
The Iranian Legal System Challenges regarding Accession to the Human Rights Treaties from the Perspective of International Law

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Abstract

The challenge between international law and the Iranian legal system has always been a controversial issue, either at domestic or international level. These challenges not only are related to the ideological and theoretical differences, but also the incorporation and implementation of international obligations (from the practical perspective) have always been faced with various difficulties. An analysis of the rules on the incorporation of international law in the Iranian law, along with the status of international law within the Iranian law show that only a limited direct use can be made of international law in Iran. Consequently, this issue has influenced the practical impact of international conventions at domestic level. This is the case, particularly, when the human rights treaties deal with issues such as the rights of women, sexual crimes, etc. While to date, much research has been conducted to criticize the human rights instruments, very limited research has addressed this issue from the international legal perspective. To provide a proper basis for dialogue and discussion and in order to minimize the gap between the both systems, it is necessary to analyze these challenges from the perspective of international law as well. To hold a fair discussion, it is crucial to know how the international community perceives Iran's incorporation of international treaties or Iran's violation of international obligations. It also brings great opportunity for Iranian researchers to convey appropriate responses and reasonable arguments for the international community regarding Iran's international obligations. Therefore, by applying descriptive and analytical methodology and thorough analyzing international treaties, reports of monitoring bodies of the UN and other relative sources, this paper categorizes and analyzes the different challenges between the Iranian legal system and international law regarding this issue. In doing so, this paper discusses that the reservation is one of the solutions of the international community to provide the maximum countries contribution in international law. However, based on the Vienna Convention on the Law of Treaties (VCLT), an appropriate reservation should fulfill some requirements which maintain the identity of treaties itself and also preserve the international order as well. In addition, the international community, when making international treaties, has to consider the cultural, political and religious context leading to the localization of human rights and consequently practical implementation of treaties at domestic level. Therefore, while maintaining the principle of sovereignty of each country, it assures the participation of the majority of countries with different cultural and religious backgrounds in international law.

Keywords: Iranian legal system, International treaties, international obligation, international perspective.

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Rules and Clauses Governing the Claim for Late Payment Damages in the Iranian Law and the Convention on Contracts for the International Sale of Goods

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Abstract

Due to their important roles in the economy, damages for late payment of the money or cash, do not follow the general rules of damages and are bound with specific terms and provisions. In countries where the Islamic legal system is dominant, the claim for this type of damage due to its common features with Reba is not fully recognized. Affected by this trend of thought, legal scholars conducting studies on late payment damage, have mostly focused on the history, nature and legitimacy of the late payment damages. However, regardless of the topic of legitimacy, we are concerned with exploring the nature of the rules and clauses governing these kinds of damages with respect to Article 522 of the Civil Procedure Code, introducing late payment damages as general rules. Examining the scope and the limits of the principle of autonomy, moreover, this study aims to investigate the perspective of the Convention on Contracts for the International Sale of Goods about interest and its limits and boundaries.

Keywords: late payment damages, interest, principle of autonomy, convention, debt.

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The Principles and Regulations of Commercial Procedure: An Economic Analysis

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Abstract

Features and requirements governing the commercial law demands setting specific principles and regulations for the procedure law in realizing an efficient condition. Among them, some of these principles and regulations concern the necessity of fast and simple proceeding of the commercial disputes such as summary proceeding, provisional execution of judgment and short limitation period in commercial claims, leading to a rise in error costs in making decisions. Some other principles and regulations emphasize on specialized proceeding and regarding the principle of Free Consideration of Proof, which despite reducing the error costs of decision leads to more costly and time consuming proceedings. In order to omit possible inefficiency as a result of applying such principles and regulations, the economic analysis of law suggests a trade-off between proceedings costs, error costs and proceedings delay. Therefore, in order to proceed the commercial lawsuits included in the appearance rule, priority is with summary proceeding and in other lawsuits included in principle of Free Consideration of Proof using certain methods is needed, such as Prejudgment Interest, Alternative Dispute Resolution (ADR), Prejudgment Interest or Settlement Escrow which helps to reduce the number of cases and consequently increases the pace of proceeding.

