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Research Paper

Inquiry in Temporary Mortgage Contract

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Abstract
The term in the mortgage is presented in two formats; one is due to the deferred debt and the other is making the mortgage contract temporal for the absolute debt. Although the jurists have considered the first one to be correct, this was not, in the strict sense of the word, making mortgage contract temporal, and it is naturally out of the question, unlike the second form, which is invalidated by consensus. Of course, in jurisprudence and civil rights, in addition to consensus, other arguments have been presented to invalidate this. Among them are the requirement of a mortgage contract, the result of its durability and subordination, the requirement of the literal meaning of the mortgage, and similar cases. In this search, we are looking for an answer to this question: Is making the mortgage contract temporal, correct and possible? For example, can money be mortgaged for two years? Is there a legal basis for the time limit in the debt document? The civil law is silent on this matter, but some jurists have clearly considered the non-limitation of the term as one of the conditions for the validity of the mortgage. The result of the discussion is that if the condition of making temporal is considered invalid due to the opposition to the requirements of the mortgage contract, then the claimant's guarantee will be lost and it will become a normal demand. Therefore, considering the silence of the civil law

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and the conflicting nature of some issues in jurisprudence and the lack of a research background on this issue, the necessity of the present research becomes clear, in which, by focusing on the reliable sources of *Imami* law with the help of the library, the analysis of making mortgage temporal will be maid, in the form of an additional condition. Considering the silence of the civil law in this matter, the present article, in a descriptive and analytical method, after examining the history of discussions in the works of jurists, criticizes each of the arguments presented and after making some considerations, finally, taking into account the requirements of the applications, the free will surrounding the contract, the principle of correctness, attention to the purpose of the mortgage (creating confidence in the mortgagor and motivating the payment of debt in the mortgagor) and attention to the rational and case benefits of making contract temporal and legal logic, reaches the conclusion that the agreement on making temporal is correct and it does not conflict with its inherent qualities. At the same time, the alleged consensus on the invalidity of the temporary mortgage is not without controversy, and does not hold up against the evidence of the correctness of making temporal. In general, it seems that the presumption of invalidity or at least doubt in the correctness of making mortgage temporal, in the Islamic and civil law, has led the regulators of these contracts to make the whole contract temporal, in such a way that the interests of the some bank contracts are secured, from the supposed problem of the timing. In fact, with this action, while the bank enjoys the rational benefits of mortgage timing, they also distance themselves from this possible problem. Finally, it should be said that the timing of the mortgage and its inclusion in the official documents, in Iran's legal system, not only does not face any obstacle, but considering its rational benefits, it is also compatible with the legal logic and customs of the society. On the other hand, the need to amend the laws and regulations of the legal system in order to make it more efficient requires that every research should include a section for presenting suggestions to the legislator. Based on this, it is suggested that, like the amendments made in some articles of the civil law, in the years after its approval, in order to clear any doubts, the correctness of the timing of the mortgage should also be included in the text of the civil law, with the following content: "Article 794 bis (recommended): The mortgage contract can be long-term and the condition of the mortgage being long-term is not void. In this case, if the considered time comes before the payment of the debt, it is like that from then on, until the payment of the debt, the mortgage guarantee is not considered and the debt is free of mortgage. In this case, the agreement on making temporal, depending on the case, will be interpreted in line with the conditional will to guarantee religion and its belongings and related matters as much as possible. In any case, the conditional defendant can request the mortgage after fulfilling all his obligations.

Keywords: Confirmation, Durability, Required by the Contract, Subordinate Contract, Temporary Bail, Temporary Mortgage.

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Research Paper

Specialization of the Legal Profession in Iran; Challenges and Solutions

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Abstract

Advocacy as a public service must be provided to citizens in accordance with the latest social developments. A variety of legal issues and laws necessitate the provision of specialized legal services. In Iran, no appropriate measures have been taken to respond to this necessity. The specialization of advocacy should identify the challenges and provide appropriate solutions. This article seeks to answer these questions: What are the challenges facing the specialization of advocacy in Iran? What are the solutions to solve them?

Nowadays, due to the wide range of issues and the complexity of social relations, it is inevitable to change the system of general advocacy to a system of specialized advocacy. It no longer seems realistic to expect all lawyers to have full control over the rules and details of laws and regulations on all matters. Although the legal profession is one of the first professions for which special legal regulations have been adopted in Iran (since 1314), the legal system governing this profession has not been sufficiently developed yet.

