



## Enforced Performance: Scope, Legal and Economic Appropriateness in Iranian and Anglo-American Contract Law

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**Key words:** Contract, obligation, breach, enforced performance, monetary damages

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Page No.: 1-8

Volume: 13, Issue 1, 2020

ISSN: 1995-4751

Botany Research Journal

Copy Right: Medwell Publications

**Abstract:** Enforced performance and Monetary Damages are the main remedies that legal system provided against breach of contract to compensate the effects of breach and protect the contractual rights. Generally, it is said that Iranian legal system as a general principle provided Enforced performance of contract for compensating the breach of contract but the Anglo-American legal system according to common law tradition, has provided Monetary damages as the first and main remedy and when monetary damages is inadequate for compensation and at the discretion of the court, accepted enforced performance as exceptional remedy. Considering these differences, this subject is selected. The aim of this article is to determine the enforced performance's exact scope with considering the limitations and evaluate the appropriateness of enforced performance, considering the superiority and objections in this legal system. According to this study, these legal systems practically move to the same side and have the same situation because Items such as the impossibility, abuse of rights, morality and public order, limited the scope of enforced performance in Iranian law while resort to enforced performance has increased in Anglo-American law. Also, despite the objections to the enforced performance, this method in the Iranian legal system is appropriate and effective.

## INTRODUCTION

The social institution of contract is found in every society and has several functions including adjust of social relations and important tool of economic exchange and source of financial and legal obligations. So, legal system taking into legal, economic, ethical, religious, social and political foundation, objectives and factors, have imposed regulations for conclude and executing

contracts. Normally contract party performs contracts and contractual obligations but sometimes refuse to enforce the obligations. That if the non-performance of the contract isn't due to external inability and accidental, breach occurs<sup>[1]</sup>.

Iran and the Anglo-American legal system have predicted sanctions such as enforced performance, payment of monetary damages and termination of the contract against breach of contract. Remedies force obligor

to follow the contract and impart obligee to the purpose for which the contract has been made or something equal or restore what was paid back to the situation before the agreement. These sanctions in England and America are called remedies for breach of contract and the means of enforcing a right or preventing or redressing a wrong<sup>[2]</sup>. These sanctions have several legal goals such as ensuring the performance of the contract, compensation of breach of contract and deterrence of breach; and their primary purpose is to protect the rights of contractual obligee.

Enforced performance in Iranian law is prior to other remedies and the first remedy. However, there are barriers that limit its scope. Abuse of rights, observance of morality, public order and the impossibility of enforced performance are barriers to enforced performance that are provided in article 40 of the constitution act 1979 and Section 975 and 239 of the Civil Code 1928.

In Anglo-American legal system, enforced performance is offered with exceptional scope as a way to remedy because the purpose of remedies is putting the obligee in a situation in which it is expected that if the contract is performed and as possible as by monetary damages be achieved, he doesn't depart from it. By studying Anglo-American law, it seems that the scope of this remedy is limited to the situation that monetary damages is inadequate, the court permits by his discretion with considering factors such as impossibility, the mutuality, personal services, vagueness, unfairness, public order, difficulty to perform or supervision, the ability to terminate the contract. These factors are somewhat similar to barriers to enforced performance in Iranian law.

According to emphasize the Anglo-American law on monetary damages and Iran's law on enforced performance and their differences, the two model to deal with the breach of contract came into existence. Each of these models has legal and economic features and advantages and disadvantages.

With developing of law and economic study and counting objections of enforced performance, economy efficiency and legally appropriateness of this method has been questioned. So, Anglo-American legal scholars and some Iranian legal researchers<sup>[3]</sup> are propounded "monetary damages efficiency hypothesis" with emphasis on expectation damages and suggest that there must be a limited scope of enforced performance<sup>[4]</sup>.

