

Environmental, social, safety, security and health impacts assessment (ESHIA) for upstream oil and gas projects

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Abstract

Upstream oil and gas operations could have adverse impacts on the environment and society as well as the safety, security and health of people. Therefore, as a pre-condition to commence any oil and gas project, there must be a comprehensive ESHIA report, prepared and submitted by contractor to DOE, in which all necessary precautions and a concrete program are considered to avoid, control or reduce such impacts. ESHIA should not be aimed only for the stage of receiving approval for the project; it must also cover all stages during the life of a project and afterwards. Public participation for preparation of this report provides the opportunity for people who might be affected by the project to give their opinions and also monitor the programe. CSR as a part of the contemporary exercise of most IOCs supports and validates the contractual and legal obligations of IOCs to observe HSE while implementing oil and gas projects.

Keywords: environmental pollution, impact assessment, local communities, regulations and standards, upstream oil and gas services.

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Traditional and modern slavery in international law and slamic opinion with regard to the condition of women and children

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Abstract

Once upon a time "slavery" was accepted by all human societies as a value and had penetrated in all aspects of human life including: ethics, culture and economy in human society to such an extent that it was impossible to deny it. However, during the ups and downs of human movement toward the respect for human and recognition of human rights, gradually, this false tradition became an illegal act. Hence, the International Community under the aegis of International Law accepted "the right not to be held as slaves" at the highest levels of international rules, international custom and international human rights treaties. However, today, the compound crime of "Human Trafficking" has become common in human societies as a modern form of slavery and is being discussed in international legal circles. Because in this framework human beings are regarded as objects and do not have legal subjectivity. In other words, according to this definition, they are considered as "slaves". This international crime often is applied in relation to women and children. It has become one of the problems of international community. In between, the current article also aims to explain the issue of slavery in Islamic thought; moreover, the Shia point of view is analyzed and investigated in relation to the proposed issues.

Keywords: human trafficking, international law, Islam, women and children, slavery.

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Payment order in Electronic Funds Transfer (EFT) as a negotiable instrument: A comparative study

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Abstract

Payment order in EFT can be a negotiable instrument in two ways; it can be an instrument based on custom and regulation meaning that whether it should be considered as new instrument or be incorporated in one of the current instruments. In light of Iranian legal system and against Common law, it is not acceptable that a new negotiable instrument be created by custom because some characteristics of these instruments are opposed to the general rules or third party rights while Acts or regulations can only do it. Given the second situation, creating a new instrument by regulation must be done by taking a special name, stating its conditions, characteristics and results. Although the related regulations like UCC or By-law for issuing a Payment Order and Fund Transfer have tried to mention these requirements notwithstanding, under Common Law no custom or rule confers the character of negotiability to payment order and therefore we cannot consider it as a new negotiable instrument. On the other hand, in Iranian law payment order is a special instrument having conditions and results in the light of the given By-law. Therefore, the obligation created by this instrument is definite and after having issued and accepted by debtor who is bank, the bankd is oblige to perform. This in turn, creates this principle in our mind: unacceptable defense principle. Nevertheless, we cannot ignore some bad consequences of this idea that led us to reject this framework for payment order.

Keywords: credit transfer, debit transfer, instrument, negotiability, receipt.

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A comparative study of requirement of "written form" in electronic arbitration agreements

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Abstract

The increasing use of the Internet and cyberspace has affected the international commercial arbitration and today, instead of the traditional ones, the forms usually include printed paper or linear versions with the signature of the parties; the most modern equipment with the use of electronic communications such as the Internet, are included to pledge the arbitration agreements. However, there are legal frameworks related to such agreements, especially the New York Convention (1958), which have been approved years before the Internet development. So, the question is raised that whether the arbitration agreement pledged by use of email or electronic filling a form available on the website could be valid under laws discussed or not? Presenting a reasonable strategy in this regard principally to answer this important question depends on whether the electronic equipment can prepare the condition of "being written" (written form) which has been considered as one of the main conditions in most of the laws for a valid arbitration agreement. The authors in the first part of paper intend to answer this question and understand the operation analysis of the subject by mentioning the legal purposes, "being in written format condition" inclusion in the New York Convention and the use of existing definitions in the commercial arbitration laws of different countries. In the second part, it has been attempted to strengthen this legal protection with latter laws combined with arguments of the first part to enrich the electronic agreements and to prepare a legal platform for users from such agreements with respect to this phenomenon pervasive in this present era.

