



**Faran Mehrdanesh Institute of
Higher Education Law student-
scientific association**

Harvest of Justice and Equity
Law Students' Scientific Association Journal
Faran Mehrdanesh Institute of Higher Education
First Volume / Fall 2024





موسسه آموزش عالی فاران مهر دانش
Faran Mehre Danesh e-learning Higher Edu. Inst.
انجمن علمی دانشجویی حقوق

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Editor's Introduction

For Iran...

"By the Pen and by what they write." (AL-QALAM 1)

Thought and awareness can be likened to a radiant torch, guiding us through the starless night, illuminating our path, and leading us towards the dawn. This brilliant light becomes even more valuable and noble when it serves as a beacon for human rights, protecting and upholding human dignity.

'Right' is a word with multiple meanings. While it may seem familiar due to its frequent use in society, its profound meaning, which is respected by every individual and enshrined in laws enacted by legislators, often remains obscure to most people due to its vast and complex nature. Therefore, we must create a platform to facilitate public understanding and awareness of their rights.

Should the contemplation and attention to human rights be neglected by the individuals in society, we will be confronted with a missing piece in the puzzle of justice and fairness across the community. Justice and fairness can be seen as the moral and human principles that form the bedrock of all other cherished human values.

It is a source of great pride and pleasure for me, as a law student and a small part of the larger legal community, to stand up and take up my pen to contribute, albeit modestly, to increasing the legal knowledge and understanding of our esteemed readers and listeners.

Ultimately, the primary and overarching goal of this journal, which can be considered a distinguished and significant achievement, is undoubtedly to contribute to a deeper understanding and insight into the various dimensions of law for our readers, and ultimately to usher in a new and auspicious era characterized by justice and equity.

Author: Seyed Amir Mohammad Hosseini

What is stated in this journal:

In the inaugural issue of the 'Harbinger of Justice and Equity' journal, we have endeavored to present articles on various practical legal topics. To conclude the journal, we have compiled a legal terminology section based on the topics discussed, aiming to enhance the reader's familiarity with legal terms and vocabulary.

In the specialized sections of this journal, we have initially introduced concepts from commercial law and civil law, both of which fall under the category of private law. Regarding commercial law, given the significance of bankruptcy, we have discussed the composition agreement, a concept employed in bankruptcy proceedings. Moving on to civil law, we have addressed the issue of guardianship over incapacitated individuals. The reason for selecting this topic is the fundamental differences between incapacitated individuals and other members of society in terms of safeguarding their rights.

Proceeding further into the realm of public law, with a particular focus on the widespread use and acceptance of criminal law, we have explored the various classifications of crimes. We have presented numerous branches of crime types. Subsequently, in relation to international law, which has become increasingly relevant in today's world, we have described various situations pertaining to the effective implementation of these laws. Finally, in contrast to the aforementioned substantive laws, we have dedicated a section to a procedural law, namely the Code of Civil Procedure, discussing its unique characteristics.

Undoubtedly, the first step in any journey is the most challenging. We have taken this first step, despite all difficulties, and hope that it will prove beneficial to you. We kindly request that you share your valuable feedback with us through the provided contact channels.

Composition agreement

Abstract:

A One of the most significant issues in commercial law that has received considerable attention is the composition agreement. Drawing on the esteemed Professor Rabia Eskini's book, "Commercial Law, Bankruptcy, and Liquidation of Bankrupt Affairs," this article delves into the characteristics of such agreements.

Eskini begins by defining a composition agreement and then proceeds to examine it in four sections: invitation to creditors, conditions for the conclusion of a composition agreement, effects of a composition agreement, and annulment of a composition agreement. A brief overview of these points is provided here; however, for a more comprehensive understanding, it is recommended to consult the aforementioned source.

The meaning of leniency in the dictionary:

Leniency, lexically, means to be tolerant or lenient towards others. The meaning of a 'composition agreement' in legal terms is also related to this lexical meaning.

Technical definition:

Addressing claims prior to the sale of a bankrupt's assets. Creditors may agree with the bankrupt to forego further liquidation proceedings on the condition that the bankrupt pays their claims within specified timeframes, albeit with a discount. In this agreement, known as a 'composition agreement,' creditors agree to waive a portion of their claim and accept that their claim will be paid in full or in part at a specified time, usually in installments.

Invitation to creditors:

Before a bankruptcy judgment is issued, creditors may enter into an agreement with the bankrupt to exempt them from paying a portion of their debts or to grant them an extension. Sometimes this agreement is called a majority agreement; that is, it is enforceable if the majority of creditors, in terms of number and amount of claims, agree to it. According to Article 38 of the Liquidation Affairs Act, after the claims have been examined, creditors whose claims have been accepted in part or in full are invited to a meeting by a notice, and if a composition agreement has been requested, this fact is stated in the invitation.

Conditions for entering into a composition agreement:

A Composition Agreement is contingent upon the following conditions:

1. **Request for a Composition Agreement:** As stated in Article 38 of the Liquidation Affairs Act, if such a request is made by the creditors, it is admissible. If a request for a composition agreement is made, the relevant authority must inform the creditors. Article 506 of the Commercial Code considers several important points in this regard, including the fact that if a composition agreement is concluded with a company, the general regulations regarding composition agreements are applicable to the company in the same way as an individual merchant.
2. **Attendance at the Voting Session:** The bankrupt must be present at the meeting. Article 477 of the Commercial Code stipulates this, and the legislator has mandated that the bankrupt must be personally present unless there is a valid excuse, such as illness, in which case a lawyer can be sent to the meeting.
3. **Acceptance by the Majority of Creditors:** Article 480 of the Commercial Code defines the majority as half plus one of the creditors, holding at least three-quarters of all claims that have been recognized based on Chapter 6.
4. **No Conviction of the Merchant for Fraudulent or Negligent Bankruptcy:** Articles 483 and 484 of the Commercial Code provide for cases where the bankrupt has been convicted of criminal bankruptcy, and depending on whether the bankrupt is fraudulent or

negligent, their right to benefit from a composition agreement is limited.