This study seeks to answer the following questions in Iran's law, according to the introduction and comparative study of Anglo-American law:

Could still be defended of "wide scope enforced performance theory" in Iranian law and its difference with the Anglo-American law? Is enforced performance, as alleged, not efficient and appropriate in Iran? What is the solution to this problem, especially for businessmen and foreign investors? It seems that scope of enforced

performance in Iran law with considering to barriers limited and there is virtually no difference. Also considering superiority of enforced performance, it is efficient and appropriate. In current situation, resorting to these barriers can be the best solution to get rid of enforced performance, albeit, businessmen and foreign investors may, based on the validity of all private agreements in Iranian law under Section 10 of the Civil Code, create agreement contrary to this legal arrangements and set aside or change the enforced performance and choose monetary damages as favorable remedy.

### **ENFORCED PERFORMANCE AND ITS LIMITATIONS IN IRANIAN LAW**

Based on religious beliefs (Particularly God says in the Holy Qur'an in the first verse of Al-Ma'idah Surah: "...fulfill the Contracts.") and principles of duty to keep a contract or binding to contract, enforced performance is the most important remedy for breach of contract and to other remedies is preferred. It is compulsory performance of contract by obligor or performance by someone else at the expense of contract obligor in a manner that is consistent with the contract. Also this rule is derived from the famous principle of Roman law provides: *Pacta sunt servanda* and means that agreements must be kept. This way is inferred from section such 10, 219, 222, 275, 534 Civil Code. Enforced performance is applicable as long as possible and the right to claim monetary damages and termination hasn't been identified for the obligee<sup>[1]</sup>.

So, if the obligor refuses to perform the contract, obligee must ask the court for enforced performance of contracts and in this way if that is not vested with the personal obligation, it can force obligation with the court's permission, personally or to obligor's expense or, according to Section 47 of Civil Verdict Enforcement act 1979 without doing obligation, demand performance expense. If obligee fails to succeed through enforced performance, he may ask damages for non-performance (*ibid*) or terminate contract to release from his contractual obligations and the return of what was paid to the breaching party. But there are limitations that limit scope of enforced performance include.

**Impossibility of compulsory forcing:** The impossibility of compulsory forcing is the most important barrier for enforced performance. Civil Code has raised the issue in 238, 239, 534 Sections. It should be noted that in Iranian law the possibility of obligation performance is the condition for the validity of the contract and measures, that customary man, personally or by another, can do it so, if impossibility of performance of the obligation were in the time of binding a contract, contract is void and if later becomes impossible, the contract is automatically dissolved<sup>[5]</sup>.

According to the researcher's opinion, impossibility of compulsory forcing must be distinguished from the possibility of performance. The possibility of compulsion is checked with regard to the type of obligation and the personality of obligor at time of performance and its criterion is: whether considering the type of obligation and obligor's assets, the court compulsory can enforce obligation by obligor or by expense of obligor and from obligor's assets of course in the absence of the possibility of compulsory forcing, contract is correct and there is the possibility of receiving monetary damages and terminating the contract. Due to this barrier, obligation to present other or obligation to introduce a particular person as a guarantor is non-performing compulsory.

**Personal services contracts:** Nowadays, contracts for personal services, such a labor contract and services, encompass wide range of contracts that compulsory enforce by the obligor on this contract is a tool for limiting freedom of the person and involving with human dignity and public order and ethical norms and faces obstacle and compulsory performing in these cases which may not bring about the desired result<sup>[6]</sup>. In particular, the obligations related to personality such as actor's obligation, was not even possible to pay obligor expense. Also requirements to do in these obligations can be considered a deprivation of freedom and is contrary to Article 960 of the Civil Code. Considering the basics, labor under Section 21 of the Labor act 1990 and the civil servants under Section 48 of the Country Service Management Act 2007 and Section 64 State Employment Act 1966 have the right to resign, so in this case compulsory enforce obligation, enforced performance the contract with the limitations facing.

