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5. The researcher should use the critical method in his study and discuss in depth the subject of the research and the problems he raises.
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Quality Assurance and Education Protection

Prof. Badria A. Al Awadhi

Chief-in-Editor

In recent decades and years, global societies are witnessing a growing trend to enhance the quality of education, as this is a prerequisite for reforming education, ensuring its efficacy, and activating its role in stimulating sustainable development and marked revival and contributing to the advancement of civilization in its general sense. This has been successfully achieved as shown by international and domestic indicators and reports.

Not far from what it means in the administrative, economic and productive fields, quality of public and legal education involves a range of systems, standards, procedures, specifications and characteristics. These are adopted in business, activities, scientific and academic curricula, infrastructure, environment and administrative and human resources for the various stages and levels of the educational process, which could reflect excellence and efficiency of their graduates and the jobs they do. It also includes expertise, consultancy and services provided by educational and academic institutions to the governmental and private institutions, both domestically and internationally.

Given government and social policies and plans, and in light of the increasing competition and role of the private sector, quality systems in education, as is the case with other institutions, have become not only an institutional and legal obligation but also an approach to excellence and value-added. Educational quality systems have also spread and found their way to Arab and Gulf educational institutions and universities, in general, and Kuwaiti ones, in particular. It has led to the establishment of the Council of Private Universities (Law No. 34 of 2000) and the National Authority for Academic Accreditation and Quality Assurance in Education (NAQAAE) in 2010. Some academic institutions in Kuwait have received domestic and international accreditation. KILAW has received two quality certificates from the British Quality Assurance Agency (QAA); the first was the Institutional Quality Certificate and the second was for four of its academic programs: The Bachelor of Laws (LLB), Master of Laws (LLM), the Paralegal Diploma, and the English Foundation Program for the LLM.

This approach to adopt, promote and ensure the implementation of quality assurance will undoubtedly place a high value on education in general and legal education in particular. It also preserves the value of scientific and academic certificates and the status of graduates helping them get the jobs they look for. This approach would also open up opportunities to extend the fields of scientific research, positively influencing the relevant academic and social sectors.

However, these remarkable efforts and positive trends face several challenges, some of which relate to the weak will for reform and development, and limited resources, particularly in the field of public education. Other challenges may relate to the spread of commercialism, poor scientific level and weak oversight and responsibility as well as the desire of some to receive certificates without undergoing the necessary scientific training to meet the requirements of future jobs, which became manifest in the phenomenon of forging certificates.

The responsibility to improve and reform the level of education, enhance quality systems and meet these challenges altogether is to be shared by all parties. The society with its various institutions must cherish and promote the values of ijtihad (discretion) and educational attainment and reject fraud and forgery. The State with its various institutions must also fulfil its constitutional and social duties in sponsoring, developing and promoting education. Likewise, those in charge of educational institutions at all levels must ensure quality and protect education.

English Abstracts of Arabic Research

The Impact of Imam Malik's Doctrine on Kuwait's Criminal Law: A Practical Study

Dr. Majid Jaber Al-Anzi[*]

Abstract

This research examines the impact of Imam Malik's doctrine on kuwaiti criminal law. Through an empirical study, it handles examples of the Criminal law and Maliki's jurisprudence agreement on code of behaviour and penalty, and examples of agreement on code of behaviour but no penalty, as well as examples of their disagreement on both of code of behaviour and penalty. The importance of this study arises from the fact that much Kuwaiti legislation stems from Islamic Sharia, a law that conforms to the country's traditions, customs and morals; jurists have exerted an effort to make its provisions match up challenges on the ground, a fact that was taken into consideration by the jurists' jurisprudence as they were enacting status laws.

