A Comparative Study of the Conception of
“Effectiveness Principle”
in Interpretation of Contracts

By: Sayyed Mohammad Sadeqh Tabatabaei,
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One of the most important and complex issues of contract law is the issue of interpretation. Indeed, interpretation of contract is the connecting bridge between the theoretical aspect of law and what happens in the outside world and the application arena. The art of a judge is to resolve the ambiguity of the contract by the use of principles and rules governing the interpretation. Interpretation system has its own rules and tools on the basis of which the discovery of the common intent is possible. One of the interpretation techniques that have very privileged role in defining the terms of the contract and clarifying its concepts is the principle of effectiveness. The principle of effectiveness has been accepted in Islamic and Iranian law (Article 223 Civil Code). This principle is recognized as a universal rule in other legal systems and international legal instruments and practices. The important point is that there is difference between the legal conception of the principle of effectiveness in Iranian law and what is found in international trade law and the law of western countries. It seems that the principle of effectiveness in interpretation of contract in western legal tradition is not completely compatible with its usage in our legal system. The present study tries to explore the said principle and its differing conceptions and the ensuing legal effects.

Keywords: Interpretation of Contract, Effectiveness Principle, Ambiguity of Contract, Principle of the Priority of Valid Meaning (Or Ut Res Magis Valeat Quam Pereat).
Recognition and Enforcement of International Commercial Arbitration Decisions Issued in Cyberspace

By: Manucheher Tavassoli Naini
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Today’s world, due to the emergence of new technologies, has turned into a global world village that one of its characteristics is decreasing of distances and reducing speed in communications especially in the field of world trade leading to an unprecedented volume of trade transactions. Increased trade and consequently increased competition for obtaining global markets require greater facilitation of international trade infrastructures. One of the most important infrastructures is the settlement of international commercial disputes and the related issues. In the past, the most common method of resolving commercial disputes was referring to national courts, but in the world of today such an approach is not possible and reasonable. The process of globalization demands alternative methods such as arbitration in cyberspace that is the developed and modern form of traditional arbitration and steps should be taken in the path of removing its obstacles and problems. In this regard, the present article reviews the principles, obstacles and the manner of recognition and enforcement of arbitral decisions in cyberspace that for the reason of new character of this institution there are surely some gaps to be filled through the efforts of foreign and internal scholars and the Institute for the unification of International Commercial Law, creating international practice, formation and development of conventions and model laws in this field.

Keywords: Electronic Arbitration, Cyberspace, Recognition and Enforcement of Electronic Awards, New York Convention, Electronic Trade.
A Criticism of the Most Important Western Philosophical Theories of Rights

By: Mohammad Hossein Talebi

Western legal philosophers did the vast investigations regarding the nature of rights. Those extensive researches produced varied theories in this subject. Nowadays, among different philosophers' and lawyers' views, the most supported theories of the meaning of rights are called Benefit/Interest theory and Will/Choice theory.

Notwithstanding different interpretations of Benefit/Interest theory, its adherents believe in the axiom that: a duty-bearer should give the benefit to the right-holder in each process of rights. This axiom can be criticised by some cases of rights in which either there is no interest for the right-holder like God or there is no correlated duty.

According to Will/Choice theory, the nature of rights is that the right-holder can have control over the duty-bearer in doing the duty. There are some problems with this theory: Criminal law and inalienable rights are not compatible with Will/Choice theory. This theory can be criticised too by those rights which have no correlated duty. Thus, natural divine rights of God and some kinds of rights in Hohfeldean division show that Will/Choice theory is null.

Keywords: the Meaning of Rights, Benefit/Interest Theory, Will/Choice Theory, Rights of God, Non-Correlated Rights and Duties.
The Principle of Party Autonomy in Determining the Applicable Law to Substantive Conditions Governing the Issuance of Commercial Instruments

By: Najad Ali Almasi  
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Determining the applicable law on substantive conditions of the issuance of commercial instruments and the criteria used in this process in case of the parties agreement or their silence are among the most important issues that the adjudicating authority is faced with. Since nowadays the law governing contracts and commercial instruments is getting out of the range of national law, the value and effect of the principle of party autonomy have taken the attention of lawyers. This article tries to investigate the role of the said principle in determining the law governing substantive conditions of the issuance of international commercial instruments.

