Jurisprudential Investigation of Indebtedness Prohibition and Its Instances

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Abstract

The most considerable religious trainings are about observing ethical norms. These norms have also entered jurisprudential rules in various ways and they have caused overlapping between these two areas of science. One of the most important ethical norms emphasized in holy narratives is the necessity of maintaining self-esteem, some instances of which have been manifested in the form of jurisprudential rule of "unnecessary action to admit indebtedness". Of course, the afore-mentioned rule has rarely been stipulated or studied independently in the area of jurisprudence and has been usually used as a hidden major premise in the arguments. The small number of analytical discussions in this area may be due to the same reason. The present research, while investigating and classifying the rulings in this regard, analyses the jurisprudential nature of "indebtedness" and its relation with the associated jurisprudential rules. It seems that "indebtedness" as an instance of harm to pride can be classified under the no-harm rule. In addition, the prohibition of indebtedness can be considered as an independent principle derived from the ethical norm of "the need to maintain self-esteem".

Keywords: Indebtedness, Harm, Hardness, Ethical Enormity.

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Obligation to Fulfill an Early Commitment in a Hypothetical Violation in the Legal System of Common Law and Imamiyyah Jurisprudence

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Abstract

The obligation to perform a pre-contractual obligation is the place of dispute in legal systems and has not been stipulated in Imamiyyah jurisprudence. By virtue of this right, an obligee who before the due date of a commitment has reached the conclusion reasonably and normally that the obligor will not fulfill his/her contractual obligation at the due time for any reason has the discretion to oblige him to fulfill his/her obligation before the due date. This research, using a comparative approach, examines the legal bases for resorting to this executive guarantee through a descriptive-analytical method in the common law legal system. While providing the proposed legal principles of law by resorting to the existence premise and resulted rules and issues including rational promise, subordinate promise, and deprivation promise it can be proved that there is a real violation of the theory of mandatory implementation of early commitment in hypothetical violation in Shi'ite jurisprudence in order that the basis of this executive guarantee is identified, established and strengthened in the Iranian positive law.

Keywords: Obligatory Implementation of Obligation, Hypothetical Violation, Actual Violation, Deprivation Premise.

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The Domain of Responsibility of People in the Spread of Crime Assumption

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Abstract

The «spread of crime» is a common phenomenon on the issue of crimes related to human organs. Sometimes the crime related to an organ due to «spread of the crime» causes the deterioration of «another organ» or «deterioration of benefit of another organ», and even causes killing of a person, and finally murder of the victim of an offence. The issue of the spread of crime is the subject of jurisprudential scholarship and legal research from various aspects. The subject of this article is the explanation of the "domain of responsibility of individuals" with the assumption of the occurrence of the spread of crime and determination of the responsible person based on jurisprudential and *ijtihadi* criteria. The best summary of the writer's opinion is that the criminal is not always responsible for such a crime, rather the responsibility may cause the spread of the crime due to an act, abandoning an act, and particular condition as well as due to the attribution of the act or its abandonment to either criminal, victim, or a third party.

Keywords: Spread of Crime, Act, Abandoning an Act, Particular Status, Criminal Responsibility.

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Investigation of the Property of Unknown Ownership According to the Conditions of the Present-Day Society

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Abstract

In every age and every society, a new situation is created based on which the jurisprudential ruling of a jurisprudential matter should be studied. This paper examines the jurisprudential ruling of the property of unknown ownership considering the situations at the present time and reaches the following conclusions: A) Based on the ruling of those who consider the property held by state banks as the property of unknown ownership, the people, when interacting with these institutions that naturally despair of finding the owner, must take permission of the religious ruler and have the right to seize the amount that the ruler permits. B) Delivering a property of unknown ownership to the institutions established for the management of such properties, like the lost property section at the holy shrines, is allowed if the person designates that institution as his proxy to announce it or to deliver that property to the institution as an instance of announcement. C) If a person makes an announcement on mass media in a way that is regarded sufficient by the wise it is allowed.

