

Analysis and critique of the implication of the hadith "fi rajol ista`jara ajiran" on the trustee's non guaranty

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Abstract

According to a tradition of the hadith sources, if a person hires a man for maintain his goods, but the worker thieves the property, Imam Sadiq (a.s.) says: "The hired worker is the trustworthy". The document of this tradition is a valid and the hadith is called as Halabi's authentic tradition or sahiha (Halabi is the traditionist who his traditions are authentic or sahiha). Based on the implication, justification and interpretation, some jurisprudents and traditionists have tried to adapt that sahiha to the trustee's non guaranty; however, a hesitation about the sahiha and the same narrations shows that it has no relation with the trustee's non guaranty, but it relates to the theft had (definite penalty) and some authors of the hadith sources have wrongly mentioned the sahiha in the chapters related to the trustee's non guaranty, and have provided the ground for error of some jurisprudents and interpreters of hadith. Similarly, part of the jurisprudents have regarded the sahiha and the same traditions as contrary to the famous theory and the theft had rules. Therefore, they believe that this collection of the traditions should be interpreted as the famous viewpoint or regarded as the worthless ones. This research tries to prove that these traditions are not different from the rues and famous theory; then, they do not need any interpretation and are not worthless.

Keywords

Halabi's sahiha, implication, hired worker, trusty, trustee, non - guaranty, theft had.

Conflict of *istishāb* and *dar'* rule in criminal jurisprudence and Islamic Punishment Code 2014

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Abstract

Dar' rule is one of the important rules of the criminal jurisprudence. Based on this rule, the punishments are removed with the mistake or doubt. In criminal jurisprudence and Islamic Punishment Code, the cases can be raised in that the content of dar' rule conflicts with *istishāb* principle. This contradiction occurs when the *istishāb* implies to establish the punishment, while the implication of dar' rule is removal of the punishment. But since this rule is a *ijtihādī* evidence, it precedes the practical principle of *istishāb* which is jurisprudential reason. Nevertheless, as to *qisās* (retaliation), according to *istishāb* principle, some jurisprudents and lawyers have ruled to establishment of the penalty in the conflict of this principle and dar' rule, and they have not regarded the latter. In contrast, based on the *dar'* rule, some other of them have ruled to remove the punishment. This contradiction is due to inclusion of this rule in accordance with their viewpoint. If implication of the *dar'* rule is proven on all the punishments (*hodud*, *qisas* and *ta'zir* punishments), the *dar'* rule precedes the *istishāb* principle in all the punishments. According to considerations, it seems that inclusion of this rule on the absolute punishments has advantages.

Keywords

istishāb, *dar'* rule, principle, *imārah*, entry, criminal jurisprudence, Islamic punishment Code.



Reasons of preferring a subjective index with a compound approach to representing jurisprudential subjects

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Abstract

This article examines the probability - measure of the usual approaches in organizing content information (such as cataloging, categorizing and indexing), in order to structure and represent jurisprudential matters based on the thesaurus of the jurisprudence. Among them, due to the analytical representation and proposed data extraction, it has preferred indexing to other methods of organization, and because of the diversity and variety of issues, and the abundance of sources and attributions of jurisprudential output, this paper introduces the only method of analytic - subjective indexing for organizing information and managing issues of jurisprudence. Nevertheless, because of some defects, this research regards three indexes including simple, textual and contextual indexes among the common approaches of indexing as inadequate to organize the subject of jurisprudence, and emphasizes and recommends on the synthetic subject indexing, which consists of combining several terms or words to represent an issue.

The synthetic indexing has been created and localized by the Institute for Management of Islamic Information and Documents. In this method, the macro and micro issues of any science, including the jurisprudence with its many branches is well described. Similarly, in order to achieve its data extraction, it will result in a proposed and desirable access of a researcher and, instead of providing a way, it will achieve the desirable aim.

Keywords

organizing data, jurisprudential subjects, science of jurisprudence, indexing, synthetic subject indexing.

Implication of `ala al-yad rule on the liability of kidnapping

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Abstract

Liability issue is one of the long standing contents of the two sects' jurisprudence, and in terms of content, response and width, it has an exemplary richness. It can be said that the jurisprudents have studied all the instances of destruction of the property and its rights regarding the liability and non-liability. However, the place of discussing about the liability of an human life which is unjustly kidnapped, imprisoned and accidentally died in the prison, is empty. In other words, the jurisprudents have precisely talked about guaranty of property, actions and financial rights of the human beings, but they have not discussed regarding the life of a man, or have vaguely referred to it.

