Women's Right to Equal Recognition with Men from the Perspective of the International System of Human Rights and Islam

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Received: 2020/03/28 - Accepted: 2020/07/05

Detailed Abstract
The unjust views that have existed since the distant past on women's issues have led to extreme extremism and oppression of women. Unfortunately, over time, women have been identified as second-class human beings, both in word and deed. The penetration of ideas that introduced women as second-class human beings was such that many thinkers have been emphasizing it for centuries, and it has been less than a century since the idea of defending women's rights emerged in the international community. Among the rights that have revolutionized women's rights is women's right to equal recognition with men, which denies the notion that women are considered second-class. This right guarantees equal legal recognition for men and women, and is a reasonable consequence of the acceptance of the right to equality and the right to the legal personality of women.

The present paper explores the right of equal recognition of women and men in international human rights law; and also in the descriptive section this comparative study examines this right in Islamic Law and International Human Rights Law, and also examines the differences between these two ideas. The summary of this study is as follow:

There are many differences to implementation in practice of the women's right to equal recognition with men. Some of these include feminist-based ideas that are based on the ideals of gender neutrality and equality before the law, and pursue equality without regard to gender. In the practice of international institutions, the belief that is most emphasized is that, equality in legal documents is used in the legal sense, and the meaning of absolute equality is not taken away from it, and equality before the law does not mean total sameness. Because; Distinctive behavior does not violate equality when it is justifiable.

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Therefore, in the International practice, seemingly discriminatory and distinct behaviors towards human individuals or groups will be justified, when they are necessary and reasonable, and be done in connection with interests of these individuals or groups; also at the same time it has a legitimate aim that has a reasonable relationship with discriminatory action and discriminatory action must also be commensurate with its legitimate aim. But the important point here is that in gender-based cases as noted, in many cases before the European Court of Human Rights, narrow margin of appreciation has been granted to states to justify these behavioral differences. Accordingly, only strong and weighty reasons are needed to justify gender-based behavioral differences, which in practice in many cases lead to behavioral similarities between men and women. The scope of this justification is so limited that it does even include all kinds of sexual orientations such as homosexuality and bisexuality, and only in a few cases such as the differences between pregnancy and childbirth, behavioral differentiation is acceptable.

From the Islamic point of view, it is obvious that equality is the part of nature of the Islamic legal system, but there are differences in behavior based on justice. In Islamic thought, authorized behavioral distinctions that do not impair the principle of legal equality are distinctions that are consistent with the physical and mental abilities and capacities of human beings. In other words, due to the existential differences between men and women, Islamic justice and equality have defined rights and duties differently, and in accordance with their inherent distinctions. In fact, from the Islamic point of view, not considering women's physical and mental capacity can lead to oppression and injustice against them. In other word, the legal view of Islam, due to its coordination with the creation of men and women, promotes women's rights.

Finally, in International Law, despite different opinions, some cases of discrimination and behavioral distinctions are not considered unjustified discrimination, but are among the justified discriminations that do not violate equality. However, in terms of ideological differences between Islamic thought and International Human Rights which are based on secularist ideas, in practice the examples of distinctions that are acceptable, there are different between the perspective of Human Rights and the Islamic view. In other words, although behavioral discrimination in both the field of International Law and Islamic thought does not necessarily violate equality, in practice we do not see the same practice of identifying rights equally between men and women. Because, as stated, in the case of international courts and committee, in a limited number of cases, gender justifies differences and behavioral differences; so that even sexual orientations such as homosexuality cannot justify the basis for behavioral differences. Therefore, considering what has been achieved in this article, it seems that one of the great gaps in contemporary Human Rights is that in many cases it does not take into account the permissible and justified differences based on the capacities and existential abilities of individuals, and insists on not distinguishing gender-based behavior.

Keywords
Islam, Equality, Difference Treatment, Human Rights, Women, Non-Discrimination.

Paper Type: Research Article

Diplomatic Protection for the National against another State of Nationality in International Law in the light of the Announcement of UK for Diplomatic Protection for Ms. Nazanin Zaghari

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Received: 2020/05/17 - Accepted: 2020/07/12

Detailed Abstract
The State's diplomatic protection for its national against another State of nationality is the most challenging issue in international law which most recently highlighted by the announcement of the UK for diplomatic protection for Ms. Nazanin Zaghari who is an Iranian-British dual national. Although the non-responsibility of the State of nationality has been frequently taken into account in such situations in traditional international law, it is now possible to have diplomatic protection against another State of nationality by a State that a multiple nationality has its dominant and effective nationality. Dominant nationality of dual nationality, as established by a state that intends to provide diplomatic protection against another state of nationality, is based on some facts based on the strong ties of the individual and one of his or her state of nationality. In fact, the tendency of dual nationality to a state that can be inferred from certain factors, including residence, the concentration of interests, family ties, language, tax, bank account, and social security insurance, is decisive. Because nationality is a legal bond having as its basis a social fact of attachment. The element of "time" also plays a significant role in determining the dominant nationality of the individual, and when the dominant nationality of the individual is considered, can change the situation. The Draft Articles on Diplomatic Protection (2006) declares the nationality must be dominant, both at the date of injury and at the date of the official presentation of the claim. But, the Iran–United States Claims Tribunal, which has adopted and repeatedly applied the criterion of dominant and effective nationality, does not simply consider not only the date of injury and at the date of the official presentation of the claim, but also all factors related to the individual has been considering the attention to its conditions since his birth. This distinction can be clearly seen in Ms. Zaghari's case. Thus, if we consider the events after 2013 when Ms. Zaghari became a British nationality, her dominant nationality is British, and if we want to know what happened in the international jurisprudence and specifically in the Iran–United States Claims Tribunal, his dominant nationality is Iranian. The claim of the UK would be that in addition to not

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informing Ms. Zaghari of her rights on consular access, Iran had prevented her from enjoying consular assistance. It should be said that even if Ms. Zaghari's Iranian nationality is accepted as her dominant nationality, it cannot be certainly said that Iran has violated Article 36(1). At first glance, it seems that the right of nationals of the sending State in Article 36(1) includes dual or multi nationality, even if those individuals are national of the receiving State. However, the judgment of the International Court of Justice in "Avena and Other Mexican Nationals" case does not confirm this conclusion. UK's practice in its national and international activities also shows that it does not believe to do diplomatic protection against another State of nationality, except in cases where the latter consider him British which this issue does not exist in Ms. Zaghari's case. The UK also may be affected by its practice. However, Ms. Zaghari's release, which the UK is seeking, will not be a direct result of this resort.