The study aims at identifying the points of agreements and disagreements between Malik's doctrine and Kuwaiti Criminal law to find solutions to these in the future to account for the Sharia provisions and sustain the interests of individuals and communities. It has reached several conclusions including the fact that only a few provisions of the penal code are consistent with Maliki jurisprudence, and that differences exist in other issues and rulings. The study acknowledges the importance of continuing to discuss convergences and differences between Islamic jurisprudence, Islamic provisions and status laws as this issue is of considerable interests.

Keywords: Maliki Jurisprudence, Sharia Law, Penal Status Law, Tazir, Hudud.

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Protecting Cultural Property during Armed Conflict in Syria

*Dr. Fatima Al-Dhabeiri**

Abstract

Cultural property has often been demolished and looted during armed conflicts; this type of crime is being evident during the armed conflict in Syria, where extremist groups seriously targeted historical and archaeological sites. This research deals with the legal protection of cultural property during Syria's civil war, which is considered a form of non-international armed conflict.

During this type of armed conflict, a question that usually arises is whether non-state armed groups can be compelled to respect the rules of international law in general and the rules of cultural property protection in particular. The current research examines the rules of international law that protect cultural properties during armed conflicts, focusing mainly on the responsibility of the conflict parties during armed conflicts of non-international nature.

The research reviews the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its protocols to determine the responsibility of each of the conflict parties. It also examines the provisions of international custom that recognizes the protection of cultural property during armed conflicts, which in turn obligates all parties, even those not considered parties to the relevant international conventions. Finally, it addresses Security Council resolutions that condemn violations of cultural property in Syria and impose international obligations to protect it. This system of rules emphasizes the determination of the international community to protect the cultural heritage which belongs to people and all humanity. However, the continuation of destructive operations against cultural property requires further solutions.

The research concludes that there are legal loopholes which should be plugged through the activation of existing legal provisions, as well as the formulation of detailed legal rules designed to counteract terrorist operations targeting cultural property.

Keywords: The Hague Convention, Cultural Cleansing, International Custom, Civil War, UNESCO.

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Technical and Procedural Aspects Necessary for the Enforcement of Kuwait's Cybercrimes Law No. 63 of 2015

*Dr. Faisal Faraj Al Mutairi**

Abstract

This research examines the technical and procedural aspects of activating the enforcement of Kuwait's 2015 Cybercrime Law No. 63, which has come to fill a legislative vacuum, which created a kind of disturbance and confusion among the judiciary and law enforcement agents alike. This has been confirmed by the explanatory memorandum to the act, noting that the increasing use of information networks and activities led to many risks, producing new types of crimes called "information crimes", such as embezzlement, forgery, crimes of ethics and morality, information theft and penetration of security systems.

As it is certain that the procedural law transfers the cardinal rules, which combat crimes, from stillness to movement, the stage of real application or practical implementation, the traditional penal procedural texts represented in the Kuwaiti Code of Criminal Procedures and Trials No. 17 of 1960 do not aid in combating new crimes committed using advanced technology. This, in turn, necessitates revision and development of relevant procedural rules.

In light of the above, the importance of this study lies in seeking to establish special procedural rules that mimic the virtual reality of cybercrime, away from traditional rules. The study, therefore, aims at shedding light on the issue that law enforcement agents, public prosecutors and courts engage in this cyberwarfare with conventional procedural weapons that are incompatible with virtual reality.

To that end, the study has followed a comparative analytical approach to identify the technical models and experiences put forward by some states, such as Finland and Switzerland as patterns for others to follow, model on and derive some benefit from. The study ended up with the conclusion that it would be necessary for the legislator concern themselves with the integration of substantive aspects with procedural aspects and it recommended the establishment of a Cybercrime Court.

Keywords: Computer System, Cybercrime, Electronic Inspection, Electronic Criminal Laboratory, Electronic Directory.

