

EXPLAINING THE NATURE OF THE RIGHT OF EXPLOITATION AND ITS CAUSES

Mohammad Mahdi Alsharif*

Associate Professor of Law, Department of Law, Faculty of Administrative Sciences and Economics, University of Isfahan, Iran

Maryam Jalali

PhD in Private Law, Department of Law, Faculty of Administrative Sciences and Economics, University of Isfahan, Iran

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Abstract

Right of exploitation is known as one of the individual relationship to property by civil code and is counted endowment and lien contracts as its causes. Analysis of the nature of loan shows that the result of the loan contract is also right of exploitation, although civil code has not considered the contract on side contracts with the right of exploitation. The nature of exploitation right is nothing except credit domination on the right of exploitation and also permission given to the owner in the contract, as dominant the borrower on the right. Article 92 has written of the right by legislator's permission in the exploitation of resources. If we don't know the loan contract creator, we will be faced with deadlock to determine the type of relationship that comes from it; in that, the 29 article has not predicted relationship except ownership. Revocable of loan contract and binding of lien contract and endowment do not make fundamental difference in the result. Accordingly, irrevocable in the free peace and revocable in the gift will not cause remarkable difference in the result (ownership) of these two contracts. Also famous jurists later have asserted that the result of loan contract is the right of exploitation as general endowment and lien contracts. We should not be wrong about the license of exploitation or charges in legal permission with the right of exploitation in legal or comparative permission in comparative law.

Keywords: Right of Exploitation, Permission, Loan, Lien contracts.

* Corresponding Author

Email: m.alsharif@ase.ui.ac.ir

MANAGEMENT OF SPECIFIC ENDOWMENTS WITHOUT TRUSTEE

Mohammad Hasan Emamverdy*

*Assistant Professor of Law, Law Department, International University of
Imamreza, Iran*

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Abstract

There is a disagreement on the management of specific endowments without a trustee. Some jurists, recognizing the ownership right for the beneficiaries, believe that the management of the endowment is an integral part of it and its exclusive management is with the beneficiaries. But most jurists in the last two centuries consider the rights of future beneficiaries as standard. They consider the administration of the affairs related to all the beneficiaries as the ruler's authority. In the Iranian law, in the beginning, the first opinion was chosen. But later on, the second view came to the force. However, the practical procedure of the Organization of the Endowments and the judicial process of the courts accept the first view and it has continued until now. However, the second opinion and its basis are accepted in the new legislations. Therefore, it is necessary to change the practical and judicial procedure.

Keywords: Beneficiaries, Specific endowment, Governor, Right of ownership, Right of exploitation.

* Email: emamverdy@imamreza.ac.ir

STRICT LIABILITY FOR SELLERS OF USED PRODUCTS ACCORDING TO THE MODIFICATIONS IN AMERICAN LAW

Bijan Haji Azizi*

*Associate Professor of Private Law, Department of Law, Faculty of
Humanities, Bu-Ali Sina University, Iran*

Reza Tavakoli Nahad

*PhD Candidate in Private Law, Faculty of Humanities, Bu-Ali Sina
University, Iran*

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Abstract

Strict liability relies on the goals including efficient allocation of resources, distribution of risk, deterrence and consumer expectations. These goals, generally speaking, cannot be realized because of the structural differences between new and used product markets. Naturally in used product markets, consumers expect lower price and quality. In addition to the existing conflict between the nature of this market and strict liability, it will not provide more secure goods. As a result, in the relationship between used product sellers and injured persons, the theory of negligence will provide greater social benefits unless the seller's conduct causes the expectation that the risk of used product is not higher than the new one.

Keywords: Strict liability, Used goods, Efficient allocation of resources, Distribution of risk, Deterrence, Consumer expectations.