Of course, the specialization of the legal profession is not just a trade union category, but its consequences affect clients and society in general. The representation of the judiciary as a public service makes the government and the relevant trade unions responsible for ensuring the necessary conditions for the proper provision of this service to members of society. An important issue, however, is the design of the model and system in accordance with the current situation in the country. This is done against the rule based on the experiences of other countries and taking into account its internal capacities and limitations. In general, for countries such as Iran, which are at the beginning of the implementation of the above-mentioned

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dea, adopting a step-by-step approach to provide the conditions for the implementation of the above plan over time and evaluate the effects and operational consequences of that idea can reduce to a considerable extent the existing challenges. In any case, at the beginning of the implementation of this idea, the specialized areas of advocacy will inevitably be general (such as lawsuits, criminal proceedings). However, in continuation and with the institutionalization of this idea, the mentioned areas can be made more detailed. Undoubtedly, in determining the details of this matter, the number of lawsuits filed in the judiciary, the higher educational system of law in the country's universities, and the graduate degrees of lawyers and the needs of the region should be considered as relevant considerations.

Based on the model proposed in this paper, the process of issuing a general power of attorney license will continue as before by the Bar Association and the Bar Association of the Judiciary. However, lawyers who are eligible to obtain a specialized attorney's license (conditions such as the expiration of a certain period of time after the issuance of a general attorney's license, success in written and oral exams related to the scientific qualification of candidates and no effective disciplinary conviction within a certain period). They will receive a specialized power of attorney from the date of application for a power of attorney. In the short term, other attorneys can also practice law in specialized areas. However, when the number of licensed lawyers in each of the jurisdictions reaches a pre-determined quorum, it will not be possible for other lawyers to practice law in those areas.

The most important challenges in the field of specialization of legal representation in Iran include the lack of explicit recognition of the specialization of the legal profession in the current Iranian legal system, the restriction of citizens' access to legal services, the possibility of monopolizing legal services (and consequently the decline in the quality of these services and the increase in lawyers' fees), differences in determining the terms and conditions related to the appointment and certification of lawyers, and resistance to change in the current situation.

As mentioned, the adoption of the solutions proposed in this paper does not necessarily lead to the complete elimination of these challenges. It is obvious that disrupting the established order and making important and fundamental changes will, in practice, entail problems and consequences, some of which are inevitable. The main art, however, will be the managing of these issues with the aim of achieving the above idea with the least costs and negative consequences. In view of the studies conducted, it seems that if the possibility of specializing in the legal profession is identified in the relevant laws, the authority of the bar association in implementing the specialization plan based on the relevant criteria, identifying the possibility of judicial objection, determining specialized areas in accordance with the existing capacities, designing a model appropriate to the situation in Iran with the approach of maximal elimination of the challenges, specialization of postgraduate courses in the field of law, forecasting and implementation of

specialized training courses by relevant trade unions and forecasting appropriate disciplinary regulations can, to a considerable extent, pave the way for the efficient and effective implementation of the aforementioned idea.

Considering the existence of two lawyers' unions in Iran (Bar Association, and the Bar Association of lawyers, official experts and family counselors of the judiciary), the implementation of the legal professionalism plan should be designed and implemented in a joint program by these entities. Finally, considering the preparation of a comprehensive bill on advocacy and legal advice, it seems that the most appropriate means to anticipate the provisions needed for the proper implementation of the idea is the provisions of the mentioned bill.

Keywords: Access to Justice, Bar Association, Judiciary, Lawyer, Legal Services.

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Research Paper

Judge and the Issue of Language: A Poststructuralist Approach

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Abstract

In common sense concepts, language is assumed to represent and report something that happened in the past independently of the language. An author uses language to communicate his intentions. Interpretation thus can be understood as an attempt to understand those intentions. According to the lawyers' formal understanding of the "language", the formal theory of law aims to "interpret" and "understand" the text of the laws, to discover the author's intention and will, and to introduce the criteria for the truth of our interpretation of the law according to the author's intention; however, the "reality" of the text is the very intention and meaning that the author intended and buried in the world of the text , and, the reader must "discover" and extract this intention. If the reader's interpretation "corresponds" to the reality of the text (the will of the legislator), this interpretation is "true" and "valid", otherwise it is "false".

