

The conceptual and factual interaction between contestable and non-contestable markets in the context of application of competition law

Mahmood Bagheri¹

*Associate Professor of Law, Faculty of Law and Political Science,
University of Tehran, Tehran, Iran*

Mohammad Sadeghi^{2*}

LLM in Private Law, University of Imam Sadeiq (a.s), Tehran, Iran.

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Abstract

The current paper investigates non-contestable markets, and through discussing this concept and adopting an interdisciplinary approach investigates the interaction between this concept and the contestable markets. In this regard and from a positive point of view, the current paper aims to discuss the interaction of these two concepts. From a legal and normative point of view, we seek to highlight the contradictions which exist between these two concepts both theoretically and practically. The outcome of this debate is that although the economic considerations, protection of the markets and the existence of a regulatory body become inevitable, one could not ignore the place of non-market in the process of legislation production. Ultimately, both non-markets and markets are part of the private sector of the economy which have to be regulated and supervised through competition law, while the regulations and control of the natural monopolies, if they are not under the government control, should be done through sector regulatory regimes. Therefore, an understanding of the competition law requires a distinction between markets and non-markets so that the borderline issues between these two areas and the scope of application of competition law which is only regulating the market are not confused.

Keywords: competition law, markets, non-markets, sector regulation and council of competition, state owned economy.

1. Email: Mahbagheri@ut.ac.ir

2. Corresponding Author, Email: Sadeqi67@gmail.com

A comparative study on borders and basis of carrier's liability under "Rotterdam Rules" with "Hague Rules" and "Hamburg Rules"

Ebrahim Taghizaadeh^{1*}

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

Afshin Ahmadi²

PhD Candidate of Private Law, Allameh Tabataba'i University, Tehran, Iran

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Abstract

On December 11, 2008, the United Nations adopted the "Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea", more colloquially known as the "Rotterdam Rules" for the city which hosted the convention's signing ceremony on September 23, 2009. Rotterdam Convention approved the "Presumption of Responsibility" as the basis of carrier's responsibility and listed the exempted cases, and the carrier, in order to get through the liability, must determine the cause of damage, events and the losses happened to the goods. Rotterdam Rules also by adopting the "door to door" strategy for goods carriage, promoting the electronic documents and embedding the volume contracts have opened new horizons in the carriage of goods by sea. Rotterdam Rules in spite of avoiding the excesses of Hamburg Rules retained their strength points and have tried to eliminate the defects of Hague Rules. Therefore, it can be said that this convention has caused a balanced approach among the benefits of shippers and carriers for providing the general fortuity.

Keywords: basis of liability, carrier, carriage of goods by sea, presumption of responsibility, Rotterdam Convention (Rules).

1. Corresponding Author, Email: taghizaadeh@gmail.com

2. Email: Mahbagheri@ut.ac.ir

Comparative analysis of inter-branch jurisdiction of president of parliament in the legal system of Iran, Britain and France

Muhammad Jalali^{1*}

Assistant Professor, Faculty Member of Shahid Beheshti University,
Tehran, Iran

Muhammad Mohajeri²

MA in Public Law, Shahid Beheshti University, Tehran, Iran

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Abstract

In the study of the subjects of constitutional law, analysis of position of the public authorities in the light of their jurisdiction is the most important approach regarding the evaluation of their power within the arena of political society. When an authority is known as a powerful authority among his other counterparts, the significance for the study of the position of this authority becomes more important. In a comparative view in relation to his other counterparts, the President of Parliament of Iran has broader and more particular jurisdiction within Iran's legal system. The study of different aspects regarding president's jurisdiction according to the inter-branch function of this public authority with a comparative view to other legal systems as the purpose of this research, leads us to this important point that the president of the Parliament has a special position hereof. In this article, we have shed light on the question that how the position of the President of Parliament is analyzed as the President of Legislative Power; In other words, with analysis and comparison of institutional jurisdiction of the presidents, the most basic function of the President of Parliament is to administer parliament sessions, but in some cases this position is higher than administration of the sessions. The innovation of the present research lies in the comparative analysis and study of the President's jurisdiction, which strengthens the originality of the present work. In this article, we have explained the institutional jurisdiction of the President of the Parliament within legal systems of Iran, Britain and France, and we have reached to this point that in comparison with other Presidents of the legal systems studied, he has a different position and has broader jurisdiction in the parliament than his counterparts.