* Corresponding Author

Email:hajii598Qbasu.ac.ir

THE CONCEPT OF NON-OPPOSABILITY AND ITS DISTINCTION FROM SIMILAR CONCEPTS

Mahsa Robati

PhD Candidate in Private Law, Faculty of Law, University of Tehran, Iran

Saeed Mohseni*

*Associate Professor of Law, Faculty of Law and Political Science, Ferdowsi
University of Mashhad, Iran*

Seyyed Mohammad Mahdi Ghabouli Dorafshan

*Associate Professor of Law, Faculty of Law and Political Science, Ferdowsi
University of Mashhad, Iran*

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Abstract

In legal texts, doctrine and jurisprudence of Iran, there are several examples in which non-opposability, not as proof of the dispute, but as existence of legal elements. This concept of non-opposability, that is a kind of legal sanction, despite the reflection and use in domestic law, remains unclear with no exact conceptualization. Moreover, the position of this sanction, along with other legal sanctions in the domestic system, is not clear, and as a result of this ambiguity, the effectiveness and application of this sanction in domestic law, due to the confusion of this concept with existing concepts, has sometimes been questioned or rejected. This study seeks, in the one hand, to explain this concept in Iran law by defining the concept of non-opposability in its origin, it means French law, and, on the other hand, explain the position of this sanction in domestic law and prevents from confusion of existing concepts in this field by comparing this legal institution with similar concepts and the distinct boundaries of concepts.

Keywords: Non-opposability, Relative Lack of Influence, Relative Lack of Effect, Relative Nullity.

* Corresponding Author

Email: s-mohseni@um.ac.ir

STYLE OF THE IRANIAN JUDGEMENT

Amirhossein Rezaeinejad*

PhD in Private Law, University of Tehran, Iran

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Abstract

Judicial style in the sense of studying the style markers of law contexts in comparison with literary style has some limitations. Judicial judgements in the light of its features can be an interesting object for stylistic study. We want to know about what the style markers of Iranian judgement are and the reason of this style, as well also to figure out whether Iranian judges can have a special style in their judgments. Results of this study has shown that current style of writing the opinions in Iran based on the reasons made it apparent, is imitation style of French model, especially concerning that Iranian judge, like other procedural grounds, can't find a pattern in Islamic law to write a judgement. However, there are some judges who have special style in writing with considerable styles apart from their quality.

Keywords: Judicial Opinion, Style Markers, Legal and Political System, Iranian Stylist.

* Email: amir_rzn2000@yahoo.com

THE PERFORMANCE OF COMPANY EXECUTIVES IN TAKING OVER A POSITION IN ANOTHER COMPANY

Abdolhossein Shiravi*

*Professor of Law, Department of Private Law, Faculty of Law and Political
Sciences, University of Tehran (Farabi Campus), Iran*

Samad Yousefzadeh

PhD in Private Law, University of Tehran Kish International Campus, Iran

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Abstract

The acquisition is to take the control of management in other companies by purchasing the majority of voting stocks, in order to eliminate the inefficient management. Creating value and expanding shareholders wealth, as two important economic goals, are the main goal for taking over another company. Nevertheless, it should be understood whether, in practice, the incentives of managers to acquire with applying this strategy, will lead to the creation of value and the increase in the wealth of the company's shareholders? The hypothesis in this research is a negative answer to the above question, explaining the reasons and the need to support the shareholders in the acquiring companies.

Keywords: Acquisition, Friendly Acquisition, Hostile Acquisition, Acquisition Motivation, Acquirer, Target Company.

* Corresponding Author

Email: ashiravi@ut.ac.ir

THE ROLE OF COURT IN DISCOVERING THE CAUSE OF ACTION IN ISLAMIC JURISPRUDENCE, COMPARING IRANIAN AND FRENCH LAW

Masoud Farzad

PhD Candidate in Private Law, Faculty of Law, Damghan Branch, Islamic Azad University, Damghan, Iran

Mohammad Abouata*

Associate Professor of Law, Law Department, Faculty of Humanities, Semnan University, Semnan, Iran

Hossein Saddat Hosseini

Assistant Professor of Law, Law Department, Faculty of Law, Damghan Branch, Islamic Azad University, Damghan, Iran

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Abstract

Under Iranian Civil Procedure Act, claimant, when making action, has to determine the cause of his/her action. According to the paramount opinion in Shiite Jurisprudence, principally the whole actions have to be heard even when cause of action has not represented. From this view point, as a rule, the court is bound, at the commencement of hearing, to explore the cause of action and, therefore, make judicial decision. By accepting this opinion which has been applied in some court's decisions, in addition to respecting the fourth principle of Iranian Constitution, it is possible to transfer the subject of determination and achievement of cause of Action, from the section of formal conditions of petition to the section of hearing bars which naturally results in changing the decision making authority from court clerk to judge. In French law, although the phrase "cause of action" has not been used and defined in civil procedure Act and jurist has expressed different opinions in the matter; according to that Act, claimant is obliged to indicate legal and subjective bases of action.

