

INTRODUCTION TO ELECTRONIC CONTRACTS AND ITS VALIDITY IN ISLĀMIC LAW

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Hazrat Bilal *

Dr. Abdul Qadir Abdul Wahid **

Abstract:

The rise of e-commerce, a colossal growth and a significant increase has occurred in all aspects of business life throughout the world. The conducting of business activities via the Internet, specifically, has played a vital role in the development of business and economical sectors in different parts of the world. Primarily, business activities conducted electronically were not specifically regulated because it was generally perceived that regulations may disturb and hinder the expansion of electronic commerce. However, as a result of the remarkable growth of electronic market activities globally, many legal disputes and concerns have raised. This demonstrates the need for regulation to govern the new activities. It is essential for Muslims to implement Islāmic rules in every aspect of their life including commercial ones. From a purely business point of view, Islām has provided its followers with general guidelines which must not be ignored or infringed. This research paper is meant to study the Islāmic perspective in e-commerce, particularly in its transactions. Issues on the legality of e-commerce in Islām are examined to expose to the Muslims around the world so that they could benefit from this new technology if it is proved legitimate and acceptable in Islām.

Keywords: E-Commerce, business, electronic, legality, Islamic Perspective

Introduction

Islāmic commercial law, known as fiqh al-mu‘āmalāt in Islāmic legal term, constitutes an important branch of law dealing with issues of contracts and the legal effect arising from a contract; be it a valid, void or avoidable contract respectively. Contract in Islāmic law, is a complex legal discipline in both its jurisprudential foundation and its practical function. Also contract covers a variety of dealings and transactions to meet the needs of the society.

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* PhD scholar, Faculty of Sharī‘ah & Law, International Islamic University Islamabad.

** Assistant Professor, Visiting Faculty, Faculty of Sharī‘ah & Law, International Islamic University Islamabad

No doubt, issues of commercial transactions, unlike devotional issues (*ibādāt*), are ever lasting and bound to change due to the changing circumstances and situations of both the object and subject of the transactions.¹ Intellectually, it is perhaps the most rewarding field of the law in action. The mechanism of contract formation depends on the fundamental conception of contract(s) under *Islāmic* law and its interrelation with other modes whereby an obligation may be generated.²

The Islāmic Law of Contract: Definitions

The term “Aqd” is used for “contract” in *Islāmic* legal system. ‘Aqd literally means tying tightly, as tying a rope.³ ‘Aqd carries the meanings of **covenant and fulfillment**.⁴ The *Qur’ān* has used the word in this sense in different places.

"يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ أُحِلَّتْ لَكُمْ بَيْمَةُ الْأَنْعَامِ إِلَّا مَا يُتْلَى عَلَيْكُمْ غَيْرَ مُحِلِّي الصَّيْدِ وَأَنْتُمْ حُرْمٌ إِنَّ اللَّهَ يَحْكُمُ مَا يُرِيدُ"⁵

“O ye who believe! Fulfill (all) obligations. Lawful unto you (for food) are all four-footed animals, with the exceptions named: But animals of the chase are forbidden while ye are in the sacred precincts or in pilgrim garb: for Allah doth command according to His will and plan.”

The plural of word ‘Aqd is ‘*uqud* which is mentioned above in commanding the faithful to keep their covenants.

"وَلَا تَعْزِمُوا عُقْدَةَ النِّكَاحِ حَتَّى يَبْلُغَ الْكِتَابُ أَجَلَهُ وَعَلِمُوا أَنَّ اللَّهَ يَعْلَمُ مَا فِي أَنْفُسِكُمْ فَاحْذَرُوهُ وَعَلِمُوا أَنَّ اللَّهَ عَفُورٌ حَلِيمٌ"⁶

“Nor resolve on the tie of marriage till the term prescribed is fulfilled. And know that Allah Knoweth what is in your hearts, and take heed of Him; and know that Allah is Oft-forgiving, Most Forbearing.”

"لَا يُؤَاخِذُكُمُ اللَّهُ بِاللَّغْوِ فِي أَيْمَانِكُمْ وَلَكِنْ يُؤَاخِذُكُمْ بِمَا عَقَّدْتُمُ الْأَيْمَانَ"⁷

“Allah will not call you to account for what is futile in your oaths, but He will call you to account for your deliberate oaths”.

