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Research Paper

Analysis of Legal challenges of Merging Unauthorized Monetary Institutions

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Abstract
Monetary crises caused by the activities of unlicensed monetary institutions in recent years in the Iranian monetary and banking system urged the Central Bank to mandate the merger of those unlicensed monetary institutions. On the other hand, according to the extra-legal decision of the *Supreme Economic Coordination Council of the Heads of the Three Branches* in August 2016, some other authorized monetary institutions affiliated with military organizations, some of which consisted in turn of the orderly merger of several unauthorized monetary institutions, were required to merge with the *Sepah State Bank*. This method, not only severely damaged the interests of direct and indirect stakeholders of these institutions, such as depositors, shareholders and employees of monetary institutions, but causes great damage to the public interest and to individuals through the creation of money and drastic devaluation of the national currency. Although merger is not unprecedented in non-monetary institutions, in case of monetary institutions, due to the their role in the national economy on the one hand and in gaining public confidence in the credibility of the national currency on the other, the effects and consequences of integration will be graver and not limited to companies to be merged, but all the society will be affected by it. Because the reason for revoking the license of, and merging, most of these institutions was their financial balance deficit and the loss of public deposits,

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they eventually imposed a heavy monetary cost on the Central Bank and the national economy. This was because they faced a liquidity deficit and were thus not able to repay the deposits on depositors' demand. The Central Bank handled this problem by creating an unsecured line of credit to pay the debts of these institutions from the public fund, which led to the devaluation of the national currency and thus reducing the purchasing power and the value of assets. It also surfaced numerous legal problems such as the legal gaps, the incompetence and inefficiency of the enforcement system, and the law's failure to safeguard the stakeholders' rights. Therefore, in this descriptive-analytical article, by examining the transnational regulations of the merger in the leading countries in this field, the questions will be answered as to what the legal nature of the merger is, whether it is a business decision, whether it is necessary and effective, whether it has any place in the current legal system, and on the other hand, whether the Central Bank and the *Supreme Economic Coordination Council* are competent to decide on the merger of monetary institutions or if they have acted beyond the scope of their legal authority. The article will argue that the purpose of merger should, as recognized in countries where it first adopted, be to consolidate the capital and the labor in order to increase efficiency and productivity, and that it must take place within the framework of clear rules and regulations. It will also be demonstrated that in societies with competitive markets, merger is an optional, rather than a mandatory, event decided based on the economic interests of the entities involved, that lies in the reduction of costs and boosting profits. Decided in this way, merger can also serve public interest by enhancing product quality and competitiveness and ultimately strengthening the national economy. The article suggests that merger should not be forced by the governing bodies of the monetary and banking system, and that these bodies must be legally prevented from such interference, their role being carefully defined and limited by appropriate legislation. The decision must be laid with the directors and governing bodies of the candidate entities so as not to impose additional costs on the public on the one hand, and to respect the rights of all stakeholder on the other hand.

Keywords: Central Bank, Competence, Efficiency, Legal Gaps, Stakeholders.

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Research Paper

Security Right against Receivables under UNCITRAL Model Law on Secured Transactions and Iranian Law

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Abstract
In the UNCITRAL Model Law on Secured Transactions, it is possible to create a non-possessory security right against movable assets means a tangible or intangible asset, other than immovable property to allow debtors to use the full value inherent in their assets to support credit. In this way, the use of intangible asset such as a right to payment of a monetary obligation subject to encumbered asset has been provided to guarantee and secure the obligation secured by a security right called secured obligation. in this model law, monetary obligation monetary is movable asset which has value inherent and exchange value and can be used as encumbered asset. Four types of this asset including receivable, right to payment of funds credited to a bank account, right to payment under non-intermediated security and right to payment under negotiable instrument has been regulated under the model law. In a special sense, the receivable can be considered as a right to payment of a monetary obligation because the creation and transfer of a

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receivable is not subject to special formalities, which is opposed to a right to payment under negotiable instrument and a right to payment under securities that the creation and transfer of debt in them is a place of reflection without observing special formalities. In this model law, the meaning of security right been changed from a right based on tangible and objective asset to an accessory and dependent right to secure secured obligation to include intangible asset such as receivable. In Iranian law, there are conflicting provisions for security right against receivable: On the one hand, it invalid by article 774 of the Civil Code, but on the other hand, in some scattered laws, such as article 1 of the law on facilitating banking facilities and reducing project costs and accelerating production projects and increasing financial resources and efficiency banks approved in 2007, security right against Receivable in the form of future income is considered possible without defining a precise framework for creating. This descriptive-analytical method has tried to investigate the method of creating security right against receivable in the UNCITRAL model law through a comparative study, and through this a new format for applying the provisions of the UNCITRAL law in Iiranian law. The main question of the research is how in the UNCITRAL model law, is created the security right against receivable? In response, it should be said that in the model law, the security right is created by the security agreement. This contract is concluded between two persons means the creditor as the grantor and the secured creditor that its purpose is to secure Secured obligation. The essence of the agreement is the possibility of secured creditor to collect payment from the debtor without transferring ownership to the secured creditor. Under this agreement, the receivable is seized in favour of the secured creditor and is entitled to collect payment from the debtor after default of the secured obligation. This agreement takes effect between the parties as soon as the security agreement is entered into without the need for the an additional step but it has no effectiveness against debtor and third parties unless the requirements of the model law have been met. For achieving debtor effectiveness, a notification or payment instruction must be notified to him so that he can be required to fulfill his obligation to the secured creditor, otherwise the debtor has no obligation to payment of money to him. For achieving third party effectiveness, the primary method is used as notice with respect to the security right is registered in the registry. There are no provisions in Iranian law such as the provisions of the Model Law. This study suggests that the provisions of the UNCITRAL Model Law be used to legislate the creation of Security right against receivable in Iranian law.

