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## Definition and Validity of Contract of Bail

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(Date of Receipt: 23 August 2015; Date of Acceptance: 6 February 2016)

### **Abstract:**

Bailment is the commitment given by bailee to summon mandator or the third party to the mandatee or bailor. This commitment on suspect of some creates guardianship over the third-party and cannot be considered valid. For this reason in Sunni jurisprudence bailsman like the bailor has some rights in order to justify his guardianship by referring to his right over the mandator through joint liability. In Shi'ie jurisprudence the bailsman is also considered the attorney of the bailor in order to fulfill his commitment to safeguard the rights of the bailor. The author believes that both justifications are subjected to criticisms. In this paper, contract of bail was regarded as a contract for the benefit of third party that creates an advantage for the party without the need for his acceptance and does not contradict with the principle of non-guardianship.

### **Keywords:**

Bailment, Commitment to the Benefit of Third Party, Guarentee, Principle of Non-guardianship, Representation.

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## Comparing and Evaluating the Impact of Religiosity on Different Types of Crime between Offenders and Normal Persons (Case Study at Sistan Region)

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(Date of Receipt: 12 September 2015; Date of Acceptance: 6 February 2016)

### Abstract:

Despite a few scholars who consider some of the religions to have innate tendency toward crime, most of criminologists regard religion as the cause of social integrity that prevents from committing crime through increasing internal control even in the absent of official agents. This study aims to investigate the effect of religiosity on the type of crimes using a social survey method. Sample size is consisted of two groups of offenders (240 prisoners) and non-offenders (421 persons) which have been selected randomly. Data was analyzed using Pearson correlation coefficient and stepwise regression analysis. Findings confirm significant inverse relationship between religiosity and delinquency and explain that the propensity to commit crime decreases with increasing religiosity. Within the normal range ritual aspect of religion and belief is most correlated with the dependent variable, i.e. reducing criminal behavior and explains the most degree of variation, but the remaining variables, i.e. consequential and experimental aspects of religiosity have indirect impact on the degree of committing crime. The results indicate that two variables of rituals and beliefs have the greatest effect among offenders on crimes against property and public welfare; the remaining variables, i.e. consequential and experimental religiosity have indirect effect on crime. But in the cases of crimes against persons there is no significant relation between religiosity and committing crime. Considering the impact of instruments of religiosity on the type of crimes, ritual aspect has the most impact on crimes against property and the least impact on crimes against persons. In general, the degree of religious influence varies depending on the type of crimes. It has the greatest effect on Hadd crimes and crimes against property and public welfare respectively but it has no effect or a little effect on crimes against persons.

### Keywords:

Delinquency, Prevention, Religion, Religiosity, Types of Crime.

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## Legal Review of the Clause 6 of Article 268 of the Islamic Penal Code

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(Date of Receipt: 4 October 2015; Date of Acceptance: 6 February 2016)

### Abstract:

According to Islamic jurists' consensus, in the case where all conditions of *Hadd* thievery are met the thief should be punished by amputation of the hand. Nevertheless, if there is a filiation relationship between thief and the loser, even by presence of other conditions, punishment (*Hadd*) of cutting hand would not be implemented. Consensus which is claimed on both issues is prophetic tradition of "*Anta wa malika li abika*" (you and your property belong to your father), which refers to impossibility of father's retaliation because of putting his offspring to death, is one of the reasoning that is relied upon. In addition to the issues which seem necessary at the incorporeal (*hokmi*) and conceptual domain of the foresaid discussion, this question arises as to whether the verdict of negating hand amputation would be considered for a progenitor who thieves from his grandchild's properties? There are various proofs which have been relied on for not applying punishment (*Hadd*) of hand amputation on forefather because of lifting properties of his "grandchild", such as consensus, verity of considering progenitor as a father, priority of progenitor's words or statements over father's words in coincide espousing of the daughter and also "principle of removal of *hadd*" (*Dar'*). Reasonability of each of these issues as well as the legal approach to this issue in late and early statutes and the degree they are in accordance with jurisprudential principles should also be considered.

### Keywords:

Filial, Hand Amputation, Paternal, Prudence in Blood, Scope of Reasoning, Thieve.

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## **Review of Reasons for the Legitimacy of Evidences of “Religious Endowment (Vaqf) of Intellectual Rights”**

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(Date of Receipt: 28 October 2015; Date of Acceptance: 6 February 2016)

### **Abstract:**

One of the conditions for the correctness of endowment is to have a legitimate ownership, objectiveness, ability to possess and eternity of the endowed property. On this basis, the opponents of the correctness of endowment of intellectual rights have cast doubts over the possibility of endowment of intellectual rights– which according to its functions it is one of the important issues and concerns in the area of social and economic matters. Of course, there are also advocates for the endowment of intellectual rights whose reasons are mainly general, pervasive and beyond endowment and have judged all the conditions under dispute as unacceptable based on the rules and principles which are not aimed at endowment. These evidences basically cast doubt over the obligations of conditions under dispute. Analyzing the evidences of both pros and cons, it has been concluded in this analytical-descriptive research that the general evidences of the pros are unable to neutralize the conditions under dispute; in other words, it is not possible to prove the legitimacy of the endowment of intellectual rights in this way, but due to the fact that faults made by opponents are not acceptable considering: A) the philosophy of forging the disputable conditions in endowment and B) revision of their concepts, the correctness and legitimacy of the endowment of intellectual rights are proved.