Keywords: Commercial Court, Commercial Procedure, Free Consideration of Proof, Summary Proceeding, Provisional Execution of Judgment.

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A Comparative Study on the Limits of TV Commercial Advertising aimed at Children

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Abstract

Television advertising to children is a sensitive issue because children are easily influenced and like to experiment new things. Children view large amounts of commercial material. Considerable evidence indicates that children have difficulty distinguishing a commercial from the program that they are watching. There are some specific and real harms that advertising can inflict upon children. The proliferation of products, advertising, promotions and media targeted children are of concern to lawmakers, the industry and the public. Many countries sought to restrict advertising for children to reduce the increasing commercial pressure on children. Children's advertising is under attack because it is perceived as "making kids want what they do not need" and this puts pressure on parents to respond to those needs. More recently, advertising is accused of being a factor of children's obesity. This article, comparatively, studies justifications and methods of restricting television advertising to children and classifies the limits to content-based and non-content-based.

Keywords: Advertising, television, children, freedom of expression, media.

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A Comparative Study of Abandonment in Fiqh, the Iranian Law and the French Law

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Abstract

Abandonment is one of the most important causes which terminates the ownership and turns the abandoned property into a publicly-owned property. This makes the abandoned property available for a new ownership in accordance with the prevailing legal rules. The present study aims at undertaking a comparative examination of this legal institution in Fiqh, the Iranian law, and the French law. For this purpose, this paper will examine different dimensions of abandonment. This study will conclude that there are many similarities among the aforementioned legal systems in relation to abandonment. The most important aspect of abandonment is the termination of the ownership and if abandonment is not performed in a proper manner and in accordance to law, this may produce legal liability.

Keywords: Abandonment, Ownership, Property, Extinction of ownership , Public properties.

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Dark Figure: A Challenge for Official Criminal Statistics (With a Comparative Approach to America and Iran)

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Abstract

In contemporary criminology, the official criminal statistics, despite its admirable and innumerable benefits, has faced with a serious challenge called “dark figure”. This “dark figure” has intrigued some critic criminologists to question the validity of such statistics. Therefore, to meet the above challenge, this article first seeks to examine the formation processes of the “dark figure” in the official criminal statistics, with a descriptive - analytical method. Then the study offers number of solutions for addressing the problem. This paper has also strived to address the methods of collecting official criminal statistics in the United States of America (US.), as the most advanced country in this field. Furthermore, the general and specific criticisms to this method of collection of statistics has been determined. Accordingly, the way for empirical studies of the Iranian criminologists could be paved. In general, it seems that for minimizing the “dark figure”, providing more scientific approaches in collecting official criminal statistics as well as the informal tactics of collecting criminal statistics as “community-based surveys” should be utilized. In this regard, tactics such as “National Crime Victimization Survey” (NCVS) and “Self-Report Surveys” (SRS) are used in the US., alongside the estimation of the “National Incident-Based Reporting System” (NIBRS) as a more scientific method compared to the “Uniform Crime Report” (UCR). In Iran, although launching the website of the “Center of Statistics and Information Technology of the Judiciary” is considered as a positive step in the electronic access to criminal statistics, it does not seem that the Center has helped to reduce the “dark figure” of the official criminal statistics.

Keywords: Official Criminal Statistics, Dark Figure, Victim-Centered Surveys, Offender – Centered Surveys.

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The Nature of the *Lex Mercatoria*

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Abstract

The theory of *lex mercatoria* shall be known as a theory in the frontier of the law science. The theory of *lex mercatoria* is an autonomous doctrine which is not enforced by sovereign governments but is created by active merchants in the field of international commerce and applied through international commercial arbitration. This subject is in contradiction to the paradigms of the present time regarding the foundation of law and its resources. Nevertheless, the *Lex Mercatoria* principle can be applied by arbitrators as a practical instrument. since the *Lex Mercatoria* is a new theory, the jurists have had different ideas regarding its nature and meaning.: Some believe that it is a method of finding the appropriate law, some other recognize it as a collection of general principles and legal rules. However, the most controversial ideas belong to those who deem the *Lex Mercatoria* a legal system beside the national and international public law.

