

جامعة نايف العربية للعلوم الأمنية
كلية الدراسات العليا
قسم العدالة الجنائية
تخصص التشريع الجنائي الإسلامي

الإعلان القضائي

في الفقه الإسلامي ونظام المرافعات الشرعية السعودية
رسالة مقدمة استكمالاً لمتطلبات الحصول على درجة الماجستير

إعداد الطالب
هايف بن صالح الوسيدي

الرقم الجامعي
٤٢٣٠٢٠٩

إشراف
المستشار الدكتور / فؤاد عبد المنعم أحمد

١٤٢٧ هـ - ٢٠٠٦ م



كلية الدراسات العليا

()

:



عنوان الرسالة: الإعلان القضائي في الفقه الإسلامي ونظام المرافعات الشرعية السعودي

إعداد الطالب : هايف بن صالح الوسيدي

إشراف : المستشار الدكتور فؤاد عبد المنعم أحمد

لجنة مناقشة الرسالة :

مشرفاً و مقررأ.

- المستشار الدكتور فؤاد عبد المنعم أحمد

عضواً.

- الأستاذ الدكتور فهد بن سلمة

عضواً.

- الدكتور أحمد بن محمد اليماني

تاريخ المناقشة : / /

مشكلة الدراسة:

أهمية الدراسة:

أهداف الدراسة:

:

تساؤلات الدراسة:

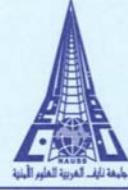
:

:

منهج الدراسة :

أهم النتائج التي توصلت إليها الدراسة:

()



College of Graduate Studies

(27)

Department : Criminal Justice

Specialization : Islamic Criminal Legislation

Thesis Abstract – M.A.

Thesis Title : Judicial Notification within Islamic Jurisprudence
and the law of saudi shari' pleadings

Prepared by: Hayef Saleh Al-Wisaidi

Supervisor: Consultant Dr. Fuad Abdul Man'am Ahmed

Thesis Defense Committee:

- | | | |
|-------------------|------------------------------|-----------------------|
| - Consultant Dr : | Fuad Abdul Man'am Ahmed | Supervisor & Reporter |
| - PH .Dr : | Fahad Bin Salamah | Member |
| - Dr : | Ahmed Bin Mohammed Al Yamani | Member |

Defense Date: 16/1/1427H. corresponding 15/2/2006.

Research Problem : The judicial notification considered as one of the rights those demanded by Islam & system of quarrels , where importance shall be put for , in order for all to be in a full recognition with. The research problem falling in that the judicial notification within the low of saudi shari' pleadings are in need of separate study distinguishing it of others , linking it with Islamic jurisprudence , showing its elements and objective and its way of implementation .

Research Importance : The research importance congested in that the judicial notification in Islam jurisprudence and the low of saudi shari' pleadings did not find all of what it deserve by researchers of research & study as by the notification the judicial disputer take place , and the progress o the appeal shall move in the direction of justice proof . A wrong or delayed judicial notification considered as an obstacle in judging the dispute , the subject importance is clear through the quick link of judicial notification , or the delay of cases specially with the lot of cases those raised for Judge which increased by increasing of quarrelers.

Research Objectives : Research objectives are :

1. Explaining the method of attendance notification to Judge Islamic Jurisprudence.
- 2.Explaining the basic elements of judicial notification .
- 3.Explaining to the followed methods in judicial notification .

Research Hypothesis / Questions: The major question of this research is : What is the judicial notification within the Islamic jurisprudence and the low of saudi shari' pleadings, and through which shape shall be implemented ? And questions may e specified more precise as follow:

- 1.How judicial notification shall be implemented within Islamic jurisprudence ?
- 2.What are the basic elements in the judicial notification operation ?
- 3.What are the methods through which the judicial notification ?

Research Methodology: The researcher used to use the analysis method in knowing the judicial notification within the Islamic jurisprudence and the low of saudi shari' pleadings.

