

Examining the Role of the Principle of Equity in Resolving Contractual Disputes in the Legal Systems of Iran and England

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Abstract

The principle of equity, as one of the fundamental doctrines within various legal systems, plays a significant role in ensuring substantive justice and compensating for deficiencies arising from the rigid interpretation of legal rules. In the legal system of England, equity has long developed as an independent body alongside common law, providing mechanisms such as specific performance, injunctions, equitable rescission and rectification of contracts, and remedies for non-pecuniary damages to resolve contractual disputes. In contrast, in Iranian law, although there is no explicitly independent doctrinal foundation under the title of “equity,” concepts such as justice, Islamic jurisprudential rules including the no-harm rule (la darar) and benevolence (ihsan), the principle of good faith, and the broad discretionary powers of judges in interpreting contracts and adjusting obligations perform functions analogous to equity. This study aims to comparatively examine the function of the principle of equity in the legal systems of Iran and England. It first explores the historical and philosophical nature of equity and its role in resolving contractual disputes, and then analyzes the capacities and challenges associated with its application in both systems. The findings indicate that English law, due to its dual structure of common law and equity, provides more coherent and institutionalized mechanisms for applying equitable principles in contractual disputes, whereas the Iranian legal system relies more heavily on general principles of justice and Islamic jurisprudential rules, with the application of equity depending on broader judicial interpretation. Ultimately, this study concludes that strengthening the position of equitable principles in Iranian law—through the development of the doctrine of good faith, the more formal recognition of institutions such as judicial adjustment of contracts, and the expansion of judicial discretion in establishing contractual balance—can enhance the efficiency of the contractual dispute resolution system and promote fairer legal practices. Furthermore, the comparative analysis demonstrates that drawing on the experience of English law in distinguishing between legal and equitable remedies may provide a suitable model for improving contractual justice in Iran. This research, by offering a comparative analysis, facilitates a more effective utilization of the concept of equity in supporting contracting parties and maintaining the stability of legal relations.

Keywords: Principle of Equity, Dispute Resolution, Contractual Disputes, Legal System, Iran, England.

Receive: 01 January 2026

Revised: 01 May 2026

Accepted: 07 May 2026

Published: 01 September 2026



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Citation: Kamali Dehghan, Z., Shafiei Fini, H., & Salehifar, A. (2026). Examining the Role of the Principle of Equity in Resolving Contractual Disputes in the Legal Systems of Iran and England. *Legal Studies in Digital Age*, 5(5), 1-14.

1. Introduction

Contractual relations are among the most fundamental instruments for organizing economic and social activities in every legal system, and the efficiency of these relations depends on the existence of mechanisms capable of ensuring the fair performance of obligations. Despite legislators' efforts to formulate clear and relatively determinate rules, experience has shown that legal rules cannot anticipate all complex situations arising in obligatory relations, and in some cases, the rigid application of law may produce unjust outcomes (Chen-Wishart, 2022; Jafari Langroudi, 2018). These limitations have made the need for principles capable of ensuring flexibility and justice in contractual relations more evident alongside strict legal rules.

In this context, the principle of equity is one of the most important instruments for achieving justice in contractual relations. Equity has been designed as a complementary and corrective principle so that, where the application of legal rules leads to imbalanced or unjust results, it becomes possible to restore balance and protect the vulnerable party to the contract (Hudson, 2018). This principle becomes particularly important where one party to the contract suffers from unequal bargaining power or incomplete information, and the contractual text alone cannot provide sufficient protection for the weaker party.

In the legal system of England, equity is a historical and coherent institution that has developed alongside common law for centuries and has become an independent source of legal rules and doctrines. Rules such as specific performance, injunction, rectification, and rescission are examples of equitable instruments used to correct the unjust consequences of contracts (Cartwright, 2021; Hudson, 2018). By relying on these instruments, English courts can provide solutions that are not merely consistent with the text of the contract but are also proportionate to the actual circumstances and oriented toward justice.

By contrast, in the Iranian legal system, the concept of "equity" does not exist as an independent institution in the same way as in English law; however, foundations and rules derived from Imami jurisprudence and general legal principles perform functions similar to equity. Rules such as the no-harm rule, benevolence, the negation of hardship and difficulty, the principle of justice, and the interpretation of contracts based on good faith provide grounds for judicial intervention aimed at adjusting the effects of contracts and preventing inequitable outcomes (Akbarian, 2017; Asghari Aghmashhadi & Abouei, 2008; Hurr al-Amili & Rabbani Shirazi, 2022). Nevertheless, the absence of a coherent and systematic structure comparable to English equity has made the application of these principles in Iranian law more dependent on judges' understanding and interpretation of general principles, which may sometimes lead to inconsistency in judicial practice.

A comparative examination of the role of the principle of equity in the legal systems of Iran and England provides an opportunity to analyze the capacities and shortcomings of each system in the field of contractual dispute resolution. In England, equity is based on judicial precedent and established rules, whereas in Iran, equity is applied more through general principles and jurisprudential rules and lacks a clearly defined coherence and scope. Comparing these two approaches can show how each legal system, through different mechanisms, seeks to prevent unjust contractual outcomes and what reforms could strengthen the role of equity in contractual dispute resolution in Iranian law.

Accordingly, the main research question is what role the principle of equity plays in resolving contractual disputes and how this role differs in the legal systems of Iran and England. Analyzing the theoretical foundations of equity, examining its functions in contracts, and studying the related judicial instruments provide a framework for clarifying the similarities and differences between the two systems and for offering proposals to improve the efficiency of contractual justice mechanisms in Iran.

