



The Duality of Cause and Object, and its Effects on the Viewpoints of Imamiyah Jurisprudence, the Iranian and French Law

Mahdi Shahabi¹

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Abstract

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Contrary to the French Civil Code, the Iranian counterpart, which follows the Imamiyah Jurisprudence, does not consider the cause of obligation as one of the elements of the validity of the contract. On this basis, some jurists believe that the legislator has intentionally deleted this causal element and has refused to introduce it in the contract, since all the consequences of this concept are accessible with reference to the third paragraph of the Article 90 of Iranian Civil Code concerning the object of transaction. This means that the unity of the cause and the object in the law of contracts are observed. Nevertheless, it appears that these elements are two distinct concepts and although they share some similarities, they are different in many respects. So, the main question in this regard is whether we can recognize the concept of cause in the Iranian law, and what are the effects of the duality of cause and object in the law of contracts. This research, in a comparative analysis framework, attempts to provide answers to these questions.

Keywords: cause of obligation, cause of contract, object of transaction, principle of correlation, reciprocal obligations, swap contracts, synallagmatic contracts



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A Comparative Analysis of the Nature and Cause of Creation of legal Acts and facts in the Iranian and French Law

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فصلنامه پژوهش حقوقی حقوق اسلام و فقه

Abstract

Judicial acts and facts are the sources of legal relationships and responsibilities among human beings. An analysis of judicial nature and cause of the creation of the judicial acts and facts can prevent us from confusion in these concepts and in a similar fashion in the effects and judicial decisions related to them. The purpose of this article is to recognize and compare the nature and the cause of creation of judicial acts and facts in the Iranian and the French law. In a general sense, in the Iranian law, judicial acts have arbitrary characters, whereas judicial facts look real. However, in the French law, the judicial acts are subjective, whereas judicial facts are objective. In the Iranian law, the cause of judicial acts is an intention to perform an action, which is a sensual interplay, while in the French law, jurists believe that intention and consent are different entities, and that consent which is the cause of judicial acts has a sensual quality. Additionally, intention in the intentional judicial facts is a simple and material intention.

Keywords: arbitrary character, existential character, judicial acts, judicial facts, intention.



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The Avicenna's Contribution to the Natural Law Theory of Aquinas

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Abstract

Abstract

As discussed by many writers, Natural Law Theory of Aquinas undoubtedly bears a striking affinity with that of Aristotle and also with the Christian theology. This affinity has been followed by neglecting the impact of Islamic philosophy upon Natural Law theory of Aquinas. Analysing from the standpoint of Islamic philosophy, this article argues that the Aquinas notion of natural law theory substantively borrows its foundation from the Avicenna's remarks on ethics. A close analysis of their work suggests that Avicenna builds the foundation of Thomistic thought without establishing a theory of natural law. This analysis ends with an argument suggesting that the following four pillars of Avicenna's thought constitutes the theoretical underpinnings of Aquinas's natural law theory. These are: 1) the definition, the scope, and the function of practical reasoning as the source of natural law; 2) the non-eternal and contingent character of natural law; 3) the empty nature of the axiomatic first principle of Aquinas natural law which necessitates resorting to natural inclinations of man; and 4) the distinctive theological foundation of natural law.

Keywords: Avicenna, Aquinas, natural law, practical reasoning, moral statements.



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The Jurisprudential and Legal Study of Misleading Commercial Advertisements

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فصلنامه پژوهش حقوقی حقوق اسلام و فقه

Abstract

As a key element in each business strategy, commercial advertisements increase competition on the market through providing information and introducing goods and services. As a result, commercial advertisements play a vital role by transmitting information related to the products, and thereby they benefit both producers and consumers. Consequently, a modern capital economy without commercial advertisements is hardly imaginable nowadays. Nevertheless, by providing misleading or false information and by using confusing trademarks, some commercial advertisements mislead the consumers and cause liabilities towards them and sometimes towards the competitors (usually intellectual property owners). Through a descriptive approach, the present study explains the concept and the status of misleading commercial advertisements in the legal systems of the European Union, the United States, the Islamic Republic of Iran, and the *Imamiyah* Jurisprudence, and paves the way for the Iranian legislator to enact exact and effective laws in this field.

Keywords: misleading commercial advertisements, unfair commercial practices, consumer protection, No-Harm (*La Zarar*) Rule.

