



History :

1. Types of commercial transaction pre-Islamic : Partnership, and receiving goods on basis of partnership

Contract Element	Meaning	Quranic Proof / Hadith	Explanatory Notes	Schools of Thought Opinion
Principles of Contracts:	Agreement between 2 parties (or more) where the consequences are legally enforceable	<ul style="list-style-type: none"> Al Maidah 1: Oh ye who believe! Fulfil the contractual obligations. Al Baqarah 177: And truly pious are they who fulfil their contract (promise) which ye have made Bani Israil 34: And be true to every promise to verify on the Day of Judgement for you will be called to account for every promise which ye had made Hadith: There are 3 signs of a hypocrite; when he speaks, he lies, when he promises, he breaks it, when he is trusted, he breaches 	<p>As a general rule, the Act undertaken under the Agreement is done based on:</p> <ol style="list-style-type: none"> 1) Unilateral Intention 2) Mutual Agreement <p>As a specific definition :</p> <ol style="list-style-type: none"> a) Obligation, linking offer and acceptance resulting in legal effects on the subject matter b) Connection of an Offer from one of two contracting parties with acceptance resulting in the effect of the subject matter (Majelle) c) Legally binding agreement between 2 or more parties in which, for a consideration, one or more of the parties agree to do something. 	
1) Permissibility is a General Rule	The originality in Islamic law is permissibility unless there is prohibition	<ul style="list-style-type: none"> Al Jumu'ah 10: And when the prayer is finished then away ye disperse through land, seek the bounty of Allah and celebrate the praises of Allah often so that ye may prosper Al Baqarah 185: Allah intends for you ease, and He does not want to make things difficult for you Hadith: Every agreement is lawful among Muslims, except one which is declared forbidden that which is allowed or declared allowed, that which is forbidden. Hadith: Nine out of ten of one's recommended livelihood lies in trade and commerce 		

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2) Mutual Consent		<ul style="list-style-type: none"> An Nisa 29: Oh You who believe, eat not up your property amongst yourself in varieties, but let there be trade amongst you by mutual consent Hadith : Verily the sale is based on mutual consent 		
3) Free from Ikrah (Duress)		<ul style="list-style-type: none"> Al Baqarah 188 : And do not eat up your property among yourselves for varieties, nor use it as bait for judges, with intent that ye may eat up wrongfully and knowingly and little of other people's property Hadith : Allah has lifted away from my Ummah responsibilities from actions done by mistakes, forgetfulness and under coercion 	<p>Types of Ikrah:</p> <ol style="list-style-type: none"> 1) Ikrah Mulji – Duress from threat that is caused by a blow 2) Ikrah Ghayr Mulji – Duress from threat that is caused by a blow leading to pain <p>Definition of Ikrah (only considered as Ikrah if):</p> <ol style="list-style-type: none"> 1) There is capability to execute the threat 2) The treat is realistic 3) Serious injury 4) Immediate 5) Unlawful / Unlawful Purpose <p>Effects of Ikrah:</p> <ol style="list-style-type: none"> 1) Cancellation of Contract (Sale contracts). Exclusions = Marriage & Divorce 2) Voidable. Has right to cancel if under duress but if victim insist to continue, it is allowed 3) Suspended. Requires duress to be ratified to continue contract 	<ul style="list-style-type: none"> Hanafi : Accepts the concept of Voidable and Suspended contract
4) Free from Riba' (Usury)		<ul style="list-style-type: none"> Al Baqarah 275: But Allah have permitted Trade and forbidden Riba' 		
5) Free from Gharar (Uncertainty)		<ul style="list-style-type: none"> Al Rahman 9: So establish weigh with justice and fall not short in balance 	<p>Types of Gharar:</p> <ol style="list-style-type: none"> 1) Unclear ownership 2) No possession of Asset 3) Ambiguous terms of 	

