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Table of Contents

Feqh

A Quarterly Scientific-Research Journal

Vol. 26, No. 3, Autumn, 2019

99

5	An Examination into the Reasons for Observance of Islamic Doctrines: Ruling, Subject, and Belonging Seifollah Sarrami
6	The Feasibility of Marriage Annulment Due to Wife's Adultery Imamiyah Jurisprudence from the viewpoint of Mohammad Arabshahi Javad Habibi Tabar
7	An Investigation into the Condition of "Equality of Place" in Retaliation of Organ Abbas Kalantari Khalilabad Sayyid Ahmad Mirkhalili Maryam Rahimi Darbid
8	Determination of Dowry: One Condition and Several Challenges Ardavan Arjang Fatemeh Alizadeh
9	An Examination of Jurisprudential Principle of Deceiving the Uninformed Person as Haram Akbar Mahmoudi
10	Capacity of Preferential Jurisprudence Rulings in the Face of Poverty Mahdi Firouzi
11	A New Exploration into Agents for Identifying the Subjects of Jurisprudential Rulings Hojatollah Bayat

Abstracts

An Examination into the Reasons for Observance of Islamic Doctrines: Ruling, Subject, and Belonging

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Abstract

The reason for observance of Islamic doctrines, despite the Qur'anic support and valid narratives and the capacity to be used in numerous jurisprudential traditions and its various aspects in the existing works, is not transparent and clear. The application of the "reason for observance of Islamic doctrines" in deducing the rulings of the subjects of Hajj, prayer, mosques and holy shrines are examples of the effectiveness of this jurisprudential reason, which demonstrates the necessity of its examination and study. One of the innovations of the current paper is the comprehensive examination of the aspects of this reason in three parts: ruling, subject and belonging. The result is that, in the ruling, the necessity of the reason for observance of Islamic doctrines is an independent ruling and beyond the "the insults to the doctrines as being harram." The observance of Islamic doctrines, in terms of subject matter, encompasses all symbols attributed to the Lord of the Universe - both real and valid. In terms of belonging, the mere existence of conventional observance is sufficient, but at least in some cases, this mere existence must always be preserved, which means not being obliged against it.

Keywords

Islamic doctrines, Divine doctrines, observance of Islamic doctrines, mosque, Hajj, Holy shrines.

1. Extracted from the ongoing project in Research Center for Jurisprudence and Law, Islamic Sciences and Culture Academy under the title of "rights, responsibilities, and rulings of holy shrines".



فقه

Abstracts

The Feasibility of Marriage Annulment Due to Wife's Adultery from the viewpoint of Imamiyah Jurisprudence

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Abstract

The marriage contract is one of the necessary contracts and therefore, its annulment requires a special reason. In the Imamiyah jurisprudence, special and limited instruments have been mentioned for the annulment of the marriage contract - because of its importance and impact on society. One of the cases that the husband can claim to annul the marriage is the wife's adultery - before or after marriage. In this regard, the present study - using library method and documentary study - is devoted to examining the feasibility of annulment of marriage due to adultery. The results and findings of this study show that, according to most of late jurists, if a man commits adultery before marriage, a man has no right to annul; however, some jurists believe that a man has the right of annulment in this respect, based on the principle of "no harm" and some narratives. From the author's point of view, it is incorrect to refer to the principle of "no harm" with regard to its unproven language. Of course, according to the valid statement of Abdul Rahman and Sahiheh Halabi, if the wife commits adultery before marriage and conceals it while concluding the (marriage) contract, the husband has the right to annul. The contradictory narratives of these two hadiths also relate to not being Makruh or permissible for annulment in order to use the right to annul, but based on Ibn Janid Baghdadi's view, if the wife commits adultery after marriage, the husband can terminate the marriage. Of course, from the author's point of view, the reasons presented to prove this theory are incorrect and the husband does not have the right to terminate the marriage due to consensus, publicity, and Istishab for necessity of the contract.

Keywords

Marriage, annulment of marriage, adultery, principle of no harm, Imamiyah jurisprudence.



An Investigation into the Condition of "Equality of Place" in Retaliation of Organ

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Abstract

One of the conditions stated for retaliation of organ is the equality in the place. Jurists and legal experts agree that with the organ existing in the place, we cannot retaliate another organ and even its kinds, but if there is a missing organ in the place, there is disagreement among jurists: Some jurists absolutely agree to pay the blood money and some others believe in retaliation of the similar organ in another place once there is a similar organ in another place, and some jurists believe in retaliation even if the people being retaliated are not the same gender. The present paper is a descriptive-analytic study of different viewpoints in this field and the result showed that in case of missing organ in the place - in the similar organ – the similar organ will be retaliated in another place, but in case of retaliation of different genders, once it is against the principle of similarity in retaliation, it is sufficient to rely on the ruling and It will be only the retaliation of the foot in the absence of the hand and the retaliation of the hand in the absence of the foot, which of course this viewpoint is a combination of the second and third viewpoints.

Keywords

Retaliation, similar organ, equality in the place, the same gender.



