

Original Article: Examining the General Rules of Contracts in Iranian and Common Law

Nadia Parvareh

Master of Laws in Private Law Shafag Higher Education Institute, Tonekabon, Iran



Citation N Parvareh, *Examining the General Rules of Contracts in Iranian and Common Law*, *AJMSS*, 2025; 1(5): 336-351.

 [https:// 10.5281/zenodo.16935839](https://10.5281/zenodo.16935839)

Article info:

Received: 11.05.2025

Accepted: 20.06.2025

Checked for Plagiarism: Yes

Keywords:

General Rules, Contracts, Iranian and Common Law, CISG, UNIDROIT Principles.

ABSTRACT

Contracts constitute the backbone of private law and commercial interactions, ensuring that individuals and entities can rely upon legally binding promises. This paper aims to examine the general rules of contracts in two distinct legal traditions: Iranian law, which is primarily based on the Civil Code influenced by Islamic jurisprudence and continental legal doctrines, and common law, which has developed through judicial precedent in England and later expanded in jurisdictions such as the United States. The comparative analysis highlights both convergences and divergences in key areas such as contract formation, validity, and consideration versus cause, performance, remedies, and doctrines of good faith. The research demonstrates that while Iranian contract law is deeply rooted in moral and religious values, emphasizing equity and good faith, common law reflects a pragmatic and case-based approach where judicial precedent and doctrines like consideration play a central role. Despite these differences, modern legal trends such as international trade law, UNIDROIT Principles, and the CISG have encouraged convergence between civil law and common law traditions. The paper concludes that comparative studies not only deepen understanding of domestic laws but also contribute to harmonization in global contract law.

Introduction

Contract law is one of the most fundamental areas of private law, forming the legal framework through which social, economic, and commercial relations are structured. The enforceability of promises and agreements is a cornerstone of legal certainty and economic stability. However, the general rules governing contracts differ significantly across

legal systems, shaped by history, culture, religion, and jurisprudential traditions.

Iranian contract law is codified primarily in the Civil Code of 1928, heavily influenced by Islamic jurisprudence (fiqh), particularly the Ja'fari school of Shia law, as well as French civil law. The Iranian legal system, therefore, reflects a hybrid structure, combining traditional Islamic principles such as the concept of intention, morality, and good faith with codified legal rules derived from European civil law models. In Iranian law, the

*Corresponding Author: **Nadia Parvareh** (Email: Nadiaparvareh@gmail.com)

notion of "cause" (sabab) and the emphasis on equity play a central role in determining contractual validity [1].

By contrast, the common law tradition, which originated in England and was later adopted in jurisdictions such as the United States, Canada, and Australia, relies heavily on judicial precedent. The common law system has developed unique doctrines such as the requirement of "consideration" for enforceability, the objective theory of contract formation, and a strong reliance on case law to shape the principles governing contracts. Unlike civil law systems, common law does not emphasize a unified codification but instead evolves incrementally through judicial decisions.

The comparison between Iranian and common law traditions is particularly significant because it highlights the intersection of religiously influenced civil law with a pragmatic precedent-based system. Understanding the similarities and differences is not merely an academic exercise; it also has practical implications for international trade, cross-border contracts, and the harmonization of contract law in a globalized world.

This paper aims to provide a comprehensive comparative study of the general rules of contracts in Iranian and common law. It explores the foundations of each system, the rules of contract formation, validity, performance, remedies, and the special doctrines that distinguish each legal tradition. By doing so, it sheds light on how historical, cultural, and religious contexts shape contract law, while also identifying areas of convergence and divergence [2].

Historical Foundations of Contract Law

Historical Background of Iranian Contract Law

The Iranian legal system is a hybrid of Islamic jurisprudence (fiqh), particularly the Shia Ja'fari school, and continental civil law influences, most notably French law. The codification of the Iranian Civil Code in 1928 was part of a broader

modernization movement that sought to reconcile Islamic legal traditions with Western legal structures. The Code is divided into books, with the Book on Contracts and Obligations being one of the most significant.

Islamic jurisprudence emphasizes concepts such as intention (niyyah), consent, morality, and equity. Contracts are not merely legal tools but also moral undertakings rooted in divine principles. The Qur'an and Hadith stress the sanctity of promises and agreements: "O you who have believed, fulfill [all] contracts" (Qur'an 5:1). Hence, Iranian law reflects both legal and ethical considerations in determining contractual validity. The Civil Code incorporates European legal concepts such as the "cause" (sabab) of a contract, drawn from the French Civil Code. However, it interprets this concept within an Islamic framework, emphasizing that contracts must have a legitimate and moral purpose. The blending of Western legal structures with Islamic moral foundations makes Iranian contract law unique.

Historical Background of Common Law Contract Principles

The common law of contracts developed in England beginning in the medieval period, shaped by the royal courts and the writ system. Unlike civil law systems that rely on codification, common law evolved through judicial decisions and case-based reasoning. A pivotal development was the doctrine of consideration, which became a distinctive requirement for enforceability [3].

