

Studing the Effectiveness of Disclosure Laws on Reducing Administrative Corruption with comparative Approach

Hasan Vakilian^{1*}, Davar Derakhshan^{2}**

1. Assistant Professor of Deparmmant of Public and International law at Allameh Tabataba'i University

2. MA Student of Public law at Allameh Tabataba'i University

(Received: 14 Jan 2016 – Accepted: 26 Nov 2017)

Abstract

Making transparency and accountability among public officials of the state on the one hand, and preventing administrative corruption, on the other hand, are good governance criteria. One of the factors of guaranteeing the above elements is approval of laws that the declaration of assets of the officials, which plays a significant role in achieving the above principles. These laws should include content and announcement items, accountable authorities, trustee responsible for asset declarations, appropriate enforcement guaranty, review of statements, and disclosure of information about assets of public authorities. In our country, the "Law on the Investigation of Assets of Officials, Authorities of the Islamic Republic of Iran" has been approved in 1394. The main question of the present article is whether this law has the effectiveness of fighting with administrative corruption and the impact on its reduction, and if not what requirements should be added to it. In response to this question, in this study, by using the library method and using the texts and laws of various countries such as the United States, Britain, France, Romania, and South Korea, it came to the conclusion that this law has many advantages and disadvantages that Its strengths can be seen in the comprehensiveness of asset items of the authorities, including disadvantages such as failure to provide a guarantee of compliance with the offenders, the failure to disclose public statements, the failure to specify the mechanism for verifying the statements, that the absence of these extensions Facilitates corruption.

Keywords: public officials, administrative corruption, asset declarations, verifications, public disclosure.

* **Email:** h.vakilian@atu.ac.ir

** **Email:** vahedarta@gmail.com

Pathology the structure and competency of administrative specific institutions (courts) in Iran administrative law

Morteza Nejabat-Khah ^{1*}, Fatemeh Afshari ^{2}, Seyyed ShahabAddin MusaviZadeh ^{3***}**

1. Assistant Professor of public law, Law and Political Science Department, Mazandaran University

2. PHD of Pubic law, Allameh Tabataba'ei University

3. PHD Candidate of public law, Shahid Beheshti University

(Received: 14 Jan 2016 – Accepted: 20 Sep 2017)

Abstract

The issue of this study is the structure and competence of administrative specific tribunal with specific pathological approach with respect to their claims referred to the Administrative Justice Court. The authors of this research contemplate that in addition to the mechanisms in Articles 16 and 63 of the Organization and Procedures of the Administrative Justice Court, to reduce the amount of the vote and a final decision claims against the administrative specific institutions (tribunals) in Administrative Justice Court, present other solutions for organizing administrative specific tribunals such as reforming the statute of administrative specific institutions (tribunals), codifying the specific procedures for these institutions, controlling on proper implementation of the principles of fair trial and Formation of hearings correctly in administrative specific institutions (tribunals), designing and codifying some training programs, including apprenticeship programs and retraining, writing the booklets and brochures for the members of administrative specific tribunals, reviewing the structure of administrative specific tribunals in terms of membership composition with reform approach, pathological and exactly reviewing about the necessity or non-necessity of the existence and continuation of administrative specific institutions (tribunals) activities in the administrative structure of the country.

Keywords: administrative specific institutions (tribunals), Administrative Justice Court, Iran administrative law, structure, competency.

* **Email:** m.nejabatkhah@gmail.com

** **Email:** mehr.solh399@yahoo.com

*** **Email:** sshahabm88@gmail.com

The Status of Modern Methods of Executing Capital Punishments under Iranian Penal System

Naser Ghasemi ^{1*}, Saman Doost-Mohammadi ^{2}**

1. Assistant Professor of Criminal law and Criminology, Judicial Sciences and Administrative Services University

2. PHD candidate of Criminal law and Criminology, Faculty law, Qom University

(Received: 14 Jan 2016 – Accepted: 20 Sep 2017)

Abstract

Despite the movement for abolishing capital punishment, several countries have been bound to these punishments. In recent decades, however, the way how to reduce the agony resulting from execution of capital penalty has been the center of focus with criminal policymakers these countries; an issue which led the legislator of the United States to substitute hanging by death by electrocution (1888). Subsequently, gas chamber(1924) and death by lethal injection(1977) were enacted which were a response to the ineffectiveness of the preceding methods and a measure to soften death penalty in the United States; the methods which are gradually penetrating in the countries with capital punishment. Under Iranian penal system, there are different points of view from the perspective of Islamic jurisprudence; some argue that outdated methods are fixed and oppose any change or substitution thereof, while others emphasize on the replacement of these methods by modern ones. That being said, these modern methods of capital punishment have been accepted under Iranian law and the legislator has ratified them.

