Private Law Studies Quarterly

Online ISSN: 2588-6622
Volume: 53, Issue:2
Summer 2023

Homepage: https://jlq.ut.ac.ir/

Research Paper

An Introduction to Legal Aspects of Algorithmic Trading in the Stock and Securities Market

Haniyeh Zakerinia[1*✉], Zahra Gholampour[2], Mahmoud Bagheri[3]

1. Corresponding Author: Assistant Professor of Private Law, Faculty of Law and Political Sciences, Shiraz University, Shiraz, Iran. Email: h.zakerinia@shirazu.ac.ir

2. PhD Student, Private Law, Faculty of Law and Political Sciences, Shiraz University, Shiraz, Iran. Email: zahragholampour77@gmail.com

3. Associate Professor of Private Law, Faculty of Law and Political Sciences, University of Tehran, Tehran, Iran. Email: mahbagheri@ut.ac.ir

Abstract

The term algorithm in various disciplines has its roots in algebra which is one important part of mathematics. Algebra in the course of time has contributed to many developments and achievements in various disciplines such as economics, informatics science, and computer science; and through this process, algorithm transactions have emerged. With the widespread use of artificial intelligence algorithms in various aspects of human life, individuals' transactions in various markets have also taken on a fresh new-look. Nowadays, what is considered as algorithmic transactions in the securities markets has some practical demonstrations. The use of algorithms of artificial intelligence in technical analysis of the market data, the proposal for entering into an optimal transaction with a trader, and then a decision to make a transaction in a specific time and within a specific bid and ask scope which is contemplated by the trader is an example of such innovation. The use of algorithms in market data analysis, identifying appropriate investment opportunities, selecting optimal stock portfolios, placing orders, and formation and execution of contracts, are just a few aspects of the

* **How to Cite:** Zakerinia, Haniyeh; Zahra Gholampour; Mahmoud Bagheri. (2023, Summer) "An Introduction to Legal Aspects of Algorithmic Trading in the Stock and Securities Market)" *Private Law Studies Quarterly*, 53, 2: 185- 204, DOI: https://doi.org/ 10.22059/JLQ.2023.358779.1007766
Manuscript received: 27 January 2023; final revision received: 10 April 2023; accepted: 25 May 2023, published online:16 August 2023

applications of these thoughtful and mysterious brains in the legal trading arena.

Due to the unique features of algorithms in terms of speed, accuracy and intelligence, they have been very effective in the financial efficiency of the market players and have been very popular among retail consumers, institutional investors and issuers of securities. Given the market's compelling need for auxiliary tools, the explosive volume of traders' transaction information, issuers, and publicly traded stocks, algorithmic trading in the capital market has flourished; an area that is not only managed and controlled by the regulations governing private contracts but also by the requirements of the government's regulatory role in these markets. However, despite the above-mentioned advantages, there have been challenges associated with this process. Such challenges include unfilled expectations of the counterparties in the transactions, the ambiguities and vagueness of the decision, and the way the algorithm functions. Also the competitive fractions among the traders and market players, lack of legal, regulatory, and technical transparency in the process of algorithmic transactions, undermining of principles of equity and good faith, and weakness in the protection of the consumers are problems that follow the association of the artificial intelligence in capital markets transactions. The adaptability of trading algorithms to legal rules has raised new questions, each of which opens up new horizons in contract law, competition law, civil liability, etc. In practice, with the expansion of the use of this kind of transaction, legal experts and legislators could have a better mental adjustment and awareness in facing the consequences and corollaries of algorithmic transactions in the securities markets and this readiness and awareness shall ensue many advantages.

This study, while examining the legal dimensions of algorithmic trading in the capital market, addresses economic and legal challenges and strives to pave the way for interested parties in this field with several proposed solutions for future studies. This paper, therefore, through giving a picture of such algorithmic transactions in the securities markets and capital markets seeks to highlight and demonstrate the intersection between law and artificial intelligence with a focus on the legal challenges associated with the capital market. The paper also seeks to attract the attention of the readers and experts in this field to set the necessary guidelines and encourage them to adopt a scientific approach in dealing with such a phenomenon. For this purpose in this paper, we shall first discuss the concepts and species of algorithmic transactions and then by positing the legal challenges associated with such transactions, shall seek to come up with solutions to tackle such legal challenges. The contribution of this work is offering some framework and safe legal infrastructure for the promotion of the use of algorithmic transactions in the securities market.

Keywords: Algorithmic trading, High-Frequency Trading (HFT), Artificial Intelligence, Stock and Securities Market.