Keywords: arbitratin, e-arbitral agreement, e-documents, written form.

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A comparative survey on the benevolent intervention in Iran and European Law

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Abstract

Most of obligations are notably derived from the contracts and torts. Quasi-contracts in their turn are another limited source to create rights and duties. Article 1371 of French civil code defines the quasi-contracts as the solely intentional human acts which produce obligations to another person or reciprocally. Benevolent intervention is one of the quasi-contracts of which British law is not ignorant. There are many authorities and regulations that govern this legal institution. In the European unity field, there is a preliminary plan for the European uniform civil code called: "Draft Common Frame of Reference". Basically no one has any authority to interfere in someone else's affairs and assets unless he or she has any kind of agency, administration or tutorship. Any other sort of intervention is a kind of usurpation. In some necessitous situations like absence or immaturity of the owner or the master of the affairs, where there is no power to get the owner's permission and when the peril of loss or damage of the concerned person's property or health is felt, the intervention benevolently is required and admitted and even admirable. The controversial aspect in this context is the legal basis for this benevolent intervention. Most of the legal systems have chosen the agency theory and justified the effects thereof. One of the consequences that stems from this theory is the capacity of the intervener and his demand for costs incurred. The agency theory is inconsistent with the accepted axioms in Iranian civil law.

Keywords: absent, benevolent intervention, minor, necessity, someone else's affairs.

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The cooperation theory of the parties and the judge in the settlement of disputes

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Abstract

The cooperation theory of the parties and the judge in the settlement of disputes is a new issue in the civil procedure that has been presented by one researcher in recent years. The cooperation theory is defined to mean law enforcement. In other words, the parties and the judge participate with each other to settle a dispute. Although in some of the new rules this theory can be seen sporadically, the principle of Transnational Civil Procedure Act (2004) provides the main foundation. By examining the laws of the country, it was found that although some materials of the principle of cooperation can be seen, this theory is not applied in the legal system and our legal system is lacking the new principle. After studying French law, transnational civil procedure and Iranian law, we can say that the cooperation theory is correct and acceptable and can be applied in some cases including determination of local jurisdiction, set a date for trial, arbitration, peace and reconciliation, the way of delivering securities, the way of handling the hearing, etc.

Keywords: cooperation theory, French law, Iranian civil procedure, transnational civil procedure.

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Municipality in legal system of Iran and France

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Abstract

Municipality, as one of the most important legal entities in the urban management, can play an effective role in providing local public services and administration of some local public affairs. The role of the municipality in urban management is different ranging from full authority to implementation of small affairs. The place and importance of the municipality is determined by the laws and legal systems. In Iranian legal system, the Municipal Act 1334 (1955) as the main Act, despite an increase in citizen's political and civil awareness, with overriding many provisions followed a regressive approach; in the way that the most fundamental duties and authorities of the municipality are withdrawn and transferred to the government which resulted in minimal participation of citizens in their local administration affairs. In France, from earlier decades, the assignment of duties from the government to municipality has been seriously monitored, and special rules have been legislated in favor of this important legal entity. "Decentralization Act", 2 March 1982, and "General Code of Territorial Communities" upgraded the municipality place to the most important and effective urban management legal entity. The municipality is the basis of urban management. It seems that the opinion of government on municipality is based upon the opinion of government on the people. The current study mainly aims for an explanation of the place and duties, responsibilities and powers of the municipalities as the official legal entity in Iran and France which are the same in the administrative system, while studying the existing differences, and applying the strategies and experiences of the France legal system relating to municipality to improve the place and position thereof in Iran.

Keywords: duties of municipality, local government, mayor, municipality, place of municipality.

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The right to public proceeding as one of the defensive rights of the accused in international criminal tribunals procedure

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Abstract

The belief on the necessity of the implementation of justice in criminal proceeding process is one of the fundamental principles for legal systems, which will be supported by creating public understanding of the proceeding process through the presence of people. In respect of this description, the purpose of public proceeding is for people to attend in proceeding sessions freely and closely observe the proceeding process and also trust the exact implementation of the laws, prosecutor's impartiality and the existence of real judicial justice. It should be mentioned that visibility of the practices of judges and parties can help to the proceeding quality and also help issue fair verdict in tribunals a lot. In this respect, the purpose of the article is to present a general view by observing the international evolution at international tribunals from the beginning up to now, through mentioning some of the significant cases. So, the general belief obtained through the ad hoc criminal cases studying, shows the evolutionary process of this right for the accused.

