

Ranking and analysis administrative barriers of labor rights from the employers point of view by parametrical analysis and the TOPSIS method

Gholam Reza Bordbar¹

Assistance Professor, University of Yazd, Iran

Mehdi Mirjalili^{2*}

MS, Industrial Management, Yazd Art and Science University, Iran

Ashkan Dehghan³

MS, Industrial Management, Yazd Art and Science University, Iran

Received: 2013/11/10-Accepted: 2014/8/3

Abstract

Among ILO, adopted and communicated several types of document which include conventions, recommendations, resolutions and statements etc., convention has a special place because the members states accept duties and obligations. Among these conventions, those conventions that are related to the fundamental rights of labor had special importance and prestige. Member countries of the Organization like Iran are required to implement the relevant commitments. This study aimed to analyze administrative obstacles of the Fundamental Principles and Rights at Work by getting weight to problems and ranking them. The result of study shows that prohibition of child labor is more important than other aspects of Fundamental Principles and Rights at Work. In aspect of child labor, the most important obstacle was "red tape". In others categories the result was as follow: in lack of collective bargaining, the most important obstacle was made emotional decisions; in forced labor, the most important obstacle was distrust of other workers; in gender discrimination, the most important obstacle was working environment; in people inequality, the most important obstacle was subjective judgments manager.

Keywords: convention, discrimination, employer, fundamental principles and rights at work, TOPSIS technique.

1. gbordbar@yazduni.ac.ir

2. Corresponding Author: mir_mahdi67@yahoo.com Fax: +98 21 44466506

3. ashkanedehghan@yahoo.com

The civil liability's basis of genetically modified foods (transgenic); Comparative study in Iran's law and international instruments

Saieed Bigdeli¹

Assistant Professor, Law Group, Faculty of Humanities, University of Zanzan, Zanzan, Iran

Amin Badiesanaye Esfahani^{2*}

PhD. Candidate, Private Law, Law and Political Sciences Faculty, Allameh Tabatabayi University, Tehran, Iran

Received: 2014/1/27-Accepted: 2014/7/9

Abstract

Producing genetically modified foods is one of the key roles in addressing the increasing needs for foods. The development and increasing use of GMfoods, despite its benefits and advantages, causes its own problems and challenges, as well. The exclusive characteristic of these types of products and the human and environment-related effects have made discussion over this issue twice as significant. Among many legal challenges lies the problem of how to determine civil liability's basis of these products bringing about controversies throughout international instruments and legal systems. Available international instruments regarding this issue include The Cartagena Protocol on Bio-safety, which Iran officially joint it in 2003. In addition, Nagoya-Kualalumpur Supplementary Protocol has been enacted on liability and redress of these products. In this paper, in view of the fact that domestic rules have not stipulated anything regarding this issue, it's been tried to determine the status of the mentioned issue in international instruments as well as obtaining an appropriate basis conforming to Iran's law. By considering international instruments and different viewpoints in Iran's law, strict liability seems to be fitting and complying with both Iran's law and international instruments.

Keywords: Cartagena Protocol on Bio-safety, genetically modified foods, liability's basis, Nagoya-Kualalumpur Supplementary Protocol.

1. bigdeli@znu.ac.ir

2. Corresponding Author: badiee129@gmail.com

Fax: +98 21 84083429

Distinction between properties of public entities in French Law

Mohammad Jalali^{1*}

*Assistant Professor, Faculty of Law, Shahid Beheshti University,
Tehran, Iran*

Hamed Karami²

PhD Candidate, Public Law, University of Tehran, Tehran, Iran

Received: 2014/12/11-Accepted: 2015/1/1

Abstract

In the French Law, the properties of public entities and at the head of them, the properties of state are divided into public domain of public entities and private domain of public entities. The criterion of distinguishing of public properties of public entities is a procedural matter that has been taken from French Doctrine, however the recent law of public entities ownership passed in 2006 has arrived these criteria in the legal texts. There principles of public ownership, and use and preparation enter a property into public properties of public entities. The state is in the top position in these properties, so the governing rules of them are administrative and their competent courts are administrative courts. But, in the case of private domain of public entities, the administration is equal with ordinary persons; therefore, the rules of private law and judicial courts govern it.