Declaration of conflicting interests
The author diclares no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding
The authors received no financial support for the research, authorship, and/or publication of this article.

Private Law Studies Quarterly

Online ISSN: 2588-6622
Volume: 53, Issue:2
Summer 2023

Homepage: https://jlq.ut.ac.ir/

Research Paper

A Reflection on the Relationship between Big Data and Market Power in Platform Markets from the Perspective of the Latest Developments in Competition Law

Ebrahim Rahbari*

Assistant Professor, of International Trade Law & Intellectual Property and Cyberspace Law Department, Faculty of Law, Shahid Beheshti University, Tehran, Iran. Email: e_rahbari@sbu.ac.ir

Abstract

Market power is one of the most important notions and elements in analyzing the competitive practices of

undertakings in markets which means the power of an undertaking to manipulate prices above the competitive level, limit production, and provide services in a significant way, and the ability of taking strategies to restrict and eliminate competition or create barriers to entering into the market.

In parallel with the expansion of platform markets and the prominence of the role of data and AI, the issue of market power in the field of competition law has confronted new challenges. Regarding the characteristics of platform markets, the main question of the current research is to what extent big data can be considered as a source of market power and to how can the new strategies and approaches of competition law in digital markets, evaluate the relationship between big data and market power?

Having analyzed the approaches of the most influential *systems* of competition law in the light of the latest developments, the present paper in descriptive-analytical research method is going to survey different opinions that accept a direct relationship between access to big data and market power, comparing it with assessments that deny it and in the final evaluation process, from an analytical point of view regarding the latest evolution in competition law, appraise the proposed opinions and comments to find out when big data may result in market power and, consequently, the necessary

* **How to Cite:** Rahbari, Ebrahim. (2023 Summer) "A Reflection on the Relationship between Big Data and Market Power in Platform Markets from the Perspective of the Latest Developments in Competition Law" *Private Law Studies Quarterly*, 53, 2: 205 – 228, DOI: https://doi.org/10.22059/JLQ.2023.347799.1007709
Manuscript received: 18 September 2022; final revision received: 25 May 2023; accepted: 25 June 2023, published online:16 August 2023

and related competition law norms should be applied. Examining the subject, this research notes the role of blockchain in adjusting the market power originating from big data and looks into the current approaches of Iranian competition law.

The results of this paper show that in platform markets, the usual norms of competition law cannot overcome the competition challenges of big data effectively. Considering the reasons and considerations raised by the proponents and opponents of the existence of a relationship between big data and market power tips the balance in favor of those who believe that this relationship exists; However, although big data may be regarded as a source of market power, a definitive and direct relationship between them is not conceivable, and a comprehensive analysis of the subject depends on particular condition of the markets and the current and future developments of the platform markets. In addition to paying attention to the characteristics of the relevant platform markets, especially the type of barriers to entering digital markets or network effects, taking into account the exclusive or non-exclusive character of the data, the position, and the ability of undertakings to gather, processing and use them by employing AI, using the outputs in targeted advertising and making profits from big data, the contribution of big data in improving or strengthening the company's market position, their role in facilitating likely anti-competitive practices, especially the abuse of a dominant position, innovation considerations and the need to respect the creative efforts of undertakings in platform competition process is necessary.

Although revolutionary technologies such as blockchain have succeeded in adjusting the market power made by big data and will play a greater role in this field in the future, according to the actual realities of platform markets, they currently do not have a great impact on the competition environment and gatekeeper undertakings are still have excessive control over the data of personal and business users, which has provided them with the opportunity to make obstacles to entry into the market and commit anti-competitive behaviors.

Accordingly, the necessity of competition authorities' control over them by revising some usual norms of competition law is necessary. Considering the new entrance of competition law in Iranian legal systems and the complex competition issues of digital markets, it is obvious that there is more opportunity for big platforms to use big data in forming undue market power and restricting competition for other undertakings.

The approach of the new documents in regulating the subject needs serious comments from different points of view and requires significant revision, adjustment, and expansion; in such a way that guarantees the competitive freedom of gatekeeper platforms that can play an important role by employing big data in providing new or improved services and products, intensifying competition and ensuring the welfare of users, and the need to prevent the abuse of market power, limiting the possibility of committing anti-competitive practices and eliminating small competitors and start-ups, a kind of reasonable balance should be established in the light of attention to the developments of modern competition law.

Keywords: Blockchain, Platform, Competition Law, Big data, Market power.

Declaration of conflicting interests
The author diclares no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding
The authors received no financial support for the research, authorship, and/or publication of this article.