Keywords: Security Right, Security Agreement, Debtor of Receivable, Secured Creditor.

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Research Paper

Guerrilla Tactics in Arbitration and How to Combat Them

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Abstract

This article introduces the term "guerrilla tricks in arbitration", an issue whose destructive effects and the ways to deal with it is the focal point of conferences and scientific debates throughout the arbitration community. Therefore, it is necessary to study the destructive effects of guerrilla tricks in the emerging Iranian judiciary. The aim of the present study is not only to show the harmful effects of guerrilla tricks, but also to provide solutions to counteract such tricks. The research method is descriptive-analytical, and the data has been collected in library method, with emphasis on the analysis and interpretation of legal texts of the international arbitration, research and theories of the international arbitration community and reviewing the proposed regulations of famous arbitration centers such as ICC and AAA.

Guerrilla tricks are a strategy used by the dissatisfied party in the arbitration process to derail the arbitration process or have the arbitrator's vote annulled. Such a person is called an arbitration guerrilla who, because he does not see the arbitration in his favor, tries to make the arbitration process difficult by requesting an extension of the hearing for illusory reasons, submitting irrelevant documents to the dispute and requesting the arbitral tribunal to review them, dismissing the lawyer and counsel in order to request a retrial, sabotaging in the provision of relevant evidence, placing pressure on witnesses and experts, protesting against the lack of independence of the arbitrator or lack of justice in

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equal treatment of the parties, engaging in verbal conflict with the other party to the dispute, showing disrespect to the arbitrator, disrupting the order of the arbitration session.

This scroll of guerrilla tricks clearly shows how vulnerable the arbitrator is to the guerrilla behavior of the parties with all its benefits. Arbitration, once the flagship of speed, cheapness, and efficiency, is now becoming a passive, slow, costly, and inefficient institution. This plague is currently infecting Iran's arbitration. For example, the most important guerrilla threat to the arbitral tribunal is the frequent delays in arbitration proceedings. It is enough for the guerrilla to disrupt the arbitration process for three months and not attend the hearings and give no reason, and disrupt the order of the hearings, ignore the court orders, and dissuade witnesses from testifying. It is not before the time limit for arbitration set in the Article 484 of the Code of Civil Procedure has reached that either the arbitration, according to Article 474 of the Code of Civil Procedure, or the arbitral award, if one has been issued, according to Article 489 of the Code of Civil Procedure, could be annulled by the court. In fact, the Code of Civil Procedure not only does not prevent guerrilla tricks, but also provides unique opportunities for guerrilla arbitration to overturn arbitration. In this way, the arbitrators have no choice but to be indifferent to the principles of the trial so that they can issue a verdict within the prescribed time limit, and this contradiction undoubtedly completely destroys the efficiency of the arbitral tribunal. That is why care must be taken in setting the rules of arbitration, and arbitration in Iran will never flourish until a solution is found to counter guerrilla tactics.

Accordingly, for the Iranian arbitration, which is at the beginning of the path, a solution must be devised to counter the guerrilla tricks. This article proposes five effective strategies to protect the arbitrator against the harms of guerrilla tricks. The first is the inclusion of an *Asymmetrical Arbitration Clause* in the arbitration agreement. In this way, if the other party does not cooperate, the plaintiff can decide on the details of the arbitration process on his own. The second solution is for the parties to agree on a regular and flexible timetable that provides for the deadline for petitions and actions required in arbitration. The third way to prevent guerrilla tricks is to attach some ethical precepts to the arbitration agreement. The benefit of this code of ethics model is that each party becomes familiar with its obligations and understands what behaviors will be considered guerrilla tactics. In this way, the arbitrator faces less challenge in punishing the offender. Two final strategies are formed to increase the managerial power of the arbitrators so that they can use their experience and knowledge to deal with the arbitration guerrillas. The fourth and most powerful tool against guerrilla tricks is *Adverse Inference* which is based on the assumption that the document that the defendant has refused to submit to the arbitral tribunal implies his conviction or proves his wrongdoing. The last resort is to impose arbitration costs on the guerrillas in two ways 1. Allocation of arbitration costs to the guerrilla at the time of the issuance of the award 2. To

receive security against using guerrilla tricks. Thus, if the proposed solutions in the Iranian arbitration law and the bylaws of arbitration institutions have a strong presence, Iranian arbitration will be free from guerrilla and guerrilla tricks in arbitration.

Keywords: Guerrilla Tactics, Arbitration Guerrilla, The Speed and Efficiency Of Arbitration, Asymmetric Clauses, Adverse Inferences.