Early English contract law was deeply influenced by the action of assumpsit, which allowed plaintiffs to sue for breaches of informal agreements based on promises. Over time, courts refined principles such as offer and acceptance, intention to create legal relations, and reliance. By the 19th century, contract law had developed into a sophisticated system emphasizing freedom of contract and minimal state intervention. The doctrine of precedent (stare decisis) ensured consistency in contract cases while allowing gradual development. Key cases such as *Carlill v.*

Carbolic Smoke Ball Co. (1893) established enduring principles of contract formation. Over time, common law evolved to address new economic realities, with doctrines such as promissory estoppel emerging in the 20th century to supplement rigid rules like consideration.

Comparative Observations

The historical evolution of Iranian and common law contract principles reflects distinct philosophical foundations. Iranian law integrates religious, ethical, and civil law influences, whereas common law is pragmatic, case-based, and secular. Yet both systems converge on key values: the enforceability of agreements, the importance of consent, and the recognition of remedies for breach. The comparative study of these histories is essential because it reveals not only the legal but also the cultural and philosophical dimensions of contract law. In Iran, contracts are deeply intertwined with morality and public policy, while in common law jurisdictions, contracts are tools of economic regulation and private autonomy.

Formation of Contracts

The formation of a contract is a central aspect of contract law, determining when parties become legally bound by their promises. Both Iranian and common law traditions emphasize the necessity of mutual consent, yet they adopt different approaches regarding essential elements such as offer and acceptance, intention, consideration versus cause, and capacity of the parties.

Offer and Acceptance

Iranian Law

In Iranian contract law, the formation of a contract requires the mutual consent of the parties, expressed through offer and acceptance. According to Article 183 of the Iranian Civil Code, a contract is defined as “the agreement of two or more persons for the creation, transfer, modification, or annulment of an obligation.”

Thus, consent is the foundation of contractual formation.

- Offer (Ijab): A proposal made by one party expressing willingness to enter into a contract under specific terms. The offer must be clear, definite, and communicated to the other party.
- Acceptance (Qabul): The manifestation of assent by the other party. Acceptance must correspond exactly to the offer; otherwise, it is considered a counter-offer.

The Civil Code emphasizes that consent must be free of defects such as mistake, fraud, or duress (Articles 190–214). If consent is defective, the contract may be voidable. Importantly, Iranian law recognizes both written and oral contracts, reflecting Islamic jurisprudence’s focus on the substance rather than the form of agreements [4].

Common Law

Common law similarly relies on the offer-and-acceptance framework, but it is interpreted through the objective theory of contracts: what matters is not the subjective intention but how a reasonable person would interpret the parties’ words and conduct.

- Offer: Defined in *Carlill v. Carbolic Smoke Ball Co.* (1893) as an expression of willingness to be bound on specific terms without further negotiation. Offers can be revoked before acceptance, unless supported by consideration (option contracts).
- Acceptance: Must be unequivocal and communicated to the offeror (*Entores Ltd v. Miles Far East Corp* [1955]). Exceptions include unilateral contracts, where performance itself constitutes acceptance.

Common law requires a stricter alignment between offer and acceptance than Iranian law, reflecting its reliance on precedent and judicial reasoning.

Intention to Create Legal Relations

Iranian Law

While the Iranian Civil Code does not explicitly articulate the doctrine of “intention to create legal relations” as in common law, the principle is implicit. Contracts must be entered into with genuine consent and purpose. For instance, under Article 190, a valid contract requires: (1) the intention of the parties, (2) their legal capacity, (3) a definite subject matter, and (4) a legitimate cause. If parties lack genuine intention—for example, if they act under coercion—the contract is voidable [5].

Common Law

The doctrine of intention to create legal relations is a fundamental requirement in common law. Courts distinguish between:

- Domestic or social agreements (e.g., family arrangements), presumed not to be legally binding unless proven otherwise (*Balfour v. Balfour* [1919]).
- Commercial agreements, presumed to be binding unless evidence shows otherwise.

This doctrine reflects the pragmatic and secular nature of common law, ensuring that trivial social promises are excluded from legal enforceability.

Consideration and Cause

Iranian Law

The Iranian Civil Code, influenced by French law, requires a cause (*sabab*) for the validity of a contract (Articles 190 and 217). The cause must be lawful and legitimate. A contract lacking a valid cause, or one based on an unlawful purpose (e.g., gambling, usury), is void. The concept of cause in Iranian law is broader than consideration in common law, focusing on the underlying purpose of the transaction.

Common Law

Common law relies on the doctrine of consideration, defined as “something of value in the eyes of the law” given in exchange for a promise (*Currie v. Misa* [1875]). Consideration distinguishes enforceable promises from

gratuitous ones. For example, a promise to make a gift is unenforceable unless supported by consideration.

However, modern common law has developed exceptions, such as promissory estoppel (*Central London Property Trust v. High Trees House Ltd* [1947]), which can make certain promises binding even without consideration.

Comparative Insight

The contrast between cause **and** consideration is one of the most significant divergences between Iranian and common law. Iranian law focuses on the legitimacy of the contract’s purpose, while common law focuses on the exchange element. This reflects deeper philosophical differences: moral legitimacy in Iranian law versus economic reciprocity in common law.

