

A contract

Definition

Ahmed Fazel Ebrahim defines a contract as:

An agreement, between two or more persons (juristic or otherwise), in which, for specific considerations, each of the contracting parties agree to specified performances.

In terms of this definition by, all the parties to an agreement would become mutually obligated to fulfill the specific performances that each of them agreed to execute, and gain mutual or specific rights depending on the terms of the contract. They would also enjoy reciprocal rights which would allow them to mutually demand of each other to perform in accordance to the agreement.

Islamic law and common law may either sanction or reject the validity of the agreement based on whether the details thereof are subject to the broad legal principles of each legal system provided that such an agreement can also be executed without infringing the rights of others or society at large.

Islamic law would primarily sanction a contract if it does not violate any of the rules of the Quran and the Sunnah. However, since the jurists have extrapolated upon the these primary sources of law, the secondary sources would have an influencing authority in regard to the interpretation of the primary sources and any inferences thereon.

In Islamic Law, an offer is referred to as the *Ijāb*, while the acceptance of an offer or an agreement is termed as *Qabūl*. The reciprocal nature of many contracts would in some sense also imply that each person is making an offer of a specific consideration, and simultaneously accepting the reciprocal offer. An agreement is termed as *Ittifāq*.

An agreement on any specific issue may not necessarily involve a contract between persons. Also, contract to execute a specific performance may not necessarily involve a demand for a specific consideration e.g. a builder accepts to construct a specific building at not financial cost to the juristic or private person. However, this may be subject to specific performances of that person.

Without mutual fulfillment of rights & obligations, society would be at chaos, and injustices would destroy the fabric of peaceful human co-existence.

It is thus that Allah says:

1. O you who believe! Fully discharge (the obligations arising through) contracts (Surah Mā'idah 5:1).
2. ...and those who truly care for their trusts (left by others in their care) and their covenants. (Surah Mu'minun 23:8).

More specifically, in terms of commercial contracts, Allah says

1. Fully discharge the volume (to be provided to the client) when you measure in volume, and weigh (the commodities sold by weight) by an accurate scale. That is goodness and better (as a material and practical) interpretation (of the contract of sale you have concluded).

(Surah Isra 17:34)

Inferentially, this rule is to be applied in every contract where each of the parties are obligated to discharge the performances sought by the others associated to the contract. Thus, even in an employment contract, the employer requires to ensure delivery of the salary on the specified occasion or date, as well as conform to other rights of the employee.

Muslims violate the rights of employees due to a lack of recognition of the legal codes of non-Islamic legal systems in which they reside.

The legal rights of the employee within the framework of the political system under which the contract is concluded requires to be acknowledged. People require to be educated in respect of the various economic and other factors that have led to the development of labour contracts and protection of employee rights. The fact that early Islamic law could not foresee contemporary economic variables and factors does not imply that Islam has rejected employee rights or that these rights cannot be inferred from the broad principles of justice that are advocated by Islam.

Commercial transactions

A *Bai* (Sale) is a contract where, in the case of non-barter transactions, a commodity or item of value is exchanged in lieu of a specified amount of a specific currency.

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