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Examining Ja'farī Jurisprudence: The Incorporation of the Leonine Clause in Partnership and Company Contracts

Caferî İçtihadının İncelenmesi: Leonine Maddesinin Ortaklık ve Şirket Sözleşmelerine Dahil Edilmesi

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Abstract

The Leonine clause, a topic relatively underexplored, holds substantial importance within the context of partnership and company contracts. This research aims to analyze this clause through the lens of *Ja'farī* jurisprudence, shedding light on the diverse perspectives presented by Shia jurists. To achieve this goal, a series of preliminary discussions were initiated. Initially, the discourse delved into defining the Leonine clause and its legal status across various jurisdictions. Subsequently, we explored the concept of contractual partnerships, the requirements of partnership contracts, and the classification of conditions in Islamic law, distinguishing between valid, invalid, and nullifying conditions. Our primary focus revolved around the Leonine clause within partnership contracts as interpreted through *Ja'farī* jurisprudence. We elucidated the contrasting viewpoints expressed by Shia jurists regarding this specific condition. Furthermore, we analyzed the placement of the Leonine clause in contemporary company contracts, considering its validity and consequential impact on such agreements. Ultimately, drawing from the perspectives of both early and contemporary Shia jurists, we argued for the invalidity of the Leonine clause and its nullifying effect on company contracts.

Keywords: *Islamic law, Ja'farī Jurisprudence, Leonine clause, company, partnership contract, requirements of partnership contract*

Öz

Nispeten az araştırılmış bir konu olan Leonine maddesi, ortaklık ve şirket sözleşmeleri bağlamında büyük önem taşımaktadır. Bu araştırma, Şii fakihler tarafından sunulan farklı bakış açılarına ışık tutarak bu maddeyi Caferî fıkhı merceğinden analiz etmeyi amaçlamaktadır. Bu amaca ulaşmak için bir dizi ön tartışma başlatılmıştır. İlk olarak Leonine maddesinin tanımlanması ve çeşitli hukuk sistemlerindeki hukuki statüsü üzerinde durulmuştur. Daha sonra, sözleşmeye dayalı ortaklık kavramını, ortaklık sözleşmelerinin gerekliliklerini ve İslam hukukunda şartların sınıflandırılmasını, geçerli, geçersiz ve hükümsüz şartlar arasında ayrım yaparak araştırdık. Temel odak noktamız, Caferî içtihadıyla yorumlandığı şekliyle ortaklık sözleşmelerindeki Leonine maddesi etrafında dönüyordu. Şii fakihlerin bu özel şarta ilişkin ifade ettikleri karşıt görüşleri açıklığa kavuşturduk. Ayrıca, Leonine maddesinin çağdaş şirket sözleşmelerindeki yerini, geçerliliğini ve bu tür anlaşmalar üzerindeki sonuçsal etkisini göz önünde bulundurarak analiz ettik. Nihayetinde, hem erken dönem hem de çağdaş Şii fakihlerin bakış açılarından hareketle, Leonine maddesinin geçersizliğini ve şirket sözleşmeleri üzerindeki geçersiz kılıcı etkisini savunduk.

Anahtar Kelimeler: İslam hukuku, Caferî fıkhı, Leonine maddesi, şirket, ortaklık sözleşmesi, ortaklık sözleşmesinin şartları

Introduction

The investigation into Islam as a legal framework has recently captivated the attention of Western legal scholars and jurists. Despite a plethora of notable literature, articles, and studies dedicated to Islamic law, there exists a significant lacuna in the debate about the Shiite school of jurisprudence, a subject of considerable import. Regrettably, this facet has been marginalized and insufficiently acknowledged by a majority of scholars and researchers within the field. This article analyzes the Leonine clause in partnership and company contracts from the perspective of *Ja'farī* jurisprudence. As a necessary prelude to exploring the core discussion, a succinct historical survey of the Leonine clause is conducted, emphasizing its significance within the legal structures and judicial proceedings of European and Arab nations, particularly those identified as Muslim countries. Furthermore, this examination extends to encompass Iran, given its prominence as the global focal point for *Imami Shiites* and the foundational reliance of its legal system on *Ja'farī* jurisprudence.[1] The ensuing discourse, therefore, encompasses a concise exploration of the Leonine clause within the framework of Iranian law. After these preliminary considerations, the article advances to scrutinize pertinent *Sunnah*[2] (tradition) and *hadiths*[3] within Shia *Ja'farī* jurisprudence on this subject matter, accompanied by an analytical assessment of the viewpoints and deliberations articulated by jurists aligned with the twelve Shia traditions.

[1] Article 12 of the Iranian Constitution: The official religion of Iran is Islam and the Twelve *Ja'fari* school [in *usul al-Din* and *fiqh*], and this principle will remain eternally immutable. Other Islamic schools, including the *Hanafi*, *Shafi'i*, *Maliki*, *Hanbali*, and *Zaydi,* are to be accorded full respect, and their followers are free to act by their own jurisprudence in performing their religious rites. These schools enjoy official status in matters pertaining to religious education, affairs of personal status (marriage, divorce, inheritance, and wills) and related litigation in courts of law. In regions of the country where Muslims following any one of these schools of *fiqh* constitute the majority, local regulations, within the bounds of the jurisdiction of local councils, are to be in accordance with the respective school of *fiqh*, without infringing upon the rights of the followers of other schools.

[2] In Shia terminology, *Sunnah* encompasses the words, actions, and *taqrīr* of the Prophet of Islam and *Ahl al-Bayt*. *Taqrīr* represents tacit approval and endorsement of the Prophet of Islam and his Ahl al-Bayt. The term *Ahl al-Bayt*, from the perspective of Twelver (*Ithna'ashari*) Shi'as, refers to al-Imam Ali, Fatima al-Zahra, al-Imam Hassan, al-Imam Hussain, and nine subsequent Imams, all descending from al-Imam Hussain.

[3] The term "*Hadith*" encompasses novelty, news, and spoken words. Shia jurisprudence specifically denotes statements indicating words, actions, or *Taqrīr* attributed to the Prophet and his *Ahl al-Bayt*.

1. History and Definition

In ancient Roman law, the spirit of absolute equality was assumed in the equal distribution of profits and losses (*harmonatio lucri et damni)*, and after the end of the partnership, the distribution of profits and losses was made according to the contributions of the partners.

The fact that there should be a spirit of equality within the framework of a company or partnership contract is intrinsically linked to the concept of partnership intention among its participants. The intent of participation, in essence, underscores a conscientious commitment to the collective will of all partners, fostering positive collaboration grounded in equality to achieve the partnership's or company's objectives. This collaborative ethos necessitates oversight through project management, wherein partners engage in cooperative endeavors within the institutional framework of the partnership or company and actively contribute to the determination and selection of these institutions.

Hence, should a provision exist within the corporate agreement stipulating the exclusive allocation of all company benefits to the partners or the complete deprivation of profits for one among them, it would be deemed inequitable. Consequently, such a stipulation is proscribed due to its contravention of the principle of equality. This proscribed condition is commonly referred to as the Leonine clause, originating from the narrative of *Phédre*. In this fable, a lion engaged in a partnership with other animals, and after a successful prey hunt, an uneven allocation ensued.

In defining the leonine clause, an author explains that every clause in a contract must possess a lawful and ethical nature and refrain from upsetting the equilibrium between the parties involved. Any clause contradicting this principle would be deemed abusive, potentially rendering the contract void in whole or in part. The leonine clause is a stipulation that confers all rights to one party while exempting them from any obligations, and conversely, imposes all contractual obligations on the other party without granting any corresponding rights.[4] Also, In *Black's Law Dictionary*, the Leonine clause is explicated under the Latin phrase "*Leonina Societas*" in the subsequent manner: "An attempted partnership, in which one party was to bear all the losses and have no share in the profits. This was a void partnership in Roman law; and, apparently, it would also be void as a partnership in English law, as being inherently inconsistent with the notion of partnership.".[5]

[4] Jean-Philippe Zanco, *Lexique d'Économie et de Droit*, (Paris : Ellipses Edition Marketing, S.A. 2018), p. 83.

[5] Henry Campbell Black, *A Law Dictionary* (2nd ed., Saint Paul, Minnesota; West Publishing Co., 1910), 711.

The predominant application of this conceptual framework entails the qualification of a contract or agreement that exclusively confers benefits upon one of the contracting parties. Consequently, in the presence of a Leonine agreement, a discernible asymmetry emerges, delineating clear victors and beneficiaries, as well as those who incur losses or disadvantages.

2. The Leonine Clause within the Legal Domain of France and other European nations

2.1. The Leonine Clause in French law

2.1.1. The condition of non-payment of profits to one of the partners

In French legal doctrine, the condition wherein profits are not disbursed to one of the partners is denoted as a "Leonine clause." Analogous to principles entrenched in ancient Roman law, French legal traditions have aspired to uphold parity in the apportionment of profits and losses. Although enshrined in French civil law (Article 1844-1), this norm has not been deemed mandatory. Within the realm of civil law, partners are afforded latitude to deliberate alternative methodologies for the distribution of profits and losses. Moreover, partners possess the prerogative to stipulate diverse modalities for the allocation of profits and losses. Nonetheless, the application of this rule concerning partners who contribute their labor as a share appears disproportionate, as it treats such partners akin to those who have made a lesser contribution to the company's capital (Section 1844-1 civil law).

Empowering partners with the capacity to specify criteria governing the apportionment of profits and losses while incorporating vital considerations intrinsic to the nature of the company contract, the French legal framework recognizes these stipulations as unwritten conditions. As a result, the subsequent segment of Article 1844-1 of the Civil Code does not invalidate agreements in which one partner is stipulated to receive the total proceeds or none whatsoever.

Precedents in judicial decisions do not proscribe the existence of Leonine clauses in *Les sociétés de personnes ou sociétés par intérêts* (partnerships or companies by interest) or in *sociétés de capitaux* (capital companies). The rationale behind this permissibility remains elusive, given that the entitlement to profit constitutes a fundamental right of both partners and shareholders. Ripert and Roblot argue that such a stipulation could lead to the dissolution of the contract. The absence of a legal prohibition in French law does not imply compatibility with the intended framework envisioned by

the parties involved in the contract. Thus, specifying that all company profits should be exclusively allocated to one partner or that one partner is entirely precluded from receiving profits is prohibited. It is important to note that the language of the law should not be interpreted literally in this context. However, if conditions exist wherein profits are distributed disparately without regard for the partners' respective proportions or if such distribution is contingent upon the fulfilment of a condition, these conditions are deemed valid.[6]

It is noteworthy that judicial precedent precludes the acceptance of a Leonine clause in an agreement that sanctions the payment of a deceased partner's share at a price lower than its actual value. The law of July 24, 1966, further mandates that the valuation of the company's share be determined by an expert based on the prevailing market price on the day of the deceased partner's demise.

