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Jurisprudential Study of the Clause of Possibility of Effect in Enjoining Goodness and Forbidding from the Time and Affecting Zone

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(Date of Receipt: 22 April 2014; Date of Acceptance: 20 July 2014)

Abstract:

Enjoining Goodness and forbidding evil is bound to some clauses from which we can refer to the possibility of the effect. The writers of this article seek to answer this question whether enjoining people to the goodness and preventing them from the evil while there is no hope of effect is religiously obligatory or not. Most jurists believe that in such case, enjoining goodness and preventing evil shall not be obligatory. Criticizing the evidences of the jurists, we prove the clause of the possibility of effect using the four types of religious evidence, from the time perspective, whether at present or future and also the affecting zone including the addressee and others. In other words, we shall substantiate that the possibility of effect clause shall be, regarding the both aforesaid dimensions, universal.

Keywords:

Affecting Zone, Enjoining Goodness and Forbidding Evil, Possibility of Effect, Time, Universal.

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Legitimacy of Sex Selection through Pre-Implantation Genetics Diagnosis (PGD)

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Abstract:

Pre-Implantation Genetic Diagnosis (PGD) is the combination of Prenatal Diagnosis (PND) and In Vitro Fertilization (IVF). In this method, the diagnosis of genetic diseases in human embryo, before implantation, gives parents the chance to start a pregnancy, being assured of having a healthy baby without any genetic abnormalities. Gender selection of children is one of the important functions of PGD. The purpose of this process is the prevention of diseases related to sex and selecting gender according to parents' interest. The aim of this study is to prove legitimacy of sex selection in these two cases based on the jurisprudential rules such as principle of hardship (Usr), the principle of no harm (La Zarar) and the principle of Isalah al-Bara'a. So far in our country in relation to sex determination no law is established. However, according to some questions (Istefta) from some scholars, they permit such action if there is no harm to the community and individuals.

Keywords:

Creation, Determination, Diagnosis, Diseases, Ebahe, Genetic, Pre-Implantation, Sex.

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Legal and Jurisprudential Foundations of Collection of Causation in Social Responsibility

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Abstract:

When in a special event there is a dominant cause, that very cause is considered as guarantor or Zamin. When various factors contribute to an event identically and at the same level, the case of common causes show up and they all share the guarantee. However, if multiple causes contribute to an event and their effect is in sequential order, there would be the issue of collection of causes in which there are different opinions about the responsible and guarantor cause. In this paper, the existing opinions, with their strengths and weaknesses are analyzed.

Keywords:

Causality, Causes, Collection, Guarantee, Responsibility, Social.

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The Ways to Take Advantage of Justice in Jurisprudence and Ijtihad

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Abstract:

One of the crucial questions in the present century is the effect of justice on jurisprudence. Although Imamiyeh from long time ago, both theoretically and fundamentally has emphasized on the fact that God is just and his rulings are based on the *Masalih* and *Mafasid*. Emphasis of Imamieh on the *Husn* of justice and *Ghubh* of injustice gave it the name '*Adliah*' though it has less paid attention to the impact of justice in *Ijtihad* and *Figaha*. Most attention to the aforementioned issue has been paid in the last few decades and by just a few jurists. In this paper we have tried to collect many ways by which justice can be used in jurisprudence. It is more difficult when we have tried to provide examples of former jurisprudential approaches. The methods about which we talk in this article are the effect of justice in issuance of Hadith, influence of justice in recognition of the issuance of traditions for expressing religious or *Valaie* rulings and the like, the use of justice in understanding the generality and non-generality of rulings, the justice's influence on the creation or elimination of ambiguity in rulings, the role of justice in allocation of a ruling to a specific time or place, the use of justice in understanding of compulsion or non-compulsion, and the use of justice in place of conflicts between rulings.

Keywords:

Effectiveness, Justice, Jurisprudence, Religion.

