

ABSTRACTS

A Glance at Imam ‘Ali (A.S.)’s Jurisprudence with an Emphasis on the Elements of State Ordinances, Judicial Approach, and Isolated Traditions

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Imam ‘Ali (A.S.)’s mastery and expertise is not restricted to a particular field of knowledge. However, his erudition is very brilliantly and evidently represented in the realm of *fiqh* (jurisprudence). His numerous legal traditions have highly enriched our – and even the Sunnis’ – legal heritage; and great jurists such as Ibn Abbās have harvested profusely from his stacks of knowledge. Imam ‘Ali (A.S.)’s *fiqh* has for a long time been favored by *fiqh* researchers and received their attention both in respect to its comparison to the *fiqh* of the *Khulafā al-Rāshidīn* (rightly-guided Caliphs) and its being a fountainhead for the later Imams’ *fiqh*. Although many elements are represented in Imam ‘Ali (A.S.)’s *fiqh*, three of them seem to be the most significant

and debatable: first, his state ordinances, which are of importance by virtue of his establishing a government and implementing certain decisions which apparently contradicted the earlier rulings. Second, his judgments and arbitrations, which in some cases require explications; and third, the traditions that are attributed to him particularly by the Sunnīs but the Imāmī scholars have regarded them as unacceptable.

Keywords: Imam ‘Ali (A.S.), *fiqh*, ordinance, state ordinance, judgment, isolated (*shāḍḍa*) traditions.

The Second Rule of Deliberate Murder in Jurisprudence, Law, and Judicial Procedure

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According to clause B of article ۲۰۶ of Islamic Penal Law adopted from legal sources, “intention to commit a typically fatal act” is the second rule of deliberate murder in Iranian Penal Code. Nevertheless, the judicial procedure, as particularly manifested in the decrees issued by Supreme Court branches, suggests that the tribunals and Supreme Court branches regard – by extensive interpretation of article B clause ۲۰۶ – the mere “intention to use a lethal weapon” as sufficient for verification of deliberate murder,

irrespective of the hitting place being a sensitive or insensitive part of the body. Nonetheless, merely using a “lethal weapon” is not regarded as “a typically fatal act”. The present article critically reviews this judicial procedure.

Keywords: lethal weapon, a typically fatal act, deliberate murder, quasi-deliberate murder.

Legal Examination of Artisan’s Liability in the Early Centuries AH

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With the prevalence of artisans' class as an independent social institution, which was well-known in such countries as Iraq and Iran, and their extensive presentation of services, the transactional relation between the artisans and their customers was legalized in the form of “hiring services”. Imam ‘Ali (A.S.)’s view concerning “shared hireling”, whose clear referent was the artisan and related to the issue of *ḍimān* (liability) and the responsibility resulting from damages done to the merchandise, was the origin of developments in form and content which affected circles of

jurisprudence since the early days of its formation up to its expansion period. During later periods, jurists relied on such evidences as “*maṣlaḥa*” (expediency), “*istiḥsān*” (juristic preference), “*sadd al-ḍarīʿa*” (prohibition of evasive legal devices), and “*qāʿidat al-itlāf*” (prodigality principle) in their legal analysis of this issue. Touching upon numerous traditions remained from ۳rd and ۴rd centuries AH concerning this issue, the writers of this article first examine the indigenous jurisprudence and jurists’ opinions from around the Islamic world in this period, and then, with a classification of traditions transmitted from the Ahl al-Bayt (A.S.), they try to present an integrated juridical system for these traditions.

Keywords: liability, artisan, hireling, shared hireling, Imam ‘Ali (A.S.), prodigality, causal inference (*taʿlīl*), juristic preference, *sadd al-ḍarīʿa*.

Taxes and Legal Alms

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Since the actualization of a dynamic society is only viable under the auspices of equitable financial mechanisms and economic planning, justice has been regarded to be the greatest goal in

Islam. One of the indices of justice is tax. In the present paper, the nature of tax as well as its relation to legal revenues and the tax as commonly used today is dealt with. The writer maintains that taxpayers are not obliged to pay both taxes and legal alms.

