بسم الله الرحمن الرحیم

دوفصلنامه علمی

فقه و حقوق خانواده

دانشگاه امام صادق(علیه السلام) پردیس خواهران

سال بیست و ششم ـ پاییز و زمستان ۱۴۰۰ ـ شمارهٔ ۷۵

دوفصلنامهٔ علمی فقه و حقوق خانواده در ارزیابی کمیسیون نشریات علمی وزارت علوم تحقیقات و فناوری در سال ۱۳۹۹، موفق به اخذ رتبهٔ "ب" شده است.

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تلفن ٤ـ ۲۲۰۹٤۹۰۱ ـ نمابر ۲۲۰٦٥٤۳۷ صندوق پستی ۱۱۱ـ ۱٤٦٥٥

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دوفصلنامهٔ علمی
فقه و حقوق خانواده

شمارهٔ ۷۵ / سال بیست و ششم / پاییز و زمستان ۱۴۰۰

صاحب امتیاز: دانشگاه امام صادق(ع) ـ پردیس خواهران

مدیر مسئول: دکتر صدیقه مهدوی کنی

سردبیر: دکتر عباس کریمی

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ویراستار ادبی: محمداسماعیل دهقان طزرجانی

ویراستار ترجمهٔ چکیدهٔ مقالات به زبان انگلیسی: دکتر انسیه باقری

طراحی و چاپ: کارور

قیمت: ۱۰۰۰۰۰۰ ریال

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۱. مقالات در بردارنده پژوهش‌های مسئله‌محور، مقایسه‌ای و میان‌رشته‌ای در گسترهٔ فقه و حقوق خانواده و در پاسخ‌گویی به شبهات، چالش‌ها و نیازهای موجود در این گستره باشد.

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(نام خانوادگی مؤلف، سال نشر، شماره جلد، صفحه)

۷. توضیحات تکمیلی در صورت لزوم در پاورقی بیاید.

۸. فهرست منابع در پایان مقاله به‌صورت الفبایی و به ترتیب زیر تنظیم گردد:

کتاب: نام خانوادگی، نام نویسنده (سال نشر). ***عنوان کتاب***، مترجم، محل نشر: ناشر، نوبت چاپ.

مقالهٔ مندرج در مجلات، مجموعه مقالات و دایره‌المعارف‌ها: نام خانوادگی، نام نویسنده (سال نشر). «عنوان مقاله»، ***نام نشریه***، شمارهٔ چاپ.

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۱۳. مقالات دانشجویان دورهٔ دکتری با همراهی استاد دارای رتبهٔ علمی درج خواهد شد.

۱٤. نام نویسندگان مقاله به ترتیب رتبهٔ علمی در مقالات پذیرفته‌شده درج خواهد شد.

فهرست

Bi-quarterly Scientific Journal of Family Law and Jurisprudence Journal, Promotional Article,
Vol. 26, No. 75/ Fall & Winter 2022

Examining the conditions of dowry and its payment based on current rate in Iranian and Egyptian laws

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Acceptance: 23/09/2021
Received: 22/08/2021

Abstract

A comparative study of the family law in Islamic countries such as Iran and Egypt, considering the differences between religions, is necessary to obtain the links and differences that exist to achieve the best rules in the current era and can prevent the penetration of abnormal Western rules in Islamic countries. Dowry is one of the important issues of family law that it's significant cannot be ignored in society, and it should be carefully addressed and its rulings examined. One of the cases that can be studied in this field is the study of the necessary conditions for dowry and its payment. In this research, we evaluated it in Iranian law, which is based on Imami jurisprudence, and Egyptian law, which is in accordance with Hanafi jurisprudence, to determine its dimensions. By studying jurisprudence and the laws in the rules of these two countries, the aim of this study is to find out what are the conditions of the dowry payment and whether it is possible to pay it in current rate in Iran and Egypt according to the legal principles of these countries and accepted jurisprudential teachings. What are its conditions and what are its differences and similarities? By examining the various reasons, it seems that we should accept the dowry payment based on current rate in Iranian and Egyptian laws despite the similarities and differences which is existed in them. Although in Egyptian laws unlike the Iranian laws have not explicitly mentioned in it, but for some reason it can be discussed.

