



Its Researching the Nature of the Right Holder of the Share and Its Relationship with the Company

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Abstract

The subject of many transactions that take place in the stock market is shares, and knowing the nature of shares is on the one hand as the basis of the legitimacy of transactions, and on the other hand, it depends on the relationship of the company that these shares have effects abroad, and the shareholders must be committed to it. Due to the ambiguity in the nature of stocks, there are mixed words in it. According to one point of view, the share represents an ownership relationship. Shareholders are the owners of the company, but they do not own the assets and property of the company - which belong to the company as a separate and independent legal entity. On the other hand, there is another opinion that does not consider the shareholders as the owner or owners of the business enterprise, according to this opinion, the share represents a special right or privilege for the shareholders, which is called "shareholder's right" in the legal literature. It is a right that includes various privileges, including the right to enjoy annual dividends, the right to attend and vote in the company's general meetings, the right to be informed about the company's important issues, the right to subscribe and purchase the company's newly issued shares. What is certain is that shares are exchanged and traded, pledged and inherited, both in law and in practice and in reality, and in the eyes of custom as elements with economic value and taxation in the field of modern business. In this article, the nature of the share and the nature of the shareholder's right and its relationship with the company are discussed first, with the description of the division of the shareholders' rights based on whether it is financial or non-financial, which is generally neither objective right nor religious right. It is consistent, although the effects such as the cost of the lawsuits filed against the two mentioned rights are different from each other. has it.

Keywords: *Nature of Shares; Share Holder; Company; Shareholders' Right*

Introduction

A share is a financial instrument that is used to provide the capital of companies and participate in their profits and losses. Shareholders share in the profits and losses of the companies they are shareholders in proportion to the number and value of shares. And from a jurisprudential point of view, stock trading is legitimate only if it does not contradict moral and religious principles, and stock trading in companies or business enterprises whose direction is unknown or illegitimate is not correct. The main question of the research is whether the shareholder trades based on the ownership of the shares or based on the right? According to some views, the shareholder trades based on the right not ownership. However, the relationship between the shareholders and the company cannot be analyzed on the basis of right and ownership in such a way that the share represents a special right or privilege for the shareholder; The right itself includes various privileges, including the right to enjoy annual dividends, the right to attend and vote in public meetings, the right to return part of the company's assets and property remaining after liquidation. (Jaafari Khosrowabadi and Shahidi, 2014, pp. 37-64) against this theory, some believe that shares are creditable and the relationship between the shareholder and the company is the credit relationship of the owner and the owner. According to this view, the relationship between the shareholder and the company is a type of ownership, the subject of which is the company itself and not its assets (Abdipour, 2011, p. 137). According to this theory, the shareholders are the owners of the company, and the company belongs to The title is considered as property and is under the ownership of the stockholders, and the stockholders do not have any direct rights to the company's property and assets, but they have an ownership relationship with the company. If we consider the share to represent the owner's ownership of the company or commercial enterprise in a common way, the sale of shares means that the owner of the share, as the owner of a common part of the commercial enterprise, acquires his ownership share to the buyer. The share certificate is a tradable document that represents It is the number of shares that the owner has in the company. In this definition, two points should be taken into consideration. First, the nature of the share is considered from the separate share sheet of the share sheet as the document indicating the share; Second, he considered the share as a part of the company's capital.

Regarding the second point, that is, considering the share as a part of the capital, there are some questions and problems: 1) Is the company, at the beginning of its formation, something other than the aggregation of the contributions of the partners? The reason for this question is that when we say that the share is a part of the capital of the company, what comes to mind is that the company is a collection of which the capital is a part; While at the beginning of the formation of the company and before its personality, what exists is nothing but the property and contributions brought by the partners and the share is given in return. Therefore, the share before the formation of the company cannot be considered a part of its capital because it has not been created yet. (Skini, 2008, vol. 2, p. 32), If capital in this article meant all the property and assets of the company, then the share should not be defined as the amount of commitments, while we know that according to the numerous articles of this law, what the founders and underwriters commit to is a part of The capital is registered. If capital means all the company's properties and assets and not the registered capital, the above article can never be followed because the company's properties and assets are constantly changing and the detection of loss Half of the capital, which will be equal to half of the assets, is a very difficult matter; However, the registered capital of the company is specific and fixed and half of it can be calculated, so according to the legal definition, the share is a part of the registered capital.