Main Results:

- The defendant have respond for his quarreler (plaintiff) appeal for ruling religious and not judicial basis , but if the appeal came from the judge or the governor so the appeal shall be imposed in religious & judicial .
- In case if disability of defendant to respond for the reason of illness or others this shall release him of responding , but he must depute attorney , as for his apologize not to cause loosing dues or delay in judging cases.
- Appeal is not carried unless through specific manners as per rules and fundamentally , the notification to be through the normal way , and not through the exceptional manner unless it is not achieved through the normal manner .
- The quarreler notification shall be through the plaintiff or through the judge assistant , as the defendant may be himself the notifier .
- The Judge got the right tot obligate the defendant to respond for appeal , even if by force to establish justice , also the judge got the right tot offense the absentee if his case came within the dangerous cases . As per the gudge vision , and the Gudge must not act for absence ruling unless through the frequent notification and absence of the defendant .
- The low of saudi shari' pleadings rules organizing the notification is of no difference than the Islamic jurisprudence rules , unless it is for organizing and putting consideration for the modern societies .

:

(/)

/ /

(p)

:

:

:

.

.

.

:

:

:

:

:

:

:

-

-

-

:

:

:

:

/

/

/

:

.

:

:

» : -

: « .»

:

.«

:

.

. () -

. ()

. ()

.

()

()

-

:

:

"

"

-

:

-

"

"

"

"

:

:

" "

:

-

"

"

()

()

(/)

()

.

.

.

.

.

:

:

" :

"

:

:

:

-

()

" :

-

"

.

.

.

:

.

-

.

.

.

:

:

:

:

: ()

/

.()

()

:

: ()

: :

()

.()

-

-

:

» ()

: «

(-)

.

:

:

:

:

:

:

-

-

-

.

-

.

-

.

-

-

-

.

-

.

-

.

.

:

» ()

: «

-

.()

:

:

-

-

-

-

-

()

:

:

.

:

:

.

:

.

:

.

:

:

:

:

:

:

:

:

:

:

.

.

.

.

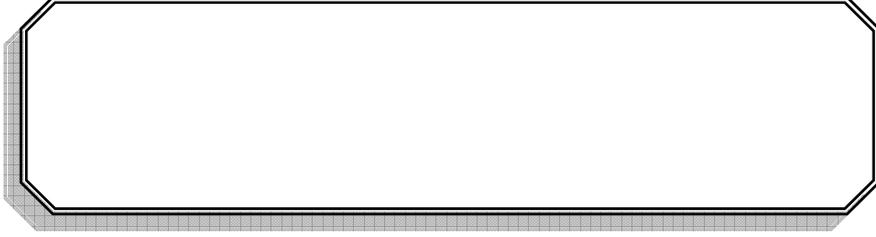
: ()

: ()

: ()

: ()

: ()



:

:

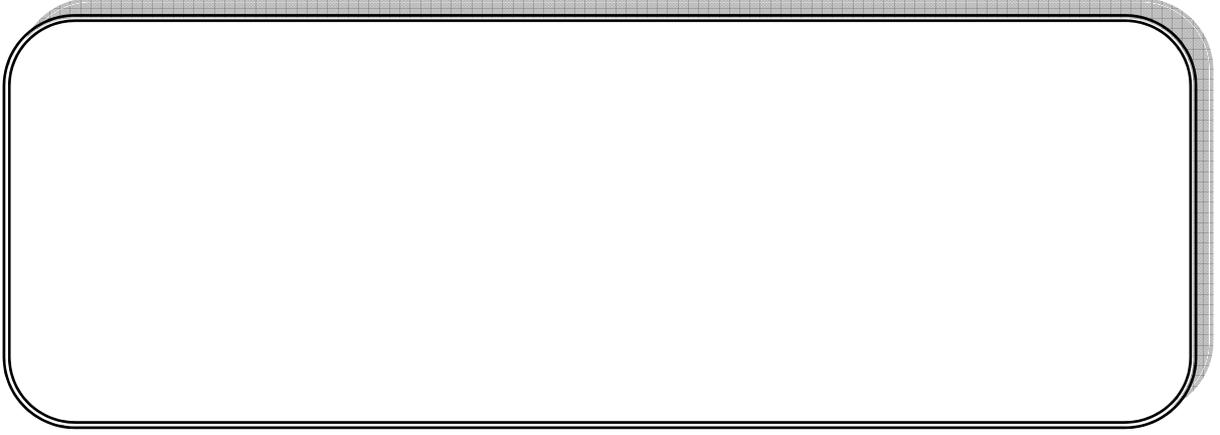
.

:

:

.

.



:

.

:

:

.