### **Keywords:**

Endowed Property Conditions, Endowment, Intellectual Rights, Necessities of Contract.

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## Liability for Firing in Islamic Law

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(Date of Receipt: 8 November 2015; Date of Acceptance: 6 February 2016)

### **Abstract:**

Whenever someone casts fire to the usual extent and he does not know that it would extend to the neighbor estate he is not responsible for the damage and loss. This legal judgment which is according to the new definitions of fault presented by lawyers has also been mentioned in new Islamic penal code. Nevertheless, this judgment is applied only when the fire is cast on a permitted place. Therefore, whenever someone casts fire on an unpermitted place including the estates of other people or even public places, because of its dangerous nature and just for the damages sustained, he is obliged to compensate for the damage if it is proved that the firing is ascribed to him; even if he is not informed or casts a fire according to his need. Now we should find that is it possible to apply this legal approach to the current Iranian law. Considering the positive law and analyzing the Shi'a jurisprudents as well as the adaptation of positive law to the Sunni law it is possible to conclude so and confirm its adaptation to the new common law.

### **Keywords:**

Civil Liability, Firing, Fault, Liability, Possibility of Damage Prediction.

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## **Review of the Verdict and Jurisprudential Principles of Bribe in Non-judgmental Payments**

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(Date of Receipt: 28 November 2015; Date of Acceptance: 6 February 2016)

### **Abstract:**

No doubt, bribery is unlawful but there is doubt about the truthfulness of the term of “bribe” in non-judgmental payments. This uncertainty is due to the existence of two traditions in this regard; because in a number of traditions only judgmental payments have been considered as bribery and unlawful. Other traditions have forbidden any type of payments, whether judgmental or non-judgmental. The aforementioned traditions are not conflicting since some of the traditions have limited bribery to the area of judgment because of the fact that it is more customary than others. Lack of attention of jurists to the customary rule of bribery and witnesses of legal judgments reinforces the generalization of bribery to judgmental and non-judgmental payments. The majority of jurists have forbidden non-judgmental payments for taboo and unlawful purposes, but uncertainty of some of them in the truthfulness of the term “bribe” for such payments made them conclude that such payments are forbidden for other reasons like complicity in sin or corruption and so forth.

### **Keywords:**

Bribery, Customary Rule, Judgment, Legal Rule, Non-judgmental.

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## **Review of the Prohibition of Visitation of Graves by Women from the Viewpoint of jurists of Islamic Denominations**

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(Date of Receipt: 14 December 2015; Date of Acceptance: 6 February 2016)

### **Abstract:**

Islamic scholars have regarded pilgrimage by all Muslims as a cause to the divine grace and blessing of the world and hereafter. Nowadays, this practice has become a debatable issue among Islamic denominations, especially the *Wahhabi* sect and other Muslims. Throughout the history, Muslim scholars have issued *fatwa* on the recommendatory and sanctity of the visiting the graves of saints of Allah. Ibn Taymiyyah issued for the first time the *fatwa* on the prohibition of visitation of the graves of saints, and then Hijaz scholars highlighted the significance of this issue based on Taymiyyah's teachings and prohibited all kinds of pilgrimage. They cast some doubts such as Prophet's (PBUH) cursing to visiting women, prohibition of travel for pilgrimage, and heretic innovation and uselessness of visiting graves. The studies show that there is no narration quoted by the Prophet (PBUH) on the prohibition of pilgrimage of the graves in general and the denunciation of the attendance of women in such places in particular. On the contrary, there are some reliable narratives regarding the recommendation to this valuable task - provided that no unlawful act or corruption is performed - and based on the definitiveness of the narratives or limiting the narratives absolutely to the issue of pilgrimage, there is no difference between men and women in this regard.

### **Keywords:**

Islamic Denominations, Visitation of Graves, Women, Wahhabi Sect.

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## Reflections on Incumbency of Giving Dowry to Continual Wife Exactly after the Marriage Contract is Conducted

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(Date of Receipt: 28 December 2015; Date of Acceptance: 6 February 2016)

### Abstract:

Some of rights and obligations will be conducted by marriage contract, such as right of dowry for wife and right of obedience for husband. Jurisprudents and lawyers believe that rights of couples will be charged exactly after marriage based on regulation of exchanges. So they consider the wife as the owner of the whole dowry exactly after the marriage contract is conducted, but the incumbency of giving dowry and its nature in relation with obedience is a challenging issue that requires an independent and comprehensive discussion. Studying the reasons and statements of jurisprudents and lawyers, the authors of this article decided that the exchangeability nature of marriage is not true, but in fulfilling the rights of both parties to the marriage contract it is possible to implement the regulation of exchanges and acknowledge that marriage is an exchangeable contract considering the period of dowry ownership and incumbency of its giving. Therefore, ownership of wife to her dowry will be conducted exactly after the marriage and like other exchanges, what necessitates ownership for exchange is that if the wife does not refuse from obedience to her husband it is obligatory for the husband to give the dowry.

### Keywords:

Continual Wife, Exchangeable Contracts, Giving Dowry, Obedience, Marriage.

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