



The Contractual Civil Liability for Third Party Action in Iranian, French and Islamic Law

Alireza Yazdanian¹

Abstract

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One of the responsibility principles is privity of the responsibility. However one of the developments in civil liability system is extending the liability institution toward civil liability for another person action. This kind of liability is divided into several types including contractual liability for third party action. In French law, this type of liability has not been mentioned explicitly in contract or tort law. Nevertheless, in spite of some divergences, the French doctrine has inferred it from some civil law and other laws articles and has proposed it in legal books. There is not such kind of responsibility In Iranian civil code which indicates it explicitly, but the same analysis which mentioned in French law can be proposed for Iranian law. As a result, the doctrine of Iranian law by comparative study and also by the using of the experiences of other legal system, particularly France, and by the interpretation of some articles of Iranian Code can pose "the contractual liability of another action institution" that has been studied comparatively in this article for enriching of Iranian legal system.

Keywords: Civil Liability, Contractual Liability, Liability for Third Party Action, Debtor, Injured Person



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Islamic Law (Sharia) as Applicable Law on Commercial Contracts: A Legal Tragedy or Interaction Between Legal Systems

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Abstract

Studies on Islamic law potential in international Commerce and Comparative research on ethical code of commerce have increased in recent decades. Two cases brought to English court titled, *Shamil Bank of Bahrain v. Beximco and Musawi v RE International (UK) Ltd (2007)* raises the question of how the parties of contract could choose Islamic law to serve as applicable or proper law of the commercial contract and financial disputes. This article tries to review some rules and principles of Islamic Commercial law, such as principle of consent, freedom of commerce and its limitations and protecting of merchants. It also analyses *Mamluk Commercial Treaty with Republic of Florence* in 1488 and two recent cases brought to English courts based on *Glorious Sharia* as applicable law and governing law. For comparative study purposes, this article discusses legal and ethical code of commerce in Islamic teaching in order to introduce similar conception in other major legal system. The outcome of this study is that it is necessary for comparative law centers in Islamic countries and International Islamic Fiqh Academy at the Organization of Islamic Cooperation, to introduce Islamic commercial rule and principles in the model commercial law frameworks. This approach will facilitate choices of Islamic law as applicable law and considered a step toward interaction between Islamic and Western legal systems in the realm of commerce.

Keywords: Commercial law, Applicable Law, Islamic Law, Common Law, Legal and Ethical Code for Commerce, Comparative Law.



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The Effect of Legal Thoughts on the Formation of Constitution in Islamic and Western Law with an Emphasis on the Shahid Beheshti Thought

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Abstract

Abstract

Constitution is the most important document in the legal and political communities. In this article, the basis of jurisdiction and authorities and their fundamental rights will be elaborated. Legal theories played a great role in the formation of such an important document. The authors studied comparatively on influences of legal thoughts in Islam and the West on the formation of constitutions. So we analysis the Western European tradition: the ideas of Aristotle, Montesquieu, Jean Jacques Rousseau and John Locke...then the opinions of Muslim thinkers like, Abu Nasr Farabi, Allama Naini, Sheikh Fazlullah Nuri, al-Sadr has been analyzed. Finally, the influence of Shahid Beheshti ideas and opinions on the constitution of the Islamic Republic of Iran has been explained. The basic assumption of this article is based on the belief that the formation and modification of the basic rules of governance are directly influenced by government and state Theories.

Keywords: Constitution, Legal Thoughts, Shahid Beheshti Thoughts, Constitutional Law, Islamic Law, Western Law



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Comparative Study on the Foundations of Commitment to the Contract with an Emphasis on the Reliance Theory

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Abstract

The most important feature that differentiates legal obligations from moral promises is that they are enforceable at law, but the main problem here is finding its reasons. Number of theoreticians has tried to answer this important question and each of them has many followers. On one hand, the advocates of “will theory” emphasize on “intention” element and on the other hand, the socialists insist on various criteria based on their pretension. While the economists focus on “efficiency,” the justice-seekers concern about “equity” as a fundamental standard. Meanwhile, the theoreticians who believe in reliance theory have turned away from the intention of promiser theory and focus on the reasonable pondering and legitimate expectations of the promisee instead of the promiser intention. In this article, some of the most important theories regarding contract law especially Reliance Theory which is remedial substitute for defective Intention Theory and also its legal consequences will be discussed profoundly and comparatively with Iranian and Islamic Law.

Keywords: Intention Theory, Reliance Theory, Reasonable Expectations, Mutual Consent, Equity.

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Comparative Study on the Civil Liability Foundation of Goods Producers and Services Providers in Iranian, Islamic, American and European Union Law

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Abstract

Scrutiny of the civil responsibility basis of goods producers and services providers in American and European Union law shows that strict liability is presumed for the first group. However, theory of fault is yet considered for service providers and presumption of fault has not yet been accepted although tendency of the courts and doctrine is toward facilitation the process of fault proving. Under Consumer Protection Act of Iran, there is no fundamental difference between the civil responsibility of goods producers and service providers. Although Article 2 of the Law has not determined it explicitly by referring it merely to the other Laws, previous dealings between the parties and to relevant commercial custom and practice which implied that it is based on the fault responsibility. Under Islamic law, the theory of strict liability is more comfortable with Imamieh jurisprudential texts and thoughts. In contrast, according to some traditions (Revayaat) and decrees (Fatawa) about responsibility of the hired worker, liability presumption is considered for the services providers. Hence, it is suggested that the Iranian legislator should amend the Consumer Protection Law by recognizing the strict liability for goods producers and presumption of liability for services providers and also it is suggested that before new enacting Jurisprudence should recognize it due to the general Jurisprudential theories and consumers legal protection necessity and also providing for it in some sparse Laws.

Keywords: Islam, international environmental law, international human rights instruments, integrity law, environmental law.

Abstract



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The Use of Unconventional Weapons on the Viewpoints of International Criminal and Islamic Law

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Abstract

War crime, as an international criminal act, has many forms which has been criminalized by the international criminal court statute. Some instances of war crime that have been internationally criminalized concern to the use of some kind of weapons in an international conflict. This category is often called unusual weapons, in contrast to Conventional Weapons, which contains several different types of chemical weapons, biological weapons, nuclear weapons and instances of firing explosive shells, which inflict unnecessary pain and suffering. The use of any types of unconventional weapons by perpetrator, considered as intentional crimes in some international documents, including the statute of the International Criminal Court. In these intentional crimes, in addition to the will to commit the crimes, the perpetrator need to be aware of circumstances. Islamic jurisprudence has imposed some restrictions and bans on the use of warfare instruments. Illegitimacy of using some military equipment as a general rule applicable to several instances, is an elementary principle. Hence, Islamic teachings and religious orders can be resorted to ban the use of these types of weapons as may be cited in various international documents, which contain the rules and norms of humanitarian law. This descriptive-analytic study shows that the theoretical foundations of the Prevention and Punishment of the use of unconventional weapons, are supported by similar rules in both Islamic law and international criminal system. These rules are based on the logic of rational religious law and the interests of human society.

Keywords: war crime, unconventional weapon, mass killing, Islamic law, International Criminal Law.

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The General Theory of Debts in the Islamic Law and its Comparison with the Western Law

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Abstract

Debt, unlike the western law, is considered as a quite independent concept from “obligation” in the Islamic law and is regarded essentially as a kind of intangible personal property which has the characteristics of ownership and is a species of Ein(thing). The conceptual application of this legal institution in the contract and tort law is more extensive than the "obligation" concept. Due to this institution, Nominated contracts such as sale, rent, loan, and guarantee contract which are regarded as promissory contracts in the western law which merely cause obligations, are often considered as possessory in the Islamic law with a different effects. Also in tort law, the relationship between the person suffering the loss and the person causing the loss is not mainly only a personal promissory relationship but injured person is the owner of the equivalent or the value of the property and is its creditor of the tortfeasor and he, as any owner, has full legal control over this property. Thus it, considering the vast application of the debt in various domains of civil law as well as the quite independent and distinguished nature of it from obligation institution, can be suggested a comprehensive theory named “the general theory of debts that is a regulated and coordinated set of legal principles, rules, and concepts including concept, essence, subject, sources, the provisos, effects of debt and causes of debt discharging and fulfilling. This study is an introduction to this theory and represents the necessity of suggesting such theory. It should be noted that this theory which is perfectly consistent with the concepts of Islamic law, is in conflict with the western theory of obligations.

Keywords: debts, obligations, general debt theory, contract law, obligation debt

Abstract



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