



Qom Islamic Azad University
Faculty of Humanities

Specialized Quarterly
Studies for Jurisprudence and Philosophy
Year 3, Number 12, Winter (2012 - 2013)

License-Owner: Qom Islamic Azad University
Managing Director: Mohammad Hossein Irandoust
Editor-in-Chief: Mohammad Mohammad Rezaie
License No: 90.24715 from Ministry of Culture and Islamic Guidance

Editorial Board:

Ahmadi, Seyyed Mohammad Mahdi

(Assistant Professor, Department of Feqh and Principles of Law, Islamic Azad University, Qom)

Irandoust, Mohammad Hossein

(Assistant Professor, Department of Philosophy, Islamic Azad University, Qom)

Khademi, Eynullah

(Associate Professor, Department of Philosophy, Shahid Rejaie University)

Roudgar, Mohammad Javad

(Assistant Professor, Department of Feqh and Principles of Law, Islamic Azad University, Qom)

Gorji, Ya'aqubali

(Assistant Professor, Department of Feqh, Jame'a Al-Mustafa Al-Alamiyya)

Gorjian, Mahdi

(Associate Professor, Department of Philosophy, University of Baqir Al-Ulum)

Mohammad Rezaie, Mohammad

(Associate Professor, Department of Philosophy, University of Tehran)

Moradkhani, Ahmad

(Assistant Professor, Department of Feqh and Principles of Law, Islamic Azad University, Qom)

Publisher: Qom Islamic Azad University

Acting Editor-in-Chief: Ahmad Moradkhani

Executive Director: Yaser Sharifi

Editor: Yaser Sharifi

English Editor: Ali Ebrahimi

Pagination: Zeinab Molavi

Office Address: Qom, Pardisan, Islamic Azad University

Tel: 025-32800281

Email: m.f.falsafi@qom-iau.ac.ir

Website: <http://aqojap.journal.qom-iau.ac.ir>

Contents

Guaranteed Compliance with Commitment Made to Non-temporary Marriage	1
Seyyed Mahdi Mirdadashi	
Study of Options Excusive to Sale in E-Commerce from Perspective of Jurisprudence and Subject Law	2
Seyyed Hassan Sadat, Ahmad Moradkhani	
Mukhammas (Five-some), Square and Triangular Divisions of Categorical Proposition in Writings of Muslim Logicians	3
Mohammad Hossein Irandoust	
Fixing Rates by the State and the Associated Norms	4
Mohammad Sarfi, Seyyed Hassan Abedian Kalkhoran	
Jurisprudent Rule for Leasehold Womb.....	5
Nasrin Karimi, Zahra Mehtari	
Conclusion of Marriage in Shafe'ie Religion	6
Mohammad Sadeqi	

Guaranteed Compliance with Commitment Made to Non-temporary Marriage

Seyyed Mahdi Mirdadashi*

(Received: 24 April, 2016; Accepted: 24 May, 2016)

Abstract

We know that “Matrimony” is typical conclusion of marriage in which essentials of accurate marriage (subject article 190 of civil law) as well as general rules of commitments must be complied with; one of the general rules of commitments is that the committed husband is allowed to be bound to comply with subject commitment but there is no doubt that general rules of transactions are included in matrimony as far as they stand compatible with primary nature of matrimony. One of the legal challenges facing courts of law is the issue dealing with commitment to permanent marriage; for example, the husband while concluding concubinage contract becomes committed to permanently marry the woman to himself once temporary marriage term expires; husband may deliver a check with a specified sum of money to woman in order to ensure compliance with commitment. Has the wife religiously justified right of claim to be filed to bind the husband to appear at the marriage office to conclude permanent marriage contract, to register it and to pay check money in case he refuses to comply with the commitment? This article explores response to such question.

Keywords

Commitment, Commitment to marriage, Guaranteed compliance.

* Assistant Professor, Department of Feqh and Principles of Islamic Law, Islamic Azad University, Qom, Iran, **Email:** mirdadashim@yahoo.com

Study of Options Exclusive to Sale in E-Commerce from Perspective of Jurisprudence and Subject Law

Seyyed Hassan Sadat*, Ahmad Moradkhani**

(Received: 4 May, 2016; Accepted: 12 May, 2016)

Abstract

Due to being young in establishment, e-commerce law is ambiguous and general in many aspects whether globally or nationally; this happens while considering covertness and ambiguity of many of its potential performances and aspects to this date and short-time passage of its associated rules; law-maker has been silent in many cases and ignored lots of matters in this regard. One of the issues disregarded in this law and not included in e-commerce law thanks to its major function in Islamic jurisprudence and civil law is the issue of put options. In this article, the writer deals with studying the possible use of options exclusive to sale contract in e-commerce law. Despite possible use of such options in electronic transactions and since the subject rules of e-commerce in the field of put options are irresponsive to needs of those taking part in this business, conclusion drawn is that it is necessary that the existing rules be reformed as well as new rules be enacted in accordance with rules of Islamic jurisprudence.

Keywords

E-commerce, Islamic jurisprudence, Put Options, Sale, Transactions.

