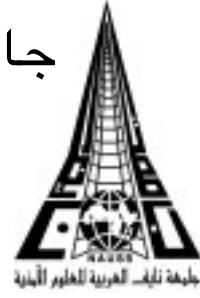


جامعة نايف العربية للعلوم الأمنية  
كلية الدراسات العليا  
قسم العدالة الجنائية



# الأمر بحفظ الدعوي بعد التحقيق والقرار بأن لا وجه للسير فيها (دراسة مقارنة)

بحث مقدم استكمالاً لمتطلبات الحصول على درجة الماجستير  
في العدالة الجنائية تخصص التشريع الجنائي الإسلامي

إعداد

زايد بن عبدالرحمن الطويان

إشراف

د. محمد السيد عرفة

الرياض

١٤٢٥هـ - ٢٠٠٤م

# **الأمر بحفظ الدعوى بعد التحقيق والقرار بأن لا وجه للسير فيها**

**دراسة مقارنة**

**إعداد الطالب**

**زايد بن عبدالرحمن الطويان**

**الرقم الأكاديمي ٤٢١٠٢٠١**

**إشراف الدكتور**

**محمد السيد عرفة**

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

قال تعالى :

﴿ إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا

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جامعة نايف العربية للعلوم الأمنية



Naif Arab University for Security Sciences

## Collage of Graduate Studies

Dep.: Criminal evidences  
Specialization: Islamic criminal law

### Abstract

Thesis title: keeping the suite after investigation and resolution that there is no way to continue.

Prepared by : Zaiyd Abdulrahman Al-Twiyay

Supervised by : Dr. Mohammed Sayed Arafa

Defence committee :

- 1- Dr. Moahmmed Sayed Arafa
- 2- Dr. Mussad Qassem Alfaleh
- 3- Dr. Mufleh Rabeay Al-Gahtani

Defense date: 5-4-1425 ( 24-5-2004)

### Thesis problem:

To assign the reasons and conditions and rules to issue the order to keep the suit after investigation and the resolution that there is no way to continue in the case, the outcomes which result from the issue and the reasons which deserve to cancel them o the light of what has mentioned in the Saudi criminal procedures law in comparison with the Egyptian criminal law.

### Thesis importance:

Thesis importance implies in the importance of the subject and the results, the order to keep the suite in case if it is incorrect is considered as keeping the suite away from the justice. So, it is a breach the justice law, also the case of not issuing and the availability of sufficient reasons which may lead to injustice toward the accused.

### Thesis objectives:

- 1-To show the possibility to keep the suite after investigation and the resolution that there is no way to continue in it.
- 2- To clarify the kinds of orders to keep the suit and to distinguish them from the similar criminal procedures.
- 3- To assign the reasons and conditions for issuing the order to keep the suit in the Saudi criminal procedures law in comparison with Egyptian criminal law.

- 4- To clarify the regular results which outcome from issuing the order or canceling it. To assign the nature of the pretext of keeping the suit.
- 5- To clarify the reasons of canceling or keeping the suit in the Saudi criminal law in comparison with the Egyptian criminal law.

**Thesis hypothesis:**

I conducted this study to answer the following questions:

What does it mean the term of order to keep the suit after investigation, and what does it mean the term the resolution that there is no way to continue in it? And what is the difference between them? 2- What are the reasons which deserve to issue the order to keep the suit and what are the conditions and results to cancel it in the Saudi criminal law in comparison with the Egyptian criminal law? 3- what does it mean the term order to keep the suit after investigation? What are the kinds of keeping the suit and what is the difference between it and the other resolutions which are issue by similar criminal and investigation authority? 5- What are the reasons of canceling or keeping the suit?

**Thesis methodology:**

The researcher depends on the theoretical side of the study on the inductive analytical method, which depends on analysis and explanation. In purpose to reach to the results which may contribute to develop the reality. Also the researcher in this thesis will depend on the practical side on the content analysis method for come of the resolutions issued by keeping the suit after investigation.

**Main results:** the matter of keeping the suit after the investigation is a judicial procedure issued by specialized investigation authority to limit the initial investigation but the Saudi law does not consider it as a judicial order. 2- The order to keep the documents before investigation is a administrative order issued by the authority which rule all the evidences to make any procedures of the investigation procedures. 3- it is possible to cancel the resolution of keeping before or after the investigation in case of availability of canceling. 4- to issue the order of keeping the suit after the investigation or the resolution of that there is no way to continue it on the light of the Saudi criminal procedures which in any case does not mean to cause any damage to the person in case of availability to his private right in a direct way. 5- everything related to individuals or private rights if the right resulted from a crime or from other reasons on the light of the Saudi law it does not effect it or prevent the claimer to claim to issue the order to keep the suit after the investigation in front of the private rights the court does not depend on compensate suit to a resolution to keep the suit after the investigation. 7- the order to keep the suit after investigation is conditioned with in the Saudi law is the same of the Egyptian law to issue the order to keep the suit after the investigation depending on lawful reasons (regular , lawful) or objective reasons for the non importance. 9- to issue to keep the suit after investigation has the same results and effects of issuing the order .



## الإهداء

أهدي هذا العمل إلى روح والدي رحمه الله

واسكنه جنات النعيم.

كما أتشرف بإهداء هذه الدراسة إلى صاحب السمو

الملكى وزير الداخلية حفظه الله ورعاه.

زايد بن عبد الرحمن الطويان

## شكر و عرفان

أتشرف بتقديم عظيم شكري وامتناني لصاحب السمو الملكي وزير  
الداخلية وسمو نائبه وسمو المساعد للشؤون الأمنية والذين لهم الفضل بعد  
الله سبحانه وتعالى في تقديم منسوبي الوزارة ، ودعمهم وتشجيعهم  
لمواصلة تحصيلهم العلمي.

كما أود أن اعبر عن خالص شكري وتقديري للمشرف على الرسالة  
الدكتور/ محمد السيد عرفه لتشجيعه ومساعدته لنا خلال تنفيذ هذه  
الدراسة .

واشكر جميع منسوبي جامعة نايف العربية للعلوم الأمنية وعلى رأسهم  
سعادة الأستاذ/عبد الله بن صقر الغامدي رئيس الجامعة وأخص بالشكر  
منسوبي قسم العدالة الجنائية ورئيس القسم الأستاذ/ محمد المدني أبو ساق .  
وأخيراً وليس آخراً أتقدم بجزيل الشكر والعرفان لجهة عملي وعلى  
رأسهم سعادة الفريق/ سعيد بن عبد الله القحطاني مدير الأمن العام وسعادة  
العميد/ سعد بن محمد المغربي قائد القوات الخاصة لأمن الطرق الذين  
أتاحوا لنا أفرصه لمواصلة دراستنا .

