

The Legal Framework of Economic Activities: A Comparative Study of Trade and Commerce Law

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Abstract:

If economics and trade are the way for humans to achieve their material goals, then law will be a guarantee for achieving this and the needs of humanity. In order to achieve these goals, it will be necessary to be familiar with the generalities and scope of each of the sub-branches of this guarantee of execution, namely law. In other words, what does economic law mean and what is its difference from trade law and what is its domestic and international scope.

In addition to the aforementioned discussions, the close relationship between law and economics will also be reviewed to clarify whether law should be measured with economics or whether economics should be weighed with the legal scale. Each of these perspectives leads to different results, some of which provide morality and some provide freedom and liberalism.

There are different perspectives on the independence or dependence of the science of law, which have been expressed after examining the views of the parties, and each has expressed its own reasons, which are necessary and essential to understanding the depth of the relationship between law and economics.

Introduction

Law has always been alongside economics and has continued its existence in human life, in essence, along with economics. (Ghotbi and Hassani, 2015) A professor named French says: Law and economics use the same interests (i.e., they talk about the same issues), but their goals are different (Savatier, 1974).

The goal of law is the common good of humans through the regulation of their rights and duties and the establishment of justice, while the goal of economics is to meet human material needs through production, distribution, and consumption. Economics seeks to obtain maximum benefit, but the law seeks to implement justice.

People cannot ignore legal rules and regulations in achieving economic goals and are forced to take the right path that the science of law considers consistent with its rules (Hajiani, 2012). Of course, law has other topics, but the majority of law, especially civil law and commercial law, discusses property, but their goals are not the same and at the same time their relationship is undeniable.

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Socialists consider the economy to be the foundation and law and politics to be the superstructure of society; in their opinion, the laws of any society are the manifestation and manifestation of the interests of those who hold the government; the law is not a means of establishing justice, but rather a tool at the service of the rulers, that is, those who hold the means of production; At the same time, sometimes these superstructure phenomena affect their cause and root and disrupt the existing economic order (Mouly, 1987) and according to some, "the economic analysis of law is simply to protect some laws that have been profitable for the beneficiaries" (Posner, 1992).

Marx Weber, the theorist of the separation of economics and law, states that there is no direct relationship between law and economy, because the legal order is ideal, normative, logical and systematic, while the economic order is concerned with the real world and the distribution of power to organize economic goods and services (Weber, 1994).

Another analysis that has been expressed in relation to the relationship between law and economy is the economic analysis of law, which says that law serves the economy. In this theory, legal rules are considered as the price of behavior and the reaction of individuals to these prices can be analyzed in the same way that prices are analyzed in economics.

For example, if the punishment for trespassing on another's property is increased, this can be He analyzed the interpretation as if an increase in the price of a commodity would lead to a decrease in demand, and as a result predicted that less aggression would occur (just as an increase in the price of a commodity would lead to a decrease in demand). (In the economic analysis of law, the provision of justice is not the issue, but the economic efficiency of legal rules. Based on this analysis, economic theory is applied to the analysis, formation, structure and effects of legal institutions and is based on the belief that the development of economic instruments improves the conditions for the establishment of laws. (Savatier, 1974)

In the theory of the economic analysis of law, a premise is accepted in the behavior of individuals: the behavior of a rational person is to maximize profit and minimize cost: it is assumed that individuals act for their own interests and seek to maximize their assets and wealth and minimize costs as much as possible, and in each case they make their choice by weighing the benefits and losses.

For example, in the field of civil liability, liability is an increase in the cost of action. Individuals consider their benefits and losses in harmful activities that can cause liability, and if the cost of the activity is greater than the benefit, they gain from it, they refrain from it. The behavior of individuals is predictable based on economic logic and based on the prediction of the effects of legal rules on human behavior, it is possible to design laws to achieve specific goals.

