Comparative study on structure of labour dispute settlement boards in Iran and some European countries

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Abstract
One of the most important and effective measures of governments in social, economic and cultural fields is the regulation of relationships between laborers and employers. Different position of laborers and employers, the large number of people engaged in this relationship and their considerable influence over each country’s economy shows the importance of this issue. Therefore, it is apparent any dispute over employment relationships should quickly be heard through labor dispute settlement boards. Although the structure of these institutions in different countries has been affected by specific international standards, there are wide disparities among them which have serious effects on their efficiency. In this essay, we tend to state the Structure of Labour Dispute Settlement boards in Iran and some European countries from four perspectives: independency, competence, pre-trial stage and quality of judges. We also explain the relevant international documents in order to find their remarkable features which we can implement in the Iranian legal system.

Keywords: labor court, labor procedure, competence of labor dispute settlement boards, conciliation, lay judge.

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Sites
The sociological study of transnational law, globalization and global solidarity

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Abstract
In current study, the relationship between Transnational Law, Globalization and International Solidarity has been studied, and Talcott Parsons's Structural Functionalism approach has been used as Theoretical Framework. This study is based on the assumption that any inconsistency between the Legal System and other Social Systems can result in Social Anomie. In the next part of the paper, the subject of Transnational Law, Natural Law and Human Rights is discussed. By combining Structural Functionalism approach and Globalization approach, towards the end of the study, the author suggests that because of International Relationships, it is nowadays impossible to establish security and justice over the world based on Particular Legal Systems and they can be reached only through Global Consensus. In this case, International Law Organizations can play an important role. International Solidarity is possible only through free dialogue between different nations and their participation in a Global Community.

Keywords: globalization, international solidarity, sociological, structural functionalism, supranational law.

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The historical evolution of commercial frameworks, from contractual arrangements to corporations

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Abstract
Mudaraba is an old method of finance and trade. Comparative historical studies show that Mudaraba and a very similar European institution that appeared first in the 12th century in Italy and then in all Europe i.e. Commenda, had a very important role in the history of trade; especially in maritime trade of middle ages. From 16th century it gradually started to lose its importance and was then replaced by corporation in the Western trade, while at the same time there was no sign of such development in the Middle East and the Islamic world. In this essay, we discuss the origin of Mudaraba, its importance in the history of trade, and the causes for its appearance and come down, understanding that the non-recognition of legal personality was the major obstacle of the Islamic law to establish corporations.

Keywords: Commenda, history of trade, corporation, legal personality, Mudaraba.

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References


Comparative analyzing of Islamic Republic of Iran’s and United States of America’s laws on state immunity with regards to the United States recent larceny of Iranian financial assets

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Abstract
State immunity is considered to be one of the most important issues in contemporary International Law. Over time, this concept has been changed due to the evolution of International Law and during recent decades, the focus of academic forums and national and international courts has been attached to it. In the meantime, several states including the Islamic Republic of Iran and the U.S have approved state immunity laws in their domestic legislation and their legal exceptions. In this article, the authors seek to answer several questions including what the similarities and differences of Iranian and U.S. laws on state immunity are and secondly, how can the U.S. recent confiscation of Iranian financial assets (2 billion Dollars) can be justified. On the other hand, do contemporary International Law developments have had any effect on the Iranian and U.S. immunity laws. The Conclusion of the topic is that the main differences between U.S and Iranian state immunity laws are the differences in scope of protection of subjected persons, differences in source of legislation the possibility of confiscation of properties outside the country, The effect of executive branch presence in claims against foreign governments and finally the effect of foreign defendant State in the course of trial hearing. Also, U.S recent confiscation of Iranian financial assets has been contrary to its international obligations in accordance with the U.N. Charter, International customary law and the mutual Friendship Agreement.

Keywords: Islamic Republic of Iran’s Courts jurisdiction over Civil Claims against Foreign Governments, State Immunity, U.S.A Foreign State Immunity Act (FSIA).