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Research Paper

Sequential Liability

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Abstract
A review of various legal rules comprising the law of obligations in the Iranian legal system demonstrates that this system recognizes a special type of obligations with the unusual property that its burden is neither on one specific person (*individual responsibility*), nor on several persons simultaneously (*joint responsibility*), but, in two or more subsequent stages, along a specified priority, on different persons, so that in each stage, the creditor's claim is due to be paid from a different person's property. The creditor could pass to the next stage only when in the previous, there has been found no, or insufficient, assets. The obligations of involved persons, in other words, cover each other alternatively. The type of obligation thus described has not been viewed as a genuine, independent one in the Iranian legal system so far. Rather, it is considered as a special and exceptional phenomenon, or even as an irregularity. Therefore, the instances fitting in this type have not been collected and studied together, its constituting elements have not been specifically studied, and the rules governing it have not been formulated. This article is intended to study this type of responsibility as a genuine and independent type among obligations and to examine its instances, elements and the rules governing it.
The method of this research is descriptive and analytical. Accordingly, in the beginning, the article will descriptively review various laws that contain, or constitute an application of, the sequential responsibility, either explicitly or implicitly. Then, in the analytical phase, an attempt will be made to derive the general principles, elements and rules governing the provisions embodied in that particular body of law. In this way, the most important

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interpretive instrument will be the *induction* from various legal provisions. The library research method will also be employed.

The hypothesis of this research is that the sequential responsibility is not exceptional or irregular, but a genuine, purposeful and regular type which the legislator is able to use when necessary. It is a combination of the individual and the joint responsibility, aiming to support both the debtor and the creditor at the same time. Also, it can be conceived as a form of insurance for a number of obligations, each backed by the obligation(s) of the next stage. Therefore, by coherent explanation and analysis of the rules governing this type of responsibility, the scope of its appropriate application can be suggested to the legislator and to the legal doctrine.

The principal questions of this research are: 1. what are the examples of sequential responsibility in the Iranian laws? 2. What are the structural characteristics and the elements of this type and its differences with other types of responsibility? 3. What general rules governing this type could be induced and to what issues could they be applied? On the other hand, the following hypotheses will be suggested: 1. The hierarchy between the liabilities of different persons for paying alimony to relatives, as well as the sequence in paying the blood money between a) *Aqila* (paternal relative of the felon), b) the felon, and c) the public treasury are prime examples of this type of responsibility. Also, the sequence between a) minor's liability and b) its culpable guardian's liability, and in some cases, the liabilities of a) the company director and shareholders/members, and b) the company/legal entity should be considered as examples of this type of liability; 2. The elements of this type of responsibility are: *sequentiality*, *single debt*, and *multiple properties*. 3. There are general rules governing matters such as: the aim of responsibility, the relationship between liable persons, and the scope of responsibility.

This article has depicted as a regular category a group of obligations that have always been viewed as sporadic or exceptional cases. The article will present them as an independent, original institution in the Iranian law, with the proposed name "*sequential liability*". Various instances of this type of liability will be traced through different laws and put together as a coherent category. These include: sequential liability between the invalid (the insane and the minors) and their culpable guardian (Article 7 of the *Civil Liability Act*), sequential responsibility between different persons for paying alimony to their relatives (Articles 1198 et seq. of the *Civil Co*de), sequential responsibility between the director of a legal entity and the entity itself to compensate for damages caused by a crime (Article 28 of the *Protection of Authors, Writers and Artists Act*, legislated in 1970), sequential liability between limited liability and general partnership companies and their partners/shareholders (Articles 126, 186 and 187 of the *Commercial Code)*, sequential liability between the company and its culpable director against third parties (Article 143 of the *Amendment to the Commercial Code*), and sequential responsibility between the *Aqila* (paternal relative of the felon), the felon, and the public treasury, to pay blood money (Articles 470, 435, 471, 474 and 475 of the *Islamic Penal Code*). Instead of focusing on divergences, the article will explore similarities and common elements in

various cases, as is necessary in any scientific research. Common elements are: a) sequentiality, which means the sequential relation between a number of obligations based on a specified priority; b) multiple properties, meaning that sequential responsibility shifts, at each level, from one liable person's property, to the property of the person in the next rank; c) one debt, meaning that the content of obligation is the same for all sequential ranks, bearing same qualitative and quantitative characteristics. Finally, by induction from various bodies of law, and by taking into account the purpose and the rationale behind this type of responsibility, the general rules governing it, which are applicable in similar cases or when no specific rule can be found in the texts, will be formulated as follows: first, the aim of sequential liability is to support both the creditor and the debtor, in that the creditor will have access to multiple properties to collect the debt, and the debtor will not be forced to face hardship by fulfilling the debt. Thus, this is a genuine category of responsibilities, along with the individual and the joint responsibility; second, as to the relationship between sequential debtors, since each of them is paying his own debt, he cannot, in principle, claim against those in the previous or the next rank to refund what he has paid, such as is the case for the one who pays the relative's alimony; third, the scope of sequential responsibility, in accordance with its rationale and its premises, is that each debtor in any rank is responsible for all of the debt, and only the portion he failed to pay will be transferred to the next rank. As for the case where several debtors are in the same rank, the rule is that each will have to pay an equal share of the debt.

Key Words: Creditor, Debt, Rank, Sequentiality, Hierarchy, Liability, Obligation, Responsibility, Sequence, Stage.