Keywords: administrating parliament sessions, parliament, president of legislative power, president of the parliament, speaker.

1. Corresponding Author, Email: Mdjalali@gmail.com

2. Email: Mohajer_law@yahoo.com

Insanity as an excuse in Iranian and English law

Sayyed Mohammad Hoseini¹

Associate Professor, Criminal Law & Criminology, Tehran University, Tehran, Iran

Amir E'temadi^{2*}

Ph.D. Candidate of Criminal Law and Criminology, Judicial Sciences and Administrative Services University, Tehran, Iran

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Abstract

If someone committed a crime while insane, in different legal systems, it is accepted that deal with him should be different from people with mental health and in the case of the existence of other circumstances, he is recognized without criminal responsibility. This is commonly where the wrongdoer suffers from complete mental disorder, not partial mental disorder. The Islamic Punishment Code 1370, does not recognize any differences between the mentioned abnormalities; and although the Islamic Punishment Code 1392 somehow takes into consideration the issue, it is silent in determining response to those experiencing the partial mental disorder which is one of the defects of the aforementioned code. Also the spotlight of the recent Code is removing criminal liability as a result of insanity; and how to find insanity, its terms and appropriate responses for insane wrongdoers is not taken into consideration properly. In contrast, in English legal system, insanity is considered in both statute and case law, its conditions are specified and it is more detailed. On this basis, it seems that it is possible to use the positive aspects of this approach in the Iranian legal system.

Keywords: crime, criminal responsibility, excusatory condition, insanity.

1. Email: Smhosseini8338@yahoo.com

2. Corresponding Author, Email: Am.etemadi@gmail.com

Fair trial in international commercial arbitration

Saleh Khedri*

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

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Abstract

A fair hearing in the courts requires the principles of procedure. Because the arbitration is considered as private judgment, thus in arbitration hearing regarding to non-ceremonial proceedings, arbitrator or arbitration panel are bound to respect the principles of civil procedure in arbitration hearing. Equal treatment with parties of arbitration and adversarial procedure are principles that arbitrator or arbitration panel are obliged to satisfy in proceeding with action arbitration parties. Independence and impartiality are elements of Equal treatment, and proper notice and giving a full opportunity to presentation case are elements of adversarial procedure in Arbitration hearing that arbitrator or arbitration panel are bound to respect in proceeding between action arbitration parties. Disclosure Obligation, Challenge to arbitrators competence, application for setting aside and refusal of recognition and enforcement of award are tools to satisfy compliance of principles of procedural civil in Arbitration hearing. In this paper, ways of satisfying principles of procedure and their sanctions have been considered.

Keywords: arbitration challenge, equal treatment, impartiality, independence, setting aside arbitrator award.

* Email: Khedri_saleh@yahoo.com

Comparative study of the legal status of NGOs in Iran and France: from the establishment to work

Mohammad Hossein Ramazani Ghavamabadi*
*Associate Professor, Faculty of Law, Shahid Beheshti
University, Tehran, Iran*

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Abstract

The NGOs are one of the most important state actors. Due to useful functions of these organizations, the state has established and codified some regulations regarding their activity. This study sought to explain the issue and their activities in two legal systems of Iran and France. In Iranian legal system, some regulations exist regarding their foundation and activity which is a bit strict in comparison with France legal system. A pre-supervision in establishment time and a post-supervision after the foundation and all activities are subjects in this study which are examined in a comparative way between the two legal systems under study. One of the most prominent works of the identified legal personality for this organization is the case. The new penal trial of Iran inspired by the French Penal procedure law takes a step forward in support of the presence of the barter in the process of punishment. What is important is the legal codification about cathedral establishment of this organization based on the experience of the other legal systems including the French, so that the presence and activities of these organizations in different fields are facilitated.

Keywords: association, legal personality, locus standi, non-governmental organization, non-profit-making.