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The comparison between supervisory bodies of human rights interpretations and international criminal courts judgments on provisional release

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Abstract
Nuremberg and Tokyo courts were the first international criminal courts were established by allies when there were no international regulations regarding the accused rights. But after World War II, effective steps were taken in this regard. At global and regional levels, a large number of documents have fully noted this matter and also measures such as the Human Rights Committee of the United Nations and the European Court of Human Rights have been predicted to be executed. The organs that played a significant role by interpreting the rights of the accused. Provisional Release is considered as one among these rights. After that in the late twentieth century and early twenty-first century, other courts were established at the international level. Now the question that arises in this context is whether these courts are required to follow the interpretations provided by the Human Rights Watch organization or not? Given that the rights of the accused do not differ in national courts and international criminal tribunals institutions, Human Rights Watch institutions throughout years have interpreted the provisions relating to the rights of the accused in their case law, Therefore, interpretations of the International Criminal courts judges can’t be inconsistent also with the judicial procedures. However, the rules and the interpretations of the courts of the latter led to violation of the rights of the accused in provisional release. In the present article, the interpretations offered by human rights monitoring bodies have been investigated with the views of international criminal courts in this area.

Keywords: international criminal courts, international documents, provisional release, rights of accused, supervisory bodies of human rights.

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Comparative study of the nature of celebrities’ image rights in commercial advertisements

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Abstract
Nowadays, images of celebrities are used to advertise goods and services, and this phenomenon is growing. On the one hand, in recent years, celebrities become aware of the value of image and image rights in the advertisement world. On the other hand, many agencies and owners of goods and services become aware of the important effect of popularity of celebrities as a tool to boost sales of goods. Therefore, in today’s world, celebrities’ image rights become a valuable asset. There is not a uniform procedure among legal systems in respect of the nature of celebrities' image rights. The legal system of the United States has recognized the economic value of image by accepting it as a right of publicity and has considered it as an economic right. In the European countries and in France, the said issue still remains in the framework of right of personality while in legal system of England, image rights is described within the right of privacy. By considering the differences in this field, this paper seeks to explain the adopted approaches in legal systems, and analyze the nature of image rights in Iran.

Keywords: commercial advertisement, image rights, right of personality, right of privacy, right of publicity.

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References
Adducibility to cultural norms in sentencing; Comparative study in judicial system of Iran, USA and Germany

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Abstract
Adducibility to cultural norms is created, when criminalization system and cultural norms are in opposite. According to this approach, when an act is criminalized and it is advised according to some special cultural norms, adducing of defendant to cultural norms in different steps of criminal process, creates a concept which is called Adducibility to Cultural Norms. This research by using qualitative models and case study method, tries to evaluate the role of Adducibility to Cultural Norms in sentencing in judicial systems of Iran, USA and Germany. Findings of this research show that in Iranian penal system, Adducibility to cultural norms is not used in hadd and qesas punishments. While it is usable for ta’zir offences. The current approach of the German legal system with accepting of Adducibility to Cultural Norms, has limited it. In the US criminal justice system, extreme attention to cultural norms has caused its acceptance in criminal process stages. While the studied legal systems are representative of three legal system (Islam, Common law and Roman-German), Adducibility to Cultural Norms usually a cause for minimum punishment. It should be noted that in the Iranian legal system, it is adduced to ta’zirat offences.

Keywords: adducibility to cultural norms, cultural norms, multiculturalism, sentencing.

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Comparative study between primary Jihad in Islamic law and Responsibility to protect in international law

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Abstract
It is clear that the establishment and continuity of the International Public Order depends on observance of the fundamental principles and norms of the International Society. Peaceful coexistence and relations and rejection of war and violence are the most important and most significant of these basic principles. At the same time, efforts of various nations under the rule of tyrants to liberation, has found nature domestic, many of the armed conflicts which works naturally seek international as well as have many questions and attracted the attention of many lawyers and efforts have been made to the doctrine of “responsibility to protect” to be answered; In this study, we sought to answer the question that is whether the Jihad in the Shiite is compatible with the responsibility to protect doctrine in International Law. In this comparative study, we briefly review the rules governing the prohibition on the use of force and also explain the concept of primary jihad and the responsibility to protect. The authors have concluded that despite the differences in structure and territory, from the theoretical and philosophical and since, one of the most important application of the primary jihad is to liberate the nations that are under tyranny and dictatorship, dignity, honor, life and property exposed to over run their domination, so with the responsibility to protect doctrine is applicable

Keywords: the doctrine of responsibility to protect, non-use of force, Primary Jihad, the right to self-determination.