Capacity of the Parties

Iranian Law

Capacity is a mandatory condition for valid contracts. Parties must be of legal age (18 years), sane, and capable of understanding the nature of the transaction. Contracts made by minors or the insane are generally void or voidable, though certain exceptions exist (e.g., contracts for necessary goods).

Common Law

Similarly, common law requires contractual capacity. Minors’ contracts are voidable at their option, except for “necessaries” (food, clothing, lodging: *Nash v. Inman* [1908]). Persons of unsound mind may avoid contracts if the other party knew of the incapacity. Corporations’ capacity is governed by statutory and constitutional provisions.

Formality vs. Informality

Iranian Law

Iranian law emphasizes the principle of consensualism: contracts are valid once parties consent, regardless of form, unless the law requires otherwise (e.g., real estate transactions requiring registration). Oral contracts are enforceable if proven, consistent with Islamic jurisprudence, which values substance over form.

Common Law

Common law historically required certain contracts to be in writing under the Statute of Frauds (1677), including contracts for the sale of land, guarantees, and contracts not to be performed within one year. However, most contracts may be oral. In practice, written contracts are preferred for evidentiary purposes.

Comparative Observations

Both Iranian and common law emphasize consent, capacity, and legality as the basis of contract formation. However, they diverge significantly in their conceptual foundations:

- Iranian law stresses the legitimacy of the contract's cause and the moral integrity of consent.
- Common law stresses economic reciprocity (consideration) and objective manifestations of agreement.
- Formality requirements are minimal in both systems, though Iranian law is more flexible regarding oral contracts.

These differences reflect broader cultural and jurisprudential contexts: Iranian law draws from religious morality and civil codification, while common law reflects pragmatism and precedent.

Validity of Contracts

The validity of contracts is a fundamental requirement in both Iranian and common law systems, ensuring that only agreements entered into with genuine consent, lawful purposes, and legal capacity are enforceable. While both systems share certain similarities, their philosophical underpinnings and doctrinal structures differ in important ways.

Conditions for Validity in Iranian Law

The Iranian Civil Code lays down four essential conditions for the validity of contracts:

1. Consent of the parties
 - Consent must be genuine and free of defects such as mistake, fraud, or duress.

- If consent is defective, the contract is voidable.
 - Example: a sale contract entered under threat is not valid, as freedom of will is a prerequisite for enforceability.
2. Capacity of the parties
 - Both parties must have the legal capacity to contract, meaning they are of age, sane, and not legally incapacitated.
 - Articles 211–213 specify that minors, insane persons, and those under guardianship cannot enter binding contracts.
 3. Definite subject matter
 - The contract must have a specific and determinable object. Uncertainty or ambiguity (غرر) renders a contract void.
 - Example: “selling something in this bag without knowing its content” would be invalid.
 4. Legitimate cause
 - Contracts must be based on a lawful and legitimate cause.
 - A contract concluded for an unlawful purpose (e.g., gambling, interest-based loans prohibited under Islamic law) is void.

Thus, Iranian law views validity not merely from a formal perspective but also from a moral and religious standpoint, ensuring that contracts align with public policy and Islamic principles [6].

Conditions for Validity in Common Law

Common law does not articulate a single codified framework for contract validity but instead relies on judicial precedents and established doctrines. The essential conditions are:

1. Offer and acceptance: A valid agreement requires mutual consent demonstrated through offer and acceptance.
2. Consideration – Something of value must be exchanged. Gratuitous promises are generally unenforceable.
3. Intention to create legal relations – Parties must intend for their agreement to have legal consequences.

4. Capacity – Minors, persons of unsound mind, and corporations with restricted powers may lack capacity.
5. Legality – Contracts that are illegal or contrary to public policy are void. For example, contracts for committing crimes or involving fraud are unenforceable (Pearce v. Brooks [1866]).

Unlike Iranian law, common law does not explicitly require a “cause,” but it insists on consideration as a distinctive requirement. Moreover, the doctrine of legality in common law is more flexible, focusing on public interest rather than religious morality.

Defects of Consent

Iranian Law

- Mistake: Contracts based on a fundamental mistake are voidable. For example, if a party buys a piece of land believing it to be larger than it is, the contract may be invalid.
- Fraud: Deception invalidates consent and renders the contract voidable.
- Duress: Contracts entered under coercion lack free will and are voidable.

Common Law

- Mistake: Common law distinguishes between mutual, unilateral, and common mistakes. A mutual mistake as to subject matter may render a contract void.
- Misrepresentation/Fraud: A false statement inducing a party to contract may allow rescission.
- Duress/Undue Influence: Contracts entered under illegitimate pressure are voidable.

Both systems protect the principle of free consent but approach remedies differently: Iranian law gives greater weight to moral integrity, while common law relies on established categories of misrepresentation and undue influence.

Illegality and Public Policy

Iranian Law

Contracts contrary to Islamic law or public morality are void. Examples include:

- Usurious contracts, explicitly prohibited.
- Contracts promoting immorality (e.g., gambling, selling alcohol).
- Agreements violating public order.

