

Examining the Conditions of Contract in Jurisprudence and Law

Maryam Sadeghi^{1*}

¹Department legal Expert of National Cartographic Center of Iran (NCC) and Master Science of Jurisprudence and Law in Islamic Azad University, North Tehran branch Iran

*Corresponding author

Abstract

Background and purpose: The purpose of this research is to examine the terms of marriage in jurisprudence and law. The research method in this study is based on the library method.

Research method: In collecting information, referring to reliable libraries and referring to authentic sources of Shia and Sunni jurisprudence have been done.

Findings: The results showed that Iqaa is opposite to contract in the composition sentence. When the order of the effect stops when another composition sentence is issued by another person, it is called contract, and if there is no need for both parties, it is called Iqaa. showed that contracts are of two types. First, gratuitous authorization contracts and compulsory exchange contracts, which are of two types. There are three types of contracts in terms of permissibility and necessity. The other side is permissible, and a contract that is permissible on both sides, such as mudarabah, partnership, deposit, loan, and power of attorney.

Conclusion: The conditions of marriage include the presence of words, being explicit, being Arabic, being in the past tense, prioritizing the request before the acceptance, the mutuality of the request and the acceptance, tanjiz (definiteness) and the matching of the request and the acceptance.

Keywords: Terms of contract, Being Past Tense, Having A Request Before Acceptance, The Requirements of a Request

1. Introduction

The conditions of a contract are accepted in Islam and are considered self-evident among Islamic jurists and legal scholars (Najfi, 1981: 23/ 78). The elements of a contract are offer and acceptance. An offer is a proposal to enter into a transaction. It is a declaration of the will of a person who wishes to bind another person to a contract on a specific basis. Acceptance means unconditional consent to the conditions of the offer (Katouzian, 1971: 1/ 282, 324). As we know, 'a contract is the creation of a legal relationship, and in some contracts, if there was a previous relationship, that previous connection is terminated before a new one is established.' In a sale contract, the offeror severs ownership of his property and establishes a new relationship between that property and the buyer. In other words, the main driver of the contract is the offeror, and the role of the acceptor is to ratify the act of the offeror. In this sense, the acceptor is a condition for the effectiveness of the contract, not its validity (Khomeini, 1371: 5/ 243; Delcea & Siserman, 2021).

With this premise, it can be said that: 'If a buyer, for example, in a sales contract, wishes to purchase an antique carpet, but after the offer is made, it becomes clear to the buyer that the carpet is not antique but was recently woven, if the buyer agrees to this, since the contract has been validly concluded, he can accept it. This is because the buyer's acceptance did not play a role in the formation of the contract, but for a contract between rational

individuals to have an effect, acceptance must be attached to it. Therefore, with the consent of the mistaken party, the contract is ratified¹.

There are several forms of offer and acceptance. Both can be actions, both can be words, one can be a word and the other an action, or both can be done through writing or gestures (Mughniyah, undated: 3/36, 35). If the parties express their inner intention to transfer ownership through words, i.e., verbal offer and acceptance, a contract is formed. If it is a sale, it is an instance of a contractual sale. If they express their inner intention through actions, it is an example of implied contract or mutual agreement (Ansari, 1376: 1/282).

According to Article 185 of the Civil Code: 'A binding contract is one in which neither party to the transaction has the right to rescind it, except in specific cases.' According to Article 186 of the Civil Code: 'A revocable contract is one that either party may rescind at any time.' In another definition of a revocable contract, one researcher states: 'A revocable contract is technically a contract that either or both parties can terminate as long as the subject matter remains unchanged.' Based on Article 187 of the Civil Code: 'A contract may be binding on one party and revocable on the other.'

Literally, the meaning of 'contract' is the opposite of 'opening.' From a legal perspective, it refers to a statement made by both parties to a contract or a statement by one party and an action by the other, upon which the law imposes a particular legal effect (Najfi, 1981: 22/3). Based on the aforementioned information, this descriptive research, utilizing library resources, will examine the conditions of contracts in Islamic jurisprudence and law.

2. Conditions of Contract

The literal meaning of contract is to bind, weave, tighten, knot, tie, covenant, etc. Raghīb Isfahani states in this regard: The literal meaning of 'contract' is to knot and join the ends and beginnings of something that is applied to hard bodies (Raghīb Isfahani, 1362: 341). In technical terms, 'contract' means that one or more persons undertake a legal obligation towards one another. It is also correct to say that 'contract' is the offer and acceptance (Fayz, 1374: 340, 341). Article 183 of the Civil Code defines 'contract' as follows: "A contract is when one or more persons undertake an obligation towards one or more persons and it is accepted by them." The conditions of a contract will be discussed next.

