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A New Approach to Meaning of Retaliation (Qesas) in the Holy Quran

Hadi Gholamreza Ravi*, Abdollah Omidifard**

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Abstract

The Almighty God says in Baqara: 179: O' you men of the reason! In the law of retaliation, there is security of life for you as a member of society so that you may become pious. Commentators and jurists believe that Qesas means the common religious sense. Those who say it is meant the common religious sense make reasons that Qesas is a deterrent causing people who have intention of murder to dispense with it; and that Qesas leads to psychological tranquility of society and lastly that for Qesas only killer is retaliated. In Dark Age, Arabs at times killed dozens of people for murder of one person. But we believe that literal sense of Qesas in the verse is meant; that means ruling of retaliation is imperative for survival of society and there is an inherence between Qesas and survival. If it were to be realized in common use, Qesas would become obligatory while the legislator has allowed selection of either Qesas or forgiving and receipt of blood money; therefore, literal sense is meant and that the obligatory selection means the same and once each one of them is fulfilled, it will meet intention of legislator. By Qesas in the holy verse, nature and quality of Qesas is intended rather than the external sense of the word; in this case, it shall be understood literally.

Keywords

Pursue, Retaliation (Qesas), Survival.

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Deceit in the Eyes of Islam (Rule of Deception)

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Abstract

This article deals with “Deceit in the eyes of Islam” and in Islamic jurisprudence, guarantee emanating from deception is called guarantee of deception, legally speaking. Delusion literally means trickery and cheat. It terminologically means that someone says or does something that deceives someone else who, as a result of such deception, suffers losses and deceiver shall guarantee his losses. The first person is called “deceiver” and the second person is named “deceived”. For achieving the rule of deceit, it is necessary that the deceived person be ignorant of what is done to him but knowledge and ignorance of the deceiver makes no sense. In books of jurisprudent rules and argumentative jurisprudence, six reasons have been enumerated for this rule that are: hadith of Prophet: «المغرور يرجع إلى من غرّه»، what the wise men put, consensus, specific narrations, rule of no-injury, rules of Itlaaf (Indirect Cause) and Tasbib (Direct Cause). After looking into what jurisprudents and authors said in this regard, idea of the late Mirza Hassan Bojnurdi can be considered as the main reason. He said the main reason behind this is what the wise men put that they endorsed and approved of narrations about its specific chapters. The remaining cases cannot be the only citations due to reasons mentioned. This rule is applied to most issues of jurisprudence. In some cases, although a person deceives another person and makes him suffer losses and in a sense rule of deception is achieved, there are some barriers that make the deceiver be incapable of compensating losses of the deceived; such barriers are: Rule of action, rule of beneficence, fault of the deceiver and benefiting of the deceiver.

Keywords

Deceit, Deceived, Deceiver, Deception.

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Emergency willful murder from the perspective of Fiqh and the criminal law

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Abstract

Emergency means misery, and poverty. Whenever one find himself in pressure and pinch that force him to commit a crime to protect his at risk life or property or those of others, while no one is forcing him to commit the unlawful act, he is considered distressed or in emergency. There are similar concepts to emergency that should be differentiated. The present paper attempted at studying all the issues related to the nature, principles, reasons, and conditions of emergency as well as stating whether the issue of emergency is a right or a warrant. Committing murder in emergency situation is not specifically dealt with among jurists; however, some jurists have discussed this issue beside other legal issues. There is no rule or procedural law in this regard in Iran's penal code. However, many lawyers do not accept emergency a license for murder as they do not accept reluctance a license for murder. Relying on the principle of "Lataqiyah fedema", most jurists do not accept emergency a license for murder. According to this principle, killing another person is inadmissible, because the reason for the obligation of reservation is preserving lives. Therefore, saving a life is more important than doing an obligatory action or prohibited action. The present study aimed at stating the views of jurists and lawyers with a comparative perspective regarding emergency willful murder; finally, it will come to the conclusion that emergency is not a license to kill someone both from the view point of lawyers and the jurists.

Keywords

Abortion, Emergency, Reluctance, Willful killing.

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A Comparative Study of Estimated Marriage Portion in Jurisprudence of Feraqayn

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Abstract

One of the things considered to stop the youth for marriage is to designate high rate of marriage portion. Therefore, it is important to make a research about it. It is deemed necessary to discuss the amount of marriage portion and the effect it can put on accuracy of marriage. In Imamiyya, there is a consensus that definite mahr is not limited to the least rate and it is necessary that the installed marriage portion be financially and possessively owned; other Islamic religions raise disagreements in this regard. According to Shafe'ie, Hanbali and Imamiyya, whatever of property type can be determined as marriage portion. Hanafiyya has prescribed ten Dirhams as the least marriage portion. Malikiyya says the least amount of mahr is four dinars or three pure silver Dirhams. Based on what the five religions say, suitable dower is said to be typical mahr which is determined for a woman with her peers and her features having chastity, beauty and family; in case definite mahr is not specified in time of marriage contract conclusion for any reasons or it cannot be paid, the husband is bound to pay suitable dower. In Sunni and Shiite jurisprudence, marriage portion of concubinage is to be right of a wife whose mahr is not clarified during marriage conclusion and she is being divorced before intercourse and mahr determination; of course, there are different ideas among Sunnis in this respect.

Keywords

Definite Mahr, Concubine Marriage Portion, Mahr (Marriage Portion), Suitable Dower.

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Civil Liability as a Result of Eradication as it is discussed in law of land use preservation

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Abstract

Owing to ever-increasing growth of nationwide gardens and agrarian lands use change as well as decision made by the statesmen to counter with this case and preservation of agricultural lands use, agricultural Jihad Organization of provinces has been given the responsibility to put into force land use preservation law. Since unauthorized land use change eradication is directly and with no judicial ruling done in accordance with note 2 of article 10 of the subject law; in many cases, because of mechanical demolishing losses are inevitably incurred. This article aims to elucidate civil liability of the state or the staff for complying with the said law based on legal and jurisprudential rules; it seems that where the state agent imposes losses on someone out of purpose or a big mistake, he shall be liable for what he has done; otherwise, the state is responsible in few cases and in most cases, the state is not responsible according to rule of caution.

Keywords

Civil Liability of the State, Land Use Change, Eradication (Demolition)

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Option of Condition in the Eyes of Sheikh Ansari and Its Civil Law Comparison

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Abstract

Option of condition is a combination of two legal terms of option and condition. One can say that it is some type of anagram addition originally meaning a right from option of condition in contract. Option of condition results from confluence and mutually direct consent on the part of both parties. In fact, option means the very right of cancellation, result of condition which is optional and subordinate. Accuracy of option of condition like other in-contract conditions permissively originates from consensus as well as reports and narrations concerned with condition. Annulment and decadence of option of condition is at times subject to dissolution of contract and at other times emanates from no stipulation of period or unknown and absolute period of exercising the right of option from condition and the need for limiting and binding time of exercising right of option from condition are included among the characteristics of option of condition whose verdict effects influence the contract.

Keywords

Condition, Contract, Law, Option.

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