

A Critical Review of the Theories on the Definition of Right in Islamic law

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Abstract

Many different theories have been presented for the definition of right by the jurists. The way the jurists define right as well as their specific theories on right is of great importance because many matters pertaining to Islamic law and positive law are based on this jurisprudential and legal entity in such a way that every theory may affect part of Islamic law and positive law. Nonetheless, unfortunately the theories on the definition of right have not been considered and studied enough by the researchers in the area of jurisprudence and law. So it can be said there is a serious scientific void in this field. The present research aims to do so and will attempt to obtain and present it with a rational analysis and to deduce it from the rules of Islamic and Iranian law as well as the present evidences using citation and library instrument which is the main finding of the research.

Keywords: Right, Imature Ownership, Abstraction, Reign, Theory.

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A Critical Study on Proving the Insolvency or Afford in the Scope of Articles 7 and 10 of the Implementation of Financial Sentences Law, 2004

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Abstract

The first part of the article identifies and investigates two conflicts between article 7 and 10 of the implementation of financial sentences law, 2004 within the scope of proving insolvency or afford. First, the article 7 is legislated based on contentious proceeding of insolvency while article 10 is legislated based on non-contentious proceeding of insolvency. Five possibilities are imaginable for the settlement of the above-mentioned conflict none of which is flawless. The second conflict among the aforesaid articles is an instance of the real judgement and apparent judgement the summing up of which is possible. The second part of the article explains and criticizes six objections of the article 7 of the implementation of financial sentences law, 2004.

Keywords: Insolvency, Afford, Conflict.

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Childbearing is a Requirement of the Perfectness of the Marriage Contract

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Abstract

In Islamic jurisprudence, requirement of the substance and the requirement of the perfectness of contracts, like recognition theory, dominate the rights and duties of the contract. Determining the requirement of the substance and the requirement of the perfectness of marriage contract, depending on its type, has a direct effect on the explanation of the legitimate examples of the rights and duties of the couples as a result of the marriage contract. Although, one may reject childbearing as the requirement of the substance and the requirement of the perfectness of marriage contract in order to prove the illegitimacy of the requirement for married couples to have a child, this research aims to prove the legitimacy of the requirement of having child in the future studies and explains the requirements of marriage contract, the method of its discovery, and its relationship with childbearing. Considering the differences between the requirements of permanent marriage and temporary marriage and by adopting the basis for the discovery of the requirement of the perfectness through Islamic law and the custom it studies the jurisprudential principles of childbearing. As a result, it is recognized and proved that childbearing is a requirement of the perfectness of permanent marriage contract.

Keywords: Childbearing, Requirement of the Substance of Marriage Contract, Requirement of the Perfectness of Marriage Contract, Permanent Marriage, Temporary Marriage.

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Analysis of Human Cloning from the Viewpoint of Islamic Jurisprudence (Shi'ite and Sunni)

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Abstract

Human cloning has raised many discussions in scientific circles. On the one hand, scholars are concerned about the possible consequences of human cloning, and on the other hand, the verdict sanctions deprive the scientific and research community. The present article aims to explain and criticize the main arguments of the Shi'ite and Sunni scholars. Although Sunni scholars allowed the use of simulation techniques or asexual reproduction in animals, they have unanimously hold that any form of human cloning is illegitimate. Most of the Shi'ite thinkers allowed the simulation of plants and animals due to the principle of permissibility (ibaha). But, there is no consensus about the rule of human simulation. Some of them believe that it is absolutely permissible, a group of them believe that it is absolutely forbidden. Another group holds that human cloning is limitedly allowed. The fourth group holds that, as a primary verdict, it is allowed by itself, but, as a secondary verdict, it is forbidden due to its adverse consequences.

Keywords: Human Cloning, Islamic Jurisprudence, Shi'ite, Sunni, Prohibition, Permission.