The main problem with this assumption is that human behavior is not always rational. Furthermore, the assumption of rational human behavior in the analysis of maximum profit may be correct for the market environment and economic relations, but it is open to criticism on a broader level. In many fields, the motivation for human activity and behavior is non-material values.

The claim of economic efficiency as the sole or dominant goal in law has no acceptable theoretical or practical justification and does not lead to desirable results. It has not been generally accepted by legal experts and scholars and has even been criticized in economics.

Among the reasons for the above-mentioned "first, lawyers are not familiar with economic tools because they have not encountered economic issues during their academic training, and secondly, the utilitarian view of all issues from the economists' perspective causes the essence of law, which is the observance of morality and justice, to be in conflict" (Montagne, 1999: 153). Thirdly, law must be dynamic and putting it

in place will cause inefficiency, but the prerequisite for this dynamism is daily familiarity with economic issues, which lawyers are not in this position (Centi, 1987).

2 - The relationship between law, trade, economics and its types

As discussed, law and economics are intertwined and sometimes appear side by side or equal with common and contradictory goals, and they influence each other in such a way that they are sometimes placed in the same concept. Since customs is the main determinant in many issues, the term mistake is one of its effects, the extent of which can be seen in considering trade and economics as the same. Although in a general view, both of them are related to material issues, the scope of each is different from the other. Next, we will examine each to distinguish them in the legal dimension.

2.1 Domestic, International and Electronic Commerce Law

It refers to the set of rules and regulations governing those types of commercial relationships that, while having the nature of private law, are related to different countries. Based on this definition, the main topics of this field of law are as follows: International purchase and sale of goods, which includes formal issues of contracts, agency contracts and other exclusive sales arrangements; negotiable instruments and commercial credit of banks; laws related to conducting commercial activities related to international trade; insurance; transportation, which includes the transportation of goods by sea, air, road or rail; industrial property and copyright; and International Commercial Arbitration (Shirvi, 2013).

Two important points can be deduced from this definition: First, international trade law is relevant when commercial relations go beyond national borders and, as a result, more than one country is involved in it. Therefore, commercial and trade relations that take place within national borders are outside the scope and domain of international trade law, even if these commercial relations take place between different states of a country.

Second, international trade law includes those topics that have the nature of private law and, as a result, do not include topics of the nature of public law. Topics that have the nature of public law but at the same time govern international commercial relations are discussed separately under the title of international economic law and are considered a subset of public law.

Domestic trade law also includes topics such as expressing the nature and activities of traders and commercial companies. In addition to general topics, it deals with a definition of the activities of traders such as issuing checks, promissory notes and bills of exchange, and states the guarantees for their execution, and finally examines bankruptcy. In the meantime, "electronic commerce, which is a newly emerging phenomenon, also encompasses the same business issues, with the difference that the buying and selling of goods and services is done via the Internet, and accordingly, all related issues; "Buying and selling, production, negotiation and the like are covered by it." (Zongqing, 2004: 52).

2-2 International Commercial Law

International commercial law refers to a set of legal rules, international treaties and conventions, domestic regulations and commercial customs and procedures that regulate international commercial relations. Today, in many books and articles, international commercial law and international trade law are used in the same sense and are used interchangeably, however, it seems that international commercial law has a broader meaning than international trade law.

International commercial law includes two general categories of subjects: The first category includes mainly contractual issues that merchants and commercial companies resort to in order to carry out commercial activities and is related to private law issues of cross-border trade.

Sale of goods and services, provision of operating licenses (license), lease with condition of ownership, agency, investment participation contracts, payment methods, transportation Commodity, insurance, and the resolution of commercial disputes are such issues. The second category is the government's guiding and interventionist regulations in commercial and economic exchanges, which are mainly related to issues of international public trade law.

For example, supporting foreign investment, supporting domestic industries, liberalizing trade in goods and services, combating the creation of monopolies, and controlling the entry and exit of foreign exchange are among the measures that governments adopt to control trade and have a great impact on the process of cross-border trade (Shirvi, 2013).

