Economic Analysis of Negotiation as a Method of Dispute Resolution in Commercial Contracts, with Emphasis on Contractual Liability

1. Morteza Ali Daei Ahmadi: PhD Student, Department of Private Law, Ar.C., Islamic Azad University, Arak, Iran
2. Vahid Ghasemi Ahd*: Department of Private Law, Ar.C., Islamic Azad University, Arak, Iran
3. Seyed Vahid Lajevardi: Department of Law, Ar.C., Islamic Azad University, Arak, Iran

*Correspondence: v.ghasemi@gmail.com

Abstract

The breakdown of commercial negotiations in legal systems characterized by low predictability is a phenomenon whose less-explored dimensions can be revealed through the economic analysis of law. The principal question of this article is which economic model is optimal for determining damages arising from breach of an obligation to negotiate, and how the conventional distinction between negative and positive damages affects the economic incentives of the parties. Employing a comparative law-and-economics methodology and drawing on the Expected Value of Litigation (EVL) model, Bebchuk's theory of information asymmetry, and Becker's theory of optimal deterrence, this study examines the legal systems of France, England, and Iran. The findings indicate that the French model, which limits compensation to negative-interest damages, results in under-deterrence in cases of intentional bad faith, while the English model, which distinguishes liability according to the type of fault, loses much of its effectiveness because of evidentiary complexities. In the Iranian legal system, the complete legislative vacuum and inconsistency in judicial practice likewise increase information asymmetry and contribute to the systematic breakdown of negotiations. Through an economic analysis of the legislative provisions proposed in the author's doctoral dissertation, the article develops an integrated, tiered model of damages in which negative-interest damages constitute the general rule (based on the Islamic jurisprudential rule of lā ḍarar [no harm]), positive-interest damages apply in cases of intentional bad faith (based on the rule of ghurūr [deception-induced liability]), and additional damages are available in exceptional cases of manifest bad faith. The article concludes that increasing the predictability of the legal system through the enactment of explicit statutory provisions is a necessary condition for the economic efficiency of commercial negotiations.

Keywords: economic analysis of law, commercial negotiation, expected value of litigation, optimal deterrence, negative- and positive-interest damages, lā ḍarar rule, pre-contractual liability.

Submit Date: 10 May 2026
Revise Date: 12 August 2026
Accept Date: 19 August 2026
Initial Publish: 19 September 2026
Final Publish: 01 January 2027

Citation: Daei Ahmadi, M. A., Ghasemi Ahd, V., & Lajevardi, S. V. (2027). Economic Analysis of Negotiation as a Method of Dispute Resolution in Commercial Contracts, with Emphasis on Contractual Liability. *Legal Studies in Digital Age*, 6(1), 1-10.

1. Introduction

In the classical literature of contract law, negotiation is regarded as a process in which the parties participate in good faith and with the intention of reaching an agreement. The economic analysis of law, however, reveals a different reality: negotiation is an economic phenomenon in which rational actors seek to maximize their own interests, and their decision to continue or terminate negotiations depends on a cost-benefit analysis (Posner, 1973). This approach raises fundamental questions that traditional legal analysis has been unable to answer adequately: Why do commercially efficient negotiations fail in legal systems characterized by low predictability? What is the economically optimal model for determining damages for breach of an obligation to negotiate? And what effect does the conventional distinction between negative-interest damages and positive-interest damages have on the parties' incentives?

The Iranian legal system, with its legislative vacuum concerning the obligation to negotiate and liability arising from its breach, provides a clear example of such a situation. The absence of explicit statutory provisions, inconsistency in judicial practice, and lack of objective criteria for calculating damages increase transaction costs and contribute to the failure of negotiations. In such a context, economic analysis can identify incentive mechanisms and provide a framework for designing a more efficient legal system.

The principal question of this article is what constitutes the economically optimal model for determining damages arising from breach of an obligation to negotiate and how the distinction between negative- and positive-interest damages affects the parties' economic incentives. The hypothesis is that the traditional distinction between negative- and positive-interest damages, as exemplified by the French model, results in under-deterrence because it fails to account adequately for the need for deterrence, whereas an integrated model based on a tiered structure of damages proportionate to the degree of fault and grounded in an optimal-deterrence approach is more efficient. Using a comparative law-and-economics methodology and examining the legal systems of France, England, and Iran, this study tests that hypothesis.

