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الإهداء

إلى من اخفض لهما جناح الذل من الرحمة

إلى والديّ

الشكر والتقدير

بعد شكر العلي القدير على ما منه علي من فضل, أتقدم بخالص الشكر والتقدير للدكتور
غسان خالد رئيس قسم العلوم الإنسانية في كلية الدراسات العليا والاستاذ في كلية القانون
في جامعة النجاح الوطنية والذي كان له الفضل الكبير في الإشراف على هذه الرسالة.
كما أتقدم بجزيل الشكر للدكتور أنور أبو عيشة والدكتور علي السرطاوي والذي كان
لبصماتهم على هذه الرسالة فخر لي.

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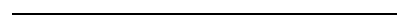
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**An-Najah National University
Faculty of Graduate Studies**

**The Contract of Surety ship and Consequences of
Applying it:
Comparative Study of Almagalaa and
Egyptian Civil Law**

**By
Su'ad Tawfiq Suleiman Abu-Mashayekh**

**Supervised by
Dr. Ghassan Khalid**

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

2006

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Abstract

This study examined the consequences resulting from the application of the contract of surety ship. It's a comparative study of Almagalaa and the Egyptian Civil Law.

The researcher began with a definition of suretyship, its characteristics and parties according to Islamic fiq and Almagalaa , on one hand, and the Egyptian Civil Law on the other hand.

Chapter one was devoted to types of suretyship interms of source of liability. This suretyship is one of agreement which the judicial and legal lawbook was content with. The chapter also dwelt on the practical importance of differentiating between the three types. It was found that suretyship falls into civil and commercial, in terms of nature, and there is a practical significance in differentiating between the two types given the difference between civil and commercial works in general. In this chapter, suretyship was distinguished from similar legal systems. It was found that the position of consequential bailman is what distinguishes it from other legal provisions.

In chapter two, the researcher examined the pillars of the contract given the fact that the suretyship is a contract itself.

1. Satisfaction. In this pillar, there are two opinions. One opinion conditions the bailman's agreement only for the suretyship to take effect. The other opinion conditions the consent of the bailman and the creditor's

acceptance. The researcher gave greater weight to the opinion that conditions the consent of the bailman only for the suretyship to hold if it's a donation. Accordingly, the bailman shall have the qualification of donor. However, if the suretyship is in return for something, it's conditioned on the competence of discretion, pertaining to the bailman and the creditor but it's not conditioned on a certain competence, pertaining to the creditor, for the suretyship to take effect.

The chapter also investigated the necessity for the bailman's will to be free from shortcomings/ drawbacks of satisfaction: coercion, error, deception and exploitation. The researcher examined the proof of suretyship contract, its interpretation according to Almagalaa and the Egyptian Civil Law. The section was entitled "Satisfaction".

2. Venue. The researcher studied the presence of the original liability or the possibility of its presence. The liability has to be true and legitimate. It has to be specified in order for the venue of suretyship contract liability valid because the bailman's liability is void, existence and otherwise.
3. Reason. The reason for the suretyship contract, between the bailman and the creditor, might be one of compensation or donation. There is no relevance to the reason for the relationship of the bailman with the creditor unless its illegitimate. In this case, the bailman may hold on, in front of the creditor, the revocation of the suretyship of contract given the void of the reason for liability between the bailman and the creditor.

Chapter three was devoted to the study of the consequences resulting from the application of the suretyship contract. In this chapter, the researcher tackled the creditor's right. That is, the right to ask the bailman and execution on the

bailman's assets unless agreed upon otherwise, or if the bailman's assets unless agreed upon otherwise, or if the bailman fails to pay upon the creditor's request first in accordance with what the law stipulates for him.

In contrast, the bailman's rights are the rebuttals according to the original liability in terms of void and expiry and exceptions stipulated as a provision. That is, the payment upon the request of the borrower by the bailman. This right is stipulated in the Egyptian Civil Law. In Almagalaa, the bailman may not do so unless agreed upon in the contract or in a subsequent contract that stipulates that the bailman may not ask the borrower. The payment ruling of the request applies to the rebuttal ruling on execution. Concerning the payment by division, it was found that there was no difference between Almagalaa and the Egyptian Civil Law. The other exceptions, loss of deposits, due to creditor's error, exception due to the creditor's taking of execution procedures against the borrower after the bailman's warning of him and the exception of the creditor's failure to apply in the borrower's bankruptcy. This was stipulated in the Egyptian Civil Law only. The researcher, however, okayed that on the basic of general legal rules in Almagalaa which give the bailman the right to hold on to such exceptions.

The study concluded with the consequences of the bailman's execution of his commitment to the suretyship contract in terms of the extent of his right of recourse to other personal bailsmen and recourse of real bailman or owner of estate upon the bailman's faithfulness. The study ended with the results of the study, conclusions and recommendations.