

Reinvestigating the effect of act of God on condition of farming after expiry of farmletting contract

Seyyed Mohammad Sadeq Tabatabaei^{*}, *Seyyed Hossein As'adi*²

1. Associate Professor, Department of Law, University of Isfahan, Iran

2. Ph.D. Student in Private Law, University of Tehran, Iran

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Abstract

Sometimes in spite of the expiry of farmletting period, because of inevitable accidents, the crop is immature and the harvesting is impossible. In this situation the rights of doer interfere with farmlessor rights. In Islamic legal texts the basic disagreement arises as to uprooting and retention of the crop. While majority of jurists believe that farmlessor is dominant over free uprooting, others refuse this authority and another group of them believe in reciprocal retention in order to aggregate between the rights of farmlessor and doer. The last view is accepted by some of the codes of other countries such as Egypt. The article 540 of the Iranian law is definite in this regard. Nevertheless, some of the jurists believe that the logical interpretation of this article requires that the uprooting is determined as the civil penalty for the dereliction of the farmhand, but this interpretation disagrees with absolute legal authority of the owner to exercise dominion or control over property. Moreover, regarding the jurisprudential history of discussion and attention to term "perchance" in words of legislature, this interpretation is unjustified versus historical interpretation. On the other hand, by analogy of farmletting contract with rent, others believe that there is conflict between the above article and article 504. Nevertheless, we should forget the hallucination of conflict, because not only the imagination of creation of two conflicting propositions in a single body of law is illogical but also the subject of the two articles is different with each other. Furthermore, farmletting, unlike rent, is a participatory contract and the right of farmlessor to uprooting is only limited if there is a clause about retention of crop for a determined duration or if it is an accepted usage and custom.

Keywords: act of God, crop uprooting, farmletting contract, "La Zerar" rule, similar wage.

*. **Corresponding Author:** tabatabaei@ase.ui.ac.ir

Reinvestigating the legal documents about reluctance to commit the murder

*Sa'id Ebrahimi**

Assistant Professor, University of Mazandaran, Iran

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Abstract

According to the popular jurisprudential theory, reluctance to murder does not justify murder; rather the actor is sentenced to retaliation and the person who use force against another to do or not to do the murder is sentenced to life imprisonment. Based on the theory the legislator enacted regulations on reluctance to murder in Islamic criminal law approved in 1370 and 1392. The theory is based on some reasons such as the traditions about impermissibility of reservation in bloods, tradition about order of killing another person, the reason for impermissibility of preventing loss of oneself in expense for causing harm to another, the tradition of "raf" being a mercy, and consensus of jurists. In contrast to the famous view, there are also unpopular views that do not have the unity of bases. Reviewing the popular jurisprudential theory and unpopular views the author of this article analyzes relevant documentation. Finally, casting doubt on the popular view and focusing on customary arbitration, the view of priority of cause to the actor and consequently the necessity of retaliation of the cause and removing responsibility from the actor is accepted.

Keywords: murder, permanent Imprisonment, reluctance, responsibility, retaliation.

*. s.ebrahimi@umz.ac.ir

Jurisprudential and legal study of benefiting in the realm of communicative data

Hossein Javar^{1}, Alimorad Heydari²*

1. Assistant Professor, College of Farabi, University of Tehran, Iran

2. Assistant Professor, Hazrate Ma'sumeh University, Iran

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Abstract

Personal data of individuals, especially in the domain of communications, might be collected and processed by commercial companies and converted to commercial profiles and supplied to customers based on the needs of consumer market. Regardless of the issues pertaining to the ownership of personal data, an important question is raised as to whether using communicative data of individuals carry any responsibility. The responsibility for the collection, processing and sale of personal data by commercial companies and other people might be considerable from different aspects. Various instruments could be employed to protect the owner of the data. It seems that benefiting, along with some other factors, could be noted as a cause of liability for violating the rights of the owner of the communicative data. Liability for benefiting from individuals' communicative data and its conditions constitutes the topic of the present text.

Keywords: benefiting, communication, data, information, liability.

*. Corresponding Author: hjavar@ut.ac.ir

Limiting reproduction, conflict of interests and jurisprudential principles of the Islamic government's intervention

Sa'id Rahaei¹, Nasrin Sanjabi^{2}, Majid Rezaei³, Mansoor Moradi⁴*

1. Assistant Professor, Mofid University of Qom, Iran

2. Lecturer, Department of Theology, Payam Noor University, and Ph.D Student of Mofid University of Qom, Iran

3. M.A. in Ethics, Payam Noor University, Iran

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Abstract

The matter of permissibility or impermissibility of the government's intervention in population control had always some pros and cons among the jurists. According to the view of Imamiyyah jurists pertaining to the matter of limits, responsibilities, and authorities of the Islamic government, the ruler can, based on accepting the principle of Velayat-e Faqih and his involvement in the social and political affairs, set some binding or preventive regulations in the scope of lawful matters and identify the cases interfere with social affairs according to the situation of the society. In the event of conflict, partial and accidental concomitance may be examined based on their priority, however, there is no reason to claim permanent concomitance between population growth and crisis. This topic is highlighted when examined in the macro level; i.e., making population policies by Muslim government. Taking a descriptive-analytical method of study based on religious teachings and the jurist's opinions the present paper aims to note the different aspects of responsibility and involvement of the Islamic government to control and regulate population, and to analyze the jurisprudential principles of the responsibility. This study tries to indicate the principles and the limits of the government's involvement based on different bases.

