

The Impact of Dynamic Interpretation on Contract Balance

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Abstract

In today's environment of rapid and unpredictable change, international contracts are frequently exposed to shifting circumstances. Consequently, the original balance envisioned by the parties may be disrupted, creating challenges in contract performance for all involved. Although the principle of *pacta sunt servanda* is widely recognized, most legal systems also acknowledge the doctrines of changing circumstances and Hardship. This study focuses on employing dynamic methods during the contract interpretation phase to realign the contract with the parties' original and actual intentions, thereby restoring Contract Balance. This approach requires consideration of actions occurring not only at the time of contract formation but also before and after it. Moreover, attention should extend beyond events at the moment of contract conclusion. Parties can anticipate potential changes by including provisions such as a Hardship clause or a Changes clause to mitigate the impact of future variations. Additionally, referencing prior dealings, customary practices, and applying interpretive rules can further enhance the effectiveness of dynamic interpretation.

Keywords: Circumstantial changes, Interpretation, Dynamic, Contract balance, Evolutionary

Introduction

Occasionally, the conditions at the time of a contract's formation change to such an extent that performing the contract becomes difficult or costly. In these cases, the resulting loss is often unusual and unpredictable. Accordingly, strict adherence to *pacta sunt servanda* and enforcing the contract according to its original terms and conditions can create significant disadvantages. Although the principle of contractual necessity is recognized across legal systems, the loss of Contract

Balance remains inevitable due to both economic and non-economic factors. Consequently, a contract should not be viewed merely as a static written document between two fully rational parties; rather, it represents a series of exchanges—both verbal and behavioral—between individuals with distinct experiences and within the context of evolving circumstances [1]. Furthermore, some contracts are inherently dynamic, evolving as the relationship between the parties develops. Therefore, in case of disputes arising during contract performance, interpretation should focus on the contract's execution period. It is worth noting that contract interpretation entails costs for all parties, incentivizing the preparation of comprehensive contracts [2].

While the general principles governing international contracts also apply to e-commerce, specific considerations relevant to the online environment must be addressed. Many of these rules have emerged from business customs and practices, often developing in the

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absence of formal contractual provisions or laws and merely reflecting the behavior of other users [3]. Given that the internet has fostered the growth of numerous business practices outside a structured international legal framework, it is essential to recognize the role of customs and norms in e-commerce [4]. Business customs are particularly critical in transnational contexts where clearly enforceable legal rules may be lacking [5].

Materials and Methods

This research was conducted using a library-based approach through the analysis of relevant sources and documents.

Contract balance

Commitment to contractual obligations has long been emphasized across legal systems [6, 7]. However, circumstances may change after a contract is concluded, making it impossible or difficult for one or more parties to fulfill their obligations. As a result, Contract Balance can be disrupted at the time of contract formation [8]. Recognizing the impact of changing circumstances on a contract is considered an exception to the principle of *pacta sunt servanda* [9]. Contract Balance can be affected at various stages, including negotiation, conclusion, performance, and interpretation, with this study focusing on the interpretation stage. Contractual imbalance refers to situations where performance is impractical or impossible. Lack of Contract Balance occurs not only when execution is impossible but also when it is excessively difficult or costly. In such circumstances, the theory of difficulty is applied to restore balance. Changes in contractual conditions (*Clausula rebus sic stantibus*) are referred to using different terms, each recognized under specific conditions. All legal systems agree that strictly enforcing *pacta sunt servanda* in these situations is inequitable, though the principles and solutions differ. Some legal systems and international instruments favor contract termination after encouraging renegotiation, while others permit contract modification as a remedy.

Interpretation

Iranian law does not provide a formal definition of interpretation, and jurists have not reached a consensus on its meaning [10]. The primary function of contract interpretation is to uncover implicit terms and obligations [11]. Misinterpretation of words and phrases is a leading

cause of contractual disputes. Interpretation must consider both the parties' intentions and the meanings of the stated terms. It should only be applied when the contract's language is unclear or lacks explicit provisions comprehensible to all parties [12].

Static and dynamic interpretation

Contract law can be approached through various classifications, including the distinction between static and dynamic interpretation. A contract is considered static when its enforcement depends solely on circumstances existing at the time it was formed, whereas dynamic interpretation also takes into account events occurring after the contract's conclusion. Over time, dynamic interpretation rules have largely replaced static ones, focusing on events that take place before, during, and after the contract's formation [1, 13]. The goal of interpreting a contract dynamically is to ensure that the parties' actual intentions and objectives are achieved [14].