Keywords: *Lex Mercatoria*, Jurisdictional power, Legal rule, Legal system, Merchants society.

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The Liability of a Mother Company Towards its Subsidiary (A Comparative Study between the French, Belgian and Iranian Legal Systems)

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Abstract

Groups of companies, which are new phenomena of the modern commercial life, have been welcomed in the recent years especially for their multiple benefits. The relationship between the companies inside the group, sometimes leads to the creation of subordinate relationship between these companies. One of the both companies is called parent company and the other is subsidiary company. Due to the independence of the legal personality of each of the companies in this group, the principle is that each of these companies is accountable for their actions and is not considered responsible for the acts of another company. With regard to this rule, the question is that if the subsidiary causes damage to the others, can the parent company be held responsible? By applying multiple bases, particularly vicarious liability, the French and Belgian legal systems assume that this liability exists. However, in the Iranian legal system, due to the lack of laws, regulations and the principle of separation of legal personality, accepting this responsibility is not an easy decision. Nevertheless, by resort to some rules and by realization of certain conditions, the parent company can be considered responsible for its subsidiaries.

Keywords: Control and Audit, Civil Liability, Fraud, Abuse of Right.

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The Independence of Securities and Exchange Apparatus of the Islamic Republic of Iran

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Abstract

Financial institutions, such as Securities and Exchange Organization (SEO), play an important role in regulating the capital market. In the past, due to the simplicity of the structure of government, the Parliament simply passed a law, the Executive was implementing it and the Judiciary was in charge of interpreting and enforcing the law. However, industrialization and engagement of governments in banking services, trading, investing, insurance services, import and export caused the creation of new financial institutions. Such financial institutions are obliged to respond promptly to the needs of society in an efficient manner and regulate the market. The High Council of Security and Exchange and SEO as main principals in the Iran's capital market are among those financial institutions. The efficiency of these institutions is intertwined with their independence. In that, the effective efficiency of such financial institutions is dependent on guaranteeing their independence. In this article, independence in regulation, supervision, structure and finance will be examined in respect to securities and exchange apparatus of Iran.

Keywords: Independence in regulation, independence in supervision, financial independence, structural independence.

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The Plurality of Crimes in the Iranian Law and German Law

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Abstract

In the context of the plurality of crimes, the question is that how the justice should distinguish between the criminals who have committed a crime for the first time and an offender who has committed several offenses. Based on the proportionally principle the punishment should be different in these two situations. To achieve this goal, the Iranian and the German legal systems have adopted two different paths. This article, by adopting a comparative-analytical method, seeks to systematically explain the legal term of plurality of crimes, and critically evaluates the similarities and disparities of the Iranian and German criminal law. Different practices of punishing the plurality of offenses after the Islamic revolution in Iran and the early reform of the regulations concerning the plurality of crimes in the Islamic Penal Code Iran, adopted in 2013, indicate the importance of this topic. The Iranian and German legal systems differ from each other in differentiation criteria of plurality from recidivism, the concept of unreal plurality of crimes, the separation of crime in real crime plurality and its punishment and the crime plurality of juvenile delinquents. Also in punishment of unreal plurality and recognition of non-independent crimes in the judicial procedures these two systems have similarities with each other. As a result, there are some ambiguities in the relevant legal provisions, regarding crime plurality including legislative or judicial criteria of the most severe punishment. In addition, some issues such as separation criteria of real plurality in the Islamic Penal Code of Iran and interference of penalties in this kind of plurality have no reliable justification.

Keywords: Unreal plurality, plurality of crimes, real plurality, consequential crime, non-independent crime.

