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## Abstracts

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### The Guardian of Permission in Treatment

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#### Abstract

The term "Vali"(guardian) has received so much attention in jurisprudential resources. This term has many usages. In many cases, jurists disagree about the purpose of this term specially the medical liability. The question is who should give the permission of treatment to the health centers and physicians that if the patient is killed or injured due to the treatment, so that no responsibility is included for the curer. In this regard, there are different viewpoints among jurists: Some of them consider the permission of religious guardian, some of them the permission of heirs, and some of the other jurists see the permission of conventional guardians as a condition.

Among the existing viewpoints on this issue, the viewpoint of religious guardian is more popular. However, through examining the uses of the term "guardian" in Islamic jurisprudence and the existing evidence for the necessity of adopting the Acquittal to exempt the physician's liability, it is concluded that guardian means the conventional guardian. Therefore, any legal and natural person that is the guardian of the patient can be the guardian of the permission. Consequently, when the patient is exempted from the permission and there is no obstacles for that, the patient himself will be the guardian of the treatment; otherwise, the guardian of the patient will be the guardian of the treatment.

#### Keywords

Guardian of the permission, medical liability, release.



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Abstracts

## Determination of Diya<sup>1</sup> in Crimes Leading to Spinal Cord Injury

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### **Abstract**

Spinal cord is one of important body organs that sometimes are hurt or injured because of crime. Jurists in Islamic Penal Code consider the complete spinal cord injury as the cause of complete Diya. In addition to have consensus, they have referred to the principle of Diya for single and pair organs.

Through examination of jurisprudential texts as well as anatomy of human body in respect to subject studies, it seems the jurists' arguments, and especially resorting to principle of single and pair organs; Spinal cord cannot be considered a single organ in the body to have complete Diya in case of an injury.

The current paper in addition to examining the jurists' viewpoints on Diya of spinal cord injury and precise investigation of their arguments concludes that basically spinal cord injury does not include diya, but includes Arsh (compensation for injury). In addition, the Arsh in different cases will be different. Therefore, the Islamic Penal code must be changed and reformed.

### **Keywords**

Crimes against individuals, Diya, spinal cord, principle of single and pair organs, spinal cord injury, article 648 of Islamic Penal Code.

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1. Diya is the financial compensation paid to the victim or heirs of a victim in the cases of murder, bodily harm, or property damage.

## **An Examination of Idealism and Realism<sup>1</sup>**

**From the series of papers on conflict and disagreement in Islamic jurisprudence**

**Authored by Noel James Coulson, translated by Esmail Nematollahi & Mohammad Emamipour.**

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### **Abstract**

Noel. James Coulson, the famous Orientalist, is the author of the paper "Idealism and Realism in Islamic Jurisprudence". In this paper, he tries to prove that Islamic jurisprudence has a completely ideal nature but over the consecutive centuries, Islamic governments have gradually and inevitably taken a pragmatic and realist approach.

Coulson's views can be analyzed and examined in seven areas: 1. Pragmatism and realism in the conduct of jurists 2. Ages of idealism and pragmatism 3. Disagreement between idealism and social realities 4. Evidence of jurists' idealism in criminal claims. 5. Evidence of idealism in the system of religious courts 6. Disagreement between idealism and expediency 7. Disagreement between idealism and jurisprudential practice. In all of these areas, he has focused on idealism and an abstract view in confrontation with pragmatism, expediency, and realism in Islamic jurisprudence.

Our analysis of the resources and content of Islamic jurisprudence indicates that Coulson does not have a comprehensive understanding of Sharia and how it is accomplished.

### **Keywords**

Islamic jurisprudence, law, Islamic judgment, idealism, realism, Ijtihad Taqlid.



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1. This paper has been prepared and authored in Islamic Sciences and Culture Academy.

## **Jurisprudential Analysis for the Foundations of Civil Liability of Organizations Supervising Products Safety Due to the Advent of New Technologies**

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### **Abstract**

One of the salient and at the same time problematic features of current normative debates about new and emerging technologies is the lack of clear and reliable data on the characteristics of many expected applications of technology. Despite the tremendous benefits and potential applications of new technologies such as nanotechnology and biotechnology, existing scientific studies have proven that products derived from these technologies, such as transgenic or nanoscale products can have harmful effects on consumers' health and the environment. This necessitates the need to provide standards and pay attention to the safety of these products by supervising organizations. Therefore, the question that arises is, "in case of losses and harm resulting from the use of these products, what are the consequences for the responsible organizations and how can the civil liability of these organizations be analyzed. In the current paper, considering the probable dangers of these products to the safety and health of the consumers, the civil liability of supervising organizations to balance the risks and benefits of these emerging technologies is examined from a jurisprudential perspective based on two principles of Tasbib (causality) and Ghorur (deception). Accordingly, in addition to the pathology principle of Tasbib, through providing a specific mechanism based on the principle of Ghorur, we can figure out the responsibility of organizations supervising the safety of products.

