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Research Paper

The Concept of Relevancy of Claim

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Abstract

It is necessary to determine the defendant and the relevancy of the claim in every petition. This is the point that should be considered by both the court and the petitioner. In Common Law, if there is a mistake about the defendant, the petitioner can correct it before the case is closed. In the Iranian legal system, the petitioner faces limitations and has to be sure about the relevancy of the claim to prevent the rejection of the lawsuit.

The relevancy of a claim which is the most important criterion in determining the defendant helps the courts in issuing the sentence. But studying the court's rulings shows that it has not been effective as it should. We believe that the ambiguity in this concept has led to such inefficiency. and judges frequently face these two challenges: 1) what is the concept of the relevancy of the claim and 2) what are the requirements to conceptualize this vague and general term, making it applicable?

In general meaning, the relevancy of the claim is the inherent feature of the case to determine the defendant and establish a relationship between the case and the defendant. So, the right to defend and the possibility of enforcing the judgment are two elements of the relevancy of the claim. Judges get sure about the position of the defendant when these two conditions are met. In

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this way, the relevancy is an experimental concept. On the other hand, determining the meaning of this concept is not enough to grasp it for practical purposes. This essay aims to clarify the concept of the relevancy of the claim and determine the criteria for applying it by studying the Imamiyyah jurist's opinions and juridical judgments.

Keywords: Case, Relevancy of the Claim, Real Defendant, Hearing of the Case.

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Research Paper

The Criteria for Distinguishing the Abrogation of the Law from Its Allocation and Its Effect on the Revision of the Laws

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Abstract
One of the issues of law revision is related to distinguishing abrogation(especially implied abrogation) from allocation. The present study seeks to answer the following question: how is implied abrogation distinguished from allocation? The findings of this descriptive and analytical research show that there are eight criteria for distinguishing implied abrogation from allocation:
1. In choosing between implied abrogation and allocation, allocation has priority over abrogation.
2. If a new reason arrives before acting for the first reason, this case will be allocation and if it arrives after the action, it will be abrogation.
3. Abrogation removes the sentence but allocation limits it to some people of the subject.
4. The abrogator is always separated from the abrogated and if they are connected, it will be a general and specific example, not an abrogator and abrogated.
5. Abrogation removes the time continuity of the sentence, but allocation changes the legislator's usual intention to his serious intention.
6. Although allocating the law with rational and customary reasons is possible, but abrogation is possible only by the authority that established it.

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7. The present study made a difference between the allocation of most common cases and the allocation of all common cases, and accepted that abrogation in the allocation of all common cases, but rejected the abrogation in the case of the most common cases.
8. In this research, it was proved that if the reason for general issuance is certain and the reason for special issuance is suspicious, priority is by allocation.

Keywords: Allocation, Revision of laws, Abrogation, Implied abrogation, Explicit abrogation.

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Research Paper

Annulment of ICSID Arbitral Award for the manifest excess of powers

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Abstract

It is not possible to stop the implementation of the arbitration award in the International Center for the Settlement of Investment Disputes (ICSID) except by resorting to the annulment procedure. In other words, the possibility of appeal and declaration of invalidity of the arbitration decision is not foreseen in ICSID as in other arbitration institutions. Article 52 of the Washington Convention contains five ways of revoking the arbitration award, which is analyzed in this research, paragraph 1 (b), which deals with revoking due to clear violation of powers.. The plan considered for the research is divided into two parts: the first, the history of drafting paragraph b of Article 52, the basis of the authority of the arbitration board, annulment limitations, prohibition of the right of average appeal of the annulment hearing board and interpretation of the annulment have been discussed, and in the second part, by focusing the research on the excess of powers and topics such as the necessity of complying with the provisions of the investment treaty, the cases that have been considered in ICSID award were counted.It is necessary to mention that the studied treaties here are considered to be investment ones and commercial treaties are out of the scope of the discussion.

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Research Paper

“Exchange Liability” in Islamic and Iranian Law and Its Comparison with “The Theory of Cause” in French Law

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Abstract
One of the most important issues in synallagmatic contracts is the liability in contractual consideration. All legal systems have faced this problem and have proposed rules to solve it. In Islamic law, this is referred to as “Exchange Liability". But in French Law, it is known as the "theory of cause", which is the most important concept in contract law. The purpose of this study is a comparative study of the concept, basis, and nature of "Exchange Liability" and "theory of cause". This will be done in a descriptive, comparative, and analytical method. According to the findings of this study, Exchange Liability is a kind of “voluntary liability” whether it is the result of a valid or invalid contract. And the theory of cause has a similar role in civil law. Despite the similarities between these two theories, there are also differences, especially in terms of territory.

