

Commencement of Banks Insolvency Procedure (The United States and Iranian law Comparative Study)

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Abstract

Given the importance of banks in countries' economy, some countries have separated insolvency of banks from bankruptcy of companies. The United States is one of the countries that has completely separated the banks insolvency from companies' bankruptcy and while the court plays the key role in the bankruptcy of companies, bank regulators decide on insolvency of banks and the Federal Deposit Insurance Company manage the insolvency bank according to the resolution regime that govern on the insolvency of banks. In contrast, in some countries, including Iran, when a bank goes insolvent, it basically applies the general rules of bankruptcy of companies. One of the important differences between these two methods is when they begin the process of resolution and bankruptcy and who beginning these processes. To begin the resolution process, there is no need to issue a court order and the start of this process is only carried out by the views of the bank regulators or the other authorities established by the law, while in the ordinarily bankruptcy regime, the bankruptcy process begins by the bank itself, the bank's creditors, or the judicial authority and the court decides on bankruptcy.

Keywords

Bank, Bankruptcy, Resolution System, Bank regulators.

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Principle of Non-Gratuitous Application

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Abstract

The Principle of Non-Gratuitous is one of the legal presumptions that its application and position have been disputed in jurisprudential and legal opinions and, consequently, in some jurisprudential opinions regarding contract description, and in legal doctrine and judicial judgments, it is referred to basis and source of fulfilment and payment according to Article 265 of Civil Code. In this paper, with due referring to reasons of this principle, it has been proved that this principle cannot be invoked in the field of contract law because in this area it is necessary to refer to the substance requirements of the contract or the common use of an agreement or explicit agreement of Parties. But in the outer of contracts field, this principle can be applicable in some cases that, firstly, the beneficiary, voluntary or without any legal duty, benefits other party based on his or her request. Secondly, the beneficial act is not gratuitous apparently.

Keywords

Contract, Application, Non-Gratuitous, Payment.

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Establishment of Unified Railway Legal System; A Necessary Step towards Development of International Transportation of Goods

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Abstract

Due to the growth of modern technologies and digitization, nowadays we live in a world shrinking day by day. In this situation, due to the increasing expansion of international trade and international exchange of goods, the existence of different legal systems on the route of a freight transportation contract causes problems such as the emergence of several partial contracts, the ambiguity of the rights, obligations and responsibilities of the persons concerned in contract, the increase in traffic at the borders, the rise in costs, the prolonging of shipping time and eventually the decrease of efficiency. An effective solution for the development of international transportation is the establishment of a unified and coherent legal system whose purpose is to start and end a transport with only one contract and document under the rule of a specific law. In the field of transboundary rail transportation of goods there are two major legal systems: the SMGS Convention and the CIM Rules. Many efforts have been made to harmonize these two provisions, including the "draft of Unified Railway Law". It seems, however, that currently there is not required ground and preparations for adoption a new convention to unify provisions of this area. It is therefore advisable, until the formation of such ground, to use voluntary contractual tools such as "CIM/SMGS common consignment note", Standard Contracts and the like to further harmonize the provisions of this area.

Keywords

Rail Transportation Law of Freight, Legal Unification and Harmonization, Rail Transportation of Goods, SMGS Convention, CIM Uniform Rules.

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Application of Hermeneutics in Resolving Conflicts in Law Texts in Iran

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Abstract

Hermeneutics and the quality of understanding law texts are two issues of great importance in academic and legal circles today. Since our constitution is derived from the Imamite jurisprudence, therefore, hermeneutics of the texts of the laws requires understanding the principles of jurisprudence which are of the most important resources of understanding the principles and the rules and the quality of jurisprudential understanding. In fact, hermeneutics is the science of interpretation. While the rules may bear more interpretations than the other laws for reasons such as briefness and ambiguity. Due to the fact that any authority to supervise enforcing any law inevitably interprets it. In fact, hermeneutics is considered as a knowledge in an era which brings an interpretation close to reality. Hermeneutics is science not limited to specific times and places and influencing in many areas (legal, economic, social, etc.). In conflicting texts of laws, hermeneutics is a helpful, powerful tool. Despite the differences between hermeneutics and inference rules and while hermeneutics is dependent on Western legal sources and inference is dependent on Islamic law sources, in the present research, we see the need to common principles and rules between hermeneutics and Inference to be used in interpretation of Iranian laws.

Keywords

Conflict, Hermeneutics, Interpretation, Inference.

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Attack on Judgment in Period of other Way of Attack & Renunciation

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Abstract

It is possible that one has right to attack on a judgment in many ways. These ways are ordinary or extraordinary ways that have their place alongside each other according to principles. Renunciation of these ways is generally possible. Nonetheless, between courts and tribunals we can see some conflicts about the way and methods of renunciation. Some courts have accepted the explicit renunciation of right of attack and some chambers of our Supreme court have rejected the express renunciation. We believe that the right of attack on a judgment is a subjective right that shall be renounced expressly. The relation between ways of attack on judgment is necessary for determining courts' view and achieving an acceptable theory which is in line with nature of civil procedure.

