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KUWAIT INTERNATIONAL LAW SCHOOL

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Kuwait International Law School's Publications .. 2019

An Overview of
The Rule of Excluding Evidence Obtained by Illegal Means
in Comparative Criminal Procedure

By
Dr. Ahmed Awad Belal
Professor of Criminal Law
Former Dean
Faculty of Law - Cairo University
Visiting Professor at KILAW

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2019

Rules for Publication in the KILAW's Journal

Kuwait International Law School's journal is a quarterly academic, legal and reviewed journal, and an academic platform that seeks quality, seriousness and excellence. It accepts research papers in all relevant legal issues of interest to the Journal in Arabic, French and English, in any of the following areas:

- Research and studies
- Comments on judicial decisions
- Thesis abstracts
- Academic reports on seminars and conferences
- A presentation of new legal books

In any of the following academic fields, especially

- Law and its various areas
- Islamic law and jurisprudence
- Public finance, economy and economic legislations
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- Comparative studies
- Arabization in any of the previous areas

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4. The journal ensures that the research submitted for publication is on realistic cases, through following a mechanism that would accommodate the current changes in terms of objectivity, methodology and formality.
5. The journal encourages comparative legal studies.
6. The journal encourages the submitted researches for publication to follow a method of criticism, analysis, and brainstorm through modern methodology and techniques.
7. All submitted research papers are subject to referral by specialists in the area, and holders of an academic degree that is higher than that of the researcher or equivalent to it (if the researcher is Full Professor).

II- Publication Rules

■ For academic research and studies

A- General rules

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2. Research or study must not be part of PhD or masters theses, or from published books, unless it has a new value or addition, which shall be approved by the Editorial Board in advance.
3. The subject of the research should be current, original and innovative.
4. The focus in the research should be on the topic without theoretical introductions or unnecessary additions or expansions. The researcher should refer to the references that has already dealt with it when necessary.
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.
6. The Conclusion of the research should include a statement of the results of the research, and the recommendations to issues or problems in question, and the proposals for future studies.
7. The research or study references should be modern and varied, local and international, Arab and foreign whenever possible, and fully documented.
8. The number of words of the research or study should not exceed fifteen thousand (15000) words, and not exceed the number of (30) pages, A4 size. (Font type: Times new Roman , size 14 - the distance between lines per page: 1.15 - margins: the same font type - size 10 - the distance between lines: 1.0), including abstracts (Arabic, English and references).

9. The research should be accompanied by an abstract in Arabic and English, each of which shall consist of a maximum of 200 words (or one page). It shall include the research objectives, methodology, conclusions and recommendations, and keywords, not exceeding five words (not mentioned in the research), expressing the fields covered by the research, for use in indexing.
10. The research or study may not be published in another academic journal after its approval for publication in the journal of the Kuwait International Law School, except after a written permission from the Editorial Board.
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12. Research or study original copies shall not be returned after approval by the Editorial Board.
13. The researcher must attach a summary of the biography not exceeding one page.
14. Each researcher shall be given three copies of the published journal with his research with twenty copies of the research.
15. The journal shall have the right to retain all copyrights, both hard copy and electronically, for a period of three years from the date of publication.

B- Special rules

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■ For comments on judicial provisions

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- A summary of the thesis method, prescriptions, its mandates, and its tools.
- Conclusion of what researcher gets of conclusions and recommendations.

■ For reports of academic meetings

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- The reviewer should be a specialist in the academic field of the book.
- should not been already offer for publication in other printing association.
- The reviewer should present adequate summary of contents, with an indication of the most important aspects of excellence and incompetence, no more than (5) pages.
- Journal gives financial reward to present books that mandated by the journal only.

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Douglas Blackstock, Chief Executive, QAA

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Editorial

Local and Global Health Laws and Regulations in Light of the Corona Pandemic

Prof. Badria A. Al Awadi (*)
Editor-in-Chief

Health care for citizens finds its basis in constitutions in the first place as it is one of the basic tasks entrusted to the state, then come legislation, laws and regulations to put these constitutional principles and basic tasks into practice. From here emerge the rules and infrastructure for building health systems and devices, and then the health sector features are formed through the implementation of laws, the application of regulations and the provision of budgets and the necessary human cadres that include administrators, doctors, nurses in various specialties and other workers in the support sectors.