Dynamic interpretation considers the contract in its entirety, including the conduct of the parties throughout the contract lifecycle and prevailing customs or standard practices [15]. In civil law jurisdictions, interpretation often begins by examining the perspective of the individual trying to understand the parties' intentions, aligning closely with dynamic principles. Courts may also factor in circumstances arising after the contract has been executed [15]. In contrast, common law systems employ an objective standard, interpreting the contract from the viewpoint of a reasonable person. This approach is more static, as it emphasizes external interpretation at the time of dispute rather than focusing on the parties' mutual intent.

Eskridge asserts that all contract interpretation is inherently dynamic, arguing that a purely static approach is unattainable. According to him, interpretation always involves aligning the reader's understanding with the writer's intention. He stresses that dynamic interpretation is not a modern innovation, and legal systems require it to operate effectively [16].

Relationship between dynamic contracts and dynamic interpretation

For contractual theories to remain applicable, they must reflect shifting social norms and evolving needs. Contracts serve both individual and societal interests, and a relevant theory must account for both. Consequently,

an effective contract theory should be adaptable, substantive, complex, and dynamic rather than rigid, bilateral, formal, or static. Dynamic theory addresses modern contractual challenges by incorporating evolving social values. When applied, it focuses on whether the contract's goals can still be realized given the altered circumstances, while keeping the parties' original intentions in view [1].

A contract is dynamic only if all potential factors that could influence contractual relations are considered during negotiation and drafting [17]. While such contracts cannot account for events with zero probability, their flexibility enhances efficiency and resilience against unforeseen circumstances [17]. Since a contract is assumed to reflect the parties' intentions at the time of performance, careful drafting and negotiation are critical to establishing a genuinely dynamic contract [18].

Dynamic contract theory does not replace other contract theories; instead, it integrates their principles to formulate the most suitable rules for specific situations. Dynamic thinking is not restricted to any single school of thought and allows substantive issues to be addressed directly, without forcing results to conform to formal principles [1].

Impact of Parties' Agreement on dynamic interpretation

To remain effective under changing circumstances, a contract must be designed with sufficient flexibility. Parties can achieve this by including provisions such as the Hardship Clause or the Changes Clause, which will be explored in later sections [19].

The Economic Hardship Clause provides a mechanism for addressing difficulties at the contract's inception. Additional dynamic clauses can further prevent or mitigate hardships. This approach prioritizes adaptability and avoids rigid planning or leaving gaps in the contract. Such provisions not only enhance flexibility but also support stability by helping maintain the agreed economic balance [20].

Hardship clause

In today's rapidly changing environment, only contracts that incorporate flexibility can endure. Such contracts must be interpreted in a manner that allows adaptation to evolving conditions. Loss of Contract Balance is particularly noticeable in long-term contracts due to the time gap between their conclusion and execution. Several legal concepts relate to changing circumstances,

including Force Majeure, Hardship, and Abuse of Rights [15]. Under these conditions, enforcing *pacta sunt servanda* is often considered unjust. The Hardship Clause serves as a mechanism to restore Contract Balance by allowing the parties to renegotiate the contract when circumstances shift, and subsequently implement a revised, moderate version of the agreement [21].

While both the Hardship Clause and the Force Majeure Clause address similar situations, their outcomes differ. The Force Majeure Clause typically suspends obligations temporarily, whereas the Hardship Clause triggers renegotiation [22]. Long-term contracts are particularly vulnerable to changes in circumstances. Rigidly enforcing *pacta sunt servanda* may render contractual obligations excessively burdensome or economically meaningless for one party. Although the law sometimes allows contract revision, simply executing the contract may not suffice. Termination, on the other hand, represents an extreme solution that conflicts with the parties' intent to remain bound by the agreement. In these situations, the Hardship Clause provides an economic evaluation of the contract when circumstances undergo substantial change.