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		<ul style="list-style-type: none"> Bani Israil 34: And be true to every promise to verify on the Day of Judgement for you will be called to account for every promise which ye had made Hadith: The Holy Prophet prohibited sale through fraudulent means or uncertainty 	<p>transaction</p> <p>4) Subject matter is doubtful</p>	
6) Free from Fraud, Mistake, Deception (Tadlis)		<ul style="list-style-type: none"> Al An'am 152: Give measure and weigh in full justice Bani Israil 35: Give full measure when ye measure and weigh with a balance that is straight, that is the most fitting Al Taffir 1-4: Woe to those who deal with fraud, those who when they have to receive by measure from men exact full measure. But when they have to give by measure or weigh to men, give less than their due. Do they think that they will not be called to account? Al Baqarah 188 : And do not eat up your property among yourselves for varieties, nor use it as bait for judges, with intent that ye may eat up wrongfully and knowingly and little of other people's property Al Maidah 64: But they (ever) strive to do mischief on earth, And Allah loveth not those who do mischief Hadith : Allah has lifted away from my Ummah responsibilities from actions done by mistakes, forgetfulness and under coercion 		
7) Free from Prohibited Activities (Haram)		<ul style="list-style-type: none"> Hadith: The worst earning is the earning of a prostitute, the price of a dog and the earning of a cupper Hadith: Abu Zubair said I asked Jabir (ra) about the price of a dog and a cat, he said the Prophet (saw) disapprove of that. 		

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		<ul style="list-style-type: none"> Hadith: Both the bribe giver and its consumer will be in hell. 		
Types of Contract		<ul style="list-style-type: none"> Al Baqarah 282: Oh You who believe, when you deal with each other, in transactions involving future obligations, in a fixed period, reduce them to writing, let a scribe write down as between the parties. Al Maidah 1: Oh ye who believe! Fulfil the contractual obligations. An Nisa' 58: Verily Allah commands you to render back your trusts to those whom they are due. Hadith: The law has been lifted away from three persons, from a minor till he becomes major, from an insane person till he regains sanity, and from one asleep till he awakens 	<p>General types of contract i.e.</p> <ol style="list-style-type: none"> 1) Unilateral – consent not required, one party set terms, usually gratuitous 2) Bilateral – requires consent, 2 parties involved, usually commercial transactions 3) Quasi – not necessarily a consensual contract but an obligation arising from an event, usually estate administrator (enforceable), or with regards to minors (unenforceable) 4) Joint – requires individual consent from a group, all parties responsible although appoints a leader, usually a guarantee transaction 	
Classification of Contract			<p>Forms of Contract</p> <ol style="list-style-type: none"> 1) Social Agreement 2) Commercial Agreement 3) Legal Agreement <p>Different Types of Commercial Contract:</p> <ol style="list-style-type: none"> 1) Sale (al Bai') 2) Lease (al Ijarah) 3) Partnership (al Shirkah) 4) Equity (al Mudharabah) 5) Security (al Kafalah) 6) Safekeeping (al Dhamanah) 7) Agency (al Wakalah) 8) Manufacturing (al 	

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			Istisna') 9) Insurance (al Takaful) 10) Gift (al Hibah) 11) Bailment (al Wadiah) 12) Mortgage (al Rahan)	
Riba	Ziyadah = Increase	Al Baqarah 275: But Allah have permitted Trade and forbidden Riba'		
Types of Riba			<ul style="list-style-type: none"> Jahiliyyah : Request excess on money on maturity by increasing amount for settlement Nasiah : Request excess on money for Delays Fadhl : Request excess on exchange of goods in Transactions (Prohibition on 6 commodities) 	
Prohibition on 6 Commodities		Gold is paid for gold, raw and coined Silve and silver raw and coined with equal weight Wheat by wheat by equal measure Barley by barley by equal measure Dates by dates with equal measure Salt by salt with equal measure But theres no harm in selling gold for silve and silve with gold, with unequal weight, payment be made on the spot	The Commodities with prohibitions: 1) Gold 2) Silver 3) Wheat 4) Barley 5) Dates 6) Salt	
Prohibition of Riba	Stage 1 – Compare Riba and Zakat, praising akat			
Prohibition of Riba	Stage 2 – Associating Riba to practices by the ews			
Prohibition of Riba	Stage 3 – prohibiting charging double or multiple			
Prohibition of Riba	Stage 4 – permitted sale and forbidden riba			
Essential Elements in a Contract (Arkzan Al Aqd)	Definition of Aqad : <ul style="list-style-type: none"> Two parties taking upon themselves and undertaking to do something, 			

