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The rule of "marriage with every nation"

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Abstract

Marriage is one of the most important and effectiveness situations in each legal system which it has several rights and duties. But legal systems do not agree on the laws of valid marriage. This conflict in law raises the question of what is the view of Islamic law regarding non-Muslim marriage. Does Islamic law merely consider a marriage to be valid only in accordance with Islamic laws, and as a result does it consider that the marriage with non-Muslims, such as the People of the Book or the Buddhists, is void and ineffective? The authors of this article will prove the claim that in the doctrine of Islamic law, the marriage with non-Muslims - provided that their marriage is valid in accordance with their own laws is valid and all the effects of a valid marriage, including the establishment of inheritance, purity of the child, the sanctity of courting a non-Muslim spouse and the adultery being considered adultery, will be arranged in such marriages. In this regard, there is no difference between marriages of the People of the Book or marriages that has been concluded in accordance with contemporary legal systems, such as the English legal system. The authors present their claim following the rule of "Marriage with every nation" according to the numerous narrations in the sources of Shiite jurisprudence.

Keywords: Marriage, Non-Muslims, Divorce, Islamic, English law.

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Jurisprudential justification of divorce after resolving marriage (Tahlil Nikah)

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Abstract

Marriage is the foundation for family and family is the foundation on which society stands. Marriage established by the Holy Shari'a in order to make it permissible as a solution for both men and women to enjoy each other to create a matrimonial relation and the permanence and continuity of married life. One of the laws of Islam, which is enacted to prevent repeated divorces which is been done by men and inflicting harm to women is resolving marriage (Tahlil Nikah). The man has no right to remarry or marry his wife after a triple divorce unless the woman marries another man and divorces from that man after having had intercourse. Being allowed to remarry the first husband is only possible when the woman marries with another man (Mohallil) then divorces him after having sexual intercourse. This kind of marriage named Mohallal marriage. There are several conditions for Mohallal marriage that include the condition of dissolution of the marriage after having intercourse with the resolving man (Mohallil), marriage on the condition of divorce, delegation of divorce, the condition of the wife's attorney in divorce. One of the requirements for the authenticity of the conditions within the marriage contract is that the condition doesn't contradict the nature of the marriage's requirements. Civil law not only does not mention the criteria for determining the requirements of a marriage contract, but also doesn't present any definition of marriage contract. Therefore, in the present study with the method of documentary – library data collection and descriptive-analytical research type, the mentioned matters have been explained and analyzed with an emphasis on the requirements of the nature of marriage.

Keywords: Mohallal marriage, Dissolution of marriage, Resolving marriage, Matrimonial relation, Nature of marriage, Requirements of marriage.

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The right of child's education according to the law and international documents

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Abstract

A healthy community regards the right of Child's education as both individual and social obligation. Although this right is presented by the family and government the role of the former is more emphasized according to the international documents. Now the question is how far the family should contribute to the child's education? The findings prove the sole responsibility of the government to provide a good basis of education and well being in each family unit. Family in return grows up healthy efficient children for a prosperous society.

Keywords: Children, The right of education for children, Time sphere, Place sphere.

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Conflict of courts and conflict of laws on alimony in EU laws, Protocol 2007 of Hague Convention and Iranian Law

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Abstract

Protecting of individual legitimate interests and establishing stability and predictability in exogenous relationships requires the simultaneous consideration to the rules of courts conflict and also laws conflict. The findings of this paper show that the competency rules including the determination of the competent court or the ruling law should be based on communication and lawsuit belonging to a given country in the matter of alimony. These rules about the competent court and the ruling law have been directed towards the creditor's habitual residence in the 2007 Hague Protocol and the 2009 European Union Regulation. Also, two parties of claim have been limitedly permitted to choose the competent court and the ruling law in the light of the expansion of the rule of will. In addition, the interests of the governments in ensuring of the right to a fair trial have been caused the court deal with a lawsuit exceptionally in spite of the lack of competency. In Iranian law, the rules of the conflict of the courts with reference to the plaintiff's domicile as final rule are not far from international document. But in conflict of laws on reliance to Iranian laws, the citizenship of husband or parent has created considerable differences with The Hague Protocol and the European Union.

Keywords: Alimony, Competent court, Ruling law, Emergency competence, The rule of will.

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The effect of parent's physical diseases (infectious and incurable diseases) on child's guardianship

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Abdullah Mokhtari³

Abstract

The role of the family in guardianship and protection of children is undeniable. Sometimes the foundation of the family weakens for some reason and its structure collapses and causes the family to lose its efficiency. In this situation, the guardianship of children is one of the most important issues. The guardian is sometimes denied from her or his guardianship right. Diseases and illness are one of the most important things that affect on guardianship of children. The most of Islamic jurists believe that chronic and incurable diseases don't cause the loss of guardianship of children if the guardian would be able to do his or her duties through a deputy. In general, it can be said that if the guardian's Infectious disease cause to damage the child's physical health, his or her guardianship right will be revoked. But the principle of his or her guardianship will be survived if the guardian can prevent the spread of the disease to the child and to carry out matters related to child's maintenance and training through the supervisor.