2.1. Being in words

Due to the consensus of scholars and its widespread acceptance, as well as the content of some narrations, every binding contract must be established through spoken words (Ansari, 1376: 1/ 277). Therefore, a contract is only valid when it is expressed verbally, except for 'aqd akhras' (silent contract) (Najafi, 1981: 22/ 251). This means that if a person is unable to speak (e.g., if they are mute), they can enter into a binding sales contract through gestures (Muhaqqiq al-Awwal (Hilli), 1403: 2/ 13). Even if, according to the stronger opinion, they are able to appoint a representative and if they are also unable to gesture, it is precautionary to appoint a representative. If they are unable to do even this, their contract can be established through writing (Khomeini, undated: 2/ 365). One jurist believes that a mute person can execute a binding contract simply by gesturing, without the need for a representative, as there are narrations that permit a mute person to divorce their spouse by gesturing. If a mute person can divorce their spouse through gestures, then, a fortiori, they can enter into a sale contract by gesturing (Husayni Aamili, undated: 4/163). Some jurists in their books of jurisprudence have considered only verbal acceptance and offer as constituting a contract and have regarded a transaction where words are not used as mere agreement rather than a contract, thus not attaching the legal consequences of a contract to it (Najafi, 1981: 22/210).

¹ Notes from the Principles of Islamic Jurisprudence class taught by Ayatollah Bojnourdi in the academic year 1378-1379 at the Faculty of Theology and Islamic Studies, Jurisprudence and Legal Foundations major

According to Article 191 of the Civil Code, a contract is formed with the intention to create a legal obligation, provided that it is accompanied by something that indicates such intention. Additionally, according to Articles 192 and 193 of the Civil Code, in cases where verbal communication is not possible for one or both parties, a gesture that indicates the intention to conclude a contract can be made through an action that demonstrates intent and consent, such as delivery. This may suffice unless the law provides otherwise.

2.2. Being Explicit

One of the jurists believes that the words of offer and acceptance must explicitly convey the meaning of a sale. Therefore, a contract cannot be concluded with words that are merely suggestive, such as 'I have included it in your property' or 'I have given you authority over it for such and such.' (Allama Hilli, undated: 1/461). The reason for the validity of this characteristic is that, firstly, if explicit words are not used in the contract, the ownership of the parties becomes doubtful. Secondly, since the seller has uttered the necessary words but intended the obligatory ones in their heart, the addressee may not understand the seller's intention and may not know whether the seller intended the necessary or the obligatory. (Allama Hilli, undated: 1/461). Some jurists deny the necessity of specific words in a sale, as there is no reason to require specific words for a sale. (Shahid al-Thani, undated: 1/169).

One of the jurists believes that instead of this characteristic, we should consider the condition of the words being literal and true. According to this fatwa, a sales contract cannot be established using figurative language (Najafi, 1981: 22/212). In the words of the contract, explicitness is not necessary, but any word that, according to common usage, indicates the intended meaning is sufficient, such as 'I sold' and 'I transferred ownership' in the offer, and 'I accepted' and 'I bought' in the acceptance (Khomeini, n.d.: 1/362). Ayatollah Khomeini also criticized the common opinion that a contract cannot be formed with literary language. They have not been able to present any reason that would necessitate a specific means of expressing one's inner will in the formation of a contract, except for consensus. And they have said that the consensus of jurists is based on recognizing the validity of words in the validity or necessity of contracts. And even if we accept consensus, the certain meaning that can be derived from the claimed consensus is that it refers to words in general, not specific words. Because, certainly, no consensus has been established regarding the recognition of specific words in the contract of sale. And the formation of all contracts and unilateral acts, with any means that conveys the intention of the parties, whether by word or deed, is correct, because they fall under the general evidence and implications related to the validity of the sale" (Khu'i, 1368: 3/185, 186).

One of the Sunni jurists believes: 'A matter upon which all Islamic legal schools agree is that the validity of a contract is contingent upon the existence of something that indicates the consent of both parties to its establishment and their commitment to the conditions of the contract.' Then, he proceeds to examine the view of Hanafi jurists regarding the formula of a contract: "A condition in the contract of sale is that its issuance from the contracting parties must be in a manner that is considered valid by the Shari'a, and the recognized valid method among our jurists is that a sale is concluded with any word that, according to custom and usage, expresses the consent of both parties to the exchange of ownership in property" (Article 340 of the Civil Code) (Zahidi, 1409: 4/348).

"In the offer and acceptance, the words and phrases must be explicit in the meaning of sale."

2.3. Being Arabic

In a contract of sale, the seller makes an offer and the buyer accepts. Examples of words used for the offer include 'I sold', 'I sell', 'I gave ownership', and for acceptance, 'I accepted', 'I bought', 'I took ownership' (Allama Hilli, 1413 AH: 2/16). Most jurists have accepted the word 'I owned' as sufficient for making an offer and have claimed consensus on this matter (Shahid al-Awwal, 1418 AH: 2/15). According to Allama Hilli and Shahid al-Thani, the basic word for acceptance is 'I accepted', and other words are considered substitutes (Allama Hilli, 1410 AH: 2/448). Some jurists believe that the contract of sale must be made in the Arabic language (Shahid al-Thani, 1418 AH: 1/276). The stronger opinion is that a sales contract can be valid even if it is not conducted in Arabic (Ansari, 1376: 1/284). Sayyed Mohammad Kazem Yazdi and Mirza Na'ini have stated in this regard: "If we were to limit the expression of a contract to the Arabic language, it would necessarily lead to hardship and difficulty, and it would close the means of livelihood for those who are unable to express themselves in Arabic. In such a case,

every non-Arab-speaking Muslim would be obligated to learn the phrases of the contract in Arabic (similar to the obligation of learning the recitation of the Quran for prayer). However, we are certain that no such order has been issued anywhere” (Tabatabaei Yazdi, 1378: 86, 87).