Common Law

Contracts may be unenforceable if they are:

- Illegal by statute (e.g., contracts to commit crimes).
- Contrary to public policy, such as contracts restraining marriage, promoting corruption, or interfering with justice.

Common law’s doctrine of public policy is broader and more adaptable, reflecting secular values, whereas Iranian law grounds validity in Sharia principles as well as statutory codes.

Comparative Observations

- Both systems emphasize consent, capacity, and legality as conditions for validity.
- Iranian law requires an explicit “cause,” rooted in civil law and Islamic jurisprudence, while common law relies on “consideration.”
- Iranian law invalidates contracts conflicting with Islamic principles, while common law uses a secular, flexible notion of public policy.
- In both systems, defects of consent (fraud, mistake, duress) undermine validity, though doctrines are articulated differently.

Performance and Breach of Contracts

Performance is the natural fulfillment of contractual obligations, while breach occurs when a party fails to meet those obligations. Both Iranian law and common law recognize performance as the central objective of contracts, but they differ in their approach to remedies and legal philosophy.

Performance of Contracts

Iranian Law

Under the Iranian Civil Code, performance is the execution of obligations undertaken in a contract.

- **Nature of Performance:** Contracts are binding and must be performed unless legally dissolved. Performance must conform to the terms of the agreement and reflect good faith.
- **Time and Place of Performance:** If the time or place of performance is specified in the contract, it must be followed. Otherwise, the default is immediate performance at the debtor's place of residence (Article 280).
- **Good Faith:** Performance must be carried out honestly and in accordance with the intention of the parties. Islamic jurisprudence emphasizes the moral duty to fulfill contracts as a religious obligation, not merely a legal one.

Common Law

Performance in common law refers to the fulfillment of contractual obligations according to agreed terms.

- **Strict Performance Rule:** Traditionally, common law required exact performance of contractual terms. Any deviation, however minor, could constitute breach. Over time, doctrines like substantial performance.
- **Time of Performance:** Time is not normally "of the essence" unless expressly stated in the contract. If time is essential and breached, the innocent party may terminate.
- **Good Faith:** Unlike Iranian law, common law does not impose a general duty of good faith in performance. However, modern cases (e.g., *Yam Seng Pte Ltd v. International Trade Corp* [2013]) suggest growing recognition of implied duties of honesty.

Breach of Contract

Iranian Law

A breach occurs when one party fails to fulfill their contractual obligations. Iranian law identifies several forms:

- **Non-performance:** Failure to perform obligations at all.
- **Delayed performance:** Performance rendered late, leading to liability for damages.
- **Defective performance:** Performance not in accordance with agreed terms.

The innocent party may demand specific performance (Article 220) or seek damages. Specific performance is considered the primary remedy, reflecting the Iranian legal preference for ensuring fulfillment of promises rather than monetary compensation.

Common Law

Breach in common law can take several forms:

- **Actual breach:** Failure to perform at the time performance is due.
- **Anticipatory breach:** When a party declares in advance that they will not perform.
- **Repudiatory breach:** Breach of a condition or fundamental term, giving the innocent party the right to terminate.

Common law prioritizes damages as the primary remedy, reflecting its pragmatic, economic orientation. Specific performance is exceptional, generally limited to cases where damages are inadequate (e.g., contracts for land).

Remedies for Breach

Iranian Law

- **Specific performance:** The main remedy, obligating the breaching party to fulfill their promise.
- **Compensatory damages:** Available if specific performance is impossible or delayed.
- **Termination:** Permitted under certain conditions, such as contractual stipulations. For example, the right of

rescission allows a party to annul the contract under circumstances like fraud, mistake, or breach.

Common Law

- Damages: Primary remedy, including expectation damages (placing the party in the position as if the contract had been performed), reliance damages, and, in rare cases, punitive damages.
- Specific performance: Granted only when damages are inadequate, particularly in contracts for unique goods or land.
- Rescission: Available where contracts are induced by misrepresentation, duress, or undue influence.

Comparative Observations

- Primary remedy: Iranian law prioritizes specific performance, while common law prioritizes damages.
- Good faith: Explicitly required in Iranian law, implicitly developing in modern common law.
- Flexibility: Common law allows anticipatory breach remedies, whereas Iranian law traditionally focuses on actual breach.
- Cultural roots: Iranian law's emphasis on fulfillment reflects Islamic moral teachings, while common law's emphasis on damages reflects its pragmatic, economic approach [7].

Remedies for Breach of Contracts

Remedies are the legal consequences that follow from the breach of a valid contract. They are essential to uphold the binding force of agreements and to protect the interests of the injured party. Iranian law and common law share the objective of restoring justice after breach, but they diverge significantly in their priorities and doctrinal underpinnings.

Remedies in Iranian Law

Iranian law, rooted in civil law and Islamic jurisprudence, emphasizes specific performance as the primary remedy. The legal philosophy is that promises must be

kept and obligations must be fulfilled unless performance becomes impossible.

1. Specific Performance

- The obligor must perform the contract unless performance is impossible.
- The court may order the breaching party to fulfill their obligation, reflecting the centrality of *pacta sunt servanda* (contracts must be performed).
- For instance, in a contract for the sale of property, the buyer can demand delivery of the property rather than monetary compensation.