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Group Litigation Order in the United Kingdom

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Abstract

If there are no suitable procedural mechanisms, the anticipation of substantive right for individuals does not amount to good results in some cases. Sometimes individual litigation is not economical because the value of relief is minimal. Furthermore, there might be considerable number of victims, and filing several actions in different courts may result in conflicting judgments which are undesired outcomes in a legal system. In the American class action, under specific circumstances, one or some plaintiffs can bring a lawsuit on their name and on behalf of other plaintiffs. If they are seeking compensation, the plaintiffs that the action on their behalf has been filed, can opt out. In the UK for better management of process by the court, group litigation order has been devised whereby judge can exercise his powers with more flexibility and depending on circumstances of process, utilizes various strategies. The court's judgment is just enforceable for those who have opted in. There is not any similar mechanism in Iran. Only consumer associations are permitted by Electronic Commerce Act to litigate as a representative.

Keywords: Class action, Group litigation order, cost_benefit, representative.

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The Examination of Sanction Adoption and Enforcement by Regional Organizations with an Emphasis on the European Union

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Abstract

Sanction is an instrument by which States, international and regional organizations intend to affect their members' and non-members' behaviors. With respect to the adoption and enforcement of sanctions by the United Nations there are considerable literature which explores the various aspects of the issue. However, the enforcement of sanctions by regional organizations has received little attention in the literature. As to this issue, the practice of the organizations such as the African Union, the Economic Community of West African States (ECOWAS), the Inter-American States Organization and the European Union is worthy of elaboration. Each of these organizations have similar, and sometimes different, bases for sanction enforcement in their constitution instruments and practices. It is occasionally seen that these organizations bind themselves to the decisions of the United Nations Security Council and to implement the sanctions of this Council. This paper seeks to examine the law and the practice of some significant regional organizations in applying sanctions.

Keywords: Sanction, United Nations, Regional organizations, African Union, European Union.

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The Revocation of Nationality in the view of Islamic Legal System and International Human Rights Law

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Abstract

The present article aims to investigate the revocation of nationality under the Islamic legal system and International Human Rights Law (IHRL) through a descriptive-analytic method. Nationality is a fundamental human right, a ground and basis of identity, dignity, justice, peace and security for the persons. Having no legal protection or right to participate in political processes, inadequate access to health care and education, poor employment prospects and poverty, little opportunity to own property, travel restrictions, social exclusion, vulnerability to trafficking, harassment, and violence are some devastating consequences of being deprived of nationality. Due to the said consequences and impacts, resort to deprivation of nationality by states is highly restricted through the IHRL regulations and grounds for this act must be construed restrictively. Furthermore, in Islamic Law, only in the case of breaching obligations stipulated in the Tribute Agreement by the recognized non-Muslim individuals in Contractual Nationality that revoking nationality is permissible.

Keywords: Nationality, Revocation of Nationality, Islamic Jurisprudence, International Law, Human Rights.

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Competent Court for the Settlement of Disputes Arising from Non-Contractual Obligations in the Iranian and European Law

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Abstract

In non-contractual obligations, it is doubtful whether or not an Iranian court which is located at the plaintiff's domicile is competent to proceed with the defendant having no domicile, residence or immovable property in Iran. In particular, this is the case when the event has not been occurred in Iran. In the European Union, upon enacting a regulation referred to as Rome II, the applicable law to non-contractual obligations has been specified. However this regulation is silent on the determination of the competent court. The Brussels I Convention, along with the jurisdiction of defendant's domicile venue, considers the following venues eligible: the accident venue, the insurer's domicile venue and the consumer's domicile venue. In the Iranian law, the question arises as to whether in cases that the defendant has no domicile, residence and/or immovable property, the court of the plaintiff's domicile will be competent to consider the case or the court of the place of occurring loss and/ or the court of the place of accident will also be competent. This article reviews the criteria for determining the competent court from the perspective of private international law relating to non-contractual obligations in the Iranian and European law. Finally, we discuss the ineffectiveness of Article 11 of the Civil Procedure Code and Article 971 of the Civil Code in addressing the cases related to the recent question.

Keywords: Competent Court, Non-contractual Obligations, Iranian Law, European Union.