Keywords: defensive rights of the accused, fair trial, international criminal tribunals, public proceeding.

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Mythology of governance in Ancient Greece: 'An essay on historical epistemology of the public'

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Abstract

The present article aims to explicate the difference between perceptions of conceptual relations governing the public in different eras. Therefore, this can be achieved through considering ancient Greece as the birthplace of western traditions and deciphering the mythological meaning of governance in that era. To this end, it takes advantage of a hermeneutical-historical point of view to review myths of "Athena" and "Hephaestus" by analyzing the personal characteristics of each god and interpreting them, trying to make a conclusion by combining the two mythical characters - from whom the first Greek king was generated. Then, this hermeneutical view is studied in a social-political context, to examine the conceptual transformation of governance in a bid to explain the move from consolidating the polis in the era of heroism (an outward-oriented governance) to maintaining it in the age of democracy (an inward-oriented governance). In the end, we will address a comparative study of the difference between perceptions of the governance in the form of a state, the concept of representation, and conceptual transformations between the public and the private in the modern era with those of the ancient Greece.

Keywords: governance, physis, polis, the public, relational historicism.

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Enforcement of accused arrest warrant in Iranian law, along with having a look at English law (According to Iranian Law of Criminal Procedure, 1392)

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Abstract

After ordering the accused arrest on warrant, its implementation requires compliance with the conditions. In Iran, enforcement the arrest on warrant by the court officers takes place in the judicial area of the prosecution or Court of Justice, but, in England, the entire territory of the country is in place that may catch the accused by policeman. Iranian General Officers in justice alone often arrest the accused, citizens can also help the officers in arresting the accused, but England's citizens have the power to arrest separately. In England, after following the accused, if he enters into a private place, the police is allowed to enter that palce, but in Iranian law, it is required by law or judicial authorities order. In Iran, use of weapons by the judicial officers for arresting the accused is limited, but inEngland, the police could use the weapons freely.

Keywords: accused, arrest on warrant, citizen, interrogator, officers of justice.

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Copyright in digital library

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Abstract

Human advancements in science and technology have also developed to libraries leading to the emergence of the phenomenon of the digital libraries. Therefore, authors decided to open the new view in the development of science and technology by examining both the copyright and digital library. It seems that in the digital library we must distinguish between two types of public and private libraries. Founder of the private libraries is required to satisfy the owner's personal needs. But it is not the case in public libraries. And According to Article 8 of “The protection the rights of authors, composers and artists act 1348” the founders should be exempted from the authorization of the copyright owner. Of course such an attitude is defensible about users without ability to download resources who have just the ability to read them. But about libraries that users can download resources from, this idea is not defensible.

Keywords: copyright, digital library, material right, moral right, publisher.

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The duty of seller to indemnify buyer for third parties' intellectual property rights

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Abstract

Sale is the alienation of goods with all presumptive, objective and, legal rights related to them in a way that a buyer can have the goods in absolute legal possession. Any defects in seller's ownership, such as the right of easement, usufruct or lien belong to the third party interferes with the absolute ownership of the buyer and his rights. A kind of these rights recognized and protected by law as a result of social changes, is the third party's intellectual property rights undermining the buyer's transaction property that may cause problem for his legal ownership and possession. Nevertheless, in some laws, particularly in Article 42 of the Vienna Convention for the international sale of goods, or by likening the claim of the third party's intellectual property rights to his other probable rights, it has been tried to codify the same rules on this issue. However the specific nature of intellectual property rights has resulted in differences that made the transacting parties cover the defect of law by the contractual provisions of buyer's indemnification as a result of third party's claim on his intellectual property rights. In this essay, we use an analytical and comparative method to investigate the enforcement of third party's probable claim on his intellectual property rights by inserting the provision of indemnification. Finally we will conclude that, considering the differences in the legal systems in respect of the intellectual property rights, inserting the detailed provisions hereof is necessary as an agreed mechanism in the international sale of goods.

Keywords: buyer, compensation, indemnification, intellectual property, sale.