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19. Holy Quran
Civil liability for false advertisement

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Abstract
Today, advertisement is an important part of all businesses. the use of false information in these advertisements is always targeting consumers and rival traders. No doubt in these circumstances consumers need to be protected, however, it is not clear what kind of support and protection can be afforded for consumers and how they can be compensated? Can they terminate the contract, or they have to keep the goods and claim for compensation due to civil liability of the supplier? On the other hand, it is not clear what the liability of the media for propagating false advertisements is and how consumers can make claims against the producer of false advertisement and what compensations are available to the consumers from them? False advertisements may also be used against rival businesses as competing traders and make them lose their market. Here also the question is whether the rival trader has the right to claim compensation from people benefiting from the false advertisement for their losses?

Keywords: business rivals, civil liability, compensation, competition law, consumer protection, false advertisement.

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Comparative study and implementation of electronic monitoring in Iran and America criminal law

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Abstract
With the adoption of the new Islamic Penal Code, the electronic monitoring entered the Iranian criminal justice system, while in the system of other countries, it has an older history. Comprising more than five decades of history in America and adopted in thirty different countries. In the new Islamic Penal Code, implementation of electronic surveillance, as many of these institutions are subject to a code of conduct. It should be based primarily on the implementation of the conceptual framework, its implementation and the purpose of its range, also according to the number of prisoners sentenced to electronic monitoring at the specified time. After that component that must be on the run to be an important issue in this work is the component that is based on the type of crime, the characteristics of the offender and criminal proceedings are drawn. In addition, identifying the tools needed to implement these institutions is another important performance issue. These considerations along with an analysis of the legal system of Iran and America. This hypothesis is explored in some implementation details,. So we attempt to shape the institutional frameworks aand thereby provide background for the development of executive regulations, in order to not only achieve the targets of electronic surveillance, but also to prevent the abandoning of this institution after a short time.

Keywords: crimes lightweight, electronic monitoring, low-risk offenders, monitoring before and after the trial, tracking devices.

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A comparative study of the substantive provisions of trademarks with an emphasis on color and three-dimensional marks

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Abstract
To be considered a trademark, symbols and emblems must be missing some situations (negative substantive conditions) and have some conditions (Positive substantive conditions). Non-traditional marks, especially those which are visible such as colors and three-dimensional marks face challenges in order to comply with these conditions. Some declare that such marks are not registerable as they strictly believe trademarks limited to the traditional marks such as letters and numbers and images and they emphasize that non-traditional visual symbols are neither able to meet some essential requirements nor- due to their specific nature- are acceptable as a trademark because of the limited grounds. In contrast, some believe that not only can the symptoms coordinate with the terms of traditional trademark, but also the need to promote such innovation requires support of these signs. In line with the second opinion, it seems that examples of trademarks are only a way to distinguish the origin of goods and persons and are not limited to traditional marks.

Keywords: distinction, the functional theory, the theory of scarcity, three-dimensional and color marks.

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Protection of business methods in comparative law
(A study on the approach of American, Indian, Japanese, Imamia jurisprudence and Iranian legal systems and the TRIPS agreement)

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Abstract
Business methods are among the most important assets of companies, whose protection is different in different legal systems. Although trade secrets are the most traditional form to protect business methods, the companies’ willingness to patent inventions in this field has so increased that recognizing them as inventions has become a controversial issue. This paper, with descriptive-analytic method, has studied the possibility of business methods protection in deferent legal systems and concluded that countries such as the United States, India and Japan, have, despite their previous practice, showed much tendency towards protection of business methods as inventions; the position of TRIPS in granting patent rights to inventions including inventive steps and industrial applicability is also favorable to business methods protection. In Iran, business methods are been excluded from the scope of protection. Therefore, considering the deep foundations of Imamia jurisprudence in protecting people's material and immaterial rights, it is necessary for the legislator to add an article to protect business methods or remove its exclusion, at least, with regard to applicable electronic commerce methods. Finally, if business methods are not protectable in the form of trade secrets or patents, recourse can be made to other forms such as utility models.

