

:

*

.1

.2

.3

.4

.5

.6

.7

.2004/12/12

2004/6/2

*

) : (7) .5

- : - .(8)() : .6

. : .(9)(

: .2 (10)

:() .(13)(

} : (14){

) : () :

(15)(.1

() .(11)(...) :

: .1 (12)(

- .2

) :

()

.(

.

.3

:

:

.1

()

.4

()

(20)

.2

(21)

.3

(22)

(16)

.4

(23)

.5

(17)

(24)

.6

(25)

(18)

:

-

-

:

(27)

(26)

:

(19)

(30)

(29)

(28)

(31)

.() :

(40)

(32)

(33)

) :

[]

(34)

:

(35)

) :

) :

(36)(

[])

(41)

(

(37)(

:

) :

:

) :

(38)

.(

:

(39)(...

:

:

:

:

(49)

- - .3

:

(50)

)

:

.4

)

] { } :

(42)(

. [275

:

:

(51)(

:

- (44)

(43)

(46)

(45)

:

(54)

(53)

(52)

(55)

:

.1

:

.1

-

(47)

.2

-

:

(56)

:) : ()

(57)(

.2

(58)

(59)

.2

.1

.3

(48)

(60)

) :
 (61)
 .3
 (62)
 (63)
 .4
) :
 :
 :
 (64)
) :
 (65)
 : (148)) (67) (66) :
 .((68)
 (70)) :
 (71)
 :
 (69)
 :
 : (143)) - -
 .(

() :

(145)

) :

.(

(146)

(73)

(

) :

:

.1

-

.2

-

.3

-

-

.4

(72)

:

(74)

) :

[29

] (

() :

:

:

(75)

:

-

-

:

:

:

:

(76)

(77)

(79)

(80)

:

:

)

:

:

(

) :

(81)(

()

()

(82)

(78)

:

.1

()

:

.2

.

.

.3

:

()

:

.4

-
-

:

.1

.2

-
-
-

:

-

()
(83)

.3

:

.1

.4

-

-

:

" "

.2

(84)

(85)

- : .5 : .1
 - (86)
 .6 .2
) ()
 .(.7 - -
 .- -
 () : (87) ()
) : (88)
 :
 (93)(:
 (94) (89)
 () (90)
 - - : (91)
 (95) () .1
 .() .2
 .3
 () .4

()

: (96)

()

) : (7)

:

(97)(

:

:

:

(98)

: .1

: .2

: .3

: .4

(99)

(100)

(101)

: .5

(105)(
(435)

) :

:

.1

.1

.2

.3

.2

.(

:

(434)

(435)

(436)

)

.3

.(

.4

(38)

):

.5

.6

(106)(

.7

.8

()

.9

.11

.10

.12

() ()

.469 3 (5)

.415 10 :- - .351 6 (1)
(97) 684 2 (6) :

):(.125 2 () :
:) :

.423-422 2 .() : (2)

.38 6 .(341 3 386-385 11 .(107-106 5 5) : .101 (3)

.91 3 : (7) .(392 2 (8) .(1540) 308

.100 4 107 6 (4)
.69 2

	301	4		(24)	.300	4		(9)
		.212	3		.11		104	
				(25)	3			:
"	"		.90	5	8			296
			.92	23	7			183
125	2		()	(26)				.372
171	17		()		752	2		(11)
248	2							
107-106	5						.(2033)	
.385	11				9			(12)
	91	3		(27)				.304
			98		753	2		(13)
470	3		98				:	
	414	3						.(2033)
		.421	6				.(77)	(14)
.301	4			(28)	91-90	5		(15)
	.17	2			24-23	3		
	.41	2				.166	5	
.372	7			(29)		"	"	(16)
				(30)			.39	2 8
.23	3		90	3	132	4		:
(2035)	753	2		(31)			"	:
(13)	1156	3					:	"
	(97)	684	2			.823-822	2	
7		(6460)	543	2				:
2		(4509)	294			"	.10	
		.(2173)	734		.66	23		"
	(9433)	694	2		101	5		:
5		17	3		.69	2		(19)
182			166					:
			.(25/824)				.26-25	(20)
(2033)	752	2		(32)	.41	2		(21)
-2253	5	(2043)	755	2	.1272	1		
3		.(5719)	2254		"		"	
3		.(12) (11)	1155			.87	23	
3		.(3438)	245		.1272	1		(22)
294	7	.(1308)	51					
734	2		.(4508)				136	
683	2		.(2174)					.100
69	3		.(96)		41	2		(23)
.(10654)		591	3	(10521)				
	:) :					644	3
					"	"	.131	4
.38	6		:(.39	2	8	

4				470		107	6			(33)
	.307	4		100				67	4	
	8				(50)				101	5
				.185		(477	6)
	.372	7			(51)	.277	7			
4					(52)	101	5			(34)
17			()	377				.69	2	
			()	171		.100	4			(35)
			126	2		90	5			
11				248	2					(.2142)
				.386		.415	10			(36)
301	4				(53))				(37)
	.212	3				(4508)	294	7		
	296	3			(54)	1				
	.23	3							.1273-1272	
131	4				(55)	-78	4			(38)
	421	6								.79
	.145	2				91-90	5			(39)
.171	17		()		(56)	415	10			
	.248	2					.1273	1		
2			()		(57)	6)		(40)
				.126		67	4			(477
							69	2		
	.386	11						.107	6	
	.301	4			(58)	91-90	5			(41)
	.17	2				24-23	3			
	.41	2					166	5		
	.212	3			(59)			.82	5	
						.126	2		()	(42)
				.644	3	27	2			(43)
			104		(60)	6)		
			.174	2		.107	6			(477
	301	4			(61)			91	3	(44)
	.212	3						(186	5)
.296	3				(62)			.100	4	
	.23	3			(63)	.185	8			(45)
	.421	6			(64)		.372	7		(46)
	.145	2			(65)	6)		(47)
	.300	4			(66)	69	2			(477
3							.107	6		
				.643				.67	4	
	.90	3			(67)			.91	3	(48)
	.386	11			(68)		98			(49)
	.90	3			(69)	3		392	2	