2.4. Being in the Past Tense

The majority of jurists believe that the verbal formula for a contract must be in the past tense (Allama Hilli, 1413 AH: 35/337). Allama Hilli cites the consensus of jurists as the reason for this (Allama Hilli, n.d.: 1/462). The past tense implies certainty in the statement. Therefore, if someone says, "Buy," or "Accept the sale," or "I sell to you," it is not valid, even if acceptance is established. The same applies to the accepting party. For example, if someone says, "Sell to me," or "You sell to me," these words are more akin to a request or a question rather than an acceptance (Muhaqqiq al-Awwal (Hilli), 1408: 2/13).

Sheikh Mufid, regarding the words of offer and acceptance, says: 'What indicates the consent of the contracting parties in a sale is sufficient for the realization of the sale' (Bahrani, 1413: 18/4.3). And to justify his opinion, he says: 'The evidence and general principles from the Quran and Sunnah have not conditioned the permissibility and validity of a sale on a specific wording, and we have not encountered any explicit evidence that conditions a particular word in a contract... And what is understood from the news and narrations is that a sale can be concluded with any word that indicates agreement and is recognized as a sale in common usage' (Bahrani, 1413: 18/4.3).

The past tense is not considered valid, so the present tense (and the present or future tense) is permissible, although the past tense form is a precautionary measure (Khomeini, undated: 2/ 362).

Sheikh Ansari believes that "what can be inferred from the various narrations and the fatwas of the scholars regarding binding contracts (such as lease, sale, etc.) is that any word that has a significant appearance in conveying the intended meaning, from the perspective of common usage, is sufficient" (Ansari, 1376: 1/284).

Imam Khomeini considers the criterion for a valid contract to be the understanding of ordinary people. In other words, the criterion for the correct use of words in a contract is whether these words convey the intended meaning from the perspective of ordinary people. In this regard, there is no difference between past, present, and future tenses or other grammatical forms. And the mere resemblance of words to a request or a command from a superior does not render the declaration invalid. As we discussed in previous sections, a transaction with non-explicit words such as:

Metaphors, metonymy, and similar figures of speech are also possible. Moreover, we assert that the implication of a past tense verb (the intended meaning is the verbal form of the past tense, such as: "I sold," "I bought", etc.) does not explicitly indicate a declaration, nor is it used in its literal sense. Rather, contextual clues have caused the past tense word to appear in a unilateral act and declarative sense, not the verb itself. Furthermore, the past tense and the present tense do not differ significantly from each other. Because the present tense form is also used to convey information of the occurrence of an action in the future, and the only difference between the two is in precedence and subsequence, and the use of both in declarations is also not based on their literal meaning. In fact, the present tense, as it is common to both the present and the future, might even be more suitable for declarations (Khomeini, 1371: 1/ 223, 222).

Hanbali jurisprudence states: 'Any word that conveys the meaning of buying and selling can be used to establish a contract of sale, and the formula for a sale is not restricted to a specific word' (Jaziri, 1406: 2/158, 159).

According to the Hanafi jurisprudence, Hanafi jurists state that a sale described in the past tense, such as 'I sold' or 'I bought', is considered valid. However, for such a sale to be valid when described in the present tense, the speaker must intend for it to be a legal act. A sale using an imperative verb, implying a request or demand, is not considered valid. This is because in such a case, there is a possibility of deception or fraud in the transaction. People might assume that if the item didn't exist, the person wouldn't have made a request to buy or sell it" (Zuhali, 1409: 4/348).

The Maliki and Shafi'i schools of thought: 'According to these two schools, the contract of sale can be concluded using any word that conveys ownership, and the sale is considered valid with any such word. However, these two

schools differ in some aspects. In Maliki jurisprudence, the use of the past tense in the contract of sale indicates that the contract is binding, and neither party has the right to rescind it. However, if the contract of sale is concluded using the imperative mood, there is disagreement about the binding nature of such a sale. Some Maliki jurists argue that if the person swears that they did not intend to purchase, they have the right to rescind. Others argue that in this case, as with a sale using the past tense, the contract is binding, and there is no right to rescind" (Zuhali, 1409: 4/349).