In *Hadīth*, *Ibn ‘Abbās*, commenting on a *Qur’ānic* verse, we mentioned that ‘*aqd* means covenant, agreement and faith. In Arabic usage, we read that a man cannot tie (‘*aqd*) a rope to mean he is too poor and feeble to do anything.⁸

Contract, from an *Islāmic* legal perspective is used in two senses i.e. general and specific, and is conceptually divided into two main categories, namely unilateral and bilateral contract. While the former is gratuitous in character and does not require the consent of the recipient, the latter is more bound to strict rulings and guideline since it requires the consent of both the parties to a contract. Also what is normally 'tolerated' in unilateral contract, would not necessarily be the case in bilateral contract. Therefore, the (strict) conditions required for both the offeree and the subject matter of the bilateral contract would cease to apply in a unilateral contract.⁹ So the Unilateral Contract is binding and effective without the need of the consent of

the other party in the contract, such as the repudiation of a marriage by the husband or, in times past, the formal manumission of a slave. Similarly unilateral contract comprises of transactions in favor of the recipient such as gift (*hadiyyah, hibah*), off-set of the debt (*ibra*), will (*waṣiyyat*) endowment (*waqf*) and loan (*qarḍ*).¹⁰ So in a general sense it is applied to an obligation irrespective of the fact that the source of this obligation is a unilateral declaration or agreement of two declarations.¹¹

In the specific sense it has been defined in different ways. However, the common feature of all definitions is that it is a combination of an offer and acceptance which gives rise to certain legal consequences.¹²

The *Islāmic* Civil Law Codification which took place in the 19th century, namely both the *Majallat al-Aḥkām al-‘Adliyyah* and *Murshid al-ḥayran* (the 1891 Egyptian version of the *Ottoman’s Majallah*), started to give a precise definition to a contract. The *Majallah*, for instance, describes contract as, the contracting parties obligating themselves with regard to a given matter and binding themselves together with the same as result of connecting an offer with an acceptance. Also according to the *Majallah*, contracting is the connection of an offer with an acceptance in a lawful manner which marks its effect on the subject of the connection.¹³ Here the definition also includes a marriage contract because the definition is not confined only to financial matters.

In *Al-‘Ināyah* the definition of a contract is, Legal relationship created by the conjunction of two declarations or that which substitutes them (i.e Conduct creating a legal effect).¹⁴

Preferred Definition

Contemporary Muslim scholars prefer the definition of *Al-‘Ināya* referred to above, because it is much more comprehensive, and covers all the ingredients of contract: (1) agreement based on offer and acceptance; (2) contracting parties; (3) completion of offer and acceptance in al legal manner: and (4) subject matter.¹⁵

Definition of Electronic

The Technology of using electric, electromagnetic, visual or other similar technological means.¹⁶

Definition of Electronic Contracts

Electron is the elementary particle which forms a part of all atoms and circulating around the nucleus having a negative charge.¹⁷ Electrons are used in manufacturing and have entered in many emerging areas like the coming up of radio which is running by the electronic waves, then the emergence of television, telephone, telex, fax, computer and other devices working through the electronics means.¹⁸

Hence in the light of above definitions for electron and electronics we can define electronic contracts as, the agreement to connect an offer with acceptance through the use of technical means of electrical or electromagnetic, optical or any other similar technical means.¹⁹

Accordingly, electronic contracts are contracts which are made through these means and the like machines that operate through electrons. This is in terms of the actual

form of electronic contracts, however, after the emergence of computer and internet, and its broad use for the purpose of mail and other correspondence, consequently entering into a contract has allocated this term to contracts which are made through computer and internet. As for the contracts made by means of radio, telephone or other means of communication are not covered by the norm of this term in the last two decades, that's why the term electronic contracts go directly to the contracts which are made through the Internet, and therefore, we find that Electronic-commerce is also described as: the set of operations carried out by electronic means, especially via the websites and e-mail.²⁰

Electronic Transactions

Any exchange, messaging, contracting or other action concluded or executed, wholly or partially, by an electronic means.²¹

Since this definition includes all transactions including trade deal known as electronic commerce as well as contracts and exchanges in goods, material and non-material goods, services, publicity, advertising and others. But in order to achieve the electronic treatment indefinitely, it must be implemented fully or partly by electronic means, whether in the form of telephonic means, telex or the World Wide Web (Internet) which is the best way at present to conduct electronic trading - or any other electronic means.²²

Methods to Conduct Electronic Contracts via the Internet

There are many ways to enter into a contract via the Internet, the most important and widely used is contract through a network of Web sites (web) then the contracts via e-mail (Email) and contracts by chatting and conversation.

