



Qom Islamic Azad University
Faculty of Humanities

**Specialized Quarterly
Studies for Jurisprudence and Philosophy
Year 6, Number 22, Summer (2015)**

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

(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

(Associate 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

General Land Use Limitations in Imamiyya Jurisprudence and Law of Iran	1
Kobra Abbasi Moqaddam, Rasul Mazaheri Kouhanestani	
Study of the Relationship between Jurisprudence and Ethics and its Comparison with Islamic law	2
Zeinab Musavi Sadat, Seyyed Mohammad Mahdi Ahmadi	
Compensation of Spiritual Loss in Jurisprudence and Law of Iran.....	3
Saeedeh Mahmodi, Ahmad Moradkhani	
Right of Easement, Legitimacy and Its Tools Based on Imamiyya Jurisprudence	4
Abdullah Gohari Tale'a, Akbar Torabi Shahrezaii	
A Look into Issue of Enjoining Good and Forbidding Bad Together in One Place Based on Philosophical Principles of Mulla Sadra	5
Hadi Gholamreza Ravi, Abdollah Omidifard	
Realty development issue with regard to amending some articles of the Civil Code of the Islamic Republic of Iran	6
Esmat Sadat Tabatabaie Lotfi, Batul MaghfuriFarsangi	

General Land Use Limitations in Imamiyya Jurisprudence and Law of Iran

Kobra Abbasi Moqaddam*, Rasul Mazaheri Kouhanestani**

(Received: 21 May, 2016; Accepted: 9 June, 2016)

Abstract

This article deals with “General Land Use Limitations in Imamiyya jurisprudence and Iranian Law”. As we know, with the growth of communities and the states coming to power, private law is being restricted by public law and as social life necessitates entrusting rights like individual ownership to social rule for public welfare, it would be better for these relations to be regulated by law. Based on “rule of royalty”, the owner is authorized to possess his properties because proprietorship is an undeniable right and it has been considered by various legal systems thanks to its significance; it has experienced alterations and it finds its existing implication affected by such alterations. On the other hand, nobody has the right to damage others in accordance with “rule of no-injury”; this restriction is applied to all real and legal persons; henceforth, the administration cannot dispense with right of public proprietorship at the pretext of public interests. As a result, in conflict of public interests and private interests, public interests are given priority due to being devoted to members of community and link to public interests. It is clear that nationalization, confiscation and purchase of real estates are among the commonest ways of dispossession through public institutions. Although they have differences in domain, objectives and manner of dispossession, they basically work to secure public interests; the ruling power or the same administration finds the only way out to force the person to transfer his right, pay a fair price and make up for losses of people to some extent. This can be achieved by enacting suitable laws, proper planning, law-adjusted strategies, public order and good ethics.

Keywords

Limitation, Public Interest, Rule of no-injury, Rule of Royalty.

* **Corresponding Author:** MA Graduate, Department of Private Law, Islamic Azad University, Qom, Iran, **Email:** k.a.moqadam@gmail.com

** Faculty Member, University of Isfahan, Isfahan, Iran

Study of the Relationship between Jurisprudence and Ethics and its Comparison with Islamic law

Zeinab Musavi Sadat*, Seyyed Mohammad Mahdi Ahmadi**

(Received: 28 June, 2016; Accepted: 26 July, 2016)

Abstract

A number of Muslim jurists believe that various forces emanating from reserves of nature, intellect, convention, interests and justice result in liability in the face of legal rules of Islam. Seemingly, what is said is incomplete because firstly: Religious rulings originate from Shari'a Will of God and He forges rules based on His Grace, interests, corruptions and theosophies that assure human prosperity in this world and in the Hereafter; each man having pure nature and common sense has to abide by rules that guarantee his happiness in this world and in the Other World and these rules are religious ones and nothing else. Secondly, sources mentioned for creation of liability in the face of legal rules of Islam possess as a whole or each individual of them no power to create liability for those who are obligated; jurisprudence and ethics are placed in two practical areas of theosophy and as interpreted by some Islamic thinkers they are grouped into two areas of disciplines of "transaction", that is they are sciences whose learning is for action in so far as ethics is considered major jurisprudence and jurisprudence is minor jurisprudence.

Keywords

Ethics, Interests, Practical Theosophy, Religious Rules.

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

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

Compensation of Spiritual Loss in Jurisprudence and Law of Iran

Saeedeh Mahmodi*, Ahmad Moradkhani**

(Received: 4 April, 2016; Accepted: 9 May, 2016)

Abstract

Law generally aims to establish order and justice. Although mankind has two spiritual and material aspects, civil law merely deals with material aspect and seeks to achieve great ambitions like restoring order, establishing justice, supporting social and individual rights and removing animosity by giving significance to material aspect. In legal system of Islam, social interests have to be met in such a way that acquisition of carnal perfections and promotion of spiritual ranks are made possible. In this direction, legitimacy of compensation for spiritual losses have to be demonstrated financially and non-financially. Just as law must protect movable and immovable properties from invasion, so it is deemed necessary to predict binding rules to safeguard prestige, credibility and non-financial belongings of people from insults, invectives, intrigues and assaults. Despite the current favorable grounds in the world's legal contexts, compensating the spiritual losses is not comprehensively possible and an overwhelming majority of courts refuse to decide upon lawsuits filed for spiritual damages whereas the existing legal contexts remain sufficiently clear; many of those who have experienced irreparably spiritual losses can administer their rights in this regard. Moreover, in conspicuous jurisprudence of Islam, there are rules that underscore compensation for spiritual losses.

