A Comparative Study of Physicians Civil Liability to Non-Patients in Iran and U.S.A.

Atefeh Ajori Ayask*
Assistant Professor of Law, Faculty of Literature and Humanities, University, Birjand, Birjand ,Iran
Sedigheh Mohammadhasani
PhD Student in Private Law, Razavi University of Islamic Sciences, Mashhad,Iran.
(Email: mohamadhasani600@yahoo.com)
(Received: 2020/10/28 - Accepted: 2020/12/23)

Detailed Abstract
The legitimacy of medical treatment depends on the patient's informed consent. Medical law, therefore, recognizes the "obligation of information" as one of physician duties. This duty is not limited to informing the patient. Rather, despite the principle of confidentiality in medical law, in many legal systems, it is accepted that the physician in order to protect non-patient must give necessary warnings to the patient or to the exposed person at risk from the patient. Otherwise the physician will be responsible for any damage to non-patient. Considering that this liability been raised for the first time in American law, and on the other hand, considering that Iranian law and jurisprudence have not addressed this issue; This article, based on descriptive-analytical method, comparatively studies the conditions of such liability in US and Iranian law, in order to clarify its various dimensions and to provide suggestions for Iranian legal system. The present article shows that US and Iranian law on the liability of physicians to non-patients have common principles and the American legal system, which is a leader in this field, can be used to regulate the conditions of this liability in Iran.

In both the Iranian and American legal systems, the physician's liability to non-patient persons is based on negligence; Therefore, in Iranian law, a physician can be blamed and held accountable for non-patient persons if physicians, like the US legal system, have a duty to warn in order to protect non-patient persons. Although this obligation is not explicitly stated in any of the laws of Iran, but from the various articles in the relevant laws and approvals of the Medical Council of the Islamic Republic of Iran, it can be seen that the health of third parties in order to maintain public health is considered by law; so that the physician's obligation to inform non-patient persons can be achieved from the general spirit governing these articles and approvals.

In addition to proving the doctor's fault (breach of obligation), the plaintiff must prove that he or she has suffered foreseeable harm as a result of this fault. In addition, in order to fulfill the physician's duty to warn and inform to non-patient persons, in addition to the ability to predict harm, the non-patient person at risk must also be identifiable, otherwise the physician in line with his duty to protect non-

* Corresponding Auther, Email: ajori @birjand.ac.ir, Fax: 05632202517

patient persons should provide the patient with the necessary information about the patient's risks to third parties.

Regarding the role of the patient in the occurrence of damage to the non-patient person, a distinction must be made between the two assumptions. In cases where the patient has no knowledge of the dangers of his or her condition to third parties, the physician who has not fulfilled his or her information obligation is liable as a stronger indirect perpetrator than direct perpetrator against the third party.

In cases where the patient has the necessary information, but nevertheless, regardless of the health of people at risk, causes them harm, custom, the damage to a third party due to the action of both (doctor and patient informed) Knows and as a result, if there are other conditions, the doctor will still be responsible by Article 526 of the Penal Code; Because if the doctor did his duty and gave the necessary warnings, the third party would protect himself and prevent the damage.

Keywords
Duty to Warn, Iranian Law, American Law, Non-Patient, Civil Liability, Physicians liability.

Comparative studies of Agreed Damage Provision du to non performance of contract in Iran and Afghanistan Law

Goudarz Eftekhar Jahromi
Professor, Faculty of Law, University of Shahid Beheshti, Tehran, Iran
(Email: eftekhar@sbu.ac.ir)
Mohammad Ishaq Rahimi[*]
Assistant Professor, Faculty of Law & Political Science, University of Balkh, Mazar e Sharif, Afghanistan
(Received: 2020/10/18 - Accepted: 2020/12/20)

Detailed Abstract
Agreed Damage provision due to non-performance of a contract is one of the contractual sanction breaches that parties to a contract agree to. At the conclusion of a contract damage caused by violations, measured and calculated in accordance with different criteria, are agreed to on the basis that, if one of the parties violates the obligation they have been in charge of implementing they must pay agreed damages to the other party. In agreed damages provision, due to non-performance of the contract, the main aspect is subordinate to the main contract and extends irrevocable and non-revocable of the main contract to that. Of course, the agreed damages provision, are absolutely binding whether the main contract is revocable or irrevocable and as long as the revocable contract is not terminated, provision contained therein are enforced. Consequently, the implied terms of the original contract remain in force and until the original contract loses its validity.

However, the condition for determining the contractual damages is the nature of the condition of the conditional act and sub-obligation. Although the condition of damages is a subordinate obligation and the condition of the contract, like other commitments and conditions, it is based on principles. Thus, as with the threefold theories of the basis of contractual obligation, the theory of the rule of will, the theory of moral obligation, and the theory of law, the same theories apply to the basis of the condition of damages. Of course, today, none of the three theories alone can be the basis for fulfilling a contractual obligation; Conditions, including the condition of contractual damages, each plays a role in creating their binding force to the degree of its importance. As the importance of the agreement of the will of the parties cannot be completely denied, but its role is not so limited. On the other hand, social needs do not cause the government to ignore the individual and his wishes in all cases, but the government intervenes in guiding and supervising contracts according to needs and will be ineffective if the agreement of the conflicting parties with social interests is reached. In addition, due to the influence of Iranian and Afghan civil law on Islamic jurisprudence, the basis of the obligation of the parties has a valuable face and the

* Corresponding Author, Email: ishaq.rahimi64@gmail.com, Fax: 0093787774792

basis and principles of the obligation to implement contracts and conditions, including the condition of contractual damages are ethics, verses and traditions.

The condition of determining the contract of damages causes the contractor to enforce the provisions of the condition in case of violation of the contract, and in case of violation of the provisions of the condition of the contract, he can request legal enforcement or termination of the contract from judicial authorities (Afghan law). In fact, the obligation to implement the provisions of the condition and the termination of the contract in the Afghan legal system are intertwined. As the contractor has the right to force or terminate the contract through the official authorities, but in Iranian law, the obligation to implement the provisions of the condition and the termination of the contract are mutually exclusive. In such a way that the conditional can terminate the contract only if it is not possible to implement the provisions of the condition. Otherwise, if conditional coercion is possible, the ground for termination will not be provided. On the other hand, termination is a non-judicial act due to non-implementation of the provisions of the condition in Iranian law, and the probationer can terminate the contract without going to court.

Keywords
breach of contract, Consequential obligation, Implied Condition, the Specific performance of Condition, termination of Contract.

A study of the conflict of law rule applicable on Security agreement against a right to payment of a monetary obligation under UNCITRAL Model Law on Secured Transactions: Approaches for reviewing Iranian law

Hossein Hamdi
Ph.D. Student in Private Law, Faculty of Law and Political Science, Kharazmi University, Tehran, Iran
(Email: std_hamdi@khu.ac.ir)
Alireza Salehifar*
Assistant Professor, Faculty of Law and Political Science, Kharazmi University, Tehran, Iran
Seyed Ali Khazaei
Assistant Professor, Faculty of Law and Political Science, Kharazmi University, Tehran, Iran
(Email: khazaei@khu.ac.ir)
Sahar Karimi
Assistant Professor, Faculty of Law and Political Science, Kharazmi University, Tehran, Iran
(Email: Karimi_Sahar@khu.ac.ir)
(Received: 2020/09/06 - Accepted: 2020/12/26)

Detailed Abstract
The UNCITRAL Model Law on Secured Transactions which was approved by the UN General Assembly in 2016 has provided for rules on conflict of laws to determine the applicable law on secured transactions. These rules separate the contractual aspects from the property aspects of each secured transaction. The contractual aspect includes the mutual rights and obligations of the grantor and the secured creditor. Contractual aspect involves the mutual rights and obligations which are created between the parties to the agreement. It also includes the effects of the contract against third parties who might be affected by this contract. The effects of a contract on secured transactions will affect three parties. The first party is the guarantor who demands money from another person as collateral. The second party is the guarantor who accepts the mortgaged property. This contract is considered obligatory for the guarantor, but it is regarded voluntary for the other party. The latter whenever wishes might waive the collateral and if the guarantor has incurred costs in enforcing the collateral, the guarantor must reimburse these costs. The third party who owes money although is considered to be a third-party collateral for the contract. However, because his liability is the source of his debt, if he is notified of a security right in a receivable he is obliged to fulfill its obligation upon request. The

* Corresponding Author, Salehifar@khu.ac.ir, Fax:+982188311867

second paragraph of Article 1 of the Model Law extends the scope of this law to the transfers of receivable contracts. This paragraph states that: "except otherwise is provided in Article 72 to Article 82, this law shall be applied to transferees by agreement of the parties".