زايد بن عبد الرحمن الطويان

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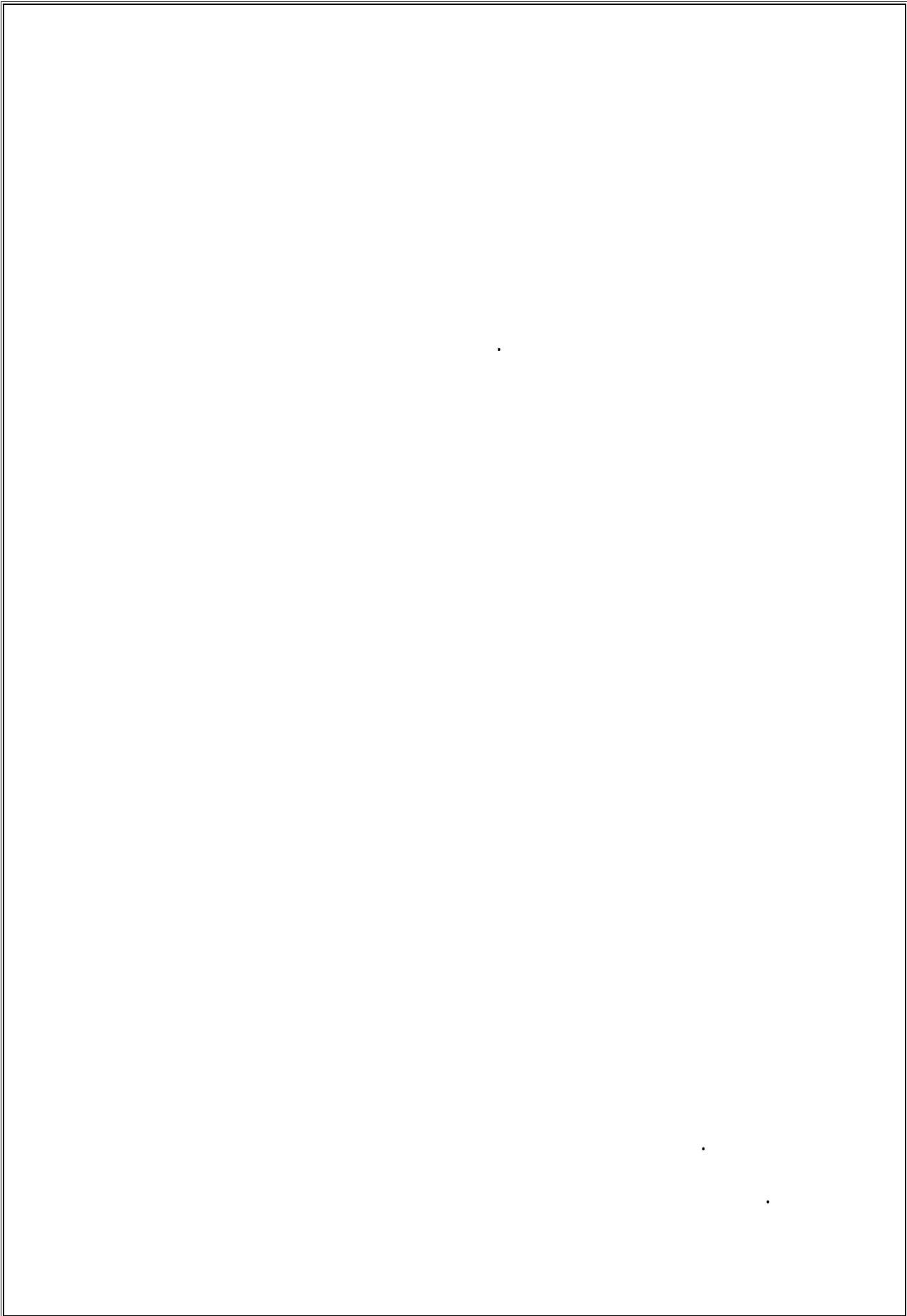
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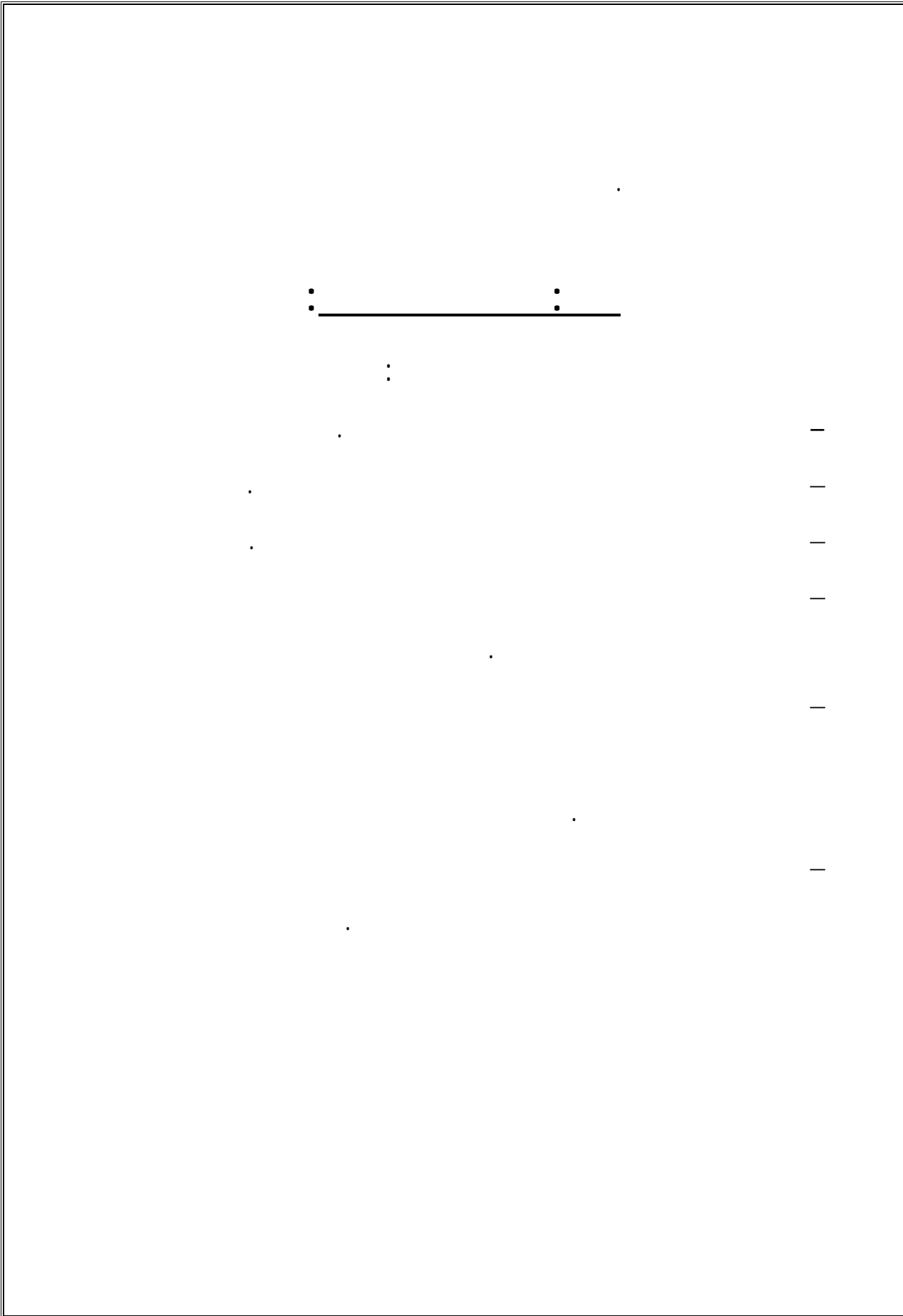
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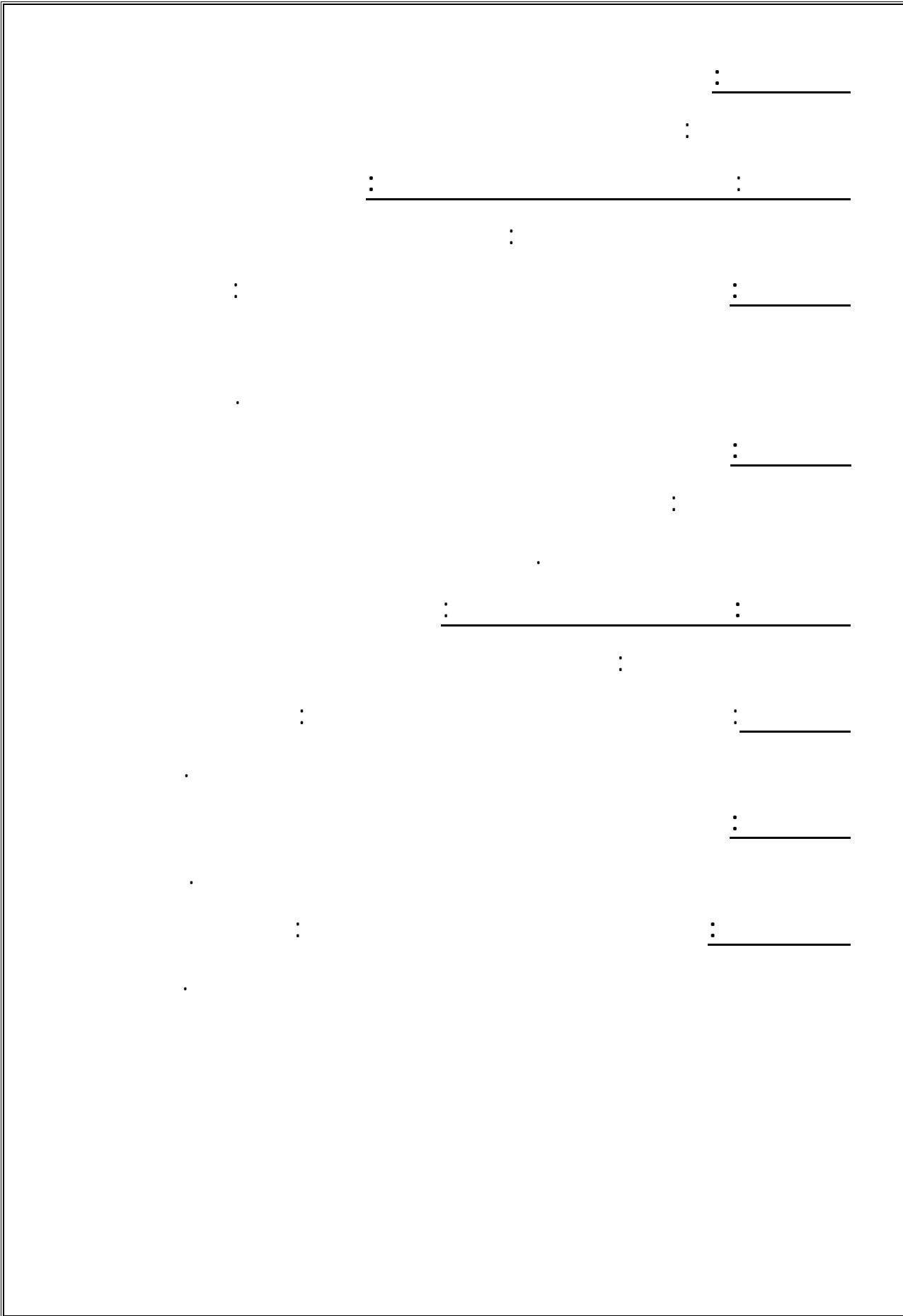
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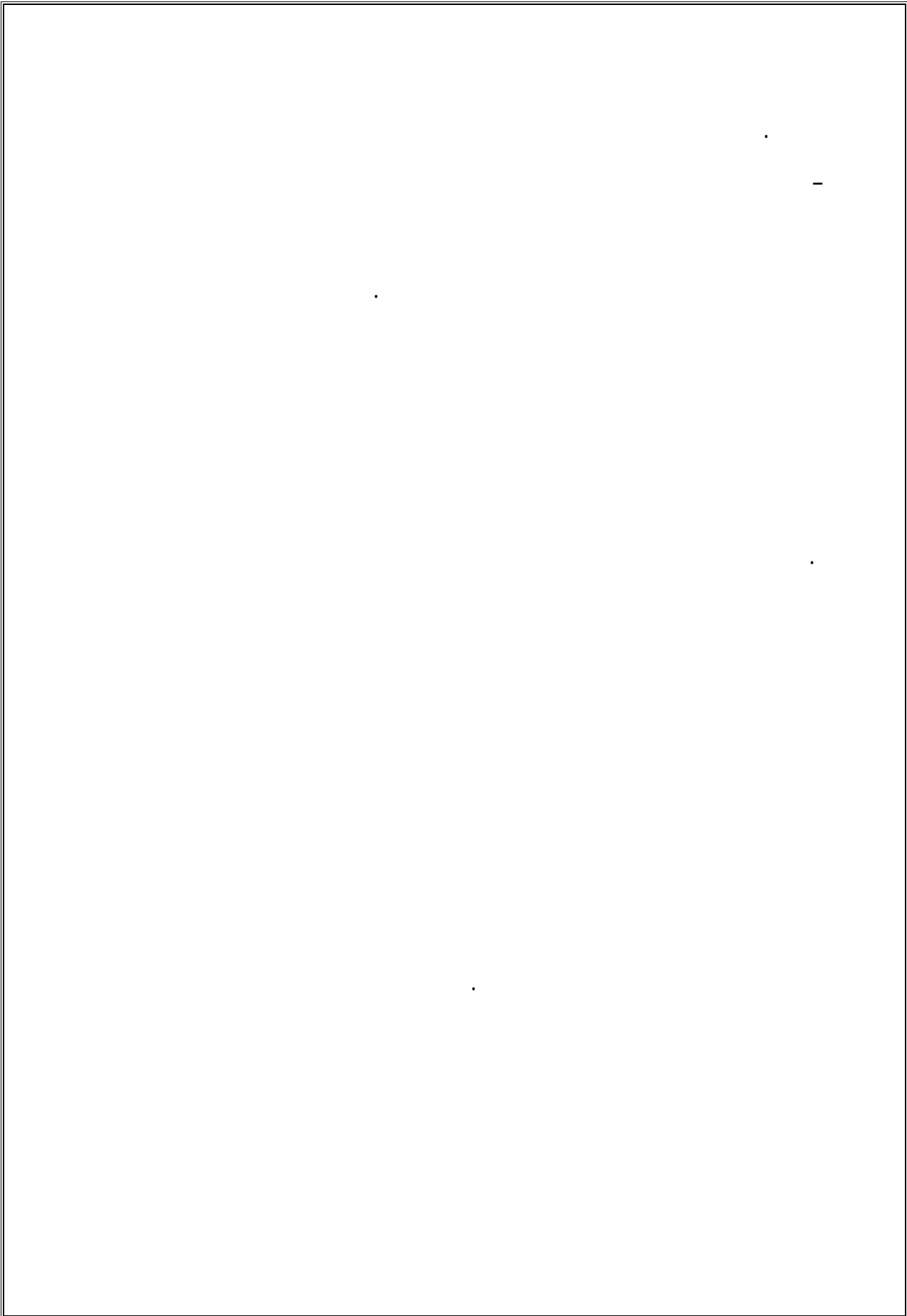
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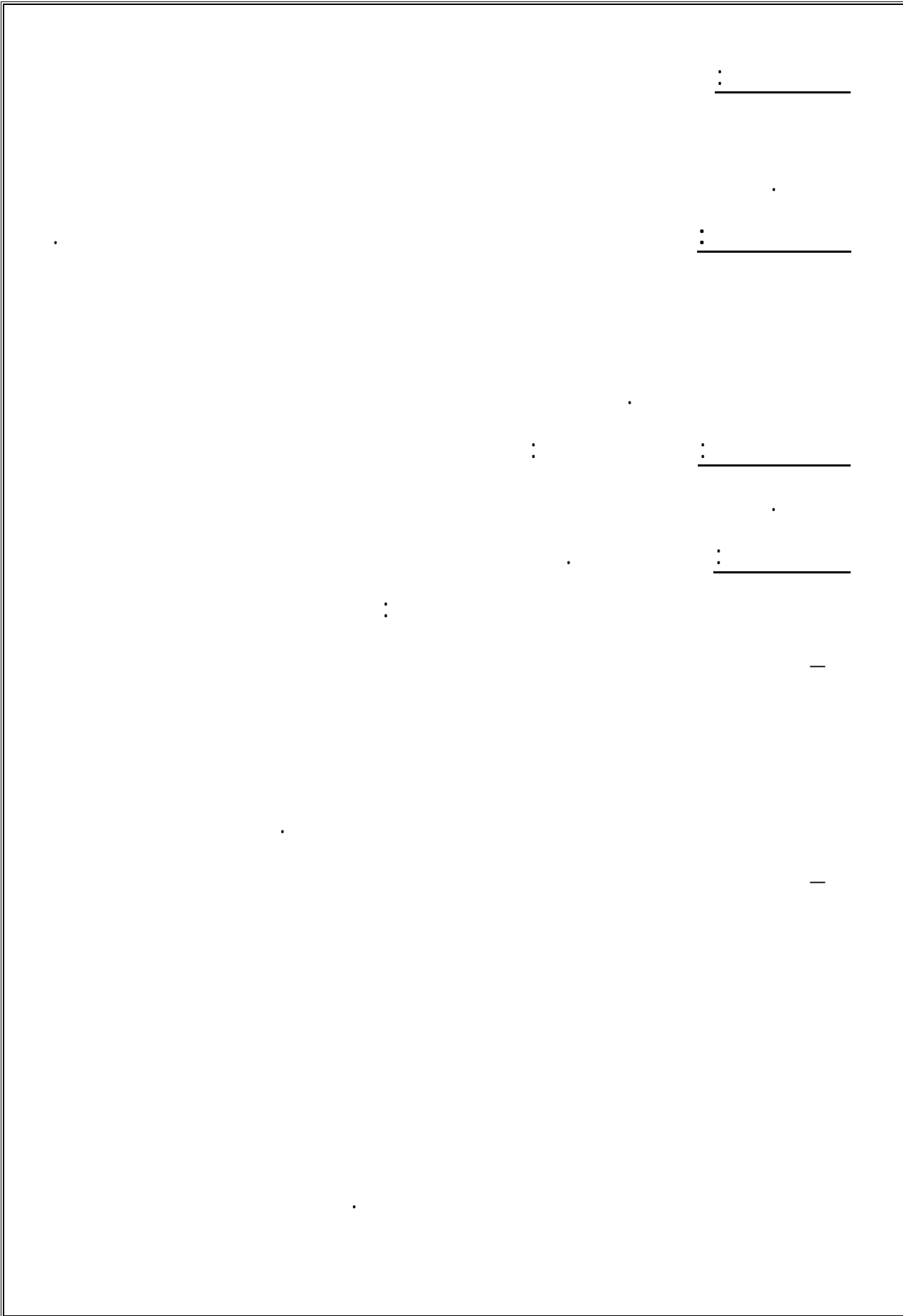
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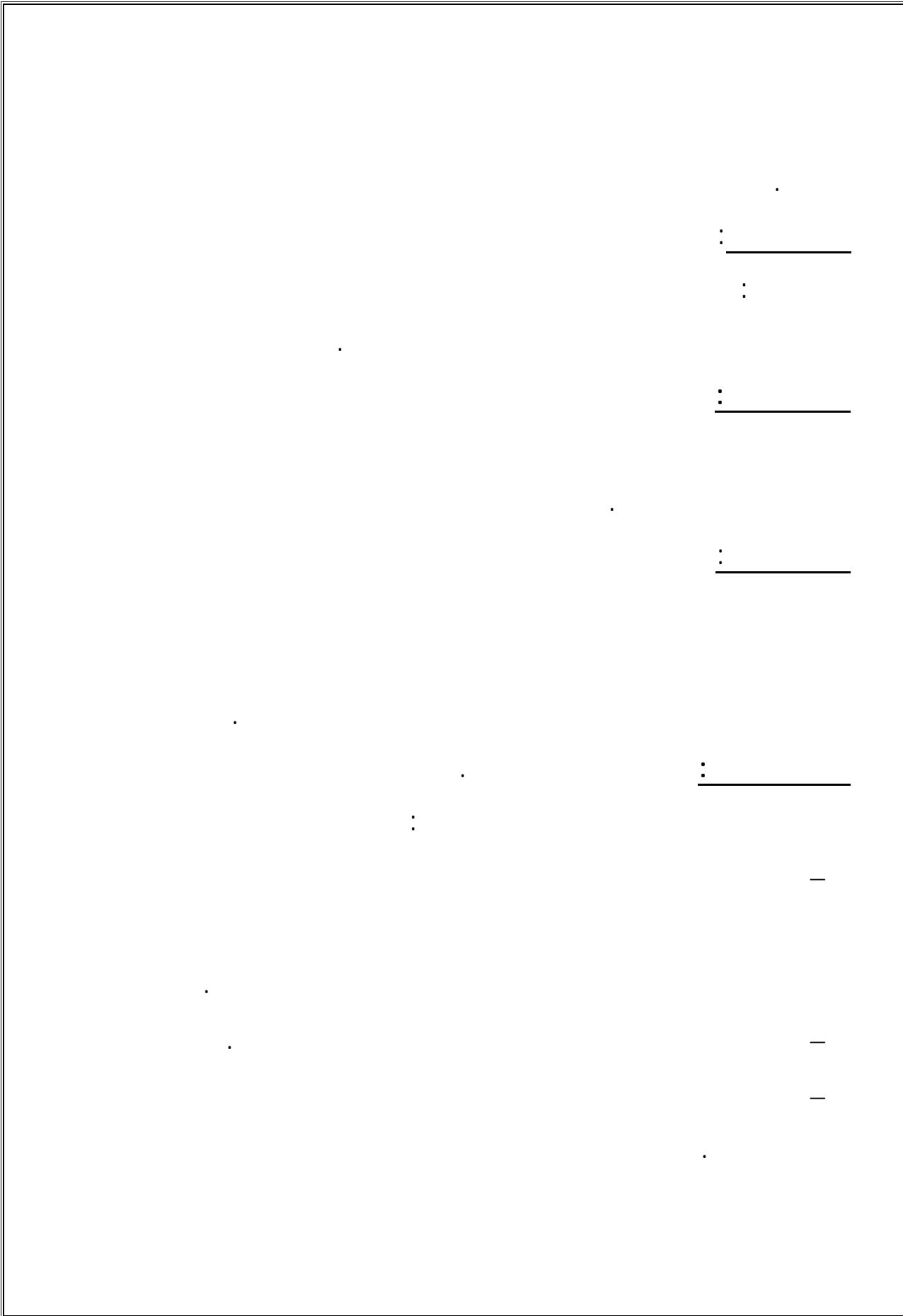