### **Keywords**

New technologies, risk, supervising organizations, civil liability, Islamic jurisprudence.



## The Critique and Examination of Most Jurists Viewpoints on Fulfillment of First-degree Murder

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### Abstract

Most of Imamiyah jurists believe that the criterion for fulfillment of first-degree murder is the purpose of the murder or often the instrument of the murder as being deadly. They have resorted to the narrations and consensus to prove their own theories. However, the narrations do not explicitly argue the most famous jurists' claim because first, the condition for fulfillment of the first-degree murder in narrations is the intention of the action. Apparently, based on the narrations, the intention of murder cannot be proven. Second, in narrations, there are only a few instances of frequently deadly actions mentioned in the narrations, and a few instances cannot be a general criterion for fulfillment of the first-degree murder. Third, the phrase "Bima Yaqtol Bemesleh" which has been used in many narrations is not considered as a criterion for often being deadly. However, in Islamic jurisprudence, and according to the most jurists' viewpoints, there are various instances of murder that are considered first-degree murder. However, these are not the most jurists' desired criteria. Fourth, consensus is not the condition for fulfillment because by ignoring the breach of promise, such consensus is based on evidence. Fifth, intention is an inner state and cannot be understood without expressing the intention by the intender. Therefore, the criterion of intention for the murder in the outside world is not very practical. In addition, the term "often being deadly" is an ambiguous concept. This concept has not been defined in Islamic jurisprudence and law and is limited to instances. So, it cannot be considered as a useful and salient criterion. It seems the best criterion for fulfillment of the first-degree murder is that the murderer must be subjected to the murder and be aware of that. This criterion is reinforced with some of the confirmed jurisprudential and legal viewpoints.

### Keywords

First-degree murder, intention of murder, often being deadly, being subjected to murder.



## **A Jurisprudential Examination on the Possibility of Mother's Exemption from Qazf by Looking at the Generalization of Arguments**

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### **Abstract**

The crime of Qazf (False accusation of adultery) in Islamic jurisprudence generally includes punishment. The son's Qazf from the father is an exception. According to this exception, the sentence for the child's Qazf from the mother will also be brought up. This dichotomy has been found in Article 259 of the Islamic Penal Code as well as in the famous viewpoints of the Imamiyyah jurists in the absence of enforcing the punishment of Qazf on the father and its execution on the mother. Most of the Imamiyyah jurists believe in enforcing the punishment for the mother and not carrying out the punishment for the father. However, given the strength of jurisprudential arguments for the possibility of incorporating the sentence of the mother into the father's, it is necessary to re-examine this argument. This paper, through a descriptive-analytical method, examines the existing possibilities for father's exemption from Qazf in order to strengthen the possibility of incorporating the mother's sentence into the father's. Based on the most famous viewpoint, the father's exemption has been subjected to the "paternal" relationship, and in some cases, the generality, and context of some arguments and narrative arguments. However, from the aforementioned arguments it seems that the parental relationship can be deduced as the criterion of the sentence. In addition, considering the arguments as unproven and the possibility of the fact that the title "father" has been proven in the narrative arguments, then the mother's sentence can be incorporated in the father's and it can be considered an exception. In addition to the aforementioned arguments, Tanqih al-Manat (clarifying the arguments), generalization of arguments for honoring the parents, the commitment of the legislator to the place of mother, and resorting to the rule of Dar al-Had (the rule of abolishing the punishment) can be a solution for the possibility of the mother's exemption from the punishment of Qazf. Therefore, it is necessary for the legislator to review the article 259 of Islamic penal code and incorporation of the mother into father and paternal grandfather to exempt them from the punishment of Qazf.

### **Keywords**

Punishment of Qazf, criminal sentences, Tanqih al-Manat , rule of Dar al-Had,



## **An Examination of the Features and Process of Subject Studies of Jurisprudential Rulings**

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### **Abstract**

In the process of subject studies, mainly two stages of semantics and instance finding have been considered. However, without going through some preliminary steps, the results of the thematic research cannot be hopefully achieved. This paper has dealt with the specific features of the foundations for conventional subject studies. In this study, the process of subject studies of jurisprudential rulings has been developed to six stages of typology, knowing the situation, knowing the title, semantic, knowing the criterion and instance finding. The stages of this process are in order. In the first stage of the study, which is determining the type of the subject, the typology of subjects in different aspects has been considered. Their relations with religious legislator, their relationships with Mukalafs (accountable people), their relations with other sciences, the type of their natures, their stability and versatility, the factors of their change, the person in charge of identifying them, their ease and difficulty, their history and background, and the literature and structure of the subjects. In addition to aforementioned items, this study has referred to the types that are effective in the foundations and the process of subject studies along with the applications of these divisions in identifying the different stages for subject studies.

### **Keywords**

Subjects of jurisprudential rulings, cognitive features, subjects, process of subject studies.

