

Evolution of right of termination for non-performance of contract: Implications for Iranian legal system

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Abstract

Nowadays, in most legal systems, breach of contract leads *inter alia* to right of termination for obligee. But this has not always been the case. This study shows how European legal systems have moved from denial of right of termination for non-performance into recognition of a general rule concerning unilateral termination of breached contract. Iranian legislature, inclined with the evolution of European approach to the subject, can foresee such a general unilateral termination right for the obligee. In addition, the way in which Europeans have treated the roman inefficient vestige on this subject, could inspire Iranian judges, lawyers and scholars to find new interpretive solutions for existing inefficient ambiguous rules.

Keywords: judicial termination, *lex commissoria*, remedies for breach of contract, statutory implied term concerning automatic release, termination of contract.

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Possibility demand of birth and life damages and pillar of liability (Comparative study)

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Abstract

Death is not the worst accident but sometimes Birthday turns into a bad accident. In the problem of unwanted or disabled child as a result of medical fault, there have been doubts about the responsibility and opportunity to claim damages for years. But now the responsibility accepted by courts in different countries; parents according to contractual liability and disabled children according to the responsibility able to claim damages from the doctor guilty. In Iran by Therapeutic Abortion Act was passed in 1384 the mother has the right to therapeutic abortion by ensuring conditions and Sterilization is also normal. If the doctor harm these rights, according to the law of civil liability can claim for damages.

Keywords: Civil liability, disabled children, sterilization, therapeutic abortion, unwanted.

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Necessity of protecting private property against taking it for the purpose of executing general policies (comparative study)

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Abstract

The State which in principle must be the guardian of the ownership of persons in society, in some cases takes private property for the purpose of executing general policies, challenges the ownership of persons in the name of superior interest, and acts to take the persons' property. Now days, due to expansion of urbanization, this act has since become ever so expanding, and involves important issues in order to reconcile it with the respect for personal Right of Property. In this article, we have briefly attended to the most important issues concerning this legal institution and necessity of protecting of private property. We have concluded that, in short, taking of persons' property for the sole purpose of public good and only after payment of fair compensation is accepted.

Keywords: general policies, just compensation, private property, public good, taking property.

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Liability of arbitrators in the law of Iran and some countries

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Abstract

Arbitrator is a private judge. He accepts a judicial function by a contract. All legal systems (common and civil Law) have been recognized this contract and the arbitrator's judicial function. Leave or violation of duties by the arbitrator can be followed by the different sanctions including civil, criminal and disciplinary, but the common law and civil law start from the opposite directions to determine the standard liability of arbitrators. In the common law world, an arbitrator (like judge) benefits a judicial immunity from civil liability. He is not liable for anything he does or omittes in the discharge or purported discharge of that function unless the act or omission is shown to have been in bad faith or his resigning without authorization. But, in the civil law systems, when arbitrators fail to obligations born of contract concluded with parties of the dispute, the arbitrators have civil responsibility like each contractor.

Keywords: arbitrator, civil, criminal, disciplinary, liability.

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Handling stolen goods in Iranian and English criminal law

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Abstract

Handling stolen goods has been recognized as an independent offence in both Iranian and English law. Committing this offence, tacitly support those actions that are called theft. However, penal policy of Iran's legislator does not provide effective fighting against the handlers of stolen goods. In others words, comparing the two Iranian and English legal system, make this issue clear that criminalization of stolen goods has some restrictions about physical element as well as the amount of relevant punishment that we can have more effective fighting against supporting factors of larceny with eliminating them and hereto, in the course of exercising appropriate reaction to the handlers, reducing the offence of theft. The article seeks to recommend some solutions for a better penal policy, such as increasing punishment of the offence and extending the scope of its physical behaviour, through comparative analysis of the offence of stolen goods; meanwhile different elements of the offence have been studied.

Keywords: handling stolen goods, stolen goods, theft.

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The formality– free protection; A principle in the copyright with emphasis on Berne Convention, The legal system of Iran & U.S.A

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Abstract

The principle of formality –free protection is an international principle in the copyright and it was stabilized in the Berne Convention. But this principle has not been studied in Iran and evaluation of the principle is very vital because easier access to the works and fair trial. Recent paper has attempted to study this principle in light of the Berne Convention and analyzes and interprets the formality and finally suggests reasonable revisions.

Keywords: Berne Convention, copyright, formality, registration, principle.

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Reflecting on the nature of withdrawal right in the electronic contracts

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Abstract

In most legal systems, the right to cancel the contract is provided for consumer in electronic contracts with slight variations. In article 6 of the European Union directives on the protection of consumers in respect of distance contracts, such right is provided too. Article 37 of Iranian EC code considered for the right of withdrawal is very close to the above terms. There is a controversy about the nature of this right between the authors. The dominant approach considers it as a new legal cancellation right. It seems that despite the apparent similarity, the right of withdrawal in these two, is fundamentally different. Article 37 unlike its European equivalent, obligates the supplier to provide the withdrawal right for the consumer in the contract not any establishment of the right of rescission for the consumer.

