FOUNDATIONS OF THE RIGHT OF ACTION OF THE INSURED AGAINST REINSURER (WITH EMPHASIS ON THE UNITED STATES COURTS' DECISIONS)

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Abstract
Insurer companies frequently reinsure part of their risks before reinsurers. The question of right of action of the insured against the reinsurer then arises. The common response to this question is negative because of the principle of the privacy of contracts. However, courts, particularly in the United States, have recognized this direct action on various grounds, especially in case of insolvency of the ceding company. This article examines the contractual and extra-contractual bases of this direct action in American and Iranian law.

Keywords
Ceding insurer, Direct action, Fairness, Indemnity insurance, Insured, Lazarar, Liability insurance, Privity, Reinsurance.

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ECONOMIC EFFICIENCY OF CRIMINAL LAW SANCTIONS FOR REGULATION OF SECURITIES MARKETS: THE CASE OF IRAN

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Abstract
The history of legislations and statutory law securities markets in Iran represents a scattered and haphazard adoption for other jurisdictions without a proper attention to the theoretical foundations of foreign laws. This has led to incompetent and alien laws to the indigenous conditions. As such a theoretical investigation of the foundations and policies behind such laws is inevitable. As far as the securities regulations are concerned, the lack, or weakness, of the enforcement mechanisms of such laws could undermine the very advantages which such laws may contain. For this reason and in in line with the make such laws efficient and effective, there has to be some criminal law sanctions for breach of securities regulation. In this paper we are specifically examining the criminal law sanctions of the of "market manipulation" in the securities markets.

Keywords
Criminal law Sanctions, Economic analysis of law, Kaldor Hics efficiency, Internalized social Costs, Market manipulation and economic efficiency, Pareto efficient.

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DECK CARRIAGE AND CARRIER'S LIABILITY

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Abstract
In maritime transport law deck carriage is an important issue. Whether a carrier is or is not allowed to carry goods on deck is a question that must be answered in each case and according to international rules and conventions (such as Hague Rules, Hamburg and Rotterdam Conventions) and domestic laws and regulations (including Maritime Law of Iran) governing the carriage as well as the type and terms and conditions set forth in bill of lading was issued. In general, the goods must be carried under deck and it is exceptional to carry the goods on deck. On the other hand, some goods according to the type and special features of each type normally load and carry on deck, such as live animals and dangerous goods. This paper according to international and domestic laws and regulations aims to describe the carriage on deck and carrier's liability.

Keywords
Breach of contract, Doctrine of deviation, Hague rules, Hamburg convention, Maritime law of Iran, Maritime transport, Rotterdam Convention.

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AN ANALYSIS ON COMPETITION RULES GOVERNING ON KNOW-HOW: COMPARATIVE STUDY IN US, EU AND IRANIAN LAW

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Abstract
Competition law as a manifestation of economic public order has also extended its controlling shadow on the commercial interactions around intellectual properties. Know-how as a specific and little-known example of such assets -at least in Iranian law-, isn't apart from the rules of competition law. This research in comparative attitude and regarding the specifics of innovative confidential information, is seeking to analyze general approaches of competition law enforceable to intellectual property and apply them in know-how domain in order to reply this question clearly that how far the competition law standards are distinct from other types of IPs including patents? Also current paper having examined the divergent solutions provided in US and EU law, is going to make clear deep deficiencies and vague approaches of Iranian competition law to know- how subject and accordingly present some solutions to rectify ambiguities and make uniformity existing laws with the established principles and rules of competition law in the framework of trade secrets and know-how sphere.

Keywords
Competition law, Intellectual property law, Know-how, Misuse of dominant position, Trade secrets.

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CRITICISM OF TRADITIONAL OR LIBERAL THEORY OF CONTRACT WHIT AN EMPHASIS ON CRITICAL APPROACH OF ROBERTO UNGER

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Abstract
The traditional or liberal theory of contract always had encounter serious critics. The authors of this article have criticized this theory- based on new theory of Unger (a pioneer in the Critical legal studies movement) - and also have analyzed the strengths and weaknesses of that. This theory consists of a principle and a counter principle that include freedom of contract against the society and freedom of contract against the justice and fairness. The main point of this theory is that the principle of freedom of contract is just a credit and thus we should not give it originality. The facts Such as General aspects of social life can limit and conflict with this credits. Thus to balance these matters, we should prefer the facts to the credits. Because the Critical legal studies movement is based on realism, we must consider a counter principle topics such as goodwill, justice and Fairness and Non loss against the principle of freedom of contract.

keywords
Critical legal studies movement, Justice and fairness of contract, Principle of freedom of contract, Traditional theory of contract.

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VALIDITY'S CRITERION OF WITNESSES' TESTIMONY, RATIONAL CONFIDENCE OR OBEDIENT ACCEPTANCE?

