right to ask for the issuance of a specific performance remedy, the seller must also enjoy this right equally in case of the breach of contract by the purchaser. Another reason could be that paying money will not probably compensate for all the damages caused to them because reselling the piece of land and property, unlike many other issues, is not an easy task. Therefore, the seller will incur high costs to resell the property and there is no guarantee for the property to be sold even after these costs are incurred. Accordingly, in many cases related to land and property, paying money to the sellers will not compensate for all the damages caused to them, which is in conflict with the “full damage compensation” principle. Hence, like the purchaser, the seller can ask the court for the specific performance order for obliging the purchaser to pay the same price (Davis, 2018: 385).

In addition, in cases where the courts of the common law cannot assess the damages caused to the plaintiff in an acceptable way, they will have no choice but to issue a specific performance order. Therefore, the courts issue the specific performance order regarding the inadequacy of paying money damages (Beatson, Burrows, Cartwright, 2016: 468). Therefore, in cases where the financial value of the lost right of the plaintiff is not precisely specified, courts are required to issue the specific performance order to cover all damages caused to them.

Moreover, when it is difficult for the plaintiff to prove the loss due to breach of obligation, or it is impossible to remove all parts of the loss due to the lack of all the legal conditions necessary for damage compensation through paying money damages, the plaintiff can ask the court to issue the specific performance order, and the court is obliged to accept it (Stone, 2013: 440).

When the money payment remedy is less efficient for the plaintiff than the specific performance remedy, the specific performance remedy is preferable to the money payment remedy. For example, if the court decides that the defendant must pay the money for the breach of the obligation, but he is unable to pay it all, but in installments, and this issue puts the plaintiff in a bad financial condition (e.g., bankruptcy or reputational damage), the court will first issue the specific performance order to save him from this condition through this order (Macdonalds, Atkins, 2010: 550).

Furthermore, when the defendant’s personality is of such special and unique importance that damage compensation through money payment cannot be as effective as the specific performance for the obligee, the court will issue the specific performance order (O’Sullivan, Hilliard, 2014: 450). Therefore, if the only repair specialist of hand-made Italian cars is a unique person and he

breaches his obligation to repair a car of this type, he cannot keep the obligee's expensive car in no use by paying a small amount of money as compensation for breach of contract. Consequently, in cases where the contractual obligations are not of this type, the contractual damages arising from the breach of the obligation can be compensated by paying a sum of money without the need for the defendant's specific performance, via sequestration or execution of official documents (Treitel, 2003: 935).

According to the dominant procedure in the common law, the necessary precondition for specific performance in all the mentioned cases is that the obligation must have financial value, and specific performance for non-financial obligations is not possible at all. However, before integrating the chancery courts³ into the common law judiciary system, using the specific performance remedy was not limited to financial obligations if a case was within the jurisdiction of these courts. Today, this remedy is possible only for financial obligations rather than non-financial ones due to the absence of these courts in many countries under the common law system.

2. Exceptional Principles and Reasons for Considering the Specific Performance Remedy as an Exceptional Remedy in the Common Law

One of the reasons for the unnecessary of issuing a specific performance order by the common law courts is the need to apply this remedy in many cases because the damages incurred to plaintiffs can be compensated through money payment. This issue is because the plaintiff achieves their goal of compensating their contractual damages through money payment. Therefore, the court does not need to oblige the defendant for specific performance (Treitel, 2003: 940). As a result, if it is possible to compensate the contractual damages through paying money and it is considered adequate for the contractual benefits of the plaintiff, there will be no need to oblige the defendant for specific performance. In this respect, the common law assumes that money payment can compensate for all damages arising from the breach of the obligation to the plaintiff unless they can prove contrary to this assumption. In other words, they may prove that the issuance of a compensation order through money damages cannot meet all their contractual benefits (Mulcahy, 2002: 12).