In the poststructuralist approach, however, language is not considered merely as a means of naming objects that existed in the past or events that occurred in the past. Rather, language is assumed to precede the existence of objects. That is, the understanding of objects would not be possible without language. The emphasis by post-structuralism on the constructive role of "language" is the basis for considering "discourse" as the source and repository of "meaning." Poststructuralists seek the meaning of words (signs) and texts not in the mind of the author, but in the discourses that revolve around the texts, each of which attempts to "impose" its desired meaning on the text. Poststructuralist discourse theory provides the legal scholar with a vocabulary (such as "central signifier," "articulation," "element," "moment," "objectivity," etc.) that can be used by the researcher provided, of course, that poststructuralist principles are adhered to. Poststructuralist ideas such as the constructive role of language and the uncertainty of meaning can help analyzing discourse conflicts in the geography of law around important legal concepts.

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This study uses an analytic-descriptive method to argue that a poststructuralist understanding of language and discourse can bring new insights to legal methodology, in both descriptive and prescriptive senses. Descriptively, in this view, interpretation is not about uncovering an author's intentions, or giving the text a single meaning (e.g., one that has been established and authorized by a religious or political authority). In statutory interpretation, a judge chooses one of the competing interpretations of the text and rejects the alternatives. To ascribe meaning to a text is always to "reject" other meanings that other discourses attempt to ascribe to the text or sign. This "rejection," however, is not permanent. Rejected meanings are still in play and return to the text. Any dominant and "hegemonic" discourse can be toppled from the throne of power: The game of discourses and the attribution of meanings to words is not over. Prescriptively, this view resists textualism and the domination of explicit meaning. Rather, it expands the discursive horizon of the text by critiquing the principles of conventional understanding in the process of reading, thus paving the way for the continuation of the reading process. The Islamic jurisprudence puts the *explicit meaning* in the foreground, but because it is aware of the shortcomings and inadequacies of language and the scarcity of the clear text, it does not put all its eggs in one basket and also relies on the *apparent meaning*: The *theory of primacy of the apparent meaning* is the main principle of interpretation in Islamic jurisprudence, which, as claimed, relies on the *the consensus of the wise people*. Post-structuralism considers the *apparent meaning* of the text as a product of the dominant discourse and does not grant it any authority. It considers rejected discourses as important as the dominant and hegemonic discourse. The deconstructive approach of post-structuralism requires us to view with skepticism any claim to dominance and semantic certainty, such as the authority of *explicit* and *apparent* meaning. This approach gives discarded and marginalized discourses the opportunity to return to the game of meanings. Using a prescriptive approach, this study proposes to bring all discourses that have been rejected into play in the reading process and to expand the discursive horizon of the text: "Let the others speak."

Keywords: Judgment, Philosophy of Law, Interpretation, Post-Structuralism, Language, Text, Discourse.

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Research Paper

Intellectual Property Securitization, A Comparative study with the U.S Capital Market

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Abstract
Nowadays the importance of intellectual property is so clear, and in technological developments, ideas have become significant, as the intellectual property rights are developing day by day. In fact, nowadays some things more than financial resources are needed to succeed in business. So even a start-up business can become one of the pioneers of the market by relying on new and innovative ideas. In such a situation, the concepts raising from intellectual property are very important. On the other hand, commercialization and financing for development of these kinds of properties are two main problems for the owners. In general, the traditional methods related to intellectual property and obtaining resources are mainly contracts such as license, franchise and direct contracts. These types of traditional contracts not only create many restrictions for the intellectual property owner, but also do not cover all the available financing capacities. Accordingly, the use of new financing procedure for the operational development of these kind of assets has become increasingly substantial. Due to the high capacity and flexibility of the existing methods in the capital market in comparison with other financial markets, especially the money

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market, raising money through the capital market has always been the focus of intellectual property owners. Securitization is one of the newest financing instruments during which an intellectual product is separated from other assets and the balance sheet of its owner or founder, and then, based on the expected future cash flow from this protected asset, negotiable securities are issued and made available to investors who are willing to purchase these securities. It is worth mentioning that, if there are correct valuation method and sufficient legal protection, this approach could be a perfect way to use dispersed funds, and conduct them towards productive economic operations. Unfortunately, despite the importance of the subject, the research conducted in this field is not enough, and the lack of operational history of financing based on this approach in Iranian capital market, more fundamental research in tune with the implementation of this method is doubly important. Considering the importance of the matter and lack of research, this study examines intellectual property securitization in comparison with the U.S capital market in three parts. In the first one, suitable intellectual properties for securitization will be explained. In this section, the distinctive features of any intellectual property that make it appropriate for issuing negotiable securities based on the expected future cash flow will be illustrated in detail. The second part of research includes the expression of the implementation mechanism of this method and its instruments. In this part of the article, different stages, legal relations governing each stage and different effective components are examined. In the third part, some operational examples of intellectual property securitization, along with the analysis of its positive and negative points are provided. In addition, the detailed explanation of each method, the published securities and their related features have also been described. This research has been prepared by analytical library method, and to increase the practical aspects, two successful implementation international experiences have been reviewed. The present article seeks to answer the question of which category of intellectual properties is more likely to be financed by this approach, and what the legal challenges are.