فقه

Abstracts

Determination of Dowry: One Condition and Several Challenges

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Abstract

One of the conditions stated for mahriyyah (dowry) is its determination and, of course, it faces challenges and ambiguities. The meaning of its determination, the inference of arguments (Nafy Gharar, Bay'e Jazaf) against the determination of exchanging items in the contract and the possibility of considering this condition in conclusion of marriage contract, the documentary and reasonable arguments in the necessity of complete determination of the dowry or the inference of brief determination of dowry, the concept of brief determination, lack of conceptual clarity and referential knowing of moderate principle which in the narratives is considered as the solution of ambiguous dowries, are some of the challenges the determination of dowry has faced ambiguities. The current study seeks to mention the challenges in order to find the solutions based on the jurists' thought and viewpoint.

Keywords

Conclusion of marriage, dowry, challenges, known, determined, exchange, Gharar.



An Examination of Jurisprudential Principle of Deceiving the Uninformed Person as Haram

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Abstract

Deceiving the Uninformed Person (Taqrir Jahil) is forbidden, either with the concealment of the truth or expressing something against it - if specific conditions exist and this is one of the famous jurisprudential principles that has been mentioned and cited in various cases and even in the novel issues of jurisprudence. However, But all its aspects have not been elaborated in a centralized independent work. This paper, for the first time, through descriptive-analytical research methodologies and library documents, examines and clarifies the contents, argument of the jurisprudence (Qur'anic verses, narrations, reason, jurisprudential rules and the application of some arguments) and the scope of this principle so that the jurists' attention can be taken seriously in jurisprudential inference. Some jurisprudential principles, such as principle of Tasbib (wasting) as forbidden, the necessity of uninformed person in giving, the necessity of guidance of the uninformed person, the denial of Gharar (uncertainty), the concealment of the truth and the relying on sin, can be evidence or proof for the validity of this jurisprudential principle. This is a propositional rule that includes the general jurisprudential ruling and covers all or most of the jurisprudential topics and is applicable to minor cases. Therefore, in some cases, not taking exception will not disrupt its accuracy or even its generality since all the principles including jurisprudential and non- jurisprudential take exceptions in some cases.

Keywords

Taqrir, Jahil, Iqra', being uninformed about reality, Izlal, the reason for ignorance, jurisprudential principle.



Capacity of Preferential Jurisprudence Rulings in the Face of Poverty

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Abstract

In coping with the problem of poverty and its solutions, divine religions and human schools have each provided ways for humankind. In the face of this phenomenon, Islam has also identified mechanisms. A glimpse at the jurisprudential rulings indicates that two sets of laws and regulations have been put in place to limit and eliminate poverty: One category is mandatory and obligatory (such as khums and zakat) and the second is the preferential and charitable (Mustahab) one and includes institutions such as donation, charity, waqf (endowment), and loan. The purpose of many principles of jurisprudence is the purpose of its mandatory rulings. Therefore, considering preferential rulings along with the mandatory ones can lead to the simultaneous realization of Shari'ah's goal of making these rulings. Thus, it seems that using the enormous capacity of jurisprudential preferential rulings related to poverty and enforcing them, along with other mandatory and obligatory rulings, can lead to poverty elimination. Analyzing and examining this issue is the subject of this paper and accordingly - after examining the concept of poverty and the criteria for its diagnosis - the issue of donation and charity is dealt with and the final part of the paper is devoted to the study of waqf and loan.

Keywords

Jurisprudence, poverty, preferential rulings, donation, charity, endowment, loan.

10



فقه

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1. The paper is extracted from a research project on "right of development in the international system of human rights and Islamic teachings" that the author has conducted it in the Research Center for Jurisprudence and Law at Islamic Sciences and Culture Academy.

A New Exploration into Agents for Identifying the Subjects of Jurisprudential Rulings

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Abstract

One of the pillars of knowing the issues of jurisprudential ruling subjects is their agent for identification. It is well known that identification of the issue is not the job of a jurist. While rejecting this general and concise claim, this paper examines and explores the status and responsibilities of the "jurists," the Mokalaf (the one charged with a duty), and the "expert" in the field of identifying the subjects of jurisprudential rulings and divides their labors, and assigns the responsibilities of each of them. Through examining these three statuses of identifying the subjects of jurisprudential rulings, it became clear that the jurists' areas of responsibility in identifying religious subjects include defining religious subjects, identifying the alfaz (principles of Islamic Fiqh) of religious subjects, identifying the jurisprudential position of religious subjects, identifying the concept of religious inventions, and identifying the elements of religious inventions. In addition, the jurist's responsibility in conventional issues are, identifying the type of subjects, identifying the jurisprudential position of subjects, and identifying the title of subjects. The areas of responsibility of the mokalaf are, identifying the subjects of religious inventions, identifying the conventional subjects in the stages of conceptualization, identifying the conceptual criteria and finding their examples in case of their ability. Finally, the areas of responsibility of the expert in identifying subjects consist of identifying the concepts and examples of difficult conventional subjects in hadiths, and identifying the concepts and examples of specialized and novel subjects.

Keywords

Agent, identification, agents for identifying the jurist, Mokalaf, expert, jurisprudential rulings subjects.

