

Non-Conformity of Truth to Offender's Belief as to Self- Defence

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Abstract

The thought of the offender about circumstances of self-defence does not always conform to the truth. The so-called non-conformity could be conceived in two different conditions which include, on the one hand, mistake as to existence of circumstances of self-defence and on the other hand, ignorance about them. To find the legal rule of these two conditions, it is to search for the thesis which is the ground on which every individual legal system views the general structure of self-defence. This thesis could be either a pure subjective, a pure objective or a mixed one, according to be focused on the necessity of either offender's belief or knowledge as to circumstances of self-defence or their occurrence in reality. Accordingly, the approaches towards the current issue would be structured as pure subjective, pure objective or mixed approaches. This article is to consider the approach of few legal systems as to these dual conditions through a comparative outlook.

Keywords

Mistake as to Circumstances of self-defence, Objective Circumstances, Objective Thesis, Offender's Ignorance as to Circumstances of self-defence, Reasonable Belief, Subjective Thesis

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Extralegal and Specific Legal Factors to the Different Sentences on Judicial Punishment in Similar Crimes

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Abstract

In this paper, the factors influencing the to the different sentences of the judges in similar crimes with emphasis on intentional crimes, Robberies and Intentional Assaults is considered. Two special legal and extralegal factors leading to the issuance of different sentences divided by the maximum penalties and specific legal factors concerning the crimes of Robberies and Intentional Assault. The questionnaire consisted of 30 questions with a range of important five-option Likert design and Comments judges of the court of first instance (Magistrates) and Court of Appeals of the Mashhad city jurisdiction is collected. 0.922 Cronbach's alpha coefficient, indicating the reliability of the questionnaire. To study the difference in sentences, the variance of the sample and to test the generalizability of the results of statistical analysis of Leuven, and the t test for evaluating the effectiveness of the registration agents and the Friedman test was used to rank the factors mentioned above. The results showed that the influences of extralegal factors in different sentencing issued by judges in similar crimes are more than the specific legal factors. Theft of "being armed robbers," most affected and "Wallet theft" has minimal effect .On the maximum penalty. " Use guns , Knife and etc," has the most influence in determining the maximum punishment of Intentional Assault. Extralegal factor "plan prior to the offense" has a significant effect on the maximum penalty by the judges

Keyword

Factors Specific legal, Extralegal Factors, Maximum Penalty, Different Sentencing of the judges in Determining Punishment.

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Public Implementation of Punishment; Justifications and fallouts

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Abstract

One of the important and challenging issues in the criminal law is the manner of punishments implementation. Deterrence as one of the main objectives of the criminal sanctions enforcement has prompted some criminal law operators to pursue this goal through the public execution of punishments. In the Islamic penal jurisprudence and consequently in the Iranian legal system, there is such a tendency. To jurisprudential justify of this tendency, the Qur'an and Sunnah is referred. It seems that Quran and hadiths, implying no obligation or recommendation to public invitation to watch the suffering inflicted punishment to the convicts. The purpose of what some of the Quranic verses on the presence of several people when implementation of Hudood (Islamic Prescribed Punishment), emphasizing the certainty enforcement of punishments, after proofing. The Hadiths about positive effect of execution of Hudood don't indicate directly or indirectly, the public implementation of Hudood, that's to say invitation of people to watch that openly. The public execution of penalties in contemporary methods may be in conflict with the primary and religious principle of unpublic execution of punishment and with important rules such as protection of people's honor; prohibition of double pain, prohibition of making religion-hate and prohibition of weakening of religion. On the other hand studies in some countries on the death penalty and how to execute it - as the most severe punishment that can be done in public, has not proved its deterrence and usefulness. On the one hand it seems that the lack of a correct conception of deterrent policies and on the other hand retribution, penal Instrumentalism and populism lead enforcement of criminal justice to public implementation of punishments in line with organizational and institutional goals.

Key words

Public Implementation of Punishment, Deterrence, Penal Instrumentalism, Penal Populism, Prohibition of Making Religion-Hate

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Thematic Elements of Money Laundering in Iran's Anti-Money Laundering Laws and International Conventions

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Abstract

Fighting crime of money laundering as a crime against economic security, has been attempted in many countries. Iranian lawmakers ratified the International Convention of Vienna 1998; Palermo in 2000, and Mérida in 2003 and the need for society to combat money laundering law passed in 1386. But due to lack of expertise in its development, with many of the issues of crime money laundering punishable practical manner so that it does not collide with each other at first, most instances of behavior and evidence of overlapping and committed other criminal laws are in conflict with the Second and Third Money Laundering and what are the same, has been seen as sentence for money laundering. Laundering of proceeds from criminal offenses, contrary to the aforementioned convention theme is encapsulated in the concept of property loss and to determine Hills no criteria specified. Mental element of money laundering with the apparent intention Restitution of property that is a legal concept has been introduced to the wrong kind of punishment.

