The Nature of Performance of Obligations in Iranian and Iraqi Law

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Abstract

In light of the recognition of the principle of fulfilling obligations and contracts as a necessary condition of religious commitment and one of the most important theoretical foundations of Islam, performance of obligations in both the Iranian and Iraqi legal systems has been regarded as the most natural institution for the execution of commitments. This performance is considered to have an effect which, in the Iranian legal system, is described as the extinction of the obligation (suqūt al-ta'ahhud), while in the Iraqi legal system it is conceived as the expiration of the obligation (inqidāʾ al-iltizām). The Civil Code of Iran addresses the subject of performance of obligations under Articles 265 to 282 as one of the causes of extinguishment of obligations, whereas the Iraqi Civil Code elaborates performance of obligations in Chapter One of Book Five, under the title inqidāʾ al-iltizām (termination of obligation), in Articles 375 to 398. This study, through a descriptive-analytical method, aims to clarify the legal nature of performance of obligations in the Iranian and Iraqi systems. The findings suggest that in both systems, what in fact occurs during the execution of an obligation is the manifestation of human will, the outcome of which is the extinction of the obligation. Moreover, the legal nature of performance of obligations depends on the subject matter within each legal relationship. In simple cases, performance of obligations constitutes a legal event, which generally does not require the declarative intent (irādah inshā'ī) of the parties. However, if performance requires the accomplishment of another legal act, its nature is dependent upon that accompanying act. Thus, if the legal act performed for the fulfillment of the debt requires mutual consent, the performance of obligations takes the form of a contract; if it is carried out unilaterally, it becomes a unilateral act (īqāʿ). In other instances, when no will is involved in its realization and it is effected by force of law, it is classified as a legal event.

Keywords: performance of obligations, extinguishment of obligations, obligations, Iranian law, Iraqi law

Received: 04 June 2025
Revised: 04 September 2025
Accepted: 13 September 2025
Published: 01 January 2026

Citation: Abdulhamza, J. R., Ghorbanifar, M., Abokeef Kaittan, A. M., & Nikouei, M. (2026). The Nature of Performance of Obligations in Iranian and Iraqi Law. *Legal Studies in Digital Age*, 5(1), 1-11.

1. Introduction

The subject of legal science is the study of rights, duties, and obligations of individuals toward one another. Essentially, the science of law does not address any matter unless, in doing so, it seeks to determine the rights and obligations of persons in

relation to each other and prescribes the method of fulfilling such obligations. Therefore, identifying the causes of obligations, their nature, and the method of their performance are among the fundamental issues in jurisprudence. Every obligation, regardless of its origin, may be either a legal act or a legal event, and it involves a debtor who, under the law, is bound to fulfill the content of the obligation. Moreover, in every legal system, conditions are established for the performance of obligations in order to terminate the debtor's legal responsibility and discharge him, which are referred to as the causes of extinguishment of obligations. The most significant and common cause of extinguishment is performance, or in the terminology of the Civil Code, performance of obligations (*wafāʾ bi al-ʿahd*). This is because the ultimate purpose of every obligation is its fulfillment. Accordingly, performance of obligations may be regarded as the most important and evident method of extinguishing an obligation (Emami, 2021).

Thus, performance of obligations is a matter that can be analyzed from a legal perspective. Fulfilling an obligation, payment, and execution of an obligation are other terms synonymous with performance of obligations. In colloquial usage, performance of obligations means "being faithful to one's promises." However, in legal terminology, it refers to the act that a person has committed himself to in a contract. Simply put, the legal nature of performance of obligations can be described as the execution of the contract. Depending on the contract, performance may involve the payment of money, doing an act, refraining from an act, transferring property, or delivering property to another. As noted, performance of obligations conveys the meaning of remaining faithful to an agreement and does not apply in cases of liability, usurpation, or unlawful enrichment (Shahidi, 2014).

Generally, performance of obligations results in the discharge of liability or the extinguishment of the obligation, whether by doing an act, refraining from an act, making a transfer, or paying money. According to the Civil Code and the opinion of most jurists, performance of obligations is solely connected with contracts and arises therefrom.

As the very name of this obligation suggests, its nature is contractual, and in principle, the declaration of intent by both parties is required. In fact, performance of obligations is regarded as a contract and a declarative act similar to other agreements, in which the parties' declarations are necessary for its realization. French, German, Egyptian, and Iraqi jurists adhere to this theory (Katouzian, 2015). Based on this view, the mere offer of payment is not sufficient to discharge the debtor's obligation, and thus the creditor's acceptance is deemed essential.

