

Abstracts

Analysis of the Concept of Condition in the Specific Custom of Imamite Jurisprudents

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In the traditions, the conceptual nature of the word “condition” has never been addressed. The concept of the term from a conventional point of view and based on the available lexical evidence, there are two things: First: The deal is in the process of trading. Second: something which is suspended on another thing and since there is no comprehensive value between the first and second concepts. And among the Imamite jurisprudents there has been no special and distinct term for custom, as well, which customary concept should be considered in the field of jurisprudential matters, and especially transactions? In general, there are three approaches in this regard that, on the basis of each, the central concept of conditionality is: First: the concept of obligation and second: The concept of suspense: The concept of relevance. According to the findings of this study, derived from the study and study of dozens of jurisprudential works, the



concept that has been the basis of jurisprudential arguments in the past is: “Obligation and Commitment in Bía and the like” and on The basis of this perpetrator never applies to a condition outside the title.

Keywords: *Condition, Concept of condition, Custom, Specific custom of jurisprudents.*

Jurisprudential and Legal Thought on Article 401 of the Civil Law

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Option of condition is one of the options which relates to the agreement of the parties to the contract. One of the important issues regarding this option, is the time of option of condition which is in article 401 of the Civil Law, following a group of jurisprudents, has considered the indefinite time causes the void of the contract and the condition and a group of jurists have joined the agreement on the unknown time in following the jurisprudential texts. Now the question is whether the rule is based on strong basics and reasons or not? In particular, contracts are often neglected or neglected in determining of option of condition contracts. This study, by examining various jurisprudential and legal opinions and reviewing the evidence and reasons, concludes that both parties' silence on the term of condition option and the more correct view is the validity of the condition and the contract where there is a criterion for determining the term, so it is suggested to amend and supplement the civil law in this field.

Keywords: *Option of condition, Cucumber indeterminacy, Deceit, Article 401 of*





Jurisprudential Investigation of Data Confinement in Cyberspace

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Imprisonment in cyberspace is one of the most important events of this age. In many cases, the information, scientific, educational, and financial information of individuals is detained in cyberspace in such a way that detention prevents owners of the work from using their information, which raises the question of whether detention is a Allow virtual space? If not, what is its Imperative rules and status? Does imprisonment, in all cases, result in sanctity and guarantees? Imprisonment in cyberspace sometimes results in sanction, but in some cases only a warrant or only a sanction and the necessity of removing it, although there may be instances of neither sanction nor warrant. In this research, some of the issues which are discussed are reasons such as the wisdom to seize the property of others without the consent of the vicar, prohibition of consuming property wrongfully, the rule of “ala al-yad” and the rule of sanctity related to dignity, guarantee and ignorance, negation of warranties reasons on the permissible assumption.

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Keywords: *Imprisonment, Detinue, Imperative rule, Statuary, Sanctity, Bail.*

Reflection on the Ideology of Jurists on the Unity of Goods Stipulation In the Realization of Unlawful Profit Transaction

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Unlawful profit (usury) transaction is one of the types of usages that the famous jurists consider the three conditions of being: 1- module (measurement) and being weighty, 2- obtaining excess and 3- consideration in kind. The meaning of the same objects in the jurisprudence words is that if the custom carries a particular word on two identical objects, the two cannot be traded with one another in subtraction and must be equal in quantity. This jurists' word is while people's custom for two similar goods but with different traits, differ different trading values and reason also dictates that the taking of excess is not only permissible, but will require the transaction. The jurists referring to the traditions mentioned in this regard have assumed this condition as a unchallengeable and binding (canon law) and have all ruled on it consensus. In this research, while examining the reasons, we conclude that the traditions of this subject do not imply the necessity of being the objects similarity in the interpretation which the jurists have and the criterion of "being equal" can be substituted for being the objects similarity. Thus, if the value of the two commodities were not the same, it would be not only the taking of excess permissible, but also the taking of excess is the exact unlawful profit.



Keywords: *Unlawful profit (usury), Unlawful profit (usury) transaction, Module (measurement) and being weighty, Two objects subtraction, Two objects unity.*



Examination and Criticism of the Reasons for the Arbiter of Cancellation of a Prohibited Conditional Transaction (by Relying on the Sanctity of the Property Using with Invalidity Reason)

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One of the issues which has been discussed in civil jurisprudence is that the transaction is conditioned on the condition from the seller which it is forbidden; one of the three reasons of jurists which invalidate this type of transaction is matching the title of property using with invalidity. The nullity claim which is based on the book's indication on nonentity of capable of being owned of this type of transaction, is formed by the impossibility of distinguishing between condition and conditioned and specific narrations. It is dealt in this research with reasons for canceling the transaction by approach of property using with invalidity and this review of the necessity of capable of being owned in transactions, non-indication of The Book on capable of being owned negation from transaction, distinguishing between condition and conditioned ,placing consideration of transaction against the object of sale except in the cases of the condition impact in reduction and increase of the price and in the end

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will end into non-explicit indication of narrations on the nullity of the conditioned transaction therefore, the nullity of the transaction will be fixed only in the conditions that it causes the reduction and the price of the commodity.

