



Qom Islamic Azad University  
Faculty of Humanities

**Specialized Quarterly  
Studies for Jurisprudence and Philosophy  
Year 4, Number 13, Spring (2013)**

License-Owner: Qom Islamic Azad University  
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## Rights of Woman and Man in Divorce According to Subject Jurisprudence and Law of Iran

Esmat Sadat Tabatabaie Lotfi\*, Farnaz Omidi\*\*

(Received: 12 February, 2016; Accepted: 29 May, 2016)

### Abstract

In Islam, family protection has been extremely underlined in such a way that divorce has been called as the most indignant lawful affairs. However, it is recommended that divorce take place and at times become mandatory in case spouses cannot continue to co-exist because of differences leading to distress and constriction. In Islam, just as concisely well-conceived rules have been formulated for shaping family where rights of each spouse are specified, so rules and duties have been stipulated during divorce and after divorce. These duties or rules can be classified into two financial and non-financial groups. Included among financial things are alimony of wife during waiting term of revocable divorce, during pregnancy in irrevocable divorce, marriage portion and adequate payment of housewife as well as inheritance of spouses. In the case of obedience, it is obligatory for man to pay alimony during revocable divorce. In irrevocable divorce, alimony shall be paid in case woman is pregnant when divorce takes place. If divorce occurs before intercourse, woman owns half of marriage portion unless where marriage is being concluded with no mention made of marriage portion and suitable dower is paid in the case of intercourse and concubinage portion is paid in the case of no intercourse. Right of divorce, observing waiting term by woman, right of revocability by man during waiting term and priority of custodianship of children are brought up among non-financial cases. Right of divorce has primarily been entrusted to man although in cases as predicted by jurisprudence and law, woman petitions it. Since the subject law of Iran is based upon Islamic jurisprudence, jurists and laws unanimously agree in most cases.

### Keywords

Divorce, Jurisprudence, Non-financial and financial rights, Subject law.

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## Existence from the Perspective of Plato and Avicenna

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(Received: 4 May, 2016; Accepted: 28 May, 2016)

### Abstract

Existence has been the most basic issue in the long history of philosophy and has preoccupied minds of thinkers. Plato and Avicenna as the greatest philosophers have expressed evident views about existence that will be discussed analytically and comparatively in this article. The article intends to show that what differences these two views raise about existence and how the differences affect our look at existent creatures. Plato being concerned about epistemology comes up with ideas which base his thought and thus existence is attributed to certain creatures; later on, thanks to means of theoretical idea like interlinked ideas, existing supreme ideas and their interrelationship, link of ideas to the good as well as relationship of ideas with the physical phenomena, he continues to attribute it to physical phenomena and the good but on the other hand, Avicenna regards existence as the most general matters attributing it to all creatures, the existence considering its distinction from nature is divided into the obligatory and contingent being and happens to nature; combines the contingent beings, which are other than Allah, and makes it demand the obligatory; thus it establishes link of God to other beings.

### Keywords

Avicenna, Existence, Idea, Nature, Plato.

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## Domain of Possessions of Mortgager over Mortgaged Property

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(Received: 6 May, 2016; Accepted: 20 May, 2016)

### Abstract

Mortgage contract, an authentication contract, brings the beholden property under right of the mortgagee without transferring ownership of the mortgage to mortgagee. For this reason, domain of his possessions over the mortgaged becomes limited although ownership of mortgager over the beholden property remains exactly and beneficially and this limitation happens in order to preserve the right of the mortgagee. The present article explores domain of possessions of the mortgagee in terms of amendment, possession and transfer types of possessions in isolation and adjusted with articles 793 and 794 of civil law. The results obtained prove that owner is authorized to take possession of his property in accordance with principle of possessive control and mortgager has limited authorization to preserve rights of the mortgagee; area of such limitation is exclusive to prejudicial possessions. In other words, since possessive principle of owner over his possessive property necessitates any possession and mortgager owns the beholden property, so limiting mortgager to possess his own property is exception to the rule and the certain part of limitations of mortgager's possessions is one that is prejudicial to right of mortgagee over the beholden property. As a result, mortgager has legitimacy, according to rule of possessive control, to the extent that it fails to stand prejudicial to right of mortgagee.