Some Iraqi jurists also consider performance of obligations as a contract. According to this theory, performance of obligations is a mixed event composed of material action or abstention from action. Thus, agreement upon the performance of an obligation constitutes a legal act. Since performance of obligations is considered a legal act in this theory, consent is required. The debtor must deliver the subject matter, and the creditor must accept it. Moreover, much emphasis is placed on the absence of defects in consent (Abdul Majeed, 2010).

Performance of obligations is the best and most common means of executing contracts and, consequently, the obligations arising therefrom. It is also considered the most peaceful method. Performance is, first and foremost, the duty of the debtor, since he has created the obligation to his own detriment. On the other hand, the principle of non-intervention in the affairs of others and the principle of autonomy of will dictate that no one may interfere in the property or affairs of another without authorization from the owner or the law (Ghasemzadeh, 2010). Violation of this principle requires strong and sufficient justification. However, based on the jurisprudential principle that "necessities permit prohibitions" and the principle of benevolence, as well as the notion that individuals may act for the benefit of others, it must be said that, in principle, the performance of an obligation may be carried out by any person, unless there is evidence to the contrary. In other words, performance of obligations is not necessarily tied to the debtor himself but is merely a means of fulfilling the obligation. A third party, therefore, may also fulfill the obligation and thereby discharge the debtor's liability toward the creditor, except in cases where the obligation is personal.

The intervention of third parties in fulfilling another's debt has deep roots in Imami jurisprudence, where jurists, in discussing *dayn* (debt), *ḍamān* (guarantee), *kafālah* (surety), and other topics, have addressed its conditions. The Civil Code, in the opening of Article 267, explicitly acknowledges performance of an obligation by a third party by stating: "Performance of a debt by a non-debtor is also permissible" (Sanhuri, 2009).

Article 264 of the Civil Code enumerates several causes for the extinguishment of obligations, with the first being performance of obligations. This means that by fulfilling the obligation in favor of the creditor, the debtor is discharged, and the obligation is extinguished (Safa'i, 2010). Performance of obligations is the most important cause of extinguishment, and its

rules and issues have been widely discussed in jurisprudential and legal texts. Nevertheless, the issue of performance by third parties has received relatively little attention from authors and researchers.

Given that Iranian and Iraqi law are substantively quite similar, as both are heavily influenced by Islamic jurisprudence, the concept of performance of obligations occupies a prominent place in both legal systems. Furthermore, since most Iranian laws are rooted in Imami jurisprudence, the legal nature of performance of obligations has been described in various ways, including as a contract, non-contractual act, unilateral act, or sale. Some jurists even differentiate depending on specific circumstances. Clarifying the nature of performance not only explains the basis of disagreements among experts in its rulings but also facilitates a better analysis of jurisprudential rules and has a direct impact on the regulation of contracts in the broad sense, clarifying both individual and social effects. Importantly, the consequences of performance of obligations manifest less in the individual sphere and more prominently within society. With the expansion of social relations, obligations between individuals and the manner of fulfilling them gain greater importance. The survival and development of any society depend on trust and social security, and the most valuable means to achieve this is performance of obligations (Sanhuri, 2009).

The issue of performance of obligations, therefore, extends beyond the individual domain to encompass social and human interactions among individuals, and even between states and the systems governing them. The scope of the subject includes contracts, certain unilateral acts, conditions, options, and performance of each of the rights arising therefrom. Accordingly, this study seeks to examine performance of obligations, its nature, rules, and effects.

2. Theoretical and Conceptual Foundations

The phrase "performance of obligations" (*wafāʾ bi al-ʿahd*) consists of two words: *wafāʾ* and *ʿahd*. The term *wafāʾ*, derived from the root "wafī," means to complete something and bring it to perfection (Qureshi Banai, 1991). Ragheb Isfahani notes that the word *wafāʾ* is used when a matter reaches its ultimate perfection. Thus, when it is said, *wafā bi-ʿahdihi* or *awfā bi-ʿahdihi*, it means that one has fulfilled his covenant completely and without deficiency (Ragheb Isfahani, 2008). The word *ʿahd* in its lexical sense denotes a covenant, contract, promise, epoch, time, guarantee, a written decree of a king to provincial rulers, or a charter and treaty (Amid, 1996). Ragheb Isfahani also defines *ʿahd* as the continuous maintenance and observance of something (Ragheb Isfahani, 2008). In the Qur'an, the term *ʿahd* and its derivatives are used in contexts such as trust, covenant, command, and monotheism. Therefore, performance of obligations may be understood as the fulfillment of covenants and the execution of commitments.

