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REPARATION OF DAMAGES FOR BREACH OF CONTRACTUAL GUARANTEE: A COMPARATIVE STUDY

MILAD KAREEM RAHMAH
COLLEGE OF LAW, UNIVERSITY OF MISAN
EMAIL: melad1karim@gmail.com[1]

MAJID MIJBAS HASAN
COLLEGE OF LAW AND POLITICAL SCIENCE, UNIVERSITY OF IRAQ
EMAIL: majid_hassan@aliraqia.edu.iq[2]

Abstract:
A contractual guarantee constitutes a legal commitment undertaken by one party in favor of the other within the framework of a binding agreement. Through this guarantee, the obligated party agrees to compensate the other for any harm arising from the failure to fulfill contractual obligations or from defects in the subject matter of the contract. Such compensation aims to redress the losses incurred by the aggrieved party, whether due to non-performance or the existence of flaws in the contracted item. Contractual guarantees play a critical role in safeguarding the rights of contracting parties. They serve as a legal mechanism for addressing harm by ensuring that the injured party receives appropriate redress for the damages suffered. This may involve financial compensation for economic loss or other forms of harm, depending on the nature and extent of the damage. In addition to offering protection, contractual guarantees contribute significantly to risk mitigation. By clearly outlining the responsibilities and obligations of each party, and specifying the procedures to be followed in cases of breach or non-compliance, they help reduce uncertainties associated with contract execution. Furthermore, such guarantees foster mutual trust between the parties. They offer reassurance that each party is legally bound to uphold their respective obligations, thereby strengthening the overall stability and reliability of the contractual relationship.

Keywords: Warranty, Compensation, Contract, Damage, Contractual Guarantee.

INTRODUCTION

This research explores the issue of reparation for damages arising from a breach of contractual security a legal concept concerned with the principles and rules that govern compensation when a party fails to uphold the terms of a binding contract. The study involves a thorough examination of contractual obligations and the consequences of their violation on the parties involved. It also requires an in-depth analysis of the relevant legal provisions to fully understand the mechanisms and foundations of liability and compensation in such cases.

1. Study Importance.

The significance of this issue becomes particularly clear in light of the complex economic and commercial relationships that characterize today's global landscape. As the volume and intricacy of commercial transactions continue to grow, ensuring the proper enforcement of contracts has become essential for maintaining market stability and safeguarding the rights of the parties involved. Contractual guarantees serve as a reflection of the parties' mutual commitment to fulfilling their agreed-upon obligations, thereby fostering trust among commercial actors and reducing the likelihood of disputes. Consequently, a deeper understanding of reparation mechanisms plays a key role in promoting fairness and transparency within contractual relationships.

2. Study Problem.

The central issue addressed by this research is how to determine the appropriate amount of compensation to be awarded to the injured party in the event of a breach of contractual guarantee. This requires a nuanced examination of the legal standards used to assess the extent of harm whether material or moral. In addition, several factors influence the debtor’s liability in such cases, including the specific circumstances surrounding the breach and the possible existence of force majeure. Investigating these dimensions is essential for developing a deeper and more comprehensive understanding of the doctrine of reparation within the broader legal framework.

3. Study Objectives.

This research aims to examine the legal concepts of reparation and contractual guarantee, with a focus on analyzing the various forms of compensation available in cases of breach. It seeks to explore the conditions under which reparation is granted, assess the influence of surrounding circumstances on liability, and identify the legal standards that govern the assessment of damages. Ultimately, the study aspires to provide a comprehensive understanding of the mechanisms of reparation within the framework of contractual relationships.

4. Study Methodology.

This research adopts a comparative analytical approach, combining both inductive and deductive methods in examining the legal texts governing liability for breach of contractual security under Iraqi civil law and English law, with particular attention to the principles of Islamic law. The study also applies this framework to selected case examples to illustrate the legal consequences arising from breaches of contractual security, while maintaining a focused scope that ensures coherence and meets the methodological standards of academic research in this field.

5. The Impact of Contractual Security on the Mechanisms of Reparation.

A contractual guarantee is a legal obligation that requires one party to compensate the other for damages arising from non-performance or defects in the subject matter of the contract. It serves as a vital mechanism for protecting the rights of the parties and providing redress for harm suffered. In this context, the research will examine the concept of reparation for damages under Iraqi civil law, Islamic jurisprudence, and English law.

