Abstracts

The Study of the Concept of the Social Compulsion and Its Effect on the Legality of the Damage to Property

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Compulsion (اضطرار) meaning compelled, impelled, forced and helplessness can be divided to individual and social. About the second part (social compulsion), according to an opinion, compulsion is a description or a title on the natural person and in the case of demonstrating this title, the primary ordinance (hukm-e awwaliyya) has changed and another hukm appropriate to the condition of the compulsion has been proved for the person. But according to the another opinion based on the acceptance of the judicial person or the unified nature for the community, the principles governing the natural person governs the community and the social compulsion can be defined. Consequently, all ahkam and the effects originating from the individual compulsion dominate the social field. This paper has

strengthened the second attitude and these results have been achieved that the society is an original affair and has living and a unified nature. Either from the scope of its unified nature or the scope of having the judicial person, if it faces compulsion, all the effects of the compulsion from both taklifi (a legal charge or obligation) and wad' (enactment) involve it. Therefore, ahkam al-taklifi (defining law or obligations creating rules) and ahkam al-wad'i (declaratory laws) are changed as in spite of general rule of the respecting property, the damage of it does not create the criminal and legal liability and also guarantee.
Keywords: *Necessary, Compulsion, Individual compulsion, Social compulsion, Necessary interests, The society judicial person.*

The Critical Examination of the Definition of the Insolvent Person with Emphasizing on the Law of the Execution of the Pecuniary Punishments Codified 1393

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Because of being the different Islamic ordinances (ahkam) for the title "insolvent person" (معسر), but all the definitions which have been determined by the Islamic jurisprudential texts and law face problems. In this note after examining and criticizing the determined definitions for the insolvent person (معسر), a new definition has been suggested.
Keywords: *The insolvent person, Debtor, Financial liability (commitment).*

The Criterion for Mu’āmalāt Rules and Its Effects on Imamiyyah Fiqh

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The term “ملاک” and the similar words to it have many usages in Imamiyyah Fiqh especially in mu’āmalāt (transaction) chapters. The criterion of hukm (Islamic fiqh rule/ ruling/ law) is a matter which is the basis of hukm. A matter which is the parameter (index) for the occurrence of the subject of matter or a measure for the purpose of the hukm and with inferring that index, the Islamic jurist can find the matter of hukm in comparison to the mentioned (attached) matter of the hukm proof broad (extensive) or narrow (restrictive). With the analytic-descriptive method and with collecting information from the usuli and fiqhi books, this note has studied the consequence of the induction of the usage of “ملاک” (criterion) and the terms similar to it in the Imamiyyah mu’āmalāt fiqh. With using the analysis of fiqhi attitudes, it has been proved that Imamiyyah jurists with the criterion of the mu’āmalāt rules (ahkam) have achieved to the broadening or narrowing of hukm which have been deduced.

Keywords: *Criterion, Axis, Basis, Purpose, Interest, Transaction.*

Reinvestigating the Evidences of the Fiqhi Ruling of the Prohibition for All the Time in Zinā with the Extramarital Affair of a Married Woman and a Divorced Woman in Her Waiting Period

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According to the saying of the well-known Fuqahā (Islamic jurists), if a man with a married woman and with a woman in her waiting period (’iddah) commits zinā (non-permissible extramarital intercourse), both partners (the adulterer and adulteress) become haram (forbidden) one another for all the time. The main evidence for this ruling is some Islamic traditions and the scholarly consensus (Ijmā) which has been taken by Sayyed Murteza (one of the greatest Shia scholars). In opposition to this opinion, there are infamous opinions with no unity of bases. In this paper, meanwhile reviewing the well-known fiqhi opinion, it has been criticized and studied the related evidences and at last, meanwhile challenging the famous opinion, with adducing to some Quranic verses and valid hadiths, the opinion of the lawfulness of the marriage between the adulterer and adulteress and the legal sexual gratification.

Keywords: *Haram (forbidden) one another for all the time, Zinā, A married woman, A woman in her waiting period (’iddah).*

The Comparative Examination of the Cancellation Clause from the View of Imamiyyah, the Law of Iran and Egypt

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If the dissolution of the obligation attaches to a provision that after its occurring, the obligation will be ineffective, this condition is named “Fasekh” (rescission, annulment). Speaking about the cancellation clause in Islamic jurists’ writings relates to the concept of the optional sale (bay). One of the imagined types in the area of paying back the price which is the condition of the dissolution of the contract relates to the issue of the condition of “Fasekh”. The approach of Imamiyyah jurists (fuqaha) to this legal establishment is not similar (the same). For the exigency of the implementation of the stipulation, the disagreement between the cancellation clause and the essence of the contract, the dependence of the effects (musababat) on causes (asbab) and the condition of “Fasekh” (rescission, annulment) is the natural dissolution of the contract with no establishment, some of the Islamic jurists believe that it faces problems. In contrast, many of them believe that the condition of “Fasekh” is valid because of the proofs of the stipulations and the Islamic tradition of the conditional sale (bay’ al-Shart) chapter. The civil law of Iran has mentioned neither in the matter of “ta’liq” (suspension) nor in the part of the stipulations. with following the well-known attitude of the Islamic jurists and with inferring to the legal and jurisprudential (feqhi) principles, the law

scholars have believed that the condition of “Fasekh” is valid. The Egypt legislature in the article 265 to 269 has explicitly stated the nature, ordinances and the effects originating from the condition of “Fasekh” and recognizes it in the same position of the waqif stipulation (mu’allaq).