Keywords: business methods, patent, trade secrets, utility models.

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Nature of construction guarantees and recording manner and conditions of call of guarantees in Iran Law and FIDIC Contracts

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Abstract
To insure the implementation of contractual obligations, guarantees is obtained from promisor in contracts. With reference to the general conditions of guarantees, nature and recording of these guarantees have not been stipulated in civil law and FIDIC contracts. In civil law and on the analysis of the substantive guarantees, predominant views presented are: contract guarantee, umbrella clause, article 10 of civil code and collateral guarantee. The most appropriate view is collateral guarantee that offers a comprehensive analysis of all guarantees. This guarantee is real and personal. Most common among guarantees in FIDIC contracts is type of personal security, too, that is almost similar with personal collateral guarantee in civil law. Recording of guarantee is the most important problem but because of ambiguity in the nature of guarantee, the frequency difference is made between contractor and employer. A conditional guarantee create obligations of an accessory nature, where the liability of the guarantor arises upon an established default by the contractor and under on-demand guarantee do not stipulate any condition for payment and when contractor after the on-demand guarantee unfairly has been called, the only remedy available to him would be to pursue the matter in litigation.

Keywords: collateral, FIDIC, guarantee, nature, recording.

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References
Inequality of bargaining power as a basis for control of contract

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Abstract
Deep economic and social developments in two recent centuries created important changes in contracting arena among them placing weak and strong parties against each other in contracts. Freedom of contract, could not provide contractual justice in this new conditions. Therefore adjustment of this tool in a manner that can serve to the justice felt necessary. In foreign law, primarily courts became pioneers in this way and used interpretation technics and general principles of contracts to protect the weak party. But overall legislative interventions felt necessary. Then legislators limited principle of freedom of contract in various areas in order to protect the weak party and for the benefit of contractual justice. Legislative control, in recent 50 years, concentrated on the protection of consumers. In Iranian law, despite minimal tools being available, there is not any evidence of judicial control of unequal contracts. Although legislative control is done, inter alia in consumer contracts but its protection is incomplete because of not being sensitive about unfair terms.

Keywords: contractual justice, freedom of contract, inequality of bargaining power, judicial control, legislative control.

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Comparative study of municipal electoral system in Iran and France

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Abstract
An Instance of human rights is the right of everyone to determine their future. Therefore the most important tool for the realization of this right in the contemporary era is attention to the views of citizens through free elections, in a way that the result of the election reflects the views of citizens in governance. The Islamic Councils in Iran are the country’s strategic approach to the development of urban and rural people’s participation in the decision-making process. Studying the urban and rural councils elections in France can help improve this process in Iran, since France, has a lot of experience in running a city and having municipalities and city councils. A comparative study of the two electoral systems can help better illustrate the strengths and weaknesses of both systems. This topic has not been studied as an independent comparative study between Iran and France before, which makes it a unique study.

Keywords: councils, election, France’s legal system, Iran's legal system.

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References

A comparative study of Islamic human Rights with the four 1949 Geneva conventions: with emphasis on the treatment of prisoners of war

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Abstract
One of the issues that occur in most wars is the capture of enemy soldiers. International humanitarian law as a branch of contemporary Islamic law has focused on the treatment of prisoners for a long time. Present comparative study in jus ad bellum shows that, the four 1949 Geneva conventions and the 1977 additional protocols compared with the Islamic rules of international humanitarian law, has a high degree of convergence with each other. This is based on the assumption that treatment of P.O.Ws exists in the Islamic humanitarian laws. Focusing on the contemporary jus ad bellum illustrate that treatment of P.O.Ws in Islamic Humanitarian Law is much broader, more general and humanistic than modern International Law represents today.

