

Landlord and Tenant Obligations Regarding the Maintenance of the Leased Property under Iraqi and Iranian Law

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Abstract

Using a descriptive-analytical and comparative approach, the present study examines landlord and tenant obligations within the legal systems of Iran and Iraq. The findings indicate that, despite fundamental similarities in their jurisprudential foundations, significant differences exist in the manner in which these obligations are regulated and enforced. Influenced by both modern European legal systems and Islamic jurisprudence, the Iraqi Civil Code provides a clearer definition of necessary repairs in Article 750 and draws a precise distinction between repairs required to preserve the leased property from destruction and those necessary to ensure the intended use and benefit of the property. Furthermore, Article 751 distinguishes between total and partial destruction of the leased property, establishes specific legal remedies for each situation, and grants the tenant the option of either obtaining a reduction in rent or terminating the contract. By contrast, the Iranian Civil Code does not provide a precise criterion for distinguishing major repairs from minor repairs. One of the principal challenges within the Iranian legal system is the inconsistency between the Civil Code and the special laws governing landlord–tenant relations. Article 492 of the Iranian Civil Code adopts a sequential approach to remedies for a tenant’s breach of obligations, initially requiring the landlord to prevent the tenant from continuing the prohibited conduct, whereas the special laws adopt an alternative approach and directly recognize the landlord’s right to terminate the lease. Article 493 of the Iranian Civil Code holds the tenant liable in cases of transgression or negligence, even for defects or damage not directly caused by the tenant’s fault. This rule may be criticized from the perspective of the principles of civil liability, according to which the establishment of liability requires proof not only of fault but also of a causal relationship between the wrongful act and the resulting damage. Furthermore, the issue of contractual clauses imposing absolute liability on tenants—which are common in lease agreements in practice but conflict with the prevailing opinion of Imami jurists regarding the invalidity of such clauses—reveals a gap between legal theory and contractual practice. The comparative analysis further demonstrates that the Iraqi Civil Code, through its broad recognition of the principle of freedom of contract and its treatment of most relevant obligations as supplementary rather than mandatory rules, affords the contracting parties greater flexibility. In contrast, Iranian legislation, with the objective of protecting tenants as the weaker contractual party, imposes mandatory restrictions that may not be equally justifiable in commercial and industrial lease agreements.

Keywords: landlord obligations, tenant obligations, leased property, major repairs, minor repairs, destruction of the leased property, Iranian law, Iraqi law.

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1. Introduction

The lease contract, as one of the most important and widely used nominate contracts in legal systems, plays a fundamental role in regulating the financial and economic relations of societies. This contract, which has received particular attention in Islamic jurisprudence and the positive law of Islamic countries, is essentially based on the temporary transfer of the usufruct of a property to the lessee in exchange for specified consideration. Nevertheless, achieving the objectives of a lease contract and maintaining a balance between the rights and interests of the parties require a precise understanding of the reciprocal obligations of the lessor and lessee, particularly with regard to the preservation and maintenance of the leased property. In this context, determining the scope and limits of each party's obligations concerning the preservation, maintenance, and repair of the leased property has consistently constituted one of the fundamental challenges of lease law. This complexity becomes even greater when different laws adopt divergent approaches to distinguishing major repairs from minor repairs, determining liability for the destruction or alteration of the leased property, and specifying the legal remedies applicable to breaches of these obligations.

The significance of the present study may be assessed from both theoretical and practical perspectives. From a theoretical perspective, a comparative examination of the obligations of lessors and lessees in the legal systems of Iran and Iraq—both of which have been influenced by Imami jurisprudence but have followed different paths in the drafting and enactment of statutory provisions—may contribute to a better understanding of the jurisprudential and legal foundations of these obligations, the similarities and differences between the two systems, and ultimately the formulation of reform-oriented solutions for both legal systems. From a practical perspective, given the widespread use of lease contracts in economic and social relations, the lack of clarity concerning the boundaries of the parties' obligations, particularly with respect to different categories of repairs, liability for the destruction or alteration of the leased property, and the permissible scope of use of the leased property, gives rise to numerous disputes in practice. Such disputes not only increase the caseload of courts but also generate uncertainty in lease transactions. Furthermore, the existence of multiple and sometimes conflicting statutes in Iranian law—including the Civil Code of 1928, the Landlord and Tenant Relations Act of 1977, and its subsequent amendments—as well as interpretive differences in judicial practice, further underscores the need for a comprehensive comparative study. By contrast, the Iraqi Civil Code, which is influenced by modern European laws while simultaneously grounded in Islamic jurisprudence, adopts a different approach to regulating these relationships, and its comparative examination may provide new perspectives for understanding these issues.

The present study seeks to answer the principal question of what obligations are imposed on lessors and lessees regarding the preservation and maintenance of the leased property under Iranian and Iraqi law, and what similarities and differences exist between the two systems in this regard. It also examines how major (necessary) and minor repairs are defined in the two legal systems and how the respective scope of liability of the lessor and lessee is determined.

The purpose of this study is also to elucidate the obligations of lessors and lessees concerning the maintenance of the leased property; to conduct a comparative analysis of Iranian and Iraqi law regarding different categories of repairs, destruction of the leased property, and the manner in which it may be used; to identify the strengths and weaknesses of the existing laws in the two legal systems; and to propose reforms aimed at resolving existing ambiguities and inconsistencies.

The present research is a fundamental study employing a descriptive-analytical and comparative approach. Data were collected through library research by consulting jurisprudential sources, legal books and articles, statutes, and relevant regulations, after which the collected information was analyzed. In the comparative section, the statutory provisions of Iran and Iraq were examined in parallel, and their similarities and differences were analyzed.

To achieve the foregoing objectives, the present study is organized into two principal sections. The first section addresses the lessor's obligations concerning the maintenance of the leased property and comprises two subsections: the first examines

repairs to the leased property, while the second addresses alteration or destruction of the leased property. The second section concerns the lessee's obligations regarding maintenance of the leased property and is likewise divided into two subsections: the first examines the obligation to preserve the leased property, and the second considers the obligation to use the leased property in accordance with its intended or customary purpose.