³ A chancery court is one that judges based on the principles of justice. Chancery courts generally use remedies such as specific performance instead of money damages. These courts in the UK eventually merged with the legal courts, although some of them in the United States still operate separately from the legal courts (Wikipedia/chancery courts, 24/12/2019).

Therefore, as mentioned before, one of the exceptional cases to applying the specific performance remedy is when the plaintiff can prove that the money paid for the breach of the obligation will not lead to their satisfaction as good as specific performance can do. Therefore, the common law courts generally refuse to apply the specific performance remedy to oblige the defendant to sell the certain property to the plaintiff in cases where a similar property is available in the market. The explanation is that the plaintiff himself can provide the property that the defendant had created for him under the contract by referring to the market and providing alternative goods. It means that the plaintiffs can refer to the defendant and claim the price difference they have paid for the alternative goods only if they have suffered a loss due to the defendant's breach of the obligation of the sales (Stone, 2013: 480). This explanation clarifies the main basis for the reluctance of the common law courts to issue a specific performance order. The principle of the plaintiff's necessity of referring to the market for the provision of alternative goods and not allowing the obligor's specific performance is based on the need to observe the "loss mitigation" principle.

Therefore, considering that the plaintiffs are obliged to prevent the imposition of damages on themselves if the defendant violates the obligation, they cannot refuse to observe this principle and cause loss to the obligor after the obligation breach and the defendant's specific performance (Charman, 2008: 229). Therefore, as soon as the obligor violates the obligation or even foreseen, the obligee must go to the market and provide his substitute goods. Also, if the plaintiffs suffer a loss because they get the goods at a higher price and with lower quality, they can refer to the defendant for compensation. Therefore, if they take no action to provide alternative goods in the market and the price of the goods rises, they can no longer compensate for the damages caused to them in this regard. Consequently, if the court adopts the specific performance remedy as the main rule for compensating the contractual damages, unjust oppression is posed to the defendant as the defendant has to buy the pledged goods whose market price at a higher price deliver it to the obligee (Treitel, 2003: 970).

In explaining this issue, the defendant is only responsible for compensating the damages that the plaintiff could not prevent due to the contract violation. As a result, if the plaintiffs can provide alternative goods, they must refer to the market as soon as possible and provide alternative goods to prevent the losses arising from the increased price of the obligation subject. If they seek the obligor's specific performance and are allowed by the court to do so, they will take no practical action to mitigate the damages arising from the breach of the obligation. Since there may be a long interval between the

breach of the obligation and the court's specific performance order, the market price of the goods may be multiplied. According to the common law lawyers, since this issue causes unjust damage to the defendant, it should be prevented by considering the specific performance remedy as a secondary remedy. Therefore, to prevent unfair damages to the defendant (violator of obligation) and based on the "loss mitigation" principle, the common law forbids the courts of the respective countries from using the specific performance remedy as the primary remedy (Treitel, 2003: 945).

Another reason that the courts in the common law are reluctant to issue a specific performance order is that the damages caused to the plaintiff arising from the breach of the obligation may be easily assessed and compensated by money. Therefore, for example, in the loan agreement, when the borrower does not pay their debt on time, the lender cannot ask the court to issue a specific performance remedy because the damages caused to the plaintiff can easily be calculated and paid based on the interest rate of the money. Hence, it is unnecessary to issue a specific performance remedy (Clark Hare, 2003: 398).

PRINCIPLES OF REGARDING THE SPECIFIC PERFORMANCE REMEDY AS THE PRIMARY REMEDY IN IMAMI JURISPRUDENCE AND THE IRANIAN LEGAL SYSTEM

