

Interaction of Specific Performance and Cumulativeness of Termination of Contract and Contractual Remedies: Efficiency Examination in Contractual Sanctions Regime

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Abstract

Under cumulativeness of contractual sanctions, if such sanctions integrate with each other to compensate for the damages incurred by obligee, legal provisions shall allow them to be executed simultaneously. However, according to the specific performance, obligor is bound to execute the obligation and the initial cumulativeness of termination of contracts and compensation is not possible. Therefore, there is a relationship between the primacy of specific performance and initial cumulativeness of sanctions (termination of contract and compensation) so, by applying one of them, the other one will not be exercised, whereas the mentioned legal institutions have special efficiency and from the viewpoint of the economic analysis of law, legislators should provide for compatibility between them. Thus, in this article the interaction of primacy of specific performance to contract termination with the cumulative contractual sanctions is examined with benefiting from the economic analysis of law including the efficiency, cost-benefit, welfare, game theory. Also the solution regarding the constructive relationship between the mentioned legal institutions from the economic point of view will be proposed to legislator.

Keywords

Specific Performance, Cumulativeness of sanctions, Efficiency.

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Photography: A Manifestation of Art or a Mere Imitation? The Status of Photographic Works in Literary and Artistic Property Law System

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Abstract

With the invention of camera a question arose and is still in place whether photography can be protected as an artistic work? On one hand, camera is a mechanical tool with an undeniable role in the creation of a photo and this fact is the main difference between it and other artistic works such as painting. Therefore, some believe that a photo quotes only the reality and is void of the originality necessary for being protected as an artistic work. On the other hand, the role of photographer as the one who uses camera to create the photo and makes choices among the available options and selects one may not be ignored. Hence, some consider photo as the result of photographer's creativity which is original and is an artistic work that must be protected. The latter opinion has been accepted in the law of most countries and important international documents including Berne Convention. In this article, through a descriptive-analytic method, the way to protect photo and determine its originality and related topics have been studied in the national laws and international documents.

Keywords

Artistic work, Originality, Literary and Artistic Law, Photo.

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The Protection of Moral Rights of Performers in Iranian and French Law and the International Documents

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Abstract

The characteristic of performers reflects in their performances so this question will be arisen whether performers have copyright in their performances. The Intellectual Property Code of France with regard to rules of literary and artistic rights prescribes the rights of attribution and integrity for them. However, the legal precedent and the doctrine also use other approaches for completing the protection in this country. In respect of Iranian regulations there is no express code or article regarding performers and the ways of protection of their rights, therefore; it is necessary to utilize other proper solutions for protection of their moral rights. For this purpose, it is possible to consider the contract law, general rules related to personality and civil liability law as solutions. However, it is required to have especial rules for moral rights and determine the rights of attribution and integrity and their limits for performers. Hence, the rules which are proposed in the Intellectual Property Bill can be acceptable by some alternations.

Keywords

Moral Rights, Contract Law, , Intellectual Property, Performers.

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Auto-generated Works in Iranian Law: Commentaries on the Current Laws and Criticism of Intellectual Property Bill

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Abstract

There is some intellectually created works that haven't been directly rooted in human intellectual endeavor, some robots can create artwork for example they write new and creative stories. There is controversy regarding the protection of this intellectual works especially in the western law. From legal point of view, it is not clear whether human should be regarded as the owner of it or not. If human is considered the owner, it is not obvious which person will benefit from the ownership's privileges. Based on logical of intellectual property right, its underlying economic and social interests and with regard to natural law, these works should be protected and the person who invests in their creation should be considered as owner of the intellectual property right. From the Iranian legal documents, the Intellectual Property Bill has assigned the determination of creator of the works to the custom; however, the different regulations in laws including civil law and also intellectual property law especially the regulations regarding the software protection contain the rules concerning the investor's protection, hence, they should be regarded by legislator and the vague points of Bill should be clarified.

Keywords

Hire, Auto-generated Works, Computer based Works, Investment, Order.