Key Words: Dowry, Family law, Adjustment of dowry, Egyptian laws, Hanafi jurisprudence, Conditions of dowry

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Bi-quarterly Scientific Journal of Family Law and Jurisprudence Journal, , Promotional Article,
Vol. 26, No. 75/ Fall & Winter 2022

Pathology of Article 3 of the Law on How to Donate a Fetus to Infertile Couples (approved on August 29, 2003)

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Acceptance: 16/12/2021
Received: 5/09/2021

Abstract

The use of new methods of pregnancy has created many issues in the field of both parties' rights that the study of its obligatory effects is one of them. The purpose of this study is to understand the obligatory jurisprudential effects of embryo donation based on Shiite attitude and remove the ambiguity of Article 3 of " the Law on How to Donate Fetus to Infertile Couples". This study has been done by collecting library data and with descriptive-analytical method and also by relying on first class Shiite books searched the key words such as embryos, donation, custody and inheritance in them. Due to the attribution of the child to the owners of the sperm, obligatory rights such as custody, alimony and inheritance are established between the child and the owners of the sperm; However, in Article 3 of this law, the legislator has "considered the duties and responsibilities of the couple who received fetus donating and the child born are the parents in terms of maintenance, alimony and respect, such as the duties and responsibilities of the children and the parents." While the child is attributed to donors and does not mention an important issue such as inheritance. Therefore, the law should be change and explain how to assign duties to recipients of fetus.

Key Words: Fetus donation, alimony, inheritance, custody, Duty sentence, Fetus donation law, infertile

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Bi-quarterly Scientific Journal of Family Law and Jurisprudence Journal, Research Article,
Vol. 26, No. 75/ Fall & Winter 2022

Studying the Possibility of issuing the permit of polygamy for husband after the approval of the Family Protection Law in 2012

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Acceptance: 14/11/2021
Received: 05/09/2021

Abstract

Remarriage of a man, as an independent right or guarantee of the wife's obedience, is one of the issues of family law. Prior to the enactment of the Family Protection Law in 2012, the Law of 1974 governed this issue and allowed it under certain conditions. In the law of 2012, there were provisions related to remarriage in the text of the proposed bill, and due to the objections to it, it was removed from the final text of the law. Due to the silence of the law of 2012, the question arises that in the current situation, what regulations are ruling on the remarriage of a man? In this regard, there are three opinions and, in this study, after reviewing and studying all three opinions and their bases and based on the history of legislation and existing laws in this field and the process of the adopting the Family Protection Law in 2012, a theory was adopted and strengthened which based on it the remarriage of man has been removed from the Iranian legal system in the current situation. In this case, if the man intends to marry again, he must divorce his wife and then marry.

Key Words: remarriage, obedience, the permit of marriage, family, family protection

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Bi-quarterly Scientific Journal of Family Law and Jurisprudence Journal, Research Article,
Vol. 26, No. 75/ Fall & Winter 2022

Feasibility study of the husband leaving the marital duties (Noshuz) in temporary contract

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Acceptance: 15/12/2021
Received: 05/09/2021

Abstract

In Shia jurisprudence and consequently in the civil law of the Islamic Republic of Iran, temporary marriage is recognized as one of the types of marriage. The wife's sexual rights and the possibility of the husband leaving the marital duties (Noshuz) in this type of marriage are the important and challenging issues about temporary marriage. This article with a descriptive and analytical method tries to answer these following related questions: Is the marital law such as the right to cohabitation and intimacy fixed or not for the temporary wife? If yes, what is the effect of the husband' refusal to perform the marital duty of the wife and how she can he obtain her rights? Family law in Iran is silent on these issues jurisprudential views on it are also different. The research findings show that the right to intimacy is fixed for a temporary wife. Also, in a long-term marriage, the wife has the right to love and affection. As a result, the husband's Noshuz in temporary contract is achievable. If the husband refuses to perform the marital duties of the temporary wife, at the request of the wife, the court first obliges the husband and then forces him to grant the term of contract.

