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THE ESSENCE OF THE CONTRACT IN JURISPRUDENTIAL AND LEGAL PERSPECTIVE A STUDY IN LIGHT OF ISLAMIC JURISPRUDENCE, EGYPTIAN CIVIL LAW, AND THE SAUDI CIVIL TRANSACTIONS LAW

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Abstract
This research addresses a topic of utmost importance: "The Essence of the Contract in Jurisprudential and Legal Perspectives." The importance of defining this essence arises from the significant role that contracts play in practical life, as they are the primary voluntary source of obligations. This has led to extensive attention from Islamic jurists in defining it, resulting in wide-ranging disagreements. Similarly, jurists and commentators of Egyptian civil law and Saudi civil transactions Law have engaged in this discussion, as both legal Laws explicitly define the essence of the contract, focusing instead on its provisions. In response to this approach, jurists and commentators have taken on the task of defining this essence.
The research concludes with several findings, including:
In the terminology of jurists, the contract has two meanings: a general meaning, which refers to any action that results in a legal ruling, whether it is issued by one party or multiple parties; and a specific meaning, which refers to the connection between an offer issued by one party and the acceptance of the other, in a manner that establishes its effect on the subject matter (i.e., the object of the contract). In other words, it is the mutual connection between the offer and acceptance in a lawful manner that manifests its effect on the subject.
The specific meaning of the contract is the most commonly used among jurists, and it is the one preferred by most contemporary jurists. This is because it is more precise than the general definition, which makes the action broader than the contract. The specific definition of the contract includes precise criteria and standards that provide the correct legal characterization for every action without ambiguity. This specific definition is the prevalent and well-known usage among jurists, to the extent that it almost exclusively represents the term. It is the meaning that comes to mind when the term "contract" is mentioned, and it does not refer to the general meaning unless indicated by context. This is evident in the works of jurists when discussing contracts.
In Egyptian civil law and Saudi civil transactions Law, jurists and commentators have defined the contract as: "The agreement of two or more wills to create a legal effect, whether this effect is the creation, transfer, modification, or termination of an obligation."
This is the prevailing definition in Egyptian and Saudi legal jurisprudence, although the wording or phrasing may differ from one jurist to another.
The definition of the contract in Islamic jurisprudence, Egyptian civil law, and Saudi civil transactions Law is almost identical or consistent, particularly with regard to the specific meaning in Islamic jurisprudence. This is because this meaning does not consider actions performed by a single will as a contract, which is also the position taken by Egyptian civil law and Saudi civil transactions Law. Both Laws consider unilateral will as a source of obligation, not a contract, due to the differences in their characteristics, essence, and rulings compared to those of a contract. Therefore, all three—Islamic jurisprudence, Egyptian civil law, and Saudi civil transactions Law—restrict the concept of a contract to actions performed by two wills, while actions performed by a single will are not considered contracts but rather unilateral actions that result in a one-sided obligation.
Despite this agreement, the definition in Islamic jurisprudence is more logically sound and precise than that in Egyptian civil law and Saudi civil transactions Law.
Keywords: Essence, Contract, Islamic Jurisprudence, Civil Law, Egyptian Law, Saudi Civil Transactions Law.

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First Section

The Essence of the Contract in Islamic Jurisprudence

1. The Linguistic Meaning of "Contract":

The term "contract" (عقد) in Arabic is the opposite of "dissolution" (حل), and its plural is "contracts" (عقود).

In the Arabic language, the term "contract" carries several meanings, including binding, tightening, covenant, strengthening, confirmation, finalization, commitment, and the joining of two things or the ends of something and binding them together.

- The term "contract" in the sense of binding can be exemplified by the phrase "tied the rope." This act of binding may either be physical or metaphorical.

Physical Binding: Such as tying a rope. It is said: "He tied the rope, and it became tied," meaning it became knotted. To tie the rope results in it being knotted. The act of tying refers to creating a knot in it. The term “knot” (‘uqda), with the stress on the first syllable, refers to the place where the knot is made — that which is tied together. The plural form is ‘uqad.