2. Damages

- If specific performance is impossible or delayed, the creditor may claim damages.
- Provides that a party who fails to perform must compensate the other for losses.
- Damages cover actual loss and loss of profit if proven, but speculative damages are not usually recognized.

3. Termination

- Iranian law recognizes numerous options that allow rescission, including fraud (تدلیس), defect (عیب), breach of condition, and impossibility of performance.
- Termination is not automatic; it requires either a statutory basis or contractual stipulation.

4. Restitution

- Upon termination, each party must return what they received.
- This principle prevents unjust enrichment and restores the parties to their pre-contractual positions.

Remedies in Common Law

In common law, damages are the primary remedy, reflecting its pragmatic orientation toward economic efficiency. Specific performance is an exceptional remedy, limited to unique circumstances.

1. Damages

- Compensatory damages: Aim to place the injured party in the position they would have been in if the contract had been performed.

- Reliance damages: Compensate for expenses incurred in reliance on the contract.
- Consequential damages: Available for losses that were reasonably foreseeable at the time of contracting.
- Liquidated damages and penalties: Enforceable if they represent a genuine pre-estimate of loss, not if they are punitive.
- 2. Specific Performance**
 - Granted only when damages are inadequate, such as in contracts for land or unique goods.
 - Equity governs this remedy, ensuring it remains discretionary and exceptional.
- 3. Rescission**
 - Available where contracts are voidable due to misrepresentation, duress, or undue influence.
 - Rescission restores the parties to their pre-contractual position.
- 4. Restitution and Unjust Enrichment**
 - Where one party has conferred a benefit on another without proper contractual basis, restitution may be ordered [8].

Comparative Analysis

- **Primary Remedy:**
 - Iranian law prioritizes specific performance, viewing fulfillment of promises as a moral and legal duty.
 - Common law prioritizes damages, reflecting its focus on compensating economic loss rather than compelling personal obligations.
- **Damages:**
 - Both systems recognize compensatory damages, but common law has developed more sophisticated categories (expectation, reliance, consequential).
 - Iranian law is more restrictive, generally limiting damages to direct and certain losses.
- **Termination and Rescission:**
 - Iranian law provides extensive statutory rights of termination, while common law relies on equitable rescission and termination for fundamental breach.
- **Restitution:**
 - Both systems recognize restitution to prevent unjust enrichment, but common law frames it

as a distinct branch of law, while in Iran it is embedded in civil law principles.

Broader Implications

The divergence in remedies illustrates the broader legal philosophies of the two systems:

- Iranian law reflects a normative and moralistic approach, rooted in the sanctity of promises and the ethical duty to perform obligations.
- Common law reflects a pragmatic, market-oriented approach, focusing on economic efficiency and compensation rather than compulsion.

However, international instruments such as the UNIDROIT Principles of International Commercial Contracts and the CISG promote convergence by recognizing both damages and specific performance as important remedies [9].

Special Doctrines in Contract Law

Special doctrines function as corrective and supplementary principles in contract law. They embody the broader ethical, social, and economic values that guide judicial decision-making when strict contractual rules may produce unjust or impractical results. Both Iranian law and common law recognize such doctrines, though they differ in their scope and theoretical foundations.

Good Faith

Iranian Law

- Good faith (*ḥusn-e niyyat*) is implicitly embedded in Iranian civil law, although it is not explicitly codified as a general clause.
- Article 220 of the Civil Code requires parties to perform obligations faithfully, and Article 221 allows compensation for breach.
- Judicial practice often invokes Islamic principles of fairness and morality, reinforcing the duty to act in good faith during both contract performance and enforcement.

- Examples include: avoiding abuse of contractual rights and interpreting ambiguous clauses in favor of fairness.

Common Law

- Traditionally, English common law does not recognize a general duty of good faith in contracts. The principle of freedom of contract prevails.
- However, recent developments show a “creeping” acceptance of good faith, especially in relational contracts requiring cooperation [10].
- In the U.S., the Uniform Commercial Code (UCC §1-304) imposes a duty of good faith in the performance and enforcement of contracts.

Comparative Note:

- Iranian law embeds good faith as a moral duty consistent with Islamic values.
- Common law is cautious, fearing that a broad duty of good faith may undermine contractual certainty.

Force Majeure and Impossibility

Iranian Law

- Rooted of the Civil Code: if performance becomes impossible due to causes beyond the obligor’s control, the obligor is excused.
- The doctrine reflects qahriyyah (compelling forces) and recognizes that no one can be bound to perform the impossible.
- For example, if a seller cannot deliver goods due to natural disasters or government restrictions, liability may be lifted.

Common Law

- The doctrine of frustration of contract applies when unforeseen events render performance impossible or radically different.
- Force majeure clauses are contractual devices allocating risks of extraordinary events (e.g., wars, pandemics, strikes).

- Courts construe such clauses narrowly, ensuring they do not undermine the sanctity of contract.

Comparative Note:

- Both systems excuse performance when impossibility arises, but Iranian law is more codified, while common law relies on case law and contractual stipulations.