As mentioned above, in Iranian law, which is based on jurisprudential principles, the primary remedy for compensating contractual damages, contrary to the common law, is the specific performance remedy (Toosi, 2008 AH, Vol. 2/312). Therefore, it is necessary to study the principles and reasons for adopting this approach in Imami jurisprudence and the Iranian legal system. By searching in the fatwas of jurists, one can understand some of the principles and reasons for recognizing the specific performance remedy as the primary remedy for contractual damage compensation. One of the jurists' main principles and reasons for using the specific performance remedy is their reference to the "requirement" rule (Helli, 2015 AH: 89). According to this rule, once all the conditions and requirements for the parties' adherence to their contractual obligations are met, they no longer have the right to terminate the contract and the transaction. Hence, according to the "requirement" rule, the court should oblige them for specific performance as the primary remedy when one of the parties breaches its contractual obligations. The explanation for this issue is that if the plaintiffs seek compensation through payment, they must first terminate the contract because it is not logical to keep a contractual relationship with the other party and ask the defendant to compensate the

damages caused by the non-performance of the obligation, simultaneously (Ansari, 1411 AH, Vol. 2/303).

The plaintiff's prohibition to compensate simultaneously for the damages caused by non-binding to the obligation with continuing the contract is because the premise of compensation through money damages is a real breach of contract. Also, a real breach occurs only when the victims see their interest in withdrawing from the contract and they can fulfill this assumption or premise via actions such as contract termination in a legal way. Therefore, they can compensate their contractual damages by only receiving a sum of money if this premise is met. However, the emergence of a legal right for the aggrieved party to terminate the contract should only be in line with and based on the "requirement" rule. The reason is that according to this rule, none of the contracting parties will have the right to breach the contract, even if one of them refuses to fulfill their obligations properly. Therefore, it can be said that if any of the contracting parties refuse to fulfill their obligations, they have merely committed a contractual violation rather than a real breach of contract.

However, as mentioned, one can obtain money damages only in case of an actual breach of contract rather than violation of contractual obligations. In other words, when one of the contracting parties does not fulfill its obligations properly, according to the "requirement" rule, neither they nor the other party will withdraw from the contract. In such a case, the other party can resort to the ruling forces to oblige the violator to fulfill their obligations based on the "requirement" rule. If he fails to do so, considering that the other party has committed a real breach of contract, he can terminate the contract in retaliation and compensate for the damages by receiving money. The legal evidence of the arguments made for the jurisprudential justification of the precedence of the specific performance remedy over receiving money damages is Article 219 of the Civil Code. According to this code, "Contracts concluded based on the law must be followed unless terminated for a legal reason". In addition, Article 238 of the Civil Code states that "Whenever a person responsible for performing a condition is incapable of performing that and no one else can perform the conditioned act on their behalf, the other party will have the right to terminate the transaction". According to this code, whoever can oblige a party to perform the obligation, the other party will not have the legal right to terminate the transaction. Hence, it is inferred that mere non-fulfillment of the obligation is not a reason for the withdrawal of one of the contracting parties.

Besides, non-fulfillment of the contractual obligation is, per se, only a violation of the contract rather than a real breach of it. The same article reads that if the obligor's specific performance is possible, there will be no right of

termination for the obligee. According to Article 219 of the Civil Code, the only way to escape from the “requirement” rule is to end the contractual relationship by identifying the legal ways, such as creating the right of termination for the aggrieved party, which is possible. Otherwise, according to Article 238 of the Civil Code, it is not possible to compel the defendant to fulfill their obligations in any way. Thus, by combining these two articles of the Civil Code, the jurisprudential basis of the precedence of the specific performance remedy over money damages (i.e., the “requirement” rule) is confirmed.

The jurists’ explanation for applying specific performance remedy as the primary remedy to compensate for the violation of the obligation, which is based on the “requirement” rule, is some Quranic verses such as “Fulfill your obligations” (Al-Ma’idah / verse 1) and narrations such as “The believers will keep their conditions (Koleini, 1407 AH, Volume 5/169). Accordingly, even in non-fulfilling the contractual obligations by one of the contracting parties, the reasoning of these verses and narrations (i.e., the need for the contracting parties to adhere to the obligation) is still valid. Therefore, if they refuse to do so voluntarily, the courts will compel them to perform their obligations based on the “command to command” principle. This sentence is issued because these verses and narrations are orders that are necessary to comply. Therefore, if the obligor violates their obligations, the obligee and the ruler will be required to force him to fulfill the obligation.

