

JUDICIAL ANNULMENT OR MODIFICATION OF MARITIME SALVAGE CONTRACT

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Abstract

Due to section 179 of Iranian maritime Act,1343, if salvage contract is concluded under the influence of danger or undue influence and its terms are inequitable or if the consent of one of the parties is vitiated by fraud and or when the remuneration under the contract is, in proportion to the services actually rendered, too large or too small, the contract may be annulled or modified by the court at the request of the party affected. These regulations that have been adopted from section 7 of convention for the unification of certain rules of law relating to assistance and salvage at sea,1910, and because of the accession of Iranian Government to international convention on salvage,1989,those have been repeated in section 13 of the Act for granting permission to the Government of the Islamic Republic of Iran for accession to international convention on salvage,1373, are not so compatible with the principle of being obligatory of contracts, general regulation pertaining to duress and fraud in contracts and the prohibition of courts from modification of them.

Key words

Salvage, annulment, modification, remuneration, contract, danger.

**CHOICE OF COURT AGREEMENT IN INTELLECTUAL
PROPERTY DISPUTES
A REVIEW OF THE HAGUE CONVENTION 2005**

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Abstract

Developments of technology and communications especially emergence of the internet as well as states' inclination to achieve a harmonized protection of intellectual property rights in international level in the last three decades have brought a new perspectives on international jurisdiction and recognition and enforcement of judgments in the field of intellectual property rights. The most important international document covering relation between private international law and intellectual property law is Convention on Choice of Court Agreements 2005. Despite the significance of the topic in international arena, the Iranian legislation lacks jurisdictional provisions with respect to intellectual property disputes. This article attempts to highlight positive consequences of Iran's membership in the Convention, discussing the drafting history of the Convention and analyzing its provisions regarding jurisdiction and recognition and enforcement in intellectual property disputes.

Key words

Copy Rights, Infringement, Jurisdiction, Recognition and Enforcement, Related Rights, Validity.

COMPARATIVE STUDY IN LEGAL PRACTICE AND A NEED TO PERMISSION OF CORPORATE LEGAL PRACTICE (LEGAL SERVICES CORPORATION)

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Abstract

Lawyers according to their routine, act as individuals or partners. Today, according to regulations of certain countries, corporations or other firms can provide legal services including the handling of court cases under specific rules. Under Iranian law, there are no specific regulations governing the practice of law within a corporate structure. However, legal practitioners can form corporations, co-operatives and non-commercial firms to provide certain legal services. With respect to granting these corporations license to render legal services it should be noted that there are no specific regulations in this regard. Due to this fact, different interpretations have been given by jurists concerning this issue. Some believe that granting such a license is not forbidden, since according to Article 588 of Commercial Act, legal persons have the same rights and obligations under Iranian law as a natural person. What is understood from Article 2 of "the Nature of Acquiring License to Render Legal Services Act, ratified in 1997" regarding qualifications of volunteers seeking license to practice law is that only natural persons can be granted such a license. In practice, to this day, the license to practice law has not been granted to corporations and firms and courts do not recognize legal persons as lawyers.

So, contrary to countries such as United States of America, practicing law in courts which is the most important function of corporations is considered illegal in Iran. But due to advantages of the practice law by legal persons and in order to fill the gaps that give rise to abuse, it is necessary, as is it done in other countries, to organize the current state of affairs and allow such persons to practice law under specific regulations.

Key Words

Legal Corporation, Responsibility of lawyers, Corporate Legal Practice, Legal Practice in Partnership, Individual Legal Practice.

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A COMPARATIVE ANALYSIS OF THE NULL AND FASID (VITIATED) CONTRACT IN IRANIAN AND AFGHANISTAN CIVIL CODES

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Abstract

Iranian legal system has established on base of Imami Jurisprudence and her main of the sanction against violating the rules of established on validity of contract sidelong Ineffective, is nullity. Too there are other Concepts such as the relative nullity or null Amendable in law, but no as a general rule of law. Whiles Afghanistan's legal system, in addition rules of null and ineffective sanctions, recognized and Confirmed Another general rule base on the Hanafi jurisprudence as "Fasîd" (Vitiation) that causes the Nullity in this legal system to have grades and in the cases the contract is amenable and debarment from nullifying it in first step and continue the contractual relationship of parties. Such concept could also enter the Iranian legal system, not with all its consequences, as a rule and replace concepts of the specific.

Key words:

Fasîd, Hanafi Jurisprudence, Imami Jurisprudence, Ineffective, Null, Relative Nullity.

