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B.Com Honours

Semester V

Calicut University

FUNDAMENTALS OF ISLAMIC COMMERCIAL LAW

Course Code: COM5EJ312 • Module 2 Notes

Module II: Islamic Law of Contract (Aqd)

Covers foundational elements of contracts (Aqd), offer and acceptance (Ijab & Qabul), subject matter requirements, mutual consent, prohibition of contingent contracts, contract validity typologies (Sahih, Fasid, Batil), and commutative vs non-commutative contracts.

Unit 5: Concept & Legal Capacity of Contract (Aqd & Ahlih)

Aqd (Contract): Legal connection between offer and acceptance giving rise to binding rights & obligations. Legal Capacity (*Ahlih*): Requires sanity, maturity (*Bulugh*), & sound judgment (*Rushd*).

Unit 6: Essential Elements of Islamic Contract

Three Pillars (Pillars of Aqd):

1. **Sighah:** Form of contract (Offer & Acceptance).
2. **Aqidan:** Contracting Parties (Buyer & Seller).
3. **Ma'qud 'Alayh:** Subject Matter & Consideration (Price & Goods).

Unit 7: Offer (Ijab), Acceptance (Qabul), & Contract Session

Conditions for Valid Consent: Conformity between offer and acceptance, clear expression (verbal, written, or conduct), & occurrence within a single contract session (*Majlis al-Aqd*).

Unit 8: Subject Matter & Mutual Consent (Taradi)

Requirements of Subject Matter: Must be in existence at contract time (except Salam & Istisna), valuable (*Mal Mutaqawwim*), deliverable, & clearly specified to prevent Gharar. Mutual consent (*Taradi*) must be free from coercion or fraud.

Unit 9: Prohibition of Two Mutually Contingent Contracts

Prohibition of *Safqatain fi Safqah* (Two Bargains in One Sale): Making execution of one contract strictly contingent upon another (e.g. "I sell you X only if you lend me Y"), as it introduces interest-like distortion.

Unit 10: Contract Validity Typologies (Sahih, Fasid, & Batil)

1. **Valid Contract (Sahih):** Meets all essential pillars and external attributes of Shariah.
2. **Defective Contract (Fasid):** Valid in core pillars but defective in external conditions (can be rectified by removing defect).
3. **Void Contract (Batil):** Fundamental defect in core pillars; completely null and void *ab initio*.

Unit 11: Commutative vs Non-Commutative Contracts

Commutative Contracts (Uqud al-Muawadath): Commercial exchanges for counter-value (Sale, Lease, Hire).

Non-Commutative Contracts (Uqud al-Tabarruat): Charitable gratuitous contracts without counter-value (Gift/Hiba, Loan/Qard, Guarantee/Kafalah).

Practical Case Framework (Contract Validity Typology Matrix): Compare legal status, cause of defect, rectifiability, and practical legal effects.

Islamic Contract Classification Table:		
Contract Typology	Shariah Compliance Status	Legal Rectifiability & Operational Effect
Sahih (Valid Contract)	Fully compliant in pillars & conditions	Fully binding; legal transfer of ownership occurs
Fasid (Defective Contract)	Defective in external condition (e.g. vague price)	Rectifiable if defect is eliminated before execution
Batil (Void Contract)	Fundamental defect in pillar (e.g. selling pork)	Null & void ab initio; no legal ownership transfer

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