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Alimony and Relevant Obligations According to Tajikistan Law Funds in light of Investment Principles

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Abstract

Family is so important for support of human being and maintain of the integrity and prosperity of the society. It also has a prominent role in the cultural, economic and political of each society. So, the Tajikistan laws pay attention to alimony as one of the most important principles of family law in order to support and reinforce the foundation of family and prevent its instability. Thus, Tajik law imposes the payment of alimony upon the person who has the ability to provide the basic amenities for life. Therefore, he must provide the costs of this small but important institution. However, Tajik law put a wife even affluent one as the receiver of alimony in order to avoid the family disruption. Wife has a legal right to receive alimony even in case of bankruptcy of husband Tajik law give primacy to it. Therefore, this study aims to examine the alimony and civil laws of Tajikistan, the meaning of alimony and also the relevant obligations of couples in Tajikistan.

Keywords

Alimony, Tajikistan Law, Social Contract, Family.

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Nature, Features and Jurisdiction of Arbitration in Building Pre-sale Act

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Abstract

The legislator states that the disputes resulting from building pre-sale contract should be referred to three member arbitral tribunal appointed by parties. The way of determining the arbitrators, the number, the feature of arbitration in this Act and the jurisdiction of the arbitrators are the subjects which are needed to be studied. By examining the foregoing issues, the results of this research have indicated that the arbitration in this Act is of compulsive one. The arbitrators must be appointed by the parties and they must hold a hearing and issue the award in accordance with the agreement and law (not equity). In this Act the arbitration clause is severable and arbitrators have jurisdiction to decide about the status and validity of the contract in addition to the nature of contract and the parties' obligations.

Keywords

Pre-sale of Buildings, Arbitrator, Arbitration Clause, Arbitration Jurisdiction, Arbitral Tribunal.

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Ancillary Counterfeiting Claims in Civil Proceedings

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Abstract

Ancillary claims are one of the ancillaries which are concerning the nature of the claim and consist of four types of lawsuits. The legislator has enumerated these claims irregularly as: counter-claim, impleader, third-party claim, and further claim in the Code of Civil Procedure. The further claim has been mentioned without specific title in Article 98 and in chapter 4 under the Hearing while other claims are referred to in the first part of chapter 6 as "accidental cases". Counterfeiting lawsuit may be filed as ancillary one, which may be in the form of a counter claim, impleader, third-party claim and further claim. Counterfeiting lawsuits are examined separately from different aspects to determine the place of counterfeiting in the civil procedure system.

Keywords

Ancillary Counterfeiting, Forgery Counter Claim, Impleader, Further Claim.

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Review of the Nature and Aspects of “Reciprocity” in the Act of the Jurisdiction of the Iranian Judiciary on Civil Claims against Foreign States

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Abstract

The Act of the Jurisdiction of the Iranian Judiciary on Civil Claims against Foreign States was approved on March 8, 2014 in reaction to breach of Iran's immunity in the courts of other countries. In the opinion of the authors the nature of "reciprocity" mentioned in the Act refers to the countermeasure in international law. The recognition of right to take countermeasure which is an international reaction, require that the domestic courts observe the provisions governing countermeasures. In this article we review the countermeasure conditions in accordance with international law. Meanwhile, its aspects in the Act will be discussed as well.

Keywords

Reciprocity, Countermeasures, The Act of Jurisdiction the Iranian Judiciary.

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The Nature of the Right to Border in the Legal System of Iran

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Abstract

Civil Code does not state the nature of the right to the border and it considers this right as real estate of the border owner. A number of lawyers like some laws and regulations have interpreted it as the easement. In contrast, Some have identified it as an independent right in addition to other jus in re. In jurisprudence, most scholars, about a kind of border, believe in the ownership and in another one, identify the prior right. Some consider it absolutely as a prior right. The examples of border in regulations show that the right to border is two sorts: the ownership right of border and the easement of border. The first type is predicted in the wastelands, but the government may purchase the private owned land for the border of the public property. In the easement of the border, the positive or negative easement exists on wastelands unless the negative easement may be applied to lands by law.

Keywords

Border, Positive Easement, Negative Easement, Ownership, Wastelands.

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