

Modern means and their role in concluding financial contracts (Taseeli Vision)

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Abstract

This paper deals with the definition of the contract and its legitimacy and its pillars, as well as the definition of modern means and their divisions and benefits. It also deals with the problem of research, which lies in several questions, including the definition of what the contract and arrest as well as the sections of contracts that require collection, as well as the emergence of modern means and stages and ways of development, and the way to address these problems lies through this research.

The researcher followed the method of inductive analytical and descriptive approach he arrived at several results, including: Islamic jurisprudence flexibility remained and will remain valid to impose its rules and controls on all new developments. Also, the Islamic Shar`aa accepts the innovations of contracts, it is permissible to use modern means, especially the Internet, like other satellite channels, it is not logic to say its forbidden or not it is the matter of what is it used for. The recommendations, including that the enemies of Islam have succeeded in the use of modern means, especially the Internet and use them to serve their false calls to distort the image of Islam, so the Islamic nation today are seeking for the benefit of modern technology to spread Islam and its teachings,.

Efforts must be made for further research and deal with such modern things, in order to satisfy God Almighty`s patients, in order to meet the requirements of the age and the requirements of evolution.

An introduction

Praise be to Allah, the Lord of the Universe, and prayers and peace be upon our master Muhammad, the master of messengers and the owner of the noble creation, human beings, and promises, and a promise, God saved people from misguidance, and guided the people to a straight path, the path of God who has what is in the heavens and what is in the earth.

After ..

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The contracting of modern technological means of different types (audio, visual), is one of the issues that need to be indicated and the difference of scholars in it, it is tomorrow, contracting modern means a link between the peoples, and a tool to facilitate dialogue and deal with them, has near distances and shortened time , And facilitated in transactions between all sides of the earth.

And the importance of contracting with modern means has increased with the great progress where less direct contact between the contractors and contracts have become between them correspondence and across the distances became urgent need to study this subject.

Reasons for choosing a topic:

- 1- Statement of the jurisprudential position of concluding contracts by modern means.
- 2- A modest attempt to fill the gap in talking about contracting with modern means and dealing with them from the point of view of Islamic law.
- 3- The subject is directly related to the reality of people and their lives, as it is exposed to common issues among them.

The importance of the topic:

- 1- The importance of the topic in that it concerns a part of the daily lives of Muslims, such as selling and buying.
- 2- Trying to reach conclusions and submit proposals related to contracts.
- 3- Attempt to reach the legitimate rule in these matters after examining the research «Jurisprudence» with the study of the emerging expulsion of each issue and the statement of the legitimacy of them.

Research problem:

The problem of research lies in several questions, including:

- 1- What is the meaning of the contract
- 2- What is the meaning of the arrest and what are the contracts in which the arrest is required?
- 3- What is the meaning of modern methods and what sections and benefits

Research Methodology :

In this paper, the analytical method was applied in the descriptive method
Search Plan :

The research is divided into three chapters:

The first topic: **Definition of the contract and its legitimacy and its pillars.**

- First requirement: Definition of contract language and convention.

- The second requirement: the draft contract of the book and the year.
- Third requirement: Elements of the contract.

The second topic: **definition of arrest and custody and conditions.**

- The first requirement: the definition of the arrest and its sections, and its cover and conditions.
- The second requirement: contracts that require the arrest in its validity.
- Third requirement: Contracts where the transfer of ownership is required.

The third topic: **the definition of modern means and their benefits.**

- The first requirement: the definition of modern means of origin and development.
- The second requirement: the division of modern means.
- The third requirement: Benefits of modern methods and their disadvantages.

Conclusion: The main findings and recommendations.

First: The origin in the contract is called the sensory connection and then transferred to the moral connection, for example metaphorical but not for the truth.

Some say that the fact of the word contract in the connection of sensory and then exceeded by the moral connection.

Second: A word may be uttered and it is intended to have a more general connection than to be a sense or a moral one.

