

## An Investigation into Jurisprudential Rule of Money on Which Khums Has Been Paid (Mukhammas) in Assuming the Increase in Its Purchasing Power

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### Abstract

Cash on which *Khums* has been paid is sometimes subjected to an increase in purchasing power. Some acceptable scientific and jurisprudential comments have been made on the devaluation but no research has been conducted on revaluation of money. The question is whether the increase in purchasing power of money is subject to *Khums*. In other words, is the revaluation of money considered an instance of interest, accretion, and business subjected to *Khums*? Given the aforementioned titles being customary in order that they are subjected to *Khums*, if custom regards the increase as an instance of interest, accretion, and business, it is subjected to *Khums* and if the customary judgment posits the increase in purchasing power incompatible with the aforementioned titles, the increase is not subjected to *Khums*. In the case where the increase in purchasing power can not be recognized based on *Ijtihad* reasons, the principles of acquittal and presumption explain that the increase in the purchasing power of money is not subjected to *Khums*. The research assumption is proved in a descriptive-analytical method and through collecting library data. The research concludes that, considering the fact that the purchasing power of money is the valuation of its nature, the increase in purchasing power is subjected to *Khums* because on which the titles of interest, accretion, and business are applicable.

**Keywords:** *Khums*, Increase in Purchasing Power of Money, Interest, Accretion.

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## Analysis of Validity and Invalidity of the Engagement to Pay Damages in Life Insurance

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### Abstract

Based on the Rule of Guiding the Ignorant, it is necessary to guide anyone who is ignorant of principles of the religion, divine teachings and religious rules. Referring to some traditions (*hadiths*) and verses of the Holy Quran such as the verse of *Nafr* (migration) and *Suwal* (question), jurists endeavor to prove the necessity and incumbency of giving guidance to ignorant; however, there are disagreements among jurists as to the necessity of guiding an ignorant about the subjects. Most of them argue that the essence of the Rule of Guidance is providing guidance about the ignorance of the rules and there are no reasons whatsoever for providing such guidance for religious subjects. There are even some jurists who forbid providing guidance to an ignorant in case he/she is bothered or falls into hardship unless the issue has to do with the life or dignity of other human beings in which cases the guidance is obligatory. In addition, the relativity of the Rule of "Guiding" to the Rule of "*wujūbi i'lāmīl jāhīl fīmā yu'tī*" takes the form of absolute generality and specification and although there are some similarities between them, like prescriptive rule of obligation, it is differently related to "promotion of good and prevention of evil" due to their different subjects.

**Keywords:** Life Insurance, Engagement to Pay Damages, *Gharar*, Ignorance of Price, Value of Engagement, Transaction of Security.

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## Jurisprudential Study of the Rule of Guiding the Ignorant

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### **Abstract**

An authenticated and unauthorized funds transfer is one of the most important risks in electronic banking. When an authenticated and unauthorized payment instruction is issued and the bank has no knowledge of the instruction being unauthorized, if that payment instruction has been recognized and confirmed in accordance with security procedures agreed upon with customer, the bank considers the instruction to be authentic and transfer the funds. Under such circumstances, does the bank or another person bear Ziman and civil liability? Depending on the payment method used for issuance of the payment instruction and whether the issuance of such instruction was due to the customer's fault or the bank's or neither, Ziman and liability for damages lies with the bank or the customer or both. This article reviews the concepts of authenticated and unauthorized payments, various categories of payment instructions based on authorization and authenticity, the legal basis of civil liability and consequences of breach of duty under the Iranian law and the U.C.C. The authors believe that in the case of authenticated and unauthorized payments, in principle when the customer has proven the unauthorized characteristic of the transfer, the bank shall bear the risk, unless it proves the customer's fault. Of course the customer should prove unauthorized transfer of the fund.

**Keywords:** attorneyship, delegation, legal basis, parliament membership, typology.

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## Analysis of the Stipulation of the Right of Recession in Marriage Contract

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### Abstract

Article 1069 of the Iranian civil code has voided stipulation of the right of recession in marriage contract but it is silent about the effect of void of stipulation on contract, while in the *Imamiyyah* jurisprudence in addition to the void of stipulation of the right of recession in marriage contract, the famous maintain such stipulation as void. However the question is whether the void of stipulation is based on the strong reasons and whether the aforementioned stipulation must be considered merely as a void stipulation or the void of marriage contract is necessary too? Moreover, is the void of stipulation appertained to perpetual marriage or is it also true in temporary marriage? The present study, taking a descriptive-analytical method of research, has reinvestigated the subject from juridical and legal viewpoint. Analyzing the different reasons, it concludes that from jurisprudential view as a whole, the stronger opinion is void of perpetual marriage contract (not temporary marriage). Principally, this stipulation does not render marriage contract void. The silence of the legislator on the void of marriage contract also depends on the acceptance of validity of marriage contract. Of course not distinguishing between the perpetual and temporary contract as to the void of stipulation of the right of recession deserves criticism and amendment.

**Keywords:** Stipulation of the Right of Recession, Perpetual Marriage, Temporary Marriage, Article 1069 of the Iranian Civil Code, *Imamiyyah* Jurisprudence.

