

Remedy for Construction Contractor's Failure to Comply with the Specifications of the Contract in Common Law and Iranian Law

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Abstract

In some cases, construction contracts are faced with contractor's breach. Breach of the contract by the contractor has various forms, such as non-fulfillment of the obligation to construct or delay in its performance, as well as incomplete fulfillment of the obligation and non-completion of the building. But another form that is common in practice is to failure to comply with the characteristics and specifications of the contract. In the common law system, the remedy for this breach is initially damages, and different methods are used to evaluate it, such as paying the cost of cure or difference in value. In Iranian law, the remedy for breach of contract is specific performance, which has its own branches such as repair and replacement. The question is that, if specific performance requires the waste of resources, is it possible to avoid the specific performance and award damages instead? Using the analytical and inductive method, this research first examines the methods of assessing damages for non-conforming performance by the contractor in common law and then the remedy for this breach in Iranian law and tries to strengthen the possibility of paying damages instead of specific performance in some cases and to provide a standard for compensation.

Keywords: construction contract; employer; contractor; breach of contract; assessment of damages.

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