2. The Lessor's Obligation to Maintain the Leased Property under Iraqi and Iranian Law

Neither Iraqi nor Iranian law provides a specific definition of the obligation to preserve and maintain the leased property. Article 750(1) of the Iraqi Civil Code refers to the substance of this obligation and provides that: "The lessor shall be obligated to repair and remedy any defect or damage occurring in the leased property that interferes with the intended benefit thereof." Accordingly, the obligation to preserve and maintain the leased property may be defined as "an obligation imposed upon the obligor by contract or statutory provision to undertake the measures necessary to preserve the continued existence and functionality of the leased property so as to secure its intended benefit." (Diab, 2007)

The obligations of both parties to a lease contract—the lessor and the lessee—concerning the repair and preservation of the leased property must have a legal foundation upon which they are based. Such obligations may be grounded in the principle of good faith, since this principle constitutes one of the fundamental principles governing the formation and performance of contracts. They may also be based on the principle of safeguarding integrity, pursuant to which the obligor is required either to protect the physical integrity of the obligee or to preserve the subject matter of the contract. On this basis, a lessor may sometimes remain in good faith despite failing to perform an obligation where the lessor genuinely intended to perform it but was prevented by a justified excuse. In such circumstances, the lessor cannot be regarded as acting in bad faith and the failure does not necessarily constitute a breach, because the extent of the lessor's obligation must be assessed in light of the lessor's abilities, available resources, and surrounding circumstances. However, where performance is possible and no unavoidable impediment prevents it, the obligor—the lessor—is not discharged from the obligation owed to the obligee—the lessee—and failure to perform constitutes conduct inconsistent with good faith. This is because the duty of performance remains in force even where certain obstacles exist, provided that those obstacles are capable of being removed by the lessor. (Karkabi, 2004) Accordingly, this section examines the lessor's obligation under Iranian and Iraqi law in two subsections.

2.1. Repairs to the Leased Property

Pursuant to Article 750(1) of the Iraqi Civil Code, "the lessor shall be obligated to repair and remedy any defect or deficiency occurring in the leased property that interferes with the intended benefit thereof." The rationale underlying this provision is unquestionably the necessity of ensuring that the lessee can achieve the intended purpose of using the leased property, whether that purpose has been expressly agreed upon by the parties or corresponds to the natural use of the leased property. The position adopted by the Iraqi Civil Code in this respect is consistent with modern and contemporary legal systems that have adopted the same approach and from which Iraqi civil law has been influenced. The repairs and restorations that the lessor is required to undertake are "necessary repairs" required for the use of the leased property, regardless of whether they are also necessary to preserve the property from destruction. Examples of necessary repairs aimed at preventing destruction include strengthening the foundations of a building that is at risk of collapse because of structural weakness and repairing cracks that have appeared in the walls or roof. Because such repairs are indispensable to preserving the property from destruction, they constitute not only an obligation imposed upon the lessor but also a right belonging to the lessor, which the lessee may not prevent the lessor from exercising. The second category of necessary repairs comprises repairs that are not required to preserve the leased property from destruction but are necessary for its proper use in accordance with the purpose of the lease contract. Examples include work required for plastering or finishing surfaces and repairing elevators and stairways.

The rule contained in Article 750 of the Iraqi Civil Code is not mandatory, and the parties may agree otherwise. Accordingly, the contracting parties may depart from the applicable custom and agree that some or all such repairs shall be borne by the lessee rather than the lessor, or they may exempt the lessor from these obligations. If the lessor refuses to undertake the necessary repairs and restorations, the lessee is entitled, after obtaining authorization from the court, either to terminate the contract or to carry out the repairs personally and recover their cost from the lessor.

One of the most important obligations of the lessor is to maintain the leased property so that the lessee can continue to use it. Any deterioration of the leased property may disrupt or make impossible the lessee's use of it and may ultimately defeat the principal purpose of the lease contract, namely the lessee's enjoyment of the property. For this reason, the Iraqi legislature has imposed the duty to maintain the property on the lessor so that the lessee may continue to use it. Article 750(1) of the Iraqi Civil Code expressly provides that: "The lessor shall repair and restore any damage occurring in the leased property that interferes with its use."

Accordingly, under Iraqi law, the obligation to undertake necessary repairs to ensure the lessee's proper enjoyment of the leased property constitutes a fundamental and significant duty of the lessor. Nevertheless, certain repairs are required exclusively to preserve the leased property itself from destruction or damage and are therefore of even greater importance. While the lessor is obligated to undertake the first category of repairs for the benefit of the lessee, the lessee is also entitled to compel the lessor to perform such repairs where they are indispensable to continued enjoyment of the property. Conversely, the lessor is entitled to carry out urgent repairs even against the lessee's objection, because preservation of the property itself takes priority over the lessee's temporary enjoyment. (Amer & Amer, 1979) For the lessor to exercise this right, the repairs must be necessary and urgent and must not merely be intended to improve or upgrade the leased property, because improvements may ordinarily be postponed until the expiration of the lease term. In such circumstances, the lessor should not unnecessarily interfere with the lessee, who is entitled to full enjoyment of the leased property during the lease term. It is also required that such repairs be necessary specifically to protect the leased property from damage or destruction. (Abd al-Zahra Abdullah, 2001) For example, the lessor may undertake necessary repairs on the upper floor of a building in order to protect a floor at risk of collapse and thereby prevent damage to the entire structure. In light of the foregoing, repairs to the leased property undertaken by either the lessor or the lessee may be regarded both as a legal obligation imposed upon the parties and as a right recognized for each of them under appropriate circumstances. (Jabr, 1985)

Necessary repairs and restorations may be undertaken either to restore full enjoyment of the leased property after damage has caused a defect or impairment in such enjoyment, or to preserve the leased property from destruction. Article 752 of the Iraqi Civil Code recognizes the lessor's right to undertake repairs necessary to preserve the leased property and provides: "1. Where the leased property requires necessary repairs for its preservation, the lessee may not prevent the lessor from carrying them out. However, if such repairs interfere with residence in or enjoyment of the property, the lessee may request termination of the lease or a reduction in rent. 2. If the lessee remains in the leased property until completion of the repairs, the right to request termination shall lapse." It follows from this provision that the need for such repairs or restorations gives the lessor the right to undertake them even if the lessee has not requested them or expressly objects to their performance. The reason is that, as previously noted, such repairs are necessary to preserve the leased property. An example would be cracks in the walls of a leased house that place the structure at risk of collapse. (Abu al-Saud, 1996)

