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Studying *HAD* and *TA'ZIR* which Stand in the Same Confirmation Relationships by Analyzing *SHAHID THANI's* Statements in *MASALEK*

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- (Date of Receipt: 28 January 2015; Date of Acceptance: 1 September 2015)

Abstract:

It must be understood that some sins, namely those actions that are or are felt to be highly reprehensible or immoral acts considered to be transgression against divine law, such as a fasting man who has coitus with his wife during period of the blessed month of Ramadan have the punishment of doubt to be either *HAD* or *TA'ZIR*, since on one hand, these punishments are decreed and predestined for certain crimes, and on the other hand, many Jurisprudents believe that those who commit these acts deserved to be punished with *TA'ZIR*. Since determining whether these sins are *HAD* or *TA'ZIR* can lead to substantial effects such as impermissibility to intercede in *HUDUD*, lack of bail or guardianship, lack of swear in *HUDUD* and many other ones related to *HUDUD* and *TA'ZIR*, it is necessary to determine whether the above-mentioned penalties are considered as *HAD* or *TA'ZIR*? Studying the detailed nature of both *HAD* and *TA'ZIR*, the authors finally came to the conclusion that considering many traditions expressing the contrast between *HAD* and *TA'ZIR* -*HAD* is limited to pre-destined punishments and *TA'ZIR* is limited to non-pre-destined punishments- these are classified as *HAD* punishments. If there is any doubt that whether *HAD* or *TA'ZIR* is to be administrated, as many Jurisprudents believe in *TA'ZIR*, the lenient in the sentence can be used for both *HAD* and *TA'ZIR* crimes due to the form of punishment which is based on extenuation, connivance, renouncement and respect the sanctity of Muslim blood.

Keywords:

HAD, *TA'ZIR*, Same Confirmation Relationships between *HAD* and *TA'ZIR*, Leniency in Sentence, *MASALEK*, *SHAHID THANI*.

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Liberty of Property Clause in Sale

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Abstract:

Can the liberty of property be considered as a general and independent clause in the Sale contract? How do *Shi'ite* and *Sunni* scholars and Iranian legal system deal with this problem? Some *Imamite* scholars consider liberty of property as a general and independent clause, but others, taking it as a general clause, interpret it an independent clause provided that there is no preventive law but they do not consider it a genuine one. The third group of scholars have rejected its conditionality, generality and genuineness and consider that only the existence of some specific preventive rights prevents from the validity and effectiveness of the sale. The current Iranian statutory law follows the latter jurisprudential view. Those *Sunni* scholars working on this topic question the genuineness of the subject, and their interpretation is based only on the condition that the property is fully owned, or having a full control over its delivery, or finally in the condition that the preventive rights are missing. The author believes that specific evidence explaining the preventive rights (such as in *Waqf* or rent/mortgage) doesn't represent the general clause; on the other hand, selling a non-free property has reasonable effects and interests, and a reasonable man would not avoid such dealings; therefore, there's no proof to refute it. As a result, there would be no room to accept the necessity of liberty of sale as a general and independent clause.

Keywords:

Liberty of Property, Sale Clauses, Imamite Jurisprudence, Sunni Jurisprudence, Iranian Law.

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Differences of Self-defense and Principle of Retaliation

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Abstract:

The principles of self-defense and retaliation created in order to protect people at risk of invasion and to comply with the conditions of human nature has a long history. Islamic law pays special attention to these issues and the many Quranic and traditional evidences indicates lawfulness of these institutions.

In spite of similarity of evidences and subjects and lack of criminal and civil responsibility, and these institutions differ in terms of right and duty, response time and requirement of proportionality. Explanation of these differences has a considerable effect on exact understanding of these two institutions.

Keywords:

Self-defense, Retaliation, Proportionality, Right, Duty.

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Legal and Jurisprudential Study of the Predictable Principle in Cases of Doubt in the Legality of Condition (Originated from Doubt in Convention or Quality of Convention of Legal and Divine Law)

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Abstract:

One of the terms of accuracy of the condition is its legality. Sometimes, there is doubt in the legality of the condition mentioned in the contract. Such doubt originates from several reasons. One reason, among others, is doubt about convention of legal or divine law which is contrary to the condition. Another reason is doubt about the quality of convention of law as to whether it is binding or non-binding. Now, the question arises as to which principle is predictable in the case there is doubt about the legality of condition? By legal and jurisprudential study of this subject and analyzing different point of views this research has reached a conclusion. If doubt about the legality of condition originates from doubt about existence of an adverse legal or lawful order, then to put an end to this doubt is applying the principle of the lack of legal or lawful order. Of course, the above-mentioned principle is reasonable only when no adverse legal and lawful order is found in spite of sufficient researches. But, if doubt originates from ambiguity of the quality of convention of the legal or divine law (binding or non-binding order) applying the principle of ineffectiveness of the condition seems to be stronger.