2.1.2. The condition of exemption from bearing losses

According to Part 2 of Article 1844-1 of the French Civil Code, from a broad point of view, the condition that exempts one of the partners from sharing in the losses of the company or from incurring all the losses can be considered a Leonine clause. The prohibition of such a condition is rooted in the thought that if a partner has the right to participate only in receiving profits, without seeing losses, this is contrary to the nature of the company. Although certain companies may, within legal limits, restrict the extent to which partners are obligated to bear losses, a complete exemption from such responsibility is not permissible. With the description that such an agreement is valid exclusively between the involved partners and holds no relevance to third parties.

Nevertheless, it is important to acknowledge that, in general, both the Leonine clause and the condition exempting partners from bearing losses are considered unwritten under French law. However, a lingering question persists: Does the nullification of such a clause result in the invalidation of the entire company?

In response, Article L 235-1 of the French Commercial Law explicitly excludes the Leonine clause from the list of conditions that render limited liability companies and joint-stock companies invalid. However, doubts may arise concerning its applicability to other forms of companies. Article L 235-1 introduces the possibility of arguing that if this clause does not apply to limited liability and joint-stock companies, the issue of

[6] Ripert G. et Roblot R., *Traité élémentaire de droit commercial (par M. GERMAIN),* Tome 1, Vol. 2 (18e édition, Paris : L.G.D.J., 2002), n° 1056-45.

company invalidation may extend to other corporate structures. Nevertheless, it is imperative to acknowledge the lack of complete persuasiveness in this argument. The content of the general provisions of the civil law regarding the invalidity of companies is not without ambiguity. Therefore, the first part of Article 1844-1, which is about the violation that leads to the cancellation of the company, does not include Article 1844-10 (amended in 2019)[7], which is about the sanction of a Leonine clause. Instead, it incorporates Article 1832[8], affirming that everything emanating from this article constitutes the essence of the company contract, encompassing both profit-sharing and loss-bearing obligations in joint ventures. Given the foregoing concerns, the preferable resolution lies in the first part of Article 1844-1, which declares the Leonine Clause an unwritten condition and refrains from prescribing any additional sanctions.

2.2. The presence of the Leonine Clause in the legal statutes of various European nations

1- In conjunction with France, the legal statutes and jurisprudential landscape of numerous European nations exhibit discernible considerations on the Leonine Clause, some of which are delineated herein:

2- In Italy, Article 2265 of the Civil Code (Title V - on partnerships and companies), categorized under the Leonine pact (*divieto di patto leonino*), explicitly invalidates any pact wherein one or more partners are precluded from participating in profits or losses.

3- The Spanish Civil Code, through Article 1691, stipulates the nullity of agreements that exclude one or more partners from any entitlement to gains or losses.

4- In Belgium, provisions against Leonine clauses aimed at profit monopolies or exclusions are proscribed in both articles of association and extra-statutory (shareholder) agreements. Article 32 of the Companies Code provides that the agreement which would give one of the partners all of the profits is void. The same applies to the stipulation, which would exempt from any contribution to losses, the

[7] As per Article 1844-10 of the Civil Code of France, the nullity of the company can only result from the violation of the provisions of Article 1832 and the first paragraph of Articles 1832-1 and 1833, or from one of the causes of the nullity of contracts in general. Any statutory clause contrary to a mandatory provision of this title, the violation of which is not sanctioned by the nullity of the company, is deemed unwritten.

[8] Article 1832 of the Civil Code of France stipulates that the company is established by two or more persons who agree by contract to contribute to a common enterprise with assets or their industry in order to share the profit or benefit from the economy that may result therefrom. It may be established, in cases provided for by law, by the will of a single person. The partners undertake to contribute to the losses.

sums or effects placed in the company fund by one or more of the partners. The sanctions for this contravention diverge between entities possessing and lacking full legal personality. For entities lacking legal personality (e.g., partnerships and general partnerships), a partnership agreement featuring a Leonine clause is rendered null and void. This nullity may be circumvented if the partnership agreement and/or the Leonine clause can be characterized differently. In contrast, for entities with legal personality (private companies, cooperative companies, and public limited companies), any clause, agreement, or provision conflicting with the aforementioned principles is deemed unwritten. Consequently, only the relevant (statutory) clause is rendered (relatively) void, preserving the integrity of the deed of incorporation (or agreement) and the company itself, notwithstanding the nullity of the Leonine clause.[9]

5- Although the United Kingdom lacks a specific statutory provision on the Leonine clause, judicial precedent treats it as unenforceable and unconscionable. Notably, in the Abbey Developments Ltd. Case,[10] courts have asserted that a 'termination for convenience clause'[11] must furnish compensation for various losses, encompassing loss of profit and contributions to overheads on the balance of the work. The absence of such benefits renders the clause susceptible to being treated as Leonine, hence, deemed unenforceable and unconscionable.

3. The Leonine clause in the laws of Egypt and Arab countries

3.1. The Leonine clause in Egyptian law

Paragraph 1 of Article 515 within the Egyptian Civil Code explicitly mandates that "If it is agreed that one of the partners shall not participate in the profits or losses of the partnership, the partnership deed is void."

The elucidation of this article reveals the identification of two distinct categories of agreements deemed as Leonine clauses, consequently leading to the invalidation of the company contract:

(a) The agreements related to the quality of profit sharing: Instances involving the exclusion of a partner from profit sharing, alongside scenarios where one partner

[9] See Laurens Lodefier, Het toepassingsgebied van het verbod op leonijnse bedingen na het WVV. Mogelijkheid tot disproportionele winstverdeling. https://www.odigo.eu/nl/nieuws/journal/het-toepassingsgebied-van-het-verbod-op-leonijnse-bedingen-na-het-wvv-mogelijkheid-tot-disproportionele-winstverdeling. Accessed: February 2, 2024.

[10] Abbey Developments Ltd v PP Brickwork Ltd [2003] EWHC 1987.

[11] A termination for convenience clause (TC Clause) allows a party to reserve the right to end a contract at its own convenience. Typically, this clause requires giving advance notice of termination.

exclusively benefits from all profits accruing to the company, fall within the purview of the Leonine clause. This also extends to instances where a minimal profit is allocated to one of the partners, thereby rendering the company contract invalid.

(b) Agreements Involving the Bearing of Company Losses: This category encompasses agreements taking various forms, including the unilateral assumption of all company losses by one partner, immunity of one partner from any company losses, or the receipt of the full company share in compensation for any losses incurred, regardless of the financial conditions stipulated by the company. Such agreements are categorized under the umbrella of the Leonine clause. Additionally, if it is agreed that the transfer of shares by one or more partners to the company necessitates an evaluation at a price exceeding the actual value under any circumstances, it falls within the parameters of the Leonine clause.[12]

It is imperative to underscore that in the assessment of conditions analogous to the Leonine clause, Egyptian courts have the authority to examine the facts and determine whether conditions such as the Leonine clause within a contract have the effect of nullifying the company.[13]

3.2. The Leonine clause in the legal provisions of various Arab Countries

The legal provisions governing the Leonine clause exhibit notable diversity across several Arab nations, each adopting distinct perspectives on the matter.

In the Kingdom of Saudi Arabia, extant legislation deems the Leonine clause as invalid, yet without necessitating the nullification of the entire company contract. Article 15 of the recently enacted Saudi Companies Law expressly outlines that the profits and losses of the company must be shared among all partners. However, any agreement designed to deprive a partner of company profits or absolve them from bearing damages is rendered void under this provision.

Conversely, Tunisia's Civil Law of Obligations and Contracts (*al-Majalah*) in Chapter 1301 adopts a stringent stance. If a company contract stipulates unequal profit distribution or imposes losses exceeding a partner's share in the company's capital, both the clause and the entire contract are invalidated. Another scenario outlined in Chapter 1302 of the same law pertains to agreements granting exclusive profit

[12] Abū Zayd Raḍwān, *Commercial Companies in Comparative Egyptian* Law (Cairo: Dar Al-Fikr Al-Arabi), 79.

[13] See the decision of Egyptian Court of Appeals, March 14, 1944, Al-Mahamah, Date 26, quoted by Abū Zayd Raḍwān, ibid., p. 77.

entitlements to one partner, which is deemed invalid in terms of partnership and construed as a donation. However, stipulating the release of a partner from all losses renders the condition invalid, although the contract remains valid.

The United Arab Emirates (UAE) echoes a comparable sentiment in Article 29, Paragraph 3, of its federal legal decree on commercial companies. The provision declares the entire contract void if it specifies the deprivation of one partner's profits, exemption from losses, or the establishment of a fixed profit for their share in the company.

In the Sultanate of Oman, Article 13 of the Commercial Companies Law underscores the prohibition of agreements leading to the exclusion of a partner from profit participation or exemption from bearing losses. Such agreements are deemed void and considered non-existent under Omani law.

Similarly, the Algerian Civil Code, as articulated in Article 426, invalidates any company contract wherein an agreement stipulates that one partner is bereft of a share in the company's profits or losses.

3.3. The result emanating from the discourse

Our empirical investigations have revealed divergent legal perspectives across jurisdictions concerning the treatment of a stipulation related to the Leonine clause within company contracts:

- Some legal systems regard such a clause as null and void, leading to the invalidation of the entire company contract.
- Another set of jurisdictions simply deems the Leonine clause invalid without necessarily nullifying the overall company contract.
- Certain legal frameworks interpret the inclusion of this clause in the company contract as an unwritten provision.
- In specific legal frameworks, the insertion of a Leonine clause in a partnership contract concerning persons lacking legal personality is considered null and void, leading to the nullity of the entire partnership contract. Conversely, in the context of entities with legal personality, the Leonine clause is interpreted as intrinsically unwritten, despite the inherent nullity of the clause per se.