2.5. Precedence of the Offer over the Acceptance

The condition of the offer preceding the acceptance in the contract formula is a subject of disagreement among jurists. There are two main viewpoints on this matter:

1. Those who argue that the offer must precede acceptance, as is the commonly held view among jurists, have also claimed a consensus on this matter. To support their argument, they have stated: Acceptance is subordinate to the offer and is based on it. Because acceptance is a declaration of consent that is made in response to the offer, acceptance has no meaning without a prior offer. Therefore, they have considered the precedence of the offer to be a condition (Allama Hilli, 1415 AH: 5/53). Since acceptance is contingent upon the offer, preceding it with acceptance is equivalent to placing the consequence before the cause (Najfi, 1981: 22/257). Additionally, the meaning of the Qur'anic verse regarding the obligation to fulfill contracts, as well as the general usage of terms like 'sale' and 'commerce,' refers to customary contracts in which the offer precedes the acceptance (Shahid al-Thani, 1418: 1/276).
2. Some jurists believe that accepting a proposal before it is made is permissible (Allama Hilli, undated: 1/164). This is because acceptance is essentially the expression of consent and its declaration regarding the proposal, and what is important is the declaration of consent to the conditions of the sale (Shahid al-Thani, 1418: 1/276). And since they have considered the acceptance of a proposal before it is made permissible in the case of marriage, and if it is permissible in the case of marriage, it will be all the more permissible in the case of sale (Ansari, 1376: 1/285).

Imam Khomeini considers it permissible and correct for acceptance to precede the offer. He believes that 'the role of acceptance in a sale is to affirm and solidify a matter that the offeror has already established. Because when the offeror says, "I sell this to you for this," the essence of the sale is completely established through this statement of the offeror. For the transaction to be realized, there is no need for a reciprocal transfer of ownership by the buyer to the purchase price or by the seller to the item sold. This matter has already been established by the offeror's statement, and what we need at this stage is for the acceptor to accept and consent to the offeror's action so that an effect can be attributed to the contract. Therefore, as soon as the acceptor's acceptance is declared, the people of society accept this transfer of ownership in exchange for the price. Moreover, the position and significance of acceptance in a contract does not signify a new transfer, because the essence of a sale is already realized with the effective offer, and the role of acceptance is similar to expressing gratitude. In other words, the role of acceptance in a contract is like permission in a voidable sale, and nothing more. Therefore, acceptance realizes the effects of the contract, not the essence of the sale' (Khomeini, 1371: 1/ 226, 223).

Khoi believes that "the essence of a contract is the inner will which is declared by external means, and none of the characteristics that some jurists have mentioned in the words of offer and acceptance, or their priority and posteriority, are conditions of a contract. Therefore, there is no difference between the words of acceptance or the type of contract. However, in contract contracts, it is better for the offer to precede the acceptance (Khoi, 1368: 3/212, 216).

Jurists of the Sunni schools of thought have differed in their opinions regarding the use of past and non-past tenses in the expression of acceptance.

Ibn Qudamah has presented two opinions regarding the use of the past tense in the expression of acceptance:

The first opinion holds that it is permissible for the acceptance to precede the offer and considers it to be the more correct view. For example, if the acceptor says, "I bought such and such from you," and then the offeror says, "I

sold it to you," in this case, just like when the offer precedes the acceptance, the contract is valid. This is because the words of acceptance and offer in the above examples both convey consent to the sale.

The second opinion does not consider it permissible to have acceptance precede the offer, justifying this by saying that a sale is an exchange, and if we place acceptance first, it does not make sense. Additionally, acceptance is dependent on the offer, and placing acceptance first means that it has not been placed in its appropriate position. Therefore, the existence and non-existence of acceptance would be the same. Regarding the use of the word "request" in expressing acceptance, two opinions have been presented:

1. If acceptance is expressed as a request, it can precede the offer. For example, the acceptor can first say, "I want your garment for such-and-such a price," and then the offeror can say, "I have sold it to you." Such a contract is valid, as both statements indicate the consent of both parties. This opinion is held by Ibn Malik, Imam Shafi'i, and Ahmad ibn Hanbal."
2. The second opinion is that it does not consider the expression of acceptance using a request form to be valid. Just as a contract would not be valid if the acceptance were to occur after the offer using an imperative form, similarly, the precedence of acceptance over the offer using a request form is also not correct. This is the opinion of Abu Hanifa.

However, if the acceptance is expressed in the form of a question, for example, if the buyer says, "Shall I buy your garment for such-and-such a price?" and then the seller says, "I have sold it to you," according to all Sunni schools of thought, such a form of contract is not valid (Ibn Qudamah, 1405: 4/3, 4).

2.6. Sequence of the Offer and the Acceptance

One of the conditions of a contract is the sequence of the offer and acceptance (Khoi, 1368: 3/221).

The jurists who have considered sequence in the offer and acceptance as a condition of a contract, have concluded the necessity of sequence from the structure and concept of the contract. According to this view, a contract is a unique legal entity whose parts (offer and acceptance) are interrelated. Therefore, for this entity to exist, the offer and acceptance must be connected to each other, and the customs must see these two declarations as related. Moreover, the effect of a contract, which is ownership, is a legal relationship that must occur between two parties and regarding each other. For example, (the transfer of ownership is like a person putting a garment they are wearing on another). Therefore, the result of the disconnection of the offer and acceptance is that the created ownership or legal relationship remains without a place and becomes an addition without an adjunct. (Katouzian, 1371: 1/327, 328).