After proving validity of the prophet's hadith "ala al-yad" based on the two sects' various narrators, this article has examined and criticized the different forms of the issues, expressing the conflict place, speaking out the implication of the prophet's hadith on the guaranty and the evidence of its opponents in the forms of difficulties. The final result of this article is that the `ala al-yad rule implies on the liability of person's life which has been unjustly imprisoned or kidnapped and died, although , the death is not attributed to the kidnapper.

Keywords

liability, kidnapper, imprisoned, possession, authority, blood money.



Jurisprudential comparing the opponent works of gratefulness for enforcing principle of religious innocence

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Abstract

Some divine precepts have a special gratefulness for a responsible person; that is to say that they have been enacted for human welfare and comfort. These precepts are called as gratefulness (*imtināni*) ordinances, and the cases which cause hardship on a responsible person, are regarded by the jurisprudents as anti gratefulness, and so they are not enforced.

The religious innocence is one of the *imtināni* precepts that because of its very *imtināni*, its performance is always prohibited according to the jurisprudential and 'osuli (principles of jurisprudence) works in two main viewpoints: the first, anti - *imtināni* cases, and the other is none *imtināni* ones. However, the effects of being *imtināni* of innocence, and the conditions and criterion of its comparison are not discussed and criticized by the jurisprudential and 'osuli sources. This paper is the first step in this regards, and comparatively examines the inferential effects of being *imtināni* of innocence from one of the two main viewpoints, namely the innocence is not enforced in the cases that are not being *imtenani*; meanwhile in this research, some anti- *imtināni* situations and their effects are criticized.

The achievement of this article is that adapting the being gratefulness of innocence to the jurisprudential inference has some conditions that are failed to consider, while accepting the condition of not being anti - gratefulness for enforcing the religious innocence. In the most jurisprudential adaptations, before anti gratefulness there are other obstacles which prevent performance of innocence or its resulting.

Keywords

imtināni precepts, *imtināni*, principle of innocence, religious innocence.

Abstracts

Jurisprudential analysis of B.O.T contracts

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Abstract

The definition of the B.O.T contract is as follows: giving the right to establish and use a certain project during the specified period from the first party to the second one, provided that the second party implements and uses the project with the intention of returning the basic capital and its logical and appropriate profit, and at the end of the contract period, without receiving a payment, the project will be delivered to the first party in the form of a desirable ready activity. In this research, with describing and analyzing the existing sources and similar works, such contracts have been jurisprudentially reviewed. The distinction between this work and the same works is that in addition to consideration of the affective foundations and presuppositions on jurisprudential analyzing these such contracts, more than 15 different possibilities for the jurisprudential reviewing these such contracts have been considered. Similarly, it is permissible to regulate how these conventions in the different forms and types of the religious contracts (more than ten legal models) including the specified contracts (deed, compromise, lease, istiṣnā', reward, agency), combined contracts (lease and compromise, sale and compromise, agency and lease) and independent contracts. Each of these forms also has the different effects.

Keywords

B.O.T, establishment, operation and transfer, new contracts, combined contracts.

Table of Contents

Feeh
A Quarterly Scientific-Research Journal

Vol. 25, No. 3, Autumn, 2018

95

- | | |
|---|--|
| <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> | <p>Jurisprudential analysis of B.O.T contracts
Belal Shakeri
Hosein Naseri Moqaddam</p> <p>Jurisprudential comparing the opponent works of gratefulness
for enforcing principle of religious innocence
Mohammad Ali Khademi Kusha</p> <p>Implication of 'ala al-yad rule on the liability of kidnapping
Mohammad Rahmani
Nafise Zarvandi</p> <p>Reasons of preferring a subjective index with a compound approach
to representing jurisprudential subjects
Sayyed Taqi Varedi</p> <p>Conflict of istiṣḥāb and dar` rule in criminal jurisprudence
and Islamic Punishment Code 2014
Reza Ilhami
sayyed Sajjad Mohammadi
Kamal Aqapour</p> <p>Analysis and critique of the implication of the hadith
"fi rajol ista`jara ajiran" on the trustee's non guaranty
Ali Nosrati</p> |
|---|--|



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