Property aspect of a contract on secured transactions involves the creation of effectiveness for third parties and priority of a security right among competing creditors. This distinction has been made on the basis of the protection of certainty principle and predictability objective as well as the protection of reasonable expectations of involved parties and also the protection of third parties' rights. The model law considers that the law chosen by the parties would be the applicable law on the contractual aspect of security rights. In the absence of a choice of law by the parties to a contract on secured transactions, the law of a State that the security agreement has most closely connected with it will be applied. This place is the place where the characteristic of the agreement as the most important part of the obligations arising from security agreement have the most resemblance with the law of that country. Because the monetary obligation owed to the debtor of the receivable is used as encumbered asset, the UNCITRAL Model Law on Secured Transactions, makes the relationship between secured creditor and the debtor as the subject of applicable law between the debtor and grantor as the principal creditor. This is to protect the debtor's rights regarding the property aspect of the security agreement, the law on the location of the grantor has been determined as the applicable law, although there are exceptions to this rule.

The purpose of the UNCITRAL Model Law on Secured Transactions is to establish a new system for endorsing obligations by means of movable property, both tangible and intangible. This law provides for conflict resolution of laws to determine the law governing the agreement. Protecting certainty and predictability, as well as the legitimate expectations of stakeholders are considered as criteria for determining the rules on conflict resolution. The contractual aspect deals only with the rights and obligations arising from the contract and is limited to the relationship between the guarantor and the pledgee and the debtor of a monetary claim. Regarding the contractual aspect, the law governing the mutual rights and obligations of the guarantor would be their chosen law. In the absence of the selected law, then, a law which has the closest connection with the contract shall be applied. The benchmark for the determination of the closest relationship is to realize which of the parties fulfills the most important and major part of the obligation so that the law of his place of residence can be considered as the governing law. In this vein, the most important part of the contract relates to the nature of a contract, and it is a part of a contract which the contract was mainly created because of it, and if it does not exist, it is not a contract.

The selection of the most important part of a contract does not have a precise criterion and is at the discretion of the court and can lead to conflicting results. In the relationship between the guarantor and the debtor of a monetary claim, as the contract cannot restrict the rights of third parties, the same law governs the contract

between the debtor and the main creditor, namely, the guarantor. The financial aspects of a contract include the conclusion of a contract and relying on third parties and applying the priority of collateral over various creditors. In these cases, the principle of sovereignty of the guarantor is not governed and the model law in accordance with the type of property has developed a conflict resolution rule. If the mortgaged property is tangible property, the law of the place of occurrence of the property will prevail over these aspects. However, if the property is an intangible property, the law of the place of pledge of the guarantor will govern these aspects to protect the rights of third parties. In the context of the Iranian law, all contracts are governed by Article 968 of the Iranian Civil Code and Article 27 of the International Commercial Arbitration Law of Iran. These two codes do not distinguish between the contractual and property aspects of a security agreement. This study suggests that in the Iranian law, the model law approach should also be implemented to determine the rules of conflict of law so that the applicable law on security agreement can be ascertained.

Keywords
Contractual aspect, Property aspect, Security right, Secured obligation

A Comparative Study of Protection of Privately Owned Historic Buildings in the England and Iran Legal System: From Permission to Objection

Foroogh Heydari Shooli
Ph.D. Student in Public Law, Ph.D. Student in Public Law at Islamic Azad University Science and Research Branch, Tehran,Iran.
(Email: Foroogh2007@yahoo.com)
Mohammad Jalali*
Assistant Professor of Public Law, Shahid Beheshti University Tehran,Iran.
(Received: 2020/12/20 - Accepted: 2021/03/15)

Detailed Abstract
In the UK, the immovable cultural heritage is divided into 5 categories: listed buildings, scheduled monuments, registered battlefields, registered parks & gardens, protected wreck sites. Iranian regulatory system despite the identification of the system of cataloging and division of cultural heritage into movable and immovable heritage, has not initiated cataloging immovable heritage. System of immovable heritage classification, not only specialized English heritage protection but also this act caused the establishment of numerous governmental and non-governmental public institutions and NGOs in the subject of cultural heritage protection. Moreover in the UK, the Historical England Institution which is a non-governmental public institution, publishes documents entitled "Protection Principles, Policies and Guidelines" that these principles have a high place in administrative procedures and must be observed by all Regulatory and decision-making institutions in the field of protection of the historical environment and also all relevant and interested individuals in the field of cultural heritage.

Protective statutes of historical buildings restrict the ownership of owners of these buildings. This article studies the legal system of protection of immovable cultural heritages in light of licensing in a comparative study of England, as a model, and Iran. It should be noted that English system of protection, which is constantly modified, has many guiding principles and documents, beside its effective administrative system. These principles have a higher position rather than positive statutes.

This article tries to answer to this question: 1. what are the main effects of process of licensing on ownership right of owners? To answer this question, these questions should be answered: what is the importance process of licensing? Which authority is responsible for it? Which principles guilds it? How it can be protested and according to which principles? This article tries to answer to these questions in a comparative study of England, as a model, and Iran in a descriptive-analytical way.

Legal system of protection of cultural heritages in England, by distinguishing between different kinds of immovable cultural heritages, regarded historical

* Corresponding Author, Email: m_jalali@sbu.ac.ir, fax: +982122431756

buildings as an example of immovable cultural heritages and has established a specific system to protect them.

Empowerment of local authorities to decide on permissions, from one side, and recognition of protest to these decisions through reconsideration of case by central government in framework of administrative proceedings, from other side, are main characteristics of English model of protection of cultural heritages. But, In Iran, lack of detailed categorizing of cultural heritages has led to Non-specialized system of protection. Actually, Iranian laws have used the phrases of "monuments, buildings, places and immovable properties", which are too general.

Some of advantages of English system of protection are "Decentralization" of licensing process, well ordered process of protest, specialized and valid reconsideration of decisions, and the importance of assessment of interests and principle of proportionality in balancing of interests of owners and cultural heritages. These characteristics have made this system of protection more efficient and defensible rather than Iranian one.

Keywords
protection, historical buildings, right of ownership, cultural heritage, permissions.

The Relationship between Wilāyah (Guardianship) and Political Representation; a Comparative Study

Ahmad Deylami
Associate Prof. Department of Private and Islamic Law, Faculty of Law, University of Qom, Qom, Iran
(Email: A-Deylami@Qom.ac.ir)
Adel Sheibani*
Ph.D. Student in Public Law, Department of Public Law, Faculty of Law, University of Qom, Qom, Iran
(Received: 2020/05/17 - Accepted: 20201/02/13)

Detailed Abstract
The Constitution of the Islamic Republic of Iran is the arena of manifestation of the concepts and institutions of modern governance with a jurisprudential and Islamic reading. It is not surprising that in the constitution, we are dealing with concepts that are abstracted from different intellectual traditions such as republicanism, human rights, theology, political jurisprudence, etc. and are integrated in a single text. The establishment of modern government institutions in the context of jurisprudential concepts in the Constitution of the Islamic Republic of Iran has raised questions about the nature and effects of some of them.

Among these, the nature of "Wilāyah"(Guardianship), As the main pillar of the Shiite state and the core of the traditional part of the Constitution of the Islamic Republic of Iran, which has long been discussed in jurisprudence; in recent decades, the following two theories of "selection" or "appointment" have emerged. The question of the nature of the relationship between government and people in this theory is one of the most important questions to be asked; Thus, the main question of the forthcoming research is that according to the conceptual analysis and description of the different aspects of the two institutions of "province" and "political representation", what is the logical relationship between them? In order to answer this question, examining the relationship between "province" and "political representation" is the main issue and purpose of this article. This will be done by analytical, descriptive and comparative methods.