Like the rest of the legislation that is pre-established and foundational, but includes consideration and regulation of emergency situations, the Kuwaiti health laws at all levels formed an effective and influential framework for organizing the response and dealing with the repercussions of the Corona pandemic that appeared suddenly, then grew and escalated in an unprecedented and wide way, which created Strong pressures on the health sector in its various aspects, and raised legal problems and aspects about performance and the responsibility of the state and doctors in treatment, and then vaccination and its optional or compulsory nature, and its limits for different age groups and social sectors, in addition to legal, , administrative, and censorship controls over governmental and administrative procedures related to the supply of masks, medicines, treatments, vaccinations and other medical supplies.

Now that the pandemic crisis has begun to decline gradually in many countries, including the State of Kuwait, where the number of injuries has receded into the tens digits, and the number of deaths has fallen to the ones digits, and even to the absence for many days, which confirms the success of the various state agencies, especially the health sector, in confronting the epidemic and saving lives, which certainly deserves appreciation and praise.

After that, the need appears urgent to review health laws and regulations in a way that shows what was ambiguous and limited with regard to the powers of the executive and health authorities, in closure, coercion, vaccination and others, as well as the role of the legislative, judicial and supervisory authorities, some of which were bypassed or ignored during the crisis, which is a matter if

(*) Professor and Head of the Public International Law Department, Kuwait International Law School.

Understanding due to the sudden and exceptional nature of the crisis, but now it needs legal and legislative regulation, control, and clarification.

The Corona pandemic also revealed a crisis in international health laws, as the international and regional health systems failed to activate the laws and agreements signed in this field decades ago.

Moreover, the major countries also turned back on themselves, and did not care about the poor and weak countries in Africa, Asia and others, which calls for urgent and rapid review to ensure that what happened is not repeated.

As much as the circumstances were related to a health crisis and legal and administrative imbalances, they also revealed a crisis in human values, morals, and solidarity, which in turn calls for review and reflection on the causes. Humanity has risen after all crises and disasters to remember and affirm common human values, and achieve them through laws, regulations, agreements, treaties, and others, which are necessary at this stage, especially since poor and marginalized countries and groups are still suffering and may continue to suffer for a long time.

English Abstracts of Arabic Research

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The Impact of Pictures and Correspondence through Social Media in Proving Divorce for Harm in Islamic Jurisprudence and the Kuwaiti Personal Status

Dr. Khaled Al Mutairi
Associate Professor of Comparative Jurisprudence and Islamic Studies
Kuwait International Law School

Abstract

In this research paper, I dealt with a recent issue related to modern technology and its impact on the disintegration of the Muslim family, entitled "The Impact of Pictures and Correspondence through Social Media in Proving Divorce for Harm in Islamic Jurisprudence and the Kuwaiti Personal Status Law." I divided it into an introduction, three sections, and a conclusion. The introduction showed the importance of research in addressing the issue in question, then came the research problem, which consists of trying to reach a ruling through research and consideration of the sayings of jurists and legal scholars. This was followed by the research objectives, the most important of which are: showing the impact of images and correspondence in proving divorce to harm, and I mentioned previous studies, as well as the research methodology and its plan

As for the first topic, it showed the definition of divorce for harm according to linguists, jurists and Kuwaiti law, as well as social media, linguistically and idiomatically. In proof of divorce to the detriment.

Finally, I ended the research paper with a conclusion in which I showed the most important results that were reached through this research, the most significant of which are: indicating that Islamic Sharia is valid for every time and place, and that the methods of proof in it are more general and broader than the methods of proof in Kuwaiti law, and that photos and correspondence that are used through social media constitute one of the ways to prove divorce for harm. I have also shown that the Kuwaiti legislator has adopted the Maliki doctrine as a corner stone in setting the law of separation to harm. Following the results, some recommendations related to the research topic were stated.