Keywords: Diseases, Illness, Mental, Physical, Parents, Guardianship.

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Jurisprudential study of the theory of judicial divorce in case of non-compliance of woman's right to sexual intercourse

Omolbanin Alahmoradi

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Abstract

As a result of permanent marriage, a marital relationship is established between husband and wife, and duties and rights are created for each of them in relation to the other. Some of these rights belong to the wife that the husband is obliged to do them. The right of having sexual intercourse or the right of Movaq'ah is one of them. The jurists believe that the husband should not leave sexual intercourse with his spouse for more than four months and according to this perspective, in this article the question arises that if sexual intercourse is considered as a woman's right, what an executive guarantee is provided for it? If the man does not observe this right of the wife, does the woman have the right to sue and complain, or does she have to wait and be patient with this cruelty and oppression until the man pass away. In this article, by referring to valid jurisprudential reasons, we have proved that if the husband violates this right or if he is unable to do so due to his disability and impotence, such as the case where the husband suffers from defects such as impotency that cannot use the right of termination, the judge can oblige the husband to divorce the wife according to the wife's divorce request and if not possible, the judge will divorce her, proving this issue is the main purpose of this study.

Keywords: Divorce, Sexual intercourse, Right, Wife, Impotence.

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The guarantee of the implementation of leaving the wife's alimony based on the rules of jurisprudence and the principle of strengthening the family

Anis Asadi¹

Received: 28/12/2020

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Monir Haghkhah²

Abstract

In Islamic jurisprudence, alimony is one of the obligatory duties of the couple after concluding the marriage contract, and the fulfillment of this duty has been guaranteed by making the protective laws. The guarantee of civil execution of non-payment of alimony by the spouse in the current regulations is the obligation of the spouse to pay alimony under Article 1111 of the Civil Code and the compulsion of the spouse to divorce under Article 1129 of the Civil Code and Also, the guarantee of criminal execution for leaving alimony according to Article 642 of the Islamic Penal Code is imprisonment from three months and one day to five months. The main issue of this article is which of the jurisprudential rules is based on the guarantee of the performances foreseen in the rules for non-payment of alimony? And what is the solution before the divorce regarding the performance guarantee of leaving alimony to the wife according to jurisprudential sources? In this research, using a descriptive-analytical method and by relying on the principle of family consolidation and using the rules of related jurisprudence such as the rule of harmless and no harm and the rule of guardianship, Al-Ta'zir and the rule of the governing province while analyzing the basic legal materials in dealing with complaints about non-payment of alimony to wife, Suggestions have been made regarding the prioritization of the proceedings, and the ruler divorce has become the last enforcement guarantee resulting from the husband's leaving alimony.

Keywords: Harmless (La Zarar), La Haraj, Al-Ta'zir, Al-Hakem vali al-Mumtane, The principle of strengthening the family, Leaving alimony, Ruler divorce.

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Contradicting the principle of consistency and the rules of harmlessness and no harm in exercising the husband's authority to divorce

Roksana Boazar¹

Received: 05/11/2019

acceptance: 25/05/2020

Kobra Poorabdollah²

Abstract

The main purpose of this research is studying the husband's authority to divorce without any need to reason and the harm imposes to wife in this issue. And considering to the plurality of judicial procedures in this regard and by using the harmless and no harm jurisprudential rules, is proved which kind of these rules is eliminated in case of the conflict between financial loss of the husband to pay the alimony and non- financial loss of the wife such as the psychological losses and the lack of adhering the wife to the common life. According to the findings of the study, non-financial loss of the wife, if there is a criterion, can take precedence over the financial loss of the husband. Furthermore, it shows if the legislator creates obstacles for the man who wants to divorce his wife for no reason and imposes costs to him, it will deter divorce. The realization of this theory can be an effective step in strengthening family and reducing the women's psychological and dignity damages.

Keywords: Principle of consistency, Right to divorce, Rule of domination. Harmlessness, No harm.