Comparing between the two definitions:

Given the first and second meanings, we find the second meaning in general is the most common and used in the lexicon of the Arabic language in view of the obvious commitment between the linguistic and the conventional.

Definition of contract in Sharia:

First: The contract at the scholars of interpretation:

Imam al-Jassas,¹ may God`s mercy and blessings be upon him, said: «The release of a contract on the obligation of something in the future is more general than one or both. The sale, marriage and other contracts are called contracts because one of the parties of the contract committed himself in his commitment and call the right on the future contract.

Secondly: The contract in respect to the jurists:

AL Hanafiya: the contract is the words of one of the contractors connected with the other – according to Islamic Sharia which shows an

1- Ahkam al quranilJassas.

impact¹.

Maaliki: it depends on the respond and acceptance, but this is not the case in divorce².

In the Shaafa`is: the contract is what happens between two, which depends on the obligation to fulfil the two wills.

In Hanbalis: It is what happens between two truths or a judgment.

The contract has two meanings according to the jurists:

One is general: it is the act that gives rise to the shar`i ruling, whether it is issued by one person such as the vow and the right, or by two parties such as selling and leasing. This definition is achieved by the act that creates a legal ruling. Whether there is an obligation on the part of the counterparty, or was completely dependent on the acceptance of the other party such as divorce³.

Abu Bakr al-Jassas (may Allaah have mercy on him) went on say the same opinion, because the contract is what a contractor does a certain activity or work for someone else.

Secondly: It deals with the behavior that depends on the completion of the satisfaction of the parties and is not valid or affirmative, and in this sense Imam Zarkashi, may God have mercy on him, had stated that «Contract relationship and acceptance of contract sale and marriage and others».

The contract is a link between the two parties, as a result of the agreement of their will, and these two wills are hidden, the way they are expressed, usually a statement that shows them in a way opposite to the contracting parties, and this term is called affirmative and acceptable.

The affirmative is the first speech made by a contractor, expressing his will to establish the contract, and acceptance is issued by the other party after the offer and expressed his consent, for example, in the contract of sale the seller says I sold and the buyer says I bought and in fact there is a link between the two persons on the subject of the contract. And the subject matter of the intended effect, when the contract was initiated, each of which becomes bound by the rights to which it is bound by the other party.

The acceptance of the contract of sale are the words «sold or bought» or what they mean, if each of them is issued by a contract holder who is legally entitled to the contract of sale, the contract of sale is bound by a link that proves the effect of the contract, And that the effect is the transfer of

1- Sharh AL Gadeer ,Imam Babirti.

2- Hashiyat al Disoqi Dar al Fikr Beirut 3/ 5.

3- Madkhal li Dirast al Figh AL Islami.

ownership of the sale to the buyer, and the entitlement of the price, and the mortgage money is the subject of the contract, and the right of the subject matter of the contract, which is the qualitative purpose that distinguishes it from other types of contracts.

Based on the above definition of jurists for the contract, it is clear that the chosen definition of the contract is the relation of the offer made by a contractor to the acceptance of the other party on a legitimate basis that has the intended effect of the contract, because this definition is general and comprehensive, The contract is intended to include the obligations of the contract, which the contractors must fulfill, as well as for the contracts that expresses the meaning of the contract in Islamic jurisprudence.

The second requirement

The legitimacy of contracting in Islamic jurisprudence:

The Islamic law has paid great attention to contract , as it has made a special chapter to the provisions of its applications, such as the contract of sale, lease, agency, and mortgage, and other contracts, which are indispensable for organizing transactions between people without the independence of transactions or injustice between them, Islamic law provided for the legality of contracts in the Holy Quran and Sunna and the consensus. It takes place between people of contracts and transactions to be as ordered.

Where God ordered us to fulfill contract, the matter is not obligatory here, it indicates that the contract must be fulfilled, and that it is a project because failure to fulfill the promises and contracts is a characteristic of the hypocrites, and they are in the bottom of the fire.