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## Recognition of Evolutionary Trend of Originality of Posterior Occurrence

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### Abstract

Analysis of the evolutionary trend of originality of posterior occurrence in the history of *Shi'ah* jurisprudence as a widely-used principle within the numerous jurisprudential subjects and as an effective principle in legislation will clarify the time, reason, and the effect of the jurists' changing views toward the aforementioned principle. Some theories such as generality of permissibility and execution, absolute negation of execution and expounding the stream or lack of stream are discussed concerning this principle. Transforming into a demonstrative principle, conflict with the opposite identical principle, and defects of bases and conditions of continuity presumption (*Isteshab*) are brought up as the grounds of the opponents of principle of posterior occurrence. In contrast, a number of reasons like conduct of the wise, the traditional reliance on practical stream compatible with this principle, and compatibility of the generality of the cause of continuity presumption have been cited to support this principle. This article has presented a new approach to the analysis of historical evolution of the stream of this principle. Analyzing the evidences and presuppositions of the opponents of the principle of posterior occurrence and solving the raised problems, it tries to discover a way to remove the conflict in some forms of doubts and to prevent from changing this principle into a demonstrative principle. Meanwhile, it gives another description for the forms of doubts, and pays attention to the influence of the probability of coincidence and the inference of the stream thereto in some cases.

**Keywords:** Posterior Occurrence, Principle of Posterior Occurrence, Continuity Presumption (*Isteshab*), Principle of Non-existent, Intellectual Principle, Demonstrative Principle, Conflict of Two Principles.

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## Jurisprudential Analysis of Differentiation between Contract and Labor Agreement

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### Abstract

When law of labor was legislated, some of hire of persons went out of Iranian civil code and get under the rules of labor law. This type of hires is called labor agreement and the remaining type of hires is called contract under the civil law. Following this separation, the problem of differentiation between contract and hire of persons under the labor law was raised among civil and labor lawyers. The lawyers have tried to present the criteria for differentiation between the two types of rents from different aspects. However, none of the common criteria can completely distinguish the nature of two types of rents. The problem is important because labor agreement determines, from one hand, obligations and responsibilities for employers, and on the other hand, rights and privileges for the hired person. Every hiring under the labor agreement includes these obligations and rights. Considering the importance of the problem and its being controversial in law and since it has not been dealt with in *Imamiyyah* jurisprudence, this paper, first, aims to present and analyze the views of lawyers and next to analyze the principle of differentiation in *Imamiyyah* jurisprudence.

**Keywords:** Contract, Labor Agreement, Rent of Special Hired, Rent of Common Hired.

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## Prohibitory Criterion for Sculpturing Based on Religion Texts

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### Abstract

Awareness of the criterion of a rule provides us with the opportunity to scale up or down simultaneously the extent of the criterion and the range of application of the rule. Prohibition of sculpturing, regardless of its constraints, is an indisputable juridical law in Islamic religions. However, considering the features of the subject for legislation of this rule, the prohibition of sculpturing was probably legislated under the influence of features of the subject at that time. Therefore, uncovering the criterion of this rule can be effective in generalization of the rule to the current instances. As sculpturing has not natural enormity, the criterion of this rule can not be established by the way of reason. However it is possible to capture the criterion of this rule using verbal reasoning. Taking this presumption, this paper investigates the explicit terms of the subject and through collecting the evidences it concludes that the prohibitory rule of sculpturing was only legislated in order to stall the spread of polytheism (*shirk*) and Idolatry.

**Keywords:** Sculpturing, Cause of Rule, Idol, Polytheism, Idolatry.

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## The Will of Testator without Heir in Excess of One-third

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### Abstract

One of the unanimous issues in jurisprudence and Islamic law is that the will is limited to one-third of the heritage and its surplus is subject to permission from the heirs. But if there is no heir, there is disagreement about whether the limitation of third still remains or the testator has complete freedom. Given that, a group of experts believes that the will is limited to the third and the surplus belongs to Imam (Governor). Another group believes in the absolute freedom of testator and validity of such testament. Others go into details and separate between wills to charity and other wills and maintain that only charitable testament is valid and other wills are limited to the third. This study examines the arguments presented for different ideas and considers the theory of limitation of the testator without heir to one-third of the property as a stronger theory. From the legal point of view it is also more compatible with the provisions of the Civil Code.

**Keywords:** Will, Testator, Without Heir, Excess of One-third, One Third of Property.

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## The Ownership of Stem Cells in the Umbilical Cord Blood

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### **Abstract**

The subject of the present study is to identify the owner of the stem cells in the umbilical cord blood. To response the aforementioned problem, this research first collects the documentary reasons based on which father or mother's ownership of these cells may be preferred from different aspects of jurisprudence and in various forms. Next, examining each of them, it draws the conclusion that these reasons are not enough to prove these two views. Further, citing medical findings about embryonic origin of stem cells of umbilical cord blood and clarifying the role of mother in the development of these cells, it tries to defend this view by explaining properly the subject and analyzing some of the criticisms involved in the ownership of the newborn – as has been emphasizes by the specialized custom.

**Keywords:** Ownership of Embryo, Partiality of Embryo to the Mother, Ownership of Semen, Embryonic Origin of Stem Cells, Pregnant Handmaid.

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## Principles of Restoration of Right through Bribery

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### Abstract

“Bribery” and to “receive any item of value” from some one to defend him and to infringe or deny the rights of others is unlawful and against the shari'ah (Islamic law) and the law and all Islamic religions hold that it is unlawful; In another word, there is consensus among Muslims regarding this rule. Undoubtedly, one who conducts bribery performs an unlawful act. In some cases bribery does not infringe or deny the rights of others, rather it restores the actual rights of some one. Given that, it will not render the bribe lawful for the bribe recipient. But a question arises here as to whether the act of bribe-giver for restoration of his right is also unlawful and forbidden? Sometimes there is no way but to give bribe to restore one's right and sometimes there are other ways too. It is understood from the review of the arguments, proofs, and the viewpoints of the jurists in this article that in the case that there is no way but to give bribe for the restoration of right, bribery is lawful for bribe-giver to the extent that it is necessary, but it is unlawful for the bribe-recipient.

**Keywords:** Restoration of Right, Lawfulness and Unlawfulness, Duress and Compulsion.

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