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Office Address: Qom, Pardisan, Islamic Azad University

Tel: 025-32800281

Email: m.f.falsafi@qom-iau.ac.ir

Website: <http://aqojap.journal.qom-iau.ac.ir>

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Legal-Jurisprudent Study of Actions Taken for Education and Security Purposes with an Emphasis upon 1392 Islamic Penal Code

Ahmad Moradkhani*, Samaneh Began**

(Received: 28 June, 2016; Accepted: 28 July, 2016)

Abstract

In Criminal law of today, it is highly important to pay attention to education and security measures. In fact, education and security actions act as one of successful reactions to crime that has gained its place as one of the main ways of fighting crime beside punishments. In Islamic law, social defense and securing the community from threat of delinquency and reforming and educating criminals as an issue is paid an attention thanks to its scientific record in early Islam. Purpose of education and security measures that is reformation, education and rehabilitation of wrongdoer as well as prevention from repetition of crime has always been underscored and favored by religion. In 1392 Islamic Penal Code, achievement of such momentum has been further considered through recognition of modern applications of education and security measures.

Keywords

Education Measures, Islamic Law, Reforming Criminal, Security Measures, Social Defense.

* **Corresponding Author:** Assistant Professor, Department of Feqh and Principles of Islamic Law, Islamic Azad University, Qom, Iran, **Email:** ah_moradkhani@yahoo.com

** MA Student, Department of Criminal Law and Criminology, Islamic Azad University, Qom, Iran

Shafe'ie Religion Considers Barriers of Marriage

Mohammad Sadeqi*

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Abstract

Barriers of marriage are: Kinship, woman is married, man has four wives, marriage during waiting period of woman, kinship of some women, blasphemy, cursing and bans. Kinship including collateral, marriage and fosterage stops matrimony to some extents. Relatives to whom marriage is forbidden due to kinship are called maharem. Collateral maharem are mother, daughter, sister, aunt, brother's daughters and sister's daughters. Collateral maharem are of two types: Becoming son-in-law and kinship of two women. Son-in-law relationship is between man and woman that necessitates banned marriage including grandfather's and father's wife, child's wife and grandmothers of wife, wife's daughter from another husband. Kinship of two women such as two sisters where one of them is man and their marriage is not permitted and it is prohibited; therefore, man cannot create kinship between wife and his sister-in-law; in case marriage with the wife is dissolved, he can marry her sister. Fosterage religiously means that a less than 2-year-old baby is breastfed. Fostering creates ban in the same ways kinship triggers ban. Woman's marriage stops matrimony. In Islamic law, polygamy is permitted but up to four wives; where man has four wives, he cannot marry a fifth wife. Waiting period means a span of time if not expired woman cannot marry another man until her first marriage contract is terminated. If man divorces his wife three times in such a way that he refers to re-marriage two times in between three divorces, the woman is haraam for that man. Blasphemy of one of the spouses stops matrimony. When cursing each other ends, both woman and man become separated and woman is haraam for man and child is not linked to husband. A Mohrem (hajj pilgrim) person with whom marriage is prohibited cannot be married or marry anyone, nor can he represent someone else in marriage whether man or woman; whether he is up to hajj or Omrah or on behalf of someone else.

Keywords

Barriers, Fosterage, Kinship, Maharem, Waiting Period of Woman.

* Assistant Professor, Private Law, Islamic Azad University, Qom, Iran
Email: msadeghi4817@yahoo.com

Particular Rulings for Option of Defect in Sale Contract in the Eyes of Imamiyya Jurisprudence and its Adaptable Subject Law of Iran

Alireza Askari*, Batul MaghfuriFarsangi**

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Abstract

One of the characteristics of sale contract is having option of deficiency which means each defective element in the object of sale and price, leading to option (voluntary cancellation by option is legal cause of contract dissolution and jurists call it measure of contract cancellation); in this case, customer is able to nullify the deal or receive compensatory or atonement. To diagnose this case, some refer to common arbitration and some others regard it less or much as something objective. Article 422 lays down that: In case it becomes clear that merchandise is defective after the deal is made, customer is authorized to accept the defective merchandise by receiving atonement or he can cancel the deal. This article tries to explore particular rulings for option of defect in sale contract according to Shiite jurisprudence and Civil Law of Iran. This means that in sale contract, option is still valid even if seller removes the defect and buyer can choose between deal nullification and defective merchandise by receiving atonement or compensatory.

