

## **ABSTRACTS**

### **A Study of Physician's Responsibility and Non-Responsibility**

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**E**ach legal system studies the liability of a physician from a specific aspect. Some study it from contractual point of view. and others study it as his natural and moral duty.

The author of this article is going to study the question of physician's responsibility in Islamic law and to whether it is contractual or he is divinely responsible to cure the patient; whether he is liable for the damages which happen during the treatment; and whether this question is studied by jurists and applicable to their views.

Although this subject is unprecedented in jurisprudence, one can

compare the jurist's' view on different cases with the ponit of view of scholars of this field.

**Keywords:** physician's responsibility (liability), contractual liability, natural liability.

### **Custom, Dynamic Element of Jurisprudence**

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**C**ustom (*'urf*) is one of the categories which are vastly employed to apply legal ordinances to the expedience of time and space. Having provided lexical and idiomatic definitions of custom, the present paper has proceeded to touch upon its pillars and spiritual element. Further on, it has reviewed the concept of custom from the viewpoint of jurists. In the Qur'an exegesese, the verses related to custom as per the viewpoint of the Shi'ite and Sunni exegetes are also proportionately discussed. In another section, the relation between custom and the intellectual manner is taken into consideration and the authority of custom in the Sunni jurisprudence as well the possibility of its acceptability in Shi'ite jurisprudence is talked about.

**Keywords:** custom, authority, intellectual manner, legal proofs, practice (*'ādah*).

## Principle of Duress

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**B**y definition, *ikrāh* (duress) means forcing someone to do something unwillingly. *Ikrāh* would be realized under seven conditions. In *ikrāh* over the prohibited, the criterion is inability of *mukrah* (i.e., the person under duress) to be released from threat and repelling loss and the culprit's mere claim would be accepted. In transactions, however, *ikrāh* would be true only through discontent. The criterion for nullifying the conventional decree is non-observance, and mere claiming of *ikrāh* is not acceptable. *Ikrāh* is of two kinds: lawful and unlawful. The former is permissible and the latter is forbidden. The obligatory precept for the *mukrah* asserts that committing the forbidden and abandoning the obligatory is permissible for him/her except in case of homicide. And the conventional decree is that the *mukrah* is acquitted from *qiṣāṣ* (retaliation), *hadd* (legal penalty), *dimān* (liability), etc. The sources of rule of duress include āyah 106 of sūrat al-Nahl, the āyahs adduced by the principle of constraint, as well as tradition, consensus, and intellect.

**Keywords:** *ikrāh* (duress), *mukrah* (the person under duress), *mukrih* (the person exerting duress), threat, loss, *taqiyya* (dissimulation).

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**Developments of Shi'ite Jurisprudence Interacting with  
the Process of Innovation in Post-Revolution Iran**

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**A**fter the victory of the Islamic Revolution, the movement launched by the Shi'ite Islamists and jurists needed to take position on various issues and explicitly and specifically express legal viewpoints for planning policies and programs in running the state. In this direction, they had to abide by their legal fundamentals in their taking positions on one hand, and to pursue the progress and prosperity of the state on the other. In fact, they were to provide an alternative pattern of renovation that could implement the intellectual accomplishments of the modern world in the Islamic Community. Consequently, they encountered serious subjective and objective queries and challenges in various fields which, as a whole, exerted great impacts on Shi'ite political jurisprudence.

In this paper, it is attempted to respond to such questions as: How did coming to power by the Shi'ite Islam in Iran influence Shi'ite political jurisprudence? In what fields did the influencing occur? In reply to these questions through a historical-analytical method, the impact of such challenges on Shi'ite political jurisprudence and their

consequences is discussed, while dimensions of Shi'ite jurists' interaction in various political, social, and economic arenas after the revolution are also touched upon.

**Keywords:** legal theoreticians (*uṣūliyyūn*), traditionalists (*akhbāriyyūn*), legal developments, intellectual manner, expediency, state decree.

## Royalties in Islamic Law

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The issue of royalties for authoring and invention is a newly emerged phenomenon that is recently brought up in legal circles worldwide, and the governments are facing challenges in devising lasting regulations for designating the relation between producers and consumers of intangible and cultural products.

Since its advent, Islam has fortunately solved this problem by presenting logical and equitable executive approaches. With a glance at the background and the history of royalties in western countries, Iran, and the Islamic culture and after defining scientific circumstances of legal examination of current problems, the writer of the present paper has attempted to introduce both positive and

negative viewpoints of Muslim lawyers and jurists, whether Sunni and Shi'ite, on the issue of royalties.

Having narrated and criticized the opinions and proofs of the proponents and opponents, the writer eventually concludes – in view of legal decisions (*fatwās*) of the contemporary authorities, particularly Imam Khomeini (*ra*) – that the prevailing royalty is not among external and tangible objects. Similarly, the right to appropriate and regard it as property is viewed as suspicious by the majority of jurists and the permission to sell it to the publishers in forms of legal sale would be problematic and requires further deliberation. However, there is no restriction for bequeathing and transferring material and intangible rights of such cultural products as books, cassettes, CD's, and software programs, in terms of legal compromise and mutual settlement.

As asserted by some contemporary jurists including Imam Khomeini (*ra*), the solution to this problem must be sought in the conditions of contract required for allocating copyrights for the publishers and the authors when providing such cultural products for sale.

**Keywords:** royalty (for book), royalty (for invention), copyright, material and intangible rights, property, prohibition of concealment of knowledge, principle of no harm.

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## **An Introduction to the Relation between Jurisprudence and Law**

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**J**urisprudence (*fiqh*) and law are two homogeneous disciplines both belonging to behavioral and normative knowledge, and in many aspects like some parts of their goals, problems, methodology, sources, etc., are convergent and analogous.

However, their discrepancies are quite a few. Jurisprudence enjoys a celestial sanctuary and law holds an earthly threshold. Jurisprudence demands both immediate happiness and the one yet to come; while law is content with immediate prosperity. The former relies on scriptures and religious texts and highlights authority in reference to God, and the latter insists on rules of actions and conventions.

These two old companions have, in the past, enjoyed many interactions that have been very influential in their evolution and development. But what should be done today that law and its many dense branches have spread all over our lives, and the Islamic jurisprudence has been seriously challenged? Should jurisprudence begin to wane in its encounter with law? Or, should conventional law

turn pale in its challenge with jurisprudence? Or, is it possible to systematize the Islamic jurisprudence – at least in some of its significant parts? The present paper reviews the fundamentals and the presuppositions of this subject of discourse to pave the way for prospective researches.

**Keywords:** jurisprudence, law, *shari'a* (religious law), statute.

### **Determination of Qiblah Direction by means of Sun**

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**M**uslims have been seriously engaged in determination of *qibla* direction since appearance of Islam.

In this paper, we first take a glance at these attempts. Then we present the most accurate method of qibla determination for any place, knowing its longitude and latitude, namely the spherical triangulation method. This method could be used by mosques or other establishments for determination of qibla once and for all.

Finally, we present a new method of determination of qibla using the most accessible means, namely, the Sun. For this determination,

we need to calculate rightascension and declination of the Sun on any day, and also the azimuth of the Sun at any desired time.

Therefore, knowing local longitude, latitude and the date, we can calculate the time of alignment of the shadow of a gnomon with the direction of Mecca for any day.

**Keywords:** *qibla* direction, solar coordinates, spherical triangulation.