The findings of this study show that "Wilāyah"(Guardianship), and "political representation" have undergone different developments and are rooted in the history and principles of inequality; And therefore, from a theological and jurisprudential point of view, they have obvious differences in different aspects; But in the system of subject law, and the Constitution of the Islamic Republic of Iran, in terms of reliance on the public will and the rule of law, have major similarities; In this way, the institution of "Wilāyah"(Guardianship), in the constitution can be considered as a special form of committed political representation and focused on moral life. In other words, the creators of the constitution have tried to objectify this institution along with their jurisprudential-theological principles, in a way with the social

consensus of the people of a land and through democratic processes such as referendums and elections, as the top of the pyramid of governance. What specifically makes the institution of Wilāyah in the discourse of the Constitution of the Islamic Republic of Iran similar to the institution of political representation is the fundamental role of public choice in the continuation of the system based on Wilāyah-e-Faqih; With a new initiative, the constitution has made it possible to integrate the people's vote with religious values, and has linked the election of a legitimate ruler (Wily-e-Faqih) and the permanence of his government (Wilāyah) with the consent of the people. The product of this process may be seen by the negligence, a representative institution committed to the religious life, which is formed within the framework of the right to self-determination of citizens.

Keywords
"Wilāyah"(Guardianship), political representation, constitutional rights, political jurisprudence, constitution of the Islamic Republic of Iran.

The criteria for calculation of delay penalty applicable to foreign currencies in international commercial instruments with attention to the Iranian international commercial arbitration practice

Oveis Rezvanian*
Assistant Professor of International Law, Graduate Institute of Management and Planning Studies , Tehran, Iran.
Mohammad Reza Shekari Ashkezari
MA. In Private Law, University of Tehran, Tehran, Iran.
(Email: rshekari@ut.ac.ir)
(Received: 20201/01/04 - Accepted: 2020/03/19)

Detailed Abstract
The matter of the penalty for late payment has a long history under Iranian law. The main obstacle in this regard is the prohibition of Riba (increase) under Islamic law which was also reinforced by Islamic Revolution in Iran. Eventually and after all controversial changes, the legislator, by virtue of Article 522 of Iran Civil Procedure Code (December 2000) allowed for the penalty on the delayed payment of debts in the currency that is commonly used in Iran (namely IRR). Although this provision resolved the problem with Rials, the matter of legitimacy of such a penalty for delayed payment on foreign currencies remained to date as an open question.

The current research, in the first place, aims to examine the legitimacy and legality of delayed payment penalty, regardless of the type of currency, by reviewing the Iran international arbitration practice as well as the scholar and practitioners' opinions. To reach this aim, different arbitration awards which convey the opinions in support of and against the delayed payment penalty is reviewed and examined. On one hand, dissenters are of the opinion that when the legislator allowed for the penalty on the delayed payment of debts in Rials, and at the same time, it did not envisage such allowance for other currencies, it literally prohibited such payment for other currencies. There are a number of arbitration awards in support of such an opinion. On the other hand, the proponents refer to Article 27.4 of Iran International Commercial Arbitration Law which provides that in all cases, the arbitral tribunal shall take into account the trade usages relevant to the case and argue that such provision allows for granting such penalty. The proponents further refer to Articles 221 and 228 of Iran Civil Code and Article 1 of Iran Civil Liability Code and conclude that nothing should prevent the judge or arbitrator to grant delayed payment penalty on other currencies, if he/she deems so appropriate. There exist many arbitration awards in support of such opinion. By reviewing all these opinions, it was the researchers' conclusion that granting delayed payment penalty to the currencies other than Rials has both legal and legitimate basis under Iranian law.

* Corresponding Author, Email: o.rezvanian@imps.ac.ir, Fax: 02122801900

After reviewing the pros and cons of the first matter and concluding on that, the next aim is to find a criterion for calculations and determining the rate of delayed payment penalty applicable to foreign currencies. In order to reach this aim, several steps have been taken. First, a number of international commercial documents are reviewed and the criteria therein are studied.

While some international documents (i.e. Convention on International Transport of Goods Under Cover of TIR Carnets) do not provide any criterion at all, some others are clear and straightforward. By way of example, the Principles of European Contract Law (2002) allows for the average commercial bank short-term lending rate to prime borrowers, or the UNIDROIT Principles of International Commercial Contracts suggests that average bank short-term lending rate to prime borrowers or the appropriate rate fixed by the law of the State of the currency of payment shall be applied. There are also some international commercial documents which do not provide an express criterion for such a rate but give implicit hints and suggestions (i.e. Convention on the Contract for the International Carriage of Goods by Road and United Nations Convention on Contracts for the International Sale of Goods). After this, as the second step, some well-known interbank offered rates (i.e. LIBOR, EURIBOR and The British Bankers' Association) were compared and their approaches were taken into consideration. Lastly, a number of Iranian international arbitration awards were reviewed and the criteria therein for granting the delayed payment penalty to the currencies other than Rials were studied.

After all above studying and investigating the criteria applied in international commercial documents, usages in international trade and Iranian arbitral awards, some suggestions are provided. According to such findings, the judge or the arbitrator should, in the first place, attempt to acquire and understand the real intention of the involved parties regarding the matter of delayed payment penalty, and accordingly, render the award based on such an intention. In case that such an acquisition is not possible, the judge or the arbitrator should determine the penalty for foreign currency by considering the type of currency, international practices, and the usages that exist with regards to such a currency.

Keywords
Adjustment of liquidated damage, civil liability, delayed payment penalty, international commercial arbitration, transnational Commercial Law.

Comparative study of illegal dismissals in the labour regulations of Iran and Australia

Niloofar Soleimani
Ph.D. student in Public Law, Department of public Law, Kermanshah Branch, Islamic Azad University, Kermanshah, Iran
(Email: Niloofar.soleimani93@gmail.com)
MohammadJavad Jafari*
Assistant Professor, Department of public Law, Kermanshah Branch, Islamic Azad University, Kermanshah, Iran
(Email: Dr.jafari@iauksh.ac.ir)
(Received: 2020/04/25 - Accepted: 2020/11/17)

Detailed Abstract
In all countries' labour laws, dismissal has been discussed as a topic that related to job security, human dignity and income of labours. Considering significant effect of dismissal on individual and social life of workers, methods of legislation are important to protect the working class. In Iranian literatures of labour law, there is no comprehensive and detailed study reviewing unjustified dismissal. In this study, unfair dismissal's patterns, formalities, performance guarantees in Australian regulations were studied and compared with Iranian regulations. As Australia is a developed country with well-balanced economy and often has top ratings on lists of ILO, it was selected for this study. In this article by reviewing the relevant laws and documents in a documentary research, descriptive analytical and comparative methods were used. Two applicable labour acts in Iranian and Australian law are labour act 1990 and fair work act 2009.in comparative study of dismissal between two countries' legal systems, similarities and differences have been observed. In Iranian regulation, illegal dismissal is called unjustified dismissal and in Australian's is called unfair dismissal. In Iran the principle is that dismissal is unjustified while in Australia there is no principle. In Iran, giving written warnings in case of worker's negligence and obtaining permission from labours authorities are necessary.in addition, employers must have a justified excuse like inevitable accident or definitive conviction. The legislature of Australia has determined significant unlawful dismissals and provided three criteria to recognize type of dismissals. In Australia there is emphasis on providing in advanced and written notice prior to dismissal. However, this is not a requirement in Iran. Dispute resolution authorities are provided in case of inevitability of disputes in labour relations. In both countries, proceedings are inexpensive, informal and easily available. Dispute settlement bodies hear individual and collective disputes. One of the strengths of Iranian labour law is that immediate dismissal is not allowed however, in Australia, in certain circumstances employer can dismissed the labour

* Corresponding Author, Email: Dr.jafari@iauksh.ac.ir, Fax:083-38457092

immediately without protective formalities of the dismissal. On the other hand, the international labour organization has provided drafts and presented factors in its approvals regarding dismissal. Comparing two countries' laws, value of regulations depends on the degree of their compatibility with the International Labour Organization's criteria. These criteria are observed to some degree by both countries. in conclusion, this comparative study indicates that the legislators of both countries can emulate each other's legal systems and improve their regulations to fully comply with ILO`s criteria.