This capital, which after the formation of the company, according to the law, has a legal personality and takes the name of the company, is divided into equal parts, each part is called a share, so it can be said that while each share A part of the capital is registered, a part of the company will be as credit finance because the sum of what the partners have brought, both cash and non-cash, to form the company, despite the legal conditions and after going through the prescribed formalities, has a legal personality. and has operated as a single group under the name of the company and has become the owner of the rights and obligations according to the law, while it has powers and duties, with this explanation

and according to the definition of Article 24 of the amendment bill of the Trade Law, the share of a part of The capital of the company is in the beginning of its formation and since the company was formed from the sum of the partners before the creation of a legal entity, the company can be considered as a credit property, where each share represents the ownership of a part of this credit property. .

- A) Nominal value: The nominal value of a share is a mathematical figure that represents a share of the registered capital.
- b) Book value: Book value is one of the accounting concepts that, in order to calculate the book value of a share, the value of equity is divided by the number of shares that are in the hands of the people.
- c) Intrinsic value: The intrinsic value of an asset such as shares is the total current value of the cash flows resulting from that asset, which is usually called investment value.

With this explanation, it is clear that what is traded in the market is the share, but with the market price, while the nominal price of the share is fixed and only changes with the increase and decrease of the registered capital. According to the stated theory, the increase or decrease of the market price of the share It should be analyzed like this: the share is a part of the company, but the value of the company according to its activity and the possession of property and benefits and the anticipation of profit belongs to the company, not the shareholders, that is, according to the legal personality of the company, the shareholders have no objective and direct rights. They have no interest in the company's property and assets, and it is the company that owns these assets, and the shareholders only indirectly benefit from the company's property and assets.

The concept of share

Share is an Arabic word that means share, portion, and share, and its sum is Sahaman and Saham. (Johri, 1404, vol. 5, p. 1956)

Sahm in verse 141 of Surah Safat Fasaham Fakan from Al-Mudhhadzin means the famous arrow and the arrow of lot. (Qorshi Bonabi, 1364, vol. 3, p. 346) Shares are equal parts of the company's capital that are indivisible and are tradable by documents such as named or anonymous or nominal or order or bearer. And the share gives its owner some rights, such as the right to share profits, the right of priority, etc. (Georges, 1996, p. 202) It has different meanings in Persian literature. They have also said "share" in the meaning of throwing a bow or arrow. (Qarib, 1370, p. 621) In the word share is used in two meanings: share means a part of the totality of a value or a unit: in this sense, "share" refers to a part or a part of a set or a whole. For example, A share means a share that a person or an entity has in the ownership of a company: in this sense, "share" refers to a share of ownership in a company that allows shareholders to participate in decisions and receive the company's profits. In Iranian law, a share is defined as the rights of shareholders in a company and it is said that: the capital of every joint stock company is divided into parts, each of which is called a share, so a share is the parts whose sum constitutes the capital of the company in joint-stock companies, each partner's share is called as share, but in joint-stock companies, it is enough to mention the word share. In French law, share has two concepts. The first concept corresponds to the concept of partnership share in non-stock companies (partnership, partnership, limited liability, etc.), that is, it is the right that a partner has in the company, and the second concept is a sheet that the said right It is written in it, but our legislator has separated these two concepts from each other: the right of a partner in a share company, and the document that expresses this right is called a share document. (Skini, 2008, vol. 2, p. 62)

But some jurists have defined the share (Action, Share) in this way. A share is a document that indicates the ownership of a certain share in the company and gives its holder the right to use all the benefits stipulated in the company's articles of association. (Azmi Zanganeh, 1351, p. 99) In English law, the share is defined as follows: the share represents and specifies the interests of the partner in the

company. This definition was given by Judge Farwell in the case of *Borlands Trustee against Stee Bros & Co. Ltd* in 1901. (Kenneth & Denis, 1983, p 106)

Some people consider the share paper as property that can be traded, and in another view, the paper itself has no property, but it indicates the fact that it has property. Neither material nor spiritual from some researchers has caused some people to think that they do not believe in the value of shares, but the fact is that in the aforementioned phrase, the meaning of shares is stock bonds, and since in their opinion, it basically does not mean money, and whatever it indicates a fact, that fact is property, not what it indicates, that is why it has been said that shares do not have property. In western law, the separation between share certificate and share has been considered. is that the share certificate is not a material embodiment of the share or is not a document proving the share; therefore, from the legal point of view, the owners are not considered to be without shares due to the loss or destruction of the share certificate, although the loss or loss of the share certificate in the bearer's money causes more problems in terms of Proving and fulfilling the compensations determined by the issuer creates the share, but the owner's ownership of the share remains despite the loss or destruction of the share sheet. (Ooi, 2003, p. 4)

