

DOI: <https://doi.org/10.63332/joph.v5i5.1308>

## The Ruling on Removing a Partner from a Company: An Applied Legal and Jurisprudential Study

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### Abstract

*The objective of this study was to elucidate the legal principles governing the removal of a partner from a company within the context of Islamic jurisprudence and law. The study also elucidated the rationales underlying the removal of a partner from a company, as viewed through the lens of Islamic jurisprudence and subsequent legal implications. The analysis further expounds on pertinent cases in Jordanian courts that address this subject. The study employed a descriptive approach, drawing from both the inductive and analytical approaches. The inductive approach entailed a procedural examination of material in Islamic jurisprudential sources and references, citing the opinions and evidence of Islamic jurists. The analytical approach involved a procedural definition of the partnership and its rulings, an explanation of the forms of removing a partner from a company, and an analysis and discussion of texts and evidence. The study concluded that Islamic jurisprudence does not stipulate the expulsion of a partner from the company in cases of immorality and transgression. Rather, it stipulates the dissolution of the company contract in the event that one of the partners leaves the company for any reason. The researchers attribute this phenomenon to the historical composition of companies, which were typically comprised of two or three entities and did not reach the scale of modern corporations. In the context of dissolution, the possibility of the contracting parties establishing a new company was discussed. Jordanian law explicitly stipulates the permissibility of expelling a partner from a company if evidence indicates justifiable grounds for dismissal, while also considering the interests of both the company and the individual partner. The final decision regarding the expulsion of a partner rests with the court, which must determine whether the evidence substantiates the expulsion. The court may rule to dissolve the contract if the company is unable to continue operating, as each case is adjudicated on its own merits.*

**Keywords:** Financial Transactions, Company, Separation, Removal of Partner, Jordanian Law.

### Introduction

It is imperative to acknowledge the divine intervention that has been instrumental in fostering peace and prosperity throughout history. The prevailing sentiment of gratitude is directed towards the Supreme Being, the Lord of the Worlds, and it is equally important to recognize the sanctity of the Master of Prophets and Messengers, Muhammad, and to extend this esteem to his family and companions. Islamic law is comprehensive and integrated, addressing all aspects of life: political, social, and economic. Among the economic aspects that the noble Shari'a has taken into account and addressed extensively and remarkably are companies, which are defined as "a

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contract in which two or more persons contribute money or work, which makes their actions valid, and their participation in the profit or loss."(Khalil,1981 AD). The legal framework governing company contracts encompasses a series of regulations that delineate the permissible actions and

restrictions, the respective rights and obligations of each partner, and the apportionment of profits and losses, if applicable. An extensive corpus of research has been conducted by scholars, both ancient and modern, addressing these issues to arrive at a legal ruling that is consistent with Shari'a and its general principles, and which does not conflict with the spirit of Shari'a and its general legislative system. One such issue pertains to the exclusion of a partner from a company in Islamic jurisprudence and its rulings. This study endeavors to address some of the salient issues associated with this subject.

### **Study Problem:**

In light of the accelerated growth and diversification of corporate entities, which is concomitant with the preeminence of capitalist ideology and the dearth of religious consciousness and ethical restraint, the study endeavors to address the following primary inquiry:

What is the Islamic jurisprudence and legal standpoint on the removal of a partner from a company?

This question gives rise to the following sub-questions:

- 1) What are the possible reasons for a partner's expulsion from a company? What is the ruling on each reason?
- 2) What does Jordanian law say about the expulsion of a partner from a company? What are the most prominent judicial applications of the expulsion of a partner from a company?

### **Study Objectives:**

The study aims to clarify the following main objective:

To clarify the ruling on removing a partner from a company, both in Islamic jurisprudence and law.

This main objective is divided into the following sub-objectives:

- 1) To clarify the possible reasons for removing a partner from a company, along with the rulings.
- 2) To clarify the Jordanian legal position on removing a partner from a company, and to mention the most prominent judicial applications of removing a partner from a company.

### **Significance of the Study:**

The importance of the study lies in two aspects:

First: The theoretical aspect

Represented by the need for an independent scientific study that clarifies the ruling on removing a partner from a company in Islamic jurisprudence, as well as in Jordanian civil law.

Second: The practical aspect

It is expected to benefit students of Islamic law, muftis working in the field of fatwa, and legal professionals.

### **Study Methodology:**

The study used the inductive approach by tracing the opinions of jurists regarding the ruling on removing a partner from a company, citing evidence for this, and the views of Islamic jurisprudence and law on this issue. It also used the descriptive approach to define a company and explain the forms of removing a partner from a company.

### **Study Limits:**

The study was limited to the substantive aspects of the topic addressed by jurists, both ancient and modern, and also limited to the views of Jordanian civil law and Jordanian companies law.