Keywords
Illegal Dismissal, Unfair Dismissal, Dismissal Procedures, Compensation, dispute settlement bodies.

A Study on the Nature of Res Judicata With A Comparative Approach

Azadeh Sadeghi
Ph.D. Student in Private Law, Department of Humanities and social Sciences, Zanjan Branch
Islamic Azad University, Zanjan, Iran
(Email: azadeh.sadeghi.lawyer@gmail.com)
Masoud Alborzi Verki*
Assistant Professor, Department of Law, Faculty of Social Sciences, Imam Khomeini International University, Qazvin, Iran
(Received: 2020/09/24 - Accepted: 2021/03/05)

Detailed Abstract

In the Latin word, *res* means "subject matter" and judicata means "adjudged" or "decided", and together it means "a matter adjudged". By the Roman rule "*res judicata pro veritate accipitur*" is meant a matter adjudged is taken as truth. The *res judicata* doctrine which had been recognized for centuries by Roman jurists and ancient Indian texts, due to its importance, was introduced to the common law and, meanwhile, became an integral part of the law of civil law countries. *Res judicata*, which is generally based upon a public as well as a private interest, promotes fairness and prevents the law from being abused and, at the same time, avoids lengthy and wasteful proceedings.

In order to assure the public order and interest, there must be an end to litigations. This aim, as well as avoidance of issuing inconsistent judgements or awards, can be achieved through *res judicata* doctrine, under which parties cannot sue each other again after the final judgment. The doctrine is based upon three principles: no person should be disputed twice for the same reason; there should be an end to litigation and; a judicial decision must be accepted as a correct and valid decision.

Since the purpose of judicial and arbitration proceedings is the decision taken to be definite and enforceable, a judge or arbitrator, by realizing the hidden truth in the case, provides a quick settlement of dispute till respect for judgments or arbitral awards would prevent the plurality of the decisions taken as well as the conflict between them. Although the rendered judgment or award will have the effect of res judicata, as soon as they would become final, the nature of this rule varies in various legal systems.

The Iranian lawyers have considered the doctrine, in relation to judgments and arbitral awards, as circumstantial fact or substantive rule which, at the same time, is based upon social considerations and is related to the public order. In some Iranian legal books, the rule res judicata has been discussed in the section relevant to circumstantial facts, under the general topic of the civil law of evidence, as an absolute circumstantial fact adverse effect of which is not provable. In the Islamic jurisprudence also the rule is based upon legal circumstantial fact.

* Corresponding Author, Email: alborzi@SOC.ikiu.ac.ir, Fax:028-33780084

On the other hand, some Iranian legal writers consider *res judicata* as a substantive rule which is envisaged on the basis of special social considerations and which, without having any indication of fact or reality, show no established rule. As a result, in spite of the possibility of inconsistency of the judgement or award with reality, re-litigation of the decided case is not possible. It can be said, for the purpose of securing legal, social and economic security, of providing for fair proceedings, of keeping respect for judgements and awards given and bringing about their validity and credibility, of vindication of rights, of settlement of disputes and of preventing from prolonged and time – wasting proceedings, the rule of *res judicata*, as a social necessity, plays an important role.

In civil law countries, res judicata is also firmly established and the nature of the rule is known as irrefutable legal circumstantial fact. As for the requirements relating to res judicata ,article 1351 of French civil code provides that judgment qualifies as such where the parties, cause of action and claim are identical in both proceeding(triple identity test). In this system, the doctrine, having preclusive and conclusive effects, normally refers to claim rather than issue. The preclusive or negative effect bans the parties from re-litigation of the claim which has been decided in the prior proceedings, while the positive or conclusive effect binds the court by prior decision.in Switzerland the doctrine of res judicata is part of procedural public policy and courts must consider res judicata issues ex officio, while in France the res judicata is not part of public policy. The prevailing view is to separate res judicata from any fact-finding power.

In common law countries, res judicata is considered as part of estoppel, which may cover both claim and issue preclusion. While the cause of action or claim estoppel prevents to sue all claims which arise from the same event, the plea of issue estoppel prevents re-litigation of a particular issue which the prior decision has established on that conclusion. In order to this rule can be established, the earlier judgment must be final, valid, binding and conclusive decision on the merit. Therefore, this decision should be taken in a fair hearing and, according to the doctrine; only the parties to the proceedings can benefit or be bound by it, in subsequent proceedings. In fact, not only the parties to the claim must be the same, but also the subject matter of the claim and cause must be identity.

In both legal systems of England and the United States the nature of the doctrine is similar and is considered as an absolute rule of the law of evidence which may, sometimes, find works similar to that of the rules of substantive law. In this system, the doctrine of res judicata carries a fact-finding value and restricts either party to "move the clock back "during the proceedings. The scope of this rule has been widened with the passage of time and, in fact, the U. S. Supreme Court, in its judgements, has expanded the areas of applicability of the rule.

Keywords
Legal Circumstantial Fact, Substantive Rule, Rule of Law of Evidence, Rule of Public Order**.**

The civil liability of occupants for injuries incurred by firefighters by comparative study of American law

Mahdiye Sadeghian
Ph.D. Student in Private Law of University of Isfahan
(Email: mahdiye.sad68@yahoo.com)
Alireza Yazdanian*
Associate Professor, Faculty of Law, University of Isfahan, Isfahan, Iran
Morteza Tabibi Jebelly
Assistant Professor, Faculty of Law, University of Isfahan, Isfahan, Iran
(Email: m.tabibi@ase.ui.ac.ir)
Mohammad Mehdi Alsharif
Associate Professor, Faculty of Law, University of Isfahan, Isfahan, Iran
(Email: m.alsharif@ase.ui.ac.ir**)**
(Received: 2020/04/03 - Accepted: 2020/10/14)

Detailed Abstract
Investigating civil Liability of the owners and occupiers to injuries incurred by firefighters during rescue attempts has a long history in the United States. Historically, firemen injured while fighting fires have been restricted in their right to recover from the negligent owner of the land upon which the fire occurred. The law limiting the firemen's cause of action against landowners commonly is called the fireman's rule. In most states, the rule has been expanded to cover police offices and many jurisdictions have expanded the rule to cover additional categories of so-called "professional rescuers," such as EMTs, veterinarians, tow truck drivers, and emergency surgeons. The fireman's rule is an exception to the rescue doctrine. This doctrine permits an injured rescuer to receive compensation from the individual whose tortious acts gave rise to the need for the rescue. Where the rescue doctrine expands an individual's tort liability to those injured in a rescue attempt, the firefighter's rule limits that liability. An individual who might otherwise recover under the rescue doctrine cannot if his injuries occurred while executing his duties as a professional firefighter. The firefighter's rule originated in an 1892 Illinois Supreme Court case. This rule was based upon the traditional system of classifying entrants upon land as trespassers, licensees or invitees. Under that system, the duty of the landowner depended upon the legal status of the entrant; the least duty being owed to trespassers and the greatest to invitees. Although firemen have been granted the status of invitees in a few cases, the majority of courts have held them to be licensees. Accordingly, landowners had no duty to avoid negligently starting fires or to keep their premises free from defects unrelated to the fire. however, many jurisdictions have completely abolished this classification today. With abolishing the classification, states willing to accept the fireman's rule, based it on assumption of

