

Examining the Role of the Courts in Persuading the Litigants through Non-Judicial Dispute Resolution; A Comparative Study of Common Law, the Romano- Germanic and Iranian Legal Systems

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Abstract

Nowadays through the bulky extent of body allegations to each other in the courts, make legal systems confronting with many problems, like much longevity of cases prosecution, pay attention to some substitutionary options instead of formal courts procedures. As example can indicate, is amiable resolutions which today, more or less, use to being utilized. In the way, the most important to notify, is courts roles in encouraging of parties to compromise with each other completely or partially through the amiable resolutions, out of engaging courts time. The present contribution by the prospect presented, after conceptualizing the amiable resolutions, tries to outlines courts roles in encouraging of parties in triangular legal systems; common law, civil law and Islamic Iranian law.

As the contribution conclusion, it would be so amazing to know that all these triangular legal systems by their basic rules have been paying attention, much more than can be imagined, to the judge roles in encouraging parties to amiable resolutions. However, through the vacuum of Iran civil procedure law in the present case, although, in presence of some other laws indicating the matter like; criminal procedure law & family law,

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Iranian today judges through the lack of acknowledgement because of civil procedure law vagueness, have no colorful role in the indicated field that is necessary to be reformed.

Keywords: Amiable Resolutions; Courts Roles in Encouraging of Parties in Amiable Resolutions; Alternative Amiable Resolutions; Conciliation Sessions.

Bibliography

A) Books and Articles

- The Holy Quran.
- Al-Ameli Aljabaie. Alshahid Zein al-Din Ibn Ali. *Masalek Al-Afham ela Tanghih al-Islami*. Qom: Majma al-Fekr al-Islami, 1990. [In Arabic]
- Al-Ansari, Morteza. *Alqaza valshahadat*. Qom: Ajma Alfekr Islami, 1995. [In Arabic]
- Alheli Almohaghegh. *Sharaye al-Islam fi Masael al-Halal va al-Haraam*. Qom: Nashr Daralmahdi, 1983. [In Arabic]
- Alheli, Ebn edris, Abu al-Salah. *Alsaraer alhavi letahrir alfatavi*. Vol 2. Qom: Nashr Islami, 1990. [In Arabic]
- Alhor Alamoli. *Vasael alshie*. Tehran: almaktabat alislami, 2014. [In Arabic]
- Al-Najafi, Sheykh Mohammad Hassan. *Javahr al-Kalam fi Sharh al-Islam*. Vol. 40, Tehran: Dar al-Ketab al-Islami, 2016. [In Arabic]
- Alsheykh Almofid. *Al-Maghnae*. Qom: Manshooratalalami, 1995. [In Arabic]
- C. Dragas, Dacian. *Alternative Dispute Resolution in European Administrative law*. First print, Romania: Cluj Napoca, 2014.
- Darwish Hoveida, Yusuf. *Alternative methods of resolving disputes*. Tehran: Mizan Publications, 2014. [In Persian]
- Ferron, Solange. *Les Modes Amiables de Reglement des Diffrends*. XV Conference des Juristice de Letat, Vol. 22.2012.
- Fiadjoe, Albert. *Alternative Dispute Resolution*. First published, London: Cavendish publishing, 2004.
- H. Weiner, Merger. *A Parent-partner Status for American Family law*. First print, New York: Cambridge University Press, 2015.
- Hadi, Solmaz, and Mortaza Hajipour. "A Study of Alternative Methods of Dispute Resolution from the Perspective of Iranian Law and Imami Jurisprudence." *Journal of Jurisprudence and essentials of Islamic Law*, No. 1 (2016). [In Persian]
- Hosseini, Seyed Mohammad. "The role of mediation in the litigation chapter and responding to violations of norms." *Journal of Law and Political Science*, No. 0, 1999. [In Persian]
- Kohut, Nester C. *Therapeutic Family Law*. Second Edition, Chicago: Family Law Publication, 1968.
- Kooshe, Gerard. *French Civil Procedure Code*. Translated by Seyyed Ahmad Ali Hashemi, Tehran: Dadgostar Publishing Institute, 2012. [In Persian]
- Morgan, Karen. *Conciliation Courts*. First Print, USA: Winconcin legislative staff, 1978.

- Noaks, J & Noaks, L. *School Based Peer Mediation as a Strategy for Social Inclusion*. Second print, France: Pastoral Care in Education, 2009.
- P.Cox, Richard, E.Miller, Mary. *Simple Justice: An Investigative Study of Conciliation Courts*. www. Googlebooks, 2004.
- Rivier, Marie, Claire. *Les Modes Alternatifs de Reglement des Conflits*. University Jean Monnet-Saint- Etienne, 2001.
- Rodop. B.V. *Conciliation- Compulsion – Conversion*. First Print, Netherland: Amesterdam Institution..
- Shirvi, Abdul Hussein. *International Commercial Arbitration*. Tehran: Samt Publications, 1398. [In Persian]
- Sime, Stuart. *A Practical Approach to Civil Procedure*. Twelfth Edition: Oxford University, 2016.
- Societe Davocate. *Les Modes Alternatifs de Reglement des Conflits*. Lexavoue 32, 2013.
- Sourdin, Tania. *Alternative Dispute Resolution & the Courts*. First Edition, the Federation Press, 2004.
- Toosi, Mohammad Ibn Hassan. *Al-Mabsoot fi Fiqh al-Imamie*. Vol. 7&8, Qom: Almaktabatalrazavie, 1990. [In Arabic]
- Van Rhee, CH. *European Traditions in Civil Procedure*. First print, London: Intersentia, 2006.
- Wardle, Iyan Dennis, C. Nolan, Laurence. *Family Law in the USA*. First Print, Britain: Wolters Kluwer, 2009.
- Yahnstan, Peter. *Negotiating with Giants*. First print, United States: Penguine Books, 2008.

B) Websites

- www.cairn.info/ Les Mediation/ Pierre gallery, 2018.
- www.cedr.com/ Dispute Resolution, 2010.
- www.dispute-resolution.uk.com/ Practical Dispute Resolution Services, 2010.
- www.lingue.fr/ La Negociation_ La Mediation_ La Conciliation, 2018
- www.localcourt.justice.nsw.gov.au/ Amiable Dispute Resolution.
- www.lorman.com/ In the Legal Section/ Social Security Basic & Advanced Planning Strategies.
- www.mediate.com/ Mediation in Family Cases.
- www.osbar.org/ Alternative Dispute Resolution.
- www.wikipedia.com/ Settlement Conference, 2015.
- www.wipo.int/ Alternative Dispute Resolution.