



Establishing and Assessing Mistake Preventing Consent on the Basis of Apparent and Internal Will in English and Iranian Law

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ABSTRACT

In contract interpretation, if the court relies on the parties' apparent intention to identify mistake, only a mistake in the expressed words prevents formation of the contract. If the parties' internal intention is treated as the basis of contract formation, then a mistake in each party's mental conception may also prevent agreement. This study compares English and Iranian law to determine whether apparent or internal will is the criterion for identifying mistake that prevents consent. The authors hypothesize that legal systems generally rely on apparent will and the content of the contract at the stage of proof, while exceptions arise where one party knows or should know that the other is mistaken. The findings show that English law primarily applies an objective standard based on apparent will, whereas Iranian law gives greater theoretical weight to internal will but, in practice and in proof, often relies on external manifestations.

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Introduction

A contract is formed through the parties' agreement and their operative intention as manifested outwardly. Yet the parties may misunderstand one another's intended subject matter in such a way that the contract does not arise in the legal realm. The central question is which criterion English and Iranian law use to determine a mistake preventing consent: the parties' apparent will or their internal will. The study also asks how each system treats exceptional cases where one party is aware of the other's mistake.

Methodology

The research is descriptive-analytical. It uses library and electronic sources and extracts the central principles from primary materials and contemporary legal studies. The analysis compares the two legal systems by focusing on contract interpretation and mistake.

Literature Review

Many studies have examined mistake and criteria for interpreting contracts, including works on contract formation in Imami fiqh, Iranian law, and comparative law. However, a focused comparison of apparent and internal will in the specific context of mistake preventing consent remains necessary.

Findings

In English law, which is based on objective interpretation and apparent will, mistake prevents contract formation only where it appears in the parties' outward expressions and prevents objective agreement. Internal mistake alone is generally insufficient. Iranian law, influenced by the doctrine of internal will, recognizes the importance of the parties' real intention, but in evidentiary practice courts often rely on external manifestations and the text of the contract. With respect to mistake as to the identity of the counterparty, both systems may depart from their primary approach under special conditions. English law distinguishes face-to-face contracts from correspondence contracts, while Iranian law evaluates the essentiality of the counterparty's identity and the role of mistake in consent.

Conclusion

Both English and Iranian law rely significantly on apparent will in proving contracts, though their theoretical foundations differ. English law is more firmly objective, while Iranian law gives greater doctrinal importance to internal intention. Nevertheless, where one party knows or should know of the other's mistake, the legal system may protect the mistaken party and deny formation or effect. The practical result is a balanced approach that preserves transactional security while preventing exploitation of known mistake.

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