Private Law Studies Quarterly
Online ISSN: 2588-6622
Volume: 53, Issue: 4
Homepage:/https://jlq.ut.ac.ir
Winter 2024

Research Paper

Supporting Digital Initiatives in Video Games by Studying EU Law

Nahid Parsa*
PhD in Private Law, Department of Private Law, Faculty of Law and Political Science, University of Mazandaran, Babolsar, Iran. Email: nahidparsa84@yahoo.com.

Abstract
This article addresses three main questions: What is the legal status of digital designs from the perspective of Iranian laws and EU design law? Is protection limited to the reproduction of physical products or not? And whether the scope of protection includes dimensions such as the use of Does it cover 3D design and conversion to 2D or vice versa? There is no mention of this subject in Iranian law, and no research or writing has been devoted to it. However, in Europe, there are two general views on dimensional transformation: "abstract" and "objective" views, which are two ways of looking at the scope of protection, depending on how the protectability of digital designs is assessed. In the "abstract" theory of protection, it does not matter whether a product exists only as a digital image or has a physical form. From an "objective" point of view, however, it is more challenging to protect digital designs because the scope of protection is often linked to the reproduction of an actual physical product. This article argues that there is no answer to these and similar questions in Iranian law, but under European jurisprudence, most of the questions raised regarding the protection of digital designs and dimensional transformation can be considered resolved. Because the jurisprudence has preferred protection based on the "abstract" viewpoint to the "objective" viewpoint, it has expanded the scope of this type of protection at the level of the European Union. This means that digital use of non-digital designs can now be considered infringement. As a result, rights holders should be more careful in the future when evaluating limitations and exceptions.

* **How to Cite:** Parsa , Nahid . (2024, Winter) " Supporting Digital Initiatives in Video Games by Studying EU Law "*Private Law Studies Quarterly*, 53,4: 513 – 531.
DOI :10.22059/JLQ.2024.359827.1007770
Manuscript received: 26 June 2023 ;final revision received: 27 September 2023; accepted: 12 March 2024, published online: 13 March 2024

In Iranian law, Article 1 of the Protection of Authors Act of 1348 refers to what is achieved through innovation as a work without considering the method or form of its expression and emergence (Rehbar and Dehghanpour, 543) (Habiba and Qaim Maggi, 1401:94) and Article 2, Clause 11, which refers to innovative work, is practically an addition (Zarkalam and Mokhuri, 2014: 27-33). Digital designs are often associated with the decision to achieve physical production, but they can also be used only in an intangible way. Designs such as icons in applications and graphical user interfaces are examples of designs made exclusively for digital use. Another example is video games, the building blocks of all games are digital designs. In the software, mobile device, and video game industries, the issue of protecting digital designs is becoming increasingly important because digital designs can be easily copied and used by others. It has been argued that industrial design protection can play a role in effectively protecting digital designs. (Church, 2019: 695)

At the European Union level, design protection is governed by two pieces of legislation: the Design Directive and the Community Design Regulation. Despite the growing importance of design protection, its scope in relation to digital designs is often unclear. These issues are particularly relevant to the question of whether protection applies to the reproduction of physical products and whether the scope of protection covers dimensional changes, such as the use of a three-dimensional design in a two-dimensional form or vice versa. This article refers to this as dimensional transformation because digitization and dimensional transformation are often intertwined. There seem to be two views on this next transformation in the EU: "abstract" and "concrete". In the "abstract" view, protection is considered for all types of production, regardless of the dimensions of the object. In some member states, such as Germany, protection is taken for granted regardless of dimensions. Any use of a protected 3D design in 2D form may be considered an infringement. An "objective" view is that protection is limited to physical goods only. Therefore, according to this view, if the design protection was originally registered for a three-dimensional figure, its use in two-dimensional form is not considered an infringement of the law, or vice versa.