The hypothesis of this article is that intellectual property securitization is possible, and according to the existing regulations, it has a high executive capacity. However, it is necessary to use accurate and specialized methods of valuation and the requirement to use credit rating agencies services. In addition, creating awareness and cultural infrastructure in dealing with intellectual property, and recognizing its rights by the government is very significant. It can be considered that, without awareness in the society, operational implementation will not be possible. Also, lack of regulations governing the possibility of issuance securities based on intellectual properties, has made the practical procedure ambiguous.

Keyword: Securitization, Intellectual Property, Trademark, Patent, Copyright, License Contract, Franchise.

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Research Paper

Legal Regime for Compensating Damages Incurred by Non-Ordinary Cars in Law on Compulsory Insurance Based on Social Cooperative System Theory

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Abstract

1- This article, which was conducted in a descriptive-analytical method using relevant sources, deals with the different consequences of the contractual liability system and the implementation of the collective compensation system as realized in the compulsory insurance law of 2015. Relying on the divided views on the liability arising out of unusual vehicles, the article emphasizes that contractual liability has been set aside by the legislator in such cases and the law was founded on social cooperation in order to protect injured parties through equality in compensation of damages. According to this view, the injured party's right to compensation from the collective resources is different from claiming the damages as a debt from the cause of damage's properties.

2- The majority of scholars believe that having defined the usual vehicle and using the half of blood money of a Muslim man as a criterion for his definition, the legislator limited the liability of cause of damage and insurer to half of the blood money. They considered such a limitation as a revocation of general rules of liability and an exception to the principle of full compensation of damages. However, having set aside the liability of the

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cause of the accident and eliminating insurance principles and rules, the law of compulsory insurance has established a semi-administrative system that pays damages equally in case of involvement of a vehicle in the accident and without attention to the fault of the cause of the accident, the necessity of establishing causation, religion and gender of the injured party, and financial capability of the injured parties (i.e. the owner of unusually expensive vehicles). The criterion for compensating losses incurred by the owner of unusually expensive vehicles is the definition of usual vehicles and matching the damages incurred by both usual and unusually expensive vehicles. The unusually expensive vehicle owners' right to receive compensation from collective resources are equal to that of the owners of usual vehicles and the additional loss could be claimed under general rules of liability. There is no difference between usually, and unusually, expensive vehicles in this regard as the ultimate aim of compensating for damage is to protect injured parties, not the vehicles, or to cover civil liability arising out of vehicles. The definition of usual vehicles and matching compensable losses is a mean for receiving compensation from collective resources of compensation in case of mere involvement of a vehicle in an accident which entitles the injured party to receive such compensation and due to the fact that it has nexus to public order no one could be deprived of such a right.

3- The social cooperation system is a separate system. In such a system insurer is not the owner of the resources of the social cooperation system of the owners of vehicles. In fact, when receiving and paying ,and recovering the resources insurance companies act as agents which is different from insurance activities that are commercial in nature. Recovering of damages for personal injuries is set out as a factor for prevention not punitive damage for traffic violations leading to the accident and is an exception to the principle of a fiduciary relationship in the law of compulsory insurance that is not set out in case of property damages.

4- The law contains words and phrases which denote the contractual insurance of liability. However, under both collective systems of compensation for damages and social cooperation, elements of both can be seen through the compulsory insurance law, the injured party's right to receive compensation for collective resources should be considered an independent and not a right to the property of the cause of accident and insurer. The structure of the social cooperation system that is reflected in the compulsory insurance law in an implied manner requires that the insurer must pay the losses incurred by the injured party regardless of the civil liability and insurance system and the aim of establishing this system is the equality of the injured parties in receiving damages from collective resources without eliminating the civil liability of the cause of the accident or taking into account of any social, economic, religious or gender differences between the injured party and the cause of the accident. Under Article 2 (note 2) of the compulsory insurance law receipt of compensation from collective resources does not deprive the injured party of its right to resort to the cause of action and in the case of involvement of different insurance companies, the insurer of the vehicle causing the accident is liable for payment of damages to the injured parties. Accordingly, it could not be

concluded that liability of the cause of the accident and the insurer is limited to half of the full blood money.