5. **Court Approval of the Composition Agreement:** According to Article 486 of the Commercial Code, either party to the agreement may request its approval from the court. Based on Article 487 of the Commercial Code, before the court rules on the approval of the composition agreement, the supervisor will submit a report to the court based on the nature of the bankruptcy. The court will then issue a ruling after considering this report. According to the provisions of Article 540 of the Commercial Code, the court's decision regarding approval or refusal is subject to appeal.

Effects of a Composition Agreement:

The effects of a composition agreement can be categorized into three main areas: its impact on creditors, the bankrupt individual, and third parties.

1. Effects on Creditors

This can be further divided into two subcategories:

- **Creditors who have signed the composition agreement:** According to Article 489 of the Commercial Code, once the composition agreement is approved, it becomes binding on creditors who were in the majority or signed within ten days of its approval. These individuals cannot revoke their decision.
- **Creditors who have not signed the composition agreement:** According to Article 489 of the Commercial Code, creditors who have not signed the

composition agreement and are entitled to a share of the debtor's assets cannot subsequently claim any remaining debts from the bankrupt's estate unless all creditors who participated in the composition agreement or signed it within the specified ten-day period have been fully paid.

2. Effects on the Bankrupt

The composition agreement takes effect from the date on which the bankrupt's assets are returned to them, and the bankrupt must fulfill their obligations under the agreement. During the execution of the agreement, creditors are not entitled to file individual lawsuits against the bankrupt, and enforcement proceedings against them cannot be pursued.

3. Effects on Third Parties

Third parties in this context refer to guarantors of the bankrupt or those who have joint liability with them. The law does not have specific provisions regarding these individuals. A creditor who has another debtor in addition to the bankrupt can pursue the other debtor. The latter debtor cannot benefit from the stay of proceedings or enforcement against the bankrupt debtor.

Uneffecting of composition agreement:

If a composition agreement is executed according to its terms, bankruptcy proceedings will terminate from the date the court approves the agreement.

1. Annulment of a Composition Agreement: According to Article 492 of the Commercial Code, a composition agreement can be annulled in the following

cases: (a) if the bankrupt is convicted of fraudulent bankruptcy, and (b) as per Article 490, if it is discovered that fraud has been committed regarding the amount of assets or debts and the true value has not been declared.

2. Termination of a Composition Agreement:

A composition agreement can be terminated if the bankrupt fails to comply with its terms. The terms of the agreement refer to the obligations imposed on the bankrupt pursuant to the composition agreement or by law. Failure to perform obligations by the bankrupt does not necessarily lead to the termination of the composition agreement. The court competent to hear a petition for the termination of a composition agreement is the court that approved the composition agreement. A creditor who will benefit from the termination, i.e., a creditor who has signed the agreement, whether secured or unsecured, may file a petition for termination.

3. Effects of the Annulment of a Composition Agreement:

If the court declares the composition agreement null and void, the guarantee of the guarantor or guarantors is automatically canceled. If the court issues a judgment for the termination or annulment of the composition agreement and acts as if it had issued a bankruptcy judgment against the debtor, any transactions carried out by the bankrupt after the approval of the composition agreement shall be deemed valid. This is because after the approval of the composition agreement, the debtor

regains all his rights to his property and can enter into any transaction.

Conclusion:

A composition agreement is a contractual arrangement between a majority of creditors and an insolvent debtor. Under this agreement, creditors provide the debtor with a fresh start by granting extensions or discharging a portion of their debts, in exchange for the debtor's promise to fulfill certain obligations.

Once a composition agreement is finalized, the bankruptcy proceedings are

terminated, and the debtor is restored to their full capacity to manage their affairs. The liquidator is then required to return the debtor's assets, records, and books.

Resource:

Commercial Law: Bankruptcy and Liquidation

Author: Dr. Rabia Eskini 2nd Edition

Publisher: SAMT Publications

Printed: Summer 2023

Prepared by: Golchin Haj Esfandiary



System of "Velayat-E Gahri"

(System of statutory guardianship)

Abstract:

The term 'velayat-e gahri' is defined as dominion, victory, and more broadly, as the authority to control another person's life and property. In civil law, 'velayat' refers to the legal power granted to an individual to manage the affairs of another person. This individual is known as a 'vali'. In Iranian law, statutory guardianship is exclusively vested in the father and paternal grandfather. This article will examine the concept of paternal guardianship in Iran.

First - The concept of statutory guardianship

In our legal system, paternal guardianship is exclusive to the father and paternal grandfather, hence the term "natural" guardianship, as it arises compulsorily by direct provision of law, without the need for a court order or intervention by another party.

As per Article 1180 of the Civil Code, a minor child is under the natural guardianship of his father and paternal grandfather. The same applies to an immature adult or an insane person if their immaturity or insanity coincides with their minority.

Consequently, the father and paternal grandfather hold guardianship over the following individuals:

1. **Minors:** Those who have not reached the age of puberty.
2. **Immature adults:** Individuals who have developed a state of folly before reaching adulthood and this condition persists.
3. **Insane persons:** Individuals who have become insane before reaching adulthood and this condition persists.

