

جريمة الإجهاض في القانون الوضعي والفقہ الإسلامي

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Abstract

Tag Alsir Ahmed Algizuli Mohamed

The Crime of Abortion between the Positive law and Islamic (Sharia) (A comparative Study)

This thesis is the crime of abortion as in the positive legislations. specifically in the Sudanese, Egyptian, English and Islamic legislations.

The study mainly aims to reveal the definition of abortion crime and the differentiation between the abortion crime and the similar acts. It also explains the provisions of abortion crime both positive legislations and the Islamic jurisprudence.

It is found that the Islamic legislation is characterized with depth and reality and therefore it overtops the positive legislations especially in respect of the embryo protection. there is no legislation providing any provisions in respect of embryo assault. **But** the Sudanese legislation is insufficient in respect at determination of the pregnancy commence and has no express provisions in respect of initialing and contribution to the abortion crime. In addition, it stresses no special penalty for those in certain relevant jobs. such as the workers in the medical field when they commit such crime.

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For the purposes of this Act, evidence that a woman had at any material time been pregnant for a period of 28 weeks or more shall be prime facie proof that she was at that time pregnant of a child capable of being born a live.⁽¹⁾

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Archbold's - 1929 ()¹
pleading, Evidence and practice: in crimnal cases, 33 Edition by Butler and Garsia, sweet and
.maxweel- ltd 1954.

.Glanville Williams .p.249²
.p.249³

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It impossible to formulate any general theory of causation so for as the law is concerned ... all can be done there is to state number of general rules which determine the issues of causation.⁽⁴⁾

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Cross and jones, intraduction to criminal law- Eight, edition, Butter Worth, London, 1976. ⁴
.p136.

Gross and jone -p136 ⁵

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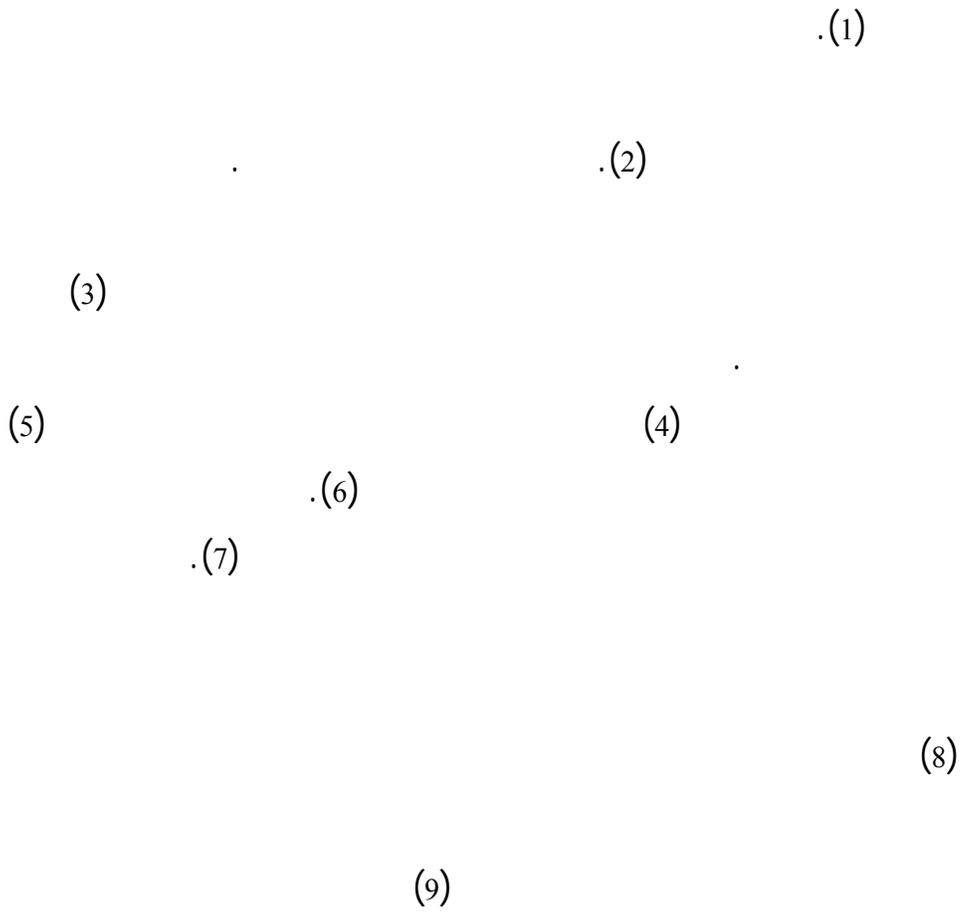
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Every woman being with child who with intent to procure her own miscarriage, shall unlawfully administer to herself any poison, or other noxious thing, or shall unlawfully use any instrument, or other means what so ever with the like intent and who so ever with intent to procure the miscarriage of any woman whether she be, or be not with child shall unlawfully administer to her or cause to be taken by her any poison or other noxious thing, or shall unlawfully use any instrument, or other means what's ever the like intent shall be guilty of aflony.⁽²⁾

