THE STATUS OF PERIODIC INSANE TRANSACTIONS IN SUSPICIOUS TIMES (JURISPRUDENTIAL AND LEGAL ANALYSIS OF ARTICLE 1213 OF THE CIVIL CODE)

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Abstract

The capacity of the parties to the transaction is one of the conditions of the validity of the transaction, which includes the maturity, wisdom and growth of the parties; according to this, the transactions of an insane person who has no power of reason and understanding have been considered invalid. But the controversial issue in this regard is the status of periodic insane transactions during the suspicious period, which has led to different views from jurists and lawyers. After analyzing the arguments and opinions of jurists and lawyers in an analytical-documentary manner, and considering the inviolability of some of the cited arguments, and using principle of authenticity in case of doubt in the capacity of the parties, the author has discussed the issue of research as a dispute in various situations and believes that by strictly applying the principle of authenticity, in some hypotheses, periodic insane transactions during the suspicious period are valid and in some hypotheses, they are invalid and these cases are justified and consistent with the evidence.

Key words

Adoption of insanity, Periodic insanity, Insane transactions, Scope of the principle of authenticity.

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SET-OFF IN ENGLISH LEGAL SYSTEM WITH A VIEW APPROACH TO IRANIAN LAW

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Abstract
Set-off between two mutual debts- which has long been adopted in civil law system, and after many ups and downs, it has become a substantive matter, that accepted too late only as a procedural principle in English law between two debts resulting from the contract, with the subject of cash, to avoid multiple claims and it is a counter claim, regarding the known or possibly unknown amount of cash against a similar claimant that its execution date is reached and except in bankruptcy, it causes the main claim to be stopped. However, the existence of three legal sources of common law, equity and statute in the mentioned legal system, led to formation of three distinct types of set-off that each of them is applicable in its own certain systems. These three types of Set-off, which have no equivalents in Iranian law and are recognized according to forms of relationship between two debts, can be nominated as integrated set-off, independent set-off and connected set-off. In Iranian law, although set-off as a substantive matter after the expiration of two mutual general debts causes acquittal of two debtors of a certain amount of debt. Existence of imprisonment right and need to invoke in the proceedings bring closer the existent solutions in Iranian law to English law. In this study the view of two mentioned legal systems about the basics of set-off, techniques and its deferent applications will be studied.

Key Words
Common Law, Cross-claim, Equity, Set-off, Statute.

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CONTAINER REVOLUTION AND ITS IMPLICATIONS ON SHIPPING LAW

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Abstract

From the 1960s, the shipping industry experienced a tremendous change, that due to the different conditions than the past known as the "container revolution". Container while brought abundant achievements such as increasing speed, safety and security of transportation and reduced shipping created law issues that are still controversial. Container's Legal Nature(whether determining the amount of responsibility for shipping, is a "package" or not), explanation of various relationships arising from issuance of several bills of lading (groupage BLs and house BLs) for one container as well as container position contracts(SLOT), determining the liable person in the case of damages to the cargo (while the sealed container is provided to the Carter), and liability for incorrect stowage of cargo in the container or stowage of container on the deck is the most important issues that emerged following the container revolution in shipping law and has been analyzed in this article.

Keywords

Bill of lading, Package, Charter party, Transportation, Deck, Container, Groupage.

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COMMON SENSE AND EFFECT OF JUDICIAL EMANCIPATION

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Abstract
Judges interpret the law in their position of dispute resolution and justice enforcement, and in this interpretation to achieve justice or righteousness, in some cases misunderstand the legislators' intention. Therefore, they might examine variety of ways and this plurality because of the possibility of becoming the tyranny and oppression of judges and the loss of the rule of law is considered unpopular. However, the clause that connected judges to each other and ultimately leads to unity despite the plurality is not law or even interference of legislator, but it is their common sense of law and case events. Although common sense with the formulation of judge's interpretation causes coherence, but on the other hand, it links judges to the inherent feature of common sense that is plurality and maintaining the status quo. This connection can be in conflict with one of the ideals of judgment, named emancipation. But the role of the judge is not only disputing resolution that satisfy with the direct application of law and common sense. The judiciary always has the capacity to interpret law, custom and other legal rules to apply justice.

Keywords
Coherence, Interpretation, Emancipation Common Sense, Judgment.

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REVIEW AND JUSTIFYING THE ROLE OF RATIONAL EVIDENCE IN INTERPRETATION OF LEGAL PROPOSITIONS

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Abstract
There are many factors in interpretation process of a text and in this article the role of rational evidence -the popular concept in Osoul fiqh- as one of these factors in interpretation of Acts has been studied. Although rational evidence in Osoul fiqh is usually studied as a source of legislation, but it also has other functions such as its perceptual and interpretative role. From one side using rational evidence in interpreting legal propositions needs to justify the necessity and explain its consequences and on the other hand it requires responding to the criticism that this article will study them. The most key aspect of the necessity of this theory is validity of rational evidence because of its certainty. One of the most significant consequences of this theory is the recognition of rational evidence as a source of law and one of the most important criticisms of this theory in addition to the lack of criterion for evaluate reason and rational evidence, is the conflict between rational interpretation and Interpretive theory of intentionalism-which is proposed in Hermeneutic science-; it may be argued that the use of rational evidence as an external factor in interpretation process prevents commentator from understanding of legislator`s intention. Therefore, while rejecting the relative objection to the legislations derived from rational evidences, it has been tried to prove that accepting the role of rational evidence in interpretation of the law does not lead to ignorance of legislation and legislator`s place.

Keywords
Interpretation, Validity of rational evidence, Intentionalism, Anti-intentionalism, Rational principles, Source of law.

