Comparative Study of Civil Liability: Indirect Cause and the Direct Cause in Iran Law and Intervening Factor in England Law

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Abstract
The civil responsibility of indirect cause and direct cause of Iran law has many similarities and differences with the intervening factor in the law of England. The expression of a variety of intervening factors as an independent and dependent intervener shows that an independent intervener is similar to direct cause and dependent intervener is like a poor direct cause. However, due to the changes introduced by Article 526 of the Islamic Penal Code of 1392, in the state of community, indirect cause and direct cause are both principally responsible and, with the difference in the effect of the amount of intervention, responsibility will also be relative, and the tendency towards material and objective factors in Iran law will be more than fraudulent factors and immaterial factors. The civil responsibility of cause priority effect, which is well-known in the community of longitudinal causes in jurisprudence and Iran law, is like the same civil responsibility of cause and primary factor against dependent intervener factor. The direct cause who are affected by the primary cause, committed the felony and hurt in Iran law in state having will is responsible, in contradiction to the procedure of England law, which is such a direct cause is dependent intervening factor and irresponsible.

Keywords: indirect cause, direct cause, independent intervening factor, dependent intervening factor.

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The Consideration of Possibility of Third Party’s invocation To professional Contractual Commitments in the Civil Liability Dispute

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Abstract
According to the principle of privity of contracts, the contractual commitments are limited to the contract parties, and third parties cannot invoke breach of such commitments in order to prove professional fault. In addition, invoking mere professional contractual and costume obligations would also make some limitations in attaining compensation by third parties. Therefore, different solutions have been devised to protect the third parties in order to exempt them from proving professional civil fault and providing them with the possibility of invoking the breach of all professional contractual commitments either mechanism oriented commitments or result oriented ones. The recognition of breach of contractual commitment as a civil fault, intervention of professional contractual situation in recognition of this civil fault (the idea of privity of contractual fault) and the law-made institutions of commitment in favor of their part, the possibility of making commitment in favor of public and formation of direct contractual relationship between professionals and third party are common solutions. However, regarding the professionals’ activities that formed mostly within the contracts’ context, the above mentioned institutions are not efficient necessarily to protect third party against damages resulted out of professional activity. Therefore, the judicial practices in England and France protect third party with utilizing the routes of the rules of the parties of contract’s possibility to invoke the legal status resulting from contract against third party and/or generalizing the idea of commitment to cautious and care in performing contractual commitments to third parties. In Iran legal system, the possibility of commitment in favor of public in general rules and the professional strict liability against the other party and third party in the Law for Protection of Consumers’ Rights are solutions that can be offered in order to protect the third party (rights).

Keywords: Professional, third party, civil liability, the possibility of invocation, strict liability.

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Trademark Parody: Infringing Trademark Owner’s Rights or Consistent with Freedom of Speech Principle? (Comparative Study)

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Abstract
Trademark parody which has been recognized as an example of freedom of speech is a means to comment on products introduced by trademark. In this type of imitation, inspired by the original trademark, a humorous form of it is drawn in order to convey a specific message to the reader. Here, the benefits of three groups are at stake: trademark owners who enjoy exclusive rights; parodists who enjoy freedom of expression, and the public who are entitled to benefit from the results of parody. In the law of the United States and countries such as France and Germany, case law has played a significant role in balancing these conflicting interests. Similarity between the parodied trademark and parody and the specific effect of parody on the trademark have led trademark owners to bring infringement and dilution actions. In the Iranian law, there is no specific provision as to trademark parody. However, principle 24 the Iranian Constitution concerning freedom of expression is a suitable basis for recognizing trademark parody. In this paper, it has been suggested to provide for parody in laws as an exception to trademark owners exclusive rights and to declare its boundaries.

Keywords: Criticism, exclusive rights, infringement action, dilution action, freedom of speech.