The sequence between the offer and acceptance means that there should not be a long gap between them that would remove it from the category of a contract. A short interval, however, such that it can still be said that this acceptance corresponds to that offer, does not cause any harm (Khomeini, undated: 2/ 362).

Twelve Shi'a jurists are in consensus that for permissible contracts such as loan, deposit, agency, and so on, the immediacy between the offer and acceptance is not a condition, and a long interval between them does not prevent the contract from being valid.

However, in binding contracts such as sale, there is a difference of opinion among jurists. Some argue that sequence is a condition, while others do not consider it a condition. Rather, they consider the criterion for the validity of a contract to be the persistence of the intention of the offeror until the time of acceptance, and a short or long interval does not, in itself, harm the contract (Tabatabai Yazdi, 1378: 90).

The sequence is essential in a contract, just as it is necessary for the elements of prayer, the actions of ablution, and ritual purification. The reason for this is the necessity of a connection between the excluded and the exception, meaning that just as the excluded and the exception are considered a single statement, the offer and acceptance are also a single statement (Shahid al-Awwal, undated: 2/97).

Determining whether the order of offer and acceptance in a contract has been maintained is the responsibility of custom. This is because preserving the customary and recognized form of a contract is a duty of custom. As long

as the customary form of connection in the contract has not been disrupted by a gap between the offer and acceptance, the contract is valid (Najfi, 1981: 22/255). A stranger should not create a gap between the offer and acceptance (Muhaqqiq Thani (Karaki), 1408: 4/59).

Imam Khomeini does not consider the simultaneity of the offer and acceptance to be a necessary condition for a contract. He believes: "The entire essence of a contract is summarized in the offer, and with the issuance of the offer, the effects of the contract become binding. The role of acceptance is merely a formality. What is truly valid is the mutual agreement of the parties and their adherence to their covenant, meaning that the seller remains committed to their promise to exchange goods. As long as the offer is not forgotten or renounced, acceptance can be attached to it, even if a significant amount of time has passed. Just as in written agreements between governments and their commercial partners, the sequential order of the offer and acceptance, or their immediacy, does not have rational validity. What harms a contract is the lack of connection between the causes, and the validity of a contract depends on the connection of the causes, not on the instruments of the contract such as the offer and acceptance. The mere sequence of these instruments is not what matters.

Furthermore, the general reasons for the validity of a sale contract, such as 'fulfill contracts' (Al-Ma'idah 5:1), 'God has permitted trade' (Al-Baqarah 2:275), and 'trade by mutual consent' (An-Nisa 4:29), do not differentiate in conditions of the validity of a contract when there is a delay between the offer and acceptance. Therefore, what invalidates a contract is the lack of connection between the causes (the intention of offeror and acceptor), not the creation of a gap between the causes of the offer and acceptance" (Khomeini, 1371: 124, 125). The realization of ownership, which is a necessary condition, depends on the realization of the customary title of sale, and there is no necessity for sequence (Ansari, 1376: 1/ 292, 293).

Hanafi and Maliki jurists have stated: 'Creating a gap between the offer and acceptance does not harm the contract, unless the gap is so long that, according to custom, it can be said that the parties have exited the state of contracting. For example, if they become engaged in eating, sleeping, or other activities in such a way that, in the eyes of custom, it appears that the contract meeting has ended.'

2.7. Unconditionality

The meaning of this condition is that a contract should not be made conditional upon something, either through conditional clauses or in other ways, such as 'I sell you this house on Friday'. An example of a condition is when the seller says, 'I sell you this house for a thousand dinars if I am satisfied' (Ansari, 1376: 1/293). Some jurists have claimed a consensus on the validity of this condition, and their reason is consensus, and they have considered this condition valid in both obligatory and optional contracts. However, many jurists have not mentioned this condition in the context of a sale contract but rather in other contracts such as a power of attorney (Tusi, undated: 2/362).

The reason for this condition, as explained by Allama Hilli, is that he considers the existence of a suspension to be contradictory to the decisiveness present in the act of contracting. Therefore, instead of requiring the contract to be unconditional, he considers the existence of decisiveness to be a condition of the contract. In this case, even suspending the contract on the customer's consent (if he is willing) would invalidate the contract. Because the seller does not know whether the customer, at the time of making the offer, consents to the transaction, and even if he is willing, his consent will remain until the end of the contract (Allama Hilli, undated: 1/ 462). Allama Hilli says in another place: Suspension based on the customer's ownership, which is known to both parties, and any condition whose fulfillment is known, is not problematic (Allama Hilli, 1413 AH: 1/ 17). Shafi'i believes that suspending a contract on the customer's desire and consent does not invalidate the contract (Husayni Aamili, undated: 4/ 165).

The types of conditions and their subjects include a condition whose fulfillment is known at the time of the contract, a condition whose fulfillment is known in the future (conditions of description), a condition whose fulfillment is unknown and does not validate the contract, and a condition whose fulfillment is unknown but validate the contract (Ansari, 1376: 1/ 294, 295, 296).