2. The Concept of Equity

Equity, as one of the fundamental legal and ethical values, concerns the observance of justice, moderation, and avoidance of oppression in relations among individuals. The lexical and technical meanings of equity are discussed below.

Equity, as a legal rule, is derived from a verbal form and lexically means conduct based on justice and fairness. Linguistically, equity means halves, giving justice, acting justly, acting truthfully, showing honesty, justice, reaching the halfway point, and taking half of something. However, justice in civil jurisprudence means avoiding major sins, not persisting in minor sins, and observing moral propriety (Hajimohammadi, 2018).

Imam Ali stated that equity is the highest of virtues (Khansari, 2017).

The term equity lexically means giving justice, dividing into halves, and maintaining equality so that neither side receives excess. It also denotes equality between two parties and dealing with them justly. In Dehkhoda's dictionary, it is associated with fairness and justice (Dehkhoda, 2018).

Equity is a rule above justice, and by taking the circumstances into account, a judgment based on equity may override or limit a judgment based on justice. As stated in Iranian law, recourse to equity arises when the application of a just rule in a particular case produces undesirable results and moral conscience determines that rules beyond justice must be observed. Where rigid rules based on justice do not satisfy the judge's conscience, a judgment based on the principle of equity assists the judge. The judge adjudicates by considering the individual circumstances of the person subject to the ruling.

In English law, it is difficult to provide a definition of equity that is universally accepted, but it may be stated that equity is part of natural justice which, although it essentially belongs to the judicial system, was not historically accepted by common-law courts. Lexically, equity refers to what is just, fair, conscientious, and moral. The main purpose of all equitable rules is to prevent unfair conduct. In English legal terminology, equity originally referred to reasoning based on equal treatment of the two parties to litigation. In this legal system, equity also denotes a branch of law administered by the Court of Chancery in England (Barikloo, 2019; Hudson, 2018).

Equity is a set of rules that exists alongside the main rules of law and, because it relies on higher and superior moral principles, may repeal or qualify legal rules (Dashti, 2018).

Justice is the attribute of a person who is upright and fair, and equity means a rule that gives everyone an equal share and observes everyone's rights (Asghari, 2019).

Equity and justice in legal terminology mean respecting individuals' rights and giving each right-holder their due. Justice in this sense differs from equality, because equality means sameness and balance, whereas the observance of justice and equity does not necessarily entail equal enjoyment of rights by all individuals. For example, an engineer in a company may receive several times the salary of the company's service staff, and this may be entirely just, although equality and sameness have not been observed (Hajimohammadi, 2018).

English jurists' definitions of equity often arise from its long historical development in that country. Several examples may be mentioned in order to clarify the concept of equity. In one legal dictionary, under the entry "equity," it is described as justice administered according to fairness in contrast to the rigid rules of common law. It is based on a series of rules and principles that emerged in England as a remedy for the harsh rules of common law. The principles and rules are based on what appears just in a particular situation, and the remedy sought under this system was more often requested in courts of equity than in courts of law. This term reflects the spirit and nature of fairness, justice, and right, which regulate the relationship between one individual and another (Ajlou, 2018; Hudson, 2018).

Equity has also been described as a body of judicial decisions and court rulings indirectly connected with law and, in some respects, independent from it. Its purpose is the fuller administration of justice by granting remedies where courts of law lack jurisdiction to provide effective and useful remedies, or by exercising specific jurisdictions independent from those courts. In another legal dictionary, equity is defined as principles of justice applied to correct and supplement laws and regulations when they appear unjust in particular circumstances and conditions. Based on these definitions, it appears that equity in English law is an instrument for adjusting laws, regulations, and consequently contracts, and for ensuring a better administration of justice (Hornby, 2016; Hudson, 2018).

3. The Concept of the Principle of Equity in Iranian and English Law

3.1. Iranian Law

In the Iranian legal system, the principle of equity is recognized as one of the general principles of law and plays an important role in the interpretation and performance of contracts and in the resolution of contractual disputes. This principle is rooted in Iranian jurisprudential sources and comparative law and emphasizes justice and equality in contractual relations. Equity allows

the judge or arbitrator, where explicit statutory rules are insufficient or produce an unjust result, to make an appropriate decision by observing justice and good faith (Ajlou, 2018; Bazarpach & Sabahi Garaghani, 2024).

In Iranian law, the application of the principle of equity is mostly observed in three main areas: interpretation of contracts, arbitration, and performance of contractual obligations. In contractual interpretation, equity enables the interpreter to construe the provisions of the contract in a manner that respects both the parties' intention and justice. In arbitration, the arbitrator may decide on the basis of equity rather than merely statutory rules, thereby making arbitral decisions more flexible. Moreover, in the performance of obligations, courts and arbitrators may determine the amount of damages or compensation by observing equity so that the right of the weaker or injured party is not violated.

Given the flexible nature of this principle, specific requirements and criteria for its application have not yet been formulated in Iran, and reliance is placed more on judicial experience as well as ethical and religious standards. This characteristic makes the use of the principle of equity in contractual dispute resolution both an opportunity and a challenge (Bazarpach & Sabahi Garaghani, 2024).

3.2. *English Law*

In English law, the principle of equity has a special status and operates as an independent source of law alongside common law. In this system, equity consists of a body of rules and remedies created to remove the limitations or harshness arising from the strict and rigid rules of common law. The main purpose of equity is to ensure justice and conscience where the mere application of common-law rules leads to an unjust or harmful outcome (Hornby, 2016; Hudson, 2018).

The roots of the principle of equity in England go back to the Middle Ages, when people appealed to the Chancellor to remedy injustices caused by the limitations of common law. The Chancellor, relying on conscience and ethical principles, made it possible to issue fair decisions that did not exist under common law. Over time, these methods developed into specific rules that are now known as equitable rules and remedies.