Key words: differentiation of harm, methods of proof, marital problems, modern techniques, good tenure.

Legal Regulation of the Right of Access to Information and Administrative Documents in Kuwaiti and French Laws: A Comparative Study

Dr. Saad Alenezi
Assistant Professor of Administrative Law
Kuwait International Law School

Abstract:

This research paper deals with one of the topics that have imposed themselves on the research table recently in light of the information revolution and digital challenges that have been reflected in all the joints of the administrative apparatus of the state. It is of great importance to achieve high levels of transparency and reform in all areas.

There is no doubt that the information stored in the administrative bodies - given its huge size and great importance - needs to establish certain controls that determine how to obtain it, and how to make it available to everyone in a smooth manner and without a series of complex procedures, as well as how to identify exceptions that are dictated by the public interest and prevent the disclosure of some information. In view of its sensitivity, there is an urgent need to define the rules that guarantee how this information will be disseminated, especially in modern means of publication, as well as the rules for its deposit, preservation and protection, and to determine the procedures to be followed in the event that individuals are unable to access this information, and enable individuals to appeal administratively and judicially against decisions that prevent individuals from obtaining the required information.

Key words: access to information, transparency, administrative justice, administrative documents, confidentiality.

Intellectual Property Rights for Pharmaceutical Patents When A Pandemic Disease Spreads

Dr. Abdul Majeed K. M. Al-Anizi
Associate Professor of Civil Law
Saad Al-Abdullah Academy for Security Sciences
State of Kuwait

Abstract:

The objectives of this research paper are to identify the following: the limits of legal protection provided by the laws and regulations of the State of Kuwait, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) for pharmaceutical patents, and the means owned by the state to break the monopoly of those patents when epidemic diseases spread, especially with the increasing demand for Medicines and vaccines due to the emerging corona virus pandemic.

For this purpose, I have followed the analytical descriptive approach to reach the flexibilities in the TRIPS Agreement, which enables the State of Kuwait to import medicines and vaccines, and to import the technology of inventions that enable it to manufacture and produce the vaccines locally, by dividing the research into two sections: the first of them deals with defining the definition of the pharmaceutical patent, its objective conditions, and cases of forfeiture. The second topic, however, deals with the means to reduce the monopoly of pharmaceutical products, and the production of medicines and vaccines locally without obtaining the consent of the owner of the right to the patent.

At the end of the paper, I reached a set of results, most notably the possibility of the State of Kuwait resorting to the principle of international exhaustion, and the possibility of obtaining the medicine at the lowest prices, in addition to the possibility of producing the medicine locally by importing patent technology or resorting to the principle of compulsory licensing.

Key words: patent, medicine, epidemic diseases, technology transfer, parallel import, compulsory licensing.

Criminal Policy in Some Arab Laws: A Critical Future Study

Dr. Adham Hashish
Assistant Professor of Criminal Law
Kuwait International Law School

Abstract:

The rule of law has several challenges in Arab societies. One of these challenges is related to the State's right/power to punish and the need to rationalize it. Thus, it is essential to adopt best practices in criminal justice and to have an efficient criminal justice system that enforces a sound criminal policy.

This research seeks to highlight some negative aspects of the current criminal policy status quo and the need to meet society's needs along with the developments in comparative law.

Adopting critical approach to the topic, the research attempts to present the meaning of rational criminal policy, models of criminal justice system, and judicial review of this policy.

In conclusion, the research recommends that drafters of criminal policy have to pay attention to the society's identity and needs, such as the need to strengthen the rule of law as well as to use modern methods of analyzing law. This includes the need to revive human rights approach to strengthen the rule of law and to adopt legal realism and economic analysis of law in penal studies.

Key words: legal realism, economic analysis of law, models of criminal justice system, human rights, rule of law.