Contracts through a network of sites (World Wide Web)

The mechanism of contracts which take place through the World Wide Web is that a purchaser looking for the products or services or the information he intends to contract by the network of sites, either through search engines, which leads to the site of the company or institution, or through access to the site directly, or through an ad leads to the site, or through a virtual shopping on the web which brings together a number of exhibitors, companies, institutions or individuals offering their products and services in catalogs which are showing these goods with particular specification and prices. When the purchaser comes to the good or services or information he wants, the Site often provides a picture or pictures of the goods and clear information on the advantages and descriptions. Sometimes the site provides an audio or video show or a hypothetical experience about the goods or services. When convinced by the company and knows the price and specifications, the purchaser clicks on the key appears to approve the contract for purchase, which contains a pay mechanism, conditions of contract and location of delivery along with the law governing the contract and other terms of contract for items which are non-negotiable in addition to the buyer's personal data, name, address, and credit card number, or how to pay the price, and the signing of contract electronically.²³

Contract via e-mail

The contracting process starts when the seller sends messages to specified mail boxes or random people, offering products and services, and invites them to enter into contract with him, indicating the price, specifications and terms of contract, and encourages to click on the icon for approval to issue an acceptance and then the same procedure as described in the aforementioned method. The electronic mail sent to a mail box could be attached with files, such as photographs, video and sounds. Often the correspondence occurs between two parties regarding the products or services, along with their specifications and is concluded by the issuance of acceptance if the buyer is convinced with the terms of contract.²⁴

By means of Chat, Pictures, and Viewing via the Internet

It includes several types of online contacts, like talking through a regular telephone using the Internet, as well as exchange of letters and conversations between several people immediately following the exchange of voices and images.

VALIDITY OF ELECTRONIC TRANSACTIONS VIA THE INTERNET

These are the facts by which we can judge the legal status of electronic transactions in general and in particular via the Internet, through the following:

1. Rule of permissibility in general to make contracts and other commercial transactions²⁵ (الأصل في الأشياء الإباحة), except there is rule on the illegitimacy of a specific contract.

This rule is supported by the following evidences:

I. From the Holy *Qur'ān*:

" يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ "

“O ye who believe! Eat not up your property among yourselves in vanities: But let there be amongst you Traffic and trade by mutual good-will:”

This verse apparently requires the legalization of all business transactions concluded with the consent of contracting parties; therefore it also includes e-commerce. In fact the basic requirement for a contract to be concluded is consent of the contracting parties and as a result both parties are obliged to act accordingly. Hence a contract is said to be valid when there is consent of the contracting parties in any type of business contracts including the electronic contracts, except those which are prohibited under the injunctions of Holy *Qur'ān* and *Sunnah* of the Prophet (S.A.W.S).²⁷

" يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ "

“O ye who believe! fulfil (all) obligations.

According to this verse every believer is bound to fulfill his contract and what he has been associated with. No one can restrict this verse only to limited types of contracts unless provided with solid evidence. Thus every statement or act of the people which according to them is considered as contract shall be fulfilled, except those which prohibits permissible things or which permits illegal things proven in *Islāmic* law.²⁹

The fulfillment of contracts in general indicates that originally all the contracts are permitted to enter into, as well as the associated conditions, which could be restricted

only by giving evidences.³⁰ It means that electronic contracts are also included under this circle of contracts and takes up the same ruling.

"اللَّهُ الَّذِي سَخَّرَ لَكُمُ الْبَحْرَ لِتَجْرِيَ الْفُلُكُ فِيهِ بِأَمْرِهِ وَلِتَبْتَغُوا مِنْ فَضْلِهِ وَلَعَلَّكُمْ تَشْكُرُونَ"³¹

“It is Allah Who has subjected the sea to you, that ships may sail through it by His command, that ye may seek of his Bounty, and that ye may be grateful.”

In this verse the almighty Allah exposes to creature his favor and generosity by the conduct of sea who made it obedient for vessels and ships in order to facilitate for the people different types of trades and gains³². Electronic commerce and contracts are from these types of trades and gains.

"وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ"³³

“He hath explained to you in detail what is forbidden to you”

This verse describes generally the permissibility of different matters and actions. In the same way if not permissible, it would have been described; consequently, if not proved to be illegal then these are valid and acceptable. Since making contracts are from the normal matters therefore, they are not prohibited and are legitimate.³⁴ This ruling is also applicable for electronic commerce and contracts.

All the above-mentioned verses of Holy *Qur'ān* are very clear with regard to the validity, permissibility and legitimacy of electronic contracts and transactions.

II. From the Traditions of the Holy Prophet (S.A.W):

Saying of the Prophet (S.W.A):

"الحلال ما أحلَّ الله في كتابه، والحرام ما حرَّم الله في كتابه، وما سكت عنه فهو مما عفا عنه"³⁵

“All what Allah has made lawful in his book are permissible and all what Allah has made unlawful in his book are prohibited and from which he is silent are pardoned by him”

We have pointed out that God Almighty has made lawful different types of trades and gains. Moreover where he is silent from the permissibility or prohibition of a particular matter or act, is pardoned by him thus no one can set aside its permissibility.³⁶ Therefore e-commerce contracts come under the general trades, contracts and gains due to the absence of any ruling which nullifies such type of transactions or by analogy ruling out these transactions.

Saying of the Prophet (S.A.W):

عن المقدم عن رسول ﷺ قال " ما أكل أحد طعاماً خيراً من أن يأكل من عمل يده"³⁷

Miqdām- (May Allah be pleased with him), narrating from the Messenger of Allah (S.A.W) said, “No one is eating food better than one who earned from his own sweat”

"و عن عائشة رضي الله عنها قالت: قال رسول الله إن أطيب ما أكل الرجل من كسبه "³⁸

‘*ā’isha* – (May Allah be pleased with her) narrated from the messenger of God (S.A.W) said, “The best of what a man eats is the gains of his own earning”.

It is made very clear for us that electronic commerce and contracts are tools of business, hence they are explicitly included as mode of earnings by the text of above mentioned traditions, and there is no clear text, neither any ruling nor order which declares such type of transactions illegitimate or forbidden.

2. E-commerce contracts are designated contracts (عقود مسماة), either contracts for the sale of goods and products, or lease contracts on the benefits, or contracts for services or online services and information. It means that electronic contracts could be in the form of sale contracts, sometimes in the form of lease contracts and in some cases in the form of *Muqāwalah* contracts³⁹ (عقود مفاولة).⁴⁰

The legitimacy of the sale and lease contracts needs not to be mentioned in this research work, anyhow validity of *Muqāwalah* Contracts could be understand from the following lines:

"يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ أُحِلَّتْ لَكُمْ بَيْمَاتُ الْأَنْعَامِ إِلَّا مَا يُنْتَلَى عَلَيْكُمْ"⁴¹

"O you who believe! Fulfill (your) obligations. Lawful to you (for food) are all the beasts of cattle except that which will be announced to you (herein)".

This verse orders to fulfill all the obligations which are not held contrary to *Islāmic* law at all, so *Muqāwalah* contract falls under this general rule.

"يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُم بَيْنَكُم بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ"⁴²

"O ye who believe! Eat not up your property among yourselves in vanities: But let there be amongst you Traffic and trade by mutual good-will:"

This verse of the Holy *Qur'ān* demonstrates the path of legitimate trade which is necessary to be held with the consent of both parties. *Muqāwalah* Contract comes under this meaning, as this type of trade is a valid transaction and fulfills the qualification of Consent from both contracting parties.

III. From the Prophetic Tradition:

"عن جابر بن عبد الله رضي الله عنهما أن امرأة من الأنصار قالت لرسول الله صلى الله عليه وسلم: يا رسول الله: ألا أجعل لك شيئاً تقعد عليه، فإن لي غلاماً نجاراً، قال: إن شئت قال: فعملت له المنبر، فلما كان يوم الجمعة، قعد النبي صلى الله عليه وسلم على المنبر الذي صنع⁴³..."

"*Jābir* the son of *Abdullāh* – (May Allah be pleased from them) narrates that a woman from *Anṣār* said to the Messenger of Allah (S.A.W): O Messenger of God: Wouldn't it be good to make something for you to seat because I have a carpenter boy. The Prophet (S.A.W) said: as u wish; he (*Jābir*) said: then he made and fixed for him a pulpit, and when it was Friday the Prophet (S.A.W) had seat on that pulpit which he made ..."