* Corresponding Author, Email: a.yazdanian@ase.ui.ac.ir, Fax: 03117934126

risk theory and public policy. The assumption of risk theory states that firefighters and other professional rescuers assume the risk of negligent conduct by third parties, because such risk is inherent in their professions. Therefore, they have been restricted in their right to recover damages from the negligent person. Another base states that recovering damages from firefighters for injuries caused by an accident that requires their presence in that scene is against the order of society. These rationales also have been criticized by lawyers. One of these criticisms is that the voluntary choice of job does not require voluntary assumption of the risk in that situation, and another is that other workers and employees have the right to sue for injuries resulting from the negligence of individuals, while firefighters which have high occupational hazards, has not been granted this right. Because of these criticisms, in some states, this rule has been abrogated or exceptions have been restricted it. The most common of these exceptions are cases where the owner, intentionally or recklessly, causes an accident that requires the presence of firefighters, as well where injury to officers is the result of safety violations or the owner is aware of the presence of officers, but do not inform them of hidden or unforeseen dangers on the land. Unlike the United States, there have been no coherent studies in this area in Iranian law. Therefore, the analysis of the issue is possible only with the generalities of civil liability. The analysis of these generalities shows that Iran's alignment with most states in accepting the fireman' rule. Because where the fireman's injuries are the result of the owner's direct loss, he is responsible for damages. But in cases of indirect loss, the firefighter will not be entitled to damages for injuries related to the main cause of his presence in the accident. Because there isn't causation between the harmful act of the occupant or owners and the damage incurred by him. But if the injuries are not related to accident required presence of him in scene, he will be strictly liable of the damages caused by the animal or object in the property, provided that the occupant allowed him to enter the property (according to Article 523 of the Islamic Penal Code). However, if his entry is with legal permission, the owner will be liable only if he is negligent, and in both cases, if the owner performs his duty to warn of the dangers in the property, he will not be held liable.

Keywords
?????

Legal Protection of Fictional Characters in American Law; The object lesson for Iranian Law

Mohammad Salehi Mazandarani
Associate Professor in Private Law, Faculty of Law, Qom University,Qom,Iran
(Email: m.salehimazandarani@qom.ac.ir)
Amid Mohammadi*
Ph.D. Student in Private Law, Faculty of Law, Qom University,Qom,Iran
(Received: 2020/04/04, Accepted: 2020/09/28)

Detailed Abstract
Fictional characters refer to strange pseudo-humans or non-human beings with unique characteristics that arise from literary, artistic and cinematic works or whose image originates directly from the creative mind of the artist and their characteristics can be commercialized or used for advertising purposes on goods and services independent of the original work. Using fictional characters in the marketing and advertising of goods and services is one of the oldest and the best known form of merchandising with a multi-million-dollar annual turnover. The fame and popularity of most fictional characters go far beyond their role in the original works which first featured. In addition, many characters are created outside the context of any particular work and may therefore remain without mechanism and law protection. So, ensuring fair protection to the creators and their owners against unauthorized profit from their creativity is necessary. This paper seeks to answer the question " Is it possible to delineate a position for fictional characters in order to pursue their independent lives from primary works in legal systems? To answer this question, through a descriptive and analytical approach and by following American law, the authors tries to examine the capacity of copyright and trademark legal systems and their confrontation together and when the characters enter into the public domain. The Iranian legal literature is very unfamiliar with the protection of fictional characters, and there is a serious legal gap in this regard. In Iranian law, there are many characters based on original stories and poems that have been illegally abused, their names, images and two-dimensional or three-dimensional representation of them in the trade of goods and services. The lack of minimum rules governing this right has been so effective that in some cases the creators of these characters have waived the economic rights of their artistic creation. There is also protection based on a personality approach and attention to the creator of the work, that ignores the fictional characters developed within the stories and poems. On this basis, it is necessary to envisage an independent and special system (sue generic) for recognizing the rights of fictional characters and their creators. Undoubtedly, explaining how to protect the fictional characters and their creators, as well as, exploring other aspects of this right, such as identifying infringement criteria and the

* Corresponding Author, Email: amid_mohammadi_gh@yahoo.com, Fax:0982532103610

public domain's contribution to these rights, in addition to assist the jurisprudence, will enhance cultural activities and augment the richness of Iranian legal literature.

Keywords
Literary Characters, Visual Character, Copyright, Trade mark, Public Domain.

A Comparative Study of the UNCLOS Superiority' Components To the Coastal State's Domestic Law in the Criminal Jurisdiction On the Maritime Zones

Javad Salehi*
Associate Professor of Payam-e-Noor University, Tehran, Iran
(Received: 2020/03/28 - Accepted: 2020/07/23)

Detailed Abstract
Basis for the Coastal State's ban on criminal jurisdiction over foreign ship affairs in the Exclusive Economic Zone and the Contiguous Zone is Subject to regulations of the Convention on the Law of the Sea. As the observance of the provisions of the Convention on the Law of the Sea is accepted by the Coastal State by its membership, it shall refrain from enforcing or enacting domestic laws contrary to its requirements. Examining the dimensions of this theory by relying on the dispute between the Coastal State and the Flag State in the case of the Enrica Lexie ship in the Contiguous Zone is one of the objectives and topics of this manuscript to answer the related questions. First, what are the requirements of the Convention on the Law of the Sea in relation to the maritime zones and the criminal jurisdiction of the Coastal State in the Contiguous Zone? Second, what confirms the superiority of the requirements of the Convention on the Law of the Sea over the domestic laws of the Coastal State over the Flag State? The research findings show that the area of maritime zones is subject to the provisions of Articles 3, (33)2 and 57 of the Convention on the Law of the Sea, and it is not possible to relocate or integrate them into the domestic laws of the Coastal State. The Coastal state's criminal jurisdiction over incidents in the Contiguous Zone and involvement of foreign ships is subject to the provisions of Articles 33(1)(a), 58(2), 94(7) and 97(1) of the Convention on the Law of the Sea. Therefore, criminal jurisdiction of the Coastal State in contrast of the Flag State by ignoring the requirements of different maritime zones and the components of criminal jurisdiction of the Coastal States and the Flag State in domestic law is not effective. Requirement of Coastal State criminal courts to comply with domestic law instead of the Convention on the Law of the Sea and initiation of criminal court proceedings based on is not efficient. India and Italy are party to the Convention on the Law of the Sea and are governed by its provisions concerning the Territorial Sea, the Contiguous Zone and the Exclusive Economic Zone, and the rights and obligations of each party. Supremacy of the accepted rules in the international law of the seas and governing relations between countries cannot be ignored under the influence of the domestic law of one of them to the detriment of the other. India in domestic law has changed the maritime zones of the legal regime of the Convention on the Law of the Sea, and consequently, the rules governing it to its advantage and to the detriment of other states, but domestic laws

* Email: Javadsalehi@pnu.ac.ir, Fax: 09834324695250

contrary to the provisions of the Convention on the Law of the Sea are not binding on other states. Because each of domestic law and international law has value in its framework and is subject to normative hierarchy, and the implementation of none negates or violates the other. Accordingly, the performance of the Indian Coastal State in superiority domestic law with provisions that do not comply with the requirements of the Convention on the Law of the Sea means ignoring the supremacy of international obligations over domestic law, even if the domestic law of that state is base of its criminal jurisdiction.

Keywords
Criminal Jurisdiction**,** Coastal State, Flag State, Foreign Ship, The Convention on the Law of the Sea, Exclusive Economic Zone, Contiguous Zone.

Re-thinking of the function and validity of the preambles of the constitutions, with emphasis on the preamble of the constitution of the Islamic Republic of Iran

Hadi Tahannazif
Assistant Professor Department of Public and International Law, Faculty of Law, Imam Sadiq University, Tehran, Iran
(Email: Tahan@isu.ac.ir)
Hamed Nikoonahad
Assistant Professor of Department of Public Law, Faculty of Law, Qom University, Qom, Iran
(Email: H.nikoonahad@qom.ac.ir)
Reza Bakeshlou*
PhD student in Public Law, Imam Sadiq University, Tehran, Iran
(Received: 2020/08/23 - Accepted: 2020/11/07)

Detailed Abstract
Today, the use of the preamble for various laws, is common in most of the legal systems of the world. There are different reasons for the use of preamble in different legal systems. Plato believed that using the preamble to the law was to prepare people to obey the law and to encourage the adoption of the law. Many constitutions in the world are equipped with preambles, that is, preliminary statements hanging over the body of the constitution explaining the reasons for adopting the constitution, its purpose or its justification. The framers of constitutions all over the world tend to invest in the quality of their preambles.