Metaphorical Binding: This type of binding occurs between two separate entities, such as linking statements from two different individuals. An example would be the connection between an offer and its acceptance in a marriage contract, as well as other types of contracts commonly used in human interactions, such as sales contracts, rental agreements, and other forms of contracts. (Ibn Manzur 3/692, Al-Fayyumi p. 052, Al-Razi p. 54, The Concise Dictionary p. 426).

- **From the meaning of "tightening":**

It is said: "He tied the rope" when he tightened it, which involves bringing its two ends together and pulling each end towards the other until they become one entity. "I tied the rope" also means "I tightened it." (Al-Fayrouzabadi 1/436).

- **From the meaning of "covenant":**

It is said: "I made a covenant with so-and-so regarding such and such," which implies that I obligated them to it. When you say, "I contracted with him" or "I tied it upon him," it means that you obligated him to it through mutual agreement.

"Contracting" refers to making a covenant, and "he contracted with him" means "he covenanted with him." It is said: "The people contracted among themselves," meaning they made mutual covenants. "I contracted with him on such and such" or "I tied it upon him" means "I covenanted with him." In the Qur'anic revelation, the Almighty says: "O you who have believed, fulfill your covenants..." (Surah Maidah 5:1). It was said that "covenants" refer to the confirmed agreements between you and God and between you and people. (Ibn Manzur 3/792, Al-Razi p. 542, Al-Fiyyumi p. 052, The Concise Dictionary p. 624 Ibn Kathir 2/62, Al-Jalalayn p. 431, Al-Shawkani 2/6, Al-Baydawi 2/231, 331, Al-Jassas 3/382).

- **From the meaning of "strengthening" and "confirmation":**

It is said: "He tied the oath," meaning he confirmed it. "He tied the covenant" and "he tied the oath" mean he confirmed them. "Tying the oath" or "the intention to do something or refrain from it" means strengthening and affirming it, whether the reinforcement is for speech issued by one party or binding between the words of two or more individuals. This is evidenced by the statement of the Almighty: "But He will take you to task for what you have confirmed in your oaths" (Surah Maidah 5:98), which means what you have affirmed and resolved upon. (Ibn Manzur 3/692, Al-Fiyyumi p. 250, The Concise Dictionary p. 246, Al-Qurtubi 4/2092, Ibn Kathir 2/19, Al-Jalalayn p. 154, Al-Sharnabasi p. 042, 142, Al-Sariti p. 97).

- **From the meaning of "perfection" and "finalization":**

It is said: "He tied something," meaning he perfected and finalized it. "The knot of marriage" and similar things refer to their perfection and finalization. "A knot" in anything signifies its perfection and finalization. In the precise revelation, the Almighty says: "And do not resolve on the knot of marriage..." (Surah Al-Baqarah 2:532), meaning its perfection and finalization. The meaning is: Do not resolve on marriage during the waiting period. And His statement: "And untie the knot from my tongue, that they may understand my speech" (Surah Taha 20:72-82). (Ibn Manzur 3/296, Al-Fiyyumi p. 250, The Concise Dictionary p. 624, Al-Qurtubi 2/0001, The Kuwaiti Encyclopedia 30/198).

- **From the meaning of "commitment":**

The word "contract" in the sense of commitment applies to anything that implies an individual's obligation to something, whether it be an action or abstention, from one side or both sides. (Ibn Manzur 3/296, 297, Aissawi p. 481, Khalil p. 52).

- **From the meaning of "joining two things" or "joining the ends of a thing and binding them":**

It is said: "I tied the rope" when I joined one end to the other and bound them together. "So-and-so tied the two ends of the rope or similar" means he connected one end to the other with a knot that holds them together, thus firmly securing their connection. (Ibn Manzur 3/296, 297, Al-Fiyyumi p. 250, The Concise Dictionary p. 624, The Kuwaiti Encyclopedia 30/198).

Thus, it is evident that the term "contract" in the language of the Arabs encompasses everything that involves binding and tightening, perfection and finalization, strengthening and confirmation, covenant, and joining the ends of a thing and binding them, whether the binding is physical or metaphorical. It also includes everything that denotes commitment, whether from one side, as in endowments and gifts, or from two sides, as in sales and leases, due to the presence of the meanings of binding, perfection, and documentation. (Al-Fiyyumi p. 250, Al-Fayrouzabadi 1/463, 792, Aissawi p. 481, Al-Sariti p. 97, Matloub p. 97, Musa p. 244, Qandil, Jum'a p. 7, 8).