Keywords
Diplomatic Protection, Nazanin Zaghari, Iran, UK, Multi Nationality, Predominant and Effective Nationality.

Paper Type: Research Article

Maritime Trading Transport and the Security of Marine Life: The Dilemma of the Domestic Legal System and International legal order

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Received: 2020/04/26 - Accepted: 2020/08/09

Detailed Abstract
Maritime trading transport is the area with the highest volume of cargo handling in the world and it plays a vital role in all aspects of the prosperity of human life. On the other hand, the marine life is associated with the security of two-thirds of the sphere of the world, the environment of seas, which is threatened by the maritime transport. The main question of this paper arises from this duality: the legal system must protect a program which supports maritime trading transport or a process which is called continuing the security of marine life? Maritime trading transport as a program with a background and designed by humans is based on the elements of subject (commodity), tools (ship), bed (sea) and agent (carrier) to move cargo and each has a separate legal system. But the combination of these elements has led to a threat to a process, the natural formation of marine life and its continuation.

In fact, the point of this article is to address the missions of a legal system. The legal system is inherently human-centered and so it seeks to do its traditional missions which is to regulate various fields in the direction of human will or interest in the name of branches such as commercial law or transportation law. But can this legal system make changes in its missions so that it tends from human-centered to existential-oriented by having more common and all-encompassing face.

The optimal legal system is based on criterion about the program and is supportive about the process. Therefore, the present article, which has been reviewed using library and internet references by description and analysis method, seeks through a comparative approach between the Iranian legal system and the legal system of U.S.A, as well as the international legal order to show how a legal system has adopted a lucrative approach toward maritime trading transport and has

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not differential or special legal system for protection in the face of anti-security threats of marine life, of which pollution is the most prominent.

The fact is that marine life as a part of our world essentially dominates the humans and their environment. From a legal point of view, the human must act within the framework that rules him regardless of the utilitarian approach in his legal analysis. As a result, a nature-based legal system must be established for specific and differential support for marine life.

The result of this article is the provision of a supportive legal system with four types of enforcement guarantees: preventive, security, criminal and compensatory so that a balance between the program of maritime trading transport and the process of the marine life can be constituted; especially since geographical location of Iran requires the provision of such a system.

Preventive enforcement guarantees are used to regulate maritime trading transport in order to prevent a pre-existing threat to marine life. This type of guarantee includes situational measures to monitor maritime trading transport from origin to destination, as well as educational and social measures to respect the value of marine life. Security guarantees are immediate measures to eliminate an imminent threat against security of marine life immediately. Criminal guarantees are to determine the main, supplementary and subordinate punishments for committing criminal acts. Of course, criminal guarantees not only need to be up-to-date and efficient, but also require prior criminalization of certain threats against security of marine life which have not yet been penalized. Finally, civil or compensatory or restorative guarantees are for compensating damage to security of marine life. Compensation system in this regard can be from restoration to the previous situation to pay compensation to the government to repair the situation or other appropriate solutions that again need to be regulated. Compensation system in this area, in particular, can be a very good guarantee for maritime trading transport operators, who generally do so with financial incentives.

If these four guarantees be comprehensive, differential, efficient and enforceable, it can be seen that maritime trading transport will respect for security of marine life.

Keywords
Maritime Trading Transport, Marine Life, Ship, Pollution, Enforcement Guarantee

Paper Type: Research Article

The Position of Comparative Law in The Judgments of The Constitutional Courts in The Common Law and Civil Law Countries

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Received: 2020/02/23 - Accepted: 2020/06/06

Detailed Abstract
The problem of the position of comparative law in the judgments of the constitutional courts in the Common law and Civil law countries is a very interesting research topic since each of these bodies has a different view on the issue. In other words, the different opinions on the subject show well how constitutional judges consider the effects and characteristics of the citation of foreign norms in their decisions. Normally the Courts of Anglo Saxon culture countries use comparative law in their studies while in Civil law countries this is rarer. Citing foreign and comparative law and rules in the jurisprudence of Constitutional and Supreme Courts is a method to develop the domestic legal studies and in these recent years not only Common law judges, but even Civil law Courts have begun to analyzing other legal systems in their jurisprudence. Moreover, most recent studies on the role of comparative law in the jurisprudence of the Supreme Courts concern scholars from Civil law countries. In this article based on the descriptive and deductive method, we will try to answer the following question: what are the strengths and weaknesses of citing foreign norms in the judgments of the national Constitutional courts? After the presentation of the approach of the Supreme Courts of United States of America, Australia, Canada and New Zealand and the point of view of South Africa, Portugal, Italy and Germany's Constitutional Courts, we will demonstrate that despite some weaknesses such as dangers for State sovereignty and the widening of the sources of law, thanks to the caution of the Constitutional judges and the citation of norms of legal systems which are close from a geographical and cultural point of view and to the use of comparison not exclusively for applying foreign law, the use of judicial and legal sources from other countries can help the development of domestic law and expand the protection of fundamental rights. For example, important judgments reported the views of judges from other countries to justify the extending of protection of human rights. This shows how comparative law and foreign law, if mentioned with reasonableness, is not a threat to national sovereignty, but an opportunity to harmonize the various legal systems.

