

FORMATION OF CONTRACT AND ITS LEGAL EFFECTS



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Outline

- Introduction
- Essential elements /requirements of contract
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 - Contracting parties
 - Subject matter
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INTRODUCTION

- There are various necessary essential elements/requirements that are needed for the formation/establishment of a contract.
- Not only that, to form a contract such essential elements have to fulfill certain required conditions.
- The fulfillment of conditions is important to determine the validity of contract and its legal effects.

ESSENTIAL ELEMENTS OF CONTRACT (*ARKĀN AL-'AQD*)

- • Jumhur – *arkan* are what are to be necessary for a thing to exist whether part or relate to it.
- Hence, essential elements of contract are *sighah* (expression of offer and acceptance), *'aqidan* (two contracting parties) and *mahal al-'aqd* (subject matter of contract).

ESSENTIAL ELEMENTS OF CONTRACT (*ARKĀN AL-'AQD*)

- Hanafis - *arkan* are what are considered to be part and partial of the thing.
- Thus, essential elements of contract are *ijab* (offer) and *qabul* (acceptance) which expressly represent mutual consent of the contracting parties.
- To them the two contracting parties and subject matter of contract must exist in order to conclude the contract. They are considered subsidiary to the offer and acceptance because it is impossible for an offer and acceptance to occur without the contracting parties and the subject matter of contract.

1. *Ṣighah (Ijab & Qabul)* (Offer & Acceptance)

- In order for a contract to be valid, the formation of a contract must be of mutual consent between parties.
- However, neither *Al-Qur'an* nor *hadith* explains on how the mutual consent can be established.
- The Muslim jurists have established that the consent in the contract can be manifested by an offer and acceptance made by the contracting parties.

Conditions of • *Sighah*

- i) Clarity of *Sighah*
- The offer and acceptance must clearly show the intention of the contracting parties to perform their contract.
- *Hadith* states, “Verily all good deeds are determined according to intentions.”
- Legal maxim provides, “Matters are determined according to their intention.”
(*Majallah*, article 2)

- This is because the terms of contract might differ depending on its nature, whether it is a contract of sale, hire or mortgage. If the will of the contracting parties is not clearly communicated, there will be no legal effect to their intention.
- ii) Conformity of *sighah*
- The offer and acceptance must correspond to each other. They must refer to the same subject matter and not to the different things. The conflict in them may invalidate the contract.

- However, the contract is considered valid if the acceptance does not correspond to the offer and tends to favor the offeror. For example, a seller says, “I sold to you this property for RM1,000” and the buyer replies, “I accepted it for RM1,500.”
- iii) Continuity of *sighah*
- The offer and acceptance must be made in one/ same contractual session [There must be unity of contractual session]. This signifies physical proximity where the contracting parties come together to conclude their bargain and it ends only when they separate physically.

- The contractual session also includes constructive contractual session that is determined on the basis of custom prevailing at that time.
- The unity of contractual session does not necessarily require the presence of the two contracting parties in the same contractual session at the same time. It is also extended to cases where the contract is formed *inter absentes* by means of modern communication systems such as telephone, telex, e-mail, internet and letter. The unity of contractual session here is the communication of the offer and acceptance which should be made within a reasonable time without any indication to terminate or suspend the offer.

Modes of *Sighah*

- i) *Sighah* by word of mouth/oral or verbal expression of *sighah*
- It is the best way to conclude the contract and the best method to determine the mutual consent of the contracting parties.
- There is no specific requirement as to the word used [except for marriage] provided that the verbal expression is understood by the contracting parties and acceptable to the custom to indicate mutual consent.

- ii) *Sighah* by writing
- It is considered similar to *sighah* by word of mouth on the basis of legal maxim, “Writing is similar to the exchange of conversation.” (*Majallah*, article 69)
- “Offer and acceptance may be made by writing as well as by word of mouth.” (*Majallah*, article 173)

- Hanafis and Malikis – It is permissible to conclude the contract by writing in whatever language understood by the two contracting parties. This mode of *sighah* can be made by any contracting parties whether they are able to speak or not and they are present in the contractual session or in absentia.
- Shafi'is and Hanbalis – This mode of *sighah* is only applicable to the contracting parties who are in absentia.
- For marriage contract, this mode of *sighah* is only applicable to the contracting parties who are unable to speak such as dumb persons.