The Iranian Constitutional legislator consider a long preamble in 1979. A comparative study shows that the preamble to the constitution of the Islamic Republic is the longest preamble among the current constitutions of the world. Preamble of The Constitution of the Islamic Republic of Iran pursues several missions. One of these missions is to introduce this law. As stated in the introductory sentences of this preamble "The Constitution of the Islamic Republic of Iran advances the cultural Socio-politicaland economic institutions of Iranian society based on Islamic principles and norms which represent an honest aspiration of the Islamic Ummah". This preamble goes on to mention the main mission of the Constitution" The mission of the Constitution is to realize the ideological objectivesof the movement and to create conditions conducive to the development of man in accordance with the noble and universal values of Islam" Another mission of the preamble to the constitution is to point out the most important principles governing the Islamic Republic, which shows the importance of this preamble.

Paying attention to the content of this preamble itself will indicate the importance of this preamble. However, this preamble has been met with unkindness

* Corresponding Author, Email: Bakeshlou@isu.ac.ir, Fax: +982188375118

to this day, and even after four decades since the adoption of the constitution, its effects have been neglected. Some opinions about the legal validity of this preamble have always been an obstacle in the way of legal studies about this preamble. Therefore, it seems necessary to study the preamble of the Constitution and examine its legal value and validity by measuring the teachings of the Constitution. Certainly, this study would not be comprehensive without regard to the status of constitutional preambles in the teachings of comparative constitution. Therefore, the main question of this research is as follows: What is the function of the preambles of the constitutions in the constitutional system and how is its compliance with the preamble of the constitution of the Islamic Republic of Iran?

This issue has been investigated by descriptive-analytical method and Finally, it has been concluded that the preamble of the constitution of Iran determines the correct way of understanding of the constitution and the system of the Islamic Republic of Iran. The following points can be mentioned as the main results of this research:

- Despite the great variety of preambles to the constitutions, there are significant similarities between the content of the preamble to the constitution of the Islamic Republic of Iran and many preambles to the constitution.
- The use of constitutional preambles as a binding source is rapidly increasing in various countries. Preamble of The Constitution of the Islamic Republic of Iran is not significantly different from other preambles in terms of legal value.
- The preambles of the constitutions are different from the preambles to the ordinary laws and international treaties in terms of legal basis and comparison between them is not accurate.
- Review of the historical process of ratification of the preamble of the Constitution of the Islamic Republic of Iran showed that, despite some common opinions and considering all the factors influencing the granting of legal value and validity to a document, this preamble has legal value and validity.
- There is no objection to the possibility of using the preamble to the Constitution of the Islamic Republic of Iran to interpret the various principles of the Constitution. However, this preamble seems to have other significant implications beyond interpretation, which, if ignored, would lead to a misunderstanding of the constitution. The preamble is the container of the constitution and has the "validity of constitution".
- Study of the possibility of citation to the preamble of the constitution takes another long opportunity. Nevertheless, an overview of the content, literature and linguistic structure of the preamble of the Constitution of the Islamic Republic made it clear that citing this preamble is possible and there is a necessary legal basis for the great influence of this preamble in the Iranian legal system.

Keywords
container of constitution, preamble, preamble of constitution.

Criminal Combating the Counterfeiting of Medical Products in International Instruments and Iranian Law

Mohsen Eini*
Associate professor, Department of Law, Faculty of Social Sciences, Imam Khomeini International University, Qazvin, Iran
(Received: 2020/09/01 - Accepted: 2021/01/31)

Detailed Abstract
Counterfeit in the medical products including medicines and medical devices is an organized criminal phenomenon which threatens public health and entails some detrimental consequences to the individual's health, and no country, including Iran, will be immune to it. High-profit activity, use of cyberspace and wide distribution of the products, the possibility for using the legal supply chain, low probability of arrest, deficiencies and inefficiencies of international cooperation and absence of proportionate regulations in some countries have caused this growing phenomenon and have increased the concerns. The dangerous dimensions of the aforesaid phenomenon have raised the question of how the international community has reacted to the phenomenon at the level of international instruments and with what measures has it pursued a criminal combat against it? What is the status of the issue in Iranian law?

The present research uses a descriptive- analytical method, and its findings indicate that at the world level, the international organizations, in particular the World Health Organization, have tried to prevent and combat this phenomenon. In 2006, by holding the International Conference on Combating Counterfeit Drugs, the Rome Declaration was approved, which states that counterfeiting medicines is a vile and serious crime that puts human lives at risk and undermines the credibility of health systems and should be combated and punished accordingly.

Additionally, the World Health Organization established the International Medical Products Anti-Counterfeiting Taskforce) IMPACT) , whose main objective was to exchange the information, and promote and facilitate the cooperation for anti-counterfeit inventions, such as drafting an international convention. However, considering the disagreement and conflict in the benefits of the governments, its approval failed and the mentioned group was replaced by a new structure called the Member State mechanism aimed at protecting public health and promoting access to affordable, safe, efficacious, and quality medical products , wherein some actors like the universities ,Interpol or the non-governmental parts are not involved. Finally, despite the organization's efforts, an international instrument has not been adopted yet.

Protection of public health and respecting the human rights, serious concern about the counterfeit medical products in Europe and a consensus on a European solution rather national, have resulted in the ratification of the Council of Europe

* Correspondent Author, Email :eini@soc.ikiu.ac.ir, Fax:+982144715156

Convention on the Counterfeiting of Medical Products and Similar Crimes Involving Threats to Public Health, called "Medicrime Convention", which is the first international instrument under the influence of the European Union law that specifically founded criminal combat against counterfeit medical products and similar crimes involving threats to public health, and it has had an effective role in making coordination and cooperation between the members for combating this phenomenon.

The convention defines some concepts, with a focus on public health, and separates it from the intellectual property, meanwhile, it organizes combating this dangerous phenomenon by using four strategies including prevention, using the criminal law, protection of victims, and international cooperation. Meantime, while respecting the principle of legality, it obliges the member states to criminalize the intentional behaviors stated in the instrument in accordance with the national law and by a competent authority, and by clarity, precision and brief observance, i.e. the principle of legal certainty.

The criminalization in question includes various behaviors such as manufacturing of counterfeit medical products, active substances, excipients, parts, materials and accessories. and also, the supplying or the offering to supply, the trafficking, importing and exporting of counterfeit medical products, and the items mentioned. The convention asks the states to criminalize the making of false documents or the act of tampering with documents.

Furthermore, for counterfeiting of medical products and the similar crimes, the members are obliged to use some effective, proportionate and dissuasive sanctions and measures as per their national laws including criminal or non-criminal monetary sanctions, deprivation of liberty, temporary or permanent disqualification from exercising commercial activity , seizure of the medical products and other materials, goods and documents or the proceeds resulting from the offence or the property whose value corresponds to such proceeds, destruction of the seized medical products and other related items and also using various administrative measures.

In Iran, different and inconsistent regulations like the law related to medical, pharmaceutical, food and beverage affairs, and the Anti-Smuggling of Goods and Currency Act are responsible for criminal combat with the phenomenon of counterfeit medical products. The ruling laws criminalize some detrimental behaviors related to counterfeit medical products and have imposed some repressive punishments on them. However, regardless of non-definition of some concepts, the criminalization's are incomplete, and do not include some important items such as medical devices, accessories, and their counterfeit parts. In addition, some of the behaviors stated in the convention are not criminalized such as offering to supply, brokering, keeping in stock, importing and exporting various counterfeit medical products.

The Anti-Smuggling of Goods and Currency Act, which comprises the economic crimes and its application aims to provide social and political order, has criminalized some behaviors like trafficking, manufacturing, supplying, selling and keeping in stock the medicinal and biological products, supplements, accessories and medical

devices and has given them a criminal response without making a separation between the original and counterfeit products. It is suggested to codify a new law special for the medical and pharmaceutical subjects and use all the strategies for combatting counterfeit medical products in a way that while defining some concepts and separating counterfeit medical products from substandard products, the illegitimate behaviors related to counterfeit medical products are criminalized and the mentioned deficits be made up.

