

# Legal Right of Defence - A Comparative Study

Dr. Naasir bin Muhammad Al-Jofaan

## *Abstract*

The present paper discusses an important juristic and legal issue related to a right established by the Islamic Sharee'ah and secular laws in spite of the fact that many people have no idea its provisions, and hence refrain from using it for fear of being criminalized and punished or use it believing that he has fulfilled its conditions and rulings while in reality he has violated them, and hence he becomes liable to criminal responsibility.

The author concludes the following:

The legal right of defence is legitimate according to Islamic jurisprudence and secular law.

The description of the legal right defence in Islamic jurisprudence differs depending on the right subject to aggression and the conditions of the aggressor and the aggressed against. Some of these conditions are

agreed among scholars but many are subject of difference. However, they all believe it to be a duty or a right.

Law experts differ as to the description of the legal right of defence. Some of them view it as a right, some others view it as a duty while some others view it as a licence. However, some of them believe it to be a right in the majority of cases, a licence in some cases and a duty in some other cases.

Secular laws agree with the Islamic jurisprudence as to the conditions of the legal right of defence.

Secular laws agree with the Islamic jurisprudence that if the defender exceeds the limits of the legal right of defence, he is held liable.

The legal right of defence can be proved by confession, testimony, oath and supporting circumstances.

Law experts expand the scope of the methods

of proving the legal right of defence. They suffice with the proofs supporting the claim and the circumstances that surround the incident to prove the legal right of defence. This agrees with the opinions of some Muslim scholars on substantiation by circumstances of the incident, the condition of the perpetrator and the condition of the victim. This is the opinion chosen by the author.

Secular laws agree with the provisions of the Islamic jurisprudence concerning the consequences of the legal right of defence if the condition of defence is fulfilled and oblige the defender to observe the limits of defence whether related to the justification of the act of defence and the defender being liable for the criminal and civil responsibility or the ruling on the effect of the act of the defender on other than the aggressor with or without intention.

the same as in the case of inheritance.

e. The preponderant opinion is that the amount assumed by each member is the one he can bear without any hardship. The ruler is the one who estimates the share of each member.

f. If the murderer has no family, the blood money is assumed by the treasury if resources are available.

7. In topic six, the following is concluded:

One of the objectives of Sharee'ah is that retaliation (qisaas) is the punishment stipulated for murder by intent. The family of the victim has the option either to request retaliation or to pardon the murderer. Pardoning the murderer is one way of fighting crime.

The objectives of Sharee'ah stipulate that the family of the murderer by mistake should assume the blood money as a gesture of kindness towards the murderer.

The objective of Sharee'ah from expiation is to purify the Muslim from his sins.

## Acting on Behalf of Others in Disputes in Islamic Jurisprudence

**Dr. Ahmad bin Saalih Al-Barraak**

### *Abstract*

The present study discusses an important subject of jurisprudence, namely acting on behalf of others in disputes in Islamic jurisprudence.

The study consists of an introduction and seven topics:

Topic One discusses the meaning of acting up, power of attorney and dispute.

This topic consists of five sections as follows:

Linguistic and technical meanings of acting up.

Linguistic and technical meanings of power of attorney.

Linguistic and technical meanings of dispute.

Meaning of the deputy in disputes.

Meaning of the law profession and lawyer. This section includes two points as follows:

Linguistic meaning of the law profession and lawyer.

Technical meaning of the law profession and lawyer.

Topic Two: Legitimacy of acting on behalf of others.

Topic Three: Conditions and rules of acting on behalf of others

Topic Four: Ethics of acting on behalf of others.

Topic Five: Ruling on the results of the acts of the deputy after dismissal and before knowing of his dismissal.

Topic Six: Rights of the deputy in the acting up contract.

Topic Seven: Ruling on differences between the deputy and the principal.

# Blood Money and *Sharee'ah* Objectives from it

Prof. Dr. Saalih bin Sulaimaan Al-Yusuf

## *Abstract*

The Islamic Sharee'ah is comprehensive, sublime, universal and perpetual. One of the basic objectives of Sharee'ah is maintaining security by establishing textual punishments enjoined by Allah. The Islamic Sharee'ah is based on the interests of people in this life and the one to come. Justice, mercy and wisdom constitute the foundation of this Sharee'ah.

One of the main reasons behind tackling this subject is its importance and the need of people to understand it. Many cases of murder by mistake take place and people need to know how to assess blood money in Saudi Riyals.

The author concludes the following:

1.The blood money is the amount paid to the victim based on the provisions of the Holy Qur'an, the Prophet's *Sunnah* and unanimous opinion of scholars.

2.The preponderant opinion of scholars is that

camels form the basis of blood money and that one hundred camels should be paid in this instance. Any other items including gold, silver, cows or sheep are fungible property rather than assets.

3.The second topic concludes the following:

a.The blood money in cases of murder by intent should be paid from the property of the culprit rather than his family.

b.The blood money for murder by intent is one hundred camels: thirty six years old camels (*huqqah*), thirty five years camels (*Jadh'ah*) and forty four years pregnant camels.

