

الإنبابة فف الوفاء

إعداد
رفم عءنان عبء الرءمن الشنطف

إشراف
ء.علف السر طافف

2007م

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إلى من أنارا لي طريقي مجبهما و رضاهما

و الذي و والدتي الحبيبين .

إلى رفيق دربي

زوجي العزيز مهند

إلى أحبتي إخوتي و أخواتي

و أخصهم ذكرا أخي الحبيب أسيد .

و من ساعدتني في مسيرة حياتي

وعلمتني الصبر و الكفاح الحبيبة تهاني .

إلى عينيبي اللتين أبصر بهما

طفلي الحبيين عمرو و سارة .

وأخيرا إلى كل من أحبني بصدق .

الشكر و التقدير

بداية الشكر والحمد لله رب العالمين الذي أنعم عليّ بنعمة الصحة والعلم.

ثم أتقدم بالشكر والتقدير إلى جميع أساتذتي في كلية القانون في جامعة النجاح الوطنية وأخصّهم ذكرا الدكتور محمد شراقة والدكتور أمين دواس – عميد كلية القانون في الجامعة الأمريكية حالياً – والدكتور غسان عمر.

كما أتقدم بجزيل الشكر والعرفان والتقدير إلى أساتذتي الأفاضل الأستاذ الدكتور علي السرطاوي بما له من فضل عظيم في الإشراف على هذه الرسالة. و الأستاذ الدكتور جهاد الكسواني و الأستاذ الدكتور حسين مشاقي الذي كان لبصماتهم على هذه الرسالة فخر لي.

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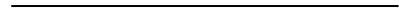
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G.H.Terite: **The Law Of Contract**. Ninth Edition.London.SweetAndMaxwell.1995.p1-7.and G.H.Beal.and M.P.Furmston:**Contracts"CasesAndMaterials**.Second Edition.Edinburgh ,London.Buterworths.1990.p3.and Ewan.Mckendrick: **Contract Law**. Second Edition.Lonond.Macmillan.1994.p15.

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.AllanFarnsworth 60 .2006.
andWilliamF.young:ContractscasesandMaterials.ThirdEdition.noplace.nopublisher.p127-128.

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الفرع الثالث: العلاقة بين المنيب والمناب لديه

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.1992 .
" " :
.1992

Allan Farnsworth.yong: **Contracts Cases And Materials**. Third Edition.

NO place. NO publisher. NO year.

Avery Wien Katz: **The Economic Analysis Of Guaranty Contract**.p1.

مقال تم الحصول عليه من الموقع الالكتروني
<http://www.jstor.com>.

Ewan.Mckendrick: **Contract Law**. Second Edition.London.Macmillan

1994.

G.H.Beal.andM.P.Furmston:**Contracs"CasesAndMaterials**.Second

Edition.Edinburgh,London.Buterworths.1990.

G.H.Terite: **The Law Of Contract**. NinthEdition.London.Sweet And

Maxwell.1995.

" " :

:

.181-157 2005 /9:21 . / .

:

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.2006 . . - -

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.(

.1999 . /

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<http://www.jstor.com>.

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**Delegation in Payment: Comparative Study Of
Egyptian and Jordanian Civil Laws and The
Palestinian Draft Civil Law**

By
Reem Adnan Abdel-Rahman e-Shanti

Advisor
Dr. Ali Sartawi

*Submitted in Partial Fulfillment of the Requirements for the Degree
of Master of private Law, Development, Faculty of Graduate
Studies, at An-Najah National University, Nablus, Palestine.*

2007

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Abstract

The subject of this thesis is about the delegation system in payment or to put more accurately the role of the delegation system in performance. The role of delegation is determined by the legal nature of delegation in payment and legal system of delegation.

This study holds a comparison between the Egyptian, Jordanian civil laws and the Palestinian draft civil law.

The study is divided into preparation and two chapters. Chapter one held a comparison between the delegation system and novation and assignment and transfer of debt. The basis of this comparison is scientific methodology which depends on comparison between the laws and the legislations, subject of this research, in dealing with the three systems in terms of concept, pillars, types and effects to identify areas of weakness and strength, points of difference and similarity to arrive at the sound legal adaptation of delegation in payment, investigated in the fourth requirement of the last section of this chapter.

Chapter two was devoted to the delegation system in payment in the framework of a scientific, analytical, legal, objective detailed study of the delegation system in payment and how delegation is different from characteristics of expressions, terms and similar close legal systems. The chapter also dwelt on the legal characterization given to it given its being a source of obligation. Then the chapter moved to types of delegation in payment according

to classification accredited by the common laws. The two types of delegation are perfect and imperfect delegations. Sections two and three of chapter one tackled both types. In section two, the researcher examined perfect delegation, in terms of concept and legal adaptation, be it a contract or not and if so, what are pillars and required conditions for its fulfillment. The researcher dealt with the second requirement in the section explaining the reason for characterizing it as perfect and illustrating the benefits which this type of delegation achieves.

The second type of delegation, namely imperfect delegation, was dealt with in the third section of this chapter. The researcher illustrated its concept and pillars and explained its characterization as imperfect, and differentiating it from other close legal systems. The researcher, further, illustrated the embodiment of this delegation in legal posts in the framework of civil transactions and in the framework of international trade. This last framework led me to the necessity of calling for its standardization with the modern common civil legislations and fostering it with in the rules of international trade.

In the fourth section, the researcher tackled the rulings which result from delegation of the two types (perfect and imperfect) Based on that, the researcher illustrated the extent of the lawmaker's accuracy in underlining delegation under causes of expiry that equals payment

The study concluded with several results and recommendations.