Another significant reason for this issue, which is based on the fatwas of the jurists, is the principle of “the need to fully compensate the aggrieved party’s damages by creating the minimum financial, psychological and temporal trouble” for him. This principle means that the damage to the obligee is caused by a person who has violated his contractual obligations. Now, it is not acceptable for the violator to pay some money and put on the obligee’s shoulder the trouble of returning his condition to the condition that he would have been in if the contract had been executed, thereby wasting the obligee’s time and creating a psychological burden for him (Helli, 1404 AH, Vol. 4/71). Accordingly, as the person responsible for the loss in contractual liability must return the aggrieved party to a condition where they would not have been if the social duty had not been violated, the violator must also return the aggrieved party to the same condition. As the difference between contractual and non-contractual liability is the violation committed by the violator, it is logical to accept that in contractual violation, the aggrieved party would be in a better condition if the violation had not occurred. Therefore, by obliging the violator to perform the obligation, the obligee will return to the condition that they deserve. However, damage compensation through money payment requires time, energy, and psychological burden, even if it puts the aggrieved

party in a condition that they would be in if the contract had been performed. This issue is at odds with the principle of “the need to fully compensate the aggrieved party’s damages by creating the minimum financial, psychological, and temporal trouble”.

The precedence of the specific performance remedy overpaying money damages does not contradict the obligee’s duty to observe the principle of “the need for damage mitigation”. In explaining this claim, the principle of “the need to fully compensate the aggrieved party’s damages by creating the minimum financial, psychological, and temporal trouble” dominates the principle of “the need for damage mitigation” and narrows its scope. In other words, the contracting obligor causes damages to the obligee by committing a contractual violation. On the other hand, the obligee’s duty to comply with the “need for damage mitigation” principle is to compel the obligee to fulfill the obligation through the court as soon as possible. If the obligor can aid the obligee concerning mitigation of the damages caused by the breach but does not take any effective action in this regard, they will be liable for not preventing the increased damages caused by obligation infringement based on the “action” principle.

Therefore, it can be said that the principle of “the need to fully compensate the aggrieved party’s damages by creating the minimum financial, psychological, and temporal trouble” governs the principle of “the need for damage mitigation” and narrows its scope. In other words, the scope of the principle of “the need for damage mitigation” is reduced to its initial level, i.e., the mere action of the obligor in compelling the obligee to fulfill the obligation through the court. Besides, if the obligee does not cooperate with him despite their ability and the court has no choice but to issue the order of compensation through money damages, the obligor, based on the “rule of action”, will have to compensate all damages caused by the breach of the obligation to the obligee. Furthermore, under the pretext of non-compliance with the principle of “the need for damage mitigation”, he cannot prevent the payment of some damages to the obligor.

Finally, it is of note that the precedence of the specific performance remedy in Imami jurisprudence and the Iranian legal system is possible only if it does not lead to rights abuse (Mohaghigh Damad, 1406 AH, Vol. 1/78). The criterion for determining it is to make a balance between the loss incurred to the obligor following his specific performance and the benefit that the obligee gets in this regard. Therefore, when following the obligor’s specific performance, they are supposed to pay one hundred million. Meanwhile, when the obligor’s achievement of bearing this loss is only five million for the

obligee, the court must set aside the specific performance remedy under the principle of “prohibition of abuse of rights”, and order damage compensation through paying money. Accordingly, in the opinion of the jurists regarding non-contractual liability, for a person who has used usurped wood in the construction of their boat, if the obligation of the boat owner to deliver the same piece of wood to its owner causes the boat to break down and imposes a high cost despite the low price of the wood, the specific performance remedy will be discarded, and the money damages remedy will be used instead.