The Concept of Right

Haq is used in the word as an infinitive, noun and adjective, and great Arab lexicographers have agreed on the meaning of haq. Contradictory right is void, and its sum is rights and rights, and right means proof. (Ibn Manzoor, 1408, vol. 10, p. 49) Johari considers right to be the opposite of falsehood and the singular of rights and rights. (Johri, 1404, vol. 1, p. 248)

Therefore, truth in the infinitive sense means proof, and in the descriptive sense, it means firm, and for this reason, the truth is also applied to God, and we know that Allah is the All-Knowing (Noor: 25) because the proof of God Almighty is the highest evidence, which is interpreted as Philosophical is not mixed with non-existence or non-existence. Also, the right word is called right because its content is actually proven. (Gharoi Isfahani, 1419, vol. 1, p. 38)

The explanation of different dimensions of right has always been the focus of jurists, extensive research has been done on the concept of right, the right of the king belongs to a person, it belongs to the requirement of Shariah against invalidity. The right in the first sense is spoken about business. The essence of right in the word means proven and fixed, and the most important views about right are:

1. Right means kingship

This theory has been attributed to famous people and this meaning is different from the meaning of ownership. Ownership is to encompass and include without kingship and kingship is a credit, like credit, it is ownership of the property, not abstract kingship, so that the forms of abstraction of sharia or customary property are entered. and sovereignty over Ain Aqvi is one of those two (property and benefit), so the sum between property and right is that it is the attachment of the real owner to the object. (Gharoi Isfahani, 1419, vol. 1, p. 42)

2. The right of a rank of royalty

Weaker than the sovereignty in property, which the holy law has placed on something for a human being as a human being or for a specific person, whether that thing is an external object, such as the right of tahjir or a specific person, such as the right of retribution, or a contract, such as the right of a cucumber that belongs to him. It is a contract.

The right is a type of monarchy, but the right of the type of monarchy over property is weak. Sovereignty over benefit is of the highest order, and sovereignty over the same is one of the two (property

and benefit), so the sum between property and right is that it is the attachment of the real owner to the object. (Taqir al-Naini's debate, Lalkhansari, 1418, vol. 1, p. 42)

The right is a form of sovereignty over an object that belongs to the same thing (the right of expropriation) or it is not the same thing, such as a contract (the right of retribution), or a person (the right of retribution), in which case the right is weaker than property, but it is a type of property.

3. Right in a special sense

Right, in a special sense, which is opposite to property and ruling, is the rule over the action, whether it belongs to the same thing or a contract, or a person or otherwise. (Ibid., p. 22) and among its effects are the permission to revoke the right, the permission to transfer with or without exchange, the permission to transfer by force due to inheritance or quasi-inheritance, and if something does not have one of these things, it is not a right, but it is a kind of ruling, like a ruling. The guardianship of water in the permission of taking possession of water in Ibn's property by observing the expediency of Ibn and the right to use it.

A right in a specific jurisprudential sense is a type of contractual authority, such as the right of pledge and mortgage, or over another human being, such as retribution and custody, or over a credit matter, such as the right of a cucumber, in a contract, therefore, the right is considered a type of property, but it is weaker than ownership. It is considered the same. (Bahrul Uloom, 1403, vol. 1, p. 14)

4. The right to The meaning of the effect of reign

Indeed, it is not the right of the monarchy, but it is one of the works of the monarchy, just as it is one of the works of property, but it has a special right of credit, which results in certain effects, such as the monarchy upon termination (right of khiyar) and possession with exchange (right of shafa) and possession without exchange (right of transfer).) In the terms and phrases of the jurists, right is sovereignty over a particular action, and property is sovereignty over an object or benefit, and right is sovereignty over an action often or constantly. So, therefore, the right of Khayar is the right of sovereignty over the termination of the contract, and the right of intercession is the right of sovereignty over the partner's share against Awad. and the right to seize property against others. (Makaram Shirazi, 1425, p. 20)

5. Right means a credit matter different from property and monarchy

In contrast to this view, it can be said that the concept of right is independent from other concepts and there is no need to justify it with concepts such as property and monarchy, in other words, the right has an independent validity, so the view, just like property, is a status ruling and has an independent validity, and rulings There is an obligation on it, such as the right of tahjir, which is a creditable monarchy for the restoration of the land, and among the rulings and effects of this monarchy is the permission to settle and the sanctity of disturbing others, in other words, the right has an independent concept against the obligatory rulings and status rulings, which are based on those effects. And rulings will follow. The reason for this claim, in addition to the understanding and concentration of rational people, is that the right is true in cases where property and monarchy are not true. The place does not become his property, but he has a right to the said place. Also, the right of Tahjir, the right to swear, or the right to castrate, if it is transferred to a minor, there is no royalty to seize these rights, but the wise consider him as having the right. Mousavi Khomeini, 1375, vol. 1, p. 40) Some of the proofs of this point of view is that in many cases ownership belongs to the right, that is, just as in custom they consider the foreign object to be owned, they also consider the right to be their own. It is a difference between right and property because the subject and the subject cannot be the same.

