Legal-Juridical Reviewing of Pre-Emption of Beneficiary of Endowments

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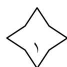
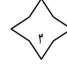
The pre-emption of beneficiaries of endowment is one of the disputable issues in jurisprudence and law, and different views have been expressed about it, and civil law has also followed the dominant idea in this regard. In this regard, there have been three major ideas among jurisprudents: some believe in non-ownership of the beneficiaries of endowment on the properties of the endowment, so they don't have pre-emption; another group believe that the pre-emption is an exception and it is applied in the cases where the property is shared between the two people, thus they have chosen an idea in between, that is, there is pre-emption only in cases where the beneficiaries of endowment is one; and finally, a number of other jurisprudents such as Sayyed Murtaza, based on the principle of no harm and the prophetic hadith, have proved this right for the beneficiaries of endowment. By reviewing the views of jurists and jurisprudents, this paper has attempted to consider the views of opponents and proponents about pre-emption for the beneficiaries of endowment. Ultimately, this paper has accepted the theory of the legal personality that has been chosen by Dr. Katouzian and the idea of Sayyed Murtaza, who emphasizes on the principle of no harm and prophetic hadith and close to the intention and the will of the





perpetrator, and the affirmation of the right to seek justice by the endowment of the enemy. According to this research, despite the fact that the idea of Sayyed Murtaza may have some problems, it is closer to the intention and the goal of the endowment.

Keywords: *Pre-emption, Beneficiaries of endowment, Ownership, Legal personality, Principles of no harm.*

The Nature of the Offer

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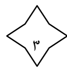
Despite the simplicity of the concept of the offer, its nature is rather complex. The offer is one of the components of the intention in establishing the contract. There is a great deal of controversy about the nature of the offer among jurisprudents and lawyers: some believe that the offer is a unilateral disposition that is created by the will of the seller. In his view, the declaration of the will of the offer and acceptance alone constitutes a unilateral legal act, since each of them has certain legal effects, even if they are not combined with the declaration of another will and do not lead to the contract. In contrast, another group believes that the separation of two making contracts should not be construed as meaning that the contract consists of two independent dispositions. Each of these two making contract is a part of the cause and provide the ground for contracting. The constructive force of the offer and acceptance is so constructed that they are bounded to each other, in fact, the effect of the offer is in the case of

customer's acceptance, and the effect of acceptance of the customer is in the case of realization of the offer. Therefore, each of the offer and acceptance is considered as a part of the cause. In our view, in order to explain the nature of the offer, it is necessary to distinguish between two types of offer: offer without obligation and offer with obligation.



Keywords: *Offer, Simple offer, Obligatory offer, Required disposition.*

Legal Feasibility of the Fall of the Option of Deception by Paying the Difference of the Price

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There is no doubt that the right of cancelation of the contract is created for the defrauded person when the deception becomes evident, but sometimes it is seen that the defrauder pay him the difference before the cancelation of the contract. The main question in the present research is that does the fight of the defrauded person disappear by paying of extra price by the defrauder or his right of cancelation remains? The answer of the article 421 of the Civil Code is negative and indicates that the option of the defrauded person remains. Reviewing the issue, the author criticizes the ruling contained in Article 421 and believes that by compensation of the damage by the defrauder the option of the defrauded person will be overthrown. This theory is consistent with the principle of the necessity of contracts and the exceptional nature of the right of option and other legal Articles, including Article 424 of the Commercial Code. It is also implicit in

the jurisprudential rules such as “principle of no harm” and “the rule: when the impediment is removed the prohibited will remove”.

Keywords: *Option of deception, Negation option, Article 421 of Civil Code, Origin of option, Remaining of the option.*

Criticizing the Article “Juridical and Legal Review of the Guarantee of the Execution of the Violation of the Negative Condition”

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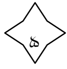
There is a controversy among scholars about the executive guarantee of the Condition of the Leave of a Legal Action. In the article “Judicial and Legal Review of the Guarantee of Infringement of the Condition of the Leave of a Legal Action”, which has been published in the issue of the 13th journal of the Doctrines of civil jurisprudence of Razavi University of Islamic Sciences, the author of the articles of civil law has inferred from the views of the jurisprudents, lawyers and the legal procedure that the of executive guarantee of the condition of the leave of action is the right of cancelation for the person who the condition for him and the right to demand damages. This conclusion is faced with major basic problems because, as the jurisprudents state, first, the fulfillment of the condition in a contract is obligatory. Secondly, the guarantee of the implementation of the condition of legal action is negative or condition of the leave of legal act does not establish the right of cancelation, but it has to be known that the



fulfilled act in contrast to the condition is validate, void or not influent. Third, the evidences that have been quoted from jurisprudents are not correct and no jurisprudent believe that the prohibited act is correct. Using the original jurisprudential sources and analytical methods, regardless of the available discussions in the books of principles of jurisprudence, with consideration of the different and, more efficient ways that has been expressed by jurisprudents, this critique concluded that, depending on the fact that whether the former permission would eliminate the prohibition or not, the transaction will be ineffective or invalid. Given to the fact that according to the well-known jurisprudents' opinion the unilateral dispositions are not made non-influentially, this distinction does not include the unilateral disposition and the guarantee of the implementation of the prohibited disposition is its void.