5- In the collective compensation system, the insurer has no title to resources of social cooperation provided by owners of vehicles and the insurer is an agent of such a system. Losses to expensive vehicles are more than the losses to non-expensive vehicles. Accordingly, the legislator has defined the usual vehicles in order to determine damage incurred by parts of expensive vehicles by matching them with identical parts of usual vehicles and to pay compensation to all the victims in an equal manner, regardless of the type of their car. In fact, matching damage and defining usual vehicles, the criterion of which is half of the blood money of a Muslim man is a means for equal allocation of collective resources to injured parties in order to impede the owner of expensive vehicles from receipt of the collective resources more than that is received by the owner of usual vehicles.

Key words: Principle of full reparation, Principles of insurance law, Recuperation of compensation, Confinement of liability, Avant-garde vehicles, Social cooperative doctrine.

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Research Paper

Analyzing the Behavior of Actors in the Secondary Registration Legal System (Registered Real Estate Transactions) Based on Bargaining Strategy in Game Theory Emphasizing on Article 62 of the Law on Permanet Development Ordrs.

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Abstract

The existence of a coherent registration system is the premise of ensuring the security of real estate transactions and maintaining the stability and order in their legal status. Whether a secondary real estate registration system, registering transactions involving registered estates, is necessary and how its implementation must be guaranteed is one of the questions determining the optimal economic performance of real estate transactions and ensuring their security, because property rights being correctly created, through primary registration, and stabilized, through secondary registration, will lead to the establishment of economic order, which necessitates an economic analysis of secondary registration. From the perspective of economic analysis of rights based on the game theory, the parties to the real estate transactions are concerned, in order to adopt a strategic and wise decisions, with how registration will affect them in *making* or *proving* their real estate transaction. The question, accordingly, is which legal sanctions for non-registration of real estate transactions the game theory prescribes as leading

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the parties to make their transactions registered. The present study predicts the legal behaviors of the actors in the real estate transactions, and provides an economic analysis of the sanctions of the transaction registration under Article 62 of the *Permanent Provisions of Development Programs Act*. The question is how game theory justifies the necessity of registering real estate transactions. From an economic point of view, the question also arises as to whether the mentioned Article can serve the expected economic functions of a secondary real estate registration rule leading the economic actors to registered transactions. This research is theoretical and applied using library method for data collection and descriptive-analytical method for data analysis. It will conclude that from the perspective of the bargaining strategy, there is a relationship, in the 'game' between the parties to real estate transactions, between the need to register those transactions and the guarantees of its implementation. The effect of registration in the *making* stage will be to shift the game with the bargaining strategy from the channel of registration/non-registration of the transactions to the channel of real estate exchange that enjoys the allocative efficiency defined by *Coase*. The second type of game, in other words, meets the economic goals of the registration system and is more efficient. As for solving the game, based on the amount in which the *Nash equilibrium* is obtained, the latter part of Article 62 of the *Permanent Provisions of Development Programs Act*, disregarding the registration law system, leads the parties to enter into transactions using unregistered deeds. Therefore, this Article, which considers real estate transactions carried out with unregistered deeds to be also valid, needs, from an economic point of view, to be amended, because the acceptance of unregistered deeds in real estate transactions creates a non-cooperative game with a negative or a zero sum. And, according to the game theory, it is only with a secondary registration system, which gives effect to registration in the m*aking* stage of real estate transactions that a cooperative game with a positive sum is created and the bargains prescribed by the economic theory of ownership and the *Coas*e's allocative efficiency are achieved. Finally, in order to achieve the economic efficiency in the Iranian real estate market, higher credibility must be granted to registered documents in transactions. This requires a decisive sanction against real estate transactions carried out by unregistered deeds and making the registration a necessary element of their validity, so that parties have no other choice but to conclude those transactions in a formal manner. Therefore, in order to create secure ownership, investment and economic development, , it is necessary to amend, following the example of the legal system of developed countries, regulations that, contrary to the purposes of the registration law, consider the unregistered deeds of real estate transactions as valid and to provide rules that motivate citizens to behave efficiently. This rules should

drive the bargaining in real estate transactions to what economic theory of ownership prescribes, which is attainable only through registered transactions, where registration is a required element of a valid transaction.

Key Words: *Coase* Theorem, Cooperative Game, Registration of Deeds**,** Economic Efficiency, Law and Economics**,** *Nash Equilibrium*, Property Rights, Registration Law.

