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# Contents

<b>Causes of Divorce in the Eyes of Hanafi and Shafe'ie Jurisprudence .....</b>	<b>1</b>
Seyyed Mahdi Mirdadashi	
<b>An Approach to Arsch Al-Jenaya (Compensatory for Crime) in Jurisprudence and the Subject Law .....</b>	<b>2</b>
Seddiqah Faqih Habibi, Mohammad Mahdi Ahmadi, Zahra Shirazi Ferdowie	
<b>Obligational Cases of Khums (One Fifth) from the Perspective of Imamiyya .....</b>	<b>3</b>
Hamid Kavianifard, Ali Tahmasbipour	
<b>A Contemplative Look at Small Water Impurity as a Result of Being in Contact with Impure Things .....</b>	<b>4</b>
Ahmad Moradkhani, Mojtaba Rahimi	
<b>Option of Choice in the Mirror of Jurisprudence and Law .....</b>	<b>5</b>
Farideh Asghari, Seyyed Hassan Abedian Kalkhoran	
<b>A Study of Necessity for Mo'atat Based on Hadith of Khalid Ibn Najih .....</b>	<b>6</b>
Hadi Gholamreza Ravi, Mohammad Ebrahimnejad Kohani	

## Causes of Divorce in the Eyes of Hanafi and Shafe'ie Jurisprudence

Seyyed Mahdi Mirdadashi\*

(Received: 29 June, 2016; Accepted: 10 July, 2016)

### Abstract

Divorce is one of the important problems facing different communities including our Islamic community in such a way that it is called as "Disease or Plague of Century". Divorce and its harmful consequences can be considered from the social, psychological, economic and governmental aspects, but what comes here is studying the causes of divorce from the perspective of Hanafi and Shafe'ie religions. With the emergence of the sacred regime of Islamic Republic of Iran, one of the concerns of officials is about positive interaction and connection with non-Shiite Islamic religions aimed at motivating unity among Muslims. Article 12 of the Constitution prescribing that Iran's official religion is Islam and Twelve-Imam religion and underlining its unchangeability lays down that these religions including Hanafi, Shafe'ie, Maleki, Hanbali and Zaydi are fully respected. They are also free in their own religious rites and religious education and they are recognized in their personal status (divorce, marriage, inheritance, will and..) as well as their associated lawsuits in courts. This article aims to present a report about jurisprudent views of Hanafi and Shafe'ie religions on causes of divorce to help the respected judges of courts of Iran's Justice Administration to comply with article 12 of the Constitution.

### Keywords

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

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## An Approach to *Arsch Al-Jenaya* (Compensatory for Crime) in Jurisprudence and the Subject Law

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### Abstract

One of the most important rules governing blood money is that of *Arsch*. *Arsch Al-Jenaya* (Compensatory for Crime) stands for compensation of damage inflicted upon human body because of crime blood money of which has not been prescribed in canon law. Rule of *Arsch* is among legal and jurisprudential rules that is challenged in criminal community of today; among problems raised in the rule is absence of a comprehensive definition, elucidation of its nature and lack of a common method for determining *Arsch* in similar cases. This article explores compensatory for crime and its place in law and jurisprudence. Based on analyses and according to opinion of majority of salient jurists, the ruler is obligated to determine *Arsch* for the injured organ of body when there is no given blood money for human limbs and organs; moreover, nowadays, one of the problems facing courts of law is determining *Arsch* particularly determining the amount of damage incurred upon the limb and specifying its value in Rials. Also, diagnosing the damage and determining amount of *Arsch* of the limb is a technical task that demands expertise of physician. Therefore, this article primarily deals with definition of the term (*Arsch*), background and its nature and the differences are examined due to close link of *Arsch* to (*Diya*) blood money. Besides, the way of determining amount of *Arsch*, extra *Arsch* over blood money and bisecting *Arsch* of females is taken into consideration. In the end, a few examples of applied *Arsch* in law have been given.

### Keywords

*Arsch* (Compensatory for Crime), Blood Money, Jurisprudence, Law.

