

# Jurisprudential Researches



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## **Evidences of theories of validity and nullity of sale in delayed payment of price**

*Heydar Bagheri Asl\**

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(Date of Receipt: 8 March 2014; Date of Acceptance: 30 April 2014)

### **Abstract:**

The option of delayed payment of price is one of the factors of rescission of the types of sale. Although provisions of sale in the case of its delayed payment of price has predicted in 402 to 409 articles of civil law, but there are different inconsistent theories in Islamic law for the validity and Nullity of Sale in delayed payment of price and different evidences justify each theory. Regretfully mentioned the theories have not been studied by researchers, so that it can be seen a scientific gap in this issue. Hence the present paper has studied the theories of validity and nullity of sale in delayed payment of price and their evidences in a descriptive method and it has also shown the conformity and segregation of provisions of civil law with these theories and their evidences and it has found the validity of sale if there is delayed payment of price complying with the well-known view of jurists and provisions of civil law and it has announced the view of jurists which is not well-known in the nullity of sale unjustified, if there is delayed payment of price.

### **Keywords:**

Delay, Option, Price, Sale, Theory.

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## Quality of validity of divine intention in the devotional obligations

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(Date of Receipt: 22 January 2014; Date of Acceptance: 30 April 2014)

### **Abstract:**

According to the celebrated definition of devotional obligation that divine intention is regarded as a distinction aspect of such obligation from its other kinds, the way of validity of divine intention and considering it in the someone was appointed, has always become one of the important origins of disagreements among the great scholars of Usul (Principles of Jurisprudence) and different Usuli views and thoughts in this regard; so that some have believed in natural transformation of taking divine intention in the attachment of affair, and some in accidental transformation. In this paper, along with setting forth of views of Usuli thinkers and its correspondence to the Usuli view of Imam Khomeini, as one of the Usuli scholars that presented the greatest and the most strict discussions in this regard, we have regarded the view of some believed in natural transformation as incomplete, and concluded that contrary to views of the most of Usuli scholars including author of Kifayah and Sheikh Ansari, transformation of taking divine intention in attachment of affair is possible. Presenting a distinctive basis as inference of decree in order to more exact recognition of applicability of devotional obligation from junction obligation, clarifies necessity of this paper as much as possible.

### **Keywords:**

Devotional Obligation, Divine Intention, Imitative Intention, Junction Obligation, Someone was Appointed.

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## The legal limits of absolute obedience of the wife

*Mahdi Rahbar\**

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(Date of Receipt: 3 March 2014; Date of Acceptance: 30 May 2014)

### **Abstract:**

The permission of husband has been always an important subject among the Islamic jurists. The principle of necessity of wife's permission for exit from the house has been accepted by the jurists based on traditions. The main question on this subject is about the boundaries of permission. So many Imami jurists (senior and recent) such as Sheikh Mofid, Sheikh Toosi, Abossalah Halabi, Allama Helli, Imam Khomayni and Ayatollah Sistani have explained the necessity of unconditional permission and some contemporaneous jurists such as Ayatollah Khoyi, Sheikh Mohammad Mahdi Shamsoddin, Sayyed Mohammad Hosayn Fazlollah, Ayatollah Mohammad Mousavi Bojnordi and Ayatollah Jannati have explained the necessity of conditional permission. Some of the Quranic verses refer to the principle of wife's permission indirectly, but we did not find any frank verse about the permission; so we will study some traditions on this subject from A'emma.

### **Keywords:**

Disobey, Husband, Leave Home, Obey, Permission, Wife.

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## **Critical survey of the presented solutions concerning conflict of proviso**

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(Date of Receipt: 16 December 2013; Date of Acceptance: 30 April 2014)

### **Abstract:**

In subject of conflict of proviso, the views of experts on the topic, is different. Some of them believe that debate is about conflict of verbal sense of a provision and concept of another provision, not conflict of some verbal senses or conflict of some concepts. Some of Jurisprudents believe that debate is about independence or dependence of provisions, not conflict of some verbal senses or conflict of some concepts or conflict of verbal sense of a provision and concept of another provision. The third group believes that debate is not exclusive in one case and there are two questions here: one is about several provisions which have unit consequent, and this unit consequent is Multiple neither existentially nor on the basis of rating. Second question is about a consequent which has true unity and repeatable existentially. From the view of some experts the main issue is that conflict of two provisions is not only from its exclusive causality but also from conflict of two immediacies; so the problem is verbal and implicative and it may be just solved through verbal rules. There are five possible solutions for removing conflict among the various provisions which have been considered and criticized in the research.