Keywords

Compensatory, Defect, Option, Sale.

* Faculty Member, Department of Feqh and Principles of Islamic Law, Islamic Azad University, Qom, Iran

** **Corresponding Author:** PhD Student, Department of Feqh and Principles of Islamic Law, Islamic Azad University, Qom, Iran, **Email:** B.Maghfoori@gmail.com

Typical Murder Committed by a Blind Person

MohammadReza Armak*, MohammadMahdi Ahmadi**

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Abstract

In this research, effort is made to deal with one of the controversial issues among Imamiyya jurists and their evidence, the case of murder committed by a person who is blind. A number of jurists believe that a blind person commits such a murder and the person is to be punished through retaliation (Qesas). Others decide that it is not a murder with no impunity. The former group cites the rational reasons, verses and narrations existing concerning such type of murder. Decision of this group remains more compatible with jurist evidence and generalities of retaliation. But the latter group has referred to narrations that are available in narration books about murder committed by a blind person, which clash with generalities of retaliation and rational reasoning.

Keywords

Murder, Murder Commission by a Blind Person.

* **Corresponding Author:** PhD Student, Department of Feqh and Principles of Islamic Law, Islamic Azad University, Qom, Iran, **Email:** mohammadrezaarmak@gmail.com

** Assistant Professor, Department of Feqh and Principles of Islamic Law, Islamic Azad University, Qom, Iran

Characteristics of Penalty for Delinquent Person to Offer Free Public Services

SeyedMehdi Hossieni*, SeyedMahmood Mirkhalili**

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Abstract

Given that inefficiency of jails particularly short-term holdup for deterring, reforming and treating the delinquent people in terms of casting out the criminal from society and familiarizing him with culture of jails as well as considering problems of jails including prevalent narcotics, outbreak of infectious diseases and violence, the countries decided to execute punishments for substituting jails known after society-centered penalties. In 1392 (2013) Iranian parliament incorporated jail-substitution punishments into the Islamic Penal Code. One of the applying cases of this institution is free public services or the very publically beneficial services under which judges by observing regulations and without keeping the wrongdoer in jail can keep him under custody of judge of injunctions execution at work in favor of the society without being paid. According to some judges, in order for such penalty to be practiced, its executive grounds have to be examined in the society and the society too has to be given information, not to mention suitable grounds that have to be made by the administration and Judiciary Power. However, this institution is under execution in a number of national provinces.

Keywords

Free Public Services, Jail-substitution Punishment, Precedent, Society-centered Penalty.

* **Corresponding Author:** MA Student of Criminal Law and Criminology, Qom Science and Research Branch, Islamic Azad University, Qom, Iran, **Email:** smehdyh@yahoo.com

** Associate Professor ,University of Tehran, College of Farabi, Qom, Iran

Post-Divorce Rulings in the Eyes of Hanafi and Shafe'ie Jurisprudents

SeyyedMahdi Mirdadashi*

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Abstract

Courts of law experience post-divorce rulings and in case claimants are from the religious minorities, judges should examine their cases based on their related religions. This article descriptively explores post-divorce rulings in the viewpoints of Hanafi and Shafe'ie jurisprudents. The Constitution of the Islamic Republic of Iran respects such differentiation and non-Shiite religions act in their personal status (marriage, divorce, inheritance and will) in accordance with their own religions based on articles 12 and 13 of the Constitution of Iran and they freely practice their own religions for rulings, regulations and ceremonies. Compliance with these articles of the Constitution necessitates that courts of law and judiciary authorities verify the claims based on rulings and regulations of religions. Since the existing laws concerning personal status are regulated based on Imamiyya jurisprudence and judges are not informed about regulations of non-Shiite religions and that Sunni judges are often informed about rules of their religions, justices are practically faced with problems to examine cases pertinent to personal status of Sunnis and they inevitably refer to Sunni scientific centers for receiving official fatwas. This article tries to take a step, though small, and provide conditions for compliance with article 12 of the Constitution.

Keywords

Divorce, Hanafi Jurisprudence, Personal Status, Shafe'ie Jurisprudence.

* Assistant Professor, Department of Feqh and Principles of Islamic Law, Islamic Azad University, Qom, Iran, **Email:** mirdadashim@yahoo.com