2. The essence of the "Contract" in the Terminology of Jurists:

In the terminology of jurists, the concept of "contract" has two meanings:

The First Meaning: The General Sense:

This meaning is closer to the linguistic definition, where a contract refers to any legal act that results in a legal ruling, whether it originates from one party or multiple parties.

This general definition of a contract has been adopted by some Maliki scholars (Al-Qarafi 4/1, Hussein 4/13, 23), some Shafi'i scholars (Al-Sharqawi 2/3, 4, Al-Shirazi 2/333, 433), some Hanbali scholars (Ibn Qudamah 5/642, Al-Maqdisi 5/542, 642, Ibn Taymiyyah p. 82, 67, and Al-Jassas from the Hanafi school (Al-Jassas, 3/285). These scholars define a contract as any legal act that results in a legal ruling, regardless of whether it comes from one party or multiple parties.

Under this broad definition, a contract encompasses all transactions carried out through a single will, such as gifts (hiba), charity (sadaqa), endowments (waqf), manumission ('itq), and discharge (ibra), as well as those requiring two wills, such as sales (bai'), leases (ijara), agency (wakala), pledges (rahn), and partnerships (sharika). It applies whether the resulting right is for God or for individuals, whether it is a commutative contract (mu'awadha) or a gratuitous contract (tabarru'), and whether it is issued by a ruler or a subject ('Isawi p. 418, Shahin p. 3 ff.).

This general definition of a contract is more evident in the works of Maliki, Shafi'i, and Hanbali jurists than in those of the Hanafis (Al-Qarafi 4/311, Al-Sharqawi 2/3, Ibn Qudamah 5/642, Al-Khafif p. 86, Al-Ba'li p. 34, Qanidil, Juma p. 10, Al-Sharnabasi p. 243, Al-Saddah, Theory of Contract 1/401).

The Second Meaning: The Specific Sense:

The specific sense of a contract is defined as the connection between an offer made by one party and its acceptance by another, in a manner that produces a legal effect on the subject matter (the object of the contract).

This meaning has been adopted by the majority of jurists, including the Hanafis (Al-Babarti 6/842, Ibn 'Abidin 2/355, Al-Shalabi 5/19, Al-Marghinani 3/42, Al-Mosuli 2/2, Al-Jurjani p. 108), Malikis (Al-Dardir 2/2, Al-Sawi 2/2, Al-Dasuqi 4/8), Shafi'is (Al-Sharqawi 2/3, 4, Al-Ansari 1/157), Hanbalis (Ibn Qudamah 5/245, 246, Al-Maqdisi 5/542-742, Al-Mardawi 4/842, Al-Buhuti p. 184), Zahiris (Ibn Hazm 8/633), Zaydis (Al-Murtada 4/792, Abu Al-Tayyib 2/131), Imamis (Al-Husayni p. 10), and Ibadi scholars (Aftiash 8/5). According to this majority view, a contract is understood as "the connection between an offer and acceptance in a lawful manner that produces a legal effect on the subject matter," because a contract only arises when there is a convergence and agreement of two or more wills. This implies that a valid contract under this definition requires the following elements:

- **Two Contracting Parties**: One who makes the offer (the offeror), indicating their intention to create the contract, and the other who accepts it (the offeree), expressing their consent and satisfaction with the offer (Ibn 'Abidin 2/553, 4/8, Al-Shirazi 2/3, Ibn Qudamah 5/245, Al-Sharnabasi p. 343, Al-Sariti p. 181).
- **Manifestation of Consent Between the Two Parties**: This can be achieved through verbal exchange between the contracting parties or through other means that express consent, such as gestures, writing, or actions (Al-Sharnabasi p. 343, Al-Sariti p. 181).
- **Connection Between Offer and Acceptance**: The offer and acceptance must be connected in the manner prescribed by Islamic law, meaning that each must correspond to and align with the other (Al-Sharnabasi p. 343, Al-Sariti p. 181).
- **Lawful Connection**: The connection between the parties must be lawful. If it is not, the agreement does not qualify as a contract. For example, if someone says to another, "I hire you to kill so-and-so in exchange for such-and-such," and the other agrees, this agreement—though involving an offer and acceptance—is invalid because it pertains to an unlawful subject matter (Al-Sharnabasi p. 343, Al-Sariti p. 181, Al-Shafi'i p. 251, Al-Jundi p. 131).
- **Legal Effect on the Subject Matter**: The connection must produce a tangible effect on the subject matter (the object of the contract). A connection without a legal effect is irrelevant. There must be a benefit resulting from this connection; otherwise, it cannot be called a contract (Al-Sharnabasi p. 342, Al-Sariti p. 18, 28, Al-Jundi p. 131, Al-Shafi'i p. 152, 162, Al-Mahdi p. 158, 162).

This effect involves transforming the subject matter from its original state to another. In a sale, for instance, the sold item moves from the seller's ownership to the buyer's, while the consideration moves from the buyer's ownership to the seller's. In a lease, the lessor gains rent in exchange for the usufruct granted to the lessee (Al-Shafi'i p. 521).

Based on this understanding, acts performed through unilateral wills, such as endowment (waqf) and divorce (talaq), are not considered contracts under this definition but rather independent sources of obligation. The essence of a

contract, according to these scholars, lies in the presence of two converging wills creating a lawful obligation, as seen in sales and leases (Al-Khafif p. 76, Al-Jundi p. 411). This is what Al-Dasuqi expressed in his commentary: "Contracts... are those that depend on offer and acceptance, whereas others, like divorce and similar acts, are unilateral acts that do not require offer and acceptance" (Al-Dasuqi 4/8).

This specific definition of a contract was adopted by the Majalla al-Ahkam al-'Adliyya in its definition of a contract. Article 3 defines a contract as "the connection between offer and acceptance, such as in sales, leases, loans, etc." Similarly, Article 301 states: "A contract is the commitment and undertaking of the contracting parties, which consists of the connection between offer and acceptance."

Furthermore, Article 104 defines "formation" (inikad) as "the mutual connection of offer and acceptance in a lawful manner that produces an effect on the subject matter" (Haydar 1/81, 91, 29, Rustom 1/46, 56).

The same specific definition of a contract was also adopted by Murshid al-Hayran, which defines a contract in Article 266 as "the connection between an offer made by one party and its acceptance by the other in a manner that produces an effect on the subject matter" (Qadri Pasha p. 72).

The Preferred Meaning:

Following this exposition of the meaning of "contract" ('aqd) according to jurists, it can be stated that the interpretation which provides intellectual satisfaction and clarity is the specific meaning of the contract. This is because a fundamental principle in formulating definitions is that a definition should encompass all instances of what is being defined while excluding everything else, a criterion that is fulfilled by the specific meaning rather than the general one. Moreover, the specific meaning has become widely accepted and established within the terminology used by jurists, making it the primary understanding that comes to mind when the term "contract" is mentioned without qualification. The general meaning, on the other hand, only applies when explicitly indicated.

In light of this, one contemporary jurist noted: "Islamic jurisprudence texts sometimes use the term 'contract' in its general sense, which is synonymous with legal transactions ('tasarruf'), and at other times in its specific sense, which refers to an act that requires the combination of two verbal expressions and produces a legally recognized effect as determined by Islamic law. This latter meaning is the prevalent and well-known usage, almost exclusively dominating scholarly terminology. Therefore, when the term 'contract' is used without qualification, it immediately evokes this specific meaning. In contrast, the broader sense does not come to mind unless accompanied by an indication pointing to such generality. Rarely do we find a jurist using the term 'contract' to refer to divorce, manumission, or oath-taking without some clarifying context." Thus, the prevailing scholarly convention is to use the term "contract" in its specific sense rather than its general one, which would equate to any form of legal transaction (Abu Zahra, p. 571).