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	<ul style="list-style-type: none"> It is composed of the combination of offer and an acceptance. It is connecting, in a legal manner, one's offer and acceptance with the other, in a way which will be clear evidence of being connected 			
1) Sighah (Ijab & Qabul)	Must have 1) Clarity 2) Confirmity 3) Continuity		Types of Sighah 1) By Wordings 2) By Writing 3) By Gesture 4) By Conduct	Shafie and Hanbali – Writing only applicable in absentia
5) Aqidan (Contracting Parties)		<ul style="list-style-type: none"> Al Baqarah 282: Oh You who believe, when you deal with each other, in transactions involving future obligations, in a fixed period, reduce them to writing, let a scribe write down as between the parties. 	Contracts can be conducted by 1) Person with legal capacity (Ahliyah) <ol style="list-style-type: none"> Not a Minor Not Insane Not an Imbecile Not Prodigal (immature) Not with Death Sickness Not Bankrupt Not Drunk / Intoxicated 2) Guardian / Authority (Wilayah) 3) Authorised Agents (wakil) 4) Unauthorised Agents (Fuduli)	Hanafi and Maliki Allows for Unauthorised Agents provided ratification is then obtained
6) Mahal Al Aqad (Subject Matter)		<ul style="list-style-type: none"> Hadith: He who buys food grains should not sell it until he has taken possession of it Hadith : Do not sell what you do not have 	Requirements of a Subject Matter: 1) It must exist 2) It must be deliverable 3) It must be known / specific 4) It must be legal 5) It must be pure / clean	
Creating a New Contract	Freedom to enter into contract.	<ul style="list-style-type: none"> Al Baqarah 185: Allah intends for you ease, and He does not want to make things difficult 		

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	Any innovation to a contract is allowed if it meets the consent of contracting parties, and not against established rules of law.	<p>for you</p> <ul style="list-style-type: none"> Al Baqarah 282: Oh You who believe, when you deal with each other, in transactions involving future obligations, in a fixed period, reduce them to writing, let a scribe write down as between the parties. Hadith: Every agreement is lawful among Muslims, except one which is declared forbidden that which is allowed or declared allowed, that which is forbidden. 		
Classification according to Legal Consequence	Resulting from the effect of Ikrah (Duress)			
1) Valid Stipulations	Valid contracts are enforceable in a court of law, if it fulfils the requirements of a contract.	<ul style="list-style-type: none"> Al Maidah 1: Oh ye who believe! Fulfil the contractual obligations. 	<p>Requirements</p> <ol style="list-style-type: none"> 1) Must have legal capacity 2) Contract in line with Shariah 3) Objective of contract = creates value 4) Consideration = creates value 5) Consent obtained without duress 6) Does not involve fraud, deception or illegality 	
7) Enforcable Stipulations	Not all valid contracts are enforceable, due to change in circumstances		While the contract is still valid and fulfil the requirements, it may not be enforceable for example, death of one of the partners in the firm	
8) Invalid Stipulations	Foundation of the contract is valid (Asal) but the attributes of the contract is unlawful		Conditions for invalidity is where there are Uncertainty, and illegality at start of contract	Not enforceable under Hanafi School of thought
1) Void Stipulations	<p>Contract which is null and incapable for confirmation, without any legal existence or effect</p> <p>A void contract does not confer any rights or transfer</p>	<ul style="list-style-type: none"> Hadith : The Prophet forbids a combination of two transactions in one Hadith : The Prophet forbids Gharar sale 	<p>Conditions for a Void contract</p> <ol style="list-style-type: none"> 1) Legal Incapacity 2) Mistake 3) Without valid consideration 4) Involves Immorality 5) Object is unlawful 6) Illegality against public 	

