

Recognition of Certification Mark and its Kinds Compared to other Types of Trade Marks

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Abstract

The term of certification mark has not been existed in the Iranian law, but it is mentioned in the Bill of Protection of Industrial Property. The role of certification mark is certifying a certain attribute in a goods or service. The attribute can be quality, material, origin or other character. This mark has different types such as compulsory or voluntary, national or regional or international and for goods or for service. Certification mark is a different concept compared to collective mark, geographical indication and ordinary trademark. The most important differences are: the specific role of these marks i.e. certifying the existence of an attribute in goods or service, the prohibition principle that prohibits the owner of a certification mark to use his mark and the freedom of use principle which allows qualified persons to use the mark.

Keywords

Certification Mark, Collective Mark, Geographical Indication, Trade Mark

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Analysis of the Basis of Liability based on Production

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Abstract

The basis of liability based on production is one of the key issues that must be determined in the light of economic and market policy and the approach of the legal system to justice on the one hand and balancing the interest of consumers in having access to safe products with the interest of producers or the aims of responsibility on the other. In spite of the necessity to regard these factors in order to determine the appropriate base theory, at first, like general civil liability, it was cited fault for justifying the product responsibility, but due to the ambiguity in the concept of fault, and its being of behavior characteristic and as well as the impossibility of proving it by the consumer, it was referred to the defect theory or the strict liability. This was a transformation from regarding behavior to the outcome, but this theory also failed to cover all aspects of the legal duties and obligations of a manufacturer. Therefore, the theory of security and stability of the market for procuring customer trust and protecting national economic interest is the proper theory that as the basis of liability based on production can cover all legal aspects of the subject and obligations of manufacturer.

Keywords

Fault, Defective Product, Manufacturer's Duties, Market Security.

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The Impact of Fraud in the Underlying Transaction on Documentary Credits with an Emphasis on the Approach of Iran's Civil Courts in Case of the Big Bank Fraud

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Abstract

The rule of fraud has a vital role on documentary credit. This rule is considered as an exception to the principle of autonomy. In most cases, fraud is made in documents by the beneficiary, that the exception of fraud being properly applied; since the documentary credit has been formed of combination of several legal acts, the fraud may also occur in the underlying transaction. Despite the fact that most legal systems have accepted the exception of the fraud, but judicial procedures differ in terms of the limits and cases of applying fraud exception. In general, there are two approaches to extending or refusing the exception of the fraud in the underlying transaction: the broad approach, according to which the fraudulent acts application should be extended to the fraudulent behavior of the underlying transaction and the narrow approach supports the principle of independence and restricts the fraud to forgery or fraudulent documents. The examination of civil cases of the big bank fraud indicates that the majority of judges have followed the narrow approach.

Keywords

Principle of Autonomy, Exception of Fraud, Underlying Transaction, Documentary Credit.

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The Legal Effects of Requirements of Convention on Biological Diversity (CBD) on Biotechnology Transfer Contracts

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Abstract

The adhesion to Convention on Biological Diversity (CBD) by different countries including Iran, will lead to some obligations for them in relation to contract for access and share of benefits arising from genetic resources that will be concluded in territory of those countries. The results of this research indicate that biotechnology transfer contracts in contrary of another fields of intellectual property, have a special legal condition and are under the requirements of CBD, specially article 16, such as prior informed consent of provider country of genetic resources (PIC), and Mutually Agreed Terms (MAT). In this article based on membership of Iran in CBD, above mentioned requirements, their applying criteria as to biotechnology transfer contracts and also their legal effects on these contracts will be studied. We will conclude that due to priority of requirements of CBD, biotechnology transfer contracts have a special legal nature and different legal rules and effects compared with traditional contract law.

Keywords

Convention on Biological Diversity, Access, Genetic Resources, Transfer of Biotechnology, Contract.