Meanwhile, legal professionals, including lawyers and judges, have reached a consensus on the invalidity of the Leonine clause, asserting that it runs counter to the inherent nature of the company contract. This assertion stems from the foundational

requirement that all partners must participate in both profit and loss, a fundamental condition within the framework of company contracts. Nevertheless, there is a lack of unanimity among legal professionals regarding the consequential impact of this annulment on the company contract. Disagreements within legal circles persist, with some contending that the company contract remains valid while only the specific clause related to Leonine is deemed invalid. Conversely, an opposing viewpoint posits that both the condition and the entire company contract should be invalidated due to the perceived conflict between the stipulation and the essence of the company contract.

4. The Leonine Clause in Iranian Law

In the context of rules and civil laws governing partnerships, it is evident that there is a notable absence of explicit provisions addressing Leonine clauses in Iranian law. The pertinent statutory reference in this regard is confined to Article 575 of the Civil Code, which posits that "Each of the partners shall share in the profits and losses in proportion to his share unless a larger share is intended for one or more of them in exchange for an act".

The counterposition outlined in this article is twofold. Firstly, partners are prohibited from attributing an enlarged share to any specific individual partner unless that partner engages in a specific action. Secondly, in scenarios where additional profits cannot be distributed among one or more partners, it logically follows, a fortiori, that the allocation of all profits to one or multiple partners becomes unattainable.

Katouzian, an esteemed Iranian scholar, argues that the appearance of Article 575 in the Civil Code implies an intention on the part of its drafters to nullify such a condition. The condition enabling increased profits for a specific partner, contingent upon the performance of a specified act, ought to be regarded as an exception to the prevailing norm, justifying a constrained interpretation of its scope. The efficacy of this exception necessitates the presence of a reciprocal transaction or the undertaking of an activity by the partner allocated more profit under the specified condition.

Nevertheless, he posits that this manifestation should be disregarded as it contradicts established principles within civil law, particularly Article 10[14], which

[14] Article 10 of the Civil Law asserts the validity of private contracts for their consenting parties, provided that such agreements do not explicitly contravene the law.

underscores the principle of contractual freedom. Consequently, the conclusion drawn is that Article 575 is intended to emphasize that the distribution of profits in proportion to the shares is mandated by the absoluteness of the partnership contract. Moreover, he asserted that it remains possible to devise an arrangement contrary to this generalization and aligned with the preferences of the partners through the inclusion of specific conditions. For this reason, he explains that some writers have preferred the influence of the opposite condition in all cases, following the famous opinion of Shiite jurists and respecting the principle of freedom of contract.[15] However, the author has not expounded upon instances wherein all profits accrue to one of the contractual parties or one of them is absolved from assuming losses. The query arises as to whether this ruling encompasses such scenarios.

Concerning the aforementioned scenarios, the matter is subject to dispute among scholars. Some assert that in the context of commercial enterprises, an exemption from bearing losses that disproportionately favors one partner is deemed incorrect and lacks legal validity concerning the company's creditors.[16] Conversely, another legal scholar contends that autonomy in determining the method of profit distribution among partners is not absolute. Partners are constrained from allocating all profits exclusively to one individual, as such a stipulation contradicts the requirement of the company contract, which is "dividend of profit in proportion to shares". According to this scholar, Article 575 of the Civil Code prohibits such a condition. Moreover, even in the absence of Article 575, he argues that, at least in commercial law, a condition entirely eliminating profits would be deemed invalid due to the inherent contradictions with the requirements of the company contract and the partners' capital objectives, suggesting an absence of genuine partnership intent. Additionally, he posits that the condition of complete exemption from bearing losses is inherently linked to the nature of the company contract.[17]

Simultaneously, certain opinions assert that, in civil companies, allocating a larger share to a partner based on a contractual condition contradicts the essential elements of the company contract, rendering both the condition and the contract invalid.[18]

The analysis of Iranian law reveals an absence of clarity regarding the duty of Leonine clauses. Consequently, judges are faced with a challenging task when

[15] Katouzian Nasser, Iranian Civil Law, *General Principles of Contracts*, *A Comparative Study*, Volume I, (13th edition, Tehran: Enteshar Publication Co., 2009), 320-321.

[16] Sotoudeh Hassan, *Commercial Law*, Vol. 1 (30th edition, Tehran: Dadgostar Publication, 2012), 213

[17] Eskini Rabia, *Commercial Law, Trading Corporations*, Vol. 1 (23rd edition, Tehran: Samat Publication, 2017), 138.

[18] Imami Hassan, *Civil Law*, Vol. 2 (20th edition, Tehran: Islamiyah Publication, 2009), 209.

adjudicating such matters. According to Article 167 of the Constitution of Iran, judges are obligated to determine the verdict of a case within the framework of codified laws. Should such laws be insufficient, judges are obligated to derive a verdict by referencing authoritative Islamic sources and authentic fatwas.[19] The term "authoritative Islamic sources and authentic fatwas" in this context encompasses sources and fatwas in Twelve Imam Shia jurisprudence or *Ja'farī* jurisprudence. Consequently, this situation prompts an inquiry into whether Islamic law, particularly within *Ja'farī* jurisprudence, offers rulings on Leonine clauses. Furthermore, it raises questions concerning the stance of Shia jurists on the validity or invalidity of such clauses and the consequential impact on the company contract's validity.

5. Elucidating and Analyzing the Leonine Clause in Ja'farī Jurisprudence

Prior to delving into the primary subject matter, it is imperative to provide a concise introduction to *Ja'farī* jurisprudence. Shia manifests internal schisms, with its principal sects being the *Ithnā ʿAsharīs* (Twelvers), Zaydis, and Ismailis. The Twelvers, also known as the followers of the *Ja'farī* sect, derive their appellation from the founder of the *Ithna Ashari Shiite* school, Imam Ja'far al-Sadiq (the 6th Imam). An elucidation of the nomenclature "*Ja'farī*" involves the historical schism within the Islamic nation post the demise of the Prophet of Islam, resulting in two factions: adherents of the caliphs and adherents of Imam Ali, the fourth Caliph. In consonance with the nomenclature convention observed in the Sunni schools (*Hanafī*, *Malikī*, Shafi'ī, and *Hanbali*), the Shia school, led by Imam Sadiq, adopts the name *Ja'farī*; hence, it is denominated as *Ja'farī* school or *Ja'farī fiqh* in the Twelver Shia.

Beyond its religious and moral dimensions, Islam encapsulates a legal system capable of regulating myriad relationships encompassing individuals, societal interactions, and governmental relations with society and individuals. Collectively, these three dimensions are compressed within the term *Shari'a*. *Shari'a* knowledge is dichotomized into *ilm al-usul* (knowledge of basic principles) and *ilm al-furu* (science of branches), also known as *ilm al-fiqh* (jurisprudence). Islamic jurisprudence comprehensively addresses aspects of human existence, encompassing worship,

[19] Article 167- The judge is bound to endeavor to judge each case based on the codified law. In case of the absence of any such law, he has to deliver his judgement based on authoritative Islamic sources and authentic fatawa. He, on the pretext of the silence of or deficiency of law in the matter, or its brevity or contradictory nature, cannot refrain from admitting and examining cases and delivering his judgement.

transactions, social relationships, marriage, divorce, legal matters, warfare, governance, judgment, and punishment. Notably, jurisprudential concerns are categorized into acts of worship and transactions, the latter further delineated into contracts, unilateral obligations, and miscellaneous rulings.

5.1. Concept and definition of contractual partnership in the Ja'farī Jurisprudence

The concept of legal personality for companies, acknowledged in recent centuries[20], has not been a familiar notion in Islamic jurisprudence. While certain legal entities like Waqf and Bait Al-Mal (Islamic Public Treasury) are recognized, the focus here will be specifically on examining the status of the Leonine clause in partnership contracts.

Islamic law recognizes the concept of partnership, referred to as "*sharikah*" in Arabic. Islamic legal scholars commonly categorize the partnership into two distinct components: the communal or property partnership or non-contractual partnership (*Sharikat al-milk*) and the contractual partnership (*sharikat al-aqd*). *Sharikat al-milk* or a property partnership occurs when two or more individuals jointly own property without a partnership contract. This can result from various means, such as acquiring assets through purchase, gift, or will, constituting what is known as a voluntary property partnership. Alternatively, individuals may share ownership through inheritance, involving assets like houses, factories, or cars. In this case, it is termed a compulsory partnership since establishing it is not a matter of choice but arises due to inheritance. Therefore, such a partnership represents a confluence of financial resources that were initially distinct from one another. It embodies a state of joint ownership, whether arising voluntarily through purchase or compelled by events such as inheritance, will, or gift. In this collective scenario, the amalgamated funds are communally transferred to the heirs, aligned with their respective shares in the inheritance. Consequently, a communal or property partnership emerges among them until the estate undergoes division, and individual shares are disentangled. These partnerships do not function as investment mechanisms; rather, they signify a transient passage of funds. These entities are founded on the joint ownership of money or debt by two or more individuals, stemming from reasons related to ownership or

[20] To delve deeper into the historical roots and background of corporate legal personality, please refer to: John Dewey, *The Historic Background of Corporate Legal Personality*, Yale Law Journal, Vol.XXXV, April, 1962, No.2.

debt, devoid of any profit motive or trade-oriented objectives. They inherently represent a shared possession, and thus, any ensuing profit or loss is contingent upon the distribution of ownership shares.

Notably, there exists a faction of jurists who perceive the communal partnership solely through a linguistic lens, thereby precluding its classification as a true partnership.[21] Within this framework, the conventional understanding of a partnership converges predominantly with the contractual partnership. This research endeavors to scrutinize and discuss the contractual partnership, as it forms the pertinent domain within which the Leonine clause is subject to examination and deliberation.

A contractual partnership refers to an agreement between two or more individuals for a financial transaction involving shared funds. The outcome of this arrangement is that the partners collectively utilize their shared resources to generate income, and the distribution of profits and losses is proportionate to their respective financial contributions. This contractual relationship is established through an offer and acceptance. It is satisfactory for the partners to express their mutual agreement by stating, "We entered into partnership," or for one party to make the same statement with the consent of the other. All the elements pertinent to financial contracts, including maturity, rationale, intention, free will, and the absence of limitations due to insolvency or stupidity, apply to the contractual partnership.

