

Abstracts

The Effects of Ignorance on Criminal Liability in Islamic Law and the Legal Systems of Afghanistan and Iran

Dr. Khadem Hussain Habibi¹

Abstract:

This research titled "The Effects of Ignorance on Criminal Liability in Islamic Law and the Legal Systems of Afghanistan and Iran" aims to answer the fundamental question of what effects ignorance has on criminal liability and irresponsibility in Islamic law and the legal systems of Afghanistan and Iran through a descriptive-analytical-comparative approach and documentary research method. The first step in examining this issue is to study the role and position of ignorance in Islamic law as the foundation of the Islamic legal system and to identify the different types of ignorance. The findings of the research indicate that the Iranian legal system, particularly its Penal Code, acknowledges the effects of ignorance on criminal liability in many cases due to its strong influence from Islamic jurisprudence. However, in the Afghan legal system and its Penal Code, the effects of ignorance on criminal liability have not been recognized.

Keywords: Ignorance, criminal liability, Islamic criminal law, Afghan legal system, Iranian legal system.

¹ Ph.D. in Criminal law and criminology, Academic Staff & President at Khatam -Al- Nabieen University, Ghazni Branch

habibi۱۳۹۳@gmail.com

Received: ۲۰۲۳-۰۳-۲۲

Registered: ۲۰۲۳-۰۵-۲۶

The Responsibility of Physicians for Their Actions in Islamic Law and Jurisprudence

Mohammad Jawad Samimi¹

Abstract:

The medical profession is a crucial and sensitive profession that involves the health and well-being of individuals. Therefore, it is essential to ensure that physicians are held accountable for their actions. Islamic law and jurisprudence provide guidelines for the responsibility of physicians for their actions, which can serve as a basis for legal systems in Muslim-majority countries. This study examines the responsibility of physicians for their actions in Islamic law and jurisprudence, with a focus on the legal systems of Iran and Afghanistan. The findings indicate that in Islamic law, physicians have a duty to provide competent medical care and can be held liable for medical malpractice if they fail to meet this duty. In Iran's legal system, there are specific laws and regulations that govern the practice of medicine and hold physicians accountable for their actions. However, in Afghanistan's legal system, there is a lack of specific laws and regulations governing the medical profession, which makes it difficult to hold physicians accountable for their actions.

Keywords: Physicians, responsibility, Islamic law, jurisprudence, medical malpractice, Iran, Afghanistan.

¹ Ph.D in Criminal law and criminology, Professor at Khatam -Al- Nabieen University, Afghanistan

Samimijavad1359@gmail.com

Received: ۲۰۲۳-۰۳-۲۶

Registered: ۲۰۲۳-۰۶-۰۵

The Conditions for the Criminal Responsibility of Legal Persons in the Legal System of Afghanistan

Hussain Dad Kamran¹

Abstract:

The criminal responsibility of legal persons has not had a long historical background in the legal system of Afghanistan, and it has only been addressed with the enactment of the Penal Code in 1976 and the Civil Code of Afghanistan in the same year. In the legal system of Afghanistan, legal persons are divided into two categories: public legal entities such as government agencies and private legal entities such as private companies. Based on this classification, this study aims to answer the question of whether these legal persons have criminal responsibility or not, and if so, under what conditions can they be held criminally responsible. Using an analytical-descriptive method and library sources, the findings indicate that public legal entities do not have criminal responsibility, and only private legal entities are subject to criminal responsibility. Furthermore, these legal entities are only responsible for crimes and damages caused by their representatives, heads, lawyers, and agents during the performance of their duties and in their name.

Keywords: Legal persons, criminal responsibility, representative, head, lawyer.

¹ Masters in Criminal Law and Criminology

Received: ۲۰۲۳-۰۳-۲۸

Hussaindadkamran۷۷@gmail.com

Registered: ۲۰۲۳-۰۶-۰۷

The General Rules of Punishment for Legal Entities in the Laws of Afghanistan and Iran

Omid Rostami Ghazani¹
Qudsia Noori²

Abstract:

The increasing involvement of legal entities in social activities has made it difficult to ensure non-criminal and civil enforcement, which is necessary to maintain their compliance with norms. The establishment of order and reduction of criminal behavior through the criminalization of actions and imposition of penalties on offenders is one of the goals of criminal law, which can only be achieved if the penalties imposed are proportionate and consistent with the laws. Therefore, lawmakers in Afghanistan and Iran have included penalties and some general rules for their application to legal entities in their laws. This study examines the application of these general rules in Afghanistan and Iran's legal systems, specifically for legal entities. Supplementary penalties can be applied to legal entities in both legal systems, but subsidiary penalties cannot. The enforcement measures according to Afghan criminal law are adaptable to legal entities, while those according to Iranian legal system are not. In Afghanistan, there are no provisions for penalty reduction for legal entities, but such provisions exist in Iran's legal system. The intensification of penalties for legal entities is accepted in both legal systems, with some exceptions in Iran's legal system. However, some factors that lead to the mitigation of penalties, such as repentance, apply only to natural persons and not to legal entities.

