The Competitive Analysis of Discriminative Pricing and Intellectual Property Rights

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Abstract

Pricing of goods and services is one of the fundamental elements of competition and the right to freely determine prices is necessary for a competitive market. In view of competition law in many countries, discriminative pricing is an anti-competitive practice though the analysis of intellectual property rights indicates that many forms of price discrimination have no destructive effects on competition but would have positive impact on the public welfare and efficiency and therefore their benefits are greater than their shortcomings. In this respect, the laws of European Union, United States and Iran have taken different approaches.

Keywords

Competition law, Discriminative pricing, Intellectual property law.

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Conceptual Development of Natural Law under the Cartesian Evaluation of Subjectivity

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Abstract

The conceptual transformation of pre-modern era to modern times of natural rights is an issue discussed under philosophical development of the modern era. Unlike many writers, we believe that natural law in the modern times is not a continuation of what was in ancient or medieval era, but at the beginning of the new era, we have witnessed a rather change in thought affecting different concepts of human and social life, including natural right which has been found a new meaning under the influence of modern philosophy and its founder West René Descartes. This intellectual elevation has different dimensions which appear under the subjectivist approach and Cartesian mathematics and natural law philosophers such as Thomas Hobbes adopted the same approach. The effects of such philosophical development on the concept of nature and natural law are discussed in this article. In this study we conclude that modern natural law or natural rights are not a continuation of what was perceived in ancient and medieval natural law. We also discuss that the use of modern natural law to prove the legitimacy of Islamic law in the legal positivist epistemological grounds is not warranted.

Keywords

Modernity, Natural rights, Nature, Subjectivity.

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Guaranteed and Non-Guaranteed Fiduciary Contracts

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Abstract

In a category, fiduciary contracts are classified into two types: guaranteed and non-guaranteed fiduciary contracts. In Islamic jurisprudent, non-guaranteed ones have extensively been studied, though the guaranteed ones have not been much explored. Majority of Islamic Jurists believe that guaranteed fiduciary contracts are invalid except for some special cases such as guaranteed loan. Therefore, they have not explored its nature and effects. However, the minority of jurists who believe that such judiciary contracts are valid, have examined its nature and effects. Those believing in their invalidity argue that such a provision will be against the essence of a fiduciary contract based on trust. Moreover such a provision will be against the rules of Sharia. In this article, these arguments will be reviewed and assessed. We believe that a guarantee provision in fiduciary contract is basically valid. The effects of such a provision will be also explored.

Keywords

Fiduciary contracts, Freedom of contract, Guaranteed fiduciary contracts, Non-guaranteed fiduciary Contracts.

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The Transferring Effect of Appeal in Civil Judgment

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Abstract

Appeal in civil cases indicates that the judgment issued in the first instance court will be reviewed by a higher court. The higher court should not focus on procedural aspects of the first instance judgment and should review the merits of the case. Today, the role of appeal courts have been fundamentally changed and gone beyond the process of double degree of procedure. In many cases, the appeal courts deal with new issues from factually and legally failing to just concentrate on reviewing the first instance judgment. In this article such an approach will be critically reviewed and assessed.

Keywords

Appeal, Double degree procedure, Factual issue, Legal issue, Transferring effect.

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Obstacles to Application of Foreign Law and Necessity of Substituting Lex Fori

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Abstract

In cases where under the rules of conflict of laws a foreign law should be applied, the application of foreign law may be confronted with certain problems such as impossibility to prove foreign law, inexistence of process or authority determined by foreign Law and un-reasonability of the application of foreign law. In such cases, lex fori shall be substituted in place of foreign law. In this article, these cases are discussed and reviewed. In addition, the substitution of foreign law by lex fori should be permitted only if there is sufficient evidence showing that foreign law is not possible to be applied.

Keywords

Conflict of laws, Foreign law, Lex fori.

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Smell Trademarks; a New Phenomenon in Legal Protection of Trademarks

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Abstract

Trademarks are signs used to distinguish the goods or services of the owner from the competitor's ones. These signs mainly include various forms of visual marks and symbols. But during last decades, we have witnessed the raise of smell trademarks. Smell is quite a strong indication to prove the origin of something. This feature of smell has led the manufacturers to use the smell as distinctive signs to distinguish their goods or services from those of competitors. But the lack of legal support for such marks hinders the development of smell trademarks. The registration of smell trademarks, however, faces two difficulties in terms of substance and procedure. Thus, registration of smell trademarks requires defining new terms and conditions for smell trademarks and how to apply the traditional requirements of visual trademarks to smell trademarks. In this article, the legal protection of smell trademarks will be explained by applying traditional requirement of visual trademarks to smell ones.

Keywords

Legal protection, Registration, Smell trademarks, Trademarks.

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The Analysis of Principle of Reasonableness of Government Decisions in English and Iranian Law

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Abstract

The judicial review of administrative regulations is the great implementation of administrative law to secure the legality of administrative decisions. In this paper, reviewing the English laws indicates that Common Law courts by applying effective principle play a considerable role in enhancing government responsibility and ensuring the fundamental human rights. One of these principles is the reasonableness of government decisions according to which the public authority should consider relevant issues in decision-making process and leaving aside the personal and party interests. In addition to the analysis of the concept of reasonableness principle in English laws, we study the Iranian Administrative Justice Court's judgments and perceive that such a principle has been applied by the Iranian administrative judges. This issue shows that there is a legal gap in controlling the discretionary powers of public authorities in our laws and we think this problem requires legal reform.

Keywords

Administrative decision, Administrative Justice Court, Common Law, Reasonableness.

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