6. Right means a kind of appropriation

A right is a type of appropriation that creates dominion and obligation, and with the word "appropriation" there is a connection that does not include appropriation, such as the permissibility of hunting and harvesting wood from nature, the right to freedom, the right to choose, and so on. And with the word "dominion" he means the possession resulting from the guardian's behavior, such as the right of guardianship over himself, which the guardian exercises his authority over the minor during discipline. And with the word duty, it means the behavior caused by the owner of the right, like the right of the tenant to the hirer. (Hosseini Haeri, 1423, vol. 1, p. 1247)

7. Right in the common literal sense

This means that the validity of the right in any case is different from the validity in other cases, and for this reason the effects of the rights are also different, so the validity of the right of guardianship is for the father and grandfather and the ruler to seize what belongs to the owner of the property, and the effect of this is the right to seize the property. Moli is against takifah and hazha.

According to the examples, the right does not have a single meaning that is shared spiritually, but in each case it has a special meaning as a verbal sharing. In some cases, credit is the same as credit, for example, in the case of Al-Ulayah, it means the same as credit and layer, and nothing else has been credited. Sometimes it means the validity of the monarchy, such as the right of retribution (which is used from the honorable verse, Khad Jaalna Luliyeh Sultanah), in some cases, it also means the validity of the delegation of the command to the person, such as the right of the choice. Therefore, there is no single meaning for the right. Mohagheh Esfahani is of this opinion.

8. Right means property

From the lexical point of view, the right is a type of property, but the property itself, according to this theory, the right has two meanings in the term, one is a general meaning, which includes the object, benefit, and judgment, and a special meaning. Applying the right to the object and benefit is the same as applying the right to the verdict, and this is a common application. (Yazdi Tabatabai, 1370, vol. 1, p. 57)

9. Right in the sense other than judgment and property

The right has a meaning other than ruling and ownership, just as the word right comes to the mind of the incapable person to have a meaning other than these two, because the ruling is a valid matter that belongs to the actions of the owner, and its falsification and removal is up to the sovereign, but sometimes absolute ownership is the true ownership of the will. It is possible that the same generative sovereignty is over all beings, and sometimes it becomes the absolute property of the quality of will, which is the body that results from surrounding another body, which is opposite to the ruling and the right, and sometimes it becomes the creditable property of the will, which is considered valid by the Shariah and the wise. And it belongs to those nobles and benefits and representations that are in front of the decree and property. (Zarei Sabzevari, 1430, vol. 3, p. 362)

The Concept of the Company

The jurists have different opinions about whether there is an independent contract called the company contract or whether the company is the result and fruit of other certain contracts such as sale, peace, etc., and their opinion can be presented in the form of three views as described below.

Some jurists believe that there is no independent contract called a company. (Bahrani, 1405, vol. 21, p. 148; Mohagheh Hali, 1377, vol. 2, p. 375) Rather, the company is the result of the combination of

diffusion in ownership, and this result is possible as a result of one of the certain contracts (other than the company). or obtained by force.

And for the permission to occupy the common property, the permission of the owners is enough, and this permission is nothing but a power of attorney, and it cannot be considered a partnership contract.

A group of jurists (Shahid Thani, 1413, vol. 4, p. 301; Shahid Thani, 1410, vol. 4, p. 202) have proposed two meanings for participation. First, it means the community of owners' rights in finance in a general way, which they consider the customary and verbal inheritance of the company to have the same meaning, regardless of whether this situation is caused by a contract or otherwise. Second, a contract, the fruit of which is the permission of the joint owners to take possession of the common property, and in this sense, the company is included in the category of contracts and is subject to the ruling of validity and invalidity.

