

JUDGES' SOCIAL BACKGROUNDS AND JUDICIAL DECISION-MAKING

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(Received: 27 April 2021 - Accepted: 14 August 2021)

Abstract

Although the focus of judicial decisions is on laws and evidence, other factors also play crucial roles. Judges' social background is one such factor hypothetically influencing judicial decision-making. The present study seeks to determine whether, based on statistical and empirical evidence, a correspondence can be detected between the judges' social background and their judicial decisions. Does a judge's financial situation, for example, affect his or her judicial decisions? This essay will argue that a judge's social background, including his religious tendencies, education, gender, race, age and experience, employment background, financial status, and political affiliations, can influence his or her judicial decisions. Using descriptive-analytical method, the present study tries, first, to achieve a coherent understanding of this issue by analyzing the researches already carried out on the judges' social backgrounds and, in the next step, to provide solutions to minimize this unconscious impact. The solutions presented in this research fall into two categories: personal strategies and structural strategies. In the first category, our goal will be to strengthen the epistemological powers of judges, while in the second, we will suggest ways to minimize the impact of judges' social backgrounds by structurally reforming the judiciary.

Keywords: Judges' Understanding, Judicial Psychology, Decision-Making, Legal Hermeneutics, Legal Realists.

CITIZENSHIP AND GENDER: THE EFFECT OF MARRIAGE ON CITIZENSHIP

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(Received: 12 April 2021 - Accepted: 23 August 2021)*

Abstract

The dissimilarity of the effect of marriage on citizenship between the wife's and the husband's side suggests that the Iranian legislator considers a wife's citizenship as a derivative of her husband's and that it sanctions gender discrimination among spouses. This article responds three main questions in this regard: Does the dissimilarity of the effect of marriage on the citizenship of men and women amount to a negative gender discrimination? Does it have a tenable rationale? In either case, what plausible reforms in the existing law can be proposed? Adopting an analytical approach, this article will scrutinize the theoretical views which have been raised on this matter as well as the content of the relevant legal materials, will demonstrate that the legal dissimilarities are not necessarily gender-based, and will argue that they are not premised on a defensible rationale. It will finally provide the legislature with two non- reformative proposals for legislation to remove gender discrimination.

Keywords: Positive Impact of Marriage on Citizenship, Negative Impact of Marriage on Citizenship, Gender Discrimination in the Impact of Marriage on Citizenship, The Principle of Unity of the Spouses' Citizenship, The Principle of Independence of the Spouses' Citizenship.

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DOI: 10.22059/JLQ.2021.319463.1007507

THE PLACE OF EVIDENCE IN DOMESTIC ARBITRATION

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(Received: 23 May 2021 - Accepted: 4 September 2021)

Abstract

In judicial proceedings, the law specifies both the procedure for examining the evidence and the rules governing the substance of evidence, and sets out the duties of the litigants and the judge. In domestic arbitration, on the other hand, the brevity of the reference in laws to the evidence and the methods of its evaluation, along with the consensual nature of the arbitration and that it is based on conciliation, has left it uncertain whether the *evidence of arbitrations* are also subject to the court supervision, which has, in turn, led to controversies about the consequences of non-compliance with the rules of evidence in arbitration. Many jurists have opined that the courts are not allowed to engage in the substance of arbitration and the examination of the evidence as this would violate the independence of arbitration or the agreement of the parties. It will be argued here, however, that since the rules of evidence are connected to the substance of the case, they can be considered as *rules that create rights*. What we thus advocate is the principle that allows court supervision over arbitral awards both in matters of law and of fact as related to the evidence.

Keywords: Court Supervision, Evidence, Matters of Fact, Matters of Law, Rules Creating Rights.

