

Rights and Duties of Secured Persons in Saudi Laws

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Abstract

The main issues tackled by this paper can be summed up in the following points:

The sound opinion states that the secured person can live in Muslim countries for an unlimited period of time except in Hijaaz as his residence in this area is limited to need. The government should deport them as soon as they can be dispensed with.

Disbelievers may not be permitted under any circumstances to enter the sanctuary area according to the majority of jurists.

Some jurists permit disbelievers to live in Hijaaz for three days, four days or one year but some others give it no limit but related to the interest. Therefore, specification of this period of residence is determined by the ruler as may

be required by the interests of the country.

Disbelievers may not be allowed to permanently live in the Kingdom. The Legislator accepted this opinion pursuant to the Prophet's advice.

The Legislator gives secured persons certain rights guaranteed by Islam. These rights may not transgressed against including their properties and lives.

Secured persons should comply with the laws of the state especially that they should not show a high profile of their religious rites. Islam does not force anybody to renounce his religion and embrace Islam but it obliges others not to have a high profile of their religious rites. However, keeping a low profile of religious rites by non-Muslims is not objected to.

The Criterion on the Parts of the Misyaaar Marriage

Mohammad bin Sa'eed Al-Kahtaanee

Abstract

This paper discusses one of the types of marriage that are prevailing in the present time, namely the *Misyaaar* Marriage which is defined as a legal marriage if it meets all conditions of marriage. Under this marriage, the wife drops some of her rights like accommodation, financial support and right of sexual intercourse or the husband stipulates dropping these rights.

This is a valid and legal marriage according to the majority of scholars but the Maalikites consider it invalid. This type of

marriage may be considered a solution for spinsters, divorced woman and widows. Some people may resort to it because of high dowers and expenses of marriage. Some people may keep it confidential in order to maintain family's stability and coherence.

The author defines this type of marriage, explains its ruling and parts. He also gives examples of similar types of marriage stating the difference in the ruling and the novel cases of marriage that should be judged according to their circumstances.

Malicious Claims - A Comparative Study

Dr. Khaalid bin Zaid Al-Wadhinaanee

Abstract

The present paper concludes the following:

The selected definition of the claim is “to file an acceptable claim against a person or to protect him in the court.”

The malicious claim is the claimant’s claim against others for something in which he has no right although he knows the same.

The connivance claim is the one that appears to be valid but is in fact connivance aiming at attaining an illegal goal.

The malicious claim and the connivance one agree in that both of them are invalid and have the same effect with regard to rejection and disciplining the claimant. However, the malicious claim differs from the connivance one is that the malicious claim is meant to cause damage to the defendant contrary to the connivance claim which includes an agreement between the claimant and the defendant to cause damage to a third party. Disciplining in the malicious claim is applied against the claimant contrary to the connivance claim in which disciplining includes the defendant if it appears that he has connived with the claimant.

The malicious claim is considered so if it meets the following conditions:

1. If the claimant admits that his claim is false,
2. If the claim is repeated by the claimant for a claim ending with a judgment with his knowledge of the same, and
3. If the claimant objects to a final judgment that has been checked by the pertinent authority without submitting new facts that

require reconsideration of the judgment.

The false claim is prohibited because it is unjust and wastes the time of the judiciary; therefore it may not be heard or considered.

The malicious claim should be rejected and the judgment of rejection should be included in the same record of the case.

Jurists state that if the judge finds out that the claim is malicious, he may punish the claimant to deter him and others.

The Law of Procedure before *Sharee’ah* Courts and related Executive Regulations adopts the majority opinion of jurists that the claimant should be punished if the judge finds out that the claim is malicious.

Jurists state that the wronged party of the malicious claim may claim for material damage caused by the claim.

Sharee’ah provisions from the Holy Qur’an and the Prophet’s Sunnah prove that it is legitimate to pay financial compensation for damages because the one who harms others guarantees the same.

Contemporary jurists differ as to the ruling on the financial compensation for moral damage. Each party provided good proofs. This issue needs more consideration and deliberation.

The Law of Procedure before *Sharee’ah* Courts, the Law of Rules Limiting Effects of Malicious and False Claims and the Law of Criminal Procedure adopt the established opinion of jurists that it is permissible to claim compensation from the claimant for the material damage caused to the defendant as a result of the malicious claim.

Authorities of the Board of Grievances as an Administrative Court

Dr. Ayyoob bin Mansoor Al-Jarboo'

Abstract

The authorities of the Board of Grievances as an administrative court according to the Law of the Board of Grievances for 1428 AH are wider than its authorities according to its law for 1402 AH. The latter law admits the authorities of the Board of Grievances on several kinds of disputes which had not been given to it under the law of 1402 AH represented in the settlement of disputes related to military service, public profit societies and the like.

