

Challenges between Jurisprudential and legal concept of Baghi

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Abstract

The legislator recognized Baghi as a crime in Islamic Penal Code of 2013 for first time. According to Article 287 of this code, Baghi means armed rebellion against the basis of Islamic Republic of Iran system. Although the Baghi is a new legal topic, it's a well known subject matter in jurisprudence. The rules regarding to Baghi have been expressed in jurisprudence since a long time ago. Jurisconsults have defined the Baghi as rebellion against innocent Imam and under some conditions have considered it obligatory to fight. This research compares the provisions of Baghi in jurisprudence and penal code and proves that these are two different terms. Actually there are significant differences between the two concepts. The juridical Baghi is related to Jihad and it is not criminalized independently but the legal Baghi is a crime and is punishable by death penalty. Therefore, it is necessary to revise and amend the provisions of the Islamic Penal Code regarding to Baghi based on its jurisprudential principles.

Keywords: Baghi, rebel group, armed rebellion, Article 287 of the Islamic Penal Code, Just ruler.

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The concept of public interest and its status in the legislation of Iran

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Abstract

Public interest is one of the multifaceted concepts in the social sciences. In a simple definition, this concept includes things that are beneficial to the masses of people and benefit everyone. The importance of public interest is so far as it has been able to transform intellectual thinking into the concept of state. Accordingly, the government refers to organizations that apply power to provide public services, which are intended to best serve the public interest. Therefore, it is possible to have a coherent perception of public interest as an essential prerequisite for the effective and effective management of collective affairs, and it is considered as a fundamental end in its concern to provide the point of sharing all the actions and decisions of the three powers of the state. But the main disadvantage in this regard is the lack of an examination of the status of public interest in Iranian legislation. The question is that in the Iranian legal discourse, where is the place of public benefit, and how is the legislator's perception of this concept evaluated? Based on the results of this study, the idea of the public interest in the basic legislation of Iran is conscious, practical and rational; these are primarily the product of the richness of the legal basis of this legislation and, secondly, the result of the challenges of governance before the revision of the constitution in 1989. But in ordinary legislation, the concept of public interest is still captive of legislative challenges, and the legislature does not consider this as a coherent and efficient notion than to take public interest as the boundary to legitimize the realm of individual rights or to prevent the entry of damage to the public interest.

Keywords: public interest, legislation of Iran, expedient, public services.

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Criminal liability of legal Persons in Iran and the French penal system

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Abstract

Until the late 20th century, assigning the criminal liability to the legal persons was ambiguous and rejected obviously in most legal systems for a variety of reasons such as: legal persons are artificial and lack criminal mansuetude, lack of proportion between the crimes and punishments, lack of realization of the penalty goals specifically regeneration, breaching the penalty of being personal and breaching the principle of expertise. However, social requirements and the ever-increasing role of the legal entities in social developments as well as possessing dangerous sources and widely involvement in criminal activities including economic, industrial, environmental, health, transportation, crimes against people and security, and inefficiency of non-criminal sanctions in preventing the crimes made it necessary to assign them criminal liability. What made gradually the reasons of the opponents of the legal persons' criminal liability ineffective were: assuming them as an independent identity and believing in being dominated by a collective will and prediction of sanctions along with the nature of these identities such as dissolution as a penalty equal to hanging a real person or judicial watch in order to meet retrieving purposes. Based on this reality, the French criminal system in 1992 and about two decades later in Iran (2013) accepted the criminal liability of the legal identities as a rule rather than as an exception. In this paper, we are going to answer the following questions: does the liability in the two systems cover various kinds of public and private persons or is it restricted to just private identities? Is the persons' liability direct or indirect? What are conditions for realization of the liability? Are the assignable crimes to the legal persons restricted or widespread? What are the assignable crimes? Are they various and appropriate?

Keywords: Legal persons, Criminal liability, Crime, Penalty, Iranian criminal system, French criminal system.