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Research Paper

A Critical Analysis to Note Two of Articles 14 of the Criminal Procedure Code of 1392 SH: and Civil Compatibility of Blood Money Damages

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Abstract

This article provides a critical analysis of Note 2 of Article 14 of the Iranian *Code of Criminal Procedure*, adopted in 1392 SH/ 2014 CE, which vindicates the victim's right to both *blood money* (*diya*) and civil compensation. The purpose of this study is to determine the scope of the above-mentioned Article and of the legality of the claim to financial and non-financial damages resulting from bodily injuries on top of the blood money. The research method is descriptive-analytical, and the data was collected in library method, with emphasis on the analysis and interpretation of legal texts, Islamic legal views and the opinions of legal scholars.

The answer to the question of whether the victim in bodily injuries can claim, in addition to blood money, the financial and non-financial damages stemmed from physical injuries or he is only entitled to receive blood money and is deprived of the right to receive any other type of damages depends, to some extent, on the rationale behind the blood money rule and on its subject and territory. It is, however, controversial among Islamic jurists, *Imamis* and *Sunnis* alike, Iranian Judicial opinions, and in the legal literature of Iran and other Islamic countries what kind of damages *diya* is intended to cover and whether or not it is compatible with financial and non-financial damages. In

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fact, the divergence over this issue in Iran, like some other Islamic countries, have reached its peak in recent years.

Nevertheless, a closer examination of the sources from which the blood money rule is derived, in particular the authentic tradition (*hadith*) of *Ghiyath*, the Qur'anic verse "We have given dignity to human beings" (17-70), the Islamic jurists' opinions holding blood money as an indemnity for a human being's soul or member (especially some explicit rulings by contemporary *Imami* and *Sunni* jurists), as well as the inherent equality of the value of people's lives and bodies regardless of their social statuses, skills, education, and ages, indicate that blood money in the Islamic legal system is merely to compensate for the loss of life, organs, or their abilities and has nothing to do with material and spiritual damage caused by personal injury.

Hence, the *financial losses* resulting from bodily harm can be claimed in addition to the blood money and according to the general rules of civil liability, regardless of whether their amount is less or more than the blood money. Even if this view is not accepted, the sources on which the blood money rule is premised do not imply more than that the financial losses that were used to commonly result from personal injury in the early days of Islam, such as the costs of basic and simple treatment and the lost income, only to the extent of the average income of an ordinary worker, are included in the blood money. Damages beyond that, like the costs of today's complex surgeries are thus not covered by blood money and should be compensated independently.

Also, *spiritual damages* caused by physical injuries can be claimed independently of the blood money according to some Islamic jurists and legal authors, and based on the history of this rule and traditions pertaining to it. But even if this view is not accepted, although it is arguable that non-financial damages ordinarily caused by bodily harm, such as enduring pain or suffering or beauty defects within the reasonable limits, are included in the blood money and are compensated by paying the blood money, these damages should be compensated separately and in addition to the blood money if they exceed ordinary levels, especially if they reach the level of neurological and mental disorders, acute distress, depression, anxiety, severe physiological imbalance etc., even if the extent of loss is less than that blood money covers.

Accordingly, Note 2 of Article 14 of the *Code of Criminal Procedure*, which prohibits claiming spiritual damages and possible lost profits (deprivation of the power to work) where blood money is payable or punishments stipulated in the sources (*ta'zirat mansus*) are to be inflicted will be objected in this article. The Note implies, on the other hand, that financial damages caused by personal injuries (except for the lost profits) will be compensable in addition to *diya* (blood money), which is an important evolution in the legal regime governing the collection of blood money and damages. In order to remedy the shortcomings of the rule stipulated in Note 2 and bring it in line with principles of Islamic law and national legislative system, the Note can be taken to include only spiritual damages within the ordinary extent (which is to be determined by forensic

experts) as well as lost possible profits in the reasonable sense (such as the loss of the wages of an unskilled worker subject to the *Labor Code*), which is covered by *diya* (blood money) and thus cannot be claimed in addition to it. However, if the said damages exceed the usual limits, they are not incorporated in the blood money and can be claimed separately. Also, the impossibility of receiving blood money and the lost profits in crimes with stipulated punishments has no logical justifications or rational bases. Therefore, this study suggests the necessity of amending Note 2 of Article 14 of the *Code of Criminal Procedure* based on the arguments here outlined.

Key words: Compatibility of Blood Money and Civil Damages, Personal injury (Physical Damage), Material Damage (Financial Loss), Spiritual Damage (Non-Financial Loss), Blood Money (*Diya*).