- iii) *Sighah* by gesture
- All Muslim jurists - For the contracting parties who are unable to speak and write, gesture is allowed provided it is known to the people on the basis of legal maxim, “The well-known sign of a dumb person is like a statement by word of mouth.” (*Majallah*, article 70)

- Hanafis and Shafi'is – For the contracting parties who are able to speak and write, no gesture is allowed.
- Hanbalis and Malikis - For the contracting parties who are able to speak and write, gesture is allowed provided it is known to the people.
- The preferable view of Hanafis - For the contracting parties who are able to write only, gesture is not allowed but they have to write.

- iv) *Sighah* by conduct
- It is known as a contract of *mu'atah*, *ta'ati* or *murawadah*.
- Examples are, a) A purchaser without bargaining or making any statement gives money to the baker and baker delivers the bread to the purchaser, b) A purchaser tenders money and takes the melon. The vendor remains silence and c) A passenger of the bus, without saying anything pays certain amount of money for a ticket to the bus driver.

- Hanafis and Hanbalis – It is allowed provided it is part of the practice of people and the price is clearly known.
- Malikis and original view of Hanbalis – It is allowed if there is clear indication of consent of the contracting parties.
- Sha• fi'is – It is not allowed due to difficulty to determine the mutual consent unless the subject matter is small or trivial such as egg, bread, newspaper and the likes.
- All Muslim jurists – It is not allowed for the marriage contract.

Termination of Offer

- Revocation of offer by the offeror before its acceptance according to Jumhur other than Malikis.
- Rejection of offer by the offeree.
- Ending of the contractual session due to separation of the contracting parties.
- Losing of mental capacity of the offeree due to insanity or unconsciousness before accepting the offer.
- Destruction/changing of subject matter of contract before acceptance such as grape juice becomes wine, etc.
- death of the contracting parties

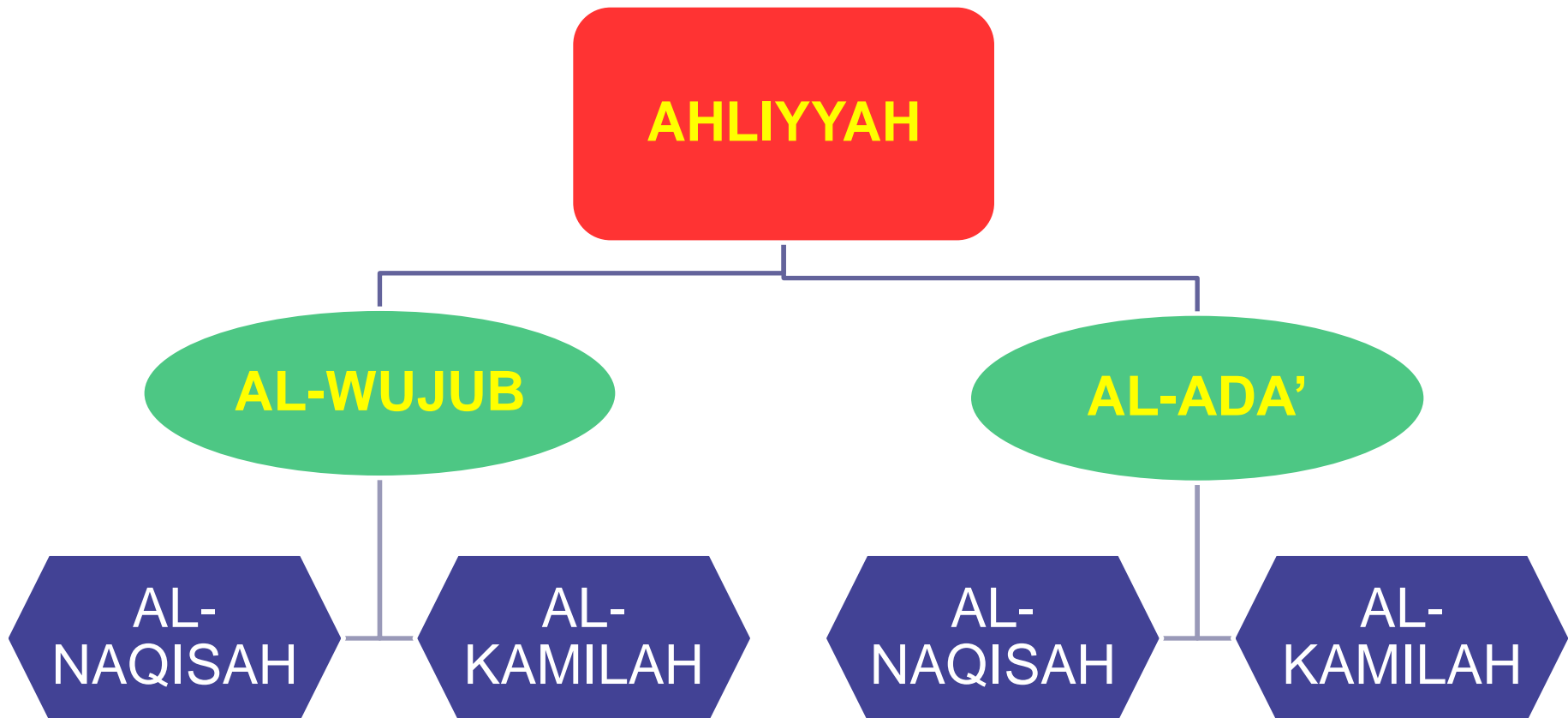
2. 'Aqidan (Contracting Parties)