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Keywords
Civil Law, Common Law, Comparative Law, Constitutional Courts, Jurisprudence.

Paper Type: Research Article

An Empirical Study of the Iranian Judicial Precedent on Trademark with an Emphasis on the Statistical Models

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Received: 2020/01/24 - Accepted: 2020/05/23

Detailed Abstract
Today, with the advancement of business, the importance of intellectual property is becoming more evident than ever. In particular, the vital and significant role of trademarks in economic development, competitiveness, customer orientation and etc. is increasingly grabbing attentions.

It is clear that, being confined with the legislated laws, in itself, may not depict an accurate image of the depth of the protective regime in this area. For this reason, the way these regulations are applied and interpreted in the courts as well as what is applied in the vacuum of any relevant law, is of great importance for all practitioners and beneficiaries in this field.

Surprisingly, to date, no empirical and statistical data has been systematically collected in this respect. Fortunately, in the information technology era, there are new and innovative facilities for better analysis and understanding of court practice. These facilities have provided researchers with great possibility to use the knowledge and data mining methods, and also in terms of the design and implementation of administrative automation in the judiciary.

From a research perspective, it is not necessary to elaborate on the environment in which intellectual property cases are proceeded In the context of this paper, trademark branches and their significance do not need much explanations as they are considered to be adequately clear.

We lack a scientific and well-documented understanding of what is happening in the courts, the consequences of which cannot be overlooked. So a serious question which arises at this point is: ‘how it could be possible to have an accurate and clear picture of the advantages and disadvantages of the topic without having proper statistics and knowledge. The second question of this research is that , how it could be possible to realize the defections of laws and regulations as well as the court practice without having the said knowledge and awareness.

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This research is based on the Data Mining approach and statistical methods, which are less exercised approaches in the context of legal science in the country. The research aims at the examination of the relationship between different components and elements of trademarks branches with one another and provides an overview of important variables the context of judicial practice. Thus, as a first step, a significant amount of data has been collected and then, by using statistical models, in the data analysis stage, in line with the definition of the knowledge pyramid, the raw data becomes information, and eventually, knowledge.

Analyzing the various dimensions of a judicial decision, whether on a case-by-case basis or in macro level, and the collection of judicial decisions in the field of trademarks, is useful and interesting. Substantive analyzes, (including thematic classification of trademark lawsuits, judges' reasoning, justifiable reasons for the decisions of courts and citation of sources, etc.) and also from a procedural perspective; (including length of proceedings and factors influencing the presence or absence of a lawyer, etc.) will draw new horizons.

In this research, a wide range of information is obtained by refining and summarizing a court decision. This information includes, *inter alia*, the elements that have been utilized as components and variables for statistics and analysis. This would shed some lights on the reasoning and citation of the courts, indicates the extent of opposing opinions in the same cases, refers to the thematic classification of the lawsuits and the frequency of each lawsuit. It also offers a wide range of statistical analyzes. In other words, the basis of this research is the conversion of qualitative data into quantitative and quantifiable data so that, at the end, by taking assistance from statistical models, the situation of court proceedings in trademarks can be shown more clearly.

It is worth mentioning that the main approach and outcome of this research is to introduce and test, for the first time, an innovative method that enables researchers to analyze macro- viewpoint judicial opinions in this research as well as in future works. This research was started with a few questions, but later on we were amazed by the numerous aspects of the topic as well as the analysis of the extracted data. The practice of the courts in relation to different subjects and variables is not the same.

For this reason, a comprehensive and multidimensional assessment and analysis were required, the details and results of which are reflected in the text of this study. The results of the research seeks to show how the trademark protection system and related laws have been implemented in practice, and what approaches they have adopted in the primary and appeal courts based on the statistics. It will be crucial to present remedial plans and improve the protective mechanism. This enrich set of data will enable and facilitate other systematic and important studies in the future.

Paper Type: Research Article

A Comparative Study on the Legal Relationship between the Competition Authorities and Sector Regulators; from Conflict to Interaction

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Received: 2020/04/16 - Accepted: 2020/07/19

Detailed Abstract
Competition is the lifeblood of the economy and the market is the highest form of a competitive environment. But there are not always market conditions and features as a fully competitive environment, and as we move away from free economic action, competitiveness diminishes and Non-competitiveness increases. In such cases, it must be accepted that the non-market or the exclusive market rules apply instead of the market Competition rules to maintain market competition, and competition authorities are responsible for implementing competition laws and regulations and preventing the undertakings from anti-competitive practices. Alongside Competition authorities, in certain areas, mainly when markets face monopoly or intense concentration, lawmakers set up sector regulators to monitor the monopolies.

Exclusive markets usually appear in the field of infrastructure, public facilities such as power plants and essential goods that people need daily, and the consumers of these goods and services constitute a large volume of society and sometimes the whole community. However, the supply of these products is in high demand, and it must be admitted that these markets are, politically, socially, and economically susceptible. Accordingly, the regulation of such markets and the prevention of market failures to protect consumers' interests, optimal allocation of resources, and fair distribution of income are at the forefront of government economic programs.

In some countries, regulatory bodies are partly in line with competition authorities, but in some legal systems, they perform differently and sometimes are in conflict; on occasions, sector regulators consider an obstacle to the implementation of competition laws.

By studying the history of the creation of institutions to oversee competition in different countries, it should be said that these institutions have emerged in many

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countries during the economic transition. In the transition from the state economy to the market economy, state, or quasi-state monopolies are created in many commercial sectors. As a result, there is a need to create an institution that oversees independent and robust competition to prevent competition law violations by monopolistic firms.

In contrast, regulators are typically needed in highly focused markets where competition is either non-existent or very weak. In parts of any country's economic system, instead of setting up a standard competition mechanism, setting a price in the marketplace, and commercial actors operating in a competitive market, regulators operate and intervene in pricing mechanisms.

