Abstracts

The Principle of the Autonomy of Outward Volition in the Territory of Wrong in the Legal Acts

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One of the issues which constantly considers among Islamic jurists (Fuqahā) and law scholars is the autonomy of outward (external) and inward (internal) volition and the role of each of them in the legal acts. The fundamental reason of the proponents of the theory of internal volition is the Islamic jurisprudential rule "aqd (Contract or legal transaction) following intent". It means that if aqd (contract) violates intent it will be null or invalid. From the other side, some other scholars have chosen the theory of the external volition and have regarded the apparent offer (ijab) and acceptance (qabul) of parties and do not pay attention to inward intention. In other words, they do not merely regard the indication (revealer) of words but they believe the causation (Causality) for them. In the law, the theory of the autonomy of outward volition is assigned to the law of German but it can be found in Imāmī jurisprudence. One of the cases of the external volition in fiqh occurs in the territory of wrong. It means that in

a legal act if contract parties act wrong the contract will be void or ineffective or unfulfilled or invalid because of the mutual intention of the parties has not happened (what is occurred, has not been intended, and what has been intended, does not occurred or what the parties intend has not performed and what happened is not their intentions). But it should be determined that with attention to the principle of irrevocability and mastering of transactions, all cases of wrong in legal acts are not the voidance of the contract and the contract can be cancelled or the contract is cancellable at the greatest possible and even in some cases it has no effect. It means the inward volition has not been governed and the words of contract parties are appropriate or fitting.

Keywords: *Volition, Outward volition, Inward volition, Wrong, Null or invalid, Cancellation.*

The Islamic Jurisprudential-Legal Mechanism for the Constant Preservation of the Rights Belonging to the Human Personality

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Today, the scope of the law belonging to the human personality is too numerous and the ways of its abuses and offences are uncountable. Through this, if the death or disability of a person to protect his right occurs, it will seem necessary to study the limitation of the authority of intermediary or heirs as trustee to protect the rights belonging to personality. with descriptive- analytic method and with referring to the library sources about the examination of the death impact on the relationship between persons with the rights relating to his personality and determining the position of heirs relating to this type of rights

in a detailed opinion, this research has accepted (believed) the additional part in the right in some cases and in some other cases, the research has mentioned (believed) only the permission of performance and practicing of that right can be transferable and belongs to heirs and in some instances,, the authority of heirs will be limited to be brought lawsuit to prevent abuses from one side and oblige the other side to fulfill.

Keywords: *Rights belonging to personality, The deceased, Deputy.*

The Position of Shart al-Mu'āmara (the Option of Consultation or Advice) from the View of Shia Fiqh

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Among options (al-Khiarat), option clause for being the result of free will of two contract parties has a special feature. Two contract parties in option clause can stipulate that the person having option after consulting with a third party (person) can execute or does not put into effect the contract. Idiomatically, this option is named shart mu'āmara or the option of consultation or advice. There are two questions about this option: why does the stipulation of mu'āmara cause the negation of the right of fulfilment or non-fulfilment of contract (putting into effect the contract or not) by the client before advice or consultation? What should be done if the client acts contrary to the opinion of the third person? In the response to the first question, this research has achieved that the option (al-khiar) is not supposed or regarded to be separated from the stipulation of mu'āmara. The client before consultation and advice does not have the right to put into effect the contract or cancel it and exercising the option has no effect. In response to the second question, it should be mentioned

that this case has two forms: when the client consults with consultant and the consultant orders to fulfill the contract, in this case, it is proved that it is necessary for the client to fulfill the contract. This obligation of fulfilment is for the condition of the option of cancellation or annulment has not been obtained therefore the annulation is void or the fulfilment of contract is for its natural exigency. The consultant commands to null or cancel it, in this case the client is the possessor of cancelation and has right (free) to cancel or fulfil the contract. After being familiar with the quiddity of mu'āmara (consultation or advice) in this paper, the evidences of Islamic jurists (fuqaha) have been studied about the determined cases and has been proved the determined opinions.

Keywords: *Option clause, Shart mu'āmara or the option of consultation or advice, Consultant, Variety of consultants.*

Insolvency Option and Comparing It with Retention of Title Clause in the Law of France

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If the buyer goes bankrupt it is the seller's right to reclaim property according to article 380 and the civil code of Iran. The retention of title clause in the law of France allows the seller of goods the right to retains ownership until the full payment of price by the customer and if the buyer goes bankrupt it will be the seller's right to reclaim property. The aim of this note is to study, describe and analyze insolvency option and retention of title clause which they have been examined in the law system of Iran and France with considering the positive laws and statute. Out comings show that in spite of having great differences; these two legal institutions have the similar function in the issue of customer's

bankruptcy and both gives right to the seller to reclaim property.