COST-BENEFIT AND EFFICIENCY; ECONOMIC PRINCIPLES GOVERNING ON LEGISLATION POLICY AND THEIR SITUATION IN IRANIAN COPYRIGHT LEGISLATION

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Abstract

In the previous article-written by the author of this paper-we saw that Economic Principles Governing on Legislation Policy in the field of Copyright make legislator enact efficient Laws and Regulations on copyright and prevent him to enact contrary regulations in the same fields. The Previous article considered three economic principles and now this article tries to survey two economic principles i.e. Cost-Benefit Principle and Efficiency Principle and general rules resulted from them and their situation in Iranian Copyright legislation. Since there is not the article considering economic principles and their relation with copyright legislation policy in Iranian legal literature, this essay surveys the mentioned issue and tries to prove this hypothesis that Iranian Legislator has not paid attention sufficiently to economic principles in enacting of copyright laws and regulations.

Key words

Cost-Benefit, Efficiency, Economic Principles Governing on Legislation Policy, Copyright, Iranian Law.

DIFFICULTY CONTRACT PERFORMANCE AND ITS EFFECT

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Abstract

The theory of hardship is a situation in which the implementation of contractual obligation, as a result of unpredictable events that are out of control, becomes economically difficult and expensive without being physically impossible and distorts the balance of the contract. In such a situation, the hardship theory applies to restore the balance of the contract. This matter has various titles in several legal systems such as unpredictability theory and sever and unexpected hardship. However, the approach of different legal systems is not equal in the same situation. Even though all legal systems agree more or less that in such situation the binding nature of the contract is unjust and justify their position by various bases, but the solution of these systems and their bases are different. Some legal systems tend to solve the problem by granting exemption and have adopted the dismissal resolution and some of them have adopted the adjustment of the contract. The study of these effects and the best effect and maintaining the best effect (adjustment of contract) which is compatible with the contract rules and principles and the concept of hardship theory is the subject-matter of the current research.

Key words

difficulty theory (hardship), binding principle, adjustment, rescission, dissolution, nullity.

**A LEGAL ANALYSIS TO THE COMMERCE ACT'S
SPECIAL METHOD IN ADHERING THE PRIORITIES AND
DIVIDING THE JOINT AND SEVERAL RESPONSIBILITIES
AMONG THE BANKRUPT SURETIES**

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Abstract

Article 251 of the Commerce Act (CA) although mentioned among the articles related to the commercial documents, is the sole Article which seeks to determine the manner of reference among the liquidators of the bankrupt sureties. This article although apparently has disrupted a normal practice in a way that provides liquidators of none of the bankrupt sureties are not allowed to refer to the liquidators of the other bankrupt sureties, but instead provides that remnants of what has been allocated to the document holder if in excess to his claim would be reimbursed respectively to the liquidators of the bankrupt sureties who have the right of reference to others. This research shows that the legislator in promulgating this article has considered various principles and has adopted a clever and exact solution. Thus as far as the priorities and division of responsibility among the bankrupt sureties is concerned, the article 251 CA plays as a bedrock.

Key words

Commerce Act, Article 251 CA, Bankruptcy, Surety, Commercial documents.

ALTERING COMPANIES NATIONALITY IN IRANIAN LAW

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Abstract

Altering of nationality is a right for persons. Accordance with rule 588 commercial law, legal persons can have the whole of rights and duties of persons, exempt rights and duties that only human can have that because of his nature such as rights and duties of fatherhood, sonny etc. in Iranian law unlike persons, there is not any rule about altering the nationality of legal persons especially companies and there is some text only about ltd and stock company altering nationality. Regarding with referring the rights and duties of legal persons to nature persons beside especial characteristic and mandatory nature of nationality rules and special limited text about altering of nationality in Iranian law and regarding with absence of special rule about forms of nationality altering, is it permitted or not. The way of doing that is vague, if it is permitted. In this article debated about that. In comparative law this matter debated as border mobility of companies and it is accepted such as principle in Treaty establishing the European Economic Community and prohibition of altering nationality and acceptance of new nationality, that cited in some internal laws modified, but in Iranian law altering of nationality is a mandatory rule and altering of that is not permitted by referring to will.

Key words

Legal persons, Article 81 of the Constitution, Nationality, Public order.

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BIOGENERIC PRODUCTION LEGAL SYSTEM

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Abstract

Biogenetics production has been done in lots of advanced industrial countries since last decades and its legal aspects are adequately addressed. On the other hand, the need for our country to these drugs is inevitable and its production in recent years has begun without considering its legal aspects. We don't have any legal system to regulate biogenetics production and commercialize them in markets in a legal way excepting Domestic Common Law. Note that improper products can direct to unforeseen side effects and cause different kinds of damages. So, we need to study more about it.

Key words

Biogenetics (Biosimilars), Drug producer, Pharmaceutical conditions, Good manufacturing practices, Civil responsibility.

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