The contractual partnerships have distinct classifications, including *Sharikah al-inan*, *Sharikat al-wojooh*[22], *Sharikat al-mufawadhah*[23], and *Sharikat al-a'maal* (*al-abdan*)[24]. In

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[21] See Damad Effendi, A. R., *Majma 'al-Anhar fi Sharh Multaqi al-Abhar* (Kh. Ayatehi & A. Kh. I. Al-Mansour), Vol. 2 (Beirut, Lebanon: Dar al-Kotob al-Ilimiyah, 1998), 542, Al-Zayla'I Hanafi, F. (1896). *Tabyeen al-Haqa'eq Sharh Kanz al-Daqa'eq*, Vol.3 (Cairo: Dar al-Kotob al-islamiyah), 313, Al-Tasuli Maliki, *Al Bahjah fi Sharh al-Tuhfah*, Vol. 2 (Algeria, Dar El Beïda: Dar Al-Rashad Al-Haditha, 1991 (1412 AH)), 393.

[22] *Sharikat al-wojooh* entails an arrangement where two individuals, possessing influence and credibility within the community yet lacking personal assets or financial resources, enter into a contract. Under this agreement, each participant, leveraging their respective creditworthiness, commits to purchase a product on credit, subsequently engaging in its and resale. Subsequent to settling the price with the original seller, from whom they initially acquired the goods on credit, any resulting profits are then shared between the two parties.

[23] *Sharikat al-mufawadhah* involves two individuals entering into a contractual agreement, wherein each party shares any gains derived from trade profits, agricultural yields, acquisitions, inheritances, bequests, or other benefits. Mutual reciprocity is fundamental, with both parties equally subject to both gains and losses within the scope of the agreement.

[24] *Sharikat al-abdan* or corpse partnership is an agreement that requires signing a contract by two parties, stipulating that the earnings are to be divided between them. This division of earnings may occur in the context of a collaborative undertaking, such as two tailors working jointly, or in the pursuit of distinct tasks, such as a tailor and a weaver sharing their respective earnings. Furthermore, this concept extends

accordance with Ja'farī jurisprudence, only the Sharikat al-inan is recognized as valid, with the other partnership types deemed invalid. It is noteworthy that within *Sunni* schools, the permissibility of this form of company is also acknowledged.[25] *Al-inan* partnership, where multiple parties contribute to the capital and actively participate in management and work. Profit and loss sharing is based on the agreed-upon terms, without a strict requirement for equality in contributions.

5.2. The perspective of Islamic jurisprudence regarding the requirements of a partnership agreement

Before examining the Leonine clause in partnership contracts, it is imperative to initially scrutinize the fundamental nature and purpose of the partnership agreement, which serve as the requirements of a partnership contract (*muqtaḍá al-aqd al-sharikah*). This preliminary examination facilitates a comprehensive understanding of the positioning of the Leonine clause within the partnership agreement and elucidates its consequential effects on the aforementioned contractual arrangement.

In a partnership agreement, all principles deemed valid in financial contracts apply. Specifically, the *Al-inan* partnership focuses solely on financial, cash, or commodity transactions. The significance of financial contracts lies in their alignment with Islamic law, where understanding their objectives and purposes becomes crucial. It entails recognizing what God has prescribed for contracting parties in terms of essentials and requirements, serving as the central point around which all transactions revolve. Those intending to enter into a contract must possess awareness regarding the implications associated with such agreements.

Sharia places significant emphasis on contracts due to their pivotal role in people's lives. Contracts serve to safeguard individuals' interests and facilitate the management of their affairs. Given that contracts form the foundation of transactions, individuals actively engage in them, underscoring their critical nature. The creation and understanding of transactions hinge on contracts, particularly when the contracting party is well-versed in the requirements associated with these agreements. The wise lawgiver deems contracts without their essential requirements devoid of value. This underscores the inherent and explicit importance of

to agreements between two individuals engaged in activities like gathering firewood in a forest, wherein the understanding is that any proceeds obtained will be equitably distributed, even if one party does not acquire any firewood.

[25] See Ibn Rushd, *Bidayat al-Mujtahid wa-Nihayat al-Muqtasid*, Vol. 4 (Cairo: Dar Al-Hadith, 2004), 35.

requirements within the framework and composition of contracts. Notably, certain jurists propose an independent theory regarding the requirements of a contract, referring to it as the "theory of the requirements of the contract." Researching and scrutinizing the ramifications and intentions associated with financial contracts is crucial to validating their legal existence. This involves assessing whether they conform to the approved requirements and purposes of established contracts or if there are violations that need to be addressed.

The objective or purpose of a contract encapsulates the amalgamation of its form and substance, encompassing both the overt and covert intentions of the contracting parties. Moreover, *muqtaḍá al-aqd* delineates the inherent nature and ramifications of the contract. Illustratively, in a sales contract, the transference of the sold object to the buyer in exchange for the stipulated price is inherent. Consequently, the seller is obligated to deliver the object of sale to the buyer, and reciprocally, the buyer is bound to fulfil the payment obligation.

Concerning the semantic analysis of "*muqtaḍá al-aqd*," it is pertinent to elucidate that this term incorporates both linguistic and contextual significance. Delving into the literal explication of each constituent in this expression, the Arabic term "*muqtaḍá*" is recognized as a past participle connoting exigence, requirement, purport, and necessity Additionally, the term "contract" is a direct translation for "*aqd*."[26]

However, within the context of Islamic jurisprudence, *muqtaḍá al-aqd* assumes a nuanced connotation, denoting the requirement, objective, purpose, or intrinsic essence of a contractual agreement.

Under the Sunni schools of thought, the contract establishes certain obligations, with fundamental ones being indispensable for the contract's existence, such as the transfer of ownership and payment in a sale agreement. Islamic *Sharia* jurists term these vital obligations as the "requirement of the contract," emphasizing, for instance, that in a sale contract, the buyer must own the item and the seller must possess the price. Beyond these essential obligations, secondary obligations may exist, such as the seller addressing hidden defects. Alternatively expressed, some view the contract's requirements as the fundamental provisions mandated by Sharia law, ensuring a balanced distribution of rights between the parties involved. Sunni jurists often discuss the meaning of the requirement of the contract, debating whether it pertains to provisions explicitly stated by the legislator or those emerging from customary

[26] See Harith Suleiman Faruqi, *Farouqi's Law Dictionary* (Arabic- English) (Lebanon, Beirut: Librairie du Liban Publishers, 2001), 238 and 330, and Munir Baalbaki & Rohi Baalbaki, *Al- Mawrid Al-Waseet- Concise Dictionary* (English-Arabic & Arabic-English) (Lebanon, Beirut: Dar El-Ilm Lilmalayin, 2007), 504 and 711.

practices and contract-related conditions. Some assert that the requirement is the principal ruling, citing examples like the legislator mandating ownership in a sale contract. Conditions aligned with the contract, as long as they don't contradict its requirements, are deemed valid. This perspective broadens the scope beyond the original contract provision to encompass all conditions within the contract.

According to early Sunni jurists, the requirement of the contract aligns with what they term the "rule of the contract," representing the intended effect and purpose of the contract, which varies across different contract types. For instance, in a sales contract, the primary rule is ownership. To distil and organize the viewpoint of this faction of Islamic jurists, we can articulate it in the following manner: every contractual agreement inherently incorporates a fundamental ruling, the fulfilment of which is deemed indispensable for the realization of any benefit stemming from the said contract. Termed variably as "the intended of the contract,[27]" "the principal purpose of the contract[28]," "the specific purpose of the contract," "the specific effect of the contract," or "the subject matter of the contract[29]," this pivotal ruling is succinctly defined as the intended objective in all manifestations of a given contractual type. It can be posited that the intended purpose across all variations of a contract is essential, as failure to achieve it would result in the forfeiture of the contract's benefit. Some scholars articulate this concept as the prime intent that initiated the contract.[30] Others consider it as the core purpose for which the contract was legislated.[31] The designations "specific effect" or " the basic legal purpose of the contract" are employed by some authors due to their status as a unified and integral rule applicable across all instances of a particular type of contract.[32]

The conclusion drawn from this aspect of the discourse is that early Sunni jurists maintain that the requirement of a partnership contract (*muqtaḍá al-aqd al-sharikah*) is consistent with their statement of the principal purpose of the contract, which incorporates the requirement of pursuing profit in the partnership contract.[33] Indeed,

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27 Ibn Taymiyya (661-728 AH/1263-1328 AC), *Qawa'id al-Nuraniyah al-Fiqhiyah* (Kingdom of Saudi Arabia - Riyadh: Dar Ibn Al-Jawzi Publications, 1433 AH), 288.

28 See Muhammad Salam Madkur, *Al-Madkhal lil Fiqh al-Islami* (2nd edition, Kuwait: Dar al-Kitab al-Hadith Publisher, 1966), 520.

29 Muṣṭafá Aḥmad Zarqā', *Al-madkhal al-fiqhī al-'āmm*, Vol. 1 (3rd edition, Damascus: Dar al-Qalam, 2004), p. 517.

30 Ibn Taymiyya, *supra* n. 27 on the same page.

31 Madkur, *supra* n. 28 on the same page.

32 Zarqā', *supra* n. 29 on the same page.

33 See Abū Isḥāq Ibrāhīm ibn ʿAlī al-Shīrāzī (393-476 AH), *Al-Muhadhdhab fi Fiqh al-Imam al-Shafi'i*, Vol. 3 (Damascus & Beirut: Dar al-Qalam – Dar al-Shamiyah, 1996 (1417 AH)) 335.

in the subsequent section, we will explore this matter from the perspective of Shia jurisprudence.

5.3. The position of the Leonian clause within the framework of Ja'farī jurisprudence

5.3.1. The notion and various categories of the requirement of the contract

Shia jurists' perspective on the significance and concept of the requirement of the contract (*muqtaḍá al-aqd*) can be articulated as follows:

First, certain Shia scholars assert that, in defining and describing the contract' requirement, it is deemed as a consequential outcome ordained by *Shariah*.[34] The essence of a contract's requirement is determined by the effect that the lawgiver (*shaari'*) imposes, which shapes its advantages and outcomes. This is substantiated solely through legal evidence, emphasizing that the placement of a term does not necessarily convey its intended meaning. Therefore, it can be asserted that the contract's characteristics of bindingness, irrevocability, and revocability do not fall within its requirements.[35]

Differing from the aforementioned viewpoint, some argue that the contract's requirement stems from the inherent nature of the contract, generated by the contract itself. *Molla Ahmad Naraqi* asserts that the requirement of the contract is inherent, not contingent upon legislative intervention. It encompasses every essential element crucial for the contract's fulfilment. The absence of such a requirement would render the contract linguistically, customarily, and legally null. For instance, in customary practice, a sale effectuates ownership transfer, and if this transfer does not occur, it deviates from customary norms, thus not qualifying as a sale. External matters subsequent to the contract, not originating from it or a direct result, do not constitute the requirement of the contract as per Sharia.[36] One of the late Shia jurists explains

[34] Al-Muhaqqiq al-Karaki, *Jāmiʿ al-maqāṣid fī sharḥ al-qawāʿid*, Vol. 4 (Qom: Muassasah Aal al-Bayt alayhim al-salam li ihya' al-turath, 1408 AH), 414; Al-Shaykh Murtada al-Ansari, *al-Makasib*, 7th ed., Vol. 6 (Qom: Majma' al-fikr al-Islami, 1427 AH), 49.