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Description of Judgment from the Perspective of Reviewability (Appeal)

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Abstract

There are several peculiarities for judgment, four of which are more important. These characteristics are related to reviewability of the judgments. These characteristics are considered binding and are enforced by sanctions: the characteristic of appeal; the characteristic of the way of appeal; the characteristic of appeal court and appeal time. These four matters are considered to be the matters of fact, and not the matters of law. These matters should be described while applying the rules on the specific cases. For this reason, the judge may not dismiss these elements by resorting to general assumptions such as people's awareness of the law. Three of these matters are grounded in the duty of judges to issue suitable judgments and the fourth is based upon the right of notification. The notification of judgment logically reflects and contains the notification of time of proceedings, unless if after the notification no legal action can be taken. This article strives to justify the judge's duty of description of those four characteristics. Finally, this paper discusses the legal sanctions on this respect.

Keywords: Characteristics; Dispute resolution; Certain judgment; Notification; Matter of fact.

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The Origins of Nation and Subjecthood in Ancient Rome: from *Gens* to Subjecthood, from Citizenship to Nation

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Abstract

All scholars agree that the western public law has always looked at the Roman legal and political regimes specially in creating the concept of nation State. Therefore, the effects of Roman foundations on the western law can be studied from different aspects. It seems that in the concept of nation State the concepts "nation" and "subjecthood" can be found. The present paper seeks to deal with this question: "can we trace these modern legal concepts back to the Roman law?". What have been studied here are the specific styles of the "gen" in Indo-European families and specific Roman approach towards colonialism and their effects on the creation of "subjecthood" and "citizenship" which is the precursor of "nation" in modern law. By the emergence of Christianity, the coherence form of "gen" to "nation" has been disrupted This is because in Christianity the relations between people are not based on the permanent link between a group of people and a territory, but are centered around common belief. This again led to the distinction between people and aliens. However, the former sequence of Indo-European tradition could have laid the foundation of "nation" even before Modern era.

Keywords: Modern State, Subjecthood, Nation, Citizenship, Roman Law

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The Study of the Foundations of Economic Analysis of the Property Rights, with an Emphasis on the Concept of Externalities

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Abstract

Property rights entered the field of economic analysis since Demsetz's pioneer article called "Toward a Theory about Property Rights". This relationship is analyzable based on externalities and searching its solution. Pigou emphasized the role of government in solving the problem of externalities, but since then market-oriented approaches became the prevailing views in this regard. Ronald Coase, based on market theory with emphasis on the role of transaction costs, and the assumption of zero transaction costs, persisted in non-necessity of government intervention to achieve the desired economic results. Then Calabresi and Melamed using Coasian Model proposed property- liability approach. In common law, the traces of market-oriented theories, in the form of trespass and nuisance, are visible. What appears in a glimpse is that these solutions, which are proposed in common law, may not be applicable in the Iranian law. However, in this article we show that there is hope to solve the externalities problem in an economically desirable method by taking advantage from liability contract. These issues will be examined respectively in this article.

Keywords: property rights, externalities, transaction costs, trespass and nuisance, liability contract.

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The Civil Liability of Employers, Artisans and Craftsmen Arising from Trainees' Actions in Iran and the French Law

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Abstract

Damage may sometimes be caused by inexperienced trainees who are learning a profession in the presence of an employer. In some countries, like France, one of the examples of civil liability arising from another's act is civil liability of the employers, artisans and craftsmen. This liability arises from trainees' actions who are learning a profession in the presence of an employer. One of the problems of such systems is the determination of nature of this responsibility. This responsibility can be a responsibility of watchful to care for another person's actions such as the responsibility of a father arising from his child's action and it can also be liability from others' actions like the responsibility of the employer arising from worker's action. The determination of this question will have different effects on the burden of proof of fault. In the law of Iran, in the civil law and the law of civil liability, this responsibility is not mentioned. It seems that the determination of the legal regime governing this responsibility, partly depends on the nature of such responsibility. This article will examine this topic by taking assistance from the French law.

Keywords: trainee, employer liability, fault.

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