In colloquial usage, *wafāʾ bi al-ʿahd* means "being faithful to one's word or covenant." However, in legal terminology, several definitions have been offered:

a) Performance (*ifāʾ*) is an act by which the obligor carries out what he is bound to under a legal act or legal event (Shahbazi Nia & Rezaqi, 2011).

b) Performance of obligations is defined as the execution of the commitment that the debtor bears, whether this execution is voluntary by the debtor or enforced (Katouzian, 2012).

c) Jafari Langeroudi has been cited as considering performance of obligations to mean "payment," whether arising from a contract, unilateral act, legal event, offense, or law. Some classical jurists, such as Muqaddas Ardabili and Fāḍil Miqdād, have similarly viewed the necessary implication of a contract as its performance.

d) Others have defined performance of obligations as carrying out an act that results in the discharge of the debtor's liability (Bagheri, 1998).

3. The Position of Performance of Obligations in the Iranian and Iraqi Legal Systems

An obligation is a legal bond by which one or more persons are required to do or refrain from doing something. However, this bond is not always permanent and may be extinguished for various reasons. This extinction of the legal bond is termed "extinguishment of obligations." In other words, after a legal relationship arises from various sources, its definitive termination—whereby the debtor is no longer under any obligation—depends on certain factors identified as the causes of

extinguishment of obligations. The most important of these causes is performance of obligations, since the obligation comes to an end once it is performed (Boroujerdi Abdo, 2001).

Legal scholars have identified different grounds for extinguishment of obligations, and this divergence has led to multiple views. According to the theory of extinguishment of obligations, the causes listed in Article 264 of the Iranian Civil Code are not exhaustive; some causes not explicitly stated in the Code—or only scattered within its provisions—may also lead to extinguishment. In this theory, two causes are emphasized as leading to the extinguishment of obligations (Katouzian, 1995).

In Islamic jurisprudence, extinguishment of obligations is discussed under the doctrines of *ḍamān* (guarantee) and *ḥawālah* (assignment). Jurists consider impossibility of performance as one of the grounds for extinguishment, which in statutory law corresponds to destruction of the subject matter. Guarantee leads to extinguishment when there is transfer of liability (*naql al-dhimmah*), but in cases of cumulative guarantee (*ḍamm al-dhimmah ilā al-dhimmah*), the obligation is not extinguished. Some jurists have enumerated nine causes of extinguishment of obligations in Islam (Bagheri, 1998), including: performance of obligations, guarantee, assignment, novation, set-off, merger of rights, impossibility of performance, and limitation periods. Other causes mentioned in jurisprudence include death, insanity, unconsciousness, rescission, benevolence, trust, voluntary assumption, amnesty, and authorization.

In the Civil Code of Iran, extinguishment of obligations is regulated by Article 264, which was influenced by the French Civil Code but adapted to Islamic jurisprudence. The French Civil Code recognizes nine causes, three of which are not included in the Iranian Code:

1. Destruction of the subject matter,
2. Fulfillment of a resolutory condition in rescission,
3. Limitation periods.

Another distinction is that rescission (*fasakh*) in French law differs from *iqālah* (mutual discharge), which was incorporated into Iranian law from Islamic jurisprudence. Article 264 of the Iranian Civil Code lists six causes of extinguishment: (1) performance of obligations, (2) mutual discharge (*iqālah*), (3) release (*ibrā'*), (4) novation, (5) set-off, and (6) merger of rights. Other provisions in the Code also indicate further causes, such as Article 51(2), which considers destruction of the subject of usufruct as extinguishing that right.

Legal scholars generally consider performance of obligations to be the most complete cause of extinguishment, since once the debtor fulfills his obligation, the obligation ceases to exist. To effectuate extinguishment by performance, specific conditions regarding the debtor, the subject matter, and the time and place of performance must be met.

4. Recognition of the Institution of Performance of Obligations in the Iranian Civil Code

a) The Position of Performance of Obligations in the Iranian Civil Code

Performance of obligations is identified in Article 264 of the Civil Code as one of the causes of extinguishment and is further elaborated in Articles 265 to 282. However, it would have been preferable for the legislator to recognize performance of obligations as an instance of execution of obligations rather than as a cause of extinguishment. This is because there is a conceptual distinction between execution and extinguishment: the causes of extinguishment directly eliminate obligations—whether contractual or non-contractual—before they are fully executed, whereas performance brings the obligation to completion, after which it naturally ceases. Hence, extinguishment occurs before execution, while performance extinguishes obligations indirectly, as a consequence of their fulfillment. The French jurist Mazeaud similarly discussed performance of obligations under execution of contracts, not under extinguishment. Likewise, Katouzian regarded extinguishment as a secondary and indirect result of performance (Sadeghi, 2005).