Examining the powers, duties, and objectives of sector regulators and competition authorities and operating in different countries presents various situations from conflict to interaction. In this article, this issue has been studied in different legal systems using a comparative approach.

According to some authors, it is the subject matter that determines the exact boundaries between competing and regulatory bodies' responsibilities and competencies and to study this relationship. Still, it is also necessary to examine the practical approach of the two.

Finally, the Iranian Legal system's viewpoint has been discussed, reviewing the latest developments in the laws and regulations and the most critical cases of dispute between the Competition Council and the sector regulators (Telecommunications, Pharmacies, Bar Associations, and Car pricing cases), using a descriptive-analytical method.

Keywords
Monopoly, Sector regulator, Competition Council Competition law.

Paper Type: Research Article

Comparative Analysis of the Influence of "Consideration" and Reasonable Reliance on the Type of the Contractual Obligations in Iranian and British Laws

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Received: 2020/06/13 - Accepted:2020/09/07

Detailed Abstract
Most jurists believe that contracts give rise to obligation, and hence as long as the contract is in effect, the parties are bound to adhere to its provisions. On the contrary, a review of the contracts in the Iranian legal system shows that some contracts (e.g. power of attorney) do not require an obligation, rather they merely result in authority and representation. Nevertheless, it is undeniable that contracts such as POA, deposits, or *Joalah* (contract of reward) are binding under any condition. This study sought to identify the factors that render some contracts binding and analyze the type of obligation arising from the contracts. A common classification of obligation in the Iranian Law is: obligations of result and obligations of means. Overall, the views of jurists concerning the basis for creation of obligation has been controversial, and, as for the effects of this classification, they have limited themselves to explanation of the burden of proof for the promisor and the promisee. The author examined the instances of obligations of means and obligations of result to identify the role of necessity and the criterion for discerning these two types of commitment. According to the results, irrevocable contracts (*lazim*) always require obligations of result, whereas obligations in revocable contracts (*jayiz*), if any, constitute an obligation of means. However, if the conditions are met, the obligations of means can be transformed into obligations of result. The contrary of this proposition mostly leads to difference between the condition and the requirements of the substance of contract. Therefore, the most important criteria for distinguishing between these two types of obligation is determining the will of the parties. In many cases, however, the parties do not expressly reveal their intention. The authors believe that under such circumstances, transactional (*moavvaz*) contracts can be regarded as binding and subject to obligation of result. On the other hand, gratis contracts are always revocable; unless

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they are subject to special structures such as contract of settlement. If a sense of customary trust is created for one party due to the actions of the other party, the later is obliged to act within the framework of the first party's trust. It is worth noting that this obligation is concerned with means, and the committing party can breach it on the basis of the contracts requirements. In that case, the offending party is required to compensate for the damages to the other party.

Keywords
Consideration Theory, Reasonable Reliance Theory, Obligation of Means, Obligation of Result.

Paper Type: Research Article

A Critical Approach to Crimea's Secession from Ukraine in the Light of International Law

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Received: 2020/06/23 - Accepted: 2020/09/20

Detailed Abstract
In 2014, after a controversial referendum, the Autonomous Republic of Crimea declared its independence from Ukraine and rejoined Russia. Crimea's request was welcomed by Russia, and Putin and Crimean representatives signed an additional agreement that formally designated the Republic of Crimea as a part of the Russian Federation. In addition, Russia claimed that the referendum was in accordance with the rules of international law. In a speech, the president recalled Kosovo's famous procedure that Crimea's secession from Ukraine was linked to the right to self-determination, and claimed that the Crimean people had exercised their right to self-determination in various situations. The Russian envoy also made the remarks during a Security Council debates. FurthermoreRussia also told the General Assembly that during the referendum, "a vast majority of the Crimean population voted to annexatin of Crimea to Ukraine, and they could not reject the Crimean people's demand for protection of their long-held right to self-determination." Thus, from the point of view of the Russian government, the right to self-determination equals, or at least includes, the right to independence, means unilateral secession. It could be argued that the Russian government implicitly referred to the doctrine of remedial secession, which includes the right to unilateral secession of peoples who have been severely wronged.

In any case, the accuracy of the views expressed under international law is highly debatable. The purpose of this article is to examine whether the Crimea's secession from Ukraine was due to the right to self-determination and secession or not. To this end, this article briefly examines the context of the events that led to the unilateral declaration of Crimean independence. We will then turn to what Crimea has been trying to achieve with this declaration. and then address the question of whether Crimea has the right to unilaterally secede from Ukraine. In this regard, we will argue that beyond the issue of decolonization, the right to self-determination does not include the general right to unilateral secession. In addition, we will pay

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special attention to the controversial theory of remedial secession and explain that the international law in question does not include the right to remedial secession. In the absence of such a rule, another question arises as to whether the unilateral secession of Crimea is effectively prohibited under international law. We will say that while the principle of territorial integrity does not imply unilateral secession, it does not preclude it. However, there are situations in which, due to its special circumstances, any intention of unilateral secession is considered illegitimate, and the situation in Crimea is one of these exceptions.

Keywords
Crimea, Remedial secession, Russia, Territorial integrity, Unilateral sesession.

Paper Type: Research Article

Judgment for Specific Performance against Obligor and its Implementation by Third Party in Iranian and French Law

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Received: 2020/02/24 - Accepted: 2020/07/20

Detailed Abstract
In contractual relationships, accurate and timely implementation of obligations is of particular importance. But sometimes the obligor commits a breach of contract and, in spite of the issuance of the court judgment for specific performance, he still refuses to carry out the obligation. Subject to the provisions of Articles 222, 238 of the Iranian Civil Code and Article 47 of the Code of the Execution of Civil Judgments, where the obligation is enforceable by a person other than the obligor, the third party may perform the obligation or even the obligee himself fulfill the obligation and claim for the cost of such performance. Also in Article 1222 of the French New Civil Code, which replaced the former Article 1144, such a performance has been recognized.