Both the father and paternal grandfather concurrently hold the position of natural guardian. According to the Civil Code, neither has precedence over the other. Both must strive to manage the affairs and protect the rights and interests of the incapacitated individual, always considering their best interests. However, if one of them becomes incapacitated or is prohibited from managing the property of the ward, their legal guardianship is terminated (Article 1182 of the Civil Code). Therefore, if the father or paternal grandfather of a mentally ill child becomes insane, their guardianship is terminated, and the guardianship of the other remains.

Second - Responsibilities and authority of a legal guardian

A legal guardian acts as the legal representative of their ward and is obligated to manage the ward's property, care for the ward, and protect their rights and interests. If the ward is an immature adult, their incapacity is limited to financial matters, and their legal guardian has no duty other than managing their property.

A legal guardian may dispose of the ward's property and enter into transactions on their behalf, provided that it is in the ward's best interest. In general, a legal guardian is obligated to act in the best interest of the ward and may not perform any act that is contrary to the ward's best interest or causes harm to the ward.

Each of the father and paternal grandfather may independently enter into contracts on behalf of the ward, such as selling or leasing their property or purchasing property for them. If the ward's best interest is considered, the other guardian has no right to object or cancel the transaction. In general, in all matters related to the ward's property and financial rights, the guardian is their legal representative. (Article 1183 of the Civil Code)

Third - Lack of capacity or fiduciary duty breach by a guardian

What is the procedure if a legal guardian is incapable of managing the ward's affairs or acts in breach of trust, such as misappropriating the ward's property? One solution provided by law is the appointment of a co-guardian. This means

that the court appoints a trusted person as a co-guardian, thus limiting the guardian's authority and freedom (Article 1184 of the amended Civil Code of 1379).

In such cases, the guardian cannot enter into transactions for the ward without the consent of the co-guardian. Although Islamic jurisprudence grants the judge the authority to remove a legal guardian whenever it is in the best interest of the ward, the Civil Code did not explicitly state this until 1379. Some jurists and courts argued that the law did not accept the removal of a legal guardian, justifying this by saying that this extreme precaution was taken to consider the family's situation and social sensitivities. For centuries, the Iranian family has been patriarchal. The father and paternal grandfather have been considered the head of the family, and their removal and restriction from managing their children's affairs have been considered a serious and perhaps intolerable matter in the customs. However, in Shia jurisprudence, which should be referred to in cases of silence of the law, and Article 15 of the Family Protection Law, the removal of a legal guardian was foreseen. Therefore, in 1379, the legislator amended Article 1184 of the Civil Code and explicitly accepted the removal of a legal guardian if the guardian does not act in the best interest of the ward or commits an act that causes harm to the ward.

Conclusion

To provide care and supervision for individuals who, due to their young age, infirmity, or mental disability, are unable to

manage their own affairs and require the assistance of others in life, the legislature has stepped in to protect them by appointing a person or persons to manage their affairs. This care encompasses both the individual's property and person and, moreover, the person assuming guardianship must be fully capable. In Iranian law, this guardianship is first assigned to the father and paternal

grandfather, and in their absence or incapacity, it is assigned to another person designated by the public prosecutor.

Resource:

Civil Law of Persons and Property

Author: Dr. Seyed Hossein Safayi

Publisher: Meizan Publications

Prepared by: Atefeh Shikhi



Classification of crimes based on their constituent elements

Abstract :

Dr. Goldozian, in his book "Essentials of Criminal Law," devotes Chapter 5 to a comprehensive analysis of crime classification based on its constituent elements. The author initiates the discussion by examining the classification of crimes based on the severity and implications of their legal consequences, referencing Articles 15-18 of the Islamic Penal Code. Subsequently, he delves into the categorization of crimes according to their nature, distinguishing between political and military offenses. To facilitate a deeper understanding of these crime categories, Dr. Goldozian explores the classification of crimes based on their physical elements, considering factors such as the timing of the offense, the resulting harm, and the methods of proving the physical act. Finally, the chapter concludes with an examination of the mental element of crimes, differentiating between intentional and unintentional offenses. This classification is crucial for determining the appropriate punishment under the Islamic Penal Code.

Section 1: Classification of Crimes Based on the Severity and Mitigating Circumstances of Legal Penalties

Pursuant to Articles 12 and following of the Islamic Penal Code of 1392, crimes are categorized into the following groups based on the severity of their corresponding punishments:

1. **Had and Qisas offenses:** as defined in Articles 15 and 16.
2. **Offenses punishable by Diyya:** as stipulated in Article 17.
3. **Ta'zir offenses:** which encompass governmental Ta'zir punishments, as provided for in Article 18.

Under the previous Penal Code, crimes were classified into felonies, misdemeanors, and infractions based on the severity of their punishments. This classification was primarily relevant for determining the court's jurisdiction over different types of offenses but has become less significant under the current legal framework.

Section 2: Categorization of Crimes According to Their Criminal Nature

Crimes, based on their nature, can be classified into public crimes, political crimes, and military crimes:

1. **Public Crimes:** These are crimes that, in addition to harming the physical, moral, and private interests of individuals, disturb public opinion, such as murder and destruction. The motive of the perpetrator is often based on instincts such as greed, profit-seeking, and hatred.