The same holds true for contracts: ordinarily, a contract ends upon fulfillment of the obligations it creates, but sometimes it may terminate before execution, through annulment, rescission, or invalidity. The distinction is that annulment arises when a contract has not yet been executed or has not been fully executed, whereas termination by expiration (*inqiḍā'*) occurs only after complete performance (Dadmarzi, 2000).

Every obligation is created for a specific purpose, and the ultimate aim is the realization of the parties' intended result. This goal is not achieved except through performance of obligations. Thus, contrary to the view of many jurists, performance is not merely the simplest or most natural means of achieving the purpose of obligations, but indeed the only means. In cases of

change in the subject of obligation, the purpose of the obligation—to fulfill the original object agreed upon—does not materialize, and the obligation is extinguished before execution. According to Article 275 of the Iranian Civil Code (corresponding to Article 1243 of the French Civil Code), the subject performed must be exactly the subject matter of the obligation. Therefore, if the debtor offers a different subject in place of the agreed one, the creditor may reject it, and in such a case, the debtor is not discharged.

It should be noted that if the obligation is performed properly without requiring the creditor's consent, there is no doubt that the obligation is executed and naturally extinguished. However, this differs from extinguishment occurring prior to performance. Thus, the causes of termination of obligations, which result in discharge of the debtor, can be divided into two categories: (1) performance (the only means of execution), and (2) extinguishment (which nullifies obligations before performance). Extinguishment may occur voluntarily (such as change of subject, release, novation, mutual discharge) or involuntarily (such as destruction of the subject or limitation periods). Both occur prior to performance. It must again be emphasized that performance is the only true means of executing obligations. Performance itself may be divided into voluntary performance (*ifāʾ khāṣṣ*, the most natural method) and involuntary performance (such as merger of rights or set-off) (Rajaei, 2023).

5. The Position of Performance of Obligations in the Iraqi Legal System

5.1. Recognition of the Institution of Performance of Obligations in the Iraqi Civil Code

a) The Iraqi Legal System's View on Obligation (*ʿAhd*)

It is first necessary to clarify the Iraqi legislator's definition and interpretation of *ʿahd* and "obligation," before turning to performance of obligations. Article 69 of the Iraqi Civil Code defines an obligation as follows:

"Every obligation is a legal bond between two persons—the creditor and the debtor—by virtue of which the creditor may demand from the debtor the transfer of a real right, the performance of an act, or the abstention from an act. The commitment to transfer ownership—whether the object is fungible, consumable, or individually determined—constitutes a personal right, and the commitment to deliver a specified thing likewise constitutes a personal right." (Fathi & Amer, 2019)

Accordingly, the elements and pillars of an obligation are as follows:

- **Al-maṣdar al-mulzim (source of obligation):** the law;
- **Al-multazim (the obligor):** the debtor;
- **Al-multazam lahu (the obligee):** the right-holder/creditor;
- **Al-multazam fīh (the object of commitment):** the subject matter of the obligation and the object of the contract in contractual obligations;
- **Al-multazam bih (the performance due):** the content of the commitment, namely, doing a positive act or abstaining from an act;
- **Sabab al-iltizām (cause of the obligation):** the juridical act or legal fact (under Sharia or statute) that generates the obligation (also referred to as the "source" of the commitment). (Al-Zilmi)

The Iraqi legislator also addresses the effects of obligations in Book Two, Chapter Five of the Civil Code, devoting Section One to specific performance (*ijrāʾ ʿayn al-iltizām*). Before all else, Article 146 provides that specific performance in contracts is compulsory, except in exceptional cases where the court—after weighing the parties' interests—may reasonably reduce an onerous commitment to the extent required by equity, and any agreement contrary to this mandatory rule is prohibited. Article 246 further states that the debtor is compelled, as far as possible, to perform in kind; however, where specific performance would be extremely burdensome for the debtor and the harm to the creditor from non-performance in kind is not serious, the debtor may be confined to paying a monetary indemnity.

This exception is reflected again in Article 249 of the Civil Code: in all cases where the nature of the debt requires performance personally by the debtor—or where the contract so stipulates—the creditor may refuse performance by a non-debtor. Article 250 authorizes the creditor, in cases where personal performance by the debtor is not required, to have the obligation performed at the debtor's expense. For this reason, Iraqi jurists have sharply criticized the Court of Appeal of Iraq's judgment No. 958 dated 2020-02-23, which compelled the debtor by bodily, physical coercion to construct a building on his

own property, arguing that the Civil Code contains no express authorization for bodily compulsion and that only monetary penalties may be sought; the ruling has thus been deemed discriminatory (Siddiq, 2020).

