

## The criteria of the driver's liability for death and the injury caused by car accidents

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### Abstract

Today, the issue of car accidents and traffic offenses and death and injuries caused by them is one of the most important issues of jurisprudential and legal circles. The identification of the person responsible for the accident is significant both for indemnification and type of liability thereof. In spite of the significance of presenting criteria for identification of the liable for damages, it has not been studied in detail in the Islamic Penal Code and it has been mostly pursued in two Articles of 504 and 505. In Article 504 of Islamic Criminal Law the statement of the legislator is brief in some cases; it is not clear, for example, that whether the said exception only refers to the lack of fault or it also includes unauthorized presence in the place. Furthermore, the type of death and injury has not been specified in this law. The Article 532 of Islamic Criminal Law accepts intentional crimes related to car accident but does not specify in which cases it is intentional and what is the penalty for that crime. Or only Article 714 among Articles 714-719 of Punishment Law (adopted in 1996) refers to the punishment of a single type of killing (Manslaughter). After giving an introduction to the article, the possibility of actualization of the pure and intentional error in some car accidents is proved and the ambiguities as to the Article 504 of the Penal Code have been studied.

**Keywords:** Article 504 of Islamic Penal Code, car accidents, fault, Manslaughter.

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## The correct image of obligatory for itself and obligatory for being a precursor to another obligation

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### Abstract

Since there is disagreement in the basis for defining “obligatory for itself” and “obligatory for being a precursor to another obligation”, scholars of the principles of jurisprudence attempted to correct the image of this basis. The most important views presented in this regard include: the obligatory for other is made compulsory because of another obligation; the purpose of the obligatory for other is to reach another obligation; the title “Husn” is not compatible with obligatory for another obligation; the purpose of obligatory for being a precursor to another obligation is not the act by itself; the criteria is the world of Ethbat and the word of legislator but not the world of Thobout; and that by the obligation which belongs to the act one can distinguish between obligatory for itself and obligatory for being a precursor to another obligation. Analyzing and criticizing the above-mentioned theories, the authors have finally adapted the view that the obligatory for other is a precursor to another obligation and obligatory for itself is not a precursor to another obligation. The view claimed by the authors not only does not bear the problems of the previous theories but also it is more compatible with the well-known statements.

**Keywords:** legally competent person, obligatory for being a precursor to another obligation, obligatory for itself, precursor to obligation.

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## Jurisprudential and legal study of the position of waters in public property

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### Abstract

Water is an instance of public property in the Islamic Republic of Iran's law. The article 45 of Iranian Constitution and Article 1 of the equitable distribution of waters law (enacted 1982) water is considered one of general commonalities under the authority of the Islamic government to exploit it according to the public interests. Given that lawful property can be owned through hayazat and water is part of that lawful property the question arises as to whether individuals can take possession of public waters. According to the water law and the manner of water nationalization enacted in 1968 the waters became a public property under the authority of the government. Some lawyers believe that after enactment of Iran water nationalization law in 1968, the article 149 of the civil code and the matter of water ownership became obsolete. Yet another group of scholars believe that the equitable distribution of water law has not abrogated the aforementioned law but to take use of waters the permission and the license of the Ministry of Power is needed. This paper studies some jurisprudential and legal views regarding to this issue and presents some solutions to solve the legal problems of public waters.

**Keywords:** Article 45 of Constitution, equitable distribution of water law, general commonalities, Islamic government, public property, waters.

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## The ritual running in the (crosswise) expanded area of the place of running from the viewpoint of the Islamic denominations

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### Abstract

The legal ruling for Sa'i (the ritual running between Safa and Marwah) in the expanded area of the place of running is a new question for the Islamic jurisprudence. Regarding to the crosswise doubling of the Running place near the Sacred Mosque in recent years, the jurisprudential ruling of the Ritual running– as one of the pillars of the greater and the lesser Pilgrimages– is unclear from the viewpoint of the Islamic denominations. This is due to the fact that there hasn't been any comprehensive and solid study in this regard yet! Consequently, permissibility of the Ritual running in the crosswise expanded area is a subject that requires further investigation to reach a suitable answer. After a thorough scrutiny of the jurisprudential sources of the Islamic denominations, it was found that a few thinkers of the jurisprudence domain do not allow the Ritual running in some newly expanded areas of the Running place and believe that those areas are out of the space between Safa and Marwah hills. However, based on the attestation of the witnesses as well as the historical, geographical, and geological examinations of the committee supervising the Running place expansion project, it is possible to consider the expanded area as a part of the space between Safa and Marwah hills, and therefore, rule for the permissibility of conducting the Ritual running in it. The study at hand sets out to disclose the limits and gaps of the already present arguments and to jurisprudentially specify the ruling on permissibility of conducting the Ritual running in the crosswise expanded area of the Running place. To this end, the author used library research as well as fieldwork methods to collect data. The obtained data was then analyzed to extract the jurisprudential stances of the Islamic denominations in this regard. At the end, the conclusion was made that conducting the Ritual running in the expanded area of the Running place is permissible.