This tradition of the Prophet (S.A.W) makes obvious the permissibility of '*Aqd Al-Istiṣnā'a*'⁴⁴ (Manufacturing Contract) because the Prophet (S.A.W) permitted the carpenter to make the pulpit. So this process of making pulpit came into practice through a contract for a particular work which is called in modern juristic terminology

'*Aqd al-Muqāwalah* or *Muqāwalah* contract. In other words such type of contract concludes between two parties where one party (the principal party) is obliged to provide allowance and the other party (manufacturer) is obliged to work.

IV. *Muqāwalah* contracts are connected with the interests of the people in order to accomplish their needs and make easier their burden specially in the current era where *Muqāwalah* contracts play a vital role in bridging the needs of the people.⁴⁵

All what mentioned above are some of the evidences which legalize *Muqāwalah* contracts.

Moreover, Electronic transactions and electronic contracts are attached with the interests of the people in large; also it is very clear that *Islām* encourages people to get benefited and prevents them from unlawful things and evils. Here one can raise objection that sometimes electronic transactions are linked with certain evils? In response simply we can say that all types of trades and businesses could have link with unlawful things and evils and it is not only the electronic contracts or transactions.⁴⁶

Conclusion: In the light of above mentioned evidences we can summarize that basically electronic transactions and contracts are legitimate and permissible unless proved contradictory to the basic requirements of these contracts no matter whether they are designated or non-designated contracts. Secondly such types of contracts are connected with the interest of both contracting parties and people are benefited more. Therefore, to authorize the legitimacy and validity of these contracts are with in accordance to the teachings of *Islāmic* law which is a unique law that covers each and every thing of all times and places and provides solutions to the issues created by the evolution of modern science. The situations where electronic contracts are inconsistent to the *Islāmic* principals, takes place the same ruling as if they are concluded outside the scope of e-commerce e.g. gambling contracts,⁴⁷ *Munābaha*⁴⁸ or *Mulāmasah*⁴⁹ contracts, some kinds of Insurance contracts,⁵⁰ and contracts containing *Ribā* (Usury)⁵¹. Similarly, unlawfulness of the subject matter is also a major cause of the invalidity of a contract.⁵² Subject matter is the object of the sale which must be beneficial and lawful in *Islām*.⁵³

¹ See *Islāmic World-net, Iqtisād Al-Islāmī* (*Islāmic Economics*), available on http://islamic-world.net/economics/contract_01.htm Accessed last time: 30.03.2009 at 6:00 PM (hereinafter referred to as *Iqtisād Al-Islāmī*)

² Ibid.

³ Muḥibbuddīn Abī Fayḏ Al-Ḥanafī, *Tāj al-'urūs*, vol. 5 (Beirut: Dār al-Fikar, 1414 AH /1994), 115 (hereinafter referred to as *Tāj al-'urūs* 1414/1994).

⁴ Ibid.

⁵ Al-Qur'ān 5:1

⁶ Al-Qur'ān 2:235

⁷ Al-Qur'ān 5:88

⁸ *Iqtisād Al-Islāmī*

⁹ Ibid.

¹⁰ Ibid.

¹¹ Muḥammad Ṭāhir Manṣūrī, *Islāmī law of Contracts and Business Transactions*, 2nd Edition (Islamabad: International Islāmīc University Islamabad, 2004), 20 (hereinafter referred to as Manṣūrī, *Islāmīc Law of Contracts*.)

¹² Ibid.

¹³ *Iqtisād Al-Islāmī*

¹⁴ Bābartī, 'Ināyah 'ala Fatḥ al-Qadīr, Vol. 5, p. 47 quoted in Manṣūrī, *Islāmīc Law of Contracts*, 21.

¹⁵ Manṣūrī, *Islāmīc Law of Contracts*, 22.

¹⁶ Art. 9, *Electronic Transactions Act*, Kingdom of Saudi Arabia, 1424 AH.

¹⁷ See *Websters's New World Dictionary*, s.v, "electron".

¹⁸ See, Muḥammad al-Mutabannī, *Encyclopedia of Electrons*, s.v, "Electron". Also see, Lejeen Needak, *Aelectron wa Atharuhu fi Hayatina*, p. 6 quoted in Abdullah Bin Ibrāhīm Bin 'Abdullah al-Nāṣir, *A- 'uqūd al- 'ilikrunīyyah*, available on http://slconf.uaeu.ac.ae/prev_conf/2003/5.pdf last visited time: 01.06.2009 (hereinafter referred to as Nāṣir, *A- 'uqūd al- 'ilikrunīyyah*)

¹⁹ Sec. 1, *Mashru' al-Niḏām al- ta'āmulāt al- 'ilikrunīyyah al-Sa'udī*, 1424 AH.