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An Introduction to the Notion of Administrative Police in Iran, with a Comparative Approach to the French Law

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Abstract
The administrative police as a function for securing public order is a French notion which provides fundamental conditions for exercising rights and freedoms. The dualism of public order and the existence of general public order and special public order results in the dualism of administrative police. Hence, both general and special police have been developed. In order to secure public order the administrative police inevitably limits the freedoms, a fact that shows the importance of restricting police authorities so that they can be easily monitored. Coming into existence of special polices which aim at arrangements for right-claims is another step towards more legitimate freedoms since these polices are obliged to follow certain procedures. The article is intended to recognize the notion of administrative police by referring to its similar concept, namely, judicial police, and seeks to clarify the necessity of distinction between police authority and police agent as well as administrative police and judicial police.

Keywords: administrative police, judicial police, police authority and police agent, public order.

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Comparative Study of the Concept and Necessities of Public Criminal Trial in the Iranian Law and International Standards

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Abstract
The rule of public trial is one of the main manifestations and indexes of fair trial, and is considered as one of the most important enforcements of the rule of fair trial. The rule of public trial has a combined and referable to various elements concept and each of the conceptual elements has its own necessities. Hence, with lack of every conceptual element and its necessities, public hearing will not refer to the concept. So, in this article after explaining conceptual elements and the necessities of the public criminal trial rule under the shadow of international criteria, Iranian Law position is studied in this relation and it is concluded that in spite of investigation of conceptual elements and some of the necessities of public trial rule in Iranian Law, ignoring other important necessities of the rule such as public inaccessibility of documents and deeds of the cases, difficulty in accessibility to the courts’ votes and also legal restrictions in the field of releasing proceedings and some other practical limitations, have confronted desired achievement of public trial with serious challenges in the Iranian legal system. In addition, to completing the text, the exceptions and limitations governing this principle are also discussed in this paper.

Keywords: Criminal Procedure, public trial, conceptual elements, international criteria, Iranian Law.
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A Comparative Study between European and Iranian Laws of Service Contracts

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Abstract
In recent years, the European Union based on the law of its members has drafted two groups of articles about contract of services. These two instruments are principles of European law on service contracts and CFR. With regard to the similarity of the systems of contract law in Iran and Europe, the subject of this research is a comparative review of the obligations of parties in service contracts in European and Iranian Laws. This study evaluates the achievements of the European law based on the Islamic and Iranian laws and States regulations of which could be accepted in Iranian law. It has been concluded that, similar to European law, we could accept obligations such as: conformity, obligation of skill and care, duty to inform and notice, payment (even if it is not specified in the contract) and the obligation to cooperate.

Keywords: service contract, conformity, duty to inform and notice, price fixing, obligation to cooperate, European contract law

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The Application of the Theory of Voluntary Assumption of Risk in Athletes’ Civil Liability: A Comparative Study in English, French and Iranian law

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Abstract
The theory of voluntary assumption of risk is an often-quoted form of the roman legal maxim and it fully exonerates the defendant. The essential elements of the defence of volenti are the explicit or implicit consent of the victim to waive all claims for damages and also the fully awareness of the victim of all the risks involved, including both the nature and the extent of the risk. The theory has specific features in French sport cases and it is considered as a victim’s consent and a “fait justificatif spécial”. In this matter, a reform has occurred in French sport law recently. English and French jurists have different perspectives on the effect of this theory. In this paper we will specify comparatively the nature, theoretical basis, essential conditions and legal effect of volenti in sport cases (its main domain of application) by referring to relevant doctrines, codes and precedent in English and French civil liability. Then we will compare their results with the effect of similar legal institution in Iranian sports law.

Keywords: Ezn (permission), Consent, Sports law, Volenti, Civil liability.

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Extermination through Human Security Violations

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Abstract
There are some overlaps between extermination as an example of crimes against humanity, with the notion of committing acts aimed at destroying a particular population and violating some instances of the seven dimensions of human security, including economic security, food security, health security, environmental security, personal security, community security and political security. As a result, many violations of human security can be considered as the material factor of extermination. In this paper, by examining the nature of each of the two concepts of destruction and human security, it is concluded that if the actions such as economic sanctions against a country, promotion of the cultivation of a water-based product in a region facing water crisis, an unrealistic change in the priority of the health system of a country, building of a dam on the rivers which leads to an area where a group of people are living, the diversion of policies and environmental protection programs directed to a group of people, the promotion of single-child values among a group of people with the aim of eliminating those groups, we should consider these violations of human security as an example of extermination. The International Criminal Court will also be the competent authority for this crime.