According to the provisions of both legal systems, the breach of contract by the obligor is one of the most important conditions for the possibility of fulfilling the obligation by a third party. It is important to note that breach of contract has a general meaning and includes defective and partial performance. Therefore, the implementation by a third party in such cases is also conceivable. However, since the delayed performance is ultimately accomplished by the obligor, third party interference in such performance is not imaginable.

After the breach of the contract, the obligee may prefer to claim for specific performance through the competent authority and after the court's order for specific performance it is likely the obligor still refuses to fulfill the obligation and in this case it is possible that the obligee wants to achieve the fulfillment of the obligation by third party. Of course, sometimes, due to necessity or urgency, the obligee may, without the permission of the court, ask third party to perform the obligation instead of the original obligor. Under new French civil code and based on article 1222 there is no need for obligee to obtain court order if the obligation is characterized as an obligation to do. Although this exception has not been foreseen in Iranian legal

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system, it is possible for obligee to obtain third party performance based on Article 51 of the Regulations for the Execution of Official Documents.

Obviously, the performance of an obligation by a third party is only possible where the obligation is not regarded as a personal obligation. It is worth noting that, third party performance is only feasible where the time element for performance is not essential for obligee and delayed performance by third party will be useful. It should be added that the issue of third party performance is dedicated to non-monetary obligations.

A comparative study of French law, that inspired the drafters of Iranian Civil Code, shows that such performance by a third party is a kind of specific performance and the discharging of original obligor is its main effect which consequently all of the guarantees will be extinguished, meanwhile the obligor will be condemned to pay expenses of performance.

Keywords
Breach of Contract**,** Performance of Obligation, Order to Specific Performance, Third Party Performance, French Law.

Paper Type: Research Article

A Case for Positive and Economic-Based Approaches to Reasonableness in Tort Law and their Practical Implications

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Received: 2019/10/20 – Accepted: 2021/09/14

Detailed Abstract
In spite of some instances in which statute or contract specifically determines the approach by which the standard of care is to be tested, the notion of Reasonable Man which plays a crucial role at the heart of Duty of Care is an ambiguous and abstruse issue. The Article sets forth an answer to the following question: Should reasonableness be a normative or a positive notion? In other words, should the reasonable person be defined in accordance with a normative ethical commitment or in accordance with an empirically observed practice or perception? We put forward and defend the thesis that positive approach is illogical and normative approach, namely Economic Welfare approach, is categorically sound, although the latter raises partially surmountable practical problems. This Article is basically founded on Documentary Research and Literature Review and is presented in two parts; The first involves dealing with the positive approach and the latter with the normative one.

Keywords
Philosophy of Tort Law, Reasonable Person, Fault, Normative and Descriptive

Paper Type: Research Article

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Comparative Study of Pain and Suffering Damage Assessment and its Compensation in Non-fatal Injuries in Iranian and American Law

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Received: 2020/04/21 - Accepted: 2020/08/22

Detailed Abstract
In different legal systems, nominal, punitive and compensatory damages have been identified according to the principles of civil liability. Physical injury includes both intentional and unintentional injuries that may lead to civil and criminal liability. These injuries often cause two types of material and moral damage. Most legal systems recognize the need for compensation for material and moral damages of this type of damage. However, these two types of damage, which result from non-fatal bodily injuries, have different effects during the life of the injured person and this has caused confusion and disagreement.

Compensation for bodily harm is one of the most important concerns of legislators. Because following the bodily harm inflicted on a person, in addition to non-financial damage that is sometimes even irreparable, it also has heavy financial consequences. There may be a number of different ways that a person suffers pain and suffering for which person may be able to receive compensation through a personal injury claim. But in general, in different legal systems, one of these two approaches has been taken, which either the power to determine the amount of damages is generally vested in the judges, or the jury does so.

In reviewing the Iran legal system, it is clear that the most attention has been paid to compensatory damages, i.e. compensation for damages and restoration of the former situation. As such, it has been dealt with reluctantly and limitedly in its acceptance of immaterial damages as a form of punitive damages, and the way and means of determining it has not been anticipated. In the Iranian legal system, despite the fact that in general, both financial and non-financial compensation methods have been considered but non-material compensation for bodily injuries is not provided.

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Whereas one of the most important types of damages resulting from physical injury is immaterial damages, including pain and suffering, which itself can be divided into different branches. In fact, the term suffering is used not only for physical pain but also for a range of intangible injuries such as fear, anxiety, sadness, and disrespect. In American law, the scope of payment for pain and suffering is varied, and most of these cases have been considered but there is no consistency in the assessment method, and It has used various methods such as determining the lump sum, determining the cap or ceiling on the amounts awarded, per diem calculations etc., and in most cases, the severity of the damage is one of the main components and the method of compensation is financially provided But the method of compensation is purely material and financial.

Regarding the acceptance of immaterial damages in Iran legal system, research has been done in this field, but in particular, the damage of pain and suffering has not been addressed. This article examines the US legal system and its calculation methods to obtain and predict the legal tools for removing this gap in the Iran legal system.

Keywords
Immaterial Damage, Iran Legal System, Pain and Suffering, United States of America Legal System.

Paper Type: Research Article

A Comparative Legal Study of the Marriage with an Adopted Child in Iran, UK and Germany

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Received: 2020/04/24 - Accepted: 2020/09/14

Detailed Abstract
Adoption is a legal institution by which a child with no family (whether without any or with irresponsible guardians) is placed under the care and support of a family, although in some systems adoption of adults as well as adoption by single adopters are common. In this regard, the adopters (or the single adopter) carry all responsibilities of the natural parents towards the child, and a parent-child-relationship will be created between them.