Keywords: *Stipulation, “Ta’liq” (suspension), Dissolution, The condition of “Fasekh”, The suspension in the dissolution of the contract.*

Determining the Affirmatory Ordinance and Its Effect on Inferring Fiqhi Religious Ordinances

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One of the current divisions in the contemporary jurisprudence (fiqh) is the division of Islamic orders in to “affirmatory” (imzaei) and “foundationary” (ta’sisi). Without considering the available disagreement in this definition, it should be mentioned that it is a true division which has been established by Islamic jurists (fuqaha) and it can be the origin of the important effects in inferring the Islamic rulings. Some of the current laws in the Islamic community obtained from the human intellect and the passing of the time and the holy lawgiver has considered them. He has accepted (supported)them with stating some proofs which most of these ahkam al-wad’i (declaratory laws) are of these. The affirmation and acceptance of the intellects’ hukm by the holy lawgiver does not comply with the establishment of hukm by Allah meaning if the intellects have an order (hukm) and this order has been advocated by the holy lawgiver, necessarily the

approval of the holy lawgiver has not been coincident with the establishment. It is important that the holy lawgiver has declared a clear affirmation or at least, He has not disagreed with it meaning it explores the consent of the holy lawgiver. In a position which the holy lawgiver has approved, it means that the holy lawgiver has not felt to establish foundationary (ta'sisi) and He has given the intellects to solve the problem. By accepting this meaning, it can be resulted from the affirmation of the holy law-giver, the affirmations of the holy lawgiver make the intellects have authority with practicing hukm aql (the order of the intellect) in every time and place to consider everything which are accepted by aql (intellect) as the hukm of the affirmations of the holy lawgiver. the acceptance of this this matter is an introduction for a new method to extract the legal rules (hukm or ahkam al-Shari'ah) in affirmations which get mujtahids have more authorities. But determining the instances of these affirmations needs research.

Keywords: *Ordinance, Affirmatory, Establishment, Establishing, The intellects' manners.*

The Tradition "مجاری الامور" and Its Implication for Velāyat-e Faqīh

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Velāyat and the authorities of a faqīh (an Islamic jurist) which has been paid attention by the Islamic religious scholars is one of the important issue at the Period of Imam's Absence (Occultation or

Ghaibat). This matter which the government is in the hands of the Islamic religious scholars at the contemporary time has situated a high position and more importance. Speaking about the scope and limit of the faqih's authorities is a lot and one of the evidence related to is the tradition which has been known as the tradition of the administration of all affairs of the society in the hands of ulamā (مجاری الامور بید العلماء بالله). The defined hadith has been found in two hadith collections al-Meyar Va al-Movaazina (المعیار والموازنة) and Tu af al- uqūl (تحف العقول) in the 3rd and 4th A.H. and some parts of it has been mentioned in Nahj al-Balaqe (نهج البلاغة). But for being these sayings in the form of mursal (a hadith which the intermediated narrators have omitted or its chain of narrators back to the infallibles is incomplete), none of them can be adduced. Therefore, for the lack of the authenticity, this hadith cannot be adduced. But about the indication of this hadith, of the four stated problems, only one problem (the 3rd problem) is acceptable. With this description, the referred hadith is not reliable (authentic) from both sanad (the chain of narrators) and the hadith meaning for proving Velāyat-e Faqīh.

Keywords: *The administration, The administration of affairs and ahkam, Those who are knowledgeable concerning God (ulamā bi Allah), Velāyat-e Faqīh , Absolute Velayat.*

The Civil Liability of the Government for the Water Sources on the Basis of the Islamic Legal Maxims of Waste, No Harm and Respecting

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The water sources are the divine gift and the consequence of God's favor to man. According to this, it belongs to all human beings to be used like other divine favors. According to the verse ﴿قَالَ اجْعَلْنِي عَلَىٰ خَزَائِنِ الْأَرْضِ إِنِّي حَفِيظٌ عَلِيمٌ﴾ (Yusuf/ 55) (Set me over the lands treasuries. Surely I am constantly-persevering, constantly-knowing). The management and the managing of the water sources should be the duty of the people who have the specification of protecting and liability. This great responsibility according to the article 44 of the Constitution of Islamic Republic of Iran is of the government. But sometimes the government with poor management or the violation of its duty causes damage to the water sources. This note tries to know the position of Sharia law, or Islamic law for the damages caused by the government based on the Islamic legal maxims of the waste, no loss and respecting carefully. The water sources are obvious that the category of the responsibility for the water sources not only is neglected but also has been considerably paid attention by the holy lawgiver and because of the generality of these maxims, ahkam and the explicit requirements related to them have been advance. The most part of these data and Islamic jurists' sayings through the library studies and with using notes and indexes and the regulations related to the field of the issue with analytic-descriptive method have been collected.

Keywords: *The civil liability of the government, The water sources, Damage, The legal maxim of waste, The legal maxim of no harm.*