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Contract of Guarantee, Removal or Survival of Collaterals (With Regard to French Law)

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Abstract

Under contract of guarantee obligation transfers from principal to guarantor. Under Iranian Law, the transfer of obligation is not the essence of contract of guarantee but it is the requirement of generality of guarantee. In jurisprudence, all those who have commented on this issue, assume the contract of guarantee as an obligation performance by principal, consequently due to the conclusion of this contract, the collateral of the principal obligation shall be removed, however; in civil law, the majority of legal scholars consider the collateral as security for performance of principal obligation, and as in contract of guarantee the principal obligation remains, the collateral shall not be removed unless it is provided for it. Under Iranian law with regard to the effect of guarantee that causes the transfer of obligation not its waiver or discharge, the contract of guarantee shall not result in the removal of the collateral of principal obligation unless it is provided for it. From French law perspective, legal scholars of this country emphasize on the removal of collateral in novation but in legal acts which contain the transfer of obligation, they believe that the collateral of obligation shall remain.

Keyword

Contract of Guarantee, Transfer of obligation, Collateral of Principal Obligation, and Removal of Collateral.

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The Comparative Study of Financial Rights of Literary and Artistic Works Performer (Scope, Waiver and Transfer)

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Abstract

Performing artists are the persons related to the literary and artistic works Iranian law has not expressly spoken of these persons and has not predicted certain rights for them. However in the French legal system as the leading country in the neighboring rights, financial and moral rights of performing artists has been accepted as well as in the international arena has been codified documents to support these persons. This study seeks in addition to study the scope of financial rights of the performing artists in French law and related international documents, explain possibility or impossibility of waiver of these rights and also the rules governing the transfer of them. Moreover, this research is trying to review the regulations related to this issue in Intellectual Property Protection Bill, approved on 24 September, 2014 (1393/07/02). This research indicates that French law and international documents supports the financial rights of the performing artists extensively. Although Intellectual Property Protection Bill contains provisions relatively good, but in addition to some formal reforms, in some cases more support of the performing artists requires substantial reforms in this Bill too.

Keywords

Performing Artists, Financial Rights, Intellectual Property, Neighboring Rights.

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Nature of Qualifying Share of Public Joint Stock Companies

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Abstract

According to the article 114 of Legal Bill Amending Certain Parts of the Commercial Code 1347 concerning the public joint-stock companies, as long as a director has not received discharge from the company for the period of his term of office, the said shares shall remain in the custody of the company. The questions arisen are: what is the nature of this share? And whether the word "directors" includes the managing director or not? if the answer is yes, how will the article 114 apply in the cases in which the director is not elected from shareholders? In this article, in order to answer these questions, we have studied different kinds of collateral, the nature of the share, directors, and the jurists' approaches about them. Finally, we concluded that the qualifying share is an independent legal institution from mortgage contract. The intent of the legislator regarding the word "director" is only the board of directors and does not include the managing director.

Keywords

Collateral, share, joint-stock company, company's directors, mortgage.

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Image Rights

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Abstract

Image rights means that one can decide about another's photography of him, how to photograph, publication and finally use of image. This right has a dual nature: On one hand, this right is related to the human personality and on the other hand, it is financial due to its financial value in a mark. The image rights can be transferrable, however; one cannot generally transfer its image rights to others and waive them. Furthermore, although moral aspects of image rights disappear upon death, its financial aspects will be transferred to heirs. There is disagreement about the legal basis of the mentioned right: Some authors consider it as an example of privacy, others consider it as an example of personality right along with privacy. It seems that the latter basis can provide image rights with more complete support.

Keyword

Image, Personality Right, Privacy, Contract, Death.

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Liability of Private Employee for Breach of Contract

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Abstract

According to the famous view of the Islamic jurists, contract of hire is a possessive one. One the most evident effects of this view could be seen in the legal consequences of the breach of contract by the private employee. Breach of this contract may be committed in various ways by the employee such as when he works for himself or others, gratuitously or otherwise; and the liability of the employee varies according to these ways as well as to various forms of private employee. This article tries to study the subject according to these forms and on the basis of possessive or promissory nature of the contract of hire. The result of this research indicates that as a general rule, in all forms of the private employee, breach of contract by him entitles the employer (hirer) to terminate the contract and recover the wages or maintain the contractual relationship and recover the quantum meruit of the lost benefit.

Keyword

Contract of Hire, Private Employee, Responsibility, Liability.

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