- The contracting parties are the pivot of the existence of the contract.
- To have a valid contract, it must be concluded by:
 - i) those who have legal capacity (*ahliyyah*),
 - ii) those who have authority towards the contracting parties, i.e. guardianship (*wilayah*) or
 - iii) those who are given authority by the contracting parties under contract of agency (*wakalah*) (and not unauthorised agents).

Ahliyyah (Legal Capacity)

- *Ahliyyah* refers to a quality by which a person becomes fit to obtain what he is entitled to, or for the discharge of legal obligation to which he is liable to in the eye of the *Shari'ah*.
- *Ahliyyah* is divided into two main categories i) *Ahliyyah al-Wujub* (receptive legal capacity) and ii) *Ahliyyah al-Ada'* (active legal capacity).

DIVISION



- i) **Ahliyyat al-Wujub** refers to the capacity for inherence rights and obligation. Its criterion is based on life itself.
- It is divided into two i.e. *Ahliyyah al-Wujub al-Naqisah* (deficient receptive legal capacity) and *Ahliyyah al-Wujub al-Kamilah* (complete receptive legal capacity)
- Deficient receptive legal capacity arises due to the rights are attached to a person such as a fetus in mother's womb forms part of a mother. He is capable of holding rights for his own interest such as in inheritance, wills, legitimacy and endowment.

- Complete receptive legal capacity comes about due to the imposition of rights on the person and of obligation against him. This exists when the person is borne alive until he passes away.
- The minor starting from his birth until the age of seven has this legal capacity. He has the capacity to have rights and to bear certain obligations that could be managed by the guardian in respect, for example, of maintenance and payment of *zakat*.

- The minor does not have *Ahliyyah al-Ada'*. All his sayings are useless and his contracts are void. This is because he does not understand the nature of sale and purchase that is not knowing that selling causes loss to the rights of ownership to the property and buying results the acquisition of ownership.
- “Verbal dispositions of property by the minor are invalid.” (*Majallah*, article 966)

- ii) ***Ahliyyah al-Ada'*** means the capacity for the exercise of rights and obligation. Its criterion is based on maturity of intellect. It is acquired upon attaining a certain level of intellectual maturity and competency.
- It is divided into two i.e. *ahliyyah al-Ada' al-Naqisah* (deficient active legal capacity) and *Ahliyyat al-Ada' al-Kamilah* (complete active legal capacity).

- Deficient active legal capacity refers to the competency of person to do certain dispositions with and subject to the authorisation of another person. This legal capacity is given to a minor who reaches the age of seven until he reaches the age of puberty. He is known as *mumayyiz* [a child who is capable to distinguish between good and bad, profit and loss and knows the general meaning of the conditions of the contract].

- Disposition of *mumayyiz* and its effects according to the majority of Hanafis can be divided into three categories.
- i) dispositions which are purely for one's own benefit such as acceptance of gift or present. Such dispositions are valid even without permission from the guardian.
- ii) disposition which are purely detrimental to him such as giving his property to another by way of gift. These dispositions are invalid even though the guardian permits them.

- iii) dispositions which may either beneficial or detrimental to him contracts of sale, hire and mortgage. Such dispositions are valid but subject to the ratification by the guardian.
- Complete active legal capacity refers to the competency of person to do whatever acts and dispositions he likes without any need to get permission from other.
- The person who reaches the age of puberty and prudent have this legal capacity.

