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Research Paper

An Analysis of the Shareholders' Claims for Reflective Loss: A Comparative Study in the Legal System of England and Iran

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Abstract

Can a shareholder recover a personal loss resulting from a loss suffered by the company? Unfortunately, that apparently simple question has no simple answer. The company lawyer may argue that the answer lies in basic company law-as a separate legal entity, it is the company itself that must sue to recoup its own losses. That leaves the shareholder with no cause of action and no standing to sue. The shareholder derivative action, available under certain conditions, is still a corporate action, seeking relief for the company itself. Simply, that means that a shareholder cannot recover damages suffered by the company. A comparative approach is relevant to this investigation as it could provide invaluable insights which could enrich Iranian jurisprudence in case where shareholders will seek to claim for reflective loss. This article, from a comparative law perspective explores whether shareholders should be able to claim such a loss which is merely reflective of the company's loss. The results of the article show that in the UK corporate law, the direct action of shareholders to claim a reflective loss is limited to exceptional cases (**such as where the company is unable or unwilling to pursue the claim**) due to the important rule of "no reflective loss". The origins of the rule come from the decision in Prudential Assurance v Newman Industries, in which the court said: "what [the shareholder] cannot do is to recover damages merely because the company in which he is

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interested has suffered damage. He cannot recover a sum equal to the diminution the market value of his shares, or equal to the likely diminution in dividend, because such a "loss" is merely a reflection of the loss suffered by the company. The shareholder does not suffer any personal loss. His only "loss" is through the company, in the diminution in the value of the net assets of the company. The plaintiff's shares are merely a right of participation in the company on the terms of the articles of association . The share themselves, his right in the participation, are not directly affected by the wrongdoing . The plaintiff still holds all the shares as his own absolutely unencumbered property".

In the Iranian corporate law, despite the doubts about the claim for damages resulting from the reduction of shares and its profits in the decisions of the arbitration board of stock exchange and securities, it seems that such a loss is compensable. Because on the one hand, by examining the conditions of compensable loss in Iran's civil liability system, the loss caused by the diminution in the value of shares and dividends is a personal and independent loss for the shareholders, and any restriction in this field is a violation of the rights of the shareholders, and the person causing the loss must pay all the losses caused for his actions , and on the other hand, the argument that the shareholder's personal right ought to be subordinated so as to protect the interests of the company's creditors and the autonomy of company would seem somewhat less compelling. Ironically, respecting the principle of company autonomy demands the recognition that shareholders are separate from the company, which in turn forms the premise upon which rights and obligations of shareholders are distinguished from those of the corporate entity. If indeed the shareholder's right is an independent personal right, the fact that the loss suffered is reflective of the company's loss should not lead to a destruction of that right. Of course, some practical considerations such as the possibility of multiple shareholder lawsuits and efficiency (cost-benefit evaluation) lead us to consider the company as a priority in the litigation without limiting the personal right of shareholders to claim personal loss.

Key words: Company, Shareholder Claims, Reflective Loss, "No Reflective Loss" Rule, 'Priority of Company' Rule.

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Research Paper

Investigating the Legal Challenges of Portfolio Management Companies in Iran

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Abstract
What is introduced in Iran as a portfolio management company is known in other countries with different titles such as asset management companies, portfolio management, capital management and wealth management, which is equivalent to asset management from other terms, with the content of portfolio management that is popular in our capital market. The customers of portfolio management companies are divided into two categories: real customers and institutional customers. Real customers or ordinary people, which means households or rich people, but institutional customers also include insurance companies, pension funds, banks, etc. The tools used by portfolio managers in the world are mainly dedicated accounts, investment funds with variable capital, investment funds with fixed capital, money market funds, exchange-traded funds, combined ETF funds, private equity funds, and finally hedge funds. Dedicated accounts are similar to these brokerage contracts in Iran, during which the broker buys and sells with the customer's money in a code specific to the customer. Little information is available about this sector because the contracts are private and there can be

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significant differences between customers. Portfolio companies generally do not invest their own money, but invest for clients. Therefore, the main income of portfolio management companies is not from investment income, but from portfolio management fees. In fact, the portfolio manager is a legal entity that forms a stock portfolio and buys or sells or holds securities for the investor, taking into account the investor's goal and level of risk-taking in order to make a profit for him. The legal basis for its establishment and management is after paragraph (33) of Article One of the Securities Market Law, the "Establishment and Activity of the Portfolio Management" instruction and the sample contract of the portfolio management company with the investor, which enumerates the terms, conditions and regulations for issuing licenses and activities of this financial institution. From the birth of portfolio management in the country until today, this financial institution has faced challenges with various elements such as the stock exchange organization, investors, brokers, Central Securities Depository, banks, information processing companies and etc.