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Economic Analysis of the Contract Theory from A Legal Perspective.. The Probable and Improbable: A comparative critical study from the perspective of the Latin School

*Prof. Mohammad Arfan Al Khatib**

Abstract

The research topic concentrates on providing a legal reading for the economic analysis of the contract theory from a legal perspective, within the philosophy of the Latin School as represented by the French Civil Law, with projection approach on the Kuwaiti Civil Law, in an attempt to illustrate the legal stand of this economic reading, whether in concurrence or discrepancy. In the first part, we discussed the probability of looking into the legal rule as an economic indicator, in particular, as related to the two stages of concluding and implementing the contract. In the second part, we discussed the case in which the legal rule cannot be weighed economically due to its value and ethical dimension, as a parameter for justice rather than a means to maximize riches and benefits, i.e. the cases of both the performance and damages.

The research reached the conclusion that the economic analysis approach represents nowadays an added value to the legal thought. In the legal transactions, the economic theory has its side presence in the framework stage of concluding and implementing the contract; proving the possibility of connecting the economic theory with the legal theory in understanding the contract philosophy in these two stages. At the same time, this reciprocal relationship between law and economy is negated in the case of the performance and damages.

It is not possible to adjust the performance process by implementation by way of compensation; and consequently, mixing between the value dimension of implementation and the economic value of compensation. In addition, the research emphasizes the approach aspects between the French and Kuwaiti legal thoughts regarding the issue of the economic analysis of the contract, particularly, the topic of concluding and implementing the contract, regardless

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of some insignificant differentiations. At the same time, the research displayed the legal aspects of differences in looking into the cases of the performance and damages, particularly, the legal adjustment for each of them, in separation between the concept of the performance as an origin in the legal commitment, and damages as an origin in penalty for default of implementation in the French civil legislation, and approaching damages within the implementation regulations as a form of implementation in the Kuwaiti civil legislation.

Keywords: Economic analysis of law, Contract theory, Legal justice, Economic justice, French civil law. Kuwaiti civil law.

Sentence Suspension: A Suspended Justice and a System Contradicts the Purposes of Punishment and the Victims' Rights: A Critical and Comparative Review

Prof. Mouaid Alqudah and Dr. Mamoun Abu Zeitoun***

Abstract

This paper is an evaluative, critical, and comparative review of sentence suspension system under the criminal laws of Jordan and UAE. It intends to explore the correlation between this system, and both the aims of punishment and victim of crime rights and interests in achieving justice as it involves a judge's decision suspending a defendant's serving of a sentence after he or she has been found guilty.

Pursuant to the central argument of this paper, it has been shown that the current state of law on this system in both laws is not in line with the aims of punishment, and undermines the right of the victim in seeing justice being served through punishing the accused.

It has been also demonstrated that although the adoption of such system is justified by the need to protect the accused from the negative consequences associated with the execution of short-term sentences, yet the sentence of contraventions and some aspects of the monetary penalties fall outside its scope under both laws.

The analysis in this paper indicates that there is severe limits on the role of the victims of crime regarding the application of this system, and points out towards some possible deeper structural law reforms to remedy such legislative imbalances.

Keywords: victims of crime, sentence suspension, aims of punishment, conciliation, short-term sentence.

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The Subject Matter of the Administrative Reconciliation Contract: A Comparative Study

*Prof. Mouhannad Moukhtar Nouh**

Abstract

Each administrative contract must have a subject matter that should be both possible and legitimate. The idea of the possibility of a subject matter in the reconciliation contract is manifested by the need for the reconciliation to be an exchange of waiver between the two parties to the reconciliation, whether this was a mutual waiver of claims, allegations or rights. Apart from a few exceptional cases, the rule here is that waivers under civil reconciliation contracts are not to be balanced. However, when it comes to the notion of mutual waivers in the administrative contract of reconciliation, the balance of waivers is one of its distinguishing features, so that the concession of the administration does not lead to the payment of what is not required. This mechanism was provided by the French Council of State (Conseil d'État) and was called the "control of generosity".

