

CONDITIONS OF SECURITY FOR COSTS ORDER IN INTERNATIONAL COMMERCIAL ARBITRATION

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Abstract

Nowadays, security for costs order to prevent frivolous claims has been recognized in most national and arbitral institutions laws. Nevertheless, Iran's International Commercial Arbitration Act like Uncitral Model Law, 1985, has not mentioned it and so it has resulted in some questions in possibility and conditions to order it in arbitrations covered this law. This study through a descriptive analytical and also comparative method provides clear meaning for security for costs order and address its possibility and conditions to order it under Iran Law. The essay shows that although it is possible to order this provisional measure, the conditions for awarding it should access with regard to *lex mercatoria*. Other procedural ambiguities are resolved referring to applicable rules on measure interims.

Keywords

Arbitration Costs, Defendant, Frivolous Claim, Measure Interim, Procedural Rules.

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A SURVEY ON LETTER OF INDEMNITY IN THE LAW OF MARINE TRANSPORT

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Abstract

The letters of indemnity as a type of indemnity contracts are used in goods carriage in international commercial contracts. The correct use of these letters, in addition of assuring the legal security of trade, can accelerate and facilitate the commercial contracts as well as reduce the costs. On the other hand, it is possible to make use of this document as a means for fraud and to threaten the legal security of commercial contracts. Therefore, the validity of these legal documents has been doubted and disagreed on. Thus, it is necessary to carry out a thorough study of the subject. Additionally, it is inevitable to discuss their applications while defining their concepts. As a result, herein the concept of this item is discussed with a descriptive and analytical method, its nature and validity is studied and finally its applications are appropriated.

Keywords

Change of Destination, Clause Bill of Lading, Clean Bill of Lading, Delivery of Good, Fraud, Indemnity.

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A CRITICAL STUDY OF THE METHODOLOGY OF COMPARATIVE U.S. TORT LAW RESEARCH

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Abstract

In recent decades, legal comparative studies in Iran have increased drastically. The US tort law has fascinated many Iranian scholars and jurists. Yet, many of the comparative studies lack the necessary elements of a high-quality legal research. Different factors attribute to this problem. Among these factors are lack of in depth knowledge of the US legal system, incorrect translation of legal texts, incorrect citations and lack of access to resources. Furthermore, understanding the ways we can incorporate the US based tort law theories in Iran should be accompanied with the understanding of Iran's socio-economic status. In addition, the tort law reform movement has been the subject of many debates in the USA and its consequences has been left out as a key factor in many Iranian comparative tort law works. In this article, we try to identify some of the problems of comparative studies about the US tort law system in Iran and put forward new ways and initiatives to address them.

Keywords

Comparative Studies, US Legal System, , Negligence, Punitive Damages, Loss distribution, deterrence.

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THE NECESSITY OF HUSBAND AGREEMENT FOR DEPARTURE OF A WIFE FROM COUNTRY

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Abstract

Based on the principles of Imamiyyeh jurisprudence, the departure of a woman from the house requires the permission of her husband. Therefore, in the legal system of Iran, leaving the country for married woman is subject to the written consent of her husband, and in cases of emergency, with the permission of the prosecutor. Hence, Article 3 and 18 of the passport law faces numerous challenges including inadequate induction, the existence of weaknesses in the accurate recognition of the nature and instances of urgency and the involvement of the prosecutor in a private marriage contract. The present study has done with a descriptive - analytic method to study the law and its amendment, to investigate its various issues. Therefore, it has come up with solutions to get out of legal troubles.

Keywords

Husband's powers, Husband's permission, Emergency, permission of the prosecutor, Exit of married women from the country; Exit the woman from home.

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THE EXAMINATION OF CONDITIONS OF LEGITIMACY OF BIRTH IN WITNESS

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Abstract

In order to adapt some laws to Imamiyyeh jurisprudence, Article 1313 of the civil code was amended in 1981 and 1990, and the condition of legitimacy of birth has been added to conditions of witness. Regarding this feature in the witness, different views have been presented in Islamic law. For instance, some believe that legitimacy has been considered as a necessary condition and in contrast some Islamic writers have not seen the legitimacy as a necessary condition. Due to the fact that there are questions and ambiguities about the reasons and documentations of each point posed in this regard and essentially the relation between this condition and the issue of witness, each of these points of view, their reasons and their roots should be considered and analyzed. By examining the subject can reach the conclusion that, according to the documentations, legitimacy of birth is not necessary in witness.

Keywords

Condition, Illegitimate, Legitimacy of Birth, Testimony, Witness.