The international literature on this subject is extensive. Ronald Coase, in his seminal article *The Problem of Social Cost* (Coase, 1960), demonstrated that, in the absence of transaction costs, parties can achieve an efficient allocation of resources through bargaining. Richard Posner (Posner, 1973), developing this theoretical framework, regarded negotiation as the most efficient method of dispute resolution. Lucian Bebchuk (Bebchuk, 1984) demonstrated through mathematical modeling that information asymmetry is a major cause of negotiation failure. Gary Becker (Becker, 1968), through his theory of optimal deterrence, likewise provided a framework for designing efficient legal sanctions.

The economic analysis of law has also received increasing attention in Iranian legal scholarship in recent years. Badini (Badini, 2016), in *Economic Analysis of Contract Law*, connected the foundations of economic theory with Iranian law. Ebrahimi et al. (Ebrahimi et al., 2018), in their article entitled *Economic Analysis of Pre-Contractual Negotiation: A Comparative Study in Iranian and French Law*, applied the Expected Value of Litigation (EVL) model to pre-contractual negotiations. Karimi and Mousavi (Karimi & Mousavi, 2020), in their study entitled *Efficient Remedies in Contract Law: An Economic Analysis Approach*, also examined optimal-deterrence theory in Iranian law. Nevertheless, the simultaneous application of these theories to the obligation to negotiate and their integration with Islamic jurisprudential rules have received comparatively limited attention. The contribution of this article lies in integrating optimal-deterrence theory with the Islamic jurisprudential rules of *lā ḍarar* and *ghurūr* and proposing a domestically grounded model for Iranian law.

2. Theoretical Foundations of the Economic Analysis of Negotiation

2.1. The Expected Value of Litigation Model and the Zone of Possible Agreement

The economic analysis of negotiation should begin with the following question: When will a rational actor enter into negotiations? The answer lies in the Expected Value of Litigation (EVL) model. According to this model, parties to a dispute compare the probable outcome of litigation with its associated costs and choose negotiation when the costs of negotiation, together with the expected costs of failing to reach agreement, are lower than the expected value of litigation (Cooter & Ulen, 2016).

For the claimant, the expected value of litigation is:

EVLw = (Pw × J) − Cl

where **Pw** represents the claimant's probability of success, **J** represents the amount of the probable judgment, and **Cl** represents litigation costs. For the defendant, the corresponding value is:

EVLd = (Pl × J) + Cl

where **Pl** represents the defendant's probability of losing (Cooter & Ulen, 2016).

Negotiation will succeed when the Zone of Possible Agreement (ZOPA) is positive; that is, when the minimum amount the claimant is willing to accept is lower than the maximum amount the defendant is willing to pay. If this zone becomes negative, negotiation fails and the dispute proceeds to arbitration or litigation.

This model has two important implications for the design of the legal system (Cooter & Ulen, 2016). First, the higher the litigation costs (**Cl**), the broader the zone of agreement and the greater the likelihood that negotiation will succeed. Second, the greater the divergence between the parties' assessments of the probability of success (**Pw** and **Pl**), the narrower the zone of agreement and the greater the likelihood of negotiation failure. In other words, the legal system should be designed so that, on the one hand, litigation costs remain at a reasonable level and, on the other hand, predictability is enhanced so that the parties' estimates of the probable judicial outcome converge. Ebrahimi et al. (Ebrahimi et al., 2018), in their economic analysis of pre-contractual negotiation, concluded that the absence of transparent rules governing pre-contractual liability in the Iranian legal system is the most important factor contributing to uncertainty and negotiation failure.

Table 1. Factors Affecting the Scope of the Zone of Possible Agreement

Factor	Effect on the Zone of Agreement	Legal Response
Increase in litigation costs (Cl)	Expansion of the zone of agreement	Maintaining litigation costs at a reasonable level
Increase in divergence in estimated outcomes (ΔP)	Contraction of the zone of agreement	Increasing predictability through explicit legal rules
Increase in the amount in dispute (J)	Expansion of the zone of agreement, provided the parties agree on P	—
Existence of information asymmetry	Contraction of the zone of agreement	Requiring disclosure of material information

2.2. *Information Asymmetry Theory and Negotiation Failure*

Why do negotiations that are economically advantageous to both parties nevertheless fail? Bebchuk's answer (Bebchuk, 1984), developed in his theory of litigation and bargaining under asymmetric information, is that the private information possessed by each party concerning the probable outcome of litigation produces divergent, and sometimes contradictory, assessments.