At the end, the suggested law can use proportionate and effective measures and sanctions such as imprisonment, fine equaling a certain amount of all the individual's properties, seizure of the properties resulting from the offence or its equivalency from other properties of the offender, withdrawal of some benefits and licenses, permanent or temporary disqualification from exercising commercial activities, placing under judicial supervision, winding-up, and so on, in addition to the administrative responses like MEDICRIME Convention.

Keywords
counterfeit in medical products, crimes against public health, falsified medicines, MEDICRIME convention

Comparative Study of Territorial Waters and its governing requirements in the Convention on the Legal Status of the Caspian Sea and the Convention on the Law of the Sea

Mostapha Fazaeli[*]
Associate Professor, International Law Department, Faculty of Law, University of Qom, Qom, Iran
Mahdi Keykhosravi
Ph.D. Student of International Law, Faculty of Law, University of Qom, Qom, Iran
(Email: mahdikeykhosravi@gmail.com)
(Received: 2020/07/22 - Accepted: 2020/11/08)

Detailed Abstract
Five coastal states of the Republic of Azerbaijan, the Islamic Republic of Iran, the Republic of Kazakhstan, the Russian Federation and Turkmenistan signed the Convention on the Legal Status of the Caspian Sea onn August 12, 2018. Since this Convention was adopted in the city of Aktau, Kazakhstan, it has also been known as the Aktau Convention. The Convention on the Legal Status of the Caspian Sea has recognized region of the territorial waters in its Article 5. The provisions governing territorial waters has considered in Articles 6, 7, 10, 11 and 13 of the Convention. The purpose of this article is to determine and clarify the rights and obligations of coastal states through a comparative study of territorial waters and its governing requirements in the Convention on the Legal Status of the Caspian Sea and the Convention on the Law of the Sea. With regard to that the present article can determine the coordinates of the action of the Islamic Republic of Iran in the region, the matter of Comparative Study of Territorial Waters in the Convention on the Legal Status of the Caspian Sea and the Convention on the Law of the Sea has located at the center of gravity of this research. The present study in a descriptive-analytical method tries to answer the question of how are the rights and requirements governing territorial waters in the Convention on the Legal Status of the Caspian Sea in comparison with the Convention on the Law of the Sea? The results of this paper show that the Convention on the Legal Status of the Caspian Sea, in comparison with the Convention on the Law of the Sea has taken three active, moderate and passive approaches about Territorial Waters. In the first approach, the Convention on the Legal Status of the Caspian Sea opens new horizons in the field of provisions governing on the Territorial Waters and as a result protection of the sovereignty of the Caspian coastal states has set its own pattern. In the second approach, the Convention on the Legal Status of the Caspian Sea has moved aligned with the Convention on the Law of the Sea and in the final approach, the Convention on the Legal Status of the Caspian Sea, unlike the Convention on the

❋ Correspondent Author, Email: m-fazaeli@Qom.ac.ir, Fax: +982532854499

Law of the Sea, has encountered with legal issues from a position of silence. Since the existence of such vacuums of the treaties can cause serious problems for the Caspian coastal states, especially The Islamic Republic of Iran, expanding regulations of Convention on the Law of the Sea by the five coastal states to the Caspian Sea is the best way to resolve future challenges.

Keywords
Breadth of the Territorial Waters, Right of Innocent Passage, Rights and Obligations of Coastal State, Territorial Waters, The Convention on the Legal Status of the Caspian Sea.

Arraignment in Iranian Criminal Law and Judicial Proceeding of European Court of Human Rights

Firouz Mahmoudi Janaki[*]
Associate Professor, Department of Criminal Law and Criminology, Faculty of Law and Political Science, University of Tehran, Tehran, Iran
Aliakbar Jalilpiran
Ph.D Student in Criminal Law & Criminology, Shahrekord Branch, Islamic Azad University, Shahrekord, Iran
(Email: Jalilpiran.aa@gmail.com)
(Received: 2020/11/22 - Accepted: 2021/03/06)

Detailed Abstract
The principles and rules of fair trial as a part of procedural law and human rights established for protecting and guaranteeing the substantive rights that are recognized in the international and national laws and documents. This law so called fair proceeding principles is rooted in human dignity and should be protected by the governments. Administrating the justice, the aim of each proceeding, isn't possible without establishing a fair trial in which rights and freedom of accused person and other people involved in proceeding process are respected. Fulfilling the right of questioning of the judicial system from the person based on the presumption of knowing him "moral agent" causes him to be summoned for criminal investigation. This summons requires that the criminal charge be explained to him in a detail and clear, unambiguous and comprehensible language, and not that the charge be stated and that the criminal title and the relevant article be only read to him. Relying on the defenses of the suspect or accused and assessing their credibility and value depends on the fact that he has a good understanding of what he is accused of. In order to prevent the nature of the summons or detention from changing into an illegal and unjustified act, the charge must be clearly and completely arraigned to him as soon as possible, by stating the reason for his summons or arrest, and his judicial rights must be reminded to him. In the meantime, if the accused is not aware of the language of the summoning authorities, he has the right to use a free interpreter to defend himself in all respects.

Fulfilling arraignment and its elements and characteristics on the presumption of knowing the suspect or accused "moral agent" and also on the principle of innocence, as well as the important effects and consequences of guaranteeing this right in order to achieve a fair trial, has caused international human beings, both general and specific, as well as in domestic laws of countries to be specified and emphasized and their implementation to be ensured by the judicial systems of governments. This article examines the arraignment in the judicial proceeding of the European Court of Human Rights by comparing it with its place in Iranian criminal procedure. The main question of this study is "how was guaranteed the right of

* Corresponding Author, Email: firouzmahmoudi@ut.ac.ir, Fax: +982161112309

arraignment as one of the essential rights of defendant by European Court of Human Rights and Criminal Procedure Act of Iran?

The European Convention on Human Rights, as a continental treaty, recognizes arraignment as one of the most important principles of criminal procedure and has obliged member governments to fully implement it. The European Court of Human Rights, as the judicial body of this convention, in its procedure, has acted with great obsession on the most detailed rights of litigants, especially arraigning the accused, and has precise and thought-provoking rulings, as far as it can be claimed that all conceivable rights for litigants in the litigation process, is carefully and strictly considered by the Court. In this regard, the full attention of the court to the principle of arraigning the accused in its judicial procedures, including attention to the concept and nature of the arraignment, its promptness and completeness, as well as attention to the accused in terms of familiarity with the language of the accusation and consequently getting a free translator familiar with legal issues to inform arraign who are unfamiliar with the language of the accusation in charge, has resulted in a fair trial, especially from the outset, to be under the strict control of a district judicial body whose order are of high executive guarantee. The court, with full seriousness in this case, has tried to guarantee this important principle of the trial as much as possible so that the most important right of the accused is not violated. On the other hand, in the Iranian criminal law system, the Code of Criminal Procedure, in order to protect the defense rights of the accused, has identified, emphasized and guaranteed the principles of the trial, including the arraignment. However, this right has not been fully identified and defined in such a way that the detailed accusation has been replaced by explicit arraignment and the right to have a "free" translator has not been provided for the accused. Having a translator free of charge is a guarantee for a fuller arraignment, not merely identifying the right to have a translator. An accused who is unable to pay for the translator may be practically deprived of this right. It seems that the drafters of this Act did not pay enough attention to the close connection between the right to have a translator and the right to be arraigned, otherwise all the stages of the investigation, including the investigation of the officers and the prosecutor's office and the court, would not be neglected. Paying attention to the procedures of international criminal institutions, including the above-mentioned Court, and in particular the principles on the basis of which the Court obliges member states to compensate damages to defendants or convicts and considers the actions of those countries in violation of the Convention to understand the importance of this right in all procedures are required. It seems that in addition to reforming criminal laws and regulations, basic education of these important rights and also further guaranteeing this right during the trial, including through, can be very effective in eliminating the shortcomings in Iranian criminal law.

Keywords

Addressee of criminal provision, Arraignment, European Convection of Human Rights, European Court of Human Rights, Fair trail, Innocent presumption.