The purpose of this article is to examine the mentioned challenges, which was compiled in a descriptive-analytical way, using library resources and obtaining the opinions of managers and market participants.

One of the problems that exist in the way of the activity of indirect investors is the time-consuming and difficult process of indirect investment through portfolio management companies compared to direct investment in this market. The competitive environment created by the brokerages has caused certain privileges to be considered for direct investors and mainly people prefer direct investment in this market to indirect investment. The dominance of the brokerage institution as well as the bank and the conflict of interest that exists between the activities of brokerages and the indirect investment of people in the capital market are among the most important problems and obstacles to the development of indirect investment. Another problem that stands in the way of the development of direct investment in the capital market is the governance perspective. Although indirect investment in the capital market is always supported in the talks, in practice, the tools and regulations governing the capital market, including the range of volatility and volume, have been based on a kind of short-term and unprofessional view of the capital market. Portfolio management companies do not have the possibility to receive credit directly from the bank for leveraged funds, and to receive credit, they are forced to receive credit through brokers. Also, investment funds are considered the most important tools of portfolio management companies. However, after receiving the license of the portfolio management companies to establish a fund, a long and difficult process must be completed. Meanwhile, in the big capital markets of the world, some asset management companies manage more than 2,000 funds. In addition, portfolio management companies do not have the

possibility to announce the minimum possible profit forecast for their portfolios and funds. All these problems have caused weakness, exploitation and short-termism in the method of indirect investment, especially portfolio management. Solutions to solve problems are: amending the guidelines and rules related to the minimum capital and manpower of portfolio management companies, changing the attitude of investors from short-term to long-term by granting long-term licenses to portfolio managers, tax exemptions for the variable commission of portfolio managers, solving infrastructure problems related to core transactions and software in order to speed up the buying and selling process and transparency of transactions for investors, the need to accelerate the issuance of necessary licenses for the establishment of funds by portfolio managers, revision of the guidelines for the establishment and activity of portfolio managers, and considering things such as the possibility of freezing the investor's code, drafting and approving a comprehensive law on the prevention and management of conflict of interest in order to reduce the field of corruption and conflict of interest in this financial institution.

Keywords: Capital Market, Portfolio Management Company, Legal Environment, Challenges, Solutions.

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Research Paper

An Analysis of Judicial Persuasion in Finding Matters Subjected to Civil Lawsuits

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Abstract
The resolution of a judicially unknown matter requires acquiring knowledge about the external facts affecting the relevant case. The judge may go through a psychological, logical, and legal process for finding external facts to achieve conscientious persuasion. The judge also needs to know the basics and steps of forming a reliable belief before reaching a reliable belief. During the process of gaining a judicial belief, the judge does not need to psychologically and logically follow special regulations, but is only required to observe the general principles and rules of epistemology. This stage of proceedings is actually a matter of epistemology. This analytical-descriptive study aimed to analyze the rules of the epistemology of proof in civil proceedings, explores the ways to achieve a valid judicial belief and the factors affecting it from psychological and logical aspects, and proposes a criterion for measuring the validity and truth of judicial beliefs. The judge uses declarative sentences, which may be either true or false because of their nature, to express his/her knowledge of relevant matters as a form of judicial analogy. Such declarative sentences indicate the judge's mental image of disputed issues obtained through a process of research and analysis for fact