EVALUATING AND DETERMINING THE BEST APPROACH OF CONTRACTUAL COMPENSATION REMEDY

As mentioned earlier, when a contractual obligation is violated by one of the parties to the contract, the primary remedy in the common law is paying money damages rather than the specific performance remedy. Using this remedy as the primary remedy to remove the losses incurred to the plaintiff is based on principles and reasons. On the contrary, the Imami jurisprudential system and, consequently, the Iranian legal system, based on its accepted principles, regard the specific performance remedy as the primary remedy to the contractual damages. The confrontation of two opposing ideas based on two different remedies of contractual compensation as the primary remedy to compensate the losses incurred to the plaintiff will certainly have different effects in the real world. Therefore, it is worthwhile to provide brief explanations regarding adopting the best remedy as the primary remedy for contractual damages.

In the world of contractual obligations, when persons are obliged to each other, there are two types of benefits for them: 1) benefits arising from the performance of the obligation and 2) benefits that the obligee can claim from the obligor as compensation for damages due to non-performance of the obligation (Webb, 2006: 43).

However, there are very precise and minute differences between these two types of contractual benefits, which unfortunately have not been considered by many common-law jurists and their followers in other legal systems. Therefore, it is important to consider the difference between the two types of contractual benefits mentioned above. Imami jurisprudence and the science of private law consider and support the various human benefits that are directly related to his physical, psychological, and financial needs. Most jurists of the common law and their followers in other legal systems, especially after the publication of Fuller and Purdue’s paper regarding the damage of trust, have erred in identifying the various contractual benefits and the differences

between them. In this vein, they have thought that the benefits execution of the obligation is the same benefits that the plaintiff can receive from the obligor as compensation for non-fulfillment of the obligation.

Therefore, Fuller and Purdue, in addition to common-law and Iranian jurists, have adopted the money damage payment remedy instead of the specific performance remedy due to their lack of neglect in identifying and differentiating these two types of benefits. This adoption is due to inattention to identifying and distinguishing between these two types of benefits. Since applying the money damages remedy is considered less complicated than the specific performance remedy, they insist on adopting this remedy as an adequate alternative to the specific performance remedy. This mistake, which seems to stem from Fuller and Purdue's interpretation of the concept of expected damages, has led them to use the expectation damage. This damage is an important instance of contractual compensation through money damages, as the main basis for covering all contractual benefits of the aggrieved party is believed to put the aggrieved party in a condition that he would be in if the contract had been executed (Fuller, Perdu, 1936: 53).

However, using this remedy as the primary remedy only includes secondary contractual benefits and does not include the benefits of obligation performance. By covering the primary benefits through applying the specific performance remedy, the secondary benefits (i.e., the benefits that the obligee could demand from the obligor if the obligation was not fulfilled) are no longer relevant. The reason is that the breach of the contract has not occurred in the real sense (Webb, 2006: 46), unless the obligation was of the desired obligation. In such a case, after a certain period of time, the obligor's specific performance will not be relevant because no benefit of performing contractual obligation can be considered for the obligee (Behjat, 1426 AH, Vol. 3/280). In addition, paying money damages not as an alternative to the performance of the obligation but as a way to compensate for the obligee's secondary benefits (i.e., the benefits that they can claim from the obligor if the obligation is not fulfilled) is the subject of the court order.

Moreover, according to the principles of Imami jurisprudence and the private law, all individuals are obliged to perform a series of basic duties and tasks, and the obligor cannot be certainly said to be free in performing these obligations through payment of money. Accordingly, lawyers who argue that the obligor must either fulfill their obligation or pay its replacement (i.e., its financial difference with money) have erred in identifying the obligatory duties of persons and the diversity of contractual benefits of individuals. Consequently, when a doctor is obliged to be present in the operating room

for the obligee's treatment according to the contract, as the contract is related to the patient's physical health, the doctor is obliged to adhere to the terms of the contract as the contract is related to the patient's physical health. In this way, the patient will have two benefits: 1) the benefit of the fulfillment of the obligation (i.e., health) and 2) the benefit arising from the fulfillment of the obligation (i.e., if the obligation is not fulfilled, the obligee can compensate the damages relating to secondary contractual benefits by obtaining money). When the doctor is deemed liable for the patient's health in the jurisprudence despite the patient's consent for the operation, this issue arises from the doctor's obligation to satisfy the first benefit of the patient (their physical health). This obligation is abdicated only by obtaining acquittal rather than consent from the patient. The rationale for such an order lies in the Imami jurisprudence's attention to identify various contractual benefits (Amoli, 1430 AH, Vol. 10/269). Therefore, the doctor cannot say that they can choose between fulfilling the obligation, i.e., operating the patient and paying him the money.