The legitimacy of the subject matter in administrative reconciliation contracts is reflected in the fact that some issues are not suitable for reconciliation, such as administrative competences, public property and contractual liability. On the other hand, the subject of reconciliation cannot be a waiver of legality. Therefore, the main impetus for research in this area is to prove the existence of particularity subject in the administrative reconciliation contract, making it different from the subject matter in the civil reconciliation contract, and identify the reasons that led to this subjectivity and its various applications.

The topic was tackled from two perspectives. Whereas the first explored the concept of the existence and possibility of a subject matter for an administrative reconciliation contract, the second examined the idea of the legitimacy of the subject itself in the contract. The researcher adopted a comparative approach to draw a comparison between the French legal system and the legal system in two Arab states, namely Syria and Qatar. The French legal system introduced a sophisticated treatment of the subject matter in administrative reconciliation

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contracts, a matter that was lacking in the Syrian and Qatari legal systems.

The most important conclusion drawn in this study was the lack of effective judicial control in both Qatar and Syria over the subject of administrative reconciliation, the activation of which this research recommended. The study also recommended that administrative reconciliation should never be a means of wasting public funds. Moreover, it called for total accuracy with adapting contracts of reconciliation when handled by the judiciary in Syria and Qatar, especially with the existence of modern trends in France permitting reconciliation in the context of abolition cases, within a limited scope, for which the administrative judiciary in both Syria and Qatar had not established clear principles of such trends.

Keywords: Administrative Contract, Mutual Waivers, Administrative Justice, Dispute Resolution, Public Funds.

Law Applicable to the Retention-of-Title Clause: A Study of UAE's Private International Law

*Prof. Noor Al-Hajjaya**

Abstract

The issue of the retention-of-title clause (Romalpa Clause), which is often included in the international sales contract in instalments until the buyer has paid full price, raises the problem of determining the law that governs it in terms of private international law. Since the UAE legislator has not provided a rule of attribution on this subject, it is felt necessary that light be shed on the relevant law under this important issue.

Indeed, I have come to realize that this the retention-of-title cannot be governed by a single law as it relates to more than one law that must be implemented in a distributed manner. Its source is a convention that requires the application of the contract law to the terms of its validity and its effects between the contractors. Whereas the Money Location Act governs its effects on third parties, particularly the creditors of the non-bankrupt buyer, those effects on the bankrupt buyer's creditors are governed by Bankruptcy Law.

Keywords: Retention Clause, Contract Law, Location Law, Bankruptcy Law, Attribution Rules.

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Rules Governing the Authority Assessing Sufficiency of Evidences for Criminal Procedure (Part 1)

*Dr. Ashraf Mohammed Abdul Qadir Samhan**

Abstract

This study is an attempt to identify the parameters of the authority that assesses the availability of sufficient evidence for criminal procedure to establish objective controls to limit abuse and arbitrariness in using this authority to guarantee rights and freedoms. To this end, it was found necessary to tackle this topic from four perspectives: (a) who estimates the sufficiency of evidence required for criminal action (b) the problem of banning weight of evidence in some systems (c) the nature of the authority assessing the adequacy of evidence for criminal action and the extent it is subject to judicial control and (d) means of monitoring the judiciary including the form of authorization for a criminal procedure and the reasoning about (in)sufficiency of evidence.

The researcher used two approaches. First, an analytical approach focusing on the authority assessing sufficient evidence for criminal action, discussed in its entirety, both in terms of determining the responsible authority as sometimes multiple authorities might be using the same discretion, and the extent to which the authority is subject to censorship with all its various means. Second, a comparative approach comparing the way this authority is regulated in different Arab laws to find out what had been provided in this regard so far to derive some benefit from the legislative and judicial experiences under study.