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finding. According to Article 199 of the Civil Proceedings Law, the judge is obliged to try to discover the truth and form the knowledge and belief consistent with the outside world. The judge's research scope and results are determined and announced based on the judge's basic and acquired beliefs. Such beliefs are formed in the judge's mind and psyche under the influence of the concepts existing in his/her mind as well as his/her skill in mental imagery and application of logical arguments. However, intellectual background, prejudices, emotional factors, or intuitional knowledge can affect the formation of judicial beliefs in some cases. The judge's final belief consists of several partial beliefs, all of which should be justified and honest to cause the formation of a correct and realistic belief. Judicial beliefs must be well-founded and strongly correlated with the outside world. Since evidence is the connection ring of this correlation, a justified belief should be evidence-based. Judicial beliefs must be established based on logical thinking and reasoning because this process can reduce the risk of error or fraud in the induction of unreal matters. Truth refers to the conformity of a belief with the outside world's facts, and the judge can achieve a true belief only through pieces of evidence. Nevertheless, this is not possible in all lawsuits due to the difficulty of access to pieces of evidence and their uncertainty in achieving the pure truth about disputed facts. Therefore, judicial beliefs cannot be investigated from this viewpoint. Considering the importance of this issue, articles 3 and 4 of the Civil Proceedings Law, which emphasize the necessity of hostility settlement and encourage the use of heterogeneous tools in terms of fact-implying probability, expect appropriate and reasonable, not pure, conformity of judicial beliefs to the outside world. Although one of the important tasks of judges is to try to achieve judicial beliefs in pure conformity with facts, there is no definitive criterion to verify the truth of judicial beliefs because of the limited access to pieces of evidence and the varying degree to which they imply facts in the outside world. It can be hence stated that the coherence of beliefs constituting a judicial belief is a practical and reasonable criterion to measure the apparent truth of that judicial belief. The partial beliefs obtained in the fact finding process must create a special mental state for the judge to convince him/her that external facts exist. As a threshold for deciding about the verification of facts or "standard of proof", this mental state is influenced by two factors: confidence and caution.

Keywords: Proof; Persuasion, Evidence, Science, Knowledge.

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Research Paper

Mediation Functions in Resolving Intellectual Property Disputes

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Abstract
The development of international transactions and the commercial exploitation of intellectual property has increased the necessity of creating dispute resolution methods in the field of intellectual property in accordance with international requirements. The parties to the dispute are looking for efficient, flexible, and low-cost dispute resolution mechanisms that will not disrupt their business relations. This is despite the fact that intellectual property disputes often lead to long and expensive lawsuits due to the territorial nature, diversity of rights, and technical complexities that result from the integration of different fields such as artificial intelligence with other fields, which is not favorable for the courts and litigants. Therefore, intellectual property rights holders have turned to methods that are more under the control and management of the disputing parties to resolve disputes. The special features of intellectual property rights and its lawsuits, such as territoriality, the specialization of intellectual property issues, conflicts in the jurisdiction of courts, widespread violations in different jurisdictions, the importance of confidentiality, the length of the process, and

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the huge costs of international proceedings. The lack of an international convention on the enforcement of intellectual property judgments is one of the most important reasons that has affected the efficiency of judicial proceedings in these cases. Non-judicial dispute resolution methods, which mainly have fewer formalities and costs and are faster, reduce many of these problems.

Among the non-judicial methods, mediation has the advantage of considering the characteristics of intellectual property, and compared to other methods, it is more successful in resolving these disputes. The interdisciplinary nature of most intellectual property claims and the need for various expertise to resolve disputes and the possibility of examining complex intellectual property cases, especially patent claims, by technical experts in the shortest time compared to other methods and often at a much lower cost, territorial nature of intellectual property rights and solving the problem of conflict in the jurisdiction of national and international courts and reducing the risk of issuing conflicting opinions, reducing the damage of the owner of the intellectual work due to the urgency and speed of mediation in resolving the dispute, focusing on the mutual interests of the parties and resolving the dispute amicably and, as a result, maintaining the commercial relations of the parties in long-term contracts that sometimes cover the entire period of protection of intellectual property, the suitability of the rapid development of technology, and the rapid diffusion of intellectual properties due to their intangible nature with the speed of dispute resolution in mediation compared to the slowness of judicial proceedings, extraordinary flexibility in the dispute resolution process and the possibility of adopting creative solutions such as concluding a license agreement, technology transfer, integration, cooperation in research and development, and agreement on the division of patent within a specific territorial area instead of being limited to the specific Judicial decisions such as revocation, financial damage, and etc. are the advantages of this method in solving intellectual property disputes compared to other alternative methods.