Section Two of the Iraqi Civil Code's chapter on the effects of obligations addresses **damages** as compensation for harm resulting from (non-)performance in kind. To this end, Article 253 stipulates that if specific performance is possible only by the debtor's personal act and the debtor refuses to perform, the court—upon the creditor's request—issues an order compelling specific performance and fixes a penalty for non-compliance (Al-Hakim, 1967). Ultimately, under Article 254, if such compulsion proves ineffective and the debtor persists in refusal, the court determines the final amount of damages owed to the creditor, considering the harm suffered and the debtor's contumacy (Al-Bakri, 1971).

b) The Position of Performance of Obligations within the Iraqi Civil Code

As in Iranian law, the Iraqi legal system recognizes various avenues by which persons may be released from contractual bonds and commitments; performance of obligations (*al-wafāʾ*) is the principal means in this respect.

The Iraqi legislator, in Book Five of the Civil Code under the title "Extinction of the Obligation" (*inqiḍāʾ al-iltizām*), Articles 375–443, sets out the rules governing the extinction of obligations. Chapter One of Book Five is devoted to performance (*al-wafāʾ*), and Articles 375–398 elaborate the doctrine of performance of obligations. Influenced by the Egyptian Civil Code and, indirectly, by French law, the Iraqi Civil Code recognizes performance as a general principle governing contracts and obligations: the parties must fully and precisely carry out their commitments (Al-Sanhuri, 2004; Sanhuri, 2009).

In addition, the Iraqi Commercial Code underscores performance of obligations as a foundational principle in commercial relations, ensuring that parties to commercial contracts remain bound by their undertakings. The Iraqi Constitution, as higher law, likewise affirms the importance of honoring commitments and agreements, grounding these obligations in principles of justice and fairness and recognizing performance as a core norm in legal and social relations (Abdul Majeed, 2010).

In the Iraqi legal system, where performance is not rendered, the aggrieved party may bring an action before the courts. Iraqi courts, applying civil and commercial statutes, may order specific performance, award damages, or decree rescission, as appropriate. Hence, performance (*al-wafāʾ*) is one of the recognized modes of **extinction of obligations** (*inqiḍāʾ al-iltizām*) in Iraqi law, functioning in a manner comparable to performance of obligations in Iranian law (Al-Bakri, 1971; Al-Hakim, 1967).

c) Rules of the Iraqi Civil Code on Various Aspects of Performance of Obligations and Their Comparison with Iranian Law

In the Iraqi Civil Code, the subject of performance of obligations (*al-wafāʾ bi-l-iltizām*) is treated as a fundamental principle of obligations and contracts, and the concept appears across multiple provisions of the Code (enacted in 1951). The relevant articles concerning performance of obligations—particularly within Book Five (Articles 375–443) and, more specifically, Articles 375–398 on *al-wafāʾ*—will be set out below in detail and compared, where appropriate, with corresponding Iranian rules (Al-Sanhuri, 2004; Sanhuri, 2009).

6. The Parties to Performance of Obligations

6.1. The Person Who Performs (Simple Performance)

Pursuant to Article 375 of the Iraqi Civil Code: "Performance of the debt by the debtor or his representative is valid. Performance of the debt by any other person who has an interest in performance (such as a guarantor or a joint debtor) is also valid, subject to Article 250. Performance of the debt by a third party who has no interest in performance, whether upon the debtor's instruction or without it, is valid as well. However, the creditor may refuse to accept performance by a third party if the debtor objects to such performance and communicates this objection to the creditor." (Al-Bakri, 1971; Al-Hakim, 1967)

Accordingly, under the Iraqi Civil Code, performance may validly be rendered by the following persons:

a) the debtor;

b) a third party with an interest in performance, such as a guarantor;

c) a third party without an interest in performance.

In the Iranian Civil Code, too, performance of a debt by someone other than the debtor is recognized under Article 267 (Emami, 2021; Ghasemzadeh, 2010).

However, the effectiveness (validity and discharge) of performance in the Iraqi legal system is subject to certain conditions. According to Article 376 of the Iraqi Civil Code: "For performance to be effective and to discharge the debt, the payer must own what he pays. If, after payment, the property is claimed by a third party, or it perishes and a substitute is taken, the creditor may revert to the debtor." (Al-Hakim, 1967)

Likewise, under Article 377 of the same Code, "If the debtor is a discerning minor, an adult who is insane, or a person under guardianship due to prodigality or negligence, and he pays his debt, such payment is valid unless performance causes harm to the debtor." (Al-Hakim, 1967)

In addition, pursuant to Article 378 of the Code, "The debtor may not, during his death-illness, perform in favor of one of his creditors if such performance would harm the other creditors." (Al-Hakim, 1967)

Accordingly, the conditions for the effectiveness of performance may be enumerated as follows:

a) the payer must own what he pays;

b) no harm must accrue to the creditor by reason of performance;

c) no harm must accrue to other creditors by reason of performance. (Al-Hakim, 1967)

Here a marked difference between the conditions for performance in the Iranian and Iraqi systems appears: under Iranian law, the performer's capacity is a condition for valid performance, whereas this is not so in Iraqi law. By Article 269 of the Iranian Civil Code, "Performance occurs when the obligor owns what he delivers or is authorized by the owner to deliver it, and he himself has legal capacity" (Katouzian, 2012; Shahidi, 2014).