Courts have adopted a broad interpretation of the term "repairs" and permit the lessor not only to carry out repairs in the strict sense—that is, positive physical measures undertaken in relation to the leased property—but also to prevent external factors from threatening it. For example, the lessor may request the water authority to discontinue the flow of water through the pipes of the leased premises where necessary. Although the law grants the lessor the right to perform repairs required to maintain the leased property and prevent its destruction, it correspondingly grants the lessee the right to request termination of the lease or a reduction in rent proportionate to the reduction in enjoyment where such repairs interfere with use of the property. Nevertheless, if the lessee remains in the leased property until the lessor has completed the repairs, the right of termination lapses, and the lessee may only claim a reduction in rent proportionate to the reduction in the benefit obtained. (Zerrouki, 2013)

Under the Iranian Civil Code, major repairs relating to the substance of the leased property and major installations connected with the building and its essential structure are legally the responsibility of the lessor, whereas the remaining minor repairs associated with the lessee's personal and proper enjoyment are borne by the lessee. These provisions are supplementary in nature, however, and the parties may validly agree otherwise. Custom also has precedence in this context to the extent recognized by law; thus, where local custom establishes a particular allocation of expenses between lessor and lessee, that customary allocation is applicable. The Iranian legislature likewise addressed this issue in the Landlord and Tenant Relations Acts of 1977 and 1983. Article 486 of the Civil Code, in the chapter concerning leases, provides: "Repairs and all expenses

necessary in the leased property to make enjoyment thereof possible shall be borne by the owner, unless otherwise stipulated or unless local custom provides otherwise; the same applies to instruments and equipment necessary for enjoyment of the leased property.” The basis of the lessor’s obligation to bear the cost of major repairs is that, in return for receiving rent, the lessor is required to make available to the lessee property capable of being beneficially used. Consequently, such enjoyment necessarily requires that the property remain in a sound condition and that repairs and expenses required to preserve that condition be provided. (Katouzian, 2002) As noted above, necessary repairs may be required to preserve the leased property, even where such repairs temporarily prevent the lessee from enjoying all or part of the leased property. Accordingly, Article 485 of the Civil Code provides that where, during the lease term, the leased property requires repairs whose omission would result in damage to the lessor, the lessee may not prevent the repairs, even if the lessee is temporarily unable to use all or part of the leased property during the period in which they are undertaken. To protect the lessee’s interests, however, the legislature grants the lessee a right of termination. The determination of whether repairs are necessary rests exclusively with the court. The court may order the lessee to permit the repairs and, where necessary, may order temporary evacuation of the premises. This matter was also addressed in Article 22 of the Landlord and Tenant Relations Act of 1977. The converse is equally applicable: where the leased property requires major repairs and the lessor fails to take the necessary measures, the lessee may compel the lessor to undertake those repairs. (Katouzian, 2002)

With regard to the performance of the obligation to undertake major repairs, the lessor is ordinarily responsible for carrying them out. The lessor may, however, authorize the lessee under the lease contract to undertake the repairs and deduct the corresponding expenses from the rent. Where no such authority has been granted and the lessor fails to fulfill the obligation, the lessee may petition the court to compel the lessor to perform the major repairs. The court may order the lessor to carry out the repairs and, if the lessor refuses, the costs and means required to execute the judgment may be obtained from the lessor’s assets or from the rent. Where the lessor’s failure has caused loss to the lessee, the lessor must also compensate that loss, with the amount to be determined by the court. An important issue arises where the lessee undertakes repairs without the lessor’s authorization or personally carries them out under the belief that they constitute major repairs that must be performed. Pursuant to the express wording of Article 502 of the Civil Code, the lessee is not entitled to recover their cost. (Katouzian, 2002)

2.2. *Alteration or Destruction of the Leased Property*

The prevailing view among jurists is that a lease of a specific property becomes void if the leased property is destroyed before delivery, or immediately thereafter. If destruction occurs during the lease term, however, the lessee may recover the rent in proportion to the remaining period where the temporal segments are equal in value; where their values differ, the calculation is made proportionately. Nevertheless, some jurists have questioned the rule governing destruction and have stated that “absolute invalidity in the event of destruction is open to question; however, as a matter of precaution, if the lessee seeks recovery of the rent, the contract should be terminated.” (Abu al-Wafa, 1982) The jurisprudential basis for the automatic termination of the lease with respect to the remaining period has been explained through several approaches.

First view: Reliance is placed on authorities indicating the invalidity or automatic termination of a sale where the subject matter is destroyed before delivery, on the reasoning that the specific character of the sale is immaterial and that the same rule should therefore extend to all commutative contracts.

Critique of the first view: The analogy between lease and sale is not valid. Even assuming that such an analogy were accepted, it would at most support invalidity where destruction occurs before delivery, not immediately after delivery, much less where destruction takes place during the lease term, unless it is supplemented by the reasoning advanced under the second view.

Second view: In a lease contract, the subject matter of the transaction consists of benefits that accrue progressively over time. Therefore, where the leased property is destroyed, benefits that would have arisen after its destruction never actually come into existence. Consequently, the lease contract is deemed invalid with respect to that portion of the benefits.

This reasoning cannot be rejected merely on the ground that there should be no distinction between accidental destruction and intentional destruction, or on the basis that accepting invalidity in the former case while recognizing a right of termination or election for the lessee in the latter creates inconsistency or contradiction in the legal rules. (Al-Shamaa, 2006)

This apparent inconsistency may be explained by the fact that custom and reasonable persons recognize such a distinction. From their perspective, accidental destruction occurring outside the control of the obligor naturally indicates the nonexistence of future benefits, whereas intentional destruction resulting from the obligor's voluntary conduct—without the leased property being destroyed in a manner that renders future benefits objectively nonexistent—is treated as a removal of performance rather than an extinguishment of the obligation. Accordingly, such intentional destruction does not automatically terminate the contract but instead gives rise to an obligation to compensate for the resulting damage, while preserving the lessee's right to terminate where the lessee was not responsible for the destruction, because the customary implied condition requiring delivery and preservation of the leased property has been breached. (Al-Qaisi, 1998)

Third view: The objective purpose of commutative transactions is to establish contracts on the basis of a legally and customarily recognized exchange, meaning the substitution of one legally protected entitlement of disposition for another. Therefore, where the exchange cannot reasonably occur because the counter-performance is destroyed before delivery, the essential basis of the commutative transaction is regarded as having failed.

