THE THEORY OF COMPARATIVE CAUSATION

Hosein Eskandari*
PhD in Private Law, Faculty of Law and Political Sciences, University of Tehran, Iran

(Received: 12 January 2016 - Accepted: 7 July 2018)

Abstract
The studies about causation have been conducted in two steps; the first step is identification of the cause in fact. The "cause in fact" is the condition, action, or object that caused the damage. The second step identifies the legal cause or proximate cause from all causes that identified at first step. This is an event sufficiently related to a legally recognizable injury or damage as the cause of that injury or damage. In some legal systems, the negligence is an essential factor for defendant's responsibility and from all causes identified at first step, those will be responsible that have a fault. Recently, the theory of comparative causation has been raised in western legal systems adopting a system of non-fault liability that assesses the costs of accidents according to the involvement in the activity irrespective of legal notions of fault. The study of the local laws and regulations indicates that dividing the costs of an accident among the sub-activities has been accepted by Iranian law.

Keywords
The causation, Comparative causation, Comparative negligence, Statistical causation.

* Email: eskandari1358@gmail.com

ANALYSIS OF THE REMEDIES OF CONFLICTING CONTRACT

Ali Reza Bariklou*
Professor of Law, Farabi College, Faculty of Law, University of Tehran

(Received: 24 May 2016 - Accepted: 27 April 2018)

Abstract
One of the legal solutions to prevent conclusion of conflicting contract is using proper remedies, because the appropriate compensations can play a role that, in one hand, the contractual interest of the innocent party should be protected and on the other hand, the wrongdoer party, could not benefit from illegitimate interests. In this article, the remedies available to the innocent party of invalid conflicting contract is examined under the Islamic and Iranian contract law. It is proven that the rules of contractual responsibility cover the loss of invalid contract, when the cause of invalidity is attributable to the one party of the contract. Secondly, the wrongdoer party of invalid conflicting contract may be deprived of obtaining illegitimate interests according to the principle of the sanctity of property. Thus, the contractual expected benefits of innocent party could be compensated and protected according to the rules such as the principle of deception, the liability resulting from the conflict confession, the principle of guarantee of damage and the liability arising bilateral contract.

Keywords
Illegitimate interests, Expected benefits, Principle of the sanctity of property, Principle of deception, Liability resulting from conflict confession.

* Email: bariklou@ut.ac.ir Fax: +9825 36166217

LEGAL PRINCIPLES FOR NON-REFERRING TO REINSURER ON PORT OF THE INSURED IN UNITED STATES AND ENGLAND

Hassan Paktinat*
Assistant Professor of Law, Islamic Azad University, Isfahan (Khorasgan) Branch

(Received: 21 October 2017 - Accepted: 3 September 2018)

Abstract
Today, individuals and, in particular, insurers are seeking to have insurance coverage to secure compensation. In this regard, there are often two or three people in the relationship: the insurer and the insurer and the third party beneficiaries. Insurers have also entered into insurance contracts to guarantee their losses, which mean the operation, reinsurance or reinsurance. However, in case of insured damages, they are not seeking direct insurers, but rather reinsurers, and in this area they have often been successful. However, what are the reasons for not being able to refer to the insurer to the reinsurer in this case?

Keywords
Insured, insurer, Reinsurer, Liabilityinsurance, Indemnity insurance.

* Email: paktinat_hasan@yahoo.com

LEGAL NATURE OF "PROMISE TO FULFILL" NATURAL OBLIGATIONS

Nahid Javanmoradi[*]
Assistant Professor of Private Law, Allameh Tabatabai University, Iran

(Received: 1 August 2017 - Accepted: 8 October 2017)

Abstract
Binding to execute an obligation is a kind of contractual obligation, which is submitted to the general terms and conditions of validity of a legal agreement. However, the question is to know whether the simple promise of completion of a natural obligation could make it enforceable by debtor's unique will, or creditor's consent is also necessary. Doctrinal and jurisdictional interpretations in this matter are quite different from each other. Some consider it as a new legal agreement to fulfill a moral duty. While the others think that it is not, but a simple avowal to confirm a moral obligation. Still some jurists believe that the new agreement is a substitution of a new legal contract for an existing natural obligation.