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One of the uses of liability in contractual relations is the “exchange liability”. The delivery of the exchange in exchange contracts is not achieved once the contract is concluded, but it is a mutual obligation that each of the parties undertakes to fulfill by concluding the contract. Even though there are many branches and examples of the exchange liability in Iranian law and the exchange liability has been recognized in a broad sense; however, in Iran's legal sources, this type of liability is referred to as "compensatory liability"; in connection with the discussion of Article 387 C.C. In jurisprudential sources, it is described as "exchange liability". Although there are various theories in the legal systems such as "Cause", "Consideration" and "exchange liability" to create and adjust the balance between the exchange parties in a reciprocal contract, they all have a common goal and to some extent a meaning.

Liability for the contractual exchange is mentioned in all reciprocal contracts and exists in the stage of the execution of the contract even in the assumption of loss of exchange and cancellation or liquidation of the contract. with the implementation of its effects, it means delivering exchange or its substitute, will be expired. Lawyers in the Roman-Germanic system have proposed the "theory of cause" to determine a standard as a basic element in the validity of contracts and as proof of the seriousness and commitment of the parties to their obligations. The main question of this study is: what is the relationship between “exchange liability" in Islamic and Iranian law and the "theory of cause" in the Germanic Roman system?

This research shows that to create and maintain balance and justice in reciprocal contracts, the Islamic law has provided “exchange liability". The concept of “exchange liability" is the responsibility for the contractual exchange, and the concept of the “theory of cause” is to express the necessity of the existence of a cause for the contract from its creation to its execution. The emphasis of the “theory of cause” is more on the existence of the legal act, while the emphasis of the “exchange liability" is more on the nature of the reciprocal contract and the guarantee of the performance of the tasks contained in it. From the point of view of the content of the “exchange liability", it is a mandatory rule, and it is not considered a financial right. The “cause” is also independent and separate from the character of the contracting party, and it is the same for every type of contract and is related to its legal structure. "Cause" is a real and logical truth, which is impossible to ignore. Both concepts have a similar basis, including being rational and establishing a balance between the parties, and preventing the loss of the parties. However, the domain of the “cause theory” is beyond the domain of “exchange liability", because it includes non-reciprocal contracts and even events. But from another point of view, the “exchange liability" has a wider scope. Because in principle, the existence and manner of creation, the

necessity, and manner of execution of the contract, in the assumption of loss of exchange, annulment or liquidation of the reciprocal contract, in the assumption of non-execution of the contract and the emergence of contractual liability, and the manner of implementation of the effects of this liability and the number of compensable damages, have an effective presence.

Keywords: Exchange Liability, Object of the Sale, Price, Voluntary liability, Theory of cause.

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Research Paper

Depending One Judicial Decision to Aanother Decision with Study of Judicial Precedents

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Abstract
Today, one of the most important litigation topics studied by jurists is the discussion of concepts such as the powers, duties and jurisdictions of the courts in the strategy of litigation. Foreign jurists have written about these concepts, and this has led to discussions in Islamic law as well. However, in the rules of procedure, the existence of important goals such as predetermined order and protection of the rights of the parties and, most importantly, the realization of rights and the settlement of lawsuits, require the interpretation of the rules of procedure in a special way. The courts consider themselves bound by the texts, precedents and customs of the judiciary, but it should be known that the development and opening of the way to the trial is left to the legislature and to clear rules rather than to the interpretation by judges. This is also the case with the rules of procedure. This task is done in the case of the rules of procedure, sometimes by the judiciary itself, while preserving the veto power of the legislature, and sometimes by presenting drafts to the legislature by the judiciary. In addition to these rules, the principles of procedure also govern the procedure, and the objectives of the procedure are also reminded to the judge in the laws. Among the principles of litigation that can be mentioned are the principle of speed in the proceedings and the principle of dominance of the parties over the dispute. If we consider the purpose of organizing a hearing to resolve disputes between the parties and the realization of rights in an efficient manner, the best way in our country's procedure law, where judges have less legislative innovative and interpretative powers, is to make good use of legal tools that are embedded in the laws. The question of how such tools help can be explored as their use leads the court to achieve pre-determined litigation goals. Among these tools, is the depending of one judicial decision to

