A CRITICAL STUDY ABOUT PUBLIC LAW OBSTACLES IN TORT LIABILITY OF LEGISLATURE'S SOVEREIGNTY (LEGISLATIVE POWER)

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Abstract
The rule of immunity of legislature's sovereignty from tort liability is rooted from this principle that "the king can do no wrong". This is the main barrier of tort liability of the sovereignty of legislature". According to this traditional view, sovereignty is the powers that governor can apply in legislative, judicial and executive fields. Legislating sovereignty is on the apex of the pyramid of authorities and different from judicial and executive sovereignty. A critical study of the obstacles in public law for tort liability of legislature's sovereignty (legislative power) from philosophical point of view is the principal question of this study. The theoretical obstacles for tort liability of legislature's sovereignty are including segregation of powers, parliamentary immunity, silence of the constitution, risk of judgocracy, and maintenance of legislative public order. In this article, we have supported tort liability of legislature's sovereignty and have proposed suitable answers for these obstacles.

Keywords: Civil justice, Judgocracy, Legislative Public Order, Immunity.

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ECONOMIC ANALYSIS OF REMEDIES FOR BREACH OF OBLIGATION, SPECIFIC PERFORMANCE

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Abstract
Specific Performance and Compensation are main remedies for breach of obligation. Different legal systems, dependent upon their philosophical, legal and ethical attitudes, gave different priority to one of them and used another as an exceptional or discretionary remedy. Economic analysis of law, with a consequential approach, shows an optimal mechanism of contractual remedies to give higher priority to one of them in accordance with the conditions of that assumption. However, economic analysis has another important function and shows legal systems with similar goals. They usually applied different ways to achieve these goals. Thus, effectiveness and convergence can be considered as two important results of economic analysis. This research emphasizing on specific performance argues the advantages of specific performance compared with the compensation to offers suggestions for the legal systems.

Keywords: Compensation, Efficient breach of contract, Justified breach, Kaldor-Hicks efficiency, Specific performance.

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TOULMIN'S ARGUMENT MODEL IN LAW

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Abstract
If the logical and mathematical approach to law is related to an argument with a valid form regardless of the matter and content in the form, the rhetorical approach can prefer the content to the structure and form. In the Toulmin's rhetorical model of the argument, the acceptability of the content of argumentation firstly belongs to the judgment of audience to whom the argumentation is made. Secondly, the argument has a descriptive form to show common way of reasoning in the people everyday conversation, not prescriptive, like the methods prescribed by the logical approach. In the Toulmin model, at the first step, there is the claim that we need argumentation for; while in the logical approach we have initially some premises which necessarily bring us to the conclusion.

Keywords: Rhetorical logic, Form, Content, Probability, Claim, Ground, Warrant.

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CRISIS IN THE AIM OF MODERN LAW, THINKING ABOUT THE CONCEPT OF "PROGRESS" AND ITS RELATION TO MODERN LAW

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Abstract
There is no doubt that the paradigm of modernity is based on the idea of progress and not compatible with stoicism. However, there is no unanimity on the notion of progress, on its linear nature or its cyclic behavior. The plurality of legal contexts is sign of legal panjurism and the interpretation as the will of meaning is sign of judgmental panjurism. This is a crisis factor in the aim of legal modernity. The explanation of this content is not possible without explaining the nature and meaning of the notion of progress and the nature of modern law; because this is ambiguous in the concept of "progress" and its nature in the discourse of modern law. This research is based on duality of the fields of cognition and norm in the discourse of modernity to present a clear sign of progress and its relationship with modern law.

Keywords: Progress, Modern law, Legal panjurism, Metaphysic, Reality.

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PHILOSOPHY OF CORPORATE LAW, ARE CORPORATIONS CREATED BY SPONTANEOUS ORDER OR CONSTRUCTIVE ORDER?

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Abstract
Juridical institution of capital business corporations can be divided into 4 fundamental rules: 1) the rule of separate legal personality of corporation, 2) the rule of majority of capital or votes, 3) limited liability of shareholders, and 4) unlimited discretion of directors. The corporation is introduced as big discovering and marvelous instrument of modern capitalism and even some elements of that are described more important than invention of electricity and steam engine. Searching in philosophy of law, we concluded that business corporations are modern concepts created by state via spontaneous order and night watchman theories outlined by economic and political philosophers. They don't accept government in economics and law and we cannot explain and justify the legitimacy of corporate law.

Keywords: Constructive nature of commercial corporations, Constructive order, Constructive rationalism, Evolutionary rationalism; Legal positivism; Spontaneous order.