Keywords:

Principle of No Condition against Kitab (*Quran*) and *Sunna*, Affirmative Principle, Principle of Void of Condition, Principle of Rule of Will, Principle of Vonventional Freedom, Article 10 of Civil Law, Principle of Accuracy.

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Jurisprudential Feasibility of Delimitation of Dowry

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Abstract:

Social problems resulting from high dowry is clear for all, but jurisprudential and legitimate solutions for this social challenge deserves studying. For a long time jurists have dealt with the subject of delimitation of dowry. It is generally accepted by scholars that there is no limit and ceiling for dowry and delimiting it is unlawful. In contrast the late Seyyed Morteza, relying on a tradition, considers *Mahr ol-Sunna* to be dowry ceiling and believes in the case of determining extra dowry it returns to *Mahr ol-Sunna* automatically. *Imamite* scholars have generally considered it to be *mostahab* (order without obligation). Studying *asnad* and evidences of the tradition Seyyed Morteza relied on as well as the opinion of *Imamite* scholars, this article provide lawful methods to delimit dowry and finally to offer solutions for resolving this challenge.

Keywords:

Dowry (*Mahr*), *Mahr ol-Sunna*, Fictitious Dowry, Huge Dowry.

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Comparative Study of Essence of Legal Verdict in *Osul* Sciences

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(Date of Receipt: 23 May 2015; Date of Acceptance: 1 September 2015)

Abstract:

Thinking about reality and essence of basic concepts in the areas of inference, jurisprudence and law, especially the concept of legal and lawful verdict has always been one of the oldest concerns of clear-sighted scholars. In spite of the importance of this subject no effective effort has been done regarding it. In order to satisfy this demand, we have studied in this paper three theories propounded on the reality of verdict, i.e., the theories of "address", "convention" and "arbitrariness of legal verdict", and have considered the element of convention and legislation as fundamental basis for laws and verdicts, and have criticized the theory of "convention" because it does not consider unconventional levels of verdicts in description and analysis of verdict, and the theory of "address" because it does not convey the meaning obtained from reality of verdict. The verdicts have legislated considering observation of real good and bad purposes and on creative levels of will of legislator.

Keywords:

Verdict, Duty, Convention, Legislation, Validity.

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Criterion for Inclusion of "*Ahl ol-Kitāb*" (People of the Book) in the Holy Quran

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Abstract:

The Quran refers to Jews and Christians as "*Ahl ol-Kitāb*" or People of the Book, and sometimes uses terms like "those to whom We have given the Book" or "those who have been given the Book". Accordingly, some verses have been used to drive social and individual rulings for the extension of these terms. Now, the question arises as to whether it is used as a limited and closed application and only includes the followers of these religions or is it possible to present a criterion to generalize it also to the followers of other religions. Commentators and jurists have generally reckoned Jews and Christians among "People of the Book" and absolute majority of them have considered Zoroastrians, in accordance with Islamic traditions, among People of the Book, but when we examine the sacred Books of these three religions, we see that based on every criterion being taken into consideration, the followers of some other religions may be included as "People of the Book" as well. This article tries to state that if we put the Islamic text reports about the status of these religions' Books and the external information, as well as general divine words related to the divine guidance of human beings together, we can achieve a common criterion and standard that exists in other religions too and this standard will help to include the followers of some other religions as "People of the Book" as well.

Keywords:

Holy Quran, People of the Book, Non-Muslims.

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Civil Responsibility of Inconclusive Cause with an Approach to Islamic Criminal Code 1392

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Abstract:

There are three essential elements to identify the responsibilities of each party; loss, harmful act, and causality relation between the act and losses among which the third element has special importance and lack of proving this element is considered as the lack of responsibility. It is very difficult to prove this relation in the presumption that agent of loss is inconclusive among specified persons. Some scholars believe that because of the lack of evidence to prove causal relation between the loss and act of specified person there is no responsibility that does not seem to be according to justice. But it is presumed here that there is a causal relation, therefore responsibility can be proved and the only issue is that losing acts performed simultaneously so it is probable to attribute loss to each individual. So, by proving responsibility, different methods are suggested considering compensation for loss. Some scholars have accepted the option that judge is free to choose the responsible person; others believe that compensation should be paid out of *beit ol-māl*. Again some others believe that the final responsible person should be specified by drawing lots. Another group states that relying on equity rule; it is possible to distribute responsibility among individuals. It has not clearly stated in Statute law but exact analysis of this subject and existence of some backgrounds in relation to inconclusive cause in Islamic criminal law (article 477 and 479) and possibility to generalize this issue to civil responsibility of inconclusive cause show that equal responsibility of agents of loss conforms more with the view of supporting loser and equal distribution of loss.

Keywords:

Civil Responsibility, Inconclusive Cause, Compensation for Loss.

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