Public Policy

Iranian Law

- Article 975 of the Civil Code prohibits enforcement of foreign laws or contracts contrary to public policy or good morals.
- Contracts involving illegal activities (e.g., gambling, usury) are void.
- Islamic principles strongly shape public policy, ensuring conformity with Shari’a values.

Common Law

- Contracts contrary to public policy (e.g., restraint of trade, immoral contracts, illegal agreements) are void or unenforceable.
- Courts are cautious in defining “public policy,” often restricting its use to avoid judicial overreach.

Comparative Note:

- Iranian law defines public policy more explicitly through Islamic and statutory principles.
- Common law maintains a flexible but narrow approach, guided by precedent.

Unconscionability and Fairness

Iranian Law

- The concept of gharar contracts with excessive uncertainty or exploitation—is prohibited in Islamic jurisprudence.
- Courts may annul contracts deemed oppressive, unfair, or harmful to one party.
- This reflects an ethical commitment to justice in contractual relations.

Common Law

- The doctrine of unconscionability prevents enforcement of contracts that are grossly unfair or oppressive.
- Recognized particularly in U.S. law under the UCC (§2-302).
- Courts evaluate both procedural unfairness (unequal bargaining power) and substantive unfairness (oppressive terms).

Comparative Reflections

- Good Faith: Strongly rooted in Iranian law, cautiously evolving in common law.
- Force Majeure / Impossibility: Present in both, codified in Iran, case-based in common law.
- Public Policy: Sharply influenced by Islamic law in Iran; flexible but restrained in common law.
- Unconscionability: Both systems reject exploitative contracts, but Iranian law grounds it in Islamic prohibitions against *gharar* and injustice.

Broader Implications

Special doctrines highlight the philosophical divergence between Iranian and common law systems:

- Iranian law emphasizes justice, morality, and conformity with Islamic principles.
- Common law emphasizes freedom of contract, certainty, and market efficiency, but balances these with equitable doctrines.

In international commerce, parties often reconcile these differences by incorporating force majeure clauses, good faith obligations, and arbitration mechanisms into contracts, thereby bridging divergent traditions.

Remedies for Breach of Contracts

Remedies are the legal consequences or relief available when a contract is breached. Both Iranian law and common law provide a variety of

remedies, but their philosophical underpinnings and practical applications differ significantly.

Concept of Remedies

The law of remedies seeks to protect the expectation interests of the parties. Remedies may:

1. Compel performance of the contract.
2. Compensate the innocent party for losses.
3. Restore the parties to their pre-contractual positions [11].

While Iranian law prioritizes the fulfillment of contractual obligations, common law emphasizes compensatory damages as the main form of relief.

Remedies under Iranian Law

Iranian Civil Code provides a well-defined set of remedies, grounded in Islamic jurisprudence

a) Specific Performance

- Primary remedy in Iranian law.
- Courts may compel the breaching party to perform unless performance has become impossible.
- Reflects the Islamic principle that promises must be kept

b) Compensation for Damages

- If specific performance is impossible or delayed, the injured party can claim damages.
- The breaching party must compensate for losses if they fail to perform.
- Compensation includes actual loss and loss of profit, provided the loss is direct and foreseeable.

c) Termination of the Contract

- Available in cases of serious breach.
- May arise through statutory rights or contractual agreement.
- Common forms include:
 - Option of defect
 - Option of fraud
 - Option of breach of condition

d) Rescission and Restitution

- In cases of invalid contracts or annulment, restitution restores the parties to their pre-contract position.

Remedies under Common Law

Common law provides a more flexible, but economically oriented, set of remedies.

a) Damages

The primary remedy in common law. Types include:

- Expectation damages: Place the injured party in the position as if the contract had been performed.
- Reliance damages: Compensate for expenses incurred in reliance on the contract.
- Restitution damages: Prevent unjust enrichment.
- Nominal damages: Token sum where breach occurred but no actual loss was suffered.
- Liquidated damages: Pre-agreed sums enforceable if they represent genuine pre-estimates of loss

b) Specific Performance

- Equitable remedy, rarely granted.
- Common in contracts for land or unique goods.
- Court exercises discretion, considering fairness and practicality.

c) Injunctions

- Prevent a party from breaching or continuing a breach.
- Example: restraining a party from violating a negative covenant.

d) Rescission

- Available in cases of misrepresentation, duress, undue influence, or fundamental mistake.
- Restores the parties to their pre-contractual positions.

Table 1. Comparative Analysis

Aspect	Iranian Law	Common Law
Primary Remedy	Specific performance	Damages
Good Faith	Explicitly required	No general duty, but evolving
Termination	Available through statutory “options”	Based on repudiatory breach
Loss of Profits	Recoverable if direct and foreseeable	Recoverable if not too remote
Equitable Remedies	Integrated in civil code	Discretionary (equity jurisdiction)

Philosophical Underpinnings

- Iranian Law: Reflects Islamic and civil law traditions, emphasizing the moral duty to keep promises and prioritizing performance.
- Common Law: Rooted in pragmatism and economic efficiency, preferring to compensate losses rather than enforce performance.