In Bebchuk's model, each party estimates the probable outcome of litigation on the basis of its own information and assessment. If the claimant estimates the probability of success at 70%, whereas the defendant estimates the probability of losing at only 30%, the zone of agreement narrows and the probability of negotiation failure increases. This problem is particularly acute in legal systems characterized by inconsistent and unpredictable judicial practice, because each party may rely on different strands of existing case law to justify its own assessment (Bebchuk, 1984).

The implication of this theory for legal-system design is clear: the greater the predictability of the legal system, the lower the information asymmetry and the broader the zone of agreement. Badini (Badini, 2016), in his economic analysis of contract law, emphasizes that transparency and predictability of legal rules are not merely formal values but conditions for the economic efficiency of the legal system.

2.3. *Optimal Deterrence Theory and the Design of Legal Remedies*

If negotiations fail because of opportunistic conduct by one of the parties, the legal system should establish an appropriate remedy to prevent repetition of such conduct. But what constitutes an economically desirable remedy? The answer lies in Gary Becker's theory of optimal deterrence (Becker, 1968).

Becker argued that the sanction attached to a legal rule should be designed so that the expected cost of unlawful conduct exceeds its expected benefit. Adapting Becker's model, this relationship may be formulated as follows: the expected cost of violation, consisting of the probability of detection multiplied by the magnitude of the sanction, must exceed the expected benefit derived from the violation. If the expected cost is lower than the benefit, a rational actor will have an economic incentive to violate the rule (Becker, 1968).

This theory is directly applicable to the obligation to negotiate. Suppose that, during negotiations, a company acquires confidential information belonging to the other party and then abruptly terminates the negotiations in order to use that information to obtain a more advantageous agreement with a third party. If recoverable damages are limited solely to the costs incurred by the other party—that is, negative-interest damages—and the benefits obtained from the substitute contract exceed those costs, the company will have an economic incentive to engage in such opportunistic conduct. This constitutes under-deterrence: the remedy is insufficient to discourage the violation (Posner, 1973).

In this analysis, a distinction must be drawn between an obligation to negotiate, as an obligation of means, and an obligation to reach agreement, as an obligation of result. Under an obligation to negotiate, the parties are merely required to make a genuine and good-faith effort to reach agreement; they are not obliged actually to conclude an agreement. Accordingly, failure to reach agreement does not in itself constitute a breach. Liability arises only where the conduct of one party during the negotiation process involves fault, such as fraud or unfair termination. This distinction is important in determining the scope of damages: under an obligation of means, recoverable damages are principally confined to reliance losses, or negative-interest damages, whereas under an obligation of result, compensation may also extend to lost benefits, or positive-interest damages (Terré et al., 2013).

Accordingly, an economically optimal remedial model should be designed so that, at every level of fault, the expected cost of violation exceeds its expected benefit. This requires a precise differentiation among degrees of fault and proportionality between the degree of fault and the damages awarded. Karimi and Mousavi (Karimi & Mousavi, 2020), in their analysis of contractual remedies, concluded that an economically desirable remedy is one that makes the cost of breach to the wrongdoer greater than its benefit, rather than one that focuses exclusively on compensating the injured party.

3. Economic Analysis of the Distinction Between Negative- and Positive-Interest Damages in Comparative Legal Systems

3.1. The French Model: Statutory Differentiation with an Emphasis on Protecting the Good-Faith Party

French law, through Article 1112 of the Civil Code as amended in 2016, represents one of the clearest statutory approaches to distinguishing between negative- and positive-interest damages. The provision establishes that, where fault is committed in the course of negotiations, compensation may not be calculated by reference to the benefits expected from the contract that was ultimately not concluded (Terré et al., 2013). Article 1104 likewise subjects the negotiation, formation, and performance of contracts to a requirement of good faith and characterizes that requirement as mandatory (Terré et al., 2013).

French judicial practice has consistently applied this distinction. In Decision No. 08-22345 of January 14, 2010, the Paris Court of Appeal limited recoverable damages to study, consultancy, and administrative expenses and expressly held that the profit the claimant might have derived from the anticipated contract was not recoverable (Terré et al., 2013). Similarly, in Decision No. 11-26789 of February 7, 2013, the Paris Commercial Court rejected the claimant's request for lost profits on the basis of the same limitation (Terré et al., 2013).