### **Previous Studies:**

Al-Mujawala, Saja Atta Ali, "Expelling a Partner from a General Partnership According to the Provisions of the Jordanian Companies Law," Al-Hussein Bin Talal University Journal for Research, Vol. 8, No. 1, 2022 AD. The research was divided into two sections, an introduction, and a conclusion. The initial section addressed the legal foundation for requesting the removal of a partner from a general partnership. The subsequent section expounded on the criteria for requesting the dismissal of a partner from a company and the ramifications of its implementation. The objective of the study was to delineate the legal foundation for the dismissal of a partner while the company remains in effect. The study employed an inductive approach to track legal opinions and a deductive approach to analyze rulings. The present study's relationship to the aforementioned text is twofold. Firstly, it discussed the subject of dismissing a partner in Jordanian law. Secondly, it explained that this procedure is followed in the event of a partner's negligence, as opposed to saying that the company is dissolved. However, the present study is distinct in that it will address the jurisprudential aspect of the subject and the legal aspect, with a discussion of judicial applications in Jordanian courts.

### **Study Plan:**

Topic One: The Concept of Exclusion, Partnership, and Its Legitimacy

First Section: The Concept of Exclusion and Partner

Second Section: The Concept of Partnership and Its Legitimacy

Topic Two: Excluding a Partner from a Partnership in Islamic Jurisprudence and Law

Topic One: The Ruling on Excluding a Partner from a Partnership in Islamic Jurisprudence and Law

Second Section: Reasons for Excluding a Partner from a Partnership in Islamic Jurisprudence and Law

### **Introductory Section: The Concept of Exit, Partnership, and its Legitimacy**

#### **First Section: The Concept of Exit and Partnership.**

The initial section: The implications of expulsion: The noun is derived from the verb "to expel," and its root is "to expel." The noun means exclusion, separation, and division (Ibn Manzur, 1414 A) The term "exit" is mentioned in the Holy Quran in numerous verses, as God Almighty says: {Would you not fight a people who broke their oaths and determined to expel the Messenger} (Tawbah 13) The term "expulsion" in this context signifies that the Prophet (peace be upon him) did not voluntarily depart, but rather was compelled to leave against his will by those who

conspired to oust him (Al-Tabari,310 AH).

And God Almighty said:{ Allah only forbids you from those who fight you because of religion and expel you from your homes and aid in your expulsion - [forbids] that you make allies of them. And whoever makes allies of them, then it is those who are the wrongdoers} (Mumtahina 9) They cooperated to expel you and banish you (Al-Tabari,310 AH).

And God Almighty says:{ Then He will return you into it and extract you [another] extraction} (Nuh 18) The expulsion is achieved by God's action, will, and power, not by their will. A thorough examination of these verses reveals that the term "expulsion" signifies an act that was not initiated voluntarily, but rather compelled by external forces.

The root of the verb in the form af'al is if'al; therefore, akharaj ikhrāj signifies that an action was performed on behalf of the individual subjected to it.( Ibn Jinni, 392 AH) This outcome is congruent with the objectives of the present study, as the partner desires to remain in the partnership, while the other partners seek his departure. In the present study, the question of whether the partner wanted to leave of his own free will will be excluded from the scope of analysis.

### **The second section: the meaning of partner**

A language partner is one who participates in the order and sale ( Ibn Jinni, Abu al-Fath Uthman,392 AH)( Al-Fayyumi, Scientific Library, Beirut, Vol. 1, p. 311) The term "portion" is defined as the share that is distributed to others in the form of financial contributions or labor ( Lisan al-Arab, vol. 10, p. 449) The Arabic term is defined in the terminology of the Arabic language. A partner is defined as an individual who engages in financial or occupational collaboration with another person.

The Second Section: The Concept of Partnership and its Legitimacy

The First Section: The Concept of Partnership

First: Partnership, linguistically, comes from "shirk," which means the mingling of two partners. It also means share (Ibn Manzur, 711 AH)

Secondly: The term “company”:

Within the context of the company's nomenclature, there are two overarching classifications of terminology: general and special. The general concept is referred to as the "permissive company," which refers to funds and benefits that are not exclusive to a specific individual but rather shared among the general population. This concept is also referred to as the "ownership company," which is further divided into two categories: compulsory and optional. Compulsory refers to situations where two or more individuals are bound by law or force in a particular location, such as in the context of inheritance. Optional, on the other hand, involves situations where the parties involved voluntarily enter into agreements, such as those pertaining to ownership (Al-Kasani, 587 AH).