Impediments to Legal Capacity

- There are various factors which lead to impediments of the legal capacity of a person that prevent him from disposing of his property and concluding the contract.
- The impediments are due to i) minority, ii) insanity, iii) idiocy/imbecility, iv) prodigality, v) death sickness, vi) bankruptcy and viii) intoxication/drunkenness.

1. Minority

- A person who falls under this category of impediment is known *al-sabiyy* (minor). He is a child who does not reach the age of puberty.
- The restriction on the minor is lifted upon his reaching the age of puberty.
- “The dictum or pen is lifted from three persons; from a sleeping person until he wakes up, from an insane till he recovers and from a minor until he reaches age of puberty.” (Meaning of the *hadith*)
- Age of puberty as agreed upon by the Muslim jurists is proven by emission of semen in a dream for a boy and by menstrual discharge for a girl.

- The minimum age of puberty for a boy is twelve and the girl nine.
- Jumhur – maximum age of puberty for both boys and girls is fifteen years on the authority a report by Ibn‘Umar, “I went to see the Prophet s.a.w. and offered myself to participate in the Battle of Uhud when I was the fourteen years old but the Prophet s.a.w. rejected. Later when I was fifteen years old and came to the Prophet s.a.w. and requested to participate in the Battle of *Khandak* (Drain), the Prophet s.a.w. accepted.” (Meaning of the *hadith*)
- Hanafis – maximum age of puberty for male is at eighteen year old and for female seventeen years.
- Malikis – maximum age of puberty for both male and female is eighteen years old.

2. Insanity

- A person who is in the state insanity is known as an insane. He is a person whose actions cannot be said to be his own and are humanly abnormal and irrational.
- He is prohibited from dealing with his property and entering into a contractual relationship. His guardian must act on behalf of him.
- His dispositions are similar to the disposition of a minor below the age of seven.

- “Insane who is continuously mad is considered to be a minor of imperfect understanding” (*Majallah*, article 979)
- The restriction on the insane is lifted upon his mental recovery.
- “The dictum or pen is lifted from three persons; from a sleeping person until he wakes up, from an insane till he recovers and from a minor until he reaches age of puberty.” (Meaning of the *hadith*)

3. Idiocy/Imbecility

- A person who is in the state idiocy is known as *ma'tuh* (idiot). He is a person being so deranged in mind because his understanding is limited, his speech is confused and his plan of action is bad.
- His action is similar to the action of *mumayyiz*.
- “An idiot is considered to be a minor of perfect understanding.” (*Majallah*, article 978)

4. Prodigality

- A person who falls under this impediment is called as *safih* (prodigal). He is referred to as either i) a person who wastes and destroys his property uselessly by throwing it away and squandering it in his expenditure or ii) a person is deceived in business owing to his being stupid or simple minded.
- Reason for his restriction is wasting and destroying of property.

- “Do not give to those who are weak of judgment your property which Allah has placed your charge for (their) support; but let them have their sustenance therefrom, and clothe them, and speak unto them in a kindly way.” (*surah al-Nisa'*, 4:5)
- “But if the debtor is of poor understanding, or weak, or is unable himself to dictate, then let his guardian dictate in justice.” (*surah al-Baqarah*, 2:282)

- His right of dispositions of property is similar to certain extent to disposition of *mumayyiz*.
- “An interdicted prodigal is, as regards his civil transactions, like a minor of perfect understanding. The judge alone is his guardian and the father, forefather and the guardians appointed by them has no right of guardianship on prodigal.” (*Majallah*, article 990)

5. Death Sickness

- It means “a situation when a person has a logical apprehension of imminent death.”
- It also refer to “a situation whereby a sick person is unable to attend his business and dies before a year has passed on account of his condition, or when the illness of such a man is prolonged.”
- It covers imminent and hazardous situations which normally lead to death such as fighting in war, drowning or an offender who is sentenced to death by the court.

- A death sickness person is not allowed to dispose of his property that involves the interest of others such as his legal heirs and his creditors.
- Gift made by him to his legal heirs is invalid if other legal heirs disagree.

6. Bankruptcy

- A person falls under this impediment is called *mufliis*. He is a person who has no property or one whose debts are equal or greater than his property. He is restricted from disposing of his property by the court adjudicating him bankrupt.
- The purpose of restriction is to protect his creditors.
- Jumhur – It is allowed for us to restrict the disposition of a bankrupt.