Keywords: French Law, public domain, private domain, public person, public power, public services.

1. Corresponding Author: mdjalali@gmail.com

Fax: +98 21 29903047

2. Hamed.karami@ut.ac.ir

Investigating the process of property acquisition in intellectual property

Saeed Habiba^{1*}

Associate Professor, Private and Islamic Law Department, University of Tehran, Tehran, Iran

Majid Hoseinzadeh²

PhD Candidate in Private Law, University of Tehran, Tehran, Iran

Received: 2013/5/22-Accepted: 2014/11/17

Abstract

Right of private property is the most important individual rights of society in the heart of private law. In Islamic law protection of property as one of the five goals of *fighhe*, that is, protection of sagacity, religion, generation and self, is to be stipulated. Based on article 140 of civil code, the process of property acquisition is restricted to four cases. On the other hand, legislator has limited the causes of property acquisition to four cases and prohibited any other acquisition out of these causes. The purpose of present article is investigating the process of property acquisition of intellectual works in the light of article 140 of civil code. However, at first, the value of intellectual works will be analyzed since it is the introduction of property acquisition of intellectual works and the quality of private property acquisition of intellectual works to its creator will be separately investigated afterward.

Keywords: acquisition of unclaimed properties, cause of property acquisition, intellectual properties, property acquisition, value of intellectual works.

1. Corresponding Author: habiba@ut.ac.ir

2. Hoseinzadeh_sut@ut.ac.ir

Fax: +98 21 66497912

Political power; Comparative study of Islamic and Liberal thought

Tavakkol Habibzadeh ^{1*}

Assistant Professor, Emam Sadegh University, Iran

Ali Fattahi Zafarghandi ²

MS Student, Public law, University of Tehran, Iran

Received: 2014/5 /4-Accepted: 2014/7 /5

Abstract

Political power is considered as one of the most fundamental Public law Vocabulary, as far as the separation of political power and public law seems impossible. Meanwhile it seems that this concept as the fundamental concept of public law, varies in Islamic and Liberal thought and there is a serious conflict between them. Analysis of this claim requires a proper understanding of the concept of political power and its components in each Islamic and Liberal government. That is why this article first explores the notion of the power in its word, terms and common literature of public law with liberal recitation and then studies position and concept of political power in Religious Literature based on the thoughts of Imam Khomeini (RA) and at the end review the concept of Velayat as an original configuration and corresponding concept of political power in Islamic government. Finally, it seems concepts of political power and Velayat or its similar Islamic concept substantively have significant differences because political power rooted in Transcendence and arrogance of rulers, while the Velayat is an instrument for realization of divine sovereignty via rejoining people`s hearts with rulers. Therefore, based on distinction between the concept and looking at the most fundamental concept of public law in these two ideas, besides the difference in probability and amount of corruption due to power of Velayat, legal appropriate structures in order to adjust the range and their applied method with vary with each other.

Keywords: Imam Khomeini (RA), Islamic government, Liberal government, political power, Velayat

1. Corresponding Author: habibzadeh@asu.ac.ir

Fax: +98 21 88082414

2. a.fattahi.zafarghandi@gmail.com

Independence of non-governmental organizations in the legal system of Iran, France V Swiss

Masoud Raei^{1*}

Assistant Professor, Law Department of Najaf Abad Azad University, Isfahan, Iran

Faramarz Atrian²

PhD., Public Law and University Instructor, Iran

Received: 2014/6/24-Accepted: 2014/8/10

Abstract

Formation of non-governmental organizations is in order to realize the Citizenship Rights and to support the legitimate demands of their and in line with the needs of human societies. Realization this goal has several conditions that among the most important is to maintain the independence of these organizations. How to establish, supervision and dissolution of the organizations and the degree of government interference in each of these stages can be indicative of the extent of independence of civil society. In relation to the discipline of non-governmental organizations, three regimes of Preventive of prior authorization, Preventive of prior notification and Repressive is conceivable that Iran, France and Swiss have chosen each one of them respectively. The purpose of this comparative study is that independence NGOs in which of the three systems are more.