Keywords: armed conflict, Islamic humanitarian law, the Geneva Conventions, prisoners of war.

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1. Holy Quran
A review of the doctrine of reasonable reliance

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Abstract
According to Common Law Rules of England, obligation by one party is enforceable when the other has provided a consideration or the contract has been put in a deed. In some common law jurisdictions, such as Australia, Canada and the United States, another doctrine, named Reasonable Reliance, has developed, which could act as surrogate for the doctrine of consideration. English courts, however, have not been prepared to accept such function for this doctrine. According to the doctrine, act of one party when it has been relied by the other, may give rise to an obligation on the first party. This doctrine has been criticized in Common Law countries and may be criticized from the Iranian law viewpoint. However, it has many points in common with some rules in Islamic jurisprudence and Iranian law, and review of this doctrine could prepare a suitable ground for the comparison between Common Law and Islamic jurisprudence and Iranian law in a small part of the law of obligations.

Keywords: Common Law, consideration, Iranian law, Islamic jurisprudence, reasonable reliance.

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Comparative study of criminal matters in the motoring vehicle offences in the Iranian legal system and the European court of human rights decisions

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Abstract
Criminal matters is one of the most important achievements of modern human rights. The mentioned concept is also the initiative of European Court of Human Rights and one of the important elements of the implementation of article 6 of the European Convention on Human Rights. One of the main results of recognizing this concept is the fact that administrative and disciplinary violations that may not appear to have criminal aspect, are not necessarily out of the coverage of the Article 6. According to the Court, not only does the Article covers them, but it also covers some of the sanctions that may not have criminal aspect, and considers them like those with criminal aspects. One of the sanctions that European Court of Human Rights recognized is driver’s license revocation. The provision of Motor Vehicle Offences Act of 1389 in the Iranian legal system also provided driver’s license revocation after having too many points on the defendant’s driving records. The main concern of current study is comparing and contrasting criminal matters in traffic violation in the Iranian legal system and decisions made by the European Court of Human Rights. To achieve this goal, the description of criminal matters, their criteria, related sanctions for the mentioned violations, and finally the trial procedure for those violations have been examined.

Keywords: criminal matters, decisions of European Court of Human Rights, fair trial, traffic violations.

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References

Controlling theories regarding abuse of shareholders' voting right in French legal tradition: Implications for Iranian legal system

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Abstract
Commercial companies are principally governed by majority rule. This notwithstanding, mere application of this decision-making rule does not prevent conflict of interests between shareholders. Such a conflict can be observed in three distinct hypotheses: 1 - abuse committed by majority shareholders; 2 - abuse committed by minority shareholders; 3 - abuse committed by holders of equal shares. Regardless of kind, these deviated forms of majority rule application entail some obstacles to good functioning of corporations. Hence legislatures and courts in many legal systems, taking into account this lacuna in majority rule, endeavor to sanction such malicious maneuvers. Two opposing (at least different) approaches are taken by two categories of legal systems: While American approach invokes “Fiduciary Obligation”, French tradition tends toward a non-contractual institution. According to Cour de Cassation's formulation, all forms of voting right contrary to corporate interest merely used to benefit its owner in detriment of concurring group of shareholders, are condemned and consequently sanctioned. There is a wide range of ideas about the very legal foundation of the criteria procured by Cour de Cassation. Most of all two theories (abuse of right and diversion of power) seem to be widely accepted. Qualification of voting right as a subjective right or power is thought as the cornerstone of the debate. Still there is no unanimous answer. Regarding the Iranian legal system, it seems unavoidable at first step to enumerate and make a list of potential institutions and foundations for the purpose of legal transplantation. This listing does not per se contain their admissibility as the proper foundation of the Iranian legal system as the receiving legal system. It is up to the second step to determine the most proper foundation for a proper transplant. The latter question stands out of this paper’s scope and purpose.

Keywords: abuse of right, abuse of voting right, diversion of power, majority rule.

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