In English law, equity is particularly applied in the interpretation of contracts, the performance and adjustment of obligations, arbitration, and claims related to trusts. Equitable rules make it possible to issue decisions such as compelling performance of an obligation, adjusting a contract, and preventing abuse of rights. Unlike Iran, this principle in England has a coherent judicial structure and a long history, and judicial precedents are precisely recorded and followed (Burke & Cooper, 2017; Hudson, 2018).

3.3. *Objectives of the Principle of Equity in Contractual Relations*

The principle of equity in contractual relations has several main objectives:

Preventing abuse of the stronger contractual position.

Interpreting the contract in a manner compatible with the parties' real intention.

Compensating losses arising from legal gaps or unforeseen circumstances.

Protecting the weaker party, especially in adhesion contracts.

3.4. *The Status of Equity in International Arbitration*

In private international law and international trade, arbitration has special importance as a method of dispute resolution. International arbitration is a process through which the disputing parties, voluntarily or contractually, delegate the authority to decide their dispute to an arbitrator or arbitral tribunal (Bledsoe et al., 2016). Within this framework, the principle of equity plays an important role, because arbitrators may, where explicit laws or positive rules cannot adequately respond to a dispute, rely on equity to issue a fair and balanced decision (Belohlavek, 2013a).

Equity in arbitration allows the arbitrator, in the presence of a legal gap, to make a decision that is not only consistent with law but also compatible with justice and generally accepted international principles. This is especially important in commercial arbitrations where the parties belong to different legal systems, because international arbitration rules are not limited to one particular legal system and arbitrators must provide solutions acceptable to all parties (Belohlavek, 2013b).

The principle of equity is also an instrument for adjusting contractual terms. For example, in international contracts containing penalty clauses or liquidated damages clauses, arbitrators may adjust the amount of damages if it is unreasonable or inequitable, taking equity into account (Skini, 2018). This ability of arbitrators to apply equity makes international arbitration more flexible and more responsive to the real needs of the parties.

Historical examples show that equity has long been applied in international arbitrations. For instance, in a dispute between the State of Qatar and an English company, the arbitrator resolved the dispute by applying equity with reference to general principles of law recognized in different systems. Likewise, in disputes between Saudi Arabia and Aramco, the arbitrator was able to provide a just solution by considering general principles of international law and equity (Brownlie, 2008; Skini, 2018).

Nevertheless, the status of equity in arbitration also has limitations. Arbitrators cannot issue a decision based solely on equity without the parties' consent, because the foundation of international arbitration is the will and autonomy of the parties. In addition, the application of equity must not conflict with mandatory rules of international law or national regulations relevant to the dispute, so that the legitimacy and enforceability of the arbitral award are not undermined (Belohlavek, 2013a; Croft et al., 2013).

Overall, equity, as a complementary instrument in international arbitration, plays a vital role in ensuring justice, flexibility, and the global acceptance of arbitral decisions. This principle ensures that international arbitration is not merely subject to explicit laws but is also genuinely responsive to commercial needs and disputes among different legal systems.

4. Examining Equity in International Treaties

In international law, treaties are the principal binding legal source among states, and determining equitable principles in their conclusion, performance, and interpretation is of special importance. Equity in this context means observing justice, moderation, and balanced conduct among the contracting parties, so that the rights and obligations of all parties are secured fairly (Bledsoe et al., 2016).

The principle of equity in international treaties allows arbitrators and international courts, including the International Court of Justice, to make decisions based on general legal and ethical principles where the explicit text of the treaty is insufficient or where there is conflict among international laws and customs (Brownlie, 2008; Francioni, 2013). This allows justice, as a complementary element in treaty performance, to acquire a status comparable to explicit rules of international law and to prevent possible abuse by one party.

In treaty interpretation, equity is particularly applicable in resolving economic and commercial disputes between states. For example, in a case involving Iran and the United States concerning sanctions, arbitrators were able, by referring to principles of equity and public international law, to consider contractual limitations and the economic effects arising from one party's measures in the final decision without exceeding their legal authority (Brownlie, 2008). Similarly, in petroleum treaties between oil-producing countries and international companies, arbitrators usually refer to general principles of law, international custom, and equity to secure the interests of the parties (Belohlavek, 2013a; Croft et al., 2013).

The role of equity in international treaties, in addition to the performance of contracts, includes preventing conflicts and disputes arising from differences among legal systems. This principle is particularly important when a treaty is concluded between countries with different legal cultures, because it ensures that reciprocal obligations are performed in a balanced and just manner (Francioni, 2013).

However, there are also limitations on the use of equity. The application of equity is permissible only where the parties have agreed to it, and it must not conflict with peremptory norms of international law or the explicit rules of the treaty. Otherwise, the decision of the arbitrator or court loses its enforceability, and its legal legitimacy becomes doubtful (Brownlie, 2008; Francioni, 2013).

In summary, equity, as a complementary legal instrument in international treaties, guarantees balance and justice among the parties, flexibility in the performance of obligations, and the prevention of disputes arising from legal gaps or ambiguities. This principle is especially strategically important in treaties between countries with different legal systems and can play an effective role in the stability and legitimacy of treaties.