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INCOMPATIBILITY OF CONTRACTUAL EQUILIBRIUM WITH TRADITIONAL OR LIBERAL CONTRACTS THEORY

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Abstract
The concept of 'Contract Equilibrium (CE)' which attempts to ensure equality between the parties to the contract, due to its conflict with principle of autonomy and its principles, that are liberalism and individualism, it has not been able to find appropriate position in the Classical Contracts Law (CCL). This approach is not merely contrary to the principle of autonomy itself, but also to its subordinate principles namely the liberty of contract and unilateral irrevocability; the principles which due to the maintaining and re-establishing CE, prevent interference with the content of the contract. Hence, CE violates the coherence of the law that established based on the principle of autonomy. In addition, there is no point in justifying exceptional rules relevant to lesion and theory of unforeseen events and in such a system reliance on the will also justifies these rules. Owing to such contradictions and inefficacies, the aforesaid concept is missing from CCL and this concept currently has been able to have a decent position in modified legal order, by questioning the mentioned principles and based on the social thought of the contract.

Keywords
Unforeseen events, Liberty of Contract, Individualism, Lesion, Liberalism, Principle of autonomy.

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CONSEQUENCES OF NULLIFIED (INEFFECTIVENESS OF) TENANT DISCHARGE VERDICT IN THE LITIGATION OF PARTIES AND THIRD PARTIES

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Abstract
The tenant has received a wide range of support according to lessor and lessee relations Act approved in 1978; Article 28 of the Act, has expanded its support even after the final discharge verdict. Based on this Article, final discharging verdict will be nullified in the case of non-payment of the right of Good Will within specified deadline (contractual or legal) by lessor, or non-request for execution of discharge verdict by the lessor within one year from the notification to lessor. Here are some questions arise about; what are the consequences of nullified verdict in contractual relationship (lease agreement) and litigation rights and obligations of lessor and lessee in that case or even possible new claims? What are the authorities and duties of the court of? In this regard, legislation, judicial procedure and even doctrine have not paid much attention to the issue; however, it can be said that there is no nullified verdict in law after nullification (ineffectiveness); that is not objectionable or applicable or preventing renewed lawsuit proceedings by lessor, nor can it even be relied on.

Keywords
Res judicata, Discharging verdict, Litigation rights, Contractual rights, Nullified verdict (Ineffectiveness verdict), Termination of lease agreement.

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FINANCING OF ARBITRATION BY A THIRD PARTY

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Abstract
Financing of arbitration by a third party is an emerging phenomenon in the arbitration whereby a third party incurs the costs of arbitration proceedings in return for sharing the benefits of the arbitral award, which is likely issued in favor of the supported party. Even a party who has no problem of paying the arbitration fees may conclude an arbitration financing agreement with a third party in order to avoid the consequences of failure in arbitration. Although the third party play a significant role in enforcing the right of the parties to access to justice, this person is not a party to the dispute and it is obvious that in some cases such as obtaining security for other party's proceedings costs, no obligation can be imposed on him. In addition to the need to disclose a third-party identity on behalf of supported party for arbitration, arbitrators are required to disclose any connection to this person.

Key words
Obtaining security, Conflict, Security for costs, Third party, Arbitration benefits.

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THE ROLE OF MEGA-REGIONAL TRADE AGREEMENT(S) IN OVERCOMING THE CHALLENGES AND EVOLUTION OF THE OF INTERNATIONAL INVESTMENT LAW

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Abstract
In the last two decades, modern international investment law has been attacked a lot for its tow source including investment treaties and judicial procedure arising from treaties. Attacks that have sometimes challenged the nature of the International Investment Law regime. At the same time, from the last decade until now, due to the growing correlation between trade and investment in 21st century and the need for correlational regulations, the trend towards concluding "mega-regional trade agreements" in order to establish an integrated system of international trade and investment regulations has increased significantly. The present study, while briefly examining the fundamentals of governments' tendency to create macro-examples of regional trade agreements as well as the challenges that these agreements will face in achieving this correlation in the field of investment regulation, by analyzing the provisions of the macro agreements, it outlines the potential implications of these agreements in order to solving challenges in the field of international investment law. The present study believes that regional mega-regional trade agreements are not only able to address the challenges posed by providing balanced examples of investment treaties, rather, the creation of these agreements with balanced regulations and macro-structural features can provide the context for a stabilizing transformation in the various resources of the international investment law regime.

Keywords
Regional Trade, International Investment Law, The backlash, Investment Arbitration, Legitimacy, Macro agreements, Integration.

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EXTENSION OF THE INHERENT COMPETENCE ARISING FROM CONNECTIVITY OF CIVIL CLAIMS, A COMPARATIVE STUDY OF IRANIAN AND FRENCH LAW WITH EMPHASIS ON JUDICIAL PRACTICE

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Abstract
The jurisdiction may change during the proceedings. One of the factors of this change is connectivity of claims that causes the extension of competence. The extension of jurisdiction is based on the fact that according to the primary jurisdiction rules, the jurisdiction is not efficient, effective, appropriate and complete, and the connectivity of claims, as one of the secondary jurisdictional rules, changes the effectiveness and efficiency of primary jurisdiction rules. Connectivity creates dependency between claims and therefore loses their independence. However, whether the connectivity of claims can lead to the extension of inherent jurisdiction is a question that has been studied comparatively (Iran and France) in this study. It seems that, contrary to popular belief, in many cases the connectivity of claims extends the inherent jurisdiction.

Key words
Connectivity of claims, extension of jurisdiction related claims, Competence, Extension of competence.

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