

RES JUDICATA FROM THE VIEW-POINT OF DEFENDANT

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(Received: 9 January 2018 - Accepted: 9 March 2018)

Abstract

Defendant can use the whole of defense styles to defend versus claim of plaintiff. After issuance of the ultimate judgment in favor of the plaintiff, defendant cannot allege new action according to Supreme Court decision as a unified judicial precedent, number 3746 in October 26, 1959, to escape judgment consequences. In case of issuance of ultimate judgment in respect to correlated actions, hearing or other collated claim includes res judicata. Regarding that judgment consists of different materials, overgeneralization is not correct about whether justified reasons of judgment have res judicata or not. Matters of law and evidence of the parties don't have res judicata, but cause of action of plaintiff has res judicata whether judgment issued in his favor or in his loss. It is not possible to bring the action for annulment of document to juridical act (cause of former action) which official document is regulated according to that. However, it is possible to bring the action for annulment of document for the registered deed itself to judicial act because of not having res judicata.

Keywords: judgment, correlated claims, res judicata, cause of decision, affirmative defense.

THE CHARACTERISTICS OF PROCEDURAL RULES (CIVIL PROCEDURE)

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(Received: 9 April 2016 - Accepted: 6 June 2016)

Abstract

The concept of procedural rules apparently is obvious, but, you can say, features of procedural rules not analyzed properly. Indeed, the nature of these rules is questioned. Bentham as one of very old philosophers has defined the concept of procedural rules. In his view, procedural rules are the means of enforcing substantive rules. Procedural rules in goals, features, and functions are different from the substantive rules. These rules are the means of applying sovereignty, serving procedural rights. They are voluntary, supremacy on substantive rules, and technical concepts. With special ways they are harmonized between personal rights and sovereignty, and do order between people themselves as well as people with sovereignty.

Keywords: procedural rules, civil procedure, judgment philosophy, Public order, positive rules.

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**THE ASSUMPTION OF RISK AS AN EFFECTIVE FACTOR
ON RESPONSIBILITY IN FOREIGN INVESTMENT DISPUTES
WITH AN EMPHASIS ON INTERNATIONAL ARBITRATION
PRACTICE**

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(Received: 12 November 2017 - Accepted: 27 December 2017)

Abstract

Risk is assumed in all foreign investments. The volume of the investment merely varies according to the subject and place of investment. The assumption of risk of investing as an effective factor in responsibility for foreign investment disputes has been recognized in international arbitration practice. However, the amount of this impact, due to the causal link between the role of the investor and damage, can reduce the amount of compensation or the elimination of responsibility. The international arbitration practice does not distinguish between a situation in which an investor ignores the assumption of the investment risk with negligence and the situation in which the investor increases investment risk with own fault, and both has considered to determine responsibility. This article tries to examine the concept of the assumption of risk of foreign investment with an emphasis on International Arbitration Practice.

Keywords: the assumption of risk, foreign investment, responsibility, international arbitration, reparation.

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APPLICANT'S RECOURSE TO BENEFICIARY AND GUARANTOR AFTER PAYMENT OF BANK GUARANTEE WITH EMPHASIS ON FRENCH LAW

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(Received: 27 September 2017 - Accepted: 19 February 2018)

Abstract

Simultaneous presence of the principle of independence and surety nature of bank guarantee is the reason of numerous questions about the rules governing bank guarantees. One of the issues raised in this regard is recourse after payment. The applicant's recourse is conceivable to two parties: beneficiary and guarantor. If beneficiary is not entitled to receive the amount of guarantee in accordance with the basic contract, it must reimburse the amount received. The applicant can also refer to the guarantor for refunds. Since the guarantor usually withdraws its financial claims from applicant's account after payment of guarantee, the applicant's recourse to guarantor and its conditions have consequential and practical results. The recourse of applicant to guarantor is possible in case of undue payment of guarantee or if guarantor acts in contravention of the applicant's instructions. This article describes the basics, conditions, and the ways of recourse in the foregoing with emphasis on French law.

Keywords: applicant, bank guarantee, beneficiary, guarantor, principle of independence.

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THE REQUIREMENTS OF THE MARRAKESH TREATY; TRANSFORMATION IN THE INTELLECTUAL PROPERTY LAW?!

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(Received: 18 July 2017 - Accepted: 12 March 2018)

Abstract

Marrakesh Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities (VIP) adopted for the part of the disabled society with the purpose of administering free use of literary and artistic works. The treaty is one of the exceptions in the form of independent regulatory that provides advantages for the persons with visual disabilities on the basis of human rights. The treaty is important as it require exceptions that are supplementary provisions. This paper with the descriptive-analytical method attempts to examine what are the necessities and requirements of the treaty? With regard to signing of the treaty by Iran after the entry into force, what changes will occur in the legal system? Finally, it can be concluded that this treaty will be the beginning of a major change in the system of intellectual property law.