For instance, consider a long-term production contract requiring one party to deliver a fixed number of products. If an economic crisis occurs, the buyer may need to reduce the quantity. By invoking the Hardship Clause, the buyer can obtain the seller's consent to adjust the delivery and strive to maintain economic balance. Contracts may include a specific clause for price review or adjustment, enabling renegotiation to moderate terms. The Hardship Clause proves particularly effective in economic fluctuations and can also be included in contracts with imbalanced bargaining power. In such cases, the stronger party may incorporate the clause to ensure the contract continues to favor them [22].

Other clauses

Additional clauses can be valuable when circumstances change. For example, shifts in values, prices, or income, or when a party receives a better offer from a third party or competitor, may render the Hardship Clause insufficient. These other clauses allow the contract to be modified in response to specific events, while the Hardship Clause is limited to situations arising from economic changes. This enables parties to predetermine the extent and manner in which the contract may be affected [22, 23].

Dynamic interpretation methods

Interpretation Against the Regulator of the Contract to the Obligor's Detriment (Contra Proferentem Rule)

Concept

The Contra Proferentem principle has long been recognized in Contract Law, particularly in adhesion and standard form contracts [24]. It has been applied in Common Law, Roman Law, and Civil Law traditions for many years, though historically its role in contract interpretation has been limited [25]. During contract formation, parties freely negotiate their respective rights and obligations and then execute the contract [26]. When ambiguity arises regarding terms, concepts, phrases, or language used in the contract, interpretation is required. The Contra Proferentem rule dictates that if the contract drafter is also the obligor, any ambiguity is resolved against the drafter. Similarly, if one party prepares certain terms or the entire contract and the other party merely accepts it, ambiguities are construed to the detriment of the drafting party [27].

A comparative study in international documents

In Article 64 of the Common European Sales Law, the law recognizes the trader, as the stronger party, to have advanced skills in drafting and formulating contracts. Due to this expertise, the trader is expected to choose words and phrases with care, and therefore cannot claim ambiguity in the contract. The article's final paragraph clarifies that terms proposed by the customer cannot be interpreted to the trader's disadvantage, reinforcing the Contra Proferentem rule [27]. Other related provisions, including Articles 62, 65, and 7, similarly address this principle.

The Principles of European Contract Law (PECL) further formalize this rule in Article 5-103, which states: "if there is any ambiguity about the meaning of a term in a contract, this term will be interpreted to the detriment of the party that has included it" [28]. Importantly, this applies only to terms that are not negotiated. If a term is negotiated by both parties, responsibility for ambiguity is shared [27].

A comparable rule exists in Articles 4-6 of the Principles of International Commercial Contracts, asserting that a contract clause drafted by one party is interpreted against the drafter [28]. The CISG does not explicitly reference Contra Proferentem, yet some courts interpret contractual

statements and actions under the principle of Good Faith [28]. Similarly, paragraph 1 of Article 8-103 in the Draft Common Frame of Reference (DCFR) applies the rule only to non-negotiated terms and uses it as a secondary principle when other interpretive rules are not applicable [27]. The rule is particularly relevant when one or multiple terms are prepared by a third party [29].

Iranian law

Although Contra Proferentem is not formally codified in Iranian law, it is reflected in several legal provisions and general legal principles. Jurists maintain that ambiguities in contracts should be resolved in favor of the party who agreed to the terms [30]. Articles 1301 and 1304 support this by indicating that a person's signature serves as confirmation of acceptance of the document's provisions [31, 32]. Despite certain criticisms, it is evident that Iranian law acknowledges this principle implicitly [27].

Interpretation in favor of the weak party of the contract

The concept of the "weak party" arises primarily in the context of unfair contracts, where one party is economically or informationally disadvantaged and therefore has limited negotiating power. To protect such parties, restrictions must be applied based on the freedom of contract principle [33]. Stronger parties frequently include terms favorable to themselves, leaving the weaker party with little ability to amend or negotiate them. Consequently, Contract Balance is often compromised, with traders or sellers obtaining disproportionate benefits. This study highlights that significant disparities exist in contractual obligations and regulations.

At the European Union level, directives have been issued to address this issue, most notably the Council Directive 93/13/EEC on Unfair Terms in Consumer Contracts. These directives mandate that member states implement appropriate measures to prevent and rectify the inclusion of unfair terms in consumer agreements.

A comparative study in international documents

The misuse of contractual terms is addressed under Article 4-109 of the Principles of European Contract Law. This provision applies when a contract reveals one party's vulnerability or need, coupled with the other party's awareness of that vulnerability [27].

