

Mortgage of Shars and Its Rulings in Islamic Jurisprudence

Dr. Khalid bin Zayd Al-Wazinani

Abstract

The paper defines the share as the amount of money paid by the shareholder when sharing in a company whether such share is in cash or in kin, the total of which forms the stock capital. These shares are exchangeable for which the holder has special rights. The paper also discusses the ruling on making these shares as a debt and a loan instrument so that the loan can be repaid by such shares when the company fails to pay the debt.

- The most weighty opinion of scholars states that common shares can be mortgaged.
- The holder of the mortgage may not dispose of the mortgaged property in a manner that damages the property.
- If the holder of the mortgage acts on the mortgaged

property with the permission of the owner of the property in a manner that takes it outside the ownership of the owner like gift or endowment, the mortgage will become null and void.

- The mortgage holder may put a condition against the owner of the mortgaged property that he will take it for the loan if the latter fails to pay the loan at the expiry of the mortgage period.
- The holder of the mortgage may put a condition that he can sell the mortgaged shares when their market value drops to a certain rate lower than the amount of the debt.
- The separate growth of the mortgaged property is included in the original and is similarly a mortgaged property. Therefore, the dividends on mortgaged shares are same as the original shares.
- It is permissible to have another loan as part of the first loan and include it in the mortgaged property prior to the second loan.

Crimes Penalized by Discretionary Whipping

Dr. Hassan bin Abdo Al-Asiri

Abstract

The paper discusses the crimes penalized under the Islamic Shariah by discretionary whipping for the lack of a specific punishment for it in the Islamic Shariah. The paper also discussed the types of crimes, the maximum and the minimum number of lashes specified under a discretionary ruling and the considerations that the authority should adopt when applying the discretionary whipping as a disciplinary action.

- Scholars have unanimously agreed that disciplinary actions by whipping for any offence that has no specific punishment in the Islamic Shariah and where there is no atonement for a sin as the case in killing a person by mistake. These sins include having a prohibited sexual intercourse but without falling in adultery or stealing something of a value less than the amount for which the hand of the theft should be cut.

- The maximum number of lashes has been a subject of difference among scholars. Some scholars are of the opinion that the authority of defining the number of lashes should be left to the judge who knows better about the circumstances of the offence and the conditions of the offender. This is the point of view that the author considers more weighty.

- The minimum number of lashes as a disciplinary action has also been the subject of difference among scholars. The author is of the opinion that the minimum number of lashes should be left to the jurisdiction of the judge according to the conditions of the offender.

- There are other considerations that the authorities should adopt when applying the discretionary whipping as a disciplinary action including the conditions of the offender, i.e. that whipping should not result in his death or if the offender is a pregnant woman. Punishments in the Islamic Shariah are meant to deter the offender from committing the crime again as well as to correct his personality.

The Theory of Nullity in the Legal Procedural Law

Bakr bin Abdul Al-Haboob

Abstract

The paper studies the provisions related to the theory of nullity in the Saudi Legal Procedural Law. Nullity is a description of a certain act which violates regulations or laws to an extent that it does not produce the effects of a non-defective act.

Nullity, according to the men of law, is of two types:

- Relative, i.e. related to a personal interest; and
- Absolute, i.e. related to the public order.

The nullity of legal papers and procedures entails the following:

1. Complete cancellation of the paper if it is null and void or if the information contained therein is indivisible.
2. The null papers should be replaced by valid papers.
3. Forfeiture of the right to reinstate actions if they are taken beyond the specified deadline.
4. Loss of the right if the purpose of these procedures is to prevent loss of such right.

a legal ruling on it should be based on sound consideration and deliberation of the fundamentals of the Islamic Shariah.

2. The scholar should do his best to have a sound and encompassing conception of the issue that has been raised.
3. The scholar who works on identifying a legal ruling for an issue should have a legal and juristic talent in order for him to be able to attach different issues to the closest original references in the Islamic Shariah.
4. The ruling adopted on the novel issue should agree with the major interests given due consideration in the Islamic Shariah.

Evidence Based Judgments in Islamic Jurisprudence

Abdul Aziz bin Sa'd Al-Deghaither

Abstract

These mean the judgments pronounced on the basis of proofs and signs that are collected from facts but not based on a clear cut evidence like confession, testimonies or the like.

- Judgments based on conclusive evidence are not subject of any differences.
- Judgments based on weak proofs and signs are invalid.
- Strong proofs can be applied in matters related to financial disputes.
- Non-conclusive evidence cannot be applied in proving adultery and similar crimes because the Islamic Shariah takes into consideration keeping the identity of the criminal confidential.
- Applying proofs and signs in proving the crime of abusing alcohol is conducive to deterring criminals because abusing alcohol usually leads to more vicious crimes.
- Accusing a trustworthy human being of adultery and the like is prohibited and accepting signs and proofs in this regard realizes justice.
- Offences against others are proved by strong proofs especially with the development of crime exposing techniques in the present time which usually lead to conclusive evidence like using the genome and other similar techniques.

Implementation of Judgments in the Judicial System: Historical Development and Effect on Security

Dr. Muhammad Abdullah Al-Shanquiti

Abstract

The paper discusses the subject of the implementation of judgments after issuing them by the judge.

The author discusses the historical development of this issue and the effect of applying judgments on the realization of security and stability by attaining rights by those who deserve them.

- Legal authorities, especially justice, is the basis of security and crime prevention policies. Both justice and security are interrelated in terms of investigations and proofs.

- Theoretically speaking, justice covers several topics of knowledge. However, as related to application, justice is the most applicable and life-related knowledge. It normally establishes justice among people and protect society from

corruption.

- The Islamic Shariah has paid great attention to the way of selecting judges and the conditions and qualities they should meet due to the importance of the judicial authority.

- The Islamic judicial system has been characterized as independent and fair especially during early times after the advent of Islam based on the strong jurisdiction the authorities had and the integrity of people and their submission to justice.

- The judicial supervision of the implementation of judgments in real life conditions has a great effect on realizing security whether such supervision takes place during litigation or after issuing judgments by judges. This can only be achieved if judgments are enforced irrespective of differing points of views.

Juristic Adjustment of Modern Banking Transactions

Dr. Misfer bin Ali Al-Ghahtani

Abstract

Juristic adjustment means the complete conception of a modern banking transaction or issue. This includes the identification of the original reference on the said banking issue or transaction in order to define the legal ruling applicable to it in the Islamic Shariah.

- Adjustment or complete conception of an issue and the identification of the original reference is the first step to reach a legal ruling. It is important in order for the scholar to avoid

any violations of the Islamic Shariah, particularly ascribing something untrue to Allah ignorantly.

- There are important principles for the juristic adjustment process which is the complete conception of the issue that has been raised and which needs to correctly referenced in order to reach a sound legal ruling.

In this regard, the most important principles include:

1. The conception of an issue in order to identify