Keywords: Modern methods, Penal system, Death penalty.

* **Email:** dr.ghasemi76@gmail.com

** **Email:** s.dostmohammadi@yahoo.com

Status of Crime and Punishment Proportionality principle in Criminal Law of Iran and England

Hojjat Sabzevarinejad *

Assistant professor of Criminal Law and criminology, Islamic Azad University

(Received: 14 Jan 2016 – Accepted: 20 Sep 2017)

Abstract

Fitness, coherence and reconciliation between punishment and crime are the tools of a balanced criminal system. Holding a rational basis for punishment is of fundamental principles of the criminal justice system and its legitimacy factor. In penal system of Iran, at least, it has not been set general and comprehensive foundations for the proportionality of crime and punishment. The lack of fundamental principles in determining punishment at the stage of penalization and sentencing is one of the major Bugs or, perhaps, the most serious criticism of Iran's criminal system. Sometimes the legislator has reduced the gap between the minimum and maximum to a maximum of 40 times in the determination of the penalty, and the court has no obligation to justify it between the minimum and maximum. It determines the amount of punishment that there is no proportion between crime and punishment, and this will undermine the proportionality principle. Therefore, the expression of the general and fundamental criterion for adhering to the proportionality principle is a strategic principle that should be addressed in Iran's criminal system. The question that has been raised and answered in this research is whether Iran's criminal system complies with the single criterion in proportion between crime and punishment. Can deduced from criminal law and judicial procedures a standard for proportion between crime and punishment? The next and, more importantly question is that what is the nature of the proportion of crime and punishment? In the present article, while referring to the Iranian and England penal codes and doctrine of the two countries, dealt with the expression and evaluation of the criteria for the proportionality of the punishment with the crime. Accordingly, the severity of the crime is a fundamental measure for proportionate to punishment and the amount of damage or damage to the victim of crime and its degree of ability to blame is the nature of the severity of the crime. In addition, on the same basis, it is possible to determine the punishment at the stage of penalization and in the

* **Email:** hojat.sabzevarinejad@yahoo.com

process of implementation and issuance of a ruling in courts, realizing proportion by prediction of the institutions that monitor the courts.

Keywords: Proportionality, Harm, Culpability, Victim, Aggravating and Mitigating Factors.

Preventive Declaratory judgment and protection of Potential Patent Invention Violators

Ali Roohizadeh ^{1*}, Majid Abbastabar ^{2**}

1. Assistant Professor in Islamic Azad University, department of law, Robat Karim Branch

2. PHD in Private Law, Shahid Beheshti University

(Received: 25 Oct 2014 - Accepted: 20 Sep 2017)

Abstract

Generally, one of the most important impediments before persons who wants One of the most important obstacles faced by those who intend to enter the inventions market is the concern about violation of others rights, which usually will result in severe sanctions in legal systems. In this situation, those Persons need a solution, which give them the opportunity, before start investment, to ask the court if their acts are violation of a patent right. In U.S.A law, this solution afforded by declaratory judgment. In Iran law, although article 18 of patents, industrial designs and trademarks act permit any interested person to ask invalidity of a patent, but by court's limited interpretation of the notion of interest, acceptance of these actions is in uncertainty. Declaratory judgment, by interpretation of patent's vague claims and checking of its validity, by removing of any uncertainty about patent infringement and deletion of non-proper patents, will be helpful in the process of research and improvement of innovation and support pubic knowledge.

Keywords: patent law system, declaratory judgment, interest to action, patent violation.

