

Abstracts

Research in the Indication of the Noble Verse of Do not Help One Another in Sin and Aggression □ لَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ □ to Being Forbidden Help in Doing Sin and Transgression

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Most of the Islamic jurists and the Quranic exegetes have inferred that the noble verse □ لَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ □ (Do not help one another in sin and aggression) indicates the prohibition of help in doing sin and transgression. But some have not agreed to it and because of using the word تعاون (Help) and being the indication (evidence) to Nahi Tanzih (it is advisable not to do this) they have determined problems in the indication of the noble verse. The authors after analyzing and studying the reasons of both parties try to explore what is understood from the opinions of Islamic philologists, jurists (fuqaha) and the Quranic exegetes shows most of the time and cases the words تعاون (Collaborate) and امانت (help) have the same meaning. Also, merely following one after the other and examining comparing the two last sentences of the noble verse are not appropriate for the indication (of prohibition to Kerahat (not recommended) and repetition the verb تعاون (Help) in the second sentence and not using only the word لَا (No) in this sentence stating the independence of the both sentences and therefore according to the intellect and the nexus between subject of the matter and hukm, it is certain that the noble verse indicates the prohibition of helping in doing sin and transgression.

Key words: *Prohibition, Sin, Transgression, To help in doing sin.*

The Civil Liability of Ill Persons with Contagious Diseases

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The goal of civil liability is to protect the injured persons and compensates all loss. But in some cases, the injured person is also the one who causes damage himself. An ill person with contagious disease is a sample of injured ones who should compensate the loss if he transmits his

illness and damages others. For this, the law determines duties for these ill people who are aware of their illnesses. Some of the mentioned duties are care for the safety of others and preventing from others losses, announcing the disease to whom are related to him and carrying out the cautious affairs to avoid dangers. The protection of human safety is as important that sometimes the responsibility of transmitting diseases are being involved the generous persons and mothers. For instance, carelessness of mothers to do pregnancy tests and injecting the necessary vaccines before pregnancy causes responsibility for them. Blood donation by someone with contagious disease who is aware of his disease is accompanied the responsibility of the donor and the intention of charity does not make him be protected. From the other side, the responsibility that originates from transmitting diseases is not included ones who are aware of their diseases but those who are not aware. Therefore the responsibility of unaware ill persons can be proved by the principles of damaging and causation.

Key words: *Contagious disease, Ill persons, Civil liability, Care for the safety, Cautious.*

The Comparative Study of Good Faith in Islamic Jurisprudence (Fiqh), Foreign Laws and International Documents

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There is no agreement about the necessary consideration of good faith among the legal systems as a contractual duty. Some of the legal systems (mostly civil law systems) regard the consideration of good faith to be a requisite for necessity, advantage and justice, conversely, the other legal systems (mostly common law systems) with regarding the principle of autonomy of the parties and the principle of legal certainty do not view the violation of good faith creating responsibility for parties. But the position of Islamic jurisprudence is not obvious. Meanwhile, it is understood the necessary duty (consideration) of good faith from some Islamic jurisprudential institutes, it is difficult and doubt to deduce a public and enforceable principle. This note is going to study the all capacity of Islamic jurisprudence (fiqh) in order to induce an Islamic jurisprudential principle as the necessary duty (consideration) of good faith. Even though, in last assessment it seems that the Islamic jurisprudence from the point of the absent implication to good faith as a common and necessary principle is more like the common law systems (like England legal system).

Key words: *Good faith, Legal-jurisprudential principle, Civil law, Common law.*

The Examination of Disputes Governing the Principle of Severability of One Contract to Several Contracts

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According to the principle of severability of one contract to several contracts, a contract which is constructed on the whole of a compound contract can be divided to several contracts in some cases. In spite of adducing to the mentioned principle in different sections of Islamic jurisprudence, Imam Khomeini has accepted the customary (public) divisibility of contract effects instead of divisibility of contracts in order to solve the problems; meanwhile, he has stated some objections. This research tries to study from one side, the determined objections in the severable principle and answering them and from other side, it is going to determine and analyze Imam attitude about this issue and at last it tries to create harmony between the opinion of the most famous Islamic jurists and Imam's Khomeini's approach. It should be stated here that in spite of the specific analysis of Imam Khomeini and its fundamental variety with the analysis of the proponents of the severable principle, the both analyses achieve the same effects in function and it is because of the acceptance of the basic role for mores in the determination of the divisible cases (division of contract or division of its effects) in both opinions.