**Abuse of rights:** Section 40 of the Constitution Act provides that: "No one is entitled to exercise his rights in a way injurious to others or detrimental to public interests." Under this Article If the obligee of contract acts their right with an intent to injurious to obligor and his action is considered as abuse of the right, demand of enforced performance through the courts is rejected.

**Public order and ethic norms:** Under Section 975 of the Civil Code and 6 of Civil Procedure Act 2000, contracts against public order or ethical norms, cannot be executed. It should be noted that Iranian lawyers, contrary to appearances of this section, consider contract contrary to public order and ethical norms void contract<sup>[6]</sup>. But clearly these sections means it is the only not-ability to perform and nullity of the contract cannot be inferred from them. It should be noted; today the concept of public order has expanded to economic public order of the cases it considers. Economic public order requires the use of resources in a way that it's most beneficial and prevents

the waste of resources. So, we can say that, if the cost of the performance of the obligation is more than the benefits to the obligee and the community and the damage arising from the breach of the contract compensate with monetary damages, compulsory performance of the contract will be canceled. It is also possible to resort to compulsory enforcement of the contract in an event which is considered abuse of the right.

**Unilaterally revocable contract:** In Iranian law contracts divided to binding and unilaterally revocable contract. Accordance with Section 186 of the Civil Code parties to unilaterally revocable contract such as deposit, are allowed to terminate the contract whenever they want but the parties to binding contract such as sale accordance with 185 of the Civil Code except certain legal cases, doesn't have the right to terminate. But the question is: is it possible to compulsory performing the unilaterally revocable contract? It seems that compulsion is not permissible to these contracts, because party may terminate it at any time and make verdict ineffective.

**Apply the lien in the swap contract:** Right of lien is a form of security interest granted for contract party to secure the payment of a debt or performance of some other obligation. It's right is discussed on issues related to the sale in 377 Section of civil code of Iran but many have expanded it to all types of swap contracts<sup>[6]</sup>. When it is invoked, performance of obligations must be done reciprocal and simultaneous. It is noted that in Iranian law in owned contracts like Sale or Exchange, contracting party as soon as contract concluded, will be owner of subject-matter of contract and obligee to surrounding is only seller duty and no effect on ownership.

## **ENFORCED PERFORMANCE AND LIMITATION IN ANGLO-AMERICAN LAW**

On Anglo-American law enforced performance is limited in scope and in a general sense including specific performance decree in positive obligation and injunction order in negative obligations and it is process by which the contractual obligee acquires actual subject of transaction, unlike monetary damages which replace the money for its refusal to performance the obligation<sup>[7]</sup>. But in particular concept just encompasses specific performance. Historically, common law courts that were formed in England in the eleventh century only sentenced to monetary damages for breach of contract but equity courts that were formed in the fifteenth century accepted enforced performance as an exceptional remedy. However, there is no separation of courts. Moreover, exceptionality of enforced performance of contracts in these countries are rooted in the concept of duty to keep a contract, so that, the American judge Holmes says: "The

duty to keep a contract at common law means a prediction that you must pay damages if you do not keep it and nothing else"<sup>[6]</sup>. Paragraph 1 of Section 52 of Sale of Goods Act 1979 England Provides that: "In any action for breach of contract to deliver specific or ascertained goods, the court may, if it thinks fit, on the plaintiff's application, by its judgment or decree direct that the contract shall be performed specifically without giving the defendant the option of retaining the goods on payment of damages." Uniform commercial code of America in Paragraph 1 of Section 716-2 provides that: "Specific performance may be decreed where the goods are unique or in other proper circumstances." Also, these rights stated in Section 357-369 Restatement second of the law of contracts of America and under Section 357 specific performance decreed at the discretion of the court against the person who breached or threatened to breach the contract apply.