In regard to the specific connotation, the term signifies the entity responsible for the execution of the agreement, a concept that has been delineated by legal scholars with various interpretations. These interpretations are contingent upon the nature of the entity in question, the categories into which it falls, and the criteria determining what is deemed permissible or impermissible, as stipulated by the Hanafi school of jurisprudence. The document in question constitutes a legally binding agreement between the two parties involved in the asset and profit

transaction (Al-Hadadi, 800 AH). The Malikiya defined it as follows: The concept of "permission to act for them with themselves" (Ibn al-Hajab, 646 A.H). is a critical aspect of the subject that warrants further examination. The Shafi'iyah school of jurisprudence posits the principle of al-mudarrisah, which translates to the concept of "the right to the same thing for two or more people on a common basis." (Al-Hasani, 829 AH). This indicates that both parties are legally entitled to manage the financial assets of the other, thereby concurrently functioning as agent and client. According to the Hanbalis, this arrangement constitutes a "meeting in an entitlement or disposition." (Ibn Qadama, 620 AH).

According to the provisions stipulated within the Jordanian Civil Code, the term "company" is defined as "a contract whereby two or more persons commit themselves to participate in a financial project by providing their share of money or labor to invest in that project and share any profit or loss that may arise from it." (Jordanian Civil Code of 1976, Chapter III, Article 582). Contemporary scholars have discussed these definitions and criticized them to some extent. However, this is not the focus of our research (Al-Khayyat, 1414 AH, 1994 AD). We posit that the most appropriate definition of the company is as follows: A contract is defined as an agreement between two or more parties that stipulates a specific economic activity with the objective of generating profits. This is the intended meaning that we are seeking to ascertain through the research.

Section II: The legality of the company: The legality of the company is proven by the Book, Sunnah and consensus; as for the Book, God Almighty says: { they share a third, after any bequest which was made or debt } (An-Nisa 12) And God Almighty said: { to his ewes. And indeed, many associates oppress one another, except for those who believe and do righteous deeds - and few are they } (Sad 24) The partners are the companions (Al-Tabari, 310 AH).

From the Sunnah of the Prophet (It is narrated that Al-Baraa bin Azab and Zayd bin Arqam were partners, and they bought silver for cash and credit, so they asked the Messenger of Allah - may Allah bless him and grant him peace - and he said: "Whatever is hand-to-hand, take it, and whatever is credit, throw it away" (Al-Bukhari, 256 AH).

Abu Dawud narrated from the Prophet - may Allah bless him and grant him peace - that he said: "Allah Almighty says: 'I am the third of the partners unless one of them betrays the other: I am the third of the two partners unless one of them betrays his companion, but if one of them betrays his companion, I will come out from between them)' (Abu Dawud, 275 AH). The aforementioned hadiths collectively substantiate the legitimacy of the company.

Muslim scholars reached a consensus on the permissibility of partnerships in general. Ibn al-Mundhir stated the following: It was determined that a valid partnership is predicated on each of the two partners allocating funds equivalent to those of their partner, whether in dinars or dirhams. These funds are then to be amalgamated until they become a single entity, the distinction of which is eliminated. The partners are then permitted to engage in trade, with the understanding that any surplus accrues to their benefit and any deficit falls upon their responsibility. In the event that these conditions are met, the partnership is considered valid." (Ibn al-Mundhir, 1425 AH, 2004 AD).

### **Third branch: The meaning of removing a partner from the company**

According to the aforementioned evidence, the act of removing a partner from a company can be interpreted as a form of exclusion, whereby one partner is involuntarily expelled from the company. Consequently, the present research will not address the partner's potential desire to

depart from or withdraw from the company, nor will it delve into matters beyond the partner's control, such as death or illness. Instead, the present discussion will address the circumstances in which partners may petition for the expulsion of another from the company. This petition is made with the intention of safeguarding the interests of the company and preventing its destruction or collapse. Additionally, the discussion will address the removal of a partner for reasons that are deemed trivial or illogical.

### Section One: Expelling a Partner from a Company in Islamic Jurisprudence and Law

This section will address two issues. First, it will examine the ruling on removing a partner from the company according to jurists. It will also explore whether they stipulated the existence of this solution while the company remains. Second, it will provide a detailed explanation of the legal opinion on this issue, if there are convincing reasons for removing him. The second issue pertains to the rationales that may motivate partners to terminate their relationships, along with the subsequent rulings on each.

First requirement: The ruling on removing a partner from a company in Islamic jurisprudence and law

According to the Hanafis, if a partner violates his partner, the partnership is invalid (Al-Sarakhsi, Al-Mabsut, 483 AH). In Ibn Abdeen's footnote, if the partner violates the agreed upon conditions, he will be liable for damages, and if the partner is known to be dishonest, he must be held accountable by the judge (Hashiya Ibn Abdeen, c4, p321).

In the chapter on what invalidates a partnership, they said: Dissolution by one of the partners. If he dissolves when the condition of dissolution exists, it is dissolved. Death, apostasy, insanity, and everything that removes the agent from the agency. It is noted from the statements of the Hanafis in their reliable books that they did not touch upon the subject of removing the partner from the partnership if he betrayed or showed signs of immorality. Rather, their solutions were as follows: 1. Including the money of the transgressing partner 2. Accounting before the judge 3. They also said to dissolve the company, in fact what is understood from their texts is that the exit of any partner from the company means the dissolution of the company contract.

