
Analysis of Dumping in Islamic Jurisprudence and Iranian Legal System

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Abstract:

Today, free trade is one of the most important international trade issues around the world and the countries have willingly or unwillingly synchronized with this worldwide wave. However, many countries have confronted with the risk of dumping because of adherence to the principle of free trade and reducing tariff barriers. Dumping as one of the negative consequences of free trade is an instrument for illegal competition at the hands of some companies to expand foreign markets and in some cases it destroys domestic product of importing countries. Although Iranian economic structure prevents to a great extent from dumping, considering the fact that Iran is obliged to accept free trade regime in order to join officially to the international trade organization and consequently to lower traffic in some cases, this policy has sometimes but not necessarily endangers our industries with the risk of dumping. While, now the most complete Iranian law to fight against dumping is 2007 act of the council of ministers which in compliance with the anti-dumping agreement of the international trade organization it has some shortcomings. The trade in Islamic legal system is based on spirituality and virtue and jurisprudential books usually put emphasis on equity and justice to provide a means of public welfare in the Islamic community. Dumping as an unfair trade practice can be studied and analyzed based on some Islamic legal rules such as the principle of *la zarar*, the principle of right abuse and the rule of disruption of the economic system and its prohibition can be understood from legal evidences.

Keywords:

Disruption of System, Dumping, Loss, Principle of *la Zarar*, Right Abuse, Unfair Competition.

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Legal Sentence of Constructing Shade in Public Passages

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Abstract:

Regardless of the major utilization of the roads, it is concluded from different jurisprudential viewpoints that any possession is permitted provided there is not any loss. Blocked roads (dead-end alleys) are also considered as the specialized states of the owners of the houses located at those alleys. There are different positive law (*Taklifi Hokm*) about permission of constructing shade including conditional permission provided that there is no damage, no damage and no opponent, and absolute prohibition. The present research tries to justify the second view based on some jurisprudential principles including the equal right of possession of passages for all people, lack of priority against each other and the application of *La Zarar* principle. Undoubtedly, based on situational law (*Vazie Hokm*) the construction is also permitted provided that there is no damage or loss. Legal prohibition of occupying passages and fulfilling civil construction regulations that are legally imposed to preserve civil and citizenship rights confirm the above-mentioned claim which has been discussed in the present article.

Keywords:

Blocked Roads, Damage, Open Roads, Road Block, Shade.

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Analysis of Reasons of Ijmā, (Islamic Consensus) on Prohibition of Building Statue

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Abstract:

Having a look at the historical books reveals that building statue has a long history of thousands of years. Gradually, it developed and in the Arabian Peninsula it turned into building and worshiping idols and idolatry. At the advent of Islam, the majority of the people of the region lived a dark life of worshiping idols. In spite of the eradication of idolatry throughout the Islamic communities, they still had a negative look to it because of its dark history and the Islamic jurists, relying on Islamic consensus and narrations (*hadiths*), prohibited building statue. Therefore, the artistic aspect of building statue is still a challenging and controversial issue in the Islamic communities. Studying and analyzing Islamic consensus as the most important reason for the prohibition of building statue, the present article draws the conclusion that Islamic consensus for the reasons of prohibition of building statue are not valid and reliable.

Keywords:

Islamic Jurisprudence (*Fiqh*), Prohibition and Islamic Consensus, Statue.

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Valid Contractual Liability in Jurisprudential Thought

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Abstract:

The liability for valid contracts has been discussed in various subjects of Islamic jurisprudence, especially in the maxim “any contract in which there is liability for its valid one, there is liability for its void one”. Considering the statement of some jurists about the unity of the meaning of liability in addition to this issue, the concept and the principle of liability are discussed. As regards to the concept of liability, three stages could be considered for a valid contract: formation, perish of considerations before submission and cancelation of the contract after submission. The main purpose of this article is to study the formation stage, although two other stages are also studied. Jurists have different approaches to the first stage of liability: some jurists reject the concept of liability in valid contract, the second group believes in contractual liability, and the third group has interpreted a valid contract to include and in another word to be a means of delictual liability. Antecedent, attainment, respect, and adversus extraneous are four major theories justifying the nature of the contract. This article deals greatly with the concept of liability in the first part of the maxim in a contract of sale; however, it may be extended to other reciprocal contracts with some appropriate modifications.

Keywords:

Contract, Contractual Liability, Delictual Liability, Imamites (Shi'a) Jurisprudence, Liability.