This perspective is particularly prevalent in England, Scandinavian countries, and the United States. Similarly, some researchers consider the lack of a tangible product to be a significant challenge for the protection of design. (McKenna, 2020: 395) The background of the research either includes the investigation of copyright in algorithms (Habiba and Ghaem Maggi, 1401) or intangible technologies (Rehbar and Dehghanpour, 1401). Maybe they have dealt with new information and communication technologies (Shakri and Jafarpour, 1401). Therefore, one of the novel points of this article is the examination of the possibility of supporting digital designs and dimensional transformation. To date, the validity of physical product design and reproduction laws has been successfully challenged at the European Union level. However, in order to consider the problem of dimensional transformation, one must pay full attention to the design protection of digital designs. In order to achieve this, the article first briefly

introduces digital designs and their role in video games before considering the copyright/design relationship in the protection of digital designs. Secondly, this article examines the legal status of digital designs.

Keywords: Digital designs, Dimensional transformation, Video games, Support.

Declaration of conflicting interests
The author diclares no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding
The author received no financial support for the research, authorship, and/or publication of this article.

Private Law Studies Quarterly

Online ISSN: 2588-6622
Volume: 53, Issue: 4
Winter 2024

Homepage:/https://jlq.ut.ac.ir

Research Paper

Analysis and critique of Article 34, Section 3 of International Commercial Arbitration Law regarding the Setting aside of Immovable Property arbitral awards on the grounds of Conflict with the Provisions of a Notarial Act

Rahim Pilvar[1]✉ * , Soroush Safizade[2]

1. Associate Professor, Department of Private Law, Faculty of Law, University of Tehran (Farabi College), Qom, Iran, Email: rahimpilvar@ut.ac.ir

Soroush Safizade

2. PhD Student, Private Law, Faculty of Law, University of Tehran (Farabi College), Qom, Iran, Email: safizade.soroush@ut.ac.ir

Abstract

Article 34 of the Iranian LICA mentions several reasons for setting aside the arbitration award in three paragraphs. The last cause, to a large extent similar to the fifth paragraph of Article 489 of the Civil Procedure law, refers to the "Conflict of the Arbitration Award related to Immovable Property with the Provisions of the Notarial Documents". A cause due to its lack of clarification in the UNCITRAL Model Regulations and the 1958 New York Convention raises the question of what is the meaning of the "Notarial Document" contained in this paragraph and what are the justifications for including or removing this exception in the provisions of the Iranian LICA.

This analytical descriptive article has reached the following conclusions using the library research method, First of all, the intention of the legislator in

* **How to Cite:** Pilvar, Rahim; Soroush Safizade. (2024, Winter) " Analysis and critique of Article 34, Section 3 of International Commercial Arbitration Law regarding the Setting aside of Immovable Property arbitral awards on the grounds of Conflict with the Provisions of a Notarial Act *"Private Law Studies Quarterly*, 53,4: 533 – 556. DOI: 10.22059/JLQ.2024.345606.1007693

Manuscript received:14 March 2023; final revision received: 10 May 2023; accepted:12 March 2024, published online: 13 March 2024

this provision is the specific concept of the notarial document - in the sense of a document prepared by the notary; Because the subject of the law is commercial arbitration, and commercial operations as defined in articles one to three of the Commercial Code, usually refers to transactions. Therefore, if the third paragraph of Article 34 has a concept about commercial operation, that concept appears only by manifesting the meaning of the notarial document in the "document prepared by the notary." Also, part of the third paragraph of Article 34 holds, "unless the "arbitrator" has been authorized to act as "amiable compositeur" regarding the latter issue." implicitly implies that a legal relationship has been concluded between the parties within the framework of the notarial document in question, which, in the form of its terms, the arbitrator has been given the right to compromise.

Secondly, Regarding the concept of setting aside the immovable property arbitral award based on Conflict with the provisions of the notarial act, three main points of view have been raised in the opinion of arbitration law experts, based on which they have considered the requirement mentioned above as a redundant provision:

The Non-incorporation of subject matter point of view believes that the transfer of immovable property is outside the scope of the LICA due to the non-commercial nature of the immovable transaction. The main challenge of the present view is the neglect of the wide scope of commercial operations of Article 2 of the LICA, derived from the footnote of Article 1 of the UNCITRAL model regulation, and conflicts with Article 2 of the Commercial Code.