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Research Paper

A Critique on Amir Nasser Katouzian's Opinions about Differentiating between the Sanction of Legal Forbearance and the Negative Status Condition

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Abstract

The agreement to abandon a certain legal act, whether the subject of the main obligation is in a contract or in the form of a condition attached to the contract, according to various general legal principles, including the principle of validity and the principle of irrevocability and according to articles 10, 219, 231 and 237 of the Civil Code is valid. This sometimes appears in the form of a condition of a legal forbearance and sometimes it takes the form of a negative status condition *(Shart-e Natijeh)*. When this kind of agreement is violated, we will inevitably face the issue of validity or invalidity of the contrary legal act.

When facing this issue, three basic questions can be asked: First, whether the legal act contrary to mentioned agreement should be considered invalid, or the validity of the said legal act should be admitted and the obligee should be directed towards receiving possible damages from the offending obligor as a solution more compatible with Iran's legal system. The other thing is whether, one of these two solutions being chosen, a single procedure should be adopted and the same sanction be applied in the event of a violation of either of these two forms of agreement, or the sanction of violation of legal forbearance and negative status clause are different n the first of which the

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validity of the legal act and in the second the invalidity of the legal act are acceptable. Finally, if we believe in the necessity of distinguishing between the sanction of the violation of these two forms of the agreement, what is the criterion for distinguishing the two from each other.

The study of jurisprudential sources, legal books and articles, as well as a brief reflection on judicial precedent shows that there is no unanimity of opinion regarding the sanction of the breach of these two forms of agreement and that, especially among lawyers, the theory of the necessity of differentiating between the sanction of legal forbearance and the negative status condition has a more significant influence.

One of the jurists who has dealt with these questions in fair detail in his numerous works and believes in the necessity of distinguishing between the sanction of legal forbearance and the violation of negative status condition is Professor Katoozian. Although many jurists have also looked into this issue, it is more necessary to emphasize and focus on his works in this field for three main reasons: firstly, the theories of professor Katoozian, including this theory, have a really special importance and credibility in Iran's legal and judicial system. It has been and continues to be the place of reference for judges, lawyers and other jurists. Another thing is that in the opinion of the author, there is some kind of ambiguity or incoherence in the contents of his analyses regarding the above questions, and the present study provides the opportunity to re-examine his positions in this regard. Finally, the criticism and detailed explanation of Professor Katoozian's views and opinions, like any other great theorist, apart from being a kind of appreciation for their years of scientific and effective efforts, leads to the emergence and flourishing of new ideas and solutions and ultimately to the development of the legal system.

In this article, the author has tried to analyze Professor Katouzian's theory regarding the necessity of distinguishing between the sanction of legal forbearance and the violation of the negative status condition based on the above questions. The research shows that his theory is not compatible with the famous opinion of the Islamic jurists, the standards of the civil Code, and the fundamental orientation of the judicial procedure, and that in case of violation of any of these two forms of agreement, the sanction of invalidity of the contrary legal act must be defended.

Keywords: Violation, Legal Forbearance, Sanction, Validity.

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Research Paper

The Status of Concession Theory in Common Law and Iran's Company Law

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Abstract

Limited companies by shares in "concession theory" are nothing but an artificial being that is widely influenced by government regulations and possesses only those properties which the charter of its creation confers upon it. Except for some references, in Iranian legal doctrine, not enough attention has been paid to this theory. The main elements and features of the concession theory in common law are: principle of no capacity to act as a body corporate without positive authorization, stakeholder primacy, serve to public interest, extensive government intervention in corporate law, priority of mandatory rules in company law, and duality of company law and private law and its tendency to public law. Also in this theory, corporation‘s legal power is derived from the state.

In the article, by comparative study of common law system, the concept, effects and challenges of concession theory have been studied and according to the findings of this study, the place of this theory has been studied in the Iranian company law. Through this, development of effects of this theory has been criticized in the laws, regulations, bills and legal doctrine of Iran and the procedures of corporate registration authority.

This article is looking for an answer to this question that what is the place of the concession theory in common law and Iran‘s company law, and what are the advantages and disadvantages of this position for Iran‘s company law?

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Looking at the effects of concession theory in the common law systems and comparing it with the Iranian legal system, the article proves that although this theory is not well known in the Iranian legal system, the prevailing logic and effects of this theory can be clearly seen in the existing laws and bills on joint stock companies. However, the common law systems have passed this theory except in exceptional cases.