The Iraqi Civil Code sets out the rules on subrogation (performance with substitution) as follows. Under Article 379: "If the debt is paid by someone other than the debtor, the payer legally replaces the creditor in the following cases:

a) if the payer is jointly liable with the debtor for the debt, or is (individually) bound to pay the debtor's debt;

b) if the payer is a creditor and pays the debt of another creditor whose claim enjoys priority, even if the payer holds no security;

c) if the payer has purchased property and pays its price to satisfy a creditor in whose favor the property was allocated as security;

d) if a legal text grants the payer a right of subrogation." (Al-Bakri, 1971; Al-Hakim, 1967)

Article 380 further provides: "A creditor who receives his right from someone other than the debtor may agree with that person that the latter shall replace him, even if the debtor does not accept. This agreement must be recorded in an official instrument, the date of which must not be later than the performance. Likewise, if the debtor borrows in order to pay his debt, he may subrogate the lender to the creditor who has been paid, even without that creditor's consent, provided that the subrogation agreement is recorded in an official instrument, the loan contract specifies that the sum is dedicated to paying the debt, and the receipt notes that payment was made from the loan received from the new creditor." (Al-Hakim, 1967)

The Code then, in Articles 381 and 382, states the rules governing substitution of a third party for the original debtor or creditor:

"Article 381: Whoever replaces the creditor by law or by agreement acquires the rights attached to that claim, including its characteristics, accessories, securities, and relevant defenses. Subrogation occurs to the extent of the amount paid." (Al-Hakim, 1967)

"Article 382: If someone other than the debtor pays part of the creditor's right and replaces him, the creditor shall not be prejudiced by such performance and has priority over the payer for the remainder of his right, unless otherwise agreed. If another person replaces the creditor for the remainder of his right, the subrogees share pro rata and distribute by way of *taqsīm ghuramāʾ* (pari passu among creditors)." (Al-Hakim, 1967)

What Article 379 sets out corresponds, conceptually, to novation by change of creditor or debtor, which is recognized in Iranian law by Article 292. A noteworthy point is that, under Article 381 of the Iraqi Civil Code, novation does **not** extinguish accessories and securities of the claim; by contrast, Article 293 of the Iranian Civil Code provides that "in novation, securities

attaching to the former obligation do not attach to the subsequent one, unless the parties expressly so stipulate" (Katouzian, 2000; Sadeghi, 2005).

6.2. In Favor of Whom Is Performance Rendered?

For purposes of acceptance and validity of performance, Article 383 of the Iraqi Civil Code provides: "Payment of the debt to the creditor or his representative (provided the latter is not incapacitated) is valid. If the creditor is incapacitated, payment to him is invalid and must instead be made to the person entitled to receive it (such as a guardian, executor, or curator). If the debtor pays the incapacitated creditor, such payment is not valid and does not discharge the debt. If what was paid is lost or destroyed while in the hands of the incapacitated person, the guardian, executor, or curator may claim payment from the debtor." (Al-Hakim, 1967)

Article 384 adds: "If performance is rendered to a person other than the creditor or his representative, the debtor is not discharged unless such performance is ratified by the creditor, or performance is rendered in good faith to a person who appears to be entitled to the debt (such as an apparent heir)." (Al-Hakim, 1967)

Therefore, in Iraqi law, the capacity of the obligee is a condition for valid performance; where the creditor is incapacitated, performance must be made to the guardian, executor, curator, or the like. Likewise, payment to a third party is not valid without the creditor's confirmation—an approach similar to that of the Iranian Civil Code, which, in Article 274, makes the obligee's capacity a condition of performance (Emami, 2021; Shahidi, 2014).

