ISLAMIC LAW OF CONTRACT

By

Dr. Liaquat Ali Khan Niazi

Research Cell, Dyal Sing Trust Library
Nisbet Road, Lahore
# CONTENTS

<table>
<thead>
<tr>
<th>Foreword</th>
<th>i</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preface</td>
<td>iii</td>
</tr>
<tr>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td>Commerce in Pre-Islamic Arabia</td>
<td>3</td>
</tr>
</tbody>
</table>

**Chapter (1) CONCEPT OF CONTRACT (‘AQD) IN ISLAMIC LAW**

(i) Definition of ‘Aqd ( ) 9
(ii) Concept of ‘Ahd ( ) or Mu‘āhadah ( ) 9
(iii) Mīthāq or Covenant ( ) 13
(iv) Role of Mofftasib ( ) in commercial Transactions 13

**Chapter (2) ISLAMIC LAW OF CONTRACT AS AN INDEPENDANT LEGAL SYSTEM**

(i) The codification of Islamīc Law of Contract 33
(ii) Salient Features of Islamīc Law of Contract 39

**Chapter (3) FORMATION OF A CONTRACT**

(i) Offer (Ījāb) 63
(ii) Acceptance (Qabūl) 65
(iii) Consideration (‘Iwad) or (Sabab) 65
(iv) Communication 67
Chapter (4)  

**TERMINATION OF OFFER**  

(i) Revocation  71  
(ii) Lapse of time  72  
(iii) Failure of a condition subject to which the offer was made  74  
(iv) Effect of Exemption Clauses  74  

---  

Chapter (5)  

**CLASSIFICATION OF CONTRACTS**  77  

(a) Valid Contract  77  
\textit{Al-'Aqd-Al-Šāhīh}  
(b) Invalid Contract  78  
\textit{Al-'Aqd-Al-Fāsid}  
(c) Void Contract  78  
\textit{Al-'Aqd-Al-Bāṭil}  
(i) Sale of things prohibited  84  
(ii) \textit{Munābadjah}  86  
(iii) \textit{Ḥabāl-Al-Ḥabala}  87  
(iv) \textit{Mukhādarah} (Sale of fruits before ripening)  87  
(v) \textit{Moẓābanah} and \textit{Muḥāqalah}  88  
(vi) Sale of goods before obtaining their permission  88  
(vii) \textit{Muʿāwamah} (forward selling)  89  
(viii) \textit{Mulāmasah}  89  
(ix) Agreement for future separation  90  
(d) Conditional Contracts  90  
(e) Written Contracts  91  
(f) Contingent Contracts  96  
(g) Element of uncertainty  99  
(g) Joint Contracts  100  

---  

Chapter 6  

**CONTRACTS THAT CONTAIN A VITIATING ELEMENT**  

(i) Mistake (\textit{Khaṭṭā})  105  
(ii) Misrepresentation  107
Chapter (7)  
CONTRACTS WHICH ARE VOID BY SHARĪʿAH  
(i) Gambling Contracts  
*Maisir* or *Qimār*  
(ii) Restraint of Trade  
(iii) Fraud (*Taghrīr*)  
*or Tadlis*  
(iv) *Al Taṣfīf.*  
(Dealing in Fraud)  

Chapter (8)  
LEGAL INCAPACITY - INHIBITION (*Ḥajr*)  
(i) Infants (*Ṣaghīr*)  
(ii) Mental Patients (*Ṣaḥīḥ*)  
(iii) Drunken Persons (*Ṣākīn*)  
(iv) Corporations  
(v) Bankrupt (*Muṭlis*)  
(vi) Married Women  
(vii) Prodigals  
(viii) Death  

Chapter (9)  
AGENCY (SHARĪKHĀH *OR WAKĀLAH*)  
(i) Definition  
(ii) Formation of Agency  
(iii) Kinds of Agency:  
   a) *Shirkāt-ul-Mutawadal*  
      *Partnership by Reciprocity*  
   b) *Shirkāt-ul-Īnān*  
   c) *Shirkāt-ul-Wujood*  
      *(Partnership upon Credit)*  
(iv) Liability of partners to third parties  
(v) Unauthorised Agency (*Fiḍītī*)  

(iii) Coercion (*Irāh*)  