5.1. Reparation of Damages for Breach of Contractual Security: Perspectives from Iraqi Civil Law and Islamic Law.

Damage refers to the financial loss or harm sustained by the creditor and constitutes a necessary condition for entitlement to compensation. The primary purpose of such compensation is to restore the injured party by addressing and remedying the damage suffered. In the absence of proven damage, no basis exists for awarding compensation.

Damage represents one of the fundamental elements that trigger the obligation of guarantee. While the Iraqi legislator does not provide a direct definition of damage, it addresses various forms of damage and leaves the task of defining the concept largely to legal scholars. One form, material damage, is acknowledged in Article 204 of the Iraqi Civil Code, which states: “Any infringement causing harm to others, other than what is specified in the preceding articles, requires compensation”. Regarding moral damage, Article 202 of the Iraqi Civil Code defines it as: “Any act committed against a person such as killing, wounding, beating, or any other form of harm entitles the injured party to compensation for the resulting damage” (Mohsen, 2015.pp.39-57).

This gives rise to several key characteristics, including the fact that it constitutes an agreement between the contracting parties to predetermine the amount of compensation. The parties agree in advance on the compensation to be awarded in the event of non-performance, with the aim of minimizing the need for judicial intervention. Importantly, the agreed-upon compensation does not exist as an independent obligation; rather, it is ancillary to the original contractual obligation. As such, it represents a secondary obligation that presupposes the existence of a primary duty, the fulfillment of which it is intended to secure (Treitel, 2003.pp.95-155).

The subsidiary nature of contractual compensation carries several important legal implications. One such consequence is that when the creditor seeks enforcement, it is the original obligation, not the subsidiary obligation (i.e., the agreed compensation), that is given primary consideration. If performance of the original obligation is still possible, the creditor may not demand the agreed compensation as an alternative, nor may they offer it in place of actual performance. However, the creditor may request payment of the contractual compensation if the debtor consents, and conversely, the debtor may offer to pay the agreed compensation if the creditor accepts, even if real performance remains feasible (Beatson, Burrows, & Cartwright, 2020.pp.55-71). The creditor is also entitled to claim the agreed compensation if performance of the obligation becomes impossible due to the debtor’s fault. However, if the impossibility arises from an external cause beyond the debtor’s control, the creditor has no such right. Another implication of this subsidiary character is that contractual compensation is inherently tied to the features of the original obligation, including its conditions and time frame. Accordingly, the invalidity of the original obligation necessarily leads to the invalidity of the agreed compensation. In contrast, the invalidity of the compensation clause does not affect the validity of the original obligation, since the latter stands independently. Finally, the termination of the original contract results in the extinction of the agreed compensation, and in such cases, judicial intervention becomes necessary to compel enforcement of the obligation through formal legal means (McKendrick, 2012.pp.69-84).

Judicial compensation is determined by the court in cases where no prior agreement on compensation exists between the contracting parties, or where a dispute arises regarding the amount of agreed compensation. In such situations, the court has the authority to adjust the compensation either by increasing or reducing it in proportion to the actual harm suffered (Al-Hanbali, 1400 AH.pp.101-123).

This is affirmed in Article 170 of the Iraqi Civil Code, which provides that: Agreed compensation shall not be payable if the debtor proves that the creditor has suffered no actual damage. The compensation may be reduced if the debtor demonstrates that the estimated amount was excessive or that the original obligation was partially fulfilled. Any agreement that contradicts the provisions of this paragraph shall be deemed null and void. If the actual damage exceeds the amount of agreed compensation, the creditor may not claim additional compensation beyond the agreed amount unless it is proven that the debtor acted with fraud or committed gross negligence (Sharaf al-Din, 1982.pp.55-87).