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## Obligational Cases of Khums (One Fifth) from the Perspective of Imamiyya

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### Abstract

Khums is right of a property that the Almighty God obliged on His Worshippers. And it is obligatory rights of property payment of which is mandatory for any obligated person in case other conditions are provided. Islam has established laws for human purification, equality restoration, strength and permanence of economic system of society and erection of utopia. This is done to both lessen poor-rich gap in the society and horizon of life various strata comes close in terms of wealth and material gifts. Hence, the obligated person has no right of seizure after the above financial rights have been established. These obligational sums of khums are allowed to be paid off only one instance of delay per year; in other cases, it must be paid immediately without delay. Khums becomes mandatory in seven cases citing verses of God and narrations of the Saint Imams that are: booties, mining, diving, lawful property mixed with unlawful one, gains from business transactions and piece of land a non-Muslim buys from a Muslim.

### Keywords

Khums, Imamiyya, Obligational Cases of Khums.

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## A Contemplative Look at Small Water Impurity as a Result of Being in Contact with Impure Things

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### Abstract

One of the key points for understanding narrations is consideration given to evidence; one of the important evidence is agreement made about the issue raised in narrations. Obviously, disregarding the evidence, particularly agreements, leads to misunderstanding of interpreting narrations with wrong results obtained. On this account, one must say there are very clear agreements over how small water is polluted and how it is purified in the eyes of rationalists. On one hand, there are disagreements over narrations too. For the article author, disregarding such agreements caused many of jurists to believe in “impurity of small water in contact with polluted things” even its properties remain unchanged. The present research deals with interpretation of narrations through elucidation of the existing agreements over small water and it has come to this conclusion that small water in contact with polluted things fails to contain impurities and its impurities happen in case its properties are changed. Besides, it has tried to remove the primary differences among narrations in this regard.

### Keywords

Agreements (Ertikaz), Distress and Constriction, Impurity, Kurr Water, Small Water.

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## Option of Choice in the Mirror of Jurisprudence and Law

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### Abstract

One of the important legal and jurisprudential issues is ruling of “Option of Choice” and the present article seeks after demonstrating this option. By option of choice, it is meant that demonstration of deal revocation right for someone who has purchased the merchandise at a price higher than it is worth or has sold it at a price less than it is worth. As the main question of research to be raised, we can say that “what is the opinion of jurists and jurists about demonstration of option of choice?” In this article, it is tried to respond to this question through data analysis with a qualitative approach based on data gathering of library sources. Findings of this research show that there are three notions about demonstration of option of choice: all ulema and jurists and civil law approve of demonstration of option of choice; some prove the option unanimously and some others deny the option; the third idea is rare. Documents and reasons behind demonstration of option of choice are: The holy Quran, narrations, no-loss rule and consensus. Role of Najsh (more) in option of choice has been examined knowing that jurists say Najsh is among the cases applied as deceit in deals and emphasizing that it is unlawful (haram). As for the fact Manjush (surcharge) has option of choice or not is faced with different ideas. To respond to this question, issues have been divided in three parts: generals and semantics; a look into what is said in this regard; presentation of evidence and its achievement as well as conclusions drawn.

### Keywords

Big Option, Choice, Lost out, Option.

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## A Study of Necessity for Mo'atat Based on Hadith of Khalid Ibn Najih

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(Received: 21 August, 2016; Accepted: 3 October, 2016)

### Abstract

One of the evidence for proving no necessity for Mo'atat (offer without contract) is what is narrated by Khalid Ibn Hajjaj; it is among narrations about which jurists have presented different interpretations. This article tries to illustrate opinions of jurists and inferences made from these narrations so that a more accurate opinion can be chosen and can this narration be a reason behind unnecessary Mo'atat or not? We have cited different interpretations of jurists concerning this narration by referring to books, card indexing, looking into jurisprudential books and rounding up opinions of jurists. It seems that this narration speaks of self-undertaking rather than verballity; therefore, this narration cannot be used as unnecessary Mo'atat.

### Keywords

Halal, Haram, Null and Void, Sale, Words.

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