2. **Military Crimes:** These crimes relate to military personnel and can be divided into two categories:

- **Inherently military crimes:** There are legal obligations that are specific to military personnel, and failure to fulfill these obligations constitutes a crime; such as desertion, abandonment of duty, and disobedience to a commander's order, which are specific to military personnel.
- **Public crimes committed by military personnel while on duty or as a result of their duty.**

3. **Political Crimes:**

- **Subjective concept of political crime:** Any act that directly harms interests or privileges that are inherently political or due to the existence or political organization of a country is a political crime; such as crimes against national security (armed uprising against the country) or electoral crimes that deprive the true representatives of the people from being elected to the legislature which has political powers.
- **Individual concept of political crime:** Any act committed with the intention of opposing the existence of the country or its political organization is a political crime. The criterion for determining this is the motive and incentive of the offender in committing the act, which extends the concept of political crime to non-political subjects but with a political motive.
- **Compound crime:** An act committed with the aim of opposing the government and political organization

with the nature of an ordinary crime; such as an attempt on the life of the leader or president, as stipulated in Article 515 of the Islamic Penal Code (Ta'zir).

- **Related crime:** An act that is inherently a public crime but is also related to and dependent on a political crime; such as stealing a weapon to be used in an internal uprising.

Section 3: Categorization of Crimes According to Their Actus Reus

Classification Based on the Duration of the Crime

Based on the duration of the criminal act, offenses can be categorized into:

- **Instantaneous offenses:** These are crimes that occur in a single, brief act, such as murder or theft.
- **Continuous offenses:** These crimes are characterized by a prolonged act, such as unlawful detention, which continues until the victim is released.
- **Habitual offenses:** These involve a series of similar acts that, when considered individually, may not constitute a crime but, when repeated, form a criminal pattern.
- **Complex offenses:** These crimes involve multiple acts that are interconnected and contribute to a single criminal goal, such as fraud.

Classification Based on the Result of the Criminal Act

Crimes can also be classified based on whether the occurrence of the crime depends on a specific result:

- **Material or result crimes:** These crimes require a specific result to be considered complete, such as murder, which requires the death of the victim.
- **Formal crimes:** These crimes are complete upon the commission of the act itself, regardless of the result. For example, the crime of attempted murder is considered complete even if the victim does not die.

Classification Based on the Manner of Proving the Crime

Crimes can be classified based on the ease with which they can be proven:

- **Manifest crimes:** These are crimes that are readily apparent or for which there is substantial evidence.
- **Laten crimes:** These are crimes that are hidden or difficult to prove, often due to the passage of time or the lack of direct evidence.

Section 4: Classification of Crimes Based on the Mental or Psychological Element

Based on the mental element, crimes can be divided into intentional crimes and unintentional crimes:

1. **Intentional Crimes:** These are crimes where the mental element is malice or criminal intent, such as premeditated murder, theft, fraud, and breach of trust.
2. **Unintentional Crimes:** These are crimes where the mental element is

negligence or criminal fault. Examples of criminal fault include negligence, recklessness; other examples such as lack of skill and failure to comply with government regulations are also considered negligence or recklessness depending on the circumstances. It should be noted that some crimes, such as issuing a dishonored check or violating traffic regulations such as parking in a no-parking zone or running a red light, do not require proof of malicious intent or criminal intent, nor do they require proof of criminal fault on the part of the perpetrator. In fact, with the existence of a law criminalizing an act, and simply proving the material element of the crime, these crimes are established and there is no need to prove criminal intent or good faith on the part of the perpetrator.

Conclusion:

In this article, we will explore various classifications of crimes. Crimes are actions against individuals or society that are prohibited by law. By categorizing crimes, it becomes possible to determine the appropriate legal punishment when an individual commits a crime.

Resource:

Civil Law of Persons and Property

Author: Dr. Seyed Hossein Safaei

Publisher: Mizan Publication

Prepared by: Atefeh Shikhi

Factors Influencing the Implementation of International Law

Abstract

In his book on Public International Law, Dr. Mohammadreza Ziaei Bigdeli has explored the factors influencing the enforcement of international law. Given the absence of a centralized executive authority at the international level, the enforcement of international law is not as robust as domestic law. However, various mechanisms exist to ensure its implementation.

Key Factors Influencing the Enforcement of International Law

The effective enforcement of international law is contingent upon a number of interrelated factors:

- **Domestic Incorporation of International Law:** Many states have incorporated international law into their domestic legal systems, often giving it precedence over domestic law. This means that states are legally bound to comply with their international obligations within their own territories.
- **Legal Enforcement Mechanisms:** These include criminal, civil, economic, and diplomatic enforcements, as well as countermeasures. Examples include the prosecution of international criminals by the International Criminal Court and economic enforcements against states that violate international law.
- **Non-Legal Enforcement Mechanisms:** These encompass ethical considerations, political factors, global public opinion, shared interests among states, and international pressure. Global public opinion and media play a crucial role in exposing violations of international law and exerting pressure on states.
- **The United Nations System:** The UN, particularly the Security Council, plays a pivotal role in maintaining international peace and security and enforcing international law. The Security Council has the authority to impose binding resolutions on states that threaten international peace and security.

In conclusion, the enforcement of international law is a complex process influenced by a multitude of factors. The existence of various enforcement mechanisms, coupled with international cooperation and public pressure, can contribute to strengthening the enforcement of international law. However, challenges such as the absence of a powerful centralized enforcement authority at the international level and conflicts of national interests continue to hinder the full and effective implementation of international law.

Variables affecting the enforcement of international law

Given the decentralized nature of the international system and the relative infancy of international law, the enforcement mechanisms of international law cannot be expected to

match those of domestic legal systems. Nonetheless, international law is not without its enforcement mechanisms, which are typically triggered when a state's international responsibility for breaching its obligations is clearly established.

A variety of factors, both legal and non-legal, contribute to the enforcement of international law. These include political considerations, ethical norms, and public opinion.