Legal Framework for Contract Promises: A Comparative Judicial- Jurisprudence Study in light of Algeria's Civil Law of 2005 and the New French Contracts Act of 2016

Prof. Belhadj Al Arabi
Professor of Civil Law
Faculty of Law, King Abdulaziz University
Jeddah, KSA

Abstract:

The promise by contract is a prominent model for the agreements that pave the way for contracting, which may permeate the stage of contract negotiations. It is one of the temporary preliminary contracts that may precede the conclusion of the desired final contract intended by the two parties. If the one promised to him in the future expresses his desire to do so, within the agreed period. A promise is a contract, even if it is in itself a contract, in which the will of the one who promises meets the will of the one who is promised to him. However, it is not the contract intended in the end by the two contracting parties, rather it is one of the premises of the promised contract, so long as the one promised to him has not yet expressed his satisfaction.

The promise of contracting still raises to this day multiple scientific and practical problems, mainly related to determining its concept, content, and forms, its nature, conditions and legal provisions, and the difficulties of implementing it in the event of a dispute between the two parties, in addition to the type and scope of civil liability resulting from the promisor's breach of what he had committed to on the specified date, without legitimate justification, or an acceptable serious reason.

The current study is a jurisprudential attempt, related to researching some of the problems of the promise to contract in the previous stage preceding the intended final contract, as well as the nature and provisions of the promise of preference, which is a special image of the promise to contract viewed in light of the new amended Algerian Civil Law Code of 2005 as a model, the rules of Islamic jurisprudence, and comparative legal systems, especially the new French contracts law in force since 2016, and the latest practical jurisprudence of the Arab and French courts of cassation, collecting, limiting, treating and scrutinizing them, in terms of jurisprudence and judicial, is extremely difficult.

Key words: preliminary contract, final contract, contract negotiations, promise of preference, contract in stages, offer by contract.

Collective Bargaining and its Role in Settling Collective Labor Disputes

Dr. Shawakh B. M. Al Ahmad
Associate Professor
Faculty of Law, University of Dar Al Uloom
Riyadh, KSA

Abstract:

This research paper dealt with the definition of collective labor disputes, and showed its elements, in terms of the parties concerned. It also indicated the subject and the phase the conflict reached. Given the seriousness of such disputes, the laws under study have singled them out with friendly means in order to settle them at the lowest costs, and among those means is collective bargaining. Thus, the research showed the nature of bargaining collectivism by defining it in language and terminology and defining its parties. It turned out that collective bargaining is achieved by the workers when they are represented in the bargaining by their trade union organization, or as some call it the Voice Foundation to compensate for the weakness that the worker suffers from. As for the employer, collectivism is not required by him.

The research paper explained the characteristics of bargaining as a civilized, consensual, friendly, direct, and democratic method, and showed the number of its conditions. The paper dealt with clarifying the importance of collective bargaining and its effects. Therefore, the scope of the research is objectively determined by studying the collective labor dispute as a subject of collective bargaining, and then defining the nature of collective bargaining and showing its importance and effects. It turns out that collective bargaining today is an important part of working relationships because it includes mechanisms that allow the organization of work and its conditions, and thus it works on shunning any raising of disputes. It also has mechanisms that allow the settlement and removal of negative impurities left by the conflict in the hearts of its parties. That is why we recommend in the Saudi system the need to introduce a collective bargaining mechanism for the settlement of collective disputes. We also recommend for legislation that has adopted the organic criterion in determining collective disputes: the necessity of abandoning that and adopting the numerical criterion in order to expand the concept of collective conflict, which requires a quick mechanism to resolve it.

Key words: collective dispute, amicable means, consensual means, collective labor agreement.

The Role of the Department of Lands and Properties in Achieving Real Estate Security: The Emirate of Dubai as a Model

Dr. Yasser A. Al Fatihat
Associate Professor of Civil Law
College of Law, University of Qatar

Abstract:

This research paper sheds light on the issue of real estate security and the role of the Land & Possessions Department in achieving it, as it is an independent party from both the real estate developer and the investor that the legislator in the United Arab Emirates was keen to attract. To show the importance of this topic, research was limited to studying the concept of real estate security in the Emirate of Dubai based on its real estate legislation for the purpose of achieving this goal. Moreover, this research was not limited to the concept of real estate security in the Emirate of Dubai only because real estate investment in it began to grow gradually and rapidly to take a significant role in the national economy of the Emirate of Dubai, and because foreigners' ownership of real estate means that their capital remains in the country of the real estate, which necessarily leads to the presence of companies with their various activities to serve and maintain their real estate, which reflected positively on the economic situation in various sectors.