Private Law Studies Quarterly

Online ISSN: 2588-6622
Volume: 53, Issue:2
Summer 2023

Homepage: https://jlq.ut.ac.ir/

Research Paper

Personal Liability of Managers for Corporate Income Tax with a view to Comparative Law

Ahmad Shahniaei*

Assistant Professor of Law, the Institute for Management and Planning Studies (IMPS), Tehran, Iran. Email: A.shahniaei@imps.ac.ir

Abstract

According to Article 198 of the Direct Taxes Act, in commercial companies, company managers, collectively or individually, are jointly and severally responsible to the company for paying the company's income tax that has been final during their management. Based on the principle of the independence of the legal personality of the managers from the company, the debt of the company can only be claimed from the company itself, as a result, claiming the company's tax debt from the managers is against the aforementioned legal principle. On the other hand, according to the principle of personal tax responsibility, tax can only be claimed from the taxpayer, i.e. the company. Article 198 is written in such a way that the joint and several liability of directors is general, absolute, and as a result includes all members of the board of directors, including the signatory directors and others, as well as those who are faulty or not faulty of non-payment of taxes. Since the ruling on the personal responsibility of managers for company tax is against the principles governing corporate law, obligation law, and tax law, as well as restricting the individual rights of board members and the CEO of the company, the legal analysis of this issue in the framework of the concepts and principles of the legal system in related fields can reveal new angles about the basics of managers' responsibility for corporate taxes and appropriate legal policy in this matter. The issue that can be raised is whether the provision of Article 198 of the Act is justified from a legal point of view or not. Is it justifiable to impose personal responsibility on managers for company taxes, based on the principles of tax law, obligation law,

* **How to Cite:** Shahniaei, Ahmad. (2023, Summer) "Personal Liability of Managers for Corporate Income Tax with a view to Comparative Law " *Private Law Studies Quarterly*, 53, 2, 229-251.
DOI: https://doi.org/10.22059/JLQ.2023.347907.1007710
Manuscript received: 11 September 2022; final revision received: 21 January 2023; accepted: 26 May 2023, published online:16 August 2023

corporate law, and other related legal fields? What is the ideal legal system for the legal regulation of managers' responsibility for corporate taxes? The theoretical framework of the research is based on several principles and accepted in related legal fields, including the principle of independence of the legal personality of managers from the company, the principle of individuality of tax, the principle of individuality of responsibility, the principle of the ability to pay taxes, the principle of tax justice, the principle of ease of tax collection, The principle of guaranteeing public rights, the moral principle of responsibility, and other relevant principles, and a balance between these principles are organized. The sources of this research are derived from legal principles and principles in related fields, fundamental principles, and the subject of legal consensus, including justice and individual rights, relevant laws and regulations, as well as relevant and useful findings in comparative law. The research method in this article is comparative and the validation of Article 198 of the Act is analyzed, reasoned, and deduced based on the criteria derived from certain legal principles in related legal fields including tax law, corporate law, public law, and civil liability law. This article tries to prove the hypothesis with legal analysis that the imposition of such responsibility is unjustified and incompatible with the foundations, principles, and integrity of the legal system. Based on the research conducted in this article, the joint and several liability of managers for company tax, which is very strict against managers to facilitate tax collection and deal with any possibility of tax abuse, regardless of the manager's role, authority, and ability to not pay tax .The imposed tax is contrary to the desired legal and tax system and is a clear violation of individual rights and the extensive and unjustified use of public law tools. The main objection is that Article 198 sacrifices the role of fairness, justice, individual rights and freedoms, the moral aspects of the legal system, and the integrity of the legal system without providing the necessary justifications and bases for the expediency of providing tax revenue for the government. From the point of view of this research, the ideal legal system for defining the responsibility of managers for corporate taxes is the civil liability system, which uses legal and acceptable elements and takes into account effective factors such as the manager's obligation to pay the company tax, the manager's fault in paying the tax, The role and authority of the manager in paying taxes, the presence or absence of sufficient resources in the company to pay taxes and other responsibility factors, to establish a fair and efficient system.

Keywords: Absolute Liability of the Manager, Principle of the Independence of the Legal Personality of the Company, Tax Justice, Joint Liability for Company Tax, Fault of the manager, Article 198 of the Direct Taxes Act.

Declaration of conflicting interests
The author diclares no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding
The authors received no financial support for the research, authorship, and/or publication of this article.