[35] The valid contract (*al-'aqd al-sahih*) is divided into two parts, the binding and the revocable. The binding contract (*al-'aqd al-lazim*) is the one that is enforceable by necessity, meaning that none of the contracting parties has the right to revoke it except for a legitimate justification, such as the marriage contract and the sale contract. The revocable contract (*al-'aqd ghair al-lazim* or *'aqd al-ja'iz*) is the one whose continuation is based on the continuation of the mutual consent of the contracting parties. It is permissible for one of the contracting parties to revoke it. It is annulled by the death of one of them, such as an agency contract.

[36] Molla Ahmad Naraqi, '*Awā'id al-ayyām fī bayān qawā'id al-aḥkām*, Vol. 1 (3rd edition, Qom: Maktaba Basitati, 1408 AH), 50-51.

that the requirements of the contract encompass its core elements, the provisions arising directly from the contract, or those emanating from the subject matter of the contract.[37] Meanwhile, *Esfahani* draws a distinction, asserting that the term "requirement of contract" can, at times, refer to its actual content and the foundational elements upon which it is based. Another interpretation of the contract's requirement involves aspects that are integral to the contract itself and encompass its stipulations.[38]

Secondly, based on the diverse definitions of the requirement of the contract, the majority of Shia jurists have categorized it into two types: the essential requirement inherent to the contract's nature (*muqtaḍá zat al-aqd*) and the requirement of absoluteness of the contract (*muqtaḍá itlaq al-aqd*). Essentially, the former can be viewed as the primary condition for a contract, while the latter is considered a secondary condition.

To elaborate, it is important to note that sometimes the requirement is intrinsic to the truth and nature of the contract. In such cases, the contract cannot be deemed valid under Sharia and rational principles without fulfilling this requirement, as exemplified by the consideration in a sale. However, there are instances where the requirement is not inherent to the truth and nature of the contract. Instead, Sharia has designated it as a contract's requirement based on a rationale distinct from its inherent Sharia justification. For instance, the authority over the object of sale - established by Sharia as a consequence of ownership- becomes a requirement of the contract, where ownership itself is the requirement of the sale. Hence, the absoluteness of the contract is not inherent to its nature or related to its essence. Instead, it is realized when the contract is concluded in an absolute manner and devoid of its opposite condition.[39]

Khoei has articulated this matter differently, asserting that every contract entails two essential requirements: one without an intermediary and one involving an intermediary. The former is established by the contracting parties upon creating the agreement such as ownership in the sale contract and other structures are created by the contract itself. Any condition contradicting this primary requirement is deemed

[37] Ruhollah Mousavi Khomeini, *Kitab Al-Bai*, Vol. 5 (4th ed., Qom: Muassasa-yi Ismailian,1400 AH), 184.

[38] Muḥammad Ḥusayn Gharawī Isfahānī, *Hashiah Kitab al-makasib*, Vol. 5 (First edition, Qom: Ilmiyyah press - Dar al mustafa li ihya al turath, 1418 AH), 153.

[39] See Mirza Habibullah al-Rashti, *kitab al'ijarha*, (no publisher, no place, n.d.), 61; Al-Sayyed mir fatah al-Hussaini, *Al-anawin al-fiqhiyyah*, Vol. 2 (2nd ed., Qom: Muassasah al-nashr al-Islamiyah al-ta'biah li jama'ah al-mudarriseen, 1417 AH), 248; Al-Ansari, *supra* note 34, at 28; Shaykh Musa al-Najafi al-Khansari, *Mania al-Talib fi Sharhi al-Makasib*, Vol. 3 (Qom: Muassasah al-nashr al-Islamiyah al-ta'biah li jama'ah al-mudarriseen, 1418 AH), 209.

to violate *muqtaḍá al-aqd*, such as selling with the stipulation that the buyer does not assume ownership of the property. The second requirement, which is a consequence of the first requirement, pertains to legal principles that are broader in scope than the obligatory and positive rulings and situational rulings[40] that arise from contracts due to the first requirement. This includes permissions related to transactions, consumption, and other implications on the sale object arising from ownership acquired through the sale contract, along with other legal rulings stemming from the initial requirement of the contract.[41]

5.3.2. The theoretical framework of conditions and their respective classifications

Considering the Leonine clause as a condition, it is relevant to offer a brief elucidation of the concept of condition in *Ja'farī* jurisprudence. In Islamic legal terminology, the condition is known as "*shart*," and its plural form is "*shurut*." *Shart* is contingent upon the presence of an object, as the existence of *shart* serves as an indication of the actualization of that object. Essentially, it means "sign," [42] and it signifies that one party must fulfil certain obligations and undertake commitments outlined in the sales contract and analogous agreements [43].

In Shia jurisprudence, a condition takes on the meaning of something upon which the effectiveness of the influencing factor hinges, contingent and reliant[44]. *Muhaqqiq*

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[40] The categorization of rulings into obligatory and positive rulings (*al-Ahkam al-Taklifiyah*) and situational rulings (*al-Ahkam al-Waz'iyah*) is one of the classifications that has been proposed within the realm of *'Ilm'ul Usul* (knowledge of fundamental principles). These categories are delineated as follows:
1. *Al-Ahkam al-Taklifiyah:* these rulings encompass actions mandated by Sharia law that fall into one of the following five categories: *wajib* (obligatory actions), *mustahabb* (actions that are commendable or preferable), *mubah* (actions that are neither required nor discouraged), *makruh* (actions that are discouraged or disliked), and *haram* (actions that are forbidden). Each of these categories constitutes an obligatory ruling.
2. *Al-Ahkam al-Waz'iyah:* These rulings contrast with obligatory rulings and refer to those Sharia rulings that are not obligatory. They are termed "*wazi'yah*" because many of them pertain to obligatory rulings. Unlike obligatory commands, these rulings do not directly prescribe regulations for individuals in their actions or behavior. Instead, they encompass laws addressing specific situations and exerting indirect influence on human conduct.

[41] Al- Khoie, *Al-Tanqih Fi Sharh Al-Makasib*, Vol.5 (Qom: Muassasah al-Khoie al-Islamiyah, 2009 – 1430 AH) 55-56.

[42] Al-Sharīf al-Jurjānī, *Kitāb al-Taʿrīfāt* (Beirut: Dar El Fikr Printers – Publishers – Distributors, 1425-1426 AH), 91.

[43] Ibn Manzūr, *Lisan al-ʿArab*, Vol. 7 (3rd ed., Beirut: Dar Sader, 1414 AH), 329.

[44] Al-Shahīd al-Awwal Muḥammad b. Makkī, *Qawā'id wa-al-fawā'id*, Vol. 1 (Qom: Kitabfrushi Mufid, 1400 AH), 64 .

al-Irawani states that the concept of condition possesses a singular definition, involving the constraint of one matter by another. The essence of this constraint lies in whether it is rooted in reality, surpassing the boundaries of creation and mental conception, or if it is brought into existence by its creator. Furthermore, he adds that from a customary standpoint, a condition is comprehended as binding one matter to another, whether occurring in reality or introduced by a creator[45].

The condition in the agreement transcends a mere juxtaposition of obligations or matters. Rather, it forges a connection between the condition and the conditional, requiring the suspension of the initial commitment. The contract is then anchored on the specified individual's obligation to perform a specific action or to suspend his commitment to the origin and fulfil it on something.

This condition can manifest in two ways. Firstly, it may entail suspending the entire contract based on the obligation of the specified individual to perform a certain action. In this scenario, if the individual had not committed to the action, the contract per se would not have originated. Secondly, the condition might involve suspending the individual's commitment to the origin and redirecting it towards an external matter. In such cases, the contract stands as absolute and not contingent upon specific conditions.

The categorization of conditions is determined by their adherence to validity or non-validity within the Shia perspective. Valid conditions are those that adhere to the following criteria: the subject of the condition must be permissible[46], it should not be ambiguous, non-deterministic or suspended based on unclear terms or doubtful descriptions[47], it must serve a legitimate purpose recognized by rational people[48], the condition should not be unknown[49], it should not contradict the *Quran*[50] and *Sunnah*[51], it should align with the essential requirements of the contract[52], it should not demand

45 Muhaqqiq (Mirza Ali) al-Irawani, *Hashiyah al-Makasib*, Vol. 3 (3rd ed., Qom: Zavel Qurba Publishing1431 AH), 267.

46 Al-Ansari, *supra* note 34, at 19.

47 Ibid. at 57-58.

48 Al-Shahīd al-Awwal Muḥammad b. Makkī, *Al-Durus al-shariyah fi fiqh al-Imamiyah*, Vol. 2 (Qom: Muassasah al-nashr al-Islamiyah al-ta'biah li jama'ah al-mudarriseen, n.d.), 215.

49 Muhammad-Hasan al-Najafi, *Jawahir al-Kalam Fi Sharh Shara'i' al-Islam*, Vol. 23 (7th ed., Beirut: Dar Ihya al-Turath al-Arabi, 1984), 202.

50 Al-Ḥurr al-ʿĀmilī, *Wasa'il al-Shia*, Vol. 18 (Qom: Muassasah Aal al-Bayt (a) Li-Ihya at-Turath, 1412 AH), 16.

51 Al-Ansari, *supra* note 34, at 21.

52 Ibid, p. 44.

the impossible[53], it must be explicitly included in the text of the contract[54], and whoever stipulates it must have the ability to fulfil it[55].

Invalid conditions, while not voiding the contract, lack legal effect and fall into categories like impossibility, uselessness, and non-compliance with legal principles. Certain conditions have the potential to nullify the contract including those contradicting fundamental requirements of the contract or unknown conditions leading to ignorance of consideration.

Conditions are broadly categorized into three types: description, collateral events, and those related to contract performance. The first category pertains to the quality or quantity of the object. The second involves the fulfilment or occurrence of external events, while the third arises when a condition is stipulated regarding the performance or non-performance by one of the parties or by a third party.