Some contemporary jurists have accepted the company as an independent contract. These jurists, unlike the jurists of the second category, who considered the fruit of the company contract to be the right to occupy the joint and common property, have identified the company contract as an independent cause next to sale, peace and lease, etc., and as a definite contract. (Yazdi, 1414, vol. 2, p. 700-702; Mousavi Khomeini, 1379, vol. 1, p. 622)

In this way, it becomes clear that although in the opinion of famous Imami jurists, fusion is a necessary and necessary condition for the realization of the company, but a slow evolution towards the independence of the company contract is underway among the late and contemporary jurists. The civil law, which in most cases has been followed from the opinion of the famous Imami jurists, its appearance suggests that it has also been followed from their opinion in this case, especially since the company contract is not mentioned as a cause of distribution in the said law.

1. The nature of the right holder of the share

In Iranian law, the rights related to shares are derived from the law and these rules are part of the mandatory rules and in the special cases prescribed by the law, the company's articles of association and the board of directors cannot establish a rule contrary to these rules, but these rights in England are divided into two It is based on the fact that some of these rights are granted to the shareholders by the articles of association and the company's letter of incorporation, and another part is granted by the law of .commercial companies. Rights are objective or religious rights, they are paid

Clause 1: Objective right

An object right is a financial right that belongs to a foreign object. And the theory of the objectiveness of shareholders' rights was accepted in English courts and judicial practice, and in fact, shareholders were considered the real owners of the company's capital in capital companies, like individual companies, as in the case of *Child v. Hudsons bay co(1723)* This theory is accepted. (Paul, 2016, p. 300)

But today in English law, the theory of the objective nature of shareholders' rights in capital companies is not popular, and English jurists have also considered the capital company to have a personality independent from the personality of the shareholders, and all the property belonging to it is a credit personality, and the shareholders have the rights due to having a share certificate. arising from the future and ownership of the company's property are not considered, in Iranian law, jurists believe that a joint-stock company has a legal personality and the shareholders do not have any objective right to the company's property, and only the company has an objective right to this property, and the board of directors only It is considered the representative of this character.

Therefore, the right of shareholders in the company cannot be an objective right. Some others have a special opinion that in the balance sheet of joint stock companies, the legal personality of the debtor of their capital is shown, so it can be concluded that the shareholders are the creditors of the company and not the owners of the company's common property. Based on the above, the share owner's right is basically a religious and non-material right, but by creating a share sheet, it is combined with a document called a share, and the ownership of the share practically becomes an objective right on the share. (Sotoudeh Tehrani, 1391, p. 106) It should be noted that this opinion is not very popular after the amendment of the Trade Law in 1347, and despite articles 24 and 27 of the Trade Law Bill, the theory of the objectivity of shareholders' rights in the company cannot be accepted.

Clause 2; religious right

A religious right is a financial right that a person owes to another person. According to this theory, the owner of a share has a religious right to the company, according to which he demands his share from the company and benefits from its profits in proportion to his shares. If the company is dissolved for some reason, it will demand a part of its assets in proportion to the share, that is, the shareholder has the right to demand a part of the company's capital in addition to claiming benefits, which are both religious and personal rights. (Safari, 1402, p. 136) In adjusting this theory, it can be said that it is true that a series of shareholder rights, such as the right to benefit from the company's profits, have all the characteristics of religious rights, and the shareholder is a creditor and the company is a debtor. is considered, but in the case of the other types of rights, it cannot be assumed that the owner of the share is the creditor of the company, especially that some of these rights are non-financial and are not included in the division into objective and religious, because this division It is a special clause for financial rights. Although the majority of lawyers in England consider the share as a religious right, they do not consider the shareholder as a creditor and they believe that the company is not in any way indebted to the partners and only in case of liquidation of the company after the payment of the company's debt if any of its property remains. It is divided between the partners. (Ryon, 1988, p. 73)

Clause 3; Special nature

The rights of shareholders in joint-stock companies have a special nature, which means that they do not correspond to objective or religious rights, but in some cases they have the characteristics of objective rights and in some cases they have the characteristics of religious rights. Dini has said that the developments of current life have created rights whose nature is not compatible with any of the objective and religious rights, for example, the right that partners have in commercial companies has a special nature and is not the same as the structure of any of the two rights without a doubt. They do not have an objective right to the company's property, because this property has the character of rights, and according to the assumption of this character, it has a privileged and independent existence, but they are not considered as creditors of the company, because they take a certain share of the profit, and when the company is liquidated, the property between is divided, the creditor can claim the principal amount and the interest regardless of the amount of the company's profit and loss, and after receiving this amount, he has no right to the company's property. (Katouzian, 1402, p. 363) So, as a result of the shareholders joining the company and transferring the objective right they had to the company, it becomes another right with a special nature that allows the shareholder from a to benefit from series of rights. In English law, the right of shareholders has not been accepted as an objective right or as a religious right, but they have assumed it as a right of a special nature, and to express its distinction from a religious right, they compare it with bonds, which in The creditor's bonds have no other rights except the claim of the loan principal and the interest belonging to it, while the right of a partner in a joint-stock company (partnership) is a contingent right that can only be applied if the company receives a profit. (Ryon, 1988, p. 300) The only feature that brings the rights of the shareholders closer to the religious right is the right to enjoy profits and the right to enjoy the company's property. Its interests do not have any other rights towards the company, while the shareholders have other rights besides that, for example, the right to