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Research Paper

Separation of Cases in Civil Proceedings

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Abstract

Compound litigations, which consist in the multiplicity of litigants, the multiplicity of claims, or both, compel the court to first decide whether to merge or separate the elements they are made up of. If the conditions for the merger of the lawsuits are not met or if after the merger, the court determines that they no longer need to be subjected to a joint proceeding, it will decide to separate the lawsuits. So far, separation and the rejection of merger has not been discussed in detail and independently in Iranian literature, and it is typically viewed as an ancillary subject, meaning that the focus has been on merging or consolidating litigation and the issue of separation of claims has been brought about only as an ancillary matter. There is nothing wrong in this approach *per se*, but its effect can be that some aspects of litigation, including issues related to the causes and procedures of litigation, will not be studied properly. In order to solve this problem, before dealing with the procedures of separating lawsuits based on their respective types, this article will explore, quite in detail, the causes of lawsuits. The question here will be why it is possible to separate lawsuits and why this should be done. The analysis of the relevant legal rules shows that the separation is mandated by law in some cases and at the discretion of the court in others. According to this study, two general bases for the separation of lawsuits could be found: discretionary or judicial, and compulsory or legal. The first involves the cases where the judge discerns that there are no theoretical foundations for the merger of lawsuits and that the continuation of the trial as a joint proceeding is undesirable. The second consists in the legislator's response to the abuse of rules and to attempts to divert the proceedings. Separation of lawsuits in the general sense include unraveling, or deciding not to merge, lawsuits and to stop their proceeding in the merged state. In the specific sense, separation involves only to dissociate lawsuits already merged. At

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first glance, the term "separation of lawsuits" refers to a situation in which the court first decides to merge the lawsuits and subsequently, when the co-trial process is under way , for some reason, either the law or the court finds the dissociation of lawsuits as possible or necessary. The reason may be that the court is ready to render its judgment on a part of the lawsuits, that the factor compelling the joint proceedings stops to exist, or secondary reasons involving the violation of the principle of good faith or of rules of procedure if merger is allowed. Both general and specific senses of the separation of claims will be studied in the present article. After examining the reasons for the separation of lawsuits, the article will deal, in its second part, with the rules governing the procedure of separation of connected or combined lawsuits. It should be noted that when the separation of cases, as one of the administrative arrangements of the proceedings, is concerned, the separated cases should be managed in such a way that their proceedings do not face procedural challenges that delay the process. In his decision over separating lawsuits or rejecting mergers, the judge must, in addition to taking account of the litigants' preferences and engaging them in the decision making, pay attention to the procedural results of separating lawsuits and its impact on the quality and efficiency of the proceedings. The purpose of adopting arrangements such as separating lawsuits or declining the merger must be to maintain the quality and efficiency of litigation and to simplify lawsuits. As a result, the judge must always evaluate the consequences of using this mechanism and its impact on the course of the proceedings. Prescription of this duty in laws will urge judges to take it more seriously and oblige them to present an argument for their decisions. As a result, in studying how to separate lawsuits, it is necessary to clarify the reasons for it and the desirable degree of intervention of the law, the courts and the litigants and the rules governing each's role. As the article will argue, Article 65 of the *Civil Procedure Act* constitutes a turning point in the Iranian procedural system in terms of the authority granted to the court in administration of the lawsuit; Given this, the next step in terms of enhancing the administrative capacity of the courts in connection to the procedural rules of compound litigation should be to leave further evaluation of the possibility of separation to the court. After the lawsuit is referred to a court, the judge will decide, as an administrative measure, and by briefly reviewing the claim and considering factors including the presence of a common basis in the lawsuits and, more generally, the level of their connection, whether to accept the merger of the lawsuits or separate their proceedings. Paying attention to the litigants' preferences and obtaining their opinions before separating the lawsuits is compatible with the new approaches in procedural law, because proper judgments is not possible without effective, lawful and conscientious participation of the litigants. This is particularly vital in proceedings containing compounding elements, as they involve grounds for deviation in the proceedings and the reduction of its quality, and the law has to respond the judge's violation of this duty with strict sanctions. At the same time, the possibility of independent objections to the court's decision on the separation will inadmissibly hamper the proceedings . Naturally, the purpose

of such research is to clarify the various aspects of litigation, to develop knowledge of civil procedural law, and ultimately to improve judicial procedure. Toward this goal and in collecting the relevant data, descriptive-applied method and library resources have been employed.

Keywords: Court, Litigation, Judge, Procedure, Decision.

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Research Paper

An Economic and Legal Approach to Contracts Based on Imposing the Price to Distressed and Crisis-Stricken Persons in the Iranian and the US Law

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Abstract

If a person purchases a commodity at a higher price than normal or sells it at a significantly lower price than normal as a result of a personal event, such as a spouse's illness, or of a public catastrophe, such as an earthquake or flood, this event can be said to impose the price on him. Under the Iranian law, the critical question is: what is the legal status of contracts based on imposing the price? To address this topic, the authors conducted a positive (descriptive) substantive analysis on laws and regulations, materials from Islamic legal treatises, and legal opinions. Also, following the economic approach used in this study, the authors examined the legal validity of contracts based on the imposition of prices on distressed and crisis-stricken persons from a positive-normative economic perspective. This positive-normative approach is founded on the *theory of price* and the concept of economic efficiency, respectively. It should be noted that since the history of the economic debate on this matter predominantly comes predominantly from the American literature, this article needs to be comparative.