Keywords
Promise to fulfill an obligation, Natural obligations, Novation, Unilateral volition.

[*] Email: njavanmoradi@yahoo.fr Fax: +982144737586

THE CONCEPTS OF EX AEQUO ET BONO AND AMIABLE COMPOSITION IN THE LAW OF COMPARATIVE ARBITRATION

Abdollah Khodabakhshi*
Assistant Professor of Law, Ferdowsi University of Mashhad, Iran

(Received: 23 November 2016 - Accepted: 17 June 2018)

Abstract
One of the advantages of arbitration, in addition to the removal of formalities, is the flexibility in substantive hearing to dispute. An arbitrator can judge based on fairness and amiable composition, with the authority that is given by the parties. This is an important option that is not common in judicial authorities, but the arbitrator could use it well and issue a fair award. At the same time, identification of this authority is decisive because the parties and judicial authorities should know arbitrator according to which principles and rules of control achieved that result. The common spirit of these arbitrations that are introduced with different titles is avoided from hard and frigid rules of law and recourse to flexible criteria for adjusting the terms of the parties. However, this criterion is ambiguous and, therefore, it deserves to be manageable and understandable by comparative view to this arbitration, paying attention to judicial review and legal doctrine. This article identifies that arbitration and related concepts.

Keywords
Arbitration, Amiable composition, Ex aequo et bono, Judicial review, Court.

* Email: khodabakhshi1356@yahoo.com Fax:+985138811243

CONCEPTIONS OF ḌAMĀN IN THE ISLAMIC LAW, CIVIL LIABILITY IN THE CIVIL LAW, AND TORT IN THE COMMON LAW: A COMPARATIVE STUDY

Ahmad Deylami[*]
Associate Professor of Private and Islamic Law, Faculty of Law, University of Qom, Qom, Iran

(Received: 3 December 2017 - Accepted: 8 July 2018)

Abstract
The rapid trend of globalization has left its impression on comparative legal studies. A first prerequisite for a comparative study is identification of the conceptions related to a topic which is subject to comparative studies in several legal systems. The first step for any comparative study in the realm of civil liability law, Tort law, and the *ḍamān*-oriented *Fiqh* and Islamic law is the comparative identification of the three conceptions of *ḍamān,* civil liability, and Tort. It is significant because our current Iranian law literature is not well transparent in this regard. This leads to inexact and imprecise uses of these terminologies. The present paper deals with each of these three terminologies in their genuine contexts of origination, followed by a mainly conceptual comparison, leading particularly to conceptual relations of *ḍamān, itself a sophisticated term in the* Islamic *Fiqh* and law, in contrast to its synonymous terminologies in other two legal systems.

Keywords
Ḍamān, Civil liability, Civil law, Common law, Legal system, Tort, Islamic Fiqh.

[*] Email: A-Deylami@Qom.ac.ir

STUDY OF INSTITUTION OF TRANSFER OF INCORPOREAL RIGHTS IN IRAN, ENGLISH AND INTERNATIONAL INSTRUMENTS

Seyed Ezatollah Araghi*
Professor of Private Law; Faculty of Law and Politics, Science & Research Branch, Islamic Azad University, Tehran, Iran
Hossein Jalali
PhD Student in Private Law, Department of Private Law; Faculty of Law and Politics, Science & Research Branch, Islamic Azad University, Tehran, Iran.
Mohammad Reza Pirhadi
Assistant Professor of Private Law; Faculty of Law and Politics, Science & Research Branch, Islamic Azad University, Tehran, Iran.

(Received: 1 August 2017 - Accepted: 19 June 2018)

Abstract
Realization of institution of transfer of incorporeal rights contrary to the institution of transfer of contract doesn't require the consent of obligor. The rights belonging to the persons, whether voluntarily or involuntarily, are transferable to the others, unless contrary thereto is proved due to definite proof such as agreement on prohibition of transfer or its personal nature. In the studied international instruments (principles of international commercial contracts, Draft Common Frame of Reference (DCFR), only voluntary transfer of rights has been identified, and contrary to Iranian and British law, its involuntary transfer has not been analyzed and investigated. Moreover, given the differentiation of total transfer of rights from its partial transfer, in the monetary rights contrary to the nonmonetary rights, the partial transfer is basis and the person, without transferring his total rights, may transfer only a part of that to other parties. Whilst in nonmonetary rights, lack of partial transfer is applied as basis, unless the right is divisible and its transfer not results in unconventional increase of obligor's obligation.