An Analysis of Nuclear Liability Systems of Japan and the United States of America

Seyed Mustafa Meshkat*
Ph.D. in Criminal Law and Criminology at the Islamic Azad University of Qeshm
(Received: 20201/02/22 - Accepted: 2021/03/20)

Detailed Abstract
One of the nightmares of humanity in the current century is an occurrence of a nuclear incident. Nuclear incidents depending on the type of nuclear facility and material could have devastating damages. Following to nature and power of nuclear energy, any nuclear incident could impact a large area for a long-term period. Nuclear damages have a variety ranges from environmental pollution to the death of a large group of people. To confront it, initially, we should prevent to occur of these hazardous incidents and then fully prepare to deal with victims of nuclear incidents. In this way, a rapid, timely, and efficient system of compensation is vital. Regarding the scope of nuclear damages, it is necessary to draw a compatible liability model of compensation. In this way, nuclear liability was created in the early 1960s. This sort of liability is a new legal topic that attempts to create a proper system to compensate such victims. However, the international nuclear liability model has been changed several times to date. The occurrence of nuclear incidents especially the Chernobyl disaster in 1986 led to a revolution in the civil liability system for nuclear damages. This incident has expressed shortcomings and gaps in compensation when many people have entitled to a nuclear incident and need to prompt and sufficient compensation. This issue does not only include international law but also encompasses national laws. Thus, following nuclear incidents, national legislations have also been updated. Among them are the United States of America and Japan. These legal systems have experienced two severe nuclear incidents. The Three Mile Island and Fukushima Daiichi incidents, which occurred in the United States and Japan in 1979 and 2011 respectively, are among the most important nuclear events so far. Following the Three Mile Island and Fukushima Daiichi incidents, Either Japan and the United States of America have updated the nuclear liability systems. Therefore, the purpose was to develop the scope of liability of nuclear operators and to establish public funds to rapidly provide compensation to victims of nuclear incidents. Japan and the United States of America are considered two roughly appropriate civil liability for nuclear damages that supportive measures of victims of nuclear incidents are taken into account. Even in some aspects, these legal systems act better compare to international law. For instance, the legislature of Japan has established the nuclear liability model that does not have an upper limit. This issue causes to lift any limitation on the compensation of victims of nuclear incidents. The United States of America has also taken proper measures to compensate victims of

* Corresponding Author, Email: MustafaMeshkat@yahoo.com, Fax: 05138403281

nuclear incidents. Among the measures is to provide two tiers of compensation. The aim of this compensation scheme is to take assurance of an efficient compensation of victims resulting from a nuclear incident. As earlier mentioned, the occurrence of nuclear incidents could clearly demonstrate shortcomings and gaps in a legal regime of nuclear compensation. It is better to say, one of the most important effects of the tangible experience of nuclear incidents and their compensations is to evaluate and test the civil liability system resulting from nuclear incidents. In other words, the occurrence of such incidents can better answer the question of whether the existing liability system has been compatible with the severity of such incidents and damages. It is clear that such analyzes and assessments could lead to the identification of a framework for a civil liability system compatible with nuclear damages in countries such as Iran, which are deprived of such systems. Such countries that have not yet experienced a nuclear incident have the opportunity to establish a compensation model with a minimum of shortcomings and gaps. However, this paper attempts to explore the legislative systems of Japan and the Federal of the United States of America and along with that to determine and evaluate the impact of the Three Mile Island and Fukushima Daiichi incidents on the nuclear civil liability system by relying on a descriptive-analytical study method in order to finally establish dimensions of the liability system compatible with the type and amount of nuclear damage (huge damage).

Keywords
Nuclear incident, nuclear liability, exclusive liability, massive damage, compensation, liability compatible with damage.

Comparative study of Competition of the Director of a Company with the Company through Conducting Transactions Similar to the Company's Transactions in English, United States and Iranian law

Issa Moghaddam*
Assistant Professor of Private Law, Department of law, University of Guilan, Guilan Rasht, Iran
(Received: 2020/09/27 - Accepted: 2021/01/20)

Detailed Abstract
The company is managed by its directors. The issue that arises is that is the director allowed to conduct a Transaction similar to the subject of the company's or not? In this regard, there are similarities and differences between the laws of the English and the United States and Iran. In English law, one of the things that contradicts the director's duty of loyalty to the company and its duty to avoid conflicts of interest with the company, is the competition of the director with the company through Conducting transactions Similar to the Company's Transactions. According to the absolute view accepted in this country, such a thing is forbidden. In US law, the director also has a loyalty duty to the company, but has a relative approach in this regard. Under U.S. law, the director is permitted to engage in activities similar to that of the company; unless done with bad faith. According to the law of this country, reliance on this duty should be done only to the extent necessary to protect the interests of the company. The advantage of this view is that it considers the interests of the company and the director and economic interests, but it is not suitable for preventing director from abuse. In Iranian law, the relationship between the director and the company is agency and the director must consider the interests of the company. Under Iranian law, it is not prohibited for a company to engage in any activity similar to the subject of company, unless it is detrimental to the company Of course, a loss is not a condition for the competition to be realized, but as soon as this is typically detrimental to the company.

Another issue that is raised in this regard is the sanction of the competition of the director with the company. In this regard, the most important concern is that the sanction is designed in such a way In addition to the aspect of compensation from the company, it also has a suitable deterrent aspect. Because one of the main approaches in the law of companies in the issue of sanction is the deterrent aspect. In English and American law, it's sanction is: first, the director's duty to return all the benefits of the competition to the company, because from the point of view of these two countries, these interests belong to the company. The second sanction is the director's responsibility to compensate the company. In Iranian law, the main sanction is the director's responsibility to compensate the company. In some exceptional cases, there is also criminal sanction for it. These are

* Email: iesa.moghadam@guilan.ac.ir, Fax: 013-33690280

cases in which the director has used the company's property and credit to compete with the company or has exercised its authority to compete.

Keywords
Company, director, competition, fiduciary relationship, absolute prohibition, relative prohibition, sanction.

A Comparative Study of the Purpose of Awarding Damages for Breach of Contract

Esmail Nematollahi*
Associate Professor, Faculty of Law, Qom University, Qom, Iran
(Received: 2020/07/16 - Accepted: 2020/11/08)

Detailed Abstract
Awarding damages is the most common remedy for breach of contract. Theoretically, awarding damages may seek one of the two purposes: placing the injured party in the actual position he had before the conclusion of contract or in the hypothetical position after enforcement of the contract. The first purpose is referred to as protecting negative interest and the second as protecting positive one. In other words, the first purpose is backward-looking while the second is forward-looking. They are also called as reliance interest and expectation interest, respectively.

Practically, there are various approaches regarding which of them should be seek by awarding damages in legal systems. According an approach, awarding damages seek to protect the injured party's positive or expectation interest, where compensating lost gain is one of the most elements.

This attitude could be attributed to Roman-Germanic and Common Law systems as well International documents like the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the UNIDROIT Principles of International Commercial Contracts (UPICC) and such European documents as Principles of European Contract Law (PECL), Principles, Definitions and Model Rules of European Private Law; Draft Common Frame of Reference (DCFR) and European Contract Law (ECL).

However, it should be noted that while protecting positive interest is the first and foremost purpose of awarding damages, protecting negative interest is also recognized in almost all legal systems as well common law and civil law systems. Few legal systems such as French law are exceptions.

As regards the Iranian legal system, paying attention to the fact that lost gains could not be recovered, it may be thought that it seeks to protect negative or reliance interest. Yet, in some situations, the purpose of damages is to protect the injured party's positive or expectation interest. The primary remedy for breach of contract in Iranian law is specific enforcement and its branches such as awarding the deference between the price and market value and repairing the subject matter in hire contract. All of these are designed to place the injured party in the position expected from enforcement of the contract. Thus, Awarding damages should be read in line with this primary remedy.

* Corresponding Author, Email: Es.nematollahi@Yahoo.com, Fax: 025-32103610

Various effects result from the purpose of awarding damages which include: identification of the kind of interest the injured party could recover, classification of the various types of damage and quantification of damages.

Keywords
Breach of Contract, compensation, Common Law, Civil Law, Positive Interest, Negative Interest.