- “The Prophet (S.A.W) had prevented Mu‘adh [whose debts are more than his assets] from disposing of his property and sold the property and paid the debt to the creditors.” (Meaning of the *hadith*)
- This *hadith* shows that petition for a bankruptcy order is in accordance with the Islamic law. If this were not so, the Prophet (S.A.W) would not prevent Mu‘adh from disposing of his property.
- The *hadith* suggests also that the court is ultimately responsible for selling all the bankrupt’s assets and distributing all the proceeds of sale amongst the creditors.

- It is reported by ‘Abd Rahman ibn Dalf al-Muzanni that a man from the *Juhaynah* tribe went bankrupt and his matter was brought before ‘Umar ibn al-Khattab, the second caliph (634-644), who said; "O People! Al-Usayfi‘, al-Usayfi‘ of the *Juhaynah*, was satisfied with his religion (*din*) and his trust because it was said of him that he arrived before the others on the Pilgrimage (*hajj*). He used to incur debts but he did not care to repay, so all of his property has been eaten up by it. Whosoever has a debt against him, let him come to us tomorrow and we will divide his property between his creditors. Beware of debts! Their beginning is a worry and their end is destitution."

7. Intoxication/Drunkennes

- Intoxication refers to “loss of mental capacity due to taking liquor or any intoxicated things causing the intoxicant becomes unawares of his action that he made during his state of intoxication.”
- Effects of his transaction/contract depend on whether his intoxication is due to legitimated or illegitimated reason.
- If the intoxication is due to legitimated reasons such as taking liquor due to necessity, duress, mistake or taking medicine, his transaction becomes invalid according to all Muslim jurists.

- If the intoxication is due to illegitimated reasons, his transaction becomes valid and effective according to majority of Muslim jurists including Shafí'ís, Hanafis and Malikis. This is to punish the intoxicant.
- However, according to Zahiris and one view of Imam Ahmad, his transaction becomes invalid and ineffective.
- This is based on
 - i) “O you who believe! Do not go near to prayer when you are intoxicated ill you know what you say.” (*surah al-Nisa'*, 4:43),
 - ii) a valid transaction is based on intention, intelligence, discrimination and understanding. Thus, his transaction becomes invalid as the intoxicant entered into such transaction with such reasons.
 - iii) there is no different between legitimate and illegitimate reason as both are the same.

Wilayah

- *Wilayah* refers to “a power or authority granted by the *Shari‘ah* to a person over another which makes his dispositions operative with respect to him without his consent.”
- There are two types of guardianship, i.e. i) guardianship of a person and ii) guardianship of property.
- Guardianship of a person refers to “a power and duty of a guardian to look after the minor and to take care of his education and teaching including to conclude the contract of marriage of his ward.”

- Guardianship of property means “a power of a guardian to make property dispositions for his ward that includes minor, insane and idiot.”
- Guardians of property according to Hanafis and Shafi‘is are the father, the executor appointed by the father, the grandfather, the executor appointed by the grandfather, the judge and the executor appointed by him. However, Hanbalis and Malikis exclude the grandfather and the executor appointed by him as guardians of property.

- In the absence of such guardians, the guardianship will go to the judge on the basis of the *hadith*, “The ruler will be a guardian of him who has no guardian.”
- The guardian should exercise his power accordingly, i.e. for the interest and benefit of the ward.

Wak•alah

- *Wakalah* refers to “a representation of another person (*wakil*) to act in a permissible (*ja'iz*) and known (*ma'lum*) disposition provided that the principal (*muwakkil*) is legally permitted to do so.”
- “Agency consists of **one person** empowering some **other person** to perform **some act** for him, whereby the latter stands in the stead of the former in regard to such act.” (*Majallah*, article 1449)

- The agent while carrying out his responsibility, must conduct the dealings within the scope of the agency and may not go beyond those limits save as may result in a greater benefit to the principal.
- He must carry out his duty with care and diligence according to the terms of the contract and instruction of the principal as he is a trustee to the principal. Thus, he is not allowed to make any secret profit by using confidential information and to sell his property to his principal. This is in order to avoid conflict of interest.