Key Words: Temporary contract, the wife's rights"," The right of cohabitation, the right of intimacy, the husband's Noshuz

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Bi-quarterly Scientific Journal of Family Law and Jurisprudence Journal, Research Article,
Vol. 26, No. 75/ Fall & Winter 2022

Criminalization of Marital Sexual Intercourse without the Wife's Consent in International Documents and the Laws of Ireland, Indonesia, Turkey and Iran

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Acceptance: 15/11/2021
Received: 22/08/2021

Abstract

This article with a descriptive-analytical approach studies the aspects of international documents and criminalization of sex without the consent of the wife in Ireland, Indonesia, Turkey and Iran countries. This phenomenon has been introduced in international documents as an example of sexual violence against women. This issue has been criminalized as rape in Ireland and Turkey, and as a domestic violence in Indonesia. Moreover, sex without the consent of the wife has not yet been criminalized in the laws of Iran. The reason may be the lack of explicit discussion about this issue in Islamic jurisprudence. In this article, it is proved that, it is possible to define the subject of sexual intercourse without the wife's consent in the context of Islamic jurisprudence in the cases of permission for the wife's disobedience and the necessity of the wife's consent to have sex. In addition, a mandatory sentence and some guarantees of the execution of Shar' rules are also provided. Finally, due to the existence of the necessary grounds for enacting the appropriate laws regarding sex without the consent of the wife in Iranian law, the criminalization of this issue has been presented in the form of a criminal offense with a minimum of 7th degree punishment and in cases of violence or harm with a minimum degree of 6th degree punishment.

Key Words: sexual intercourse without the wife's consent, Marital Rape, Criminalization, Jurisprudence, International documents

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Bi-quarterly Scientific Journal of Family Law and Jurisprudence Journal, Research Article,
Vol. 26, No. 75/ Fall & Winter 2022

The Cognitive Nature of the Duty of Cooperation (Mo'azadat) between Couples according to Iran Statute Law and Jurisprudence

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Acceptance: 15/11/2021
Received: 29/08/2021

Abstract

Despite the text of articles 1108 and 1130 in the civil law, which made some doubts in considering the truth and validity of leaving the cooperation as an infraction with a capable of performance, the duty of cooperation between couples mentioned in article 1104 vanished all doubts. Hence, the nature of this duty has been disputed among the doctrine of law; as some know it ethical while some other count it juridical. However, the authors of this paper, by examining the jurisprudential and juridical sources and by descriptive-analytical method and the approach to the judicial procedure, believe in the third view that is the bilateral essence of ethical-juridical for the mentioned article. Therefore, in the low-level cases, this is a mere ethical rule and has the guarantee of moral implementation, and on the higher-level ones, , in addition to being the ethnical rule, it would be considered as a full- fledge juridical rule which overlaps the Noshuz (disobedience of woman or man) criteria in point of view of jurists. The criterion on distinguishing the forenamed levels is custom and if any conflict happens, the verdict of substantive courts would be applied. Subsequently this verdict includes the various and appropriate implementations guarantee according to the jurisprudence and law and by following the dynamic and organized jurisprudence view.

Keywords: Cooperation, Noshuz (disobedience of woman or man), Duty of Couples

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Bi-quarterly Scientific Journal of Family Law and Jurisprudence Journal, Research Article,
Vol. 26, No. 75/ Fall & Winter 2022

Modification of Women's Legal Differences by the Rule of Ṭanqihe Manat (rectifying the effective cause) and Elghâe Khoṣuṣiyyat (abolishing the specificity) from the Jurisprudential Documents of Dowry Adjustment

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Acceptance: 15/11/2021
Received: 27/08/2021