Economic analysis of this approach reveals both advantages and disadvantages. On the one hand, limiting damages to negative-interest losses reduces the risk associated with participation in negotiations, thereby expanding the zone of agreement and increasing the willingness of parties to negotiate. On the other hand, where the wrongful conduct involves intentional bad faith, this approach may result in under-deterrence. For example, if a company enters negotiations for the purpose of obtaining confidential information and, after terminating the negotiations, enters into a contract with a third party worth €500,000, while the recoverable loss suffered by the negotiating counterparty is limited to €50,000, the violation would remain economically profitable.

Table 2. Cost-Benefit Analysis of Opportunistic Conduct Under the French Model

Scenario	Benefit from Violation (€)	Cost of Violation (€)	Economic Outcome
Ordinary case	100,000	80,000	Violation is economically profitable
Intentional bad-faith case	500,000	50,000	Violation is highly profitable
Low-loss case	30,000	25,000	Violation is moderately profitable

The figures presented in Table 2 are hypothetical and are intended solely to illustrate the logic of cost-benefit analysis. In practice, precise estimation of these amounts would require empirical investigation beyond the scope of this article.

As Table 2 demonstrates, in all three scenarios the benefit obtained from the violation exceeds its cost. This situation constitutes systematic under-deterrence within the French model.

3.2. The English Model: Differentiation According to the Type of Fault

English law adopts a different approach: instead of distinguishing primarily between negative- and positive-interest damages, it differentiates remedies according to the type of misrepresentation. Three categories are generally recognized: fraudulent, negligent, and innocent misrepresentation (McKendrick, 2020).

In fraudulent misrepresentation, *Doyle v. Olby (Ironmongers) Ltd* [1969] 2 QB 158 establishes that all direct and consequential losses resulting from the fraud may be recoverable, even where they were not foreseeable (McKendrick, 2020). *Smith New Court Securities Ltd v. Scrimgeour Vickers* [1997] AC 254 likewise confirmed this approach (McKendrick, 2020). However, *Royscot Trust Ltd v. Rogerson* [1991] 2 QB 297, which extended a comparable measure of damages to negligent misrepresentation, has been subject to substantial criticism (McKendrick, 2020).

For negligent misrepresentation, Section 2(1) of the Misrepresentation Act 1967 provides for damages in circumstances prescribed by that statutory regime. In cases of innocent misrepresentation, Section 2(2) permits the court, in appropriate circumstances, to award damages in lieu of rescission (Peel, 2015).

Economic analysis indicates that differentiation according to the degree and type of fault is, in principle, more consistent with the optimal-deterrence model: the greater the degree of fault, the greater the damages should be in order to ensure that the expected cost of the violation exceeds its benefit. The difficulty with this model, however, lies in evidentiary costs. To obtain broader damages, the claimant may be required to establish knowledge of falsity or recklessness as to whether the representation was true or false (McKendrick, 2020). This substantial evidentiary burden may reduce deterrent effectiveness in practice because many forms of opportunistic conduct escape adequate sanction due to the difficulty of proving bad faith.

3.3. The Iranian Model: Legislative Vacuum and Inconsistent Judicial Practice

The Iranian legal system faces a substantial legislative vacuum concerning the obligation to negotiate and liability arising from its breach: no explicit statutory provision directly regulates the matter. The scattered provisions of the Civil Code, including Articles 206 and 220, primarily concern the stage following contract formation (Katouzian, 2011).

Iranian judicial practice is also inconsistent and difficult to predict. In Decision No. 9309970222400296 of Branch 24 of the Tehran Province Court of Appeal, issued in 2014, the court treated a negotiation clause as a binding precondition to arbitration. By contrast, in Decision No. 890997022300208 of Branch 30 of the Tehran Province Court of Appeal, issued in 2010, the court relied on the principle of freedom of negotiation to reject a claim for reimbursement of negotiation expenses (Ebrahimi et al., 2018).

Economic analysis of this situation reveals several adverse consequences.

First, lack of predictability increases information asymmetry. Each party can rely on a different strand of inconsistent judicial practice to justify its own estimate of the likely outcome of litigation. Consequently, the zone of agreement contracts and the probability of negotiation failure increases (Ebrahimi et al., 2018).

