

A DISCUSSION OF THE RELATIONSHIP BETWEEN LAW AND IDEOLOGY AND ITS IMPACT ON THE PLURALISM OF LEGAL REASONING

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Abstract

Law is essentially a social phenomenon and, therefore, in full association with other social sciences. To understand a legal rule must be interpreted and for interpretation we have to argue about that. Therefore, there are a strong relationship between reasoning, interpretation and law. Furthermore, the three categories of base, source and purpose of the legal statement are considered as the contributors to each legal system. The purpose of this study is to explore influence of ideology on different interpretations of same legal rule. We discuss problem, social justice and fairness in law, the origins of different sometimes conflicting rules in the same subjects. This can damage the realization of the order as one of the goals of the legal system. This phenomenon is explained as pluralism of legal argument, which is shaped by various factors including ideology as the most notable. The mutual relation between law and ideology in legal pluralism is controversial. It can be concluded that depending on what the ideology governing the mind of a legal practitioner is, his kind of argument in the interpretation of the legal rules will be equally different.

Keywords: Legal pluralism, Legal reasoning, Ideology, Legal statement.

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THE LINK BETWEEN ECONOMICS AND LAW TO PROVIDE A CONCEPTUAL FRAMEWORK FOR SUPPLYING VOLUNTARY PUBLIC GOODS

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Abstract

Reforming official institutions enacting economic law and regulations and guaranteeing their implementation is an integral part of any community. These reforms need to form a collective action among its stakeholders. Although the formation of this collective action among actors with conflicting motives may increase the chances of success for such reforms, economic considerations are faced with significant barriers such as transaction costs. The theory of collective action for voluntary public procurement and transaction cost theory challenged the presumption of the omnipotent and benevolent government; this explained the evolution of decision-making processes within the public sector. In this paper, we attempt to provide a conceptual framework for examining the transaction costs associated with the collective action of political, administrative, and economic actors to guarantee the implementation of law as voluntary public goods. Such action requires the pursuit of information, bargaining and negotiation activities, and ensuring that political, economic, and administrative actors perform the transactions. The results of the conceptual framework, developed based on a combination of collective action and transaction cost theories in this paper show that 18 components influence the costs of collective action for institutional reform. The application of this framework for analyzing the enforcement of business environment facilitation law, in particular the Law on Continuous Improvement of the Business Environment approved in Iran in 2011, shows that despite the lack of legal enforcement guarantees and external supervision deficiencies, there are several components that can cost the collective action required to enforce these law.

Keywords: Formal Institutional Reforms, Transaction costs, Collective action, Law Enforcement, Business Environment.

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TAX LAW AND LEGAL NATURE OF CORPORATE SHARES

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Abstract

The issue of objective or subjective legal nature of shares and partners share was always place of conflicts among lawyers. Legal provisions in this regard have acted insufficient (poor). So, the idea of some lawyers is that shares are considered among the subjective and, accordingly, the contract transfer them to transfer of debt. The purpose of this study is to declare disambiguation in the nature of the shares. Justifying taxation on shares from the perspective of subjective nature of them is ambiguous. Incoming is taxation source due of business in its economic meaning (principles 17, 34, 119 to 123, 143 and repeated 143 of direct taxes act) that's the meaning makes a need to transfer the shares as an independent and integrated property. This research is conducted by exploring library documents from the sources, as the main basis of this research. Involving the subject of the study with the issues such as taxation in the tax authorities has led to field researches. As a result; the topics mentioned ownership interests are known as objective explanation of the relationship between shares and shareholders. Therefore, taxation on stock is not possible except in the form of transfer of an objective property.

Keywords: Income tax, Objective right, Shares tax mandatory, Tax law, Transfer of debt.

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AN INTRODUCTION TO A COMPARATIVE STUDY ON THE FRAUD IN POSITIVE LAW AND ISLAMIC JURISPRUDENCE

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Abstract

The issue of fraud against the law and its consequences, both in domestic law and international law, is one of the challenging issues about which there are different ideas. In Iranian law, there is not a legal article that clearly expresses the verdict of fraud, so a judge in the face of a fraud has to refer to and judge with valid sources or reliable jurisprudential Fatawa (Islamic Shariah and jurisprudence) according to Article 167 of the constitution. But the truth is that there is nothing about the fraud in the jurisprudence and there are some other topics which can be compared with the fraud. Reviewing these topics and comparing them with the fraud in this paper shows that we can not express a certain defined verdict about the fraud and it shall depend on each special case.

Keywords: Fraud against the law, Deception, Prohibition of detriment, Illegitimate cause, Breach of purpose.

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AN ANALYSIS ON DEFINITION ELEMENTS AND APPLICATION CASES OF FRAND LICENSE

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Abstract

FRAND license as one of the strategies based on intellectual property law adopted by standard-setting organizations, observe technologies of technical standards because of their importance in particular art. Such license can play significant role in developing technical standards, and exploiting and transferring essential standard technologies. Having contemplated in approaches raised in different legal systems, this paper in descriptive – analytical method is going to clarify the notion of FRAND license and survey the situations that lead to employing such agreement by undertakings and competent authorities. The results show that design of the structure of FRAND license by standard-setting organizations and courts has encountered serious challenges which in its turn has had adverse effects on determining process of rights and obligations of parties as well as using essential standard technologies. Iranian law lacks legal essentials in applying FRAND license and existing general rules impede extensive and efficient exploitation of such technologies rather than solve the problems. Accordingly, having analyzed the driftnet aspects of subject and benefiting legal experiences and findings of other countries, current paper tries to provide some suggestions and approaches confronting particular matters of FRAND license in Iranian law framework.

