Provision of Taking Higher Profits without a Consideration in the Partnership Contract

Seyyed Salman Mortazavi[1], Mostafa Mas'oudian[2]*

1. Ph.D in Jurisprudence and Islamic Law, Faculty of Literature and Humanities, Urmiya University, Urmiya, Iran

2. Assistant Professor, Faculty of Humanities, Shahed University, Tehran, Iran

(Received: March 13, 2017; Accepted: June 19, 2019)

Abstract

In the contract of partnership in the Imamiyyah jurisprudence, the profits from the partnership are divided in proportion to the share of each partner in the company's assets. However, this article studies the possibility that one of the partners takes more profits than its share ratio without any consideration for that. In addition to the importance of this matter in the quality of dividing profits in the partnership contract, the lawfulness or unlawfulness of the condition of taking higher profits without a consideration is very important in the mechanism of distribution of profits among its agents in the economic system as well as the nature of the wage of the worker in the labor law. This article aims to present a view about the possibility of making a condition to take a profit higher than the proportion of the individual's share of the company's shares based on the principles of Imamiyyah religion. The scope of the research, is a brief study of the abovementioned condition in the civil code and the views of the jurisprudents, and its detailed study in the opinions of the jurisprudents. This study presents a view based on the validity of the above condition in Imamiyyah jurisprudence. The result of the study can be used for presenting a criterion for dividing the profits and losses in the partnership contract, elaborating on the mechanism of distribution of profits among its production agents and the nature of the wages of the worker in the Imamiyyah jurisprudence.

Keywords

Profit, Profit without a Consideration, Partnership Contract, Imamiyyah Jurisprudence.

* **Corresponding Author, Email:** Slman.Mortazavi@gmail.com

Analysis of the Indication of the Rule "Opposing the Sunnite Consensus" in Shi'ite Jurisprudence and Principles

Mohsen Taslikh[1], Abolfazl Alishahi Qal'ehjouqi[2], Bibi Zeinab Hosseini[3], Abdollah Bahmanpouri[4]*

1. Ph.D Graduate, Faculty of Humanities, Yasouj University, Yasouj, Iran
2. Associate Professor, Farhangian University, Mashhad, Iran
3. Assistant Professor, Farhangian University, Mashhad, Iran
4. Assistant Professor, Faculty of Humanities, Yasouj University, Iran

(Received: December 16, 201; Accepted: May 15, 2019)

Abstract

Conflict of evidence is a challenge against the religious traditions and proofs, the way out of which is to express and utilize the preponderators quoted by the Infallible Imams (peace be upon them) in the language of Islamic traditions. One of these preponderators is opposing the Sunnite Consensus, following which jurisprudents prefer the opposing tradition to the supporting evidence. There are a lot of functions for this preference in the Islamic jurisprudence and principles. However, it has rarely been dealt with such issues as the meaning of the term opposing the Sunnite in the traditions, the domain of the usage of the rule, the channel of the rule, its difference with dissimulation, the criterion for the opposition to the Sunnite, reasons for its preference, and the relevance or appropriateness of the rule. This research, analyzing the indication of the aforesaid rule, tries to find the answers to the questions posed, and to scrutinize some of the wrong analyses and misunderstandings of the rule "Opposing the Sunnite Consensus".

Keywords

Opposing the Sunnite, Principles, Dissimulation, Agreement with the Sunnite Consensus, Conflict.

* **Corresponding Author, Email:** alishahi88@gmail.com

A Review of the Meaning of *Imtinan* and Its Comparison with Similar Words

Behrouz Majdkhani[1], *Mohammd Taqi Fakhla'i*[2*], *Abbas 'Ali Soltani*[3]

1. Ph.D Graduate, Faculty of Theology, Ferdowsi University of Mashhad, Mashhad, Iran

2. Full Professor, Faculty of Theology, Ferdowsi University of Mashhad, Mashhad, Iran

3. Associate Professor, Faculty of Theology, Ferdowsi University of Mashhad, Mashhad, Iran

(Received: May 26, 2018; Accepted: December 4, 2018)

Abstract

Despite the fact that the word *imtinan* has been frequently used in *Fiqh*, and the fundamental rules and principles of *Fiqh*, its concept has not been deeply analyzed yet. Paying attention to the words of jurisprudents it is made clear that *imtinan* is a special kind of divine blessing which belongs to some divine rules according to which a legal rule has been easily fabricated or a legally competent person has been get rid of a the responsibility of a strict rule. Comparing the concept of *imtinan* in *Figh* with other Islamic words such as *minnah*, grace, favor, and mercy shows that in spite of the similarity of *imtinan* with these words, it has clearly a different meaning. Meanwhile, the legal texts use other words such as leniency, simplification, and abatement instead of *imtenan* in the same meaning.