In the Iranian legal system and especially in terms of family relationship, marriage and inheritance, the adopted child is not considered as a natural child. This explains why the legislator has repeatedly used the term guardian and custodian in the relevant law, except for marriage with the adoptee. Beyond that, there is no minimum age for marriage and polygamy is also accepted by law. In addition, adoption is only recognized for orphans and in special situations also for abused children with irresponsible guardians. Thus, adult adoption has no place in the Iranian law.

Having said that, freedom of marriage is one of the fundamental principles of human rights. Nevertheless, today, the prohibition of consanguineous marriage is also a universal principle. In some societies, religions and various legal systems, there are, in respect of different kinship hierarchies, prohibited kinship degrees with whom a matrimonial relationship is forbidden. Some of these bans are due to blood relations to certain degrees. For example, in Islamic law, marriage with parents, grandparents, siblings and their children, and uncles and aunts is eternally forbidden.

In 2013, the "Law on the Protection of Children without a Guardian or with an Unworthy Guardian" was passed. This law – contrary to the law of 1353, which had silently left out the issue of marriage with the adopted child – prohibits marriage between adopters and adoptees during the custody period and thereafter, but allows

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it if the competent court finds out that the best interest of the child so requires. With the absence of an Islamic legal prohibition and silence of the law, there had been cases of marriage with an adoptee. This kind of marriage is now, at least, dependent on court's permission based on the best interests of the child. Thus, the adoptee is more protected from possible social harm. However, it is forbidden to marry an adopted child in most non-Islamic countries. In this regard, this article seeks to explain the legal status of three countries, i.e. Iran, England, and Germany, with a focus on the principle of the best interest of the child and the freedom of marriage.

Comparing the legal situation in England and Germany, it seems that the fulfillment of parental duties and responsibilities towards a child at an early age, forming a parent-child-relationship, preventing sexual competition in the family, and strengthening the mental security and family solidarity require such a provision in favor of the best interest of the child and enhancing family ties. These concerns are ignored in the law of countries such as Iran, which permits the marriage between adopters and adoptees, although the new legal limitation is indicative of the common concern of the Iranian legislator with the above mentioned countries. In addition, the fact that this kind of marriage is not punishable may indicate the tendency of these legal systems towards the principle of freedom of marriage, the more so as such a marriage happens when the adoptee is of full age.

Currently efforts being made to ban child marriage in Iran are particularly welcome. In principle, the legislature can assume that if marriage under the age of 18 is banned, there will be less concern about the best interests of the child. In case such a marriage takes place in adulthood, it could be accepted on the assumption of the full and perfect will of an adult and in accordance with the principle of freedom of marriage. However, at present, despite the prohibition of this marriage, unless the court has many means and much space for maneuvers and due to the possibility of child marriage as well as polygamy, there are still serious concerns about possible harm to the child and the family.

Keywords
best interest of child, child abuse, forbidden marriage, freedom of marriage, marriage with the adoptee.

Paper Type: Research Article

Theoretical Explanation of Death in Custody in the Context of Comparative Criminal Justice

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Received: 2020/01/05 - Accepted: 2020/02/28

Detailed Abstract
Deprivation of liberty either for detention or as a result of a sentence, requires observing the rights of detainees, including the right not to be tortured and to preserve their right to life. Imposing any kind of discrimination in observing these rights by prison staffs based on the type of charge or conviction of the detainees has a fundamental conflict with human rights standards. In other words, it is necessary to have a humanity-based treatment to all kind of convicts regardless to their charges and double treatment of prisoners should not be allowed by dividing them according to the type of charge. However, in almost all criminal justice systems, several cases of death in custody or prison can be founded. The study of prison death literature raises this question that which type of prisoners are more at risk of death in prison? This article tries to answer this question what kinds of charges put their perpetrators at risk of the phenomenon of death in prison. The study of this issue is important because despite all the national, regional and global human rights efforts to eliminate and prohibit the use of torture, we still see inhumane methods of dealing with detainees in almost all criminal justice systems. Amnesty International stated in its 2000 report that between 1997 and 2000, three-quarters of governments worldwide used torture. Since 1997, there have been reports of torture and ill-treatment in more than 150 countries. In 80 of these countries, the use of torture has resulted in death, and in another 70 cases, torture has been widely reported. Reports of this organization in recent years do not indicate much change in the number of countries that have used torture. For example, a 2014 report found that between 2009 and 2013, reports of torture and ill-treatment of prisoners in 141 countries were received by the organization. Prison researchers attribute the phenomenon of death in prisons to a variety of causes. while a number of studies have focused on the organizational culture that governs criminal justice institutions, another group of studies focuses on the characteristics of these environments. Nevertheless, the

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present article tries to use the psychological theory of "dehumanization" and its later readings in the realm of death in prison to answer the question that which group of prisoners based on its charges is most at risk. Therefore, the focus of this article is not on organizational culture or environmental characteristics, but on the characteristics of prisoners who, during the dehumanization process, are considered as enemy and become victims of the phenomenon of death in prison.

To answer the question that which groups of accused or convicts are more vulnerable to the death in custody, by referencing mentioned theories and using case study, current paper tries to analyze 30 cases of death in custodies/prisons of Iran between 2004-2019. Findings of this article show us that all the prisoners are Not vulnerable to death in custody in equal proportions. Mostly, these are accused & convicts who exposure the death in custody that are deeply in conflict with some non-negligible values of criminal systems. Analysis of 30 cases of death in custodies of Iran shows Security charges is the reason of 21 cases. The High number of security accused or convicts in the death in custodies statistics may reinforce this hypothesis that in the eyes of criminal justice's authorities, such group of prisoners in the process of dehumanization was considered as enemy.

Keywords
death in custody/prison, dehumanization, delegitimization, security accused, prisoners as enemy.