With regard to reparation for damages through contractual guarantees in Islamic law, compensation in Islamic jurisprudence is a significant topic that addresses the principles for assessing harm caused to individuals or property as a result of wrongful acts. This assessment is grounded in a fundamental principle known as the rule of financial guarantee, which emphasizes the necessity of ensuring full equivalence between the harm suffered by the injured party and the compensation to be provided by the wrongdoer (Al-Fadl, 1998.pp.12- 23). Such compensation is regarded as a manifestation of justice and fairness, and must be proportionate to the extent of the actual damage, insofar as such equivalence can realistically be achieved. In essence, the injured party should be compensated in a manner that accurately reflects the negative impact they have endured, thereby restoring them, as much as possible, to their original state prior to the harm. In Islamic jurisprudence, compensation may take the form of either in-kind or monetary reparation. In-kind compensation refers to the return of the exact property that was wrongfully taken or damaged, provided it still exists in its original condition and has not undergone any alteration (Treitel, 1979.pp.67-81) .

The validity of this principle is supported by a hadith of the Prophet Muhammad (peace be upon him), who said: "None of you should take his brother's belongings in jest." In another narration, he stated: "None of you should take his brother's staff in jest." These narrations underscore the importance of respecting others' property and avoiding any conduct whether playful or serious that could cause harm, discomfort, or embarrassment. From this, it becomes clear that anyone who takes another person's property, regardless of intent be it playfully or seriously has overstepped the bounds of lawful ownership and is obligated to return the item to its rightful owner. If the property cannot be returned due to circumstances such as damage or destruction, the obligation transforms. In such cases, if the item is of a type that is commonly available and has clear equivalents in the market, then the responsible party must replace it with a similar item. However, if the item is rare or holds unique value, then its monetary value must be compensated instead (Al-Mahlawi, 2004.pp.65-72).

To understand the concept of fungible items (referred to in Islamic jurisprudence as mithliyat), these are goods that can be readily found in the market with consistent quality and without significant variation in value such as certain types of consumer products. In contrast, non-fungible items (qīmiyyat) are those whose exact equivalents are difficult to obtain, or whose available alternatives vary widely in quality or value. Examples include rare works of art, historical manuscripts with cultural significance, or discontinued products no longer manufactured, which makes them effectively unique (Yasbin, 2018.pp.67-95). When assessing compensation for the destruction or damage of property, fungible items are generally regarded as the fairest basis for compensation, as they combine both the characteristics of kind (similarity) and monetary value. If fulfilling the obligation by returning the original item or providing an identical substitute is not possible, then monetary compensation becomes appropriate. In such cases, the financial value of the item serves a similar function in restoring the injured party's position, sharing with fungible items the essential characteristic of financial equivalence (Davies, 1977.pp.193-212). Therefore, this noble hadith and the legal principles derived from it make it clear that respect for the property of others is not merely a moral obligation, but a fundamental pillar of social and financial justice. It reinforces a spirit of cooperation, trust, and mutual understanding among members of society.

5.2. Reparation for Damages Arising from Breach of Contractual Guarantee under English Law.

Compensation is a widely used legal concept that extends beyond the realm of contractual relationships. It can be defined either as the obligation to indemnify another party for any loss, damage, or liability suffered, or as the injured party's right to seek such indemnification from the party legally responsible. In commercial practice, compensation clauses are commonly found across a broad spectrum of contracts. However, as will be explained, the precise content and legal effect of these clauses cannot be determined in the abstract; they depend entirely on the specific language used in each individual contract (Al-Hakim, Al-Baqi, & Al-Basheer, 2002.pp.55-63). It is important to note that the legal consequences of a clause are not governed by its label as a "compensation clause," but rather by the actual wording and substance of the clause itself. An analysis of contract law theory and practice reveals that compensation clauses may generally be grouped into three main categories, based on the type of liability they are intended to cover. A single clause may address one or more of these categories, depending on its formulation. This classification serves as a helpful framework for understanding how liability may be allocated in commercial agreements. However, it is worth emphasizing that this categorization is not recognized by English or Norwegian courts and, as such, does not carry any direct legal consequences (Richards, 1999.pp.220-256).

Contractual compensation is governed by the specific terms set forth in the contract. Compensation is not merely the fulfillment of an obligation; it also arises from conduct deemed unlawful if clearly stipulated within the contract. It may be paid either by mutual agreement or by court judgment based on the party's liability, provided that the conditions for compensation are explicitly defined in the contractual terms. Compensation agreements or indemnity clauses often serve to allocate potential risks or costs from one party to another. For example, if one party is contractually required to cover costs and expenses incurred by the other party under certain circumstances such as claims or disputes involving third parties these provisions clarify the responsibilities involved. Such contracts are typically the result of negotiation, and the terms relating to compensation, guarantees, or promises should be thoroughly and carefully discussed to ensure mutual understanding and agreement (Marqus, 1988.pp. 88-91).