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PURPOSIVE INTERPRETATION OF PROCEDURAL RULES

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Abstract

It is well known that the procedural rules should be interpreted narrowly. This idea has its own foundations, most important of which is the maintenance of order, but the question is whether these rules can be interpreted in the light of certain goals? There are approaches based on which the procedural rules can be interpreted on specific purposes and goals. Such an approach is not alien for different legal systems, even it is legal dynamics and agility of justice requirement. The philosophers of law, through the relationship of procedural rules to fundamental rights, society and, in general, connecting individuals to states through these rules, have set goals for such an interpretation, such as the accuracy of the results, Utilitarianism, efficiency and procedural rights.

Keywords

Philosophy of Procedure, Interpretation, Procedural Rules, Purposive Interpretation.

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CHECK THE CONDITION OF CHOICE IN THE MARRIAGE IN JURISPRUDENCE

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Abstract

Condition of choice is one of the terms of binding contracts as marriage is a binding contract. The question that arises here is whether condition of option of marriage contract is right. In case the term is rendered invalid, is the contract repudiated? In the Article 1069 of Civil Code, the nullification of the term of the contract is ordered, and scholars have long agreed to nullify the term; however, the status of the contract is drawn into dispute. In verses and narrations, there is no reason for nullifying or validating optional marriage and condition of option involving it. The entire evidence mentioned in this regard is efforts made by scholars. Most lawyers have followed the ideas and reasons of jurists in this context. In this paper, an effort was made to review the ideas and arguments on the answer to this question. In the end, due to lack of a definite cause to nullify the terms, the validity of the terms and contract was upheld.

Keywords

Marriage, Nullification of Marriage, Condition of Choice, Condition of Option in Marriage, Nullification.

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IRAN'S NOTARY OFFICES AND THE NEED TO REVIEW THEIR IMPLEMENTATION METHOD

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Abstract

A notary public, in handling the office affairs, is a prisoner of his/her mission; the replacement of notary public is not an easy task, especially when the status of his/her assistant is ambiguous. It is not possible to make the matters scientific and specialized, and the task of consulting is denied by its transparency. The notary public is solely responsible for compensating the customer. With the death or retirement of the notary public, the office will be closed and its public service is stopped. The retired notary public or his/her heirs will have no benefit from the office. Therefore, in the transfer of its license, scientific merit of the successor will not be considered. Unfortunately, any company's capital contributions for this context have not been subjected to researchers' scrutiny. Some issues could be resolved by maintaining the current method. However, actual change occurs with the acceptance of collaborative implementation of the notary office and gathering several notary publics in one place: removing the notary public assistant position, replacing simple notary, making possible matters scientific and specialized, compensating the person harmed by the company and partners, and considering the provision of continuous service and the scientific merit of the successor.

Keywords

Collaborative Implementation, Individual Implementation, Notary Public, Notary Public Assistant, Public Service, Task of Counseling.

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A CRITICISM ON THE CIVIL AVIATION LAW AND THE NECESSITY OF ENACTMENT FOR A NEW LAW ON AVIATION AFFAIRS

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Abstract

Adoption of laws by governments from the International Aviation Law System is a relatively common practice for coordination. Moreover, they have organized their aviation system by passing an act as the main governing law on the aviation affairs. The Iranian government also with the existence of “the Act on permitting Iran to accede to the International Civil Aviation Convention”, has regulated its national legal system by enacting the Civil Aviation Law that after over six decades it seems that it requires to have more than a mere amendment. In this article, we tried to show that the mentioned law in addition to its non-decorated appearance, in three domains, namely application of law, macro issues and micro issues, has significant deficiencies that should be considered in enactment of a new law on aviation affairs. We considered the deficiency of law on unlawful extension of application of law, ambiguity on application of law, weakness and anxiety of regulations on macro issues and finally shortcoming on macro and micro issues.

Keywords

Accident, Aviation Law, Damage, Responsibility, Safety.

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**DEVELOPMENT RISK IN ENVIRONMENTAL DAMAGE
(EMPHASIZING ON THE EUROPEAN DIRECTIVE
2004/35/CE AND THE APPROACH OF ITS MEMBER
STATES)**

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Abstract

Environmental "Development risk" is the potential risk due to the industrial and economic operation of humans in the environment. This may be discovered by science and such as genetic risky variations in plants that perform with biotechnology; Article 8.4(b) of Directive 2004/35/CE, assigns civil liability for development risk to member states guidelines. The operator may refer to the state of the art and development risk defense to get rid of civil liability. It should be considered in the light of the precautionary principle, the principle of prevention and non-coverage, which is a characteristic of this kind of risk in the environment and his defense.

Keywords

Development Risk Defense, Ex ante, Ex post, Genetically Modified Organism, Precautionary Principle, Uncertainty.

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