CHOICE OF LAW IN COPYRIGHT INFRINGEMENT IN INTERNET

Nasrollah Ebrahimi*
Assistant professor, Faculty of Law and Political Science, University of Tehran
Shadi Kasnavi
Ph.D. Candidate in oil and gas law , FacuIty of Law and Political Science, University of Tehran
(Received: 20 January 2016 - Accepted: 1 May 2016)

Abstract
The inevitable conflict between two principles, territoriality of intellectual property law and internet being placeless at the stage of enforcement, has affected the determination of the applicable law on an action claimed to be infringing; especially in copyright for which registration is not a requirement. This situation has caused the principle of territoriality to become weak in determining the applicable law. On the other hand, international and regional conventions, which discuss determining the applicable law, regard traditional infringement in a physical context; thus rely on the principle of territoriality. As a result, considering the uncertainty regarding territoriality, this principle cannot be applied in copyright infringement cases in the placeless environment of internet. So most countries are obliged to recourse toward general principles in order to determine the applicable law. Since there is no single procedure (approach) among countries of the world, and most definitely implementation of individual solution cannot help resolving the issue, it is clear that the laws must become unified, in order to preserve the benefits of parties of a lawsuit. Therefore, this paper is put together in order to pave the path from an incoherent jurisdiction to an international and comprehensive copyright protection.

Key words
Applicable Law, Copyright , Internet ,Non-Contractual Obligations.

* Corresponding Author Email: snebrahimi@ut.ac.ir Fax: +982166409595

THE ROLE OF CUSTOM AS A SOURCE OF LAW

Ali Eslamipanah*
Assistant Professor, Private and Islamic Law Department, University of Tehran
(Received: 26 June 2016 - Accepted: 19 April 2017)

Abstract
Every force that produces the rule of law is called the source of law. In the most legal systems the custom is the source of law. The custom is a general and permanent rule that directly results from people's intention and government don't have any role in its formation. Today the place of the custom as a source of law on beside of another sources is controversial. In fact, the principal question is if the custom is superior or inferior or equal to the law. In some of legal systems such as Anglo-Saxon custom is the first source and the law comes after it. But in the civil law system the law is first and the custom comes after it. In our legal system the main question is if the custom is a source of law or not. If the answer is yes, the next question is if the place of custom is similar to those systems or is something else. In this article we have tried to answer these questions.

Keywords
Custom, Customary law, Sources of law, Introduction to law, Role of the custom in the law.

* Email:Fax: eslamip@ut.ac.ir Fax: +982166409595

A CONCISE ANALYSIS OF THE REASONS FOR THE NECESSITY OF DETERMINING THE AGE OF PRUDENCE

Mohammad Ali Ansaripour*
Associate Professor of Private Law Department, Faculty of Law and Political Sciences, University of Tehran
(Received: 21 June 2015 – Accepted: 9 July 2015)

Abstract
During amending the Civil Code in 1361 by the Judicial and Legal Committee of Parliament, the article 1209 was repealed and article 1210 was amended. This repeal and amendment was ratified by Parliament in 1370. As a result, the age of 18, as evidence of prudence, was abrogated. The contradiction between the main part of amended article 1210 and its note 2 that created conflict in the delivery of judgments by the courts, was resolved by Judgment no. 30 of the Plenary Assembly of the Supreme Court in 1364; but the absence of a certain age as evidence of prudence was not remedied. This paper criticizes the legal lacuna relating to the age of prudence, and by referring to a number of reasons including the delivery of conflicting judgments by the courts, the existence of conflict in statutory provisions, harmfulness of the absence of the presumptive of prudence, specifying the age of prudence in some Islamic sources as well as scientific reasons, concludes that age determination, preferably age 18, is essential as the presumptive of prudence. So, the reason that the legal system as well as people has not faced a serious problem since the abrogation of the age of prudence in 1361, is that governmental departments and the courts still enforce the abrogated laws in this respect.

Keywords
Age of Prudence, Maturity, Presumptive of Prudence, Prudence.