Also, privacy and confidentiality and maintaining the technical and commercial secrets of the parties, avoiding the reinterpretation of the claim in court and the risk of narrowing the claims, reducing the risk of patent invalidation, avoiding the research process, and obtaining the opinions of multiple experts due to the complexities of intellectual property claims, especially patent lawsuits and its costs, complete control of the parties on the determination of proceedings and the absence of legal dates and deadlines, being held in a single stage and with quick results, lack of legal obligation of the parties to accept the mediator's recommendations and suggestions, and the optionality of the procedure that leads to the parties not resorting to useless tricks or objections to slow down or create obstacles in the mediation process. Another reason is the effectiveness of mediation in resolving

intellectual property disputes. A field research has been prepared to answer the question of what functions the mediation institution has to resolve intellectual property disputes and it comes to the conclusion that mediation is effective in all aspects of the conflict, including judicial and non-judicial elements such as commercial interests, feelings, and other conditions of companions. Considering the dispute and empowering the parties, it allows them to find the right solution based on their special interests and needs. Therefore, it can be said that although dispute resolution through mediation is not considered the only appropriate method for resolving intellectual property disputes, it has desirable functions and is efficient in most of these disputes.

Keywords: Alternative Dispute Resolution, Conciliation, Intellectual Property Rights, Mediation, Non-Judicial Dispute Resolution Methods.

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Research Paper

Explaining and Analyzing the Business Judgment Rule in the Company Law with Comparing Its Rationales to the Iranian Law

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Abstract
The directors of the company, including the members of the board of directors and the CEO, are responsible for the management of the company. They have to make day-to-day decisions about managing the affairs and property of the company. From a legal point of view, directors are subject to the duty for the company to take the best decisions and actions in terms of maintaining the interests and expediency of the company, but in some cases, due to a mistake in understanding the reality or a mistake in understanding the fair decision, an action or decision may be taken which later turns out to be wrong and causing damage to the company. In this assumption, it is a legal issue that how the mistakes of the directors in managing the company's affairs can be described from the legal point of view, and whether they have a liability to compensate the company or not. In the company law of many legal systems, the analysis of this issue is mainly influenced by a legal theory entitled "business judgment rule of directors". According to this theory, in cases where the decision and harmful action to the company is not caused by the violation of the directors' obligations, including fiduciary obligation, prohibition of the conflict of interests, obligation to care and compassion and other obligations, the harmful mistake of the director does not mean his liability to compensate for the damage. This rule is explicitly or implicitly accepted in the laws of many countries. The explanation and analysis of the implementation of this rule in Iranian law can be proposed, especially because in Iranian law, according to the rules of civil liability, anyone who causes damage to another is obliged to compensate for the

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damage. It is possible to justify this rule based on legal grounds in the field of civil liability, trust law and company law. In this research, an attempt has been made to prove that this rule is applicable and identifiable in Iranian law based on general legal principles and rules in civil liability law and trust law and special rules in commerce law and facts related to the director's position in the company. From the point of view of company law, the exclusive, independent, absolute and general attributes of the board of directors and the recognition of the discretionary competence of directors in making decisions about the affairs of the company increase the possibility of making mistakes in making decisions, and it is clear that making mistakes in making decisions is not only inevitable but is one of the necessities for exercising the authority of the board of directors. The possibility of suing for damages against director or the intervention of a judge to check the fairness or unfairness of the director's decisions, simply claiming that the decision is wrong and harmful and incompatible with the absolute and independent authority of the board of directors and their discretionary competence. Also, in terms of practical reality, company law has accepted the fact that management practiced by directors are in a changing business environment with the risk of making mistakes in decisions, and creating a safe territory for directors in directorial decision-making and risk-taking situations and profitability and commercial activity which is expected by shareholders is possible by identifying the rule of business judgment of directors and immunity of directors from liability for professional decisions and prohibition of inspection of the fairness or unfairness of the decision by the judicial authority. From the point of view of civil liability law, the rule of business judgment is justifiable. In fact, the fault is of the pre-conditions of liability to compensation and in the case of company directors, a mistake or unfair decision in itself is not associated with fault. In addition, in all fiduciary relationships, of which the relationship between the director and the company is one example, according to the rule of trust, the liability of the trustee (director) requires the fault. In the same way, company management, as a professional job, in terms of legal describing of the decision and the degree of fault required for professional liability, requires more than mere mistakes. Considering the business conditions of the company's environment and the necessity of active management and decision-making, the duty to care does not mean the duty not to make mistakes. The duty of efficient management means applying skill and specialized care in management practices. The legal rule considers the provisions of such a duty to be an obligation to apply these skills and tasks and does not impose a guarantee on the director for the usefulness and real fairness of the decision and the absence of mistakes and this is the legal, logical and moral spirit of the business judgment rule.