5. Equity as a General Principle of Law and One of the Sources of International Law

Legal principles are common among all civilized nations. Article 38 of the Statute of the International Court of Justice refers to general principles of law recognized by civilized nations as a source of law to be applied by the Court. Although the phrase “civilized nations” is inherently ambiguous, it is assumed that such a concept is based on a developed legal system and therefore includes all societies except the most primitive ones. There is no consensus on the meaning of general principles of international law. Some scholars interpret these principles as referring to fundamental rules of domestic law common to all domestic legal systems and applicable to international relations (Bledsoe et al., 2016). Another view, advanced by former Soviet jurists, is that general principles of law include only the general principles of international law, not specific principles of that law. International authorities have considered both meanings in applying general principles of law, and there is no reason why these principles should not derive from both domestic legal systems and international law. General principles of law are regarded as the foundation of every legal system, including international law. These principles are rules that go beyond positive international law and, instead, are rooted in the commonalities of various domestic legal systems. Concepts such as morality, justice, equity, and good faith are older than the voluntary principles of positive international law (Bledsoe et al., 2016; Brownlie, 2008).

6. The Role of Equity in the Settlement of Commercial Disputes through the International Court of Justice

The International Court of Justice is one of the six principal organs of the United Nations and its principal judicial organ. The International Court of Justice succeeded the Permanent Court of International Justice, which was formally dissolved in 1946. This Court, also called the “World Court,” functions under Chapter XIV of the United Nations Charter and the Statute of the Court, which forms an important part of the Charter.

The fundamental principle of the Court is that its jurisdiction depends on the consent of the parties and may be declared in three ways:

- Special submission of a particular dispute.
- Granting jurisdiction in advance on the basis of a treaty.
- An optional declaration accepting the jurisdiction of the Court in certain legal disputes under the optional clause in Article 36(2) of the Statute of the International Court of Justice.

The Court is a judicial institution and must settle disputes according to international law. It applies treaties, customary law, general principles recognized by civilized nations, and, as subsidiary means for determining rules of law, judicial decisions and the opinions of legal scholars. Decision-making *ex aequo et bono*, that is, on the basis of equity or other extra-legal considerations, is possible only with the consent of the parties. However, the Court has never settled a case on the basis of *ex aequo et bono* (Bledsoe et al., 2016; Brownlie, 2008).

7. Equity as an Instrument for Resolving Commercial Disputes through International Arbitration

The peaceful and binding settlement of international disputes by judges selected by the parties, according to predetermined rules, is conducted on the basis of voluntary submission and respect for law. Arbitration is one of the techniques of international judicial proceedings, or judicial settlement, although in the strict sense it differs from judicial settlement because the parties to the dispute are usually free to select the arbitrators and may, to some extent, determine the procedure and applicable law themselves. However, like judicial settlement, arbitration includes the constitutive element of a binding decision known as an award. Consent to submit a particular dispute or a class of disputes to arbitration is formalized in an international agreement known as an arbitration agreement. This agreement also includes the conditions under which the tribunal will perform its functions, such as the applicable legal rules, possibly the authority to decide on the procedure to be followed *ex aequo et bono*, and any other provision desired by the parties. Matters not addressed in the arbitration agreement, such as the tribunal’s competence to determine its own jurisdiction, must be resolved by the tribunal itself (Skini, 2018).

In some cases, the parties to a contract allow arbitrators to decide on the basis of equity, general principles of law, or international customary rules. The same principle of deriving authority from the will of the parties, as noted above, requires

that the arbitrator be given greater freedom in resolving the dispute between them. Arbitral awards thus become a vehicle for incorporating general principles of law common to the different legal systems of states (Belohlavek, 2013a; Skini, 2018).

8. Equity as a Complementary Rule and a Factor in Issuing a Universal Award

In some oil-producing countries, the only existing legal system is Islamic law. Western companies believe that this legal system was established for a specific region, namely the Muslim region, and for resolving disputes among Muslims. In most petroleum contracts between oil-producing countries and foreign companies, in addition to the clause designating the law of the producing country as the law governing the contract, reference is made to the need to apply general principles of law as complementary rules, so that the oil-producing country is satisfied and the foreign company is reassured that, if a problem arises in its relations with the other party, legal principles recognized in most legal systems of the world will protect its rights (Skini, 2018).

A petroleum contract between the Libyan government and a foreign company provided that the contract and its interpretation would be governed by those principles of Libyan law that are compatible with principles of international law, and that the contract would be performed and interpreted according to general principles of law, especially those principles applied by international courts. Many international arbitral awards have been issued on the basis of clauses of this kind. In such awards, arbitrators often try to settle the dispute by referring to principles shared between Islam and the non-Islamic world, thereby giving the issued award a fully universal character (Brownlie, 2008; Skini, 2018).

9. Equity as a Factor in the Unification of International Commercial Law

Efforts have been made to formulate uniform rules on international commercial law. Undoubtedly, international commercial law is one of the important and major branches of international law that makes international commercial relations possible and practicable. It is among the oldest branches of international law, and even of law itself. Today, extensive efforts have been made to create rules and regulations in this branch of international law, and we are witnessing the drafting of numerous uniform and harmonized rules in this field, which perhaps contains the largest number of international uniform rules compared with other branches of international law. These include the 1890 Berne Convention on carriage by rail, the 1910 Brussels Convention on maritime collisions, the 1924 Convention on bills of lading, the 1926 Convention on maritime liens and mortgages and the immunity of state vessels, the 1929 Warsaw Convention on air carriage, the 1968 Hague Convention on the international sale of movable goods, the Hamburg Rules on carriage of goods by sea, the Hague Convention on contracts for the international sale of goods, and others (Skini, 2018). It is clear that in these efforts, general principles of law, including the principle of equity, have played an essential role.