Anyone who follows the Maliki texts will find that the opinion of dissolution if the partner leaves or is removed is the most likely. It is stated in Al-Shalabi's commentary: "The partnership is dissolved in the event of intentional dismissal if the company's property is a thing, even if it is merchandise, it is not dissolved." (Al-Zaili, Tafseer al-Haqiqah and Hashiya al-Shalabi, Al-Amiriya Al-Kubra Press, C3, p. 323). That is, if one of the partners intends to dismiss his partner, then the partnership is dissolved, according to them (Abu Abdullah al-Mawaq, 897 AH).

As for the Shafi'ish, they believe that if the partner removes his partner, the partnership contract is annulled (Al-Shirazi, 476 AH). In Hashiya al-Sharwani, it is stated that the condition of the partner is that he must be just, so if it turns out that he is not, the partnership is annulled (Al-Hitmi, 974 AH). They believe that the partner may not sell with gross overpayment, nisiya, or anything that involves gambling, if he does, the partnership is annulled, and he may not sell it, that is, make it a commodity and pay it to those who work for them in it, even voluntarily, because he has not accepted another instead, and if he does, he is liable for a fine (Al-Hitmi, 974 AH). so the Shafi'ish doctrine appears that one partner's removal of his partner causes the company to be annulled.

As for the Hanbalis, they argue that the partnership is invalidated when a partner dismisses his

partner, but they stipulate that the money must be depleted, otherwise the partnership remains until the money is depleted (Al-Fayoumi, Al-Misbah Al-Munir, c2, p610). Al-Bahuti said: "A partnership of all kinds is a contract that is permissible for both parties, because it is based on agency and trust, but it is invalidated by the death of one of the partners, by his absolute insanity, by his imprisonment for insanity or bankruptcy in the matter in which he was imprisoned, by the revocation of one of them, and all other things that invalidate the agency; if one of them removes his partner, the one who is removed, even if he does not know it, will be removed like an agent and may only act in his share of the money." (Al-Bahuti, 1051 A.H)

Based on the above, the scholars did not mention the permissibility of removing a partner while the partners remain, but they agree that the removal of any partner from the partnership leads to its dissolution.

The two researchers believe there is no objection to stating that it is permissible to remove a partner from a company in general if the partner's continued presence would affect the company's operations, for the following reasons:

First: The lack of a provision in Islamic jurisprudence regarding the removal of a partner from a company is due to the fact that companies in the past often consisted of a small number of partners, rather than the large number we see today. It is easy to dissolve the contract and reconstitute a new one, but this is now impossible, especially in joint-stock companies, which may consist of an unlimited number of people and may operate in more than one country and have multiple branches. There is no objection to stating that a partner may be removed while the company remains in operation. The fact that scholars have not explicitly stated this does not mean that it is forbidden, as long as it does not conflict with an explicit text or a valid principle. The ruling, even if it is not explicitly stated, may be derived from the general rules of Islamic law and the basic rules of transactions.

Second: We can say that removing a partner from the company falls under the jurisprudential rules that prohibit harming others (Al-Zuhaili, 1427 AH, 2006 AD). There is no harm and no harm is done, and choosing the lesser of two evils is preferable. The evil resulting from removing the partner from the company may be lesser and less than saying to dissolve the company contract.

Third, at the corporate level, the public interest takes precedence over the private interest. The company's interest in survival, continuity, and production takes precedence over the partner's interest in remaining in the company. If the harm in his continued existence outweighs the benefit, then it is permissible to dismiss him in accordance with the established principles of Islamic jurisprudence, which state that the prevention of harm takes precedence over the achievement of benefit, and that the public interest takes precedence over private interest. In this regard, Al-Darini establishes his principle which states: "Private interest does not retain its original legitimacy unless it is in accordance with the general legislative system." (Al-Drini, Theory of Arbitrariness, p. 80)

Fourth: The argument for removing a partner while maintaining the company is often necessary, especially since many companies support the national economy, and the argument for dissolving the company is based on negative repercussions for society as a whole. Therefore, the argument for removing a partner from the company is less serious and less harmful than the argument for dissolving the company at the community level as a whole.

However, the permissibility of removing a partner from a company is not absolute, but is limited

by two factors:

First, there must be strong reasons to support the permissibility of the removal. Second, the matter must be referred to the judiciary for a thorough and comprehensive review, weighing rights, benefits and harms. A decision must then be made as to whether or not the deportation is permissible.

Under Jordanian law, the removal of a partner from a company is considered a means of protecting the partners in the company, protecting the company in general, and even protecting the national economy, given the damage that dissolution of a company causes in many companies.