A condition that is known to be fulfilled at the time of the contract is a condition whose fulfillment is known to the parties at the time of the contract. For example, if both parties know that a certain traveler has returned from their journey, and the seller says, "I sell you this house if Zayd has returned" (Ansari, 1376: 1/295), the suspension in this case does not invalidate the contract (Shahid al-Thani, n.d.: 1/348).

A condition that is known to occur in the future (conditions of description) is a condition whose occurrence in the future is certain. For example, if someone says a few days in advance, "I will sell you this on Friday" (Tabatabaei Yazdi, 1378: 91). This type falls within the consensus claimed to negate suspension, and therefore, it invalidates the contract (Fakhr al-Muhaqqiqin (Hilli), 1387: 2/ 384).

A conditional clause is uncertain and cannot validate a contract. An example of such a condition is when someone doesn't know if a traveler has returned from their journey or not (Tabatabaei Yazdi, 1378: 91). A condition that validates a contract, meaning a condition whose absence would invalidate the contract, is one like the requirement that the object of a sale must be legally permissible to own, such as a house, as opposed to something impermissible like wine or pork (Ansari, 1376: 1/295). This is certainly included in the consensus of jurists on the invalidity of suspension (Shahid al-Thani, n.d.: 1/348).

A condition whose fulfillment is uncertain but which still validates a contract is a non-essential condition. A non-essential condition in a contract is one that, if not mentioned, will not invalidate the contract, such as the condition 'if Zayd returns from his journey' (Ansari, 1376: 1/ 295). In this case, the contract is not invalidated because there is no consensus that it is invalid, which is the primary evidence in this matter (Tabatabaei Yazdi, 1378: 92). Sheikh Tusi also accepted the permissibility of such suspension (Tusi, undated: 3/ 150) and Shahid al-Awwal holds the same opinion, saying: "If the seller says, 'I have sold it to you if you accept,' and the buyer also accepts, it is more correct to say that the contract of sale is valid" (Shahid al-Awwal, 1418: 2/ 11).

2.8. Matching of the Offer and the Acceptance

One of the conditions for a contract to be valid is that the offer and acceptance must match each other (Najfi, 1981: 22/255). As mentioned earlier, the existence of acceptance in a contract is necessary, and acceptance means the declaration of the customer's consent to the exact offer made by the seller. If the acceptance differs from the offer, in reality, acceptance has not been achieved here, and the contract is incomplete and void (Ansari, 1376: 1/298). For example, if the seller offers to sell something for a thousand tomans, but the buyer accepts it for five hundred tomans, the sale contract is void (Shahid al-Awwal, 1269: 334).

For a contract to be valid, the offer and acceptance must correspond with each other. Therefore, if they differ, such as when the seller offers to sell something to the buyer's client under specific conditions and the buyer accepts on different conditions, a contract is not formed. Thus, if the seller says, "I have sold this to your client for such and such an amount," and the agent says, "I have bought it for myself," the transaction is not concluded. However, if the seller says, "I have sold this to your client," and the client himself, who is present but was not directly addressed by the seller, says, "I accept," it is not unlikely that this would be valid. If the seller says, "I have sold this to you for such and such an amount," and the buyer says, "I accept on behalf of my client," then if the seller intended the sale to be to the person he was addressing, the contract is not valid. But if the seller's intention was general, meaning that he did not care whether the buyer was acting as the principal or an agent, the contract is valid (Khomeini, undated: 1/462).

A contract is only valid when the acceptance fully corresponds with the offer. This means that each party must intend the same thing as the other party, and this agreement of intention must exist in several matters:

First, 'in the type of contract' means that each party must intend to create the same type of contract that the other party intends to create. For example, if someone intends to sell their house to another person and proceeds to form a contract, the other party must also accept with the same intention of buying, not renting or making a gift, etc. Article 194 of the Civil Code states: The words, gestures, and other actions by which the contracting parties form a contract must be in agreement in such a way that one party accepts the same contract that the other party intended to create, otherwise the contract will be void.

Secondly, 'regarding the subject matter of the contract' means that both parties must agree on the subject matter of the transaction. This means that the subject matter intended by one party must be the same as that intended by the other. However, if the seller intends to sell their Peugeot car at an agreed-upon price, but the buyer intends to purchase their Benz car at the same price, or if the seller intends to sell a 'machine-made carpet' but the buyer intends to buy a 'hand-woven carpet', in such cases, the contract is void.

Third - 'On the Part of the Contracting Party': On the part of the contracting party, it is not the case that complete disagreement always leads to the annulment of a contract. Sometimes it does, and sometimes it doesn't. For example, a shopkeeper intends to sell goods in his shop, and it doesn't matter to him who the buyer is. In such a case, if Zayd comes to the shop and asks to buy something from the shopkeeper, and the shopkeeper, thinking that this person is Muhammad, sells him the item and the contract is formed, and after the transaction, it becomes clear to the shopkeeper that this person is not Muhammad but Ahmad, since the buyer's identity did not play a role in the essence of the transaction, meaning that if the shopkeeper had known from the beginning that this person was Ahmad, he would have still made the deal, this transaction is valid (Taheri, 1375: 6/40).