111  
115  
118  
121  
126  
133  
134  
141  
142  
144  
145  
147  
148  
149  
155  
156  
159  
160  
162  
164  
165
Chapter (10)  CONTRACT OF SALE: *BAI*  175
(i)  Definition of *BAI*  175
(ii)  Essentials of *BAI*  176
(iii)  Options:
1)  Options of acceptance  187
2)  Options of determination  187
3)  Options of inspection  187
4)  Options from defect  188

Chapter (11)  KINDS OF SALE  201
(i)  *BAI*  201
(ii)  *Tawliyah*  202
(iii)  *Morābahah*  203
(iv)  *Waqfah*  203
(v)  *Salam*  203
(vi)  *Qard*  206
(vii)  *Suftaja*  213
(viii)  *ʻAriah*  214
(ix)  *Istisnā*  218
(x)  *BAI-ul-Wafā*  219
(xi)  *Ṣarf*  220

Chapter (12)  MUDĀRABAH  227

Chapter (13)  RIBĀ  249

Chapter (14)  CONTRACTS OF SURETY  273
(i)  *Hawālah* (Novation)  273
(ii)  *Kafālah* or *Qamān*  275
    (Bail or Guarantee)
(iii)  *Rahn* (Mortgage)  286

Chapter (15)  THE HIRE CONTRACTS (*IJĀRAH*)  295
Chapter (16) DISCHARGE OF CONTRACTS 301
(i) Discharge by performance 301
(ii) Discharge by express agreement 301
(iii) Discharge by operation of doctrine of frustration 301
(iv) Discharge by breach (Faskh) 303

Chapter (17) REMEDIES FOR BREACH OF CONTRACT 309
(i) Rescission (Iqaläh) 309
(ii) Damages 311
(iii) Specific performance 311
(iv) Injunctions 312
(v) Restitutionary Remedies 313

Chapter (18) EFFECT OF LIMITATION PERIOD 315

Chapter (19) QUASI-CONTRACTS 319

Chapter (20) MISCELLANEOUS CONTRACTS 325
(i) Protection of Intellectual Property 325
(ii) Contract of Muzâra‘ah 328
(iii) Contract of Musâqāt 329
(iv) Contracts of Bailment 330
   (a) Amanâh 333
   (b) Wadâ’ah 333
   (c) Finders 340
   (v) Contract of Hibah 340
   (vi) Contract of Waqf 340
   (vii) Contract of Marriage 343
   (viii) Contract of Compromise 345
   (ix) Contract of Partition 348
   (x) Contract of Arbitration 349
   (xi) Contract of Mawâlāh 352
<table>
<thead>
<tr>
<th>(xii)</th>
<th>Contract of Qamān</th>
<th>354</th>
</tr>
</thead>
<tbody>
<tr>
<td>(xiii)</td>
<td>Contract of Personal Services</td>
<td>354</td>
</tr>
<tr>
<td>(xiv)</td>
<td>Contract of Employment</td>
<td>356</td>
</tr>
<tr>
<td>(xv)</td>
<td>Contract of Bargaining (Musāwamah)</td>
<td></td>
</tr>
<tr>
<td>(xvi)</td>
<td>Novation</td>
<td>359</td>
</tr>
<tr>
<td>(xvii)</td>
<td>Acknowledgement ( ) and Contracts during Death Sickness</td>
<td>360</td>
</tr>
<tr>
<td>(xviii)</td>
<td>Rewards</td>
<td>362</td>
</tr>
<tr>
<td>(xix)</td>
<td>C.I.F. and F.O.B. Contracts</td>
<td>371</td>
</tr>
</tbody>
</table>

**Chapter (21) CONTRACT OF INSURANCE**

1. (i) Institution of 'Āqilah | 381 |
2. (ii) Life Insurance | 388 |
3. (iii) Group Insurance, Social Security | 389 |
4. (iv) The War Injuries (Compensation Insurance) | 396 |
5. (v) The Riots and Civil Commotion Risks Insurance | 397 |
6. (vi) Fire Insurance | 397 |
7. (vii) Traffic Insurance | 398 |
8. (viii) Marine Insurance | 399 |

**Chapter (22) BANKING CONTRACTS**

1. (i) Commerce and Banking in Pre-Islamic Arabia | 406 |
2. (ii) Banking in Historical Perspective | 408 |
3. (iii) Theory of Ribā | 409 |
4. (iv) History of Banking in Pakistan | 414 |
5. (v) Mudārakah Model | 417 |
6. (vi) Shirkah Model | 420 |
7. (vii) The Institution of Qard-e-Hasan | 421 |
8. (viii) Hire-Purchase Agreement (Buy Mu'ajjal) | 422 |