

ISLAMIC LAW OF CONTRACT

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Contract in *Shariah* means Aqd or a tie or Knot binding two parties together. The contract is a declaration of offer and acceptance.

Islamic law of contract developed through the work of Fugaha. In English through the work of Judges.

The Kuran contains a large number of specific contracts and axioms of wide application in the area of contractual relationships. These include various commercial contracts such as sale and hire, guarantee and security, deposit....etc. some of these verses provide a foundation for rules instated by the Koran for new contracts, some recognizing and legitimizing an already existing practice.

The Islamic contract is wider in scope than the English or French because it embraces some dispositions which are not considered “contract” in either English or French. Endowments is an example.

Classification of contracts in *Shariah*.

There are several classification for contracts in *Shariah*. What we are concerned will however, is that doing with Islamic banking.

a- Definitive and suspensive:

A contract is definitive when the offer and acceptance are both categoric and the contract is validly concluded. A contract is suspensive when the

offer or the acceptance or both are kept in suspense. The latter is not permitted in *Shariah*.

b- Binding (or obligatory) and facultative (or permissible):

Some contracts are binding, *Lazim*, once concluded they cannot be revoked except by mutual consent of the two parties. Some are facultative, *Jaiez*, which can be revoked by either party, and in some cases by a given party.

An example of the binding contracts are the contracts of sale, hire and lease...etc., and example of the permissible contracts is agency deposit, and *Mudarabah* which can be revoked by either party, while the contract of security (*rahn*) can be revoked any time but only by the beneficiary, i.e. the creditor.

Some contracts are revoked but only up to a point such as donation, once delivered it becomes binding.

c- Correct and corrupt contracts:

A contract is correct (*sahih*) when it is valid, effective and enforceable. A contract is considered corrupt (*fased*) refers to a void one.

d- Contracts of Exchange and Contracts of gratuities:

Contracts of exchange are those where the two parties interchange price and good or service. Contract of gratuities are those which are done for

benevolence purposes. An example of the first is sale and hire. Distinction between the two is important particularly when Gharar is present.

e- Specific or nominate contracts:

Shariah includes certain pre-designed contracts derived from the Kuran, Sunnah and Ijma. These are, basically, sale, hire, agency, guarantee, donation, partnership, mudarabah.

Islamic *Shariah*, nevertheless, allows contracting arrangement not falling in the categories of recognized nominate contracts given that are within the parameters of *Shariah*.