Keywords: *Capable of being owned negation, Illegal condition, Property using with invalidity, Nulled transaction.*

A Critical Analysis of the Jurisprudents’ Approach to the Current Tradition in Inferencing Judgments “A Case Study of Narration by Abdul Hamid Bin Saeed”

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The present tradition, which is the act of the infallible (Al-Ma‘šūm), is undoubtedly valid and invoked under certain conditions in the process of deduction; but what seems contemplation here is that, despite the deeper impact of the actions compared to the words, this part of the Islamic legacy has been neglected and not taken care of as it should be. The present essay regarding to this point which is possible to discover obstacles through the examination of cases; studies one of the traditions that implies the current tradition of the infallible (Al-Ma‘šūm). The contents of the above narration illustrate the behavior of Imam (as) in dealing with the money gained through gambling that the jurisprudents have undermined the contents of the narration documentary and implicationally, ordered the incompatibility with the





beliefs of Imamiyyah basics such as infallibility and knowledge of the Imam. During the descriptive-analytical research, the author studies the above narration and how the jurists encountered it as one of the instances of the current tradition of the infallibles. According to the research, assuming the problem, while the Imam could just do a speech prohibition, in order to prevent with emphasis, started vomiting the property; which the action prohibition entails more denial and rejection compare to the saying prohibition, therefore, according to Mukhtar's (elector) view, the narration does not contradict the belief basics, such as the infallibility and the knowledge of the Imam, as some jurists are on it; in addition, through the analysis of the above tradition, it was concluded that the examination of narrations should include a set of proofs, including the examination of the content and the document; therefore, the sufficiency of one of them does not appear to be correct; rather, for final judgment, the sum of the evidence must be the basis of action.

Keywords: *Action tradition, Infallible behavior(action), Saying sunnah (tradition), Abdu'l-Hamid bin Saeed narrations.*

Investigation of the Famous Theory of Testimony on Testimony

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The witness himself directly testifies and testifies on it or by witnesses to the incident being informed of that event and testifying to his testimony. The one who witnesses the event and testifies about it, his

testimony is the original testimony. And he himself bears witness, and the one who testifies to his testimony before the ruler is called his subordinate witness, and he himself is called the subordinate witness. Since the presence of the original witness is often overlooked, it is necessary to elucidate and expurgation this argument. Many jurists have accepted testimony on the testimony by following of seven conditions as evidence to prove the claim; which have been explicitly stated and some have been stated in their phrases. But from the point of view of this research, there is no convincing reason for satisfying the first, second, fifth, sixth, and seventh conditions, so these conditions can be criticized and seem unnecessary. Famous reasons in support of the inadmissibility of testimony on the testimony of subordinate witnesses which is in expression is third-party testimony is also said to be defective and the credibility of the third testimony is defensible.

Keywords: *Testimony, Testimony on Testimony, Subrogation testimony, Principle witness, Subsidiary witness.*

Applying Traditional Non-Contractual Civil Liability Rules to Holding Company's Responsibility for Subsidiary Acts

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Holding Group and its subsidiary, one of the most active in the economic community today, despite the lack of special provisions in the Iranian legal system have been operating in the Iranian economic

system for some time. Therefore, in order to deduce the laws and laws governing their relations, we have to refer to the existing rules and general laws. One of the issues with this group cooperation which is afflicted is the liability or non-liability of the Holding Company against the Subsidiary's creditors is due to the holding and management of the Holding Company in each of the Subsidiaries and their independent legal personality. After disputing views on the unity or multiplicity of legal entities between this group of companies and, as a result, of Holding Company's absolute responsibility or non-responsibility, we chose a third intermediate opinion on the relative independence of Holding Company against its subsidiaries. After examining the arguments of the supporters of the theory of relative independence in Western law, such as the doctrine of corporate legal personality hijab, fraud against the law, prohibition of abuse of power, according to the legalization of the Iranian legal system based on the Islamic legal system To jurisprudential rules such as Harmless, arrogance, everyone has a benefit; it has a disadvantage, cause and... and as well as related legal articles, the choice of causation rule, and rectifying of non-contractual civil liability-based article of the provisions of the statutory non-contractual civil liability, such as Articles 1, 7, 11, 12 of the Civil Liability Act as a general criterion in the holding and basis of the liability of the holding company against the actions of subsidiaries, seems justified.