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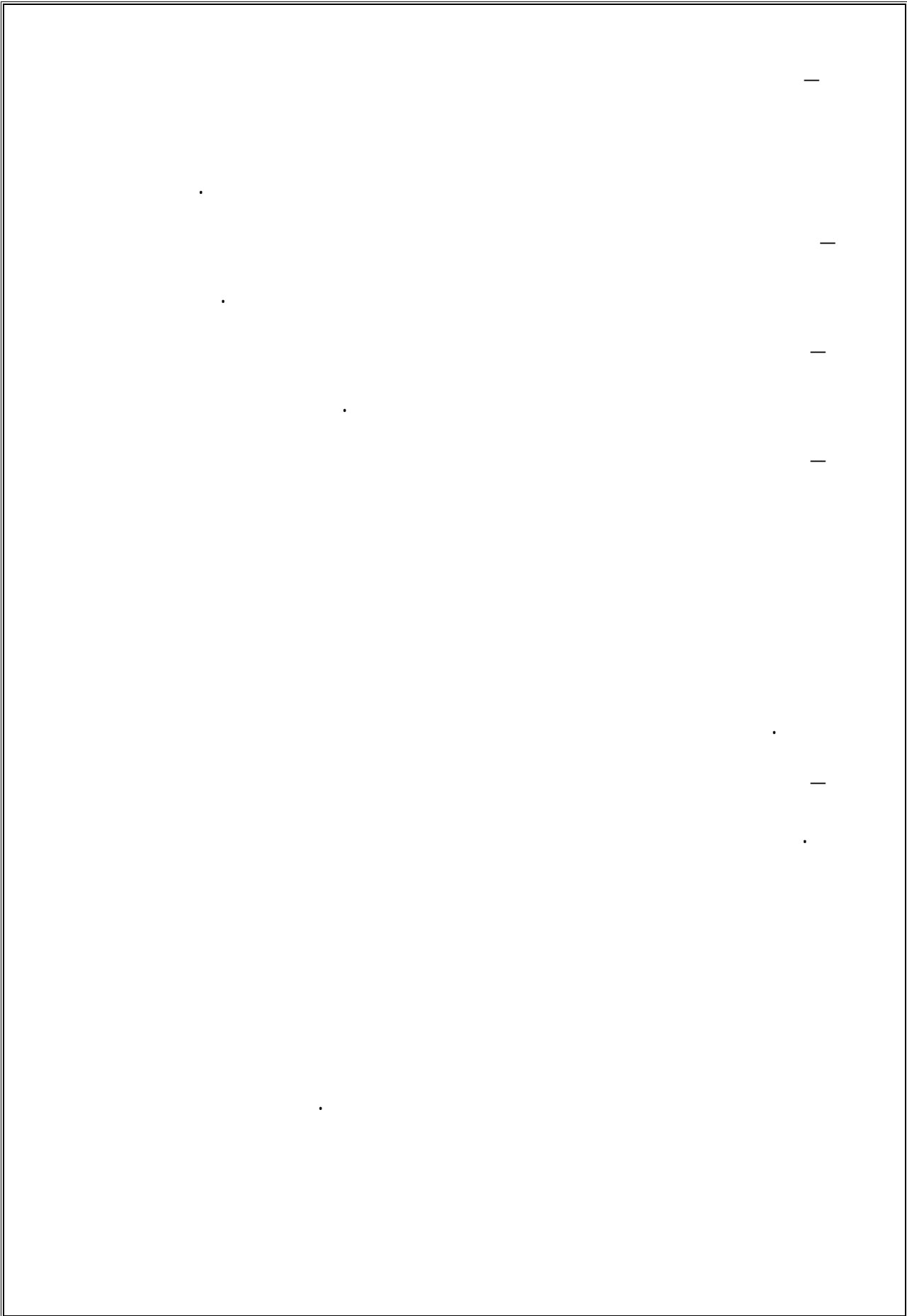
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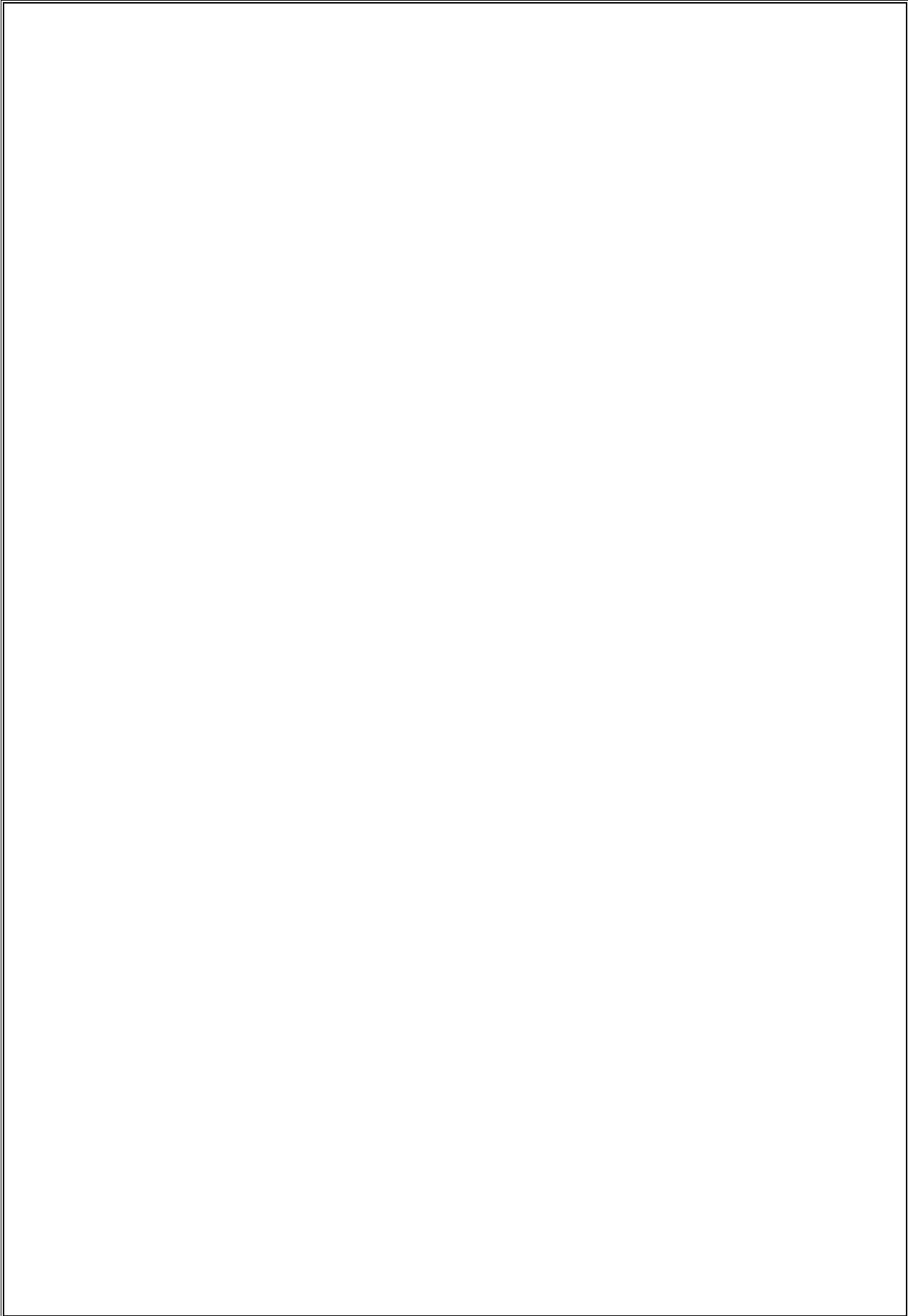
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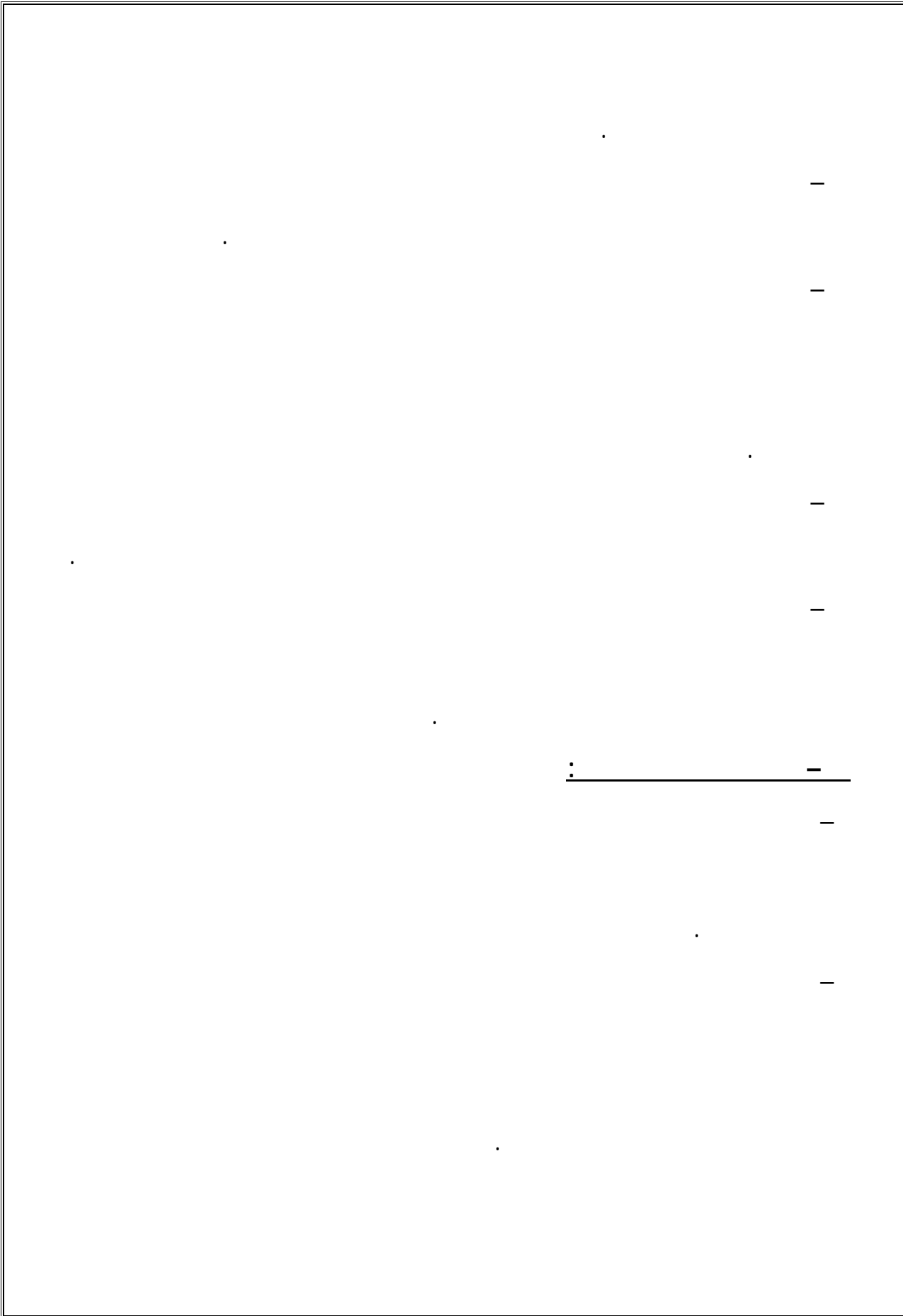
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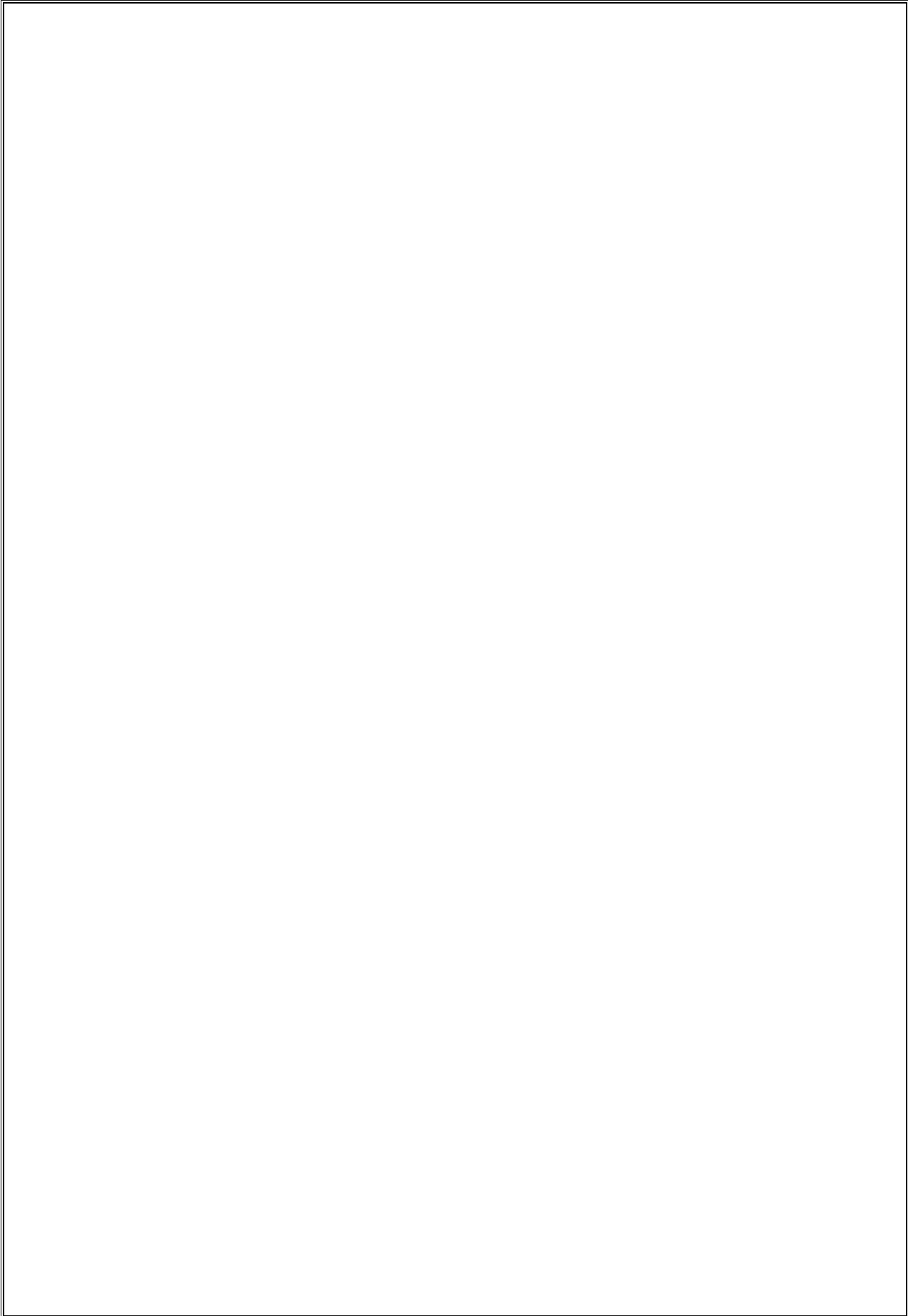
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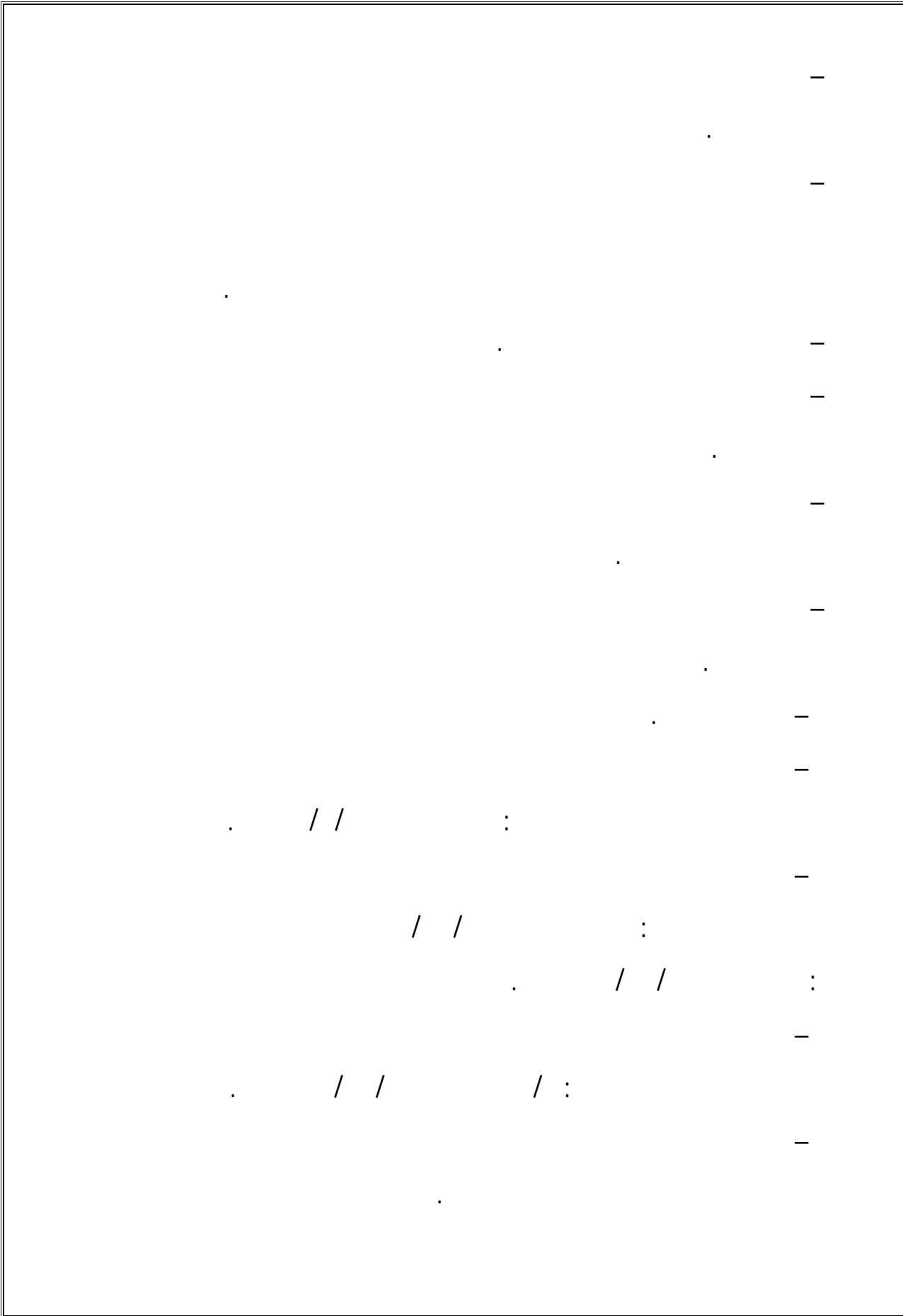
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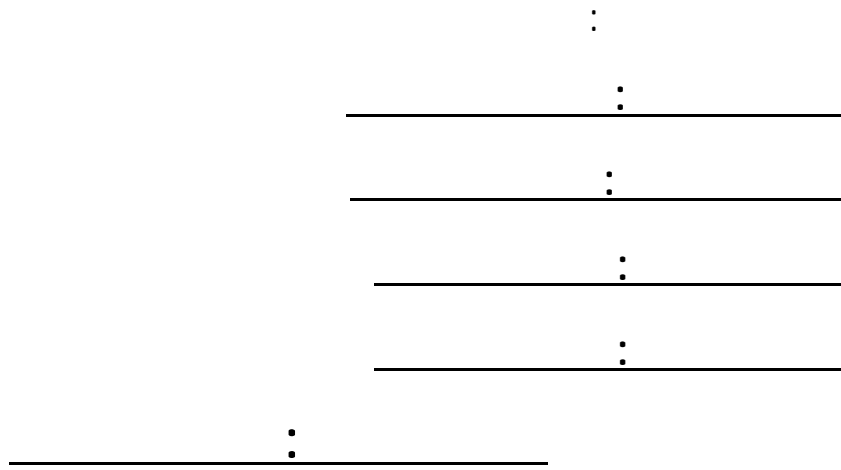
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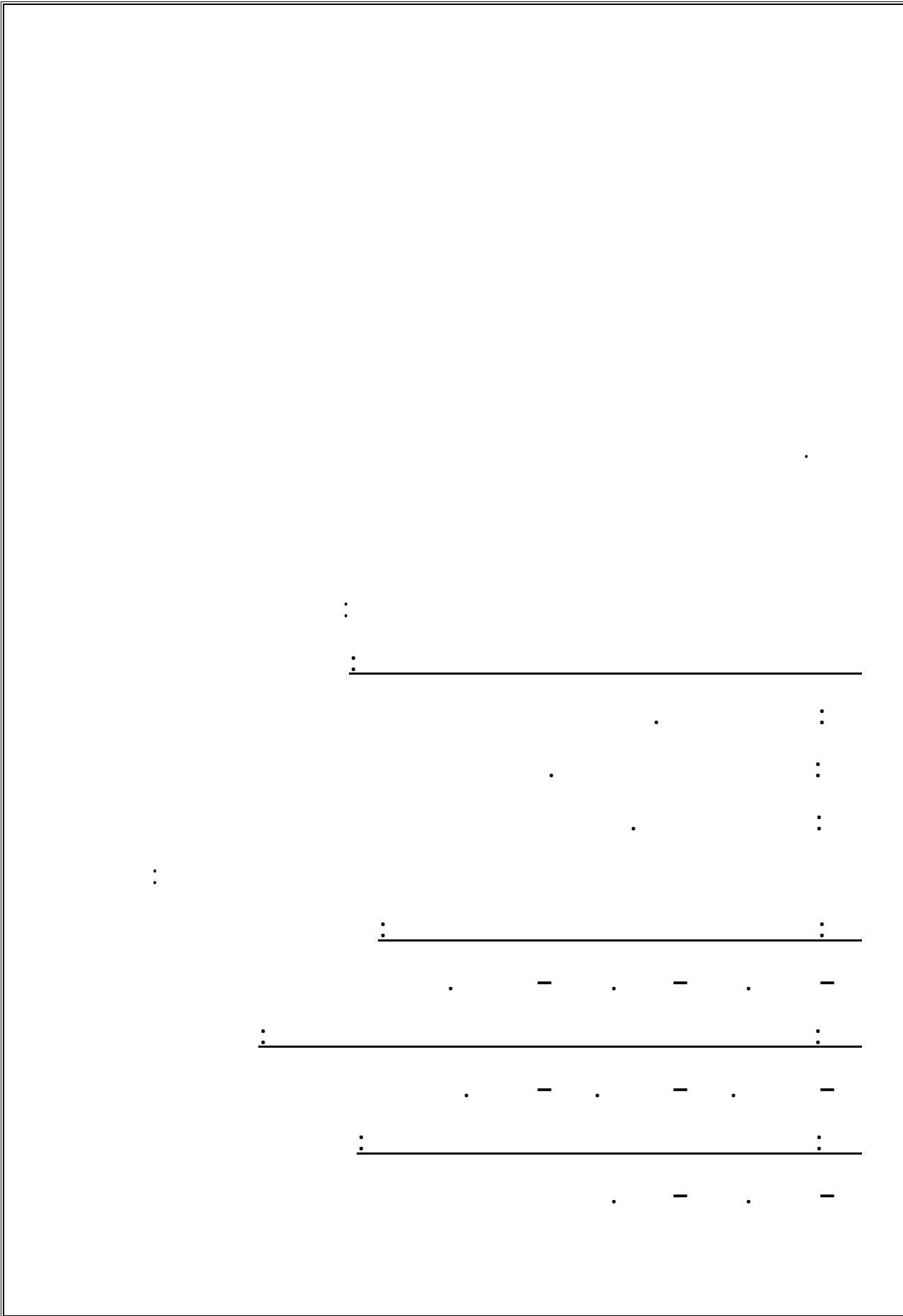