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Right to Healthy Environment From the perspective of international human and Islamic law

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Abstract

Abstract

Nature has always been considered as the most important foundation of human life. As a result, respecting the environment has kept to be significant in all period of man's history. Although respecting the environment has been a concern of contemporary international law, and as a result, it forms the branch of international environmental law, it has not been able to sufficiently protect the environment for the present and future generations. Consequently, this emerges the unity between environment and human rights. So the environmental rights as a new type of human rights instruments were formed in the framework of the third generation of human rights. From the point of view of Islam as a comprehensive religion, there is a strong connection between human beings and the environment. In Islamic teachings, man has an authority over the nature in order to reasonably benefit from it and to prevent it from degeneration. In Islam, as seen in the Quran, this right has been recognized and it is examined from several respects. Specifically, it teaches humanity to use the environment as an instance of divine blessings in which the rights of the future generations are observed.

Keywords: Islam, international environmental law, international human rights instruments, integrity law, environmental law.





Rethinking Criminal defenses of Necessity and Duress in Dubious Cases

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فصلنامه پژوهش حقوقی حقوق اسلام و فقه

Abstract

Duress and necessity have always been considered as a defence in criminal liabilities. Due to different practical legal effects, it seems inevitable to recognize their distinction. As there is in some way uncertainty about the individual inclusion of these two conceptions, it seems effective to apply some rules. Occasionally a rule does not work in the determination of cases and one has to resort to one principle. In this article we attempt to investigate concepts like; *zarurat* "necessity" and *ezterar* "compulsion" practical effects of discussion and applicable criteria such as danger, threat, existence of third party, determination or selection of act and enforcement of threat by the threatening. Then, we explain how and when one should resort to the original principle, if the hesitation is still present. -Meanwhile, this article addresses the western concept of "situational duress" which is established to deal with these sorts of dubious cases.

Keywords: criminal defence, *ezterar*, *zarurat*, duress, situational duress.



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The Feasibility of Implementing the Theory of Good Governance in Muslim Societies with an Emphasis on the Government of the Islamic Republic of Iran

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Abstract

Abstract

After the failure of theories concerning the notion of government, the theory of good governance was introduced by the international institutions like the United Nations Commission on Human Rights and The World Bank Group in the recent decades. This theory puts emphasis on the strength of the governments. According to this theory, the way to achieve this goal is to revise the concept of governance. Examining this theory in the West has caused some concerns about its implementation in the Islamic societies. In this article, varying opinions about this issue have been discussed with the viewpoints of its advocates and the opponents. The authors of the present study do not admit the ideas of neither group. Conversely, they believe that the theory of good governance and the excellent principles introduced in it can be accountable as a human experience. In this way, following the Islamic foundations concerning governance, like the principle of Islamic governance and some other rules concerning it, which are taken from the Holy Quran and the Islamic traditions, the theory of good governance can conditionally be applicable if it can observe the foundations of the Islamic governance.

Keywords: governance, good governance, government, Islamic Republic of Iran.



7

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∞Contents∞

- 1- The Duality of Cause and Object, and it's Effects on the Viewpoints of Imamiyah Jurisprudence, the Iranian and French Law 1
Mahdi Shahabi
Nafiseh Jafari
- 2- A Comparative Analysis of the Nature and Cause of Creation of legal Acts and facts in the Iranian and French Law 25
Alireza Fasihzadeh
Azam Heydari
- 3- The Avicenna's Contribution to the Natural Law Theory of Aquinas 49
Seyed Mohammad Ghari Seyed Fatemi
Majid Nikouei
- 4- The Jurisprudential and Legal Study of Misleading Commercial Advertisements 77
Seyyed Mohammad Hadi Ghabooli Dorafshan
Mostafa Bakhtiarvand
Akram Aghamohammadi
- 5- Right to Healthy Environment From the perspective of international human and Islamic law 99
Mohsen Ghadir
- 6- Rethinking Criminal defenses of Necessity and Duress in Dubious Cases 125
Jalaloddin Qiassi
Seyyed Mohsen Qaemfard
- 7- The Feasibility of Implementing the Theory of Good Governance in Muslim Societies with an Emphasis on the Government of the Islamic Republic of Iran 151
Mohammad Hadi Mofatteh
Gholamali Qassemi
Nasrin Kordnezhad

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