Article No. (23)(The Companies Law and its amendments No. 22 of 1997 until the 2018 law, Article 23) of the Jordanian Companies Law specifically mentions the removal of a partner from the company in the case of a general partnership (Al-Khayyat, 1414 AH, 1994 AD) and it is annexed to the provisions applicable to general partnerships and limited partnerships (Al-Khayyat, 1414 AH, 1994 AD) It states that the judiciary has the right to intervene to remove one of the partners if there is a justification for doing so, but it is not permissible for one of the partners to do so alone, rather the matter is left to the court according to what it deems appropriate, provided that the company continues to exist among the others. This solution is a realistic and logical solution and aims to preserve the company instead of saying that it should be dissolved (Al-Mujawala, 2022)

Among the judicial applications that were mentioned in Jordanian courts as a practical application of what was stated in this research is Judgment No. 231 of 2023, Economic Chamber - Amman, Subject: Expulsion of a partner in a general partnership. It ruled to expel the partner from the company according to the claims, evidence, reasons and justifications that necessitate his expulsion. It preferred this decision to the declaration of dissolution, taking into account the interests of the remaining partners and the preservation of the national economy. In the opinion of the researchers, in such cases and rulings, we note the creativity of the Jordanian legislation and its insightful vision and achieving a balance of interests that avoids harm to the participating parties as much as possible.

## **Section Two: Reasons for Removing a Partner from a Partnership in Islamic Jurisprudence and Law.**

This section will discuss two reasons for removing a partner from a partnership, the ruling on each reason, and its explanation in Islamic jurisprudence and law.

Section One: The ruling on removing a partner from a partnership due to his immorality.

Question: This question examines the decision regarding a partner when it becomes clear to the partners that he is a sinner, or when his condition changes from righteousness to immorality, God forbid, and the remaining partners fear that he will dispose of the money in a way that God Almighty has forbidden, such as by taking usury, or by depositing his money in usurious banks, or by buying and selling alcohol, or by engaging in any forbidden trade, or if he has harmed the reputation of the company and damaged it. Are these reasons strong enough to justify saying that it is permissible to remove the partner from the company as a preventive measure to protect the company, to protect the money from being lost, and to protect the remaining partners?

First, if his immorality is due to a defect between him and God, such as neglecting prayer or committing minor sins, then this is not a justification for ending the partnership with him, since



the purpose of the partnership is to gain profit through a legitimate means, and this does not conflict with its purpose. An analogy to this is that most jurists have allowed a non-Muslim to associate with a non-Muslim even though it is disliked, so the immoral person is even more disliked (Al-Sughnaki, 714 AH).

Second, if the partner's immorality goes beyond the relationship between him and God to the relationship between him and people, for example, if he becomes a swindler in his business and a liar, then this will be a means for him to increase his money in an unlawful way and to eat people's money unjustly. Says God Almighty: { O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent } (An-Nisa 29) Then the continued presence of the partner is harmful, and the statement of dissolution is also harmful to him. So the statement to remove this corrupt partner is less harmful than the dissolution of the company and the continued presence of this corrupt partner. There are two conflicting interests here: a public interest and a private interest, and the public interest takes precedence over the private interest. Or we can say that there is a conflict between the right of the partner to remain in the company and the right of the partners to maintain the progress and economic activity of the company without harm. It is known from the rules of legislation that this partner is abusing his right with his corruption, and the Prophet, may God bless him and grant him peace, says: "There should be neither harm nor reciprocal harm (Ibn Majah, 273 AH).

In Sharia, rights are limited by the absence of harm. Therefore, if this partner became a transgressor, it was permissible to remove him from the partnership and give him his share of the capital and profits. This separation should be by judicial order, so the balance dictates that this partner be removed. As evidence of this standard, the Prophet (peace and blessings be upon him) ordered that the palm tree of Samurah ibn Jundub be cut down in order to prevent the most serious harm, in exchange for a benefit that was almost trivial compared to the harm that would result (Abu Dawud 275 AH) Therefore, the person who acted in a contradictory manner within the partnership, his actions were essentially invalid, necessitating the annulment of the contract in his case, while maintaining the contract in the case of his partners. What is the fault of the other partners and the people working in the partnership? Isn't it possible that the entire country would be harmed by the annulment? Therefore, it is more correct and just to remove the partner from the partnership.

Third, some of the statements of the jurists can be quoted, including:

1. Scholars have stated that among the general rulings regarding partnerships, the hand of a partner is one of trust, and he is not liable unless he transgresses or is negligent. This statement requires that the partner be just and trustworthy in the company. Any partner who commits an act forbidden by the Shariah is considered a transgressor, negligent, and liable.
2. Some jurists have also considered each partner to be a trustee, requiring him to be just ( Al-Desouki, 1230 AH) otherwise he will be removed and replaced by another (Al-Desouki's 977 AH; Mughni al-Muhtaj, 1415 AH, 1994 AD; Ibn Qadama, 620 AH; al-Mughni, 3rd edition, 1417 AH, 1997 AD).