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In Iranian law, according to the predominant view of *Shi'i* Jurists, Article 206 of the *Civil Code* considers a transaction motivated by the party's economic need to be valid. However, based on many pertinent articles, most notably Article 178 of the *Maritime Law*, some jurists have argued that this is an unfair transaction in which products or services are provided at excessive rates to, or at a lower price purchased from, the distressed party. Some held the contract to be voidable, some found it modifiable, and some considered it valid, though with an option for the distressed party to cancel it. However, based on the predominant view among *Shi'i* jurists and the express or implicit content of the pertinent rules of Iranian law, a contract motivated by a party's economic need is valid unless it falls in the scope of the *Maritime Law*, the rule embodied in which cannot be extended to other contracts, or is deemed anti-competitive in the market, in which case it may be terminated by the Competition Council according to the paragraph 1 of Article 61 of the *Law on the General Policies for the Implementation of Article 44 of the Islamic Republic's Constitution.*

In the US law, section 2-302 of the *Uniform Commercial Code*, on which most states have based their respective laws directly or implicitly, a contract based on the imposition of an unconscionable price on the distressed party is deemed changeable. Moreover, contracts based on the imposition of prices on individuals affected by catastrophic disasters and crises, such as floods and earthquakes, can be altered and the imposer will face criminal sanctions and financial penalties . It should be emphasized though that using criteria such as unfairness or unconscionability for altering this sort of transactions may be challenged due to their vagueness and incapability to produce objective, well-structured standard.

It is also noteworthy that the rise or fall in the price of commodities or services in a widespread or uncommon emergency is reasonable from an economic standpoint, because such events, on the one hand, often impede the production, resulting in large supply reductions and, on the other, lead to dramatic rise in the consumer demand, particularly for certain products and services. According to the pricing mechanism, whenever a product's supply declines and its demand grows, its price will reach its maximum level. This price rise will encourage present and future manufacturers to expand their output, resulting in lower prices and increased consumer welfare. Furthermore, validating the discount sales of economically distressed parties may be an appropriate economic strategy in recessions. However, government interventions (by regulation) are often inefficient and ultimately detrimental to consumers and should thus be limited to cases when it is necessary for the maintenance of the market activity.

Keywords: Emergency, Disaster-stricken Persons, Emergency Abuse, Price Imposition, Unconscionability, Economic Analysis of Law, Embarrassed, Supply and Demand.

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Research Paper

Declaration of Third Parties in Proceedings and its Exceptions

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Abstract
A human element outside the litigants who has information on the subject matter of the dispute is called a third party. In general, the statements by any person other than the plaintiffs or the judge hearing the case are called the "statements of third parties." Logically, this evidence in terms of nature and method can be the third party's information or comment on the fact or on the law, which is presented orally or in writing, whether on paper or digitally, in person at the court or outside the court. Manifestations of these statements are enumerated according to the historical and cultural roots in the positive law, which are referred to in this article as the statements of certain third parties. However, many of the examples that can be assumed are not covered in this article, and they are referred to here as indefinite third party statements. The relationship between these statements and the subject and the sentence can be examined and evaluated from two aspects. First, the logical relationship is the one that has traditionally been examined in the evidence of litigation. The purpose of this relationship actually refers to the manifestation and logical and rational reality of the evidence for the statements of third parties. Evidence is the product of the study of experimental sciences, including cognitive sciences, psychology, and so on. Second, the relationship between evidence and meaning, which is the new division proposed in this article. The purpose of this relationship, regardless of the logical aspects, is to look at the moral, cultural, social, and economicconsiderations for the legislature and the legal system. In this way, according to the mentioned purposes, the legislator sometimes does not onsider the logical relation between these statements and meanings and prevents the exercise of the probative power of the evidence.

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This article is methodologically fundamental because it seeks to provide a legal theory that can be offered on the probative value of third party statements as an important part of the evidence, taking into account the rationale and contractual links between these statements and the fact or law. Of course, the result of the present study can have a practical aspect. However, due to its direct relationship with theoretical issues and the fact that it is initially used in theoretical and scientific references and may even lead to the amendment of laws, Its relationship to the practical law is typically indirect. Hence, it is considered non-practical and theoretical in conventional classification.

Also, the present article is an introduction to different types of third party statements and the current situation of their positive valuation in the Iranian legal system and a case study with the two main categories of legal systems, namely positive law and common law. How to deal with the legal systems under study with this type of evidence and provide as much analysis as possible of the causes and aspects of this type of view and its principles are also the purpose of this article. Therefore, in terms of data collection, the research method is to refer to sources to compile a so-called library study.

The article first deals with the lack of uniform and logical aspects in the analysis of the probative value of various third-party statements, and secondly examines the irrelevant issue for the formal aspects of the probative value of third-party statements and its mechanical view, and thirdly examines the difference between reason and meaning in the Iranian legal system. It is obvious that any reform in legal approaches and judicial procedures in the Iranian legal system, which stems from its cultural and social roots, including *Imami* law, is not possible without considering its principles and finding relevant literature and correct justification of its statements. The present article is written with the approach of analyzing justified solutions in order to theorize the free system of evidence and critique the mechanical view of the probative value of evidence and accuracy in the nature of the principles of probative value and presenting a new classification of probative value and the statements of third parties should be examined on the basis of the principles of *Imami* law and the existing legal system in Iranian Procedural law.