Keywords: Unfairness of Decision, Professional Mistake of Directors, Civil Liability, Director's Discretionary Power, Risky Management, Fiduciary Relationship of Directors.

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Research Paper

Incapacity and Bankruptcy of Guarantor on Personal Surety Contract

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Abstract
The guarantor is obliged to recall the debtor to the creditor under the surety contract and in case of default of the obligation, according to the law, it must pay the debtor debt or the amount of bail as compensation for noncompliance obligation. The basic problem that this research has addressed with a descriptive and analytical method is what kind of obligation the guarantor's obligation is, and which persons has the capacity to enter into a guaranty contract.
By examining the opinions of jurists and lawyers, it was determined that the guarantor's obligation to recall the obligee is a non-financial obligation, but because this obligation also has financial effects, the guarantor must be adult, wise and mature, and because the surety contract is harmful, the minor and the non-mature cannot enter into this contract either in person or through a guardian or mandatory. Another issue that is raised here is whether, in case where after concluding the guaranty, a guarantor who has the capacity faces insanity, foolishness, coma or bankruptcy, the guaranty contract will be still valid, or the contract of surety will be destroyed due to the occurrence of these cases. By looking into the books of jurists and legal authors, it is clear

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that although surety is a binding contract, because the guarantor's commitment depends on him, the surety contract will be dissolved if the guarantor suffers from permanent insanity after the contract and before the recall. Therefore, the fulfillment of the obligation cannot be requested from the heir or the agent of the guarantor, and the debt or the amount of bail cannot be received from the property of the guarantor. The court must instead ask the debtor to introduce a new guarantor. In the assumption of periodical insanity, although the contract of surety remains, it is not possible for the guarantor to perform the obligation during the period of insanity, as this causes loss to the creditor. Therefore, the court should ask debtor to introduce a new guarantor. In case of the guarantor's foolishness, because legally and commonly, the fool has the ability to fulfill the obligation and present the guarantor, in case of breach of the covenant, he is obliged to pay the safe pledge. In describing the conditions of the guarantor, the *Imami* jurists, in addition to maturity, wisdom and growth, consider the absence of bankruptcy as a condition and state that if the guarantor is not able to summon the debtor, he must take care of the religion, and because a bankrupt person is prohibited from seizing his property, it is not possible to enter into suretyship unless the creditors give him permission to do so. In Article 221 of the Criminal Procedure Law, the condition of the guarantor's solvency is stated and, therefore, if a person is bankrupt, his guarantee should not be accepted, However, if the judge accepts the guaranty of the bankrupt regardless of the insolvency, the guaranty contract is valid. Because according to Article 418 of the Commercial Law, the bankrupt is prohibited from taking possession of his financial affairs after the issuance of the bankruptcy award. And since the surety contract is a non-financial contract, the bankrupt has the ability and competence to conclude it. However, if the guarantor does not present the debtor on the due date, the court did not have the right to collect the amount of the surety from the property of the guarantor without the permission of the creditors. And in the case of receiving the amount of bail, according to paragraph 2 of Article 423 of the Commercial Law, such receipt is invalid and the amount of bail must be returned to the receiver. Therefore, it is not possible to pay the debt due to surety until the end of bankruptcy. In case of bankruptcy of the guarantor after concluding the surety, the surety contract is still valid and if the guarantor refuses to summon the debtor, the creditor must enter the creditors of the bankrupt guarantor to collect the amount of bail. In the assumption that the guarantor falls into a coma after concluding the contract due to the lack of will and intention during the coma, it is not possible to ask him to summon debtor. Therefore, according to Article 234 of the Criminal Procedure Law, the court can reject the surety contract and ask the debtor to introduce a new guarantor. However, in case of brain death, the guarantor is assumed to be dead, the surety contract is terminated and the debtor must introduce a new guarantor according to the law.