Keywords: France, government, independence, Iran, non-governmental organizations, Swiss.

1. Corresponding Author: masoudraei@yahoo.com Fax: +98 31 32665881

2. Atrian.f.1001@gmail.com

Analysis of the nature of aleatory contract in Iran and Egypt law; A comparative study

Habibollah Rahimi ^{1*}

*Assistant Professor, Faculty of Law, Allame Tabatabaei
University, Tehran, Iran*

Khosro Mahmoudzade ²

*Master of Civil Law, Faculty of Law, Allame Tabatabaei University,
Tehran, Iran*

Received: 2014/1/23-Accepted: 2014/10/14

Abstract

Aleatory contract has not been codified in Iran's regulations. Whereas Egypt's regulations not only generally compromise aleatory contract, but also give prominent examples for it. In aleatory contracts considerations are not determined, because, here, determination of a consideration is based on some factors which will be fulfilled in the future. The effect of this contract shall be established at the time of conclusion of contract. So, this contract is absolutely distinguished from the suspended contract. Risk is not effective to this contract. So, aleatory contract is basically distinguished from risk contract as well. Ultimately, aleatory contract has different concepts in comparison with deferred contract and conditional contract. With dependence on profiteering intentions of parties, this contract has deceptive characteristics. With respect to dependence of contract's effect on tense factor, it has continuous characteristic inhere. Also, this contract is one of obligatory contracts which has non-simultaneous obligations. Unexceptional characteristic is another characteristic of these contracts.

Keywords: aleatory contract, being continuous, deceptive, ineffective risk, suspended contract.

1. Corresponding Author: Rahimi@atu.ac.ir

Fax: +98 21 22096865

2. babaklegally@gmail.com

Battle of the forms and its effects in contract formation; A comparative study

Ebrahim Shoarian ^{1*}

Associate Professor, Law Department, Faculty of Law and Social Sciences, University of Tabriz, Tabriz, Iran

Roya Shirin Beigpour ²

Ms. in Privte Law, University of Tabriz, Tabriz, Iran

Received: 2013/7/17-Accepted: 2014/6/6

Abstract

Nowadays, in commercial contracts, parties communicate with together using standard forms. Both the party's standards forms usually contain a description of the subject-matter, the price, the quantity and the delivery terms. Such a situation is called the Battle of Forms. In such a case some questions are raised. Does the exchange of the conflicting forms create a contract? If so, what are the contract terms? Does performance form the contract? If so, what are the contract terms? Some legal systems and international instruments contain solutions for the battle of forms, but in the absence of specific provisions the problem is usually resolved by the general principles on formation of contracts. In this article we examine some important legal systems point of view and then we express the position of international instruments including CISG, UPICC, PECL and DCFR in this regard.

Keywords: first shot rule, formation of contract, international instruments, last shot rule, knock out rule.

1. Corresponding Author: e_shoarian@tabrizu.ac.ir. Fax: +98 411 3341232

2. r.beigpour@yahoo.com

Reasons and procedures of worker's dismissal in ILO's standards and domestic labour law; Comparative study

Azadeh Sadat Taheri *

Assistant Professor, Department of Law, Faculty of Human

Received: 2013/12/18-Accepted: 2014/5/31

Abstract

The right to work is undoubtedly considered as one of the most important human rights imposing obvious obligations on the states to ensure it. Through those obligations, providing protection of the worker's security of employment plays a special role. So, it has been in the heart of ILO's consideration and regulation for a long period. To this end, based on ILO's standards, employment termination can be justified only because of a valid reason while an appropriate procedure is necessary, too. Present article reviews justified and unjustified termination of employment and its procedure in the basic instruments and reports of ILO and will compare them with Iran's legal system.

Keywords: employment security, International Labour Organisation, justified dismissal, right to work, unjustified dismissal.

