In the Name of Allah the Compassionate the Merciful

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The effects of the "dissolution" of the contract as an origin of debt upon assignment contract; Jurisprudential (Fiqh) and legal analysis of Article 733 of the Civil Code

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In this article, the effects of the "dissolution" of the contract as the origin of debt upon assignment contract have been analyzed with the aim of removing ambiguity from Article 733 civil code, emphasizing on Islamic jurisprudence. The main question here is whether with the dissolution of the contract relating to the origin of debt, the assignment contract is also dissolved or the assignment contract remains valid and the resulting obligations must be fulfilled? If either of these two solutions is accepted, what will happened to the price that the customer has paid directly or indirectly (through the third party assignee); That is, does the buyer, with the dissolution of the contract, have to recourse to the seller or to the assignee for returning the price? Also, what will be the status of the third party assignee's debt to buyer, and also what will be the status of the price received by assignee? With the method of descriptive-analytical research and with extensive study in Islamic jurisprudence and analysis of Article 733 civil code, it was concluded that the dissolution of the contract as the origin of debt does not cause the dissolution of the assignment contract, but the assignee takes the price from the third party assignee and the third party assignee has no obligation with respect to the assignor; The customer also refers to the seller fir returning the price. However, this ruling does not merely apply to the contract of sale, but any debt that is created as a result of a civil contract or non-contractual event and an assignment is issued based on it, and then the said contract is dissolved or the debt is revoked, the aforementioned provisions will be applied.

Keywords: Assignment contract, sale, contract as the origin of the debt, assignment by the customer, assignment by the seller, dissolution of the sale, termination of the assignment.

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The basis and scope of the rule of the necessity of oath in a lawsuit against the deceased Mahdi Hasanzadeh

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In jurisprudence and law, this rule is stipulated that the plaintiff in a lawsuit against a deceased person, in addition to proving the right, is required to oath on the survival of the right. The basis of this ruling needs to be analyzed, and its scope can be discussed in several aspects; including, whether it includes objective litigation and cases of proving the right with any proof, or whether it is dedicated to claiming debt and proving debt with witness, and whether this rule is inclusive to litigation over absentee, minor and insane, and Claimant's heirs claim and their parent or executor or assign it to the lawsuit against the deceased by plaintiff , and does it apply to the case of doubt in the survival of the right, or does it also include the case of the lack of doubt in the survival of the right? In these fields, various and different views have been presented in jurisprudence and law. The legislator's statement also has inconsistencies. From a legal point of view, the rule of the necessity of taking an oath in a lawsuit against the deceased includes objective lawsuits and can be extended to lawsuits against absentee, minor and insane, and it also includes the Claimant's heirs claim against the deceased, and condition of the necessity of such an oath is doubting the survival of the right.

Keywords: dispute over the deceased, oath, claimant, doubt in the survival of the right.

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Grounds for assessing the role of the judge in proving civil litigation

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In Islamic jurisprudence, jurists have provided criteria and cited various legal rules and principles in order to determine the plaintiff. The reason for this distinction of the jurists is that they can determine the burden of proving the dispute on the recipient. However, it is not always the case that the plaintiff wants to be the only active member of the trial. Sometimes this view is accompanied by changes such as the judge's involvement in proving the dispute. Since civil litigation systems are divided into different legal systems, the role of the court in each legal system is different. In this case, in civil litigation, civil litigation is the property of the litigants, and the judge is merely a passive member who cannot play a role other than issuing a judgment based on the reasons given by the parties. However, in the inquiry system, the role of the judge in proving the lawsuit is active and plaintiff can, in parallel with the plaintiff, search for evidence to prove the lawsuit. In such a way that the activism of the judge reduces the role of the plaintiff in carrying out the burden of proof. This article examines the role of the judge in proving litigation.

Keywords: court, judge, proof, lawsuit, passive, active.

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Analysis of How Contractual Constructionality Is Influenced by Reality Contemplation About the Relation Between Constructionality and Socio-Empirical Reality in Law

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Law has a constructed nature; the one which is distinguished from socio-empirical reality. Nevertheless, one can believe in dualism of contructionality and reality providing constructionality is independently thought to be different from reality and each of which has its distinct area. Furthermore, contract has a constructed nature. The question is whether there is an insist on its separation from reality; or what kind of effects would be followed by this independence? As long as this independence resulted in dominancy of contractual constructionality over reality, would it necessarily eventuate to have a fair contract? What are the challenges of pure dependency of contractual constructionality from reality? On the basis of this dependency, can one believe in the transformational and evolutionary function of law, particularly the contract? Denying both dominancy and pure dependency approaches, it sounds in all likelihood that it is the one and only way to keep the supremacy of will principle beside the principle of equity or the principle of the denial of distress and constriction; moreover, we should just emphasize how influenced the contractual constitutionality could be by the reality.