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Who so ever shall unlawfully supply or procure any poison or other noxious thing or any instrument or thing what so ever knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman whether she be or be not with child shall be guilty of misdemeanour.⁽⁴⁾

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.Abortion: medical and social implication – Mason and Mccol 1991- p161 ¹

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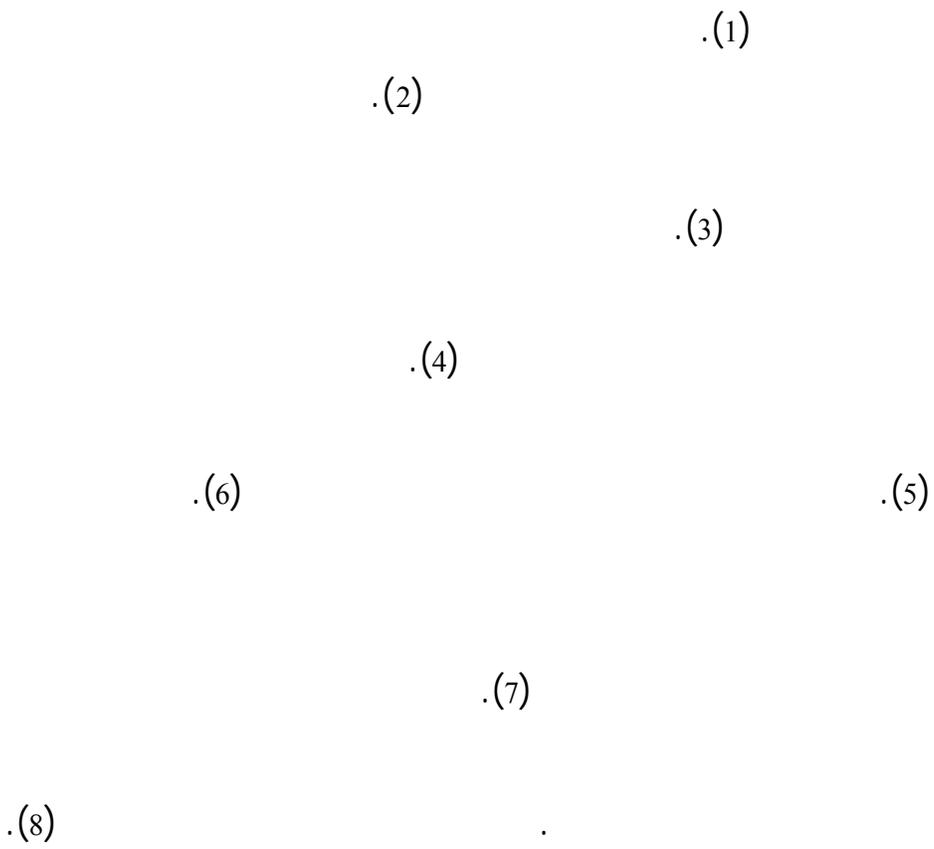
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1. -Archbold's pleading, Evidence and practice in criminal cases, 33 Edition by Butler and Garsia, sweet and maxwel- ltd 1954.
2. Cross and Jones, introduction to criminal law- 1976 .
3. Glanville Williams textbook of criminal law- London - Stevens @ sons 1968.p.252.