* azadetaheri@semnan.ac.ir

Fax: +98 233 3654083

Abstractive description of land registration system based on the theory of public confidence

Nasrin Tabatabai Hesari *

PhD., Private Law, University of Tehran, Tehran, Iran

Received: 2013/7/28-Accepted: 2013/12/31

Abstract

The system of land registration is protective formalism that is formed based on the theory of public confidence. This theory presumes that what reflected by the land registration offices is based on the legal fact. This theory, which provides legal stability and security in transactions, is manifested in three guiding principles including mirror principle, curtain principle and insurance principle; and offers an abstractive description to a land registration system. This character has different effects on diverse legal systems and can be studied for both positive and negative systems.

Keywords: abstractive description of registration, curtain and insurance principles, mirror, theory of public confidence.

* Nasrintabatabai@hotmail.com

Fax: +98 21 66566860

Legal nature of factoring financing agreement; Comparative study of American, England, French and Iranian law

Gholamnabi Fayzi Chekab^{1*}

Assistant Professor, Law, Allameh Tabatabaee University, Tehran, Iran

Ali Darzi²

MS., Art, International Trade Law, Allameh Tabatabaee University, Tehran, Iran

Received: 2013/8/19-Accepted: 2013/12/10

Abstract

In the context of international trade factoring, one of the important ways of financing is a dominant method of asset based financing for small and medium enterprises. Financing through factoring is done in the form of a contract between the creditor and factor. Determining the legal nature of this contract is important to identify and determine its effects. With this regard, this paper studied comparatively the legal nature of factoring financing in the national laws of developed countries and Iran's legal system. Most countries, except France, use contractual form of assignment of debt for Legal justification of factoring financing. As the basis of factoring financing based on transfer of debt, in the domestic level Iran similar to others countries like itself, has no specific rules and can also use contractual frame works in which the transfer of debt is possible.

Keywords: factoring, finance, international trade, private contract, sale of debt.

1. Corresponding Author: legalfayz@gmail.com

Fax: +98 21 22098315

2. a.darzi@yahoo.com

Disclosure of classified information by Wikileaks: A new conflict between the right of access to information and national security

Abbasali Kadkhodae^{1*}

Associate Professor, Public Law, Faculty of Law and Political Sciences, University of Tehran, Tehran, Iran

Hiwa Hajimolla²

MA., International Law, Faculty of Law and Political Sciences, University of Tehran, Tehran, Iran

Received: 2014/6/10-Accepted: 2014/7/4

Abstract

Disclosure of classified public interest information has become one of the major legal challenges in recent years. In the past decades, the conflict between the right of people to receive information and principle of sovereignty within the framework of traditional media (direct broadcast satellite) resolved in favor of principle of free flow of information and the said conflict was replaced by the exception of national security. But nowadays, Wikileaks by access to classified information and disseminating them has shown new conflict between the right of access to information held by government and national security. So in this research, besides of analyzing this conflict, we are going to study legal ways of coexistence between disclosure of classified information and national security within the right of access to document and information held by the Government.

Keywords: classified information, information concerning human rights violation, national security, right to information, Wikileaks.

1. Corresponding Author: aliyary1385@gmail.com Fax: +98 21 66409595

2. Hajimolla_Hiwa@yahoo.com

Substantive constitutionalization of right to environment in Iranian & French Law

Ali Mashhadi*

*Assistant Professor, Public and International Law Department,
University of Qom, Qom, Iran*

Received: 2014/4/2-Accepted: 2014/8/10

Abstract

Nowadays, right to environment, during constitutions, court decisions and administrative procedures, in internal public law have been identified and secured. The recognition of this right in public law is dependent on normative evolutions. With the promotion of the tight to environment in constitutional norms, we can speak about the real impact of the constitutionalization in contemporary public law system. This process can be seen as a transition from formal constitutionalization to substantive constitutionalization right to environment. This article attempted to show how formal constitutionalization leads to substantive constitutionalization in light of the balance theory and the theory of interpretation. So, in the framework of constitutional norms and environmental judicial precedent evolutions, trying to devise real mechanisms for guarantee of the right to environment was the main concern of the legal system.

Keywords: constitutional environmental rights, environmental judicial precedent, formal constitutionalization, interpretative evolutions of norms, right to environment, substantive constitutionalization.

