Abstracts

Explaining the Requirement of the Contract and the Rule of Context with a Special View on the Condition of Inheritance in the Temporary Contract

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Although the condition of inheriting in temporary marriage contract as one of the permissible conditions has the capacity of being included of the proof of validity, the idea that the requirement of inheritance in the marriage contract absolutely, or its lack in temporary marriage has provided the ground for various opinions (fatawas) in this regard. By resorting to the context of the verses of the Quran, some people have proved their claims that there is inheritance even if there has been the condition for non-inheriting. The others, based on the order of the words and the context of the narrations, have said that the there is no inheritance even if there has been the condition of inheritance. Whereas, according to the definition of the context, the set of

indications of the statements and the context are for discovering of speaker's intention, traditions that negate inheritance due to the mentalities of the audience of the time of the issuing of the traditions, which is the same condition for non-inheriting based on not having any guarantee at that time, implies the non-inheritance if there is the condition for not having inheritance, without any supervision to the condition of inheriting. The context of the verses is also alien to the requirement of the contract. It is understood that the inheritance is valid and authoritative if it is conditioned.

Keywords: *Inheritance, Condition, Requirement of contract, Temporary contract, Context.*

Legal Nature of the “Participation Contract for Production” in Iranian Law and Shiite Jurisprudence

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The oil production contract is a contractual arrangement for encouraging international oil companies to carry out oil operations in the upstream of the oil industry and can serve as a basis for Iran's interaction with oil companies seeking investment in this industry in the country. Given the fact that the establishment of these types of contracts is not in conflict with the requirements of national sovereignty and ownership over natural resources, it is necessary to examine the nature of the legal dimensions of this contractual model, whether or not it is opposed to the legal bases of the positive law and

Shiite jurisprudence. Analyzing the jurisprudential and legal principles and sayings of Shiite jurisprudents and the lawyers, the present paper has attempted, firstly, with a descriptive-analytical approach and selectively, to explain the legal nature of the rights and duties of the parties of the contract and then analyze the aspects of the similarity and difference of these contracts with similar legal institutions and ultimately, prove the validity of establishment of that contract in the light of the institution of “contract of reward”.
Keywords: *Oil, Foreign investment, Upper contracts, Production contracts, Contract of reward.*

A Criticism on the Legal Interpretations of Article 218 of the Civil Code and the Provision of an Interpretation Based on the Teachings of Shiite Jurisprudence

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One of the disputed materials in civil law is Article 218, which states: “whenever it turns out that the transaction is done intentionally to escape from debt, that transaction is null and void”. After assigning the invalidity in the article to the fictitiousness of the transaction, most jurists have with numerous interpretations analyzed the verdict of transaction that has been done with the intention of escaping from debt and none of them has ruled out it. But rather some have been in favor of “the validity of the deal with the intention of escaping from

debt”, and another group was in favor of its invalidity and have provided some interpretations such as: “attribution of the invalidity of the transaction to its unreality”, “the right of the creditor to the same property of the debtor in such a transaction”, “entailing of the violation of the creditor's rights”, “the intention of escaping from debt as the motive of formal transaction”, “being formal as a description of the deal for the purpose of escaping from debt”. Studying the texts of the Shiite jurisprudence, opposition of this transaction with order of the prophet of Islam that it is necessary to pay the debt and have the decision and intention of doing it that entails the prohibition of escaping from not paying the debt which signifies its illegitimacy and ultimately, the lack of one of the conditions of the transaction, this article has criticized the commentaries about mentioned Article and has accepted the invalidity of such a transaction and finally has proposed a solution for the legislator to resolve the ambiguity of this article.

Keywords: *Formal transaction, Aim of the transaction, Article 218 of the Civil Code, The necessity of having the intention paying debt, Illegitimate aim.*

Legal Jurisprudential Review of the Ways of Determination of the Guarantor in Accidental Interference of the Causes

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The necessity of compensation for unjust damages and the rule of

guarantee are the undoubted and accepted principles in jurisprudence and law, but what is being discussed is how the rules are applied to their cases. One of the most difficult cases of their application is the case of interference of the causes that they all have co-operated in the committing of a crime or damaging. In this case, the way of determining the guarantor and the division of responsibility between the causes is the place of controversy. Some have accepted the equal responsibility, a group agrees with the degree of influence and intervention, and others believe in proportion to the degree of fault of the cause in creating a harmful incident. In contrast, some others believe in joint and several liabilities in the case of interference of the causes versus of the harmed person and say that it consistent with rules and fairness. The writer believes that the guarantee sharing to the normal extent of the percentage of the impact of each of the causes in damage is more equitable and applicable to the jurisprudential and conscientious standards and attempt to prove it.