* PhD Student, Department of Feqh and Principles of Islamic Law, Islamic Azad University, Qom, Iran

** **Corresponding Author:** Assistant Professor, Department of Feqh and Principles of Islamic Law, Islamic Azad University, Qom, Iran, **Email:** ah_moradkhani@yahoo.com

Mukhammas (Five-some), Square and Triangular Divisions of Categorical Proposition in Writings of Muslim Logicians

Mohammad Hossein Irandoust*

(Received: 30 April, 2016; Accepted: 26 May, 2016)

Abstract

“Categorical proposition” has divisions because of subject-matter. One of them is categorical proposition as to the subject-matter. This division has three, four or five types in different texts of logic, interpreted as Mukhammas, square and triangular ones. Until 7th century, Aristotelians presented triangular division by adding individual proposition to the category remained from Aristotle. Muslim logicians posed square proposition by adding physical proposition since 7th century. Addition of this proposition to context of traditional three-folded types produced square division by which the subsequent logicians abided. They approving square division agreed to the predominantly three-folded types with the same approach and definition and added a novel type to it. But someone who added one type to square division and thus presented Mukhammas division is Allameh Helli. This article intends to respond to this question that “what are standard and outcomes of Mukhammas, square and triangular divisions of categorical proposition in the works of Muslim logicians?”

Keywords

Allameh Helli, Categorical proposition, Mukhammas division, Square and triangle division.

* Assistant Professor, Department of Philosophy and Theosophy, Islamic Azad University, Qom, Iran, **Email:** mohirandoost@gmail.com

Fixing Rates by the State and the Associated Norms

Mohammad Sarfi*, Seyyed Hassan Abedian Kalkhoran**

(Received: 10 March, 2016; Accepted: 6 May, 2016)

Abstract

One of the major issues in economy is fixing rates by the administration; this fixing of rates largely affect the economy in such a way that production, supply, employment and the whole market is being affected. At first look, fixing rates done by the administration seems to be reasonable and other states might embark on such act. In this article, attention has been given to opinions of Shi'a thinkers and jurists whether they find fixing rates permissible thanks to religious evidence. In this study, the following points can be given consideration: 1. The state cannot fix rates under normal conditions of bazaar. 2. Under certain circumstances (hoarding, collusion and monopoly), people are obliged to supply products (without fixing any prices) but if sellers tend to surcharge, they are obligated to reduce rates and if surcharging continues, the administration is opt to fix the rates.

Keywords

Colluding, Determining prices, Fixing rates, Hoarding, Monopoly of bazaar.

* **Corresponding Author:** PhD Student, Department of Feqh and Principles of Islamic Law, Islamic Azad University, Qom, Iran, **Email:** sarfiamir@yahoo.com

** Assistant Professor, Department of Feqh and Principles of Islamic Law, Islamic Azad University, Qom, Iran

Jurisprudent Rule for Leasehold Womb

Nasrin Karimi*, Zahra Mehtari**

(Received: 2 May, 2016; Accepted: 31 May, 2016)

Abstract

One of the modern phenomena in human society is birth of child through womb held under a lease. In this way, womb-owned woman carries sperm or fetus of another person in her uterus; after pregnancy and childbirth, she delivers the child to the applicant parents as agreed based on a pre-signed contract. In recent years, leasehold womb use has been favored by many thinkers and jurists. Since there is no clear reason behind prohibition of the subject action, the action under principled immunity can be the only choice agreed. Considering the mentioned principle and the fact that there is no reasoning for prohibition on one hand and that Shari'a is not opposed to exercise of this action on the other hand, one can claim that ovulation from woman and insemination with sperm of man and insertion into another woman's womb (surrogate mother) is subject to permission; one can infer rules and traces of the act only from verses, narrations, related jurisprudential issues, principles and generals of Shi'a jurisprudence as well as from certain evidence and narrations pertinent to unnatural methods of reproduction. If a group of jurists have raised doubt about application of the act, they probably fear commission of ovulation by the unlawful person or receiving sperm on an unauthorized way.

Keywords

Artificial insemination, Leasehold womb, Maternal relationship, Paternal relationship.

* **Corresponding Author:** Assistant Professor, Department of Feqh and Principles of Islamic Law, Islamic Azad University, Qom, Iran, **Email:** nasrinkarimi1358@yahoo.com

** MA Student, Department of Feqh and Principles of Islamic Law, Islamic Azad University, Qom, Iran

Conclusion of Marriage in Shafe'ie Religion

Mohammad Sadeqi*

(Received: 10 April, 2016; Accepted: 5 June, 2016)

Abstract

The principle in marriage lies in its permissibility, but marriage has different rules because the person might raise different reasons: Permissible, Obligatory, Permissible abstention (it is against the first one if concluded), disapproved and most meritorious. Proposing for marriage may be explicitly or ironically made. Matrimony has five elements: Recital of marriage, wife, husband, guardian and witness. Matrimony is being concluded through recital and recital of marriage is: binding and accepting. Binding and accepting in conclusion of marriage have to have the following conditions: 1. Words denoting marriage shall be uttered; 2. Immediacy is a requisite in acceptance; 3. Binding shall be principally from wife and accepting from husband; 4. Recital of matrimony shall not be temporary in time; 5. Suspended marriage causes conclusion of marriage to be rescinded; 6. Representation for concluding marriage recital is authorized. Conditions related to spouses are: 1. Matrimony shall be freely concluded; 2. Spouses shall be known; 3. Spouses shall be self-authorized; 4. Maturity and wisdom are necessary in matrimony unless where marriage shall be concluded by guardian. In marriage of an unwise person, permission of guardian is necessary. Marriage is concluded at the presence of witnesses and testimony is a condition for proper marriage. Guardian including father, inheritor of father, relatives, free man, ruler and owner is someone who finalizes proper marriage. Guardianship stands exclusive to men and women cannot have guardianship. Every marriage without presence of guardian is null and void and woman cannot marry a man independently. It is necessary to observe priority of guardians.

Keywords

Conclusion of marriage, Guardianship, Proposing for marriage, Spouses.

* Assistant Professor, Private Law, Islamic Azad University, Qom, Iran

Email: msadeghi4817@yahoo.com