Where a contract obligation is negative in nature, breach of it may be restrained by injunction and may prohibitory injunction or mandatory injunction, an injunction will not be granted if its effect is directly or indirectly to compel the defendant to do acts which he could not have been ordered to do by an order of specific performance<sup>[9]</sup>. In these countries refusing to enforced performance established by the Court decree or order may lead to imprisonment or a fine will be charged with contempt of court. Also today, this remedy practices in these countries expanded rules and may be specific performance of contract are done at the expense of the obligor<sup>[7]</sup>.

In these countries, to reach the enforced performance primary should prove inadequateness of monetary damages and after court check the limiting barriers and, therefore at his discretion accept enforced performance. Before the study, these factors and limitations should be noted that under Section 357 Restatement second of the law of Contracts of America, the same rules and limitations for specific performance and injunction is required. but in England, although restrictions are similar but not quite the same and It is possible in such cases as personal service contracts specific performance isn't accepted but the injunction is to be ordered<sup>[10]</sup>. In *Lumley v Wagner* 1852 case defendant obliged to sing at a particular time in the plaintiff theater but he signed another contract with another theater and breached of the obligation. Not only the court did not accept specific performance but also accepted second contract's prohibition by injunction.

**Inadequacy of monetary damages:** Because enforced performance is complementary remedy and secondary of monetary damages, traditionally as long as monetary damages is adequate to compensate, will not be

sentenced<sup>[9]</sup>. There are inadequateness in cases include: unavailability of satisfactory equivalent of what he contracted for from some other source, damages hard to quantify, difficulty of assessing and recovering, nominal damage, Section 52 of the Sale of Goods Act 1979 cases. Albeit nowadays in the more liberal view of the scope of availability of specific performance, specific performance depends on the appropriateness of that remedy in the circumstances of each case<sup>[7]</sup>. *Beswick v. Beswick* 1968 is a landmark case in the development of the rule, so that, its appropriateness is based on the circumstances of the case and in this case, specific performance is accepted because the damage was minor. Despite the court's freedom of action in decree to enforced performance, two factors plays a role in being exceptionality of enforced performance: Prime, sentence to enforced performance is contrary to the principle of Mitigation of damage that provides aggrieved party should be prevented from increasing damage and with enforced performance apply, obligee does not apply measures and actions to reduce losses. Second, today much progress has been made in measuring loss, so, monetary damages to adequately compensate damage<sup>[11]</sup>. Under Section 52 of the act of sale of goods, land, house, family heritage, patents, licenses or specific rating, specific company's stock, even a contract of employment, for construction, unique goods and a contract to supply a ship or machinery or other industrial plants which cannot readily be obtained elsewhere, as examples have been specific or ascertained goods is considered and enforced performance in case become available<sup>[7]</sup>. Despite the withdrawal of generic goods such as gasoline or steel, if a replacement is not available due to scarcity of supply, specific performance of the contract will apply, as in the case *Sky Petroleum v. VIP Petroleum* 1974 & *Howard E. Perry v British Railway Board* 1980 was accepted. In America the courts have extended the remedy of specific performance beyond this point and have made it available even to buyers of generic goods whose need for the actual supply was particularly urgent or who would in fact be unable to get a substitute. This view has been confirmed by UCC s. 2-716(1), under which 'Specific performance may be decreed where the goods are unique or in other proper circumstances. This tendency means that the stress is on the appropriateness of specific performance rather than on the adequacy of damages. There is the same tendency in some United States and under Section 16-169 Annotated Code of Maryland there is an express statutory provision to the effect that specific performance is not to be refused merely because the plaintiff has an 'adequate' remedy at law (ibid).