The questions examined in this article are as follows: 1- What rules can govern these statements in terms of probative value? 2- Are there any common rules that can be referred to as general rules? 3- Can the relationship between the reason for the statements of third parties and their meaning be examined from a contractual point of view? 4. How many types of statements of third parties are there in procedural law? 5- Is the evidence for the statements exclusively enumerated? 6. What is the relationship between the probative value of third party statements and the presumption and the knowledge of judge? 7- What do the traditional conditions related to

the logical acceptance of third party statements have to do with the probative value of these statements?
The hypotheses of this article are:
1 -The types of statements of third parties are not exclusive. 2- The probative value of third party statements can be examined from both logical and contractual aspects. 3- The basic principle is to accept the logical probative value of all types of third party statements. 4- The probative value of all kinds of third party statements in Iranian law can be analyzed absolutely in the form of a judicial presumption. 5. The division of the probative value of the evidence and statements of third parties into logical and contractual makes it possible to make policies for the evidence and thus limit or prohibit the probative value of the statements of third parties regardless of their logical relationship with the meaning in terms of contractual aspect.
In this article we achieved these goals:
Providing the classification of probative value into rational and contractual, announcing the basic principle of rational acceptance of the probative value of third party statements, the ability to analyze all types of third party statements under the presumption and judge's knowledge.
Discussion of presumption as the basis and nature of probative value of different types of evidence by considering the relationship between judge's knowledge in probative value of evidences and rejecting the definition of judge's knowledge to personal science and criticizing the mechanical view on the probative value of third party statements has been our goal in this article. The definition of evidence and the presentation of the division of positive value into logical and contractual evidence are new approaches in the present article.

Keywords: Definite and Indefinite Third Party Statements, Rational and Credit Positive Value, Statistics and Jurisprudence.

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Research Paper

Cross-Border Executive Support of Judicial Settlements
A Comparative Study of the Singapore Convention 2019, the Hague Conventions 2005, 2019 and Iranian Law

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Abstract
Problem Statement: Conciliation as one of the most well-known dispute resolution methods has gained special credibility due to ratification of Singapore Convention on International Commercial Settlement Agreements 2019 by the United Nations and the granting of executive support to settlement agreements resulting from mediation. One of the types of settlement agreements is judicial settlements recorded by court, which are considered as a kind of settlement agreements due to the main role of the will of the parties (rather than the judge) in drafting them. Also, it is always possible for the parties to reach a settlement after a dispute has been filed in court, and in some cases, the parties to the dispute may even reach an out-of-court settlement agreement and submit the settlement to the court for approval in order to benefit from enforcement support. In both cases, the judge reflects the settlement agreement of the parties in the form of a judicial settlement. An important issue regarding judicial settlements recorded by courts is the possibility of their enforcement in other countries, which is questionable due to the involvement of two dispute resolution methods: litigation and conciliation. This is because the judicial settlement has a dual nature, because on the one hand, it is a kind of settlements due to the

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exclusive intervention of the will of the litigants in its conclusion, and on the other hand, it has a judicial nature due to its reflection in the court judgement. Therefore, in order to examine the possibility of enforcing foreign judicial settlements, the provisions related to the enforcement of the settlement agreements and court judgements can be applied. As a result, there are serious doubts about the international treaty applicable to the enforcement of judicial settlements in foreign courts. The position of Iranian law in this regard should also be examined.

Research Method: The purpose of the present study is fundamental because it contributes to the development of law and in essence, the method of the present study is analytical/descriptive. There is also a comparative approach in this study due to the review of the 2019 Singapore Convention, the 2005 Hague Convention and the 2019 Hague Convention.

Theoretical and Conceptual Framework: To examine the subject of the present study, judicial settlements should be examined from the following perspectives: cross-border enforcement of judicial settlements of courts in accordance with the Singapore Convention, cross-border enforcement of judicial settlements of courts in accordance with The Hague Conventions, and cross-border enforcement of judicial settlements of foreign courts in accordance with the Iranian law".

Research Questions and Hypothesis: The main questions of the present article are: Is it possible to enforce cross-border judicial settlements in accordance with the Singapore Convention? Is it possible to enforce cross-border judicial settlements in accordance with the Hague Conventions? Is it possible to enforce cross-border judicial settlements in accordance with the Iranian law? The hypothesis of the present study is that due to the approach of conventions applicable to cross-border judicial settlements and the narrow approach of the Iranian Civil Judgment Enforcement Law, in none of the above three hypotheses can the possibility of cross-border enforcement of the judicial settlements be considered high.

Research achievements: Overall, the article concludes that 1- the enforcement of judicial settlements by foreign courts is fraught with difficulties because the Singapore Convention generally excludes such settlement agreements from its scope of executive support in Article 1.3.2- the explicit support of the Hague Conventions for judicial settlements, due to the unacceptability and small number of member states of these treaties, cannot have a positive impact on the enforcement of judicial settlements by foreign courts, 3- the vague and numerous restrictions mentioned in Articles 177 and 169 of the Iranian Civil Judgment Enforcement Law also greatly reduce the possibility of the enforcement of foreign court judicial settlements in Iran. Overall, based on both international law and Iranian law, the possibility of enforcement of cross-border judicial settlements in other countries do not consider high, and individuals and businesses are advised to submit the settlement to an arbitrator (rather than a foreign court) to benefit from the successful New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in the various States party to the said Convention.

Key Words: "Settlement Agreements", "Conciliation", "Enforceability of judicial settlement", "Approval of judicial settlement by court", "Contrary judgments to judicial settlement".

