

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

Mahdi Sajedi

### Abstract

The following research has examined the precept of transforming intent of 'umreye tamatto` to hajje ifrād in regard with the women pilgrims in carrying out the religious duty of hajj and 'umrah 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 'umrah 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 *istiṣhāb* 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 Mahdaviipur  
Mohammad Ja'far Sadeqpur  
Hamed Rahdarpur**

### **Abstract**

Damiya is regarded as the second kind of injuries to head and face (shajaj). The jurists have shown the various definitions regarding this injury which all of them can be summarized in three general definitions. With reflecting the famous jurists' 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 jurists' 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 ijthadi method in criticizing jurisprudential propositions.

**Keywords:** damiya, jurists, 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 politic 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 jurists, the signification of this holy verse " `awfū bi l-'oqūd", the Prophetic tradition of "al-mu'minūna 'enda shorūtihim " 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 an 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

<b>A hesitation about the precept of changing intent of 'umrah tamatto` to hajje ifrād in women pilgrims .....</b>	<b>177</b>
<b>Mahdi Sajedi</b>	
<b>Civil responsibility of remedial abortion.....</b>	<b>178</b>
<b>Reza Pursedqi</b>	
<b>Hassan 'Ali 'Aliakbarian</b>	
<b>A critical view on the definition of damiya in jurisprudence and Islamic Penal Code With a convergent attitude to the principle of statute quality.....</b>	<b>179</b>
<b>A'zam MahdaviPUR</b>	
<b>Mohammad Ja'far Sadeqpur</b>	
<b>Hamed Rahdarpur</b>	
<b>Jurisprudential and legal analysis of tendering the seized vehicles by the security forces.....</b>	<b>180</b>
<b>'Aref Bashiri</b>	
<b>Mohammad Mohseni Dehkalani</b>	
<b>'Ali Akbar `Eizadi Fard</b>	
<b>Considering and analyzing the foundations of legality of policy -making in Islamic economy .....</b>	<b>181</b>
<b>Mohammad Javad Qasemi `Asl</b>	
<b>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 .....</b>	<b>182</b>
<b>Ja`far Nezam Al-Molki</b>	
<b>Mohammad Salehi Mazandarani</b>	



## Editorial Board (In Alphabetical Order)

Abdorreza Eizadpanah (Board of Trustees Member of Islamic Propagation Office)  
Seyyed Ahmad Hosseini (Member of Society of Seminary Teachers of Qom,  
and professor of advanced levels at Qom Seminary)  
Yaqoubali Borji (Associate Professor, Al-Mustafa International University)  
Muhammad Zarvandi Rahmani (Associate Professor, Al-Mustafa International University)  
Seyyed Abbas Salehi (Assistant Professor, Islamic Science and Culture Academy)  
Seifollah Sarrami (Associate Professor, Islamic Science and Culture Academy)  
Ahmad Moballeqi (the head of Islamic researching center of Islamic Consultative Assembly and  
representative of Lorestan Province at Assembly of Experts for the Leadership)  
Seyyed Ziya Mortazavi (Associate Professor, Islamic Science and Culture Academy)  
Muhammad Sadieq Mazinani (Fourth Level Researcher at Qom Seminary)  
Muhammad Hassan NajafiRad (Assistant Professor, Islamic Science and Culture Academy)

Editor: Yahya Sarrami

Editor: Mohammadreza Zafari

Arabic translator: Mohammad Hossein Hekmat

Referring to the enactment 131 issued by The Council for Awarding Scientific Permissions and Grants of the Seminaries Supreme Council held on 5/3/1394, The Quarterly Journal of A New Probe in Fiqh has granted Scientific-Research rank since Volume 75. It is noticeable that by virtue of single-clause bill enacted by the session 625 of the Supreme Council of the Cultural Revolution held on 21/3/1387, enactments of the Supreme Council of the Qom Seminary possesses official credit in regard of awarding scientific grant to the scientific journals, and begets legal privileges at the universities and seminaries.

### Disclaimer:

The Editorial Board reserves the right to modify articles.

The views and opinions expressed in this article are those of the authors and do not necessarily reflect the official policy or position of the Editorial Board.

The Quarterly Journal of «A New Probe in Fiqh» is cited in the Islamic World Science Citation Center (ISC), State Journals Database ([www.magiran.com](http://www.magiran.com)), Noor Specialized Magazines ([www.noormags.ir](http://www.noormags.ir)), and The Magazines Portal of the Islamic Propagation Office ([www.daft-armags.ir](http://www.daft-armags.ir)).

Address: Fiqh Journal Office, Islamic Science and Culture Academy, Moallem St., Shohada Sq., Qom, Islamic Republic of Iran,

P.O.Box: 37185-599

Office Phone: +98-25-37742158

Fax: +98-25-37742159

Circulation Phone: +98-25-37116666

Email: [Jf@isca.ac.ir](mailto:Jf@isca.ac.ir)

Web: [Jf.isca.ac.ir](http://Jf.isca.ac.ir)

Publication Manager: Seyyed Hossein Moosavi

Price: 7000 Tomans.



فقه  
کاوش نود

A New Probe in Fiqh

A Quarterly Scientific-Research Journal

Volume 93, Issue 1, spring 1397



Publisher: Islamic Propagation Office, Qom Seminary

Islamic Science and Culture Academy

Director-in-Charge: Abdorreza Eizadpanah

Editor-in-Chief: Seifollah Sarrami

Journals expert: Alireza Fajri

Executive manager: Seyyed Mahmood Karimi