

Condition of Certainty of Consideration in Employment and Services Contracts

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Abstract

In Islamic jurisprudence, there is no specific section dedicated to employment and service contracts. The certainty of consideration (price and subject matter), although considered one of the conditions for the validity of a contract, traditionally applies to tangible goods and is not used in the context of employment and services. Thus, this condition does not indicate the necessity of knowing the wage and the task (considerations in employment and service contracts), raising the question of how the condition of certainty of consideration can be proven in employment and service contracts. In this research, to address the aforementioned question, the concept of services and an overview of transactions involving service provision are initially discussed. Subsequently, by examining and analyzing the term 'subject matter', the rules related to lease, contract of reward (Ja'alah), agency, and contract of manufacture (Istisna'), the concept of the Hadith of "Nafi al-Gharar" (prohibition of uncertainty) and the rule of "La Zarar" (no harm), the necessity of the certainty of consideration in service contracts is established, except in Ja'alah where the task can be based on a type of uncertainty and a general determination of the task is sufficient. Finally, through jurisprudential rules and regulations, the necessity of drafting a document in time-bound service contracts to fulfill the condition of certainty of consideration in employment and service contracts is proven and selected.

Key words: Employment and Services, Certainty of Consideration, Lease, Ja'alah, Agency, Istisna'.

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Awarding of Deterrent Damages as a Legal Response to Intentional Breach of Contract (A Comparative Study in Common Law, Roman-Germanic, Iranian, and Jurisprudential Systems)

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Abstract

The awarding of deterrent damages is a severe reaction to a breach of contract, where the ultimate goal is not compensation but deterrence and punishment. Due to the departure of these damages from the principle of compensation, legislators and courts are generally reluctant to apply them in situations of ordinary contract breaches. On the other hand, most legal systems recognize unique consequences for intentional breaches of contract—the most severe type of breach—that are not applicable to unintentional breaches, reflecting the necessity to increase liability in the face of intentional wrongdoing. This study aims to answer, through a descriptive-analytical method and comparative study, whether the intentional nature of a contract breach can justify the awarding of deterrent damages. The findings indicate that in most legal systems, there is no general rule regarding the awarding of deterrent damages in cases of intentional breaches. Recent efforts to establish this connection (for example, in France and the United States) have so far been unsuccessful. However, in certain specific cases of intentional breaches, especially where the breach constitutes an independent quasi-crime or in egregious intentional breaches such as an insurer's deliberate breach of an insurance contract, the awarding of deterrent damages is accepted. Although this type of damage is not recognized in Iranian statutory law, it appears that accepting such damages for intentional breaches would not be inconsistent with jurisprudential principles.

Key words: Intentional Breach, Willful Misconduct, Increased Liability, Compensation Methods, Deterrent Damages.

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The Limits of Public Interest and the Type of Government Interventions in the Islamic Administrative System

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Abstract

One of the most determining factors in the type of administrative system and government management approach is the size of the government, which in the paradigm of public administration, is large, and in the paradigm of modern governance, is small. The main issue is to what extent the size of the government in the administrative system aligns with Islamic teachings. Research findings indicate that the size of the government depends on the extent of its responsibilities. An ideal government, according to Islamic teachings, is responsible for the welfare of the people in this world and the hereafter and intervenes in economic, cultural, military, and political domains. This does not necessarily mean a large government but rather demonstrates the breadth of its responsibilities. In the economic realm, the principle of non-intervention of the government in the market is fundamental, and the sole fundamental criterion for government interventions is the public interest rather than personal gain. This criterion also determines the extent and type of interventions, which may include provision, policymaking, regulation, and supervision. From this perspective, the government is neither small nor large but rather capable of fulfilling its duties relying on and engaging with the people. The research methodology is analytical and based on Islamic teachings, utilizing the ideas of Islamic scholars.

Key words: government size, administrative system, government interventions, Islamic teachings.

