Diffrence Plea Bargain between Iran and The U.S. civil law

Mohamad Ali Ali Yousefkhani, Mr
One of the most important things in contract feature in Iran and The U.S. Civil law is Plea bargain. In Iran law the parties can also null and void in accordance his/her agreement, Feghe, and law inspite of The U.S. law are different from the above mentioned, so in this article we are to consider plea bargain between the said countries law.
Sources:

1) Calamari and Perillo: the law of contracts 2\textsuperscript{nd} ed.

2) Anson: law of contract 24\textsuperscript{th} ed. 1975.


4) Colin et Capitan: course elementaire de droit civil Francais 10\textsuperscript{th} ed. T.4. 1953.

5) Nasser Katoziyan General obligations in contract Volume 1-5 and general theory of obligations 5\textsuperscript{th} ed, 2009.
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Introduction:

one of the most important things in contract is the thing that help the parties to enforce the abuser due to his/ her misrepresentations and his/her failures obligations .

sometimes , some offered that the parties can call for his /her settlement on the presentation of the judge.

Therefore, in this article we are to consider the plea bargains over view in Iran and The U.S. civil law.

Calculation Judge Data

As you see that the parties can presented his /her settlement on the court when one or two delinquency of their commitments, it
meant Judge is not able to measure and rely on the parties personal information, but he can look for the parties default in accordance to Law, Feagh resources, and parties agreement and he can not put the law case away because of law silence. (1)

Also, the magistrates should be examined the cases neutrality, justice calls the magistrates don’t pay attentions the parties official or bands ties,

In accordance to Iran civil procedure code 360:

Presentation on the reasons should be done on court otherwise the said call refers to the magistrate alternate. (2)

Plea Bargains Overview

The vast majority of criminal cases are resolved through a "plea bargain", usually well before the case reaches trial. In a plea bargain, the defendant agrees to plead guilty, usually to a lesser charge than one for which the defendant could stand trial, in exchange for a more lenient sentence, and/or so that certain related charges are dismissed. For both the government and the defendant, the decision to enter into (or not enter into) a plea bargain may be based on the seriousness of the alleged crime, the strength of the evidence in the case, and the prospects of a guilty verdict at trial. Plea bargains are
generally encouraged by the court system, and have become something of a necessity due to overburdened criminal court calendars and overcrowded jails.

What Kind Of Plea Bargain Might Be Made?

To illustrate how a "plea bargain" might be reached in a criminal case: suppose Dan is arrested and charged with two counts of aggravated assault/battery, based on his alleged use of a baseball bat in a street fight. A "plea bargain" might be reached in Dan's case in one of three ways:

1) **The prosecuting attorney handling the case approaches Dan**

2) **Plea Bargains Overview**

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1) The prosecuting attorney handling the case approaches Dan and his attorney, and offers to allow Dan to plead guilty to a less serious charge, such as simple assault/battery or even disorderly conduct; or

2) Dan agrees to plead guilty to one charge or "count" of aggravated assault/battery, in exchange for dismissal of the second count; or

The government's evidence against Dan is so strong, and the injuries suffered by the assault victim so serious, that Dan agrees to plead guilty to the original charge of aggravated assault/battery, in exchange for a less severe sentence than he would likely receive if a jury found him guilty at trial.

**Plea Bargaining: Areas of Negotiation**

Plea bargaining actually involves three areas of negotiation:

**Charge Bargaining:** This is a common and widely known form of plea. It involves a negotiation of the specific charges (counts) or crimes that the defendant will face at trial. Usually, in return for a plea of "guilty" to a lesser charge, a prosecutor will dismiss the higher or other charge(s) or counts. For example, in return for dismissing charges for first-degree murder, a prosecutor may accept a "guilty" plea for manslaughter (subject to court approval).
Sentence Bargaining: Sentence bargaining involves the agreement to a plea of guilty (for the stated charge rather than a reduced charge) in return for a lighter sentence. It saves the prosecution the necessity of going through trial and proving its case. It provides the defendant with an opportunity for a lighter sentence.

Fact Bargaining: The least used negotiation involves an admission to certain facts ("stipulating "to the truth and existence of provable facts, thereby eliminating the need for the prosecutor to have to prove them) in return for an agreement not to introduce certain other facts into evidence.

The validity of a plea bargain is dependent upon three essential components:

Knowing waiver of rights

Voluntary waiver

Factual basis to support the charges to which the defendant is pleading guilty

Plea bargaining generally occurs on the telephone or in the prosecutor's office at the courtroom. Judges are not involved except in very rare circumstances. Plea bargains that are accepted by the judge are then placed "on the record" in open court. The defendant must be present.
One important point is a prosecuting attorney has no authority to force a court to accept a plea agreement entered into by the parties. Prosecutors may only "recommend" to the court the acceptance of a plea arrangement. The court will usually take proofs to ensure that the above three components are satisfied and will then generally accept the recommendation of the prosecution.

