EXCLUDING CONSEQUENTIAL LOSS IN PETROLEUM JOINT OPERATING AGREEMENTS WITH EMPHASIS ON BRITISH LEGAL SYSTEM

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Abstract
A well-known method for risk management in petroleum Joint Operating Agreements (JOA) is the use of knock for knock liability clauses. In one type of such clauses, parties in the JOA exclude their liability to consequential loss. The British courts try to construe and interpret the exclusion of consequential loss and loss of profit narrowly and, therefore, insisted on recoverability of such losses to the extent possible despite the parties' agreement to exclude them. Furthermore, loss of profit may be considered as direct losses in British and American legal systems. Under Iranian legal system, directness is a condition, among others, for recoverability of damages, but, such condition may not be considered as equivalent to direct damage in Britain and accordingly the concept of indirect damage is different in the two countries. Therefore, the usefulness of excluding consequential loss responsibility in the contracts with applicable laws and regulations of Iran is questionable if the parties do not define a clear and distinguishing definition of it in such contracts. Despite the existing doubts with regard to recoverability of loss of profit, probably all Iranian scholars believe in recoverability of loss of profit and, therefore, it should be considered as direct damage.

Keywords: Risk Management, Liability Exclusion Clauses, Knock for Knock Clause, Recoverable Damages, Loss of Profit.

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ELECTRONIC COMMUNICATION OF LEGAL PAPERS; PRIVILEGES AND DEFECTS

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Abstract
Since 2016, a new mode of communication of legal papers is created in Iranian legal system that is known as electronic communication of legal papers. In this mode, legal papers including notifications or verdicts are communicated by computer through sending papers to person's account. On a few time after creation of the new mode for communication, its privileges and defects are appeared. Speedy and security in communication of legal papers, parsimony on the costs for sending and communication of papers are among the privileges of the new mode of communication. Temporary disorders in the related site, reception of some papers with delay on the person's account and dichotomy of legal or real communications in some cases are among defects of the new mode. It is necessary to solve these problems to provide better possibility in using this mode. In this article, we have considered the new mode of communication of legal papers and its privileges and defects to give appropriate solutions for convenient use of the method.

Keywords: legal communication, real communication, electronic communication, legal papers.

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ANALYSIS OF ARBITRATION AGREEMENT IN LAW WITH EMPHASIS ON ARBITER STATUS

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Abstract
Stating the elements of arbitration agreement and their analysis in relation with Iran general rule of contracts has a major impact on determining the type and validity of the agreements as well as arbitrator legal position. In addition, this analysis has an impact on the arbitrator's type and scope of responsibility. In this paper, we have addressed the existing theories about the legal status of the arbitrator, including its semi judicial or contractual nature. The, we have studied the advantages and disadvantages of the arbitration in the view of the arbitrator, parties and legal logic, and the type of responsibility in each theory. Taking into account the existence of arbitration agreement in the cases, the impact of the agreement on the legal position, and vice versa, has been examined. Providing a practical analysis about the nature of an arbitration agreement, a legal arbitration flexible commentary is presented under the title of "contract in the contract theory", which in the view of the writer embodies both contract and semi judicial and also reduces the disadvantages as much as possible. In the conclusion, the positions of arbitrator and parties towards each other have been expressed on the basis of this analysis. After criticizing different theories on the arbitrator's position, individual judge is proposed as the appropriate theory.

Keywords: Arbitration agreement, arbitrator, arbitrator's liability, individual judge, quasi-judicial.

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INDEMNITY CLAUSE

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Abstract
"Indemnification" is a common method for the risk allocation in contracts in the Common Law; according to which, one party is liable to indemnify the other party against the losses resulted from his anticipatory act, from the indemnitee's liabilities or from a third party's claim. This institution has emerged from the customs formed amongst the merchants, gradually recognized by the legal systems. In this paper, we are going to examine the validity of the indemnity clause by using the relevant legal principles and rules. Studies show that the indemnity clauses are typically being considered valid, except in cases of indemnitee's deliberative act or his gross negligence. In this paper, the concept of indemnity clause and its validity and variety along with the similar legal institutions in the Iranian law and the Shiite jurisprudence are being studied.

Keywords: Indemnitee, Indemnitor, Indemnity clause, Indemnity against Liability, Negligence, Public Policy.

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LEGAL NATURE AND SEPARABILITY OF ARBITRATION CLAUSE FROM THE MAIN CONTRACT FROM THE STAND POINT OF JUDICIAL PRECEDENT

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Abstract
Referring the dispute to arbitration is done in two ways: independent contract and arbitration clause. An arbitration clause is included in the contract when there is still no controversy and parties will refer their possible future potential disputes to the arbitration. Arbitration clause is generally considered as a stipulation in contract. However, the point that whether the arbitration clause has the potential of being the subject of stipulation in contract or not is the topic of this study. These issues have been studied from the stand point of judicial precedent. The importance of this issue is that depending on the legal nature of the arbitration clause, its legal effects will be different. Therefore, by analyzing the concept of an arbitration clause, the views in this area, and in particular the important principle of the independence of the arbitration clause, it can be assumed that despite the fact that the clause can be construed in terms of the conditions of the performance and result, however, it has a special legal nature removing it from the traditional rules of civil law because the arbitration clause has a direct effect on the denial of the jurisdiction of the court and can be the subject of an independent obligation.