- Iranian law emphasizes justice and moral obligation, ensuring that contracts are fulfilled as promised.
- Common law emphasizes economic pragmatism, prioritizing damages while reserving specific performance for exceptional cases.

Both systems, however, recognize the need for flexibility, allowing courts to tailor remedies to the circumstances of each case

Conclusion on Remedies

The comparison illustrates how legal systems balance fairness, efficiency, and moral considerations:

The Role of International Instruments in Contract Law

In the globalized economy, contracts often cross borders, bringing different legal systems into play. International instruments such as the United Nations Convention on Contracts for the

International Sale of Goods (CISG) and the UNIDROIT Principles of International Commercial Contracts aim to harmonize contract law principles and provide uniform rules for international transactions. Both Iranian and common law systems interact with these instruments in different ways [12].

CISG (United Nations Convention on Contracts for the International Sale of Goods)

Overview

- Adopted in 1980, effective 1988.
- Governs contracts for the international sale of goods between parties in contracting states.
- Provides rules on formation, performance, remedies, and avoidance of contracts.

Interaction with Iranian Law

- Iran is a signatory to CISG, which supplements domestic law for international sales contracts.
- Iranian courts often integrate CISG provisions with the Civil Code, particularly regarding:
 - Contract formation
 - Obligations of the seller and buyer
 - Remedies for breach

Interaction with Common Law

- CISG serves as a default framework in member states.
- Common law countries such as the UK have incorporated CISG principles for international transactions, though domestic contract doctrines like consideration may differ.

Comparative Note:

- Both systems adapt to CISG rules, but interpretation may reflect domestic legal culture—Iranian law aligns with codified provisions, common law emphasizes case-based reasoning.

UNIDROIT Principles of International Commercial Contracts (PICC)

Overview

- Non-binding but influential, drafted to harmonize international commercial contract practices.
- Covers contract formation, interpretation, performance, and remedies.

Relevance to Iranian Law

- Iranian scholars and practitioners refer to UNIDROIT Principles to:
 - Guide interpretation of commercial contracts.
 - Bridge gaps where domestic law may be silent.
 - Align practices with international trade standards.

Relevance to Common Law

- PICC is frequently cited in English and U.S. courts for international arbitration and cross-border contracts.
- Provides flexible rules for issues like hardship, unforeseen circumstances, and renegotiation.

Harmonization and Convergence

- Both Iranian and common law systems engage with international instruments to facilitate cross-border trade.
- These instruments promote convergence by:
 - Offering neutral principles independent of domestic legal systems.
 - Emphasizing good faith, fair dealing, and performance remedies.
 - Allowing parties to contractually choose applicable rules, reducing uncertainty.

Comparative Insight

- International instruments soften some doctrinal divergences, e.g.:
 - Iranian emphasis on specific performance vs. common law emphasis on damages can be harmonized through CISG remedies.

- Principles of good faith in UNIDROIT align closely with Iranian law and increasingly with modern common law.

Case Examples

1. **Sale of Machinery from Germany to Iran**
 - CISG rules applied for contract formation and breach.

- Iranian court enforced remedies consistent with CISG rather than purely Civil Code provisions.
2. **International Arbitration involving UK and Iran Parties**
 - UNIDROIT Principles applied to address unforeseen circumstances and hardship.
 - Enabled resolution without direct reliance on either domestic law, showing harmonization potential.

Table 2. Comparative Reflection [13]

Aspect	Iranian Law	Common Law	International Instruments
Primary Approach	Codified, moral/legal framework	Case-based, pragmatic	Neutral, harmonizing principles
Good Faith	Implicit in domestic law	Evolving, not universal	Explicitly recognized
Remedies	Specific performance primary	Damages primary	Flexible: specific performance & damages
Adaptation	CISG & UNIDROIT supplement domestic law	CISG & UNIDROIT integrated with local case law	Applies uniformly, bridging gaps

International instruments like CISG and UNIDROIT Principles play a crucial role in bridging the gap between divergent legal traditions. They allow Iranian and common law systems to:

1. Reduce legal uncertainty in cross-border contracts.
2. Harmonize remedies, good faith principles, and performance obligations.
3. Enhance predictability and efficiency in international trade.

As global commerce continues to expand, understanding and integrating these instruments becomes essential for both legal scholars and practitioners. The comparative study of Iranian and common law contract principles reveals both convergences and divergences in the legal approach to contract formation, validity, performance, and remedies. Understanding these similarities and differences is critical for domestic legal reform, international commercial practice, and academic discourse [14].

Conclusion

While the two systems share core objectives—enforcing agreements, protecting parties, and ensuring fairness—their methodologies differ. Iranian law integrates ethical, religious, and codified principles; common law relies on pragmatic, precedent-based, and economically-oriented reasoning. The study of Iranian and common law contracts underscores that law is both a social and economic instrument. It reflects cultural values, ethical norms, and pragmatic concerns. By understanding differences and leveraging international frameworks, parties can achieve legal certainty, fairness, and efficiency in both domestic and international transactions. This comparative analysis also highlights the need for dynamic legal systems, capable of responding to technological advancements, global trade complexities, and evolving societal expectations.