Keywords: *Prohibiting of the transaction, Void, Non-interpenetration, The right of cancelation, Reject.*

The Condition for the Determining of Alimony in Iranian Law and Shiite Jurisprudence

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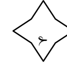
One of the issues that are problematic in the system of family law is the determining of alimony. On the basis of this condition, the couple may, with the consent of the wife, determine the exact amount of the alimony or make determinable. If this condition is accurate, the wife does not have the right to claim from her couple more than that



predetermined amount. Accordingly, there is a controversy between jurists and lawyers; in other words, some have considered the "alimony" as a "right" and some considered it as a "religious command". On this basis, if it is accepted as a command, the condition should be void, while the accepting it as a right strengthen the accuracy of the condition. Accordingly, the author in this article attempts to prove that according to the views of both jurisprudents and jurists about alimony, whether it is a right or a command, this condition can be permissible, and in this regard, if any of the jurists and the lawyers are inclined to each of the two perspectives, this correct condition can be mentioned in the contract.

Keywords: *Alimony as a right or a command, Condition for determining of the alimony, The commandment of the determining of the alimony.*

The Approach of Shiite Jurisprudence Towards the Sale of Dead Animal to the Infidels

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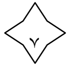
In the present day, Muslims have a wide range of business communications with the infidels and the people of the book. One of their communication platforms is trading. The conditions and necessity of interacting with the world require that Islamic countries and Muslims interact with the infidels or the people of the book and those who do not observe the rules. On the one hand, in Islam, for the correctness of transactions it is necessary to have some conditions without which the transaction is void; for example, the goods must



have financial value among Muslims and transaction on the property that are valuable in view of the custom but the prophet has forbidden its trading is not correct. One of the issues that are forbidden in the Sharia law is the sale of dead animal and various religious reasons imply its prohibition. According to Islamic teachings, if the buyer and seller are both Muslims, their trading is invalid and forbidden, but the issue of current research is that the transaction is at a time when the customer is a disbeliever or one of the people of the book. In addition, we examine whether the religious arguments for prohibition of the sale of the dead animal is absolute and prohibit all of its benefit or some of its benefits are permissible even when the transaction is between two Muslims.

Keywords: *Selling of the carrion, Who permits using carrion, Infidels, Intent of eating, Intent of using it except eating.*

Justice in “the Housekeeping” of the Housewives

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Justice is in the rank of the causes of judgments. Since jurisprudential sources and practical decrees are one of the sources of law, justice should also be considered as a “balance” and a measure of law. In this regard, if a law is not compatible with it, it should be reviewed and the gap should be filled. In the meantime, women’s rights are tied up with justice because at various times, in both the community and at home, oppression has been imposed upon them, which caused imbalance in

their rights. One of the concepts related to women's rights, which seems to be incompatible with justice, is the definition of "housekeeping"; according to official definitions, a housekeeper is considered as an inactive person in society and in the economy. This article has focused on this definition from the aspect of justice and it is adapted to religious and legal teachings to determine that not only is the above definition not a fair definition, but also, if we want to look at housekeeping fairly, it is one of the noblest professions that should have legal rights and benefits.

Keywords: *Justice, Housekeeping, Employment, Work, Added value, Women's rights.*

The Nature of Imprecation and the Effect of Permanent Bar of Marriage from the Perspective of the Sunni and Shiite Jurisprudence

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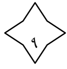
The sacred law has appointed some constraints and obstacles on marriage due to some reasons such as the preservation of human values and family reverences, and in some cases due to punishment of the obliged. The permanent bar of marriage of men with women is one of the topics that the jurisprudence is responsible to discuss for the same reason. One of its examples is "imprecation". The coherence and explaining the Sunni and Shiite views and their foundations about this subject is the main goal of this study. Thus, the audience becomes familiar with the views and opinions of the jurisprudents of both sects

and it becomes an introduction for researchers to access easily to other topics of permanent prohibition in a comparative way. The main questions of this research are: a) what are the reasons and bases for the permanent prohibition of marriage due to “imprecation”? b) What are the commonalities and differences among five Islamic sects about this subject? This analytical-comparative research has no background and given to its subject and resources, it has been developed by using inference and ijtihadi methods.



Keywords: *Marriage, Imprecation, Permanent prohibition, Factors of the prohibition, Jurisprudence of the both Islamic sects.*