Moreover, plea bargaining is not as simple as it may first appear. In effectively negotiating a criminal plea arrangement, the attorney must have the technical knowledge of every "element" of a crime or charge, an understanding of the actual or potential evidence that exists or could be developed, a technical knowledge of "lesser included offenses" versus separate counts or crimes, and a reasonable understanding of sentencing guidelines.

**See also:**

[Defense Plea Bargains](#)

[Plea Bargain Pros and Cons](#)

**Plea Bargain Pros and Cons**

Although plea bargaining is often criticized, more than 90 percent of criminal convictions come from negotiated pleas. Thus, less than ten percent of criminal cases go to trial. So, what are the incentives behind plea bargaining? Below is a look from the points of view of different players in the criminal justice system.

**Judges' Incentives for Accepting a Plea Bargain**
For judges, the key incentive for accepting a plea bargain is to alleviate the need to schedule and hold a trial on an already overcrowded docket. Judges are also aware of prison overcrowding and may be receptive to the "processing out" of offenders who are not likely to do much jail time anyway.

**Prosecutors' Incentive to Engage in Plea Bargaining**

For prosecutors, a lightened caseload is equally attractive. But more importantly, plea bargaining assures a conviction, even if it is for a lesser charge or crime. No matter how strong the evidence may be, no case is a foregone conclusion. Prosecutors often wage long and expensive trials but lose, as happened in the infamous O. J. Simpson murder trial.

Moreover, prosecutors may use plea bargaining to further their case against a co-defendant. They may accept a plea bargain arrangement from one defendant in return for damaging testimony against another. This way, they are assured of at least one conviction (albeit on a lesser charge) plus enhanced chances of winning a conviction against the second defendant.

**Defendants' Incentive to Plea Bargain**

For a defendant in a criminal case, plea bargaining provides the opportunity for a lighter sentence on a less severe charge, and to have fewer (or less serious) offenses listed on a criminal record. If they are represented by private counsel, defendants also save the monetary costs of a lengthy trial by accepting a plea bargain.

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See Iran civil procedure, article 3.
Pages 552&591, March 10, branch 1 of the supreme court, Title 333, Second edition,
Dissertation international private law, Batifoul.
Page 578, Title 400, General Theory of obligations, DR, Naser Katoziyan.
2) Title 1151, Volume 9, Bodan Jounier.
Plea Bargaining in Federal Courts

The Federal Rules of Criminal Procedure (F.R.Crim.P), and in specific, Rule 11(e), recognizes and codifies the concept of plea agreements. However, because of United States Sentencing Guideline (USSG) provisions, the leeway permitted is very restrictive. Moreover, many federal offenses carry mandatory sentences, with no room for plea bargaining. Finally, statutes codifying many federal offenses expressly prohibit the application of plea arrangements.

Federal criminal practice is governed by Title 18 of the U.S. Code, Part II (Criminal Procedure). Chapter 221 of Part II addresses arraignments, pleas, and trial. The U.S. Attorney's Manual (USAM) contains several provisions addressing plea agreements. For example, Chapter 9-16.300 (Plea Agreements) states that plea agreements should "honestly reflect the totality and seriousness of the defendant's conduct," and any departure must be consistent with Sentencing Guideline provisions. The Justice Department's official policy is to stipulate only to those facts that accurately represent the defendant's conduct. Plea agreements require the approval of the assistant attorney general if counts are being dismissed, if defendant companies are being promised no further prosecution, or if particular sentences are being recommended (USAM 7-5.611).

Prohibitions and Restrictions
Aside from legal considerations as to the knowing or voluntary nature of a plea, there are other restrictions or prohibitions on the opportunity to plea bargain. In federal practice, U.S. attorneys may not make plea agreements which prejudice civil or tax liability without the express agreement of all affected divisions or agencies (USAM 9-27.630). Moreover, no attorney for the government may seek out, or threaten to seek, the death penalty solely for the purpose of obtaining a more desirable negotiating position for a plea arrangement (USAM 9-10.100). Attorneys are also instructed not to consent to "Alford pleas" except in the most unusual circumstances and only with the recommendation of assistant attorneys general in the subject matter at issue. In any case where a defendant has tendered a plea of guilty but denies that he or she committed the offense, the attorney for the government should make an offer of proof of all facts known to the government to support the conclusion that the defendant is in fact guilty (USAM 9-16.015). Similarly, U.S. attorneys are instructed to require an explicit stipulation of all facts of a defendant's fraud against the United States (tax fraud, Medicare/Medicaid fraud, etc.) when agreeing to plea bargain (USAM 9-16.040).