* Email: ramazanighavam@yahoo.com

Comparative possibility of carrying out commercial activities in the form of cooperative on the basis of I.C.A approaches

Mohammad Sardoeinasab¹

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

Shahin Aghamohammadi^{2*}

M.A. Student in Private Law, University of Tehran, Tehran, Iran

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Abstract

The cooperative nature of the economy, according to its principles and values, is incompatible with a melancholy cast, but what would be wrong to assume, more than anything else, is that a non-profit-oriented philosophy is often confused with nonprofit approach. We believe that the more the cooperation goes under the trade and economic reasoning, it will better realize its own goals which are members' promotion. International Cooperative Alliance approach also suggests that if these companies in the field of economic competition and services offering, get out of the traditional deviations and apply commercial activities, it should not be called "perversion of capitalism", if the cooperatives in this way have no purpose except to the extent necessary to meet the needs of its members and do not go beyond its own nature and foundations to be a merchant and investment-oriented company.

Keywords: business activity, cooperation, International Cooperative Alliance (ICA), profits and benefit.

1. Email: sardoeinasab@ut.ac.ir

2. Corresponding Author, Email: sh.ghamohammadi@ut.ac.ir

Contract as natural law (rational) thinking about foundation of the validity of the contractual content in the Iranian and French civil law

Mahdi Shahabi*

*Assistant Professor, Department of Law, Faculty of Economic and
Administrative Sciences, University of Isfahan, Isfahan, Iran*

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Abstract

The contract looks like the natural law. This means the negation of the principle of the autonomy of the will and the will of Legislator as a basis for the validity of contractual content would be rejected. Because the foundation of creation and validity of natural law would not be the will, but natural justice and natural equity. Therefore, the foundation of the validity for such a contract- similar to such a law- must be sought in justice and equity. Adopting such an approach, the principle of contractual justice and fairness- not the principle of the autonomy of the will or the principle of obligatory force of a contract- will be surface dominant. Such an approach could become more conducive to Iranian contract law. Neither could will of legislator nor the principle of the autonomy of the will be considered as the foundation of the validity of the contractual content in the Iranian legal system, all in order to deter the contract to be praised. It is God's will that determines the foundation of the validity of the contract and this will gives priority to the La Zarar and the negation of Hardship over other contractual principles.

Keywords: basis of validity of the contract, contractual justice, contract law, contractual fairness.

* Email: Shahabi880@yahoo.fr

A survey of criterion of gravity threshold for prosecution of crimes in international criminal court

Mahmoud Saber^{1*}

Assistant Professor, Tarbiat Modares University, Faculty of Criminal Law and Criminology, Tarbiat Modares University, Tehran, Iran

Azade Sadeghi²

PhD Candidate of Criminal Law and Criminology, Tarbiat Modares University, Tehran, Iran

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Abstract

One of the issues that has gained a good place in considerations of the office of the prosecution and international criminal court is the gravity threshold set out in paragraph 1(d) of article 17 of statute. This concept from the time of being inserted in statute has some challenges such as lack of definition in statute, lack of criterion for satisfaction of this concept. Given to the fact that gravity threshold is one part of admissibility mechanism, these ambiguities can disturb the legitimacy and function of international criminal court as the first permanent international criminal court. Hence, the current paper aims to clarify this significant concept. Moreover, the gravity threshold criteria and the role of this concept in situation and cases also have been analyzed. Finally, it is concluded that due to political considerations, the clarification of gravity threshold is seriously needed.

Keywords: admissibility, complimentary, gravity threshold, international criminal court, prosecution of international crimes.