**Discretionary of court:** Enforced performance is a discretionary remedy so the court is not bound to grant

when the monetary damages is not adequate but this doesn't mean that it may be refused arbitrarily and court taking into account factors and barriers, what remedy is fair remedy and as long as refraining from monetary damages is not justified does not deviate from it. Thus enforced performance may be refused if it isn't mutuality of remedy such as a party who undertakes to render personal services or to perform continuous duties cannot get specific performance as the remedy is not available against him<sup>[10]</sup>. Also when the enforced performance is not possible for obligor, it will not be decreed<sup>[7]</sup>. Moreover in England and America enforced performance of contracts for personal services contract is not decreed. The basis for this view is that service and work for others with compulsory force thought to interfere unduly with his personal liberty (ibid). other obstacle is likewise ambiguous of contractual obligation because it is possible to contract adequately for calculating the damage is clear but not enough that, the court can issue a decree the execution of specific performance of contract or injunctive relief because cannot determine obligor exactly what to do. The court usually enforced execution of the contract that unfairly been concluded, refused (ibid) also, if specific performance of obligation or injunction is contrary to public order, refused to grant it, although the contract was correct and monetary damages available<sup>[7]</sup>. Difficult to execute of decree or supervision is other barriers for enforced performance of obligation because compulsory execution or supervision may have hardships and heavy severity for the court<sup>[12]</sup>. Because of the difficulty of matching the quality of work should be done with the order of court or the result of continuous monitoring, so usually the enforced performance in continuous obligation will not be accepted<sup>[7]</sup>. Today in America there are tendencies to ward compulsory execution of the agreement in the contract using monitoring tools such as employing an expert to monitoring<sup>[13]</sup> and in England in the case of *Shiloh v Harding* 1972, claim of the difficult to execute of decree was rejected. If the defendant is also entitled to terminate the contract, decree enforced performance will not be ordered, because obligor may with the termination of the contract ineffective court order<sup>[7]</sup>. Also in England according to the *Jaggard v. Sawyer* 1995 case, it is said if issuance of an injunction is oppressive, decreed to monetary compensation instead of enforced performance. Authority and discretion to make enforced performance of obligation to monetary damages provided in Section 50 of Supreme Court Act 1981 of England. So that, section provides: "Where the Court of Appeal or the High Court has jurisdiction to entertain an application for an injunction or specific performance, it may award damages in addition to or in substitution for an injunction or specific performance."

## SUPERIORITY

**Granting of idem subject of contract:** Enforced performance can put the obligee on the voluntarily performance situation or closest situation and grant idem subject of contract to obligee, according to the contract by the obligor or at its expense. Therefore Section 275 of the Iranian Civil Code emphasizes on performance of idem subject of obligation.

**Respect for private property and ownership:** This remedy is based on principle of Respect for private property and ownership because by apply it the obligee isn't forced to exchange their right or property to its equivalent. Section 47 of the Iranian constitution useful means and provides: "Private ownership that legitimately acquired is to be respected."

**Not involves proof of damage and difficulties of assessment and problem of assessment less than fact damage:** The first problem that arises after breach of contract is proof of damage and secondary problem is financial assessment and valuation of damage by experts and courts. If the method is monetary damages, the courts must primarily assess damage for breach of contract but enforce performance isn't required to assess. When claiming monetary damages in the valuation may be some aspects of obligation not considered in the financial valuation or considered at lower valuation. Because contract and its related interests in essence is subjective matter, therefore possible that benefits arising from contract have a special value for party whereas persons other than the parties (experts and courts) by objective criteria do assessed them. But with apply of enforced performance there isn't this problem. Based on this problem some believe enforced performance should be dominant mode of remedy and contract law should as possible as develop it<sup>[14]</sup>. In this regard, the Iranian legal system is desirable.

**Covering material and spiritual damage and full compensate damage:** Enforced performance of the contract compensates material and spiritual damage as much as possible because part of damage cause by the breach of contract may be immaterial damage that is non-convertible into money. Also it prevents the spread of spiritual damage caused by breach of contract. In Iranian law, while accepting the principle of full compensation loss and Spiritual losses and loss of profits in Section 1 of act civil liability 1960 and Section 221 of civil code, there are doubts and many problems in court on accepting the loss of profits and spiritual. Because of Section 515 in civil procedure Act, the loss of profits demanding is rejected. But the court only in case of uncertain profits, rejects claim for loss of profits and accept it in certain profits<sup>[5]</sup>.