I was keen in searching for an explanation of the role of real estate legislation issued in bearing the shock that occurred after the global crisis, which caused the global real estate market to decline. Therefore, the research reached many results including the necessity of distinguishing between the real estate investor and the real estate buyer, because the ways to achieve real estate security for each of them are different, which requires a review of the legal controls in a way that reflects positively on each of them to try to put them in the real estate security department.

Key words: real estate promotion, stalled projects, real estate regulatory agency, real estate investor, real estate developer.

Legal Realism in Western Jurisprudence and the Influence of the Philosophy of Postmodernism: A Multidisciplinary Approach

Dr. Abdullah O. Alkholy
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Jeddah, KSA

Abstract:

The poverty of legal formalism has been recognized in the early history of modern legal systems. Since then, legal realism has become on the rise as a dominant force in western jurisprudence, acknowledging the active role of the judiciary in determining the content of the law. The paradigm of legal realism arose as a revolt against the traditional formalist view on the role of the judiciary as limited to the interpretation of the legal text with the sole purpose of discovering the legislative intent.

The core claim of the early realists has been that judge, in most of their practices, had to go beyond the surface of the legal texts to their inner structure to discover the aims and principles that were in the legislature›s mind at the time of the adaptation of the legal text. And according to the later generation of legal realists, when judges do so, they almost always project their own philosophical views or policy preferences on the text rather than interpreting it objectively. Some realists went further to favor such an active role by the judiciary as essential for a functioning legal system. Such progress in the thoughts of legal realism throughout its history reveals that it has been more like a broad label for different judicial philosophies. In fact, jurists of such traditions have been influenced by different philosophical paradigms, of which some have prevailed and declined in the face of new ones.

This article investigates the extent to which postmodernism had its influence on different themes of legal realism, of which some are not entirely free from the basic metaphysical assumptions of legal formalism. The hypothesis to be examined in this article is whether postmodernism has freed legal realism from the remaining influence of these basic metaphysical assumptions.

Key words: legal realism, postmodernism, formal schools, philosophy of law, interdisciplinary studies, legal sociology, realist schools.

Arbitration Condition in Commercial Paper Disputes

Dr. Walid E. Al Dhafiri
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Riyadh, KSA

Abstract:

The research deals with the provisions of the arbitration clause in commercial paper disputes in the Saudi legal system, and it also offers an answer to the main question which is the extent to which it is permissible to agree on arbitration in commercial paper disputes. Hence, how correct is the inclusion of the arbitration clause in commercial papers, or more precisely in the body of the instrument itself, whether it is a bill of exchange, a promissory note, or a check? The study went on to answer in the affirmative, as long as the dispute arising from commercial papers does not violate public order on the one hand, and on the other hand, as long as the dispute is acceptable to reconciliation. This is in accordance with the Saudi arbitration system.

Also presented are the provisions of activating the arbitration clause in commercial paper disputes through the application of the provisions of the Saudi arbitration system, and the validity and enforcement of the arbitration clause, whether in the face of the drawer or the drawee, or the endorsers according to his role in the circulation of the commercial paper.

And after reviewing the provisions of the Saudi Commercial Papers and Arbitration Laws, the study concluded with the permissibility of arbitration as a means of settling commercial paper circulation disputes by including the arbitration clause in the paper, and the circulation of the condition with the paper itself, thus implementing the negative and positive effects of the arbitration clause, until the dispute is resolved by arbitration by the last holder of the paper.

The study ended with several recommendations, the most important of which is the necessity of the intervention of the Saudi regulator in order to extend the scope of the check in the check as a commercial paper so that it is permissible to arbitrate in it by presenting issues regarding it, and the necessity of the urgent intervention of the Saudi judiciary to implement the positive effect of the arbitration clause.