Keywords

Imtinan, *Minnah*, Grace, Leniency, Legal Rule.

* **Corresponding Author, Email:** fakhlaei@um.ac.ir

The Role of Time and Place in Changing a Ruling (*Fatwa*) with a Review on the Ruling of Cutting a Young Boy's Hand

Fatemeh Ahmadi Qaragozlou[1], *Seyyed Abolfazl Mousavian*[2*], *Hossien Ja'fari Farani*[2]

1. Ph.D Student, Jurisprudence and Principles of Islamic Law, Mofid University, Qom, Iran

2. Assistant Professor, Mofid University, Qom, Iran

(Received: August 11, 2018; Accepted: December 23, 2018)

Abstract

Some of the jurisprudential rules have undertaken some changes over the time. Naturally different causes and factors have played role in the process. This article is seeking to define the roles played by time, place, and other influential factors and having presented an example of jurisprusential issues about "cutting the young boy's hand" it discusses the influential factors. First, it deals with the importance of analyzing this matter. Next, it examines the ruling of cutting the young boy's hand as an example in three parts. Primarily, it examines the reliable traditions about cutting the young boy's hand when he commits stealing. Next, the different periods of jurisprudence are reviewed. It then examines the jurisprudents' standing against such traditions and the rulings issued by them regarding this matter, including both the cons and pros of cutting the hand. Next, it makes a reference to the arguments of the opponents of this ruling in spite of the reliable evidences existed regarding this matter. Finally, it focuses on the role played by time and place, as well as the conduct of the wise, and the reason.

Keywords

Young Boy's Punishment, Cutting the Young Boy's Hand, Role of Time and Place in *Fatwa*, Conduct of the Wise.

* **Corresponding Author, Email:** moosavian34@gmail.com

"Wife Obedience Based on Known Criterion" in the Viewpoint of Imamiyyah Jurisprudence

Bibi Rahimeh Ebrahimi[1], A'zam Amini[2]*

1. Assistant Professor, Jurisprudence and Law, Shahid Motahhari University, Tehran, Iran

2. Assistant Professor, Jurisprudence and Principles of Law, Payame Noor University, Tehran, Iran

(Received: July 24, 2018; Accepted: June 19, 2019)

Abstract

According to the noble verse: "And women have rights similar to their obligations, according to what is fair", the wife has some rights similar to the duties that she has toward her husband. According to the traditional and rational reasons, the jurisprudents brought up different opinions about details of these rights and duties. This paper has collected and criticized their opinions in the scope of duties of wife toward her husband in five points of view under the headings of "obligatory absolute obedience", "obligatory obedience just in cases narrated in the hadiths", "obligatory obedience in the cases of enjoyments and leaving home", "obligatory obedience in enjoyment", and "determining the limits of obedience based on the criterion of incompatibility with the rights of the couples". Next, considering the opinions presented and criticized and by referring to the evidences that have been neglected, it has explained the viewpoint of "obedience based on known criterion". This research has used a descriptive-analytical method of study and a documentary style.

Keywords

Obeying the Husband, Absolute Obedience, Leaving Home, Enjoyment.

