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

**Sale of a Property Belongs to Another
A Comparative Study Under
Positive Law & Islamic Jurisprudence**

**Prepared by
Ayman Mohammed Hussein Nasser**

**Supervisor
Dr. Ali Al-Sartawi**

*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

**Sale of a Properly Belongs to Another
A Compartive Study Under
Positive Law & Islamic Jurisprudence
Prepared by
Ayman Mohammed Hussein Nasser
Supervisor
Dr. Ali Al-Sartawi**

Abstract

The subject of this research is the issue. Sale of a properly Belongs to Another a Compartive Study under Positive Law & Islamic Jurisprudence.

The research includes a preliminary section where I stated the essence of sale in language, law & doctrine where I have compared among these three concepts.

In the first section, I've tackled the concept of sale in the positive law & Islamic jurisprudence, comparing between these two concepts. Then I've limited the range Sale of a properly Belongs to Another, determining what might be included in this sale or not, distinguishing it from a few other suspected systems.

In the second section, I've dealt with the issue of legal nature for the Sale of a properly Belongs to another in the positive law, discussing the theories said in this concern as follows:

1. The theory of cancellation;
2. The theory of absolute nullity;
3. The theory of relative nullity;
4. The theory of suspended contract;

5. The theory of annulment, for a special kind.

Then I dealt with the theories said in rooting the Sale of a properly Belongs to Another according to the Islamic jurisprudence; such as:

1. The theory Sale of a properly Belongs to Another cancellation;
2. The theory Sale of a properly Belongs to Another stopping.

Then I compared between the two doctrines: the Islamic & legal in determining the lawful nature Sale of a properly Belongs to Another where I studied the rule of suspended contract & the rules of contract liable to cancellation; as well as which of the two contracts is more appropriate for the case Sale of a properly Belongs to Another.

In the third section, I researched the subject Sale of a properly Belongs to another where I started with determining the legal nature of real-estate sale in the positive law & Islamic jurisprudence, comparing between the two trends. Then, I moved to limiting the nature of the lawful nature for the selling Sale of a properly Belongs to Another according to the positive law & Islamic jurisprudence, comparing between the two concepts, the lawful & doctrinal from the issue Sale of a properly Belongs to Another.

In the fourth section, I took the rules Sale of a properly Belongs to Another where I studied first the rules Sale of a properly Belongs to Another between the contracting parties; and the right of the buyer & seller in revoking the Sale of a properly Belongs to Another and the position of Islamic jurisprudence in this concern; as well as the extent of buyer's right to claim compensation according to the two doctrines: the legal & Islamic; as well as the source of this compensation on the basis of the lawful &

Islamic trends. Then, I took the cases of correcting the Sale of a properly Belongs to Another, such as,

1. The lapse of buyer's right to sue for an action-at-law against annulment by prescription;
2. The licensing of buyer for the sale;
3. The possession of buyer for the sale;
4. The possession of seller for the sale.

Then, I took the rules Sale of a properly Belongs to Another according to the true proprietor where I studied the issue of fixing or licensing the proprietor for the sale inscribed on his proprietorship. This needed at first studying the concepts of fixing & licensing according to the lawful & Islamic concepts; as well as the difference between the two terms in the shade of the two doctrines. And I moved afterwards to the hypothesis of not confirming the proprietor for the sale where in this supposition there were two relations for the true proprietor: the 1st, his relation with the buyer; and the 2nd, his relation with the seller. Yet, in the hypothesis of fixing the true seller for the sale, three results have emerged:

1. The validity of selling in the right of the proprietor;
2. The lapse of the buyer's right to claim for annulment;
3. The relation between the true proprietor & the buyer.

Finally, I researched the rules of 3rd. Party's Sale in the case of successive sales. Then, there was the end which included the results of the research and recommendations.