Article 4-110 focuses on unfair terms that have not been specifically negotiated. Its foundation lies in the EU Council Directive 93/13/EEC on Unfair Terms in Consumer Contracts. While the Directive is limited to consumer agreements, the Principles of European Contract Law extend its scope to include State and Trade Contracts, thereby broadening its application. Unlike the Directive, which lists specific prohibited terms, the Principles do not provide such a list due to the variety of trade agreements. According to Article 4-110, any term violating the Good Faith Principle or undermining fairness can create a significant imbalance in the rights and obligations of the parties, possibly justifying contract termination. Terms that establish the contract's primary subject or set a specific price remain outside its scope [28, 34].

Article 20-2 of the Principles of International Commercial Contracts addresses unexpected terms and conditions. Typically, parties are obligated to accept the other party's terms once the contract is signed, and ignorance cannot be claimed as a defense. However, the article allows an exception when the contract's "content," "language," or "phrasing" is unconventional or surprising [35]. The focus on these three elements aims to prevent the stronger, more experienced party from exploiting their position or the weaker party's lack of knowledge. In practice, this prevents the inclusion of seemingly simple but interpretable terms that could unfairly disadvantage the weaker party [23, 36].

Iranian law

In Islamic jurisprudence, the principle of freedom of contract generally governs contractual agreements, except in cases explicitly restricted by religious texts. Signing a contract binds a person to its obligations and commitments, even if they are not fully aware of all terms. The signed terms reflect the parties' will and are considered fair, especially in Exchange transactions [37]. Under Iranian law, contract validity does not require a balance of considerations. However, minimal consideration may alter a contract's nature or result in termination. The right to terminate can also arise through the deception option, which is assessed according to the contract's terms.

The good faith principle

Dynamic or evolving interpretation is possible through the Principle of Good Faith. This principle

accommodates reasonable exceptions raised by either party and requires that contracts be interpreted based on loyalty and mutual trust. Actions that disrupt expectations formed from contractual obligations violate this principle. Numerous rulings by international courts have emphasized this standard [38].

A comparative study in international documents

The Good Faith Principle has been explicitly incorporated into many pivotal international frameworks, such as the Convention on Contracts for the International Sale of Goods, and it is binding on all contracting parties. Paragraph 1 of Article 7 of this Convention emphasizes: "the international specifications of the provisions of this convention, the necessity of coordination in its implementation and the observation of the Good Faith Principle in the International Trade should be considered in interpreting the convention." Legal scholars widely hold that this principle should extend to all contractual interactions governed by the Convention [12].

This principle is also integrated into Article 7-1 of the Principles of International Commercial Contracts. Furthermore, related concepts appear in multiple other provisions, including Articles 15-2, 16-2, 18-2, 5-3, and 8-4, reflecting the broad application of Good Faith across various chapters of international commercial law.

Iranian law

Although Iranian law does not explicitly mention the Good Faith Principle, its existence can be inferred from several statutory provisions and legal norms.

Article 40 of the Constitution reflects a closely aligned idea, stating: "no one can use the exercise of their right as a means to harm others or to violate the public interest." While not identical to the Good Faith Principle, the underlying concept is consistent. Similarly, Article 132 of the Civil Law declares: "no one may seize their property if it requires harming the property of their neighbor unless they seize is conventional, aims to meet their need or eliminate their loss," further underscoring this principle.

The Good Faith Principle was first formally recognized in Article 8 of the Civil Liability Law. It was subsequently referenced in other legal texts, including Article 154 of the Commercial Code (1932), Article 6 of the Check Issuance Law (1965, later abrogated in 1976), Article 35 of the Electronic Commerce Law (2003), paragraph 4 of Article 15 of the Patent Law (2007), and

Articles 12 and 13 of the Insurance Law (1937). Although Civil Law does not explicitly mention it, legal scholars have long argued for its formal inclusion in Iranian law [9].

In practice, Iranian law presumes that contractual relations are governed by the Good Faith Principle, and in certain cases, this principle functions as an exception. However, some legal experts suggest that the intensity and scope of its application may vary depending on the specific nature of the contract.

Good faith and contract balance

When a contract's initial balance or economic equilibrium is disrupted, fulfilling it under the original terms can become exceptionally challenging and costly. This situation prompts a critical question: can an obligee still be regarded as acting in good faith if they demand complete performance regardless of the changed circumstances?