10. The Role of Equity in Good Offices Concerning Commercial Disputes

According to one of the peaceful methods of settling international disputes, including international commercial disputes, a third party, with the consent of the states involved in the dispute, acts as an intermediary and amicably tries to bring them to negotiation, without necessarily making substantive proposals to those states for settlement. In this method, good offices are the most modest form of participation by a third state in dispute settlement. The person offering good offices may be the representative of a third state, an organ of an international organization, a non-governmental international organization, or even an individual (Skini, 2018).

11. The Role of Equity in Adjusting Liquidated Damages in International Commercial Contracts

In order to prevent any dispute over the amount of loss and to accelerate compensation, some commercial contracts contain a clause under which, if one of the contracting parties refrains from performing what the contract has imposed on them or performs an act prohibited by the contract, they must pay the other party a sum specified in the contract as damages.

The foregoing clause is described in comparative law as a penalty clause, and Iranian legislation has referred to it as liquidated damages in Article 719 of the former Civil Procedure Code and Article 34 of the Registration Law. In the past,

common-law courts, based on the principle of freedom of contract, respected every liquidated damages clause and refrained from interfering with its structure. This conduct was contrary to that of courts of equity, which, from the fifteenth century onward, became involved in certain contracts whose subject matter was money. These courts declared unenforceable a clause under which a debtor undertook that, in the event of non-payment of the principal and interest of the debt on the due date, the debtor would pay an amount far greater than that as damages. Later, in the eighteenth century, any clause providing for the payment of liquidated damages was declared invalid if it was punitive or considered unreasonable ([Cartwright, 2021](#); [Skini, 2018](#)).

12. The Obligation of Arbitrators to Issue an Award Based on Equity

One group of jurists takes the view that the parties' agreement and consent to amiable composition not only grant arbitrators the authority to disregard positive rules but also require them to provide a solution to the dispute solely on the basis of equity and not on the basis of law ([Belohlavek, 2013a](#); [Trakman, 2018](#)).

They argue that if the parties to a dispute have asked the arbitrators to adjudicate according to equity, but the arbitrators decide according to legal rules, without any reference to equity or equitable considerations, this conduct contradicts the philosophy of amiable composition. More specifically, if no deviation from positive rules occurs, there will be no difference between amiable composition and the application of legal rules, even if the result is equitable. Arbitration has the nature of amiable composition only when it is conducted on the basis of equity and in contrast to positive rules ([Bertrand, 2015](#); [Jafari, 2019](#)).

On the other hand, not requiring amiable compositeurs to decide on the basis of equity allows them, under the pretext that the results of applying legal rules are fair and in order to avoid accusations of relying on their personal and subjective understandings of equity, to refrain from applying equity. This would undermine the nature and philosophy of arbitration based on equity. French judicial practice follows this view. According to the dominant view in French judicial practice, an arbitrator authorized to apply equity is not only required to resolve the dispute on the basis of equity and as an amiable compositeur, but must also expressly and clearly state, in the reasoning section of the award, the reasons and arguments showing the connection between the adopted solution and equity, so that the judge can determine whether the arbitrator considered equity when examining the dispute and issuing the award ([Bertrand, 2015](#); [Delvolvé et al., 2018](#)).

In fact, most French commentators regard an express reference to equity in the arbitral award as the only objective criterion by which court judges can verify that amiable-composition arbitrators have performed their duty to apply equity. This same approach has led courts to annul many arbitral awards because they did not expressly and formally mention equitable grounds in the reasoning section of the award. For example, in decision no. 192 dated February 15, 2001, the French Court of Cassation annulled the award at the claimant's request and stated that, despite the grant of amiable-composition authority to the arbitrators under the arbitration agreement, the arbitrators' award was based solely on legal rules, without explaining or clarifying whether the arguments and reasons relied upon were consistent with equity and equitable considerations ([Bertrand, 2015](#); [Delvolvé et al., 2018](#)).

Contrary to the arbitration agreement authorizing the application of equity to the merits of the dispute, the issued award was based only on legal rules and had no connection with equity or equitable foundations. Likewise, in case no. 7913 in 1996 before the ICC International Court of Arbitration, it was stated that when arbitrators face a situation in which the parties have not selected the applicable law, there is no need to determine the applicable substantive law if the arbitrators have been granted the authority to act as amiable compositeurs. Similarly, in case no. 10049 dated June 2003, the same authority, in response to the issue of determining the substantive law applicable to the merits of the dispute, stated that finding the substantive law applicable to the merits of the dispute was not of great importance because the arbitration clause had granted the arbitrators authority to act as amiable compositeurs ([Bertrand, 2015](#); [Jafari, 2019](#)).

Accordingly, the tribunal has no obligation to adjudicate according to legal rules. This clause is fully valid. Arbitrators are required to decide the disputed case according to principles of equity rather than resorting to state laws. A similar approach has also been adopted in cases before the FIBA Arbitral Tribunal. For example, in case no. 10/0117 in 2010, it was stated that it is generally accepted that an arbitrator authorized to apply equity must render a decision and award based exclusively on equity,

without regard to legal consequences. In fact, instead of applying general and abstract rules, the arbitrator must focus on the circumstances of the case at hand. According to this view, an arbitrator acting as an amiable compositeur has only one option, namely to decide by following principles of equity, provided that such equitable considerations do not conflict with public policy. French courts have repeatedly followed this view (Bertrand, 2015; Delvolvé et al., 2018).

13. The Non-Obligation of Arbitrators to Issue an Award Based on Equity

Against the view expressed in the previous section, most writers believe that decision-making as an amiable compositeur, even where expressly agreed by the parties, does not require the dispute-resolution authority to deviate from the applicable law (Belohlavek, 2013a; Trakman, 2018).