**Prevents from spread of damage and protect future benefit:** Enforced performances prevent the spread of material damage and better provide future benefits.

**Protect subjective and personal values and respect to principle of binding to contract:** From the perspective of compensating subjective and personal values and respect for the principle of binding to contractual obligations, enforced performance is a priority because it better meets the values of contracts, so monetary damages is second stage.

**Ethical, religious, custom and legal acceptance:** fulfillment of Promise and binding to contracts is ethical, custom and reputable legal and religious worthy rule that is accepted in Iranian society. Against substitution of individual's rights to money and establish superiority for money is bad and immoral. Because it overlooked moral duty and binding to contractual obligations by money.

**Judgement proof person problem:** In developing and middle east countries where there is no regularly detailed statistics structure and control over the assets of people and where people can easily hide their property and are immune from execution or haven't assets for executions and even in cases, cannot collect damages from them with the remedy methods of Private Law, that so-called "judgment proof", enforced performance is a better remedy<sup>[3]</sup>. Because it's as ever remedy and forces people to execute the obligation.

## OBJECTIONS

**Be Severe and doesn't have Flexibility and contrary to efficiency:** Of the most important factors influencing the obligor decision to execute or breach the contract is sanction or remedy for breach. In normal mode, the parties, when the contract was concluded with optimism decided to perform it but later events may occur with subsequent calculations, the initial decision affected. This may raise the cost of obligation or that he is to find new opportunities, labor and possibilities that can do profitable activities. The events in the economic analysis of law Unfortunate contingency and fortunate contingency is said<sup>[15]</sup>. In such cases, economic efficiency requires allocation of resources in the most valuable use and emphasis on performance to be justified when enforcing contracts more benefits to obligee than costs to obligor and if the cost is higher than the interest performance, it is ineffective and breach is legitimate. From this perspective it seems that if monetary damages be dominant, obligor can choose between perform and breach of obligation and is possible if it have no other side interests, breach of contract and pay damages. However, if enforced performance is the dominant method, he has

no choice. Alleged, based on enforced performance remedy that is dominant in Iran law, obligor must perform the obligation and obligee must necessarily resort it, so there is no flexibility. But according to English and America law focuses on monetary damages and obligor usually have choice between performance and breach<sup>[3]</sup>. Flexibility of remedy is consistent with economic efficiency and efficient breach.

**Economic and law researcher believe that:** "The best remedy for breach secures optimal commitment to the contract which causes efficient formation, performance and reliance." (cooter et ulen, *ibid*). Anglo-American law is flexible and can at the least cost, make the highest utility, so it is efficient. Pareto Optimal and Kaldor-Hicks Efficiency are dominant efficiency criteria in Economic behavior analyzing that extended to economic analysis of law. However, despite this objection from the viewpoint of conventional economic analysis, Iranian researcher believe Iran law is efficient and argue that from view of economic and its classification, Iranian law approach fit with the "safety-of-expectation" approach or approaches of Austrian economy school. So, although from the viewpoint of conventional economics is not efficient but in view of Austrian school of economics it is efficient because at the least cost, it can achieve expectation, especially subjective aspect. Also, due to the certainty of performance creates better incentives for conclusion of the contract and relying on it, therefore secure performance and reliance.

**Reduced welfare and social wealth and resources:** Enforced performance due to the inflexibility reduces welfare and social wealth and resources are wasted. As mentioned earlier economic principles including efficiency of perform and breach requires the efficient and allocation and redistribution of resources in situations which are more utility is the result of this wealth and social welfare will be increased. In this regard every rule that limit the efficient, it is considered a waste of resources. In this sense enforced performance in Iran has no economic justification. It should be noted that all investment of society aren't material and things like the social desirability and worth respect towards the contracts and perhaps raising such investment is more favorable.