Abstract

This article with the aim of identifying and recognizing the possibility of modifying women's rights and the position of the rule of Ṭanqihe Manat (rectifying the effective cause and Elghâe Khoṣuṣiyyat (abolishing the specificity) in modifying women's legal differences, is examined the jurisprudential documents of dowry adjustment and the dowry adjustment, which has been accepted and documented by the dominant statement in Iranian jurisprudence and law, and a criterion is considered that the Ṭanqihe Manat and Elghâe Khoṣuṣiyyat in its documents can result in the possibility of adjustment in women's legal differences. This article by descriptive-analytical method and with documentary-library manner is studying the possibility of modifying other women's legal differences by using the rules of Ṭanqihe Manat and Elghâe Khoṣuṣiyyat and its research community is the sources of jurisprudence and the law and principles of jurisprudence. The main issue is whether the documents cited in the dowry adjustment are specific to the dowry or whether they are general, and these arguments can be used in other legal differences between men and women? Documents for adjusting dowry include the rule of La Zarar(no- harm), La Ḥaraj (no- embarrassment), Ghabn e Ḥadeth (loss occurring), implicit condition, survival originality, priority analogy, adding مهما امکن اولی من الطرح و تعذر وفاto the content of the contract (marriage) which is examined from the point of view of Ṭanqihe Manat and the principle of accepting the women's legal differences is proved from the perspective of jurisprudential documents and it was concluded that it is possible to modify women's legal differences in Islamic law, especially material rights by Ṭanqihe Manat and Elghâe Khoṣuṣiyyat.

Keywords: right adjustment, right resignation, Ṭanqihe Manat, women's rights, dowry

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Bi-quarterly Scientific Journal of Family Law and Jurisprudence Journal, Research Article,
Vol. 26, No. 75/ Fall & Winter 2022

The condition of the wife's not expelling from her Balad in perspective of legal jurisprudence and its subdivisions

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Acceptance: 01/07/2021
Received: 31/08/2020

Abstract

In marriage contract, the couples, like the other two parties in contracts, can make their wishes such a condition and increase the degree of desirability of this contract to some extent; But, in the cases of the correct conditions during the marriage, there is disagreement and the condition of the wife's not expelling from her Balad is also one of these different conditions; It is obvious that in the mentioned condition, the condition is in favor of the wife and against the husband. There has been disagreement among jurists as to the validity or invalidity of the said condition; even among jurists; Some believe in the invalidity of the condition and others believe in its validity; In this article, we study the opinions and theories related to the condition of the wife's not expelling from her Balad and its subdivisions (including the condition of the wife's not expelling from home, drop the condition, the relationship between the condition of the wife's not expelling from Balad and the amount of her dowry). Finally, based on jurisprudential and legal opinions and critique of each of the proposed views, the validity of this condition is concluded. It should be noted that this article is an applied article based on its purpose and is descriptive-analytical based on its nature and method.

Key Words: Drop the condition, subordination of the wife, the wife's not expelling from her Balad, resident right, dowry

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Bi-quarterly Scientific Journal of Family Law and Jurisprudence Journal, Research Article,
Vol. 26, No. 75/ Fall & Winter 2022

Feasibility study of marriage annulment due to the husband's Vitiligo (Baraṣ) from the perspective of Imami jurisprudence

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Acceptance: 15/11/2021
Received: 29/08/2021

Abstract

Due to the necessity of marriage, its annulment requires a special reason. One of the reasons for canceling a marriage is a defect. Vitiligo is one of the skin defects and diseases that has always existed among humans and leads to whitening of some organs of the body. The presence of this disease in a woman gives a man the right to terminate a marriage. Most of Imami jurists believe, this disease is one of the specific defects of women and the presence or occurrence of this disease in men does not create the right of revocation for women. However, some Imami jurists, based on narrations, the priority analogy, the rule of no harm and harmless (La zarar va La Haraj) and by Tanqih e Monaṭ (one of the methods of discovering verdict from jurisprudence books), believe that vitiligo is one of the common defects. In this article, by descriptive-analytical method, feasibility study of marriage annulment due to the husband's vitiligo is examined and it was proved that a distinction should be made between leprosy before and after marriage. In the first hypothesis, Sahah Halabi and the harmless rule imply the right of woman to terminate marriage, and in the second hypothesis, according to the narrations and the principle, the woman does not have the right to annul it.