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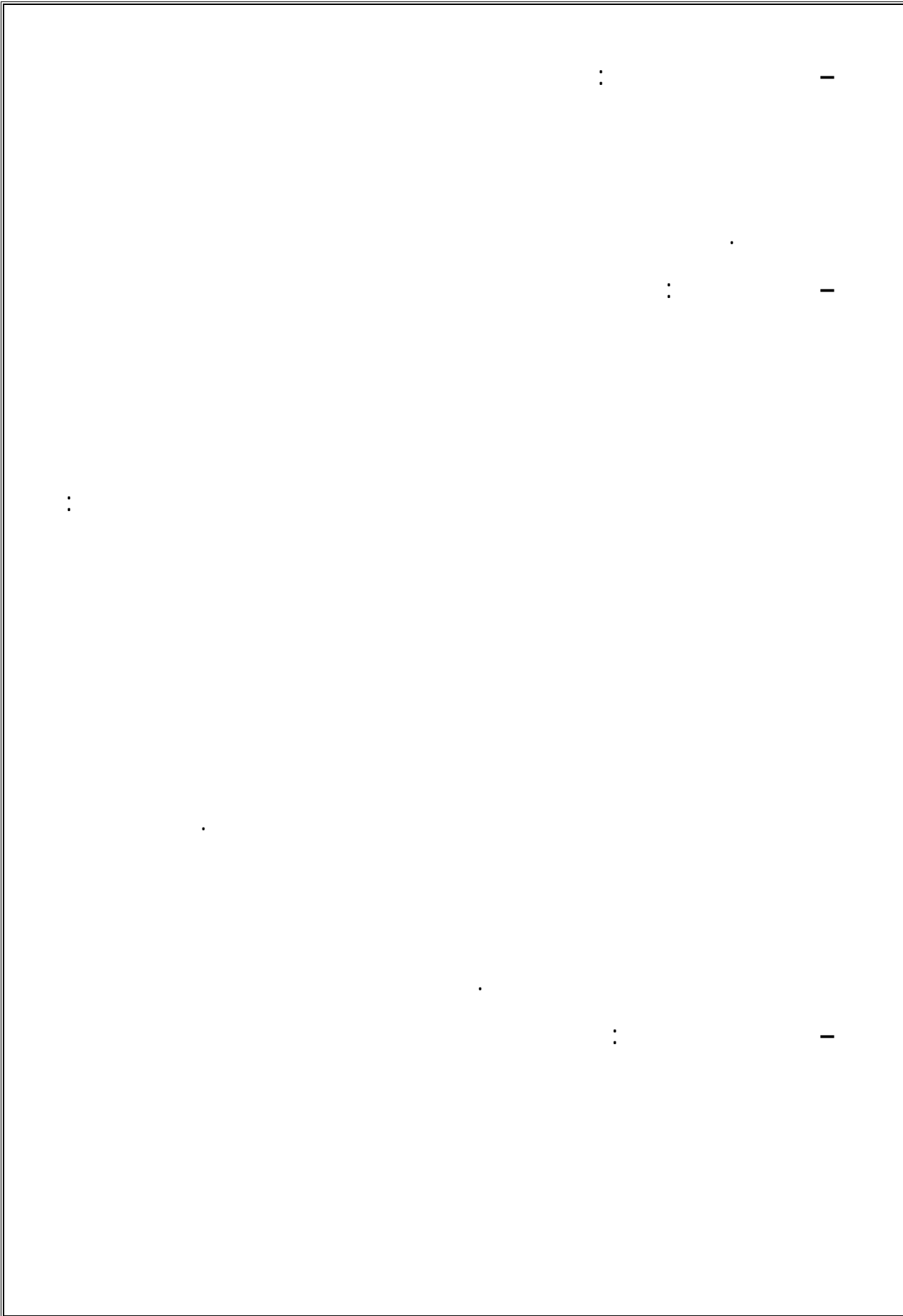
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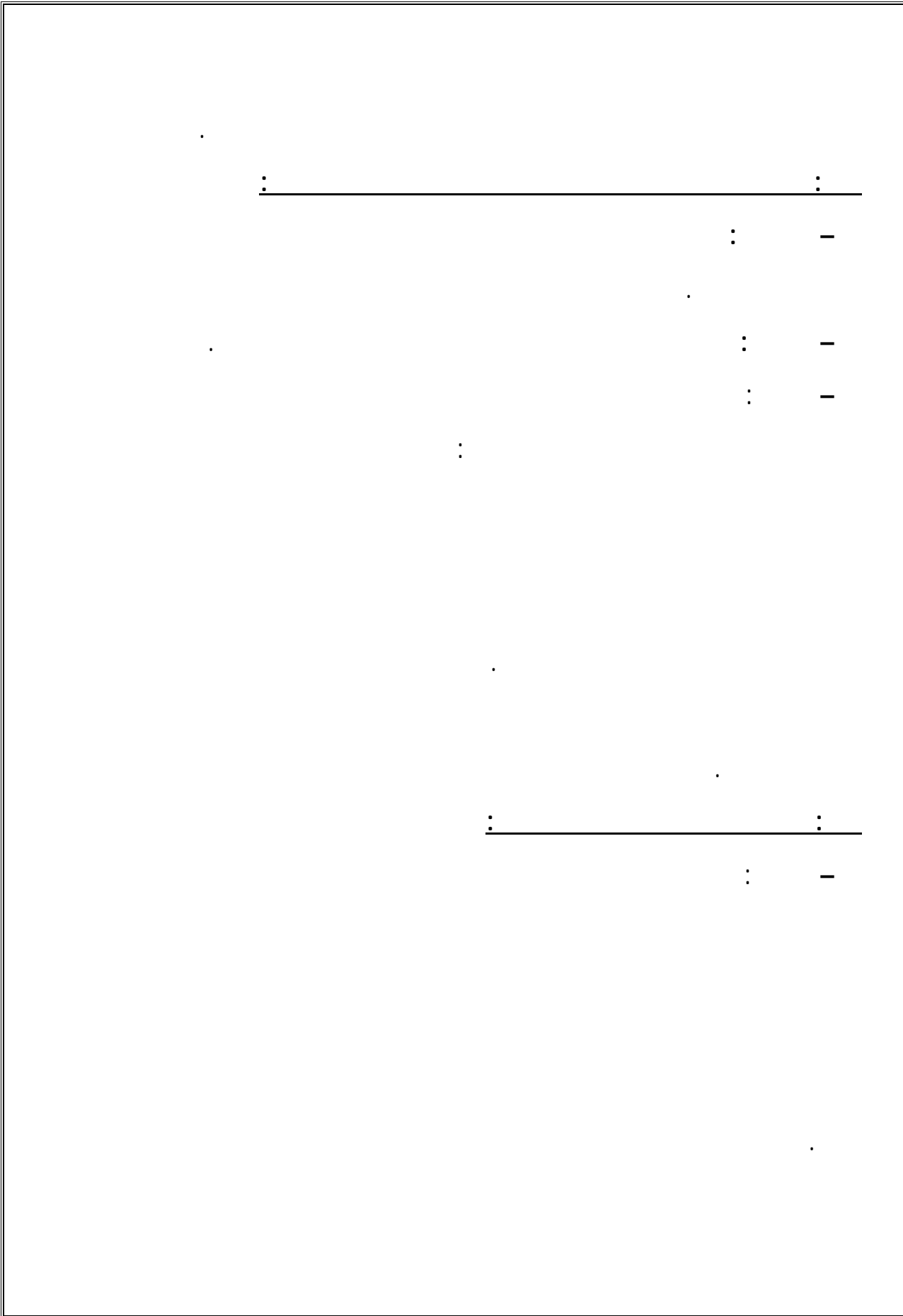
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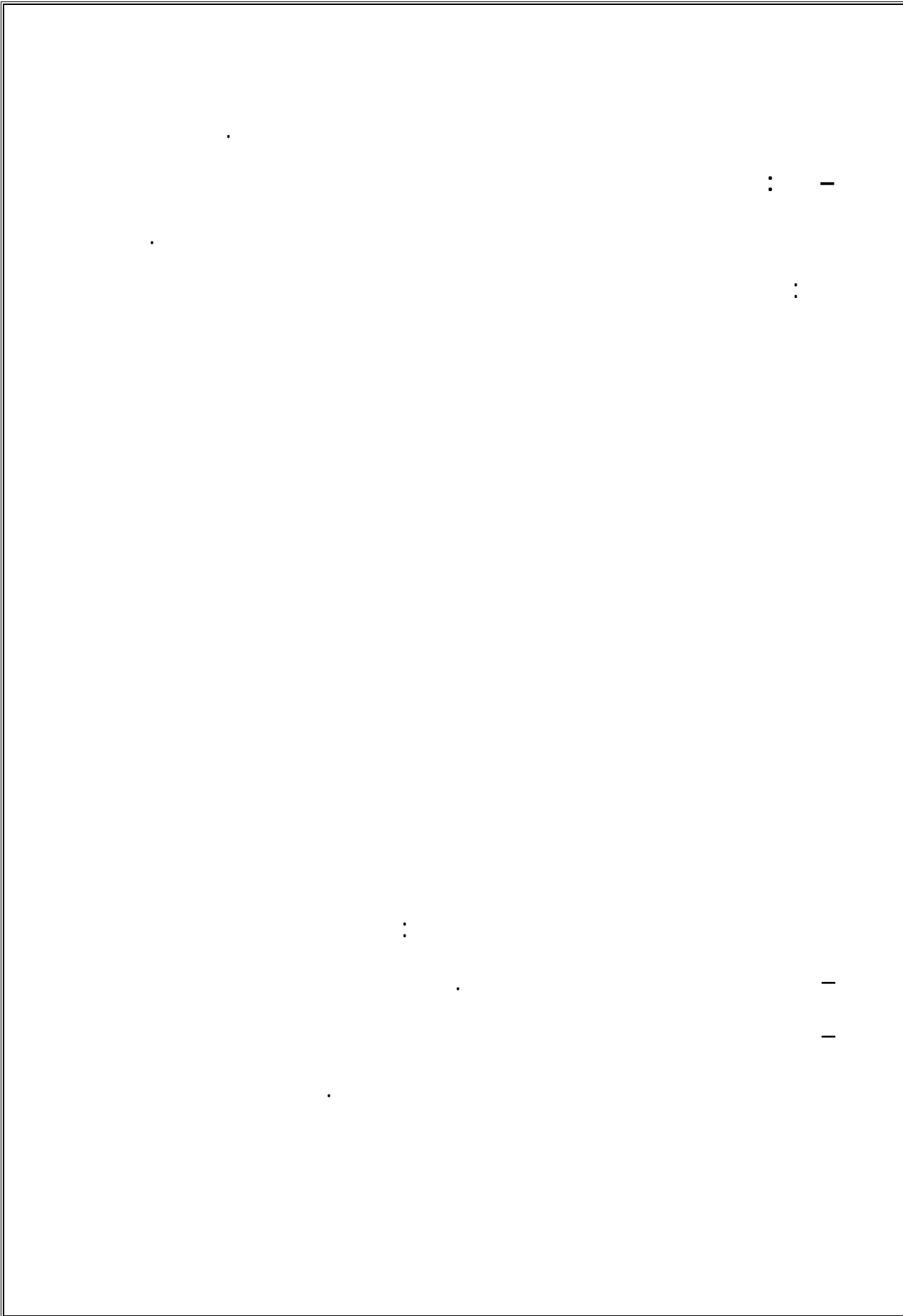
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- (١) الغريب، محمد عيد (١٤١١هـ) . مرجع سابق، ص ٢١٨ - ٢١٩ .
  - (٢) محمد، عوض (١٩٩٠م . مرجع سابق)، ص ٥٧٠ .
  - (٣) المادة (٢/٢٣٢) من قانون الإجراءات الجنائية المصري .
  - (٤) حجازي، عبد الفتاح (١٩٩١م) . مرجع سابق، ، ص ٥٤٤ .
  - (٥) الشاوي، توفيق (١٩٥٤م) . مرجع سابق، ص ٤٠٨ .