Second, the absence of clear criteria for determining damages increases the risks associated with participating in negotiations. A party negotiating in good faith cannot know what losses will be recoverable if the other party unfairly terminates the negotiations. This uncertainty decreases the willingness to negotiate and increases resort to judicial proceedings.

Third, existing remedies, such as the option of rescission for fraud in contract law, primarily operate after a contract has been concluded and are therefore incapable of adequately deterring opportunistic conduct at the negotiation stage. This situation represents a clear deterrence gap.

3.4. Comparative Analysis and Identification of Efficiency Criteria

A comparison of the French, English, and Iranian models from the perspective of optimal deterrence reveals the following criteria for designing an efficient legal framework.

(a) Proportionality of damages to the degree of fault: The legal system should distinguish among three levels of fault: intentional fault or fraud, negligent fault such as failure to disclose material information, and innocent conduct such as termination of negotiations without bad faith. At each level, damages should be calibrated so that the expected cost of the wrongful conduct exceeds its expected benefit.

(b) Predictability: Rules governing damages should be transparent and predictable so that the parties can calculate legal risks before entering negotiations. From this perspective, the French model, by virtue of its statutory codification, is superior to the other two models.

(c) Enforcement costs: The damages regime should be structured so that the costs of proof and enforcement do not exceed its benefits. The English model imposes substantial enforcement costs by requiring proof of particular forms of fault. The Iranian model, by contrast, effectively imposes no systematic enforcement cost because of the absence of a coherent regime; however, this does not signify efficiency but rather the absence of effective deterrence.

(d) Coherent theoretical foundations: The legal system should rest on coherent theoretical foundations. The French model is based on the principle of good faith, the English model on differentiation among types of fault, while the Iranian model lacks a sufficiently coherent theoretical framework.

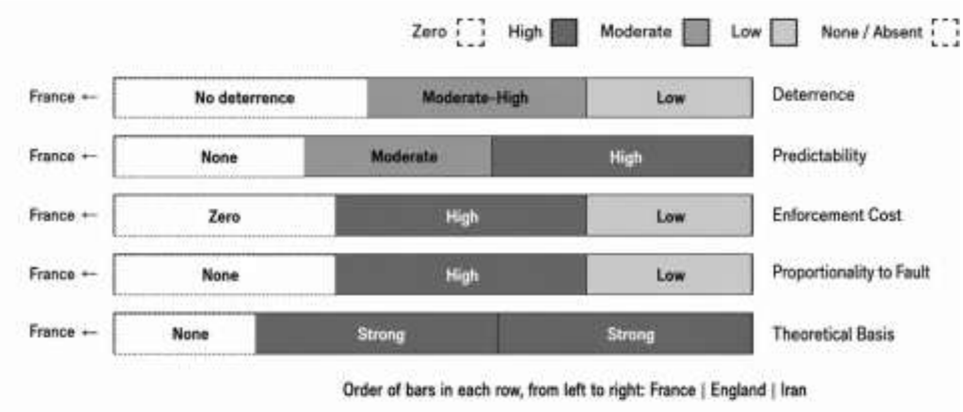

Figure 1. Comparison of the Efficiency of the Three Models

This analysis demonstrates that none of the three models is independently optimal. The French model, by limiting damages to negative-interest losses, produces under-deterrence in cases of intentional bad faith. The English model, because it imposes a substantial evidentiary burden, may likewise fail to provide adequate deterrence in practice. The Iranian model fundamentally lacks a coherent deterrent mechanism. The preferable solution is therefore to combine the advantages of the French and English approaches and remedy the deficiencies of the Iranian model through an optimal-deterrence framework.

4. A Proposed Model for Iranian Law Based on Economic Analysis

4.1. Economic Critique of the Existing Situation and the Need for Reform

As discussed in Section 2-3, the current state of Iranian law constitutes, from an economic perspective, a form of market failure in the field of commercial negotiations. The absence of clear rules has reduced predictability to an extremely low level and substantially increased transaction costs. Under such circumstances, even negotiations that could potentially result in agreement may fail because of severe information asymmetry.