From a practical perspective, private individuals can carry out economic activities within the framework of restrictions governing international trade. No sales contract can be carried out without considering import and export restrictions; no foreign exchange payment can be made without considering the regulations on the entry and exit of foreign exchange.

No decision to invest in a foreign country can be made without considering the regulations on encouraging and supporting investment and other trade restrictions. Therefore, the issues of international trade law cannot be one-dimensional, but must cover all relevant and effective issues. Accordingly, in most of the writings published under the title of international commercial law or international trade law, specific issues of international trade have been raised alongside general issues. In the field of trade, the relationship between law and economics is more present

When we say economy, we are using a broad and deep concept, one of whose parts also depends on whether we consider the concept of commerce for it or not, and we consider it equivalent to trade. These two words have found an equivalent in Persian. That is, trade has an Arabic root, which is translated into Persian as commerce. But the reality is that trade and commerce are completely different.

In general, if we take trade as the criterion, it must be said that the relationship between law and economics is intensified in this area, and commercial laws have been formulated independently all over the world. Trade has a wide scope and includes companies, transportation, labor fees, commercial documents, brokerage, warehouse receipts, bearer documents, bonds, partnership bonds, and so on.

All of these are discussed in commercial law, and along with these components, commercial laws have also addressed bankruptcy and liquidation of merchants. For example, in the field of companies, many economic concepts have come to the legal arena and have been given legal and legal clothing. So, familiarity with these close concepts is necessary for law students or interested individuals, as small differences that have a big impact are necessary and essential.

2.3 International Business Law

Another term that is widely used in international commercial and trade relations is international business law. This term is widely used to mean international commercial law or international trade law. However, there are differences between these terms in terms of the breadth of topics covered and also the approach to the topics.

To clarify the concept of international business law, first business law is examined in comparison with commercial law or trade law. The topics covered in international business law are broader than those covered in commercial law, and the relationship between the two is absolute.

In business law, in addition to commercial law topics, other topics are also covered. This field of law covers not only all economic activities, including production, distribution, and consumption, but also all economic actors, such as merchants, commercial companies, and agents. Therefore, business law includes topics related to commercial law, corporate law, business law, competition law, bankruptcy law, tax law, contract law, debt collection, guarantees, auditing, arbitration, and in short, any regulations that govern economic and commercial activities.

Since international business is a complex process that requires the recognition and coordination of various factors such as the formation of companies, competition and monopolies, taxes, labor relations, and other legal requirements in the relevant countries, international business law refers to the rules and regulations that govern this complex process (Shirvi, 2013).

Therefore, international business law has a broader scope than international commercial law and is responsible for expressing all the regulations that govern cross-border economic activities. There is also a difference between international business law and international commercial law in terms of the approach to the issues, and this difference is related to the difference between business law and commercial law.

Traditionally, commercial law or trade law included mainly theoretical and legal issues that expressed general and general rules governing commercial and business relations. These theoretical and general issues had several major drawbacks. First, the issues of commercial law or trade law were not consistent with the realities of business, and many of the topics discussed did not have any significant practical benefit. Second, it was not clear how to apply and adapt these general and theoretical topics to practical realities.

Third, many important points and issues that arose in practice were not addressed in these books. Finally, the literature used in these writings was very complex and legalistic, in a way that merchants and traders were unable to understand. Attention to the practical aspects of business and responding to the needs of people involved in business led to the creation of a new legal discipline called business law (Shirvi, 2013).

Conclusion: First, international business law is simpler and more understandable than international trade law or international commercial law, and therefore it is possible for non-lawyers to understand it. Second, legal analysis and theorizing are less common in international business law books, and more attention is paid to practical needs and business procedures. Third, the issues raised in international business law are broader than those of international trade law and international commercial law.