Private Law Studies Quarterly
Online ISSN: 2588-6622
Volume: 53, Issue:2
Homepage: https://jlq.ut.ac.ir/
Summer 2023

Research Paper

Counter Claims in Investor-State Treaty-based Arbitration

Majid Ghamami [1✉*], **Amin Arzhangi** [2]

1. Corresponding Author: Associate Professor of Law, Private & Islamic Law Department, University of Tehran, Tehran, Iran. Email: mghamami@ut.ac.ir
2. PhD Candidate in International Trade and Investment Law, Faculty of Law and Political Sciences, University of Tehran, Iran. Email: amin.arzhangi@ut.ac.ir

Abstract

Counterclaims are very rare in treaty arbitration. According to UNCTAD, there have been over 800 treaty-based investor-state arbitrations to date, but unlike commercial arbitration and litigation, where a respondent is usually entitled to raise a counterclaim, the issue of counterclaims in treaty-based investment arbitration is problematic, or at least challenging, for arbitrators. Host State counterclaims in investment treaty arbitration are rarely raised and never successful, to the extent that one commentator has described their use as "thirty years of failure". This is mainly due to the nature of treaty arbitration, which operates as a triangular system where home and host States enter into an IIA, and investor benefits from the provisions of that IIA. This system often leads to an asymmetry of procedural rights, where only an investor can sue a host state, but not vice versa. This asymmetry in turn often leads to the deprivation of the right to bring counterclaims against investors. Nevertheless, counterclaims have an important role to play in treaty arbitration.

While state counterclaims are permitted in principle under the ICSID Convention and the UNCITRAL Arbitration Rules, meeting the jurisdictional and admissibility requirements has proved more complex. This paper examines several key treaty provisions to identify those treaties that are more or less likely to extend a tribunal's jurisdiction “ratione materiae” over state counterclaims. The paper then examines the requisite connection that must exist between a counterclaim and the principal claim. A survey of international jurisprudence supports the paper's conclusion that recent treaty tribunal decisions have taken an unjustifiably narrow and often inconsistent

* **How to Cite:** Ghamami, Majid; Amin Arzhangi . (2023, Summer) “Counter Claims in Investor-State Treaty-based Arbitration)” *Private Law Studies Quarterly*, 53, 2: 253- 273, DOI: https://doi.org/10.22059/JLQ.2023.298707.1007347
Manuscript received: 1 June 2021; final revision received: 28 February 2023; accepted: 21 June 2023, published online:16 August 2023

approach to the requisite connection, to the extent that it may be virtually impossible for states to assert counterclaims under the current formulation. This paper proposes an alternative approach.

This research examines the obstacles host states face in asserting counterclaims in investment treaty arbitration and critiques the reasoning of tribunals that have refused to hear state counterclaims. To this end, the paper proceeds in three substantive parts: it defines counterclaims, explains the overarching purpose of international investment law and arbitration, and promotes the potential value that a more permissive approach to host-state counterclaims could bring to the international investment regime. The paper agrees that investment tribunals should undertake the factual and legal assessment of the requisite nexus. However, in contrast to current practice, this paper recommends that legal nexus should be satisfied if a counterclaim relates to the same investment as the main claim, rather than insisting on symmetry in the legal instruments underlying the claims. This approach is likely to be more consistent with the jurisdiction of the tribunal as reflected in the relevant bilateral investment treaty. Crucially, this alternative approach also leaves open the possibility for state counterclaims to be based on the general domestic law of the host state.

A greater role for host state counterclaims in investment treaty arbitration has the potential to save host states and foreign investors the time and expense of protracted battles in different fora over related disputes. Even in the same form, giving both parties the means to go on the offensive, rather than reserving this right to investors, may make states more willing to arbitrate and deter foreign investors from bringing weak claims. Despite these advantages, host state counterclaims are rarely brought and never successful. The first barrier is jurisdiction. Investment treaties make a standing offer to foreign investors which, once accepted, results in an arbitration agreement. This agreement determines the jurisdiction of the tribunal. The definition of the scope of disputes that the parties have agreed to submit to arbitration is of paramount importance. It will be easier for host states to assert counterclaims if the tribunal's jurisdiction is broad "ratione materiae", whether it is general, referring to "all disputes", or delineates several legal sources, such as authorizations and agreements. resolution clauses may limit the scope of the dispute to host state obligations or to the exclusive application of international law and/or the BIT. Other subsidiary provisions of the BIT may also help to limit the scope of the dispute. It will be easier for host states to assert counterclaims if they have locus standi or if the treaty explicitly directs the tribunal to apply the host state's general domestic law - but neither is determinative.