Key words: drawer, drawee, commercial paper, arbitration agreement, arbitration.

The Legal System of Equal-Member Administrative Committees in Algeria: A Study in the Light of the Provisions of Executive Decree No. 20-199 Issued on July 25, 2020

Dr. Ahsan Gharbi
Associate Professor (Lecturer "A"), Public Law
Faculty of Law and Political Sciences
University of 20 August 1955, Skikda, Algeria

Abstract:

This research examines the entirety of the rules related to equal-member administrative committees in Algerian law, which are established as participating bodies alongside the administration, entrusted with running the employees' professional life, and thus it is considered an important guarantee to defend the rights of employees against the arbitrariness of the administration represented by the authority that has the appointment power. The aim of its introduction is its contribution to achieving the objectives of the public utility and preserving its principles.

This study examines the legal system of equal-membership administrative committees in terms of membership and from the functional point of view. It also deals with the issue of the legal value of the opinions of equal-membership committees. This study is limited to Algerian law, as it deals with the issue of equal-membership administrative committees in light of the provisions of the general basic law for public office and the provisions of the Executive Decree No. 20-199, related to equal administrative committees' members in public institutions and administrations. The study also relied on the descriptive and analytical approach through analyzing many legislative and regulatory texts related to the research topic.

Therefore, this study deals with the formation and organization of equal-member administrative committees, and this is through the first topic related to the organic aspect of equal member administrative committees. The study also deals with the rules for the functioning of the committees and their powers, and this is done through the second topic related to the functional aspect of equal member administrative committees. The research concluded with a set of results and recommendations, represented in the legislator's adoption of combining the method of election and appointment in forming committees with the awarding of committee chairpersons to the administrative head or

his representative, and this affects the independence of the committees in the performance of their tasks, especially since the president's vote is a casting vote when opposing votes are equal. Votes, and therefore these committees are considered a guarantee of lacking effectiveness, which must distinguish between their convening as disciplinary councils, and their convening in the rest of the cases, as the presidency must be assigned, when convened as a disciplinary council, to a member representing employees while the presidency in the rest of the cases is assigned to the representative of the administration, in addition to granting the disciplinary council the power to issue final decisions regarding third or fourth degree penalties, and expressing an advisory opinion regarding the remaining disciplinary sanctions.

Key words: disciplinary board, equal-member committees, management, binding opinion, advisory powers, executive decree 20-199.

The Legal System of the Electronic Arbitration Agreement in International Commercial Contracts: A Comparative Study

Dr. Khadija Boudali
Associate Professor (Lecturer "A"), Private Law
Faculty of Law and Political Science
University of Mustapha Stambouli, Mascara, Algeria

Abstract:

The impact of the huge technological revolution in the field of information and communication has extended to all aspects of life, and international trade is among the systems that have been greatly affected by the electronic system. It is well known that the great importance of arbitration in the field of resolving international trade contract disputes has led to it becoming a resort sought by concluding arbitration agreements through modern means of communication instead of the familiar paper documents, which raised many problems about determining the parties to the electronic contract, the time and place of its convening and documentation, and using it as a document in facing others. This is what made the comparative and international legal systems attach great importance to the legal system of the electronic arbitration agreement.

In this regard, a set of results and recommendations have been reached, the most important of which is the necessity to develop legislation and an international legal system to govern this type of transaction, deal with such developments, and keep pace with them, so that all developments that can occur in the age of electronics are harmonized.

Key words: data, virtual world, arbitration, international, arbitration agreement.

The Legal Basis for the Claim of the Bearer's Recourse to the Withdrawn Bank in Accordance with the Provisions of the Jordanian Commercial Law

Dr. Jabr Ghazi Shatnawi
Commercial Law Teacher
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Abstract:

This study deals with the issue of the legal basis for the claim of the check bearer's return to the withdrawn bank in accordance with the provisions of the Jordanian Trade Law, as the Jordanian legislator has organized this case in the first paragraph of Article (271) of the Trade Law No. 12 of 1966, but this regulation raises the question about the nature of this lawsuit, is it a cashing lawsuit stemming from the cashing obligation of the drawee towards the holder? Or is it a normal claim that stems from the obligation according to the general rules? What is the legal basis that can be said in both cases?