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A comparative study of alternative entities of permanent marriage in Iranian and British laws

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Roghaieh Sadat Momen²

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Abstract

Sexual instinct is one of the most natural human instincts to regenerate the generation and God, while designing the religion of Islam, has prepared a comprehensive program named "marriage" to respond this natural human need. The Iranian legal system, based on Islamic regulations, introduces permanent marriage as the main solution to this problem, and in situations where it is not possible to achieve, it proposes temporary marriage and sets precise criteria for it. The British legal system was initially considered marriage as the main way to respond this need, but in recent decades, various entities- such as white marriage, common law marriage and cohabitation - have formed in Western societies and changed the initial direction of responding to this need. Due to the expansion of communication in the present era, the Iranian society is not been immune from the effects of these entities and has been faced some problems. The present article based on descriptive and analytical methods and by collecting library resources, with a comparative approach to Iranian and British law, explain the nature and characteristics of each of the alternative entities of permanent marriage in these two systems; The result shows that among the above institutions, temporary marriage has more advantages and can be a suitable alternative to permanent marriage when necessary.

Keywords: Marriage, Temporary marriage, White marriage, Common law marriage, British law, Iranian law.

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New Muslim personal status from the perspective of Imami jurisprudence and Iranian law

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Received: 31/10/2020

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Abstract

Personal status are those attributes that civil law makes them the subject to legal effects for individuals, In this way, considering that the mentioned regulations can affect the family life of individuals and situations such as converting to a new religion, including Islam, can cause a change in a people personal situation, it will be important to address this issue. This article uses descriptive-analytical method to answer this question: how is the situation of personal status, especially the new Muslim marriage, in Iranian jurisprudence and law? And what conditions and rights are provided for him? According to studies, this issue is one of the issues that are considered as legal gaps. However, in Imami jurisprudence, there is scattered valuable information about the new Muslim personal status following the family discussions. According to the rule of Jab, below these issues, the effects of the situation that is due to the things that happened to the new Muslim before Islam will be removed from him. Due to the great importance of strengthening the family in Islam, there is a verdict on the authenticity of the new Muslim marriage, even if it is opposed to the Islamic rules, except in cases where it is expedient to differentiate more than the expediency of living together. In these cases, it is not a sin for a new Muslim, but the continuation of the marriage is forbidden. Therefore, according to Imamieh jurisprudence, the marriage and its effects are recognized even if they are contrary to Islamic rules.

Keywords: Islam, New Muslim, Jab rule, Family Law, Personal status.

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The fair remuneration of wife's work in Afghanistan law and the effectiveness of the laws to achieve it

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Received: 29/01/2021

acceptance: 10/05/2021

Abstract

The fair remuneration of wife's work at home is recognized as one of his financial rights in the Afghanistan laws and can be claimed under certain conditions. The current research by descriptive-analytical method analyzes the concept, its legal basis, conditions and performance guarantees of wives' wages and concludes that some of its conditions; Such as the condition of "order" of the husband and "no intention to donate" is in such a way that proving it is very difficult due to the special features of cohabitation and actually leads to the deprivation of women of this right, and in order to facilitate this, an alternative offer has been proposed. Moreover, according to the law of "personal status of Shiites", the fair remuneration in terms of time can be claimed only "after" the divorce or death of the husband, while this restriction does not be defended and supported by jurisprudential rules and principles and seems to need to be revised and amended.

Keywords: Afghanistan laws, Fair remuneration of wife's work at home, Personal status of Shiites, "No intention to donate", Customary implied term.

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Analysis of the procedural unity verdict no 708 of Supreme Court general board, compatible to legal & jurisprudential criteria

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Received: 05/11/2019 acceptance: 25/05/2020

Abstract

In this article the procedural unity verdict no 708 of Supreme Court general board, after paying installments the dowry is examined and recognizes the wife's imprisonment right based on legal& jurisprudential criteria, specially the principle of family security and the nature of marriage. As we know the consequences of family are not limited to parties and family members and the success, failure and instability of the family, have the direct effect on society and even on next generations. So that, the tenth Article of the Constitution of Islamic republic of Iran describes the family as the foundation of Islamic society, but apparently- despite this insignificant- some judicial decisions- such as the above verdict don't support the family as a fundamental unit, and even those decisions along with other factors, sometimes would be an obstacle for family durability. This article with descriptive-analytic method is proved that this verdict is not compatible to legal& jurisprudential criteria in terms of not paying attention to the role of the Supreme Court, the situation of dowry in marriage contract, the real description of this subject, and specially lack of attention to husband's inability to pay the dowry (insolvency) and the sentence of paying installments the dowry and due to its negative consequences in preventing the marriage should be reconsidered.

Keywords: The wife's imprisonment right, Installment payment, Couple duties, Judgmental procedure.

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صادق^۷

صندوق پستی: ۱۱۱-۱۴۶۵۵ تلفن: ۵ - ۲۲۰۹۴۹۰۱ نمابر: ۲۲۰۶۵۴۳۷

نوع اشتراک: شخصی مؤسسه علمی سایر موارد

نام: نام خانوادگی:

شغل و میزان تحصیلات:

نشانی:

کد پستی: صندوق پستی:

درخواست اشتراک از شماره:

مبلغ پرداختی: (ریال)