

Abstracts

The Islamic Jurisprudential Analysis of Legal Personality

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Legal personality is one of the most important legal concepts. It has a wide realm in the contemporary social life. With regarding to Islamic jurisprudence (fiqh) which rights and duties (obligations) are attributed to legally competent in Islamic law and the subject of this knowledge is the act of to legally competent and from the other side in the contemporary period non-human subjects have a special position and have considered roles like human's role in most rights and duties (obligations). Can the subject of Islamic jurisprudence (fiqh) being generalized to legal persons or not? Specifically, is it (possession or owning) the specification of the natural person or can the legal person be owner (possessor)? It seems that legal persons like natural persons can be considered the subject of rights and duties (obligations) and has competence like the possessing -owning property- competence.

Besides, the legal person in Islamic jurisprudence (fiqh) has been mentioned before and some of Islamic jurisprudential issues like public interest can be analyzed under the legal persons and stated reasons to the validity and existence of legal persons in Islamic jurisprudence (fiqh).

Key words: Legal person, Legal personality, Public interest, Possession, Liability, The manner of wise men.

Legal Analysis of Inclusion of Stipulations within Unilateral Contracts

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One of issues which is worthy to study in unilateral contracts as they are unilateral is possibility or impossibility of inclusion of conditions within unilateral contracts. Not only is the civil code of Iran silent about this subject but also is it being debated from the Islamic jurisprudential view. A unilateral contract which has been included a condition is called a conditional unilateral contract or a unilateral contract is coupled with a condition which should not be mistaken with suspended (executory) unilateral contracts. Meanwhile the present note determines the concept of conditions it has explored the possibility or impossibility of inclusion of conditions within unilateral contracts. After revoking the opponents' evidences of conditional unilateral contracts, it is revealed that contrary to some Islamic jurists (fuqaha), conditions within unilateral contracts are possible and has no disagreement with the nature of unilateral contracts and their effects.

The conditions within unilateral contracts with regard to the principle of free choosing of conditions are included within the generality of the evidences of conditions and cannot be said that unilateral contracts are simple matters which cannot be imagined the inclusion of conditions within them.

Key words: Conditions (Terms) at the time of unilateral contracts, Conditions in unilateral contract (Conditional unilateral contract), Conditions are considered in favor of someone (One of the contractor), Conditions should be fulfilled by someone (One of the contractor), Option for violating a condition, Cancellation.

The Examination of the Principle of the Restriction of Generating Income to “Work”

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The relationship between generating income and “work” is of an economic-Islamic jurisprudential matter. Is only “work” the origination of creating income and wealth from the point of view of Islam or one of its originations? If “work” is the exclusive origination, what kind of “work” and with what clauses are? Is this principle, if it is proved, concerned with the stage of distribution before production or is generalized and also includes the stage of distribution after production? Some of scholars (thinkers) emphasize on the exclusivity of “work” as an origination of making income and wealth and the opposite with presenting samples have contradicted the principle. This note shows that in the stage of distribution before production, “work” with particular circumstances is the only generation of creating

income and possessing natural wealth and in the stage of distribution after production, beside “work”, consequences and results of possession in the limitation of regulations are the origination of making income and therefore the validity of creating income from leasing is justified. Also the factor of need for those who are not able or opportunity to work is the origination of taking advantage of wealth and favors of Almighty Allah.

Key words: Economic work, Generating income, The distribution of wealth.

Effectual Factors in the Determination of the Exigency (Obligation or Requirement) of Contracts

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This research aims to codify and organize the effectual factors in the determination of the exigency of contracts. Firstly, primary object of the research relating to contracts and literal meaning of the exigency has been presented and subsequently to access a discipline and logical rule we have divided contracts into nominate and innominate contracts. In nominate contracts with regard to the results of the survey what is acceptable in nominate contracts as a source and reference for the determination of the exigency of contracts is social custom and statute (law) and Islamic law and indications of terms cannot be used for the determination of the exigency of contracts. But the nominate contracts are divided into what popular in custom and

what have no precedent. In the well-known (conventional) contracts, recognizing the exigency is public custom and law scholars have strengthened this attitude and contracts with no precedent the main source of the determination of the exigency of contracts is the common intent of two parties in making contract if the jurisprudential-legal issues create no problems but if it does not, the custom torch should be used for guidance and enlightenment.