* **Email:** a.roohizadeh.k@gmail.com

** **Email:** m_abbastabar@yahoo.com

Irrevocability condition in the permissible contracts

Mohammad Jafari-Majd ^{1*}, Pegah Ali-Abadi ^{2**}

1. Assistant professor ministry of science research and technology
2. Graduated master of private law, naragh Azad University

(Received: 29 Jan 2017 - Accepted: 20 Sep 2017)

Abstract

According to articles 550 & 552 of civil law, bailment of capital is revocable contract. Rule of civil law about absolute bailment of capital is correct, but it is discussable about delayed bailment of capital. Regardless of whether existing practical necessities, doesn't accept this notion, The subject is theoretically controversial. One of the law's solutions to solve the problem is, inserting revocable contract in binding contract But this notion was not relief the problem completely.

It is necessary to consider the basis of frustration of contracts after death or incapacity of parties. Since most lawyers considered basis of article 954 civil law in permissible contracts, believe that it isn't possible to convert permissible contracts to binding contract. They are revocable contract, even if insert in binding contract and they will dissolve with death or incapacity of parties. Therefore it is necessary to be checked, whether frustration of contracts through death or incapacity of parties is essential characteristic of revocable contracts? In other word every contract that be dissolved with death or incapacity of parties is revocable contract or it is a separate matter, isn't depend to irrevocability and revocability of contracts. In my opinion any where parties personality is essential, it will dissolved by death or incapacity, whether the contract is revocable or irrevocable. The purpose of this article is answer to this question that if with respect to principle of freedom of contracts, it is possible that convert bailment of capital and other permissible contracts to binding contract or not.

Keywords: permissible contracts, irrevocability condition, commandite, revocability, condition of subsequent.

* **Email:** mjaafarimajd@gmail.com

** **Email:** pegahaliabadi.1234@gmail.com

Penalization and Sentencing in the scope of Imprisonment in Iran and England Law

Abdolali Tavajohi ^{1*}, Hesam Ebrahimvand ^{2}**

1. Assistant Professor, Departmen of Law, University of Science and Culture

2. LLM in Private Law, Departmen of Law, University of Science and Culture

(Received: 29 Jan 2017 - Accepted: 20 Sep 2017)

Abstract

Imprisonment is one of most severe punishments, which is the sanction of many of crimes in both England and Iran law. There exist some rules in England law for Imprisonment Sentencing, however there are not in Iran law. Iranian legislator has not anticipated any systematic, distinguished framework for the Imprisonment Sentencing. The rules of Imprisonment Sentencing in penalization stage contains of "Necessity of determining Imprisonment just for the serious crimes" with paying attention to the "Necessity of public protection", and in justice process, it includes the "principle of Impose Imprisonment just for dangerous criminals". Accordingly, this punishment should be determined just for dangerous criminals and for serious crimes, and just it is Necessary of public protection. Clasyfing the rules of Imprisonment determining and Sentencing in Iran requires definition of the specific structures to punishment determination and codification of laws that elaborates the status of the Imprisonment in the punishments category.

Keywords: imprisonment, determining rules, crime Seriousness, public protection, dangerous criminal.

* **Email:** a.tavajohi@yahoo.com

** **Email:** ebrahimvand2@gmail.com

Normal Risks of Life and their Role in Scope of Tort Law

Hasan Badini^{1*}, Hamidreza Aghdas-Tinat^{2**}

1. Associate professor of department of private law, Faculty of Law and Political Sciences, Tehran University

2. PHD student of Private Law, University of Tarbiat-Modares

(Received: 16 Mar 2017 - Accepted: 20 Sep 2017)

Abstract

Normal risks are limitations of social life that are different in various situations and are not separable from the essence of life. When these risks make damages to persons, the main question is that weather the approach of tort law towards the compensation of them should be different from other risks or not and what is their role in liability. In this research, after using analytical and comparative methods, it has been concluded that enforcing remedy policies towards damages arising from normal risks is unreasonable and may cause some further damages to the society. So, it is necessary to distinguish between normal and abnormal risks and make remedy policies more sensible. Thus, it should be taken into consideration that in elements of liability, an effective factor of attribution (which is different from causation) is that loss must not arise from normal risks. In order to realize normal risks, in each case, a total number of criteria should be taken into account. Considering this idea, besides economic efficiency, leads to restriction of liability scope in possible cases and protects human being's liberty, the interest which tort law always seeks to bring its balance along with security interest.