In English jurisprudence, reparation for breach of contract is understood as compensation awarded to the injured party for losses incurred due to the other party's failure to fulfill contractual obligations. One legal scholar defined it as the compensation for damages suffered by the aggrieved party as a result of a contractual breach. Compensation for breach of a contractual guarantee can take two forms: either it is unliquidated damages, meaning the amount is not predetermined and must be assessed by the court based on the extent of the loss suffered by the injured party; or it is liquidated damages, which are pre-estimated and agreed upon in advance by the parties through a contractual clause known as a liquidated damages provision. When a contractual guarantee is breached, the non-breaching party's legal remedy is a claim for compensation. This compensation aims to redress any losses arising from the breach of warranty itself, rather than to terminate the contract (Al-Shi'i, n.d.p.p. 33-45).

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Compensation imposes an explicit contractual obligation on one party to compensate the other party for a specific loss or damage. One party to the contract seeks to preserve its right to claim compensation for damages on a contractual basis, as well as to claim compensation for breach of warranty on the basis of compensation. This means that if the warranty is not explicit or misleading, the seller must pay the amount necessary to put the buyer in the position he would have been in if the warranty had been accurate Any loss incurred by the buyer as a result of the warranty being inaccurate or misleading(Al-Ahwani, 1996.pp.33-41).

This jurist argues that for compensation to be regarded as true reparation for damage, it must satisfy three essential conditions. First, there must be actual damage or loss suffered by the injured party, which serves as the primary criterion for establishing harm. Second, the damage or loss must directly affect the injured party. Third, the damage must result in adverse consequences; otherwise, compensation is not warranted. The fundamental purpose of compensation is to restore the injured party to the position they would have occupied had the contract been fully performed (McKendrick, 2012.pp.69-84).

In English law, compensation for breach of contractual guarantee often takes the form of a pre-agreed, predetermined sum of money intended to compensate the injured party for potential damages and losses. It is important to note that the English judiciary has prohibited the simultaneous recovery of compensation for both expectation losses (anticipated losses) and reliance losses (losses related to expenditure), as established in the court ruling in the case of Cullinane v. British Rema Manufacturing Co. Ltd (1954) 1 QB 292. In this case, the plaintiff, Cullinane, purchased a stone crushing machine from British Rema, the manufacturing company (Al-Hakim, Al-Baqi, & Al-Basheer, 2002.pp.55-63). The sales contract included a guarantee from the manufacturer that the machine would operate at a capacity of six tons per hour. However, after using the machine, it became evident that its actual capacity did not exceed two tons per hour. The buyer filed a lawsuit demanding compensation, asserting that he was entitled to damages that would place him in the position he would have occupied had the contract been properly fulfilled(Mohsen, 2015.pp.39-57).

The plaintiff sought compensation for expenses and costs incurred in purchasing the machine, as well as additional compensation for consequential losses, including lost profits during the first three years of operation. The court ruled that the plaintiff could not claim all of these compensations simultaneously. Instead, he was required to choose between claiming compensation for the incurred expenses and costs or opting for compensation for consequential losses and lost profits, as these two forms of compensation are alternative remedies and cannot be combined (Sharaf al-Din, 1982.pp.55-87).

Specific performance is a fundamental concept in English law, referring to the direct enforcement of contractual obligations. This enforcement occurs through a court order compelling the breaching party to fulfill their contractual duties as agreed (Al-Mahlawi, 2004.pp.65-72). The principle of justice underpins this remedy, emphasizing that monetary compensation is inadequate as a basis for ordering specific performance. For specific performance to be granted, it is crucial that the plaintiff has complied with their contractual obligations and has not breached the contract, particularly in cases involving reciprocal duties. Courts will not order specific performance if the plaintiff has failed to fulfill their own obligations or has not shown readiness to do so in the future. In essence, the applicant’s conduct must be proper, and there must be reciprocity in the contractual obligations—contracts involving gratuitous promises, such as gifts, are typically excluded from specific performance. Furthermore, contracts involving minors may lack the necessary mutual consideration required to enforce specific performance (Sharaf al-Din, 1982.pp.55-87).