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Research Paper

Detailed Article Abstract: An Analysis of the theory of Unpredictability in Modern French Law and its Place in Iranian Law

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Abstract
The theory of unpredictability originated in French law and has undergone a historical transformation. This theory considers changes in the terms and conditions surrounding contracts. In principle, the parties to a contract declare their wills after considering all matters related to the subject-matter of the contract, and it is their intention not only to take account of the current circumstances, but also to foresee future changes and possible developments. However, the process of fulfilling obligations may be hampered by the occurrence of unpredictable events. In this situation, two scenarios are conceivable: the implementation of obligations may be practically impossible, or it may entail excessive financial costs. The first type is known as force majeure while the second is the subject of the theory of unpredictability, where negotiation to modify the contract is suggested as a solution.

In its recent amendments to the Civil Code, the French legislature, while accepting the theory of unpredictability, gives the judge an unfettered discretion for the modification or dissolution of contracts. Article 1195 of the French Civil Code is intended to recognize, as a rule, the modification of contracts in the event of unpredictable conditions that makes performance difficult. This legislative measure has realized one of the aspirations of lawyers because the judicial procedure, and the judge in particular, have not

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been able to change the contracts, and on the other hand, if such an action is permitted, the security of legal and economic relations in a society will be in danger. French judges, however, now have the necessary authority to modify contracts as a matter of enforcing the rule of law. The law speaks of the difficulty of fulfilling obligations, but does not provide specific criteria for it. It might have been found impossible to suggest criteria because the difficulty of fulfilling obligations varies from one contract to another, and it is the judge that, by examining the surrounding elements and by obtaining expert opinions, can conclude whether there has been difficulties in implementing the contract.

In Iranian law, the need to provide for a modification mechanism is more pressing now after the imposition of unilateral sanctions on international contracts as well as severe economic instabilities due to a variety of factors including the COVID pandemic. Due to the lack of specific legal provisions on contract modification, the courts decide about the modification according to the spirit of the law, general legal principles and the implicit agreement of the parties. Judges of Tehran courts have recently discussed the implementation of continuous contracts affected by the COVID in their meetings, and it has been suggested that if the conditions of force majeure are met, the party in failure should be exempted from the obligations and the compensations provided for the breach in the law or in the contract. The fact that the National COVID Committee has decided to allow the extension of lease agreements with a limited authority being conferred on the lessor to adjust the rent also indicates that the theory of unpredictability is not alien to the Iranian legal system.

This article, using descriptive-analytical method, and taking into account the differences in the sources of law between the legal systems of Iran and France, will examine the legal nature of this institution and distinguish it from others. It will address the question whether the proposed solutions contribute to the economic dynamism of the contract law and will conclude that the contract has several economic and legal effects for the parties and these effects are long-term, so the need to modify the contract is paramount. On the other hand, considering that Iranian law is in many ways inspired by French law, this legal system is amenable to this theory on the basis of its general legal principles, although no specific legal text expressly upholds it.

Keywords: Modification, Unpredictability, Force majeure, Renegotiation, Cancellation.

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Research Paper

Challenges of Implementing e-litigation in Iranian Law with Fair Trial and Litigation Rights

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Abstract

Rules of procedure, contrary to the substantive laws, are subject to change based on the requirements of time and place and the conditions of, and facilities available to, the society, and with the growth of technology. Therefore, despite that the *Civil Procedure Code* currently in effect has been enacted as early as in 2000, the legislature and consequently the judiciary, due to the inefficiency of that law, has sought to change it to reduce the excessive costs of litigation for individuals and the judiciary and minimize the procrastination. These efforts are crystallized in the *Judicial Case Management system*, resulting in the removal of redundant formalities from the proceedings and demonstrating itself in two main patterns, *legal deregulation* and *material deregulation*. Relying on modern technologies, the latter pattern consists in moving litigations away from the traditional manpower-based form it used to have.

Although a comprehensive law on e-litigation has not yet been enacted, many of the rules of litigation are now processed electronically. This article argues, in response to this situation, that what is becoming electronic is litigations, the very right of individuals to access justice which is enshrined in the Iranian Constitution. Therefore, the major basis of the system should be the law, rather than the information technology and the abilities of

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engineers. The judiciary, in its very rapid advancing in the electronization of proceedings, has simply set aside some of the encumbering rules without replacing them by new lawmaking to address the problems in a more informed way. In some cases, instead of providing electronic services, this system decides in place of court judges, clerk or others involved in the lawsuits, neglects the application of the principles of proceedings that are meant to guarantee the acquired rights of individuals, and deviates from the purpose of assisting the proceedings. The litigants have no say whether the litigation is to be performed electronically. The optional e-litigation procedure is applied in the courts of France, and the choice of e-litigation or electronic information exchange in that country must be based on the litigants‘ consent, which they even have the right to retract. The *Judicial Case Management system* should thus be designed in such a way that neither ignores the regulations nor allows electronic services beyond the law to be introduced in the litigation. In other words, since the litigation is the core of this system, it is not justified to subject the procedures to inefficient changes without necessity. Accordingly, the most important challenges in e-litigation will be criticized in this article and the effects of e-litigation in providing a fair trial and securing the rights of litigants will be explored by examining relevant rules and procedures.

The present article has been written in a descriptive-analytical method using library studies and a deductive method, to address the challenges and concerns in this field.