### Keywords

Beholden (Mortgaged) property, Beneficial possession, Mortgagee, Mortgager, Prejudicial possession.

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## Mustering of Creatures in the Eyes of Mullasadra

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(Received: 18 May, 2016; Accepted: 9 June, 2016)

### Abstract

Mustering of creatures and how it happens is included among philosophical-theosophical issues discussed by Muslim philosophers and theologians, saying that God revivifies human beings on the Resurrection Day and everyone is recompensed. Knowing the trend of mustering of creatures and post-mortem life is so intricate that opinions of thinkers about it have come across ambiguity, disorder and distress more than what is difficult about the onset of the world and origin of the universe because not only materialists and deniers of the universe origin fail to accept an end to the world and deny the resurrection, but also some who believe in origin of the universe and in God raise doubt about “revivification” on the Day and say it is unacceptable. Mullasadra, a Muslim philosopher, is among thinkers who have written about the matter and has elucidated and analyzed mustering of creatures based on his own philosophical temperament. The present research intends to explore mustering of creatures from the perspective of Mullasadra. For so doing, after clarifying conceptual framework of research topic, ontology, quiddity and truth of soul, reincarnation and its types in the eyes of Mullasadra as well as his seven-folded tenets for proving physical-spiritual resurrection have been investigated. The results obtained show that Mullasadra believed that people who possess reasonable life could get rid of material things and have intellectual perceptions; they depart to reasonable world after death and attain divinely illuminative graces as well as real perfection. “Learned men pure from sins and grievances” as Mullasadra holds are placed within this group. About mustering of non-human beings, Mullasadra adheres to revivification of all creatures in the Resurrection by relying on verses and narrations, maintaining that all beings including the Angels, human beings, jinns, plants and solid things possess resurrection. He underscores that theosophy and Strong Features of God find it exigent that man with all his being becomes mustered because there is necessary and definite reward and punishment for every soul no matter what feature he has acquired in this world.

### Keywords

Creatures, Mullasadra, Mustering, Resurrection, Soul.

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## Study of Human Condition during Coma in the Eyes of Jurisprudence and Subject Law

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(Received: 24 February, 2016; Accepted: 21 May, 2016)

### Abstract

Coma has been considered more medically. Its legal and jurisprudential aspects have not been seriously discussed by speculators such as what is coma and what are the effects? This article intends to clarify the nature of coma and its effects on parties around the person in coma as well as on his property. This article has come to conclusion that coma is not a disease: rather, it indicates damage on brain power resulting in lengthened unconsciousness and the person under coma condition is alive; all rules of living people are effective on him and he cannot be regarded dead because of his long coma condition. His condition differs from that of a dead person with brain death having no vital signs and rules of a dead person cannot be applied to him. Death in brain death is crucial whereas the person under coma is likely to rehabilitate to survive; property of the person under coma is not transferred to his heirs. Contracts of person in coma are cancelled before coma.

### Keywords

Coma, Contract of attorneyship, Jurisprudence, Nature of divorce, Seizures.

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## Custody of Children in the Eyes of Imamiyya Jurisprudence

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(Received: 4 June, 2016; Accepted: 10 June, 2016)

### Abstract

To survive, child needs other cares not to mention mother's breastfeeding. Under normal circumstances, these types of cares shall be given by somebody who has the most emotional bond to the child. Hence, to achieve this, issue of child custody is raised. It is defined as managing child's affairs of life, protecting and cherishing him as long as he or she is in need. Since role of child custody is both of social and individual importance in the eyes of Islam and competent people shall be responsible as concerned in order to assure their custody through such people, Imamiyya jurisprudence determines certain conditions for custodian to perform such duty favorably.

### Keywords

Children, Custody, Guardianship, Imamiyya jurisprudence, Legatee.

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