∴ **Keywords:** *Holding company, Subsidiaries, Doctrine of the jurisprudence of the company, Causation.*

Juridical and Legal Possibility of Compensation Caused by the Ownership of Dangerous Objects

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The topics of “civil liability” in law are discussed under the heading of “compulsory guarantee” in jurisprudence. High precision (scrutiny) in the use of compulsory guarantee contributories in jurisprudence indicates, that, this is the “person’s behavior” that plays a central role in the guarantee. The emphasis on the necessity of attributing wasted property to Islamic law behavior raises this question of whether ownership or on the other hand the domination of property over object of sell can also be regarded as compulsory guarantee contributories as well as the rules of destruction and *ala al-yad* (under fiduciary capacity)? In other words, can a person be the guarantor of damages by means of the ownership or domination of property without invoking damage refers to the behavior of the owner? The research has shown that ownership of Islamic law is a set of rights that allows one to use it, without the right of use oppositely, the right of exploitation and the right of occupation applied by a person shall be guaranteed his or her ownership. However, in order to preserve the social norms and social expedients of present era that result in the production of dangerous objects and the infliction of increased damage to persons, a solution must be sought to hold the owner accountable for the damages caused by the dangerous goods which were under their control. According to the authors, based on the Imamiyyah jurisprudence and with regard to the distinction between





the concepts of “responsibility” and “guaranty”, it can be used theories of civil liability in law, which are equated with the necessity of compensation, as well as the compulsory provision of insurance coverage and the recognition of the rational nature of guarantee.

Keywords: *Civil liability, Compulsory guarantee, Behavior, Ownership, Dangerous goods.*

Research on the Impact of Illegal Direction: Confirmation or Verification ?! (Investigation of the Jurisprudence of Article 217 of the Civil Law)

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According to Article 190 of the Civil Law, the legitimacy of the order is one of the essential conditions for the accuracy of the transactions. Concerning the condition of its effect in Article 217 of Civil Law it is stated that in order to influence the illegitimate direction (that is the nullity of the contract), which must be specified. Therefore, in the case of knowledge of one of the parties to the contrary which is illegal to the side, the contract is correct. This is while there is a discrepancy between the jurisprudents of Imamiyah, in a way which some who consider it permissible and some void. In the present research, after explaining the meaning of illegitimate direction, and quoting legal interpretation on the issue, jurisprudential principles on the issue, such as specific narrations, and prohibited contributions to sin, with considering the intention of lawgiver to eliminate the corruption of

matter has been investigated and finally, the nullity of the contract is accepted if it is one-sided for illegal direction and knowledge of the other party and principles such as the principle of validity cannot prevent the void arbiter progress and it was concluded that the criterion for influencing the illegitimate direction, is identification or positivity (and not specification of that) Therefore, it is suggested to the respectable legislator in future amendments (reforms) of the civil law.

Keywords: *Illegal purpose, Trading purpose, Knowledge, Specification, Prohibition, Nullity.*

A Research on the Impact of Creditor's Indigence on the Issue of Debt Exemptions

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One of the issues in civil courts has been the exemptions of debt from the past to the present. Jurists and jurisconsult in this issue believe that if debtor owes no property except his home and some other necessities of life, creditor cannot force him to sell the property. Different aspects of debt exemptions have been explored in jurisprudence books and jurisprudential and juridical researches, but what has not been addressed is the impact of financial conditions of the creditor on debt exemptions arbiter. The question of whether the creditor is still in penury can also order the debtor with the exception of some property of debtor? This is the question that has been tried to be answered in this research through jurisprudential, traditionary and law books. In



the end, after examining the reasons for the debt exemptions, which are mainly narrations and the rule of distress and constriction negation, what is stated as an answer to this question is that these reasons does not apply to the case where creditor himself or herself is in distress and constriction (insolvency), therefore, debtors' property can be withdrawn as long as distress and constriction (insolvency) be removed from creditor, even if it is his (debtor) house. if creditor is in distress and constriction (insolvency).

Keywords: *Debt exemptions, Distress and constriction, Debtor, Constriction negation rule.*

Exploring the Role of Rationality in Determining the Scope of Contractual Responsibility Based on Imam Khomeini and Martyr Sadr's Opinion

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The role of the “rational course” in the inference of Shari'a law has been more or less considered by the jurists. The point of difference is how to determine its status, conditions and validity. At the same time, the greater validity of the precepts of the meaningful transactions of the world indicates the importance of rationality in jurisprudence. (At the same time, the more general verdicts of the verdicts confirm the importance of rationality in jurisprudence.) The exquisite views of some jurists in the study of the material and spiritual components of the Sirae are the basis for the significant works in contractual responsibility. Based on the findings of this essay written in a

descriptive-analytical manner, it can be said that, in addition to relying on the evidence of coercive assertion to substantiate the principle of contractual liability, this type of disclaimer is indisputable, and does not imply explicit or implied (This type of responsibility is certain and it is not correct to subject it to explicit or implied). therefore, article 221 of the Civil Code is incorrect. In addition, relying on the organic and instrumental role of the rational process in understanding the rules of loss, ala al-yad and prohibition of detriment, the radius of responsibility encompasses non-profit damages. The of liability covers the non-profit losses incurred. On this basis, the amended Articles 221 of the Civil Code and Note 2 of Article 515 of the Code of Civil Procedure have been proposed. The overall approach of this article is to endorse the theory of unity of accountability and is in line with jurisprudence. At the same time, however, it differs from the well-known view of jurists, in that it argues that coercive damages include non-profit damages. (At the same time, it differs from the famous view of jurists in that it is argued that forcible indemnification involves non-profit damages.) Definite non-profit damages whether due to usurpation of property, human imprisonment, or breach of contract.

Keywords: *Rationale, Custom, Contractual civil liability, Non-profit damages.*