Keywords: Marriage annulment, Vitiligo (Baraṣ), husband's vitiligo, common defects, harmless rule

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Bi-quarterly Scientific Journal of Family Law and Jurisprudence Journal, Research Article,
Vol. 26, No. 75/ Fall & Winter 2022

Capacity assessment of Sovereign intervention against Children and Adolescents violate Criminal Laws in criticism of the Law on Children and Adolescents Protection and its executive regulations

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Acceptance: 16/11/2021
Received: 01/09/2021

Abstract

Considering to the Provisions of Article (6) on the law on child and Adolescent Protection approved in 1399 and its executive regulations in 1400, the critical question is arises about the capacity assessment of effective sovereignty intervention against the children and adolescents violate criminal law; Because, on one hand, the best interests of these silent victims, require that the sovereignty should intervene in determining the reaction to them with therapeutic and expedient approach, and the lack of serious protection of sovereignty from them will lead to the continuation of defective series of their behavioral abnormalities. On the other hand, this subject is incompatible to the well- known saying that the sovereignty needs to intervene minimally in family sphere. Therefore this article with combined method and the application of qualitative and quantitative of principles research (Likert Scale), has performed the intervention of sovereign over the delinquent children and adolescents whenever is required. This type of intervention with the negative and positive approach is based on dignified and expedient perspective and requires the interaction of sovereignty institutions in protective intervention contained in said law and also applies local and

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indigenous capacities in determining and executing of criminal reaction on children and adolescent. In this regard, the inefficiency of this current method such as imprisonment and maintenance in Correctional Centers indicates the necessity of changing in criminal policies in this problem and requires the strong legislative infrastructure. In order to the effectiveness of sovereign contingency intervention, it is necessary to establish an independent institute that could cover initiative, supervision and continuous monitoring in all issues related to children and adolescent crimes with a single procedure.

Key Words: Sovereign, Children and Adolescent Violate Criminal laws, Expedient, Public order, Intervention

Bi-quarterly Scientific Journal of Family Law and Jurisprudence Journal, Research Article,
Vol. 26, No. 75/ Fall & Winter 2022

Critical review of reasons of halving of forgiveness of dowry (Ebra) with the assumption of divorce before sexual intercourse

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Acceptance: 15/12/2021
Received: 29/08/2021

Abstract

One of the financial effects of marriage is the wife's possession of the dowry; In religious resources there are much emphasis on the virtue of forgiveness of dowry especially before sexual intercourse. According to the most Imami jurists, if divorce occurs after forgiveness of dowry and before having sexual intercourse, the wife will be obliged to return half of the dowry that she has not taken. At first sight, such issue seems to be inharmonious with legal conscience. ; in this article, the reasons of these famous legal presumption have been criticized and according to the lack of guarantees , forgiveness of dowry, weakness in narration indicating halving, and the other theories have been strengthened ; Also, according to the incompatibility of halving of forgiveness dowry with legal and customary conscience, it is necessary to base on the certainty as a legalized in this area; due to this fact, in forgiveness of dowry, the principle might be the presence of a condition of collusion to the continuation of the marriage, and in the case of divorce, the right of recourse will be valid; This problem reinforces the relations between jurisprudence and moral values in the rules and principles related to the family.

Key Words: forgiveness of dowry, halving of dowry, divorce, sexual intercourse, benefaction

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Bi-quarterly Scientific Journal of Family Law and Jurisprudence Journal, Research Article,
Vol. 26, No. 75/ Fall & Winter 2022

Legal Analysis of Different Forms of Dowry Waiver with Emphasis on the Instrument of Couple's Will Interpretation

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Acceptance: 14/11/2021
Received: 05/09/2021

Abstract

The wife as the owner of the dowry can take possession of her property. One of these possessions entails to waive her dowry right and grant it to her husband in various ways. In this article, we discuss the various formats that the wife can waive dowry and study the possibility and impossibility of referring in each of those formats. Due to the lack of a clear boundary in distinguishing these patterns from each other and the lack of familiarity of people with jurisprudential-legal terms, the proof of some cases occurred in the world that make it difficult to distinguish the type of legal action taken. This article attempts to provide the instruments for interpreting the nature of legal action that has taken place. As well as, due to the insufficient determination of these instruments, it is recommended that the legislature intervene and introduce the necessary instruments in this regard. Also, it is suggested to the legislature to pay attention to the function of the contract and its subject as usable instruments.

Key Words: Dowry, Marriage, Divorce, Donation, Interpretation

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Family Law and Jurisprudence Journal

Vol.26 Fall and Winter 2022 / No.75

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Bi-quarterly Journal of

Family Law and Jurisprudence Journal

Women's Collage of the University of Imam Sadiq

VOL.26 / Fall and Winter 2022 / NO.75

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