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another decision. However, Iranian courts do not make much use of it and even in lawsuits where this decision is induced, judges are not willing to issue this decision. As an example, we can refer to the vote number 791 of the General Assembly of the Supreme Court. Considering that these decision is based on two important principles of the trial, namely the principle of hearing the disputes and the principle of speed in the proceedings, it seems that the failure to use this decision is not only against the principles, but also causes disputes to be returned to the judiciary, delays in proceedings and accumulation of cases in the judiciary. The purposeful and flexible interpretation method should also replace the narrow interpretation of Article19 in order to add items to this provision. In the comparative realm, the French law has also used the title of suspension of proceedings (La suspension de l'instance) for such a purpose, and the issuance of such an order not only makes the trial in accordance with the law and complying with it and maintains the order, that is the most important goal of the rules of procedure, but also fulfills the goal of justice and the realization of the rights and the principle of speed. Depending one judicial decision to another decision or the suspension of proceeding is not desultory and cannot be considered unregulated under the pretext of the principle of speed and similar goals. Jurisdiction of another court to hear the case, ability to file a case (one on which the other is dependent) in a competent court, the effectiveness of proving the claim in the main lawsuit, administrative or judicial authority of the court (dependent on it), hearability the of the main lawsuit, dependent lawsuit not being filed before the main lawsuit, and filing the claim by the plaintiff are the conditions for issuing this decision while this agreement can be revoked and not be complained.

Keywords: Depending One Judicial Decision to Another Decision, Principle of Hearing a Lawsuit, Principle of Speed of Proceedings, Dispute Resolution.

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Research Paper

Justice and Fairness in the Distribution of Inheritance between female and male heirs under Iranian and Islamic-Shiite Law

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Abstract

In answer to the questions posed in respect of the distribution of inheritance between female and male heirs, under Iranian law, it can be argued that Iranian law, following Islamic-Shiite law, has adopted the fairest system of distribution in this respect. The responsibilities of each of woman and man in the family as well as the rights and protections given to them, as the creatures of God and His successors on the earth, must be taken into account when analyzing the inheritance distribution system. This paper argues that, under Iranian law, inheritance is distributed between male and female heirs in proportion to (1) the responsibilities and obligations that a man has with respect to his family (including providing maintenance for his wife and his children), the duty to defend the country and the duty of doing the preliminaries like military service and to (2) financial protection given to a woman including the dower, maintenance and equivalent remuneration for the work done by the wife at home, that must be provided by the husband. In other words, the distribution of inheritance is not based on the gender of the heirs.

This paper, by looking at the aims of God from the creation of mankind including women and men and by referring to the Quranic verses (such as beginning verses of Nisā chapter, Verse 189 of Arāf chapter and Verse 56 of Al-Dhārīyāt chapter, and the traditions narrated from the infallibles (peace be upon them) as well as the equality of all human beings before God and that no individual is preferred to another one except by righteousness, knowledge, faith and the right conduct, deals with the distribution of

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inheritance based on meeting the needs of woman and man and their financial responsibilities.

A man in an Islamic society has a number of financial responsibilities including the payment of dower, as agreed by the spouses, and providing the living expenses of the wife, according to her social standing, and living expenses of his children. By taking into account the fact that a woman has no duty to do housework, she is also entitled to ask her husband to pay remuneration for her work. By explaining the different ways of distributing the inheritance between male and female heirs, according to the degree of their relationship with the deceased, the share of every female heir has been made clear.

It should be noted, that in the inheritance distributing system, under Iranian law, the heirs are divided into three classes according the degree of the heirs' relationship with the deceased. For example, parents and children are among the first class; sisters and brothers as well as their children and grandparents are in the second class; and uncles and aunts as well as their children are in the third class. The first class prevents the second class and the second class prevents the third one from benefiting from inheritance.

By taking into account the way of distributing the inheritance between the heirs in the three classes, it can be argued that:

(1) In many cases the share of female and male heirs are equal. For example, the share of mother and husband from the deceased wife's property is equal. The share of father and mother, is one sixth of the child's property. Where the heirs are a sister and the husband, their shares would be equal. All maternal relatives like maternal brother and maternal sister as well as maternal uncles and aunts and their children would receive equal shares from the inheritance.