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Jurisprudential Study of Judgment in Absence

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Abstract

The legitimacy of the judgment against the person who is absent from the due process meeting is an important matter in judicial jurisprudence. On the one hand, it is not possible to hold hearing session provided that both parties should attend the court, because some people do not have the possibility or intention to appear in the court. And on the other hand, trial against the absent should not result to wastage of his rights. Imamiyyah jurisprudents have different opinions to solve this dichotomy. Some of them, referring to the principle of the autonomy of the individual, have limited the judgment against absent to the (rights of people) narrative. Another group, referring to the general evidences for judgment, hold that it is not necessary for all parties to be present at the court and believe that it is permissible to make judgment against the absent. These studies show that based on the primary principle of the autonomy of the individual, it is permissible to make judgment against absent on the rights of people. On the right of Allah, there is no reason to permit proceedings. Judgment creditor is also abliged to provide appropriate guarantees to protect the rights of absent (judgment detor).

Keywords: Absent, Trial, Legitimacy, Evidence, Principle.

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Generalization of Sanctioning Matrimony Revocation to Acute and Chronic Hepatitis B, Syphilis, Sarse, and Herpes Simplex diseases

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Abstract

Nowadays, contagious, fatal, incurable or hard of cure diseases like acute and chronic hepatitis B, syphilis, sarse, and herpes simplex have broken out all over the world. However, less attention has been paid to the legal bases of the diseases. In spite of the famous view of the Shi'a jurists that the defects sanctioning matrimony revocation are restricted, it seems that a more reasonable, fairly and adaptive viewpoint to jurisprudential principles and rules is to generalize the revocation right to such diseases that are more acute and dangerous than the defects stated in the Texts. Since the above diseases are nascent and don't have any history in the jurisprudential texts and since there is a need to a dynamic jurisprudence and law according to the principles of Islamic jurisprudence, the theory of permissibility of generalization is notable. Such diseases are contagious, incurable or hard of cure and cause hate and disorder of marital life. In addition, it can be understood from the evidences like traditions, analogy of reasons stated in the text, the priority rule, the harmless rule, and the conduct of the wise that the defects sanctioning matrimony revocation are not restricted and the permissibility of revocation can be generalized to the modern diseases.

Keywords: Defects Stated in the Text, the Contagious and Fatal and Incurable Diseases, Option to Revocation, Harmless.

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The Application of Jurisprudential Principles and Rules for the prevention of Anxiety - OCD

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Abstract

Obsessive compulsive disorder (OCD) has been studied seriously as a psychological and medical disease, but the scope of this disease that is usually manifested in religious affairs raised a question in the author's mind as to how the application of jurisprudential principles and rules can prevent from OCD? Therefore, a descriptive-analytical method of research has been used. The article has been structured in two parts: the first part deals with a series of definitions, characteristics, symptoms, etiology, etc.; and the next part discusses the different jurisprudential principles and rules such as the principle of isalat al-sihha (authenticity of act), principle of istishab (presumption of continuity); since they can inform religiously accountable persons both through the application of the opposite concept due to the application of jurisprudential principles, remove perplexity in the beginning of the person's religious accountability, and remove thoughts of undue fear and shame for the divine punishment and mercy to prevent from OCD. For this reason, both claims and arguments in jurisprudential principles have been used to the extent that they are not mingled with the beliefs and non-scientific matters. Finally, the article concludes that OCD can be prevented effectively both at the primary and secondary levels (after the development of disorder) through the application of jurisprudential principles and rules.

Keywords: Anxiety Disorder, Obsessive Compulsive Disorder (OCD), Jurisprudential Principles and Rules, Argument on Principles of Jurisprudence, Informing.

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The Study of Jurisprudential Principles of Preemption in Movable Properties from the viewpoint of Islamic Religions

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Abstract

There are two definitions for movable and immovable properties in Islamic jurisprudence one of which is accepted in the Iranian civil code. Movable and immovable properties have several rules and effects in Islamic jurisprudence. One of these effects has been appeared as preemption which is held permissible by the famous Shi'ite and Sunni scholars for immovable properties and not permissible for movable properties. This famous idea is accepted also by the Iranian civil code. In spite of this famous idea, the permissibility of preemption for movable properties is justifiable because the reasons of famous scholars for unlawfulness of preemption for movable properties is not faultless. Also the main reasons such as Islamic traditions and the necessity of elimination of loss and hardship in movable properties by preemption, justifies the permissibility of preemption in movable properties. This research uses a descriptive-analytical method and puts emphasis on *ijtihad* methodology.