Keywords: Contract, Reality, Realism, Voluntarism, Constructions.

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Principles and alternative effects of juvenile criminal proceedings

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Benefiting from alternative measures in the criminal proceedings is something that can be used and effective in different stages of the trial and even before it. These measures are very important for certain groups, such as children and adolescents, because they are in the age range that their inclusion in the criminal justice and judicial system can have many negative effects on their individual and social personality. To this end, the benefit of alternative measures for them is included in the laws of many countries, which can provide rehabilitation and prevent the recurrence of crime. In the meantime, the juvenile police, with interactive actions as officers and the first group in contact with the delinquent child, play a key role that requires giving them broad powers to take alternative action. These measures include a wide range of activities, the most important of which are the use of non-criminal intervention, family meetings, support services, official warnings, and the use of interactive police powers in the rehabilitation of the offender so that he can understand Correct your wrong behavior and accept responsibility for the behavior committed in a proper way.

Keywords: family meetings, restorative justice, non-criminal intervention, adjudication.

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An Investigation of the Substantial Punishment of Apostasy from the Perspective of Islamic Jurisprudence and Iranian Penal Code

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According to the Islamic Penal Code and the jurists' point of view, the penalties are divided into three categories: The main punishment is the punishment provided by law for any offense and must be stated in a court order. Supplementary punishment, which is mainly optional. In such a way that in the case of inadequacy, it will punish the offender with additional punishment.

Subordinate punishment. These penalties are applied in accordance with the main punishment for the offender and are not stated in the lawsuit and the judge is not involved in the application of the subordinate punishment. This is the legislator who in some cases and convictions applies the subordinate punishment. From the point of view of the Islamic Penal Code for the application of the subordinate punishment, in addition to the definite criminal conviction, it is also a condition for its execution. In other words, the punishment is subordinate to the punishment after the main punishment has been committed in deliberate crime.

Subsidiary punishment is derived from customary law and is not provided for in the penal jurisprudence of Islam and its criminal law as subsidiary punishment. However, in some penal jurisprudence books, in addition to the main punishment, it has also dealt with subordinate punishment, including deprivation of inheritance and deprivation of apostasy, including the importance of specific instances of subordinate punishment. Islamic jurisprudence and the penal system of Iran.

Keywords: Subordinate Punishment, Subordinate Punishment in Islamic Jurisprudence, Principles of Subordinate Punishment, The Concept of Apostasy, Apostasy in Islamic Jurisprudence.

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A comparative study of alternatives to criminal prosecution in Iranian and French legal system

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The high number of criminal dossier due to the limitations of the judiciary, both in terms of manpower and credit, and in terms of time, leads to inflation of the dossier and double pressure on judicial authorities and issuing wrong decisions, which prolongs the investigation process. Thus, in the legal systems of different countries, alternatives to criminal process have emerged over the last three decades to control the overcrowding and speed up the criminal response to petty crimes. In these alternative processes, the prosecutor enters into negotiations directly with the perpetrator, and after admitting their guilt and taking certain actions specified by the prosecutor, leads to the cessation of the public prosecution and the resolution of the case at the stage of the prosecution. In this regard, the leading research with a descriptive-analytical (critical) approach has examined the position of alternatives to public prosecution in the two legal systems of Iran and France. In the end, it was conclude that the Iranian legislature does not have a systematic and clear position on alternatives to public prosecution of natural and legal persons. According to the comparative study, it has been suggested that, considering the principle of the necessity of prosecution, more trust be placed in the prosecutors and that the mentioned alternatives be enacted in a separate chapter with the goals predetermined in the criminal code.

Keywords: Alternatives to prosecution, restoration, victim, Iranian legal system, French legal system.

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Self-Beneficence

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According to the rule of bona fide (Ehsan), beneficent person (Mohsen) is exempt from the Liability for the damage he/she brings on the person receiving the beneficence (Mohsen al-ELayh). One of the important issues under this rule is that if the beneficent person (Mohsen) and the one who receives beneficence are the same person, that is, a person harms another in order to avoid harm to himself or to transfer profit to himself, does the rule of bona fide (Ehsan), also exempt such a person from Liability or not? In this article, by rejecting the view of the jurists who have considered beneficence to self the resolver of Liability, it has been proved that beneficence to the self is not beneficence thematically. Because the origin and correctness of negation are both signs of truth and the origin of beneficence is beneficence over others, it is correct to negate the title of beneficence from "beneficence to oneself"; even if we do not believe in the thematic exclusion of beneficence from the self from the scope of the rule of bona fide (Ehsan), due to the necessity of good deed for the coming to the mind of the rule of bona fide (Ehsan), and the absence of such goodness in "beneficence to oneself" towards the injured party and also because the honorable verse "There is no cause for blaming the virtuous" is only for gratefulness and should not lead to harm to the injured person, therefore a verdict exclusion of "beneficence to oneself" is accepted from inclusion in rule of bona fide (Ehsan).