1. Corresponding Author, Email: m.saber@modares.ac.ir
2. Email: sadeghiazade@yahoo.com

Analysis of the relation of copyright and work content in judicial verdicts of USA, UK and Canada

Mahmoud Sadeghi¹

*Associate Professor, Faculty of Law, Tarbiat Modares University,
Tehran, Iran*

Sara Allameh^{2*}

*MA Student, Intellectual Property Rights, Tarbiat Modares University,
Tehran, Iran*

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Abstract

According to copyright system, the normal standard for protecting literary and artistic works is originality. Hence, the international copyright treaties such as Berne convention, while emphasizing on originality, avoid imposing other mandatory standards for protecting such works. However, these works are different forms of expression of various ideas and accordingly, comprise different contents. In some cases, the works contents are inconsistent with religious and national values and norms or society custom and laws. There are conflicts between protecting copyright as an intellectual property right and other moral, religious and legal priorities in the society. To resolve this conflict and answer the question whether work content will affect copyright protection, countries have adopted different approaches. From the perspective of the work content, this article through a comparative study of approaches and judicial verdicts of the USA, the UK and Canada, infers two general views: the work content does not have any impacts on copyright protection and the work content have impacts on copyright protection. In addition, some supporters of the second view believe in content impact on existence of copyright in a work and other supporters believe that content has impacts on some enforcements of copyright.

Keywords: content, copyright, current views, international approaches.

1. Email: sadegh_m2000@yahoo.com

2. Corresponding Author, Email: Sara.allameh@yahoo.com

Effects of land registration on validity of juridical acts (Emphasis on functions of land registration system)

Nasrin Tabatabai Hesari^{1*}

Assistant Professor, Faculty of Law & Political Science (Institute of Comparative Law), University of Tehran, Iran

Mohammad Hasan Sadeghi Moghadam²

Professor, Faculty of Law & Political Science, University of Tehran, Tehran, Iran

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Abstract

Guaranty of security of juridical act about lands is an important difficulty in every country. Disregarding the independence of land registration system from the system of civil law –in enactment, interpretation and amendment of the land registration rules- and disregarding bases and functions of land registration system has resulted in some mistakes made by judicial doctrine and precedent in order to propose proper suggestions for solving the problems related to land registration system and to sanction for juridical acts about lands. However, presentation of every solution in this scope must be proper regarding protective bases of owner and third parties and two functional characters of the land registration system including “informing” and “protective” features. On this basis, land registration systems can be divided into constitutive registration system and confirmative one. This classification means land registration in any case, plays a very effective role in credit of judicial act about land although the degree of this effect is different depending on the system.

Keywords: constitutive and confirmative systems of land registration, informing function of registration, protective function of registration, registration law, sanction of land registration.

1. Corresponding Author, Email: nasrintaba@ut.ac.ir

2. Email: mhsadeghy@ut.ac.ir

Extension capacity of plea bargaining in the law system of Iran

Atieh Abasian¹

Graduate Student of Criminal Law and Criminology, University of Isfahan, Isfahan, Iran

Hassan Alipour^{2*}

Assistant Professor, Literature and Humanity Faculty, Shahrekord University, Shahrekord, Iran

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Abstract

In criminal procedure, the best attitude to diversity of crimes and criminals is not yet determined and the juridical systems are also in the process of trial and error. Plea bargaining is an organization arised from juridical system of Common Law and particularly America based on which the prosecutor and the accused discuss the accusation and its outcomes. Although plea bargaining is an organization which has been formed to deal with the cultural, social, economic instructure, it is a better way to benefit the accused, society and victim. The current study extends plea bargaining to other law systems in order to pave the path for accepting the essence of plea bargaining in the law system of Iran.

Keywords: accused, guilty plea, suspending the prosecution, plea bargaining, prosecutor.

1. Email: Atieh.abasian@gmail.com

2. Corresponding Author, Email: hassan.alipour@gmail.com

Comparative study of determining the responsible person and the basis of compensation in civil liability results from events related to nuclear facilities in Iran and French Law and International Instruments

Sayyed Mohammad Mahdi Qabuli Dorafshan^{1*}

Associate Professor, Department of Law, Ferdowsi University of Mashhad, Mashhad, Iran

Vahid Rezadoost²

M.A. Student in International Law, Shahid Beheshti University, Tehran, Iran

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Astract

Nuclear facilities, though have large advantages for human being, they also creates heavy hazards. Thus, the question of civil liability resulted from events of mentioned facilities are so significant. This paper studies the question of the basis and the responsible for compensation resulted from aforementioned events in international instruments, Iran and French law. Outcome of this study shows that in this regard, Paris and Vienna conventions and the other related conventions and protocols adjust a special legal régime. In this respect, the international instruments while distancing themselves from liability based on fault, highlight the exclusive responsibility of the operator of nuclear facilities and the operator is committed to insurance or appropriate secure financing. Also French legal régime has followed this manner with the impact of the Paris Convention and its amendments and additions. There is no special provisions in Iran legal régime in this matter so civil liability resulted from nuclear events is under general rules of civil liability and rules such as *Itlaf* (loss), *Tasbib* (causation), *Taqsir* (fault) and *La-zarar* (no damage) in the context of *Imamyeh* jurisprudence. Of course, the responsible is basically the one to whom the damage is attributable. Finally, it is appropriate that the Iranian legislator predict favorable régime and provide special financial fund for compensation of possible injured parties in accordance with necessities and specific requirements related to nuclear energy.

Keywords: French law, international instruments, Iran law, nuclear damages, operator of nuclear facilities.

1. Corresponding Author, Email: ghaboli@um.ac.ir

2. Email: Vahidrezadoost@yahoo.com

A comparative study of the fiscal arrangements of petroleum service contracts in Iraq and Iran

Mohammad Jafar Ghanbari Jahromi¹

Assistant Professor, International Law, Shahid Beheshti University, Tehran, Iran

Mojtaba Asgharian^{2*}

PhD Candidate in International Law, Shahid Beheshti University, Tehran, Iran

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Abstract

Petroleum upstream service contracts possess different aspects of legal, contractual, fiscal, economic, technical and environmental nature. In this research, efforts have been made to review one of the aspects of the petroleum upstream contracts which have been far too little considered, namely the fiscal system of upstream service contracts. Since every service contract possesses its own independent fiscal system, we tried, using the analytic approach, to review the fiscal system of Iranian service contracts (buy-back) after taking a close look at the fiscal system service contracts used in Iraq. Since our country is in possession of Joint Petroleum Fields with Iraq, it would be extremely beneficial, from the comparative law perspective, to take into full account the contracts concluded overseas for the same field.

Keywords: buy-back, fiscal system, Iraq's development and production service contract, petroleum costs, remuneration.

1. Email: Mjg.jahromi@gmail.com

2. Corresponding Author, Email: Mojtaba.asgharian@yahoo.com

Comparative study of victims' participation in special international criminal tribunals and the International Criminal Court

Mohsen Lal Alizadeh*

Assistant Professor, Faculty of Law, Payam Nour University, Tehran, Iran

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Abstract

In special criminal tribunals before the establishment of the Court, in the first generation of tribunals, Nuremberg and Tokyo, unfortunately, not only is there any notes to the rights and protections of victims, but also no mention of the term "victim" is seen. In the second generation trials, the former Yugoslavia, Rwanda and Sierra Leone, although there were some improvements compared to previous courts, there was not dedicated a place more than witnesses to victims. International Criminal Court, influenced by the developments and experiences from previous international tribunals, has considered relatively broad participatory rights for victims in different stages and with different forms. Despite high limitations in victims' participation, the court jurisprudence has supported a broad interpretation of participatory rights. However, the judges are generally determining the deadlines, procedures and participation.

Keywords: International Criminal Court, rules of procedure, special international criminal tribunals, victim participation.

* Email: mohsenlalalizadeh@yahoo.com

Formal and substantial irregularity of procedural acts in French Law

Hassan Mohseni*

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

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Abstract

Procedural acts may be invalid because of formal or substantial irregularity. In French Procedural Law, we can see a distinction between invalidity of instruments owing to formal irregularity and invalidity of documents by reason of essential defect; a distinction that affects the nature and plea time and the subsequent regularization of document. Formal invalidity must be expressly provided in Law, except where it is a case of a failure to comply with an important formality or one of public policies, but plea of invalidity based on failure to comply with substantive rules relating to written pleadings shall be admissible without the party raising them having to prove any prejudice to him even where the invalidity does not arise under express provisions.

Keywords: form, invalidity, irregularity, substantive, sanctions.

* Email: hmohseny@ut.ac.ir