The second obstacle is the requisite connection. A survey of international jurisprudence shows a general tendency to treat the requisite connection as a matter of both fact and law. The ICJ has adopted a flexible approach to the issue, treating both fact and law as relevant but neither as determinative. The Iran/US Claims Tribunal and treaty-based arbitral tribunals have taken a stricter approach, insisting on the symmetry of the legal instruments underlying the counterclaim and the claim. While a strict approach to legal symmetry may make sense in a commercial context, it does not apply to

treaty-based arbitration because host states cannot assert counterclaims under the BIT. Nothing in the BIT test suggests that such a strict requirement is necessary. Moreover, tribunal practice suggests that counterclaims based on domestic law are prima facie inadmissible. The conclusion is that it would be virtually impossible for States to assert a counterclaim under the current formulation of the requisite connection test.

Practice shows that counterclaims are in principle admissible in contract arbitration. However, their admissibility depends on certain factors:

(1) the counterclaims must fall under the consent of the disputing parties (state and investor); and

(2) they must be (closely) related to the main claim.

Keywords: Counterclaim, Treaty-based Arbitration, treaty breach, host state, ICSID

Declaration of conflicting interests
The author diclares no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding
The authors received no financial support for the research, authorship, and/or publication of this article.

Private Law Studies Quarterly

Online ISSN: 2588-6622
Volume: 53, Issue:2
Summer 2023

Homepage: https://jlq.ut.ac.ir/

Research Paper

The Assignment of Debts in Action

Mahmoud Kazemi [1] ✉ * , **Ali Zarei** [2]

1. Corresponding Author: Associate Professor, Department of Private Law, University of Tehran, Tehran, Iran. Email: makazemy@ut.ac.ir

2. PhD Student in Private Law, Faculty of Law & Political Sciences, University of Tehran, Tehran, Iran. Email: ali_zarei@ut.ac.ir

Abstract

As defined by the existing positive law, it is clear that debt is a property that can be transferred and traded similar to other forms of corporeal property, but because it is a constructive existence and is subject to contingent liquidation, the economic value of these debts is greatly determined by this. A lower liquidity contingency of the debt will result in a lower economic value. In some circumstances, it may be more difficult to liquidate a debt, and the likelihood of its collection is reduced. There can be several reasons for this condition, including the quality and characteristics of the debt, such as conditional debt, contingent debt, or future debt, as well as the situation of the debtor, such as insolvency or bankruptcy. In addition, there may be a dispute between the creditor and the debtor regarding the existence of the debt or its characteristics. This type of debt is referred to as a debt in action. In this case, the creditor cannot expect that the debt will be liquidated in a manner that is consistent with his desire, because the debtor, through whom the debt must be collected, unlike the creditor, denies the existence of the debt in its origin or some of its characteristics. In the event of a dispute between the creditor and the debtor, which may be caused by a difference in the existence and amount of the debt, or by a difference in its characteristics and function, it is less likely that the debt will be liquidated in the manner the creditor anticipates. When debt is assigned, the assignor does not guarantee the payment of the debt, but in any event, the existence of the debt

* **How to Cite:** Kazemi, Mahmoud; Ali Zarei. (2023, Summer) "The Assignment of Debts in Action)" *Private Law Studies Quarterly*, 53, 2: 275 – 299.
DOI: https://doi.org/10.22059/JLQ.2023.362336.1007787
Manuscript received: 3 November 2022; final revision received: 27 January 2023; accepted: 24 April 2023, published online:16 August 2023

is required. Thus, as with other contracts, a pillar of the validity of an assignment of debt is the existence of the transferred debt at the time of the assignment. It is, therefore, necessary to examine whether or not a debt in action that is disputed, whose existence is doubtful, can be transferred, and, if so, what are its effects and consequences?

In Roman law, the assignment of debt in action was prohibited in the early periods due to the fear of speculation, but in later times, due to the benefits that were envisioned for such a transaction, it was permitted. As part of the effort to prevent speculation and safeguard the rights of the debtor, this right was provided for the debtor to pay the consideration of the assignment to the assignee, that is the amount that the assignee paid to the assignor to settle the dispute and acquire ownership of the debt. The countries that followed the Roman legal system in the later periods, such as France, accepted the assignment of the debts in action. Despite some hesitation in Iranian law and Islamic jurisprudence in this regard, the validity of this type of assignment of debt should be accepted by general contractual rules. The validity of this contract may be questioned initially due to the uncertainty, the lack of knowledge about the object of the contract, and the inability to deliver the object, however, by examining each of these objections, it can be demonstrated that these objections are irrelevant. Accordingly, the assignment of debts in action should be regarded as valid under Iranian law and Islamic jurisprudence. Due to the special nature of this type of debt, there are certain consequences associated with it. Unless otherwise agreed, the implied intent of the parties should be interpreted as a waiver of the warranty of title. As a result, the assignee may not be entitled to restitution of the consideration that has been paid to the assignor if, after the assignment of debt, the assignee claims against the debtor for recovery of the debt and it becomes evident that the debt did not exist when the assignment contract was concluded. Moreover, it is important to note that, since the fact that the debt is disputed is considered a defect of said debt, and also, since every contract of assignment of debt contains an implicit condition that the debt to be transferred is not denied by the debtor at the time of conclusion of the contract, the agreement may be terminated if the assignee is unaware of the dispute.