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- (١) مراد، عبد الفتاح. مرجع سابق، ص ٣٦٧ - ٣٦٨.  
(٢) عبد المنعم، سليمان. مرجع سابق، (٢٠٠٢م)، ص ٦١.  
(٣) حجازي، عبد الفتاح (١٩٩٢م). مرجع سابق، ص ٥٤٢.



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- (١) أبو الوفا، أحمد (١٩٨٠م) . نظرية الأحكام في قانون المرافعات، الإسكندرية: منشأة المعارف، ص ٣٦٢ . و عوض، محمد محيي الدين (١٩٦٤م) . القانون الجنائي، ط ٤، إجراءاته في التشريعين المصري والسوداني. ج ١، القاهرة: (د.ن) ص ٢٥٧ .
- (٢) عالية، سمير (١٩٧٥م) . قوة الحكم الجنائي أمام القضاء الجنائي، دراسة مقارنة، رسالة دكتوراه، كلية الحقوق، القاهرة :جامعة القاهرة، ص ١٥٠ .

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(١) غالي، إيوار (١٩٧٨م) . حجية القرار بعدم وجود وجه لإقامة الدعوى الجنائية، القاهرة:  
دار النهضة العربية ص ٣٨٦ .  
(٢) المجالي، نظام توفيق (١٩٨٦م) . مرجع سابق، ص ٤٣٧ .

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(١) حسني، محمود نجيب (١٩٧٧م) . قوة الحكم الجنائي في إنهاء الدعوى الجنائية، ط ٢، القاهرة: دار النهضة العربية، ص ٤٤ .

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- (١) المادة (٣٣) نظام المرافعات الشرعية السعودي.  
(٢) المواد (٢٢ - ٢٣) من نظام الإجراءات الجزائية السعودي.  
(٣) المادة (٦٨) من نظام الإجراءات الجزائية السعودي.



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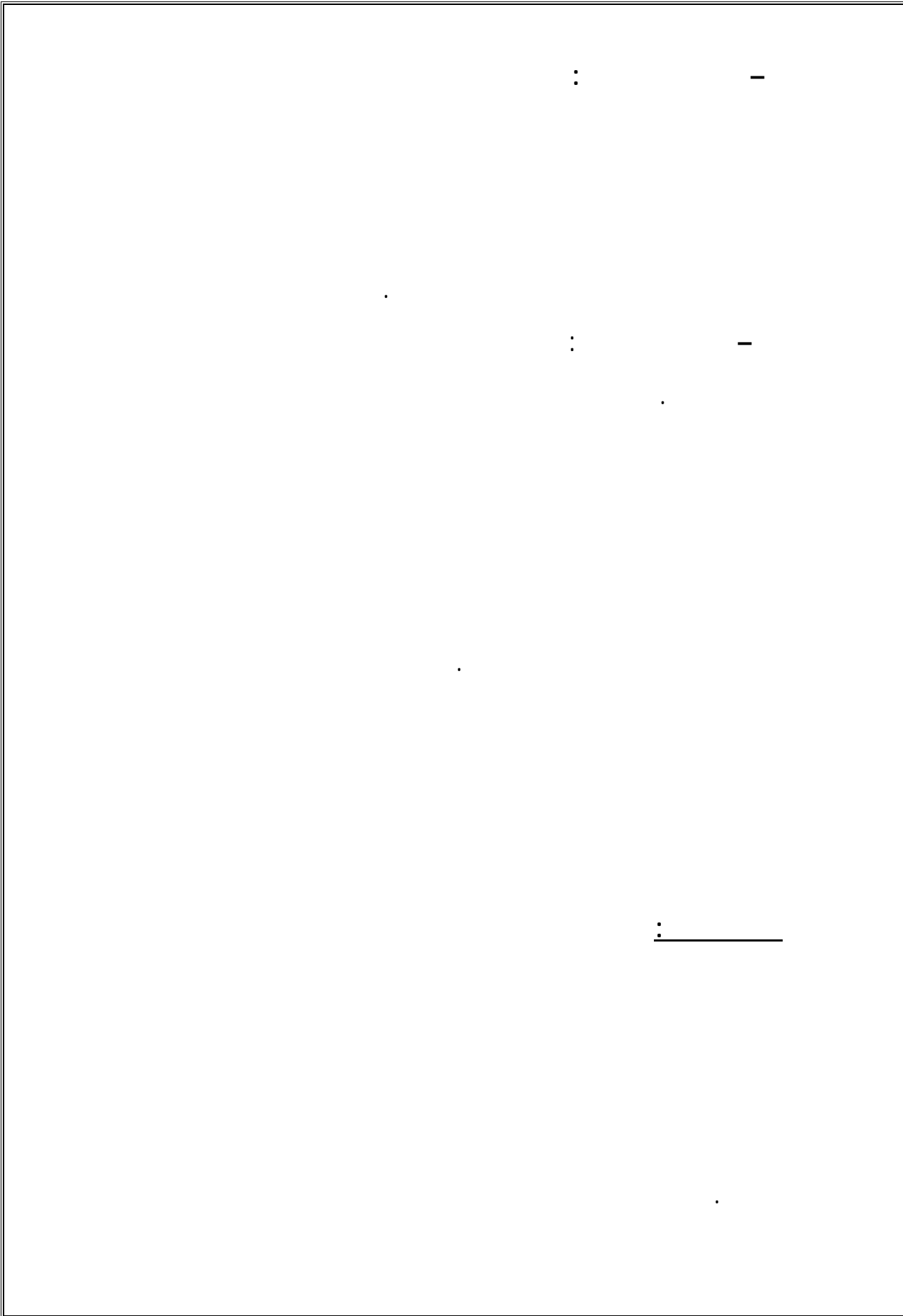
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(١) المادة (٥/٢/٥٥) من مشروع اللائحة التنظيمية لنظام هيئة التحقيق والادعاء العام.



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(١) حجازي، عبد الفتاح بيومي (١٩٩٢م)٠ مرجع سابق، ص ٥٤٤ .  
(٢) سلامة، مأمون محمد (١٩٨٠م) . قانون الإجراءات الجنائية معلقاً عليه بالفقه وأحكام  
النقض، ط١، القاهرة: دار الفكر العربي، ص ٥٠٣ .

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(١) المجالي، نظام توفيق (١٩٨٦م) ٠ مرجع سابق، ص ٥٢٤.

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(١) الشاوي، توفيق ١٩٥٤م). مرجع سابق، (ص ١٩٤.

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(١) التعليمات العامة للنيابات بشأن الأمر بعدم وجود وده لإقامة الدعوى الجنائية، المادة (٨٦١).

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(١) المادة (١٢٥) من نظام الإجراءات الجزائية.

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(١) المادة (٢/٥٦) من مشروع اللائحة التنظيمية لنظام هيئة التحقيق والادعاء العام.  
(٢) الغريب، محمد عيد. مرجع سابق، (١٤١١هـ)، ص ٢١٩.

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- (١) المادة (١٩٧) من قانون الإجراءات الجنائية المصري.  
(٢) المادة (٢٠٩) من قانون الإجراءات الجنائية المصري.  
(٣) عثمان، أمال (١٩٨٨م). شرح قانون الإجراءات الجنائية، القاهرة: مطابع الهيئة العامة للكتاب، ص ٦١٢.

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(١) عبد الباقي، عدلي (١٩٥١م) . شرح قانون الإجراءات الجنائية، القاهرة: (دين) ص ٤٥٠ .

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(١) محمد، عوض. مرجع سابق، (١٩٩٠م)، ص ٥٧٥.  
(٢) محمد، عوض (١٩٩٠م) مرجع سابق، ص ٥٧٥ - ٥٧٦.

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(١) العرابي، علي زكي (١٩٥١م) . المبادئ الأساسية للإجراءات الجنائية، ط ١، ج ٢، القاهرة: مطبعة لجنة التأليف والترجمة والنشر، ص ٣٣٧.  
(٢) عوض، محمد (١٩٩٠م) . مرجع سابق، ص ٥٧٧.



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(١) المجالي، نظام توفيق (١٩٨٦م) . مرجع سابق، ص ٤٧٢ .  
(٢) محمد، عوض (١٩٩٠م) . مرجع سابق، ص ٥٧٩ .

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(١) مكي، محمد عبد الحميد (٢٠٠٠م) مرجع سابق، ص ٢٤٩.

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- (١) المادة (٢/٥٥) من مشروع اللائحة التنظيمية لنظام هيئة التحقيق والادعاء العام.  
(٢) المادة (٣/٥٥) من مشروع اللائحة التنظيمية لنظام هيئة التحقيق والادعاء العام.

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(١) المادة (٤/٥٣) من مشروع اللائحة التنظيمية لنظام هيئة التحقيق والادعاء العام.

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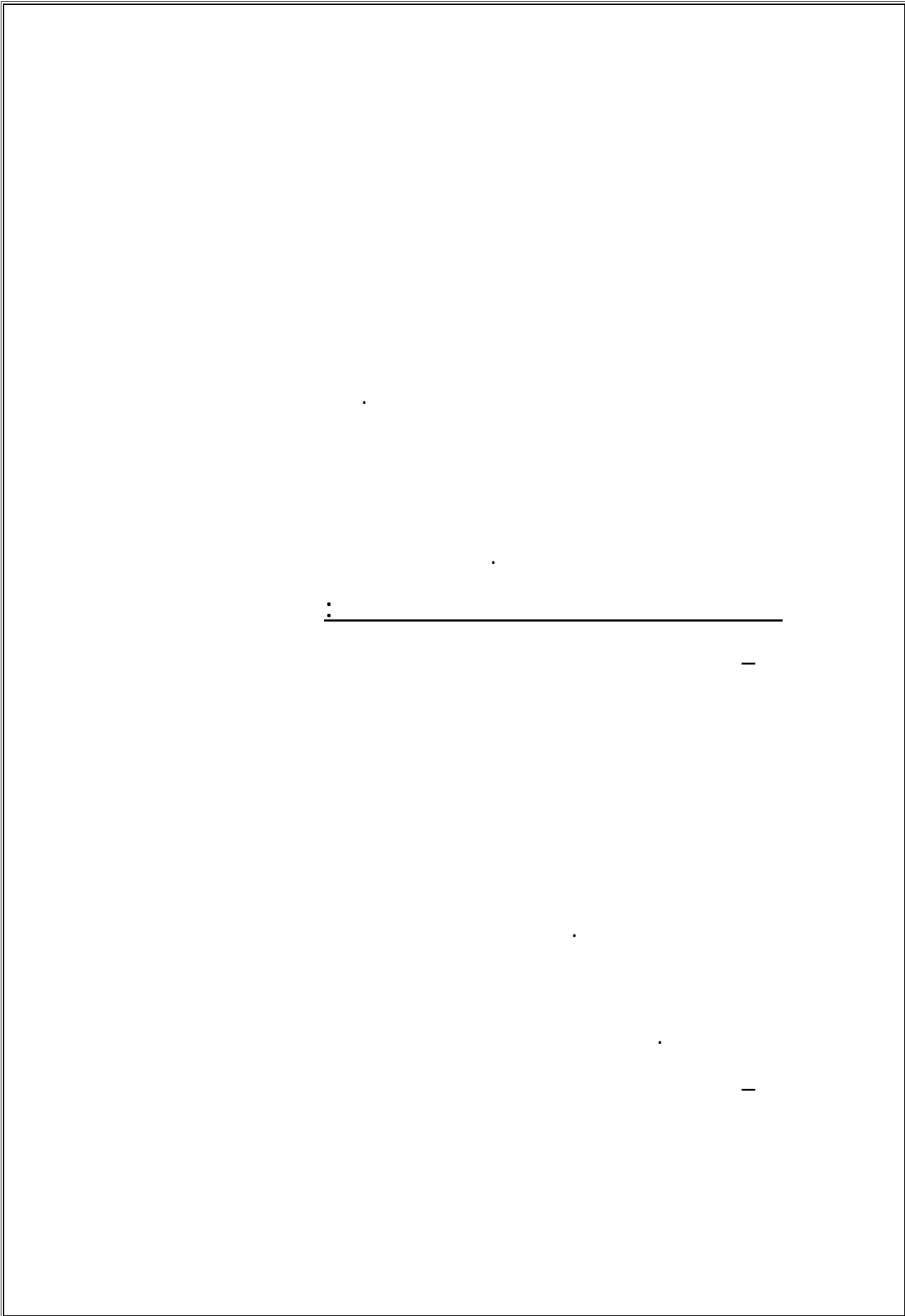
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(١) المادة (٢٠٦) من نظام الإجراءات الجزائية، كذلك المادة (٤٤١) من قانون الإجراءات الجنائية المصري تجيز إعادة النظر بالأحكام النهائية في حالات معينة.  
(٢) المادة (٥٥) من مشروع اللائحة التنظيمية لنظام هيئة التحقيق والادعاء العام.

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(١) محمد، عوض (١٩٩٠م) ص ٥٧٩، وعدلي عبدالباقي، ج ١ ص ٤٤٨ - ٤٤٩ .  
مرجع سابق .

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(١) المادة (٢١١) من قانون الإجراءات الجنائية المصري.

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(١) محمد، عوض (١٩٩٠م) مرجع سابق، ص ٥٨٠ - ٥٨١.

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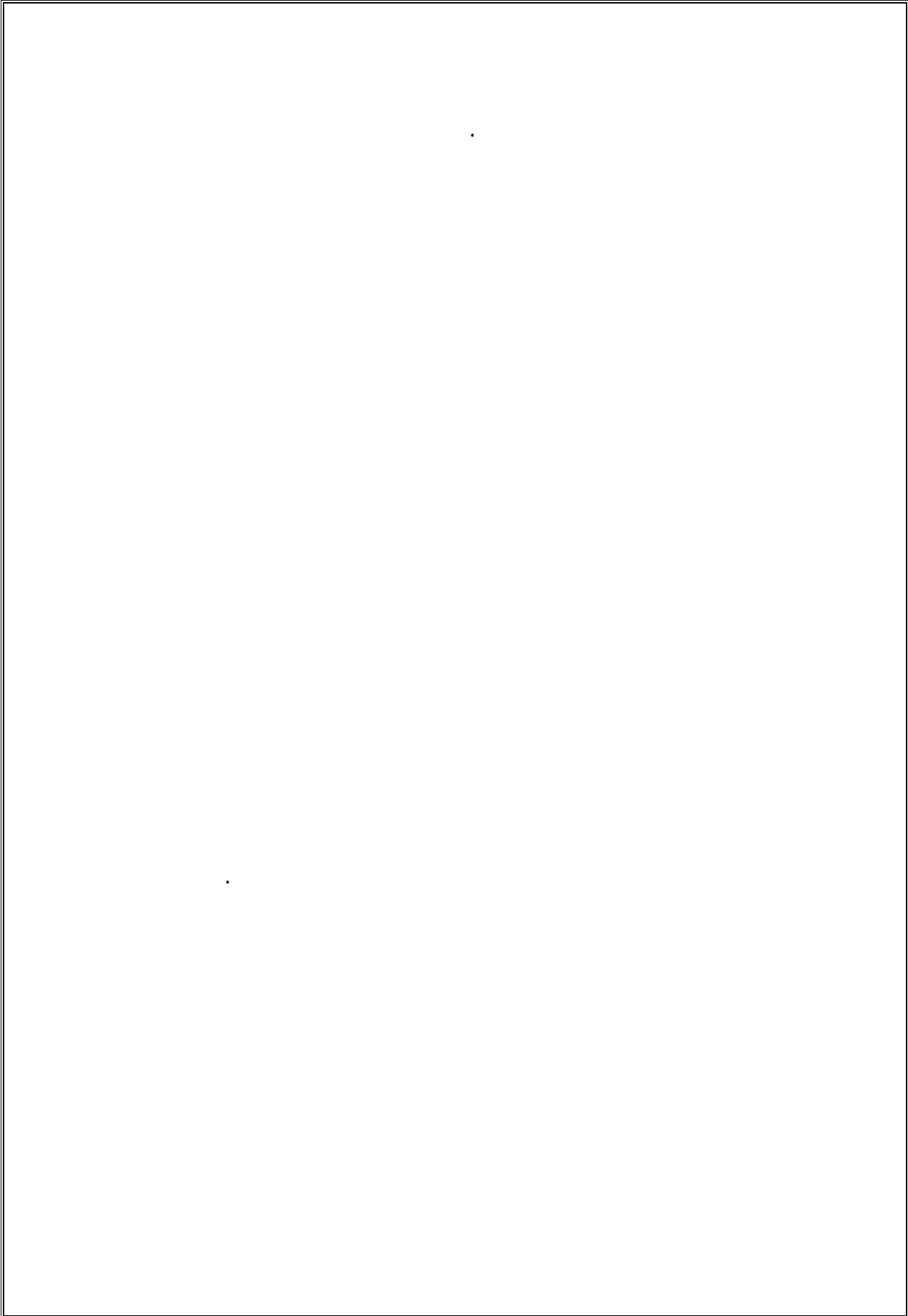
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(١) المادة (١٢٤) من نظام الإجراءات الجزائية.





