Discharge as a Method for Management of Bankruptcy

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Abstract

In bankruptcy law, the legislator needs certain measures to manage financial crisis caused by bankruptcy. One legal action that plays an important role in management of financial crisis of bankrupts is discharge. The definition of discharge is that the bankrupt will be discharged from payment of any outstanding debts after bankruptcy proceedings. The goal of discharge is enable the bankrupts to start their economic activities. The positive effect of discharge is to encourage bankrupts to commence economic activities. But the negative effect is its adverse impact on the credit market and the creditor's discontent. The main challenge that this legal action is facing, is the immorality of it. The discharge has not been recognized in Iranian law and bankrupts remain liable even after bankruptcy proceedings and therefore their creditors could claim thereafter.

Keywords

Bankruptcy, Discharge, Fresh start, Liquidation.

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The Review of Merits of a Case by Supreme Court of the Country

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Abstract

Every institution of civil procedure has its own special functions and it is necessary that such functions always be respected by the laws. Two institutions are organized for review and control of court judgments. The appeal court is for control of judgments from factual and legal aspects but Supreme Court of the Country is only for making sure that legal procedures were correctly followed. However, Supreme Court sometimes looks at the merits of the case by reviewing the case from factual and legal aspects. In this article, the reasons underlying such approach will be discussed and a new notion would be proposed.

Keywords

Civil procedure institutions, Factual issues, Legal issues, Supreme Court of the Country.

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Removing Ambiguities through Editing of Laws

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Abstract

Ambiguity in legal language has been part of the unwanted but inevitable legal texts. Thus, the interpretation of these texts with the aim of removing the ambiguities or attaining their correct meanings is part of science of aw. But instead of focusing solely on interpretation, it would be possible to prevent such ambiguities so that the law becomes clearer to avoid different interpretation. This proposal would be possible and necessary which could be called: "edition of ambiguities". The basis of this proposal is that the ambiguity is regarded as a negative phenomenon in the language of law which is necessary for the benefits of society and individuals. However, editing of unusual ambiguities in legal language is possible, but their amount is significant. From a practical perspective, edition of draft laws could be considered as a step for clarification of laws. So, the relevant authorities could benefit from edition of ambiguities for clearing up the laws.

Keywords

Ambiguity in laws, Codification, Edition of ambiguities, Legal language.

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Possibility of Donor's Revocation of Donation to Grandchildren

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Abstract

In donation contract, the principle is that donor can refer to given property and to take its possession. This principle has some exceptions. One of these exceptions is "donation to children", which is irrevocable in accordance with the first paragraph of article 803 of civil law. Most of the civil law's writers believe that judgment about donation to children include the donation to grandchildren, therefore donor cannot revoke of donation to his grandchildren. Study of origin of the first paragraph of article 803 in jurisprudence, in the subject of "donation to relatives", shows that conforming to the well-known opinion of jurisprudents; donor cannot revoke of donation to all of his "relatives by blood". On the basis of this view, donation to the bloody grandchildren is irrevocable and donation to foster grandchildren is revocable. Furthermore; remembers that what is in the consensus of jurisprudents, is exclusively the irrevocability of donation to father, mother and donor's children. So it seems that in order to adherence to the principle and abstaining from extension of exception, legislative has contended to the certain level-consensual opinion of jurisprudents-so we cannot follow the most writers and say that the mentioned provision include the donation to grandchildren. Therefore, donation to bloody grandchildren and foster grandchildren is revocable.

Keywords

Children, Donation, Grandchildren, Revocation.

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Comparative Study of Ultra Vires Acts of Companies in the Iranian Law and Common Law

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Abstract

The concept of "Ultra Vires" has been studied in company law and also in agency. Historically, in English law, ultra vires acts were considered as void and neither representatives nor shareholders could approve them at a later time. Subsequently, judges of common law changed their approach from a restricted capacity of companies to a general capacity, and ultra vires acts were considered as valid acts towards a bona-fide third party. Under Iranian legal, we could consider two approaches to the issue, i.e., that of the Commercial Code (1932) and that of the Decree amending some parts of the Commercial Code (1968).According to the Commercial Code which provides a general rule, the ultra vires act is considered as voidable. Regarding the company's director liability, reference is made to trust liability which is rooted in agency. Under the provisions of the Decree governing joint stock and governmental companies, ultra vires acts are regarded validin respect of third parties, subject to three conditions: being within the limits of capacity, not to be within company's general meetings scope and considering specific status of bankrupt companies.

Keywords

Acts of managers, Capacity, Company law, Ultra-Vires.

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Efficient Breach of Contract in Iranian Law

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Abstract

"Efficient breach" is one of the most controversial concepts in the economic analysis of contract law. According to this theory a contracting party may be encouraged to breach a contract and pay damages if doing so would be more efficient than performance. In this article, this issue will be reviewed from the perspective of Iranian civil law. This article argues that on one hand, pacta sunt servanda as a rational rule requires the specific performance, which is purportedly in conflict with the efficient breach theory, and on the other, the efficient breach theory is also based on a logical basis. Therefore, specific performances as could not rule out the efficient breach as both are rational. In conclusion, the authors argue that by adopting a different approach to the principle of pacta sunt servanda, the theory of efficient breach could be also respected under Iranian law. Nevertheless, in view of the fact that Iranian law suffers from a severe lack of full compensation system, this theory should be applied with care.

Keywords

Efficient breach, Specific performance, Pacta sunt servanda.

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Damages Caused by No-title of the Sold Property

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Abstract

Because of selling the estates through unofficial deeds, it is likely that the estates are sold by the seller having no title thereof. According to Iranian law, the sale will be regarded as void if the deal was rejected by the owner having the title and seller shall compensate the buyer for any resulting damages. The issues to be discusses here in this article include the following: what kind of damages would be claimed from the seller and what are the foundations of seller's responsibility against the buyer? We will consider the causality, exchange of promises and the theory of apparent as the foundations for the seller's responsibility. Then we will consider whether the damages arising from inflation and market price increase would be recoverable.

Keywords

Damages, No-title, Sale of property without having title.

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