	.739	2	(84)	.84	.166	5	:	(70)
		.729-728	22					
"	"	.87			.72		.82	
.47	1		(85)		.141	2		(71)
		.65	1	(86)	.85		:	(72)
.91				(87)				
.357							.104	
	.195					85-84		
196			(88)				.72	
		.51				.85-84		
198			(89)					(73)
		.14-13					.611	2
	.360-359		(90)			(19)	(15)	(74)
			:	(91)	1966	(14)		
		.322-321			(36)		(41)	
			:	(92)			.1955	
	.360		(93)	.182			:	(75)
	16		(94)	()	()	(4)		(76)
.199		.360	(95)	.1953			(1)	(77)
		.408-407	(96)			.2002		
1994 -	1415			9				(78)
		49 44	2				.35	
	.26					.110-109		
"	8 /4/77	" 77	(97)					(79)
-	1415						.125	
	.170	2	1994	(98)		:		(80)
		.425-424			-	.398	:	
	.217			(99)	.		-	
	17				"		"	
	.360		(100)	.7-6	2			(81)
		()				.70		
					.426			(82)
		.513	(101)		.71			
-	:			.427-426				(83)
) :	-		"		"		
				2				
						.33-32		

	.9		.519		.(
		(103)	-	-	
	.183-181				
.343	10	(104)	-	-	.
:	:	(105)			
.1960	(16)	(106)		.523	
	.2001	(58)			: (102)
		.4			
.()			:
		.5			.1
			.1992-	1412	
		.6			.2
			-	1413	
		.7			.1993
		.8			.3
-	1412				
		.(1992			.4
			.()
		:)	.5
		.1	-	1412	
					.(1992
		2001-	1422		.6
		.2			
		:			.1316
		.3			.7
-	1417				.8
		1997	.1990-	1411	
		.4			.9
					:
		.1993-	1414		
		.5			:
		.1990-	1410		()
		.6			.1
			.1988-	1408	
	1994-	1415			()
					.2
		.7			.3
.1990-	1411			1332	

		.2		.8
		1404		1988
		.3		.9
			1994- 1414	
				.10
	:)	
1985-	1405	.1	(1990-	1410
				.11
	:		1985-	1405
	1987-	1408		.12
:	" "	1998-	1418	
		.2		
				.1
	" "	1422		.3
.101-63	23	"		.2
	"	1994-	1414	.4
		"		
			1992-	1412
			()	.3
			1994-	1414
		.5		.4
	1999-	1419		
"	"	1994-	1415	.6
.44	2		(-)	.5
		2001-	1422	.7
			- 1416	.6
	"	1998-	1418	.8
	:	"		.7
			1996	
	2001-	1422		.9
			1982-	1402
				.8
			:	
	2001-	1422	1993-	1413
		.10		
	2004 -	1424		.11
			:	
				.1
/4/77	"	1994-	1415	.12
	"			
	.170	2		8
	:			
	1999-	1420		.13
			- 1409	.1
	1999-	1420	1947-	1366
		.14		1988

	. 1981- 1401				
		.17			
					.1
	. 1297		1994- 1414		
:		.18			
					.2
		.19			
. 1989- 1419				1979- 1399	
		.20			.3
			1993- 1414		
		.21			
	. 1992- 1412				.4
		.22			
					.5
		.23			
					.6
	. 1988- 1408			1994- 1414	
					.7
:				1985- 1406	
		.1			
. 1994- 1414					.8
		.2	- 1374		
1992- 1413			-	1955	
					.9
		.3	1987- 1407		
- 1412					
	. 1991				.10
:			- 1414		
	1998	.1		1994	
					.11
	1993	.2			
				1985- 1405	
2000		.3		1999- 1419	.12
	1993	.4			.13
					.14
:			1994- 1414		
	1999	.1			.15
2002		.2)	
				(1992- 1412	
	1987	.3			.16

	. 2002		
. 1953 ()	.2	2004	.4
. 1960 (16)	.3		
. 1976 (43)	.4	1985	.5
(58)	.5		
	. 2001		
	.6	:	
(41)	1966 (14)		.1
.1955 (36) ()	()		

**“Al-Najash” and Its Contemporary Applications
‘A Comparative Study in Islamic Jurisprudence and Jordanian Law’**

*Adnan Mahmoud Al-Assaf**

ABSTRACT

This paper covers comprehensively the subject of *al-Najash* which is one of the forbidden transactions in Islamic *Shari’ah*. It provides by an analytical way a deep study for all the issues relating to this subject in Islamic Jurisprudence, such as its concept, ruling, causes, and its consequences on the contract. This research embodies also an assessment for the rulings of *al-Najash* according to the Jordanian law. It sheds light on its consequences on the contract according to the Jordanian Civil Law and the punishments which are due on the person who commits this crime according to the Jordanian Penalty law and some other Jordanian laws.

Further, this project devotes a whole chapter to research and deduct the contemporary applications concerning *al-Najash*. It illustrates its applications in the auctions, the field of bids –tenders–, trading in the copyrights and incorporeal rights, trading in estates, and the field of advertising. Moreover, one of the important themes that are studied in this project is the motivations and reasons for committing *al-Najash*. This is in addition to assessing the appropriate solutions for them.

* Department of Jurisprudence and Foundations, Faculty of Shari’ah, University of Jordan. Received on 2/6/2004 and Accepted for Publication on 12/12/2004.