

Jurisprudential evaluating validity of conditions for cash sale in the monetary exchanges including currency and none - currency

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Mohammad Hasan Haji Mohammare

Abstract

Monetary exchanges in Islamic jurisprudence as a title of cash sale are presented and mentioned their necessary terms. there are three conditions according to Imamate's famous opinion: equality in amount, paying in cash, , and taking possession in one session. Imamate jurists have different opinions regarding the validity of terms for cash sale in foreign exchange transactions, in spite of they are common issue. By investigating the foundations of traditions, it should be said that compliance of the two first conditions *i.e.* equality in amount and paying in cash for the currency transactions and preventing usury are necessary. Similarly, it must be noted that taking possession in one session in monetary exchanges which currencies have common unit, is not a condition, because differences caused by price Fluctuations in them is negative. But because of Resolving Disagreements caused by price Fluctuations in transactions which currencies are different, taking possession in one session should be regarded as a condition.

Keywords: cash sale, currency transactions, banknote, usury, and taking possession in a session, Monetary exchanges.

Limits of condition of lacking paternity for proving retaliation (Qisas)

By Mohammad Ja`far Sadeqpour

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Abstract

Murder and intentional injury are punished by Qisas. One of the conditions of executing qisas is lack of paternity. Accordingly, a murderer is not retaliated where he is father of his victim. Traditional documentaries and renown legal opinions which are raised on this case by the Shiite and Sunni groups, make the legislator consider the mentioned condition in the article 301, Islamic penal code of 2014. A father that murders his offspring, is not absolutely taken in retaliation in accordance with absoluteness of the Shiite Jurist`s words and text of law. This is while that according to some jurists`s opinions, retaliation is executed on a father where he murders his child with malice aforethought or motives such as hostility and greed.

In this paper, based on a descriptive-analytical method and connected narrations, it is resulted that annulling qisas of father is a general and absolute legal commandment, and limiting it to some situations such as killing with malice aforethought, necessitates abandoning the traditions. At the same time, it proves that such an legal precept is especial for father, and it does not apply to mother, grandfather and grandmother at all.

Key words: retaliation, lack of paternity, malice afore thought, intention and grandfather.



Application of Dar` rule in Hodud crimes

Esmacil Aqababayi Bani

Abstract

When we accept dar` rule, we will face with two agreeable and disagreeable viewpoints to it, and some scholars are opposed to extension of the rule to the Ta`zir and Qesas crimes. Among the existing jurisprudential opinions, the legislator underlies its acceptance theory and its extension to ta`zir and qesas which seems not to be applicable to the Ta`zirat or, at least, to the reasonable ones because of specifications of the mentioned rule and its basic difference with the innocence principle.

The rule itself and its requisites are acceptable in the limits of some crimes, but the legislator`s inattention to these requisites makes some of dominant principles in the criminal law practically ignored, and causes the offenders to abuse them.

This paper discusses the legislator`s attitude towards the rule and its negative requisites with due attention to the jurisprudential opinions regarding the issue, meanwhile avoids the exiting debates on the legitimacy and inclusion scope of the rule.

Keywords: dar` rule, doubt, waiving conditions of punishment, Islamic punishments code.



Khoms (one fifth) of capital and companies` incomes
Sayyed Mohsen Tabatabayi

Abstract

khoms is Islamic true religion`s one of the necessary precepts which the Shiite and Sunni Jurists have adopted khoms in reference to verse 41/chapter anfal, the prophetic tradition and the two groups` consensus, but they differ in the examples, specially the Shiite scholars only give opinion to it because of appearance of the mentioned verse and the innocent Imams` reliable traditions.

Paying khoms of the capital and its profit is obligatory, and whereas some companies and institutions have independent legal personalities, it seems that the above sentence is applied to them; the reasons for this are two things: the first is basis expurgation in the necessity order of khoms and regarding it as ownership and benefit, and the second one is an attention to conventional sentence and financial right placed in the benefits by the holy legislator and it is clear that conventional sentences are not conditional upon capacity, reason and puberty.

Of course, it is resorted to this manner where guardian jurist`s powers is abandoned, otherwise a governor of Islamic society is allowed to take khoms of the companies and institutions` capitals and annual benefits as well as tax which are customary in all the societies.

Keywords: khoms, legal personality and company.



A research on jurisprudential judgment of filter (T.V channels , Web pages and Social websites of virtual spaces)

By Mohammad Mahdi Moheb Al-Rahman

Seif Allah Sarrami

Mohammad Ali Moheb Al-Rahman

Abstract

This paper is a jurisprudential answer to this question: " Is there any jurisprudential evidence for admissibility or obligatory of filtering and blocking T.V. channels, web pages and virtual social websites? what is this evidence?" In accordance with this research and based upon grand jurists` opinions, it can be resulted that the first principle is prohibition of preventing others to access for internet pages, T.V. channels and virtual social websites, and the reason of prohibition of possessing the heretical books can't make their filtering mandatory. Of course, if T.V. channels, web pages and virtual social websites are the proof of the evil, evidence of preventing from the evil can include it. Meanwhile if this act causes a bodily harm and loss of proprietary or even is possession of his property (which is usually as such), judge`s permission is required.

Key words: website, blocking, satellite, heretic books, preventing the people from doing an evil, oppression and harassment.

Bringing an action versus the Islamic state and governor and jurisdiction of trial court over it

By Sayyed Ziya` Mortazavi

Abstract

In disputes between the Muslim governor and state with the citizens, apart from the issue of initiating an action versus the ruler and government, there is this question that who is competent for its trial? Can this ruler hear the case which himself is one part of it? Similarly, there is this question that does the Islamic ruler or state require to raise an action in order to receive the public rights or , as thought by others, according to his absolute guardianship, can the governor carry it out without resorting to any judicial strategy?

In this paper, with a glance at the admissibility of bringing an action versus a governor, absolute majority of Shiite jurists` viewpoint have been confirmed: in those cases that the Islamic Governor or judge is one of the parties, it should be resorted to arbitration of a third person. In the other hand, by raising an action against state which its personality has no reality except abstraction, there is a question that can it bring an action against a legal person?

In this article, in addition to a positive answer to the mentioned questions, it was stated that there are some probabilities regarding the types of relationship between natural person of a governor and legal person of a state, and the nature of initiating proceedings was explained as each case appropriates.

Key words: judgment, Islamic governor, Islamic state, absolute guardianship and legal personality.



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