Although it may be said, since joining the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Iran, like many countries, has used the right of reservation of paragraph one of Article 3 of the Convention regarding the governance of internal regulations in the definition of commercial operations, the Commercial Code definition of commercial operations is acceptable; However, in rejecting this argument, the possibility of difference between the concept of commerciality in the New York Convention and commerciality in the LICA has been mentioned. Even beyond that, it has been said that if Iran has accepted the New York Convention subject to the definition of commercial operations according to its internal regulations, this does not mean applying articles two and three of the Commercial Code. It also makes sense to refer to the general criteria of the LICA.

The view of Conflict with public order believes that from the perspective of domestic law, immovable property is a part of the territory of countries, and the sensitivity of the legislator regarding immovable property and the possession of foreigners has historical roots, which places it in the category of domestic public order. According to some jurists, this sensitivity in the field of land registration system has become much more intense, especially after the events in Palestine.

From an international point of view, the *Lex rei sitae* is one of the oldest rules in private international law, according to which the legal regime governing immovable property is assumed to be the law of the country where the property is located. In this regard, land registration rules are considered a manifestation of public order based on the *Lex rei sitae.*

In this regard, although according to the acceptance of the land registration system in most countries, it may appear that the acceptance of this theory is not compatible with the concept of relativity in public order. But considering that relativity can be different based on the concept and scope of public order in different countries (spatial Conflict) or different periods (temporal Conflict), although from a spatial perspective, the issue of notarial documents has an almost universal consensus; From the temporal point of view, the relativity discussed can be attributed to the issue of notarial documents.

The third point of view regarding the non-arbitrability of claims related to real rights believes that arbitration is only specific to the rights of obligations and cannot refer to real rights, which have to be registered in the land registry. In criticizing this point of view, it should be mentioned that according to the rule in Iranian private law, except in cases where the law prohibits arbitrability, all claims are arbitrable, and immovable property is not excluded from this principle. In this regard, the pre-sale contract is one of the contracts that, according to Article 3 of the building pre-sale law, is made through the preparation of a notarial document by the notary and its notice is sent to the local registry office and included in the title document. However, paragraph 10 of Article 2 of the law provides the mandatory arbitration mechanism. Article 20 of this law states that all disputes related to the pre-sale contract have been subject to arbitration.

Therefore, paragraph 3 of article 34 of the LICA is part of the second paragraph of the same article. On this basis, it is suggested that it be removed according to the logical justification based on the doctrine of Conflict with public order. With this action and regarding the above-mentioned interpretation, Iranian regulations consider international standards, and respect for notarial documents is maintained in terms of public order.

Keywords: Setting aside the Arbitral award, Conflict of the Arbitral Awards with the Notarial Act, Conflict of the Arbitral Awards with the Public Order, Non-Arbitrability of Real Rights, Law of International Commercial Arbitration.

Declaration of conflicting interests
The authors declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding
The authors received no financial support for the research, authorship, and/or publication of this article.

Private Law Studies Quarterly
Online ISSN: 2588-6622
Volume: 53, Issue: 4
Homepage:/https://jlq.ut.ac.ir
Winter 2024

Research Paper

Marketers: A Lacuna in the Law

Mohammad Shokri*
Assistant Professor, Department of Law, Faculty of Law and Social Sciences, Payame Noor University, Tehran, Iran, Email: mshokri@pnu.ac.ir

Abstract

The marketer plays a vital role in transactions. By facilitating the supply, on the one hand, the marketer provides a valuable service to the demander. On the other hand, he facilitates the possibility of supplying goods or services to the producer. The development of commercial affairs and commercial exchanges has caused the specialization of marketing as a profession, and there is a need for specialized knowledge and experience in this job. A Lacuna in the Law is evident, so legislators and legal writers have neglected it. The legal gap undoubtedly is the cause of the many legal problems for this vast group of commercial activists and their parties. This article uses a descriptive-analytical method, compiled by referring to the relevant laws, regulations, and works, and analyzes them based on legal principles.

Nowadays, it is necessary for the marketer and marketing to acquire a special legal status independently and like other existing institutions so that the legal status of this critical part of the commercial and economic activities of the society is clarified.