By comparing the texts of article 8 of the law of 1402 AH and article 13 of the law of 1428 AH, it appears that the text of article 8 of the law of 1402 AH is more accurate. Clauses A, B and C of article 8 use one legal term "the government or a corporate person" when determining the authorities of the Board. However, article 13 of the law of 1428 AH, several terms were used like the "administration" in clauses C and D, the term 'government or a corporate person' in clause A of the same article which purports that the two clauses which include the term "administration" covering contracts claims and liability claims that the authorities of the

Board do not include disputes to which corporate persons are parties.

The Saudi Legislator did good by adding the text of clause F to article 13 of the law of 1428 AH which delineates the authorities of the Board of Grievances related to the settlement of "other administrative disputes" to avoid the possibility of any disputes to which the administrative is a party which are not included in the other clauses of article 13 (A, B, C, D and E). In addition, the issuance of the Law of the Judiciary and the Law of the Board of Grievances for 1428 AH all judicial authorities have been determined which does not require keeping this text.

The Saudi Legislator did good by not including a text in the Law of the Board of Grievances for 1428 AH similar to the text of clause 2 of article 8 of the Law of 1402 AH which reads, "Notwithstanding the rules of jurisdiction under the law, the Council of Ministers may refer any subjects and cases it may determine to the Board of Grievances for consideration." This text deals with authorities by individual resolutions which may confuse the rules of judicial jurisdiction.

tions as follows:

We need to deliberate on the beginning verses of *Surat Al-Mutafifeen* in considering invalid contracts especially if they relate to endowed properties.

Scholars should explain to people that Irq contracts are invalid especially the re-

cently practiced one. Judges should prevent people from concluding this type of contracts, correct invalid ones and terminate those which cannot be corrected but should always attempt to ameliorate damage as much as possible to the parties of the contract or either one of them.

Effect of Lapse of Time on Financial Duties

Dr. Muhammad bin Su'ood Al-Khamees

Abstract

This paper can be summed up in the following:

Technically speaking, lapse of time means “the long time that passes for something existing.”

The paper concludes that it is the preponderant opinion that zakaat is tied with the dhimmah of the person paying the zakaat, and therefore, zakaat may not be dropped by the lapse of time because it is a divine enjoinder which should be fulfilled. Moreover, debt cannot be dropped by the lapse of time.

It is also the preponderant opinion that the wife’s financial support may not be dropped by the lapse of time because originally anything due from an individual remains a debt for which he remains liable until he pays it or is released by the creditor.

It is also the preponderant opinion that the financial support of a relative drops with the lapse of time unless he is permitted by the judge to take loans to pay to his relative.

The paper also concludes that it is the preponderant opinion that the jizyah is not dropped by the lapse of time as the proofs provided by the advocates of this opinion are strong and as the jizyah is similar to other financial rights and compensations.

The paper also concludes that the opinion that the kharaaj does not drop by the lapse of time is the preponderant opinion because the kharaaj is a financial right and may not, like any other financial right, be dropped by the lapse of years.

Rulings on the *Irq* Contract Applied in Al-Ihsaa according to Local Norms and the Islamic Sharee'ah

Dr. Abdur Raheem bin Ibraaheem Al-Sayyid Al-Haashim

Abstract

The present paper concludes the following:

Experts agree that the meaning of *Irq* in the norms prevailing in Al-Ihsaa is vegetables rather than palm trees or other trees.

The *Irq* contract came into use in the late tenth Hijri century and has been continuing up to the present time but it covers some orchards at Al-Hafoof city only.

The *Irq* contract is concluded to take care of the palm trees and vegetables or the palm trees of an orchard and growing vegetables in the spaces between trees for the complete crop of vegetables and remaining dates after the owner receives his main crop unless the worker or his attorney breaches the contract or abandons it.

The contract includes the duties and obligations of the principal (owner of the orchard) and the growing worker.

Juristically speaking, this contract is a combination of three contracts: irrigation, cultivation and lease, all of which are invalid in the Islamic Sharee'ah because their periods are uncertain and unspecified. Moreover, the rent under the lease is unknown as it includes the crop of vegetables and the remaining crop of dates after the owner of the orchard receives the main share.

A recent *Irq* contract has been estab-

lished, namely selling the palm trees, trees, vegetables and buildings at a specified price and leasing the land for an unlimited period of time to the buyer on an annual basis for an annual rent.

Experts are of the opinion that it is wrong to call it an *Irq* contract because it does not agree with the *Irq* contract with regard to rights and duties of both parties and caused forfeiture of these rights and duties. It also caused problems between the growing worker and the owner of the land. Juristically speaking, this contract combines two contracts, namely selling the resources of the orchard but not the land and leasing the land for an unlimited period to the buyer of the resources.

This type of sale is valid if it relates to an orchard that is not governed by an endowment but other types are invalid like the one made of an endowed orchard. However, the lease is invalid because it is long and unspecified.

Jurists differ as to the lease of the endowment for more than three years in two opinions: The Hanafites consider it impermissible while the majority of jurists consider it permissible.

It is prohibited to conclude invalid contracts irrespective of people's acceptance of these contracts. The judge should terminate them if he knew about them.

The writer provides two recommenda-