Keywords: distance contracts, electronic contract, option, right of withdrawal.

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Principle of TRIPS interpretation at dispute settlement understanding

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Abstract

TRIPS agreement (Trade-Related Aspects of Intellectual Property Rights) is one of the binding agreements of World Trade Organization, upon the cases originate from that agreement also heard at Dispute Settlement understanding. One different character of TRIPS agreement is expressing minimum standards. The diverse explanation of its articles may lead to some controversy between members of World Trade Organization at intellectual properties issues. With regard to an important object of World Trade Organization to increase predictability of circumstances, recognizing the methods of interpretation at dispute settlement understanding can be beneficial for countries to whether provide comprehensive legal proviso's or win lawsuits.

Keywords: dispute settlement undrestanding, principles of nterpertation, TRIPS agreement, Vienna convention, World Trade Organisatio.

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Right to liberty and security of person in international instruments of Human Rights and Iran law with a glance innovations of criminal procedure bill

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Abstract

Criminal procedure bill resolve all defects and vagueness's of current law about people benefiting the right to liberty and security of person and by complete omission of chances ending in compulsory detention and also omission of all compulsory detentions in all groundwork except for laws applying to armed forces, emphasized the necessity of justification of temporary detention and also reduction of detention period vis-a-vis current laws. Also, by highlighting the right of people to ask about the lawfulness of detention, plea for freedom and stressing the protesting right of people about their detention, there will be this hope that by passing and implementation of the mentioned bill, which is completely in line with international instruments of Human Rights and especially international covenant on Civil and Political rights, can help in great deals in performing responsibilities and international obligations which has been accepted by the country.

Keywords: detention, freedom, obstreperously, security, security of person.

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Goodwill in e-stores

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Abstract

While the putting a place of business out to lease is a subject matter which is common in trade and the goodwill, it is a familiar for the both lawyers and merchants. Those matters are not so common and known in respect of e-stores. In this article the attempt is done to light up these subjects, present a legal analysis thereof and to show they are a separate matter of other similar subjects in IT Law like the cyber-squatting. In recent matter, the other's trade mark is used in domain name without his consent that could be settled through ICANN's regulations.

Keywords: domain name, e-mail, e-store, goodwill.

Floating charge in common law jurisdiction

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Abstract

This paper examined the charge of circulating assets in common law jurisdiction. The aim was to know the way and basis that it is constituted and to find out its profits for creditors and also to find out its meaning and its impacts in market. The conclusion was that floating charge provides an appropriate security and benefits for the chargee and chargor, where chargee can achieve his benefits and chargor can carry on his ordinary course of business. In this kind of charges third parties' rights have been supporting as well. In addition the assets in the ordinary course of business are the main part of the company's assets and depositing them as a floating charge will increase the capital of the company, will improve the efficiency of economy and will give creditable security to banks and financial institutions and it will have benefits for economy.

Keywords: circulating assets, crystallization, fixed charge, floating charge, ordinary course of business.

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Non-professional, the obligie of obligation to inform in contract in french law

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Abstract

Concern for the protection of the weak party is a characteristic of contemporary French contract law. In the area of the obligation to provide information, the question arises as to what criterion should be applied to distinguish the weak party from the one placed in a position of power: On what basis is the party in the inferior position protected by jurisprudence and by the legislator in the face of their (stronger) partner? The principle applicable to the body of pre-contractual and contractual obligations relating to the disclosure of information is the degree of knowledge that one of the contracting parties has about the other. This widespread and objective concept of the layman as proposed by jurisprudence is indirectly accepted by legislators through the use of the term 'non-professional'. According to the jurisprudential criterion, the professional consumer who acts beyond his/her competence when concluding a contract may be regarded as a 'non-professional' in order to benefit from legal and judicial protection, provided through the obligation to disclose information.

Keywords: consumer, expert, non-professional, obligation to disclose information, professional.

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Principles of liability in transportation: from theory to practice in common law

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Abstract

Although England and the United States are both common law states and their legal systems follow the same rules, each has disregarded certain rules and changed them to suit specific circumstances. For instance, they have both disregarded the common law rule on the insertion of exemption conditions by carriers. Regarding carrier's liability towards passengers, the United States accepts the highest strict care in this regard whilst the common law only based it on negligence. This therefore proves the hypothesis that common law states may in some respect distance themselves from the legal system that they follow because of the conditions of their pertinent state.

Keywords: carrier, liability, negligence, remedy, tort.