The Theory of Compensating Certain Lost Profit Damage in Imamiya Jurisprudence

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Abstract

Lost profit damage refers to the damage due to losing the profit because of the actions of an infringer or the profit that the obligee would have been received if the obligor had fulfilled his obligation; no matter whether the profit is generated from a specific property or person, or is received merely because of fulfilling the obligation. Imamiya jurists have a difference of opinion over compensating lost profit damage. Some jurists do not believe in compensation for lost profit damages presenting the reasons that lost profit is not subsumed under the rubric of damage, potential profits have no financial value, such profits do not exist in practice, and the lack of causality. On the other side, the proponents of compensation for lost profit damage resort to the principle of lā-ḍarar (denial of injury or malicious damage), the principle of itlāf and tasbīb (causing direct or indirect damage or loss), the financial value of profits, and intellectuals' stipulation. Scrutinizing the reasons presented by the proponents and the opponents shows that only some cases of lost profits are subjected to compensation by the proponents, while the opponents reject the compensation for lost profits in some other cases. Therefore, the paper concludes that certain lost profit damage is compensable and contingent lost profit damage is not compensable. Certain lost profit damage refers to the cases in which the disruptive action's role as the exclusive cause of damage is confirmed, while such role is not demonstrated in contingent lost profit damage.

Keywords: damage, lost profit, certain lost profit, compensation for damage, contingent lost profit.

A Reappraisal of the Place of *Arsh* (compensation) in Lease Contract

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Ghulāmrizā Yazdānī

Abstract

If one of the exchanged things in a contract is defective, the injured party has the option of defect and can cancel the contract or claim arsh (the compensation for the difference between a defective and sound thing) instead. While when the object being leased is defective, the lessee holds no right to claim arsh according to the Iranian Civil Law. Whereas apparently the Civil Law, specifically article 456, grants the right for claiming arsh to the lessor when the payment is tangible property and is defective. This kind of approach to Civil Law is inferred from non-famous jurists' view which, considering jurisprudential sources and the nature of arsh, seems weak and is not a suitable source for legislation. Arsh, in fact, is peculiar to sale contract and generalizing it to other contracts, including lease, is not allowed. Therefore, it is necessary to amend the article 478 of Civil Law regarding lease contract, and to revise the article 456 of Civil Law.

Keywords: cancellation right, arsh, lease, defect.

An Inquiry into the New Instances of *Ḥirz* (the secured place) and Proving *Ḥadd* for Electronic Theft from the Viewpoint of Jurisprudence and Law

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Maryam Āqāyī Bajistānī
Muhammad Rūḥānīmuqaddam

Abstract

One of the conditions required to prove the ḥadd (religiously prescribed punishment) of amputation for the theft that causes ḥadd is the violation of ḥirz (the secured place). Most jurists define ḥirz as a closed or locked place so others are not allowed to enter without permission. Examining jurisprudential views shows that there is no consensus on the element of "place", and the emphasis is put on convention to recognize the true sense of ḥirz; in other words, ḥirz happens when a thing is safeguarded against theft. Considering the increasing electronic activities and that the concept of property has gone beyond external objects, it is necessary nowadays to work on the new instances of ḥirz. The items like bank accounts, credit cards, electronic smart cards, online passwords, E-Signature Token, emails, personal information, usernames, personal applications, and digital version of essays are considered as new examples of ḥirz. Exploring early jurists' views and their criteria for defining ḥirz, the paper insists that electronic theft constitutes the violation of ḥirz because data and digital information has financial value, so the criminal would receive ḥadd for theft if other requirements are fulfilled.

Keywords: ḥadd for theft, electronic theft, ḥirz, violation of electronic ḥirz.

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A Deliberation of Jurisprudential Bases for Applying Complementary Punishments in *Ḥudūd* and *Qiṣāṣ* in Penal Code Sanctioned on 2013/ 1392

Ahmad Ḥājī Dihābādī

Mahdi Nāristānī

Abstract

According to the penal code of the Islamic Republic of Iran, a judge is authorized to inflict complementary punishment. After revising Islamic Penal Code in 1392/2013, applying complementary punishment, in addition to taʿzīr (discretionary punishments), was also permitted in ḥudūd (the crimes with religiously prescribed punishments) and qiṣāṣ (the crimes requiring retaliation). Considering the principle of non-permissibility of punishment, the question is that what are the jurisprudential bases for the legitimacy of complementary punishment in ḥudūd and qiṣāṣ? Is that innovation in law supported by jurisprudential grounds? However this kind of punishment is permissible, as a primary or secondary ruling, resorting to some hadiths and sub-titles, but examining the hadiths shows that complementary punishment is assigned for some special cases and there is no way to generalize it through the annulment of the specification or refinement of the basis of the ruling. In addition, sub-titles are not strong enough to allow leaving the basic principle of non-permissibility of punishment, which is supported by concrete jurisprudential proofs, and to give the permission to apply complementary punishment in every crime requiring ḥudūd, qiṣāṣ, or even indisputable taʿzīr punishments.

Keywords: complementary punishment, ḥudūd, qiṣāṣ, taʿzīr, the principle of non-guardianship, istiṣḥāb ʿadam (presumed continuity of non-being).

Free Association in Psychoanalysis and the Legal Injunction of Relating Sin

Ahmad Murvārīd
Mohammad Sadeq Elmi Sola
Morteza Modarres gharavi

Abstract

Psychoanalysis is a common method in psychotherapy, and one of the important therapy techniques in this method is free association. In this technique, the patient relates whatever comes into his mind during the analytic session to help the therapist to discover his unconscious and prepare the way for treatment. Sometimes the patient also relates his criminal or sinful actions in this process. The question is that, is free association in compliance with the legal injunction of relating sin? To answer the question, first the ground and scope of the decree of relating sin are explored through Shia jurisprudential sources, then the decree's applicability to psychoanalysis process is examined.

Jurisprudential studies show that relating sin is not prohibited as an independent title in jurisprudence but rather is considered as haram only when it is the instance of self-degrading, disseminating sinful deeds, or assisting in sins. So, as primary ruling, relating sin in psychoanalysis sessions is not prohibited because it is not subjected to any of these titles. In addition, relating criminal or sinful actions is permitted in psychoanalysis process, as secondary ruling, in the cases that refusing psychoanalysis treatment causes considerable difficulty or harm for the patient.

Keyword: psychoanalysis, free association, relating sin, self-degrading, disseminating sinful deeds, assisting in sins.

A Reflect on "Theory" in Jurisprudence (Conceptology and Capacity)

Ali Shafīī

Abstract

After analyzing different definitions presented for "theory", the paper considers the following definition as the best one: a general explanation and interpretation of a set of jurisprudential issues that are pervasive and inclusive in form and expanded in concept, and yet have thematic unity and the common points that connect them to each other.

Explaining the concept of "theory" and its relation with some similar concepts, the paper is to talk about the present jurisprudence's capacity of theorization and the causes and factors of lack of theory in this field.

The paper concludes that, first, however jurisprudential theory is a newly-emerged term, but it does not mean that theory is foreign to jurisprudence. Second, though the present jurisprudence has a great capacity for theorization, inferring theories from it and maximizing that capacity need to reappraise some bases, methods, and sources of present jurisprudence.

Keywords: theory, jurisprudential theory, jurisprudential paradigm, jurisprudential principle, problem-centeredness, theory-centeredness.

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