Fourth, the foundation of a partnership is based on the fear of God Almighty and the trustworthiness of the partners. If this condition is violated, the partners must remove that partner (Al-Qarafi, 684 AH). Similarly, if a partner's immorality is evident and the company is endangered by him, they must either come to an agreement and work to remove the immoral partner or file a lawsuit with a judge demanding the dissolution of the partnership and his

removal from the partnership, especially if there is clear immorality and transgression. If there is a transgression, he must be held responsible for it and must immediately return the capital and the profit, if any, because his immorality does not waive his rights. If the company has debts, he is considered a guarantor for them along with the other partners.

Fifth, lying, cheating, and deception in business can damage a company's reputation, cause people to abandon it, and cause it to lose credibility in the marketplace. Therefore, the immoral person must be removed from the company.

Section Two: The ruling on removing a partner from the company by conspiring against him

The meaning of conspiracy is to gather and consult to harm someone, and God Almighty says about this: { He said, "O Moses, indeed the eminent ones are conferring over you [intending] to kill you } (Al-Qasas 20) And nothing hurts more than killing (Ibn Manzur, 711 AH).

The image of the problem: The partners conspire among themselves to expel one of their partners from the company without his consent. The partner performs his duties as required, and the other partners want to expel him for profit, or for illogical reasons, or out of hatred, envy, old enmity, or other reasons. Is it permissible to expel the partner from the company? And exclude him? In these cases, does this situation constitute a justification for saying that he should be expelled?

First: The ruling on conspiracy between partners to remove one of them from the company (religion).

Conspiring against a partner and agreeing to remove him from the company without an excuse is considered treason and a violation of covenants and agreements. Says God Almighty: { O you who have believed, fulfill [all] contracts } ( Al-Ma'idah 1) God Almighty said: { And fulfill the covenant of Allah when you have taken it, [O believers], and do not break oaths after their confirmation } ( An-Nahl 91) Allah, the Almighty, has commanded His servants to observe the covenants which they make between themselves, and has forbidden them to break them. He has made it clear to them that He, Glory be to Him, knows what you do in regard to the covenants you make and the oaths you swear, whether you fulfill them or break them, and in regard to your other deeds. He will ask you about them and what you have done in them. The covenant is one of the covenants in which fulfilling what they have promised and not betraying each other is a constitution and a law among the laws that govern the covenant, without any explicit text to that effect. So any breach or violation of it will have a painful punishment from Allah the Almighty (Al-Tabari, 310 AH.P, c. 17, p. 283). Allah the Almighty has compared the one who breaks a covenant, betrays it, and deceives others to a foolish, ignorant woman who unravels her wool after spinning it, as a warning against this shameful act (Al-Ezz ibn Abd al-Salam, 660 AH; al-Mawardi, 1416 AH, 1996 AD)

Imam Ahmad narrated in his Musnad on the authority of Anas bin Malik, who said: "The Prophet of God, may God bless him and grant him peace, never addressed us without saying: "There is no faith for one who has no trustworthiness, and there is no religion for one who has no covenant (Ibn Hanbal, 241 AH).

Meaning: There is no complete faith for someone who betrays someone's wealth or person, and there is no complete religion for someone who made a covenant with someone and then betrayed and deceived them without a legitimate excuse (Al-Madhari al-Zaydani, 727 AH; Al-Manawi, 1031 AH) The basic principle for partners is that they should be trustworthy among themselves, keep the fear of God in mind, and make their primary concern cooperation for the success of the

project, not cooperation against each other. In Islamic jurisprudence, partnership is based on piety. When the partners agreed to enter into this partnership, it was as if they had entered into a contract between themselves and God based on piety and obedience, on loving your brother as you love yourself, and on each partner putting his partner's interests before his own. Remember the hadith of the Prophet (peace and blessings be upon him) on the authority of Abu Hurayrah, who said: Allah says: "I am the third of two partners as long as one of them does not betray the other. But if the other one betrays me, I will leave them (Abu Dawud, 275 AH; Sunan Abu Dawud, 1st edition, 1430 AH, 2009; al-Hakim and al-Dhahabi: Ibn Hajar Ahmad ibn Ali ibn Muhammad ibn Ahmad al-Asqalani, 852 AH), Al-Tulkhaj, 1419 AH. 1989 AD).