Keywords: Surety, Guarantor, Insanity, Foolishness, Bankruptcy.

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Research Paper

Recognition and Enforcement of Arbitral Awards of China International Economic and Trade Arbitration Commission (CIETAC)

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Abstract
The China International Economic and Trade Arbitration Commission-CIETAC is one of the successful and prominent arbitration institutions in China, which many businessmen and investors from all over the world refer to in order to resolve their disputes. Based on the UNCITRAL model law, international arbitration rules and the new principles and rules governing arbitration, this arbitration body has legislated its laws and amended them repeatedly in this regard. The possibility of identifying and implementing the arbitration decisions of an institution is one of the important factors in referring people to that arbitration institution, because on the assumption of issuing a just and fair decision, if it cannot be implemented, it will practically make the arbitration useless. Since arbitration is a private dispute resolution method, it has no coercive power to enforce its decisions. Therefore, the intervention of the courts to assist in the implementation of arbitration decisions is inevitable. But in this case it is necessary to create a balance between the important principles of "recognition and mplementation

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of arbitration decisions" and "issuance of fair and just decisions" as well as "independence of arbitration from judicial authorities". It is obvious that the laws that can establish this balance in the best way have been more successful towards the goals of arbitration. In this article, it has been tried to introduce the rules and procedure by using the descriptive and analytical method of competent authorities in the implementation of internal and external arbitration decisions of CIETAC. The ruling on the implementation of CIETAC's arbitration decisions should be reviewed in these references. According to Chinese laws, votes that do not have foreign elements or have foreign elements but are implemented in China are considered domestic votes and are implemented by Chinese people's courts. Chinese law considers the recognition and enforcement of arbitral awards as the principle. However, in the cases listed in the Civil Procedure Law of China, it allows non-implementation of arbitration decisions. According to this law, there are obstacles to the implementation of internal arbitration awards without an external element and internal arbitration awards with an external element that are implemented in China, there are differences in terms of the number of non-enforcement cases, their subject matter, and the form and substance of the issues. The implementation of the internal votes of CIETAC in these two cases are accompanied by differences. CIETAC's foreign votes are votes that have a foreign element and are enforced outside of China by foreign courts. The implementation of CIETAC's arbitration awards outside of China is first recognized by the courts of the place of implementation and then implemented. Due to the importance of the implementation of this type of votes, bilateral or multilateral international treaties have been created to recognize foreign arbitral awards and their implementation. One of the most important of them is the 1958 New York Convention, which China has joined. This convention also recognizes the principle of recognition and implementation of foreign arbitral awards. However, in the cases listed in paragraph 5 of this convention, the courts implementing the arbitration award are allowed to refuse to implement the arbitrator's award under certain conditions. Obstacles to the implementation of CIETAC's internal and external arbitration awards are different in terms of the number of cases, their subject matter, the burden of proving the existence of obstacles, and the form and substance of the implementation obstacles. The question that arises is how to identify and implement CIETAC's arbitration awards. Is it possible and what is the procedure of the courts inside and outside of China in this regard? It seems that by establishing laws in accordance with the new principles and rules governing arbitration and using China's accession to international conventions, including the New York Convention of 1985, and governing the principle of recognition and implementation of arbitral awards and the independence of arbitration from judicial authorities and issuing fair awards and Justly has facilitated the recognition and implementation of the