Fourth view: One of the requirements for the validity of commutative transactions, both under Islamic law and according to custom, is the possibility of delivery, which must objectively exist at the time the contract is concluded. In relation to benefits that accrue progressively over time, delivery is achieved by transferring possession of the property to the lessee and leaving it in the lessee's possession throughout the lease term. Accordingly, given the customary understanding that ownership of future benefits is transferred to the lessee by virtue of the contract, involuntary destruction reveals that delivery of those benefits has become impossible. Consequently, the contract is considered automatically terminated due to the absence of the requirement of deliverability. By contrast, where the lessor destroys the leased property, the destruction results from the lessor's voluntary conduct and therefore constitutes subsequent incapacity after an initial ability to perform, which does not invalidate the contract. Similarly, where destruction is caused by a third party, invalidity does not result because such destruction is unrelated to the lessor's original capacity to deliver. (Al-Tusi, 1996)

A group of jurists, including the author of *Jawahir al-Kalam*, have recognized this rule on the basis of the divisibility of the transaction from a temporal perspective. Allamah al-Hilli, in part of *Tadhkirat al-Fuqaha*, considered payment of rent obligatory in respect of the elapsed period, whereas he expressed uncertainty regarding the matter in *Tahrir al-Wasilah*. It is noteworthy that although jurists have expressly recognized the lessee's option arising from the divisibility of the transaction in cases of partial destruction of the leased property, they have not expressly recognized such an option in this particular situation of total destruction. (Al-Qaisi, 1998)

It appears that the reason for not recognizing an option in this situation is that the basis of the option of partial failure of consideration (*tab'ud al-safqah*) is a customary implied condition that does not exist in relation to successive temporal portions of a benefit. In other words, there is no implied condition according to which, if part of the lease period cannot be transferred, the lessee would necessarily be dissatisfied with the benefit already received. Moreover, the effect of recognizing such an option in this context would merely be to convert the agreed rent into reasonable rental value, whereas the rational basis underlying the option of partial failure of consideration is different. However, where the lessor leases fungible or generically specified property and delivers one particular instance of that property which is subsequently destroyed, the lease contract is not automatically terminated because the true subject matter of the contract is a generic benefit owed as an obligation and not embodied exclusively in the particular item delivered. In such a case, only the obligation relating to delivery of that particular item is extinguished, and the lessor remains obligated to provide another item conforming to the generic description. (Fayyad, 2007)

Article 751 of the Iraqi Civil Code addresses destruction of the leased property. Under paragraph 1 of this Article, where the leased property is totally destroyed, performance of the lessor's obligations—all of which relate to the leased property and are intended to enable the lessee to enjoy it—becomes impossible. Accordingly, these obligations, as well as the corresponding obligations of the lessee, are extinguished, and the contract is automatically terminated. This rule represents an application of the general principles of law in this area.

Article 751(2) of the Iraqi Civil Code addresses partial destruction and provides: "Where the leased property reaches a condition in which it becomes unsuitable for the use intended under the lease contract, or such use is substantially diminished, without the lessee having contributed to the occurrence of that condition, and the lessor does not restore the leased property to

its former condition within a reasonable period, the lessee shall be entitled to request a reduction in rent or termination of the lease contract.” This provision indicates that, in cases of partial destruction, the Iraqi legislature does not compel the lessor to undertake reconstruction or substantial renewal, but instead leaves the matter to the lessor’s discretion, because the costs of reconstruction are generally considerable, unlike ordinary repairs, whose costs are relatively moderate and which the lessor is therefore required to undertake. Numerous examples may be given of partial destruction and impairment of enjoyment. (Marqus, 1968) These include the collapse of a wall or roof of a house or the drying up of a watercourse used to irrigate leased agricultural land. Partial destruction, however, must not be so extensive that it is effectively equivalent to total destruction.

In all cases, the lessee is entitled to claim damages from the lessor unless destruction of the leased property resulted from a cause for which the lessor bears no responsibility. However, where the destruction results from the conduct of the lessee or persons for whose acts the lessee is legally responsible, the lessor may bring a claim against the lessee for compensation under the general principles of contractual liability. (Al-Jamal, 1991)

Under Iranian law, the extent of the lessor’s obligations concerning repairs to the leased property is significant in determining whether the lease continues or terminates. Such obligations may be imposed on the lessor only to the extent that the leased property can be maintained in a usable condition through reasonable expenditure. For example, where the leased property is destroyed as a result of an external event such as a flood or earthquake, or deteriorates through the passage of time and wear, or must necessarily be demolished, the lessor cannot be compelled to reconstruct it. Accordingly, Article 496 provides that where the leased property is destroyed, the lease becomes void from the date of destruction. Likewise, where destruction is such that repairs cannot restore the property to its former condition or make it capable of beneficial use, the lease becomes void because its subject matter has ceased to exist, and the remaining remedy is compensation for damage. Article 3 of the Iranian Civil Liability Act authorizes the court, in connection with compensation for losses suffered by a lessee, to require the lessor to grant the lessee priority in leasing the premises after reconstruction. This situation must be distinguished from one in which the lessor intentionally destroys the leased property. Article 484 prohibits the lessor from making alterations incompatible with the purpose of the lease. Accordingly, where the lessor undertakes such conduct, the property must be restored to a condition equivalent to its former state. (Katouzian, 2002)

Just as the lessor is required to bear the costs of major repairs relating to the leased property, the lessor is prohibited from undertaking unnecessary repairs or alterations that interfere with the benefit the lessee is entitled to obtain from the leased property. Accordingly, Article 484 provides that during the lease term the lessor may not make alterations to the leased property that are incompatible with the purpose for which the lessee leased it. For example, the lessor may not alter the entrance to a house or change the course of a water channel supplying a leased garden. The alterations contemplated by Article 484 are physical alterations to the leased property. (Katouzian, 2002)

3. The Lessee’s Obligation to Maintain the Leased Property under Iraqi and Iranian Law

This section examines the obligation to preserve the leased property and to use it in accordance with its intended or customary purpose. The analysis is conducted through the following subsections.

