Comparative Examination of Doctrine of "Rebus Sic Stantibus" in International Law and in the Iranian Legal System

By: Mahmoud Jalali Hamid Araei

Principle of "stability of contracts" has been recognized by most legal systems. Autonomy of contracts and their subordination from the common intents of the parties, require the content of contracts to be always binding upon the parties. However, the scope of the principle is not absolute. For in certain circumstances, noncompliance with the principle has been accepted both at national and international levels. Thus, jurists have always tried to replace the applicability of the principle pacta sunt servanda with adjustment or abrogation of contracts, if fundamental changes of circumstances disturb the contractual adjustment between the parties making implementation of obligations too difficult. Doctrine of rebus sic stantibus is applicable both to national and international long lasting obligations. In international law resort to the doctrine is an exception to the principle of pacta sunt servanda. The Iranian legal system has approached the issue carefully and consequently, making adjustment in contracts due to fundamental changes in circumstances of concluding time of contracts is a controversial matter. Nevertheless, it seems that the principle can exceptionally be accepted in the Iranian private law on three grounds of "sudden deception" (ghabne hades), "rule of hardship" (Osr VA Haraj) and "theory of interpretation of parties intents".

Keywords: Contract, Treaty, Rebus Sic Stantibus, Pacta Sunt Servanda, Iranian Legal System, International Law.
The Place of Ethics in Economic Analysis of Law

By: Mehrzad Abdali

Economic analysis of law is a deeply analytical methodology, that its current approach that treats the efficiency as the end of economic analysis of law is morally objectionable. This Article focused on the consequentialist aspects of utilitarianism and welfare economics, especially on the lack of ethical constraints within it. It is proved that ethical values must be considered together with efficiency. From the point of view of morality, both positive economic analysis of law and normative economic analysis of law are objectionable.

Thus, in economic analysis of law, it is necessary to accept that efficiency is an instrument for reaching the justice.

Keywords: Economic Analysis of Law, Efficiency, Welfare Economics, Consequentialism, Ethics.

Doctrine of Soul Vivification (Ehyae Nafs) and Its Relationship with Restorative Justice

By: Ismaeel Rahimi Nejad

So far, several theories have been presented by criminologists to explain and justify the restorative justice, such as the theory of “reintegrative shaming”, “social control theory”, “the neutralization theory of crime” and abolitionism. This article, critically considering these theories, makes clear the nature and bases of the doctrine of “soul vivification”(Ehyae Nafs), which is the main and most important foundation to restorative justice from the point of anthropological, sociological and moral view, and studies its relationship with restorative justice.

Keywords: Restorative Justice, Soul Vivification, Reintegrative Shaming, Social Control, Neutralization, Abolitionism.
Socialization of Risks

By: Ali Ghesmati Tabrizi

Nowadays, enhancement of occurrence, spread of damages and the appearance of losses which arise from the technology and knowledge products, shows necessity of the remedies beyond the classical boundaries of civil responsibility alongside the changing general thought. Accomplishment of most of these needs occurs with the aid of the social remedies systems which are supported and also situated in civil remedies systems. "Social risks" alongside the "socialization of risks" are new concepts which are containing all of the damages beyond the civil responsibilities of jurisdiction and its redress ways. The terms are multifunctional and it increases their ambiguity. Exposing, surveying of various definitions, explaining the meaning of socialization of risk and its reason are the purposes of this research.

Keywords: Social Risks, Socialization of Risks, Collectivization of Responsibility, Civil Responsibility, Social Solidarity.

A Reflection to Environmental Problems on the Judgment of the ICJ on the Pulp Mills Case

By: Mohammad Hosain Ramazani Ghavam Abadi

On 4 May 2006, the Argentine Republic filed in the Registry of the Court an application instituting proceedings against the Eastern Republic of Uruguay in respect of a dispute concerning the breach of obligations under the Statute of the River Uruguay. In the Application, Argentina stated that this breach arose out of the authorization, construction and future commissioning of two pulp mills on the River Uruguay, with reference in particular to the effects of such activities on the quality of the waters of the River Uruguay and on the areas affected by the river. This article tries to briefly study this case.

Keywords: International Court of Justice, International Law, Environment, Precautionary, Prevention.
Comparative Research on Tajarri
(Temerity to Commit Crime) in Islamic Methodology of Feqh and Concept of Dangerousness in Criminology

By: Seyed Mahmood Mir Khalili

This article talks about tajarri and it’s criminal types comparatively with concept of dangerousness in criminology. First, it states the meanings of main words and the words that related to them. While Iran Criminal law after Islamic revolution, rejected any penal reaction against tajarri and its types, like inchoate offences, as in attempts or impossible crimes, so this research proves the necessity of any logical reaction against doer of tajarri which are dangerous for society, by using the comments of scientists in Feqh, methodology and criminology. Although the legislature has criminalized some conducts like preparation conducts or threat to commit a crime, that are less dangerous for society, but refused to criminalize any type of tajarri, however we don’t recommend the legislature to criminalize them. Finally the recommendation is to accept the dangerousness concept and to foresee the appropriate safe guarding measures without punishment but with observance of legal principle.

Keywords: Dangerousness, Criminology, Temerity to Commit the Crime (Tajarri), Attempt, Attempting Impossible Crimes.

Justification and Denial of the "Right":
Thoughts on Contradiction or Interaction of Reality and Value in Legal Order

By: Mahdi Shahabi

The objective of this work is to clarify the place and role of the "right" in a legal order and its connection therein. Is the right beyond legal order or does it find its validity and its justification within the legal order? What changes or challenges does the lack of "right" or its rejection create in a legal order? Why is that the realists and legal sociologists do not accept it? Have they managed to generate a just legal order? Have the metaphysists who insist on metaphysical justice, established a realistic legal order? If the "right" is a value, does it contradict with an empirical view move away legal order from reality? Does elimination of the value from legal order, not direct it towards excessive-realism and especially etatist-realism?

Keywords: Right, Law, Justice, Metaphysic, Reality, Value, Legal Order.
Theory of Apparent Agency in Iranian Law  
(A Comparative Approach with Foreign Law)

By: Rabia Eskini  
Nader Pour Arshad

The theory of apparent agency has its origin in English legal jurisprudence. This theory is regarded by the International Law and in many countries especially countries with written Law systems such as France, Belgium, Switzerland and Egypt. In regard with the influence of apparent agency theory in written Law, three presumptions are to be considered:

First: some regulations can be interpreted and analyzed through the apparent agency theory.

Second: some regulations are based on the apparent agency theory, meaning that this theory can accept exceptions.

Third: the apparent agency theory has been explicitly or impliedly accepted as a general principle.

This article deals with the three above-mentioned presumptions in the Iranian Law and has reached the following results:

The apparent agency theory does not contradict with the Iranian legal principles.

2- In the Iranian Law, there are cases which can be analyzed and justified through the apparent agency theory.

3- Some aspects of the apparent agency theory have been accepted in the Iranian law, at least exceptionally, by borrowing from foreign Laws.

4- The theory of apparent agency is not acceptable in the Iranian law as a general rule, but theories similar and equal to it are available.

Keywords: the General Theory, Apparent Agency, the Written Law.