Keywords: Debts, Assignment of debts, Debts in action, Legal successor, Transfer of claim.

Declaration of conflicting interests

The author diclares no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding
The authors received no financial support for the research, authorship, and/or publication of this article.

Private Law Studies Quarterly

Online ISSN: 2588-6622
Volume: 53, Issue:2
Summer 2023

Homepage: https://jlq.ut.ac.ir/

Research Paper

Jurisdiction of Higher Authorities of Religious Minorities (Criticism of Article 4 Family Protection Act)

Hossein Kaviar[1] * ✉, Mehdi Amini [2]

1.Corresponding Author: Assistant Professor of Law, Faculty of Administrative Sciences and Economics, Arak University, Arak, Iran. Email: h-kaviar@araku.ac.ir

2. Assistant Professor of Law, Faculty of Literature and Humanities, Shahrekord University, Shahrekord, Iran. Email: mehdi.amini@sku.ac.ir

Abstract

One of the innovations of the Family Protection Act adopted in 2012 is the identification of the competence of supreme religious authorities in family and personal status disputes for religious minority communities. Before this act, the judiciary addressed family and personal status disputes of religious minority groups, and there was no specific, independent authority for this purpose. By specifying the "supreme authorities of religious minorities" for addressing Hisbah and personal status disputes, Article 4 of the Family Protection Act created an innovation in the Iranian legal system; however, it raised numerous ambiguities and questions.

This article seeks to answer the following questions: Was Article 4 of the Family Protection Act intended to negate the competence of family courts? Is it an obligation or an option (a choice) for religious minority communities to refer to the supreme religious authorities? What is the duty of family courts in handling family and personal status disputes of religious minority groups? Should all decisions/votes made by the supreme religious authorities of religious minority communities be approved by the courts regardless of their content, or is there an issue of judicial oversight? In cases of public order concerns, how should they be interpreted, and can an individual file a complaint with the official judiciary if being dissatisfied with the ruling? Can they be deprived of this right?

* **How to Cite:** Kaviar, Hossein; Mehdi Amini. (2023, Summer) "Jurisdiction of Higher Authorities of Religious Minorities (Criticism of Article 4 Family Protection Act)" *Private Law Studies Quarterly*, 53, 2: 301 – 322, DOI: https://doi.org/10.22059/JLQ.2023.353991.1007744

Manuscript received: 14 March 2023; final revision received: 13 April 2023; accepted: 30 May 2023, published online: 16 August 2023

According to the results of the present paper, Article 4 of the Family Protection Act does not negate the competence of family courts, and the supreme religious authorities of minority communities have concurrent jurisdiction with family courts to handle family and personal status disputes. However, the lack of a specific and predictable legal procedure may jeopardize the protection of the civil rights of religious minority communities, particularly women and children. In the implementation of Article 4 of the act, to achieve judicial independence for the People of the Book, a precise, well-considered, and balanced legal procedure specific to religious minority communities should be established to ensure that the legitimate interests of families within these minority communities are protected. Another solution may involve reverting to the previous system, where exclusive jurisdiction over family matters is vested in family courts, with the consent and input of the supreme religious authorities of religious minorities concerning religious issues.

Considering the discussed challenges and ambiguities, it appears that the innovation introduced by Article 4 of the Family Protection Act may jeopardize principles of fair procedural justice in sensitive matters like Hisbah and personal status affairs. One potential solution could involve reverting to the previous system and restricting the authority of supreme religious authorities of religious minority communities to just providing religious opinions on religious matters, similar to what exists for religious minority groups. As a minimum solution for better procedural justice for religious minorities, these communities are suggested to have the choice to refer their disputes to the courts or the supreme religious authorities. These authorities are suggested to adhere to the procedural rules of the relevant court. In cases of non-compliance of the supreme authorities with these rules, in their enforcement role, the courts are recommended to act more strictly to ensure procedural equality between the parties.

Keywords: High Authorities of Religious Minorities, Civil Court, Family Court, Parallel Jurisdiction, Exclusive Jurisdiction.