The actual notification is one in which the form of notification is delivered to the addressee‘s own, if the addressee is a natural person, or to a person authorized to obtain judicial documents, if the addressee is a legal entity, in accordance with procedural rules, by the officer legally responsible for the execution of the notification, in exchange for a receipt, and the process is reported to the court office. In electronic proceedings, according to Article 13 of the *Regulations on the Use of Computer and Telecommunication Systems* and Article 8 of the *Regulations on the Provision of Electronic Judicial Services*, electronic receipt of judicial papers to the addressee's account in the notification system is deemed as valid actual notification. The fact that the notification is seen by the addressee, along with its time and other details, is recorded and stored in the notification system, and will be given all the effects of the actual notification. Logging in to the notification system through the user account and viewing the papers in this way is considered a receipt.

The present study seeks to answer the question whether, assuming the enactment of comprehensive rules of electronic procedure, all the stages of the proceedings could be implemented electronically, and how this method of litigation could ensure the rights of litigants, in spite of all challenges it is faced with. The article argues, in response to this question, that what is becoming electronic is litigations, the very right of individuals to access

justice which is enshrined in the Constitution. Therefore, the major basis of the system should be the law, rather than the information technology and the abilities of engineers.

E-litigation has undeniable benefits, such as the elimination of collusion between litigants and the notification officers, the capability of preparing and sending several records without going to court and, more importantly, the time efficiency. It has also several drawbacks for litigants as this practice is neither based on sufficient legal materials nor supported by enough technical infrastructure. It thus seems that it was the reduction of government costs rather than securing the interests of litigants that has motivated the project. As far as litigants are concerned, they will be forced to have a mobile phone line and a phone with special capabilities, to be connected to the internet, and to constantly monitor the *Judicial Electronic Registration system*, which demands time and expense. On the other hand, individuals will be obliged to accept various undesirable effects and consequences of e-litigation, such as going to the offices of the Judiciary to file lawsuits, to be confined in describing their claims to the precomposed clauses of electronic forms without much power to alter them, and at the same time to pay many different and additional costs that were not necessary in non-electronic proceedings. Also, one cannot request an immediate hearing during holidays or in non-office hours, and may be notified by the system at times of the day that are outside office hours, so he will miss, in practice, the day of notification. Finally, considering that many citizens do not have the necessary facilities for e-litigation and many other drawbacks of this electronic system, it not only does not guarantee the rights of individuals to a fair trial, but can also be considered a violation of their rights.

Key Words: E-litigation, Legal Challenges, Optional E-Litigation, Fair Judgement.

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Research Paper

Comparative Analysis of Substitute Contract as Remedy in Light of the Basic Principles of Contractual Liability

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Abstract
The possibility of concluding substitute contracts as remedy by the obligees is considered a controversial effect of the breach of contracts. According to this method, the contractual beneficiary is able to conclude a similar contract with a third party without the obligation to enforce the obligator to implement the contract. Due to the substitute contract, the obligee does not miss the opportunity to enter the market and will not incur losses from price fluctuations or the suspension of his property. However, according to the traditional approach in contract law, breach of contract and non-observance of the provisions of contracts is not a reason to ignore the contractual obligation. In other words, replacement and termination of the contract is allowed only if the enforcement of contract is not possible. Meanwhile, it is not possible to ignore a valid contract and its effects except as specified by law, while in legal texts or laws of Iran, concluding an alternative contract cannot be recognized as a general rule for remedy.
On the other hand, based on legal basics, it has been stated that substitute contract in certain circumstances can be a method of compensation and provide the best way to ensure the performance of contract. This is a punitive compensation of breach of contract and should be recognized based on the benefits of the damaged party. To restrict the methods of compensation means the ignoring practical facts and the effects of breaches of contractual obligations, which is also incompatible with the principles of contract law.

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This article tries to answer the question of whether the use of an alternative contract to compensate can be considered a valid and approved method. In examining the above issue, other questions can be asked, such as what are the principles justifying an alternative contract in contract law? What are the necessary conditions? Can the use of substitute contract be applied to all contracts? What will be the compensation if the costs of concluding an alternative contract increase?
Based on the studies conducted in this article, it is safe to say that concluding of substitute contract is a rational and desirable remedy that, in addition to complying with the principles of contract law, can create many benefits. The challenges of applying this method to law can be solved and justified, which is fully compatible with the development of interest-based analysis in contract law. It can be used in all financial contracts. However, it requires conditions that have reasonable bases and provide effectiveness. Therefore, it can be said that there is a basis for using this method in all contracts and agreements. The main justification argument used in this article is the adaptation of the alternative contract to the practical termination of the contract, which causes the injured party to terminate the contract after breaching. He explains his will to do so through the conclusion of the substitute contract.
The article is an analytical-descriptive study and considers the legal sources of other countries in the position of examining the nature, basics and conditions of the substitute contract. The main purpose of the article is to assess the compatibility of using this method with the rules of Islamic jurisprudence and Iranian law. The existence of some scattered examples, along with compliance with the principles of Iranian contract law and jurisprudence, makes it possible to use an alternative contract. The prevalence of this method can, in addition to achieving economic efficiency, reduce the number of lawsuits related to breach of contractual obligations. Finally, the conformity of the substitution with the principle of contractual liability is another advantage of using this method as a compensation.

Key words: Breach of Contract, Substitute Enforcement of Contracts, Impossibility of Enforcement of Contracts, Requirement to Perform Contracts.

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