

CIVIL LIABILITY CLAIM OF STOCKHOLDERS AGAINST DIRECTORS OF COMPANIES IN IRANIAN AND FRENCH LAW

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Abstract

One of the important issues in companies' law, is how to control directors in applying their attributions. Since in great companies, there is often a separation between ownership and management, most of stockholders cannot have effectual role in managing the company. Also it is possible that the directors abuse their attributions, focus on their own benefits rather than the company's, and do breaches that actually result in the company's detriment. One of the significant means to control the actions of directors is the possibility of making liability claim on behalf of the company against them. The main aim of this claim, which is not necessarily made by legal representatives of the company but by some of stockholders or partners, is to protect directly the company's rights against the breaches of directors. Of course, this legal support in Iran's law, contrary to French law, is in some aspects weak and subject to criticism.

Keywords: Claim, Company, Director, Liability, Representative.

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ECONOMIC EFFICIENCY IN PRIVATE LAW; THEORY AND INSTANCES

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Abstract

The objectives of legal rules have traditionally been grouped under two major titles of order and justice. In modern law, in light of new demands and the experiences of legal systems, other principles and objectives such as legal certainty and efficiency, have been proposed for legal rules. Efficiency, with its rational foundations and structure, along with justice, can play a substantial role in fulfilling the responsibilities of the legal system. Efficiency, through its rational perspective, and justice, by means of its largely spiritual and idealistic basis, can adjust the rules and the relationships among different individuals in a society. Efficiency, along with the traditional bases of legal rules, such as justice, can result in the fulfillment of the role of legal systems, while on the other hand, may lead to conflicts between them. Efficiency can be utilized in the phase of establishment of rights and commitments, optional or compulsory fulfillment of them, and in the settlement of disagreements as well.

Keywords: Justice, Law and economy, Legal rule, Theory of maximization of wealth.

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LAW: A REALITY OR A CREDIBLE (THE NATURE OF LAW)

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Abstract

It seems that in addition to the point that instead of “Philosophy of Law” we should say of “Philosophies of Law”, and discuss its issues according to many natural differences of them in private and public law, we should study law in a more basic viewpoint which is the basis for the other topics, and that is cognition. When we consider law as credible, contrary to the reality, the ratiocinations which are not considered as reality in real world, are permissible in law ambit. It means that law is not considered as knowledge, and it is described as credible, and also it means there are no obligations toward cognition and science in law studies. What is deeply deliberated here is the rate of truth and falsehood of the known statement of credibility of law.

Keywords: Cognition, Philosophy of Law, Reality.

INFORMATION ASYMMETRY IN BANKING LAW (CASE STUDY: SYNDICATED LOANS CONTRACTS)

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Abstract

The prerequisite of success in economic activities is to get access to correct and reliable information. This accessing to correct and precise information, one can take advantage of activities in various markets. In a trade market, the information asymmetry occurs if one of the two has more material or more consequential information compared to the others, which may lead to the market failure. One of the main markets is the monetary and banking one in which the financial and economic information are more significant compared to the other markets'. Information asymmetry in this market may lead to destructive effects. One of the most important topics of financial and banking markets is facilities granted by the banks. Syndicated loans are facilities prepared and paid to applicant by two or more banks or credit institutes jointly. The structure of these loans is such that the risk resulted by information asymmetry may lead to irregularity of them. In this article, we analyze the problem of information asymmetry based on the structure of these loans, and its factors including moral hazard and the adverse selection. Results show that there is the eventuality of the asymmetry of information and its factors between the syndicate members and agent bank, as well as between the applicant and the syndicate members. Finally, in order to avert information asymmetry and prevent its consequences, there would be some suggestions at the end of the article.

Keywords: Adverse selection, Information asymmetry, Moral hazard, Syndicated loans.

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LETTER OF UNDERTAKING AND THE ROLE OF PROTECTION AND INDEMNITY CLUBS

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Abstract

Merchant vessels may be arrested for various reasons, often by the claimant in order to secure their relief, especially in actions relating to bodily injuries, property damages and collisions. While the ship is under arrest, ship-owner has duty to pay necessary and irrevocable expenses. On the other hand, the ways of release of the vessel for the ship-owner are not a lot. Ship-owner may, for example by tendering a bail bond or paying the money (often with the calculation of punitive damages), release the ship from arrest. One of the ordinary methods to release the vessel and to have the permission to continue its activity is to get a letter of undertaking issued by the protection and indemnity clubs to the claimant. This paper with descriptive and analytical perspective is to introduce the letter of undertaking, express its object, benefits, form, legal nature, requirements for achieving it, the subject of acceptance and non-acceptance of the letter of undertaking with regard to the claimants and the courts views and finally the effects of this type of letters.

Keywords: Bank guarantee, Damages, Insurance, Limitation fund, Release/arrest of vessel.