Declaration of conflicting interests
The author diclares no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding
The authors received no financial support for the research, authorship, and/or publication of this article.

Private Law Studies Quarterly

Online ISSN: 2588-6622
Volume: 53, Issue:2
Summer 2023

Homepage: https://jlq.ut.ac.ir/

Research Paper

Hidden Imposed Conditions in Iran's Consumer Law and the Latest Legislative Developments in French Law; Examples and Rulings

Abbas Karimi [1]✉ *, **Ali Kazemi**[2]

1. Corresponding Author, Professor of the Department of Private and Islamic Law, Faculty of Law and Political Science, University of Tehran , Tehran, Iran. Email: abkarimi@ut.ac.ir
2. PhD in Private Law, from the Alborz Campus, University of Tehran, Tehran, Iran. Email: kazemiali@ut.ac.ir

Abstract

Today, the attractiveness of contracts regarding consumer rights is related to their formal aspect. The rules and regulations regarding consumer rights in France have grown in the shadow of two important laws: the old civil law approved in 1804 and the new one approved in 2016. Commercial law and its regulations are constantly evolving. At first, consumer law regulations were only considered as a supplementary source of contract law (Rzepecki, 2015: resume) and gradually its rules became original to the extent that in some cases it became a source of inspiration for other fields (Julien, 2019: Résumé). As will be seen in Iranian law, there are laws such as the Car Consumer Protection Law approved on 1386/23/3 ,the Consumer Protection Law approved on 8/2/1388, the Electronic Commerce Law approved on 10/17/1382, the Building Presale Law approved on 12 /10/1389 ,the country's trade union law approved on 12/24/1382, the country's monetary and banking law approved in 1351 with subsequent amendments, the usury-free banking operation law approved in 1362, the government punishments law approved in 1367 with subsequent amendments. They are considered a turning point in the history of consumer rights in Iran. In the reliminarynegotiations, the consumer was very weak in front of the contractual party,and this caused the stronger party to take the initiative in determining the rights and obligations of the parties, and the text of the

* **How to Cite:** Karimi, Abbas; Ali Kazemi. (2023, Summer)" Hidden imposed conditions in Iran's consumer law and the latest legislative developments in French law; Examples and rulings "*Private Law Studies Quarterly*, 53:2, 323 – 347,

DOI: https://doi.org/10.22059/JLQ.2023.344660.1007687
Manuscript received: 16 November 2022 ; final revision received: 19 December 2022; accepted: 13 April 2023, published online:16 August 2023

predetermined contract containing its desired terms in front of they used to be consumers and behaved like lions and rabbits towards their weak side and drew the line of justice) Kirimi, 2016: 76). Previous articles and researches have focused on the analysis and review of the content of clearly imposed terms to ensure equality between the rights and obligations of the parties and emphasize the need for judges and legislators to intervene in ordinary laws and the constitution to create a contractual balance through the annulment of imposed terms. There is a research gap regarding the secret imposed conditions (Sardoui Nesab and Kazempour, 2013: 75 p. 37; Taghizadeh, 2014: 10 p. 9; Amini, Mansour; 2011, p .59 ;Asadi, Passapour, Badini; 2017: 23; Nabizadeh Kabria; 1399: 18; Isaei Tafarshi, Ayin Alireza; 1396: 4; Elahian; 1392: 1). The research question is what is the meaning of hidden imposed conditions and what are their examples in Iran's consumer law and what is the ruling of the legislator regarding this category of conditions? The new approach to the freedom of contracts in consumer law to fight against the content of the imposed contract prompted professionals to change their position and turn to the formal aspects of the contract in such a way that today the appeal of consumer law is flexible to the formal aspect of the contract. In French consumer law, a list of black-and-gray conditions was compiled in 11 cases. In Iran, hidden imposed terms were identified in 6 cases in two ways: inclusion in the text of the contract, such as illegible, small, ambiguous terms, and inclusion outside the text of the contract, such as terms inside the packaging of goods and software products, in the middle and margin of the contract. In France, Article 1171 of the Civil Code approved in 2016, has declared the sentence of imposed conditions to be considered unwritten "as having the effect of invalidity, and at the same stage of the legislation, it specified their sentence and has the advantage of avoiding the high involvement of judges in the form and content of the" contract and as a result, the difference of opinion of the trial courts has been prevented. Considering the emphasis of the present research on the formal aspect of imposed conditions, as explained in the conclusion section of the article a proposal was made to amend Iran’s, Consumer Protection Law.