Keywords: Applicable Law, Commercial Instruments, Substantive of Issuance, the Principle of Party Autonomy.
An Study of Foundations and Tools of Constitutional Economics and Its Application in the Constitutional Engineering

BY: Abbas Ali Kadkhodaei
Moslem Aghaei Togh

The Research Program of the Constitutional Economics which began in 1970s by now well known work of James Buchanan and Gordon Tullock titled “The Calculus of Consent: Logical Foundations of Constitutional Democracy”, and reached its Golden Age subsequently in 1990s, is founded on methodological individualism and rational choice. It analyzes the rationally expected consequences of alternative constitutional rules by employing the standard method of mainstream economics and its widely recognized analytical techniques, such as Price Theory and Game Theory. This paper presents this research program and emphasizes the need for its application in constitutional engineering.

Constitutional Engineering/Design which means choosing among rules is the most sensitive example of decision-making in a political system. Despite such importance, unfortunately, constitutional theory until now has failed to pay enough attention to the problem of possible political consequences of alternative constitutional rules. This is because in designing a constitution, we need some model to analyze those rationally expected consequences of different alternative rules and predict political behaviors and reactions, and classic theories of constitutional engineering lack such model.

Keywords: Constitutional Engineering/Design, Constitutional Theory, Constitutional Economics, Economic Analysis, Game Theory.
The Legal Status of Unauthorized Contracts and Its Basis in the Laws of England, France, Germany and Iran

By: Mohamad Hassan Sadeghi Moghadam
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The legal status of unauthorized contracts is one of the different points between Iranian law, on one side and English, French and German law on the other. The unauthorized contracts are always ineffective in Iranian law and not absolutely void, but in English, French and German law, these contracts are sometimes effective and complete. There are some bases behind these provisions. The most important bases of these provisions are promotion of trade, recognition of possession as the creator of property, and respect to good faith of buyer. Conversely, in Iranian law, the most important basis of non-voidance of unauthorized contracts is the causality of considerations in the creation of contract.

Keywords: Unauthorized Contracts, Good Faith, Possession, Representative Theory, Transfer of Property, Intent and Consent, Cause of Contract.

Time at Large Contracts in English and Iranian Law

By: Mansour Amini
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The promisee in any term-contract is entitled to request the performance of the obligations at the contractual time, and in case of delay in performance of the obligations, claim for the damage accrued by delay. If in the contract no term is provided for the performance of the obligations, then is the obliged party entitled to perform his/her obligations anytime he/she wishes? Is it possible in such contracts to receive the damage due to delay in performing the obligations? This paper intends to, while describing contracts with time at large, explain the strategies of English and Iranian law in encountering such contracts.

Keywords: Contracts with Time at Large, Performance with Delay, the Reasonable Time, the Time in Custom and Objective Measure.
On the Role of Forensic Linguistics in Achieving Judicial Justice

By: Seyed Fazlollah Mousavi
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Ahmad Ramazani

The satisfaction of judicial justice is the final goal of every legal system. The type of the wording used in the confession by the confessor or in witnessing by a witness or in drafting different documents by the plaintiff and defendant can be affected by some factors including age, sex, race, ethnic, the level of education, physical and mental health, intelligence, social culture and etc. Thus, finding out the main and real purpose of such persons by a judge in some cases is rather difficult which can be an obstacle for the satisfaction of legal justice. It is in such cases that the important role of forensic linguistics can be fairly understandable in analyzing the wording, content and the linguistic processes of the people in a legal process. Explanation of the important role of forensic linguistics in trials is an interdisciplinary field which drew attention in some countries. This article tries to study some particular legal cases and explain the role of forensic linguistics in the improvement of justice in trials and also it presents some suggestions for the legal authorities, courts and Iranian lawyers for the improvement of justice and cooperation of law and linguistics.

Keywords: Law, Forensic Linguistics, Trial, Judicial Justice, Witness, Confession.