²⁰ 'Abdal Ḥamīd Bāsūnī, *Albay' wal-ttijārat 'alal intarnit*, 54 quoted in as Nāṣir, *A- 'uqūd al- 'ilikrunīyyah*.

²¹ Art. 10, *Electronic Transactions Act*, Kingdom of Saudi Arabia, 1424 H

²² 'Abdal Fatāḥ Ḥijāzī, *Al-Niḏām al-Qānūnī li ḥimāyati- ttijārat al 'ilikrunīyyah*, (Egypt: Dār al fikar al- Jāmi'ī, 2002) P. 95-97 (hereinafter referred to as Ḥijāzī, *Al-Niḏām al-Qānūnī li ḥimāyati- ttijārat al 'ilikrunīyyah*).

²³ Aḥmad Al-'ajlūnī, *Atta'āqud 'an Ṭarīq il-intarnit*, (Oman: Al dār al-'ilmīyyah wa maktabat dār al-thaqāfat, 2002), 16 (hereinafter referred to as Al-'ajlūnī, *Atta'āqud 'an Ṭarīq il-intarnit*).

²⁴ Naḍāl Ismā'īl Barham, *Aḥkām 'uqūdu'ttijārat al 'ilikrunīyyah*, (Oman: Dār al-thaqāfat, 2005), 26-27 (hereinafter referred to as Naḍāl, *Aḥkām 'uqūdu'ttijārat al 'ilikrunīyyah*)

²⁵ Jalāluddīn 'Abdurrahmān a'Issuyuwṭī, *Al-ashbāh wa'l-nnaẓā'ir*, (Beirut: Dārul Kutub al-'ilmīyyah, 1983), 60.

²⁶ Al-Qur'ān 4:29

²⁷ Shykh-ul-Islām ibne Tīmīyyah, *Majmū'ul Fatāwā*, vol.29 (Saudi Arabia: Tawzy' a'lrri'āsatul-'āmmat lishu'ūnil ḥaramyn al-sharīfayn, 1404 AH), 155 (hereinafter referred to as Shykh-ul-Islām, *Majmū'ul Fatāwā*).

²⁸ Al-Qur'ān 5:1.

²⁹ Muḥammad Rashīd Rizā, *Tafsīr al-Manār*, vol. 2 (Beirut: Al Maktab al Islāmī, 1404 AH), 254 (hereinafter referred to as Rashīd Rizā, *Tafsīr al-Manār*).

³⁰ Muḥammad Alḥāj Nāṣir, “Bahath al-Islām wa Ijrā’ul ‘uqūd biālāt al-ittiṣāl al-Ḥadīthah,” *Journal Majallath-ul Majma’ul fiqh al-Islāmī* 6, vol. 2 (1410 AH): 1078.

³¹ Al-Qur’ān 45:12

³² ‘Abdal Raḥmān bin Nāṣir al-Sa’dī, *Taysīr al-karīm al-Raḥmān fī Tafsīr Kalīm al Mannān* (Beirut: Mu’assasatu a’Irrisālah, 1421 AH).

³³ Al-Qur’ān 6:119

³⁴ Shykh-ul-Islām, *Majmū’ul Fatāwā*, vol. 29, P.150.

³⁵ Sunan al-Tirmidhī, tr. 1648.

³⁶ Ibn al-Qayyim al Juz’īyah, *I’lām al Muwaqī’īn ‘an Rabbil’ālamīn*, ed. Muḥammad Muḥayyuddīn ‘Abdal Ḥamīd, vol. 1, 2nd edition (Beirut: Dāral fikar, 1397 AH), 344-345 (hereinafter referred to as Ibn al-Qayyim, *I’lām al Muwaqī’īn*).

³⁷ Ṣaḥīḥ al-Bukhārī, tr. 1930.

³⁸ Sunan ibn Māja, tr. 2128.