Keywords: FRAND license, Essential standard technology, Technical standards, Patent law, Intellectual property agreements.

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**PLAGIARISM AND SANCTIONS AGAINST IIT; WITH AN
EMPHASIS ON THE INTERACTION PLAGIARISM &
INTELLECTUAL PROPERTY LAW**

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Abstract

Plagiarism means copying intellectual work belonging to another and passing off it as own. This is overlapping with Intellectual Property Law. Hence, many academics think these two terms as synonyms, but this is a false impression, and all instances of plagiarism, such as the use of the idea of another person, or self-plagiarism, are not subject to intellectual property law. The present paper tries to investigate the elements and enforcements of its implementation by analytical-descriptive approach and Library- empirical methodology (reviewing Sentences of Disciplinary Board). Finally, it can be concluded that plagiarism is just part of intellectual property law, but other parts are also subject to an independent system that can lead to administrative penalties.

Keywords: Originality, Plagiarism, Copyright Infringement, Moral Rights, right of attribution (paternity right).

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LEGAL PERSON'S CAPACITY IN GRATUITOUS CONTRACTS

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Abstract

In Iran law, it is often believed that legal persons have full and complete capacity (Article 588 Commerce Act). But there are some doubts about legal person's capacity in gratuitous contracts: i) whether legal persons can understand "beneficence" means and if such a sense is imputable to legal person? ii) Is gratuitous contracts compatible with legal person's aims and nature; especially with commercial companies? iii) What is the range of state and public institutions capacity to gratuitous contracts? iv) Is there any capacity restriction to special gratuitous contracts such as testament; endowment; and personal suretyship? As a general rule any beneficence contract can be signed from legal person; whether as donor or done. The exceptions are the cases which human relations and motivations are more important than financial aspects (such testament), or when a contract naturally specialized for human (such suretyship), or when gratuitous contract is incompatible with the subject, aim, and philosophy of the legal person.

Keywords: Beneficence, Capacity, Corporation, Donation, Gift, Gratuitous contracts, Juridical personality, Legal person, Statute.

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THE ROLE OF REGULATION IN TORT LAW

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Abstract

Tort law is private law while the regulation by the state is public law. How should make relations between the two with each other? Tort law seeks to find the best person to bear the costs of conducts in social life and regulation to make obligatory standards of conduct that must be the best for a civilized society. However, both tort and regulatory law has regulatory effects and the aim of both is to shape the conducts of citizens. Many scholars have considered the link between these two but in a coherent system of conduct-regulation the aim of this paper is to analyze the role of the regulation in tort law. Thus, some samples of this effect can be seen in new approved law. It can be concluded that regulation may mitigate tort law system and fill its gaps when the tort law fails to observe conduct regulation policies.

Keywords: Tort, Regulation, Effectiveness, Compensation.

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INTERNET LINKS FROM THE PERSPECTIVE OF LAW AND IMAMIA JURISPRUDENCE

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Abstract

Linking to the content of other websites on the internet is a common practice which makes it easy for users to access their desired material. Two issues are raised about the linking; first, freedom of linking principle justified by free nature of worldwide web and, second, implicit authorization to link to all pages of a website by mere unconditioned presence on the web. The main reason raised by opponents is elimination of advertising profits of the front page of the linked website in certain types of linking. Another important issue is the probability of infringing the linked website owner's copyright. Hence, the need to analyze possible types of infringement, i.e. direct and indirect infringement and material and moral rights exposed to infringement by linking. This article, through descriptive-analytical method, has studied the concept and different types and freedom or prohibition of linking and the relation between linking and copyright from the perspective of Imamia Jurisprudence and law. The discussions show that all links are not necessarily infringing and the advertising incomes of websites may be acquired through advertisements on deep pages and linking may be restricted through technological means.

Keywords: Material rights, Moral rights, La Zarra Rule, Tasbib.

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THE COLLECTION AND OPTION OF RESPONSIBILITY DUE TO PERSONAL ACTION, ANOTHER PERSON'S ACTION AND OBJECT'S ACTION IN FRENCH LAW AND ITS DESIGN IN IRANIAN LAW

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Abstract

Occasionally, the harmful act can be described simultaneously in the personal action, another person's action and object's action. This is an interesting question in French law whether the victim's claim can be based on the principles of all three responsibilities or he has to choose one responsibility and the court should choose one responsibility and which responsibility and its documentation is prior to the other. Therefore, one of the examples of the collection and option of responsibility is the determination of the domain of the personal action, another person's action and object's action. All three types of responsibilities are nowadays becoming the rule and it is necessary to determine the scope of each one. This issue has been raised in the French books of the law of obligations and from the induction in these cases, general rules can be found. Doctrines have not addressed this issue in Iranian law and the studying it in French law could provide the basis for its design in Iran in a comparative study.

Keywords: Action, Personal, Another actions, Object action, Contract.