

THE OBLIGATION OF ADVANCE-SELLER TO PRODUCTION AND COMPLETION OF BUILDING AND ITS SANCTION IN BUILDING ADVANCE-SALE ACT AND ITS COMPARISON WITH CIVIL CODE

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Abstract

Extension of the building advance-sale contracts on the one hand, and inadequacy of the provisions of the Civil Code on protection of building advance-buyers before making its completion, on the other, consequently causing many problems for people in the community (society), has forced the legislature to pass the building advance-sale code in 2010. The parties of these contracts are called advance-seller and advance-buyer. Enactment of the mentioned code is the basis of developments in buildings sale. Among these developments, one can name: the anticipation of delay penalty if the obligations are not done timely (duly) by the advance-seller, necessity of arrangement of the official documents for building advance-sale, interpolation codes points in contract and another different sanctions from sanctions in civil code. One of the most important obligations of advance-seller is the obligation to production and completion of building based on the conditions of contract and in the determined time. In this article, we will examine the advance-sellers obligation to production and completion of building and its sanction in building advance-sale code and compare it with civil code to explain the developments created in this area.

Keywords

advance-seller, building, completion, obligation, production.

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UNCERTAINTY AND ITS APPLICATION IN CONTRACTS

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Abstract

Uncertainty is one of the general rules of the law of contract that is discussed from different aspects under Islamic and Iranian law. However, despite the long history of the subject and its importance, there are still ambiguities about its application in contracts especially the new ones. This article succinctly examines the meaning, scope and application of *gharar* (uncertainty) in contracts under Islamic and Iranian law and concludes that the application of *gharar* in contracts is wider than what the Civil Code and legal texts offer.

Keywords

doubt, risk, unawareness, uncertainty, uncertain contract.

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THE APPLICABLE LAW ON THE EXERCISE OF THE INTELLECTUAL PROPERTY RIGHT

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Abstract

It is well understood that the jousance capacity of foreigners in intellectual property rights has a paradoxical nature. On one hand and as a minimalist approach, this right is governed by private law and on the other, based on a maximalist approach; it is under the public-economic law governance. Therefore, reconnaissance of jousacne capacity is under the publican law domain. Meanwhile, it is important to know whether the applicable law on the exercise right is governed by the law of the country of origin or the protection law. The answer to this question is the main concern of this article.

Keywords

conflict of law, exercise of the intellectual property rights, la lex protectinist, law of country of origin, Lois de polices.

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THE STATUS OF MARKET ACCESS PRINCIPLE IN WTO REGULATIONS AND IRAN REGULATIONS IN SECURITIES EXCHANGE SECTION

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Abstract

Nowadays, the status of regulations of securities exchange section in accordance with its huge transactions and its increasing role in countries' economies has gained particular significance. On the other hand, taking into account that Iran is presently an observer member of WTO and the necessity of its becoming a permanent one in the near future, it is essential to revise and amend its rules and regulations. This article, with a specific emphasis on market access principle, which is one of the most important principles of general agreement on trade in services of WTO, investigates the status of rules and regulations of securities exchange section in full details and provides a set of suggestions to amend these regulations and achieve further correspondence with WTO regulations.

Keywords

general agreement on trade in services, Iran regulations, securities exchange law, World Trade Organization (WTO).

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AN ANALYSIS OF THE SITUATION OF E-COMMERCE OF DIGITAL PRODUCTS AND ITS CLASSIFICATION IN WTO RULES

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Abstract

From the very beginning of the attempts made to organize Electronic Commerce in international field, the most important subject has been classification of Electronic Commerce under any legal systems of the organization, i.e. GATT, GATS, TRIPS or a combination of the provisions of the GATT and GATS. The hybrid and TRIPS systems did not have the required capacity for the subject matter both theoretically and practically, and in fact, the main arguments have been focused for the coverage of GATT or GATS regulations on E-commerce. The main conflict has arisen between USA and some industrialized countries in one hand, and EU and some developing countries on the other, such that the former countries seek to apply GATT regulations on Electronic Commerce and the latter group sees the GATS regulations more appropriate. This conflict of perspectives, which is based on especial legal and commercial approaches of parties, has continued. But it seems that the circumstances are more prepared to accept Electronic Commerce as a service, and possibly in future, Electronic Commerce will be categorized under GATS regulations.

Keywords

classification of E-commerce, digital products, E-commerce, GATT, GATS and TRIPS regulations, World Trade Organization (WTO).

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REASON AS THE SOURCE OF THINKING ABOUT THE DUALITY OF REASON AND NATURAL JUSTICE IN THE FOUNDATION OF VALIDITY OF THE LEGAL RULE

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Abstract

Highlighting the driving cause and its strict relationship with the formal cause and especially the final cause in the intrinsic elements of natural justice has caused the duality of reason and natural justice in the thinking of the proponents of the reason as the source. Since the same emphasis makes the full understanding of the mechanisms of natural justice and its content for the human wisdom impossible. For this reason, one cannot speak of monism of reason and natural justice. Duality refers to God-based monism, at the foundation of the legal rule, as well as the inability to present a criterion for assessing the validity of the content of the legal system. Thus, the reason decreases to the reason as the source; a reason which is limited to the incomplete understanding of the natural rule and cannot create the rule of behavior.

Keywords

driving cause, final cause, legal monism, natural justice, reason as the source.

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THE FAILURE OF BANK BANKRUPTCY RULES IN IRANIAN LEGAL SYSTEM

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Abstract

The financial crisis have caused many writers to become concerned with the effectiveness of existing bankruptcy laws, which encompasses both the usefulness of reorganization and liquidation laws, as well as efficiency of the judicial system to uphold the laws in court. This concern accompanied in our legal system with the privatization movement has caused many banks owned by the government to be privatized. This leads us to conclude that the previous system of bankruptcy may fail to respond to new challenges of different legal systems around the world. The current paper aims to scrutinize the bankruptcy of banks in our legal system and propose the amendments required to make an efficient and effective system of bank bankruptcy.

Keywords

bank, bankruptcy, efficiency, privatization, reorganization.

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RESPONSIBILITY OF MAKING A NEGOTIABLE INSTRUMENT ON BEHALF

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Abstract

Making a negotiable instrument on behalf is one of the most important issues in negotiable instruments law. Under general rules, the principle has the obligations arising from making negotiable instrument on behalf and agent is not in charge. If the maker wasn't an agent or he violated the representation area, his act wouldn't be valid. Now the question is if the agent doesn't manifest his position, in the issuance of negotiable instrument, or in contrast with his representation claim, he wasn't an agent, or exceeded his authority, would it be possible, despite the general rules, to hold the person responsible for the obligations arising from issuance of negotiable instrument. According to the special situation in representation of companies, these questions about the mentioned companies will increasingly be an important issue. This research aims to provide a proper answer to the issues in the Iranian legal system, which meets the requirements of negotiable instruments and specific provisions of trade law.

Keywords

company, negotiable instrument, representation, responsibility.

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ALTERNATIVE OBLIGATION

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Abstract

Undoubtedly, one of the most fundamental issues in the study of law is obligation that has diverse types. One of them is alternative obligation which, despite instances in the Iranian legal system, has not been mentioned by the civil code and has received less attention from authors. Alternative obligation for the parties has several advantages and facilities including further guarantee of the performance and ease of implementation. The legitimacy of such obligation with some reasons could be proved. Therefore, identification of alternative obligation, principles and specific rules governing its legitimacy, seems necessary. This paper presents a more detailed understanding of alternative obligation, its characteristics, and validity of the reasons for its implementation.

Keywords

alternative obligation, Gharar, multiple objects, right of option.

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