Keywords: Claimant, Defendant, Claim, Hearing, Legal Rule.

* Corresponding author

Email: abouata @semnan.ac.ir

**REVIEW OF DEVELOPMENTS IN IRAN'S LAW ON THE
NATIONALITY OF IRANIAN-BORN MOTHERS
(FROM CIVIL CODE 1307 TO THE 1398 ACT)**

Gholam Ali Ghasemei*

*Associate Professor of International Law, Law Faculty, Qom University,
Iran*

Mohammad Bafahm

PhD Candidate in Private Law, Qom University, Iran

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Abstract

Iran's law on the Nationality of Iranian-born mothers has undergone some modifications. By reviewing the process of amending the rules in this area we can state: The legislator has faced the dilemma of the preference for "macroeconomic and governance interests" and "people's interests". In dealing with the issue of the Nationality of Iranian-born mothers, they first consider the absolute interests of their sovereignty, but due to the problems caused by this absolute and dogmatic approach by the legislator and even the government itself, it is considered paying attention to the interests of the people and the use of the legal and analytical method to deal with the issue of the Nationality of these individuals. In this research, the weaknesses and strengths of various developments and efforts of the legislator and the government are explained and described. The results of this study indicate that both the initial dogmatic approach and the recent analytical efforts are faced extremism views.

Keywords: Foreign father, Nationality, Iranian-born mothers.

* Corresponding Author

Email: g.ghasemi43@gmail.com

A CRITICAL STUDY OF OBSTACLES OF LIABILITY OF LEGISLATURE'S SOVEREIGNTY

Hamid Ghasemi *

*Assistant Professor of Law, Department of Law, Bandar Abbas Unit, Islamic
Azad University, Bandar Abbas, Iran*

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Abstract

The principle of "civil balance" and the principle of philosophical dominance of "civil justice" (value-oriented) and "reform justice"(Ulpian-Aristotle-Kant) over the idea of "civil order" (Instrumentalism) and the "economist thought" in the harmful behavior of the wise legislators. "They are superior and open up philosophical challenges to civil liability, such as the challenge of the "legal personality of the state", "non-attribution" and "innocence" and civil fault in legislative behavior. In France, civil liability arising from government regulations began with the votes of Blanco (1873) and Quibus (L'arrêt Couitéas ,1923) of the State Council, a process that led to Laflovert (L'Fleurette, 1938) voting in favor of Parliament's Harmful Law. In Iran, it is the fault of ordinary legislators to disobey public (religious) order and the basic law, to break the previous duty (Article 72). In "unjust situation" and "faulty abandonment of status" harmful government regulations based on the fundamental right to sue.

The Administrative Justice Code, "fault civil liability" is organized into harmful decisions: "The principle of faulty civil liability breaks down the boundaries of the principle of 'civil immunity' of legislative rulers."

Keywords: Illegitimacy, Guilt (Stubbornness), Non-attribution, Innocence, Legislation.

* Email: hamidghasemi@ut.ac.ir

**REWARD OF FAILURE TO PAYMENT OF WAGE
(SOME CRITICS ON SUPREME COURT UNIFICATION
JUDGMENT NUMBER 757)**

Hassan Mohseni*

*Associate Professor of Private Law, Faculty of Law &
Political Science, University of Tehran, Iran*

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Abstract

Although an employee can prosecute his employer for non-enforcement of its wage condemnation according to article 185 of Labor Law via choosing a penal sanction, but legislator have not foreseen an article in Labor Law about civil sanction of Late Payment Indemnity of wage or condemnation of it in Employee & Employer Conflict Resolution Commission and so this silence occurred conflict of judgments in our courts and consequently in our Supreme Court's Chambers. Finally, Supreme Court by its Unification Judgment Number 757 held that adjudication about this kind of sanction under jurisdiction of Civil Tribunals. This claim is out of authority of that special Commission (EECRC). We believe that this Unification Judgment is consistent with the nature of Employee & Employer Conflict and so it cannot be properly justified by the Principles of Labor Law.

Keywords: Civil Sanction, Duration of Employment Relation, Regular Payment, Cost of Errors.

* Email: hmohseny@ut.ac.ir