
Review of not to be harmed rule effect on dissolution of family hearth (abolition, divorce, putative death)

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Abstract:

It seems that, substance of no to harmed and well – known anecdote "Lazarar and Lazerar" is that in the Islam , the loss is not legitimacy and this non legitimacy is vested and includes of legitimization and administration of laws, in other wards, the prophet Mohammad contradicts harm in the legitimization stage and if one damages on other in relations stage between society members, couldn't be affirmed by lawgiver. In general, in primary Islamic acts, this rule, i.e not popular loss has been considered as well as in social relations of people, any maleficent act isn't by blessed law giver.

The abolition is one of reasons of matrimony dissolution which one of it's causes, is being defects in any of couple and main reason of matrimony dissolution because of detect with jurisprudence is repulsion of harm. The articles 1122, 1123 of case law, in addition to mention the parties defects, allows couple to abolish in the cases, continuation of the marriage life causes distress and constriction, although, divorce has been criticized in traditions and by God, there isn't something more hateful than destruction of family hearth because of divorce.

Key words: harm, abolition, divorce.

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The interpretation of contract in common law legal system

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Abstract

Undoubtedly, the main purpose in signing any contract is executing all its purports and committing to its consequences. To execute the contract completely, its purports must be unambiguously clear so that both parties agreed upon the validity conditions, all phrases involved, and upon the way of performance.

The need to interpret contract seems necessary and essential when the contents can not be executed without some faults, and commitment to it damages the individual as well as social relation of the parties. In such cases, through interpreting the contract and making clear its purports and phrases as well as the purpose of both parties, it can easily and correctly be enforced. The present paper discusses this subject in the various systems of law within different countries. With this matter, in common law legal system has been dealt in the books on contracts and commitments under the titles such as 'construction' and 'interpretation'. By scrutinizing this system of law, it becomes clear that it seeks to discover the parties' purpose, to make clear the purports of contract to be executed, and finally, to relieve the contract from any ambiguity and conflict. These are done by explaining the concept of contract and defining its limits, and by appealing to the external and internal instruments of interpretation like as the will, the custom, and the law.

Keywords: interpretation of contract, socialism, individualism, close, extensive and verbal interpretation

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***The effect of Globalization of Law and Economy on
the Sovereignty of States***

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Abstract

Undoubtedly, the sovereignty is one of the fundamental components of any state, without which the state can not come into being. Statistics tells us that there are 187 sovereign states in the world the sovereignty of which is equal with each other and by it they can enforce their authority over the relevant territories. But this right has been challenged because of the emergence of some new developments and conditions within the realm of international relations. Now, all the European citizens are situated in a different position that they were in a two decades ago. They are the citizens of the European Union rather than those of a special country.

This is an example for developing the concept of sovereignty in the contemporary world. As a result, the statesmen's control over their countries has been declined and they can not execute the authority within their territories as they did in the past. The main question is that how the sovereign states have been tied down by these limitations and in what source they rooted? Several factors can be enumerated in this regard. They are as follows:

1. The conditions resulted from the post-cold War era;
2. Enactments some rules by the United Nations and executing them by the relevant international organizations;
3. Increasing the communications as a result of developing the mass media and Internet;
4. Penetrability of boundaries by which the sovereignty of states have been seriously threatened.

Now, the present paper tries to show how much the states' sovereignty has been touched and transformed by the globalization.

Keywords: sovereignty, state, development, international relations, limitations, law, economy

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*Change the function of the lease and its consequences
on the laid down law in Iran*

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Abstract

According to the law of relations between the lessor and the lessee, the latter can not change the function of the lease arbitrarily. This function is defined by determining the kind and characteristics of the usage which can be made of the lease. Now, if that kind or those characteristics change, the function of the lease will be changed. On the other hand, such changes have always no legal consequences, and there must be standards on the basis of which it can be recognized that which of them, if occurred, has any legal consequences. The change of function in various laws has different legal consequences some of which can be executed in any lease contracts while others can only be executed in some of them. The authors, in the present paper, try to present some standards for recognizing the change of function and that whether this change brings legal consequences or not. Finally, these consequences are dealt with.

Keywords: change of function, lessee, lessor, eviction

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The Theoretical Foundations of Restorative Justice

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Abstract

So far, there are several theories presented by criminologists to explain and justify the restorative justice, such as that of 'reintegrative shaming', 'social control theory', 'the neutralization theory of crime', and theory of 'abolitionism'. The present paper, while critically considering each of them, tries to explain nature and basis of the 'soul vivification' (*ihyâyi nafs*) doctrine which is regarded as the most important anthropological, sociological, and ethical foundation for restorative justice in Islam.

Keywords: restorative justice, soul vivification, reintegrative shaming, social control, neutralization, abolitionism

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Evolution of the Islamic Legal Reasoning (ijtihād)

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Abstract

Ijtihād is among the titles in which all muslim thinkers (either Shi'ite or Sunnite) have interested. This term have been used by the Prophet (God bless him and his descendents) and other innocent Imams literally, i.e. as 'effort' and 'hard-working'. But there are some different views on this word as a technical terminology and on its historical development and evolution. That the Prophet and his Companions have committed to *ijtihād* as a legal task is in question, too.

Author tries to make clear that how this evolution occurred in Shi'ism and Sunnism by explaining two kinds of *ijtihād*: public and specific. This term, in its general meaning, has been regarded as equivalent with terms such as analogy, approbation and inference. It has been evolved during the Islamic history until in the 5th century, the general and more extensive concept of *ijtihād* came into being. Yet, there are some muslim thinkers who believe that the general concept of *ijtihād* has been current from the very beginning, and deny the evolution of this term. But the definition of *ijtihād* by thinkers including Āmidī rejects their view. The Shi'ite thinkers such as Seyed Murtizā, Muhaqiq Hillī and others have accepted the evolution of *ijtihād*. The important point to which it should be referred is the fact that the development of this historical evolution in Shi'ism and Sunnism has been different.

Keywords: *ijtihād*, imitation (*taqlīd*), collective *ijtihād*, Shi'ite *ijtihād*, Sunnite *ijtihād*

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A study on the legitimacy of the divorce application on behalf of spouse by appealing to the no harm rule

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Abstract

According to the well-known tradition which tells 'the divorce is in the hand of somebody who has control over family', it is generally accepted that the divorce is in the hands of husband. Our study focuses on the surveying of the divorce application on behalf of spouse by appealing to the no harm rule. There are some definitions of harm and reciprocal harming according to the well-known 'no harm' tradition. The present paper deals mainly with those definitions according to which the divorce application on behalf of spouse is allowed. In this respect, the authors regard the comprehensive theory of negation and prohibition as an accepted one. They are of the view that the divorce application can be brought up on behalf of spouse if these points are considered: the basic significance of no harm rule and its affinity with the justice rule; that the jurisprudential views and examples are close to the no harm rule than to the no impediment rule; and finally the fact that the martyr Mutaharrî often emphasizes on the no harm rule and justice. Of course, it must be noted that on the basis of some other reasons, this right can only be enforced by the Islamic judge.

Keywords: harm, reciprocal harm, divorce, spouse, Islamic judge

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