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The realization of the right to defence in the light of the concept of good administration: A comparative study of the legal system of Iran and European Union

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Abstract

Implementation of the right of defence in the modern administrative law is very important as widely recognized in the world's important legal systems. The object of this paper is to determine the conditions of this right and then, to compare its situation in European Union and Iran's legal system. The conditions of this right are hearing, access to file and knowledge of the reasons of the administrative decisions. These are the fundamental rights of citizenship and component of characteristics of good administration in the Europe Union legislation and jurisprudence. In the legal system of Iran, these conditions are in some of the laws and jurisprudence of Administrative Justice Court, but it is not in general and prevails over all administrative decisions. So, the recognition of the right to defense and its conditions by legislator is necessary.

Keywords: good administration, hearing, access to file, knowledge of the reasons of the decision, the right of defence.

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Unfair competition in the form of denigrating the competitor in Iranian and French law

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Abstract

One example of unfair competition is competition through discrediting a competitor. French doctrine and precedent has been accepted and it has explained this legal entity. But the richness of the Iranian legal literature on this subject is not enough. Therefore, in this paper a review of unfair competition, while explaining the concept and its variants, and based on the analysis of the resulting liability is addressed. In French law, it is necessary to realize discredit, being dismissive of rival publications, as well as the possibility of identifying who is denigrate for the audience. But the accuracy of these statements is not important. In the French legal system, liability caused by discrediting a competitor is based on fault. The Iranian legal system is the same, but the liability can be established based on the principle of sans fault. It is evident that selection of base has influence on the terms and scope of responsibility.

Keywords: civil responsibility, discredit competitor, French law, Iranian law, unfair competition.

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The competent court in cases resulting from commercial electronic contracts in American and European Legal Systems

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Abstract

The emergence of the Internet severely affected the social life. Cyberspace, regardless of geographical constraints, has provided the possibility of fast and affordable communication for all people around the world. The increase of international electronic contracts has caused the courts to confront the challenge of determining jurisdiction in cases involving such contracts. Traditional rules of private international law concerning elimination of conflict of laws are based on connecting factors which have territorial nature and are not easy to determine in cyberspace. The aim of this study is to investigate the possibility of applying the traditional rules of private international law to determine jurisdiction of courts in cases which one contract is concluded or executed via the internet. Given that the European Union and The United States are pioneer in e-commerce and solving cases which arise in this context, this study investigates the approach of these two legal systems in confronting with jurisdiction in cyberspace.

Keywords: e-commerce, general jurisdiction, minimum contacts term, personal jurisdiction, targeting test.

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Types of claims and procedures in Iran and USA's capital market

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Abstract

Capital market activists who act contrary to the principles, rules and regulations of the market have been placed in three categories: 1-disciplinary infractions, 2-dispute and claims, and 3-crimes. Occurrence of each of the above derogation is inevitable and this directly affects the investment and economy activities of countries. Hence, appropriate legal procedures and authorities in order to regulate the affairs of capital market, according to the characteristics of this market, are necessary. The governing rules in judicial systems should be tailored to the requirements of the capital market. Expertise, speed and accuracy are notable characteristics of capital market. In this way, significant changes happened as to the governing rules and acts in judicial systems. Consequently, we will comparatively study the Iran and USA's legal system and determine whether there is appropriate procedures and authorities in the Iran and USA's governing legal system or not?

Keywords: disciplinary infractions, disputes, Iran and USA's capital market, offences.

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A comparative study of objects realms in the civil liability resulting from objects at Iranian and French Laws

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Abstract

An action resulting from an object like human's damaging action can cause liability for those who possess them. The French civil law at its approval time (1804) had not predicted this principle and just in Articles 1385, 1386, the liability of damages resulting from two types of objects, i.e. animals and buildings due to imposing great damages by them had been predicted by French law. However, by the late nineteenth century, the general principle of liability resulting from the objects was included in the liability realm based on an interpretation from the Paragraph 1 of the Article 1384 of the French Civil Law. In the Iranian law, the Articles 333, 334 of the Civil Law and also the Articles from the Law of Islamic Punishment like 511, 512, 514, 515, 518, 522, 528 and 534 and article 1 of the law on compulsory insurance of civil liability of owners of motor vehicles against third-party land have dealt with the identification of this liability without dealing with the rules related to the object realms in creation of the mentioned liability. This article intends to review these rules through a comparative study. The main objective of this paper is to state that in considering object responsibility, there lies no difference whether the object is animate or inanimate, hazardous or non-hazardous, movable or immovable and static or dynamic through a comparative study. Even it is not necessary for the object to be directed or managed by a person. In case of existing any elements of civil liability, the damaging action of object can pose responsibility on its possessors.

Keywords: objects actions, objects realms, possessor's liability.

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