

## A REVIEW OF INTERNATIONAL CONVENTIONS ABOUT THE GLOBAL LIMITATION OF LIABILITY IN MARITIME LAW

**Mohsen Izanloo \***

*Assistant Professor, Private and Islamic Law Department, University of  
Tehran, Iran*

**Ramin Dargahi**

*MS. Student, Faculty of Law and Political Science, University of  
Tehran, Iran*

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### **Abstract:**

The concept of limitation of liability has been recognized in the 11th century and developed in national legislations until 19th century. Considering the importance of maritime transport as the backbone of international trade and great potential for conflict of laws in maritime transport, the need for harmonizing international maritime law, particularly the law on limitation of liability, became visible in the 19th century. The first step towards international unification of the rules on limitation of liability for maritime claims has been taken by adopting 1924 Conventions, but it received little support from the international community. Unlike the 1924 Convention, the 1957 and 1976 Conventions on limitation of liability for maritime received wide international acceptance. Iran has ratified the 1976 convention on 2014 but at the same time the maritime code has preserved the rules of the 1957 convention, yet. In this paper, after exploring the different systems of limitation of liability, we attempt to review the provisions of international conventions on global limitation of liability in maritime law and (including, 1924, 1957 and 1976 conventions) and discuss the status of Iranian law in this regard will be discussed, too.

### **Keywords:**

claims subject to limitation, conduct barring limitation, liability limits, liability of shipowner.

## INSURANCE CORPORATE GOVERNANCE IN IRAN'S LAW

**Mahmood Bagheri\***

*Associate Professor, Faculty of Law and Political Science, University of  
Tehran, Iran*

**Mohamad Sardueenasab**

*Assistant Professor, Private Law, Farabi Campus, University of Tehran, Iran*

**Mahdi Mousavi**

*PhD. of Private Law, University of Tehran, Iran*  
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### **Abstract:**

Supervision of insurance in all states is carried out for the purpose of development and evolution of insurance market. However, the method and field of supervision is different in states in relation to time and law and national development structure. The function of insurance in relation to creation of security and continuance of economic and social activities and development of social justice and wealth is very important. One of the most important methods for supervision of insurance companies is corporate governance for insurer companies. For this purpose, we need legal means and infrastructure. This article intends to study the law of Iran in relation to corporate governance for insurer companies for the first time.

### **Keywords:**

board of directors, corporate governance, insurance company, stakeholders, supervision, shareholders.

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\* Corresponding Author

Email: mahbagheri@ut.ac.ir

Fax: +98 21 66409595

**LOCAL INQUIRY WITH MUTUAL CONSENT OF PARTIES  
TO AN ACTION ON WELL-INFORMED PERSONS  
(ANALYSIS OF ARTICLE 253 C.P.C.)**

**Mahdi Hasanzadeh\***

*Associate Professor, Faculty of Law, University of Qom, Iran*

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**Abstract:**

In article 253 c.p.c., it has announced that parties to an action can introduce persons for acquisition information and consent on what they state. Consent, subject of this article, needs to be studied and investigated in respect of subject, form, nature, validity and effect. So, similarities and differences between local inquiries should be distinct. Local inquiry is not accompanied with such consent. In this investigation, we want to prove that consent that is subject of mentioned article is previous announcement of acceptance of parties to what well-informed persons state which is done in writing or oral and without making nature other than local inquiry for inquiry. It can provide ground of next admission of parties to a case or be effective in evaluation of local inquiry as judicial presumption by judge.

**Keywords:**

consent, judicial presumption, locale inquiry, well-informed persons, witness.

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\*Corresponding Author

Email: m.hasanzadeh@qom.ac.ir

Fax: 0251-2850959

## PROCEDURAL PRINCIPLES IN INTERNATIONAL COMMERCIAL ARBITRATION

**Saleh Khedri\***

*PhD. of Private Law, University of Tehran, Iran*  
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### **Abstract:**

A fair hearing in the courts requires the principles of procedure. Because arbitration is kind of judgment, so in the arbitration hearing the arbitrator or arbitral tribunal is not bound to observe the principles of procedural formalisms. But they oblige to compliance of principals of civil procedure. Equal treatment with parties and adversarial procedure are principles that arbitrator obliged to satisfy them. Independence and impartiality are elements of equal treatment and proper notice and give a full opportunity to elements of adversarial procedure in arbitration hearing. Challenge to arbitrators competence, application for setting aside and refuse to recognition and enforcement of award are tools to satisfy compliance of principles of procedural civil in Arbitration hearing. In this paper, ways of satisfying principles of procedure and its sanctions has been considered.

### **Keywords:**

adversarial procedure, arbitration challenge, arbitrator, equal treatment, setting aside award.

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\* Email: khedri\_saleh@yahoo.com

## EVALUATION OF DAMAGES IN INTERNATIONAL DISPUTES WITH SPECIAL REFERENCE TO THE OIL AND GAS CASES

**Mehrab Darabpour\***

*Associate Professor, Shahid Beheshti University, Iran*

**Mohamad Alikhani**

*PhD Candidate of Oil and Gas Law, Shahid Beheshti University, Iran*

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### **Abstract:**

In this article, the evaluation of damages in international disputes with special reference to the oil and gas cases has been studied. It should be noticed as a fact that the breach of contracts or the breach of some sorts of obligations does not necessarily amount to payment of damages. In many cases, the evaluation of damages depends on the methods of evaluation uses. Therefore, the most important methods of evaluation, such as market value, liquidation value, replacement value, adjusted book value and discount cash flow methods, in the lights of legal principles are carefully studied. The courts or the arbitral tribunals decide which method is more suitable in the special case in question. There are a lot of issues to be taken into account. This article shows the most important related criteria which the judges or the arbitral should bear in mind when they are making their decisions. This will help them to reach into a conclusion which is just, reliable, advisable and finally acceptable to the parties to the disputes and the international commercial community as a whole.