* **Corresponding Author, Email:** ebrahimi_40728@yahoo.com

A Review of Shahid Sadr's Views on Bank Usury Based on the Legal Income Theory

Mohammad Taqi Tolami[1*], *Mohammad Javad Heidari Khorasani*[2]

1. Ph.D Student, Jurisprudence and Principles of Law, University of Qom, Qom, Iran

2. Assistant Professor, Faculty of Theology, University of Qom, Qom, Iran

(Received: September 3, 2018; Accepted: November 12, 2019)

Abstract

The theory of legal income was proposed by Shahid Sadr in his book "*Ightisādunā*". According to this theory "doing a work" is the source of earning a legal and legitimate income. Reviewing his views specifically in his book "*Al-Bank Al-la Rabawi*" shows that he has analyzed the issues related to the bank usury based on this theory. This article using a descriptive-analytical method shows that the model of banking without usury has been proposed by Shahid Sadr based on this theory. According to this theory every income earned through the bank must be in exchange for performing an act and superficial changes of the bank contracts and transactions, although they may make an income without usury and illegal profits, since it is not based on doing a work, is illegal and illegitimate. As a result, substituting a loan contract with a contract of sale, *muzāriba*, *ju'ālah*, and things like this, as long as it does not end to a valuable economic act, will not be the license for making income, and taking or paying the profit and the income and the profit from that will be illegal and illegitimate since it is not based on performing an act.

Keywords

Sadr, Legal Income Theory, Usury, Bank.

* **Corresponding Author, Email:** ttolami@gmail.com

An Interpretation of "Financial Affordability" of a Reasonable Woman Focusing on Jurisprudential Principles

Javad Riahi[*]

Assistant Professor, Department of Law, University of Ayatollah Boroujerdi, Boroujerd, Iran

(Received: August 18, 2018; Accepted: June 19, 2019)

Abstract

According to the Islamic Punishment Act, in cases of the crimes of absolute fault, the crimes committed by the minor and insane, the reasonable woman is responsible for paying the blood money of the victim in due situations to his/her avengers of the blood. The reasonable woman is considered responsible under the Articles 469 & 470 of Islamic Punishment Act provided that she can afford to pay the blood money. However, the regulations have very briefly explained that whether it is meant actual affordability by "financial affordability" or else. Considering the fact that the acceptance of each of the interpretations has important effects both on the fate of the parties and the duties and authorities of the courts and the executing authorities, therefore this article using a descriptive-analytical method, has examined this subject and concluded that by "financial affordability" in the Article 469 of Islamic Punishment Act it is only meant actual affordability and therefore it does not contain the gradual payment of blood money. For the same reason, unaffordability under the Article 470 of that Act should also be regarded as unaffordability to pay the debt of record in one payment.

Keywords

Reasonable Woman, Criminal Responsibility, Blood Money, Financial Affordability, Gradual Payment.

* **Email:** Riahi@abru.ac.ir

An Investigation into the Criminal Liability for the Transmission of Contagious Diseases through Organ Transplantation

Younes Mesbah[1], Maryam Aqaei Bejestani[2], Mohammad Rohani Moqaddam[3]*

1. Ph.D Student, Department of Private Law and Criminology, Semnan Branch, Islamic Azad University, Semnan, Iran

2. Associate Professor, Department of Jurisprudence and Principles of Islamic Law, Semnan Branch, Islamic Azad University, Semnan, Iran

3. Assistant Professor, Department of Jurisprudence and Principles of Islamic Law, Semnan Branch, Islamic Azad University, Semnan, Iran

(Received: October 7, 2018; Accepted: June 19, 2019)

Abstract

Criminal liability for the transmission of transmissible diseases in organ transplantations is one of the challenging issues requiring scientific accountability in this regard. Because in the process of organ transplantation and the transmission of contagious diseases we face three pillars of the medical staff, the transmitter, and the transmitted or the victim, we should separately examine the extent of each of the criminal liabilities. There is a controversy over the responsibility of the mentioned bodies in terms of jurisprudence and the law and the procedures of the courts. The jurisprudents hold that the physicians are responsible in all circumstances, but the law and the procedures of the courts do not hold him accountable to the prescribed conditions (observance of technical regulations or taking acquittal) in the law and their observance by the physician. The current jurisprudential and legal views hold that according to the type of disease transmitted and its being fatal or non-sedentary, as well as in the view of the existence of a criminal intention (*mens rea*) of depriving the life of or sustaining a physical harm to the patient, as well as a criminal blame, (recklessness, negligence, etc.) the penalty will be different. In addition, considering the medical requirements before transplantation, the faults of the medical staff should be specifically considered.

Keywords

Criminal Liability, Organ Transplantation, Transmission of Disease, Fault.

* **Corresponding Author, Email:** m.aghaei@semnaniau.ac.ir