Keywords: Crime against Humanity, Extermination, Human Security, International Criminal Court.

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A Comparative Study between the Status of the Rights of Minorities in the Iranian Charter on Citizens' Rights and the United Nations Declaration on the Rights of Minorities

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Abstract
The topic of minorities rights is one of the blatant manifestations of human rights, which has been considered by the national and international legal systems. Protection of minorities rights is to be done in legislative form and through the legal documents and non-legislative form. A comparative analogy between the substance of the UN Declaration on Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992) and the Iranian Charter on Citizens' Rights (2016) as non-obligatory documents, may picture the panorama of the minorities rights in the two mentioned systems. The comparison reveals that the Charter coincided with the international standards mentioned in the declaration through considering particularly the non-discrimination principle, cultural participation and diversity mentioned in the declaration. It should be mentioned that the Charter has not considered some affirmative obligations of the government in protecting the survival of minorities and non-considering the prohibition and punishment of the minority rights activists. Still the Charter is much more developed than the declaration in some fields like considering the prohibition of hatred speech. The noticeable compatibility of the Charter substance with the declaration reveals that the Charter is implicitly impressed by the declaration.

Keywords: Minorities Rights, the Iranian Charter on Citizens' Rights, the United Nations Declaration on Minority Rights.

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A Comparative Study of the Competent Court and Applicable Law in Civil Liability Caused By Nuclear incidents under International Conventions, Japanese and Iranian Laws

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Abstract
The expansion of nuclear activities has been accompanied with increased nuclear transboundary risks. One of the legal issues is the determination of the competent court and law. Civil nuclear conventions consider a single competent forum to deal with all actions, that is the court of the country within the territory of which the nuclear incident occurred or the courts of Installation State. The applicable law is to be the provisions of the conventions or national legislation of the competent court. Even though Japan is not a party to any of the international nuclear liability conventions, it has a solid national third party liability legislation on nuclear responsibility according to which, the court of the country where the incident took place has the jurisdiction, and the applicable law is usually the law of the place where the damage has occurred. Since Iran it is not a member of civil nuclear liability conventions and it does not have any relevant domestic law in this field, it has used general rules such as defendant’s domicile to determine the competence court and the applicable law, which in many cases will be ineffective. Therefore, the specific legislation or at least membership of the relevant conventions is necessary.

Keywords: Nuclear incidents, Competent court, applicable law, nuclear civil liability conventions.

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Economic Analysis of Law In the Conflict between Legal Modernity and Legal Postmodernity

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Abstract
There is no doubt that the economic analysis of the law is realistic. The question, however, is whether or not this realism is in conflict with the fundamentalism of legal modernity? If realism, considers interpretation as the will of a concept, economic analysis of law as a theoretical framework for the interpretation of the legal rule, leads to the negation of fundamentalism and to the acceptance of pluralism in validity of the legal rule; as substantial and formal formalism will not be valid. These results denoted the paradigm of legal postmodernity, as a pluralistic one. However, it seems, if that fundamentalism is manifested in spontaneous value, it is a symbol of the interaction of reality and metaphysic. Thus, the economic analysis of the law, based on this type of fundamentalism, is only the resurgence of the modernity as the spontaneous order. Consequently, the interpretation will also be confined to the discovery of meaning, so that information has not fallen in the demise of pluralism. Because the acquisition of economic information requires a minimum of this formalism, the validity of this method of interpretation means the validity of formal formalism.

Keywords: Economic Analysis of Law, Modern Law, Postmodern Law, Reality, Value.

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The Legal Effects of Sex Change on Marriage based on the Islamic Jurisprudence and Common Law

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Abstract
Soon after the acceptance and legalization of transsexual surgery, transsexuals' stability of marriage turns into a concern for both jurists and judges. Whether their marriage remains stable after surgery is a question which is still left unanswered. In cases when only one of the couples undergoes the surgery, marriage is generally believed to be abrogated, but in other cases when both partners do the surgery simultaneously, there are disagreements in verdicts. Based on the British common law system the transsexual partner is obliged to abrogate the marriage for six months until his or her gender is identified. In the United States however, no ban is imposed on marriage in such cases. The present paper aims to discuss the current ideas in this regard and survey the fact in common law and Islamic perspective.