votes issued by this institution based on its regulations. Examining the rules and procedures governing the implementation of CIETAC's internal and external votes can be important from two perspectives: 1. The policy of looking east in Iran requires identifying the potentials of the East in all fields, including dispute resolution authorities and their procedures. They should be used to grow and expand international business relations. Considering the growing woodworking and economic relations between Iran and China, the introduction of CIETAC as a reliable institution in the East whose votes can be recognized and implemented inside and outside of China can promote the development of international trade relations by promoting arbitration between two countries. In addition to Iran's accession to the 1958 New York Convention, CIETAC votes can be recognized and implemented in Iran. Therefore, Iranian businessmen and investors can refer to this prestigious arbitration institution to resolve disputes arising from their international business relations. 2. In addition, the experiences of this successful arbitral institution can be used in legislations, amendments to laws and also in the promotion of Iranian arbitral institutions.

Keywords: Arbitration, Awards, CETAC, China, Enforcement, International, Recognition, Trade.

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Research Paper

The Clause Forfeiture in Insurance Contract

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Abstract
In the insurance contract, assuming the fulfillment of the contractual conditions, the insurer is obliged to fulfill his obligation, to compensate the loss. Sometimes, despite the fulfillment of the conditions for claiming contractual rights for the policyholder (realization of contractual risk), based on the fulfillment of a matter that is typically a breach of obligation by the policyholder, the insurer is released from its obligation, which is interpreted as "Forfeiture ". The basis of this fall of the right can be according to the law or contractual condition. In foreign legal systems, the validity of the clause in the insurance contract is limited to specific cases and subject to compliance with conditions. In French law, the condition of "Forfeiture" is subject to limitations, both in terms of nature and form. In terms of form, the clause must be binding, in the sense that the insured must know precisely which of his obligations the forfeiture of the right is. It should also be written in clear and bold terms. From a substantive point of view, according to the law of December 31, 1989, it is effective only when the insurer proves that the loss occurred as a result of the policyholder's non-obligation. In the law of England, due to the seriousness of the guarantee of the implementation of the breach of warranty in the law of 1906, fundamental reforms were made

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in the insurance law of 2015 and in articles 10 and 11 of the insurance law, it is stipulated that the breach of the warranty does not exempt the insurer from the obligation to compensate the damage, but with the breach of the warranty, the insurer's obligation to will be suspended. In addition, the insurer cannot refuse to compensate the damage by using the breach of warranty even if it is not related to the damage. In Iranian law, in Article 15 of the Insurance Law, this ruling is provided for the obligation to inform about the occurrence of an accident and to try to deal with the damage, but regarding whether the parties to the insurance contract can agree on this in other cases as well, or it should be considered limited to legally authorized cases, there is no text. In addition, the law is silent about the legal nature of this condition. The importance of examining the "condition of Forfeiture" is that such a condition is widely used by insurers in insurance contracts. While the provisions of this condition, the collapse of the most important effect of the insurance contract (one of its two cases); It means "Insurer's obligation to compensate". In addition, the explanation of the legal nature of this performance guarantee can help to explain the various aspects of this institution and the conditions of its impact on the legal relationship of the parties and adjust the superior position of the insurer in concluding the contract according to the supplementary nature of the insurance contract. The current research is an applied research and the method of collecting information is a library. The author's research method is descriptive, analytical and critical. The fundamental question is what is the legal nature of the " Forfeiture" in insurance contracts; furthermore, what are its validity conditions? It seems that the nature of this clause is "Falling Obligation" and can be analyzed in the form of causes of falling of obligations and it cannot be considered as a "Exclusion Clause" and the validity of this clause must be confirmed in the insurance contract based on the principle of contractual freedom. This research work is considered fundamental and at the same time practical, which tries to be discussed with an analytical approach and with descriptive, qualitative aspects and using library data to the extent necessary to conduct the research. In order to achieve this, first, according to the background, the required sources were prepared from Persian, English and French legal books and articles, and then according to their content and the analysis of the contents, the desired results, including the explanation of the legal nature of Clause Forfeiture in The insurance contract and its credit terms and conditions were obtained.

Keywords: Forfeiture, Exclusion Clause, Limitation Clause, Cross-Claim, Conditional Release.

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