

FOREIGN INVESTMENT CONTRACT AN OVERVIEW OF LEGAL NATURE, FEATURES AND CHARACTERISTICS

S. Nasrollah Ebrahimi*

*Assistant Professor of Private law, Faculty of Law and Political Science
of Tehran University*

Shahab Jafari Nedoushan

*Ph.D. Graduate of Private Law, Faculty of Law and Political Science of
Tehran University*

(Received: 25 October 2016 - Accepted: 25 January 2017)

Abstract

“Investment Contract” which is also known by the name of “State Contract” or “Economic Development Contract” is the prevalent method of making enormous investment projects especially in the developing countries. This type of the contract embraces a vast array of subject matters and includes disparate type of agreements. The main feature of an investment contract is that one party to the contract is essentially a “State Entity” or a “Public Law Entity” and the other party to the contract is a “Private Law Entity”. Following the conclusion of an investment contract, the legal framework of the rights and obligations of the parties and the enforcement mechanism closely resemble private law paradigm. The usage of the term “State contract” in Iranian legal literature shows two distinct applications, one of which conforms to the concept of “investment contract” as we delineate its features and nature in the present article.

Keywords

Foreign Investment Contract, International Investment Contract, Economic Development Contract, State Contract, Foreign Investment Law.

* Corresponding author, Email: snebrahimi@yahoo.com

Fax: +982166409595

THE STUDY OF THE POSSIBILITY OF EXPLOITATION FROM DEVOTION BY THE BENEFACTOR IN IMAMIYEH FIQH AND CIVIL CODE

Hamid Abhary*

Professor of Private Law, university of Mazandaran

Somayeh Zohuri

Ph.D. graduates of private law, university of Mazandaran

(Received: 15 April 2017 - Accepted: 14 December 2017)

Abstract

According to definition of devotion in Fiqh and Islamic law, one of its traits is allocating part of one's properties for certain good purposes and helping to others. Therefore, devotion is supposed to be free from narcissism and profiteering and devoted to altruistic activities. Jurisprudences as well as legal writers have discussed about the assumption of benefiting from devotion by benefactor, yet finally rejected it. Nevertheless, exploitation of devotion by benefactor seems not to contradict with the concept of *Tasbil (benefits for others)*, and even, in some cases, can allow for it. In addition, accepting this issue persuades community members to devoting their possessions far from anxiety and apprehensions well as poverty and indigence. Aiming to promote the culture of devotion, this research seeks to set and analyze some examples of devotions in which benefactor benefits directly or indirectly and then discussed the cases in which benefactor is allowed to seek his/her own benefits.

Keywords

exploitation, profits of endowment, endowed, devotion, benefactor.

* Corresponding author, Email:Hamid.abhary@gmail.com

Fax: +981125342102

RESEARCH ON THE LEGAL AND THEOLOGY CHALLENGES OF THE ISLAMIC AZAD UNIVERSITY WAQF PROPERTY

Vali Rostami*

*Associate Professor of Law and Political Science College; Tehran
University*

Fatemeh Afshari

*Ph.D. of public law and lecturer at Allameh Tabataba'I University
(Received: 15 August 2015 - Accepted: 26 February 2017)*

Abstract

The waqf of the property of the Islamic Azad University, in spite of political discussions, has some jurisprudential and legal challenges that can be considered about truth of this waqf and the similar waqfs of the future. The main issue in this research is to examine these challenges and find answers for each one. The legal personality of the the Islamic Azad University has the capability to perform legal acts like waqf as a genuine person, but the person do the waqf and the managing director can only take possession of the property within the limits of the competency of the university (carrying out educational and research matters), and act outside of specialty such as godliness and gratuitous affairs and without regard to the interests of a legal person, it would invalidate action. The condition of ownership has done - except on these lands that has done waqf or in mortgages or university land that are disputes- because the property of the university is private. Under the conditions of doing waqf, the intention just for Allah can be based on the acceptance of criminal liability for a legal person and the possibility of supposed intention of it, but the condition for the acceptance of the waqf by the ruler of the Islamic scholarship regarding the Azad university has not been observed.

Keywords

Waqf, Islamic Azad University, Islamic jurisprudence, , Legal person.