And he said (interpretation of the meaning): and know that Allaah knows what is in your hearts, so beware and know that Allaah is the great Forgiver , Most Merciful.

Secondly: From the Prophetic Sunnah:

Third Consensus:

The scholars of the Islamic Ummah unanimously agreed that the contract is one of the aims of Islamic legislation and a means of dealing with individuals. Man is a social being with his instinct. He cannot live alone apart from his sex because he needs them. He needs to get his needs from food, drink, clothing and housing, and all this made him build relationships with others so that he can meet their needs, which was a motive for the legitimacy of the contract.

It is reasonable that the mind finds in the contracts a great benefit to individuals, because of the intensity of the need for it, it was a reason for its legitimacy because it means to achieve the goal without embarrassment or hardship or injustice.

Third requirement

Elements of the contract

First: the opinion of the public in the pillars of the contract
The majority of the Maalikis, Shaafa`is and Hanbalis see that the three pillars of the contract are the wording, the contractors and what is agreed upon. The public went on to say that the contract cannot be conceived without the three pillars mentioned above.

Based on the course of the public, this is the contract and the basis of the contract is taken from their texts:

- 1- According to AL Malikya :The pillars of the contract are: the wording, the contractors and what is agreed upon¹.
- 2- According to the Shaafa`is: The pillars of the contract are: the wording, the contractors and what is agreed upon².
- 3- According to the Hanbalis: The sale has three pillars, the wording, the contractors and what is agreed upon³.

Secondly: The view of the Hanafis in the pillars of the contract:

The Hanafi sees that the contract has one corner, it is wording in which the contract is created.

It is stated in the books of the Hanafis: The said that the affirmative and the acceptance are corners. In fact, what the Hanafis went to regard as a cornerstone of the contract is necessarily the existence of the other two pillars. There is no affirmation without positive or acceptance of non-negotiable, and no positivity or acceptance without a place where the contract is signed.

The second topic

Definition of Receiving and its pillars and conditions

The first requirement

Definition of the Receiving and its sections and conditions:

The general rules in the Islamic Shariah indicate the requirement of being paid in many contracts, and if that requirement is different in scope between one contract and another and between a jurist and another.

1- Mawahib AL Jaleel, Sharh Mukhtasar AL Khaleel.

2- Hawashi AL Sharwani 215 /4.

3- Badai ALSanai 1982.

Receiving in the convention of jurists:

Receiving is the possession of something and the ability to do it, whether it can be handled by hand or not.

Al-Kasai said: «Because receiving is the ability to abandon and the rise of obstacles, in respect to custom, habit and reality.

Balancing between the linguistic and conventional meaning of receiving : If we look at receiving in its linguistic and conventional meaning it always requires the meaning of the general and the opposite.

Sections of Receiving:

- 1- Real Receiving: It is the complete sense of perception and is estimated by the amount of weight and counting and transplantation and transfer of movables such as cars, airplanes, building materials and animals from where they were contracted elsewhere.
- 2- An Estimated Receiving: It takes place in the case of unusual and in this case it is just estimated .

How to Receive: that the (Receiving) varies according to the nature of things and according to the nature of people in different ages and environments and the nature of the transactions as it is traditionally known. Sheikh AL Islam IbnTaymiyah said that: «Names are commonly known by their limits sometimes in Sharia such as prayer, fasting, Zakat, and Hajj¹»

The difference in how to receive things is according to their differences in themselves and they are two types: 1- estate 2-property

Property Receiving:

The fuqaha(jurists)in respect to real estate, differed as to what is meant by this real estate

AL Hanafiya said that : the real estate has a fixed asset and that it cannot be transferred and converted such as land . The public Scholars stated that real estate are such as : the land, the building and trees².

Property Receiving:

The property is what can be transferred includes money, animals, ships, cars and so on and the scholars disagreed on how to receive the transferred property, here are two different opinions:

AL Hanafiya:

Receiving the property should be by hand by hand, on the face of empowerment, and shall be called hand-to-hand.