Currently, a marketer has no place in Iran's legal literature; therefore, to determine the importance and legal status of marketing activity, its position should be analyzed in light of its matching with similar legal institutions.

If the contract involves making a transaction for the account of the principal and the parties explicitly call the contract a power of attorney based on their intention, the contract has the nature of power of attorney. In this way, he can be called a marketer-lawyer; of course, it can only be considered a power of attorney when it is incompatible with any commercial

* **How to Cite:** Shokri, Mohammad (2024, Winter) " Marketers: A Lacuna in the Law "*Private Law Studies Quarterly*, 53,4: 557 - 579 DOI: 10.22059/JLQ.2024.355598.1007748
Manuscript received: 16 April 2023 ; final revision received: 15 July 2023; accepted: 12 March 2024; published online: 13 March 2024

representation (royalty, brokerage, agency, or other cases). A clear example of this situation is when marketing is done free of charge.

If the marketer's activity is in such a way that the creativity and initiative in the work are solely with him, and he is not under the supervision and compliance of the employer in doing marketing, then the worker's title does not apply to him.

Marketing has the adaptability to with commission if: first, the marketer deals. Secondly, the marketer should conduct the transaction in his name and on the principal's account. In cases where the marketer only mediates the transaction without dealing with the other party himself, the nature of his action is an example of brokering. According to brokerage regulations and what happens in practice, most examples of marketing without independent legal regulations are subject to the nature of brokerage; a marketer often does not initiate a transaction between the principal party and the other party but merely acts as an intermediary between them. If the nature of the marketer's action is a brokerage, the following duties are deduced from the relevant regulations: a. conducting mediation in transactions subject to the marketing contract: b. notification by the marketer. Marketing may be realized as a factor, and the condition for recognizing a factor, such as royalties and brokerage, is to perform work for wages.

Marketers and marketing professionals are common and inevitable cases in the market and commercial and economic activities today. Despite this, they do not have a special place in the relevant laws. Since the mission of the law is to regulate the legal relations of individuals in society, the laws must be regulated and approved in parallel with social phenomena to avoid ambiguous legal consequences and differences in determining the rights and duties of related parties. The need for the dynamics of rights to respond to legal phenomena caused by social changes requires that marketing, like other commercial businesses, has its nature and regulations. What is the quantitative and qualitative abundance of marketing in business and economic relations? It is even more than some similar businesses.

In the current legal vacuum and the lack of a specific nature for the marketer and marketing in the relevant laws, according to what is prevailing now, the marketer mediates the transaction between the seller and the buyer through activity and advertising. Therefore, in most cases, marketing coincides with the nature of brokering. However, the criteria of the parties' contract in each case represent its legal nature, and inevitably, to determine the rights and duties of the parties and the effects of the contract related to marketing, its nature must first be considered concerning other similar cases such as royalties, brokers, agents, attorneys, and leases. If the person is identified, then based on that, he determines the contractual works. In any assumption, the titles of marketer-right-holder, marketer-broker, marketer-agent, and marketer-lawyer will be the pioneers of the nature and legal position and accordingly determine the rights and duties of marketer and agent.

Keywords: Marketer, Marketing, Royalty, zbroker, Marketer-broker.

Declaration of conflicting interests
The author diclares no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding
The author received no financial support for the research, authorship, and/or publication of this article.

Private Law Studies Quarterly
Homepage:/https://jlq.ut.ac.ir
Online ISSN: 2588-6622
Volume: 53, Issue: 4
Winter 2024

Research Paper

The Position of the "Movable Property Registration System" in Ensuring the Stability of the Legal Status of Movable Property and Transaction Security with Emphasis on Secured Transactions

Nasrin Tabatabai Hesari [1] ✉* , **Sahar Ain Parast**[2]

1. Associate Professor, Department of Private and Islamic Law, Faculty of Law and Political Science, University of Tehran, Tehran, Iran, Email: nasrintaba@ut.ac.ir

2. Master's Degree, Private Law, Faculty of Law and Political Science, University of Tehran, Tehran, Iran, Email: sahar.aein@ut.ac.ir