Keywords: Hidden terms ,Consumer, Professional, Considered unwritten, Illegible condition, Small condition, Condition in the middle of the contract, Condition on the edge of the contract, Condition inside the package.

Declaration of conflicting interests
The authors declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding
The authors received no financial support for the research, authorship, and/or publication of this article.

Private Law Studies Quarterly

Online ISSN: 2588-6622
Volume: 53, Issue:2
Summer 2023

Homepage: https://jlq.ut.ac.ir/

Research Paper

Introducing Digital Identity in Metaverse, Identifying Related Legal Challenges and Solutions*

Mahdieh Latifzadeh[1], Sayyed Mohammad Mahdi Qabuli Dorafshan[2] **✉

1. PhD Graduated in Private Law, Faculty of Law and Political Science, Ferdowsi University of Mashhad, Mashhad, Iran.
Email: m.latifzadeh@mail.um.ac.ir

2. Corresponding Author: Associate Professor, Department of Private Law, Faculty of Law and Political Science, Ferdowsi University of Mashhad, Mashhad, Iran. Email: ghaboli@um.ac.ir

Abstract

Metaverse is a Three-dimensional (3D) virtual framework where users can communicate with each other and engage in various activities. Despite the advantages that have led to the development of Metaverse, this environment also has many legal challenges. Along with new opportunities, this virtual world has caused different legal problems. Among these problems are issues related to preserving the integrity of the physical and spiritual personality of people, as well as how to protect intellectual property rights and even material property rights of people. Regardless of the challenges, one of the most important concerns for users who are active in this virtual world is how to protect their digital identity and personal data in the metaverse. Explaining that people in the metaverse are in the form of avatars; Avatars are a representation of a person's personality in the metaverse and allow users to recreate not only their physical appearance but also their movements and behaviors. The use of avatars has created various challenges. One of the most important challenges is how to protect information privacy, specifically protecting personal data in the Metaverse, as well as the possibility of giving

* This article is supported by the National Elites Foundation.

** **How to Cite:** Latifzadeh, Mahdieh; Sayyed Mohammad Mahdi Qabuli Dorafshan. (2023, Summer) "Introducing Digital Identity in Metaverse, Identifying Related Legal Challenges and Solutions" *Private Law Studies Quarterly*, 53, 2: 349 – 372, DOI: https://doi.org/10.22059/JLQ.2023.353867.1007743
Manuscript received: 14 January 2023; final revision received: 6 June 2023; accepted: 28 June 2023, published online:16 August 2023

avatars personality. The stated issues are the main questions that this research has answered with a descriptive-analytical approach and the use of comparative studies.

Now there is no specific law for metaverse. Therefore, it is difficult to control this virtual world and the flow of legal protections for it, even though many people are related to Metaverse for various reasons and the lack of a legal framework is inappropriate and even dangerous. According to the above, the solution is to use related legal frameworks in the effective legal systems regarding Metaverse as well as the Iranian legal system. In other words, some provisions of related laws and regulations in the EU legal system can be used as an effective legal system for this issue. The European Digital Identity Regulation, as well as the legal related to artificial intelligence in this legal system, are among these matters. In addition, it is appropriate to pay attention to the legal frameworks related to the protection of personal data in each of the legal systems due to the connection between digital identity and personal data. In this regard, it is possible to use the European General Data Protection Regulation and the proposed documents related to personal data in Iranian law. Considering that one of the most important aspects of protection based on the previous frameworks is the existence of various obligations for controllers and processors and numerous rights for data subjects; It seems that the use of these obligations and rights in Metaverse will lead to legal protections in this environment.

blockchain technology can also be used to control the metaverse. Blockchain is a safe and widely used technology that is significant in various fields. Regarding the current discussion, blockchain can be used as a platform for realizing legal protection in the metaverse and monitoring it. Each of the different types of blockchain - mentioned in this research - controls the metaverse in a way and specifically protects personal data and identities in this environment. According to the results of this research, it seems that the use of private blockchains is more suitable due to the better implementation of laws and regulations on it, as well as the ability of legal institutions to monitor it. Of course, the use of this technology has also been evaluated in some legal systems, including the European Union, while this has not been achieved in Iranian law. For this reason, the Iranian legislator should - with the help of people who are experts in this technology - determine the legal opinion regarding which of the types of blockchain is more suitable for realizing comprehensive protection for digital identities in the metaverse.

Keywords: Blockchain, Data Protection, Metaverse, Digital Identity, Self-Sovereign Identity.

Declaration of conflicting interests
The author diclares no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding
The authors received no financial support for the research, authorship, and/or publication of this article.