Keywords: Lawful damages, Attribution (Imputability), Social contract, foundation of Civil liability, Common act criterion.

* **Email:** hbadini@ut.ac.ir

** **Email:** h.aghdastinat@modares.ac.ir

Articles Contents

Normal Risks of Life and their Role in Scope of Tort Law	A
..... <i>Hasan Badini, Hamidreza Aghdas-Tinat</i>	
Penalization and Sentencing in the scope of Imprisonment in Iran and England Law	B
..... <i>Abdolali Tavajohi, Hesam Ebrahimvand</i>	
Irrevocability condition in the permissible contracts	C
..... <i>Mohammad Jafari-Majd, Pegah Ali-Abadi</i>	
Preventive Declaratory judgment and protection of Potential Patent Invention Violators	D
..... <i>Ali Roohizadeh, Majid Abbastabar</i>	
Status of Crime and Punishment Proportionality principle in Criminal Law of Iran and England	E
..... <i>Hojjat Sabzevarinejad</i>	
The Status of Modern Methods of Executing Capital Punishments under Iranian Penal System	F
..... <i>Naser Ghasemi, Saman Doost-Mohammadi</i>	
Pathology the structure and competency of administrative specific institutions (courts) in Iran administrative law	G
..... <i>Morteza Nejabat-Khah, Fatemeh Afshari, Seyyed ShahabAddin MusaviZadeh</i>	
Studing the Effectiveness of Disclosure Laws on Reducing Administrative Corruption with comparative Approach	H
..... <i>Hasan Vakilian, Davar Derakhshan</i>	

Abstracts

In

English



دانشگاه علوم قضایی و خدمات اداری

Judicial Law Views

Biannual Journal of

Judicial Sciences and Administrative Services University

(Vol. 22, 77 & 78, Spring & Summer 2017)

Publisher: *Judicial Sciences and Administrative Services University*

Director in Charge: *Ali Ghasemi (PhD)*

Editor-in-Chief: *Baqer Shamloo (PhD)*

Editorial Board:

Rabia Eskini (*Professor, Atomic Energy Organization of Iran*)

Mohsen Esmaili (*Associate Professor, Faculty of Law and Political Science, Tehran University*)

Vali Rostami (*Associate Professor, Faculty of Law and Political Science, Tehran University*)

Siamak Rahpeyk (*Professor, Judicial Sciences and Administrative Services University*)

Sayyed Ghasem Zamani (*Associate Professor, Faculty of Law, Allameh Tabatabaee University*)

Baqer Shamloo (*Associate Professor, Faculty of Law, Shahid Beheshti University*)

Mohammad Hasan SadeghiMoghadam (*Professor, Faculty of Law and Political Science, Tehran University*)

Sayyed Hosein Safaai (*Professor, Islamic Azad University of Tehran*)

Mohammad E. Tafreshi (*Professor, Faculty Human Science, Tarbite Modarres University*)

Ali Akbar Farahzadi (*Assistant Professor, Judicial Sciences and Administrative Services University*)

Sayyed Morteza Qasemzadeh (*Professor, Judicial Sciences and Administrative Services University*)

Abbas QasemiHamed (*Professor, Faculty of Law, Shahid Beheshti University*)

Hasan Ali Moazenzadegan (*Associate Professor, Faculty of Law, Allameh Tabatabaee University*)

Hosein MirmohammadSadeghi (*Professor, Faculty of Law, Shahid Beheshti University*)

Address: Judicial Sciences and Administrative Services University, No 9. Khark St.,
Enghelab Ave., Tehran, Iran.

P.O.B: 1133913615 - **Tel & Fax:** (009821) 66762571

Email: Legalviews.mag@gmail.com

Web Address: www.jlvviews.ir

Biannual Journal
Of
Judicial Law
Views

A Publication of
Judicial Sciences and
Administrative Services University
No. 77 & 78