Keywords: *Interference of the causes, Liability, Guarantor, Damage, Fault.*

Investigating the Changing of the Bailment Contract into Usury Contract of Loan in the Case that the Guarantee of the Agent Be Stipulated

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Stipulating the guarantee of the trustee is one of the most controversial scientific topics in all three jurisprudential, legal and economic

spheres and it is the most functional proviso in the field of cooperative banking contracts and investment projects of the present age. The sever difference of the opinions (fatawa) between the correctness and lawfulness of this condition which is the opinion of the “minority” of the jurisprudents and void and voiding and prohibition of that condition which is the view of majority as well as the proximity of the boundary of the deposited contracts provided for by the above condition to the “the largest economic red line of the Islamic world” because of the revolution of its nature, namely, the element of “usury”, the necessity of reviewing and clarifying the basis of the issuance of laws and conflicting rules in this regard is one hundred so many. The strength of the “evidences of invalidation” of the condition of the agent's guarantee makes the possibility of its legal and juridical justification minimum and more than ever clarifies the necessity of the attention of the designers of investment models in the realm of the economy in order to safeguard the foundations of Islamic economics from the harmfulness of the usury economy. This fact in the field of cooperative and deposited contracts will not be possible, except in the case of implementation of the “real partnership of the parties”, including, fair distribution of risk and return between investor and receiver of the capital, in other words, the impossibility of conditioning of guarantee against the agent.

Keywords: *Stipulation of trustee guarantee, Bailment contract, Consequential condition, Condition of act, Impossible condition, Revolution of the contract, Usury devices.*

Investigation of the Jurisprudential Evidences of the Fall of the Option of Deception through Possession before Knowing

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In the present paper, we attempt to determine the role of the necessary possession and the possessive conveyer of the property that are made before knowing of the deception bargaining. In this case, there is a difference of opinion among Shiite jurisprudents. The view of the majority is that the option of deception will be terminated, but the findings show that with regard to non-intervention of returning sold thing in termination of the option and that this is a matter of juridical conflict, this view from the perspective of jurisprudential reasons not devoid of weakness and inaccuracy and on the base of the principle of legal authorization of previous state (esteshab), the belonging the option of cancellation to the contract, the principle of precaution, principle of harm, excuse of ignorance, and fairness, it is proved that the non-majority view is more acceptable. Given the fact that this is a public affair and civil law is still silent about this, the provision of a legal act that is the product of this research seems necessary.

Keywords: *Option of deception, Possession, Knowing deception, Harm, Legal act.*

Legal Possibility of Endowment of Spiritual Rights by Looking at Article 55 of the Civil Code

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The Shiite jurisprudents defined the endowment as “the embaying of the object and releasing of the benefit” and the majority has considered one of the conditions of the endowment to be external object. According to some, this presupposition has made the endowment of non-external object impossible and limited the scope of endowments. In this paper, we attempt to answer this question: Is the endowment of intellectual and spiritual property legitimate? What makes the affirming of the statement in question a little difficult is that: First, it is the precondition that the jurisprudents have presented in that it is necessary the endowed object to be external thing; secondly, doubtfulness of the possessory value of the spiritual affairs, and in particular of intellectual products, and consequently the complexity of proving legitimacy of intellectual property as a religious conventional ordinance. After rejecting or justifying the first origin and proving the second origin, the link between endowment as a legal act and spiritual owned as its subject will not be difficult. In this article, an attempt has been made to expound the subject of the endowment to include immaterial tings then the possessory value of intellectual products and the legitimacy of intellectual property has been proved. Finally, we conclude that the endowment of intellectual owned objects is possible, as the endowment of objective property is.

Keywords: *Endowment, Spiritual property, Intellectual property, Article 55 of the Civil Code, Article 58 of the Civil Code.*

The Status of the Rule of "Warning" in Civil Liability of Individuals and Government

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The rule of warning is one of the very important and influential, but also obscure, rule regarding civil liability. This rule is propounded in civil liability of individuals and it can be influential in relation to civil liability of the government as well. To achieve the status of the rule in these two cases, it is necessary to compensate fairly the damage by analyzing the cause of non-liability of warner, which, according to the authors, is based on rational reason and the other reasons are just confirming. Given to the effects of the elements of the fault and awareness of the warner and the injured, several branches existed that the ordinance of each of them is different from one another. Although by considering the presence or absence of any of these elements the civil responsibility become different, the rule is still effective and it cannot be ruled out in the absence of one of the elements. Therefore, the role of the rule of warning in civil liability of individuals is explained in this way that If only one of the two parties was guilty, only the guilty person would be liable for all damages and if the fault is on either side, each one liable to the measure of his/her guilty and if neither of them were guilty, the government would provide compensation on the basis of negation of the non-compensated

damage of the liable. The role of the rule in the civil responsibility of the state is in particular where the government as a warner if fulfills all the conditions of the rule and does not have any fault in the realization of damages and warned person disregard the government's warning, the government will not have liability, but if the government does not do the warning properly or is guilty for other respects, in this case, if the warned person is also guilty, the state is liable for compensation to the degree of its guilty, but if the warned person does not have any fault and in fact the warning has not been done correctly, the state will compensate for all damages.
Keywords: *Warning, Government, Injured, Fault.*