- “If an agent for purchase sells his own property to his principal, such sale is invalid.” (*Majallah*, article 1488) (*Majallah*, article 1496)
- Property in his hand is considered as a trust.
- “Property in the possession of an agent which he has received in his capacity as agent for sale, purchase, paying or receiving payment of debt, or receiving any specific property, is considered to be property deposited with him for safe-keeping. If it is destroyed without fault or negligence, the loss not be made good.” (*Majallah*, article 1463)

Fu•duli

- *Fuduli* refers to “a person who performs a disposition or concludes a contract on behalf of another person without having an authority of performing this disposition or concluding this contract.”
- Examples includes a person sells the goods of a person or buys something for him without being a legal guardian recognised by the *Shari‘ah*, nor an agent of another person in concluding this disposition.

Effects of transactions concluded by unauthorised agent

- Hanbalis and Shafi'is – disposition and contract concluded by unauthorised agent are invalid even if the person concerned allows them, for invalid contract cannot become valid by a permission.
- “No person may deal with the property of another person unless by his permission or acting as his trustee.” (Legal maxim)
- Hanafis and Malikis – disposition and contract concluded by unauthorised agent are valid depending on the ratification of the person concerned.
- Ibn Taymiyyah and Ibn Qayyim – disposition and contract concluded by unauthorised agent are invalid provided that they are beneficial to the person concerned.

Mahal al-'Aqd

- Subject matter of contract is “the thing on which the contract proceeds.”
- It normally involves a property [subject matter of contract of sale, mortgage and gift] and to certain extent the usufruct [subject matter of contract of hire, bequest for certain period of time and borrowing for using the usufruct (*'ariyyah*)].
- There are five conditions for validity of the subject matter of contract.
 - i) It must exist
 - ii) It must be able to be delivered
 - iii) It must be known
 - iv) It must be legal
 - v) It must be clean and pure

(i) Existence

- The subject matter of contract must exist or can exist in the future.
- “Do not sell what you do not have.” (Meaning of the *hadith*)
- This condition is important i) to avoid *gharar* and ii) to show the ownership of the subject matter.
- Hanafis and Shafi‘is – the existence of subject matter of contract is essential in all kinds of contract whether synallagmatic (*mu’awadat*) or gratuitous (*tabarru’at*).

- Malikis – its existence is only essential in synallagmatic contract but not gratuitous.
- Hanbalis – its existence is not a condition of a contract on the basis that neither *al-Qur'an*, *hadith* nor opinion of the Companions prohibits the sale of non-existence subject matter but the *hadith* prohibits the sale of an uncertain subject matter.
- Exception – this general rule is not applicable to *bay' al-salam* and *al-istina'*.

- “The subject matter of contract should be existed at the time when the contract begins or afterwards. Thus, if the subject matter is the transfer of corporeal rights, it must exist at the time of contract. If the subject matter is for work or labour, it is sufficient that it might exist in future. If the subject matter which does not exist or impossible to exist in future invalidates the contract.” (per al-Sanhuri)

(ii) Specific and Knowledge

- The subject matter of contract must be known to the contracting parties in order to eliminate uncertainty and lack of knowledge.
- Knowledge to the subject matter involves its essence, quantity and value.
- Knowledge could be obtained through indication, viewing and description.

- Hanafis and Shafi'is – knowledge of subject matter of contract is essential in all kinds of contract whether synallagmatic or gratuitous.
- Malikis – its knowledge is only essential in synallagmatic contract but not gratuitous because the ignorance of the nature of the subject matter in gratuitous contract is unlikely to cause dispute among the contracting parties.

(iii) Delivery

- The subject matter of contract must be capable of delivery.
- All Muslim jurists - this condition is necessary in synallagmatic contract. Thus, the sale of a sunken ship or of a runaway animal which cannot be caught and delivered, is void.
- M• alikis – it is not necessary for gratuitous contract as the person who will receive the subject matter will not suffer any harm if it is not delivered to him for he did not give up anything.

(iv) Legality

- The subject matter must be property that is lawful according to the *Shari'ah* and owned by the contracting parties (*mal mutaqawwim*).
- Contract to sell a corpse is void because it is not *mal mutaqawwim*. Similarly, contract to sell fishes in the sea and birds in the sky are void because they are not owned by any body.

- For instruments of entertainment such as various musical instruments, according to Imam Abu Hanifah, they can be come the subject matter of contract because they are useful and property in itself. However, according to Abu Yusuf, Muhammad and others, such instruments are ineligible to become the subject matter as they are used for evil and amusement purposes.