Certain jurists maintain that since the obligee is not responsible for the changed conditions, and all parties are bound by the Good Faith Principle, insisting on full performance does not violate this principle. In fact, they argue that enforcing *pacta sunt servanda* under such conditions aligns with, rather than contradicts, the Good Faith Principle.

In contrast, other scholars highlight that the parties have a duty to assist one another in executing the contract and must refrain from any conduct that makes performance more difficult for the other party. From this perspective, it would contravene the Good Faith Principle to expect the obligor to perform unconditionally, regardless of circumstances.

The principle of executing contracts in good faith is well-established in legal systems such as those of Germany, Switzerland, and France. For example, if a payment loses value due to rising prices but the obligee still insists on performance according to the contract's original terms, such insistence would be inconsistent with the Good Faith Principle.

In the context of Iranian law, one jurist reflected on contract interpretation and modification under the Good Faith Principle: "assuming that this obligation related to the Good Faith Principle can be deducted from the law, the application of this principle is still quite difficult. This is because this principle is in contrast with *pacta sunt servanda* and the commitment of both parties to the content of the contract. Undoubtedly, any kind of

deception in social relationships is not accepted and contractual relationships are no exception. However, the contradiction between the strictness of obtaining one's right and execution of obligation in good faith is rather doubtful. The question that is raised in this regard is: Should the Principle of Good Faith be applied to confirm the provisions of the contract and to fully execute it or should it be applied for the parties to be exempted from implementing the contract?" [30].

Results and Discussion

Legal rules must maintain sufficient strength and consistency so that they are not subject to individual whims and personal interests. At the same time, these rules need to remain adaptable to meet the evolving demands of society. Unpredictable events or circumstances can disrupt the economic equilibrium of contractual consideration, and imposing rigid rules under such conditions may be deemed unfair. To address this, many national laws and international documents have introduced provisions aimed at restoring Contract Balance.

The goal of dynamic interpretation is to uncover the evolving intentions of the contracting parties. This process, carried out by the interpreter, allows the contract to adapt and remain relevant to changing conditions. By applying dynamic interpretation, a more nuanced understanding of the contract's subject and purpose can be achieved, offering both parties a renewed and comprehensive view of their obligations. Dynamic interpretation emphasizes that no legal rule exists in isolation from the context of its time.

Despite its usefulness, some scholars criticize the concept of dynamic interpretation. Nevertheless, it has been adopted across various legal systems and reflected in numerous international documents. In several Civil Law jurisdictions, dynamic interpretation has even become a central topic of legal debate. In contrast, Iranian Law remains somewhat unclear on this matter, as it does not explicitly outline principles or rules for contract interpretation.

The law itself, along with its fundamental characteristics, plays a pivotal role in guiding dynamic interpretation. When a contract violates statutory provisions or contradicts good morals, courts may declare it void. Conversely, if an obligation is conditional or discretionary, the contract's validity depends on the parties' willingness, making it particularly suited for

dynamic interpretation. In such cases, two essential criteria are considered: the mutual intent and will of the parties, and the specific requirements of the contract.

One principle applied in contract interpretation is the principle of interpreting to the detriment of the regulator of the contract. Under this rule, ambiguities in the contract are addressed through dynamic interpretation when they disadvantage the party that drafted or proposed the terms. Additionally, dynamic interpretation places special emphasis on protecting the weaker party, who may lack economic power or information to negotiate effectively. In modern legal systems and international documents, the Doctrine of Irrationality is recognized as a critical tool for safeguarding such parties. Principles like Fair Transaction and Good Faith also serve as foundational elements in dynamic contract interpretation, reinforcing fairness and balanced obligations between parties.

Conclusion

Legal rules must be capable of responding to the evolving needs of society, yet contracts do not always maintain sufficient balance. Contract Balance refers to the equitable distribution of obligations among all parties, achieved by adjusting duties as necessary. Dynamic interpretation provides a mechanism for restoring lost balance.

Dynamic interpretation underscores that no rule can ignore the temporal and contextual conditions surrounding a contract. It examines events occurring before, during, and after the contract's formation, taking into account the relevant customs and conventional practices. Furthermore, for a contract to remain effective under shifting circumstances, it must be drafted in a manner that ensures sufficient flexibility and adaptability.

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