4.In the third topic it becomes clear that the preponderant opinion that the blood money in cases of quasi-intent murder is assumed by the family of the murderer rather than the murderer himself.

5.In the fourth topic, the following is concluded:

a.The unanimous opinion of scholars is that

the blood money in murder by mistake is borne by the family of the murderer.

b.The expiation is not borne by the family of the murderer, rather he is the one who bears it.

c.The preponderant opinion states that no expiation in the case of murder by intent.

6.In the sixth topic, the following is concluded:

a.It is agreed that the family include the agnates rather than the maternal brothers and other consanguineous members of the family. Fathers and sons are the subject of difference among scholars whether they are included in the family or not.

b.The family does not assume the blood money in case of murder by intent.

c.The time of the payment of the blood money is decided by the ruler.

d.The preponderant opinion is that the blood money is divided among the members of the family

# Stat's Responsibility for the Protection of Endowments

Dr. Abdul Azeez bin Saalih Al-Fawzaan

## *Abstract*

The importance of endowments and the protection of endowed states needs not be overstressed. The state shoulders a remarkable responsibility for the protection and organization of endowments in order for endowed properties to serve their role properly.

The author divides this study into three topics as follows:

First Topic: Definition and Types of Endowments

Second Topic: Ruling on the Administration of Endowments and its Types

Third Topic: Limits of Responsibility of the State for the Protection of Endowments

The author concludes the study as follows:

Linguistically speaking, endowment means a property preserved for a certain purpose and technically speaking, it means a property that is maintained but its usufructs spent for the prescribed purposes.

Endowments are of two types: familial and charity. The first is meant to support the offspring or the members of the family and the second is meant to spend for public or private facilities or poor people.

Familial endowments have been restricted or even confiscated by some rulers and stopped.

The administration of endowments is a legitimate authority placed over an endowed property.

A private administration is carried out by the endower himself and is stronger than the public one. If there is a private administrator, the public administrator has no right to act on the endowments.

The public administration of endowments is part of the authority given to administer the interests of Muslims which is the responsibility of the ruler "the public administrator". In the present time, endowments are assigned to ministries of endowments to care for them.

Originally, the conditions stipulated by the endower should be fulfilled unless they violate the provisions of the Holy Qur'an, the Prophet's Sunnah, Unanimous opinion of scholars or an established interest.

Muslims agree that the conditions of the endower are of two types: valid and invalid as is the case in any contract.

Meeting the conditions of the endower that agree with the provisions of the Islamic Sharee'ah is the responsibility of the state for the protection of the endowment and realizing its Sharee'ah objectives.

through endorsement.

The endorsement is a valid transfer; the time the person receives the endorsed papers of goods, he is considered to have received its contents for they

represent the commodity to be exchanged.

Exchange of shares at the present time whether in the form of sale or purchase is basically depending on modern electronic

technologies.

The purchaser may not guarantee the shares or act on them through sale or otherwise before receiving them by entering them in his investment portfolio.

# Juristic Description of Reciprocal Receiving Operations in Modern Banking Transactions

Dr. Hishaam bin Abdul Malik Aal-Asheikh

## *Abstract*

Allah Almighty has made it lawful for people to deal with each other in order for live to continue and for people to acquire things they need in their daily life conditions. With the advancement of time, the needs of people expand and new needs arise. Therefore, what could be the juristic description of each receiving operation of banking transactions?

The author divides the study into a foreword, an introduction, three chapters and a conclusion.

The author concludes the following:

The technical definition of "receiving" is based on an issue that is a subject of difference among scholars; that is if there is any difference in receiving movables and immovables.

The act of "receiving" is general in the Islamic Sharee'ah, and hence norms should be the authority in this regard.

It is not permissible to sell a commodity before receiving it whether the subject of contract is a type

of food or otherwise, a measured or weighted item, a real estate or movable property or sold by measurement or arbitrarily pursuant to the authentic *hadeeths* on forbidding sale of things that cannot be received.

Receiving the cheque serves as receiving the amount of money if necessary conditions are fulfilled.

Jurists who consider the bill of exchange as a tool of payment do not consider receiving it as receiving its contents unless it is drawn on the bank as payable at sight. In this case, there is no difference between the bill of exchange and banking cheque; receiving each one of them is considered as receiving its contents.

Jurists who consider the bill of exchange as a tool of credit do not consider receiving it as receiving its contents because the issuer wanted to guarantee his right and safeguard it against loss.

Travelers cheques aim at mere transfer of money and cannot be used as a tool

of credit which is the main function of commercial documents.

The travellers cheque does not give sufficient guarantee to the seller as to the payment of the value of his commodity until it is compensated for by the issuer of the traveler cheque (the bank). Therefore, receiving the traveler cheque is not receiving its contents unless the seller is compensated for the amount of the cheque.

The banking entry is considered a real receiving. As soon as the entry is completed, the act of receiving is considered complete.

There is dire need in the present time for considering the debit in payment as serving as real receiving.

The banking transfer is considered a real receiving.

It is permissible to sell gold for banknotes and pay the price through sale points to provide for maturity and reciprocal receiving in the session of the contract.

Papers of commodities are exchanged and their ownership transferred