5.3.3. Reasons clarifying the invalidity of a condition contrary to the requirements of the contract resulting in Contract nullification

In the earlier section, it was highlighted that any condition contradicting the contract's requirement is deemed invalid and results in the nullification of the contract. Yet, it is essential to briefly examine the fundamental reasons cited by *Ja'farī* jurisprudence in this context. These reasons elucidate why a condition contrary to the contract is deemed invalid, leading to the nullification of the contract:

1- Imposing a condition that contradicts the contract's requirements introduces a conflict between the condition and the contract itself. Consequently, not only is this contradiction deemed invalid, but it also becomes impractical, rendering the specified requirement null. For instance, in a sales contract, stipulating that the buyer must not own the object of sale contradicts the fundamental requirement of ownership by the buyer, resulting in an unmistakable inconsistency.[56]

2- A condition conflicting with the contract's requirements strips the agreement of its substance to the extent that it ceases to be recognized as a valid contract. Such a situation elicits societal disapproval and condemnation. Consider the example of selling a book with the condition that the buyer does not own it; this deviates from

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53 Allamah al-Hilli (648-726 AH), *Tadhkirat al-Fuqahā* (Memorandum for Jurists), Vol. 10 (Qom: Muassasah Aal al-Bayt (a) Li-Ihya at-Turath, 1420 AH), 253.

54 Al-Ansari, *supra* note 34, at 54.

55 Al-Muhaqqiq al-Hilli (602-676 AH), *Sharāʾiʿ al-Islām fī masāʾil al-ḥalāl wa l-ḥarām*, Vol. 2 (2nd ed., Tehran: Istiqlal, 1409 AH), 288.

56 See Al-Ansari, *supra* note 34, at 44.

customary sale practices, and people would question the legitimacy of a sale without ownership.[57]

3- Sharia law prohibits contradictions between the condition and the contract's requirements. Both the *Quran* and *Sunnah* affirm that a marriage contract establishes conjugality, permits lawful intercourse between spouses, and legitimizes offspring. Similarly, a property sale contract establishes ownership. Conditions contrary to these principles are considered inconsistent with Islamic teachings and are consequently deemed invalid.[58]

Beyond the previously outlined reasons, most Shia jurists assert that the invalidity of such conditions directly results in the nullification of the entire contract.[59]

5.4. Assessing the validity of the Leonine clause in the partnership contract

In light of the presented discussions, it has been ascertained that Shia jurisprudence classifies conditions into two distinct categories: valid and invalid. The latter category is further delineated into two subtypes: a void condition, which exerts no detrimental impact on the contract and is solely deemed invalid and void, and a void condition, which not only bears invalidity but also results in the overall nullification of the contract. Among the dual cases of invalid conditions resulting in contract nullification is a condition contradicting the effects and requisites of the contract[60]. In this segment of our investigation, our primary objective is twofold. Firstly, we aim to assess, through the lens of Shia jurisprudence, whether the Leonine clause contradicts the inherent characteristics of the partnership contract. Secondly, we endeavor to ascertain under what circumstances and conditions the aforementioned condition can be classified as either valid, invalid or an invalid condition leading to the nullification of the contract.

Shia jurists have directed their attention towards ensuring fair dealing and equality between partners. They have extensively discussed and clarified their views

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57 Ibid., the same page.

58 Ibid., the same page.

59 See for example Muhsin al-Hakim, *Mustamsak al-'urwa al-wuthqa*, Vol. 12 (3rd ed., Beirut: Dar Ihya al-Turath al-Arabi, 1391 AH), 263; Mirza Habibullah al-Rashti, *supra* note 39, at 71; Hashemi Shahroudi, *Minhaj al-salehin*, Vol. 2 (Qom: Bonyad Fiqh wa Maarif ahl-e-Bayt 1433 AH), 54; Al-Muḥaqqiq al-Thānī (al-Muḥaqqiq al-Karakī), *Jāmiᶜ al-maqāṣid fī sharḥ al-qawāᶜid*. Vol. 8 (Qom: Muassasah Aal al-Bayt alayhim al-salam li ihya' al-turath, 1414 AH), 55.

60 Hilli, *supra* note 53, at 247.

on the allocation of additional profit to one partner when there is equality in the amount or an equal distribution of profit when there is a difference in their capital. They have also briefly touched upon situations involving a "Leonine clause" in the partnership agreement, where one partner receives all profits or bears all losses due to a specified condition. Opinions on the validity of such clauses have been expressed.

The emphasis on fairness and equality among partners has led some jurists to view the condition of assigning additional profit without any reciprocal action as contrary to the requirements of the partnership contract, rendering both the condition and the partnership contract invalid. In this part of our examination, we will delve into the three prevailing theories regarding the validity of this condition and its impact on the partnership contract. Following the conclusion of this discussion, we will explore the stance of the Leonine clause within *Ja'farī* jurisprudence.

5.4.1. Condition of assigning additional profit without any reciprocal action

To attain the above-mentioned goals, a meticulous analysis of the two designated critical elements is essential. Essentially, Shia jurists assess the validity of the clause involving the allocation of extra profit to one partner in cases of equal capital or equal profit distribution in instances of disparate capital. This evaluation involves a close examination of its consistency and possible conflicts with the consequences and requirements of the partnership contract.

Some assert that this clause contradicts the essential nature of the partnership contract (*muqtaḍá zat al-aqd*), while others argue that it conflicts with the imperative of an absolute manner of the contract without any opposing conditions (*muqtaḍá itlaq al-aqd*). This assessment has led to the formulation of three distinct standpoints, which we will briefly address.

5.4.1.1. First perspective: The condition is seen as void, resulting in the annulment of the entire contract

Certain early Shia jurists advocate for and endorse this viewpoint. They argue that the condition is rendered invalid due to the absence of consideration for the profit increase for either party. It was not explicitly outlined in a mutual contract as part of the considerations, nor did the ownership necessitate a gift contract (*Aqd al-hibah*). The factors determining ownership are enumerated, and this particular condition does not

fall within those criteria. Consequently, the condition is nullified, and the contract adheres to this conclusion due to the absence of mutual agreement on such terms.

For a partnership, the partners must mutually agree by formalizing a contract and contributing capital, with the understanding that profits and losses will be shared among the investors. The correlation between profit/loss and the partnership's capital is an inherent aspect of the company contract (*muqtaḍá zat al-aqd*). Consequently, any condition conflicting with the fundamental nature of the contract is considered invalid, a perspective endorsed by *Ibn Idris*, a prominent scholar of the 12th century AD.[61] In addition to him, *Muhaqqiq al-Hilli*[62] and *Shahīd al-Thānī* (who is placed in the category of late jurists)[63]have similarly conveyed their viewpoint.

5.4.1.2. Second perspective: The condition is considered valid, thereby confirming the overall validity of the contract

The validity of the partnership contract containing this condition is unquestionable. There are no issues since the partner's contribution to profits and losses is not a component of the partnership contract, and it is not a requirement of the contract. In other words, the absence of this provision does not render the contract incomplete, nor does specifying its non-existence contradict the requirement of the contract. Yes, it is required because of its absoluteness. In cases where the contract is absolute and does not explicitly state non-involvement in profit or loss, it becomes a necessary component of the absolute contract. However, if the contract specifies a non-contributory term to profit or loss, the inclusion of such a condition aligns with the established legal principle that asserts "the believers are bound by the agreements they enter into."[64]

To elaborate on the issue, it is allowable for the two partners to mutually agree that one will bear the profits and losses while the other recovers his capital. This permissibility is substantiated by various reasons, including (1) Sharia rules, (2) the comprehensiveness and absoluteness of the contract, and (3) specific supporting evidence.

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61 Ibn Idrīs al-Ḥillī (543-598 AH), *al-Sara'ir al-Hawi li tahrir al-fatawi*, Vol. 4 (Qom: maktaba al-rawda al-hamriyah, 1429AH), 28.

62 Al-Muhaqqiq al-Hilli, *supra* note 55, at 375.

63 al-Shahīd al-Thānī (911-955 or 965 AH), Al-Rawḍa al-bahīyya fī sharḥ al-lumʿat al-Dimashqīyya, Vol. 4 (Qom: Intisharat-e- Dawari, 1410 AH)), 201.

64 المؤمنون عند شروطهم

Regarding the first reason (Sharia rules), under the principle of the authenticity of correctness (*Qaida asalat al-Sihha*), if there is doubt about the authenticity of a condition or contract, it should be based on its validity. In this context, there are two conflicting claims. The first argues that the condition of paying additional interest to one partner contradicts the essence of the partnership contract, rendering it invalid. The second claim asserts that such a condition is in line with the absoluteness of the partnership contract and is valid without conflicting with Sharia regulations. Since there is uncertainty about the validity or invalidity of the condition, the basis for judgment should lean towards its legitimacy. It is permissible to stipulate disagreement or reconciliation in this regard.

Furthermore, the rule stating that every owner has complete control over their property (*Qaida al-saltanah*) supports the notion that such a condition is valid since owners can exercise various forms of possession, both material and legal, without interference unless prohibited by Sharia law.

As for the second reason, the common and comprehensive meanings, along with the generalities evident in the support for reconciliation, necessitate acknowledging the validity and permissibility of such a stipulation.

Regarding the third reason, a hadith recounts an instance where two individuals partnered in property, turned a profit and held shared debts, including some property subject to a debt. One partner proposed to the other the return of the initial capital brought in during the partnership, with the understanding that the latter would bear the responsibility for profit and loss. Imam Sadiq, the sixth Imam of the Shiites, affirmed that if they entered into such an agreement, there was no issue. The implication of this hadith suggests the validity of the matter under all assumed conditions, provided it does not contradict any teachings of the Quran.[65]

Among renowned Shia scholars who assert the legitimacy of such a condition, affirming that it does not impact the contract's validity, notable figures include *al-Yazdi*[66], *al-Sharīf al-Murtaḍā*[67] and *Khomeini*[68]

[65] See Abd al-A'lá al-Mūsawī Sabzawārī, *Muhadhdhib al-aḥkām fi bayān al-ḥalāl wa-al-ḥarām, fi fiqh al-Imamiyah*, Vol. 18 (Qom: Dar al-tafsir, 1403), 177-178.

[66] Mohammed Kazem Tabataba'i Yazdi (1337-1247 AH), Al-Urwah al-Wuthqa, Vol. 5 (Qom: Daftar Intisharat-e-Islami, 1419 AH), 280-282.