* Corresponding author Email: map@ut.ac.ir Fax: +982166494990

THE EFFECT OF BANKRUPTCY OF PARENT AND SUBSIDIARY CORPORATIONS ON EACH OTHER WITH SCRUTINY IN THEIR MUTUAL RELATIONS AND RESPONSIBILITY

Laya Joneydi*
Associate Professor of Department of Private and Islamic Law of Faculty of Law & Political Sciences of University of Tehran
Hassan Eskandari
Master in Private Law in Faculty of Law of University of Tarbiat modares
Behzad Farjam
Master in Private Law in Faculty of Law & Political Sciences of University of Tehran
(Received: 24 August 2015 - Accepted: 7 April 2017)

Abstract
The topic of parent and subsidiary corporations, because of the role that these corporations perform in trade-economic field, had always been from the controversial issues of legal circles. From the ambiguities be studied in this case, is the issue of the effect or effectiveness of the bankruptcy of these the two corporations on each other. In this regard, the principle of the financial independence of these two corporations, due to their independent legal entity on the one hand and financial and administrative relations between them on the other hand, should be considered. In this article, it is tried to, by investigation of the financial relations and responsibilities between these two corporations during their lifetime, achieve to offer a clear answer in this issue. The result of article indicate the effect of the bankruptcy of parent corporation to subsidiary and it's entering to the valley of dissolution in practice and probable liability of parent corporation in the case of bankruptcy of subsidiary corporation.

Key words
Effects of bankruptcy, Independence of legal entity, Legal relationship, Subsidiary corporation, Parent corporation, Responsibility.

* Corresponding Author Email: joneidi@ut.ac.ir Fax: +982166409595

THE EFFECT OF SET-OFF ON DEMAND AND RECOVERY OF BANK GUARANTEES

Majid Sarbazian[*]
Assistant professor of shiraz university at private law
Seyyed Reza Hashemi
Master of science at private law, shiraz university
(Received: 9 April 2016 - Accepted: 14 March 2017)

Abstract
Bank guarantee is one of the most efficient financial instruments that what is the importance of its role in the process of signing the contracts and transactions is the independence of the underlying contract between the beneficiary and principal and the contract for issuing the guarantee between guarantor and principal. Due to these characteristics, if the principal fails to perform his obligations in underlying contract, Beneficiary can demand guarantee without having to prove negligence. During the demand of guarantee it's possible to be resorted to set-off by principal and guarantor. In view of the above-mentioned relations between principal and guarantor, principal and beneficiary and guarantor and beneficiary and set-off that prevent from prolongation of mutual payments, it must see that in which relationship can be relied on set-off against beneficiary? According to the concept of independence guarantee, the only guarantor can invoke to set-off for mutual demands against beneficiary and then to be innocent of his debts. The same approach was also adopted in international and domestic regulations.

Key words
Bank guarantee", "The principle of independence", "Demand of guarantee", "Set-off", "Invoke to set-off

[*] Corresponding Author Email: sarbazian@shirazu.ac.ir Fax:+987136287311

CONCEPTUAL ANALYSIS OF ARBITRATION IN EQUITY AND RELATED INSTITUTIONS

Morteza Shahbazinia*
Associate professor of law Tarbiat modarres university Faculty of law
Feizollah Jafari
Assistant professor of law Bu-alisina University Faculty of human science
Fatemeh Hamidian
Master graduate of private law Tarbiat modarres university Faculty of law
(Received: 10 October 2016 - Accepted: 14 January 2017)

Abstract
One of the most important characteristics contributing to international commercial arbitration popularity as a dispute settlement is the freedom of the parties to choose the applicable law, i.e. the law governing the merits of the dispute and the process of arbitration proceeding as well. This party autonomy is somehow that the parties can allow arbitrators for decision making and the issuance of an award according to principles of equity. Although many international contracts include the arbitration clause based on equity, it is not defined clearly, precisely and even obligatorily in arbitration rules including national laws and international documents. Moreover, there is other similar procedures also that difference between them and arbitration in equity is not determined. Considering amiable arbitration as a way for applying the easier and more flexible solution compared to the arbitrations based on the rules, meanwhile with facilitation of their mutual cooperation even after settling conflict issue through the restoration of contractual equivalence between the parties, this article will analyze and demystify this concept and separate it from similar institutions as to resolution of commercial disputes.