2.4 International Economic Law

International economic law refers to the set of principles, laws, and international regulations that regulate and control the behavior of states in adopting policies and establishing laws and regulations regarding cross-border economic, commercial, and financial exchanges (Shirvi, 2013).

International economic law includes issues related to international economic and trade organizations (such as the World Trade Organization), the establishment of free trade areas for countries (such as the European Union and NAFTA), regional agreements (such as ECO and ASEAN), international regulations regarding the control and regulation of trade in goods and services, the obligations of countries in adopting trade policies in the goods and services sector, international financial regulations, the establishment of a preferential customs system, the economic sovereignty of states and its scope, the new international economic order, natural resources and the protection of the rights of states, international sanctions,

international recognition of intellectual property, the establishment of policies related to foreign investment, and the settlement of trade disputes between countries.

"International economic law mainly regulates the relations of states and international trade organizations regarding economic activities, and commercial and includes a broader dimension of international trade law and directly targets the targets of public international law, namely states. (Seidl-Hohenveldern.1999).

Commercial companies and traders are usually not directly subject to international economic law but are indirectly affected by it. For example, if a country does not comply with its obligations under a treaty or convention, traders and trading companies from another member country cannot directly sue the country for breach but must refer the matter to their home country and pursue the matter through the home country.

However, in some cases, such as regulations on encouragement and protection of foreign investment, foreign investors directly benefit from the relevant conventions and can rely on them to sue the other party to the treaty.

In short, the relationship between the concept of international economic law and public and private international trade law is a matter of principle. Private law issues related to commercial and trade relations are part of international commercial law, while they are outside the scope of international economic law.

Issues related to the sovereignty of states, the new economic order, economic sanctions, and the protection of states' rights over natural resources are among the issues discussed in international economic law, but are outside the scope of international commercial law.

Issues related to controlling the export and import of goods and services, controlling the entry and exit of foreign exchange, and supporting foreign investment are discussed and examined in both international economic law and international commercial law.

Research Method

This article is descriptive and logical inference. The tool used is a library method, so that first related books, articles, and magazines, whether in print or online versions, were collected, then the relevant materials and required parts were copied and compiled as a writing.

Conclusion

In the research conducted on these issues, we can mention the article Law and Economics written by Mahshid Ghotbi Rawandi and Alireza Hassani, which examined the extent of the relationship between law and economics, but did not state its direct impact on the science of law, and did not examine the word trade, which is related to economics, on a case-by-case basis.

In the research conducted by Hassan Badini, the opinions of different groups regarding the independence or dependence of law and economics were also expressed, but again, no mention was made of its direct impact. Economic efficiency is acceptable as a desirable and one of the constructive and influential factors in law.

In law, the main goal of which is to establish justice, economic efficiency can also be considered. Economic efficiency and justice are often combined; that is, the legislator must consider both economic efficiency and justice in enacting the law, and whenever the two are in conflict, justice must be given priority.

It is obvious that economic analysis is not possible or appropriate in all cases, and although some believe that, just as they entrust the work of building bridges and roads to civil engineers (Posner, 1987), law is also

a field of social engineering, so the design of legal institutions is reserved for lawyers as legal engineers, some reject both its complete independence and absolute dependence (Badini, 2006). It has been stated that the framework of law does not have a permanent form, but is a function of scientific developments and it is these social forces that create law (Riper, 1955). It is suggested that in the field of contract law and commercial relations or civil liability, where the application of the criterion of economic efficiency and increasing wealth is less difficult, the help of economics should be used. However, in cases where non-economic goals such as helping the disadvantaged classes and fair distribution of wealth or family relationships and generally high values are involved, the theory of economic analysis of law cannot be of much use. In any case, economic analysis of law can be of great service. To legislators and decision-makers so that they can enact appropriate laws and regulations, taking into account economic factors and other imperatives and beliefs governing society, public policies, and spiritual values, and take effective steps towards the country's all-round development.

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