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REFLECTION OF THE CAMBIAL RIGHTS AND OBLIGATIONS IN THE NEGOTIABLE INSTRUMENTS ITSELF IN THE PROCESS OF ISSUANCE AND CIRCULATION

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Abstract
"Speed" and "security" are two basic requirements in commercial relationships. In this regard, respecting the legitimate confidence is one of the most important of these necessities. In the scope of negotiable instruments, protection of the holder in good faith requires that the appearance of document should be taken into consideration. Accordingly, the rights and obligations related to the negotiable instruments should be assessed on the basis of the guise of the document. This principle known as "the principle of reflection the cambial rights and obligations in the negotiable instruments itself" is not expressly mentioned in the legal contexts of Iran. This study by a comparative study on international documents and French law in one hand and using the achievements of these legal systems on the other by analyzing different examples of this principle in the legal contexts of Iran, achieve an extractive principle with inductive method.

Keywords: Negotiable instruments, Attached slip (allonge), Separate instrument, Holder in due course, Document appearance.

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THE LEGAL NATURE OF FEDYE IN DIVORCE KHULA AND MOBARAT

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Abstract
In Khula divorce, wife offers his husband Fedye (ransom) and persuades him to get divorced. After accepting Fedye, the husband pronounces Talaq (divorce contract). In this type of divorce, both man and woman are consent to get divorced. Investigating the nature of this divorce, Faqihs (Islamic jurisprudents) and lawyers have only focused on the nature of this divorce and little attention has been paid to the legal nature of Fedye paid back to the husband from the wife. The current study aims to investigate the legal nature of Fedye paid back to husband from wife and try to answer whether the nature of Fedye, like divorce, is an independent Iqa (unilateral obligation) or a specific contract between husband and wife, and what can be set as an exchange for the Fedye. Previous studies specified that Fedye in terms of nature is a special contract between husband and wife. By that, wife financial is transferred to husband and make him required to to divorced his wife.

Keywords: Legal nature, Khula, Mobarat, Divorce, Fedye.

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RELATED ACTIONS AND STUDY OF SIX CRITERIA FOR THEIR RECOGNITION

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Abstract
Relation between litigations has a significant effect on process and judgment. Except its definition, legislator has not indicated concrete criteria of the relation for its recognition. In this study, we have studied six criteria including co-relationship and Mere Relationships; One-way relation and two-way relation; Proof relation and the effect of judgments; res judicator; Indivisibility of claims and interdiction of twice condemning. The source of these six criteria is the current interpretation of judicial precedent. The goal of these six criteria is just administration of justice governing all proceedings.

Keywords: Related actions, Same cause, Full connection, Counterclaim, Plural actions.

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GAS PRICE REVIEW CLAUSE IN TAKING OR PAYING CONTRACTS AND DISPUTE SETTLEMENT ARISING OUT OF THAT

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Abstract
Take- or- Pay is a kind of long-term contract for purchase and sale of natural or liquid gas. Parties in the contracts are usually faced with some problems such as economical imbalance of contract and the impossibility of its implementation by the parties. So far, there are many specific solutions for the problem. One of the solutions is makes pricing of the contract through a pricing formula independent of oil price. This has been considered as the way of exiting this deadlock. To predict the price review clause at the time of signing the contract (as the Exit Clause) is the best example for solution of these problems. Checking out the reasons leading to price changes and the price review clause are going to modify the price to avoid potential disagreements during negotiations. The arbitration arising from this clause are the important topics discussed in this essay.

Keywords: Arbitration, Trigger event, Gas sales, Price review clause, Pricing.

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AN ANALYSIS OF THE CIVIL LIABILITY ARISING FROM OTHER CRIMINAL ACTS IN IRANIAN AND FRANCE LAW

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Abstract
One of the topics of civil liability of French law is, "the civil liability resulting from other criminal acts". In the legal systems, the rule states that the criminal responsibility is personal and individual and there is no liability arising from the other's criminal acts. However, it seems that we can accept civil liability arising from other's criminal activities. This can even be assumed in the systems that they apply this kind of liability a "civil" responsibility not "criminal" responsibility. Therefore, the civil liability arising from criminal acts of other people can be raised in Iranian law. In one hand, Article 142 of Islamic criminal law is the question that the imposition of liability resulting from other's criminal acts is possible or not. The place of this issue is empty in the legal literature of the law of obligations and Iranian criminal law. In this study, we discussed this subject through a comparative approach and with the help of French law.

Keywords: Responsibility, Civil liability, Criminal acts, French law.

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