Keywords
Amiable Compositeur, Arbitration, Equity, Governing Law, Lex Mercatoria, Peace.

* Corresponding Author Email: shahbazinia@modares.ac.ir Fax:+982182884260

]

THE ROLE OF "REGISTRATION" IN THE PROCESS OF TRANSFERRING OF INDUSTRIAL PROPERTY RIGHTS: ANALYSIS OF REGISTRATION SYSTEMS OF INDUSTRIAL PROPERTY RIGHTS TRANSACTIONS IN THE WORLD

Nasrin Tabatabai Hessari*
Assistant Professor of Faculty of Law & Political Science, University of Tehran
(Received: 23 November 2016 – Accepted: 26 December 2016)

Abstract
Ensuring the security of industrial property rights transactions, securing of third parties and preventing of opponent dealings has caused that legal systems of the world pay attention to the role of registration systems in these transactions and consider two "declarative" and "protective" functions of registration systems. A comparative study of national laws, considering reports of international organizations in the scope of industrial property and the analysis of the provisions of Industrial Property shows that industrial property registration systems are indivisible into three categories: declarative, constitutive and inposability system. The present paper, while analyzing the nature of each of these systems, has analyzed their effect on the legal security of industrial property transactions and expected legal functions from the establishment of industrial property registration systems in the world. The article has been concluded that the Constitutive and inposability system provide both "declarative" and "protective" functions of registration systems. Because in both systems, the registration is effective in one of the stages of creation or effect of the right. But the inposability system has more coordination with the general rules of transactions and the principle of 'freedom of will', which has led to a greater tendency of legal systems to that, including Iran.

Keywords
Intellectual property law, Legal formalism, Registration law, the Assignment and licences contract, the Validity and stability of the Transaction, Transfer contracts.

* Email: nasrintaba@ut.ac.ir Fax: +982166566860

LEGAL THEORY OF APPEARANCE: REVIEW AND CRITIQUE

Ehsan Lotfi[*]
Assistant Professor of Law Department, International University of Imam Reza
(Received: 20 April 2015 – Accepted: 27 September 2015)

Abstract
Although resorting the reality is always significant and effective in the legal system but sometimes, this rule is in conflict with civil rights. The rights of people who enter into a transaction while they were unaware of reality and have confidence in appearance that is reliable for reasonable person but the discovery of reality violated their right, inequitably. Indeed, the theory of appearance was initiated to repair this situation and protect of good-faith and the stability of transactions. Although, the influence of this theory is visible in Iranian Law but it seems that the use of the of origins of Iranian Law, make us needless of borrowing this legal establishment. Some issues such as "the principle of appearance", the rule of "ghorur", "La-zarar" and make a way toward creating a local mechanism to fulfilling of mentioned purpose.

Key words
Theory, Appearance, Confidence, Good-faith.

* Email: lotfi482@gmail.com Fax: 05137602155

SUSPENSED TRADER AND FRAUDULENT ACTS

Alireza Mohammadzadeh Vadeghani[*]
Associate Professor of Faculty of law and political science, University of Tehran
Mohammad Moein Amirmojahedi
Master of private law at Tehran University (farabi)
(Received: 10 September 2016 - Accepted: 7 April 2017)

Abstract
Bankruptcy is a legal institution (entity) that Commercial Code has dealt with in Articles 412 to 575. Fraudulent bankruptcy is a crime against property that trader will be punished _if committed_ under Article 670 of Penal Code of Islamic Republic of Iran 1392. This crime has been criminalized in Commercial Bill through Article 1208. Determination of its elements, relevance of fraudulent bankruptcy and fraud, requirement of issuance or non-issuance of suspension order from criminal court to establish suspension of payments or establishing whether he is a trader or not, are the points that are not theoretically and practically matters of consensus that will be discussed in this article.