Keywords: Property of Unknown Ownership, Charity, Check up, Guarantee.

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The Transplantation of the Hereditary Organ and Its Effect on Genealogy Ruling

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Abstract

Removal of the ovary or testicle from the donor of organ and its transplantation into the recipient is one of the newest methods of pregnancy. After transplantation, the egg or sperm released from the ovary or testicle belongs to the recipient, but the ruling of the parentage of such a child from the religious and legal point of view, as well as the effects on this genealogy, is the main question of this study. The study of the arguments and principles suggests that the genealogy of a child born from the transplant of a hereditary organ is transferred to the couples into whom the organ was transplanted, and all legal effects related to genealogy, such as marriage, will, and inheritance, are also transferred to the child born from this method of pregnancy.

Keywords: Hereditary Organ, Legal Genealogy, Organ Transplantation.

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Analysis and Evaluation of Jurisprudential Views on the Amount of the Blood Money of the Eyelids, with an Emphasis on Article 590 of Islamic Penal Code

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Abstract

There has been serious dispute among the Imamite jurisprudents regarding the amount of the blood money of the eyelids (*diya al-ajfan*). The famous jurisprudents, differentiating between the total and solitary destruction, hold that in the former case, the complete amount of blood money is fixed and in the later case, for the upper eyelid it is one-third of the blood money of the eye and for the lower eyelid it is half amount of the blood money of the same eye. This view is based on the claim of consensus and the report of "Zarif ibn Naseh" is another evidence to support this opinion. The Islamic Penal Code also follows the famous theory in this regard in the Article 590. In contrast to the famous promise, the writers have studied exactly the jurisprudential texts and have reached four different standpoints of other jurisprudents. There are several reasons for the development of such different views, including rejecting the claim of reaching a consensus on the matter, invalidating a number of cited traditions, and the existence of other reports on this assumption that have made most of the jurisprudents to hold other positions. The present article, taking into consideration the importance and the necessity of adaption and adaptation of positive law with religious law, uses a descriptive-analytical method and having a problem-based view, analyses the present views on the matter and cast doubts on evidences in other opinions. It finally adopts the view that the amount of blood money in both solitary and total destruction of eyelids is five-sixth of the [complete] blood money.

Keywords: Eyelids Blood Money, Total Destruction, Solitary Destruction, Upper Lids, Lower Lids, Tradition from Zarif ibn Naseh.

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Pondering upon the Background and Legitimacy of Consensus in the Sunni Point of View

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Abstract

Consensus is one of the important jurisprudence resources of the Sunni which is invented by them and added to other jurisprudential resources of Sunni denominations; however, the definition presented by Sunni scholars is not accepted by Shi'ite jurisprudents. Sunni scholars have tried their best to bring the precedence of consensus to the time of Companions and hereby to raise its validation in addition to presenting reasoning to legitimate consensus. This research uses a descriptive-analytical method and aims at reviewing the background and legitimacy of the consensus in Sunni scholars' point of view. It has criticized both claims and finally refused them.

Keywords: Consensus, Judgment, Companions, Legitimacy, Background, Sunni.

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The Evolutionary and Developmental Process of the Conduct of the Wise to the Shi'a Scholars of the Principles of Jurisprudence

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Abstract

The conduct of the wise in deducing the rules is one of the most important issues of the modern time because it plays a great role both in responding to the increasing needs of the societies and the adaptation of jurisprudence to the new social life. Therefore, this study aimed to investigate the evolutionary process of the conduct of the wise to the Shi'a scholars of the principles of jurisprudence and the amount of referring to the conduct of the wise from the early to the contemporary scholars of the principles of jurisprudence. The results showed that the Shi'a scholars of the principles of jurisprudence specifically the later ones have relied on the conduct of the wise on most of the principles of jurisprudence and sometimes have regarded it as the only evidence or the best evidence.

Keywords: Conduct of the Wise, the Practice of the Wise, the Principles of Jurisprudence.

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