Keywords: Arbitrator, arbitration clause, Condition of performance, Obligation.

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LEGAL ANALYSIS OF APPLYING OPTION OF CONDITION, TERMINATION AND DISSOLVING CONDITION IN B.O.T CONTRACT

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Abstract
In B.O.T contract, construction of a project is relegated from the public sector to the private sector, so that after a certain period of operation of the project, it assigns the project to the public sector. The main objective of the parties is undoubtedly performing B.O.T content. However, the parties' agreement, the public interest, breach of contract, and temporary stoppage at B.O.T contract may cause the interruption of relationships. In this regard, in the rules and regulations of the Islamic Republic of Iran, there are no clear and objective regulations for that. It is worth noting, for termination of the contract various ways can be outlined the most important of which are Option of Condition, Termination and Dissolving Condition. In the present research, the authors try to analyze the legal texts and law scripts and explain the mentioned solutions about the termination of B.O.T contract.

Keywords: B.O.T Contract, Terminating B.O.T Contract, Option of Condition, Operate and Transfer Contract.

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TRANSMISSIBILITY OF PERSONAL ACTIONS TO HEIRS IN IRANIAN AND FRENCH LAW

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Abstract
Death of one of the parties is one of the cases of suspension of procedure. The action would be continued with the involvement of heirs. But all the actions are not compatible with the involvement of heirs. Traditionally, personal actions are deemed non-transmissible. Taking into account the non-transmissibility of personal rights, this conclusion may be justified. But bring the case to justice, may affect the substance of the rights. One of the substantive effects of the action is the stabilization of the subject-matter of the case. With bringing the action, the death of the parties, it is principally hard to extinguish the subject-matter of the case. This effect so called in French Law as the (*effet novatoir de l'instance*). The fundament and obstacles of this effect is the principal subject matter of this Article. This study is dedicated to render a general theory of transmissibility of personal actions.

Keywords: Personal actions, Transmissibility to heirs, moral damages, Subject-matter of the case.

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"GOOD MORALS" AND "PUBLIC ORDER" AS SOURCE OF LAW PRINCIPLES AND RULES; A STUDY ON HOW TO TRANSIT FROM THE NEGATIVE FUNCTION OF LEGAL INSTITUTIONS TO THE POSITIVE ONE

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Abstract
"Good morals" and "public order" should be regarded as the source of the rule of law and legal propositions so that they have not only a negative role, but also have a positive function. These two sources like other sources are affected by the basis of rules validity in legal system as far as pluralism in legal basis results in different types of "good morals" and "public order". Defining the type of hierarchical relationship between "public order" and "Good morals" also depend on the type of hierarchical relationship in the foundations of legal rules validity; so that we can say in Iranian legal system, "religious good morals" and "religious public order" have credit priority. The difference between "Good morals" and "public order" is not a kind of substantive one, but also is phasic. "Public order" is statutory and legal propositions derived from "good morals" are non- statutory. In other words, "Good morals" is a reminiscent of the duality of rights and the law.

Keywords: Good Morals, Public Order, Basis of Law Rule, Source of Law Rule, Legal Institutions.

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COMPARATIVE STUDY OF THE NATURE OF RECEPTION IN THE MORTGAGE CONTRACT

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Abstract
Traditionally, the bill on contracts has been disputed among lawyers and jurists. Popular opinion knows the reception as part of the elements of contract. Consequently, until the reception is not fulfilled, the contract is concluded and has no effect. But civil law is silent on the role of reception in mortgage contract. It must be noted that despite the articles 47, 364, 798 of civil law regarding the role of reception in devotion , sale of gold, and donation expressly considering the reception as an element of contract, without which the contract is not cancelled, such constraint is not seen about mortgage in the civil law. This silence arises from the ambiguity which analytically exists over the role of reception. In this paper, while reviewing various opinions, a new point of view has been taken to the subject. With analysis of the elements of the contract and the common intention of the parties we concluded that the reception in mortgage contract is, in fact, the suspension on the establishment of the effects of contract not one of the elements of the contract.

Keywords: mortgage, suspension, effects of contract, pending contract, reception.

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CASE LAW STUDY OF DEMURRAGE CLAIMS: CONCERNING DISPUTES OF INCHOATE NOTICES

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Abstract
Demurrage clause is stipulated in voyage charter parties so that ships and oil tankers would not be detained. Demurrage is a kind of liquidated damage which sets a penalty against charterer of the ship in the case that he detains the ship or tanker for more than the agreed lay time for loading or unloading the ship or tanker. It is common and usual that parties of this kind of charter party would determine a particular situation, stipulated in contract, for sending a notice of readiness, from owner of the ship to the charterer, or whom he introduces to the owner. Therefore, owner, or captain of the ship as owner's deputy, is obliged to send such notice under such circumstances. Sending notice of readiness before reaching the agreed circumstances has been a cause for a lot of demurrage claims. In this article we have examined leading cases on this subject which have made changes to the jurisprudence of this issue.

Keywords: Ship, Oil Tanker, Voyage Charter party, Demurrage, Notice of Readiness, Laytime.

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