[67] al-Sharīf al-Murtaḍā, *al-Intiṣār* (Qom: Muassasah al-nashr al-Islamiyah al-ta'biah li jama'ah al-mudarriseen,1415 AH), 471.

[68] Ruhollah Mousavi Khomeini, Tahrir al-wasilah (Tehran: Muassasa Tanzim wa Nashr Aathar al-Imam al-Khomeini, 1421), 489.

5.4.1.3. Third perspective: The condition is deemed null and void, but the contract itself remains valid

In contrast to the preceding perspectives, some scholars from both earlier and contemporary periods posit that the condition is merely null, yet the contract remains unimpaired and valid. To illustrate, Allamah Yazdi in his book asserted that if the contract specifies an augmentation in profit exclusively for one partner without a corresponding contribution or if the increase surpasses their actual efforts, the debate revolves around the legitimacy of the condition and the contract, the invalidity of both the condition and the contract, or the validity of the contract paired with the invalidity of the condition. There are viewpoints on the three situations of both the stipulation and the contract. *Khoei*, a contemporary Shia jurist, has embraced the third doctrine.[69] He considers it inappropriate for one partner to take ownership of another partner's profit without adhering to the Sunna and lacking a valid Shariah justification. Furthermore, he deems such a condition as illegitimate.[70]

In the book "*Miftah Al Karama Fi Sharah Qawayed*," Aamili asserts that the works "*Al-Kafi*," "*Al-Ghunya*," "*Jami' al-Shara'i'*," and "*Al-Nafi'*" convey the idea that partnership is valid, and the condition is not obligatory. According to them, the stipulation is not binding. This perspective was narrated by *Al-qāḍī*. Additionally, the book "*Al-Ghunya*" purports that there is a consensus (*Ijmāʿ*[71]) on this matter.[72]

5.4.2. The validity of the Leonine clause in the partnership contract

The initial discussions of this article highlighted the origin of the term "Leonine clause," tracing it back to the tale of a lion who, after hunting alongside various animals, monopolized the entire prey without sharing it with his collaborators. The Leonine clause, as observed in the laws of certain countries like France, Italy, Belgium, and Egypt, entails a partner being entirely deprived of profits or excused from bearing losses. Interestingly, *Ja'farī* jurisprudence predominantly focuses on scenarios where additional profit is allocated to one partner with equal capital or equal profit in cases of differing capital amounts. Nonetheless, discussions within *Ja'farī* jurisprudential

[69] Yazdi, *supra* note 66, as mentioned in the citation in footnote 1 on page 280.

[70] Ibid., as mentioned in the citation in footnote 3 on page 280.

[71] *Ijmāʿ* denotes a consensus reached by Shia scholars and religious authorities concerning a religious ruling.

[72] Syed Muhammad Jawad Amili, *Miftah Al Karama Fi Sharah Qawayed*, Vol. 20 (Qom: Muassasah al-nashr al-Islamiyah al-ta'biah li jama'ah al-mudarriseen, 1419 AH), 361.

framework do touch upon the Leonine clause, and, hence, relevant comments will be explored below.

5.4.2.1. The condition of allocating all profits to one of the partners

When a partnership agreement specifies that all profits are allocated to one partner, it inherently implies that the other partner is excluded from receiving any profits. Of course, most Shia jurisprudence texts commonly address the concept of a contractual partnership involving two parties, wherein the entirety of the profit is designated to one partner. Conversely, this implies that the other partner is excluded from receiving any share of the profit. Shia jurists hold varying opinions on the validity of such a condition. For example, Certain scholars regard the inclusion of a Leonine clause as rendering the partnership contract void, as they perceive the partnership arrangement to be oriented towards seeking profits. Yazdi categorically asserts that the presence of such a stipulation within the partnership contract is ample justification for voiding the entire agreement.[73] According to one of the commentators on Yazdi's book (*Urwa al-Wuthqa*), he distinguished between clauses that specified an increase for one party while excluding the other and those that dictated a complete profit for one party but not the other. In the latter context, he declared both the condition and the contract invalid. The invalidity of the condition stems from its contradiction with the essential elements of the business contract, which is centered around trade. The contract necessitates that both parties share in both profit and loss. Thus, a condition stating that the entire profit belongs to one party goes against the fundamental requirements of the contract.[74] One significant observation here is that, as per the perspectives of these jurists, specifying the allocation of all profits to one partner nullifies the contract. However, the author argues that even when a substantial portion of the profit is allocated to one partner, it has a face of "all profit" and effectively represents the entirety of the profit. Therefore, the same rule should hold true, resulting in the designation of both the condition and the contract as void. In front of these jurists stands a contingent of Shia jurists who hold a divergent perspective and do not regard the contract as void solely based on the presence of the Leonine clause. Firstly, the fundamental aspect of the partnership contract (*muqtaḍá al-aqd al-sharikah*) involves sharing the funds. Concerning the distribution of profit

[73] See Yazdi, *supra* note 66, at 279.

[74] Muhammad al-Jawahiri, *Al-Wadih fī sharḥ al-'urwah al-wuthqá*, Vol. 13 (Beirut: al-'Arif lil-Matbu 'at, 1440 AH), 72.

between the parties, it aligns with the foundational principles of joint ownership and the subordination of profit to asset ownership. Therefore, there is no prohibition on specifying that the profit belongs to one of the partners. Secondly, the essential requirement is to nullify the condition without invalidating the entire contract. If one argues that the condition stipulating the profit for only one partner goes against Sharia law, it is important to note that ownership necessitates a cause and is not established solely through conditions.[75] Notably, a contemporary Shia jurist holds the view that including a condition of excess profit for one partner in the partnership agreement renders both the condition and the contract valid. However, he contends that assigning the entire company's profit to one partner raises issues regarding the contract's validity.[76] Also, another contemporary jurist affirms the validity of the Leonine clause, asserting that if all profits are assigned to a single partner, both the stipulation and the partnership agreement remain legally sound.[77] Yet, one Shia scholar contends that if partners stipulate that the entire profit of the partnership is allocated to one of them, its validity is affirmed when the condition is structured as related to contract performance (*shart al-fi'al*). However, if the condition is framed in the manner of collateral events (*shart al-natijah*)[78], concerns about validity may surface.[79]

5.4.2.2. The condition of one partner bearing all damages on the partnership contract

The validity of stipulating that one partner bears all damages incurred by the partnership is a contentious issue among Shia jurists. Some argue that such a condition is valid, ensuring the overall validity of the partnership contract. Conversely, another group asserts that while the condition may be deemed invalid, it does not nullify the partnership contract. A third faction within this discourse draws parallels between this condition and the one concerning the allocation of all profits to a single partner,

[75] See Muhammad Sadiq al- Rouhani, *Fiqh al-Sadiq*, Vol. 19 (3rd ed., Qom: Muassasa Dar al-kutub, 1414 AH), 261; Muhammad Taqi Al-Khoie, *Almabani fi Sharh al-urwah al-Wuthqa*, Vol. 1 (Iraq-Najaf: Ma'had al-Khoie, 1406 AH), 205.

[76] Ali al-Husayni al-Sistani, Minhāj al-Ṣāliḥīn, Vol.2 (Qom: Maktab Ayatollah al-uzma Al-Sayyid Ali Al-Husseini Al-Sistani, 1415 AH), 166.

[77] Muḥammad Fāḍil Lankarānī, *Al-Ahkam al-al-Wadihah* (4th ed., Qom: Markaz fiqh al-a'imma al-athar, 2001 AD-1380 SH), 329.

[78] As mentioned before, *shart al-fi'al* is the condition stipulated in the contract regarding the performance or non-performance by one of the parties or by a third party while *shart al-natijah* or the condition of the collateral event related to contract performance involves the fulfilment or occurrence of external events.

[79] See Hashemi Shahroudi, *supra* note 59, at 165.

contending that similar rulings should apply to both conditions despite their differing natures.

The first group of jurists believe that the primary objective of interpersonal partnerships is profit, which is the predominant focus. Loss, considered secondary to profit, is acknowledged only after profit is pursued. Both partners collectively strive for profit, making efforts to mitigate potential losses. Nevertheless, the unequal loss is not deemed a fundamental partnership requirement. Consequently, stipulating that one partner bears all damages does not run counter to the essence of a partnership agreement.[80] Yazdi, a prominent jurist from an earlier period, clearly endorses the validity of such a condition in his *fatwā*[81], as it does not contradict the requirement of the partnership contract.[82] This perspective has faced opposition from certain Shia scholars, who contend that discussing loss is inherently tied to discussing profit in financial transactions. The essence of partnership contracts dictates that both parties bear both the losses and profits arising from the partnership. Hence, the exemption of one partner from any losses contradicts the contractual obligations, a factor that cannot be overlooked. Consequently, claiming that shouldering all damages inflicted upon the partnership by one partner is not in conflict with the requirements of the partnership agreement is untenable.[83] *Borujerdi*, among these conflicting scholars, contends that this condition is not valid.[84] Another Shia scholar shares the same perspective, contending that if the contractual stipulation dictates that one of the two partners is solely responsible for the entire loss, such a condition is deemed invalid and should not be fulfilled unless that partner intends to cover the loss with his personal funds rather than his share in the company.[85] Nevertheless, an alternative perspective posits that if the partners agree that one of them will bear the entire loss, then the legality of this agreement and even the validity of the partnership contract become a matter of question.[86]

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80 See Abd al-A'lá al-Mūsawī Sabzawārī, *Muhadhdhib al-aḥkām fi bayān al-ḥalāl wa-al-ḥarām*, *fi fiqh al-Imamiyah*, Vol. 20 (Qom: Dar al-tafsir, 1403), 46 .

81 A *fatwā* is a legal pronouncement concerning a specific aspect of Islamic law (sharia), delivered by a qualified Faqih, an Islamic jurist.

82 See Yazdi, *supra* note 66, at 279.

83 Muhsin al-Hakim, *Mustamsak al-'urwa al-wuthqa*, Vol. 13 (3rd ed., Beirut: Dar Ihya al-Turath al-Arabi, 1391 AH), 35, footnote 2.

84 See Yazdi, *supra* note 66, at 279, footnote 3.

85 Muhammad Amin Zayn al-Din, Kalima al-taqwa, Vol. 4 (2nd ed., Qom: Matbia Mehr, 1413 AH), 432.

86 Hussein-Ali Montazeri, *Al-ahkam al-Shar'iyyah* (Qom: Tafakkor, 1413 AH), 396.

5.5. Evaluating the legitimacy of the Leonine provision in contemporary corporate contracts

5.5.1. The perspective of Shia jurisprudence on the status of newly established companies

Before exploring this aspect of the discussion, it is essential to clarify that concerning modern commercial companies with legal personality and partnerships lacking such a personality, legislators in various countries have designated appropriate forms and names for them in the laws they have ratified.