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Abstract
Amara in jurisprudential sources is said to any evidence which indicate the fact. Indication is not definitively in the sight of *Foghaha* and *osooliyeen*, but due to the prevailing conjecture which can be achieved from that evidence. Witnesses' testimony (*bayyinah*) as valid evidence in the jurisprudence and law is known as an *"amara"* in the sight of jurists witch its Validity is from Legislator. and meanwhile the majority of the jurisprudents validated the *bayyinah*- which is an instance of *ammarah*- because lawgiver validated it not because of its ability in providing valid conjecture, and also they named its provided conjecture because of *bayyinah*'s confirmation by lawgiver as terms such as Shar'i* knowledge, regular or common knowledge, obedience knowledge, revealed knowledge, and complementing of exploration. Beside of this group, some believed that origin of Bayyinah's validity is manner of wises which is confirmed by lawgiver and meanwhile the stronger conjecture causes validation for *Bayyinah* In spite of the imperfect finding of fact, because lawgiver completes the imperfect finding ability and validated it. The result of difference between these two opinions is effect on conditions of *Bayyinah*'s validity and on its effects and its verdicts, including mandatory issuing the verdict by judge after testimony of witnesses, testimony's validity after return from it, value of numbers of witnesses, and … . According to research's finding and researcher's opinion, the stronger conjecture and rational confidence is the Validity's Criterion of witnesses' testimony which holy lawgiver has validated because of it. and also scholars which accepted Obedient validity for testimony, admitted this matter in discussions about ranked validity, conflict between two *Bayyinah*s, most just witnesses, and maximizing of witnesses.

Keywords:
Amarah, Bayyinah, Confidence, Conjecture, Testimony, Witnesses.

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A LEGAL ANALYSIS ON SECURITY FOR COSTS IN PROBATE MATTERS

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Abstract
After considering the security for costs as a rarely considered establishment and analyzing legal points and problems concerning that security which is located among the articles on provisional remedy, and after having a look at the security for costs against foreign claimants, present research analysis brings the security for costs in probate matters as its main subject into focus to the extent that possibility of a legal suit being hidden in a probate matter gets inferred. The Legislature's presuming of a defendant for the probate matters and inevitably presuming of a claimant for the said matters prepares the ground for setting out newer analyses about the probate matters substance and the rights and responsibilities of the parties to those affairs. In this way, it gets clear that the law specialists in respect to the probate matters have usually adopted a diminished view in comparison to the Legislature's one, so they have not had any or enough regard to the existent potentials in those matters. Making clear some already dark remained angles of the Civile Procedure Act and the Probate matters act is of the results of this analytical research.

Keywords
Claimant, Defendant, Legal suit, Probate matters, Security for costs.

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NOVATION IN IRANIAN LAW
A COMPARATIVE STUDY OF ROMAN AND FRENCH LAW

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Abstract
Novation is originally a Roman law institution which has influenced the legal system of Western countries. In Roman law the obligation was a legal personal relationship that changing one of its element resulted in dissolution of obligation and consequently, the transmission of obligation became impossible; therefore, the Novation, seeking to achieve the transmission of debt and credit, was established. Despite the revolution of the personal concept of obligation, the transmission of debt is still not accepted. In addition, with changing the subject of obligation, the Novation enjoys considerable advantages and is of great importance in different legal systems yet. The Iranian Civil Code, borrowing from French Civil Code, has allocated two articles to the Novation that their interpretation has created a lot of controversies. Some consider it the result of an error in translation but some believe that it is a superfluous institution. Accordingly, the comprehensive study of Novation in Roman and French Law is very useful for explaining its effects and conditions in Iranian Law.

Keywords
Estebdal, Novation, Transmission of credit, Transmission of debt.

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EXORBITAN JURISDICTION IN FORUMS CONFLICT

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Abstract
Absence of enough connection between forum and action is principal reason for existence of exorbitant jurisdiction. Some jurisdictional rules such as conclusion place of contract in the historical ground especially revolution of communication instrument has lost its logical ground. Because of political interest such as protection of forum nationals, spite of states increasing cooperation has been yet remained unfair rules of jurisdiction. Exorbitant jurisdiction based on nationality has been preserved in French and in the light of Brussels 1 has finded extraordinary development. Courts In U.S. with expansive interpretation of minimum contact criteria, has justified exorbiant jurisdictionsderived from transient or attachment. Reexamination of jurisdictional ruleson the base of necessaryconnection between forum and action and also conclusion of international agreements will safe international private relations from agitated decisions grounds on political purposes and provide causes of just litigation in the meantime of preserving of litigant parties rights.

Keywords
Attachment Jurisdictiont, Fairly Jurisdiction, Nationality, Transient Jurisdiction.

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