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RECOGNITION AND PERFORMING OF FOREIGN JUDGMENTS ON INTELLECTUAL PROPERTY RIGHTS

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Abstract

Nowadays, intellectual property rights with its unique trade value, is considered as the pulse of international economy, and increasing transactions on these properties has extended the ground for litigations in this field whose compromise would be possible by pronouncing in jurisdictions and justice. Sometimes it is necessary to perform the verdict in a country where the verdict has not been pronounced which requires recognition and enforcement of the verdict within the foreign country. The qualities of intellectual property require some particular rules and regulations on recognition and execution of foreign judicial decisions. This is why some international model documents have made uniform model regulations which appropriate to qualities of international intellectual property rights, and by developing appropriate tenets which facilitate recognition and perform the verdicts, they have tried to prepare the ground for effective support for intellectual property in the international scope. This issue, in some countries such as Iran, faces with some challenges and require being discussed and finding possible and proper solutions. The appropriate solution in this field would be reforming domestic laws by referring to convention models and international model documents, with regard to protection politics and considering national public interests.

Keywords: Foreign judgments, Intellectual property rights, Recognition and performing.

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A LEGAL ANALYSIS OF THE CONDITION IN INITIATIVE AND ITS USAGES IN THE COMMERCIAL LAW

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Abstract

This legal analysis shows that despite of lawyers' wanted or unwanted overlook, condition in initiative could not be and has not been set aside from the legal relations of the people in the society, and the legislature assist to it by counting it originally as valid. By the condition in initiative in this research analysis, we mean the condition in offer, condition in acceptance or condition in both. There are many obvious and hidden usages for condition in initiative in social relations, particularly in the contractual and trade relations; although it is not naturally allocated to the commercial law. For instance, in concluding composition agreement with the bankrupt businessperson charged with the fraudulent bankruptcy, in subscribing the stocks, opening an account and ratifications of the statutory general assembly for the public joint stock company in process of formation, in the arbitration agreement, and in the undertaking in benefit of the third person, we can benefit from these establishment or at present it is used. Besides, possibly many legal actions which are being made disputably at present, with using the condition in initiative can be accomplished more efficiently and indisputably. Applying condition in initiative provides a more ingenious mechanism for reaching the contracts aims easier, reaching multistage aims and avoiding leaving the probable problems of implementation to the time after conclusion.

Keywords: Condition in acceptance, Condition in initiative, Condition in offer.

THE APPLICATION OF THE THEORY OF DÉPEÇAGE IN CHOICE OF LAW ANALYSIS

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Abstract

The determination of governing law is one of the significant issues in law cases, especially those pertaining to international law, which plays an important role in determination of the two rights and obligations in a claim or a contract. However, the question that has yet to be answered is the ability to apply different governing laws in one unique legal issue. The theory of dépeçage is the application of different laws to a unique legal issue, and this issue has various legal aspects and on each aspect, separate law is governed. In other words, dépeçage is the process of dividing a legal issue to discrete parts that each is governed by a unique governing law. One of the advantages of the application of this theory, is maintaining the two's interests which will have a positive results on increasing economic transactions and foreign investments. Moreover, in complex international law problems, especially in conflict of laws, applying this theory could be effective, and grant more justice through emphasizing on the most related law to the given issue.

Keywords: Conflict of law, Dépeçage, Governing law, International private law.

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THE QUALITY OF DETERMINING THE APPLICABLE LAW TO NON-CONTRACTUAL OBLIGATIONS IN ROME II REGULATION

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Abstract

The application of the rule of *lex loci* in determining the applicable law of non-contractual liability includes the *lex loci demissi* and *lex loci damni*. The benefit of separation of these two is determined when the accident is in one country and the loss is in another country. So, the application of *lex loci demissi* is in accordance to the principle of territorial jurisdiction. While, the view of *lex loci damni* conceives the absolute cause of creating civil liability as the loss and not the injurious act. The difference between the law of the European Union regarding the determination of applicable law to non-contractual obligation caused this Union to approve a regulation called Rome II in 2007 which contains a collection of conflict of law rules and at its head the rules of *lex loci damni*. The present article will review, pay attention and analyze the Rome II regulation regarding the applicable law to non-contractual obligations.

Keywords: European Union, Law of closest connection, Law of common domicile, *Lex loci damni*, *Lex loci delicti*, Non-contractual obligations.

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DETERMINING GENERAL INTERESTS OF CHILD IN THE PERSPECTIVE OF IMAMIYE FIQH AND ITS FUNDAMENTALS

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Abstract

Discarding the authority of an individual on one another in Imamiye Fiqh is one of the fundamental principles. However, child's guardianship is the exception of this principle which bases on the child's especial situation. The exception faces a restrictive factor: interest. Child's interests can be divided into general and private ones on the basis of extension or restriction to one person. In Islamic texts, private interests are under attention, while we can infer general interest from Islamic sources. Determining general interest is possible by recognizing human being's life time and periods, and child's destination in each level, which will help the guardians and the judges to make and evaluate decisions.

Keywords: Child's general interests, Islamic contexts, Islamic sources, Levels of human lifetime.

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