### **Keywords:**

adjusted book value, damages, discount cash flow, international disputes, liquidation value, market value, methods of evaluation, replacement value.

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\* Corresponding Author

Email: [info@drdarabpour.ir](mailto:info@drdarabpour.ir)

Fax: +98 2177634542

## LEGAL ANALYSIS OF THE "ORIGINAL DOCUMENT RULE" IN CYBER SPACE

**Parviz Savrai \***

*Assistant Professor, Department of Law, Shahid Beheshti University, Iran*

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### **Abstract:**

The “original document rule” provides when a document is adduced as substantive evidence of its contents. Due to the nature of electronic document which is difficult to class as original, the said rule has been abolished by many jurisdictions. The UNCITRAL Model Law as well as Iranian Electronic Commerce Law pre-empts this by making it clear that a data message shall not be denied admissibility as evidence on the ground that it is not in its original form.

### **Keywords:**

best evidence rule, electronic document, original document rule & data message.

## PRACTICAL KNOWLEDGE OF CLICKWRAP AND SHRINKWRAP AGREEMENTS

**Seyed Sajad Seyedjafari\***

*Master of Intellectual Property, University of Tehran, Iran*

**Mohammad Hasan Sadeghi Moghadam**

*Faculty of Law and Political Science, University of Tehran, Iran*

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### **Abstract:**

Speed in electronic transactions forms a new kind of software agreements Known as end use license agreement. In American legal system, there is no unit procedure. End user license agreement was begun by shrinkwrap and clickwrap agreements. Browsewrap agreement is the latest development type of them. Shrinkwrap agreements are usually formed by opening of the plastic cover of software package or by using of it. Clickwrap agreements are formed by clicking on "I Accept". Validation of this agreement and their terms might be in conflict with consumer interest. For this, there is debate about the issue. In this respect, we tried to study validation of these agreements and their terms in Iran legal system with consideration of national interest and introduce applicable solution for formation of these agreements.

### **Keywords:**

clickwrap, end user, license agreement, shrinkwrap, software.

## ADVOCACY AND BAR ASSOCIATION DEVELOPMENTS

**Hassan Mohseni\***

*Assistance Professor, Procedural Law, Faculty of Law and Political  
Science, University of Tehran, Iran*

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### **Abstract:**

Before Constitution Revolution, advocacy in our country governed by Islamic Law and Lawyers introduced as a free profession in means of that law. After that revolution the government promulgated some rules for its regulation as an official profession. By act of bar association independence, this profession declared independent. Many lawyers after Islamic Revolution have been filtrated and by the law of advocacy license obtaining 1997 created some supervision of judiciary power on bar association. Judiciary power by the law of tired development trained lawyers and treated their disciplinary violations and essayed to create an association equivalent to bar association in judiciary power. There is other regulation that affected independent bar association. Among many law project and bill, this is only Parliament's research draft that has observed bar independence and we cannot see major reflection of Iranian bars proposed drafts in judiciary power's bills so that obedience or dependency of bar association to judiciary power will be possible.

### **Keywords:**

bar independence, constitution revolution, Islamic law, obedience, official profession.

## THE APPLICABLE SUBSTANTIVE LAW TO THE DISPUTE IN CONTEXT OF ICSID ARBITRATION SYSTEM (IN THE ABSENCE OF PARTIES' AGREEMENT)

**Hamid Reza Nikbakht\***

*Professor, Department of Law, Shahid Beheshti University, Iran*

**Hossein Kalantari**

*PhD Candidate, Shahid Beheshti University, Iran*

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### **Abstract:**

The 1965 Washington Convention on the settlement of investment disputes between states and nationals of other states created international center for settlement of investment disputes (ICSID). This center conducts investment disputes arbitration according to the rules of the convention. The choice of law rules of the Washington Convention have been provided in article 42. Second sentence of article 42(1) specifically deals with the applicable law in the absence of choice of the parties and set forth that “the Tribunal shall apply the law of the Contracting State party to the dispute (including its rules on the conflict of laws) and such rules of international law as may be applicable.” Regarding to this rule, different interpretations have been made both in practice of ICSID arbitral tribunals and in views of scholars and arbitration authors. The differences of interpretations are from one extreme of the application of internal law of host state alone and in all circumstances, up to the other extreme of supremacy of international law and independent application of it. After considering all view points, this article reaches to the conclusion that initial purpose of the Washington Convention or ICSID and the parties’ (investor and host state) interests require that the national law of the host state must necessarily be applied, but, also in certain and special circumstances another law or rules of law including rules of international law will be applicable.

### **Keywords:**

applicable law, arbitration, disputes settlement, ICSID, investment, national law, rules of International law, Washington convention.

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\*corresponding Author

Email: Hr-nikbakht@sbu.ac.ir

Fax:44222472

## THEORY OF CIVIL LIABILITY OF LEGAL PERSONS ARISING FROM ACTS OF GOVERNING BODY WITH COMPARATIVE STUDY OF FRENCH LAW

**Alireza Yazdanian\***

*Associate Professor, Department of law, Ispahan University, Iran*

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### **Abstract:**

Legal persons can also be responsible for compensation. They can also be responsible for others acts. These legal persons are responsible for their own actions and responsibilities of employees and workers in the article 1384 of French law and Iran's article 12 of civil liability (The responsibility of employee acts). This responsibility is not a new discussion. But in the books it can be seen another form of civil liability, the liability of the legal person responsible arising from acts of governing body. Some think that this responsibility is not under the employer's liability. It was somewhat new. In this article we will examine the comparative method.

### **Keywords:**

governing, legal person, organization, responsibility.