(v) Cleanliness and Purity

- The subject matter of contract must be clean and pure according to the majority of Muslim jurists. Thus, Muslim cannot transact in wine, blood, pork and the likes because they are considered impure by Islamic law.
- “O you who believe! Intoxicants, gamblings, idolatrous practices and the dividing of the future are abomination of Satan’s handiwork. So avoid it in order that you may be successful.” (*surah al-Maidah*, 5:90)
- Interpretation of the verse shows that such things are prohibited to be dealt with because they are unclean.

- According to Hanafis, this condition is not necessary unless there is a clear provision as in the case of wine, pork, corpse and blood. Thus, they allow a contract of impure things such as pig's bristle and corpse leather.
- “He, it is Who created for you all of that is on earth.”
(*surah al-Baqarah*, 2:29)
- “Any beneficial thing is permissible in *Shari‘ah*.”
(Legal maxim)

LEGAL EFFECTS OF CONTRACT

- To determine the legal effects of contract, the validity of contract must be ensured.
- Muslim jurists differ for classification of contract that is based on the legal effects and validity.
- Jumhur – i) valid contract and ii) invalid contract/null and void contract.
- Hanafis – i) valid contract, ii) void contract and voidable contract.

Jumhur

- Valid contract – “contract that fulfills all necessary essential elements and conditions of contract and complies with the *Shari‘ah* principles and objectives (*Shari‘ah* compliant).”
- Legal effects - contract exists immediately upon its conclusion.
- Invalid contract – “contract that has a defect in its essential elements, conditions or *Shari‘ah* compliant.”

- Legal effect – contract will cease to exist on account of missing of one of its essential elements, absence of one of their conditions or occurring of a prohibited elements.
- For contract of sale, no property rights are transferred and no liabilities are incurred by the purchaser in respect of the goods, whether or not he has taken possession of them with the consent of the seller. Nor can void sale be validated, ratified or amended by approval of the parties or by the passage of time.

- This happens due to non-existence of acceptance, contradictory between offer and acceptance or non-unity of offer and acceptance.
- This also occurs when one of the contracting parties does not fulfill the required conditions of legal capacity i.e. to have complete active legal capacity.
- This also arises if the subject matter of contract is non-existence, unknown, non-deliverable or unlawful.
- The contract is also invalid if it is subject to gambling or *rib*• that Islamic Law prohibits.

H• anafis

- Valid contract – “contract that its essence (*as• l*) and circumstances/attributes (*was• f*) are in accordance with the law.”
- *A• s/* refers to essential elements and conditions of contracts.
- *Wa• sf* signifies matters externally connected with the contract such as mutual consent of the contracting parties, certainty of subject matter and consideration/price.

- Legal effect – all the legal effects of contract accrue from it. For the contract sale, the seller is obliged to transfer and deliver the proprietary of the goods to the buyer and the buyer has to pay the price to the seller. In case of contract of hire, the lessor is obliged to transfer of proprietary right in usufruct to the lessee for the latter to utilise it and the lessee is obliged to pay the rent as agreed upon in the contract. In loan, the lender must transfer the subject matter of loan to the borrower and the borrower has to repay the loan accordingly.

- Void contract – “contract that one of its essential elements are breached or its cause is imperfect.”
- If the contract is made by an insane or a minor, it is considered void as though it has never been formed. Similarly, it is void if the underlying cause of the contract is dissolved and it concerns the object of sale as for example, when it constitutes one of the unlawful object.

- Voidable contract – “contract that other than its essential elements or causes are defective or contract that is lawful in respect of its essence, but not with respect of its quality.”
- Legal effect – it is a contract and it produces some of its legal effects. It will be considered valid if the irregularity of such contract is ratified.
- This happens when a defect or imbalance occurs in the price such as the price is not clearly ascertained in the sale agreement as the buyer must pay its value in a lawful form.

- It also happens due to lack of proper consent such as the sale is concluded on the basis of duress or mistake.
- It also arises i) due to condition that is not recognised by Islamic Law such as condition that is subject to payment of interest or ii) for a condition that is uncertain such as A sells to B a commodity on condition that he pays him a sum of money 'for a long as he lives'. This contract is voidable for uncertain condition.
- To render the contract valid, the condition must be changed to a specified period, such as 'ten years'.
- It also comes into effect if the subject matter of sale cannot be delivered to the buyer unless by causing damage to it such as sale of pillar of the roof.

CONCLUSION

- To form a contract, all its essentials elements and conditions must be fulfilled because their existence is necessary to determine the validity of contract.
- Legal effects of contract are determined on the basis whether the contract is valid, invalid or voidable.