:

.

:

.

:

): ρ

. (

:

: () : ρ

()

. () ()

() ()

()

()

..

()



"

- " :

-

: ρ

: .

: ρ

. " .

ρ

.

()

. ()

-

.
:

-

-

-

.

- -

ρ

):

:

: ρ

: ρ

. (

-

.

.

/

-

/

()

()

()

()

()

()

()

()

:

:

.

:

: []

"

.

ρ

.

.

-)

:

-

(

-

"

"

":

"

==

. 2

. 3

" :

"

" :

=

=

-

-

-

.

.

-

.

.

.

.

.

-

-

"

"

"

: ρ):

-

" " : ρ

:

:

:

: ρ

"

-

-

-

-

-

-

..

-

.

.

"

.

:

:

.

:

-

.

-

): ρ

(

.

()

.

: .2

. -

.3

-

-

.

:

:

ρ : ()
 () : ()

1 . :
 :
 :
 :
 :
 : ()

:

:

.

): ρ

. (

:

" :

.
:

"

:

" :

"

:

" :

:

:

.

-

.

.

:

.

-

.

"

.

"

-

-

"

"

"

.

.

.()

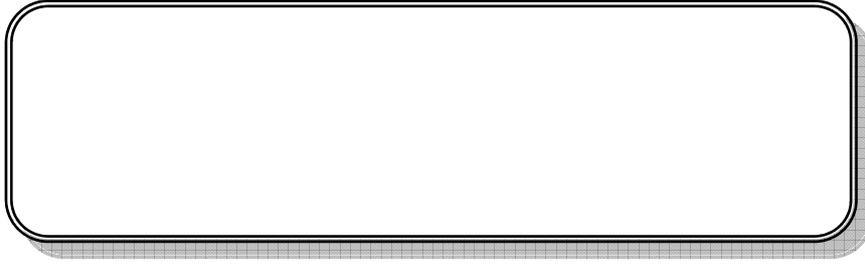
.

.(-)

.()

.

.



:

:

.

:

.

"

" "

"

...) :

...
...
...
... (...)

:

p

:

.....
.....
.....

" :

"

):

:

: ρ

- ρ

:

:

-

:

-

-

:

:

:

:

-

-

:

(

:

.

.

-

(/)

.

-

-

ρ

.2

-

.

:

:

. 1

. 2

. 3

. 4

. 5

:

.

:

.

:

):

-

:

:

 ρ

. (

.1 : (

(

/

.2 :

.3 :

.4 () ()

() ()

-

-

:

:

()

-

-

.

:

ρ

:

ρ

) -

:

:

ρ

:

:

: ρ

. (

:

ρ

. 1 - :

. 2 :

. 3 .

:

ρ

-

-

-

- : .1

- : .2

- : .3

- : .4

:
 - - -) :
 (

:

:

:

 1 . : -

2 . : -

3 . :

4 . :

5 . :

-

:

-

-

()

-

:

. 1 :

. 2 :

. 3 :

. 4 :

. 5 :

: - -

أ) : ()

③ ٢٠١٤ ٢٠١٤ ٢٠١٤ ٢٠١٤ ٢٠١٤ ٢٠١٤ ٢٠١٤ ٢٠١٤ ٢٠١٤ ٢٠١٤
 ٢٠١٤ ٢٠١٤ ٢٠١٤ ٢٠١٤ ٢٠١٤ ٢٠١٤ ٢٠١٤ ٢٠١٤ ٢٠١٤ ٢٠١٤
 ٢٠١٤ ٢٠١٤ ٢٠١٤ ٢٠١٤ ٢٠١٤ ٢٠١٤ ٢٠١٤ ٢٠١٤ ٢٠١٤ ٢٠١٤
 . (٢٠١٤ ٢٠١٤ ٢٠١٤ ٢٠١٤ ٢٠١٤ ٢٠١٤ ٢٠١٤ ٢٠١٤ ٢٠١٤ ٢٠١٤

:

- -

:

-
- 1 . :
 - 2 . :
 - 3 . :
 - 4 . :
-
- :
-
- :
-
- :

.1 :

.2 :

:

:

:

:

.

.1 :

.2 :

.3 :

.4 :

:

:

:

()

:

. 1 :

. 2 :

. 3 :

(

. 4 :

. 5 :

.(

(

:

.