**Keywords:** crosswise expansion of the running place, greater and the lesser pilgrimages, jurisprudence of the Islamic denominations, permission, ritual running.

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## Jurisprudential review of lawfulness of women's visitation of graves focusing on the principles of Quran and Sunnah

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### **Abstract**

Visitation of graves has roots in the Sunnah of Prophet Mohammad (pbuh), his companions and followers. According to the great Islamic scholars and jurists there is an equal rule for both men and women's visitation of the graves of their dear ones and the holy shrines in Islam considering the Sunnah of Prophet Mohammad (pbuh) and his numerous traditions; because Islam has equal rules for both men and woman except in a case where there is a reason for its specification. The Quran, which is generally accepted by all Muslims, has no clear rule about lawfulness or unlawfulness of visitation of the graves, but it generally refers to the lawfulness of women's visitation of graves. There are several reports on the women's visitation of graves at the time of Prophet Mohammad (pbuh) and after that which may be considered as evidences for its lawfulness; including a report on the method of its performance attributed to 'Ayesha, one of the Prophet Mohammad's wives. There is still another report on Hazrat Zahra (S)'s visitation of the graves of hazrat Hamza (AS) and other martyrs of Uhud. This article aims to explain and review the jurisprudential principles of women's visitation of graves in the Quran and Islamic traditions from the viewpoints of the Islamic jurists who not only consider it lawful but also recommended. The innovative aspect of the matter is detailed analysis of the views of four Islamic denominations in this regard which can present a clear and exact image of this matter and remove doubts from the people's minds.

**Keywords:** graves, jurisprudential principles, lawfulness of visitation of graves, scholars of two Islamic sects, visitation, women's visitation of graves.

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## Influential factors on the rule of husband permission

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### **Abstract**

It may be understood from many traditions that permissibility of many religious or unreligious ritual acts depends on husband's permission. But specifying the limits of the wife's duties to take permission of her husband and the range of her authority to do such acts requires investigation of influential factors on the matter and its ruling. It means that the range of the necessary obedience of husband may become wider or narrower in the case of changing any of these factors. The factors include: the manner of expressing the permission, the permission's dependency on the manner of imagination of the husband's right of sexual pleasure, removal or continuation of the causes of permission, and finally the type of the marriage contract as being permanent or temporary one.

**Keywords:** husband permission, marriage contract, removal of the causes of permission, right of sexual pleasure, wife.

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## Jurisprudential and legal bases of organ transplantation of those sentenced to retaliation and Islamic prescribed punishments after execution of the rule

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### Abstract

Exercise of punishment is the most important issues in Islamic criminal law, but the rules of some matters have not been stated explicitly including organ transplantation of those sentenced to retaliation and Islamic prescribed punishments after the execution of the rule. The famous Imamiyyah jurisprudents believe that the method of penalty enforcement is not relevant and cutting off the organ is enough to prove the right of retaliation. In contrast, some other jurisprudents do not consider it as the cause of retaliation and believe that the quality and method of penalty enforcement should be identical to the committed crime. There is also disagreement on the possibility of transplantation of amputated organ in enforcement of Islamic prescribed punishments. Some believe that it is aimed at penalty enforcement; therefore, the amputated organ can be transplanted. In contrast, some believe that the purpose of amputation is to give lesson to the offender and other people and because it is incompatible with the wisdom of God order, transplantation is not acceptable. The present paper tries to prove the possibility of organ implantation of those sentenced to retaliation through studying its jurisprudential and legal aspects.

**Keywords:** amputation, Islamic prescribed punishments, organ, retaliation, transplantation.

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## Jurisprudential study of the case where the criminal survives execution

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### Abstract

In rare cases the criminal survives execution. However, to repeat the death penalty or not is a complicated and tangible matter. Killing of an innocent person is equal to the killing of humanity and the life of a human is like the life of humanity. Some of the great jurists believe that in such a case the retaliation (*Qisas*) or the Islamic prescribed punishment (*Hadd*) should be repeated because the criminal is sentenced to death and the sentence is executed in the case where the criminal is dead. In addition, according to a Sahih tradition from Imam Ali (AS) about stoning of a person who was still alive after being stoned, Imam Ali (AS) ordered that the criminal should be stoned again. Similarly in the case where the criminal survives execution, the sentence should be exercised again. Not repeating the Islamic prescribed punishment (*Hadd*) of Rajm in the case where the criminal escapes in the tradition of Aban ibn Uthman, the condition of E'teda bi mithl in retaliation (*Qisas*) as well as *dar'* rule are analyzed as evidences for prohibition of repeating the death penalty.

**Keywords:** deprivation of life, executed criminal, execution, sentence repetition, survival.

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