

The Effects of Wrong Jurisprudential and Legal Rulings and Mistakes in Electronic Contracts

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Abstract

Considering the fact that information technology has made significant changes in contracts as well as the entry of Iran into the world of electronic contracts and the lack of specification of e-commerce law on many issues of electronic contracts, there is the possibility of error and mistake. Therefore, this research aimed at examining the effects of wrong rulings and mistakes in electronic contracts in Islamic jurisprudence, the rulings and the effects of such contracts, comparing it with Imamiyya jurisprudence and Iranian law, as well as examining the gaps and shortcomings of electronic contracts. According to the information and foundations of the research, it has been concluded that there are many gaps in different areas pertaining to the effects of wrong rulings and mistakes in electronic contracts. This paper proposes some solutions to remove these barriers and gaps. In this regard, it is suggested that the legislator can take actions to approve substantial law and specific civil procedure for commerce and electronic contracts in accordance with international rules and dynamic jurisprudence, including the relevant rules of jurisdiction, conflict resolution rules, and national arbitration.

Keywords: Mistake, Electronic Contract, Error, Jurisprudence.

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Reinvestigation of Multiplicity of Crimes and Prescribed Punishments from the Jurisprudential Perspective of Islamic Religions

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Abstract

Multiplicity of crime as one of the general elements of exacerbation of punishment within the public criminal law has not been considered by the jurists. The present study aims at analyzing the multiplicity of crimes and prescribed punishments from the perspective of five Islamic religions; since, the jurists, instead of raising theoretical issues about public criminal law and extension of their personal views, have been mostly dealt with punishments prescribed by the divine legislator like prescribed punishments, retaliation, blood money, and sanctions. Since prescribed punishments are intrinsically pre-destined and decreed by God, in the case of multiple offenses by a single person they will be exempted from among the rules pertaining to exacerbation of punishment. Nonetheless, the jurists, seeking the help of the rules stipulated within the principles of jurisprudence, such as the rules governing the multiplicity of causes and perpetrators in the case of a multiplicity of offenses that cause a prescribed punishment, whether with a different cause that necessitates prescribed punishments or with a different objective nature of the punishment for the offenses that necessitates prescribed punishments, hold that the prescribed punishments must be consolidated. Considering the nature of prescribed punishments and the purpose of the divine legislator, it demands the same treatment by the Islamic jurists. Although this approach may seem somewhat rigorous at first, if the modern human science understands the deep purposes of these punishments, perhaps it will become clear that the legislation of these rules by the divine legislator is the very mercy of God.

Keywords: Multiplicity of Crime, Multiplicity of Punishment, Prescribed Punishment (Hadd), Cause, One Who Occasions Something.

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Legal-Jurisprudential Review of Wife's Leaving Home During Engagement Period

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Abstract

Today, it is customary in Iranian society to spend a time between marriage proposal and starting the joint life that is called engagement period. During this period, in spite of the fact that the daughter is the legitimate and legal wife of her husband, indeed she lives in her father's house or a house other than her husband's. This social procedure demands special jurisprudential and legal rules and laws pertaining to how the spouses should observe their rights during this period. One of the issues is the wife's leaving home without permission of her husband. The question arises here as to whether during this period, like the joint life of the spouses, it is an obligation for the wife to take permission of her husband for leaving home? To answer the question, this article first explains the rights of spouses and the views of jurists pertaining to the obligation or lack of obligation for taking permission during engagement period. Next, discussing and criticizing the arguments of those who hold that it is obligatory to take permission from jurisprudential perspective relying on mentally established condition, concomitant of right and responsibility, custom, and using lien right as well as from legal perspective relying on the juristic unification vote, it is concluded that it is not necessary for the wife to take permission of her husband during engagement period.

Keywords: Taking Permission of the Husband, Lien Right, Leaving Home, Mentally Established Condition, Engagement Period.

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Jurisprudential Study of Sunni Hadiths about Musical Instruments and Songs in the Presence of Prophet Mohammad (PBUH)

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Abstract

There are some traditions in Sunni narrative books based on which Sunni scholars have judged about the legitimacy and even desirability of playing a number of musical instruments. This article criticizes these hadiths. The figurative meaning of these narratives was intended more than reviewing the *sanad* of the narratives by the author. Given some contradictions in the figurative meaning of these traditions that are even incompatible with the Sunni jurisprudents' opinions, it can be concluded that the maximum judgment that can be obtained from these traditions is the legitimacy of playing *daf* without ring just at the wedding ceremony.

Keywords: Musical Instruments, Singing, *Daf*.