(2) In certain cases, the share of female heir is higher than that of male heir. For example, where one daughter and the husband are the heirs of the deceased, the daughter would receive more than the husband. Where the heirs of the deceased are the husband, father and mother, the mother would receive more than the father. Where the sister and maternal grandfather are the heirs of the deceased, the sister would receive more the maternal grandfather.

(3) In certain cases, however, the share of male heirs is more than the share of female heirs.

The most important point that must be taken into account in the distribution of inheritance between the heirs is that the distribution has a direct relation to the obligations and responsibilities that each of woman and man has in the family life and in the society. No attention is paid to the gender and the natural value of female and male heirs in the distribution of the inheritance.

Key words: Deceased, Inheritance, Distribution of Inheritance, Justice and Fairness, Male and Female Heirs.

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Research Paper

Economic Analysis of Organ Market

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Abstract
Nowadays, with substantial improvements in medical technology, a mix of the increase in demand for transplants and the low supply of human transplantable organs has been one of the most critical issues in medical treatment. Every year, many people who need transplants die. Different countries have implemented various policies to solve this problem. One proposed solution is creating a free market for human body organs. In practice, there is no such a market in almost all countries. This paper purports to shed light on the legal feasibility of creation of this market and its potential for reaching an equilibrium between demand and supply for body organs for transplant from an economic perspective.
Findings based on economic analysis suggest that pure altruism is not efficient enough to solve the above-mentioned problem. In contrast, pecuniary incentives can help increase the supply of living and brain-dead donors, narrowing the gap between demand and supply in the body organ market. Besides the free market in which parties are free to determine terms of trade freely, there are other mechanisms in which a third party like the government, insurance, or NGOs is involved in regulating different aspects of the exchange, such as price. Along with other organ procurement policies, if the government can establish a formal and transparent mechanism for the

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voluntary exchange of organs, besides increasing efficiency, it can also prevent the formation of a black market or human trafficking to a great extent.
It is worth mentioning that there is no consensus among economists about establishing a free market for body organs. The critiques have proposed some non-pecuniary-oriented policies such as default rules, mandated choice, required recovery, reciprocal systems, and pairwise kidney exchange. Despite its potential advantages, this market is also challenging. So, it is necessary to consider its legal and ethical aspects to guarantee its efficiency. Pragmatically, establishing this market requires considering its ethical, legal, and economic features. In addition, due to the complexities of the problem, it seems that applying a bunch of different policies is required to bring about society to its ends.

Keywords: Efficiency, Free market, Human organ exchange, Medical ethics, Organ procurement policies.

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Research Paper

Functional analysis of formalities in civil procedure

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Abstract

Laws of procedure are full of templates and forms through which the will necessarily emerges. "Formalities" are considered as one of the most important forms. Sometimes, the proceedings must be carried out with special arrangements and rituals that the legislator has determined, and these special arrangements have turned "formalities" into one of the important principles and characteristics of proceedings. The stubbornness of the ritual rules and their subjectivity have made it difficult to understand the nature of the formalities. With such a bad reputation, these formalities lose their attraction to be used and studied. For this reason nowadays, judicial systems tend to reduce formalities and specify a minimum of them for proceedings. However, the present article tries to examine the formalities and understand their meaning through functional analysis. The most prominent and important theory in contemporary sociology is "functionalism" or the attitude of authenticity of function. This analysis focuses on efficiency and function. One of the important principles raised in the interpretation of formal rules is the interpretation of these rules based on efficiency as well as goal-oriented interpretation. Paying attention to function and purpose has

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been accepted as a basis in the legislation and implementation of formal rules. At least in the civil code, there are cases where the legislator specified the function and purpose of the regulations. Article 155 of the Civil Code for example, has mentioned the function and purpose of providing evidence as follows: "Providing evidence is to preserve it...". The functions and purposes of other judicial institutions are not authorized and should be analyzed with inferential tools. In ascertaining and inferring the functions and goals, it should be noted that a rule may have several functions and goals. Although the function of communication is to inform the audience, some contents in the judicial document have a separate goal, which cannot be achieved by simply informing the audience. For this reason, by achieving a function of a rule, the work cannot be considered finished, and perhaps this is why a group believes that the search for the function and purpose of the rules should be done individually in each case and situation. what is the function of formalities? What purpose and function the legislator expect from this institution by determining them? The study hypothesizes that formalities cannot affect the main functions of an institution. A rule, the absence of which disrupts or makes incomplete the function of the relevant institution, is not a formality.

Keywords: Formal rules, Principles of procedure, Purpose of the procedure, Formalities.

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