Keywords

Security Economic, Money Laundering, Economic Crimes, Subjective Elements of Crime, International Conventions Anti-Money Laundering

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Penal Nature of Terrorist Financing

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Abstract

The fight against terrorism is one of the main concerns of the international community. The different approaches to political, military and legal in this regard will be designed and implemented. One of the ways many have noted that the international instruments; combating the financing of terrorism. In the majority of these international instruments as discussed with money laundering takes place, because experts believe there are many similarities between the two. This approach until major financial resources through the financial support of the rich and the government was providing was efficient But today's developments in terrorist groups can not be measures taken to fight money laundering and terrorist financing Terrorist groups today gain its financial resources from land occupied and organized crime. In other words, we can say that today the world is faced with economic terrorism. Accordingly, for designed Efficient system for fight against terrorism financing, must be in addition to money laundering measures recommended in the documents relating to organized crime, as well as our attention. Unfortunately, in our country so far have not criminalize the financing of terrorism in an independent manner and that the bill under consideration in parliament and the Guardian Council set with the approach of the alliance between money laundering and financing of terrorism. This article In addition to an analysis of changing patterns of terrorist financing efficient policy in this area will also be examined.

Keywords

Financing of Terrorism, Money Laundering, Organized Crime, Terrorism

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The Situation of Reflexive Participatory Criminal Policy in Penal Prosecution Process in Iranian Law

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Abstract

The Participatory Criminal Policy which shows role and situation of people and social and non-state organizations in penal prosecution divides in two types: Active (pragmatic or precautionary) and Reflexive (responder or passive). The main goal of The Active or primitive Participatory Criminal Policy is to prevent committing of crime or decreasing it through upbringing the social behaviors which is called social prevention and shows people's role in decreasing of crime. The goal of Reflexive or second Participatory Criminal Policy is participation of people and social and non-state organizations in penal prosecution after the commitment of crime. In this view, the penal justice institution is no longer just a replier reference for resolution of discrepancy, but also it will be used the people and social organizations capacity in this matter. With people's participation in criminal prosecution process we will see respectability of the people's volition which results enhancement of public trust to the penal justice institution and decreasing of crime. In this article, the main goal is to study the role of people and social and non-state organizations in penal prosecution which will be in three sections: beginning the penal prosecution, resolution of discrepancy and implement of penal contracts based on the new Criminal Procedure Code approved on February 23rd of 2014.

Keywords

Public Prosecutor, Substitutes of Penal Prosecution, People's Participation, Penal Intercession, Social Prevention, Criminal Procedure Code.

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Adjournment of the issuing of judgment: delaying in justice or changing in justice

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Abstract

One of the sentencing institutes that is somehow as same as probation and impunity is Adjournment of the issuing of judgment. When guilty is proved, a judge can issue this order and avoid determining sentence. So, punishment is not applied like probation but it differs from probation because sentence is determined. Therefore, the adjournment of the issuing of judgment is something between probation and impunity: delaying in justice or changing in justice. We say Delay, because it is not compatible with this traditional rule that if the guilty is proved, punishment must be applied. Since punishment is not applied in adjournment of the issuing of judgment, its usefulness is doubt in Iran. In contrast, it must be said that adjournment changes the justice, because adjournment is a new justice institute. This finally results in judgment. This judgment is one of these two: if a person under adjournment obeys the order of court, he will be finally released and if not he will be sentenced. Since the remedies must be paid to victim and the high cost of punishment specially prison is lost here, this situation can be useful for both victim and society.

Key words

Sentencing, Adjournment of the issuing of judgment, impunity

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War Crimes against Cultural Heritage in Syria's Armed Conflict

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Abstract

Destruction of historical buildings and sites, using archaeological site for military purposes and smuggling historical and antiquity objects are some of the war crimes committed in large scale and in a targeted, planned and systematic way against Syrian cultural heritage by Islamic State of Iraq and Syria. Lack of appropriate internal laws and regulations, failure of judicial, political and cultural organs of Syria, being not member to most of the international treaties governing cultural heritage, unwillingness and inability of security council for adopting appropriate measures such as military intervention or referral of Syria situation to international criminal court and non-compliance in the side of armed non-state groups of the rules and principles of international humanitarian law has brought a dangerous situation for Syrian cultural heritage which are part of the common heritage of mankind. War crimes against such heritage is a threat to international peace and security. Hence, the international community shall use all of its legal and political capacities for prosecution and trial of persons who committed those crimes.

Keywords

Cultural Heritage, Syria, Armed Conflict, Islamic State of Iraq and Syria, Common Heritage of Mankind.

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