To address this problem, the author's 2023 doctoral dissertation, entitled *Requirements and Effects of Recognizing Negotiation as a Method of Resolving Commercial Disputes* at the University of Tehran, proposed a number of provisions for incorporation into the Iranian Civil Code. Among these is proposed Article 339 bis, which recognizes negotiation in good faith as a legal obligation and provides that pre-contractual negotiations must be conducted in good faith. Either party may terminate the negotiations, provided that termination is undertaken in good faith, with prior notice, and within a reasonable period. Abrupt and unjustified termination of negotiations that have reached an advanced stage and have caused the other party to incur substantial expenses constitutes an abuse of rights and gives rise to liability. Proposed Article 339 bis 2 further establishes a framework for pre-contractual liability by identifying four categories of fault in negotiations—providing false information or withholding material information; using confidential information exchanged during negotiations without the consent of the other party; abruptly terminating advanced negotiations without prior notice and without legitimate justification; and engaging in any other deceptive conduct that misleads the other party—and by distinguishing between negative- and positive-interest damages. Under this provision, recoverable damages are limited to costs incurred and losses suffered directly as a result of reliance on the continuation of negotiations, namely negative-interest damages. Benefits lost because the contract was not concluded, namely positive-interest damages, are not recoverable unless intentional deceptive conduct is established. The following section provides an economic analysis of these proposed provisions.

4.2. Economic Analysis of the Proposed Provisions

Economic analysis of the proposed provisions from the perspective of optimal deterrence reveals the following considerations.

(a) Negative-interest damages as the general rule: Limiting recoverable damages to costs actually incurred expands the zone of agreement by reducing the risks associated with participation in negotiations. This approach is economically efficient because it prevents the fear of excessive liability from discouraging parties from entering negotiations. This general rule is also compatible with the Imami jurisprudential rule of *lā ḍarar*: unfair termination of negotiations constitutes the infliction of harm upon another, and the *lā ḍarar* rule supports compensation for that harm (Al-Ansari, 1995).

(b) Positive-interest damages in cases of intentional bad faith: The exception permitting recovery of positive-interest damages in cases of intentionally deceptive conduct represents a means of addressing the under-deterrence inherent in the French model. From the perspective of optimal deterrence, this exception helps ensure that, in cases of manifest bad faith, the cost of the violation exceeds its benefit. The jurisprudential basis for this exception is the rule of *ghurūr*, which supports more extensive liability in cases of intentional deception (Al-Najafi, 1984).

(c) The challenge of proving bad faith: Nevertheless, the principal problem is that proving intentional bad faith, as in the English model, is difficult and costly. This evidentiary difficulty may reduce the deterrent effectiveness of the exception in practice. To address this deficiency, it is proposed that, where wrongful conduct involves manifest bad faith or is undertaken for the purpose of obtaining an illegitimate benefit, the legal system should also permit the award of additional damages.

4.3. Proposed Integrated Optimal-Deterrence Model

On the basis of the preceding analysis, the following integrated model is proposed for determining damages arising from breach of the obligation to negotiate under Iranian law.

Table 3. Integrated Tiered Model of Damages

Tier	Type of Fault	Recoverable Damages	Jurisprudential Basis	Economic Rationale
Tier One (General Rule)	Innocent conduct: termination of negotiations without bad faith	Negative-interest damages: direct and reasonable costs	*Lā Ḍarar* rule	Reducing negotiation risk and expanding the zone of agreement
Tier Two (Qualified Exception)	Negligent fault: failure to disclose material information	Negative-interest damages + demonstrable lost opportunity costs	*Lā Ḍarar* rule + *Ghurūr* rule	Deterrence against negligence
Tier Three (Severe Exception)	Intentional bad faith: fraud, misuse of confidential information	Positive-interest damages: lost benefits + additional damages	*Ghurūr* rule	Complete deterrence against opportunistic conduct

4.3.1. Tier One: General Rule (Negative-Interest Damages)

At this tier, which constitutes the general rule, recoverable damages are limited to the direct and reasonable costs incurred by the other party in reliance on the continuation of negotiations. The jurisprudential foundation of this tier is the *lā ḍarar* rule (Al-Ansari, 1995). Its economic rationale is to establish a minimum level of compensation capable of discouraging minor opportunistic conduct without increasing the risks of negotiation to such an extent that parties are discouraged from negotiating.