Therefore, Article 201 of the Civil Code states: 'A mistake regarding the identity of the other party does not affect the validity of a contract, except in cases where the identity of the party was the main reason for entering into the contract.'

Conclusion

This research aims to examine the conditions of contracts in Islamic jurisprudence and law. The unilateral act is contrasted with a contract. In defining a unilateral act and a contract, it has been stated that if the occurrence of an effect is contingent upon the issuance of another declarative sentence by another party, it is called a contract. If it does not require two parties, and the issuance of a declarative sentence by one party, without being dependent on another declaration by another party, gives rise to an effect, it is called a unilateral act. Examples include divorce, *Khul'a* (a divorce which a wife achieves by giving consideration to her husband) and *Mubarat* (a divorce by mutual consent) divorce, *Zihar* (a man referring to his wife as his mother or by uttering that "you are, to me, like my mother"), *Ila* (oath taken by the man to cease marital intercourse), *Li'an* (solemn malediction), manumission, guardianship, oath, and vow (Fayz, 1374: 261)."

Studies have shown that contracts can be divided into two categories. The first category is gratuitous contracts based on permission, such as agency, gift, deposit, and loan... The second category is obligatory, bilateral, and compensatory contracts, which are further divided into two types. Determinative: such as sharecropping, share farming, partnership, and reward... Investigative: such as sale and lease...

Sale is the transfer of ownership of a thing in exchange for a known price, while lease is the transfer of the right to use a thing in exchange for a known price. If a price is not mentioned in a sale, it becomes a gift, since a gift is the transfer of ownership without consideration. Similarly, if a price is not mentioned in a lease, it becomes a loan, since a loan is the transfer of the right to use without consideration. Therefore, mentioning a known price is a condition for the validity of both sale and lease contracts (Al-Kashif al-Ghata, 1359: 113, 114). The sale contract is the most important and common of the bilateral contracts, known to humankind since ancient times. People have resorted to trade to meet their needs, and in this way, ownership of objects has been transferred from one person to another through simple delivery and acceptance.

Today, the contract of sale is one of the most important types of transactions in both domestic and international commercial relations. Therefore, the regulations and laws related to it are constantly evolving. The contract of sale, in addition to having its own specific rules, also involves the rules of other contracts, and perhaps it is because of this importance that the contract of sale has been considered as the most important topic throughout the history of Islamic jurisprudence. Rent is also one of the most important bilateral contracts, and today the relationship between the landlord and tenant is no longer merely a private relationship where the establishment of commutative justice is the main goal. The landlord and tenant, as two distinct social classes, are placed opposite each other, and regulating their relationship is of particular importance, which has forced the government to intervene and inevitably increase its mediation, and sometimes even play the role of a manager and leader.