There are exceptions to the general rules governing specific performance. Courts typically do not order specific performance in certain types of contracts, such as personal service agreements or contracts that require continuous judicial oversight. In cases where a party fails to fulfill their obligations, the injured party may seek monetary compensation, which is a financial award intended to cover the damages incurred (Beatson, Burrows, & Cartwright, 2020.pp.55-71).

Cash compensation under English law takes two primary forms: first, unquantified monetary compensation determined by the court, and second, predetermined financial compensation agreed upon by the parties. The creditor has the right to demand performance of the debtor’s obligations, as well as seek legal compensation for non-performance (Al-Ahwani, 1996.pp.33-41). If the debtor refuses to fulfill the obligations entirely or only partially performs them, this does not grant the creditor the unilateral right to cancel or terminate the contract, without prejudice to the creditor’s right to claim compensation as an additional legal remedy. However, not every breach justifies contract termination. English law recognizes termination only in two circumstances: either cancellation of the contract by one party or dissolution of the contract by unilateral declaration before performance begins or is completed. This latter scenario is commonly referred to as denying the existence of the contract or arises when one party commits a fundamental breach (Marqus, 1988.pp. 88-91).

The creditor may either accept or reject the breach of contract. Acceptance of the breach means that the injured party acknowledges the breach and may take steps such as initiating legal proceedings or issuing a formal notice to the breaching party, followed by appropriate actions. Accepting the breach has three primary consequences: first, the injured party is released from fulfilling their contractual obligations; second, the breaching party is exempt from specific performance and is only required to pay compensation; and third, acceptance grants the injured party the immediate right to claim compensation without having to wait for the original obligation to be performed (Treitel, 1979.pp.67-81).

Conversely, the creditor may reject the breach, meaning they continue to perform their contractual duties. The creditor has the right to withhold acceptance as grounds for contract termination, particularly when maintaining the contract is more advantageous than terminating it (Al-Fadl, 1998.pp.12- 23). In this scenario, the creditor assumes the risk of unforeseen events that may impede the performance of their obligations. This leads to two key outcomes: first, both parties remain bound by their contractual commitments; and second, the party opting to uphold the contract forfeits the right to terminate it, without prejudice to their entitlement to seek compensation. Should the party choosing to adhere to the contract fail to fulfill their obligations, the other party retains the right to pursue compensation or seek specific performance through legal channels (Richards, 1999.pp.220-256).

CONCLUSION

First: Results:

1. English law is characterized by its distinctive approach to handling contractual guarantees, built upon the principles of compensation and binding contractual commitments. These principles aim to uphold a fair balance between the rights and obligations of the contracting parties.
2. One notable form of compensation is contractual compensation, which does not exist independently but rather stems from a primary obligation. It functions as a secondary measure to ensure that the original contractual commitment is fulfilled.
3. In Islamic law, compensation for damages represents a significant legal concept. It focuses on the proper assessment of harm caused to individuals or property due to wrongful acts. This process is governed by the principle of financial equivalence, which requires that compensation fully reflect the extent of the damage incurred. Justice is achieved when the awarded compensation matches the actual harm suffered.
4. In English law, compensation for breach of a contractual guarantee may sometimes be determined in advance, in the form of a **pre-agreed monetary amount**. This sum is designed to cover potential damages or losses the injured party may face due to non-compliance with contractual obligations.

Second: Recommendations:

1. We recommend that the legislator provide a clear and specific definition of contractual compensation, given its frequent application in practice particularly in contracts related to construction, energy, and services.
2. We further propose that the Iraqi legislator expand the scope of compensation to include non-financial damages, also referred to as moral or emotional damages, within the framework of contractual liability arising from breach of contract. Currently, such compensation is confined to tortious liability. In light of this, we suggest the following provision: "Compensation for moral damage shall not be limited to unlawful acts but shall also extend to breaches of contract, where such breaches result in disappointment to the injured party, psychological distress or mental anguish, damage to commercial reputation, or other legally recognized forms of harm."

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