Keywords: Self-Beneficence, Beneficence, Liability, Beneficence to Oneself-Civil Liability, Legitimate Defense, Urgency.

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Mechanism of Citation to The General Policies of The Government in The Administrative Justice Court

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Citation to the general policies of the government as an existing norm in Iranian legal system in the administrative justice court is possible. According to the particular features of this norm, citation to the general these policies is nearly different from citation to the laws. So, this research tries to answer this question: What's the mechanism of citation to the general policies of the government in the administrative justice court? Therefore, with descriptive-analytical method the subject has been studied. Relationship between the senior council of supervision to implementation of general policies of the government as deputy of leader and the administrative justice court in supervision to implementation of general policies is other topic that been investigated in this research. Finally, according to the authoritative opinion about quiddity of the general policies and with patterning from how to judicial citation to high level norms like constitution try to suggest a mechanism and explain way of citation to the general policies in the administrative justice court.

Keywords: The general policies of government, The Administrative Justice Court, Citation to the general policies, The senior council of supervision to implementation of general policies of the government.

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The Analysis of the Contents and Effects of the Theory of Ja'l & Taghrir in Clarification of the Nature of the Condition

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There are various theories on explaining the nature and concept of "proviso" that accepting each of them, directly, effects on the rules which are governing "proviso".

One of the most important theories on nature of proviso is Mohammad Kazem Tabatabai Yazdi's theory that is known as "Ja'l"/"Taqrir" theory. This article seeks to explain this theory, it's jurisprudential and legal effects and it's criticisms and shows the differences between it and other theories. Finally, it becomes clear that a proviso, merely, refers to a promise made by individuals that shari'a law confirms it.

According to this theory, there are any types of "proviso" including pure promise, promise to bind the original promise and obligation. In proportion to the nature of proviso and its types, the rights of beneficiary against promisor determines as well as the status of the transaction including the voided proviso.

Keywords: condition, Ja'l, Taghrir, promise, proviso.

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Reflection on the concept of equality in the legal system's approach to transnational documents

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Citizens, regardless of their personal characteristics (such as race, gender, religion, social class, etc.) must be subject to a single legal system. The modern government manages an equal society, and the members of this society must be equally obedient to universal power. Obviously, the intermediary of these relations is a law that governs the will of the public in society. The real picture of equality in the area of contract is where the equal conditions for all citizens to obtain administrative contracts are provided. Therefore, the inherent and acquired differences of citizens can not be considered an obstacle to the achievement of government contracts. In Iran, the constitution in its original principles has accepted the equality of citizens in certain ways. Therefore, the assumption of discrimination between citizens in terms of race, religion, political opinion, position, and ... is not accepted. Since this is not an area, but an allegory, this equality should be maintained in access to public services, one of the most important of which is the right to conclude and use employment contracts.

The concept of equality is one of the most challenging concepts in which various definitions are given. This dichotomy and ambiguity in the concept of equality, giving a precise and balanced classification of it, also presents a problem. However, in a general division, they have divided equality into legal equality, equality of opportunity and outcome equality. In this article, the author will refer to the descriptive-analytical method to study the concept of equality in Iranian law and transnational documents.

Keywords: Equality, non-discrimination, employment system, government contract.

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Legal analysis to protect brand owners against unfair use

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The most important way to legally enhance brand credibility is to look at the brand as an independent entity. Under these circumstances, the brand becomes a commercial commodity that can be easily protected in various legal situations. Brand independence means that there is no need for the brand to necessarily communicate with the product or service that contains the brand. Among the problems and challenges facing the brand is that the brand may not reflect the nature and quality of the goods and services introduced. According to the studies conducted in this article, we came to the conclusion that the description of brand independence has two important effects, one of which is the ability to transfer and the second important effect of this description is related to the transfer of mobile information. It is with the brand that this effect seems to show more of the economic and marketing aspects of the brand. The description of brand independence is mentioned in paragraph 4 of Article 15 of the TRIPS Agreement and is mentioned as one of the conditions that can be upheld in this article. In addition, it should be noted that the lack of fair competition can be referred to and cited based on what is stated in the Paris Convention.

Keywords: brand, description, independence, unfair, transfer, competition.

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