# أحكام تصرّفات الشريك في شركة العقد في الفقه الإسلامي


إعداد

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المشرف

الأستاذ الدكتور محمود علي السرطاوي


قدمت هذه الأطروحة استكمالا لمتطلبات الحصول على درجة الدكتوراة

في الفقه وأصوله


كلية الدراسات العليا

الجامعة الأردنية



تعتمد كلية الدراسات العليا
هذه النسخة من الرسالة
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ملخص

تتناول هذه الدراسة الحديث عن أحكام تصرّفات الشريك في شركة العقد في الفقه الإسلامي، فتبين أحكام تصرّفات الشريك في شركة العقد المطلقة بأنواعها: الأموال والوجوه والأعمال ــ بأقسامها المفاوضة والعنان ــ والمضاربة ، مستعرضة أقوال الفقهاء وآرائهم على المذاهب الثمانية: الحنفية والمالكية والشافعية والحنابلة والظاهرية والزيدية والجعفرية والأباضية، مبينة أدلتهم، ذاكرة ما ورد عليها من اعتراضات ومناقشات إن وجدت ، خاتمة في مسألة خلافية ببيان الرأي المختار للباحث مع بيان وجه ذلك الاختيار.

وقد اشتملت هذه الدراسة على تمهيد وفصلين وخاتمة؛ فقد استهلت الدراسة بتمهيد عرضت فيه لتعريف التصرّف وأقسامه وتعريف شركة العقد وأنواعها وحكم كل نوع.

ثم الفصل الأول بعنوان "أحكام تصرفات الشريك في الشركة"؛ بيّنت فيه أحكام الشريك في شركة الأموال والوجوه والأعمال المطلقة بأقسامها المفاوضة والعنان في عقود المعاوضات المالية والإطلاقات والتوثيقات والحفظ والمشاركات والتبرعات والخلط والسفر، مع ذكر بعض ما يترتب عليها من آثار عقب معظم المسائل الواردة في الدراسة.

ثم الفصل الثاني بعنوان "أحكام تصرفات المضارب في المضاربة"؛ بيّنت فيه أحكام المضارب في شركة المضاربة المطلقة في عقود المعاوضات المالية والإطلاقات والتوثيقات والحفظ والمشاركات والتبرعات والخلط والسفر، مع ذكر بعض ما يترتب عليها من آثار عقب معظم المسائل الواردة.

ثم انهيت الدراسة بخاتمة ذكرت فيها أبرز النتائج التي تمخضت عنها.

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# PROVISIONS OF PARTNER DISPOSITIONS IN CONTRACT COMPANY IN ISLAMIC JURISPRUBENCE

**Preparing**

**Musa Hamed Mohammad Abu Saileek**

**Supervisor**

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**Summary**

**This study deals with the provisions of the partner actios in the partner company in the Islamic jurisprudence , as the same shows the partner actions in the partner company in all of its types: Monies, manners, businesses and speculation , and the jurists speeches , evidences and their discussion mentioned therein , which has been chosen to initiate , this stady is started with an introduction included the action definition , its sections and the difinition of the partner company , its types and the provision of each one.**

**This study shows that the partner actions in the partner company are varied and multiple according to the contracts variety exercised by the traders in their business and this study shows that some of these acts is allowed to the patner in the whole of contract without the need to a permission , and some of them not allow unless with or permission of its owner (delegation), and some other has no right either with or without of a permission , and some of them it deferent concerning the provision from a type to other one of the partner company, and some of them it agreed thereupon concerning the provision between some of them or all , as a partner act may be allowed in a company such as the funds company , and not be allowed unless with a permission in other such as the speculation company ( for**

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**example ) , and the effects resulted for a partner acts in the company place in the case of no permission is deferent in its provisions or to be agreed thereupon according the type of action and the type of company , and being these effects are multi-acts , the damage effect may be the inclusion in the case of damage together with the act correction and the continuing validity of the contract , and its effect may be the inclusion the inculusion and the invalidity of the company contract, or the inclusion with the invalidity of the directed act , and its effect may be accepted such act.**

**This stady also shows that the actions has been done in the company is may be accepted by the partner or not according to four basics:**

**First basis: The extent of achieving the interest of the cpmpany by the partner action or not , which is paetner action in the company place is subject to the company interest positively or negatively , therefore , if there are an achieved interest to the company resulted by such act, the partner is be allowed, but otherwise in not be allowed .**

**Scond basis: The extent of achievement an interest to the company resulted by such act , in this case the partner act it will be allowed , if otherwise it will not be allowed.**

**Third basis: The extentof the traders usage concerning their dealing with such act or not, and if this thing is of the trade requirements or not , therefore if such act is of the traders usage it will be agreed thereupon and otherwise it will not be allowed act to the partner.**

**Fourth basis: The extent of joining the damage to its owner and the partner by his act or not , as if his act damaged the partner he will not be allowed thereto. The jurists agreed upon these basics in principle but they are different among them in achieving its purposes concerning the acts of the partner in the company place.**

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