الفساد أسبابه وأحكامه في عقود المعاوضات في الفقه الإسلامي

إعداد

ماجد عبد الرحمن سليم أسعد

المشرف

الدكتور العبد خليل أبو عيد

قدمت هذه الأطروحة استكمالا لمتطلبات الحصول على درجة الدكتوراه في الفقه وأصوله

كلية الدراسات العليا

الجامعة الأردنية

الخاتمة 212
ملاحق الرسالة 213

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الملخص

تناولت هذه الدراسة موضوع الفساد أسبابه وأحكامه في عقود المعاوضات، وهو من الموضوعات الحيوية التي كانت مدار بحث بين العلماء قديما وحديثا، وسعت هذه الرسالة إلى التعمق في مفهوم الفساد، ومدلوله، والنظر فيمن فرق بينه وبين البطلان، ومن جعلهما رديفين، وفي بيان ضوابط العقد الفاسد عند الفقهاء، ثم البحث في أسباب الفساد العامة، وضوابط كل منهما، وبيان موقع الفساد والبطلان في كل سبب منها، ودراسة فقهية مقارنة لمجموعة من الفروع الفقهية لعقود المعاوضات في كل سبب من هذه الأسباب، ومدى مطابقة الضوابط المنصوصة لكل مذهب على حدة، ومن ثم دراسة النتائج والآثار المترتبة على العقد الفاسد.

فجاءت هذه الرسالة في ثلاثة فصول كالآتي:

- الفصل الأول: في مفهوم العقد والعقد الفاسد ، وضوابطه عند الفقهاء
- الفصل الثاني: أسباب الفساد في عقود المعاوضات
- الفصل الثالث: أحكام وآثار العقد الفاسد

وقد توصلت هذه الرسالة إلى جملة من النتائج ذكرتها في نهاية البحث.

CORRUPTION; IT'S REASONS AND RULES TN THE COMPENSATORY CONTRACTS IN THE Islamic figh

B Y

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This study dealt with the subject of corruption, it's reasons and rules in the compensatory contracts.

It is considered to be one of the vital issues that were at discussion for the Islamic sharia'

This study sought to delve into the corruption as a concept; it's implications, looking at the difference between it and invalidity, and the issues of equality between corruption and invalidity.

This study clarified the discipliner of the invalid contract, and then it clarified the general reasons of corruption and their discipliner.

This study is considered to be a comparative study in the Islamic figh for a group of all figh branches of the compensatory contracts in every reason of them.

This study focused on the range of the compatibility of the written texts for each Islamic dogma (mathhab), and finally this study showed the results, and consequences of the invalid contract.

<u>This thesis is divided into three chapters:</u>

- -The first chapter: the concept of the contract and thinvalidcontract, and it's disciplines for the Islamic " faqeeh ".
- The second chapter: I wrote about the reasons for corruption in the compensatory contracts.

- The third chapter: I wrote about the results and effects of the invalid contract.

The study concluded that:

1. The invalid contract: it is the contract of it's origin without it's specification.

2. Corruption and invalidity are considered to be some of the results of objection - clues for judging the contracts based on the distinction between the corrupted contracts for al-hanfia followers, and the invalid one for all people, we can say that: in the hanafia's conceptualization, corruption is broader and more comprehensive than the all people's conceptualization, because the invalid contract subsumes the corrupted one and the contrast of the invalid contract.
So, the lower (which is invalid) is included in the higher level (which is the corrupted, and not the other way around).

3. There is an agreement between Muslim faqeehs that ignorance is one of the reasons. It's divided into two kinds:

a. In affective simple ignorance

b. Affective complicated ignorance that leads to invalidity between the all people's view point, and the corruption for hanafia.

4. Cheating is two kinds:

a. Simple that can be forgiven

b. Complicated that affects the contract.

There is an agreement between al-hanafia and all the people that harmful cheating that is incidental on the origin of the contracted items, can lead to the invalidity of contract because it has the rule of being expired.

5. It is not legal to accept the obliged person with corporal punishment or imprisonment, and it is not executed.

The obliged one has the permissions to do so, in the condition that the reason of obligation has vanished.

6. The origin of conditions are the permissions and expansions, and thcondition of it's validity is it's suitability with items included in the contract, and the authority of the common sense to judge these conditions whether to refuse or accept that.
The expansion of activation of a rule is to implement the contracts as possible.

The corrupted contract without paying has not any effect as the effect of the invalid one.

7. The corrupted contract has got an effect as being a material incident it is considered to be a reason – generator for actual legal effects.
This will lead to transfer the warranty to the buyer and his right to perform as the owner of that paid thing with the permission of that owner, this will lead to consider him as the representative of that warranty.