With respect to refusal of performance, the Iraqi Civil Code provides as follows. Under Article 385: "If the creditor, without valid reason, refuses to accept performance duly offered to him, or abstains from taking steps without which performance cannot be completed, or declares that he will not accept performance, the debtor may notify the creditor to receive his right within a reasonable period specified in the notice. The notice is completed only when, after the lapse of that period, the debtor deposits the property to the creditor's account and informs him of the deposit." (Al-Hakim, 1967)

Under Article 386: "Deposit is deemed performance if the creditor accepts it or a judgment is rendered confirming its validity. In that event, the costs of the deposit fall on the creditor, who bears the risk of loss from the time of deposit; from that time, interest also ceases to accrue." (Al-Hakim, 1967)

Article 387 states: "If the object of performance is an immovable or a thing that must remain in its place, the debtor may request the court to place it under custodianship (*ʿadl*). Delivery to the custodian is deemed a substitute for deposit. If the thing is perishable or entails heavy costs for deposit, the debtor may sell it at market price after court permission, or, in case of necessity, without permission; if that is not possible, he may sell it at public auction, and the deposit of the price is deemed a deposit of the thing itself." (Al-Bakri, 1971)

Article 388 continues: "Deposit or its substitutes are also permissible in the following cases:

— if the debtor does not know the creditor's identity or domicile;

— if the creditor is incapacitated and has no representative to receive performance;

— if several persons dispute the credit;

— if there exist serious reasons justifying such action." (Al-Hakim, 1967)

Finally, Article 389 provides: "If the debtor tenders payment and thereafter makes a deposit or a similar act, he may revoke his tender so long as the creditor has not accepted it and no final judgment has confirmed its validity. If the debtor revokes, his co-debtors and sureties are not discharged. If the debtor revokes after the creditor's acceptance of the tender or after judgment confirming its validity, and the creditor accepts the revocation, the creditor may not rely on his securities, and the co-debtors and sureties are discharged." (Al-Hakim, 1967)

Accordingly, under the Iraqi Civil Code, where the obligee refuses or abstains from accepting performance, the debtor has several avenues:

a) giving notice to the creditor;

b) making a deposit of the thing owed;

c) delivery to the court/custodian if the object is immovable or must remain in place;

d) sale at market price if the thing is perishable or entails heavy deposit costs;

e) public auction with deposit of the proceeds if a market sale is not feasible (Al-Bakri, 1971; Al-Hakim, 1967).

By contrast, in the Iranian system, where the obligee refuses to accept performance, Article 273 provides: "If the right-holder refuses to accept, the obligor is discharged by placing the subject matter at the disposal of the judge or his deputy; from the date of this act, he is not responsible for any damage that may occur to the subject matter." Thus, mechanisms such as notice or deposit—as structured in Iraqi law—do not appear in the same form in Iranian law (Al-Sanhuri, 2004; Emami, 2021; Katouzian, 2015; Safa'i, 2010; Sanhuri, 2009; Siddiq, 2020).

7. The Subject, Time, Place, and Costs of Performance of Obligations

7.1. The Subject of Performance

Article 390 of the Iraqi Civil Code provides: "If the debt is specifically determined, the debtor may not, without the creditor's consent, pay something other than the debt—even if it is equal in value or more valuable. If the debt is not specifically determined but defined by contract, the debtor may pay an equivalent, even without the creditor's consent." This differs significantly from Article 275 of the Iranian Civil Code, which states: "The obligee may not be compelled to accept anything other than the subject of the obligation, even if the substitute is of equal or greater value." The Iranian rule, unlike Article 390 of the Iraqi Civil Code, is absolute and makes no distinction as to whether the obligation is specifically determined or generic (Emami, 2021; Katouzian, 2012).

According to Article 391 of the Iraqi Civil Code, "If the creditor incidentally discovers the specific subject of his right among the debtor's property, he may retain it." Such a provision does not exist in the Iranian Civil Code. Article 392 further states: "If the debt is due, the debtor may not compel the creditor to accept part of it without the rest, even if the debt is divisible." In this regard, both the Iranian and Iraqi legal systems take the same approach: the creditor is entitled to the entire debt and cannot be forced to accept partial performance. This is consistent with Article 277 of the Iranian Civil Code, which provides: "The obligor cannot compel the obligee to accept part of the obligation; however, the judge may, considering the debtor's circumstances, grant a reasonable extension or authorize payment in installments." The difference is that the Iranian legislator makes no distinction between due and future debts.

On the allocation of payment where multiple debts exist, Article 393 of the Iraqi Civil Code provides: "If the debtor pays one of two obligations owed, and one is unconditional while the other is secured or pledged, or one is a loan while the other is part of a sale price, or one is joint while the other is individual, or the two debts differ in any other respect, and the parties dispute the purpose of payment, the debtor's designation prevails. If the debtor is bound to pay expenses and interest along with the debt and his payment is insufficient to cover all, the expenses are deducted first, then interest, and finally the principal, unless agreed otherwise." Similarly, Article 282 of the Iranian Civil Code gives the debtor the right to determine to which debt payment applies, but in both systems this right must be exercised at the time of payment. If the debtor fails to specify, it is deemed delegated to the creditor (Bagheri, 1998; Katouzian, 1995).