Keywords

Subjective Right; Procedural Subjective Right; Way of Attack; Renunciation.

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Comparative Study of Legal Ways to Protect Publicity Value in the United States of America and Iran

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Abstract

The economic exploitation of identity attributes, such as name, voice and image have become possible, especially for celebrities, and this consequently leads to the question about different ways of supporting the mentioned identity attributes. This article uses a descriptive, analytical, and comparative method to study this question in the law of the United States and Iran. The results of this study indicate that, based on the experiences of the United States legal system, contractual and non-contractual liabilities and intellectual property rights cannot fully protect such a right. Thus, over half of the United states recognized an independent right as the "publicity right" by law or Common law or both. In Iran, there is no law that expressly recognizes this right, and we can only resort to traditional solutions. Nevertheless, it is worthwhile to take protective provisions in this regard in Iran's law, using US experience in this matter.

Keywords

Publicity Value, Right of Publicity, Intellectual Property Rights, Non-Contractual Liability, Contractual Liability.

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Lis Pendens in Private International Disputes by Looking at Iranian Law

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Abstract

The doctrine of lis pendens is accepted in national systems nowadays. The prevention of parallel proceedings, conflicting judgments and loss of time and money to the litigants and the courts are most important reasons to apply it in most legal systems. However, due to several reasons including national sovereignty observance there is a disagreement as to whether the courts apply the doctrine in private international law between different lawyers and also legal systems. The main focus of the article is on the doctrine of lis pendens in Iranian private international law. The article with descriptive-analytical and comparative method shows although the doctrine is accepted in most legal systems, it is overlooked in Iranian private international law. However, Iran legal system is prepared to accept the doctrine in private international cases.

Keywords

Private International Disputes, Doctrine of Lis Pendens, Doctrine of Forum non Conveniens, Exclusive Jurisdiction, Competent Court.

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Comparative Analysis of Anti-Competition Conducts Evaluation Criteria -Emphasis on Iranian Law

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Abstract

The bases of Competition Law have economic nature that precise examination and clarification of them lead to effectiveness of legal regulations. There are variety of criteria to analyze anti-competitive conducts. The main ones are “Per se rule” and “Rule of reason”. Under “Per se rule”, the subject of conduct is the basis of prohibition, however; “Rule of reason” requires the analysis of effects of conducts and the relevant market structure. Other admissible criteria in Competition Law in compliance with the specific view, study the anti-competition conducts. This article aims to examine legal rules of antitrust and pros and cons associated with them and also Law on Implementation of General Policies of Principle (44) of Constitution law in order to clarify view of Iranian Law. To conclude, acceptance of any criteria has direct impact on content of laws and the way of addressing anti-completion conducts and also it roots in economic basis and objectives that Competition Law attempts to achieve. The ambiguity of legislator’s economic bases and also overlooking the criteria in this area are the reasons of ineffectiveness of Competition Law.

Keywords

Commercial monopoly, Economic bases of Competition, Anti-Competitive Agreements, Anti-Trust Law.

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Comparative Study of Possibility of Punitive Damage Verdict issuance by Arbitration Institutions in the United States and Iranian Law

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Abstract

The main purpose of issuing punitive damage verdict is to make compensation for the loss inflicted on the plaintiff and to restore the plaintiff to the status quo ante. In Iranian law, the basic principle is to recover the damage and restore the plaintiff to the status quo ante, but the punitive damage is completely different. In other countries, including England and the US, in which punitive damage is accepted in a broad sense, the punitive damage is defined aside from any compensatory damages or nominal damages which are considered in issuing the verdict due to extreme misconduct of the defendant. As in the members of Romano-Germanic Legal System, in Iranian law punitive damage is not applied in private lawsuits. Despite this situation, and regarding international aspect, and in response to some measures taken by countries - the US, in particular - in sentencing Iran to punitive damage, the lawmaker, eventually, recognized punitive damage in considering civil lawsuits against foreign governments in 2011. A question, however, arises here is that it is possible for arbitration institutions in common-law obedient countries to issue punitive damage verdict. In this paper, we discuss this issue and also possibility or non-possibility of execution by national courts of the punitive damage verdicts issued by arbitration institutions.

Keywords

Punitive Damage, Arbitration, Competence, Verdict.