4.3.2. Tier Two: Qualified Exception (Extended Negative-Interest Damages)

Where negligent fault is established, such as the failure to disclose material information, recoverable damages should include not only direct costs but also demonstrable lost opportunity costs. The jurisprudential foundation of this tier is the combined application of the *lā ḍarar* and *ghurūr* rules. Its economic rationale is to encourage disclosure of material information and thereby reduce information asymmetry.

4.3.3. Tier Three: Severe Exception (Positive-Interest Damages and Additional Damages)

In exceptional cases involving intentional bad faith, such as manifest fraud or the use of confidential information for competitive purposes, positive-interest damages, including lost benefits, as well as additional damages should be recoverable. The jurisprudential foundation of this tier is the rule of *ghurūr*, which supports heightened liability in cases of intentional deception (Al-Ardabili, 1996; Al-Najafi, 1984).

With respect to additional damages, sometimes described in legal literature as punitive damages, two distinct concepts must be distinguished. The first is punitive damages in the conventional common-law sense, the purpose of which is to punish the wrongdoer. The second is additional damages whose purpose is to achieve complete deterrence in cases of manifest bad faith. This article proposes the second concept, which may be justified within the framework of pecuniary *taʿzīr* in Imami jurisprudence. Pecuniary *taʿzīr* is a sanction that the competent Islamic authority may impose where the public interest requires disciplinary and deterrent measures against the wrongdoer (Al-Hilli, 1989). Although this institution has traditionally been discussed principally within criminal law, some jurists have accepted the possibility of extending it to civil liability in cases of intentional fault (Al-Khoei, 1996). Accordingly, the additional damages proposed at the third tier should not be regarded as an institution foreign to Imami jurisprudence but rather as a form of pecuniary *taʿzīr* designed for deterrent purposes. The economic rationale of this tier is to secure complete deterrence: the expected cost of the violation at this level should be sufficiently high that no rational actor, even where proof of bad faith may be difficult, retains an economic incentive to engage in opportunistic conduct.

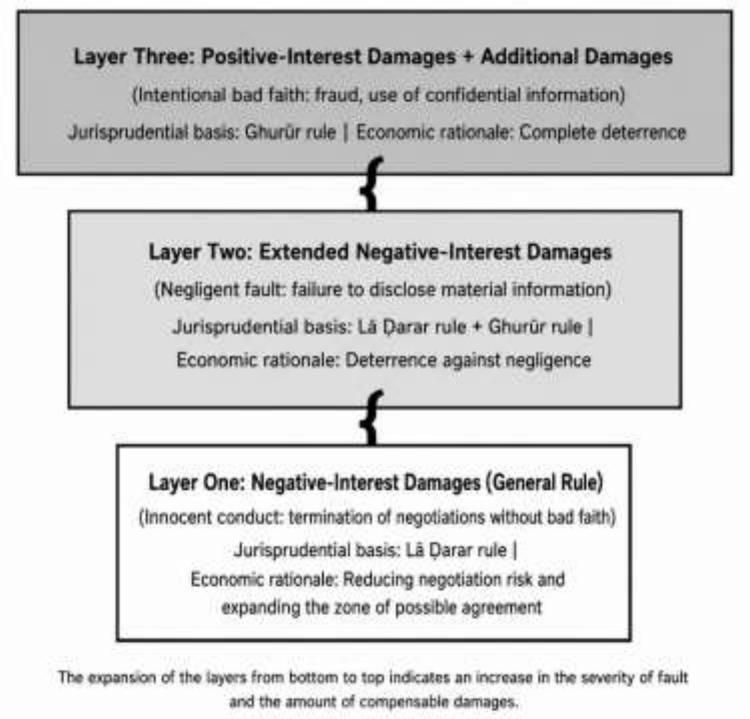

Figure 2. Tiered Structure of Damages in the Integrated Model

4.4. Compatibility of the Model with Imami Jurisprudence

The proposed model is fully compatible with the foundations of Imami jurisprudence. The *lā ḍarar* rule provides the basis for compensation of negative-interest damages at the first tier. The *ghurūr* rule provides the basis for more extensive liability at the second and third tiers. In light of the analysis above, the additional damages proposed at the third tier can also be justified within the framework of pecuniary *taʿzīr* in Imami jurisprudence, eliminating the need to rely on the foreign common-law institution of punitive damages.