The study provided a set of interesting findings. First, the need for a proper and balanced assessment of the availability of the suspicion by the criminal control officer. Second, the trial court has no right to substitute for the control officer and decide, for itself, whether outward appearances were sufficient to assess the existence of suspicion, nor it can interpret these appearances, in one manner rather than another. Third, to ensure the effectiveness of the prosecutorial authority in assessing the availability of sufficient evidence, its power to weigh evidence, which might be denied by the judiciary in some

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countries, has first to be recognized. Fourth, the reasoning of authorization to inspect plays an essential role in providing sufficient evidence to justify it.

This is reasoning proper, represented by the citation of real and legal reasons that led to the action to activate the role of the various oversight bodies of this authority. Fifth, the argument for insufficient evidence required for inspection is also objective rather than procedural, meaning that it should be raised before the trial court besides exercising oversight of the availability of sufficient evidence of arrest. This is carried out through requests for the release of the detainee and through the grievance submitted to higher competencies within the authority of the investigation, through which the oversight role of the Attorney General in assessing the need for arrest or release can be activated, and finally through challenging detention orders or refusal to release.

Keywords: Weight of Evidence, Suspension, Inspection, Arrest, Detention.

Bribery in Accordance with the Laws in Force in the West Bank - Palestine

*Dr. Mustafa Abdel Baki**

Abstract

Bribery is an agreement between two parties; one offers an advantage or service to the other who accepts it for doing or refraining from doing a job relating to his/her job or mission. The importance of this research stems from the dialectic based on the appropriateness of limiting the crime of bribery to public officials and the likes, as a crime against public office and public administration, or extending it to private sector workers as well. Its scope will be limited to the crime of bribery in terms of its concept, nature and elements, per the laws in force in the West Bank compared to the 2003 United Nations Convention against Corruption, the Arab Convention against Corruption of 2010 and the Model Penal Code. By adopting a comparative, descriptive, analytical approach, the research is divided into two sections; the first section highlights what the crime of bribery is and the second deals with its elements.

Many conclusions have been arrived at in this research. These state that the spread of bribery undermines a fundamental pillar of society, namely, the confidence of citizens in the State and its employees; and that the exclusion of legislators the private sector workers from criminalization may harm employers. The recommendations put forward by the author call for standardizing the definition of the 'civil servant' in public service laws and penalties; not only criminalizing actual staffing, but rather explicitly stipulating the inclusion of private sector workers. It also calls for imposing other consequential penalties on the perpetrator of the crime of bribery as well as denying them any public service jobs such as denial of candidacy and voting in general and local elections, and that the legislator imposes penalties for the moral person in case of committing the bribery crime.

Keywords: Public Servant, Bribe-giver, Bribe-taker, Corruption, Anti-Corruption.

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The Problem of Interest on Bank Loans in Qatari Law: An Analytical Study

Dr. Mohamed Abou El Farag and Dr. Tarek Rashed***

Abstract

This paper discusses important legal problems relating to the adoption by the Qatari judiciary of a position on the issue of interest on bank loans, namely, that banks should not take interest on loans granted to clients. Perhaps, the reason for adopting such a position is the lack of any legal regulation of bank loans to enable them that allows for charging interest on loans they grant, unlike what is prevalent in comparative legislation such as those in the United Arab Emirates and the State of Kuwait.

This study examines the legal system of bank loans in comparative legislation and analyzes the judgments issued by the Qatari judiciary regarding the subject matter of the study. It emphasizes that Article 70 of the Central Bank of Qatar and the Regulation of Financial Institutions (Law no. (13) of 2012) have been representing the legal basis for the legality of banks> agreements with their customers on bank loans interests. It also highlights its disagreement with the decisions issued by the Qatari Court of Cassation that decided the illegality of interest on bank loans and decided to apply the provisions of the Civil Code of Qatar to grant compensation to banks because of the borrower>s late repayment of debt.

Keywords: Banking Loans, Interests, Law of Qatar Central Bank, Qatari Judiciary Rulings, Banking Credit, Civil Loans.