References

- [1] Al-Kashif al-Ghita, M.H. (1359 A.H.). *Magazine writing*. Qom: Al-Firouzabadi School and Al-Najah School. (In Persian)
- [2] Allameh Hali, A.M.H.Y.M.A. (1410 AH). *The end of Al-Ahkam in the knowledge of Al-Ahkam*. Research: Seyed Mehdi Rajaei, second edition. Qom: Ismailian Institute. (In Persian)
- [3] Allameh Hali, A.M.H.Y.M.A. (1413 A.H. A). *Compendium of al-Maram fi Ma'rifah al-Ahkam* (published in the series of Al-Alinabi' al-Faqihah). First edition. Beirut-Lebanon: Institute of Fiqh al-Shia. (In Persian)
- [4] Allameh Hali, A.M.H.Y.M.A. (1413 AH). *The rules of Al-Ahkam in the knowledge of Halal and Haram*. First edition. Qom: Al-Nashar Al-Salami Institute. (In Persian)
- [5] Allameh Hali, A.M.H.Y.M.A. (1415, A.H.). *The different Shiites in the rules of the Shari'ah*. First edition, Qom: Moussa al-Nashar al-Salami. (In Persian)
- [6] Allameh Hali, A.M.H.Y.M.A. (n.d). *Tahrir al-Ahkam*. Bi-ja: Al-Al-Bayt (Ali-Islam) lithography institute. (In Persian)
- [7] Allameh Hali, A.M.H.Y.M.A. (n.d.). *Tazkira of the jurists*. Tehran: Manuscripts, Al-Muktaba Al-Mortazawieh Lahia Al-Athar Al-Jaafarih, lithography. (In Persian)
- [8] Ansari, M. (1376 A.H). *Al Makasab*. 4th edition, Qom: Dehaghani Publications. (In Persian)
- [9] Bahrani, Y. (143 AH). *Al-Hadaiq Al-Nadrah in the laws of Al-Atrah Al-Tahirah*. Researcher: Mohammad Taghi Irvani, correction: Yusuf Beqaei. Third edition. Beirut-Lebanon: Dar al-Azwa. (In Persian)
- [10] Delcea, C., & Siserman, C. (2021). The emotional impact of COVID-19 on forensic staff. *Rom J Leg Med*, 29(1), 142-6.
- [11] Faiz, A. (1374 AH). *Principles of jurisprudence and principles*. The seventh edition. Tehran: Publishing and Printing Institute of Tehran University. (In Persian)
- [12] Fakhr al-Haqeen (Hali), A.T.M.H.Y. M. (1387 AH). *Explanation of the benefits in the description of the problems of the rules*. Research: Seyyed Hossein Mousavi Kermani, Ali Panah Eshtheri, and Abdur Rahim Boroujerdi, first edition. Qom: Al-Mattaba Al-Alamiya. (In Persian)
- [13] Hali, Y.S. (1410 AH). *Al-Jamee Lal-Shari'e, (in addition to the chain of Al-Alinabiyyah Al-Faqihah, Ali Asghar Marwarid)*. First edition. Beirut: Dar al-Islamiya. (In Persian)
- [14] Hosseini Ameli, S.M.J.(n.d.). *Miftah al-Karamah in the description of Al-Allamah rules*. Bey: Darahiya al-Tratah al-Arabi. (In Persian)
- [15] Ibn Qudama, M.A.M.A. (1405 A.H.). *Al-Mughni fi fiqh Imam Ahmad bin Hanbal Al-Shibani*. First edition. Beirut: Dar al-Fekr. (In Persian)
- [16] Jaziri, A.R. (1406 AH). *Jurisprudence of Ali al-Mahhab al-Arba'ah*. Second edition. Beirut: Dar al-Ahaya al-Tarath. (In Persian)
- [17] Katouzian, N. (1371). *Civil rights of certain contracts*. Fourth edition. Tehran: publishing company. (In Persian)
- [18] Khoi, S.A.M.(1368 AH). *Masbah Al-Fiqahah Fi Al-Maamalat*. Researcher: Mohammad Ali Tawhidi. First edition. Vojdani Publications. (In Persian)
- [19] Khomeini, R. (1371 AH). *Al-Bai Najaf*. Al-Adab Press. (In Persian)
- [20] Khomeini, R. (n.d.). *Tahrir al-Wasila*. Qom: Al-Nashar al-Islami Institute.
- [21] Mohaghegh Aval (Hali), A.Q.N.J.H. (1403 A.H.). *The laws of Islam in matters of halal and haram*. Second edition. Beirut: Dar al-Awtah. (In Persian)
- [22] Mohaghegh Dovom (Karki), A.H. (1408, A.H.). *Jami al-Maqasid fi Sharh al-Qaas*. First edition. Qom: Al-Al-Bayt, may God bless him and grant him peace, Institute of Heritage. (In Persian)
- [23] Mughniyeh, M.J.(n.d.). *Imam al-Sadiq's jurisprudence*. Qom: Quds Mohammadi Publications. (In Persian)
- [24] Najafi, M.H. (1981). *Jawaharlal Kalam in the explanation of the laws of Islam*. Researcher: Ali Akhundi. The seventh edition. Beirut-Lebanon: Dar al-Hiya, al-Trath al-Arabi. (In Persian)
- [25] Ragheb Esfahani, A.H.M. (1362 AH). *Vocabulary of the words of the Qur'an in the strange Qur'an*. Second edition. Mortazavi bookstore. (In Persian)
- [26] Shahid Aval, M.M.A. (1269 A.H.). *Al-Dros al-Sharia fi fiqh al-Umamiyah*. Unplaced: Lithograph. (In Persian)
- [27] Shahid Aval, M.M.A. (1418 AH, 1376 AH). *The purpose is to explain the advice point*. Research: Abbas Mohammadi, Gholamreza Naghi, Gholamhossein Qaisariehha, first edition, Qom: Al-Nashar Al-Tabiah Library of Al-Alam Al-Islami. (In Persian)
- [28] Shahid Aval, M.M.A. (n.d.). *The rules and benefits in fiqh, al-usul, and al-Arabiya*. Researcher: Seyyed Abdulhadi Hakim. Qom: Al-Mofid school charters. (In Persian)
- [29] Shahid Sani, Z.A.J. (1418 AH). *Al-Rawza al-Bahiyyah in Sharh al-Lama al-Damashqiyyah*. to print Qom: Al-Nashar Al-Taba Publishing Center of Al-Mahad Al-Islami School. (In Persian)
- [30] Shahid Sani, Z.A.J. (n.d.). *Masalak Al-Afham fi Sharh Shar'e al-Islam*. Qom: School of Insight. (In Persian)
- [31] Tabatabai Yazdi, S.M.K.(1378 AH). *Margin al-Masab*. Qom: Darul Alam Institute, offset printing. (In Persian)
- [32] Taheri, H. (1375 AH). *Civil rights* 6. First edition. Qom: Islamic Publications Office. (In Persian)

[33] Tusi, A.J.M.H. (n.d). *Al-Mabsut fi fiqh al-Umamiyah*. Research: Seyyed Mohammad Taghi Kashfi, source: Lahia al-Akhtar al-Jaafarih. (In Persian)

[34] Zaheili, W. (1409 AH). *Islamic jurisprudence and justice*. Damascus: Dar al-Fekr. (In Persian)