3.1. The Obligation to Preserve the Leased Property

3.1.1. The Necessity of Repairs for the Preservation of the Leased Property

Under Iraqi law, minor repairs customarily associated with a lease are borne by the lessee where local custom so requires. Such repairs generally arise either from the lessee’s lack of due care or from ordinary use of the leased property, such as repairing window glass, water taps, and defective locks. Courts enjoy broad discretion in determining the nature of these repairs—whether they are necessary repairs or ordinary lease-related repairs—and judges must take account of local custom, which may vary from one place to another and over time. (Amer & Amer, 1979)

Under Iranian law, the property that becomes the subject matter of a lease was previously in the possession of its owner, who was free to maintain the property as the owner deemed appropriate. It is nevertheless presumed that the owner maintained the property in the best and customary manner. Once the leased property is placed in the lessee’s possession for a specified

period through a lease contract, enabling the lessee to acquire its benefits, the lessee is expected to exercise the care of a custodian in preserving and protecting the lessor's property. The lessee is therefore regarded as an entrusted possessor, and possession is fiduciary in character. Consequently, where the lessee has exercised due care in protecting the leased property but destruction or a defect nevertheless occurs, no liability attaches to the lessee. However, where the lessee exceeds the limits of authorization or the contract—that is, commits transgression or negligence—the lessee's fiduciary possession is transformed into possession giving rise to liability. (Azadi & Hayati, 2020)

Regarding the liability of carriers for safeguarding goods, it should be noted that, in contracts for the hire of services, the person procuring the service is referred to as the hirer, while the person whose services are hired is referred to as the hired person or service provider. Article 513 of the Iranian Civil Code identifies the principal categories of contracts for the hire of services, one of which concerns carriers engaged in transporting persons or commercial goods by land, sea, or air. The carrier's possession, like the lessee's possession of leased property, is fiduciary. With respect to the carrier's liability, Article 516 of the Civil Code provides that the obligations of carriers regarding the protection and preservation of objects entrusted to them are equivalent to those imposed upon custodians. Accordingly, in cases of transgression or negligence, carriers are liable for destruction of or damage to the goods entrusted to them for transportation, with liability commencing from the date the goods are delivered to them. Because carriers are treated as custodians, accidental destruction of entrusted property does not ordinarily create liability unless they have been at fault in safeguarding it. An important point concerning carriers, however, is that their obligation is generally characterized as an obligation to achieve a result. Consequently, failure to deliver the goods in sound condition constitutes a breach, and carriers must demonstrate the absence of fault to avoid liability. Iranian commercial law specifically addresses the liability of carriers. Article 386 of the Commercial Code provides: "If the merchandise is lost or destroyed, the carrier shall be liable for its value unless the carrier proves that the loss or destruction resulted from the inherent nature of the merchandise, from the fault of the consignor or consignee, from instructions given by either of them, or from events that even a diligent carrier could not have prevented." It is therefore evident that two statutory provisions address the same matter. Under the Civil Code, a carrier seeking exemption from liability must establish the absence of fault because the carrier's obligation is one to achieve a result. Under the Commercial Code, however, merely establishing absence of fault is insufficient. Since the person entrusting goods to a carrier confers upon the carrier a responsibility extending beyond that of an ordinary custodian, the carrier consequently bears a heavier burden. Furthermore, because the consignor is not present with the goods throughout transportation and cannot personally safeguard them, the consignor entrusts the carrier with both transportation and preservation of the goods so that they reach the destination safely. Accordingly, to establish a ground for exemption from liability under the Commercial Code, the carrier must prove that the loss or destruction resulted from the inherent nature or condition of the goods, from an external event such as a flood or earthquake, or from the conduct of the consignor or consignee, including erroneous instructions that caused the loss or destruction. Therefore, as previously stated, the carrier's obligation under the Civil Code is an obligation to achieve a result: mere non-performance creates a presumption of fault, and the carrier must rebut that presumption in order to escape liability. Under the Commercial Code, however, because the carrier's obligation arises from an implied undertaking to deliver the goods safely to their destination, proof of absence of fault alone does not suffice; the carrier must establish one of the specific causes identified in Article 386. (Azadi & Hayati, 2020)

With respect to the duty to refrain from transgression and negligence, Article 493 of the Iranian Civil Code provides that a lessee is not ordinarily liable for the leased property. Consequently, where the leased property is wholly or partially destroyed without transgression or negligence on the part of the lessee, the lessee is not liable. However, if the lessee commits transgression or negligence, liability arises even where the resulting defect was not directly caused by that transgression or negligence. The lessee is therefore clearly treated as a custodian and is required to protect the leased property. Regarding its benefits, the lessee must first act in accordance with the provisions of the lease agreement and, where the agreement is silent, in accordance with custom, and must refrain from fault. The fault that transforms fiduciary possession into possession giving rise to liability comprises two forms: transgression and negligence. Transgression means exceeding the limits of permission or custom, whereas negligence means failure by the lessee to perform acts that the lessee is required by custom or law to undertake with respect to the leased property. Reference to custom is important because certain duties of the lessee may not be expressly specified in the contract, in which case the determination of transgression or negligence is left to customary standards.

According to this approach, once a lessee exceeds the limits of authorization or custom, or acts negligently and a defect subsequently occurs, it is not necessary to establish a causal relationship between the lessee's fault and the destruction of the property in order to impose liability. (Katouzian, 2002)

A disputed hypothetical has been discussed among legal scholars. Suppose that the lessee commits transgression or negligence with respect to the leased property for a limited period, but no damage occurs during that period. The lessee subsequently regrets the conduct, ceases the wrongful behavior, and resumes maintaining the property in the manner expected of a custodian. In such circumstances, does the fiduciary character of possession return, or does the lessee's possession remain one giving rise to liability? Some scholars maintain that the lessee's subsequent change of conduct is ineffective and that once possession has become liability-based, it cannot revert to its previous fiduciary character. (Emami, 1993) According to another view, however, because the owner's authorization has not been withdrawn and the lease remains in force, the lessee continues to be regarded as the owner's custodian for as long as the lease subsists and is liable only while committing fault. If the lessee's wrongful conduct persists, the owner's authorization is considered withdrawn, and the lessee's possession becomes liability-based. (Katouzian, 2002)