7.2. The Time of Performance

Article 394 of the Iraqi Civil Code states: "If the debt is deferred or divided into specified installments, the creditor may not demand payment before maturity. If the debt is not deferred or is due, it must be paid immediately. However, the court may, in case of necessity and absent a statutory prohibition, grant the debtor an appropriate delay if his condition so requires and the creditor suffers no serious harm." Article 395 adds: "If the debt is deferred, the debtor may pay it before maturity if the deferment benefits him alone, and he may compel the creditor to accept. If the debtor pays before maturity and the payment is later annulled, the debt becomes deferred again." (Rajaei, 2023; Shahidi, 2014)

7.3. The Place of Performance

Regarding place of performance, Article 396 of the Iraqi Civil Code stipulates: "If the subject of the obligation requires transportation (such as goods sold by weight or volume) and the contract is silent as to the place of delivery, the goods shall be delivered at the place where they were located when the contract was concluded. For other obligations, performance is at the

debtor's domicile at the time performance becomes due, or at his place of business if related thereto, unless agreed otherwise." Article 397 provides: "If the debtor delivers the property to the creditor by his own carrier, and it perishes before reaching the creditor, the loss is borne by the debtor. If the creditor instructs delivery to his own carrier and it perishes in transit, the loss is borne by the creditor and the debtor is discharged." (Al-Sanhuri, 2004; Sanhuri, 2009)

Thus, under Iraqi law, performance of obligations requiring transport is generally at the place of contract unless agreed otherwise, while other obligations are performed at the debtor's domicile or place of business unless another arrangement is made. By contrast, Article 280 of the Iranian Civil Code provides: "Performance must take place at the location where the contract was concluded, unless the parties agree otherwise or custom dictates another arrangement." Unlike Iraqi law, the Iranian Code makes no distinction regarding the type of obligation and explicitly recognizes **custom** as a factor in determining the place of performance (Katouzian, 2015; Safa'i, 2010).

7.4. The Costs of Performance

Article 398 of the Iraqi Civil Code provides: "The costs of performance are borne by the debtor, unless agreement, custom, or a statutory provision dictates otherwise." Similarly, Article 281 of the Iranian Civil Code states that "the expenses of performance are upon the debtor, unless otherwise stipulated." (Boroujerdi Abdo, 2001; Shahbazi Nia & Rezaqi, 2011)

Conclusion

Iranian jurists have offered divergent views on the nature of performance of obligations. Some regard it as a contract, others as a sale, some as a necessary act, and others as a unilateral declaration. Another group has adopted a nuanced perspective, holding that simple performance is a legal event that generally requires no declarative intent from the parties, since it is realized automatically upon the effectiveness of a contract or unilateral act. For instance, performance occurs through transfer of ownership immediately upon conclusion of a sale (contract) or by approval of an unauthorized transaction (unilateral act) which validates the unauthorized contract. However, if performance requires another juridical act, its nature depends on the accompanying act: if the legal act necessitates mutual consent, performance is deemed a contract; if it is carried out solely by one will, it is considered a unilateral act; and in cases where no will plays a role and it is effected by operation of law, it is classified as a legal event.

Iraqi jurists, too, have expressed different opinions. Some consider performance of obligations to be a material act, others a material act that results in the extinguishment of obligations. Some describe it as a contract, others as a unilateral act, and yet others as a religious and moral obligation. A further group proposes that performance has a distinct legal nature, reasoning that it must be seen either as a contract or as a unilateral act in absolute terms. The main principle of performance is that it constitutes a special agreement distinguished from ordinary agreements because it is imposed on both parties and on the subject matter itself. While the agreement that creates an obligation is based on the parties' autonomy to contract or not and to determine the subject of the obligation as they wish, performance, which extinguishes the obligation, is an agreement imposed on both debtor and creditor with no possibility of avoidance, except by transferring liability to a recalcitrant party. It is also imposed on the subject matter, since the obligation is precisely that which the debtor must fulfill and the creditor must accept. Exceptionally, performance may be considered a unilateral juridical act by the debtor when the creditor arbitrarily refuses acceptance, thereby compelling the debtor to resort to actual tender or deposit.

Given the absence of a precise definition of performance of obligations and the lack of clarity regarding its legal nature in both the Iranian and Iraqi Civil Codes, multiple interpretations and understandings have emerged in each system. It is therefore appropriate for legislators in both systems to take steps toward providing a clear statutory definition and explicit delineation of the nature of performance of obligations in order to eliminate grounds for conflicting interpretations.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

Acknowledgments

Authors thank all who helped us through this study.

Conflict of Interest

The authors report no conflict of interest.

Funding/Financial Support

According to the authors, this article has no financial support.

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