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	of property and: 1) Cannot be validated by consent 2) Cannot confer any beneficial consequences		policy 7) Restrain a legal trade 8) Impossibility of performance 9) Fundamentally unlawful 10) Contrary to divine sanctions / prohibitions	
11) Voidable Stipulations	Incomplete but the parties has the free option to either continue or rescinding it.	<ul style="list-style-type: none"> Al Baqarah 185: Allah intends for you ease, and He does not want to make things difficult for you 	<ul style="list-style-type: none"> The contract remains a valid contract until the parties makes the choice to continue with the contract or rescind it. No third party has any rights of claim until the choice is made. A contract can be deemed voidable if it falls into 2 categories: 1) Special Circumstances 2) Falling into Right of Khiyar (various options) 	
Voidable Contracts : Special Circumstances	Specific circumstances that allows a contract to become voidable	<ul style="list-style-type: none"> Al Saf 3: Grievous is it in the sight of Allah that ye say which ye do not. Hadith : Allah has lifted away from my Ummah responsibilities from actions done by mistakes, forgetfulness and under coercion 	Special Circumstances: 1) Contract by Infant (exceptions – benefits the infant, and ratified later by the guardian) 2) Contract Under Undue Influence 3) Contract under Duress (Ikrah) 4) Contract Under Fraud (consent obtained fraudulently) 5) Contract Under Misrepresentation	Hanafi view that contracts made under fraud is Void, not Voidable.
Right of Khiyar (Option) to terminate	A contract that gives right to Khiyar is a Voidable contract, which gives the option for 2 actions i.e. to cancel or to continue with the contract	<ul style="list-style-type: none"> Al Baqarah 185: Allah intends for you ease, and He does not want to make things difficult for you Hadith: When you buy and sell, at the moment of sale, make a declaration to the effect that there shall be no cheating and I reserve for myself the option for three days 	The rights of option (Mejelle): It is permitted to make a condition to a sale, given to the seller and buyer, or both together, an option within a fixed time to make a valid sale by assenting to it or to annul it	

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1) Khiyar Al Majlis	Option of Session – Once an offer and acceptance is concluded in a Majlis, it is binding and a voidable stipulation can be agreed only in the same Majlis	<ul style="list-style-type: none"> Hadith: Every contracting party has the right (option) to cancel or continue the contract until they separate or sale is an optional 	Termination of contract : <ol style="list-style-type: none"> Approval of contract not achieved by both parties Separation of contracting parties before agreement Death to any party 	<ul style="list-style-type: none"> Hanafi and Maliki : Termination in Majlis Not Recognised, only in death Shafie and Hanbali : Allowed to Ratify in same Majlis
2) Khiyar Al Shart	Option of Stipulation – The right to cancel or continue when there is a change in circumstances over time resulting in changes in conditions of the sale.		Termination of contract: <ol style="list-style-type: none"> Exercise of right of Khiyar Exercising ownership by disposing the subject matter Lapse of stipulated time Destruction of subject matter Death of one of the contracting party 	
3) Khiyar Al Ayb	Option of Defect – The right to cancel or continue upon discovery of a defect whether made known to the buyer, or not clearly made known to the buyer, or only discovered by the buyer upon delivery, which does not meet his expectations		Condition for Option of defect only available if: <ol style="list-style-type: none"> Buyer not aware of defects before and during the conclusion of the contracts Buyer discovers the defect after its possession Defect proves contrary to the quality of good in the agreement 	
4) Khiyar Al Rukyah	Option of Sight – The right to cancel or continue after assessing the difference / similarities between description and upon actual sight of the goods.	<ul style="list-style-type: none"> Hadith: Whoever purchases an article (or foods) that he has not seen, he has the right of option whenever he sees it. 	Termination of contract: <ol style="list-style-type: none"> Rescind or ratify contract as party has not seen the subject matter 	Accepted by Hanafi and Maliki
5) Khiyar Al Ta'yin	Option of Designation – The right to cancel or continue where the contracts stipulates a general description resulting in ambiguity,		Termination of contract: <ol style="list-style-type: none"> Choose the good that they only want Cancel the arrangement 	

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	different classes, limited in choice,		c) Destruction of the subject matter	
6) Khiyar Al Wasif	Option by Stipulation or Description – Stipulates a period where he can cancel or continue the contract, for up to 3 days, if there is cheating or discrepancies in description of goods	<ul style="list-style-type: none"> Hadith: When you buy and sell, at the moment of sale, make a declaration to the effect that there shall be no cheating and I reserve for myself the option for three days 		Mixed views by jurist on number of days
Termination of Contract	Reasons for termination			
1) Rescission	Stop of contract due to specific circumstances		Reasons: <ul style="list-style-type: none"> a) Invalidity of contract b) Right of Option (Khiyar) c) Mutual Rescission d) Frustration – inability to fulfil e) Lapse of time f) Completion of work 	
2) Death	Stop of contract due to death			
3) Non Approval	Stop of contract due to required ratification			