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(١) المادة (٢١٠) من قانون الإجراءات الجنائية المصري.  
(٢) المادة (٣/١٦٧) من قانون الإجراءات الجنائية المصري.

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(١) ثروت، جلال. مرجع سابق، (١٩٩٧م)، ص ٤٨٩ - ٤٩٠.  
(٢) المادة (١٩٧) من قانون الإجراءات الجنائية المصري.  
(٣) ثروت، جلال. مرجع سابق، (١٩٩٧م)، ص ٤٩٠.

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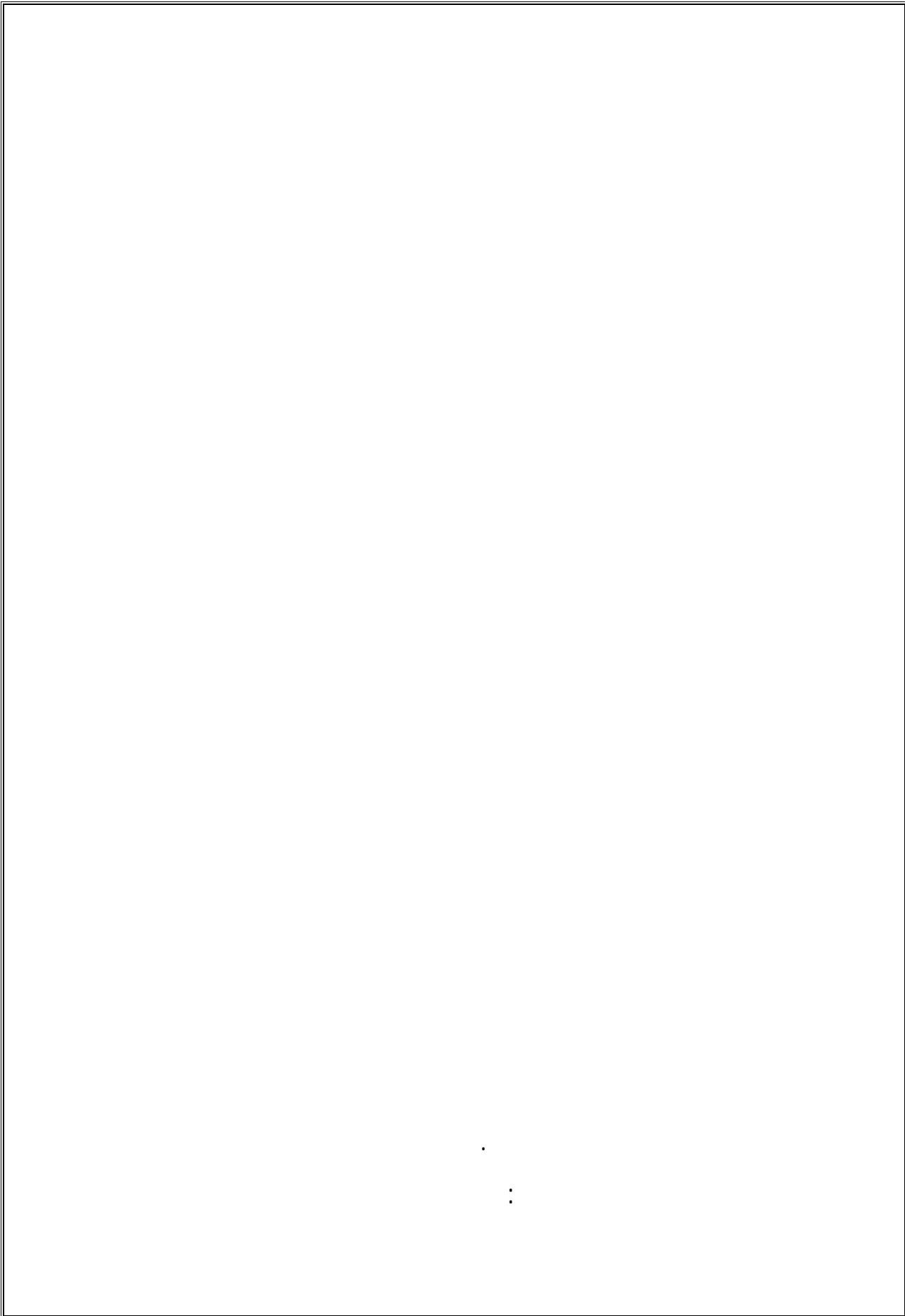
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- (١) المادة (١٢٥) من نظام الإجراءات الجزائية السعودي.
  - (٢) المادة (١٩٧) من قانون الإجراءات الجنائية المصري.
  - (٣) المادة (٢١٣) من قانون الإجراءات الجنائية المصري.



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(١) المادة (١٢٤) من نظام الإجراءات الجزائية السعودي.  
(٢) المواد (١٥٤ - ٢٠٩) من قانون الإجراءات الجنائية المصري.

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(١) المادة (٨٦٠) من التعليمات العامة للنيابة بشأن الأمر بعدم وجود وجه لإقامة الدعوى الجنائية في مصر.

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- (١) المادة (٤/٥٥) من مشروع اللائحة التنظيمية لنظام هيئة التحقيق والادعاء العام.  
(٢) المادة (٨٧٠) من التعليمات العامة للنيابات العامة المصرية.

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- (١) مراد، عبد الفتاح. مرجع سابق، ص ٤٨١.  
(٢) المادة (١٦١) من قانون الإجراءات الجنائية المصري.  
(٣) محمد، عوض. مرجع سابق، (١٩٩٠م)، ص ٥٨١ - ٥٨٢.

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(١) خطاب وزير الداخلية رقم (٢٦٧٦/١١) في ١٥/٢/٣هـ، بشأن لائحة الادعاء.  
(٢) مكي، محمد عبد الحميد. مرجع سابق، (٢٠٠٠م)، ص ٢٦٢-٢٦٤.

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( ١ ) المادة (١/٢١٤) من قانون الإجراءات الجنائية المصري.  
( ٢ ) المادة (١/٢٣٢) من قانون الإجراءات الجنائية المصري.

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- (١) المادة (٢١٤) من قانون الإجراءات الجنائية المصري.  
(٢) مكي، محمد عبد الحميد. مرجع سابق، (٢٠٠٠م)، ص ٢٦٥.  
(٣) سرور، أحمد فتحي. مرجع سابق، (١٩٩٣م)، ص ٦٣٣.