:

.

:

.

" :

"

:

. 1 :

. 2

. 3

:

.

:

:

:

. 1 :

-

. 2 :

. 3 :

. 4 :

:

:

:

. 1

: . 2

: . 3

: . 4

: . 5

: . 6

. 7

:

— — —

.

:

— — —

.

:

.

:

. 1

:

.

: . 2

: . 3

.

]

. [

- -

: _____ . 1

-

=

-

-

-

-

-

-

-

-

-

()

-

-

-

-

-

.

-

ρ

-)

. (

:

:

.

-

-

. 1 .

. 2

.

. 3 .

. 4 .

. 5 .

. 6 .

-

-

:

-

:

-

. 1 :

. 2 :

. 3 :

. 4 :

. 5 :

:

.

- - :

.

.

-

-

:

.

:

-

-

.

.1 :

/

:

.

:

.

:

:

:

"

"

":

"

"

-

:

= =

-

()

=

:

":

:

":

:

.

-

-

:

:

.

.

.

.

.

.

:

.

"

:

" "

"

.

:

"

.

— —

.

"

.

.

:

.

.

.

.

.

. "

- "

. :

. :

" :

"

.

.

. :

. :

. :

= (/)

:

:

:

:

=

. 1 () :

. 2 :

. 3 :

. 4 :

. 5 :

-

:

.

.

:

):

.

:

-

-

. (

): -

-

.

: .

.

: .1

-

-

: .2

. -

.3

:

()

: .

. ()

/

-

-

-

:

.1 :

/

.2 :

.

- -

-

-

-

:-

-

.

.

. -

"

"

.

.

:

"

" ()

:

:

:

:

:

:

"

" ()

:

:

:

"

()

()

"

"

-

-

"

. . . .

()

"

() "

.

"

:

() "

.

.

.

.

.

"

.

.

.

" ()

.«

»

"

: " 1.

":

: "

-

-

-

:

. 2

:

: "

.

() .

" ()

" .

" : ()

" ...

. 1

. 2

()

()

" "

()

"

"

:

()

-

"

()

"

":

()

"

()

- -

"

()

"

()

"

" ...

- -

.

. 1 :

":

()

"

. 2

— —

.

:

()

" :

"

. (/)

.
() :

(/) .(...

»

.«

(/)

."

":

"

()

"

"

"

()

"

:

"

"

" () .

"

" () .

" (/)

"

:

()

:

-

"

"

() :

:

(/) :

"

"

.

.

.

()

:"

"

" "

:

-

-

-

-

-

"

-

:

:

"

"

:

"

(/)

"

:

"

"

-

:

.

-

-

()

-

-

-

// (/)

-

:

// (/)

(-)

(/)

.

.

.

.

.

()

()

" -

()

()

":

" "

"

": (/)

”

.

:

:

()

()

”

”

.

”

.

.

.

.

.

”

.

.

.

"

"

" ()

:

:

()

": ()

"

" (/)

"

" (/)

"

.

"

.

.

.

.

"

.

:

:

:

" (/)

"()

"

"

:

:

"

"

()

)

(

:

:

"

"

:

"

.

.

"

.

"

"

.

:

:

:

.

.

. ()

-

.

()

»

«

”

() ”

”

() ”

:" (/)

."

"

" (/)

()

() "

(/)

()

"

:

"

"

"

()

()

" : (/)

" :

"

"

"

:

:

:

"

:

-:

:

.

:

"

.

.

"

"

- -

.

.

"

.

()

.

.

.

-

-

.

(/)

()

)

. (

"

"

:

:

:

" ()

.

.

.

"

.

.«

»

"

"

"

.

"

.

-

.

.

.

.

"

.

"

.

(/)

.

"

.()

"

.

.

"

.

-

.

.

.

.

:

()

"

"

.

.

"

-

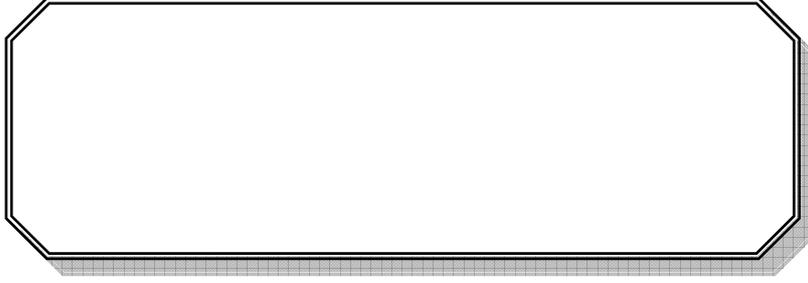
"

.