Keywords: Preemption, Movable, Immovable, Divisible, Loss.

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A Review of the Condition of Substitution in the Option of Observation

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Abstract

In the case where the buyer has not seen the property and has purchased it only according to its specification, and also in the case where the buyer is confident of his previous observation and purchases a property, and then it is proved that the property has not the aforesaid specifications, would he have the option of cancellation? In addition, in the case where the customer finds the object of sale against the aforesaid specifications and it is stipulated in the contract that in the case of any inconsistency another object of sale must be given to the customer, is the transaction correct or not? Referring to the jurisprudential books and summing up the views of the jurists, this article aims to answer this question using a descriptive-analytical method of research. The jurists hold that conditioning in this problem takes two forms; it is whether the condition of result or the condition of act. Any one of these conditions or substitutes stands against the substituted object, or the substitute stands against the price. It seems that the condition of substitution (*ibdal*) in the four cases is not valid, the most important reason of which is *qharar* (deceit) which causes harm.

Keywords: Option of Observation, Condition of Result, Condition of Act, Condition, Ignorance, Price.

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Fasting on the Day of 'Ashura Analyzing the Traditions and Views of Jurisprudents

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Abstract

As for the day of 'Ashura, there is disagreement between the jurisprudents; a group of them has decreed that fasting on this day with the intention of grieving is recommended and not only has opposed but generally have agreed on it. Yet, another group hold that it is unlawfulness and some of them have decreed on its abhorrence. There is also another group who has a moderate idea between its abhorrence and recommendation and hold that fasting on this day is abhorred and it is recommended to keep fasting until one hour before afternoon prayer. Some of the jurisprudents hold that it is absolutely recommended. In contrast, some of them hold that it is recommended to quit fasting. The origin of the disagreements is the traditions quoted on this matter. Maybe the dubious nature of the matter has made the jurisprudents to give a moderate idea from among the traditions. But it should be understood that there are two different types of traditions in this regard. Those traditions that consider it permissible have taken into consideration the time before Karbala event and those that prohibited it have taken into consideration the time after Karbala event. On the one hand the enemies of the Household of Prophet (AS) fast in this day, and on the other hand, the friends of the Household of Prophet (AS) should grieve for the calamity stroke Abi 'Abdullah (AS). For this reason the people should keep fasting like calamity-stricken people and eat and drink a little in afternoon. Therefore, it seems that the recommendation of fasting is a stronger idea.

Keywords: Fasting on 'Ashura Day, Karbala Event, Manuscripts, Permission, Impermissibility.

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The Legal and Jurisprudential Analysis of Positive Condition from Absolute Duty to Undertaking a Duty or Obligation "A Discussion on the Effects of Positive Condition in Imamiyyah Jurisprudence and Iranian Law"

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Abstract

The Imamiyyah jurists have wide dispute over the substantial effect of positive condition. Some jurists hold that positive condition lacks natural effect, believing that it is merely a positive law. Another group goes to the extreme, assuming that it has natural effect of debt, while others reduce the positive right of positive condition to the "right of demanding". Meanwhile, a group of scholars has taken a moderate approach, considering a natural effect for positive condition. They regard it as a type of financial right. It is called financial covenanted right by the author of the article, believing that in some occasions, it turns to financial obligational right, which is debt. Iranian civil code doesn't take a clear position, and this necessitates further a precise explanation of the effect of positive condition in Imamiyyah jurisprudence, which has been the source of legislative adoption. Therefore this article, using a descriptive-analytical approach, studies the views and arguments of each group and reveals the position and basis of civil law.

Keywords: Positive Condition, Natural Law, Positive Law, Financial Right, Right of Demanding.

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