1. **Formation of Contracts:**
 - Both systems require mutual consent, capacity, and legality.

- Iranian law emphasizes cause and moral legitimacy, while common law emphasizes consideration and objective manifestation of intent.
- 2. Validity of Contracts:
 - Both systems protect against defects of consent (mistake, fraud, duress).
 - Iranian law codifies legitimacy based on Islamic principles; common law applies public policy and equitable doctrines.
- 3. Performance and Breach:
 - Iranian law prioritizes specific performance as the main remedy; damages are secondary.
 - Common law prioritizes damages, granting specific performance only in exceptional cases.
- 4. Special Doctrines:
 - Good faith, force majeure, unconscionability, and public policy guide fair and efficient enforcement.
 - Iranian law embeds these doctrines in Islamic and civil law; common law relies on equity, statutes, and case law.
- 5. International Instruments:
 - CISG and UNIDROIT Principles bridge the gap between divergent systems, promoting uniformity in international commercial contracts.

Recommendations

1. For Legal Practitioners:
 - Integrate domestic law with international instruments for cross-border contracts.
 - Emphasize drafting clear force majeure, termination, and performance clauses.
 - Consider cultural and legal expectations of parties when negotiating contracts.
2. For Iranian Legal Reform:
 - Codify general principles of good faith to align with international trade practices.
 - Introduce flexible remedies balancing specific performance with damages.
 - Enhance clarity on anticipatory breach and electronic contract formation.
3. For Common Law Systems:

- Recognize the moral and ethical dimensions of contract enforcement in certain contexts.
- Consider specific performance in culturally sensitive or high-stakes transactions.
- 4. For Academia:
 - Promote comparative studies to facilitate cross-system understanding.
 - Conduct empirical research on the practical application of CISG and UNIDROIT Principles in Iran and common law jurisdictions.

Future Perspectives

1. Globalization and Digital Contracts:
 - Contracts increasingly involve electronic platforms, smart contracts, and blockchain.
 - Both Iranian and common law systems will need to adapt principles of consent, formation, and performance for digital contexts.
2. Harmonization of Remedies:
 - International trade may encourage convergence in remedies, blending specific performance with economic compensation.
3. Integration of Good Faith Principles:
 - Recognition of good faith in common law is likely to expand, converging with Iranian legal expectations and international instruments.
4. Legal Technology and AI in Contracting:
 - Automated contract drafting, performance monitoring, and dispute resolution may transform traditional contract doctrines.
 - Comparative frameworks will guide harmonization and predictability in global commerce.

References

- [1] Ahadi, M. (2017). [The adoption of the CISG in Iran: Practical difficulties in implementing the CISG](#). UNCITRAL Congress 2017, 339–354.
- [2] Asadzadeh, S., & Karimi, A. (2021). [A comparative study of the legal status of contractual groups in Iranian and French law](#). Mofid Law Review.

- [3] Chianale, M. (2016). [The CISG as a model law: A comparative law approach](#). Singapore Journal of Legal Studies, 29, 1–24.
- [4] Dennis, H. (2014). [The guiding role of the CISG and the UNIDROIT Principles in harmonizing international contract law](#). International Trade and ADR in the South Pacific, 58(2), 509–525.
- [5] Garg, A. (2023). [A comparative analysis of contract law in common law and civil law jurisdictions](#). Indian Journal of Law, 1(1), 61–70.
- [6] Graziadei, M. (2022). Jan M. Smits: Contract law: A comparative introduction. European Review of Contract Law, 18(4), 309–317. <https://doi.org/10.1515/ercl-2022-2052>
- [7] Masoumi, M. M. (2025). [A comparative study of the possibility of claiming damages for breach of contract in Imamiye jurisprudence](#). Iranian law, and international documents. Islamic Law and Jurisprudence Studies, 17(38), 153–182.
- [8] Munoz, D. (2017). [Teaching comparative contract law through the CISG](#). Indonesian Journal of International & Comparative Law, 7(4), 725–757.
- [9] Pargendler, M. (2019). [The role of the state in contract law: The common-civil law divide](#). Yale Law School Legal Scholarship Repository, 22(1), 98–115.
- [10] Sharifi, S. E., & Safari, N. (2025). [A comparative study on effects of hardship in principles of European contract law, UNIDROIT Principles, and Iranian law](#). Mofid Law Review, 31(2), 22–45.
- [11] Smits, J. M. (2022). Contract law: [A comparative introduction](#). European Review of Contract Law, 18(4), 309–317.
- [12] Smits, J. M. (2022). [Contract law: A comparative introduction](#). European Review of Contract Law, 18(4), 309–317.
- [13] Zareshahi, A. (2016). [A comparative study of damages and price reduction remedy for breach of sale contract under CISG, English, and Iranian laws](#). Journal of Politics and Law, 9(6), 126–134.
- [14] Zimmermann, R. (2000). [The UNIDROIT Principles and the Principles of European Contract Law: A comparative evaluation](#). Tulane European and Civil Law Forum, 15, 1–24.