State recognition of international law

Today, many domestic laws, particularly constitutions, recognize international law and, in some cases, even consider it superior to domestic law. Moreover, the direct application of international law by domestic executive and judicial authorities in many countries confirms the acceptance and recognition of international law in their domestic legal systems. Additionally, states, through diplomatic negotiations and participation in conferences, forums, and international organizations, especially the United Nations and its specialized agencies, recognize international law in various ways.

Legal Enforcement in International Law

The term "legal enforcements" in international law refers to those enforcements that have a legal basis and are authorized under international law. These types of enforcements include:

1. **Criminal Enforcement:** In international law, criminal enforcements are imposed for specific violations that constitute an "international crime." Entities responsible for imposing criminal enforcements can include

states (exercising universal jurisdiction) or international criminal courts such as the International Criminal Court or ad hoc international criminal tribunals.

2. **Civil Enforcement:** In contrast to criminal enforcements, civil enforcements are more developed in international law. Today, the principle in international law is civil rather than criminal, meaning the focus is on reparation and compensation (restorative measures) rather than punishment (deterrent or retributive measures).

3. **Economic Enforcement:** Imposing economic enforcements, such as a blockade, on a state that violates international law is a right recognized for all states, provided that international law is respected when implementing them.

4. **Diplomatic or Consular Enforcement:** International law grants all states, whether victims of violations of international law or not, the right to sever or reduce diplomatic or consular relations with a state that violates international law, recall their diplomatic or consular agents from the offending state, or revoke the exequatur of the head of the consular post of the offending state.

5. **Reciprocal Measures:** One of the most important factors contributing to the enforcement of international law is the reciprocal measures taken by states against a state that violates international law. The most important of these measures include: self-

defense, countermeasures or retaliatory measures, and reciprocity.

Non-Legal Enforcement in International Law

Non-legal enforcements are those that do not have a legal nature but are recognized in international law. The most important of these enforcements include:

1. **Moral Enforcement:** This type of enforcement involves satisfying the moral conscience of the state that has been victimized by a violation of international law through actions by the offending state, such as expressing regret or apologizing.
2. **Political Enforcement:** This type of enforcement can include publishing documents and evidence of violations of international law, especially by the victimized state, as well as formal protests by states regarding violations of international law.
3. **World Public Opinion:** Drawing the attention of world public opinion to violations of international law and its impact on the actions of states is one factor that can be considered a enforcement of international law. "The growing awareness of nations of history has led to the emergence of a universal human conscience and the formation of a new factor in international relations: 'world public opinion'. Thanks to this conscience, humanity no longer easily forgets aggression and tyranny, and does not allow its perpetrators to go unpunished."

4. **Common and Mutual Interests of States**

5. **Avoidance of Tension (such as strained relations, cold war, hot war)**

6. **Censure or Reprimand of the Offending State** by the international community

Enforcements in the United Nations System

The primary objective of enforcements within the United Nations system is not to penalize the violator but to disrupt the conditions that perpetuate an ongoing situation.

Enforcements within the UN system take various forms, including:

1. **Disciplinary Measures:** These involve the temporary suspension of rights and privileges of membership (Article 5 of the UN Charter), expulsion from the organization (Article 6), and suspension of voting rights (Article 19). A fundamental criticism of these measures is that they do not prevent the recurrence of violations. Moreover, excluding a member state, even temporarily, might incite it to further violate international law. Consequently, Article 6 (expulsion) has rarely been seriously considered, perhaps due to the difficulties involved in its implementation.
2. **Recommendatory Measures:** Some UN decisions, in response to violations of specific provisions of the UN Charter, are recommendatory in nature and do not constitute binding obligations under international law. Resolutions of

the General Assembly typically have such a character (Articles 10-15). However, since these resolutions are backed by the votes of all or a majority of member states, they can, in practice, transcend the status of "recommendations" and take on the character of "decisions." Consequently, the moral force—not the material force—of states that have voted in favor of these resolutions ensures their implementation. Certainly, if the General Assembly repeatedly adopts resolutions on a particular issue, they will carry greater moral weight, thereby facilitating their implementation in a more satisfactory manner. In addition to the General Assembly, the Security Council and the Economic and Social Council also have the right to adopt recommendatory resolutions in certain cases (Articles 33, 36-41, 62, and 63).

3. **Condemnatory Measures:** The Security Council, or in some cases the General Assembly, imposes a specific type of enforcement by using moral terms such as "regrets" or "condemns" in various resolutions. Michel Virally, a distinguished scholar of international law, has termed this "political judgment." These measures are called "condemnatory measures" because they are generally condemnations devoid of tangible consequences and lacking a criminal content.
4. **Mandatory Measures:** The United Nations has the right to adopt mandatory measures against a violating state in response to violations of international law. All decisions of the

Security Council based on Chapter VII of the UN Charter (Articles 39, 40, 41, 42, 48, and 49) and decisions of the General Assembly adopted exceptionally pursuant to the Uniting for Peace resolution are binding, and members of the organization are obliged to accept and carry them out (Article 25).

Conclusion

This article provides a thorough examination of the enforcement mechanisms in international law. It highlights the structural differences between domestic and international legal systems, explaining the complexities and diversities of enforcement at the international level.

Key points and conclusions drawn from this article include:

- **Absence of a Central Executive Authority:** Due to the lack of a global government, the enforcement of international law requires more complex mechanisms.
- **Diversity of Enforcement Mechanisms:** International law enforcement can be categorized into two main types: legal and non-legal. Legal enforcements include criminal, civil, economic, diplomatic measures, and countermeasures, while non-legal enforcements involve moral factors, political pressures, public opinion, and shared interests among states.
- **Role of the United Nations:** The UN, as the most significant international institution, plays a crucial role in enforcing international law.