Parallel litigation in international proceedings

Reza Maghsoudi *

Assistant Professor, University of Guilan, Guilan, Iran

Received: 2013/9/29-Accepted: 2014/7/11

Abstract

In an international connection which different factors of legal relation were spread in different countries, bringing of several actions with the same object in different countries court was completely probable. Each party with various reasons seeks litigation in a court providing their interest in better way. However, parallel litigation in it, the same object impose burdensome charges on litigant's parties and judiciary systems and will cause an impediment for recognition of foreign judgments. Profound difference legal systems and direct relation of jurisdiction issue with sovereignty rights of states is an impediment for existence of uniform and worldwide resolution for settlement of parallel litigation problem. In some way, many of treaties and model laws merely have been satisfied with defective integration and cause a kind of mediation between rules of major legal systems.

Keywords: international proceedings, jurisdiction, Lis alibi pendens, parallel litigation, stay of proceeding.

The concept of corporate social responsibility in Iran, France, Britain and Germany with comparative approach

Jafar Nory Yohanloey¹ *

Assistant Professor, Faculty of Law and Political Sciences, University of Tehran, Tehran, Iran

Saeed Johar²

MS. Student, International Transportation Law, University of Judicial Sciences, Tehran, Iran

Received: 2013/9/29-Accepted: 2014/4/22

Abstract

Corporate social responsibility is the term of 1990 extensively, which was created and emerged with the liberation of the economy and a profound gap between the role of the social and economic. At first, the theory is fitted; as effects alien before it aspect of the commercial enterprises, solely for economic activity for your maximum profit for attention of return and profit without cost were unthinkable. Activities of the company, directly or indirectly, to the community at large, including the concept of environment, economy, culture, values and customs and fitted the influence. The company should be consistent on the legal principles such as the principle of compensation. The responsibility for compensation for losses incurred on the community is tolerant and receptive.

Keywords: corporate ethics, social investment, social responsibility, sustainable development.

1. Corresponding Author: jafarnory@ut.ac.ir

Fax: +98 21 66409595

2. saeed.johar@yahoo.com

An introduction to concept of legal regulation

Asadollah Yavari *

Assistant Professor, Beheshti University, Iran

Received: 2014/12/26-Accepted: 2015/1/7

Abstract

Next to mechanisms, methods and instruments and classic public bodies to administer, there are new independent administrative and public authorities equipped with various skills and attribution, composed of soft law and hard law to regulate the public fields. The multiplicity of forms of regulation shows the composite nature of regulation, which is between the private and public domain: laws, codes, charters, contracts, economic incentives and certification used in an increasing order of soft law in hard law. Now, the state is no longer the only player in the regulation of the game, but there are other private and public actors; what made change both the face and the content of the law and the state.

Keywords: independent administrative authority, independent agencies, regulation, regulator, regulator state, soft law.

* yavariamir@hotmail.com

Fax: +98 21 22431760

The challenges of education and research in the field of law in Iran and the strategies to address them

Hossein Safai¹

Professor, Private Law Department, University of Tehran, Tehran, Iran

Mahmoud Kazemi²

Associate Professor, Private Law Department, University of Tehran, Tehran, Iran

Received: 2014/9/17-Accepted: 2015/1/14

Abstract

During the past few years, the Iranian system of education and research in law has received several changes, which have seriously damaged this system, and consequently have led to decline of the Iranian legal system. Some of changes are not limited to law; rather, they are present in other fields of human sciences. This can be partially due to university instructors (e.g., how they are recruited, promoted, assigned various posts unrelated to academic affairs, etc.), the process of admitting university students (e.g., nationwide and centralized admission of university students which is done sometimes out of the regular rules, without entrance exams, and through admitting large numbers of students at postgraduate levels), educational methods (e.g., demand for memorizing huge quantities of materials, unfamiliarity of students with legal issues in practice, demand for high scores, etc.), or to research (insufficiency of original, fundamental studies).

Keywords: common/ overlapping studies, full-time job, university student admission.

1. Corresponding Author: hsafaii@ut.ac.ir

Fax: + 98 21 66497912

2. makazemy@ut.ac.ir