This group of jurists believes that although the distinctive feature of the authority to decide according to equity is deviation from legal principles, such authority never prevents the application of national laws and does not require arbitrators to depart from statutory rules. In other words, although arbitration based on equity takes into account all circumstances, customs, and practices governing the relationship between the disputing parties in order to reach an equitable decision, if the arbitrators consider that there is no difference between legal rules and the requirements of equity, or that the solution resulting from law is more equitable, they must base their award on legal standards (Belohlavek, 2013b; Blaszcak & Kolber, 2013).

In their view, in order to decide according to equity, in addition to the parties' express permission and consent, the arbitrators must consider such action necessary. That is, if the arbitrators believe that applying legal rules would lead to unjust, inequitable, disproportionate, or unenforceable results, they may, with the consent of the disputing parties, disregard legal rules and decide solely on the basis of equity. Otherwise, arbitrators may refrain from amiable composition and issue an award based on positive rules (Belohlavek, 2013a; Jafari, 2019).

In support of the need to establish necessity in addition to the parties' agreement, it has been written that amiable composition is a method of reaching an equitable solution by disregarding legal rules, but only to the extent that such disregard is considered necessary. Therefore, the parties' consent is only a necessary condition, not a sufficient one, for the application of equity. For this reason, members of the French working group at the International Chamber of Commerce stated in their report on amiable composition that the amiable-composition arbitrator must first assess each party's claims according to the rules and standards of the applicable substantive law. If the solution provided under the law appears unjust or inequitable, the arbitrator is permitted to adapt that solution to equitable principles or to decide independently on the basis of equitable considerations. Accordingly, under this group of writers' view, arbitrators acting as amiable compositeurs may align their equitable opinions and decisions with national laws. Nevertheless, there is no consensus among these jurists as to whether arbitrators are required in such cases to declare the absence of any difference between equity and legal rules (Bertrand, 2015; Delvolvé et al., 2018).

Some believe that the arbitrator is not required to state this expressly, whereas other writers who follow this approach believe that the arbitrator must clearly explain in the award why deviation from legal standards was considered unnecessary in the disputed matter. In fact, the arbitrator must provide sufficient reasons in the reasoning section of the award showing that the result of applying equity and the result of applying legal rules are identical. Therefore, if the arbitrator cannot prove such conformity, the award may be exposed to annulment for exceeding the limits of authority (Jafari, 2019).

14. The Status of Equity in Iranian Law

In Iranian law, it is very difficult to identify an independent institution called equity, and there are only limited cases in which the legislature has referred to justice and equity. Among these cases, one may refer to provisions such as Article 277 of the Civil Code, which permits the judge to take equity into account when issuing a judgment, and Article 4 of the Civil Liability Act, whose first and second clauses are based on nothing other than equity. In all these cases, mitigation and the manner of compensation are entrusted to the sound judgment and equity of the judge. Article 2, clause 2, of the Landlord and Tenant Relations Act, enacted in June 1960, is also based on equity, as are certain provisions of the Act Establishing Houses of Equity. For example, Article 3 of that Act provides that the council must consider the evidence, defenses of the parties, and the results of investigations and, by observing the requirements of justice and equity as well as local custom and usage, proceed in an amicable manner to settle disputes and issue decisions (Ajorlou, 2018; Bazarpach & Sabahi Garaghani, 2024).

Although the enactment of this law was, according to some, an imitation of the formation of equity in the English legal system, its major difference at the outset from equity in English law was that, in Iranian Houses of Equity, most of those hearing disputes were not jurists; they were ordinary people and sometimes illiterate. By contrast, the English court of equity was administered by the royal Chancellor, who, in addition to being a jurist, was a cleric, priest, literate, and trained in both civil law and canon law. Since Islamic law is among the sources of Iranian law, it should be recalled that justice and equity are also among the sources of Islamic law (Ayorlou, 2018; Jafari Langroudi, 2019).

The following cases may support this point.

First, when the Prophet Muhammad sent Mu'adh ibn Jabal to Yemen as a judge, he asked him what source he would rely on in resolving disputes. He replied: the Book of God, the Qur'an. The Prophet then asked: if there is no explicit rule on the matter in the Book of God, on what basis will you judge? He replied: on the basis of the judgments of the Messenger of God. The Prophet asked a third time: if a matter arises concerning which there is neither an explicit rule in the Book of God nor a judgment from me, what will you do? He replied: I will exercise *ijtihad* and effort and judge according to the principle of justice and equity. The Prophet said: praise be to God, who enabled His Prophet to choose for judgment a person whose conduct is pleasing to Him (Hurr al-Amili & Rabbani Shirazi, 2022; Jafari Langroudi, 2019).

It follows from this account that where there is no text in the Qur'an and Sunnah and the case is not predetermined, the judge may rule on the basis of justice and equity.

Second, Ibn Qayyim al-Hanbali states that justice, by whatever means it is identified, is an inseparable part of Islam and is not contrary to it (Jafari Langroudi, 2019).

Third, according to Muhammad Salam Madkur, Ibn al-Muqaffa', the Persian writer, wrote a letter to the Abbasid caliph al-Mansur and proposed the refinement and codification of Islamic laws and regulations. In this proposal, he did not overlook issues relating to legislative silence and told the caliph that, in the event of silence in the law, judges should decide according to justice and the public interest. By justice, he meant justice in its broad sense. Apart from this point, Ibn al-Muqaffa' was aware that Muslims regarded justice and equity as a source of Islamic law.