Disciplinary, recommendatory, condemnatory, and mandatory measures are among the tools employed by the UN to address violations of international law.

- **Importance of Domestic Implementation of International Law:** The acceptance and implementation of international law within domestic legal systems is a crucial step in ensuring its enforcement at the international level.
- **Role of Global Public Opinion:** Global public opinion, as a powerful force, can influence the behavior of states and the enforcement of international law.

In conclusion, while the enforcement of international law may not be as robust or certain as domestic law, a diverse range of tools and mechanisms exist to enforce these laws. These mechanisms, when working together, contribute to creating order and stability in international relations.

Limitations of International Law Enforcement:

International law enforcement faces several limitations, including:

- **Dependence on State Will:** The enforcement of international law relies

on the cooperation and willingness of states. If a state is unwilling to comply, enforcing enforcements becomes challenging.

- **Lack of Effective Enforcement Mechanisms:** Some enforcement measures, such as countermeasures, can escalate tensions and hinder effective law enforcement.
- **Delays in Enforcement:** The process of investigating and implementing enforcements at the international level is often lengthy and complex.

Overall, the enforcement of international law is a complex and multifaceted issue. While challenges exist, significant progress has been made in strengthening the mechanisms for enforcing international law. With increased international cooperation and the development of international institutions, it is expected that the enforcement of international law will become more effective in the future.

Resource:

Public International Law

Author: Mohammad Reza Ziaee Bigdeli

Publisher: Ganj Danesh Publication

Prepared by: Mehdi Rostami



Attributes of civil process laws

Abstract

In his first volume of *Civil Procedure*, Dr. Abdullah Shams delves into the characteristics of civil procedural laws. Two primary attributes of these laws, namely their mandatory and formalistic nature, are closely intertwined despite their distinct qualities.

The mandatory nature of civil procedural laws signifies that these rules are binding upon all parties involved in a lawsuit, including the judge, and deviations from them are not permissible. This characteristic is designed to uphold public order and safeguard the rights of the litigants. However, not all civil procedural rules are equally mandatory. In this regard, these rules can be categorized into three groups:

- **Rules pertaining to the judicial organization:** These rules are strictly mandatory, and any agreement contrary to them is void.
- **Rules pertaining to jurisdiction:** Rules concerning inherent jurisdiction are mandatory, while those related to relative jurisdiction are typically dispositive.
- **Civil procedural rules in the narrow sense:** These rules are generally mandatory as well.

The retroactive application of civil procedural laws is another subject explored in this book. Generally, due to their procedural nature, civil procedural laws are more likely to be applied retroactively compared to substantive laws. However, this principle has exceptions, and the retroactive application of such laws must be examined in light of vested rights and other legal considerations.

Characteristics of Civil Procedure Laws

Civil procedure is distinguished by two primary characteristics: mandatory and formalistic. While these two characteristics are distinct, they are interconnected. In essence, the formalistic nature of these rules serves to protect the litigants against judicial arbitrariness and to guarantee the freedom of defense. Thus, from one perspective, their mandatory or dispositive nature must be examined. On the other hand, although the scope of application of these rules in terms of place, meaning their applicability to all individuals involved in litigation in Iranian courts, seems clear with explicit exceptions, the manner of their application in time should be further studied. These two issues are discussed below.

First - Mandatory or Dispositive Nature of Civil Procedure Rules

The question of whether civil procedure rules are mandatory or dispositive is a subject of discussion. It seems natural that civil procedure should have a mandatory character. Determining the competent court, the method of hearing a case, and the means of appealing judgments cannot be left to the discretion of the litigants.

The mandatory nature of civil procedure, interpreted through the involvement of public order, does not, however, encompass all civil procedure rules. Therefore, examining them from this perspective does not always yield uniform results. In fact, although it is said that procedural rules are imposed on both litigants and judges, it cannot be denied that since civil procedure ensures the enforcement of the substantive rights of the litigants, a certain degree of effective will of the litigants must be accepted in relation to the rules governing the enforcement of these rights in court. Therefore, considering this matter and, at the same time, involving public order and, certainly, its superiority to the will of the litigants, it is better to examine the mandatory or dispositive nature of different categories of civil procedure rules to reach a more accurate conclusion.

Rules Pertaining to the Judicial Organization Those civil procedure rules related to the judicial organization are considered mandatory. For example, at present, a court of appeal must be formed with the participation of two judges and proceed to hear the case and issue a ruling. Therefore, if more than one judge does not participate in the hearing and issuance of the judgment, the issued judgment is not lawful, even if the litigants have not protested in this regard or have previously agreed that this court would hear and issue a ruling with the presence of only one judge.

Rules Pertaining to Jurisdiction Those civil procedure rules related to the inherent jurisdiction of courts are considered

mandatory, but the rules governing the relative jurisdiction of courts are generally dispositive. In fact, since the establishment of rules regarding local jurisdiction is primarily for the ease of defense of the defendant, the litigants should be free to agree to the contrary.

Civil Procedure Rules in the Narrow Sense

These rules are generally considered mandatory, and therefore agreements contrary to them are ineffective. For example, the deadline for appealing a judgment of a general court is currently twenty days for persons residing in Iran. Therefore, although a person against whom a court judgment has been issued may not appeal the judgment, if they wish to do so, they are obliged to submit their request within the specified period. Therefore, if the appeal is filed after the statutory deadline, even if the other party does not object or even agrees, the competent authority will issue an order rejecting the lawsuit for the same reason (Article 339, paragraph 2 of the Civil Procedure Code).