Abstract

Establishing "information transparency and guarantee of credit" in transactions with movable collateral has caused legal systems to pay attention to the legal registration technique. Although the movable property has a greater share in the asset portfolio of individuals, there is no desire to conclude movable collateral transactions, especially by credit institutions, due to the limitation of using these properties with their bills. So when people turn to acquiring immovable property and concluding transactions with immovable collateral due to the existence of the real estate registration system, the maximum use of movable property is not provided, and movable property is not used in transactions with collateral, especially in production

* **How to Cite:** Tabatabai Hesari, Nasrin; Sahar Ain Parast (2024, Winter) " The Position of the "Movable Property Registration System" in Ensuring the Stability of the Legal Status of Movable Property and Transaction Security with Emphasis on Secured Transactions "*Private Law Studies Quarterly*, 53,4: 581 – 601. DOI:10.22059/JLQ.2024.337869.1007642
Manuscript received: 5 March 2022 ; final revision received: 17 August 2023; accepted: 12 March 2024; published online: 13 March 2024

and trade. Due to the lack of assurance to individuals and the lack of guarantee of legal security, it will inevitably become a dead capital. It has raised the issue of what legal functions are expected from the registration of movable collaterals, on what legal basis it should be established, and what legal effects it should have to guarantee the intended legal functions.
The present study, with an analytical and comparative perspective, has concluded that the "principle of declaration and general access to information", "preventing the phenomenon of display of false wealth," and "creating an impersonal market through the conversion of assets into capital" are the legal functions expected to a system of registration of movable collaterals in all legal systems. By adopting one of the two legal bases, "registration as an alternative to taking property" and "registration as a complement of effects, " each has provided different sanctions. In other words, paying attention to the basics and legal functions expected from the movable property registration system, especially in the field of commercial transactions and obtaining credit, has led to the prediction and suggestion of creating a movable property registration system as a comprehensive database in many conventions and sample rules.
The Iranian legal system also faces the challenge of restricting the area of movable property, the dispersion and diversity of movable registration systems, and the multiplicity of its dependent authorities, which has led to the failure to provide the expected legal functions by establishing a comprehensive movable registration entity. In fact, in Iran's legal system, despite the creation of certain systems specific to certain movable properties and the approval of regulations in the field of authentication of movable properties to increase credit, there are still defects in the legal infrastructure for the authentication of all types of movable properties and the lack of a bank Comprehensive information about the legal status of the property can be seen. This article has concluded that this legal challenge can be solved by creating a "comprehensive movable registration institution" that registers all movable property transactions and provides public access to this information. According to the legal status of the traded property, by ensuring the stability of the legal status of the movable property subject to verification with the help of the support function of the mentioned registration system, which leads to the determination of the right of priority of collateral rights based on the time of registration, it is possible to protect these rights before the society.

Keywords: Credit Obtaining, Ensuring Transactions Security, Movable Registration System, Notices, Property Law, Publicity Principle, Registration Law.

Declaration of conflicting interests
The authors declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding
The authors received no financial support for the research, authorship, and/or publication of this article.

Private Law Studies Quarterly

Online ISSN: 2588-6622
Volume: 53, Issue: 4
Homepage:/https://jlq.ut.ac.ir
Winter 2024

Research Paper

Reflection on the Relationship between Copyright and Publicity Right: Interaction or Contradiction?!

Amid Mohammadi *
Assistant Professor in the Department of Law, Faculty of Humanities, Jahrom University, Jahrom, Iran, Email: amid_mohammadi@jahromu.ac.ir

Abstract
This article investigates the relationship between copyright and publicity right. These rights are connected in a place where the creators of literary and artistic works use the identity symbols of celebrities and especially their images to create their works. Here, the conflict between the two owners of moral rights shows itself. According to the fundamental principles of copyright or author's right, the work belongs to its creator. On the other hand, using a person's image without his consent can be considered an infringement of publicity right because of free riding and exploitation. Therefore, according to the standards raised in pioneering countries such as America, the right to publicity is recognized as an inherent right of a human being to prevent profiteering from identity signs and emphasize the right's economic aspect. The legal doctrines do not agree on the clash between these two rights and whether the reputation owner should be defended and prevented from violating his economic rights or take the side of the