Keywords: Transsexual, Hermaphrodite, Gender Identity, Gender Recognition Act, Gender Recognition Certificate.

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The Effect of Force Majeure on the Scope of Liability in Compulsory Insurance Act of 2016 Compared to Former Laws and General Rules with a Comparative Study in French Law

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Abstract
In tort law, Force Majeure is considered to be one of the obstacles to civil liability. Accordingly, damage caused by Force Majeure in compulsory insurance Act of 1968 was excluded from insurance coverage and law. In amending the Compulsory Insurance Act of 2008, excluding damage caused by Force Majeure of insurance coverage was removed, and the question is raised as to whether the damage caused by Force Majeure is under the purview of the law or not? In the Compulsory Insurance Act of 2016, this question becomes more important because on the one hand, this law has not mentioned about excluding damage caused by Force Majeure from the, on the other hand, any accident caused by a vehicle because of fortuitous events has placed under the law. To answer this question, we first review the concept of Force Majeure by means of conducting a comparative study in French law and then the effect of Force Majeure in compulsory insurance laws will be compared with the general rules of liability in Iranian and French law.

Keywords: Force Majeure, Causation Relation, Scope of Liability, Insurer, Compulsory Insurance Act of 2016.

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A Comparative Study on Specialty Rule in Legal Systems of IRAN and the USA

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Abstract
Extradition of offenders is a formal process by which a person is surrendered by one State to another State. The requirements of positive substantive for extradition are: dual criminality, extraditable offenses and specialty. According to specialty, a person extradited under a treaty shall not be proceeded against, sentenced, detained or subjected to any other restriction of personal liberty in the territory of the requesting State for any offence committed before surrender other than an offence for which extradition was granted or any other offence in respect of which the requested State consents. The philosophy of the existence of the specialty is the protection of the rights of the accused, as well as the providing confidence to the requested State so as to ensure that the requesting State does not abuse its authority. This principle was included in sources of extradition in Legal systems of IRAN, the USA and the United Nations (UN) Model Treaty. Given the philosophy of the existence of this principle in the simultaneous protection of the rights of the accused person and the State, one of the problems with the implementation of the principle is the possibility of abandoning this principle by the state and or the accused; this leads to a question in determining the beneficiaries of this principle. The question is whether the accused person can cite principle despite the withdrawal of the State from it? This paper, by examining documents and case law, concludes that by creating a hierarchy between the interests of the requested State and the accused and prioritizing the interests of the requested State can resolve the conflict between the interests of them, provided that the withdrawal of the requested State does not violate other rights of the accused person.

Keywords: Extradition, Specialty, Model Treaty, United States of America (USA), Iran.

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Issuing and Executing of the US Courts Judgments against the Assets of the Central Bank of Iran from the Perspective of International Law and the US Law

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Abstract
In April 20, 2016 the Supreme Court of the United States confirmed the execution of the US Courts judgments in Case of Peterson et al against assets of the Central Bank of Iran. The Supreme Court held that the execution of judgments against assets of the Central Bank is not in contradiction with the Principle of Separation of Powers set out in the US Constitution. This judgment which reflects the position of the highest court in the United States with respect to the immunity of Central banks and its property would affect the judgments of inferior courts in the United States. Up until 2012 the Central Bank of Iran and its property was immune under American Law. In that year, the US Congress adopted Iran Threat Reduction and Syrian Human Rights Act by which the assets of Central Bank of Iran were blocked and allowed the American judgment creditors to enforce the judgments against the Government of Iran from assets of Central Bank of Iran. The measure of Congress in adoption of the Act and consequently the execution of judgments against assets of Central Bank of Iran are without merit. Under Customary International Law, Central Banks and their properties are having immunity and the properties cannot be subject to the execution of judgments which are issued against States.