Second - Retroactive Application of Civil Procedure Laws

According to Article 4 of the Civil Code, the effect of a law is prospective and does not have retroactive effect unless the law specifically provides otherwise. This principle also has other exceptions that have been examined in civil law courses. The question is whether civil procedure laws are retroactive or whether their effect, like other laws, is generally prospective. Procedural rules might be considered exceptions to Article 4 of the Civil Code.

Procedural rules, which are primarily formal in nature, might seem to be retroactive, unlike substantive rules (civil law, commercial law, etc.). However, an exception to this principle is the protection of vested rights. Nevertheless, the application of this general rule should be done delicately, and it is better to examine its application separately in three categories of civil procedure rules.

Rules Pertaining to the Judicial Organization Laws related to judicial organization are either retroactive or, according to another viewpoint, apply to pending cases due to the immediate effect of laws (for example, if a law is enacted during the course of a proceeding that changes the number of judges in a court from two to three or one).

Rules Pertaining to Jurisdiction Laws related to inherent jurisdiction are retroactive or, according to the aforementioned view, apply to pending cases due to their immediate effect (for example, if a case is within the jurisdiction of a revolutionary court and, pursuant to a law enacted during the proceedings, it falls within the jurisdiction of a general court). However, laws related to relative jurisdiction are generally not retroactive unless otherwise provided in the law itself or another law.

Civil Procedure Rules in the Narrow Sense Civil procedure rules in the narrow sense generally have an immediate effect and are retroactive except in cases where retroactive application would infringe upon vested rights. For example, if a new law abolishes the right to appeal a judgment, this law is not retroactive and therefore

does not apply to judgments issued when the old law was in force. In fact, upon the issuance of the judgment, the defendant acquires the right to appeal the judgment, and the subsequent law cannot be enforced in a way that deprives this right. It is clear that the application of this rule is only permissible if the legislator does not provide otherwise.

However, the question is, if one of the civil procedure rules in the narrow sense becomes enforceable while a matter is pending before the Supreme Court, and this rule was not enforceable at the time the appeal judgment was issued, what is the duty of this court in enforcing it? In response, it should be said that since the Supreme Court does not judge the dispute but rather judges the appeal judgment according to the rules in force at the time of its issuance, therefore, subsequent rules are not considered by the Supreme Court. However, if the judgment is overturned, the lower court is obliged to apply the new rules under the studied conditions. However, civil procedure laws related to the evidence of a claim are subject to rules that have been discussed elsewhere.

Conclusion

Civil procedure laws, as a set of rules and regulations that determine how legal claims and disputes are handled, possess specific characteristics that distinguish them from other laws. Two important features of these laws are their **mandatory** and **formalistic** nature.

- **Mandatory Nature:** Many civil procedure laws are mandatory, meaning that these laws are binding on all individuals, and agreements

between the parties cannot affect them. This feature is essential to maintain order in the judicial process and to guarantee the rights of the parties.

- **Formalistic Nature:** The formalistic nature of these laws means that there are specific formalities and procedures that must be followed during the proceedings. These formalities are designed to safeguard the rights of the parties and prevent judicial arbitrariness.

Other important points mentioned in this text include:

- **Difference between mandatory and dispositive laws:** Although many civil procedure laws are mandatory, some of them are also dispositive, meaning that the parties can agree on them and act contrary to them.
- **Importance of public order:** Maintaining public order plays a

significant role in the interpretation and application of civil procedure laws.

- **Retroactive application of laws:** Civil procedure laws are usually retroactive; however, this rule has exceptions.

In summary, civil procedure law is designed to create an orderly and just judicial system, and the mandatory and formalistic characteristics of this law, along with its other features, contribute to this goal. In simpler terms, civil procedure law can be seen as a detailed manual for handling legal cases, and all individuals are obligated to comply with it to ensure that justice is administered in the best possible way.

Resource:

Civil Procedure Textbook (Basic Level), Volume

Author: Dr. Abdullah Shams

Publisher: Derak Publication, 44th edition

Prepared by: Mehdi Rostami.



Terminology

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International Law

Obligation

In its literal sense, "obligation" means compulsion, and it doesn't have a technical meaning. However, the Iranian Civil Code's legislators erroneously used it instead of "commitment" or "undertaking," and as an equivalent of the foreign term "obligation," which was borrowed from the French Civil Code. They overlooked the fact that legal scholars had long used the terms "commitment" and "undertaking" instead of the foreign term.

United Nations (UN)

The United Nations is a global organization established by the United States, the United Kingdom, the Soviet Union, and China to implement and pursue the goals of the Atlantic Charter. It was designed to maintain international peace and security as outlined in the 1944 Dumbarton Oaks plan, with the hope of allowing human principles to flourish. This organization is the successor to the former League of Nations and aims to maintain international peace and security, develop friendly relations among nations, and cooperate in solving international economic, social, cultural, and humanitarian problems.

State

(Public law and international law)

- a. A population living in a defined territory and subject to a common public authority. A state possesses a legal personality in public law.
- b. In Persian, "government" is also used to mean the cabinet. In this case, the word "cabinet" is often added, and it is referred to as the "cabinet of ministers."
- c. It has also been used to mean the entire apparatus of government.

Sanction

The Latin word "sanction" literally means to establish or enact a law. In contemporary Arab academic circles, it has been translated as "punishment" (جزاء بما كانوا يعلمون), but this does not seem to be a suitable translation.

Executory Force

Any document that the law recognizes as **enforceable has executive** force, such as a court judgment, official documents, and checks. Executive power either arises from a court judgment or directly from a legal authorization.

Civil Law

Capacity (Civil Law)

a. A quality of a person who is not insane, foolish, a minor, bankrupt, or otherwise deprived of rights (in whole or in part) (Articles 212 and 1207 of the Civil Code).