Key words: *The principle of divisibility, Contract, Mores (Custom), Objections.*

A Research on Farmer Rights to Landowners

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A farmer is a person who farms with his instruments and implements in the land of someone else with his consent. The crop which is obtained by the farmer's work is contributed to both the farmer and the landowner on a share-cropping. The landowner's share of profits is for his possession of land and the farmer's share of profits for his work and tools and the expenses which he has done to run his operation. After the end of the contract, what have been produced which are included trees, buildings, Utilizable roots and etc. in the land for the farmer. This ownership causes the right of priority for the farmer in land use which it has not been mentioned clearly in laws. The determined right leads to continue the relationship between the farmer and the landowner after the end of the contract and none of them is able to cancel it one-sided.

Key words: *Farmer, Landowner, Farmer rights, The right of priority, The right of cultivating root.*

Restudy of the Causation Principle and Critiquing the Rules Related to It

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The causation is one of the reasons of the obligatory liability. Causation means a person make someone be hurt indirectly. Because it is important for judges and two sided of quarreling to be known the real liable and from the other side, the definition which is mentioned in the statue and the other determined definitions for having problems and ambiguities cannot clarify this matter we decided to shed light on the dark points and problems with analyzing and investigating in the lightening words of ahl al-Bayt (peace be upon them) and with considering all related traditions and using the prominent Islamic jurists to get standards and rules to recognize the real liable in the causation liability. The results show that the title of loss for its expanding concept applied for harm or penalty in order to be included all psych and property and also reputation losses. Also losing the will of the hurt (damaged) person, the allowable acts of causative agent and hurt person are criteria to be considered in recognition of liable to causation. At the end, the criteria of real liable in causation liability are accorded to every person or persons, he or they are liable and it should not be considered and he being far or close in the chain of reasons which creating loss.

Key words: *Damaging, Causation, Loss, Cause (Reason), Positive law, Causative agent.*

The Early Execution of the Obligations in the Islamic Jurisprudence (Fiqh) and Law of Iran

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The time and date of the execution are of conditions which effect on the relation of both parties in the execution of the obligation. In most legal systems, the fundamental principle is the governance of both parties' intent in the determination of the time of contract execution and then law, court and custom play roles. If the time of the execution of the obligation is determined the obliged can carry out it before the fixed date is the subject of argument which is studied by this note? The effects of early execution of agreement are dissimilar due to the time of the contract execution is as a condition within a contract or it is as a stipulation of the main subject. The quiddity of this execution can be unilateral or bilateral contract or a legal fact and attitudes of non-acceptance or restricted acceptance have been determined. The present note has divided this subject according to this the period of time is in favor of whom that in the implicit or direct agreement of both parties or with consideration of situations and circumstances and interprets the silent situation that it is in favor of the contractor.

Key words: *Execution of the obligation, The time of the execution of the obligation, The quiddity of the execution of the obligation, Early execution (Putting in to effect of a contract before its fixed and definite time).*

The Analysis of Art.651 of the Civil Code of Iran

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If within a loan contract sets out a condition that after a period of specified (fixed) time the loaner has been a right to demand repayment and the borrower has responsibility to return, among the Islamic jurists there is no agreement if it is valid or invalid. The origin of these two opinions is the different attitudes toward the obligation and permissible or allowed. In response to the late problem, there are three opinions should be investigated in Imami jurisprudence. The well-known Shia jurists believe that the loan contract is a mutual obligation. But some others believe that it is a mutual allowable and the third group believes that it is obliged from the loaner and permissible from borrower. The most of who accept the obligation of the contract believe that the condition of time within the loan contract is void and majority of them accept that it does not cause the void of the contract. Contrary to them who accept the permissible of the contract and condition believe that the effect of this condition is not force able and for being forcible they suggest that it should be included among the other obliged contracts. Although the author like other famous jurists accepts the mutual obliged but contrary to the most of jurists believes that the condition of time in this contract is a permissible condition and therefore setting it out within the contract causes the obligation to be followed.

Key words: *Obligation, Permissible, Loan (qard), The condition of time.*