Keywords
Transferor, Transferee, Total assignment, Partial assignment.

* Corresponding Author, Email: searaghi@yahoo.com

A LEGAL ANALYSIS TO PARTNERSHIP SECURITIES: PARTNERSHIP SECURITIES; NON-MARKET SECURITIES

Ahad Gholizadeh Manghutay*
Associate Professor of Law, Faculty of Administrative and Economic Sciences, Isfahan University, Iran

(Received: 25 December 2017 – Accepted: 11 July 2018)

Abstract
Always there has been this question in the minds of experts that whether the partnership securities (*ouräghe moshärekat*) have been able to substitute debentures in the market properly? Present legal analysis shows that partnership securities as a substitution for debentures are needed for the market. But despite fundamental differences between stocks and debentures, partnership securities are a compound of stocks and debentures. They have both the advantages of stocks and debentures without getting suffered from disadvantages of each of them. In addition, legal questions on management of the subject project of these securities as well as responsibility out of these securities for its holder has not been considered by the legislature. The mechanism considered for partnership securities although approved from the Islamic jurisprudential (*fiqhi*) view contains faults from the legal economy view. Therefore, such securities practically in the market, within the private sector, have not been acceptable so have not been accepted or used. As a result, partnership securities could not substitute debentures perfectly.

Keywords
Partnership securities, Stocks, Debentures.

* Email: gholizadeh@ase.ui.ac.ir Fax: +983136683116

UNFAIR TERMS IN THE AIR TRANSPORTATION CONTRACTS

Abbas Karimi[*]
Professor of Law, Faculty of Law and Political Science, University of Tehran
Khashayar Esfandiarifar
Phd Student in Private Law, Mofid University

(Received: 8 April 2017 - Accepted: 21 June 2018)

Abstract
Air transportation contracts are those considered for numerous consumers. Given the point that thousands and even millions of daily transportation contracts between the airline companies (as the expert) and passengers (as a consumer) are placed, it seems necessary to identify the unfair terms in the contracts, which represents airlines abusing their power. It is also noteworthy that for fighting against the unfair terms, in addition to identifying the instances of the unfair terms, applying the appropriate legal strategy is also demanding. European Nation country members attempted to develop new strategies in order to fight against the unfair terms. The present study aimed to initially identify the unfair terms and then investigate their relevant provisions.

Keywords
Unfair terms, Air transportation contract, Invalidity of the unfair terms, Amending the unfair terms.

[*] Corresponding Author, Email: abkarimi@ut.ac.ir Fax: +982166409595

THE ISSUE AND NATURE OF ARBITRATOR'S OBLIGATION

Abbas Mirshekari*
Assistant Professor, Faculty of Law and Political Sciences, University of Tehran, Iran
Mohsen Salimi
PhD Student in Private Law, Islamic Azad University, Shiraz Branch, Iran

(Received: 22 April 2018 - Accepted: 16 July 2018)

Abstract
Arbitration is an alternative method in which the neutral and selected arbitrator of the parties outside the court seeks to resolve the dispute. In the course of arbitration, the arbitrator is the main actor and he is the one who ultimately decides on the dispute. The most important obligation of the arbitrator in this battle is to resolve the dispute, and his other obligations are in keeping with this main obligation. The establishment of this obligation requires the acceptance of the arbitrator and, if the dispute arises and the petition is handed down by one of the parties, the arbitrator is required to fulfill the obligation accepted by his will. The present paper deals with the question of the issue and nature of the arbitrator's obligation to resolve dispute. Using the library method and referring to internal and external sources, the present study seeks to clarify the legal aspects of the arbitrator's obligation from the obligations law view. In this regard, it can be argued that the arbitrator's obligation to resolve the disputes is in fact an obligation to the issuance of the award, it must be definite and possible and like the judge, arbitrator should seek the discovery of the truth.

Key words
Obligation, Arbitrator, Contract, Dispute resolution.

* Corresponding Author, Email: mirshekariabbas1@ut.ac.ir