This term is used in contrast to incapacity or disqualification.

b. A person's ability to have rights, bear obligations, and exercise the rights granted to them by law.

Prodigal

(Civil law - Islamic jurisprudence) A person whose disposal of their property and financial rights is not rational, and by reason is meant ordinary reason.

Minor

(Islamic jurisprudence) A person who has not reached the age of puberty. (Civil law) A person who has not reached the age of 18.

Insane

(Civil law - Islamic jurisprudence) A person who lacks the ability to distinguish between benefit and harm, good and evil. Insanity is determined by a court. (Articles 57 and 58 of the Guardianship Law and Article 1210 of the Civil Code).

Guardian

A person who, by law, has authority over another person or persons in some of their affairs, whether in private matters (such as the guardianship of a father or grandfather over a minor) or in public matters, such as the authority of each government employee within the scope of their job. For this reason, each government employee

was called a "vali" in Islamic jurisprudence, and their collective was called "vilayah."

Civil Procedure

Judicial Organization

- **In a narrow sense:** This refers specifically to the structure of courts of justice.
- **In a broad sense:** This includes the above meaning as well as any other judicial body (such as the Administrative Court of Finance).

Jurisdiction of a Court

"Jurisdiction of a Court" refers to the authority or power of a court to hear and decide a case. It encompasses both the types of cases a court can handle (subject matter jurisdiction) and the geographic area over which it has authority (territorial jurisdiction).

Retroactivity of Laws

refers to the application of a law to events that occurred before the law was enacted. Generally, it is considered against the public interest for laws to be applied retroactively. Therefore, the principle is that laws should not be retroactive, except in exceptional circumstances.

Criminal law

Ta'zir, Islamic Law, and Criminal Punishment

Ta'zir is a form of punishment in Islamic law characterized by the following:

- **Defined limits:** It has both a maximum and a minimum penalty.

- **Maximum penalty:** The maximum penalty is specified by law but must be less severe than the fixed punishments (hadd).
- **Minimum penalty:** The minimum penalty is determined at the discretion of the judge. Islamic law has defined certain ta'zir punishments explicitly. In such cases, the distinction between ta'zir and hadd is based on the nature of the crime. Crimes punishable by hadd are limited and clearly defined. Therefore, ta'zir is often defined as a punishment for a crime that is not considered serious enough to warrant a fixed hadd punishment. In modern legal systems, ta'zir punishments may be applied to felonies, misdemeanors, or infractions, depending on the specific circumstances.

Crime: In criminal law, a crime is an act that is prohibited by law and is punishable by law.

Hadd:

- **Literal meaning:** In Arabic, "hadd" means limit or boundary.
- **Legal definition:** In Islamic law, hadd refers to a specific, fixed punishment prescribed by Islamic law for certain offenses. These punishments are often corporal and have no minimum or maximum limits.
- **Broader meaning:** In some contexts, "hadd" can refer to any form of punishment, whether fixed or discretionary.

Diya: Diya is a monetary compensation paid by the offender to the victim or their legal representative in the following cases:

- **Agreed upon by the victim:** When the victim or their representative agrees to accept diya in lieu of a hadd punishment.
- **When a hadd punishment is not possible:** For example, if an injury is too severe for qisas but not fatal.
- **When the law specifically mandates diya:** Such as in cases of patricide.

Qisas: Qisas is a form of retribution in which the offender suffers the same harm as the victim. It is applied in cases of intentional killing or intentional harm to another person's body. The punishment must be equivalent to the crime committed.

Elements of a Crime:

- **Actus reus:** The physical act of committing a crime.
- **Mens rea:** The mental state of the offender, such as intent or negligence.

Punishment: The suffering inflicted on an offender as a consequence of a crime.

Commercial Law

Merchant: A person whose regular occupation is commercial transactions.

Article 1 of the Commercial Code: Craftsmen are also considered merchants under Article 6 of the Commercial Code, even if they are exempt from keeping commercial records and bankruptcy regulations (Article 708 of the Code of Civil Procedure of 1318). In the regulation number 7 of the Official Gazette of 1313 (page 181), the term "merchant" is specifically applied to customary merchants, artisans, and small traders, and the broader concept of "merchants"

includes these groups, as well as brokers, agents, intermediaries of all kinds, industrialists, factory owners, bankers, money changers, insurance agents, shipbuilders, transporters, contractors, travel agencies, publications, sellers, exhibitors, public institutions, and individuals who purchase goods for resale, even if they do not take possession of them.

Liquidation: The process of settling accounts, determining debts and claims, and arriving at a final figure. This includes the liquidation of debts, public expenses, and estates.

Assets:

- **In contrast to "Patrimoine":** The term refers to the totality of property, receivables, and debts.
- **In terms of finance:** It refers to finances, the Ministry of Finance, and finance departments.

Composition Agreement: A contract entered into between an insolvent

merchant and all or a majority of his creditors, provided that the insolvency is not due to fraud or negligence and a bankruptcy order has been issued. After the claims have been examined and before the commencement of the sale of assets and liquidation, the merchant's creditors agree to waive a portion of their claims and receive the remainder according to a specific arrangement. However, creditors who do not participate in the agreement will receive their claims according to the share allocated to other creditors from the existing assets of the merchant, and they will not have the right to claim more in the future unless all the claims of those who have entered into a composition agreement with the merchant have been paid in full. A composition agreement is a type of collective agreement (Articles 489 and following of the Commercial Code).

Insolvent: A person who is insolvent. That is, their debts exceed their assets, and they do not have the credit to pay their debts from those assets.

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