15. Characteristics of the Principle of Equity in Iran

In Islamic jurisprudence, the principle of equity may be established by relying on verses, Sunnah—including narrations, statements, and acts of the infallibles—and the practice of rational persons. In Romano-Germanic and common-law legal systems, equity is a concept that entered these systems in the past and means judgment based on the judge's conscience. In the common-law system, as stated, equity is regarded as one of the sources of law. However, in Iranian law, equity has not been expressed as a legal rule, and some jurists have introduced it as an unwritten source of law. At the same time, this concept also possesses the characteristics of a legal rule and has significant applications in law. Recourse to equity arises where the application of a just rule in a particular case produces undesirable results and moral conscience determines that rules beyond justice must be observed (Bazarpach & Sabahi Garaghani, 2024; Hajimohammadi, 2018).

Where rigid rules based on justice do not satisfy the judge's conscience, a judgment based on the principle of equity assists the judge, and the judge adjudicates by considering the individual circumstances of the person subject to the ruling. The characteristics of the principle of equity in jurisprudence are divided into several parts.

First, generality and applicability to multiple cases. It may be said that the principle of equity is a general rule and is not limited to a specific chapter of jurisprudence, even though its application is most visible in adjudication. This does not undermine the generality of the rule.

Second, the religious nature of the principle of equity. All jurisprudential rules originate from Sharia, and the principle of equity is not an exception.

Third, containing a binding ruling. All jurisprudential rules contain binding rulings, and Muslims are required to observe them. This may sometimes take the form of a prescriptive ruling and sometimes the form of a declaratory ruling (Hajimohammadi, 2018).

16. Legal Sources of the Principle of Equity

After clarifying the status of justice and equity in Islamic sources, the legal sources of justice and equity are examined here. To this end, the Constitution is examined first, followed by the Civil Code and then other laws.

16.1. The Constitution

The Constitution contains principles in which the legislature has expressly referred to the principle of justice and equity, and this itself indicates the importance of this principle in the legal system of the Islamic Republic of Iran.

First, the use of the verse “We sent Our messengers with clear proofs and sent down with them the Book and the Balance so that people may uphold justice” at the beginning of the Constitution indicates the importance of this principle in the Constitution.

Second, in the preamble to the Constitution, under the discussion of the judiciary in the Constitution, emphasis is placed on creating a judicial system based on Islamic justice, and at the end of it appears the verse “When you judge between people, judge with justice,” which indicates the importance of justice in adjudication (Ajlou, 2018).

Third, the Islamic Republic is a system based on divine justice in creation and legislation, according to clause 4 of Article 2 of the Constitution.

Fourth, pursuant to the noble verse stating that God does not forbid you from being kind and just toward those who have not fought you because of religion and have not expelled you from your homes, the government of the Islamic Republic of Iran and Muslims are required to act toward non-Muslims with good conduct, Islamic justice, and fairness and to respect their human rights, under Article 14 of the Constitution.

Fifth, no one may use the exercise of their right as a means of harming others or encroaching upon public interests, under Article 40 of the Constitution (Ajlou, 2018).

Sixth, under Article 43 of the Constitution, one of the foundations of the Islamic economy is the prohibition of harm to others, monopoly, hoarding, usury, and other invalid and forbidden transactions. In most of these cases, there is a form of injustice and inequity that has led the legislature to prohibit them.

Seventh, the judicial power is exercised through courts of justice, which must be established according to Islamic standards and must settle disputes, preserve public rights, expand and implement justice, and enforce divine limits. Article 61 of the Constitution shows that the purpose of implementing Islamic standards is the administration of justice. Therefore, if in some cases justice requires adjustment of the law, it should be said, in light of this principle, that the law must be adjusted. This is because the legislature enacts law in general form, and in some cases this general rule may not require justice, in which case conduct must be according to justice (Ajlou, 2018).

Eighth, the judiciary is responsible for realizing justice. Article 156 of the same Constitution provides that the judiciary is an independent power that supports individual and social rights, is responsible for realizing justice, and is entrusted with several duties, including the restoration of public rights and the expansion of justice and legitimate freedoms.

Ninth, Article 166 of this Constitution provides that court judgments must be reasoned and supported by statutory provisions and principles on the basis of which the judgment has been issued. Given this repeated emphasis on justice and equity, it may be said that one of the principles on the basis of which the judge is required to issue judgment is justice and equity (Ajlou, 2018).

In addition, from the perspective of the architect of the Islamic Revolution, Imam Khomeini, Sharia rulings are not ends in themselves; rather, they are instruments of Islamic government for achieving justice. A fortiori, statutes enacted by parliament should also be regarded as instruments for realizing justice and not as ends in themselves (Javadi Amoli, 2017).

16.2. The Civil Code

In Article 277 of the Civil Code, the legislature has expressly authorized the judge to grant the debtor a just period of time. This just period is a means of softening the logical rules of law and reconciling them with equity and justice (Ajlou, 2018; Bazarpach & Sabahi Garaghani, 2024).

The Civil Code contains rules and provisions which, upon close examination, show that justice and equity may be their basis. For example, the law requires each of the two reciprocal considerations in commutative contracts to have financial value as a condition for the validity of the contract, so that the balance intended by both parties is preserved. Otherwise, it grants the aggrieved party the right to rescind the imbalanced contract under Article 416 of the Civil Code. It also gives the buyer of defective goods the option to compensate for the deficiency in consideration by receiving an allowance for defect or to rescind the economically imbalanced contract under Article 422 of the Civil Code. The prohibition against one person acquiring both considerations is another rule necessary for preserving the balance between the two considerations. Thus, in *khul'* divorce, it has been said that a woman may revoke the consideration only if the husband also has the possibility of revoking the divorce, so that the woman cannot deprive the husband of the right of revocation without paying the consideration and thereby disturb the established balance in *khul'* divorce. Likewise, some scholars, fearing the accumulation of both considerations in the ownership of one contracting party, have considered a condition placing the risk of destruction of the sold property before delivery on the buyer to be contrary to the nature of exchange (Bazarpach & Sabahi Garaghani, 2024; Jafari Langroudi, 2018).