* **How to Cite:** Mohammadi, Amid (2024, Winter) "Reflection on the Relationship between Copyright and Publicity Right: Interaction or Contradiction?! " *Private Law Studies Quarterly*, 53,4: 603-624.
DOI: 10.22059/JLQ.2024.364713.1007795
Manuscript received: 22 October 2023 ; final revision received: 10 December 2023; accepted: 12 March 2024; published online: 13 March 2024

copyright holder. This has led to conflicting opinions and also verdicts in American law. Therefore, the primary question of this research is: In cases of interference between copyright and publicity right, who owns the exclusive rights and benefits of the creativity that have appeared?
The current research aims to answer the above question with a descriptive-analytical method and a library and comparative approach. For this purpose, an attempt has been made to clarify the concept of copyright and publicity right, the relationship between the two in terms of similarities and differences, and the interference of these two rights. Solving the conflict between this issue from different legal and judicial perspectives is another subject matter that is considered along with Iran's legal position. The fundamental belief is that if the owner of the publicity right exercises his rights and prevents the manifestation of his identity marks in the literary and artistic works of others, huge damages will be caused to the copyright holders, and consequently, the general public will suffer; This partiality means the opportunity loss to create new and derivative works based on adaptation for other artists and blocks the way of innovation in the future. If the rights of the copyright holder are overridden, the right of the person to benefit from the features of reputation and identity will be infringed. Therefore, in case of interference, a frontier should be found between these two conflicting interests and the rights of copyright creators and owners of publicity right must be considered. In American law, referring to the principle of "fair use" and expanding its dimensions to the publicity right is considered an important step in settling the claims of copyright owners and the right of publicity. In this regard, the four criteria of the nature of use, the nature of publicity right, Substantiality of the Misappropriation, and the effect of the use on the potential market the owner of publicity have been considered in explaining the boundary between commercial and non-commercial use. The article concludes that the dominance of these two different legal bodies does not mean that one has precedence over the other or that each one is nullified by the other. One should respect the author's creative activities and consider protecting the exclusive rights hidden in identity symbols and controlling their use. Therefore, one of the research achievements is that there is coexistence between two rights, and emphasizing each one does not mean excluding the other or reducing each territory against the other. In Iranian law, although the right to publicity has not been taken into consideration by the legislator and the judicial procedure is silent in any case, it is possible to achieve this conclusion with the inspiration of the solution adopted in leading countries and along with global developments, in the assumption that a creator exploits the celebrity's symbols in his work, the judge must make a decision and they can distinguish between commercial and non-commercial exploitation by referring to the principles of fair use and especially the criterion of the nature and context of use, and if they find free riding, consider the famous person entitled to receive compensation. In this way, the creation of a literary and artistic work from the image of a famous person without his consent is allowed if it is either taken in public places and according to the rights of

citizenship, based on the right to freedom of expression and access to information, or the creator manifests the celebrity's image in a transformative way based on the derivative work, so that the famous person is regarded the secondary subject of that work.

Keywords
Literary and artistic works, Publicity Right, Symbol of Identity, Friction, Preemption, Fair Use, Nature of Use, Commercial Use, Transformative Use, Compensation.

Declaration of conflicting interests
The author diclares no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding
The author received no financial support for the research, authorship, and/or publication of this article.

Private Law Studies Quarterly

Online ISSN: 2588-6622
Volume: 53, Issue:4
Winte 2024

Homepage: https://jlq.ut.ac.ir/

Research Paper

Unity or Plurality of the Foundation of Contractual Remedies: A Comparative Study in Common Law and Iranian Law

Seyed Morteza Naeemi*
Assistant Professor of Private Law, Bandar Anzali Branch, Islamic Azad University, Bandar Anzali, Iran, Email: naeemi@iaubanz.ac.ir

Abstract

One of the important questions in the descriptive theory of contracts is related to the basis of contractual remedies. The question addressed is regarding the basis of each of the methods chosen by the legislator as a remedy for breach of contractual obligation and whether this basis is the same for all types of remedies. The answer to this question requires the presentation of an interpretive theory that helps us to understand and reform the existing legal system and also assists in presenting a general theory of the contract law system. In this article, in response to the proposed question, a comparative study has been conducted on the two legal systems of common law and Iranian law.