Rejecting such an order is for the benefits of human life, and individuals' financial and personal benefits have been supported by the legal system of Imami jurisprudence and private law. The reason is that the Prophet of Islam has placed the persons' property and its related benefits in the same rank as their lives and has highlighted the need to protect its privacy (Helli, 1420 AH, Vol. 4/519). Therefore, when there is a contract between two people in connection with purchasing and selling a laptop or tablet containing non-unique information and programs, the benefits of fulfilling the purchaser's obligation are related to the delivery of the same laptop or tablet that contains some information. On the other hand, its secondary benefits are related to the time when the obligation is not fulfilled. Therefore, it seems that the only way to cover the benefits of fulfilling the obligation is to use the specific performance remedy. As long as the specific performance remedy is possible, no one can claim that payment of money is an adequate substitute for it. Therefore, the seller cannot ignore the benefits of fulfilling the obligee's obligation under the pretext of compensating the damages for non-performance of the obligation and say that they will either fulfill the obligation or pay the damages.

Therefore, given the order existing between the contractual benefits (i.e., precedence of the benefits of the fulfillment of the obligation over the benefits of non-fulfillment of the obligation), the specific method of compensating the performance benefits (the specific performance remedy) should precede the compensation method relating to secondary benefits (paying money damages). Moreover, legal justice requires that in the event of a breach of contractual obligations, the minimum right that can be assigned to the obligee is to prevent

the obligee from violating their rights and benefits. This prohibition is not possible unless the legislature allows them to compel the obligee to fulfill their obligations as the first remedy for damage compensation.

In the perspective of some jurists of the common-law system, another mistake existing in this system is that although the courts of this legal system realize the difference between the benefits of fulfilling the obligation and the benefits of not fulfilling the obligation, they think that compensation through payment (expected damages) covers both benefits. Also, they believe that there is no need to issue the specific performance order, so they imagine they have compensated a loss twice if such an order is issued. Hence, they do not have much desire to issue a specific performance order to observe the principle of the need to compensate the unit of damages (Webb, 2006:57). However, as mentioned earlier, this false assumption stems from Fuller and Perdu's theory of expectation damages, positing that this type of damages covers all the contractual benefits of the obligee (Fuller, Perdu, 1936:57). As mentioned above, their claim is based on their inattention to identifying and distinguishing between primary and secondary contractual benefits. Therefore, they have made such a claim based on this premise. The identification and protection of various contractual benefits manifested that the theory of expectation damage includes only secondary benefits rather than primary ones and compensates only one type of loss. Therefore, this idea of common law courts is also not relevant.

In addition, many jurists and lawyers have said that the essence of the contract is fulfilling the obligation (Bojnourdi, 1401 AH, Vol. 2, 451), and this is the very reason why individuals accept the contractual obligations, and if upon the breach of the contract by one of the contracting parties, for whatever reason. Therefore, the main substance of the contract in compensation is not considered by the court such that it suffices with paying money. Consequently, the main essence of the contractual obligation seems not to affect the compensation remedy. The noteworthy point in this regard is that the very nature of any kind of obligation is to condemn the infringer to pay a sum of money for their violation of the essence of the contract (i.e., the performance of the obligation). Meanwhile, what is important in the world of law is the nature and substance of the legal action to achieve a definite purpose rather than to oblige individuals to pay its monetary value regardless of the specific purpose for which individuals are willing to accept contractual obligations. Thus, when it is accepted that the payment of monetary value has precedence over the specific performance remedy, the nature and substance of the contract (which has a specific purpose) has been ignored, and the adoption of such an issue will never be acceptable. In this respect, using a breach of contract