Keywords
Bankruptcy, Fraud, Fraudulence, Suspension.

[*] Corresponding Author Email: alirezamv@yahoo.fr Fax: +982166409595

PRIVATIZATION OF RESPONSIBILITY FOR ENVIRONMENTAL DAMAGES; SHIFTING FROM INTERNATIONAL RESPONSIBILITY OF STATE TO RESPONSIBILITY OF DANGEROUS ACTIVITIES OF OPERATORS

Ali Mashhadi[*]
Associate Professor, Public &International law Department, Qom University
Atiyeh Shahhosseini
MSc of International law, University of Qom
(Received: 17 September 2016 - Accepted: 18 November 2016)

Abstract
Under traditional public law international responsibility arising out of environmental damages usually imposed on states. But whereas some environmental damages are arising from private sector activities, it is not sufficient to limit this responsibility only on states without providing any responsibility on private sector in many cases. So a positive change created in the field of international responsibility arising out of environmental damages, that it is development of the responsibility scope to private sector. There are two ways for privatizing: approval of primary responsibility of operator instead of origin state responsibility that is named channeling and reducing the level of responsibility from intergovernmental level to civil law level of origin State.

Key words
"Channeling of international responsibility", "Civil liability of private sector", "International responsibility", "Operator", "State Responsibility", "Privatization of Responsibility".

[*] Corresponding Author Email: mashadiali@yahoo.com Fax: +982532504532

HARM TO CORPUS OF DEADS

Khadijeh Mozafari*
Assistant Professor of Alzahra University
Abbas Mirshekari
Assistant Professor of University of Judicial Sciences and Administrative Services
(Received: 10 September 2016 - Accepted: 18 May 2017)

Abstract
If the human body, after death, to be damaged, the analysis of the topic is particularly significant in determining the injured party. Should the deceased be considered as injured? There is a doubt because of incapacity of deceased therefore he could not have any right on his body. In addition, the dead cannot be harmed, because the dead are free from pain, grief, despair, and other unpleasant sensations. As result, the deceased should not be seen as loss party. The second answer is inheritor. But in this manner and with relying of appearance of penal code, inheritors are not injured. By Rejecting the two aforementioned options and in result, society is incurred a loss of injury to dead's corpus. Because of The disturbance of the peace community members after injury to dead's corpus. Thus, by accepting civil liability for the cause of the damage, in fact, the life assured that their body will be respected after death. That is why both the renowned jurists and the new punishment law pay compensation in the way of charity in order to offset the damage to society.

Keyword
Deads, Loss, Inheritor, Tort.

* Corresponding Author Email: kh.mozafari@alzahra.ac.ir Fax: +982188047862

THE DESIGN OF THE RULE OF CIVIL LIABILITY ARISING FROM OBJECTS IN IRAN AND FRENCH LAW

Alireza Yazdanian*
Associate Professor, Department of Law, University of Isfahan, Iran
(Received: 4 May 2016 - Accepted: 19 September 2016)

Abstract
As a principle, to determine the responsible, the damaging action plays a major role. But in some cases, one of rules to determine the responsible, in French law is determining of the responsible on the basis of the ownership or maintenance of objects, that this issue, in French law has led to rule of civil liability of things. In French law, liability arising from animal and liability arising from the demolition of buildings and liability arising from accidents, as examples of liability arising from objects, it has been suggested and the doctrine of these cases and with the help of paragraph 1 of Article 1242 of code civil has concluded the principle of liability arising from the objects. In Iranian law, there have been such examples, but there is no general rule such as article 1242 of code civil. But it seems the doctrine in Iranian law can conclude the principle of civil liability arising from the objects that in this article, according to the jurisprudence and comparatively with French law will be examined.

Keyword
Responsibility, Objects, Rule, Ownership, Maintenance.

Email: dr.alireza_yazdanian@yahoo.com Fax: +98 3117935126