Keywords

Compensation for Spiritual loss, Loss, Spiritual Cases, Spiritual Loss.

* MA Student, Department of Feqh and Principles of Islamic Law, Islamic Azad University, Qom, Iran, **Email:** Daneshjooiran3@gmail.com

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

Right of Easement, Legitimacy and Its Tools Based on Imamiyya Jurisprudence

Abdullah Gohari Tale'a*, Akbar Torabi Shahrezaii**

(Received: 28 August, 2016; Accepted: 1 November, 2016)

Abstract

Right of easement stands for legitimate dispossession of a land owner in another property so that the owner can better use his immovable property as a result of such dispossession. This issue with such features has not been raised and examined in old jurisprudential sources and even in modern Imamiyya sources. Right of easement with the same meaning has found entry from civil law of other countries into legal sources and more or less into jurisprudential studies. Of course, rights such as right of profiting and right of allocation and the like have similarities with right of easement when land owner using other property but there are also important differences study of which in jurisprudence cannot be reckoned as literature background of right of easement and that is why it is unsystematic from their inalienable legitimacy to bridge to this issue based on Imamiyya jurisprudence. The most important topic is to study its legitimacy in accordance with approach adopted by Imamiyya jurisprudence by using generals proving good behavior with neighbors and recommended cooperation for good deeds and manners of the wise. Besides, since right of easement is diverse as to its various tools, reasoning can be made proportionate to the same tools that affect its formation; that is, legitimate composition of right of easement in the frame of mutual and unilateral contracts can be demonstrated by turning to generals of channels of transactions.

Keywords

Easement, Imamiyya Jurisprudence, Legitimacy, Property, Right.

* **Corresponding Author:** PhD Student, Al-Mustafa International University, Qom, Iran

Email: gohari.tale@gmail.com

** Assistant Professor, Al-Mustafa International University, Qom, Iran

A Look into Issue of Enjoining Good and Forbidding Bad Together in One Place Based on Philosophical Principles of Mulla Sadra

Hadi Gholamreza Ravi*, Abdollah Omidifard**

(Received: 3 October, 2016; Accepted: 5 November, 2016)

Abstract

One of the major issues that play a leading role in inferring the religious rulings is that of “enjoining good and forbidding bad” together in one place. What is in question is that whether a single act can bear two titles of obligatoriness and prohibition or it is impossible to have such a thing. This article intends to deal with the issue based on philosophy of Mulla Sadra and to answer these questions accordingly. Can philosophy enter into such discussion? How can mankind build up relationship with his mental habits? What is the relationship between decency and indecency? In response, it has to be said that the issue of enjoining good and forbidding bad together in one place is a rational discussion, so it is possible for philosophy to deal with it. Connection of man with his habits happen to be in subjective form and man creates proportionate form with his acts. Decency and indecency have a relationship of non-existence and habit and these two features cannot come in one place; therefore, human mind cannot create both decency and indecency based on act at the same time. Thus, enjoining good and forbidding bad together in one place is rationally impossible.

Keywords

Contrast, Enjoining Good and Forbidding Bad, Decency and Indecency, Philosophy.

* **Corresponding Author:** PhD Student of Feqh and Principles of Islamic Law, Qom University, Qom, Iran, **Email:** hadyra94@gmail.com

** Associate professor, Department of Feqh and Principles of Islamic Law, Qom University, Qom, Iran

Realty development issue with regard to amending some articles of the Civil Code of the Islamic Republic of Iran

Esmat Sadat Tabatabaie Lotfi*, Batul Maghfuri Farsangi**

(Received: 20 September, 2016; Accepted: 6 October, 2016)

Abstract

with the aim of this paper is to argue in terms of the realization of the property, which seems to wife such as the relationship parity and the existence of this relationship is not Testator died when but first to the value of the legacy of the wife of his wife paid and went on to developments in this field in this area, glancing at the glancing at the amended law articles of the law of Iran, which was approved in the year 1387 found paid in the Holy Koran God Almighty contribution rates Testator Mitt with a series of differences determined and secrets and lies in his own, and understanding with the help of tradition and it is understood e and that's the signal for the legacy as the rest of the decrees Science is based and theology of course twice to investigate the causes of the inheritance man or woman for a son or daughter father male relatives to female relatives father could written to their power will fall and sparkle upon dewy of course twice to investigate the causes of But it is referred to them.

Keywords

Immovable property, Inherited, Movable property, Wife.

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

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