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Legal and Jurisprudent Basis for Qabz (Conventional Control over property) in Mortgage Contract

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Abstract

Principle of rule of will that has been recognized in article 10 of Civil Law of Iran and rules as fundamental principle of law of contracts necessitates “willingness” and “non-formality” for contracts. Considering this principle, contracts in which Qabz is a condition for accuracy (objective contracts) are exceptions and stand contrary to the principle and it is necessary that the reason behind such exceptional rule be examined. This article in a critical approach deals with necessary whys for Qabz in fulfilment of mortgage contract with a consideration given to article 772 of Civil Law that prescribes Qabz as a condition for correctness of mortgage contract and based upon jurisprudential sources inspiring the lawmaker; regarding non-consensus of jurists over the necessity of such condition as well as owing to the marine law that has not clarified Qabz as condition of accuracy on mortgaging ship, amendment of law for dropping the condition is proposed and different assumptions of Qabz in certain cases like mortgaging property held in undivided shares, repeated mortgage and variety of mortgagees have been studied.

Keywords

Mortgage, Mortgagee, Mortgager, Qabz (Conventional Control over Property), Security.

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Sale Contract for Delivery with Prepayment (Salam) in Islamic Religions

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Abstract

Contract for delivery with prepayment (Salam) is one of types of sale contracts in which cash money is paid and the sold product will be supplied or made in future and will be delivered to customer. There is disagreement over terminological definition of Salam in different religions. Some people say Salam is sale of an object described by verbal obligation and some others say it is cash purchase of some product at maturity. Jurisprudents generally agree that Salam contract is religiously true and permitted and referred to the Book, Sunna and consensus to prove it. Components of Salam contract are: parties of contract, price, traded product and form of contract. Specifications of parties of contract are those prescribed in general rules of contracts and sale contract for parties of a trade. There is disagreement over necessary verbal use of Salam. Various terms are illustrated about price and traded product about which no agreement exists. In this article, views of quintet religions about definition of Salam contract, terms of price and traded product are examined.

Keywords

Contract for Delivery with Prepayment (Salam), Pre-purchase, Sale, Imamiyya, Sunnis.

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A Study of Options Waiver in the Eyes of Sheikh Ansari and Compatibility with Iran's Civil Law and Vote Precedent of the Court

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Abstract

The Right of Option included within fiscal rights is of the rulings specific to Imamiyya jurisprudence and law of Iran. It is not an issue as such in detail in law of other nations. This right like other fiscal rights can be waived and demands will and authority like other rights. Parties to a transaction can set condition that they shall not primarily enjoy options and they can waiver right of option once it is settled. The case as it is common in present contracts has led to problems. This goes as far as some jurists tend to pay attention to the case that contracts having such condition are considered null and void; on the other hand, Sh'ia grand jurisprudents have no explicit ruling about options waiver and they separately waiver options as to their quality. This rule is faced with many problems through scrutiny of jurists. What is concerned in the study of options waiver lie exceptions to this rule in such a way that many jurists have approved of the rule.

Keywords

Options Waiver, Rulings of Options, Rights, Vote Precedent

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Portraiture in the Mirror of Jurisprudence

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Abstract

The Holy Quran takes no position of ban against portraiture as it introduces power of Jesus Christ (‘a) for making clay bird and breathing soul into it in the shape of miracle and an indication of prophethood as well as fabricating effigy for Hazrat Suleman as a gift for the righteous worshippers. But in narrations from the Immaculate Imams (‘a) and following fatwas of jurists (Mabsout, Moqna’eh, Nahaya, Sharh-e Ershad, Masalek Al-Afham, Makaseb-e Moharrameh and...), pictures and statues which are worshipped by people are sporadically banned and unlawful, citing that banning creation of something demands its banning in occurrence and in survival. There are narrations that prove that God has banned every industry in which you find pure corruption and with no interests unless those pictures are lawfully and legitimately used for decoration and other rational purposes; artistic approaches and rational purposes have special status particularly in medical sciences, use of human organs. Learning and teaching courses without images, atlases and moulages are faced with plenty of problems and it is not against Shari’a wherever necessary.

Keywords

Effigies, Effigy, Jurisprudence, Portraiture, Sculpture.

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Domain of Financial Possessions of a Death-impending ILL Person

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Abstract

What we shall know about possessions of an ill person on the verge of death is that decisiveness stands versus suspension (will). All jurists and jurists agree on the ruling of will and they all accept that will is permitted up to one-third unless inheritors permit otherwise; there is a controversy arising that the patient releases a contract that is voluntary donation and free of charge or assures something of donative affair, in this case, the question posed is whether his assets are taken as it is done for a non-ill person or it is valid up to one-third? To achieve results, we need to first prove that is the ill person on the point of death included as means of interdiction? Of course, jurists and jurists have disagreements that the ill person is interdicted or not; here, we proved with strong evidence that the ill person on the point of death is not interdicted and this means that the said person is not interdicted and he can have financial possessions (transactions) as a healthy person can have and his area of financial possessions will be binding like that of non-ill person.

Keywords

Decisiveness, Donative Possessions of Sick Person, Financial Possessions of Sick Person, Possessions of Sick Person, Sick Person on the point of death, Voluntarily.

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Jurisprudent Study of Scope of Powers of Administration's Sleuthing into Public Affairs

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Abstract

In the Holy Quran, God has prohibited people from suspicion and probing into affairs of others, which can be said as invasion over rights of others. This article tries to answer these questions by using the Quran and resort to life of the Immaculate. 1. How should the administration think of people? 2. Is this prohibition from sleuthing absolute and universal?; in other words, does this prohibition include the administrations sleuthing and meddling in public affairs including matter of thought and freedom of expression, properties and other affairs? 3. To what extent is the scope of administration's powers of meddling in public affairs? In answering this question, it is to be said that the administration has to consider that it is a principle of immunity and should not treat people through suspicion; God's prohibition about unlawful probing is not universal and the statesmen are given the right of probing and sleuthing into public affairs including matters of thinking and freedom of expression, assets and other affairs to allow them to lead the country and restore public safety. But this right is not absolute and they are not given the right of intervention in social affairs or where non-intervention results in sedition and the ruler should exactly and permanently control social affairs of people.

Keywords

Freedom, Probing, Right, Sleuthing, Suspicion.

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