In order to answer the above questions, the descriptive analytical approach was adopted in studying the legislative provisions in the Jordanian Trade Law, jurisprudential opinions and judicial rulings, without neglecting the comparison with other commercial legislations to the extent that serves the study, and clarifies its content and objectives. The study was divided into two main sections: the first section deals with the possibility of establishing this claim on the check holder's possession of the consideration for payment with the bank, while the second topic deals with the possibility of establishing the claim on the bank's signature on the check.

The study concluded that in light of the current provisions regulating the check in the Jordanian Trade Law, we do not find a legal basis for this lawsuit, which was organized by the legislator in Article (271) of the Trade Law, where it became clear to us that this lawsuit is a morphological lawsuit, and there is no cashing obligation for the bank towards the check bearer in accordance with the provisions of the Jordanian Trade Law, as it turns out that the claim of the holder for ownership in return for fulfillment is based on the general rules, not the rules of the exchange law. Therefore, one of the most important recommendations of this study was the necessity of organizing the certified (certified) check by the Jordanian legislator; This lawsuit will have a legal basis on which to base it, so that the bank has a signature on the

check that justifies its cashing commitment towards the carrier. The study also recommended the necessity of stipulating that the provisions of the bill of exchange be considered the general Sharia for every issue for which there is no special provision in the articles governing the check, and that the referral should not be limited to specific articles.

Key words: the bank, the exchange return, the consideration for fulfillment, the marking of the check, the certified check.

The Role of the Guarantee Fund in Compensating Traffic Accidents Victims: A Comparative Study between French Law and Syrian Law

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Abstract:

The Traffic Accident Guarantee Fund aims to compensate the affected people or their heirs when they cannot obtain compensation for the damage caused to them by others. The establishment of this fund reaffirms the role of the general guarantee principle that aims not to leave any traffic accident victim without being compensated.

The compensation paid by the Traffic Accident Guarantee Fund is subject to exceptional conditions and procedures, which differ from one law to another, but they are, in general, proportional to its reserve role.

This study compares the role of the Guarantee fund in compensating the victims of traffic accidents between the French and Syrian laws, analyzing the legal texts in each of them and explaining their pros and cons, with an attempt to end up with conclusion which help to develop the job of the Traffic Accident Guarantee Fund in the new Syria, and to do that, as perfectly as possible, building on the leading French experience in this field.

Key words: compensation, damage, insurance, civil liability, guarantee.

Criminal Confrontation of the Hidden Financing of Political Parties in Libyan Law: A Comparative Study

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Abstract:

Political parties play an important role in political life. In order to perform this role entrusted to them, they need money, and they cannot survive and continue and carry out their tasks without money, and they are prohibited from obtaining money outside the framework specified by the law. The problem lies in the fact that despite the danger of the phenomenon of hidden financing of political parties to the integrity and transparency of the basis of political action, and despite the electoral benefits in Libya, there are no explicit texts dealing with this phenomenon other than the situation in comparative legislation. The study aimed to demonstrate the effectiveness of the texts of Libyan law in their current state compared to the laws in France, Algeria and Ivory Coast in facing this phenomenon.

The study dealt with the definition of political parties, their sources of funding, and the mechanisms of criminal confrontation. In the study, we followed critical, analytical and comparative approaches to achieve the study's goal.

The study showed the ineffectiveness of the provisions of the Libyan law in confronting this phenomenon, and the penalty is limited to the political party, and does not include the perpetrator of the crime, who remains unpunished despite the seriousness of the act. It is suggested that the Libyan legislature explicitly criminalizes the hidden financing of political parties. On the other hand, legislators in Algeria and Ivory Coast have addressed this phenomenon with explicit texts. as a crime of corruption.

Key words: corruption, politics, censorship, punishment, parties, democracy.

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