³⁹ According to the Article 661 of the Civil Code of Kuwait *Muqāwala* Contracts are defined as: (المقاوله عقد يلتزم بمقتضاه أحد الطرفين أن يؤدي عملاً للطرف الآخر مقابل عوض ، دون أن يكون ، تابعاً له أو نائباً عنه “*Muqāwala* contract whereby one party is committed to do for the other party in return for payment, without being proxy or following him”. *Majma’ al Fiqh al Islāmī* in its declaration No. 129 (3/14) give the definition of ‘*Aqd al Muqāwala* or *Muqāwala* contract as: (عقد يتعهد أحد طرفيه بمقتضاه بأن يصنع شيئاً أو يؤدي عملاً مقابل بدلاً يتعهد به الطرف الآخر) It is a contract whereby one of the party undertakes to make or doing something in return of what the other party is committed to.

⁴⁰ Muḥammad Ḥusayn Manṣūr, *Almas’ulīyyat al ’ilikrunīyyah*, (Alexendria, Dāral Jāmi’a al-jadīdah linnashar,, 2003), 20 (hereinafter referred to as Manṣūr, *Almas’ulīyyat al ’ilikrunīyyah*)

⁴¹ Al-Qur’ān 5:1.

⁴² Al-Qur’ān 4:29

⁴³ Ṣaḥīḥ al-Bukhārī tr. 1953.

⁴⁴ It is a contract of sale where the buyer gave an order to a workman (seller) to make a definite thing with an agreement to pay definite wage or price for that thing when it is made. (See, Zia’uddīn Aḥmad, *Theory of Ribā*, 2001, quoted in Norazlina Zainul and Fauziah Osman, *E-commerce from an Islāmīc perspective*, Department of information system, Faculty of Information and Communication Technology, International Islāmīc University, Malaysia, available on: <http://www.sciencedirect.com/science> last accessed time: 10.04.2009 at 3:00 pm. (hereinafter referred to as Norazlina and auziah)

⁴⁵ ‘Abdul Raḥmān al-‘ā’id, *Aqd al Muqāwalah* (Riyadh: Imām Muḥammad bin Sa’ūd Islāmīc University, 1425 AH), 147.

⁴⁶ ‘Alī Abdullāh al-Shihri, *A’tijārat al ’ilikrunīyyah ‘abral intarnit*, available on: <http://www.islamfeqh.com/Nawazel/Nawazelltem.aspx?Nawazel ItemID=89> last accessed time: 01/05/2009 at 3:00 pm.

⁴⁷ Gambling or *al-maysir* from Islāmīc perspective is defined to mean a game of haphazard in all matters particularly a game of chance by means of divinatory arrows. *Maysir* is of various categories. Some of these types of *maysir* are seeking omen or fortune by divinatory arrows,

back gammons, chess, lottery and many others. (See, ‘Abdullāh Ḥasan, Maqāsid Shari‘ah: The Prohibition of Gambling, Punishment and Justification available on: <http://maqasid.wordpress.com/2008/07/11/maqasid-shariah-the-prohibition-of-gambling-punishment-and-justification/> last visited time: 25.06.2009 at 7:00 pm.

⁴⁸ A contract of sale performed by the vendor throwing a cloth at the buyer and achieving the sale transaction without giving the buyer the opportunity for properly examining the object of sale. (see. Manṣūrī, *Islāmic Law of Contracts*, p. 95)

⁴⁹ Where the bargain is struck by touching the object of sale without examining it. (see. Manṣūrī, *Islāmic Law of Contracts*, p. 95)

⁵⁰ A contract of Insurance is one whereby one party, i.e., Insurer promised in return for a money consideration, i.e., the premium to pay to the other party, i.e., the insured, a sum of money or provide him with some corresponding benefit, upon the occurrence of an event specified in the contract. (see. Parkington and Anthony on Insurance law, 17th edition (London: O’Dowd Sweet and Maxwell, 1981), p. 3.

⁵¹ *Ribā* means an increase in the principal, stipulated in loan transaction. So, anything chargeable in addition to the principal amount as a contractual obligation falls under the purview of *Ribā* and is, therefore, prohibited. see, Jaṣāṣ, *Aḥkām al Qur’ān*, (Lahore: Suhail Academy) quoted by Manṣūrī, *Islāmic Law of Contracts*, p. 117)

⁵² ‘Alī Abdullāh al-Shihri, *A’tijārat al ’ilikrunīyyah ‘abral intarnit*, available on: <http://www.islamfeqh.com/Nawazel/NawazelItem.aspx?NawazelItemID=89> last accessed time: 01/05/2009 at 3:00 pm

⁵³ Norazlina and Fauziah.