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The Risk of Public Private Partnership Contracts in the Field of Information and Communication Technology and its Management Method

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Abstract

Nowadays, given the limited government funding in financing the projects of the ICT sector, the use of public private partnership can be very promising. Also, given the large budgets and the long time spent on these projects, achieving the main goals of the project and success in these projects are very important. On one hand, because public-private partnership projects in the ICT sector may face a variety of risks during their lives that affect the main objectives of the project, identifying and assessing the nature of the risks seems necessary. In this paper, after explaining the features of these contracts and the risks involved in using them, has tried to discuss the risks of using public private partnership contracts in the IT sector and how these risks are managed.

Keywords

Public-Private Partnership, Information Technology, Risk, Contract, Management.

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Effects of Anti-Suit Injunction in International Commercial Arbitration

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Abstract

If anti-suit injunction is not enforceable and without sanction in case of non-compliance, its issuance will be impractical and may be led to parallel proceedings, which causes waste of time, cost and issuance of contradictory awards for single subject. Then, status of this injunction in international commercial arbitration is discussable in terms of implementation and remedy of non-performance. Performance of the above injunction and remedy of it is not guaranteed in world court, because different legal systems have several approaches and New York convention is ambiguous and limited. Accepting and performing of this injunction for protecting of parties by arbitration tribunal prohibit simultaneous proceedings.

Keywords

Provisional and Contemporary Measures, Insulting Court, Simultaneous Proceedings, Arbitration Agreement.

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Mechanism of Collective Compensation for Damages Arising from Breach of Security Rules of the EU General Data Protection Regulation and its Application Feasibility in Iranian Law

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Abstract

Collective compensation for violations of private data protection security which is the subject of the EU's 2016 General Data Protection Regulation is a new mechanism that has been on the Union's agenda since 2018. The present research aims to explain the conditions, implementation mechanism and rules governing the mechanism through documentary method. The purpose of this mechanism is to aggregate lawsuits for breach of the aforementioned bylaws in a court of law to recover damage from the performance of controllers or processors of information collected by virtual reality institutions, NGOs taking measures to receive license. They will be allowed to sue for their rights. In accordance with Article 80 of the foregoing Regulations, these institutions are legal representatives of the people and do not need to be represented by them. In accordance with 2018 Consumer Protection Directive, governments are also responsible for compensation. Implementation of this process in Iranian law will be subject to legislative and administrative policies to monitor the performance of these organizations, ratify union regulations, and amend domestic law.

Keywords

Private Data Protection, Collective Compensation, General Data Protection Regulation, Legislative and Executive Policy.

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Nationality of Children born From Marriage of Iranian Women to Non-Iranian Men

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Abstract

According to section 4 and 5 of Article 976 of the Iranian Civil Code, it is possible to identify children born in Iran, from Iranian mothers and non-Iranian fathers, as Iranian nationals. However, the problem is that most of these marriages have been concluded without complying with Article 1060 of the Civil Code. Therefore, any solution to this problem must include all types of these marriages, whether legal or illegal. The lawmaker in the Act of determination of the nationality of children from marriages of Iranian women with foreign men (approved in 2006) provides that these children can apply for Iranian nationality after they reach the age of 18. However, there are many problems with this Act. According to these problems, and according to amending Act Iranian mothers can apply for Iranian nationality for these children before they reach the age of 18. The Act, eliminated the whole conditions stipulated in the Act adopted in 2006 for the granting of nationality, including the condition of birth in Iran, not having a criminal record and rejection of foreign nationality and, established a new rule of nationality far beyond solving a problem. This is an issue particularly in connection with the removal of the condition of birth in Iran, the removal of the condition of observance of Article 1060, and security considerations which can be a place of criticism. It seems that the act intends to grant acquired nationality to these children, rather than granting nationality by blood. This article aims to analyze and critique the aforementioned Act and its various challenges

Keywords

Nationality, Marriage of Iranian Women, Non-Iranian Men, Iranian Mother, Acquired nationality, Maternal nationality.

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Status of Principle of Freedom of Evidence in Commercial Claims from the Perspective of Iranian and French Law

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Abstract

The principle of freedom of evidence in commercial claims, has established its status in law of some countries such as France, considering the fundamental requirements such as speed and ease of proceedings and the consideration of characteristics of business in the proceedings. This principle indicates that in commercial cases, a claim can be proven by any means, without any limitations in their ability to prove, such as testimony, invoices, purchase orders or emails etc.. The principle of freedom of evidence abandons two pillars of the system of the *preuve légale* (admissible determined types of evidences and limited probative value of some of them) and establishes a different evidence system for commercial law. However, it seems unnecessary in Iranian law to establish the principle, due to elimination of limitations set on probative value of testimony and presumptions after Islamic Revolution of Iran and use of capacities of legal establishments such as the presumptions and the judge knowledge. This point of view makes it necessary to engage expert judges that are familiar with business affairs in the judiciary more than ever.

Keywords

Commercial claims, Proof, Commercial evidences, Freedom of evidence.

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