Different views have also been expressed regarding contractual clauses imposing liability upon the lessee. Some jurists, including al-Shahid al-Thani, maintain that because the lessee's possession is fiduciary and this characteristic is inherent in the lease contract, a contractual term providing otherwise is invalid and may even render the contract itself invalid. Others consider such a clause contrary to Islamic legal principles and therefore void because the lessee is effectively regarded as acting with the owner's authorization. Still others maintain that such a clause is valid even where no fault is attributable to the lessee. An analogy may be drawn to Article 642 of the Iranian Civil Code concerning a borrower's contractual assumption of liability, which provides: "Where liability has been stipulated against the borrower, the borrower shall be responsible for any loss or deficiency, even if it is not attributable to the borrower's act." The rule applicable to gratuitous loan may arguably be extended to other fiduciary contracts, including *mudarabah*, deposit, lease, and similar arrangements, and judicial practice has also tended to support this approach. (Katouzian, 2002) There is likewise disagreement concerning clauses excluding liability. Some scholars regard such clauses as invalid by reference to the principles governing direct and indirect causation of damage, whereas others regard them as valid pursuant to the principle of freedom of contract. In evaluating such clauses, however, validity should not be treated as absolute. Although such a term may generally be valid under the principle of freedom of contract, it remains subject to limitations imposed by morality, good faith, and public order. The parties ordinarily insert such a clause merely to exempt the lessee from liability for ordinary mistakes or errors that any reasonable person might commit. It cannot, however, be invoked to excuse gross negligence or intentional damage to the leased property. (Katouzian, 2023, 2024)

Article 493 of the Civil Code establishes a general rule concerning the lessee's liability and is sufficiently broad to encompass the inclusion of a contractual liability clause in a lease. In practice and in official notarial documents, where such a clause is inserted, it commonly provides that the lessee must return the leased property to the lessor at the end of the lease term in the same condition as on the first day and in sound condition; otherwise, the lessee will be liable for any deficiency or damage that has occurred. Although the prevailing view among Imami jurists is that such an absolute liability clause is invalid, contrary views exist, and the issue remains disputed among legal scholars. Since the Iranian Civil Code is substantially derived from Imami jurisprudence, it has followed the prevailing jurisprudential position by refraining from expressly recognizing such a clause and remaining silent on the matter. This position, however, is inconsistent with prevailing judicial and contractual practice. (Ahmadi & Rahmati, 2021)

3.1.2. Allocation of Responsibility for Necessary and Lease-Related Repairs Between the Lessor and Lessee

The lessor is not required to undertake every type of repair because repairs may be divided into two categories: first, repairs necessary to preserve the functionality of the property and enable its use for the purpose of the lease; and second, repairs undertaken to improve the property or facilitate the lessee's use of it. (Al-Namir, 2006)

Most legal scholars distinguish necessary repairs from lease-related repairs, maintaining that necessary repairs are the responsibility of the lessor, whereas lease-related repairs are borne by the lessee. The Iraqi legislature has adopted the same approach, although the determination of which repairs are necessary and which are lease-related is left to the judge. The

legislature also requires the lessee to permit the lessor to carry out necessary repairs to the property. In relation to movable property, the lease contract may expressly provide that responsibility for all repairs rests with the lessee. (Tanagho, 1998) In practice, financial institutions often transfer the burden of both necessary and lease-related repairs and restorations to the beneficiary of the contract. As financial entities, such institutions seek to avoid assuming technical obligations associated with leased assets. Accordingly, lease agreements often contain a provision requiring the beneficiary to undertake all necessary and lease-related repairs so that the leased assets remain in good condition throughout the lease term. Financial institutions or their representatives may even retain the right to inspect periodically the manner in which the leased assets are being used and to verify that the lessee is carrying out periodic maintenance. (Istanbuli & Abu Habib, 1997)

Under Iranian law, pursuant to Article 486 of the Civil Code, the lessor is responsible for repairs necessary to enable beneficial use of the leased property. The Article provides: “Repairs and all expenses necessary in the leased property to make enjoyment thereof possible shall be borne by the owner, unless otherwise stipulated or unless local custom provides otherwise; the same applies to instruments and equipment necessary for enjoyment of the leased property.” This provision demonstrates that the lessor is responsible for maintaining the usability of the leased property throughout the lease term. Accordingly, repairs such as restoration of the principal building systems, remediation of structural defects, and other work necessary for the ordinary and safe use of the property are borne by the lessor. Under Article 486, the lessor is responsible for major repairs required for the lessee’s use of the property unless the contract or applicable custom provides otherwise. Article 20 of the Landlord and Tenant Relations Act of 1977 provides that major and fundamental repairs to the leased property are borne by the lessor unless otherwise agreed. In addition, Article 10 of the Landlord and Tenant Relations Act of 1983 emphasizes that all major and fundamental repairs to the leased property are the responsibility of the owner unless otherwise stipulated in the contract. Consequently, substantial repairs, including structural rehabilitation, repairs to principal installations such as heating and cooling systems, and other necessary work are borne by the lessor. By contrast, the costs and responsibility for minor repairs are ordinarily allocated to the lessee unless the contract provides otherwise. Such repairs include correcting minor defects resulting from the lessee’s everyday use and replacing consumable items, such as taps or light bulbs.

Article 486 of the Civil Code and the Landlord and Tenant Relations Acts both emphasize that the parties’ agreement or local custom may affect the allocation of responsibility for repairs. If the contract assigns responsibility for major repairs to the lessee and such a provision does not conflict with mandatory rules, it is enforceable. Contractual agreement and local custom may therefore play an important role in allocating responsibility. According to custom, minor repairs generally include measures such as repairing door locks, remedying minor defects caused by the lessee’s use, and replacing consumable items such as light bulbs. Accordingly, the lessee must undertake minor repairs necessary to prevent further damage or deterioration. The parties to a lease contract may also allocate repair obligations by agreement. For example, the lease may provide that the lessee is responsible for certain major repairs. Such an agreement must not conflict with public order or mandatory statutory rules.

Therefore, under Iranian law, necessary repairs required to preserve the usability of the leased property are borne by the lessor, whereas minor and routine repairs arising from the lessee’s use are the responsibility of the lessee, unless the parties agree otherwise.

3.2. The Obligation to Use the Leased Property in Accordance with Its Intended or Customary Purpose

This issue will be examined through the following points.