Key words: Nominate contracts, Innominate contracts, The exigency of the nature of contracts, The exigency not included in the nature of contracts.

The Quranic Evidences (Proofs) over the Ban on Women's Judgeship from the View Point of the Five Schools of Islamic Thoughts

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The common jurisprudential opinion of Imami and Sunni Muslims over the women's judging is negative (disallowed). The both schools (Shia and Sunni) have established evidences about the ban of women's judgeship. Focusing on every of these proofs in this matter can reveal the dark angles conceivably. For this purpose, the note tries to consider and restudy only the Quran verses which are counted as the supporting of the common opinion and has made (caused) the present paper exclude from being repetitive task and declare new points. Reviewing of the Quran verses which the arguments are based reveals that the current results (fruits) confront considerable insufficiencies (inadequacies) in reasoning. The Quran verses shows

(proves) that manhood is not the clause of effectiveness of judging.

Therefore the judging of women is legal and valid and effective.

Key words: Women's judgeship, Women's judging, The Quranic evidences, The condition of being man, The condition of manhood.

Civil Liability of Taker of Property Which Is on Sale

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When someone has in mind to buy something he naturally asks the seller to give the property in order to study and examine for if the property is as he considers (thinks) he creates transaction. In fiqh (Islamic jurisprudence), it is called the property which is taken to study and examine for buying by money owner. If the taken property in the hand of taker (holder in order to examine) is damaged or corrupted, is he responsible? This research shows that in spite of the common (well-known) opinion, the liability of taker of property which is on sale before the property owner is contractual and of type of result liability means the property taker assumes to repay the taken property or its price to the property owner otherwise he is responsible to the property owner and should compensate the property owner if the property damaged or defective unless unforeseen circumstances is proved.

Key words: Civil liability, On sale, Taker, Property possession being in secured in the hand of taker, Property possession being in trust in the hand of taker, Being contractual in the hand of taker.

The Critique and Studying of the Necessity of Examination of the Commodity (Sold Things or the Subject of Sale) Features from the Islamic Jurists' View

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One of the ways to detailed knowledge of commodity features is testing. According to Islamic jurists, the meaning of testing is determining and expressing the attributes in order to prevent the transaction being uncertain or risky (gharar) and come in to effect the condition of validity in transaction with one of these ways: smelling, testing and etc. The Islamic jurists have stated different opinions about the necessity of examination or the lack of necessity for non-perishable goods. Some Islamic jurists believe the obligation of testing and some others believe in the principle of validity or creating transactions according to description and lack of obligation of testing of commodity features. The present research with analytic-descriptive method has been organized, meanwhile determining the concept of gharer, studying the reasons of opponents and proponents with the obligation of testing of the commodity (sold things) and this has been resulted that with regard to the stipulation of the existence of goods, if it is possible to test according to the opinion of proponents, the testing is obliged.

Key words: Testing (Examination), Commodity features (The features of subject of sale), The principle of validity, Sale, Gharar (Uncertain or risky).

The Contracts of Secured Trust and the Role of Negligence of Trustee in It

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Dividing the contracts of trust into secured and unsecured is presented in the contracts of trust. The contracts of secured trust are those of which the hands of trustee on the subject of trust are considered secured. This circumstance is contrary to the contracts of unsecured trust because in this type contracts as soon as the contract is established the hands of trust for trustee will be created. Thinkers have debated on the different aspects of the negligence in the contracts of unsecured trust. Still the impact of negligence of trustee in the contracts of secured trust is unclear in some extent. For before the commitment of negligence, the secured hands have been for trustee. The important impact of negligence in the contracts of secured trust is binding of paying profits which is included solely the wage in kind of obtained profits and from the other side, the impact of this subject is differentiated according to cases in the contracts of secured onerous trust and in the contracts of secured gratuitous trust. Because in the first type the trustee is bound to repay wages in kind like specified wages according to the precedent agreement and in the second type wages in kind of obtained profits is duty of trustee. With acceptance of this opinion that the description of trust implies to negligent trustee, the bidding of paying profits is restricted to the period of negligence.

Key words: The contracts of unsecured trust, The contracts of secured trust, Trustee, Negligence, Negligent trustee, Trust possession, Secured possession.