Keywords: exception on the intellectual property rights, imperative rules of law, and three steps test, supplementary provisions, Marrakesh Treaty, Visually Impaired Persons and Persons with Print Disabilities.

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**DURATION OF THE LIABILITY OF MARITIME
TRANSPORTATION ENTERPRISE AND ITS INTERFERENCE
WITH COSTUME**

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(Received: 30 May 2016 - Accepted: 7 May 2018)

Abstract

The steps of delivering the goods by its owner to the transportation enterprise and from this person to the consignee in or the costume in the destination is a considerable issue. Sometimes in case of the synchronous liability of the transportation enterprise and the costume, it is required to study the national law and international conventions. In this article, the maritime law 1443, the Hague rules and Homburg and Rotterdam conventions are studied concerning this subject.

Keywords: liability, transportation enterprise, costume, Hague rules, Homburg convention.

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PRINCIPLES OF TRANSLATION OF LEGAL TEXTS

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(Received: 22 May 2017 - Accepted: 27 September 2017)

Abstract

Applying legal texts of other countries in order to develop our law is vital and, as a result, translation of such texts is important. A correct and scientific translation must be done in accordance with some rules and principles. These principles are divided into two categories: General Principles and Particular Principles. Translation based on these principles is a (meaning-based) translation, i.e., a kind of ideal translation. A law professional translator should not only have sufficient lingual knowledge in both source and target languages, but also have sufficient mastery of legal knowledge in order to translate general and technical words based on their context and the author's intended meaning based on such principles.

Keywords: Context, General and Particular Principles of Translation, Lingual Knowledge, Meaning-Based Translation, Source and Target Language.

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CHALLENGING THE NOTIFICATION, TRADITIONAL, ELECTRONIC, RECENT PLACE & LANGUAGE

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(Received: 6 May 2017 - Accepted: 20 November 2017)

Abstract

Notification officers notify judicial acts but they are not mere administrators of notification; there are other kinds that facilitate notification. Information and Communication Technology is also developed in our society and affects vastly the ways of notification in legal system. In our country, electronic notification is obligatory but in French legal system it is a voluntary way. The effects of recent notification in attacks on judgment in two legal systems are not same. This is also true for the language of notification.

Keywords: notification at person, domicile, electronic notification, language of notification, recent place of notification.

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**THE CHOICE BETWEEN THE OWNER OR POSSESSOR;
ECONOMIC ANALYSIS OF THE LAND REGISTRATION
SYSTEM (RECORD AND REGISTER SYSTEM) IN COMMON
LAW WITH A VIEW TO ARTICLE 22 OF THE LAW OF DEED
AND REAL ESTATE REGISTRATION**

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(Received: 14 June 2016 - Accepted: 25 June 2017)

Abstract

Investigation about the quality of protection of property rights, including efficiency of land registration system is one of the most important issues in economic analysis of these rights. The allocation of land to the owner or possessor (the buyer in good faith) is one of the major issues in this domain. Accordingly, in common law there is a registration and record system for solving the problem. In this situation, according to the record system, the land will be assigned to owner instead the land is given in registration system by the possessor. From economic perspective, encounter of registration system is more efficient for different utilities of owner and possessor and positive role in facilitating the exchanges. In Iranian law, this issue has a same response to record system. But article 22 of the law of deed and real estate registration by defining the registry as the main reference in determination of owner and consequently rejection of private document can almost entail efficiency of registration system.

Keywords: Article 22 of the Law of deed and real estate registration, economic efficiency, economic utility, record system, registration system.

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CIVIL LIABILITY OF PUBLIC INSTITUTES ARISING FROM THE OPERATION OF POTENTIALLY DANGEROUS PERSONS IN IRAN AND FRENCH LAW

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(Received 15 November 2016 - Accepted: 6 May 2017)

Abstract

Economic and cultural devastation in some families increase stray and homeless persons in the society. The people are usually either a minor criminal or mentally ill persons. The loitering and wandering in the society may result in the crimes that this situation is led to the criminalization of this phenomenon in the world. However, no policy has been adopted by the world about the damages caused by the actions of these individuals. One of the concerns of today's law is the problem of compensate for the losses arising from the operation of potentially dangerous persons in the society. This can be similar to sick and incapacitated persons or youth offending in the society. In some cases, natural or legal persons are responsible for the maintenance of these people that in French law by Article 1242 of the Civil law and in Iranian law by Article 7 of the Civil Liability these persons with the condition will be liable for such damages. But some of the damage occurs in the conditions that any natural or legal persons are not responsible for the maintenance of these people. The big question is whether this part of the losses of these victims will not be compensated or a legal person like the state can be considered liable for such damages. According to an opinion in French law, it can be expected that in the current situation the governments should pay compensation for such damages. This opinion is absent in Iranian law but the issue can be examined with the help of French law.

Keywords: responsibility, patients, children, disabled.