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The Place of Participation in Islamic Political Thought

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Abstract:

Political thinking in Islam is seen as an integrated system with lean and holy teachings and special guidelines to run social, political and educational affairs of people. Hence, one can see many modern social ideas in the narratives and statements of both Shi'ite and Sunni Islamic thinkers as a benchmark to evaluate and analyze their different attitudes. An idea is the right of participation of the citizens in society's macro management that its ongoing record and prevalence in any political system shows its superiority, efficiency and utility. In the same framework, participation theory has a coherent and well-established position in Islamic political thinking in the form of a textual, narrative, and dialectic theory which indicates the long history of application of this theory and justifies the necessity to evaluate it in Islamic political jurisprudence. However, one should note that the bilateral nature of participation– consultation, in Islam, irrespective of some similarities, differs from what is meant in western developed political and legal systems. In fact, in Islamic thinking participation– consultation is based on institutionalizing religious enthusiasm in people and is recognized through mechanisms like “allegiance”, “public supervision”, “the right of advice”, “invitation to wellness”, and “promotion of good and prevention of evil” of the pattern of political participation in its relevant concept in political literature. The present paper discusses this subject of the research from three aspects: first, it focuses on the role of participation in Islamic political thinking, second, it studies the reflections of participation and consultation in the opinions of Islamic thinkers; and finally it identifies the legal status of participation in upstream law.

Keywords:

Islamic Political Thinking, Tegal Origins of Participation in Upstream Documents, Participation in Islamic Resources, Participation in Opinions of Islamic Thinkers.

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Term of Lack of Disagreement of Husband with Education of Wife in Marriage Contract

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Abstract:

Marriage is a special legal institution formed on the basis of sexual and emotional relation between man and woman. People are completely free to choose their spouses and the marriage contract, like other contracts, depends on intention and the consent of the parties. The effects of this contract [of marriage], however are specified by law and there is no room for ruling the wills of two parties. One can rarely find a case in which wife and husband can eliminate the conventional effects of [the contract of] marriage. In this respect, contract of marriage differs from other kinds of contracts. A rare case in which man and woman are entitled to specify the effects of their marriage concerns the ‘conditions [to marriage]’. According to the Article 1119 of the Civil Code ‘the parties to the marriage can stipulate any condition to the marriage which is not incompatible with the nature of the contract of marriage or the *Book (Quran)* or *Sunnah* and require the other party to accept it ...’. Various conditions may be stipulated based on the situations of the spouses one of which concerns lack of disagreement of the husband with wife’s education. The present article tries to find out how this condition may be included in the contract of marriage and what guarantees its execution. Of course, paying attention to the condition to attain this goal should not be an excuse to neglect the easier way to attain this major goal which is achieved through moral virtues.

Keywords:

Condition to Marriage, Foreclosure, Marriage, Loss, Right of Education.

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Provisionality of Confession Repetition in Islamic Criminal Jurisprudence

(A Criticism on Article 172 of Islamic Penal Code)

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Abstract:

Based on the principle of "confession by the sane about themselves is allowed", confession in Islamic law is among evidences to prove a claim. Even, it can be said that confession is a stronger proof as compared to other evidences and it can be considered as one of the most assured evidences to prove a claim. In Islamic criminal jurisprudence the repetition of confession is a necessary condition to prove many crimes. However, there are disagreements about the number of positive confession to some crimes such as declaring war on God, apostasy and discretionary punishments. Accordingly, the question arises here as to whether in questionable cases, a single confession suffices or the confession must be repeated? The article 172 of Islamic penal code stipulates on a single confession whenever no clear wording exists. This study tries to evaluate the evidences and to show that in disputed cases crimes related to the Rights of God are out of the generalities and prediction of evidences of the confession and the repetition of confession are needed to prove them. But in proving the crimes considered as the Rights of People, the predictions and generalities of evidences of confession should be considered and a single confession should be considered enough to prove them because of the Rational principles of no error, no reluctance and no caution, except in cases in which it is clearly ordered by the legislator that the confession should be repeated.

Keywords:

Confession, Repetition of Confession, Principle of Confession.

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Jurisprudential Principles of Commitment to Childbearing

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Abstract:

In the family system bringing child is a major challenge of spouses in the present time. There is no disagreement among Imamite (Shi'a) jurists about this issue that bringing child has no legal nature and is not considered a natural requirement of marriage contract. Sometimes wives have different views about bringing child and this makes them worried and upset. One way to lower these concerns is that wives make bringing child a binding guarantee; in such a case the parties to the contract has no right to violate this binding condition and in the case of violation, litigation is the only legal solution. The present article aims to discuss the views of jurists about childbearing (*estilad*). For this reason we first express one of the purposes of marriage from the perspective of verses and *hadiths*, i.e. childbearing and continuation of the generation. Next we briefly discuss the position and the value of the child from the perspective of verses and *hadiths*. Next the requirement of the nature of marriage is studied and finally the viewpoints of jurists about childbearing are expressed. It was concluded that childbearing is not a legal nature and absolute requirement of the marriage contract, but every one of the couples can make childbearing a binding guarantee of marriage contract with legal support.

Keywords:

Absolute Requirement, *Estilad*, Legal Nature of Marriage, Marriage Contract.

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