

## The Connecting Factor in Determination of Law Applicable to Intellectual Property Contracts

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(Received: April 25, 2015; Accepted: September 16, 2015)

### Abstract

Globalization, especially in the capital and assets sections, has affected all fields of the law. Moving towards private contracts in foreign relations and drafting considerable number of standard contracts has, to some extent, decreased the importance of international private law. But without international private law, it is not possible to settle all disputes arising from private contracts. In addition, a contract could not foresee all aspects of differences that may be raised in future and in some cases a private contract or part of which may be considered invalid as being contrary to the mandatory laws of the relevant country. The determination of applicable law of intellectual property contracts is difficult due to characterization of intellectual property and some related conventions. This article seeks to focus on the connecting factor in determination of applicable law of intellectual property contracts and agreements.

### Keywords

Connecting factor, Intellectual rights, Intellectual property (IP), IP contracts.

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## The Doctrine of Closest Connection in Contracts by Emphasizing on Iranian Law

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(Received: April 21, 2015; Accepted: September 16, 2015)

### Abstract

Increasing development of international relations and their arising disputes on the one hand and ineffectiveness of traditional conflict rules on the other hand, have brought about a new doctrine under which the law of the country with the closest connection should be considered as the law applicable to category of property, tort and so on. This doctrine implies that applicable law in each case should be determined based on its own merits in the light of its connection factors by using the inductive, proportionate and specific rule methods. It seems that, this doctrine have been accepted in international documents and domestic laws in various countries. Article 968 of the Iranian Civil Code that is devoted to the governing law of the contracts, accepted traditional conflict rule, according to which the law of the place where the contract is concluded shall be regarded as applicable law, unless they both are foreigners and otherwise agreed. It seems, that this traditional rule is not in line with the requirements of the world trade and it is necessary that Article 698 will be amended.

### Keywords

Article 968 of Iranian Civil Code, Closest connection, Conflict of laws, Connection factor.

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## Necessity of International Cooperation in Establishing the Foreign Law

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(Received: April 26, 2015; Accepted: September 16, 2015)

### Abstract

Globalization and increasing political, economic and cultural relations among people of different countries have brought about many legal consequences, one of them is the increase of disputes among people of different countries. In such a case, the court may need to apply the foreign laws to settle the differences. Certainly, Iranian courts also face such a problem and they need to apply a foreign law. In the Iranian laws, the disputing parties should prove the foreign law as a fact, but in confronting with different and conflicting evidences and witnesses about foreign law and its content, the courts should play more active role in establishing the foreign law. Today, most legal systems have adopted certain measures by giving more active role to courts in establishing the foreign law. Although the necessity of involvement of courts in this regard is widely acknowledged, there is no clear and cut solution to implement it. By a comparative study of laws and experience of some countries, this article proposes an international cooperation through bilateral agreements for establishment of foreign laws before local courts.

### Keywords

Bilateral agreement, Conflict of laws, Establishment of foreign law, Local courts.

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## Comparative Study of Naturalization: Lessons for Iranian Legislature

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(Received: April 21, 2015; Accepted: September 16, 2015)

### Abstract

Naturalization is one of the ways for attracting qualified and skilled persons for the economic and social development. Laws and regulations related to naturalization could play a significant role in this process. The requirements for naturalization in those laws and regulations should lead to attraction of qualified and skilled persons. Furthermore, those acquired such nationality should be treated on a non-discrimination basis to allow them to integrate into the community. Laws and regulations of those countries having successful experience in this respect, such as the United States and Canada, have taken into account these requirements. Such requirements are not well considered by the Iranian laws and regulations for naturalization and therefore they should be accordingly amended.

### Keywords

Naturalization, Naturalization in Iran, Naturalization in the United States and Canada.

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## Conflict of Laws in International Intellectual Property Agreements

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(Received: April 19, 2015; Accepted: September 16, 2015)

### Abstract

The complexity and diversity of international assignment or license of intellectual property rights (IPRs) and their territoriality nature makes determining their applicable law difficult. The rules governing IPRs are different from those applicable to other contractual issues in this respect and therefore “characterization” is very important. The party autonomy and determination of applicable law by courts are restricted by other issues such as competition law originating from national or international public policy. In the absence of agreement as to the governing law, Rome I Regulation, after stating specific rules for determining the applicable law to certain categories of contracts, has adopted the performance as a criterion for determining applicable law of certain intellectual property contracts. Other international documents more provide for the application of the law of the country with the closest connection to the contract. There are different rules to identify such a country, the most appropriate one is presented by Max Planck rules which is based on the analysis of a group of elements. The assignee’s or licensee’s country also deserves attention. The Iranian laws have no specific rule in this regard and the conflict of laws rule in Article 968 of the Civil Code does not consider the characteristics of these contracts.

### Keywords

Assignment contract, Governing law, Intellectual property, License.

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## The Right to Nationality: from Private International Law to Human Rights

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(Received: April 20, 2015; Accepted: September 16, 2015)

### Abstract

The concept of right as one of the fundamental concepts of the law, policy and ethics, has been entered into legal discourse of Iranian community. However, right is a contested concept, and its discussion requires theorization. Despite offering different views about the nature of right that can be categorized under two theories named will-based theory and utility-based theory, it seems that we can recognize the claim-based theory as a comprehensive conceptual theory about right. According to this theory, right is a guaranteed individual claim that has been justified based on two elements of human dignity and moral agency. Any way can we defend the nationality as a human right? In this article we will attempt to show from a descriptive and analytic perspective that nationality is one of the fundamental human claim rights and moreover it is the precondition of all rights. The non-recognition of the nationality as right will directly lead to denial of intrinsic dignity and moral agency and therefore deprivation of humanity.

### Keywords

Claim-right, intrinsic dignity, moral agency, nationality, right.

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## The Status of Foreigners in the Iranian in the Light of Humanization of International law

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(Received: April 22, 2015; Accepted: September 16, 2015)

### Abstract

The presence of foreigners on the territory of other countries has a long history and it is not an unusual issue. Explicitly this presence entails some legal effects. In any country, foreigners have minimum rights recognized by that country. Nowadays, as a result of developments in international law by moving from an inter-state towards an individual rights perspective, the legal status of foreigners has witnessed some changes. In this process, in addition to determination of legal standards for treatment with foreigners in the host countries, the human rights approaches should also be considered. For these developments, it is necessary to examine the legal status of foreigners in the Iranian legal system in light of human rights developments and humanization of international law. As the rights of foreigners in the host country is an international sensitive issue, the improvement of laws and regulations of the Islamic Republic of Iran in lieu of humanization of international law is necessary.

### Keywords

Aliens' rights, Foreigners, Host country, Humanization of international law.

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