know about the company's affairs, which the bondholders do not have, and also the profit belonging to the shareholders, such as the demand of the bondholders, is not clear and fixed, but the amount of the profit. It depends on the company.

2. The relationship between the shareholder and the company

2-1 Company on common credit

Company, in its special sense, is one of the definite contracts that are created along with the distribution of ownership rights, and usually, whenever a company is mentioned in civil law, this is the meaning; Because the company in its broad and broad sense, in addition to including the company contract, will also include Mudarabah, Mazareh and Musakat contracts, as well as any mixing and mixing of properties that cannot be distinguished from each other (whether that mixing was achieved voluntarily or forcibly), In Article 571 of the Civil Code, the company is defined as follows. The company is the collection of rights of multiple owners in a single object. This definition is taken directly from the Imami jurisprudence, as the scholar in Shari'i says in the definition of the company: Sabeel al-Shi'a" jurists have generally defined the company as the union of rights of two or more people on a common object. (Tahiri, 1418, vol. 4, p. 279)

The definition of a company in the words of the jurists, whether it is a contract company or an acquisition company, which is also interpreted as Anan company or Ananiyeh company, is: a contract between two people who share the same finances, make a transaction, then a partnership contract is concluded. In order to make a transaction with the money that is common between them, it means that it belongs to the contract, to make the transaction.

Another point is that a contractual partnership is a "permissible contract": and any of the parties can terminate it (Issue 12 of the partnership agreement is permissible for the parties, *fijūz* for each party to terminate the partnership) if they have stipulated a period for the partnership, for example, Let's conclude a company contract for one year, in this case, either party can terminate the contract before the end of the year (Issue 13: If the company is legally bound for a period of time, it is permissible for each party to return before its expiration, unless there is a condition in the contract that is necessary. Not going back means that they must fulfill their obligations, but even if it is permissible to enter into a contract, they must fulfill their obligations as long as the contract remains). Therefore, in the case of a condition, they can still terminate the contract unless, in addition to the necessary contract, they stipulated not to terminate the contract of the company, in which case, the company is not a necessary contract, but the fulfillment of that condition is necessary.

In the comparison of partnership bonds with the contract company mentioned in the definition, investors who intend to participate in the implementation of profit-making projects; In other words, are the partnership bonds the same as the jurisprudential partnership contract where people share with the government as a broker and agent in the profits from profit-making projects? What was understood from the words of the jurists is that the contract is different from the partnership papers because in the contract, the contract is for the transaction of the joint property that is mixed; But these papers are not like this, so the rulings about jurisprudential companies do not apply to partnership papers. Therefore, the nature of partnership bonds should be explained, when people buy shares of a company, they are partners in the company's property, and in the case of owners of partnership bonds, they are also partners in the company's property. Or if we consider that in the nature of shares, the owners of the shares are the owners of the financial paper and the share itself is a financial credit that has effects such as the profit goes to them and the loss goes to them in proportion to the shares, the right to participate and the right to vote in have the general assembly; In partnership papers, it is the same as shares, but it does not have the right to interfere in affairs (Andalibi, Ali Zahiri's version of the professor's contemporary jurisprudence course, *ismc.ir* version system)

According to this theory, the ownership credit of the owner of the share towards the company is distributed in a common way, on this basis, the partial share of the company is considered as financial credit, which is determined only after the liquidation of the legal personality of the company. Mamluk is considered a legal entity and the shareholders of that legal entity are joint owners. (Abdipour, 2011, p. 138)

2-1-1. Ownership of the company by the shareholders jointly (without property)

Here, the shareholder is the common owner of the company, although buying and selling shares does not face problems from a jurisprudential point of view, but it does not comply with the effects on the company and shares abroad, because the shareholding of the subsidiary company is based on creating a legal personality for the company and The acceptance of this character is for that, in this assumption, the property of the company is in the property of the company, and despite the ownership of the company in relation to the property of the owners of the shares, it does not make sense in relation to the property of the company, because the community is the owner independently of the whole property, in the sense that the property The company is completely owned by the company, and at the same time, the property of the company is completely owned by the owners of the shares. It is impossible, of course, in credit matters, it is impossible to speak of impossibility, unless it leads to the gathering of defaulters, or the credit matter is based on or leads to real matters. The curve is the return of transformation to the community of opposites (independence or lack of independence).