3.2.1. The Obligation to Use the Leased Property in Accordance with the Agreement

The Iraqi legislature has sought to protect the interests of the owner—the lessor—where a change in the manner of using the property may cause it damage. Consequently, changes in use that do not cause damage to the property are not necessarily subject to the same restriction where there is no legal justification for prohibiting them. (Istanbuli & Abu Habib, 1997) This principle may be inferred from the Iraqi Civil Code, which provides that a person who acquires a specified benefit under a lease is entitled to obtain that same benefit, a similar benefit, or a lesser benefit, but may not obtain a benefit exceeding it. (Al-Sheikh Jasim, 2005)

The matter nevertheless remains subject to the agreement and consent of the contracting parties. It is therefore permissible to restrict the manner in which the property may be used even where an alternative use would not damage the owner's interests. In other words, the parties may, by mutual agreement, impose absolute restrictions on the use of the leased property. This is because regulation of the permitted use reflects the parties' consensual allocation of their respective interests under the contract. (Al-Badrawi, 1991)

Article 761(1) of the Iraqi Civil Code expressly recognizes this principle by providing that a restriction contained in a lease is valid regardless of whether the nature of the benefit varies according to the identity of different users. (Al-Sheikh Jasim, 2005)

In all circumstances, the lessee is required to use the leased property in a manner that does not cause damage. For example, a person who rents a house may not leave it vacant and unattended for an extended period. Likewise, a person who leases a vehicle or mechanical device must use it appropriately or at least store it in a place where it will not be damaged. One of the lessee's most important obligations is therefore to refrain from improper or abusive use of the leased property. Allowing rainwater to enter a building, causing damage through negligence, leaving a water tap running without justification, or placing excessive loads on an animal or vehicle that is not designed for such loads—for example, using a light vehicle to transport heavy cargo—are examples of conduct from which the lessee must refrain. (Al-Badrawi, 1991)

If the lessee uses the leased property improperly, the owner—the lessor—may seek compensation for the resulting damage or termination of the lease. The lessor is also entitled to recover any loss caused by the lessee's improper use of the property. Article 764 of the Iraqi Civil Code similarly provides that use of the leased property by the lessee in a manner contrary to custom constitutes transgression and renders the lessee liable for the resulting damage. (Al-Sheikh Jasim, 2005)

During the lease term, the lessee's use may cause certain forms of damage or deterioration, such as broken window glass, malfunctioning electrical equipment, or damaged water fixtures. In such cases, the lessee is required to repair and restore the affected items pursuant to Article 763 of the Iraqi Civil Code. Iraqi law likewise regards the leased property as property entrusted to the lessee. Under Article 950 of the Iraqi Civil Code, a custodian is not liable for the loss of entrusted property, whether the cause of loss was foreseeable or unforeseeable, unless the entrusted property was lost as a result of the custodian's act or fault. (Al-Sheikh Jasim, 2005)

Article 490 of the Iranian Civil Code requires the lessee to "use the leased property for the same purpose stipulated in the lease and, where no purpose has been specified, for the intended benefits inferred from the circumstances." Article 511 similarly provides that "an animal that is the subject of a lease must be used for the same purpose intended by the parties; therefore, an animal leased for riding may not be used for carrying loads." Article 490 governs the lessee's obligation to comply with the specified type of use of the leased property. Where the lease contract expressly specifies the permitted use, the lessee must comply precisely with that stipulation. For example, if premises are leased for use as an office, the lessee may not use them for residential or other unauthorized commercial purposes. Any use outside the contractual framework constitutes a breach of the lessee's contractual obligation and may entitle the lessor to terminate the contract. As owner of the leased property, the lessor is entitled to prevent the property from being used for unauthorized or abnormal purposes. The provision therefore constitutes a form of statutory protection for owners against potential misuse by lessees. Where the lessee's unauthorized use causes damage to the leased property, the lessee is required to compensate the lessor for the resulting loss.

3.2.2. *The Obligation to Use the Leased Property in a Customary Manner*

Where the lease contract does not specify the manner in which the leased property is to be used, the lessee must use it in a manner consistent with the nature of the property and its customary benefits. For example, where a residential unit is leased without specifying a particular use, residential use is presumed. Where a shop is leased, commercial use will ordinarily be presumed. Factors such as local custom, the nature of the leased property, and the parties' implied agreements may assist in determining the permissible type of use. Unauthorized or abnormal use may result in destruction of or reduction in the value of the leased property. Article 490 is intended to prevent such consequences. Where the lessee uses the leased property contrary to the purpose specified in the contract or contrary to its customary benefits, the lessor may terminate the contract on the basis of breach of an express or implied contractual term.

Pursuant to Article 492 of the Iranian Civil Code, the lessee is obligated to use the leased property for the purpose specified in the lease or inferred from the surrounding circumstances. Where the lessee breaches this obligation, the offending conduct must first be prohibited; if prevention is impossible, the lessor acquires the right to terminate the lease. The lessee is required to use the leased property exclusively for the specified purposes, and compliance with this obligation itself represents one aspect of the broader duty to refrain from transgression and negligence. For example, a lessee may not convert a building leased for residential use into a school. The court has jurisdiction to determine whether such a breach has occurred. After examining the dispute and determining whether the lessee's conduct conflicts with the contractual terms, the court may order the lessee to cease the prohibited conduct; where enforcement of such an order is not possible, the lessor may terminate the lease. The weakness of this remedy is evident because the lessee may temporarily cease the offending conduct during judicial proceedings and subsequently resume it. By contrast, Article 14 of the Landlord and Tenant Relations Act of 1977 and Article 8 of the 1983 Act concerning residential premises provide that where leased premises are used for purposes other than those specified in the lease, the lessor directly acquires the right to terminate the contract. (Katouzian, 2002)

The question then arises as to what rule applies where the permitted use of the leased property has not been specified. As noted above, Article 490 of the Civil Code provides that, "where no purpose has been specified, [the lessee shall] use it for the intended benefits inferred from the circumstances." It is therefore evident that the lessee does not enjoy unrestricted freedom in using the property and must instead have regard to the surrounding circumstances in order to determine the parties' common intention. Thus, if a shop located in a district primarily occupied by jewelry stores is leased without any express stipulation regarding use, the surrounding circumstances may indicate that it cannot appropriately be converted into a blacksmith's workshop or bakery. To prevent potential disputes and difficulties, Article 11(5) of the Landlord and Tenant Relations legislation requires notarial offices to specify in lease documents whether the premises are intended for residential use or for business and trade; where they are intended for business, the particular type of business must also be specified, and where the premises are leased for another purpose, that purpose must be expressly stated. Another situation may arise where the use identified in the lease contract is intended merely as an example rather than an exclusive restriction. Article 491 of the Civil Code provides that: "If the benefit specified in the lease was not intended because of its particular characteristics, the lessee may obtain a benefit that is equal to or less harmful than the specified benefit." For example, if a lease specifies the operation of a haberdashery, the lessee may use the shop to sell sporting equipment or stationery where such uses impose an equal or lesser burden on the premises. (Katouzian, 2002)