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The Nature and Rules of the Dead Lands in Islamic Jurisprudence

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Abstract

Nowadays, considering the growth of population the need for land has become one of the common concerns; therefore, jurisprudential investigation of the dead lands seems necessary. Since the rules, conditions, similarities, and differences of dead lands have not been systematically described in both Shi'ite and Sunni jurisprudence, this study, using a descriptive-analytical method, tries to achieve proximity of opinions of five Islamic religions (*mazaheb khamsa*). The results indicate that according to the jurists of five Islamic religions dead lands refer to the lands that will not yield a profit. To take possession of dead lands Imamiyya, Hanafiyya and Malekiyya jurists hold that it is necessary to take permission of Imam. Meanwhile Imamiyya jurists have proposed two different theories: The first theory states that one can obtain the right to exploit the land and to pay the tax, and the other states that one can obtain the right of property and take possession of the land. Imamiyya and Sunni jurists have also the same opinions regarding the quality and conditions of recultivation of dead lands.

Keywords: Dead Lands, Conditions, Imamiyya Jurisprudence, Sunni Jurisprudence, Nature.

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Legal Status of Pregnant Woman's Alimony at the Time of Irrevocable Divorce

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Abstract

In spite of the fact that the jurists, relying on the Verse 6 of the Surah Divorce, agree on the obligatory nature of the pregnant woman's alimony during waiting period after divorce, there are two fundamental ambiguities surrounding this kind of alimony: on the one hand, it is disputed whether the above-mentioned alimony is for women or her pregnancy? The majority of jurists hold that alimony is for her pregnancy. In contrast, a few of them hold that it is for the woman. On the other hand, the death of man after the woman's divorce results in the conflict between the right of residence of the woman - as part of the alimony - and the right of heirs to inherit the property of the deceased. In the meantime, some of the scholars like Saheb Javaher proposed the theory of revolution in alimony. In contrast, the majority of jurists hold that the wife has the priority right of residence. After evaluating the arguments of the jurists and the proposed theories, the findings of the study showed that contrary to the famous beliefs, after proving alimony for the woman relying on the advent of the proofs of the verses and traditions, this alimony is placed in the third group of the category of "conjugal alimony" but not the alimony itself. In the issue of conflict of the right of residence after the death of man, the claim of the theory of revolution of waiting time cannot be fulfilled due to the priority of the effect of the verse, on the other hand it sustains harm to the wife and the fetus which is not allowed based on no-harm rule.

Keywords: Alimony, Irrevocable Divorce, Pregnant Woman, Right of Residence, Heirs.

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Property Value Guaranty in the View of Jurisprudence and Iranian Substantive Law

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Abstract

In the case when someone usurps the property of someone else, prevents the owner from taking possession of his property, or reduces the value of the property by making no changes in it, the issue of deficiency in the value of property in civil liability is raised. According to this study, the value of property can be considered both in terms of "use value" and "exchange value". Decrease in the use value and the price of the property occurs with making changes in or usurpation of the interests or characteristics of the property while the property survives and remains intact. In spite of the controversy in the examples, most of the authors hold that it brings about liability issues and would be guaranteed. In the case of deficiency of the exchange value that is affected by supply and demand, most of the jurists do not consider it as guaranteed but this study argues that the verdict of absolute lack of grantee and liability faces some challenges and should be separated. Any great decrease in the value of the property like destroying the property is customarily considered a loss and should be compensated.

Keyword: Property Value Guaranty, Property Usurpation, Use Value, Exchange Value.

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The Effect of Committing Suicide on the Legal Status of Last Will with a Critical Approach to Article 836 of Civil Code

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Abstract

Civil law under the article 836 defines a person who attempts to commit suicide without a special right to make a will, and explicitly states that if he makes a suicide before his will, it shall be void. In principle, it should be said that the jurists have relied on different arguments such as the authentic hadith of Abi Vallad, madness, low status, lack of deployment of life and comparison with the deceased murderer, among which only one can justify the authentic hadith of 'Abi Vallad as the firm reason for this verdict. Although some of the jurists referring to the word "third" in the aforementioned hadith and considering a context for that term, either in terms of a significant issue (*Qadre Motayaqqan*), or from original relinquishing (*Enserafe Zohuri*), hold that the invalidity of this kind of will is specific to financial affairs, the findings of the research show that in addition to application of the words of many jurists, application of the above-mentioned tradition also confirms the theory of absolute invalidity of will, including financial and non-financial wills, and the same result follows from the application of Article 836 of the Civil Code. Also, on the basis of the same application and contrary to the promise of some jurists, invalidity of the will of a person committing suicide does not depend on the fact that his suicide action has led to his death, but the very attempt of committing suicide would be enough.

Keywords: Suicide, Last Will, Financial Will, Article 836 of Civil Code, Special Jurisdiction.

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