In Iran‘s company law, the basis and logic of this theory can be seen in the Commercial Code and its amendments, Commercial Bill, legal doctrine and the procedures of the company registration authority. Some examples are: 1- As mentioned, the capacity of the company are deemed to originate from the (state) law; 2- providing public interest is more important than aims such as shareholder wealth maximization; 3- strictness is observed in company registration procedures; 4- several mandatory rules imposed on companies; 5- there is not enough desire to reduce the burden of regulations governing companies; 6- the scope of activities of the company is important, and going beyond the limits of the company's authority contained in the company's constitution is an inexorable taboo, etc.

Therefore, the concession theory can be considered as one of the important theoretical foundations governing the company law in Iran, and by referring to the changes and developments of the common law in reducing the influence of this theory and replacing it with other theories, especially contract theory, It can be concluded that the existence of the basis and logic of concession theory in Iran's company law can be criticized.

Furthermore, considering the existence of numerous reasons and indications that the Iran's company law follow other theoretical bases such as contractual and legal person theories, in the description of the current state of Iran's company law, it can be said that several, sometimes conflicting theoretical bases govern Iran's company law.

As an efficient solution, this article suggests that company law forsakes the concession theory and moves towards the contract theory, because it is more compatible with our legal foundations, gives the company law an independent identity from public law, creates greater compliance with the general policies, is more consistent with common law experience, by emphasizing the efficiency and reducing transaction costs, helps companies in playing their main role in the economy, by reducing the role of mandatory rules and emphasizing the importance of default rules, defines an efficient role for the state in company law and increases creativity in company's constitution. Commercial Bill, which is in the process of approval by the Iranian Parliament, is the most important document and the best opportunity to adopt such approaches.

Keywords
Common Law Legal System, Company Law Theory, Corporate Registration, Legal Personality, Public and Private Limited Companies.

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Research Paper

Evolution of the Basis of Liability of Non-Discriminating Persons and Its Eeffects on the General Rules of Civil Liability in French and Iranian Law

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Abstract
One of the most controversial issues in the law of obligations in any legal system is the liability of non-discriminating persons. The question is whether the non-discriminating persons are responsible and if they are, whether the basis is fault or it should be sought in other theories presented. By resolving this issue, the basis of civil liability in French law and many Roman-Germanic regimes, including Iran, becomes clear. In other words, if it is determined whether the non-discriminating persons are responsible or not and whether the basis of this responsibility is fault or not, it can be better concluded in the general rules that if the basis of civil liability is fault, which of the two concepts of fault, personal and specific, is accepted as the basis of responsibility. This has been a controversial issue not only in doctrine but also in jurisprudence, to the point that the French legislature has been forced to intervene. However, despite the intervention of the French legislature, the ambiguities have not diminished but have been added. On the other hand, as it was said, this discussion and the solution of the problem has an effect on the basis of civil liability and the general rules of civil liability. Because by solving the basis of the responsibility of non-discriminating persons, the traditional or objective concept of fault becomes clear. In Iranian law, nonetheless, unlike the French, the responsibility of a non-discriminating person is specified from the beginning in Article 1216 of the Civil Code, but determining the basis of obligation in Article 1216 civil code has some effect on the concept of fault in the general rules, which in this article will be done with a comparative study. The main question of this article is whether or not in French law, non-discriminating persons are responsible and whether it is based on the theory of fault or not. In Iran, too, with regard to specifying the responsibility of a non-discriminating person , the main question is whether

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the meaning of this responsibility is both based on loss and causation or only on the meaning of loss, and if it means causation, whether the non-discriminating person can be guilty or not. In this article, it is assumed that the main basis of civil liability should still be sought in the theory of fault, because the theory of fault has a fundamental value. It has also been hypothesized that one of the differences between loss and causation is that, given some of the examples in civil law, the liability based on causation requires the proof of guilt. In this article, the method of library analysis has been used and by referring to authoritative French sources and focusing more on the developments of the French legal regime, materials have been collected and analyzed. In French law, despite the problems that remain after the intervention of the legislature, the doctrine seems to be inclined to accept the objective theory of fault, and to be less inclined to the personal concept of fault. It seems that in Iranian law, according to the specification of the responsibility of a non-discriminating person and in terms of the words of Article 1216, which appears to be based on causation more than on loss, Article 1216 can be applied not only in cases where both loss and causation exist, but also that the basis of liability, in the causation, is fault, and that by eliminating the subjective element of fault, Iranian law has taken a step towards accepting the objective concept of fault. On the other hand, studying the evolution of French law can be effective in the way of thinking of Iranian doctrine and practice in interpreting Article 1216, which in this article will be done by descriptive method and library analysis with comparative study.

Keywords: Fault, Discrimination, Attribution, Obligation, Responsibility.

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