### **Keywords:**

Concept, Conflict, Expression, Provision, Proviso, Verbal Sense.

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## **Comparative study of theft punishment and conditions of its enforcement**

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(Date of Receipt: 4 October 2013; Date of Acceptance: 30 April 2014)

### **Abstract:**

The punishment sentence for theft as one of the divine punishments has been expressed in the Quran, chapter At-Tawba, verses 38 and 39 and based on the hand amputation of man or woman theft. In this paper, according to the jurists and interpreters' opinions in the interpretation of these verses it has been explained the conditions of enforcement of theft punishment considering the conditions of theft and the stolen goods. In addition, it has been surveyed the possibility of deduction of theft punishment if the thief repented. In all the cases it has been tried to be expressed shi'ite and sunni jurists' various opinions briefly and clearly.

### **Keywords:**

Amputation, Hand, Theft, Theft, Punishment.

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## **A Jurisprudential view on incomplete abortion from the viewpoint of five religions**

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(Date of Receipt: 21 November 2013 ; Date of Acceptance: 30 April 2014)

### **Abstract:**

Identification and recognition of incomplete embryo is a new matter which has been raised recently. But rapid development of technology and recognition of prenatal disorders made abortion a means to relive and to prevent a child with untreatable and dangerous diseases from having a hard life. But some people are involved in it and it has created many social disorders. Although many religious jurists believe that abortion is unlawful, if embryo has developed a fatal and untreatable disease, is abortion lawful? What is the opinion of jurists considering abortion before and after blowing the soul? The research method on this issue is to collect the opinions of abortion cons and pros and to discuss and investigate their proofs. Considering jurisprudential studies and investigations, Sunni jurists regard incomplete abortion before blowing the soul lawful. Majority of Imamite jurists have the same opinion in this regard. On the other hand, all Sunni and Imamite jurists regard abortion after blowing the soul unlawful, even though the embryo has an untreatable disease.

### **Keywords:**

Abortion, Blowing the Soul, Five Religions, Incomplete Embryo, Malformed.

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## **Place of assessment of amount of damage in a civil liability case from the viewpoint of Imamite Jurisprudence and statute law of Iran**

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(Date of Receipt: 30 September 2013; Date of Acceptance: 30 April 2014)

### **Abstract:**

If the price of the lost property in the different places is not equal, the judge in civil liability case is faced with this question that to which of these prices should be sentenced? In this paper after propounding and reviewing different views, it has been tried to be presented a criterion for determination of the competent place to assess the amount of damage according to sound tradition of "Abi Vallad". The criterion that is preferred over other options in this text with regard to mentioned tradition is the habitat place of injured person. Since the article 3 of the civil liability act has required the judge to determine the amount of damage based on the circumstances of the case and as the habitat place of the injured person and the value of the lost property at that place is one of the situations affecting on the rate of the loss incurred by him, the theory of assessment of damage based on the price of the habitat place of the injured person can be accepted in the Legal System of Iran.

### **Keywords:**

Assessment of Damage, Circumstances, Injured Person, Loss, Place of Damage.

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## Principles of public order in the Quran

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(Date of Receipt: 19 October 2013 ; Date of Acceptance: 30 April 2014)

### **Abstract:**

Public order is one of the fundamental subjects discussed in jurisprudence and public law. Some of scholars believe that the issue and its surrounding topics is of innovations and achievements of lawyers and little effort has been made to it in religious texts. But by scruticizing the teachings of the Quran we can well attain legislative bases and central laws of public order from the viewpoint of the Quran as the first source of Islamic jurisprudence. In this paper it has been tried to be studied carefully the Quranic requisites of public order after its legal description.

### **Keywords:**

Holy Quran, Order, Public Law, Public Order.

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