2-1-2. Longitudinal ownership of the shareholders (the company is owned by the shareholders, and is the owner of its property)

Here, the company is first and foremost the owner of the property, and the shareholders are the owners of the property during the ownership of the company, that is, the company is the owner of its own property and assets as well as its shareholders. (Abdipour, 2011, p. 137)) According to the hypothesis that a joint-stock company has property and the shareholders are the owners of the property during the joint-stock company, if some or most of the shareholders become bankrupt and disqualified, considering that the property belongs to them, the seizure of the company's property should be stopped when the shareholders are disqualified. While one of the works of a joint-stock company is that whatever happens to the stockholders, the company will continue its work, so the ownership of the legal entity itself, whether it is only a legal entity or it is not owned during that time, can also exist in property. They are not obligations. According to this theory, the stock holders are the owners of the company and the company owns its property, and the stock holders become the owners of the property, in other words, the stock holders become the owners of something that is the owner of the property, like a car company is the owner of its property (ownership), in stock market transactions, the theory "Ownership" means that when a person buys shares on the stock exchange, he is recognized as the actual owner of those shares in this transaction, even if the shares are not physically delivered to him.

2- 2. Ownership of stockholders in relation to property and non-ownership of the company in relation to property

Shareholders who have shares in a company share in the property in proportion to their share and the company has the same property in the jurisprudential sense. As a result, the property is only for the owners of the shares and the company does not have an independent legal personality to prove its ownership. It seems that the company's credit is A share in the meaning of a jurisprudential company is not a correct possibility because the establishment of a joint stock company is a jurisprudential company in the sense that the owners of the shares of the company are not in the company's property, it is contrary to the common practice. Share in profits and losses does not mean a juridical company because the owner of the share may have rights to the company's property or they may have money that gives them the right to participate in the profits of the company's capital, but this means the jurisprudential company and the

ownership of individuals It is not the property of the company, but according to the appearance of Article 24 of the Law of Trade, the property belongs to a joint stock company. Also, if a joint stock company faces a loss, the shareholder does not share in all the loss, but only shares in the loss to the amount that he paid and bought shares, and to The same amount of his credit will be lost. Therefore, the theory of share holders are not partners in the ownership of foreign property, but they are partners in the ownership of these properties, the company is sometimes in the same and sometimes in the ownership, so that the owner of the share is not a partner in the company's property, but the owner of the share in their property, and it is the same. It belongs to the company, for example, a company like an automobile manufacturer that produces cars, here the shareholder is not the owner of the company's products, but the owner of its property.

2-3. The credibility of the independence of shares and the intrinsic value of shares

According to this theory, the share is considered as a right resulting from the contract and obligation, which after creation, by reflecting its rights in the securities, turns into a tangible asset. (Ghamami and Ebrahimi, 1391, p. 127) That is, just as the banknote is considered to have credit value through the government, the same stock paper is also considered to have value for any exchange such as sale and purchase due to the credit of the company. It seems that this possibility is associated with some problems, because supposedly, if the loss of a banknote as the same asset is an example of the loss of property, but the loss of a share certificate is not considered as the loss of a part of the property, that is why the custom makes a difference between the banknote and the share certificate. And he considers the share deed as the only discoverer and proof of his ownership, and with its loss, it still gives a ruling to the survival of the relationship of the shareholder. Apparently, this saying is popular among some jurists, that is, the owners of the shares do not own anything, neither the company nor the company's property, but they are the owners of the right that shares represent the right. 1. If this company makes a profit, a part of it will go to the shareholders. 2. He has the right to vote in the general assembly. 3. If the company is liquidated, a part of it will be bought to the shareholder. So the shares belong to this company in the sense of right. The difference between the third and fourth theory is this; In the third theory, the shareholder is the owner of the company and the company is the owner of its property. But the fourth theory is that stockholders are not owners at all. They do not own any money, they are not objective owners, they are not the owners of the company as a legal entity, nor are they the owners of its property, but they are the owners of rights. that shares imply that right. In fact, Iran Khodro has a right for the buyer Shares credit and sell this right. The name of this right is to be a shareholder. Some jurists have clarified this matter. (Abadi, 1368, p. 92)