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Jurisprudential Foundations of the Dowry Assessment on the Basis of Real-time Rates

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Abstract:

Assessment of the dowry on the basis of real-time rates is an issue that did not exist before. The emergence of money and the decrease in its value caused the consideration of a compensation method in order to keep the value of money in *Doyun* like Dowry (*Mahr*). In this regard, there was a waiver to article 1082 in 1376 based on which monetary dowry must be assessed according to the rates. Although some jurists do not allow dowry assessment, some have permitted it, and some others believe in a compromise between the two sides. The current article, using analytic methods and authentic jurisprudential sources proves the legitimacy of dowry assessment. In this research, subjective exclusion of *Reba*, *Orf*, *Vafa bi al-Ahd* as *Madloul Illizami* of dowry, the principle of hand (*Ziman Yad*), principle of *Lazarar* and the necessity of observation of justice, as foundations of dowry assessment, are investigated and its legitimacy and necessity is proved.

Keywords:

Compensation, Currency, Dowry Assessment, Real-Time Rate, Value, Reduction.

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Truth and Legitimacy of Life Insurance from the Viewpoints of Contemporary Islamic Jurists and Lawyers

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Abstract:

Nowadays, life insurances are one of the most effective and applied risk management tools in the economic and social realm. With the help of these kinds of insurances and by economizing the costs and monthly savings, individuals are able to pay the costs of education of the children, marriage, buying a home and so on. However, the legal and jurisprudential questions and doubts on this matter has caused the insurance not to be able to reach its outstanding and real position in Islamic countries. Seemingly, contemporary Islamic lawyers and jurists have various views about the truth and legitimacy of insurance. Some of them regard it unlawful and an instance of *Rabawi*, *Gharari*, *Safahi*, *Ghomari*, *Amani* deal, *Tahadi ma' al-Ghadha' and al-Ghadar*, *Akl al-Mal bi al-Batil*. Some others confirm the life insurance license in the form of a deal based on contracts such as *Sulh*, *Ta'avon*, *Dhaman*, *Wadi'a*, *Mudharaba* and adhering to the general religious evidences, agreement with rationality, principle of freedom of contracts believe in legitimacy of all kinds of life insurances. This paper, based on the jurisprudential foundations of Imamieh jurisprudence and Iran's law and looking at the jurisprudence of other Islamic sect e.g. Shafei, Hanafi, Hanbali, and Maliki tries to describe the theories of contemporary Islamic jurists and jurists.

Keywords:

Insurance, Legitimacy, Legal Nature, Commitment, Third Person, Imamieh, Jurisprudence.

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Liability for Breach of the Contract of Muzara'ah

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(Date of Receipt: 6 January 2014; Date of Acceptance: 25 July 2014)

Abstract:

There is disagreement as to the acceptance or rejection of contractual liability in Islamic jurisprudence. Like many other topics, there could not be found a distinct discussion regarding the question at hand in Islamic jurisprudence, and materials must be attracted from here and there. This article deals with a case study of this topic in the contract of *muzara'ah* (agricultural partnership). Thus, after a survey on the nature of this contract, it goes on studying the breach of contract by cultivator and agent separately. From this study, it could be concluded that, as against the famous view, acceptance of damages for breach of contract is favored by some *Imamiah* jurists and could be supported.

Keywords:

Contract, Imamiah, Jurisprudence, Liability, Muzara'ah, Tort.

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The Explanation of Falsafa Al-Ahkam in the Fadakieh Speech

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Abstract:

Fadakieh Speech of Hazrat Zahra, just like Nahj al-Balaghah of Imam Ali (PBUT), is on the artistic peak and is one of the great blessings of God to the human being. Composed expressively, one of the important sections of this speech is the explanation of the *Falsafa al-Ahkam*. Rulings such as: *Iman* or belief with the *Falsafah* or reason of purity from polytheism, prayer for being separated from arrogance, *Zakat* for increase in *Rizq*, fasting for Ikhlas or sincerity, Haj for support of the religion, justice for peace, Imamah for prevention from division, Jihad for glory of Islam, patience for demanding compassion, enjoining good for the advantage of all, treating parents with kindness for protection from God's outrage, keeping relatives for the generation growth, Qisas for protecting blood, loyalty to one's covenant for compassion, weighting for fairness, Qazf and God's curse, robbery and virtue of mankind, justice in verdict and the relation between unlawfulness of polytheism and sincerity to God.

This paper, explaining the aforementioned rulings and their reason which is extracted from Fadakieh speech, tries to explain the last section of this speech which refers to inviting to piety toward God.

Keywords:

fadak, falsafa of ahkam, reason, religion, prayer, zakat, fasting, haj.

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