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KEY FEATURES OF CORPORATE GOVERNANCE IN EAST ASIAN APPROACH AND IN IRANIAN LAW: A COMPARATIVE STUDY

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(Received: 15 May 2021 - Accepted: 14 August 2021)

Abstract

Corporate Governance is one of the most challenging issues in the world of law, which is due to its special role in joint stock companies, especially those presenting their stocks in the stock exchange market. Among the approaches to corporate governance developed in the capital markets of developed countries, three are identified as the *Anglo-American Approach*, the *Continental European Approach*, and the *East Asian Approach*. (Baker & Anderson, 2010: 7) The first two approaches, more commonly adopted throughout the world, have already been the subject of a few studies in Iran, but the third has been disregarded so far. Given that there is no specific binding rules about the corporate governance in Iranian law, the study of the East Asian Approach, which is different in most of its features from the one exercised in Iran, can help to design a specific model of corporate governance in this country. Comparing the rules of Iranian Joint Stock Companies with the East Asian Approach will show that the Iranian legal system, while having employed more vigorous strategies than the latter approach towards *financial transparency*, is less advantageous at least in terms of *managerial balance* and *sources of financing*, and it is necessary that the Iranian Legislature takes effective steps forward in these respects based on a localistic insight.

Keywords: Board structure, Capital Financing, Centralized Stock Ownership, Financial Transparency, Family-Based System.

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DOI: 10.22059/JLQ.2021.314479.1007472

COMPARATIVE STUDY OF THE RESTRAINT OF TRADE CLAUSE IN THE LAWS OF IRAN, EENGLAND AND THE U.S

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(Received: 23 December 2019 - Accepted: 30 June 2020)

Abstract

In its most commonly used form, the *restraint of trade clause* is a contractual clause to the effect that one party avoids engaging in certain business activities for a specified time or in a specified geographical area in a way that serves the other party`s commercial interests. This clause, however, should not be in conflict with law of contracts, competition law, consumer law, and other relevant rules of law. The restraint of trade clause can moreover be viewed in the perspective of *contractual terms* and *right to depriving oneself of rights*. Examining relevant rules in Common Law systems, particularly the English and the American law, this article concludes that despite the great respect in these systems for the fundamental principles of freedom of will and contractual freedom, they do not uphold the restraint of trade clause, unless the restraint is minor, serves a legitimate, reasonable interest and is not against the public interests or any specific laws. This research has employed analytical, descriptive method and library materials.

Keywords: Clause, Contract, Law, Restraint, Term, Trade, Validity.

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A HISTORICAL ANALYSIS OF THE FUNCTION OF THE DEEDS AND THEIR EVIDENTIARY VALUE IN ISLAMIC LAW

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(Received: 10 May 2020 - Accepted: 13 July 2021)

Abstract

Deeds and their evidentiary role are of great importance today in judicial process as well as in other social relations. While they used to have a lesser role in the past centuries, this role was not totally marginal either. Most *Imami* jurists reject deeds as evidence and have questioned their validity on various bases including the exclusivity of the valid types of evidence specified in the *Sources*, the possibility of frauds and impossibility of the intentions being embodied in writings. A glance at the history of deeds reveals however that they were used for specific purposes in any particular era. They were often produced by the parties to transactions and were often accepted by the courts. There were official jobs associated with scribing and preparing deeds. Moreover, Quran has commanded Muslims to write down their contracts. This study aims to renounce the notion that the deeds were regarded invalid as evidence, and to demonstrate that it was only the lifestyle of the past generations that made their employment difficult and that from the legal point of view, there is no caveat to the validity of the deeds.

Keywords: Document, Validity, Evidence, Written Evidence.

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INHERITANCE SUBROGATION THEORY IN THE ISLAMIC AND THE IRANIAN LAW

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(Received: 26 November 2019 - Accepted: 23 August 2021)

Abstract

Subrogation is an institution in western legal systems which has its roots in Roman Law. It has been conceived as a legal fiction, justifying a few of the rules in the law of obligations. One important embodiment of this theory is the transmission of obligations and the survival of the contract after the death of one of the parties to it. The Iranian Civil Code uses the term denoting this concept (*qa'im-maqami*) in articles 219 and 231 of it, without defining it. The Iranian legal doctrine, however, influenced by the French doctrine, has adopted subrogation as an Iranian law institution and suggested a few definitions. The same term has also been used in *fiqh* to signify the relation between the devisor and the heirs. A closer study of the texts, however, proves that the meaning of this term in *fiqh* is different from that in western legal systems. Even though many of the rules of western systems, justified by invoking subrogation, have counterparts in Islamic law, their bases in the latter is not subrogation. It is contended here, therefore, that the inheritance subrogation in the sense embraced by western legal systems, does not exist in the Islamic law.

