

Restitution of Benefits for Breach of Contract in Common Law, Vienna Convention 1980 and Iranian Law

Mohammad Sadeq Ramezani Mahoonaki^{**}
Azam Ansari^{**}
Sayyed Mohammad Mahdi Qabuli Dorafshan^{***}

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Abstract

Usually, the loss suffered for breaking the obligation is one of the responsibilities bases on contractual liability. Now, the key question concerns the profits that the wrongdoer has obtained. Can we say the party who breaks his obligation under the contract is liable because of his profits without any loss to the other party? Is he required to transfer the benefits to the other party? There have been disagreements on this question in Common Law private law. The essay with descriptive-analytical method searches the answer in Common Law, Iranian Law, and the Convention on International Sale of Goods (Vienna 1980). The results show although gain-based liability in Common Law contract law is seldom has been awarded by the courts and there are some barriers against it, but they can be eliminated by new bases. Considering traditional principles and rules, it is problematic to accept gain-based liability result of breaking the contract in Iranian law. In addition, restitutionary liability can be only a way to calculate the loss of the party in the Vienna Convention.

Keywords: Restitutionary Liability; Transfer of Gains; Gain-based Liability; Breach of Contract; Opportunistic Breach.

* MA in Private Law, Department of Private Law, Ferdowsi University of Mashhad, Mashhad, Iran.
Email: mohammadsadeq.ramezani@um.ac.ir

** Assistant Professor, Department of Private Law, Ferdowsi University of Mashhad, Mashhad, Iran.
(Corresponding Author) Email: aansari@um.ac.ir

*** Associate Professor, Department of Private Law, Ferdowsi University of Mashhad, Mashhad, Iran.
Email: ghaboli@um.ac.ir



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