* Corresponding author, Email: vrostami@ut.ac.ir

Fax: +982166409595

COMPETITION RULES ON EXAMINATION OF MERGERS INVOLVING INTELLECTUAL PROPERTIES

Ebrahim Rahbari*

*Assistant Professor of IP & Cyberspace Law Department of Law faculty at
Shahid Beheshti University*

(Received: 26 September 2016 - Accepted: 8 January 2018)

Abstract

Merger among undertakings attaining IPs has had increasing trend in the last two decades and as well competition law has been more sensitive and has enforced more effective control on them. Although competition law applies same general rules governing on mergers in IP domain but their characteristics require particular attention to the specific elements which make possible exact examining the competitive situation of merger in a regulated framework. Having analyzed U.S and EU merger law approaches, this article is going to explain the particular aspects of mergers involving IPs and their effects on innovation and technological progress and finally specify their competitive situation. While the complexity of the issue and increasing developments have directed legal systems to review merger evaluating criterions and more focusing on the features of changing innovation and technology markets, the current competition rules and attitudes of Iranian merger law in the absence of specific competition policy relating to IPs has caught in deficiencies, ambiguities and wrong approaches that demands serious modification and providing a transparent and comprehensive legal framework.

Keywords

Merger, Competition law, Intellectual property law, Know-how, Innovation.

* Corresponding author, Email: Rahbarionlaw@gmail.com

Fax:+982122431758

LEGAL NOTION OF PROCEEDINGS' RELATIONSHIP

Reza Shokoohzadeh*

Assistance Professor of University of Teheran

(Received: 4 March 2017 - Accepted: 8 January 2018)

Abstract

In French law, there are controversies about legal notion of proceedings' relationship (lien d'instance). Some authors addressing on proceedings' connection as real riddle. Some other qualified this relationship as contractual or quasi-contractual and refers to it as judicial contract- as formerly described in reference to, especially during the classical period in Rome. Some authors believe that best leave the contractual qualification of the proceedings' relationship unto Roman law, because the litigants' obligations have only the legal origin. Despite the aforementioned criticisms, very principles of Iranian and French Civil Procedure Codes may authorize qualifying as contractual, the concept of civil proceedings.

Keywords

Proceedings' Relationship, Judicial contract, Authority of definitive judgment, Relative effects of judgment, Novation effect of proceedings.

* Email: rshokoohzadeh@ut.ac.ir

Fax: +982166409595

RESPONSIBILITY OF SOCIAL SECURITY ORGANIZATION IN THE CASE OF "LACK OF ACCESS TO EMPLOYER TO ACHIEVE OF PREMIUMS" AND STRATEGIES FOR FINANCING

Nasrin Tabatabai Hessari*

*Assistant Professor of Faculty of Law & Political Science,
University of Tehran*

Mahmood Saber

*Assistant Professor, Tarbiat Modares University, Iran
(Received: 1 February 2017 - Accepted: 29 May 2017)*

Abstract

The principle of "the responsibility of the employer to pay the premiums," is an accepted principle in contributory social security systems. The principle in the Social Security Act, together with the legal principle of "responsibility and commitment of social security organization in front of insured for non-payment or delay in payment of premiums" have been proposed. Apparently, these two principles are in conflict, but knowing of their legal basis and solutions can allow for compensation due to non-payment of premium. Review of previous research in this area shows that recovery of premiums, especially in cases such as lack of access to employer and lack of recognition of him is not considered. This paper through on analytical and comparative approach shows; the bases of employer's liability is "the distinction between debt and obligation to pay" and the basis of organization's liability is principle of "supporting" in the social security system and implementation of this tow rules is possible by establishing a comprehensive system of "business registration" and a "guarantee fund for damages resulting from non-payment of premiums.

Keywords

Non-payment of premiums, Compensation, Damages Guarantee Fund, Contributory systems, Social insurance.

* Corresponding author, Email:nasrintaba@ut.ac.ir

Fax: +982166566860

DENIAL OF BENEFITS CLAUSE IN INVESTMENT TREATIES

Majid Ghamami*

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

Reyhaneh Sedighi

Ph.D. student of international trade law at Shahid Beheshti University

(Received: 9 October 2016 - Accepted: 12 November 2017)

Abstract

International investment law now recognizes the right of foreign investors to bring a claim directly against host states. This right is often provided in multilateral or bilateral investment treaties. However, this principle is now under threat by measures known under the term of "Treaty Shopping" taken by investors to take advantage of investment treaties between host states and countries other than national states of investors. In order to benefit from these treaties, investors have devised means to acquire the nationality of states that have signed the target treaty with host states. These conducts are sometimes taken by ingenious investors as well. Host states have designed various means to confront treaty shopping. One of these solutions is drafting treaties in a manner that prevents wrongful benefit of investors without the nationality of states that have signed favourable treaties with host states, before any dispute arises and be taken to arbitration. The insertion of "Denial of Benefits Clause" in investment treaties is one of these methods. This paper seeks to evaluate the efficiency of Denial of Benefits Clause in dealing with treaty shopping and to elaborate the considerations that must be taken into account by host states when including this clause in Investment treaties.