Paper TYPE: Research Article

Charterers' Obligation to Pay Hire in Charterparties on Carriage of Goods (A Comparative Look)

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(Received: 2020/06/25, Accepted: 2020/09/19)

Detailed Abstract
Payment of hire from charterers to shipowners is considered as a principle in charterparties. Charterers' obligation to pay hire is an absolute one, and in only exceptional cases, they are entitled to deduct from hire or set off against it. Therefore, the charters include some terms in time or voyage charterparties to permit them to adjust this obligation in certain circumstances. For avoiding the legal consequences, however, the charterers who need to apply this contractual right must examine the contract attentively. Since the charterparty is sometimes silent on these terms, the question of what sources of law can be used by courts should be discussed. With a descriptive and analytical method and from a comparative perspective, this paper aims to scrutinize the charterers' obligation to pay the hire in charterparties on carriage of goods. The result is that Iranian law on this subject matter differs significantly from the common-law system; including deduction from hire for the ship off-hire period, collapsed ship, and delay in delivery of ship to the charterer. According to Maritime Act of Iran, the charterer must pay total hire to the shipowner, and he/she has no right to deduct from hire. However, in some cases, it has predicted that the shipowner is not entitled to claim the hire, and in another case under the Act, charterer has a right to pay hire in half or based on the covered distance. When a ship goes off-hire, there are some differences between Iranian and English Law about whether charterer has a right to deduct from hire or not. In English law, there is no right to deduct from hire if ship off-hire is predictable. If off-hire situation is the result of act or omission of charterer, he/she is not entitled to use above-mentioned stipulation, whether or not the ship off-hire is predictable. In Iranian Law, the predictability of ship going off-hire doesn't affect the obligation of charterer to pay hire. Furthermore, if the act or omission of charterer causes the off-hire, he/she is obliged to pay hire completely. It is essential to distinguish between

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off-hire and force majeure. Furthermore, this is the charterparty that must be considered as the primary source of and the basis for regulating the relations between the parties. When charterparty is silent, we should refer to Iranian Maritime Law or other legal provisions as general rules. Iranian Maritime Law in its ninth chapter includes scattered articles concerning charterparties, and in some cases such a right is granted to the charterers.

Keywords
Hire, Set off, Damage, Terms, Charterparty, Shipowner, Charterer.

Paper Type: Research Article

Standards and Objective Priorities in Updating of the Iranian Commercial Provisions at the Point of View of Comparative Law

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Detailed Abstract
Development of trade and needing to modern provisions in our country magnify the necessity of more attention to comparative law and its achievements. The urgent needing to updated provisions in the Iranian commercial law necessitates resorting to comparative law achievements as a scientific and realistic solution. Despite this point resort to mentioned solution requires many requirements in order to obtain acceptable conclusions in the field of accession of international commercial provisions in the Iranian law. Thus, we want to study these requirements and priorities in accordance with legal and economic structure of Iranian law. Therefore, middle situation of Iranian law in transition to law modernization necessitate more caution and observance of some requirements in using commercial comparative law achievements. The benefits of this approach are two. First is enhancing of efficiency of transplanted provisions. Second is decreasing of the conflict between commercial provisions and constitutional and judicial principles of Iranian law regime. The firm tie between commercial provisions and economic principles lead to magnify economic analysis of law and compare them with economic structures of acceptor country. In the other hand, improving of soft law situation in Iranian law regime and promoting the principle of freedom of the will in commercial law is very useful. because of their more flexibility as to traditional law resources, Some types of the soft law such as model laws are very important in unification and updating of commercial provisions in Iranian law. The reason of this importance is very vivid. The soft law helps lawyers and traders to use modern and new provisions before intervention of legislators. Thus, these features repair backwards in the field of international commercial provisions. Further, transparency of legal terms and new notions and comparing of them with traditional terms is the other requirement in the legislative policies. Negligence to these requirements may lead to legal confusion. The mentioned result may reduce the modern provisions achievements and their efficiency. Thus, we suggest that the Iranian legislators pay attention to mentioned requirements in updating commercial acts in order to enhance quality of modern laws. In this article we try to demonstrate and analyze the presumption that updating

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commercial provisions should be done continuously and in consistent with economic and political structure and new evolutions of international trade without mere imitation of abroad provisions.

At the point of view of objective provisions in modernization of commercial provisions we can find variety of maters in the Iranian commercial law that legislation on them is very urgent and important. In the other hand, objective diversity of required provisions in the Iranian law necessitates recognition of these requirements and shortages in domestic law and thier solutions. In current research, we try to exercise these requirements and solutions upon inferential analytical approach. Among required provisions we can mention commercial instruments in both traditional and electronic format, transnational insolvency and reinforcing economic analyze of them and general principles of commercial contracts. Expectation of lawyers and trader societies in our country is recognition and applying of these requirements in new commercial acts that are in passing in legislative authorities.

Keywords
Comparative law, International commercial provisions, Customization of acceded provisions, Updating of provisions, Iranian law.

Paper Type: Research Article

Resolving the Problems of the WTO Regarding the Renewable Energy Subsides through the European Union Regulations

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Received: 2020/06/14 - Accepted: 2020/08/12

Detailed Abstract
Renewable energy includes all types of energy produced from natural and non-fossil resources. Providing a virtually endless source of energy, having a significant role in providing the world's energy and improving the status of the environment are ?some of the countable advantages which pronounce the necessity of producing and enhancing such energy resources. Increasing renewable energy requires substantial amount of investments and application of costly technology. In order to reduce the costs, the governments ought to support the investors through granting subsidies. The approaches and extent of the supports on the side of the governments in granting subsidies are, to a large degree, dependent on their national principles of sovereignty in determining the economic policies; however, since there are 164 countries that have joined the WTO and because of the international effects of the energy trade, a balance should be established between the support policies of the governments on renewable energy and the principles of the international trade law. Specifically, since the subsidies on renewable energy are mostly granted to the internal producers of technical equipment and turbines and the investment on the construction equipment in the projects, granting the subsidies results in restricting the imports of renewable energy equipment as well as the discrimination of such equipment against its foreign counterparts; this, in turn, is in breach of laissez-faire and non-discrimination principles.

