Abstract
The following research has examined the precept of transforming intent of 'umreya tamatto' to hajje ifrād in regard with the women pilgrims in carrying out the religious duty of hajj and 'umra by reason of necessity of respecting condition of cleanliness. Similarly, it has analyzed the jurists’ opinions and their document in this respect. The findings of this paper which are done in the form of documentary and library method, are as follows: given that the condition of entering in Masjid Al-ḥarām and performing the tawāf is tahara, in order to abide by this condition, the women can prevent menstruation by using medication, provided that it does not make them a considerable harm. But in the event of the menstrual period, if the opportunity to perform the 'umrah and hajj acts is a short time, five jurisprudential opinions have been proposed and, according to the famous jurisprudents’ view, the pilgrim ladies should change the intention of 'umrah tamatt’ to Hajje ifrad. However an accuracy in two categories of the existing traditions in this respect, leads us to this result that the criterion of the precept regarding a responsible lady’s duty who is in the menstrual period, is the knowledge of possibility of acquiring cleanliness before the time of hajj ceremony and lack of knowledge: i.e. if the responsible lady knows that before realizing the hajj ceremony, acquiring tahara is not possible, she should change her intention to hajje ifrad; but if she has no knowledge connecting acquirement of tahara until that time, should stay on her intent of ‘umrah tamatto and carry out her sa’y and taqsir. In this event, there is any opportunity after obtaining tahara, she should do the rest of ‘umrah tamatto acts, and if the opportunity is short or tahara is not acquired, she should perform hajj acts and after that, she should do belated tawafe ‘umra before tawafe hajj.

Keywords: ladies’ precept, belated tawaf, cleanliness, changing an intent, withdrawal
Civil responsibility of remedial abortion
Reza Pursedqi
Hassan 'Ali 'Aliakbarian

Abstract
Although abortion is regarded as an evil and indecent act according to the holy shariah and the human societies, but in cases of contradiction between a mother’s health and her fetus’s life, based on lots of the jurisprudents’ opinion, the mother is authorized to prefer her health. In spite of permission for an destruction of fetus, civil liability of remedial abortion is a problematic question. In this regard, following some great scholars’ outlooks, the lawmaker has issued an opinion of extinction of liability.

Reviewing the absoluteness of the traditions in connection with the liability of diya for abortion is considered as one of most sensitive and difficult points of this subject. The method of taking absoluteness, accepting and refusing absoluteness of ahval (states) in these traditions is one of the prominent effective discussions in implication of these evidence. With analyzing appearance of the evidence, an enough assurance regarding taking absoluteness from these traditions will not be acquired. Though lack of their implication is not reliable, but lack of appearance is enough for disproving it. The only evidence is the practical principles of istiṣḥāb and barā`ah which determines the first principle in diyat and liabilities (blood moneys and zimānāt). This principle can be a proof of non-responsibility for remedial abortion.

Keywords: remedial abortion, liability of abortion, diya of fetus, civil responsibility of abortion, risk of mother’s life.
A critical view on the definition of damiya in jurisprudence and Islamic Penal Code
With a convergent attitude to the principle of statute quality

A'zam Mahdavipur
Mohammad Ja'far Sadeqpur
Hamed Rahdarpur

Abstract

Damiya is regarded as the second kind of injuries to head and face (shajaj). The jurisprudents have showed the various definitions regarding this injury which all of them can be summarized in three general definitions. With reflecting the famous jurisprudents` definition in paragraph" b", article 709 Islamic penal code, the Iranian lawmaker has considered damiya as a injury that " is entered into the meat a little while more and less flows blood." Critical analysis of the different jurisprudential viewpoints on the definition of this injury and a hesitation over the content of the above article, raise a doubt about the statutory definition of damiya. When such these doubts become more tangible and ordered that in criticizing and reviewing the jurisprudential and legal opinions, the principle of statute quality has been considered as a new institution in regard with examining the nature, originality and formality of enacting the statute. Hence, in this paper, with analyzing the jurisprudents` various outlooks at the definition of damiya, in view of the principle of statute quality, it will be tried to present a definition for damiya which have all the qualified statute indicators while showing fidelity to the ijtihadi method in criticizing jurisprudential propositions.

Keywords: damiya, jurisprudents, quality statute principle, clarity, foresee ability
Jurisprudential and legal analysis of tendering the seized vehicles by the security forces

'Aref Bashiri
Mohammad Mohseni Dehkalani
'Ali Akbar Eizadi Fard

Abstract
For improving and progressing the statutes, and promoting the security of the property in the society and prohibiting an illegal possession, this paper examines the theories of legitimizing the tender of the seized vehicles by the security forces according to the intellectual arguments and jurisprudential and legal certainties. Similarly, in this regard, punishment of custody of something and the different legal dimensions of avoiding to return by the owner are examined. In this paper, the author restudies the rule of abandonment and the other causes of removing the ownership in the Islamic jurisprudence; and by analyzing the legislator’s intention in the very legislating the penalty of custody, and the theory of paying the fine for the road traffic offences, the author concludes that argumentation of the legal causes in order to remove the ownership and legitimacy of tendering is incomplete according to the legal and jurisprudential analysis. The author also believes that in some presumptions, the requirements of article 11 proceeding law of road traffic offences are contrary to the certain legal principles and jurisprudential rules; because, on one hand, these requirements make the legal effect of the article 6 of the mentioned law - being temporary of custody judgment - practically invalid, and prevent the owner to return to the vehicle, and on the other hand, they are contrary to the Islamic Shariat’s intensions based on the guaranty of social justice, and impact on the issue of ownership.