**Transaction cost problem:** Transaction costs have a significant impact on the choice of appropriate compensation model because the economy theory is always trying to reduce the transaction costs. May be said that by apply enforced performance, due to the inflexibility, Transaction cost will increase because the transfer of ownership should always be the owner's consent which raises transaction cost. of course some rejected this argument because of the high litigation costs

for monetary damages and costs for negotiation of breaching of contract and find alternative contract<sup>[4]</sup>. In Iranian law cost of litigation for claim of monetary damages is determined based on the percentage of actual price of demands, so more than enforced performance that determined according to the plaintiff stated price.

**Difficulty and slower of Executions:** Executions of enforced performance sentence is more difficult and slower than monetary sentence execution. Because when Forced executions sentenced, especially in continuous contracts may any time of execution refusal to execute and even require continuous monitoring of judicial and even if obligor accept the decree, Executions requires much time for performance of the contract. In the meantime, it is possible that in the decision obligor changes occur but when sentence is obligated to pay as damages or alternatively, can be immediately executed. Also on Iran law under Section 3 of the ways of financial sentences executions Act 2014, there where possibility of imprisonment of obligor for monetary sentence as long as execution of sentence, so, obligee usually tends to gotan order with the subject of money. On the other hand, monetary sentence with respect to execution is easy to perform and more quickly. Therefore legally utility and efficiency of enforced performance rejected.

**Inability of compensation in all cases:** In some injury, especially in Spiritual damages compensation through Forced execution is impossible or difficult and monetary compensation is only possible to compensate. If you believe monetary compensation is not, an act of breach will be no answer. Also enforce enforcement does not cover damage caused by breach in the past and is prospective. If remedy is only enforce performance damage resulting from breach that happened in the past will not be compensated. Therefore monetary damages along with enforced performance in this case are appropriate. In Iranian law, remedy combination is possible and In this case, if enforced performance and monetary damages be demand, only the profit of performance damage or expectation damage rejected and other damage such as delayed contract Redeemable. In this regard, it is said monetary compensation could easily damage all of damage.

**Contrary to mitigation rule:** In Anglo-American law mitigation rule limits the damages and based on rule injured party must reduce the damage scope. In Iranian law Section 3 of Civil Liability Act and Section 537 of the Penal Code Act 2013 have referred to this rule. If remedy method is enforced performance obligee has less incentive to reduce damage but by monetary damages model injured party obviously more motivated to reducing the scope harm that justify economically this approach better. Uncertainty of obligee situation after breach: Parties

wishing to know definitively and certain, what are the rights and duties in the event of breach of contract. Moreover, People tend to know more quickly their situation and seek to their demands from other people. Definitively and certainty may better achieved with monetary damages. Such problem in Iran's law is serious because when breach of contract, first obligee must resort to enforced performance by court, second if force failed, must do obligation to expense of obligor, third only in case of impossibility previous step, obligee can terminate the contract and received amages for non-performance of contract.

## CONCLUSION

Unlike the basic and primary difference it seems, enforced performance in Iran and the Anglo-American practically are not significant difference. Especially given the numerous limitations has reduced the scope of this principle in Iran law. As was observed these limitations in many cases similar to Anglo-American law.

In the Anglo-American is tendency to replacement of inadequate criteria with appropriateness criteria developed. Even now enforced performance of obligation accepted on obligor expense. Therefore, the scope of this remedy increased in Anglo-American law.

In The view of theoretical preferences, particularly legal and ethical principles enforced performance has stronger foundations and reasons. Particularly, personal and subjective values of contracting party from entering into the contract actualize by it. But it is facing economic and practical objections.

## SUGGESTION

**In the current situation, economic activists, businessmen and investors can:** After understanding current state of Iranian law by inserting the explicit standard term in contracts agreed on monetary damages as a first remedy when contract breach or under Section 230 of Civil Code can determine the agreed damages clause. Also according to 399 and 456 Sections of Civil Code can determine that as soon as breach of contract and without primary resort to enforce performance, non breaching party have a right to terminate of contract.

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