Keywords: Inheritance Subrogation, Survival of Debts After Death, Theory of *Dhimmah*.

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DOI: 10.22059/JLQ.2021.292796.1007305

ABOUT SOME INNOVATIONS AND WEAKNESSES OF THE IRANIAN LABOR PROCEDURE

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(Received: 10 October 2020 - Accepted: 23 January 2021)

Abstract

The power imbalance in the worker-employer relationship and the dependence of the worker's livelihood on the labor makes it necessary to introduce special regulations to govern lawsuits between the parties to this relationship. Article 164 of the Iranian Labor Law puts the Supreme Labor Council and the Ministry of Cooperatives, Labor and Social Welfare in charge of codifying the special regulations governing the procedures of the boards to hear these claims. The most important regulation currently in effect is the *Labor Procedure*. This regulation, enacted in 2012, despite its similarities with the civil procedure, contains special principles that could be considered as the innovations of this regulation and whose recognition is essential for the promotion of legal services.

Keywords: Competence, Proof, Principles of Labor Procedure, Reason, The Boards of Inquiry and the Boards of Settlement.

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DOI: 10.22059/JLQ.2021.311002.1007450

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ECONOMIC ANALYSIS OF RESTITUTION CLAIMS IN BANKRUPTCY

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(Received: 27 February 2020 - Accepted: 6 June 2020)

Abstract

As a legal-economic event, bankruptcy, which leads to a halt in the business life of the business people, has a direct impact on the economic interests of a whole society. One of the proceedings associated with bankruptcy involves the *restitution claims* by third parties against bankrupts or vice versa. The question here is how the modern approach to bankruptcy, which is based on economic theories as independent bases for restitution claims, makes a difference in the way these claims are handled compared to the traditional approach that is based on the principle of equality of creditors. It is arguable that economic theories can be solid bases for the construction and enforcement of restitution claims in bankruptcy, their advantage over the traditional approach being that the ability to reclaim property in the new approach is attuned to the goal that the merchants' capital be returned to them as much as possible. That is why this approach takes the bankrupt's claim against the third party as the principal form of a restitution claim, and the claim of third parties against bankrupts only as exception. The modern approach is, accordingly, conducive to the restructuring of the bankrupt's capital and will help, by offering amenable interpretations of, and modifications to, the relevant rules, to prevent the collapse of the society's businesses and its adverse effects.

Keywords: Bankruptcy, Efficiency, Maximalism, Creditors, Maximization, Restitution.

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DOI: 10.22059/JLQ.2020.297954.1007342

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POSSIBILITY OF ENDOWMENT (WAQF) OF PROPRIETARY WORTH IN LIGHT OF A NEW ANALYSIS OF THE ENDOWMENT CONTRACT

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(Received: 5 September 2020 - Accepted: 30 August 2021)

Abstract

While endowments (*waqf*), sometimes called everlasting charities, has the capability to turn the wheels of production and business prosperity, some statistics suggest that the current efficacy of endowments in Iran is below half a percent. One main reason for this could be the literalist interpretations put forward of the relevant Islamic legal texts. Apparently, the object of the endowment contract is always the substance of a specified property, and the substitution of that object with a new item is not allowed. A new analysis of the endowment contract, focusing on its main purpose, namely the continuous flow of usufructs, however, can solve many problems. What this analysis indicates is, first, that the essence of the endowment is the usufruct flow, and second, that the endowment is not limited to the substance of the property, but it can also have the proprietary worth as its object. Therefore, the *Endowment Organization*, as the institutional custodian of endowments in Iran, can rely on this new interpretation, upholding the endowment of proprietary worth, in substituting the endowed properties.

Keywords: Endowment, Substitution of the Endowed Property, Endowment Institution, Endowment of Proprietary Worth, Property.

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DOI: 10.22059/JLQ.2021.309037.1007433