Keywords: conflict of interests, government authorities, government responsibility, jurisprudence, privacy, reproduction control.

*. Corresponding Author: nasrinsanjabi@yahoo.com

Contemplation on the famous jurisprudential perspective in the scope of and the requirement for endowment for descendants and relatives of benefactor

Morteza Tabibi Jebelli¹, Ehsan Aliakbari Baboukani^{2}, Daryoush Keyvani Hafshejani³*

1. Assistant Professor, Department of Law, University of Isfahan, Iran
2. Assistant Professor, Department of Woman's Studies, University of Isfahan, Iran
3. M.A. Student of Private Law, University of Isfahan, Iran

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Abstract

The authors of this paper try to study and to propose the right views of Imamiyyah jurists about the scope of and the requirement for endowment for descendants and relatives of benefactor. The Famous Imamiyyah jurists maintain that in the case where the Islamic formula for endowment has been applied generally by the benefactor without clarifying its instances, granddaughters virtually are among the beneficiaries of the endowment. In the case of endowment for relatives granddaughters are not among beneficiaries, as they are not descended from the benefactor (grandfather from their mother side). After analyzing jurisprudential documentations of the famous jurists, the authors of the article believe that in such cases of endowment granddaughters are in fact among beneficiaries of the endowment as in the case of endowment for relatives.

Keywords: beneficiaries of the endowment, endowment for grandchildren, granddaughters.

*. **Corresponding Author:** 22aliakbari@gmail.com

Advanced sale

Mohammad Ebrahim Davoudabadi Farahani^{1}, Mahmoud Qayoumzadeh²*

1. Ph.D Student of Private Law, Azad University of Saveh, Iran

2. Associate Professor of Civil Law, Azad University of Saveh, Iran

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Abstract

Advanced sale is the selling of any property (general or specified property) which will be procured, produced, made, or delivered in a specified time in the future. What puts the validity of this view into question is invalidity kali-for-kali sale and deyn-for-deyn sale also occurrence of fraud in specified contracts. But the study of different views of jurists shows that kali-for-kali sale is not invalid, and deyn-for-deyn sale has a special definition and a narrow interpretation that does not interfere with the validity of such sale. The arbitrariness of ownership and the possibility of the arbitrariness of its subject and also the possibility of common delivery and detailed specification of the property that removes any ignorance to the property remove any possibility of fraud in advanced sale of a specified property. It is because of the fact that when there was the possibility of such a sale in the primitive societies, now with the possibility of common delivery of the property and giving the detailed specifications of the property, a fortiori the custom of the wise would accept such sale if it meets other general requirements. What is known as advanced sale in Western law and especially in English law is in fact making agreement on sale of property but not advanced sale, because no agreement is made on the transfer of the possession of the advanced property for the time being.

Keywords: advanced sale, customized sale, general sale, sale.

*. Corresponding Author: amooz80@yahoo.com

Jurisprudential reflection on "Justice and Equity" doctrine

*Saleh Montazeri¹, Mohammad Mahdi Zare'i², Mohammad Mohseni
Dehkalani^{3*}*

1. Ph.D Student of Jurisprudence and Principles of Islamic Law, University of Mazandaran, Iran
2. Assistant Professor, Department of Jurisprudence and Principles of Islamic Law, University of Mazandaran, Iran
3. Associate Professor, Department of Jurisprudence and Principles of Islamic Law, University of Mazandaran, Iran

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Abstract

The Jurisprudents have indicated to a jurisprudential rule called "Justice and Equity" for division of property or right. According to this rule, the jurisprudents say "If a property or right is uncertain between two people or more and none of them has any proof to present or the evidences are controversial and there is no indication for giving the property or right to a certain person, it will be equally divided among them in accordance with the Justice and Equity rule. Studying the documents of the aforesaid rule and considering carefully the contents and purports thereof, the authors of this article believe that "Justice and Equity" as a jurisprudential rule and a canonical evidence for giving fatwa has no justification and there is no evidence to support it. This article has been written in line with the aforesaid subject and aims at defending the writer's opinion.

Keywords: analysis, doctrine, equity, jurisprudential rules, justice.

*. **Corresponding Author:** mmdehkalany@yahoo.com

The necessity for differentiating the applications of the word “Jurisprudence” to explain the relation between “Jurisprudence” and “Ethics”

Seyyed Mohammad Reza Rokni Dezfouli^{1}, Mohammad Hedayati²*

1. M.A. in Ethics, Imam Khomeini Educational Research Institute, Iran

2. Associate Professor, Department of Ethics, Ma’aref University, Qom, Iran

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Abstract

Jurisprudence and ethics have their own responsibilities of human perfection. These two areas of science have similarities and differences. Although many judgments have been made about the relationship among “jurisprudence”, “ethics” and “mysticism” yet, it is hard to achieve a united result, as the judgment of any of the researchers is based on their perception of the meaning of “Jurisprudence” and “ethics”. Therefore, understanding the relations, similarities and differences of jurisprudence and ethics requires determining the different aspects of these two areas of knowledge. This study aims to explain the necessity to separate the different meanings of “jurisprudence” in different applications and meanwhile to reveal the homonymy and the different applications of the word “jurisprudence” and finally to discuss the relations among different meanings and the relation between “jurisprudence” and “ethics” and to make a comparison of their role in human perfection.

Keywords: applications of jurisprudence, ethics, jurisprudence, relation between jurisprudence and ethics, relation of sciences.

*. Corresponding Author: smrezard_law@yahoo.com