Keywords

International Investment Law, Bilateral Investment Treaty, Denial of Benefits Clause, Treaty Shopping.

* Corresponding author, Email: mghamami@ut.ac.ir

Fax: +982166409595

**PUBLICITY RIGHT
STUDY OF THE AMERICAN LAW AND AN ATTEMPT TO
RECOGNIZE IT IN IMAMIA JURISPRUDENCE AND
REGULATE IT IN IRANIAN LAW**

Seyyed Mohammad Hadi Ghabooli Dorafshan*

Assistant Professor, Ferdowsi University of Mashad

Mostafa Bakhtiarvand

Assistant Professor, University of Qom

Samane Khansari

M.A Graduate, Intellectual Property Law

University of Qom

(Received: 16 May 2017 - Accepted: 17 September 2017)

Abstract

Using celebrities' name and other characteristics in commercialization of goods and services is a feature of modern marketing. The exploitation of celebrities' name, image and likeness is protected as publicity right in the American legal system which is governed by special rules. In Iran, the executive order on the use of artists, actors and athletes' image 2014 has, for the first time, protected the publicity right, but it only deals with its generalities and is not enough to meet the society's needs. This descriptive-analytic paper proves that publicity has economic value and is considered as property. There authors believe recognition of this right is necessary given the economic and commercial progress and development of today's society and is not in contradiction with foundations of Imamia Jurisprudence and Iranian law. Yet, the balance between individual and public interests in the form of preventing the excessive spread of publicity right is an important issue which must be considered in determining subjects, persons protected and the limits of this right.

Keywords

Celebrities, Commercial use, Financial right, Identity.

* Corresponding author, Email: h.ghaboli@um.ac.ir

Fax: +982532855684

A LEGAL ANALYSIS TO CAUSES AND COMMANDS OF RESORT TO THE COURT FOR ELECTION OF JOINT STOCK COMPANIES' TEMPORARY INSPECTOR

Ahad Gholizadeh Manghutay*

Assistant Professor at the Department of Law, Faculty of Administrative Sciences and Economics, University of Isfahan
(Received: 15 August 2015 - Accepted: 19 July 2017)

Abstract

Legal analysis to causes and commands of resort to court for election of joint stock companies' temporary inspector or comparative explorative analysis of the legal questions on companies' temporary inspection had not so far been approached by the specialists perhaps because of its extraordinary scientific complexity. This research shows that there are many differences between the law governing the directors' board members and the executive manager on one side and the law governing the inspectors on the other side. Besides, there are considerable differences between the laws governing the main and temporary inspectors. These differences show that for the Legislature the inspection is more sensitive than management and considering the appointment of the temporary inspector by the court is a reason as well a consequence of this sensitivity. Seeing a company for a few months does not have a board of directors or an executive manager is comparatively easier tolerable for the Legislature than seeing it without having an inspector or sufficient number of inspectors. As well, decisions and operations of disqualified directors' board's members and disqualified executive managers are tolerable for the Legislature, whereas the reports of a disqualified inspector are never acceptable.

Keywords

Temporary inspector, Unanimous conduct rule, Supervisor's board .

* Email: gholizadeh@ase.ui.ac.ir

Fax:+983136683116

PUNITIVE DAMAGES IN CONTRACTUAL LIAIBILITY

Mostafa Mohaqeqe Damad (Ahmad Abadi)^{*}

*Professor, Department of Law, Shahid Beheshti University, Tehran, Iran
Morteza Shahbazinia*

*Associate Professor, Department of Law, Tarbiat Modares University, Iran
Homayoon Rezaei Nejad*

*Ph.D Candidate in Private Law at Tarbiat Modares University, Tehran, Iran
(Received: 22 April 2017 - Accepted: 28 June 2017)*

Abstract

In common law, punitive damages is a renowned institution. The traditional approach is that punitive damages are unavailable for breach of contract. The dominant elements (basis) of this approach is non-recognition of the possibility of deterrence and punishment in contractual liability and that punitive damages is efficient, breach and heterogeneous. In this article, we consider and study that how could justify awarding punitive damages in contractual liability and is there any theoretical justification for this view in French and Iran legal regime? We argue that in these legal regimes, in addition to reparation of damages, deterrence and punishment are desired goals. The authors argue that punitive damages are accommodated with defendant conduct: The conduct which has an element that necessitate punishment, whether that misconduct accompany with breach of contract or a tortious act.

Keywords

Punitive damage, Infra compensatory damages, Goals of contractual liability, deterrence, punishment, misconduct.

* Corresponding author, Email: mdamad@me.com

Fax: +982122606414