Keywords: Legal entities, punishment, Afghan Penal Code, Iranian Islamic Penal Code.

¹ Ph.D student in Criminal Law and Criminology at Gilan University, Iran

² Professor Assistant in Criminal Law and Criminology, Ahl -e- Bait International University

Qudsianoori۳۶۶@gmail.com

Received: ۲۰۲۳-۰۴-۰۱

Registered: ۲۰۲۳-۰۵-۳۱

Judicial Independence in the Legal System of Afghanistan

Mohammad Mehdi Mirzaei¹

Abstract:

The concept of judicial independence is a fundamental legal principle that has been repeatedly declared in national constitutions and ordinary laws of countries. According to this principle, every person has the right to have their dispute heard by an independent, impartial, and public court, which shall decide on their rights and obligations or any criminal charges against them. This principle has been recognized in Article 116 of the Afghan Constitution of 2003, which acknowledges the judiciary as an independent pillar of the Islamic Republic of Afghanistan. The provisions of this article are reiterated in all laws related to the establishment and jurisdiction of courts, such as Article 2 of the Law on the Establishment and Jurisdiction of the Judiciary of 2013, Article 13 of the Law on Special Courts of 2014, and Article 6 of the Law on Military Courts of 2010. These provisions mostly refer to the institutional independence of the judiciary, considering other government bodies or the principle of separation of powers. However, fortunately, Article 3 of the Code of Judicial Conduct of 2008 explicitly emphasizes individual judicial independence, stating that "the independence and impartiality of judges are the only guarantee for the protection of rights and ensuring justice by judges." Given the importance and necessity of judicial independence and individual judicial independence, this study aims to explain the fundamental aspects of judicial independence in accordance with the Afghan Constitution and ordinary laws, using an analytical-descriptive method and library sources.

Keywords: Judicial independence, impartial court, independent court, judicial immunity.

Comparative Study of Computer Fraud in the Legal Systems of Afghanistan and Iran

Mohammad Naeem Haidari¹

Abstract:

The purpose of this article is to examine the constituent elements of computer fraud and to conduct a comparative study of it in the criminal law systems of Afghanistan and Iran. The article is practical in terms of its objective and descriptive-analytical in terms of its method, using library sources. Computer fraud is a crime committed through a computer. Legislators in Afghanistan and Iran have criminalized computer fraud in their laws, indicating sensitivity towards cyberspace and computer fraud. In this article, Article 67 of the Electronic Commerce Law, Article 741 of the Islamic Penal Code, and Article 859 of the Afghan Penal Code are discussed and analyzed. The results show that the prescribed behaviors for computer fraud are similar in the legal systems of Afghanistan and Iran. Additionally, some of the behaviors that the Afghan legislator has predicted in the aforementioned article of the Penal Code, such as "access to computer systems, programs or computer information, etc." have not been prescribed by the Iranian legislator in the Islamic Penal Code.

Keywords: Computer fraud, Afghanistan, Iran, Penal Code, Islamic Penal Code.

¹ Graduated from Criminal Law and Criminology at Ahl -e- Bait International University

Naimhaidary2010@gmail.com

Received: ۲۰۲۳-۱۴-۰۴

Registered: ۲۰۲۳-۰۶-۱۸

Comparative Study of Counterfeiting Currency in the Criminal Laws of Afghanistan and Iran

Wahidullah Hamidi¹

Abstract:

Although currency plays an important role in economic growth and improving the standard of living and welfare of society, counterfeit currency without backing reduces the value of money and increases the price of goods and services. Counterfeiting currency is a crime that falls under the category of crimes against public safety and directly affects people's well-being. Through this crime, many people suffer losses, and even the country's monetary and banking system is harmed. This undermines people's trust in currency. Therefore, it is essential to pay adequate attention to maintaining the health of the economic, monetary, and banking systems and people's trust in currency. Additionally, the speed and ease with which counterfeit currency is circulated can cause harm to many people and society as a whole. Counterfeiting currency can be discussed and analyzed in Afghanistan and Iran based on their laws and differences in their material elements and punishments for this crime. One of the differences is that counterfeiting currency is considered a complete crime in Afghanistan, but not in Iran. The damage caused by these crimes to public safety, especially when it occurs on a large scale, is evident and obvious. Counterfeiting currency is one of the most dangerous crimes that undermines people's trust in currency and creates problems for their legal cases. It disrupts the economic system or harms the monetary and banking system. Therefore, serious and decisive action must be taken against those who commit this crime. One reason why lawmakers in countries, especially Afghanistan and Iran, have imposed severe penalties on those who commit this crime is precisely this issue. This study shows the strengths and weaknesses of the laws in Afghanistan and Iran and the differences between these two legal systems.

Keywords: Counterfeiting, Currency, Counterfeit Currency, Disruption of Monetary and Banking Systems, Economic Crimes.