17. Conclusion

The principle of equity, as one of the fundamental justice-oriented concepts, plays an important role in resolving contractual disputes in both the Iranian and English legal systems, although its status, foundation, and method of application differ in these two legal systems. A comparative examination of this principle shows that equity in both legal systems has been considered an instrument for moderating the rigidity of legal rules and preventing unjust contractual outcomes, but it has followed different paths in terms of legal structure, historical background, and scope of application.

In the Iranian legal system, the principle of equity has deep roots in Islamic jurisprudential foundations and rational principles. The acceptance of rational good and evil, the rule of correlation between reason and Sharia, and the emphasis on justice and equity in Qur'anic verses and narrations have caused equity to have a significant presence as a general and value-based principle in the interpretation and performance of contracts. Although Iranian statutory law does not expressly refer to an independent rule called the "principle of equity," concepts such as justice, prohibition of abuse of rights, the obligation to honor undertakings, good faith, and observance of balance in contractual obligations all constitute practical manifestations of equity in Iranian law. Courts also, in cases of ambiguity or silence in the law, rely on general legal principles and jurisprudential standards and use equity as an instrument for interpreting contracts and resolving disputes. Therefore, equity in Iranian law has a mostly implicit and inferential nature and is extracted from jurisprudential rules and general legal principles.

By contrast, in the English legal system, equity has an independent and historical status and has developed as a set of specific legal rules alongside common law. Equity in England emerged in response to the rigidity and formalism of common law, and its purpose was to prevent injustices resulting from the strict application of legal rules. Institutions such as specific performance, prevention of abuse of rights, trust, and rules relating to limitation periods and fair conduct of the parties are all practical manifestations of equity in this legal system. In arbitration and contractual claims, English courts may rely on principles of equity to provide solutions beyond monetary compensation and reach outcomes more compatible with legal conscience and justice. From this perspective, equity in English law is not merely an ethical principle but an official and independent source of law.

Comparison of these two systems shows that both ultimately pursue a common purpose: achieving contractual justice and preventing the parties from abusing the formal structures of contract. The main difference is that in English law, equity is applied as an independent institution with judicially developed rules, whereas in Iranian law, equity enters the dispute-resolution process more through jurisprudential principles, general rules of contracts, and concepts such as good faith and prevention of harm. This difference arises from the different theoretical foundations of the two legal systems: one is based on judicial precedent and the historical experience of courts, and the other is based on Islamic jurisprudence and statutory legislation.

The role of the principle of equity in resolving contractual disputes becomes especially important in the field of domestic and international trade. Complex commercial contracts are always accompanied by ambiguity, changes in economic conditions, and conflicts of interest, and mere reliance on rigid legal rules cannot respond to all practical needs. In such circumstances,

equity, as a complementary instrument, makes contractual adjustment, fair interpretation of obligations, and prevention of imbalanced outcomes possible. In English law, arbitration based on equity and the principles of equity has a recognized status, and in Iranian law, the arbitrator may also, while observing Sharia and legal standards, rely on equity to reach a just solution.

Ultimately, it may be said that the principle of equity in both the Iranian and English legal systems plays a fundamental role in realizing contractual justice and acts as a bridge between legal rules and ethical values. Although the method of its realization differs, the final result in both systems is the protection of the parties' real intention, prevention of oppression, and creation of balance in contractual relations. Developing and strengthening the application of the principle of equity, especially in arbitration and commercial contracts, can increase the parties' trust in the legal system, reduce conflicts, and better realize justice in private relations. Therefore, the comparative study of this principle shows that the gradual convergence of legal systems in using equity is an important step toward making contract law more humane and more efficient at both national and international levels.

Recommendations

It is recommended that the Iranian legislature, inspired by the experience of English law, provide more explicit recognition of the status of the principle of equity in laws relating to contracts and arbitration in order to prevent inconsistency in judicial decisions when applying this principle.

Specific criteria and standards should be formulated for the application of equity in the interpretation and performance of contracts by courts and arbitrators so that the use of this principle does not become discretionary and unpredictable.

Training in the concepts of equity, good faith, and contractual justice should be strengthened in specialized courses for judges and arbitrators so that these principles are applied scientifically and coherently in contractual dispute resolution.

It is recommended that arbitration laws clearly and transparently state the arbitrator's authority to rely on the principle of equity, especially in commercial and international disputes that require greater flexibility.

Developing coherent judicial practice regarding the application of the principle of equity in contracts can help create uniformity of practice and increase legal certainty in contractual relations.

The use of comparative studies between Iranian law and advanced legal systems such as English law, with the aim of identifying strengths and weaknesses in the application of the principle of equity, should be expanded in future legal research.

It is recommended that, in drafting commercial contracts, the principle of equity be expressly incorporated through contractual clauses such as adjustment clauses, good-faith clauses, and clauses prohibiting abuse of rights.

Domestic and international arbitration institutions based in Iran can develop specialized guidelines on arbitration based on equity, or *ex aequo et bono*, in order to provide a clear framework for arbitrators.

Strengthening the role of commercial custom and fair market practices in the interpretation of contracts can lead to better implementation of the principle of equity and reduce disputes arising from contractual ambiguities.

It is recommended that future studies examine the effect of the principle of equity in modern contracts, including electronic and international contracts, in order to evaluate the efficiency of this principle under new economic and technological conditions.

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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