The Civil Code does not provide a particularly detailed treatment of remedies for contractual breach within its general rules, and compensation is ordinarily available where a harmful event causes loss. In cases of breach of contractual obligations, legal remedies may generally be divided into three categories: (1) compulsory specific performance of the obligation; (2) termination of the contract; and (3) payment of damages. These remedies are recognized in different legal systems, although their precise operation may vary. (Hosseini Modarres & Golshani, 2013)

Iranian law presents two statutory approaches that are inconsistent with one another. Article 492 of the Civil Code adopts a sequential model of remedies: following a breach by the lessee, including an unauthorized change in the use or occupation conducted on the premises, the lessor may terminate the lease only where it is not possible to prevent the lessee from continuing the prohibited conduct. By contrast, Article 14 of the Landlord and Tenant Relations Act of 1977 adopts an alternative or parallel model of remedies, under which breach by the lessee and an unauthorized change of occupation directly entitle the lessor to terminate the lease. (Abedi & Ghanbarian, 2024)

4. Conclusion

The present study was conducted to comparatively examine the obligations of lessors and lessees concerning the maintenance of leased property in the legal systems of Iran and Iraq. The findings demonstrate that, despite the fundamental similarities between the two systems in their jurisprudential foundations and the general principles governing lease contracts, significant differences exist in the regulation, interpretation, and enforcement of the parties' obligations. These differences derive from divergent legislative approaches, the influence of foreign legal systems, and the distinct socioeconomic developments of each country.

1. From the perspective of theoretical foundations, both Iranian and Iraqi law base the obligation to preserve and maintain the leased property on jurisprudential principles concerning the fiduciary character of the lessee's possession, the necessity of securing the intended benefit, and the principle of good faith. Closer analysis, however, shows that the Iraqi Civil Code, influenced by modern European laws, particularly French and Egyptian civil law, has adopted a more pragmatic and flexible approach to regulating these obligations. By contrast, the Iranian legal system, which is substantially influenced by Imami jurisprudence, continues in certain respects to exhibit tension between traditional jurisprudential rules and the requirements of modern society. This tension is particularly evident in matters such as contractual clauses imposing absolute liability upon the lessee, the distinction between major and minor repairs, and remedies for breach of obligations. Although the prevailing opinion among Imami jurists considers an absolute liability clause invalid, Iranian judicial and contractual practice frequently recognizes and employs such clauses, thereby revealing a significant gap between legal theory and practice.
2. One of the central issues examined in this study is the distinction between major (necessary) repairs and minor (lease-related) repairs and the allocation of responsibility for each category between the parties. Article 750 of the Iraqi Civil Code provides a clearer conception of necessary repairs—namely, repairs required either to prevent destruction of the leased property or to secure the intended benefit—and therefore offers judges and contracting parties a more comprehensible standard. By distinguishing repairs necessary to preserve the property itself, which the lessee may not prevent the lessor from undertaking, from repairs necessary merely to complete or maintain beneficial use, Iraqi law establishes a more coherent regulatory framework. By contrast, Article 486 of the Iranian Civil Code refers only to repairs “necessary to make enjoyment possible” and does not establish a precise criterion for distinguishing different categories of repairs. In practice, this ambiguity has generated considerable disagreement over which repairs are major and which are minor. Although the Landlord and Tenant Relations Acts have attempted to address this gap, inconsistencies between these special statutes and the Civil Code remain. It may therefore be argued that, by leaving the classification of repairs to custom and judicial determination, the Iranian legislature has, on the one hand, preserved a necessary degree of flexibility but, on the other hand, created conditions conducive to divergent and sometimes contradictory interpretations. Iraqi law, by relying on the more objective standards of “interference with the intended benefit” and “preservation of the property from destruction,” affords the parties a greater degree of predictability. This is more consistent with the principles of legal certainty and predictability in contractual relations, which constitute fundamental principles of modern legal systems.
3. Regarding destruction of the leased property, both legal systems, on the basis of shared jurisprudential principles, recognize automatic termination of the lease in cases of total destruction. Important differences nevertheless exist in matters of detail and legal remedies. The Iraqi Civil Code establishes a more precise legal framework by clearly distinguishing total destruction from partial destruction and specifying remedies for each situation. In cases of partial destruction that substantially interferes with enjoyment, the lessee may choose between a reduction in rent and termination of the contract where the lessor fails to restore the leased property to its previous condition within a reasonable period. By contrast, Article 496 of the Iranian Civil Code merely provides that the lease becomes void from the date of destruction and remains silent regarding partial destruction. This legislative gap has led courts to rely on the general principles of civil liability and broader jurisprudential principles, resulting in varying interpretations.
4. With respect to the lessee's obligation to use the leased property in accordance with its intended or customary purpose, both legal systems recognize essentially the same general principle. The Iraqi Civil Code expressly recognizes the validity of restrictions on the manner of use contained in lease agreements, regardless of whether the nature of the benefit differs according to the user, thereby adopting an approach that affords significant protection to the lessor. This approach is consistent with contractual logic because respect for party autonomy and contractual terms constitutes a fundamental principle of contract law. The Iranian Civil Code likewise recognizes this principle but contains an inconsistency regarding the applicable remedy for breach. Article 492 of the Civil Code adopts a sequential approach, requiring the lessor first to seek cessation of the lessee's unauthorized conduct and granting a right of termination only where such prevention is impossible. By contrast, Article 14 of the Landlord and Tenant Relations Act of 1977 and Article 8 of the 1983 Act adopt a parallel approach and directly grant the lessor a right of termination. This legislative inconsistency demonstrates a lack of coordination within the Iranian statutory framework. From the perspective of

general legal principles, the parallel approach—granting an immediate right of termination—appears more coherent because breach of a contractual obligation may itself provide sufficient justification for termination, whereas requiring the lessor first to pursue an order prohibiting the conduct unnecessarily complicates and prolongs the protection of the lessor's rights. Moreover, as noted above, the lessee may temporarily discontinue the prohibited conduct after being ordered to do so and subsequently resume it, further demonstrating the weakness of the remedy contemplated by Article 492.

Ethical Considerations

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

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Conflict of Interest

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