through payment of money in the common law is possible only when there is a contractual obligation. Thus, this principle is confirmed by the verdict issued in the case of Park B in *Robinson V Harman*. The judgment reads “When a person suffers a loss due to a breach of contract, they should be paid money damages as far as possible to put them in a condition where they would have been if the obligation had been fulfilled. Elaborating on this sentence shows that compensating the damages for breach of obligation by paying monetary value requires having an obligation as the main essence of compensation. As a result, one may ask why to leave the same obligation as a closer result and the essence of compensation and seek compensation through the payment as a further result (Webb, 2006: 57). Under these conditions, the precedence of subordinate over superordinate and the farther result to closer result to compensate for contractual damages does not seem reasonable.

Eventually, it should be noted that although the contractual obligations may be breached by one of the parties in some cases, the breach of the obligation might not have caused any damage to the obligee, given that the initial remedy in the common law is paying money damages. One of the conditions for issuing such an order is the need for the plaintiff to prove the damage. This issue will prolong the proceedings. Nevertheless, based on the specific performance remedy as the primary remedy for compensation, as soon as the obligation is violated, regardless of the proof of loss, the obligee will achieve all the contract benefits by forcing the obligor to fulfill the obligation. Therefore, in most cases, the obligor’s specific performance has less judicial complexity than the payment of financial compensation, and it will prevent the prolongation of proceedings and subsequent damages to the plaintiff (Webb, 2006:58).

According to the arguments made above, it seems that the remedy adopted by the Iranian legal system for contractual damage compensation excels the procedure governing the common law.

CONCLUSION

One of the remedies for contractual damage compensation is to obligor’s specific performance. This remedy is considered the secondary or exceptional remedy for compensation in common law, where paying money damages is the primary remedy. However, the Iranian legal jurisprudential system uses specific performance remedies as the primary remedy for damage compensation.

The main reasons for considering the specific performance remedy as an exceptional and secondary remedy in common law are two-fold. First, its application contradicts the principle of “the need for damage mitigation” by

the aggrieved party. Second, as contractual damages can be compensated by money in many cases and thus it is not necessary to use the specific performance remedy as the main remedy for compensating the contractual damages. As a result, this remedy will be used only if the compensation through money damages is not considered an adequate element in compensation for all the damages incurred to the obligee.

Two main principles for considering the specific performance remedy as the primary remedy in the Iranian jurisprudential system are the “requirement” rule and “the need to fully compensate the aggrieved party’s damages by creating the minimum financial, psychological and temporal trouble”. According to the first rule, even if the obligation is not fulfilled by one of the parties, the obligee not only has no right to withdraw from the contract but will have to continue to adhere to the contractual obligations and to keep the obligor adherent to the contract following the specific performance remedy. Overall, by issuing the defendant’s specific performance order, most of the financial, psychological, and temporal burden of returning the aggrieved party to the condition in which he would have been if the contract had been executed would have been put on the shoulder of the contract violator rather than the aggrieved party.

Finally, by examining the principles and reasons for adopting different approaches by each of these two legal systems, we concluded that individuals in contractual obligations have two types of benefits: 1) the benefit of fulfilling the obligation and 2) the benefits that can be claimed from the obligor in case of non-fulfillment of the obligation. It is possible to cover the two types of benefits through the issuance of specific performance orders. However, the common law system regards this remedy as an exceptional remedy and uses the money payment remedy as its primary remedy for damage compensation, thereby covering only the secondary benefits of the aggrieved party. Therefore, regarding the specific performance remedy as the main remedy takes precedence over regarding it as the secondary and exceptional remedy. Accordingly, the approach adopted by the Iranian jurisprudential legal system is better than that adopted by the common law.

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