-

-

.



:

:

:

()

:

"

"

:

:

:

:

-

» : ()
«...»

” .

” .

"

()

": (/)

"

" (/)

(/)

"

": ()

."

": (/)

": (/) "

(-)

."

": (/)

."

(/)

":

() " ()

"

": (/) "

." ()

(/)

": (/)

."

": ()

."

"

"

.

": (/)

"

.

"

.

"

.

"

()

.

"

.

. -

.

.

.

.

. -

.

()

:

.

-

-

.

-

.

-

"

.

)

"

(/)

"

(

:

" ()

:

:

()

-

:

"

()

"

"

"

:

-

" : (/)

"

.

"

. ()"

.

:

()

»

.«

.

-

.

.

.

() :

() :

(

() :

"

"

"

() "

: (/) . "

.« »

"

:

:

.

:

.

"

.

"

.

.

"

.

.()

()

()

":

"

"

"

"

()

"

"

":

()

"

"

:

:

:

"

.

/)

» : (

" : (/) «

."

.«

» : (/)

"

"

.

"

"

.

()

.

- .

.

- .

.

.

.

.

.

"

"

:

/

/

()

":

"

» :

()

.«

:

"

- - - - -

()

"« () »

« »

:

:

:

» :

()

.
- - :.
- -

.«

»

»

:

":

()

"

:

."

:

": (/) -

": (/) -

"

": (/) -

-

"

-

()

":

()

:

.

-

-

.

-

.

-

.

-

.

-

.

. -

-

-

.

-

-

"

.

()

.

-

-

:

:

-

.

:

-

.

:

-

:

.

.

.

.

.

.

.

.

:

.

» : (/)

«.

» : (/)

«.

»: ()

«.

()

"

()

()

()

"

»: (/)

«.

»: (/)

- -

«.

:

:

:

:

:

:

"

"

"

(/)

"

« »

"

:

—

.

.

.

.

« »

»

:(/)

»

() »

»

() »

.

.

.

.

.

.

» : (/)

.«

»

»

»

»

»

»

. - .

. - .

. - .

"

.

.

.

.

.

.

.

" : " " : " :
 " :
 "

"
 .
 » (/)
 .«

... " (/)
 " ...

" : (/)

"

.

" : (/)

" .

"

" .

"

" "

.

.

"

.

« »

"

.

.

.

.

.

.

.. "

" ()

.. "

..
" : (/)

.. "

" ()

"

.

" (/)

"

.

" (/)

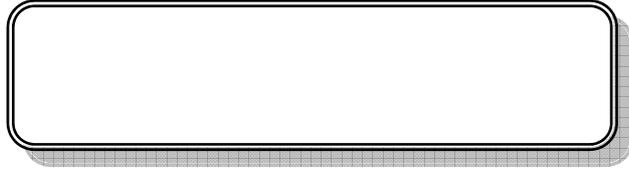
"

.

.

-

.



:

•

-

•

-

...

:

:

:

.

.

.

.

.

.

.

.

.

—

—

.

.

.

.

.

()

:

:

●

●

●

()

السنة

اللغة والمصطلحات الفقهية والقانونية

أصول الفقه

القواعد الفقهية

الفقه الحنفي

الفقه المالكي

)

(

∴

:

كتب الفقه الشافعي

كتب الفقه الحنبلي

كتب الفقه العام

() .

- ()

كتب الفقه والنظم

النظم واللوائح

// (/)

. //

كتب الشروح والتعليقات على النظم

كتب السير والتاريخ

:
:
:
:
:
:
:
:
:
:

الفصل الأول : الإعلان بالحضور إلى القاضي في الفقه الإسلامي

:
:
:
:
:
:
:
:
:
:

:

:

الفصل الثاني: العناصر الأولية في عملية الإعلان القضائي

:

:

:

:

:

:

:

:

:

:

:

:

الفصل الثالث: طرق الإعلان القضائي

:

:

:

:

:

:

:

