

An Investigation into Financial Sanctions within Competition Law

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Abstract

According to the Competition Law, financial sanctions are the most significant sanctions considered by legislators. They are used in cases of anti-competitive practices regarding Law on implementation of General Policies of Principle (44) of the constitution. These sanctions include confiscation of property, surplus income refund and financial penalties. Investigation and analysis of the sanctions prove that there are some ambiguities and problems which require legislators to make amendments. In addition, evaluating the deterrence effect of the fine with comparing the way they were legislated in the above-mentioned law with the model offered for an optimized fine, show that in many cases, enforcement is not efficiently deterrent because there is no balance between violation and the enforcement. In this condition, to improve regulatory compliance for competition law, imprisonment is suggested as a preventative complementary to control breaches and avoid further violations.

Keywords

Sanctions, Anticompetitive practices, Law on Implementation of General Policies of Principle (44) of the constitution, Deterrence theory.

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Criminal Law and Political Authority: An Introduction to Political Theory of Punishment

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Abstract

What is the relationship between criminal law and political authority? On one hand, all criminal laws are passed by political authority and their validity apparently depends on this fact. On the other hand, when punishment theorists attempt to justify punishment, they usually try to prove moral obscenity or harmfulness of the criminal act and the offender's guilt. In the first part of this paper, we define political authority and consider its characteristic features. Thereafter, in the second part, we will try to prove that political authority cannot be established without punishment. In the final part, we argue that punishment cannot be justified regardless of political authority. Hence, as a result of a philosophical analysis of these concepts, it can be concluded that Punishment theory, in contrast to prevalent retributivist theories, is a part of political theory, not a part of moral theory. Therefore, any attempt to justify punishment depends on justifying political authority and is an integral part of political theory.

Keywords

Theory of Punishment, Moral Justification, Criminal Law, Political Authority, Retributivism

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Criminal Perfectionism

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Abstract

Perfectionists contrary to “The idea of Neutralism and Moral pluralism” recognize promotion of a good life as a duty of the governments. The main objective of the criminal perfectionism approach is to invoke the “Principle of Limitation of Freedom” for the evolution of personality, protection of common moral values and advancement of citizens’ desires that are subject of criminal law. They believe that, it’s not right to leave alone citizens for their individual desires, because persons are not necessarily the best judge in assessment of right from fault in their life. In this study, it was tried to examine and scrutinize this idea, in criminal law and ethics, on the one hand, and political sovereignty instruments in establishing a perfectionist approach in the society, on the other hand. It’s worthwhile that states drive their perfectionism to the valuable options like establishing educative centers, cultural centers and media training, and also avoid from unnecessary criminal conflicts and insecurity of public area by employing non-coercive tools.

Keywords

Virtue, Sovereignty, Perfectionism, Liberalism, Criminal Law.

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Foundations of Criminalization of Spamming

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Abstract

An unsolicited electronic message means any messages are sent without recipient's permission and ignore her/his rights to not receiving messages. Spamming may also provide opportunities for malicious activities in the cyberspace. Problems made by spamming on one hand, and non-efficacy of self regulation techniques used by internet hosts, on the other hand, have made the legislator to take effective action against spamming. There are several countries which have enacted specific laws and regulation with respect to criminalization of spamming and provided particular limitations for data exchange in the cyberspace. It seems that issues like harm, privacy and protection of consumer rights are considered as legal foundations of such legislations. The present research aims to study the foundations of the above mentioned regulations through a comparative approach and from an action-oriented perspective.

Keywords

Spamming, Cyberspace, Criminalization, Harm, Privacy Consumer's rights

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International Criminal Responsibility for Supporting Terrorism with emphasis on the Responsibility of Senior Government Officials

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Abstract

International regulations and procedures confirmed two main points; a comprehensive fight against terrorism and prohibition of any interaction with terrorist groups. But nowadays, some political necessities have caused states' extensive interaction with terrorist groups behind the scenes. This is a driving factor in recognizing the responsibility of states for their roles and responsibilities in the international society against other actors. In this research, in addition to analysis the theoretical foundation of responsibility of legal persons (states leaders), we have briefly overviewed general responsibilities of states with the respect to terrorism phenomenon, and viewed the supplementary and specific responsibilities of states in the form of the doctrine of responsibility to protect against other actors of international relations. Considering the threat of these groups to international peace and security and international prohibitions, we have also reviewed moral and material supports of terrorism by some leaders and states. This situation made us to understand criminal responsibility of leaders considering all the existing restrictions, and the ability of authentication of their criminal liability and the design of this responsibility for crimes against humanity and war crimes that are available in Articles 7 and 8 of the Statute of the International Criminal Court.

Keywords

International Responsibility, State Sponsors of Terrorist Groups, Criminal Responsibility, International Law.

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Exclusionary Rule on Criminal Procedure (By Emphasis on American Law)

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Abstract

Protecting rights of accused in a fair trial necessitates the obtained evidence in criminal procedure be according to the rules and the law. The principle of lawful evidence is accepted as a rule in American law as well as in Iranian law in certain cases to make sure that the principle of lawful evidence observed, in addition to other sanctions have mentioned inadmissible investigation and excluding the evidence providing rules have not been observed. The exclusionary rule states that any evidence which obtained by police or judicial officers illegally is not admissible. In American law the “exclusionary rule” and “the fruit of poisonous tree” have been predicted in case of violation of the fourth amendment (guarantee against unreasonable search and seizure). The first rule includes primary evidence in violation of rule of law and the second doctrine states that once the primary evidence (the tree) is shown to have been unlawfully obtained, any secondary evidence (the fruit) derived from it is also inadmissible. It should be noted that both of them are judge-made rules. Judicial precedent not only influence the territory of these theories but also exceptions of the rules.

Keywords

Criminal procedure, Legally obtained evidence, Exclusionary rule, The fruit of the poisonous tree, Observation due process

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