And some others also state in this regard that "none of the partners can claim that they have ownership rights in the capital of the company until the company is dissolved, they only have the right to demand profit from the company" and some other jurists also believe: "A shareholder cannot claim ownership of the company's property in proportion to his share, but only has a right to the company's share in proportion to his share, and according to that, he will use the company's benefits and in case of liquidation of the company, he will be a share of the company's property." (Katouzian, 1374, p. 96) According to the fourth theory, credit becomes a right, and then the right is transferred to the owner of the share. (Shahidipour, Dars Khahr Fiqh, 1400)

2-4 Validity of ownership and independent legal personality for the company and non-ownership of stockholders

According to this theory, the company is recognized as an independent legal entity that is the owner of the property and the shareholders will not have any ownership over the company or its property. The customary and legal effects of the company strengthen this theory. And property can be depicted in several ways.

2-4-1. The rights of the shareholders towards the company

According to this theory, the nature of shares belongs to the category of right, which means that the owners of the shares only own a right of the company, this aspect is benefited from the words of some lawyers. (Katouzian, 2014, p. 62; Ebadi, 2016, p. 92; Abdipour, 2011, p. 145)

Based on this, the share is called the right of the company, the right to enjoy the annual dividend during the company's activity and the right to acquire the remaining capital and assets of the company after liquidation and settlement are examples of this right. The stages of the formation of a joint stock company clearly show it. Before the formation of the legal personality, the nature of the contributions of the founders is the common share of the total contributions, but after the creation of the legal personality, the ownership relationship between the founders and the underwriters is terminated. (Skini, 2008, vol. 1, p. 18; Abdipour, 2011, p. 138)

2-4-2. religious and objective rights of stockholders towards the company

In the view of some, share belongs to the category of debt and the claimant is the owner of the share of the company. This debt is the origin of legal rights for him. Most of the people who hold this theory are English and American lawyers, by considering the division of financial rights into objective and religious rights, and then weakening the objective right of nature. They have considered shares as a religious right. (Aminzadeh, 2016, p. 76)

This theory is also not based on the law, the statutes and the works of the whole theory because the law does not consider the share to be the responsibility of the company and does not consider the shareholder as a creditor, but instead introduces the share as a part of the company's capital, as a result, according to the law, the capital is divided and The stock is considered for its owner, therefore, there is no responsibility for the legal entity. Also, this theory is contrary to the usual concentration of stock market traders, based on the claim that the owners of the shares are not considered to be employers. Therefore, this theory that the owners of the shares are not the owners of the legal entity and are only If they have the right of religion, it will not be enough. This issue has been raised in some legal books. that "most judges consider the right of the shareholder in the company to be a religious right, not an objective right, i.e. they consider it as a creditor". (Shahidipour, Dars Khahr Fiqh, 1400)

This theory is contrary to the usual concentration of stock market traders based on not being considered as job seekers, so this theory that the stock holders are not the owners of the legal personality and only have the right of debt towards it will not be complete. Because the theory of stockholders being creditors in stock exchange transactions means that stockholders are actually creditors of the company and demand their rights and financial obligations from the company in stock market transactions.

2-4-3. credit property

The owners of the shares are not entitled or creditors, but they are the owners of the credit balance that has property, just as the company is a credit balance and while not having an external existence, it owns its property, the shares are also a credit matter that belongs to the shareholders, according to this, the shares themselves are considered as capital. and exchangeable.

The theory of creditworthiness of shares in stock market transactions means that stocks are known as credit documents, according to this theory, stocks have a creditable existence, credit is not a right in them, but merely a creditable existence is assumed for them, and this creditable existence is the source of the effect. The difference between the sixth theory and the fourth theory is that in the fourth theory they were right, but here the credit is like the credit of securities, here the shares are created for this company. In the sixth theory, the shares are credited.

Result

The owners of shares have rights that are not limited to financial affairs, but also include other rights, and the right arising from the share cannot be an objective right for its owners, although some jurists have considered this right as a religious right. which is based on the relationship between the shareholder and the company, in which the former is the debtor and the latter is the debtor, and the shareholder can claim the rights arising from his share from the company, and these foreseen rights have a special nature and can be applied to objective or religious rights are not.

Regarding the nature of the right holders of shares with the company based on the enamel of Islamic law, the company can be considered as the subject of their rights, in this regard, the issue of ownership is not the objective and tangible property, but the company as a subjective and creditable concept is the subject of ownership, and the concept of the relationship Ownership of credits such as commercial companies is not unprecedented, and we can refer to the ownership of the entire asset.

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