The Hadith shows and proves that Allah's companionship, protection, and support for partners, as well as the sending down of blessings and success in trade and partnership, depend on trustworthiness, not betraying each other, and keeping promises. If one of them betrays the other, the blessing, support, and help will be withdrawn, and they will be left to their own devices. How miserable will they be afterwards! Those whom Allah leaves to themselves will be lost and destroyed, and will stray from the right path. Says Allah, the Exalted in Power: { absence and that Allah does not guide the plan of betrayers }( Yusuf 52) (al-Ramli, 1004 AH).

Al-Manawi says: "God Almighty says, 'I am the third of the two partners in terms of help, blessing, and growth, as long as one of them does not betray the other by failing to fulfill the trust or guard against betrayal. If he betrays him in this way, then the blessing is removed from their wealth (Al-Manawi, 1031 AH). Then, when these partners agreed to the covenant among themselves, the right of each to remain in the covenant became equal. No one has any advantage over the other as long as each is committed to what he has and what he owes. No one has the right to expel anyone from the covenant. Therefore, conspiring to expel a partner from the partnership is religiously forbidden, as it involves treason and the breaking of covenants and agreements. All of this is contrary to what Islamic law has stated and contradicts the highest foundation on which partnership is based in Islamic jurisprudence, namely trustworthiness, loyalty, and the prohibition of deception and trickery. The Jordanian law has listed in Article (33) (Company Law No. 22 of 1997 as amended by the 2018 Law, Article 33). the grounds that justify the court's expulsion of a partner from the partnership, including If a partner violates the partnership agreement in a fundamental and persistent manner, or causes serious harm to the partnership as a result of committing an error, negligence or neglect in the management of its affairs, or if the company can no longer continue its business except at a loss for any reason, or any other reason mentioned in the article.

While mentioning these justifications, the law gave the court the choice of either dissolving the company or removing the partner from the company if the interest requires the company to remain. We note that what the Jordanian law went to in the first justification of the partner's breach of the company contract in a fundamental and continuous breach, or causing it serious harm as a result of his committing an error, negligence or neglect in managing its affairs or in looking after its interests or preserving its rights, is very similar to the statement that it is permissible to remove the partner from the company for his immorality, fraud and deception in trading so that it became as if he was negligent in looking after its rights and preserving its interests.

Among the judicial applications mentioned in Jordanian courts as a practical application of what has been stated in this research is Judgment No. 269 of 2022, the beginning of retail rights. In this case, the court finds that the plaintiffs' request to remove the defendants from the company

(M, E), which is a simple limited partnership, is based on the plaintiffs' sole reason, which is the defendants' obligation to the company in the amount of (12,618) dinars. The court finds that this is not a sufficient reason to remove the defendants from the company, especially since the court has not proven the existence of a dispute between the plaintiffs and the defendants that has degenerated to a level that makes it impossible for the company to continue its work and partnership with the defendants. On the other hand, the presence of the defendants as partners in the company does not hinder the work. Therefore, based on the above and in accordance with Articles (23) and (48) of the Companies Law and its amendments No. (22) of (1997), the court decides to dismiss the plaintiffs' lawsuit for lack of a valid legal basis. As for the second image, which is the issue of conspiracy against the partner or his expulsion from the company, the law does not address it as a justifiable excuse for expulsion, and perhaps the reason for this is that the law considers the company contract as a binding contract, so conspiracy against the partner is not considered a strong justification for expulsion, and the statement that it is permissible to expel the partner from the company is not specific to the general partnership and the simple limited partnership, because although it is not stipulated in the Jordanian Companies Law, there is a general text in the Jordanian Civil Law on the permissibility of expelling any partner from any company, regardless of its type, as stated in Article no. (605) of the Civil Code (Jordanian Civil Law No. 43 of 1976, Article (605)).

Second: The consequences of removing a partner from the company, practically or judicially.

Jurists have differed regarding the type of partnership contract, with regard to its binding nature, and there are two opinions:

The majority of jurists, including the Hanafi (Abdul Aziz al-Bukhari, 616 AH), Shafi'I (Al-Ramli, 1004 AH; Al-Muhtaj to Sharh al-Manhaj, 1404 AH, 1984 AD), Hanabila (Ibn Qudamah, 620 AH) and Ibn Hazm (Ibn Hazm, 456 AH), schools, hold that a partnership contract is permissible but not necessary, such as an agency. This opinion entails the following:

1. It is invalidated by the death of one of the partners, their insanity, their being placed under interdiction due to foolishness, and by dissolution for any reason (Al-Khayyat, 1414 AH, 1994 AD).
2. If the imposed prohibition is removed, the person removed is removed, and he is not entitled to participate except to the extent of his share, or to dispose of all of the partnership, because the person removed did not revoke his permission (Ibn Qudamah, 620 AH)
3. This means that if one of the partners refuses to proceed with the meeting, the judge must not compel him to do so (Al-Babarti, 786 AH; Al-Iyyah 1389 AH, 1970 AD).

Thus, if someone wants to cancel a second term with his partner or remove him, he is permitted to do so, according to the majority opinion, because the partnership contract is not necessary.