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Legislative Functions of the Objectives and Spirit of Islamic Sharia as Principles of Religious Governance in Housing Development

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Abstract

The The objectives (maqasid) and spirit (madhaq) of Islamic Sharia, as evidence for deriving jurisprudential rulings, originate from religious principles and serve as guiding principles for Islamic governance. These principles are essential elements of the Islamic system, offering a framework for legislating and implementing laws and policies in various fields, including architecture and urban planning. This article examines the legislative functions of the objectives and spirit of Islamic Sharia as principles of religious governance in housing development. The aim of this study is to elucidate the role of maqasid and madhaq al-Sharia in housing legislation and to provide a framework for drafting housing laws and regulations based on these principles. The article demonstrates how the objectives of Sharia can play a significant role in legislation related to housing. This study focuses on four main areas: Conceptual analysis of maqasid and madhaq al-Sharia, The objectives of Sharia in construction, Primary and secondary rulings in housing development, and Legislation based on the objectives of Sharia in housing development. Initially, the paper provides a conceptual analysis of maqasid and madhaq al-Sharia, as well as legislation in the context of housing development. Next, it discusses specific objectives of Sharia concerning construction. Subsequently, it addresses the primary rulings of housing construction and the role of maqasid in adapting to secondary and variable rulings. Finally, the paper examines legislation grounded in the objectives and spirit of Islamic Sharia in housing development. The findings indicate that legislation based on maqasid al-Sharia can lead to fulfilling fundamental needs, ensuring justice and balance, guaranteeing safety and security, and preserving the environment.

Key words: Maqasid al-Sharia, Madhaq al-Sharia, Legislation, Religious Governance, Housing, Construction, Urban Planning.

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Legislators' Mandatory Duties in the Legislative Process

Mohammad Motagheyan Tabrizi¹

Abstract

The Islamic Consultative Assembly (Majlis) has both supervisory and legislative roles. In its legislative capacity, a member of the Majlis grants legal validity to a bill or proposal by voting in favor of it. Although, according to the Constitution of the Islamic Republic of Iran, this legal validity is subject to the "absence of rejection" by the Guardian Council, the Constitution explicitly states that the Islamic Consultative Assembly has the exclusive authority to "enact" laws, thereby embodying the legislative power in the country's legal system.

Given the jurisprudential nature of law, a member of the Majlis, through their vote in the capacity of "legislative creation," intervenes in public affairs within the domain of the "Guardianship of the Jurist" (Velayat-e Faqih). In essence, they act as a representative of the Supreme Leader in the legislative process. Furthermore, since the Constitution has outlined certain requirements for the legal actions of Majlis members, it seems reasonable to consider certain mandatory duties incumbent upon them.

In this article, the author seeks to identify the mandatory duties relevant to the legislative actions of Majlis members based on accepted foundations and jurisprudential principles concerning "voting."

Key words: Guardianship of the Jurist, Public Affairs, Constitutional Law, Legislation, Vote, Legislative Creation, Certainty.

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Flexibility in Jurisprudence and Its Role in Governance and Legislation

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Abstract

the sustainability of this knowledge in the realm of society and governance. While discussing governmental authorities and secondary rulings is enlightening, it diminishes the effectiveness of jurisprudence in exigent situations. Hence, flexibility, defined as the transformation and adaptation of jurisprudential rulings according to needs, becomes necessary. In Shia jurisprudence, despite opposition to jurisprudence as a tool and justification, signs of flexibility can be found in the principles of religion and criteria for flexibility in narrations and statements of jurists; criteria such as change of subject, change of circumstances, differences in interpretation of narration, change in customary practices, and the like. The obligations arising from international commitments, societal needs, and changes in customary practices, regardless of flexibility, pose numerous challenges in formulating laws based on jurisprudential opinions. This flexibility, besides observing standards in individual jurisprudence, also demands assistance in governmental jurisprudential issues and can enable effective governance in the legislative domain. Accordingly, this paper, while expressing the necessities, perspectives, and criteria of jurisprudential flexibility, including attention to governmental jurisprudence, articulates existing legal needs and offers solutions for revising and formulating laws compatible with societal needs based on flexibility criteria, endeavoring to articulate the role of governance in legislative formulation using the capabilities of jurisprudence.

Key words: Fixed rulings, variable rulings, adaptability, Islamic governance, governmental authorities.

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