1- AL QabdwaAhkamuhu, MasoodIbnMasood, p16.

2- AL Hiyazafii AL Ogood, Dr.NazeehHammad.

Public jurisprudents:

They went on to define property as , since some of them are usually handled by hand, such as money and jewelry.

Conditions of Receiving:

The first condition is that the person should be worthy of Receiving, the Hanafis stated that that the person who is supposed to receive should be able to do that.

The second condition: Permission: The fuqaha differed on the requirement of permission to receive real estate or property:

Al-Malikiyya said: The common share is taken by placing his hand on them as his owner puts his hand on it with his partner, except in the mortgage where the partner is present.

The second requirement

Contracts that require the condition of receiving in order to be valid

All contracts that require Receiving of the transfer of ownership: the contract of the loan and the gift: The majority of fuqaha said that the gift, charity, are words with similar meanings, all of which are ownership in life without compensation, and the name of the gift is comprehensive for all of them, as well as the gift. If there is a discrepancy between the charity and the gift.

The majority of fuqaha from the Hanafis, Shaafa`is and Hanbalis went on to say that it is necessary to receive the transfer of property to the talented person, and that the gift is only given to the arrest, and they are based on the Sunnah, consensus and reasonableness.

According to AL Sunnah:

It is narrated that the Prophet (peace and blessings of Allaah be upon him) said: «It is not permissible to give a gift unless it is received»¹.

The consensus:

It was narrated from Aa`ishah (may Allaah be pleased with her) that she said that Abu Bakr had given her a gift from his wealth, and when the death is attended him was, he asked his daughter to distribute the money among her brothers and sisters if she didn't receive this gift in the past. said: Umar Ibn al-Khattab, Uthman bin Omar, Bin Abbas, Anas and Aisha may Allah be pleased with them, they all had the same opinion that the gift should be received , otherwise it is permissible².

1- AL Mustadrakala AL Sahihein1245/ 2.

2- AL Hiyazfii AL Ogood, DrNazih Hama, p 13.

The reasonable:

If the gift owned before receiving this proves that the receiver (the person who received the gift) has the right to ask the donor to surrender and forced him to do so, and this is one of the obligations of the contract of compensation and gift donation contract.

Loan:

It is a special contract in which someone has to pay money to another one, and the receiver (the second person who received the loan) has to pay it back to the first person, and this is called the contract of a loan, the scholars differed on the requirement of receiving the and they gave three different opinions:

Al-Malikya went on to say that the borrower has a full loan under the contract, although he does not receive it.

The majority of fuqaha of the Hanafis and the Shaafa'is agreed with this opinion.

Religious Endowment:

In the Islamic shar`iit is the transfer of the original and its benefit .» The scholars of the Hanafis differed regarding the requirement of receiving to remove the waqf property. Abu Yusuf said: His property will disappear as soon as he is saying that he has given his property to Allaah.

Muhammad ibn al-Hasan said: It is not permissible for him to do so, because he is the owner of the things, as in zakaah and other alms that have been executed.

Contracts that require receiving for validity:

The contracts that require receiving as a condition of validity, and this is considered as a dispute among scholars about the possibility of holding modern means of communication, this includes:

Exchange:

Exchange of money, has a variety of meanings, including payment, weight, money and transport.

AL Hanafiya: The exchange is to sell what is of the same price of each other.

AL Maalikis: The exchange is selling gold with silver.

ALShaafa'is is selling cash with money of their kind and others.

In economics: It is the exchange of a national currency with a foreign currency, and it is also called the exchange rate.

Scholars Opinions about exchange contract with modern means:

Nearly all the transactions held on through boards between countries and this is why the importance of currency transfer takes place, it occurs through post, telex , fax, phone or the internet in this case money transferred may not be received immediately it depends on technology and its speed, this in turn gives a chance to the seller to make use of the money. This raises different opinions among scholars whether it is permissible or not to state an exchange contract through modern means .