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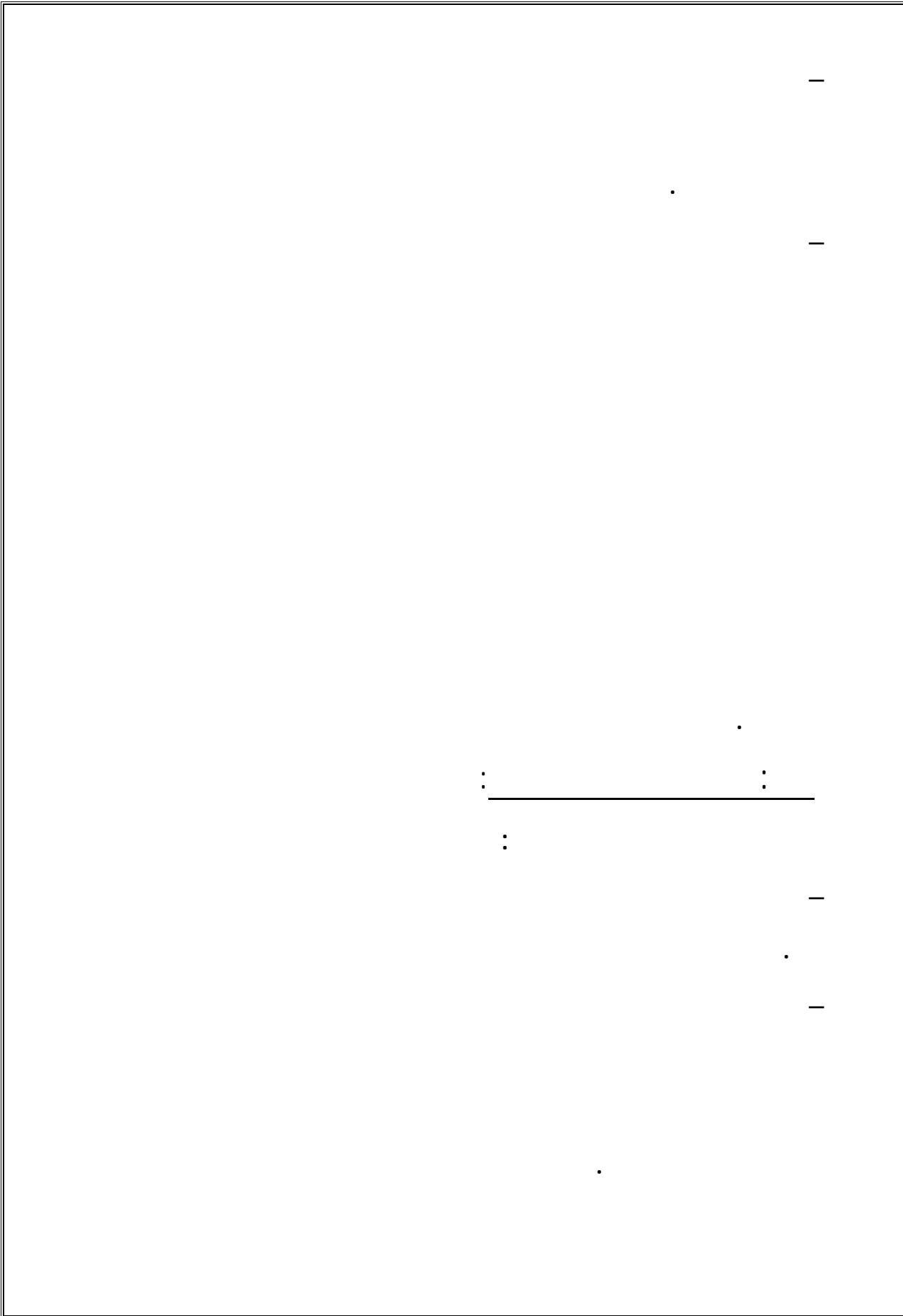
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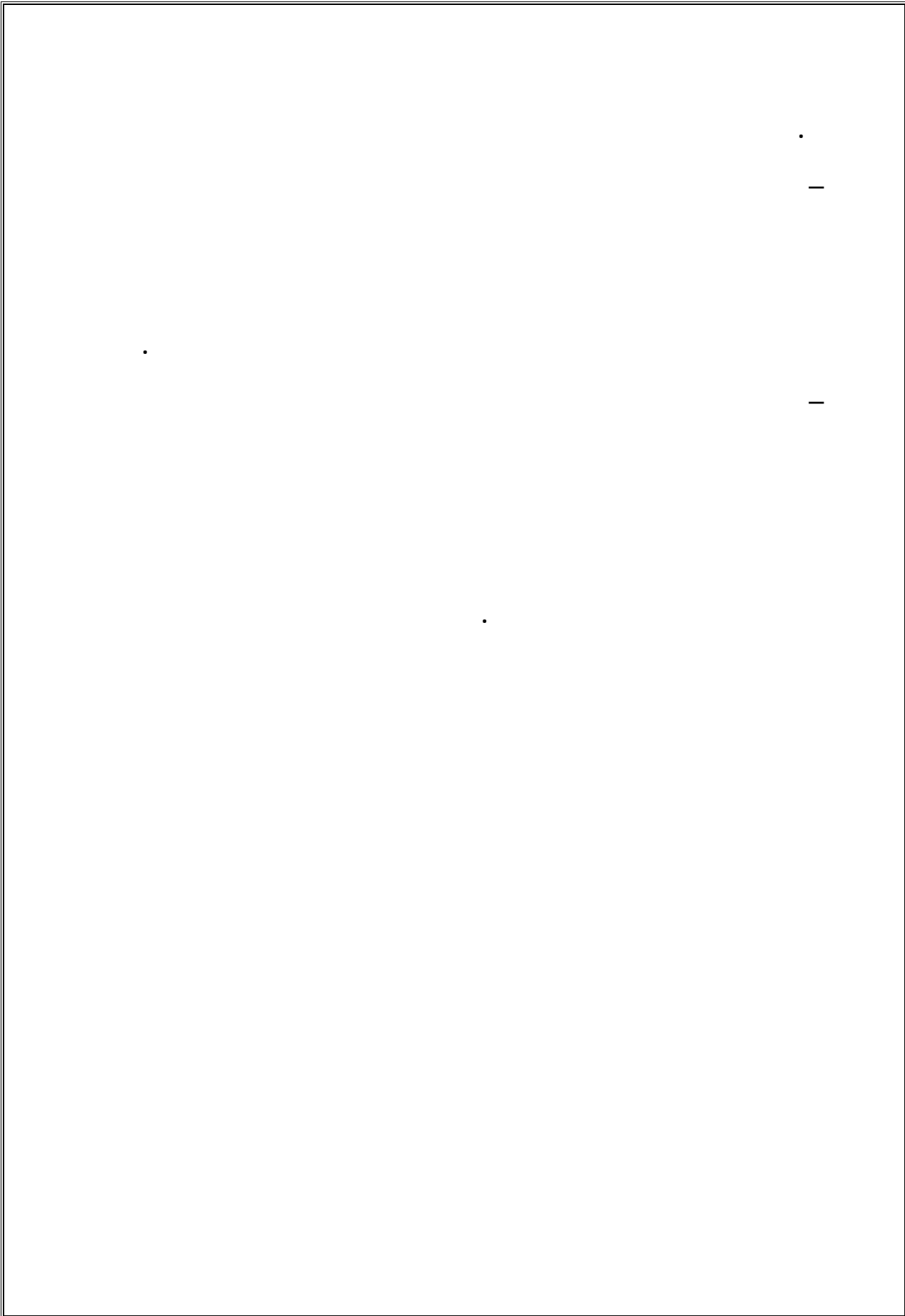
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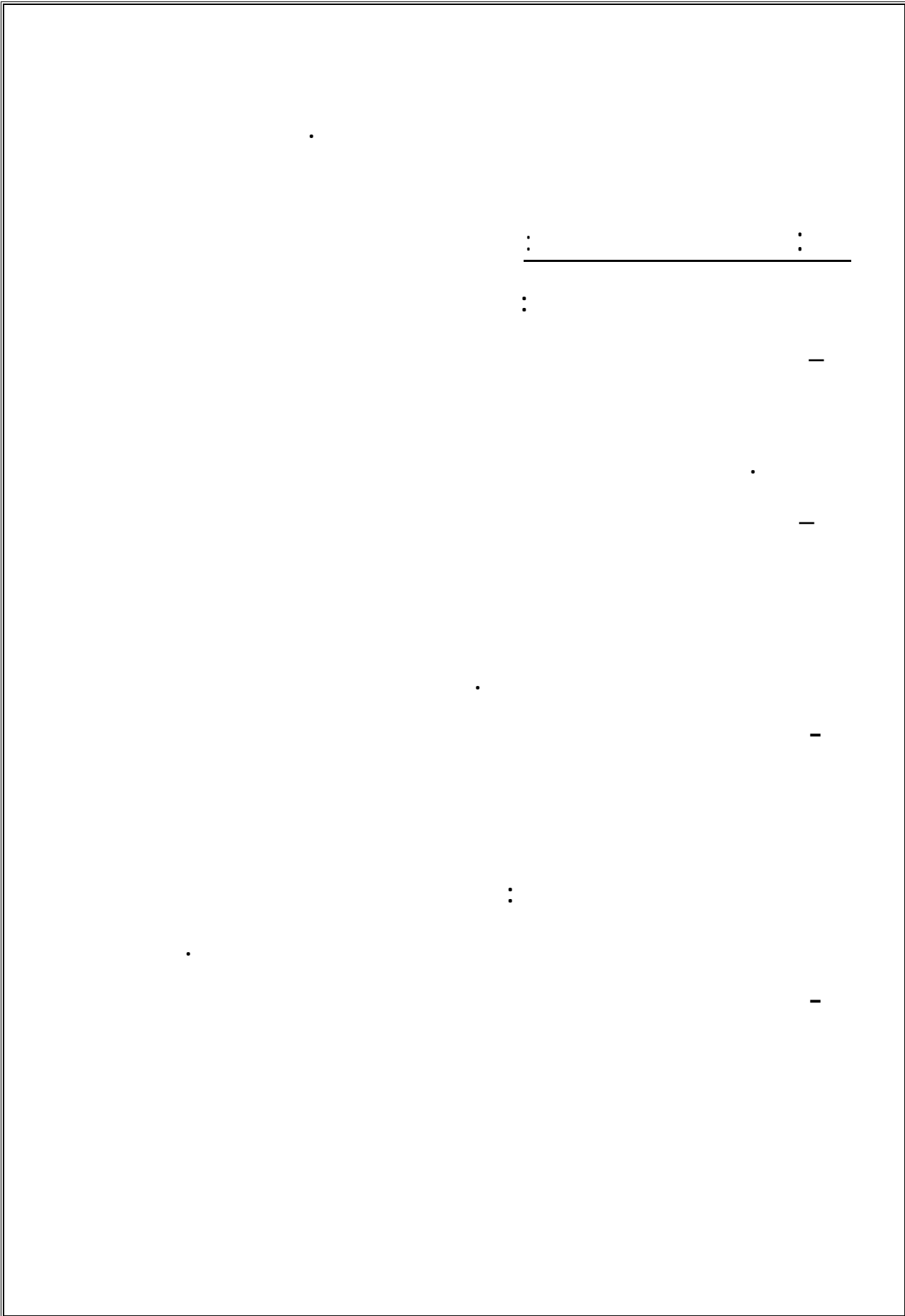
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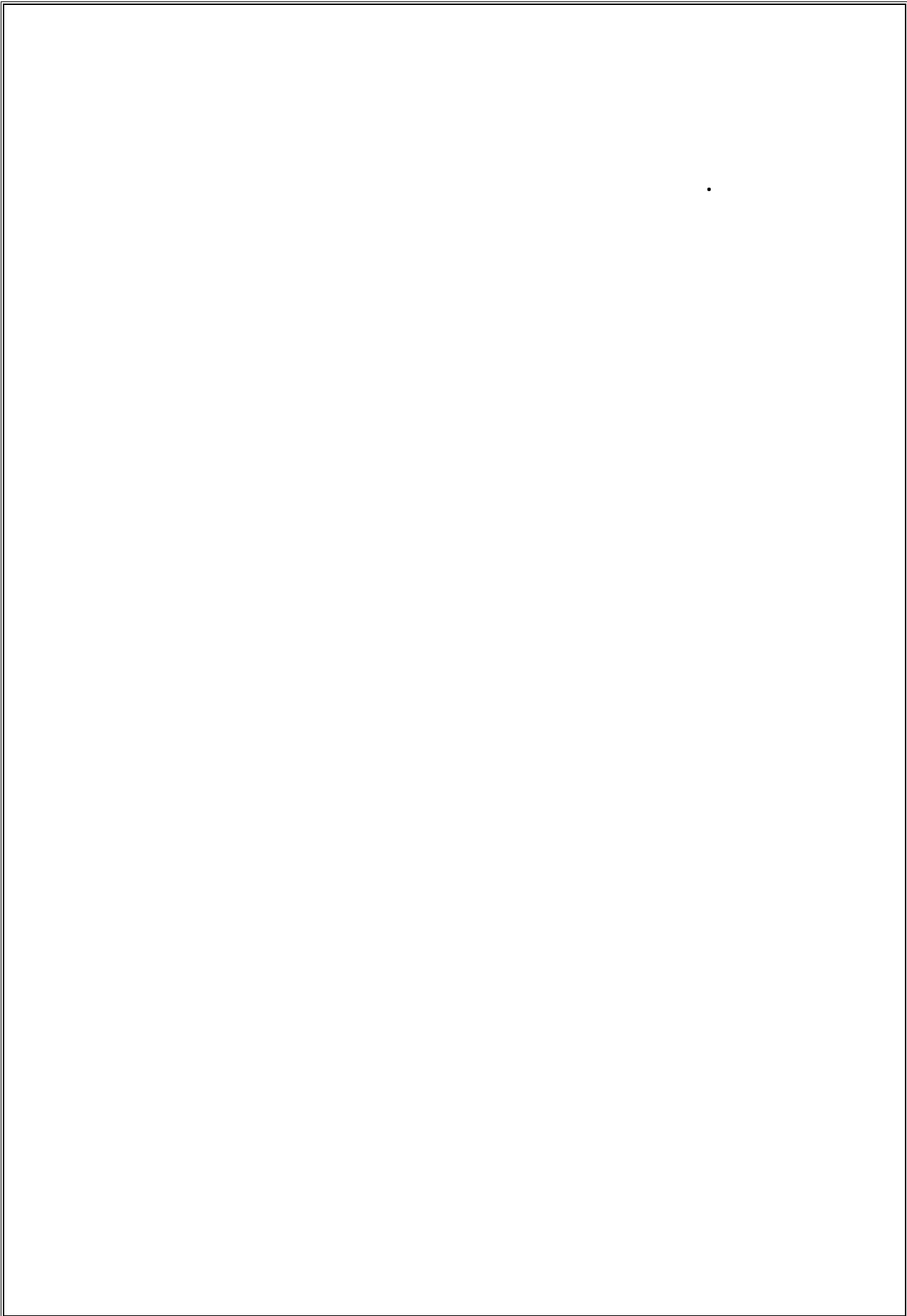
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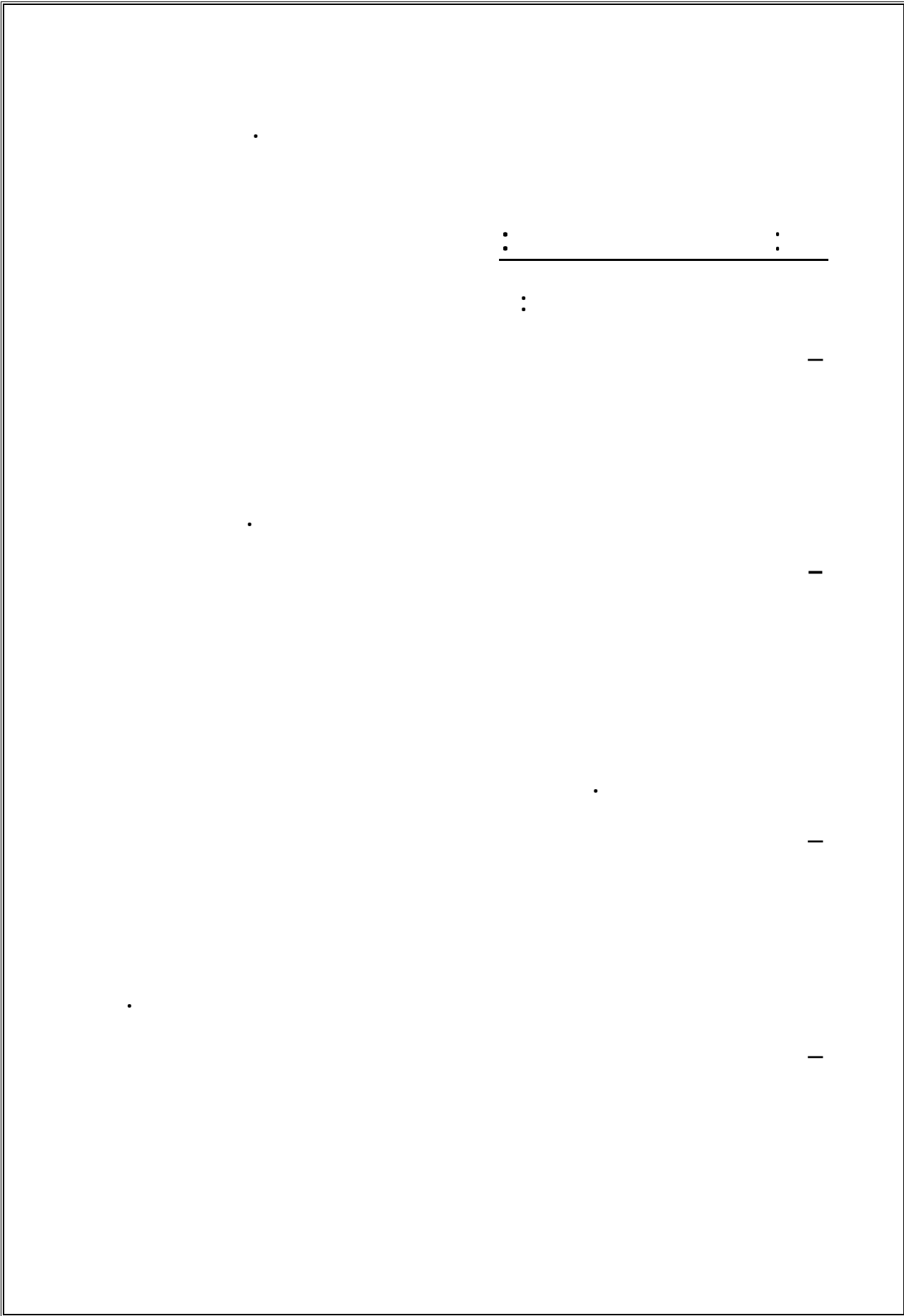
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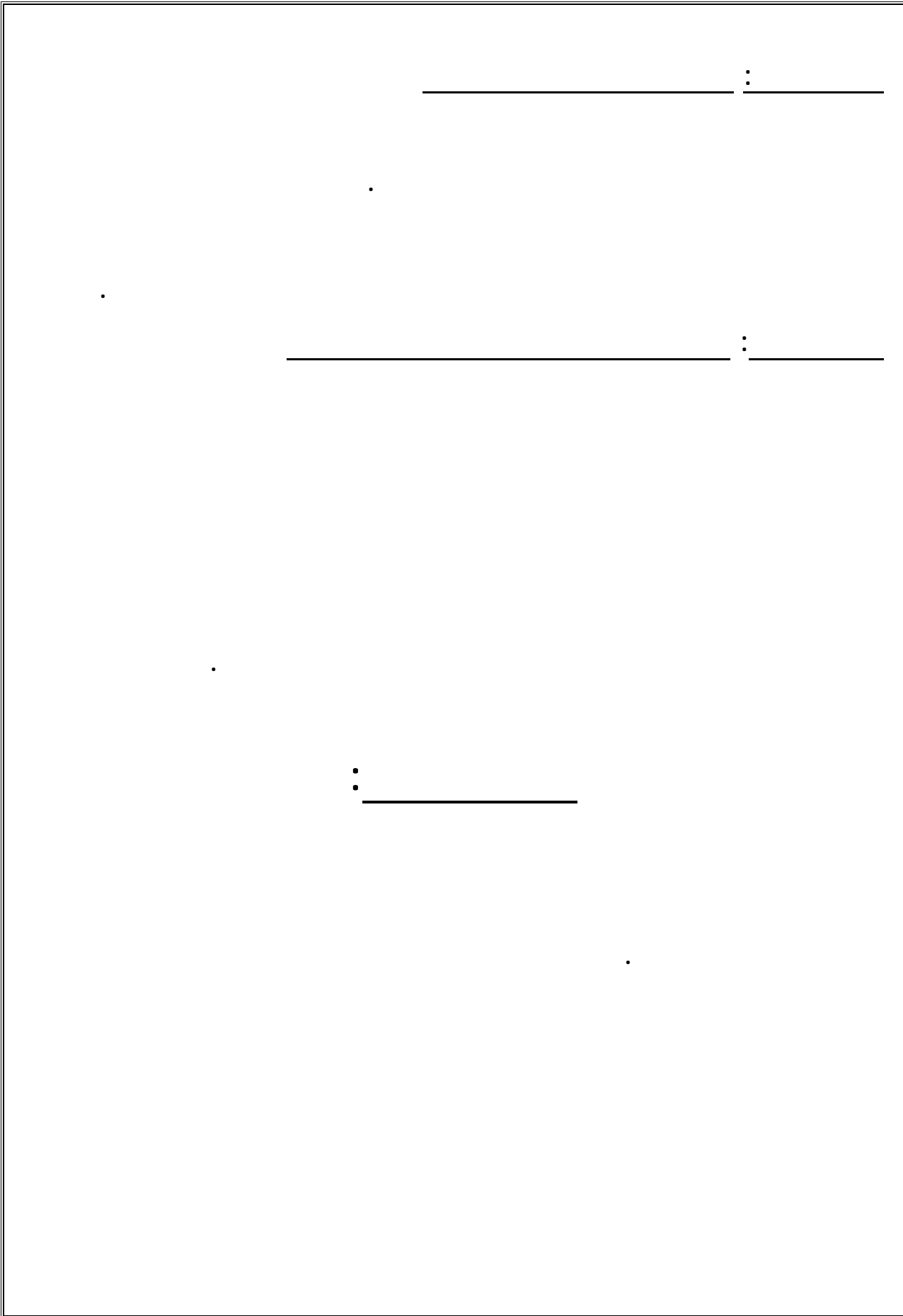
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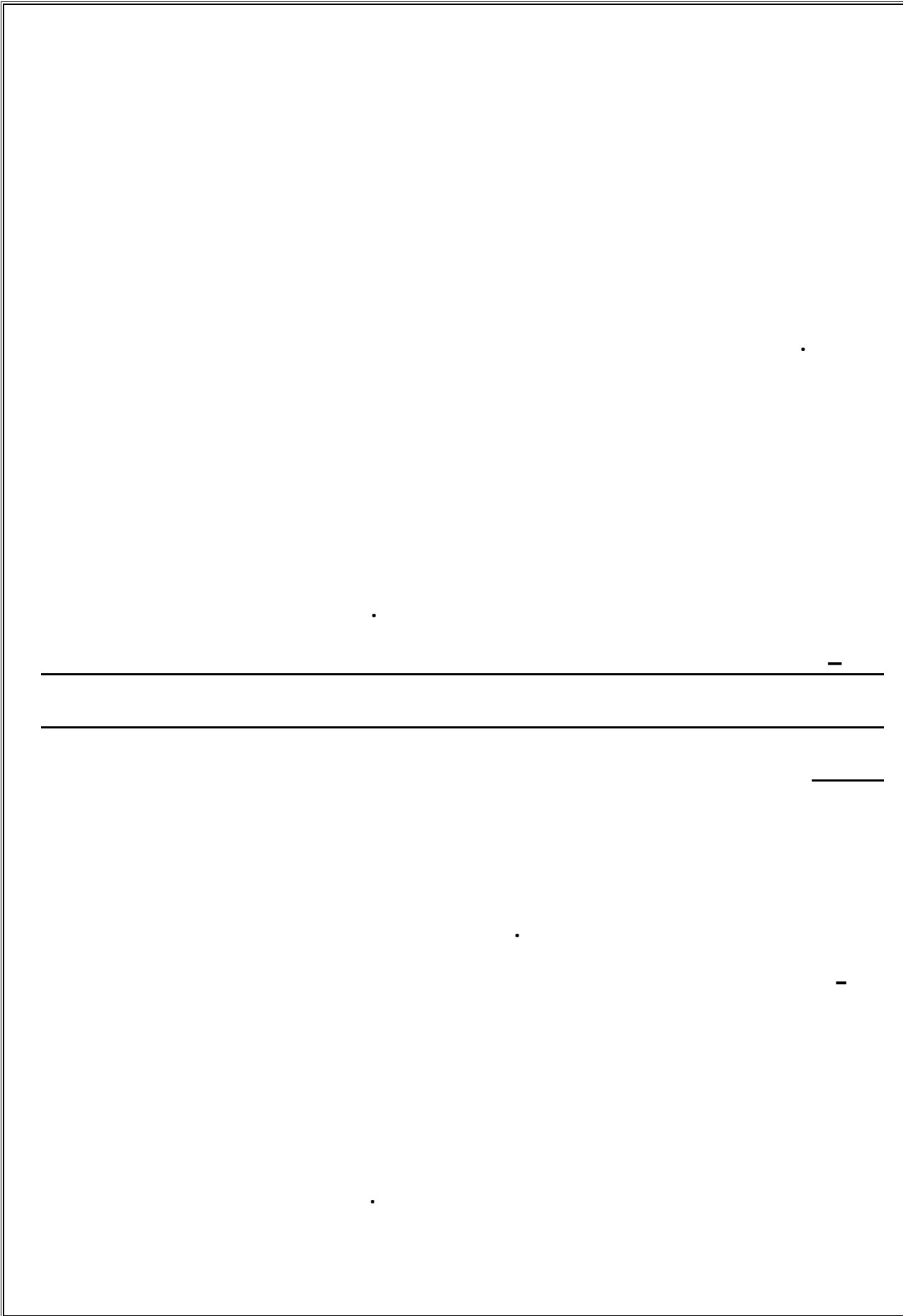