Keywords: *Insolvency option, Bankruptcy, To reclaim property, Retention of title clause.*

Reinvestigating of the Role of Sale Slip in the Situation of Mortgage; A Comparative Study in the Law of Islam, Iran and France

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The role of the situation of mortgage has been reviewed to present a proper solution as a suggestion for the law system of Iran through the comparative study of the issue in the law of Islam and France. We face this question if it should be followed predecessors concerning to the role of sale slip and should be determined the exigency (obligation) and non-exigency of sale slip in the validity of mortgage or with attention to variety and features of different properties and it should be differentiated between different properties. The result is in Islam law like the law of France from the view of the exigency of sale slip; it should be differentiated between personal property (movable property) and immovable property as a principle: the sale slip and its continuation is the validity stipulation of mortgage in movable property and it should be given up in immovable property. Therefore, the obtained results are suggested to the legislature or law maker of the civil code in the future reforms.

Keywords: *Sale slip, The validity condition and non-validity condition, Movable and immovable property, Official -legal- registration, Unenforceability (inopposabilité).*

Following Multiple (Tabidh - Taqleed) Marjaʿ in Different Islamic Religious Topics; Being Azimat (Obligatory; Strict Law) in the Face of Rukhsat (Permission)

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In the religious topics and Furūʿ al-dīn (practices or branches of religion) like other life matters, the manner of thinkers and the habitual practice of intellectuals is to follow religious experts and scholars. This following is a scope of following (obeying) mujtahids and it is called taqlīd or taqleed. The followers (mukallaf) usually follow one marjaʿ. Todays, because of variety of issues, unbelievable complication in our life problems in the different areas and different backgrounds and also their depth and expansion and its different dimensions and continual problematic and momently technology for man and his future, the specialization of fiqh and tafaqquh (profound understanding) it demands not to be followed one marjaʿ necessarily. From one side, fatwā (religious decision) far from knowing the fundamental and real exigency (requirement), it will be negative effects on mukallafūn (one who is obliged to fulfil the religious duties; followers) and society. The following research has examined the possibility of following different mujtahids (taqlīd) at the same time in the special chapters and sections of fiqh (following multiple marjaʿ) and it has presented and criticized different opinions at the end, this note has chosen the tenet of permission and even the necessity of following multiple marjaʿ with adducing evidences. The idea of azimat -obligatory- (beyond rukhsat-permission) is an approach which is based on the probative value of

evidences from one side and the weakness of the opinions of opponents from the other side, if following multiple marja is recommended and is rukhsat-permission today, it will be azimat (obligatory) in close future.

Keywords: *Following multiple tabidh-taqleed, Permitted, Necessity, Evidences, Rukhsat-permission, Azimat (obligatory).*

The Concept of Right in Two Paradigms "the Islamic Civil Code and the Western Democracy"

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The concept of Right is one of the fundamental concepts in the legal, religious and political topics and it is one of bases and principles of democracy. In the modern time, with the manifestation of thinkers and philosophers such as Tomas Hobbes and John Locke, the concept of Right has been far from its moral and divine background and it has been tied up with the concepts such as freedom, free (authority), Self-ownership (or sovereignty of the individual, individual sovereignty or individual autonomy). From that time, the dualism and paradox of the right and assignment has been propounded by the philosophical and political literature. The concept of right has an ancient history in the way of Islamic, religious thought and from the other side, it is considered by Islamic scholar specially fuqaha (Islamic jurists). The concept of right when it is used in the public and political area of Muslims relates to the concept of the right of individual autonomy of people which is the basis of democracy. This question is introduced what the position of people in a religious system based on divine sovereignty and the right of their sovereignty forms. With studying the right in the two paradigms f western democracy and religious democracy,

this research has examined different opinions of fuqaha (Islamic jurists) about the concept of right. Briefly the opinions of fuqaha relating to the sovereignty of people and the legality of their presence can be categorized into three groups: absolute disagreement, absolute agreement and stipulated (conditioned) agreement.

Keywords: *Right, hukm, Western democracy, Civil jurisprudence.*

Respecting the Life of the Neutral Original Kafir (Apostate)

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The subject of this note is to determine the role of Islam in respecting the life of persons. Most Islamic jurists (fuqahā) believe that the original principal about kafir (apostate) is the lack of respect for his life. Therefore, from their view, if kafir is not dhimmī (protected person) it will be kafir harbi (disbeliever who is in state of war) and if he is not mu'āhad or musta'man (protected) and even he is neutral, he will be mahdūr ad-damm (مهدورالدم) (he whose blood must be waste). The present note with restudying the Quranic evidences of two well-known and unwell-known opinions tries to reveal the general Quran idea about it. For this purpose, firstly, it will be clear the initial indications of the Quran verses with respect to the context of the holy Quran verses and close examination of the verity or actuality of the holy Quran verses. Then determining the connection of these two types of the verses, it is resulted that the true idea is to respect the life of the neutral original kafir.

Keywords: *Neutral kafir, Life respecting, Harbi (state of war), Isolation, Dar al-hiyad or land of neutrality, Kafir dhimmi.*