**Plea Bargains: In Depth**

Plea bargains are extraordinarily common in the American legal system, accounting for roughly 90% of all criminal cases. Many countries, however, do not allow plea bargains, considering them unethical and immoral. Below is a discussion about what plea bargains are, why we use them and different types of plea bargains,
as well as what happens if both parties don't live up to the terms of a plea bargain.

What Are Plea Bargains?

Plea bargains are an agreement in a criminal case between the prosecutor and the defendant that usually involves the defendant pleading guilty in order to receive a lesser offense or sentence. Plea bargains are often referred to as really just establishing a "mutual acknowledgment" of the case's strengths and weaknesses, and don't necessarily reflect a traditional sense of "justice". In theory, courts are happy to have the respective parties work out a solution by themselves, but it begs the question of who is best served by allowing plea bargains.

Why are Plea Bargains Used? Are They a Good Idea?

The primary justifications for plea bargains are that:

Courts are overcrowded; if you didn't allow plea bargains, courts would be overwhelmed and forced to shut down.

Prosecutors' caseloads are also overloaded; fewer trials means that the prosecutor can more effectively prosecute the most serious cases.

Defendants save time and money by not having to defend themselves at trial.
These primary justifications all provide benefits to the respective players: the court, the prosecutor and the defendant, but don't inherently offer any benefit to the populace at large or take any steps towards a truly just outcome. For this - and other moral, ethical and constitutional reasons - many in the legal field have openly challenged the plea bargaining system.

In a notable example, the Attorney General of Alaska outright banned plea bargaining in 1975, and other states and localities have as well. In one study about areas where plea bargaining was prohibited, the author concluded that not being able to rely on plea bargaining reinforced responsibility in every level of the judicial process judges, lawyers, prosecutors and police and did not result in the court system being overwhelmed.

Finally, work in other fields, such as "Prisoner's dilemma" studies have demonstrated that suspects have every incentive to agree to plea bargains that don't reflect their guilt or innocence, either out of fear or to push the blunt of the blame to someone else. Regardless of these concerns, however, plea bargains continue to be a major component of the American legal system.

What Types of Plea Bargains Are There?

There are generally three types of plea bargains recognized:

Charge Bargaining: the most common form of plea bargaining, the defendant agrees to plead guilty to a lesser charge provided
that greater charges will be dismissed. A typical example would be to plead to manslaughter rather than murder.

Sentence Bargaining: far less common and more tightly controlled than charge bargaining, sentence bargaining is when a defendant agrees to plead guilty to the stated charge in return for a lighter sentence. Typically this must be reviewed by a judge, and many jurisdictions simply don't allow it.

Fact Bargaining: this is the least common form of plea bargaining, and it occurs when a defendant agrees to stipulate to certain facts in order to prevent other facts from being introduced into evidence. Many courts don't allow it, and in general, most attorneys do not favor using fact bargains.

What Happens if I or the Prosecutor Break a Plea Bargain?

A plea bargain is a contract between the defendant and the prosecutor. If either side fails to live up to its end of the agreement, the most likely remedy is to go to court to enforce the agreement. In particular, many plea bargains ask a defendant to do something in return for a lesser charge. If a defendant fails to perform his or her end of the bargain, then a prosecutor can revoke the offer.

Defense Plea Bargains
As many as 90% of all criminal cases are settled by plea bargain. Why are plea bargains so popular with both prosecutors and defense attorneys? For prosecutors, it means not having to prosecute the case which saves time and resources. For defense attorneys, it means potentially saving their client from more serious charges and jail time. Finally, for defendants, it often means receiving a reduced sentence and resolving the matter quickly.

The Benefits of Defense Plea Bargains

From the defense standpoint, the benefits of plea bargaining are numerous. Here are some of the most commonly cited justifications for agreeing to a plea bargain.

Trade risk for certainty: one of the primary reasons that defendants agree to plea bargains is simple anxiety. If a case goes to trial, they might get off - but they also might get the maximum sentence. Most people can't stand living in a state of constant anxiety and prefer certainty, so they sign plea agreements.

Avoid jail time: a big reason for agreeing to a plea bargain is to avoid jail time. Not having to go to jail and live with the stigma associated with it, and not being separated from family and friends is a huge incentive to sign a plea agreement.
Reduction in charges: the most common form of plea bargain, a reduction in the severity of the charge, is a great benefit to a defendant. A lesser charge looks better on a permanent record, won't have as serious an impact on future convictions (especially in "three strikes" states) and may not exclude the defendant from a variety of things that those convicted of more serious charges are prohibited from doing (eg, voting).

