

The role of recognizing the nature of the sheri`ah precept on the zid (anti especial or general command)

Belal Shakeri

Abstract

One of the basic points in analytic debates and declaring the ideas is the presentation of the effects and results of the formed analyses; of course, this point is usually neglected. One of the analytic subjects of Ilm al-osul (science of principles of jurisprudence) suffering from this defect, is the "nature of the religious ordinance". Concerning which theory we believe in the analysis of the nature of the religious precept, , many effects arise in Ilm al-osul. For example, in the case of which any command necessitates prohibiting generally from its opposite, and based on the concomitance doctrine, three kinds of influences can be recognized according to the different theories about the nature of the religious precept. some theories cause that the concomitance doctrine make apparent incorrect and meaningless in the case of opposite; but the result of accepting some other bases, corrects the possibility of such a doctrine. However, some foundations in the case of the nature of religious precept, have pushed forward the concomitance doctrine, and not only they correct the possibility of its planning, but also respond lots of proving and demonstrative problems on this theory, and make acceptance of such a doctrine reasonable in the issue of the opposite.

key words: general opposite, nature of religious precept, and concomitance doctrine

Jurisprudential - legal review of foundation and nature of harim (privacy)

**Abdollah Omid Fard
Ro`ya Saremi Juybari**

Abstract

In the existing regulations, the harim (privacy) has a special function. Concerning the subject of the privacy, there are different regulations which each of them has used the privacy in according with the nature of its subject. Since in the different laws, the legislator has not followed a similar procedure, the legal nature and foundation of the privacy has remained vague. In articles 137 and 138 of the civil code, based on the famous jurists' approach, the extent of some harims has been emphasized, while in other regulations, the famous theory has sometimes been accepted and, in some cases, has not been followed by reason of the necessity. In addition, in Article 136, the basis of the privacy is completeness of profit, and article 139 is to prevent the loss which the logical aspect of the combination of these two mentioned articles has been doubted. Since in the case of ambiguity of the legal regulations, a judge is obliged to infer the judgment of the issue by reference of the valid jurisprudential sources, it can be said that according to jurisprudential principles and criteria, the basis of the benefit perfection is to consider possession of the owner's privacy and without taking an account of the other estates, or owners and privacy; but the foundation of preventing the loss is raised in the event that there is another right which in the case of conflict between completeness of benefit and loss, the rule of la zarar (there shall be no loss and damage in Islam) is made a priority.

Key words: privacy, right, right of privacy, estate, and right of benefit.

Researching the nature of sabb al-nabi (insulting the prophet mohammed) crime in Imami jurisprudence

Hosein Haji Hoseini

Majid Qurchi beigi

Abstract

One of Jurisprudents' debates in the book of al-hodud (determined punishments chapter), is of sabb al-nabi crime referring to insulting the prophet Mohammad (s.a). The traditions of this chapter agree to the necessity of killing its offender provided that his killer is safe from causing the loss of his life, property and decency, and a large number of jurisprudents claim the consensus on this matter. But what is doubtful, is whether this precept is be a had penalty or ta'ziri (discretionary) one. The famous jurisprudents have already discussed this precept in al-hodud chapter, and it seems that they consider it to be a had penalty. But there are some circumstances of evidence that killing of the sabb-al-nabi is not a matter of had penalty or ta'ziri one, but it is especial ruling, and it makes the famous viewpoint of being a had penalty, partly problematic.

Describing the existing evidence, this paper, on the one hand, seeks to show this claim, and on the other hand, examines the cases as the necessity of executing the percept or permissibility of it, or the need for the permission of the ruler to enforce the ordinance, or its needless of it. Obviously, given the special effects of the had penalty or ta'ziri one, there are different results which govern on this issue. This research has used a library and analytical method.

Key word: sabb al-nabi, insulting the prophet (s.a), had penalty of sabb al-nabi, its ta'ziri (discretionary) punishment.

Normality of the waqf's nature (endowment) on permissibility of change and transformation

Sayyed Taqi Varedi

Abstract

Except in some cases, impermissibility of changing the waqf is a matter of the jurists' consensus. But concerning the reason of its impermissibility, there is no agreement between them. Some believe that its reason is religious ordinance which prohibited it. Some others say that the waqf's nature is a form conflicting with any change, and all the narrations that imply prohibition, have aspect of approval, not legislation and establishment. The third group says that the cause of impermissibility of transferring the waqf is that after settler endowment, the subject of endowment is removed from its settler's ownership and no longer, falls into the ownership of anyone and the property is removed from the ownership. Between the mentioned three theories, the second is acceptable and defensible due to which the endowment has no religious nature, and it is a human covenant, which it occurs and is current beyond religion and faith in all the periods and among all the nations of the universe. In addition, it has historical and narrative circumstances of evidence.

key words: transferring the waqf, types of waqf, subject of endowment, its sale, settler, its beneficiaries.



The Feasibility of Annulment Process in Unilateral Pronouncements

Shakiba Amirkhani

Ahmad Baqeri

Abstract

According to most Islamic jurists, annulment like options is considered to be one of the causes of revocation and discontinuity of the contract. The difference is that revocation enforcement through options is done just by discretion of one party, but the condition for fulfillment of annulment is the agreement of the parties to the contract on dissolution. Considering jurisprudential books and the reasons for annulment permission, the Islamic jurists generally consider the contracts revocable through this way and they prohibit only some of the certain contracts, such as marriage from annulment. The entry of "revocation" into the scope of unilateral pronouncements has raised various issues among Islamic jurists. One of them is "the revocability of unilateral pronouncement". Basically, some of the Islamic jurists still haven't accepted it. Even though, some others have introduced unilateral pronouncements as revocable contracts through option, they have explicitly considered the annulment of unilateral pronouncement prohibited and irresistible or they have been silent on this issue. It seems that this silence is also due to the adoption of the theory "the impossibility of annulment of unilateral pronouncement" and clarity of this idea in their mind.

In this study, first, it has been tried to evaluate the theory "the revocability of unilateral pronouncement" and strengthening its positive arguments and then to investigate revocability of unilateral pronouncement through annulment. Based on the findings of this research, the annulment of unilateral pronouncement does not confront with intellectual or legal barrier and it is also possible to use this way to revive the situation before the creation of unilateral pronouncement.

Keywords: annulment, unilateral pronouncement, revocation, option, contract.

Time of nafilah (recommended) night prayer

Mohammad Zarvandi Rahmani

Nafiseh Zarvandi

Abstract

The recommended night prayer is one of the worships that has been emphasized by the verses and traditions of the innocent Imams (s.a), and an insistence on it has been practically continued by the practical biography (sirah) of the Innocents and the righteous elders of the past. One of the religious precepts that has deprived many enthusiasts of it from carrying out it, is the time of this prayer which in accordance with the well known viewpoint of the jurists, its beginning is midnight, and its end is the true dawn. Among the contemporary jurisprudents, except two or three personalities, the majority of them have delivered the same religious decision (fatwa) based on that famous theory. Reviewing and criticizing the evidence of the famous theory which is totally seven case, this article has proved with various evidence, circumstances and proofs that the time of the mentioned prayer is the beginning of the night, but the midnight later is the time virtue of prayer, and the more the night prayer approaches dawn and rising, the more virtue it has.

Key words: recommended night prayer, virtue, midnight, true dawn.

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Editor-in-Chief: Seifollah Sarrami

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