Keywords: tendering, custody, illegal possession, security forces, vehicles.
Considering and analyzing the foundations of legality of policy-making in Islamic economy
Mohammad Javad Qasemi `Asl

Abstract
Forming an Islamic political economy as a functional part of Islamic economics which is a result of combining the existing situation of Islamic society and desirable Islamic aims, is conditioned to occur some preliminaries including identifying a method of attributing economic policies to Islam. This paper evaluates the relation of economic policies to Islam in three domains: position, impacts and content. As to the position and effects, Islamic political economy means that the policies are to be driven from recognition of the Islamic society’s situation and to pursue the economical norms and aims of Islam. Regarding the content and structure, the competence of recognizing an Islamic political economy rests on the knowledge of principles of jurisprudence. In this research, five couples of jurisprudential principles were introduced: precept - criterion, unchangeable - changeable, first - secondary, obligatory - conventional, and degree one - degree two. Based on the findings of this research, economical policy is pursuing to maintain the criteria of Islam in the field of economy, and it is a kind of changeable percept; by exercising the first policies in mantaqat al-firagh (the subjects have no specific jurisprudential precepts) and by utilizing the conventional precepts, this policy establishes the necessary contracts and institutions, and by defining the duties of each institution, it forms the behaviors. Each policy utilizes the first titles of precepts in order to identify the criteria and benefits the secondary titles for maintenance of criteria.

Keywords: Islamic political economy, precept and criterion, unchangeable and changeable, first and secondary, obligatory and conventional precepts, the first and secondary degree titles.
Analyzing and evaluating the validity of a condition for extinction of an option and its exceptions in Imami jurisprudence and Iranian law with a look at the judicial precedent

Ja`far Nezam Al-Molki
Mohammad Salehi Mazandarani

Abstract
There is a doubt about the validity of a condition for extinction of an option attached to a contract. This doubt has been formed by reason of some objections such as being circular of a condition, gathering two contradictories (irrevocability and revocability) in a conditional contract, and conflict of the mentioned condition with the requirement of the essence of a contract. Criticizing and evaluating these objections as well as the principle of the irrevocability of contracts, the consensus of the Imami jurisprudents, the signification of this holy verse "`aw̱ū bi l-`oqūd", the Prophetic tradition of "al-μu'minūna 'enda shorū̱īhim " and the rule of waiving of a right, all lead to prove the validity of a condition for extinction of an option attached to a contract. Based on Iran’s law, the principle of freedom of contracts, the exceptional feature of invalid conditions in civil code, principle of validity of contracts and also general and explicit article 448 of civil code, provide the same condition. Innovation of the following paper in comparison with the background of the research is that by combining the jurisprudential and legal subject, this paper has completely explained and evaluated the objections to the mentioned condition; then it has specified and determined the non-waiver options and current condition of waiving of all the options, and in this regard, logically stated and criticized the predominant approach over the judicial precedent. The results of this research show that in spite of the validity of a condition for having no option attached to a contract, given to the non waiver of some options, according to the jurisprudential and legal viewpoint, the stipulation of waiving all the options (mentioned by article 448 of civil code) is a invalid condition. Therefore, it is necessary to change the above article and correct our country’s judicial precedent in this regard.

Keywords: stipulating waiver of option, contract, waiving all the options.
Contents

A hesitation about the precept of changing intent of 'umrah tamatto' to hajje ifrād in women pilgrims .......................................................... 177

Mahdi Sajedi

Civil responsibility of remedial abortion ............................................. 178

Reza Pursedqi

Hassan 'Ali 'Aliakbarian

A critical view on the definition of damiya in jurisprudence and Islamic Penal
Code With a convergent attitude to the principle of statute quality .......... 179

'A'zam Mahdavipur

Mohammad Ja'far Sadeqpur

Hamed Rahdarpur

Jurisprudential and legal analysis of tendering the seized vehicles by the
security forces .................................................................................. 180

'Aref Bashiri

Mohammad Mohseni Dehkalani

'Ali Akbar 'Eizadi Fard

Considering and analyzing the foundations of legality of policy-making in
Islamic economy ............................................................................ 181

Mohammad Javad Qasemi 'Asl

Analyzing and evaluating the validity of a condition for extinction of an
option and its exceptions in Imami jurisprudence and Iranian law with a
look at the judicial precedent ......................................................... 182

Ja'far Nezam Al-Molki

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