Reduction in sentencing: sometimes the prosecutor does not lower the charge, but rather lessens the sentence sought to something below the maximum allowed sentence for a crime. While not nearly as advantageous as a reduction in the charge, the difference in sentencing can be a matter of years and crucially important to a defendant.

Resolve the issue quickly: probably the most practical reason plea bargains are sought is simply to resolve the issue as quickly as possible and move on. It may not be the most "just" outcome, but many defendants simply want to move on with their life.

Avoid stigmatizing sentences: several crimes have a severe social stigma attached to them, and plea bargains often recognize this by dropping the most stigmatizing offense (such as rape) in favor of a less stigmatizing offense (like assault).

Avoid publicity: one of the biggest tools prosecutors or defendants can use is the media. As a result, many defendants simply want to keep the matter quiet, without dragging the case out in front of the public.
Avoid hassles: finally, there are a multitude of hassles that come with going to trial. The time, expense and exposure can be exceptionally draining on a defendant, and many defendants will seek a plea bargain just to avoid the circus that may accompany a trial.

Not everyone agrees that plea bargains are really a good deal for defendants, especially where many of the considerations seem to favor time, expense and convenience over justice. Finally, many defendants agree to plea bargains simply out of fear or ignorance in which case no one is well served - the system or the defendant.

Plea Bargains and Judicial Economy

The American legal system has used plea bargaining for well over a hundred years, and one of the primary justifications for the use of plea bargaining is the principle of judicial economy. Judicial economy simply means that one goal of the judicial system is to conclude cases in an efficient and speedy manner. Without plea bargaining, it is widely believed that there would be an explosion of cases which in turn would overtax and disrupt the current legal system.

Plea Bargains, Judges and Judicial Economy

The primary benefit of plea bargains to a judge is that plea bargains reduce their already crowded calendar of court cases. It takes months, if not years, to get a trial date, so judges are always eager to
have parties settle the matter between themselves and keep the dispute out of the court room.

Many judges also see plea bargains as advantageous because they represent an agreement or bargain between the parties, which makes compliance and adherence to the agreement more likely. This, in turn, reduces potential disputes the parties will have in the future and will hopefully prevent parties from having to come back to court.

Finally, most judges are keenly aware that many state's prisons are also overburdened. Many judges see plea bargains as an effective way to deal with less heinous criminals and reserve limited prison space for serious threats to the community.

Plea Bargains, Prosecutors and Judicial Economy

Prosecutors have their own calendars to worry about, and for the same reason as judges, prefer to keep the calendar as free as possible. Especially in offices where funding and resources are a major issue, prosecutors are open to negotiating a plea agreement rather than spend the time, money and resources on a full trial.

Similarly, many prosecutors like plea bargains because they give the prosecutor flexibility and they allow prosecutors to "screen out smaller criminal offenses. By screening out lesser
offenses, a prosecutor can bring the full power of their office to bear on serious criminal offenses. For instance, many prosecutors would rather focus their time on a high-profile murder case than a minor drug possession case, both for political and practical reasons.

As any good attorney knows, if it matters to the judge, it had better matter to you. Prosecutors know that judges want to keep trials moving and not fill up the court calendar, and prosecutors want to stay in good favor with the judge. Accordingly, prosecutors always want to appear ready to solve the dispute outside of the court room in order to avoid the wrath of an overworked judge.

Plea bargains also result in convictions, and prosecutors are measured by their conviction rate. Most prosecutors would rather spend a week negotiating a plea for a lesser conviction than spend a year to achieve a greater conviction. They can still tout their conviction rate, and claim to be "tough on crime", while doing it in a much more efficient manner.

Finally, any experienced prosecutor knows how much of a gamble a trial really is. Plea agreements, however, are a sure thing. Even if the case seems reasonably air-tight, most prosecutors would rather have a certain conviction over an uncertain trial. All it can take is one juror to wreak havoc on months or years of effort. Accordingly, even if a prosecutor is
confident, there is a good chance that he or she would rather settle the case by a plea agreement than roll the dice in the courtroom.

Approved by Abass Ahmadi, MR, Ghafaree, and Mahdi Gozali university structures of Science and applied.

www.yousefkhanimohamad@yahoo.com

098_9356902322.

www.abassahmadi295@yahoo.com

Mahdi.Gozali@yahoo.com

MR, Ghafaree: 098_9121232006.