In our examination, we found that the principles outlined in *Ja'farī* jurisprudence texts and the fatwas issued by Shia jurists can be applied to partnerships lacking legal personality. However, concerning modern companies endowed with legal personality, the clarity of the applicability of rulings found in Shia jurisprudence (*al-ahkam al-shar'iyya*) and the fatwas of Shia scholars is uncertain. It is important to note that such companies have only come into existence in the last few centuries. In essence, there is no historical presence of these entities before or after the advent of Islam, thus eluding the attention of Islamic jurists, including Shia scholars. However, in recent decades, contemporary Shia jurists have started addressing this issue, and we will discuss some of their perspectives below.

The agreement of these companies is documented as it is exclusively formalized in writing. An essential distinction lies in the fact that, unlike partnerships in Shia jurisprudence, the company contract is obligatory for all parties and cannot be categorized as a revocable contract. Consequently, every partner is bound to the company, and reciprocal obligations exist between the company and each partner. Certain contemporary jurists have incorporated this characteristic of modern companies into jurisprudence, asserting that the contracts of modern companies are irrevocable.[87] Some among them even contend that the contracts of valid partnerships in Shia jurisprudence fall under the category of irrevocable contracts. For example, *Makarem* (an eminent jurist) states that it is plausible to consider a company as an irrevocable contract. The assertion of consensus on its revocability may stem from the belief that company rulings depend on mutual consent for interference and decision-making regarding each other's property. However, categorizing the company as an inherently independent contract introduces a challenge when applying the principle that favors the irrevocability of contracts in cases of doubt about their revocability.

[87] Sayyid Abdolkarim al-Mousavi al-Ardebili, *Fiqh al-Sharikah* (Qom: Dar al-Ilm al-Mufid, 1414 AH), 128.

Therefore, deeming it a revocable contract poses difficulties. [88] In a different context, he affirms that the company is treated as an independent contract, following the Qur'anic directive to fulfil contracts (*aufụ bil-'uqụd*) and the hadith stressing the obligation of believers to honor specific conditions they accept (*al-mu'minun inda shururihim*). Consequently, the idea of revocability is rejected, especially as it goes against the wisdom of prudent individuals. It seems unreasonable for two parties to enter a long-term partnership, attain success, and then have one partner abruptly terminate the contract. This is particularly out of sync with the current era, where substantial economic activities are primarily conducted through corporate structures.[89]

To bolster this idea, another contemporary Shia jurist affirms that a commercial company contract is an agreement that establishes a financial company for trading and selling, with a specified period during which termination is prohibited. While it is correct to specify the contract duration, it is essential to note that this contract is legally irrevocable under the principle governing irrevocability of contracts. The sole contradiction to the irrevocability of this contract stems from the assertion of a consensus (*Ijmā*) regarding the revocability of partnership contracts. However, the assertion of a consensus is perplexing; how can such a claim be substantiated? The concept of this type of company contract was not within the contemplation of jurists before its inception. Consequently, many jurists overlooked it in their writings, and some who did touch upon partnership contracts characterized it as permission granted to partners for interference and decision-making regarding each other's property, resembling an agency contract. Thus, it raises questions about the feasibility of a consensus among jurists concerning this particular type of company, especially considering its alignment with the words and opinions of the Prophet of Islam and the Shia imams. Furthermore, he contends that the reality is that such a contract falls under the category of irrevocable contracts, and the associated effects, including the determination of the contract's duration, stem from this classification.[90]

[88] Mohammed Kazem Tabataba'i Yazdi), *Al-Urwah al-Wuthqa*, with annotations by Nasir Makarem al-Shirazi, Vol. 2 (Qom: Madrasah Al-Imam 'Ali Ibn Abi Talib, 1428), 625, footnote 7.

[89] See https://eshia.ir/feqh/archive/text/makarem/feqh/95/950922/ [the website in Persian].

[90] Ardebili, *supra* note 87, at 97.

5.5.2. The Viewpoint of Shia Jurisprudence on the Placement of the Leonine Clause in Contemporary Company Contracts

It is worth noting that the inclusion of such a clause in the contracts of modern companies gives rise to a range of viewpoints, mirroring the diverse perspectives expressed by Shia jurists regarding partnership contracts. In essence, one must either align with the Shia scholars who affirm the validity of this clause, thus deeming the company contract valid, or reject the clause while maintaining the contract's validity. Alternatively, one may opt for the third scenario, deeming both the clause and the company contract invalid.

Nevertheless, the author believes that, firstly, based on the perspectives of the two aforementioned contemporary Shia jurists regarding modern companies[91]—views that find support from various other Shia scholars—emerging company agreements stand apart from partnership contracts and fall within the category of irrevocable contracts.

Secondly, within numerous legal texts, one of the exclusive and fundamental pillars of new companies is identified as the intention of participation. The company contract diverges from other agreements due to inherent disparities and conflicts in the interests of the contracting parties. Within a company, all partners share a common objective—to establish and operate the company—seeking mutual profit through collaborative efforts based on equal legal standing. There is no hierarchy among partners, as they all possess equal status. Fundamentally, the essence of a company contradicts principles of obedience, as obedience and command run counter to the notions of participation and cooperation.

The intent to participate or to establish a company (*affectio societatis*) signifies a commitment to collaborate and engage as equal partners in the enterprise. French jurisprudence, underscoring its significance, considers this intention a foundational element of the company. Thus, the intention of participation can be aptly characterized as the "spirit of collaboration."[92]

Hence, the contracting parties must share the intention to establish a company together. The intention to participate stands out as a crucial factor essential for the finalization of the company agreement. This pivotal status is attributed to the amalgamation of the interests and concerted efforts of the contracting parties in

[91] The names and content are omitted here to avoid unnecessary extension of the discussion.

[92] See Alfred Jauffret, *Droit Commercial* (20ème édition, Paris : L.G.D.J, 1991), 151.

achieving a shared purpose—the singular objective of attaining profit and subsequently distributing it among the partners. Therefore, even though legislators may not explicitly mention the intention of participation in the characterization of a company, it should be regarded as a fundamental prerequisite for entering into a contemporary company contract. This condition is inherent in the essence of the company contract, assuming a harmony of interests among the contracting parties and the joint pursuit of a shared goal—the primary aim being profit and its fair allocation among the partners.

When emphasizing that the intention of partnership should be rooted in fairness and equality among partners and that the company's profits and losses should be divided based on the principle of equality, it does not imply an equal division of the company's profit among partners based on their numbers. Rather, it signifies that a partner contributing to the company's capital is entitled to a share of the profit pro rata to his investment in their capital contribution. In essence, this equality pertains to shares, not individuals. For instance, if the company's capital is divided into 100 shares, each share is entitled to a percentage of the profit. Consequently, a partner contributing 30% of the capital holds 30 shares and receives 30 percent of the profit.

Therefore, we contend that the inclusion of a Leonine clause in a company's contract renders the establishment of the company untenable. This is due to its disruption of the fundamental principle of equality in profit and loss distribution within the company, rendering the entire company contract void. The breach of the profit and loss sharing condition should be understood as an outcome of the Leonine clause, typically stemming from deficiencies in the consent of one of the contracting parties. This discrepancy arises from an imbalance between what is contributed and what is obligated, as well as in the distribution of gains and losses within the company. In ordinary circumstances, a reasonable individual would find the Leonine clause unacceptable.

Considering the diverse opinions among Shiite jurists concerning the Leonine clause, which encompasses the perspective deeming the condition invalid, consequently nullifying the entire partnership contract, the aforementioned arguments can be employed to bolster this position. According to this viewpoint, the existence of the Leonine clause is seen as the factor that results in the invalidation of

the partnership, aligning with the laws acknowledged in various countries (such as Italy, Spain, and Egypt).[93]

Conclusion

In conclusion, this study illuminates the historical precedence within *Ja'farī* jurisprudence concerning the Leonine clause, which predates the emergence of contemporary corporate structures by several centuries. The Leonine clause, subject to diverse legal frameworks globally, is evident in partnership or company agreements. It mandates the unilateral assignment of profits to a singular partner, either excluding others from any share or entirely depriving one of them of receiving any profit. The study emphasizes Shia jurists' persistent concern about this clause, which extends beyond its explicit forms to encompass scenarios including unequal profit distribution and liability for damages.

Notably, the jurisprudential viewpoint of early Shia scholars, who consider the Leonine clause invalid and, thus, nullify the partnership contract, carries significant weight. Even some scholars assert a consensus (*Ijma'*) on this standpoint, adding weight to its credibility.

This article meticulously explores and supports this prevailing viewpoint, delving into the contemporary landscape of company contracts. The contention posited herein contends that the inclusion of the Leonine clause introduces distortions into the contractual framework of modern enterprises. Such distortions, in turn, disrupt the foundational ethos of participatory intent, ultimately culminating in the nullification of the company contract. Consequently, this investigation enriches the broader discourse on Shia jurisprudential considerations in the domain of contract law. It accentuates the enderin significance of historical legal perspectives in shaping

[93] It is crucial to acknowledge that certain scholars have contested this perspective, citing concerns about its impact on the conceptualization of a corporate contract. Endorsing the idea that profit sharing is the central element of a company contract suggests a reductionist interpretation. In this viewpoint, the contract is seen merely as a legal tool for organizing profit distribution, overlooking the wider aspects inherent to a business entity and its legal framework. Lucas, for instance, expressed that the fundamental concept of a company contract is too vague and variable over time to serve as a stable foundation for prohibiting leonine clauses (F. Xavier-Lucas, *Théorie des bénéfices et des pertes - Clauses léonines*, J.-Cl. Sociétés Traité, fasc. 15-30, n° 5.). Also, it is argued that each investor looks out for their own interests. It's hard to imagine a partner insisting on taking all the profits while others agree to partner with them unless there's a lack of consent or a desire to give up their shares. However, this explanation doesn't cover everything, as some shareholders with a strong majority can change how profits are distributed (see Guillaume Grundeler. L'investissement (étude juridique). Droit. Aix-Marseille Université, 2014.

contemporary commercial practices, particularly in the establishment of commercial companies.

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