PARTNERSHIP IN A BUS COMPANY (1960)

Introduction

Since the late 1950s there is ample documentary evidence of stock societies in the Judean Desert that have been established with a view to promoting economic ventures such as transportation of passengers, production of minerals and construction of public roads. These societies are in the form of a corporation of a limited number of shares or a joint stock company. The companies operate on the basis of the Jordanian companies law (which acknowledges the corporation as a juristic person or legal entity). The promoters of the companies are tribesmen (who occasionally join forces with non-tribesmen); they divide the shares among themselves. Needless to say, the concept of a corporation or juristic person is totally alien to Islamic law, which does not acknowledge freedom of association, though certain kinds of society (sharika or shirka), especially mercantile partnerships (sharikat 'aqd) are permitted. Occasionally the boundaries between these companies and the sharī partnerships are blurred.

In a substantive respect, the case under review is an instance of muḍāraba partnership initiated for the purpose of operating a bus company. Muhammad Sālim al-Dhuwayb is the sleeping partner (rabb al-māl); he provides the capital (ra'smāl) of the partnership by transferring the ownership of the bus of the Za'tara Company (which he shares with several shaykhs) to the new bus company and by enlisting his personal reputation as the leader of al-Ta'amira tribes, as a member of the Jordanian parliament and as a famous tribal qādī to promote the interests of the company. The other partners, Christians of Bayt Sāhūr, are the muḍāribūn; they contribute their effort, labor and professional expertise, that is, the actual management of the new bus company, by means of the board and as representatives of the company vis-à-vis the official authorities and banks. Formally, however, the partnership operates as a shareholders company; each promoter receives a certain number of shares according to his contribution to the new company, the profits or losses of the company being distributed in accordance with the number of shares held by each promoter.

The document demonstrates the adaptation of the Bedouin to the changing economic conditions. It goes without saying that a stock company by definition involves risk (gharar), which is prohibited by the sharī'a on account of the interest entailed. No tribal sureties have been nominated by the parties to back up the partnership, implying thereby that in the event of infringement of the agreement, the injured party will probably seek the intervention of the civil court.

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1 Schacht, Introduction, 125, 155–56.
2 See Glossary, s.v. muḍāraba, doc. 66 below.
3 Saleh, 51–52; Layish, Sharī'a and Custom in Libya, doc. 64, fn. 6; doc. 71, fn. 6.
PARTNERSHIP AGREEMENT (ITTIFĀQIYYA SHIRĀKA)

between the gentlemen ‘Aṯā Allāh al-Šūs, Jōrj [George] Michā’il al-Šūs, Michā’il ‘Aṯā Allāh al-Rashmāwī and Muḥammad Sālim al-Dhuwayb, all of Bayt Sāhūr.4

The above-mentioned gentlemen agree to establish a company (sharika or shirka) styled the “Bayt Sāhūr—Za’tara Bus Company,” on the following terms:

1. The [capital of the shareholders] company is divided into fifteen equal shares (sahm), the value of each share being 450 dinars.
2. Mr. ‘Aṯā Allāh al-Šūs holds four of these shares, worth one thousand eight hundred dinars.
3. Mr. George Michā’il al-Šūs holds four shares of the same value.
4. Mr. Michā’il ‘Aṯā Allāh al-Rashmāwī holds four shares of the same value.
5. Mr. Muḥammad Sālim al-Dhuwayb holds three shares, worth one thousand three hundred and fifty dinars.5
6. The shares registered in the name of Muḥammad Sālim al-Dhuwayb belong to him jointly (bi’l-ishtirak) with Shaykh Muḥammad Abū ‘Āmīriyya,6 Shaykh Aḥmad Muḥammad ‘Iwāḏ, ‘Ālī Muḥammad ‘Iwāḏ and Aḥmad Sālim al-Dhuwayb7 on the basis of equality between them, except that all the partners (shurakā) mentioned in this clause empower (yuwakkilūn) Mr. Muḥammad Sālim al-Dhuwayb to administer, supervise (ishrāf) and represent their shares [in the new bus company].8
7. The board of the company (sharika) consists of the four shareholders (musāhimīn) mentioned in the agreement.
8. The board is responsible for the management of the company, inspects its accounts and appoints its clerks and workers in accordance with their rank; no worker or clerk may be appointed or dismissed without a decision of the board passed by an ordinary majority, and all purchases and sales are likewise subject to decisions of the board.
9. The board shall meet at least once a month upon the invitation of the chairman of the board. The chairman shall hold office for one year and shall be replaced by other members of the board in rotation unless the assembled members see fit to appoint a permanent chairman or a chairman for a longer period [than one year].
10. The members of the board may appoint one of their members or an outsider as manager of the company for the management of its affairs under their supervision.
11. A financial report shall be prepared once a year, and the profits (arbāḥ) or losses (khsāʾir) shall be distributed in proportion to the number of shares held by each party.9
12. George Michā’il al-Šūs and Michā’il ‘Aṯā Allāh al-Rashmāwī are the representatives of the company vis-à-vis the [official] authorities (marāji) and banks, and are empowered to sign on its

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4 All the partners except Shaykh al-Dhuwayb are Christians.
5 In 1978 Muḥammad Sālim al-Dhuwayb sold his shares (two out of fifty shares) in the bus company in Bayt Sāhūr to Aṯūn ‘Aṯā Allāh ‘Iwāḏ Rashmāwī and his children for the sum of 80,000 Israeli lira. See contract of sale of shares in the property of the Bus Company of Bayt Sāhūr; Layish, Archive, Partnership, No. 9, Muḥammad Sālim al-Dhuwayb ‘Ashirat al-Sharāʾiyya al-Taʾāmira.
6 Muḥammad Sālim al-Dhuwayb and Muḥammad Abū ‘Āmīriyya were two of the most famous tribal arbitrators in the Judean Desert; see Index of Arbitrators, Sureties, Qādīs and Muftīs.
7 The latter seems to be a paternal brother of Muḥammad Sālim al-Dhuwayb.
8 In other words, Muḥammad Sālim al-Dhuwayb will have to share his profits or losses with his partners of the first bus company.
9 According to the sharīʿa, the mudārib alone bears the losses; see Glossary, s.v., muḍāraba.