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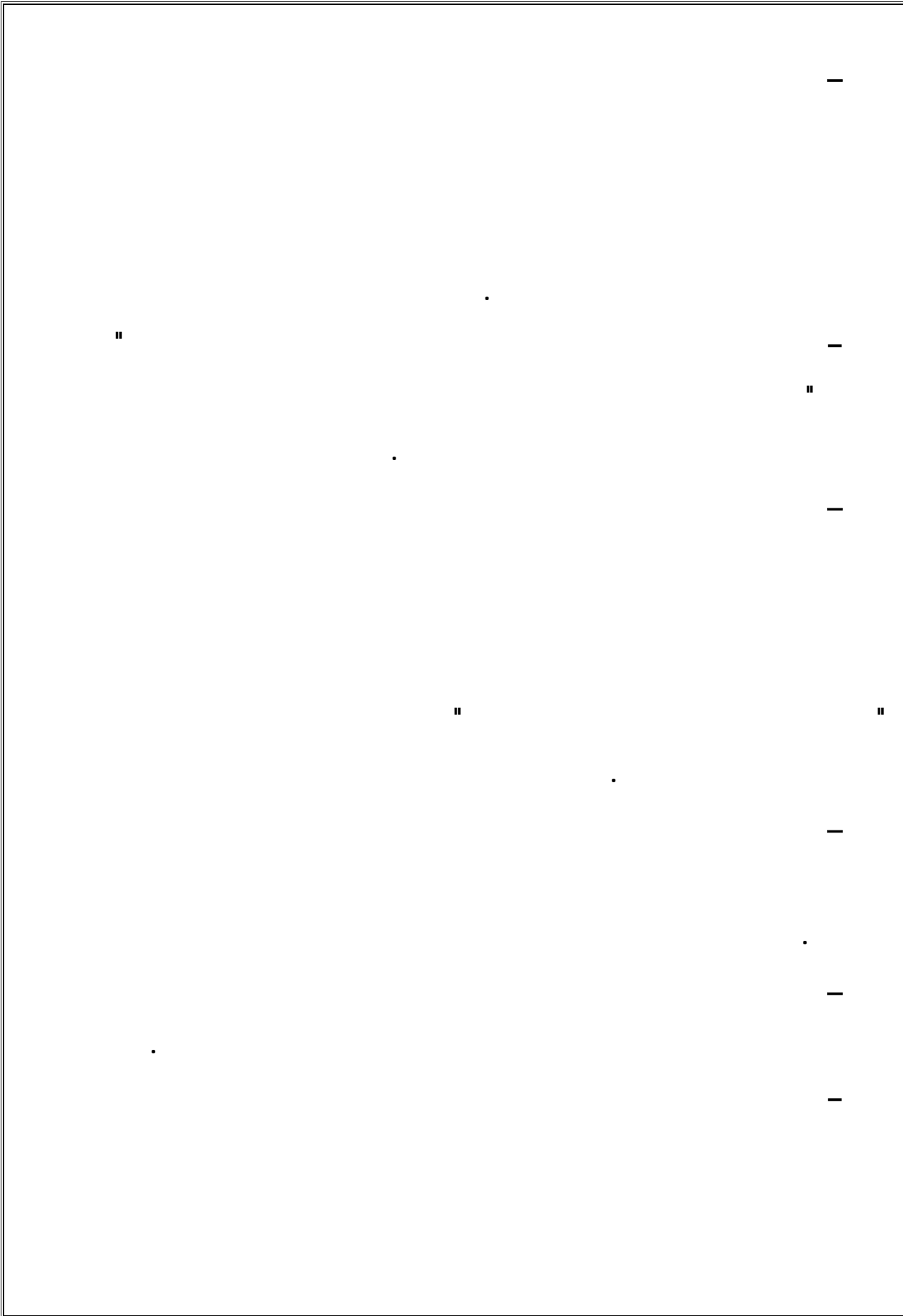
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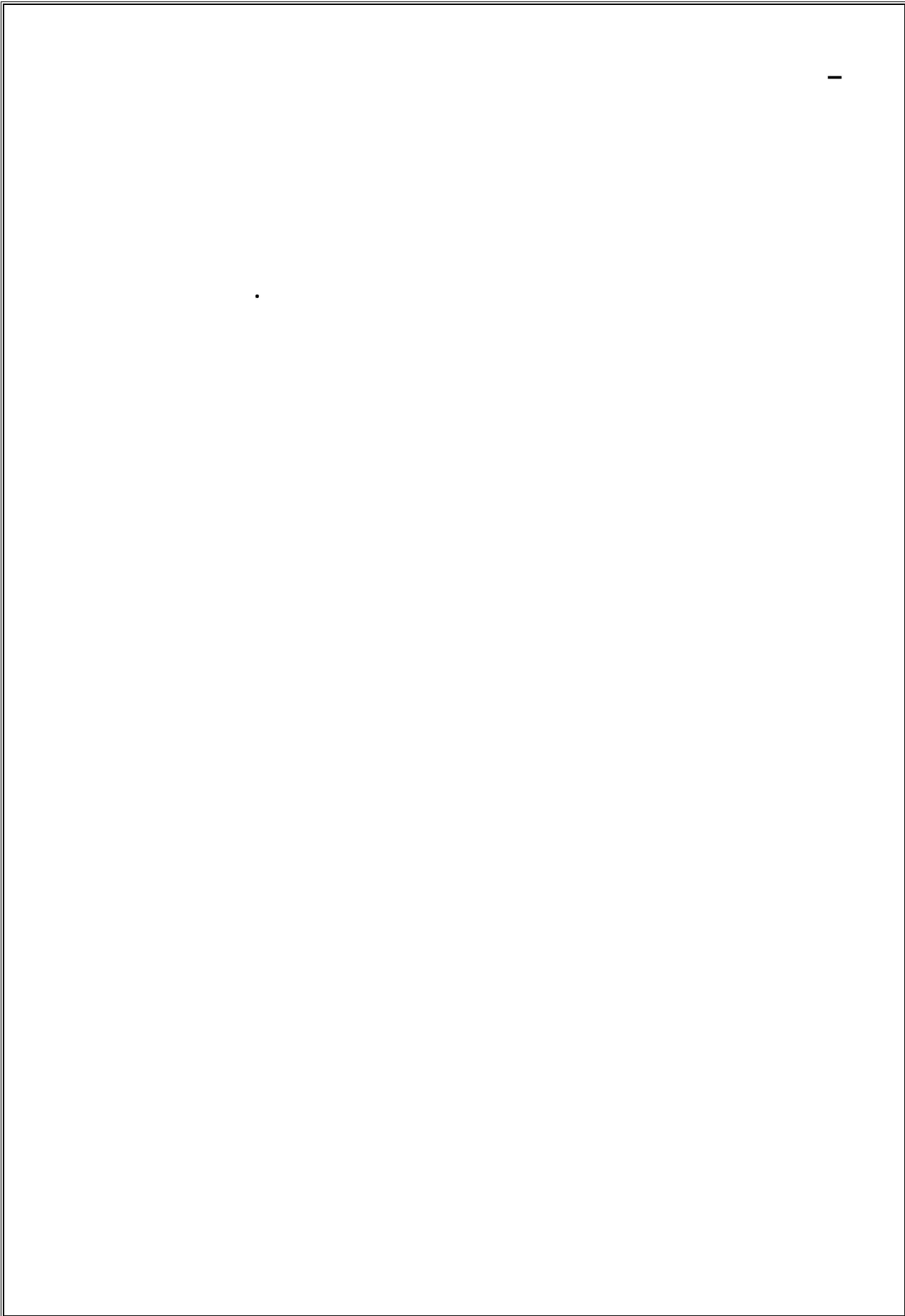
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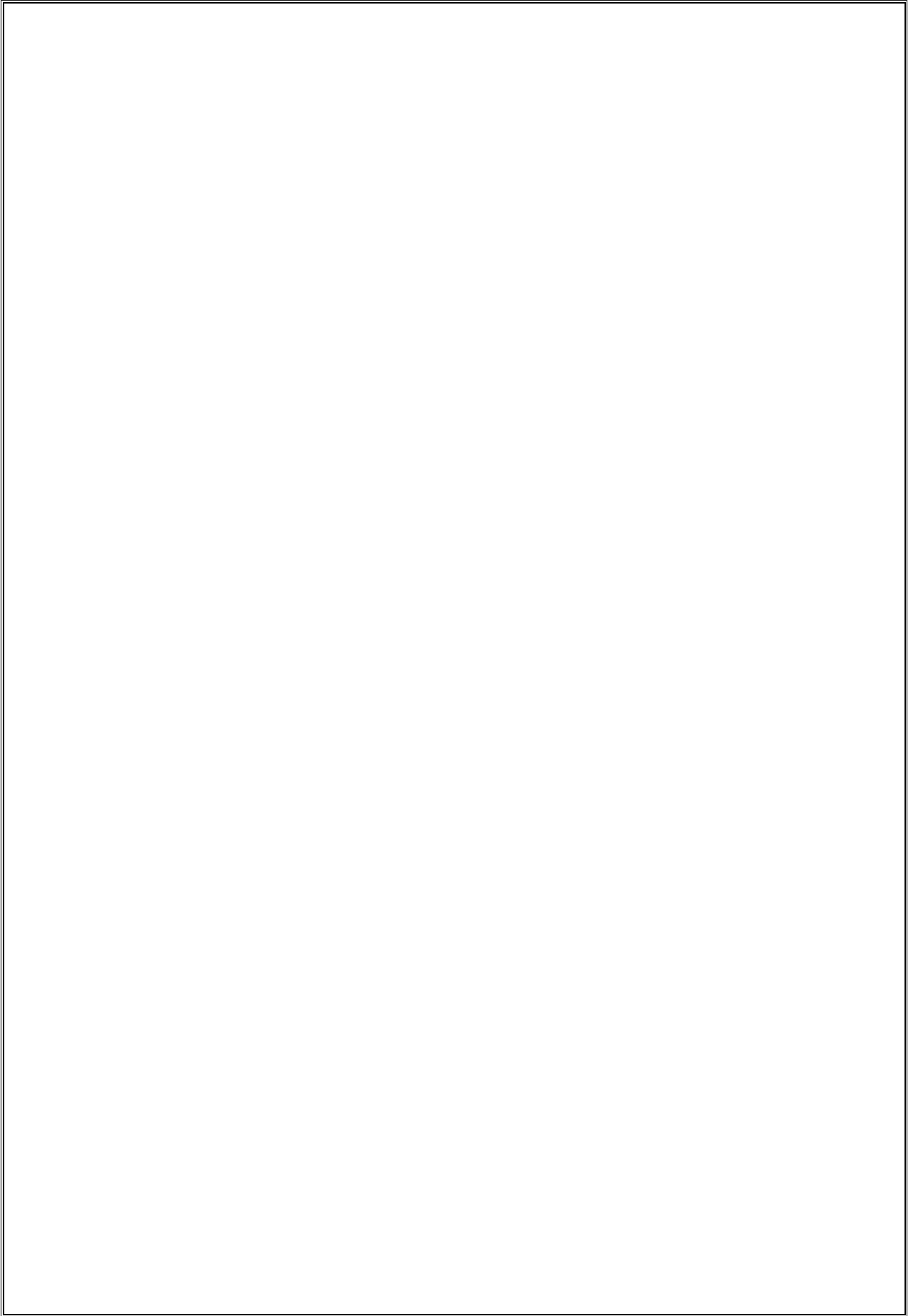
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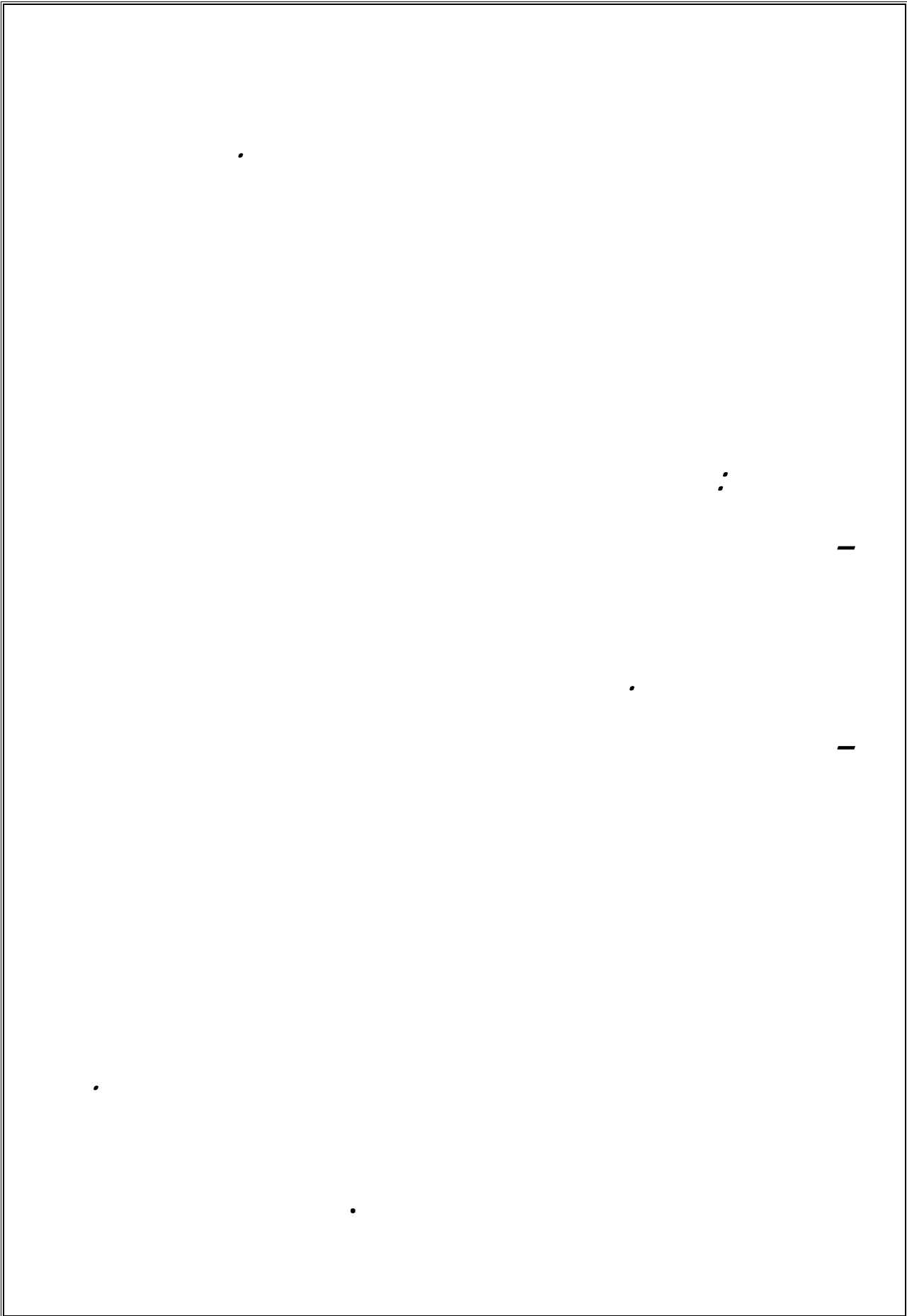
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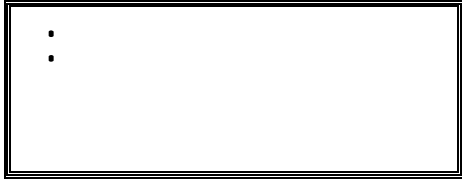
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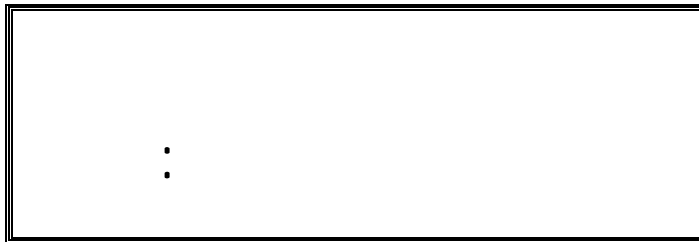
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