Nature and effects of parallel forward contract

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Abstract

Parallel Forward contract is a contract that anticipated to resolve the limitations arising from the forward sale. This contract is parallel to the primary forward contract, forward contract to be signed first, second independent predecessor in terms of commitments and associated works contract has complete autonomy over index futures; the buyer of the forward contract take place in the seller's position in the forward contract, and it concludes a contract Between him and the buyer of a forward contract, that for something with similar characteristics into commodity index forward contract is concluded. the awarding of attorney or draft contract also parallel predecessor, the customer can go to the seller's predecessor and the first to receive sales. In addition, a third type of forward contracts as well as parallel, there was an absolute. Due to the independence of the parallel inductance of the first inductor, the liquidation of any of them does not makes a dent in the other and does not change commitments. But it can dissolve the power of attorney or assignable while parallel forward sale contract is awarded to affect change obligations under the stipulation of the original contract still remains. In addition to observing the commandments of the parallel inductor and associated conditions futures sales, special orders, including the complete independence of the first two forward contracts and certain works in parallel to each other creates can be outlined that.

Keywords: Forward contract, Parallel forward sale, Draft, Advocacy, parallel forward sale.

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Legal Nature of margin account in financial derivative transactions

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Abstract

Derivative market including futures and options is Innovation of IRI' exchange Securities Act 2005. One of the distinguishing characteristic of the market is the guarantee of clients' obligations through margin account system. Investors, while entering in to the market, shall have to deposit a sum called margin account in order to guarantee their liabilities and shall have to adjust the sum depending on market fluctuations and rise and fall of c contract value. The characteristics of the sum and it's types and variability has make it an exclusive nature.

This article, while defining the concept, types and the function of the margin account, shall compare it with similar legal institutions such as deposit, borrow, lump sum, mortgage and security and shall conclude that the margin account, despite of some similarities with many of mentioned institution, mostly resembles security.

Keywords: Stock market, financial derivative market, margin account, Clearing house.

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Prevent the bankruptcy of banks

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Abstract

Emergence of banking crises in recent decades, has shown the deficiency of bankruptcy regulation to deal with this type of business. So Legislators around the world following certain rules have begun to reduce its adverse effects. Factors such as Systematic risk of the public trust in the banking system, particular role of banks in the financial system, priority of preserving the integrity of financial system over creditors' rights, and need for special supervision of banking activities, induce differentiation of regulation of bankruptcy of banks from other merchants and general rules of bankruptcy. In Iran's law, bankruptcy of banks is viewed as a bankruptcy of other merchants which is not look desirable at all. Differences in the goals, the references to the bankruptcy of banks, the failure to pay attention to the different functions of the legal suspension of banking activities that lead to systemic risk, and the existence of a recovery and refinement phase with due regard to the status and performance of banks, are issues that encourage iranian' legislator to review the Current rules.

Keywords: banks bankruptcy, reforming proceedings, restructuring action, purification, Ball Committee.

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Articles Contents

Prevent the bankruptcy of banks	A
..... <i>Mahmoud Bagheri, Mahboubeh Saghoouri</i>	
Legal Nature of margin account in financial derivative transactions	B
..... <i>Javad Hoseinzadeh, Dana Mabadi, Mohamad Hoseinkhani</i>	
Nature and effects of parallel forward contract	C
..... <i>Hasan rahpeyk, Mohammad Reza karimian</i>	
Criminal liability of legal Persons in Iran and the French penal system	D
..... <i>Mohsen Sharifi</i>	
The concept of public interest and its status in the legislation of Iran	E
..... <i>Nasser-Ali Mansourian, Adel Sheibani</i>	
Challenges between Jurisprudential and legal concept of Baghi	F
..... <i>Seyed Ahmad Mirkhalili, Abbas Kalantari Khalilabad, Mohammad Nazari Nodoushan</i>	

Abstracts

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