Keywords: State Immunity, the Central Bank of Iran, the US Foreign State Immunity Act, Execution of Judgments, US Courts Judgments.

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Autonomic Nullity-Appeal in French Law

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Abstract
One of the most important concerns over judicial systems around the world is guaranteeing the conformity of definitive judgments with law and legal principles. In French law, despite the fact that the appeal in Cassation Court (pourvoi en cassation) is widely accepted, the jurisprudence does not stop in this phase; in all cases where ordinary or extra-ordinary ways of appeal are abolished by the law, in cases of the ultra virus actions of the judicial authorities, the parties could resort to autonomic appeal. This appeal is created by the French jurisprudence. Taking into account the restricted domain of appeal in the Supreme Court in Iranian Law, especially in civil matters, it is necessary to consider the mechanism of other legal systems in respect of controlling the correspondence of definitive judgments with law and legal principles. For there reasons, the domain and conditions of autonomic nullity-appeal in French Law have been studied in this Article.

Keywords: Nullity-appeal, definitive judgments, Ultra virus actions.

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The Parties’ Bringing Changes in Action and Litigation (Comparative Study)

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Abstract
To whom belongs an action? Only complainant? Or defendant may also have his share on it? So called expression in civil procedure "action belongs to the parties" shows this practical and legal reality that each party can do some acts on civil litigation such as choosing the action and freedom in that work, transfer of action, and freedom of defense. Action becomes in some cases common things of the parties. This time called and "time of decision". Sometimes disputing parties can do their modification to the procedure and not to litigation. Where each party do some modification to litigation such as consenting to conciliation or arbitration or they do some modification in litigation by filling incident action. Those acts need consent or acceptation of defendant. In the other words, when each party do some modification to the litigation such as consenting to conciliation or arbitration or they do some modification in litigation by filling incident action, those acts need consent or acceptation of the defendant. It seems that this limit of ownership does not permits claimant to withdraw action in case of disagreement with the judgments.

Keywords: Ownership, modification of litigation, Withdrawal of legal action, Termination, Whole Withdrawal.

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Theoretical Basis of the Exercise of the Fundamental Rights in Contract Law

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Abstract
Traditionally, fundamental rights were considered as an instrument for protecting citizens against government, and contract law was considered as a regulating instrument for private relations, without influence of fundamental rights and concepts of public law. This traditional idea has become less significant in recent years and fundamental rights have been influencing private law. So that, courts interfere in contractual relations by referring to fundamental rights. This study investigates theoretical principles of effect of fundamental rights on contractual relations. A descriptive analytical approach is adopted in this study. Results indicate that fundamental rights have been treated as superior rights based on which other rights are interpreted and exercised. In other words, fundamental rights are inviolable principles, both in private law and public law, and the government is required to support these rights in entire its law system. On the other hand, fundamental rights are considered as instruments to protect the weak party in a contract and realization of social justice. In the Iranian civil law, in accordance with the constitution and fundamental rights guaranteed therein, as well as the rule of law of these rights, private individuals can not violate fundamental rights in their contractual relationships and Article 959 of the Civil Code also permits the implementation of fundamental rights in contractual relationships.

Keywords: Constitutional Law, Contractual relationships, Private Law, Justice.

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Exceptions to Image rights

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Abstract
People are entitled to their images in a sense that they can decide on whether or not they want to be pictured by others, as well as the publication of the taken pictures from them. Therefore, for the purpose of imaging or publishing a photo, the person's consent must be obtained. However, this right is not absolute. People have the right to become aware of events around them. So, if with an intention of publishing information, an image was taken from other people and it published, then there will be no need to obtain the consent of those persons. For this reason, various legal systems permit the imaging of celebrities or public places. In general, where there is intention as to inform other people, it is permitted to take photo without attaining their consents. However, in such cases, individuals’ privacy and dignity must be respected. Also, no one can use another one’s image for commercial purposes. In the legal system of Iran, it seems that due to the freedom of the press (principle 24 of the constitution), the importance of public interests and the preference for private interests, the same belief is acceptable.

Keywords: Image, Public interest, Celebrities, Privacy, Human rights.

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