In fact, given the necessity of granting such subsidies for the renewable energy, there is a clear conflict between the fundamental right on having a healthy environment and the mentioned principles of the international trade regulations. In order to solve such conflicts, the regulations of the organizations must distinguish between subsidies that support and are effective in renewable energy industry from those that are actionable and prohibited.

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In other words, in case of having tangible criteria or features, renewable energy shall rule the mentioned international trade regulations. In effect, through supervision, control and provision of proper evaluation procedures, grating the subsidies which is ceremoniously in support of renewable energy but in fact is for gaining economic interests and distorting the trade must be stopped.

The present paper first examines the regulations of the WTO and counts the challenges of renewable energy. Then, by defining the structure and policies of the European Union, it is aimed at answering this question that whether the European regulations are in harmony with the renewable energy as such that they can be adopted and thereby solve the WTO challenges?

The paper explains that due to a lack economic principles and clear criteria, the regulations stipulated by the WTO have led to confusion and broad interpretations; they fail, moreover, to identify properly the concept of subsidy. The WTO does not have any particular policy on renewable energy subsidy. According to the Agreement on Subsides and Countervailing Measures, the renewable energy subsidies which are aimed at reducing climate change and do not observe some trade principles are categorized under the actionable subsidies.

The mentioned regulations have prohibited the allocation of Local Content Requirement Subsidies in spite of their positive bio-environmental, industrial and economic effects. According to the organization policies, when the policies on free trade and environment preservation are in conflict, the international trade principles are constantly prioritized. In the regulation of the organization, there is no criteria or test to assess the compatibility of the granted subsidy with its defined objectives as well as the degree of distortion in trade as a result of subsidy policies.

With regard to the supervision and control of subsidies, the regulations of the organization do not necessitate informing before implementing; they are, moreover, bereft of proper incentives or punishments to push the individuals and organizations towards observing the regulations.

On the contrary, the EU regulations have explicitly delineated some state aids (special subsidy) for the investment in promoting renewable energy. Their approach in prescribing state aids is very generous; however, these supports are not unrestricted and the EU not only sets precise limitations but also provides the balancing test for enacting the state aids. The European approach has also supervision regulations on the state aids and informing policies which are being observed through incentives and sanctions by the European commission and courts.

The authors of the present paper hold that the WTO, when modifying the regulations, can adopt the optimal system of the EU state aid; nevertheless, due to the structural differences between the two legal systems, it is not possible to fully emulate those regulations in the form of a proposed package. Numerous entities, such as the European Commission, European courts, and the guidelines in EU, function in the EU system that cannot be found in the World Trade Organization. Putting an end to the win-win relationship between the environmental policies and

free trade, the WTO should include the subsidies on renewable energy under non-actionable subsidies. It also should prioritize them over international trade principles by utilizing the balance and proportion testing methods.

Keywords
EU union regulations, Renewable energy, Subsidy, WTO.

Paper Type: Research Article

Place and the Legal Value of Limitations of the Constitutional Revision; A Comparative Study

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Received: 2020/05/25 – Accepted: 2020/09/20

Detailed Abstract
Following the victory of the constitutional movement in the 18th century and the establishment of constitutional political systems, each state is supposed to function within the framework provided for in its constitution. In other words, it is the constitution that gives legal legitimacy to the acquisition and transfer of power, and determines the structural framework and organization of the state. Since the middle of the twentieth century, the serious and effective recognition, protection and guarantee of human rights and freedoms have been added to the content of constitutions. Nevertheless, one of the great constitutional challenges arose later: it is the question of the continuity of the validity of a constitution and of the possibility of modifying and changing it. Is it possible to change the constitution or not? By what reference? Under what conditions and rituals? Would it be possible to control this process? By whom and how?

During developments in this field and according to the fundamental and substantial right of the people to amend or change their political system and a fortiori their constitution; this possibility has been recognized in almost all constitutions today (replacing the right of revolt). However, the main question might be the possibility or the impossibility of changing and reforming the foundations of the constitution (to change, in some way, the ideology of the political system). In this regard, in today's constitutions, certain rules (considered supra constitutional or forming intangible rights, the identity of a political regime, the constitutional core) were explicitly or implicitly excluded from the possibility of revision. However, the legitimacy of predicting such a limit has long been the subject of controversy from a legal and political perspective. As a solution, in some constitutions the possibility of changing the fundamental rules and even the entire constitution (and consequently of changing the foundations of the political system) has been foreseen, although by a different ritual from a simple revision.

The constraints on constitutional reform have fundamental differences in the so-called democratic political systems having a rule of law which respect human rights with political systems with fixed and closed ideologies:

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The restrictions of content, in the first group of countries, are subject to a ban to compromise the recognition and guarantee of rights and freedoms; Whereas in dictatorships, these restrictions aim to maintain a certain ideology and hence the monopoly of power in the hands of a particular individual or political group under the guise of that ideology. Besides, in the first group of countries, the possibility of fundamentally changing the political order and system has usually been explicitly provided for in the constitution (amendment of the entire constitution or establishment of a new constitution). This change could be effected either through voluntary constitutional reforms on the part of the state (because of accepting the ineffectiveness of the existing system) or through forced changes (following popular demands and protests). But in the second group, it would neither be enshrined in the constitution, nor accepted implicitly, and there is, moreover, no practical possibility of effective protest; which could ultimately be seen as a sort of implicit incitement to revolt against the ruling power!

Keywords
Constitution, Revision, fondamentale, supra constitutionnel, constituent power.

Paper Type: Research Article