First: those who support the opinion :

They agree that it is possible if receiving takes place during the meeting of exchange council¹ , putting into consideration time of exchange how long does it take because this affects the price.

Salam Contract: it is a contract that achieves a kind of investment, and according to AL Hanafiya² it is a later selling with sooner selling. In AL Malikiy³ opinion it is a selling of in which the capital preceded the price. AL Shafiis⁴ think Salam contract is a selling of a certain thing with a substitute that received later.

Scholars opinion of Salam Contract by modern means:

Islamic jurisprudence Council which was held in Mekka In March 1990 stated that it is not allowed to hold Salam Contract through the modern means because one of its conditions is that the capital is paid before the price⁵.

Third Theme

Definition of the Means

Means are the ways that lead the human being either to what is good or what is bad, al Imam AL Garafi said that the sources of provisions are two kinds: Magasid which includes both what is good and what is bad. In this study the researcher, in respect to the means, he intends to point to all what carries knowledge between the sender and the receiver. for example: the television, the radio, films and all recording equipments.

The development of modern means:

Early in the past the news was sent from mouth to ear, and through this traditional process it is commonly changed, but today the political systems are growing up and they started to dominate everything , as well as

- 1- Ahkam al biyooiwa al Ogoodfii al Figh AL Islami.
- 2- AL Sharh AL Kabeeral Mukhtasar Khaleel, Ahmed AL dirdir 195 /3.
- 3- Rawdat AL Talibeenwa Omdat AL Muttageen.
- 4- AL Insaffii Marifat al Khilaf 84 /5.
- 5- AL Figh AL Islamiwa Adilatuhu, Wahbi AL Zuheily.

people in the past began to send their messages through writing and in this era this stage is called the written transferred era, the written news began in the sixteenth century, then papers developed to become journals and for a long period of time it was the only means of transformation, then the inventory of wireless communication made a big change in the development of the means of transformation it saves time and place, then came the inventory of satellites which travel all over the air space day and night. Modern means can be classified into three kinds:

1. Direct transfer means.
2. Modern means to transfer directly what is written.
3. Modern means to transfer directly sound and picture.

Conforming contract through the phone: It is clear that when two persons talk together to each other through the phone, they hear each other clearly and no change takes place through their conversation, and if a contract was completed between two persons through phoning it is true and valid.

Conforming contract through the television:

It is possible to conform a contract through the television if the conditions are clear and there is an acceptance as a respond from the receiver(the listener)

The second Issue: Means of indirect transferring and it includes the recorded radio and video cassettes, in this way the sender swnds his speech through a recoded cassette and the receiver listens to this speech and responds by any means, in this case the contract is true and valid.

Receiving through modern means:if there is no condition of immediate receiving in case of contracts through modern means, the contracts in this case are true and valid.

Benefits from contracting trough modern means:

1. Minimizing the cost and traverse far distances.
2. It is easy to contract with others with no need of others.
3. The flow of information through the internet makes good competition.
4. It is easy to deal with computers, one click and every thing is on hand.

Disadvantages of contracting trough modern means:

1. The importer is disable to see the goods before paying.
2. False contracts are possible to be held through the internet.
3. Numbers of credit cards are possible to be stolen.

Conclusion

First : **The results:**

1. The Islamic jurisprudence whatever the change of reality is able to dominate with its rules and controls.
2. In Islamic Law (AL Shara') it is permissible to accept what is modern, on condition that it is not contradict with Islam.
3. It is allowed to use the modern means, particularly the internet.
4. Muslims should be aware before saying a contract is lawful or unlawful.
5. The conditions of contracting through modern means are the same as contracting traditionally.
6. If one of the contractors does not see the other , this will not affect the validity of the contract.

Second: **Recommendations:**

1. More efforts should be held to investigate in such topics.
2. It is better not to use the modern means in personalities .
3. The Omma(nation) of Islam should make use of the modern technology in order to distribute the Islamic rules and provisions.

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