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Impact of Procedural Solutions on Jurisdictional Res Judicata

*Dr. Yasser Bassem Thanon Al-Saba'wi**

Abstract

This study studies addresses the issue of procedural solutions and their impact on Jurisdictional Res Judicata. In this sense, the concept of procedural solutions corresponds to the concept of exceptionality, so that the term procedural solutions go to the state of extraordinary or exceptional status in a civil action. This extraordinary character does not deny the right holder or legal status the normal status in the case, noting that solutions must be achieved prior to the judgment in the civil proceedings. This occurs within the framework of the relative rule of judicial judgments and respect for res Judicata in a set of comparative legal systems reinforced by jurisprudence and judicial applications in several countries, including French, Egyptian and Iraqi laws, regarding these as main legislation, whenever possible.

The study comprises two sections. The first concerns the definition of procedural solutions and second one handles the effect of procedural solutions on res judicata. Following close analysis, some conclusions have been made including the difference existent between procedural solutions and procedural extension, reflected in the need for the latter to be third-party while the same was not necessary for procedural solutions. In addition to the difference sought by the case of procedural representation, the solution has a status in the case other than in procedural representation.

The researcher puts forward a number of recommendations. These include a call for the Iraqi legislator to formulate a general theory of procedural solutions in the civil case, provided that these are stipulated in the Civil Procedure Law so that the texts contained in it would be the general reference wherever its applications were received, whether in litigation or liability of execution.

Keywords: Exceptional, Procedural Extension, Procedural Representation, Proportionality of Judicial Judgments, Final Judgments.

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Criminal Policy against Archaeological Sites Crimes

*Dr. Mustafa Ibrahim Al-Arabi Khaled**

Abstract

This study aimed at discussing an important issue specifically prevalent in the field of criminal protection of archaeological sites. It attempted to evaluate the criminal policy in the protection of archaeological sites locally, in the Libyan legislation and local legislation in the Emirate of Sharjah regarding the protection of antiquities, internationally, in cases of armed conflicts (international and non-international) and the case of occupation.

The study falls into three sections. These sections were devoted to the crime prevention policy, criminalization policy and examination of punishment policy against such crimes, respectively. It identified a range of failures in the abovementioned kinds of policy in both Libyan and Sharjah legislation. The researcher recommended that a set of fundamental amendments be made to the legal texts of this legislation. In contrast, the study recorded the international community's intense interest in providing criminal protection to archaeological sites. The researcher recommended that more efforts be exerted on the ground to increase the level of effectiveness of criminal policy against such crimes and reduce the rate of damage to archaeological sites in situations of armed conflict and occupation.

Keywords: Tourism, Antiquities, Real Estate Antiques, Antiquities Crimes, Armed Conflicts, Protection of Antiquities.

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Appropriateness of Traditional Attribution Rules for the Provision of Ship Leases

Dr. Abdulsalam Al-Fadhl & Dr. Salim Khasawneh***

Abstract

Economic and social openness between states have led to the flow of goods and services across borders, which required multiple means of transport. Hence, the need for maritime transport has increased and there has been a multiplicity of shipping contracts and transport contracts based on charter party agreements. The latter is at the forefront of these contracts, especially in the context of irregular shipping.

Because maritime transport is linked to states and persons of different nationalities, it has granted transportation an international status. Undoubtedly, the internationalization of these contracts raises problems of conflicts of laws because legislative systems differ from country to another, particularly those relating to rules governing transport issues. This study, therefore, highlights these rules through detailed analysis and comparison aiming at clarifying the appropriateness of these rules to the nature of the transport contract and determining their ability to achieve the legal security expected of the contract parties.

This study came up with a set of conclusions. The most important of which was that the rules of attribution adopted by the Jordanian legislator as well as most Arab legislators, were not in line with the nature of ship lease contracts. It, therefore, recommended the need to adopt flexible rules in line with the most recent legislative developments.

Keywords: Shipping, Conflict of Laws, Ship Flag, Objective Rules, Charter Parties.

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