The Maliki school, however, holds that a partnership contract requires long contracts of exchange, and its binding nature continues until the commercial capital is lost. Ibn Yunus Nisan Abd al-Salam and Iyadh said: This is the doctrine of Ibn al-Qasim and the implication of Ibn al-Hajeb statement (al-Dasuqi, 1230 AH).

Therefore, the company contract cannot be cancelled until the company ends and the money is spent.

### *78 The Ruling on Removing a Partner from a Company*

What the two scholars believe is that a company contract can be dissolved and one of the partners can be removed from it, unless it would harm one of the partners, the company in general, or the state. Ibn Rajab said: "The rescission of permissible contracts if it causes harm to one of the contracting parties or others related to the contract is not permissible and will not be enforced, unless the harm can be remedied by a guarantee or the like, in which case it is permissible" (Ibn Rajab, 795 AH) Both parties must be aware of the rescission, which is what the Hanafis and Shafi'is stipulate, with the exception of the Hanbalis. Ibn Aqil disagreed with them and said: "What is more appropriate to our school of thought regarding Mudarabah and partnerships is that they are not dissolved by the dissolution of Mudarib until the owner of the capital and the partner know it, because it is a means to the greatest harm, which is the deprivation of the capital of interest and profits" (Al-Mardawi, 885 A.H.).

If one of them decides to oust the other, monopolize the partnership, and give him what he is entitled to, then there is no problem, because from a practical standpoint it is a non-binding contract. However, from a religious point of view, he sins by breaking the covenant and betraying trust. In practice, even if we allow the dissolution and removal of a partner from the partnership, this may result in the company's reputation being tarnished and damaged. It is better for partners to avoid all of this.

However, the question remains: Can this partner legally hold the other partners accountable in front of a judge? In other words, we can remove him and terminate his contract, but is there a legal penalty for this action?

Lawyers have mentioned compensation in cases of transgression and negligence, but we have not found any scholar who has stated that if a partner proves psychological damage as a result of being removed from the partnership, who would advocate compensation? In fact, all agree that if a partner claims betrayal against his partner and the other partner denies it, then his claim is valid because the default is that there is no betrayal (Ibn al-Samnani, 499 AH)

The researchers believe that there is nothing wrong with going to court and demanding financial compensation for the psychological damage inflicted as punishment for the partners for their acts of betrayal and conspiracy against the partner and his expulsion.

As for the Jordanian Companies Law, it clarifies the consequences of expelling a partner from the company in Article (28), which can be summarized as follows: (Companies Law and its amendments No. 22 of 1997 until the 2018 law, Article 28: Withdrawal from the company)

First: Regarding the company's address, it is necessary to change the address with the name of the expelled partner, unless the address has a commercial reputation and the partners wish to keep it, in which case they may do so with the approval of the Companies Controller.

Second, an application must be filed with the Commercial Register of the company to change the names of the partners in the company.

Third: Amend the Articles of Association or maintain the same.

Fourth, a statement of the status of the company after the partner is removed from the partnership.

### **Conclusion (Results and Recommendations)**

Praise be to God, Lord of the worlds, and may blessings and peace be upon our Master Muhammad, his family, and all his companions. The research has led to the following

conclusions:

1. The expulsion of a partner from a partnership is defined as: the forced exclusion of one of the partners from the partnership.
2. It is permissible in Islamic jurisprudence to expel a partner from a partnership. This position does not contradict any explicit text or principle, but is consistent with the principles of Islamic law.
3. The statement that it is permissible to expel a partner from a partnership is conditional upon the existence of justifiable reasons and the matter being referred to the judiciary.
4. It is permissible to expel an immoral partner from a partnership because his continued presence would harm the company, unlawfully consume people's wealth, and destroy the company's reputation.
5. It is forbidden to conspire against a partner in order to expel him from the partnership, as this is treason and a breach of covenants and agreements. However, there is no objection to his expulsion under Islamic jurisprudence, since the partnership agreement is a non-binding contract, according to the majority of jurists.
6. Jordanian law allows the expulsion of a partner from a partnership while the remaining partners remain, as a measure to protect the remaining partners and the national economy, provided that there are acceptable justifications and the matter is referred to the judiciary for adjudication.
7. Jordanian courts are full of cases involving the expulsion of a partner from the company. Sometimes they decide to expel him, and other times they consider that this reason is not a convincing excuse to expel the partner from the company, so they decide to dismiss the case.

### **Recommendations:**

This study concluded with the following recommendations:

1. The need to establish controls and limits to regulate a partner's withdrawal from the firm, especially since most older case law did not provide for a partner's withdrawal from the firm.
2. The research recommends the need to study the possibility of financial compensation for the psychological damage inflicted on the partner of the conspiracy that led to his dismissal from the company.

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