5. Conclusion

The economic analysis of negotiation as a method of dispute resolution demonstrates that the efficiency of negotiation depends not only on the skills of the negotiators but also on the design of the legal system. By increasing predictability on the one hand and establishing efficient remedies on the other, the legal system should align the parties' economic incentives with fair conduct.

The findings of this study demonstrate that the French model of limiting recovery to negative-interest damages, despite advantages such as transparency and risk reduction, results in under-deterrence in cases of intentional bad faith. The English model, which differentiates according to the type of fault, likewise loses much of its deterrent efficiency because of the substantial evidentiary burden it imposes. The Iranian model, characterized by a legislative vacuum and inconsistent judicial practice, fundamentally lacks a coherent deterrent mechanism and contributes to systematic negotiation failure.

The integrated model proposed in this article seeks to preserve the advantages of the French and English approaches while addressing their shortcomings by establishing a tiered system of damages proportionate to the degree of fault. Grounded in the jurisprudential rules of *lā ḍarar* and *ghurūr*, the model provides for negative-interest damages as the general rule at the first tier, extended negative-interest damages for negligent fault at the second tier, and positive-interest damages together with additional damages for intentional bad faith at the third tier. Contrary to an initial assumption, the additional damages contemplated at the third tier are not an institution alien to Imami jurisprudence but may instead be conceptualized as a form of pecuniary *taʿzīr* designed to achieve deterrence.

Future research could empirically examine the effect of additional damages on negotiation success rates in legal systems that recognize such remedies, thereby contributing to the empirical validation of the proposed model. Economic analysis of negotiation clauses in long-term contracts, including petroleum and investment agreements, could also open new avenues of research in this field. Comparative research on the feasibility of recognizing pecuniary *taʿzīr* within civil liability constitutes another valuable direction for future scholarship.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

Acknowledgments

Authors thank all who helped us through this study.

Conflict of Interest

The authors report no conflict of interest.

Funding/Financial Support

According to the authors, this article has no financial support.

References

Al-Ansari, M. (1995). *Al-Makasib*. World Forum for Proximity of Islamic Schools of Thought.
Al-Ardabili, A. (1996). *Majma' al-Fa'ida wa al-Burhan fi Sharh Irshad al-Adhhan* (Vol. 8). Jama'at al-Mudarrisin Publications.
Al-Hilli, J. f. i. H. (1989). *Shara'i al-Islam fi Masa'il al-Halal wa al-Haram* (Vol. 4). University of Tehran Press.
Al-Khoei, S. A. (1996). *Misbah al-Fiqaha* (Vol. 1). Maktabat al-Dawri Publications.
Al-Najafi, M. H. (1984). *Jawahir al-Kalam fi Sharh Shara'i al-Islam* (Vol. 22). Dar Ihya al-Turath al-Arabi.
Badini, H. (2016). *Economic Analysis of Contract Law*. Mizan.
Bebchuk, L. (1984). Litigation and Settlement Under Imperfect Information. *Rand Journal of Economics*, *15*(3), 404-415.
Becker, G. (1968). Crime and Punishment: An Economic Approach. *Journal of Political Economy*, *76*(2), 169-217.
Coase, R. (1960). The Problem of Social Cost. *Journal of Law and Economics*, *3*, 1-44.
Cooter, R., & Ulen, T. (2016). *Law and Economics* (7th ed.). Addison-Wesley.
Ebrahimi, S. N., Hosseini, S. A., & Razavi, S. M. (2018). Economic Analysis of Pre-Contractual Negotiation: A Comparative Study in Iranian and French Law. *Quarterly Journal of Private Law Research*, *7*(24), 41-66.
Karimi, A., & Mousavi, S. M. (2020). Efficient Remedies in Contract Law: An Economic Analysis Approach. *Journal of Comparative Law Studies*, *11*(1), 113-136.
Katouzian, N. (2011). *General Rules of Contracts* (Vol. 1). Enteshar Joint Stock Company.
McKendrick, E. (2020). *Contract Law: Text, Cases, and Materials* (9th ed.). Oxford University Press.
Peel, E. (2015). *Treitel on the Law of Contract* (14th ed.). Sweet & Maxwell.
Posner, R. (1973). *Economic Analysis of Law* (1st ed.). Little, Brown and Company.
Terré, F., Simler, P., & Lequette, Y. (2013). *Droit civil: Les obligations* (11th ed.). Dalloz.