In the common law legal system, though with slight distinctions in different countries, two general methods of contractual remedies are provided: The first type of remedy is the court's order to the defendant to perform the obligation as promised in the contract, and the second type of compensation is damages, which is usually in the form of expected damages. Some lawyers in the common law believe that these two methods follow a single basis, while others believe that there are multiple bases for the justification of remedies. According to the first theory, damages are considered a particular type of performance, and both specific performance and damages confirm the original obligation. This theory, in a way, establishes the principle of the domination of will in justifying both remedy

* How to Cite: Naeemi, Seyed Morteza (2024, Winter).“ Unity or Plurality of the Foundation of Contractual Remedies: A Comparative Study in Common Law and Iranian Law” *Private Law Studies Quarterly*, 53,4: 625-645. DOI: 10.22059/JLQ.2024.351665.1007731
Manuscript received: 5 April 2023; final revision received: 26 November 2023; accepted: 12 March 2024; published online: 13 March 2024

methods. The second theory, which supporters of civil recourse theory defend more, holds that the court issues the duty to pay damages, and it is an entirely new obligation whose purpose is to compensate for a civil wrong. Contrary to the order to specific performance, which is a response to rights, paying damages is a response to wrongs.

In Iran's legal system, there are several remedies for breach of contractual obligation: the right of lien (in bilateral contracts), specific performance, damages (for delay in performance or non-fulfillment of obligation), and termination of the contract (right of rescission). There is no coherent and unified theory regarding the foundation of these remedies, and most legal authors have discussed the ground of each one separately and independently from each other. For example, regarding the basis of the right of lien, the principle of mutual dependency of considerations, the principle of balance, the will of the parties, and the existence of mutual obligations have been mentioned. Concerning the foundation of specific performance, sometimes the domination of the will and sometimes the community interests have been invoked. Regarding damages, some have pointed to the parties' will and others to the legislator's order. For the basis of the right of termination, the conditions included in the contract, the custom and usages of resorting to mutual obligations, and finally, the necessity for total compensation for the loss have been invoked. By studying these theories, we can conclude that Iranian jurists do not believe in a single basis for these remedies, and as a result, they favor the view of plurality.

In this research, I have claimed that the different ways of contractual remedies follow a common basis, and all of them are derived from the objective will of the parties. Then, the legislator's purpose is to guarantee the collaborative will of the parties. In other words, all the methods of remedies can be considered to be rooted in the objective and collaborative will of the parties, which is guaranteed and supported by the legislator. The collaborative will realized during the contract's conclusion, sometimes explicitly and sometimes implicitly, contains customs, conceptions and expectations that result from a long-standing and enduring process of evolution in an economic and social context. The parties do not enter into a contract in a vacuum and are more or less aware of the customs and laws that have been formed concerning the contract in question. They expect contractual obligations to be performed and often this expectation is fulfilled, but when this expectation is not met, they go for what they expect rationally and logically, and this expectation is a function of economic and customary logic. In this way, specific performance, right of lien, damages, or right of termination are all customary expectations that can be discovered and recognized in the minds of contractual parties as community members. According to these customs and based on them, the legislator does not get away from ensuring the parties' collaborative will and chooses remedies rooted in these custom-based wills. By defending the idea of unity in contractual remedies and relying on the objective or customary will of parties, it is possible to distinguish between the two traditional areas of private law: contract law and torts. This division draws a fine line between them and requires a thorough understanding of the contractual system.

Another advantage of this theory is that it raises the possibility of presenting a defensible contract theory that can provide a coordinated and coherent interpretation of the contract system.

Keywords: Remedy, Basis of Remedies, Domination of the Will, Civil Recourse Theory, Contractual Custom.

Declaration of conflicting interests
The author diclares no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding
The author received no financial support for the research, authorship, and/or publication of this article.