Keywords: tax, legal alms, alms tax, *khums* (the one fifth tax).

Legal Bases of Intellectual Property Rights in Shīʿī Jurisprudence

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Nowadays, intellectual property rights have become so important that they have found their way into universities around the world, and due to their highly financial value, are providing abundant revenues for governments. The above-mentioned issue, although belatedly dealt with formally and in the present form, has a long past record in the world of Islam, and the Muslim jurists – both Shīʿa and Sunnī – have researched and commented on it. Some Muslim jurists have presented their own evidences as opponents to the above rights and regarded them illegitimate; others have spoken of their legitimacy. In the present paper, the legal bases of

the Shīʿī jurisprudence, including the viewpoints of both opponents and proponents of the above rights, have been examined and concluded to be legitimate. In the end, ways of transferring these rights from the viewpoint of Shīʿī jurisprudence, such as rent, sale, settlement of a claim (*ṣulḥ*), gratuitous and non-gratuitous donation (*hiba*), etc. are touched upon, and contrary to some Shīʿa and Sunnī jurists, who do not approve of the sale (*bayʿ*) of the above rights, this type of sale is concluded to be legitimate by virtue of developments in property ownership, financial value, and sale as well as the difference between present and past criteria of property and its financial value, the sale of intellectual rights are concluded to be valid. Moreover, bearing in mind the right of society as well as that of the individual, a limitation has been set for the above-mentioned rights and like construction of multi-storey buildings (*taʿallī*) its time restriction is to be determined by the common law (*ʿurf*).

Keywords: intellectual property rights, intellectual and material property, financial value, property, approving proofs, disapproving proofs.

Generalization of Crescent Sighting from the Viewpoint of some Shī'a and Sunnī Jurists

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Confirmation of the start of lunar month is mandatory for performing individual and social duties, hence, making the relevant discussion and research as highly important. The present article takes into consideration the viewpoints of the jurists who, contrary to the generally accepted view, believe in generalizing the proof of crescent sighting. To this end, the writer has brought up the opinions of both early jurists and scholars of *ḥadīth* and contemporary jurists, as well as the viewpoints of jurists from the four religious schools; and finally given evidences and confirmations concerning the generalization of crescent sighting.

Keyword: crescent sighting, generalization, common nighttime.

Position of *Qāḍī al-quḍāt*

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Historians have recorded the position of the *qāḍī al-quḍāt* (presiding judge) as tantamount to that of the chief Zoroastrian

priests (*mūbads*). His position has been one of the highest and most important ranks in the judiciary establishments of Islamic States. He was appointed by the Caliph of the time or the head of the state, was in charge of all the judiciary affairs of the government including appointments and dismissals of judges, and installed deputies with full authority in various provinces. *Qāḍī al-quḍāt* was also in charge of schools, pious foundations, endowed properties, mosques, and prayer rituals. There is divergence of views concerning the first *qāḍī al-quḍāt*, but most sources have named Abū Yūsif (d. ۱۸۲ AH/۷۹۸ CE) as the first *qāḍī al-quḍāt*, who was appointed by Hārūn al-Rashīd to this position. In the establishments of some governments first the position of *qaḍā al-quḍāt* (chief judge) became common, then *aqḍā al-quḍāt* (supreme judge), and after that *qāḍī al-quḍāt* (lit. judge of the judges).

Similar position in Cordova (Andalusia) was called *qāḍī al-jamā'a* (chief justice), who was a scholarly and political figure and qualified for judiciary affairs as well. During the Fatimid era in Egypt, this position was also called *dā'ī al-quḍāt*, which was of similar importance.

Keywords: *qāḍī* (judge), *qāḍī al-quḍāt*, *aqḍā al-quḍāt*, *qāḍī al-jamā'a*, *qaḍā al-quḍāt*.