Second Section

The Essence of the Contract in Egyptian Civil Law and the Saudi Civil Transactions Law

Despite the paramount importance of the contract in practical life—such that it is rare to find any voluntary act that does not take the contract as its framework, encompassing the rules that govern the relationship arising between its parties—the Egyptian Civil Code and the Saudi Civil Transactions Law does not provide a definition for the contract. While this approach aligns with some legal Laws in various countries, it diverges from other Arab and foreign laws that explicitly define the concept of a contract (Abd El-Baqi, p. 33; Othman, p. 81; Al-Ghayyati, Shahin, p. 52-62).

Nevertheless, both Egyptian and Saudi jurisprudence agree that the Egyptian legislator and the Saudi regulator have acted wisely in omitting a statutory definition of the contract. This approach is considered commendable because it is widely accepted in the realm of legal thought that legislative definitions are inherently flawed. Defining legal concepts is primarily the role of legal scholarship, which is tasked with grounding the work of the legislator or regulator, formulating definitions, and developing legal theories (Al-Ghayyati, Shahin, p. 62; Othman, p. 81 Hegazi, p. 253; Al-Zuqrad, Abd El-Qader, p. 42, paraphrased).

Given this approach by the Egyptian legislator and the Saudi regulator, who limited themselves to addressing the rules governing contracts, legal scholars and commentators have taken on the task of defining the contract. They define it as follows: (Al-Ghayyati, Shahin, p. 62).

"A mutual agreement of two or more wills to produce a legal effect, whether that effect involves the creation, transfer, modification, or termination of an obligation" (Sanhouri, The Mediator, Vol. 1, p. 731; Sanhouri, Theory of the Contract, p. 18; Markos, Vol. 1, p. 75; Al-Sadah, Principles, p. 723; Ghanem, Vol. 1, p. 84; Mokhtar Al-Qadi, p. 11; Zaki, Vol. 1, p. 53; Jameel, p. 25; Yahya, p. 91; Loubib Shennab, p. 22; Farag, p. 52; Al-Bayhaqi, p. 2; Al-Ghayyati, Shahin, p. 62; Saad, p. 212; Samhan, p. 21; Talbi, p. 23; Bin Shouaikh, p. 29; Makhloof, p. 13, 14; Al-Zuqrad, Abd El-Qader, p. 26; Al-Murjah, p. 59).

This is the prevailing definition in Egyptian legal doctrine regarding the essence of the contract, though the wording or phrasing may vary among scholars (Abd El-Baqi, p. 33).

Some scholars argue that there is no need for the definition to specify the type of legal effect that the wills have agreed upon, as it is immaterial whether the effect involves creating, transferring, modifying, or terminating an obligation, or even relating to non-pecuniary rights. Therefore, they define the contract as "the mutual agreement of two wills to

produce a specific legal effect" (El-Badrawi, p. 40). This definition aligns with the previous one in substance but is more concise.

The term "mutual agreement of wills" in the definition refers to the simultaneous existence of two wills that are identical and interconnected before the lapse of the latter (Markos, Vol. 1, p. 75; Al-Otoum, Al-Omar, p. 13, paraphrased). Alternatively, the mutual agreement of wills can be understood as the mutual consent between contracting parties, such as between a seller and buyer or a lessor and lessee (Mokhtar Al-Qadi, p. 11).

This mutual agreement, which constitutes the contract, does not necessarily have to encompass all the terms of the contract. However, there is a minimum threshold: the wills must agree on the essence of the contract. For example, if one party intends to sell while the other intends to lease, neither transaction will be valid. Similarly, the wills must agree on the subject matter of the contract. If one party intends to sell one of their houses, but the other party intends to buy a different house, no sale will be concluded. These two elements—essence and subject matter—are essential, and without agreement on them, the contract cannot be formed. Other terms of the contract may or may not be considered essential depending on the intent of the parties, which is ultimately a factual issue to be determined by the trial judge based on the circumstances of the contract (Al-Sadah, Theory of the Contract, Vol. 1, p. 401; Al-Otoum, Al-Omar, p. 13, 14; Al-Zuqrad, Abd El-Qader, p. 24, paraphrased).

The legal effect of a contract is not singular but may be multiple. It may involve the creation of an obligation, as in a sales contract, where the seller is obligated to transfer ownership of the sold item to the buyer, and the buyer is obligated to pay the price.

It may also involve the transfer of an obligation, as in assignment, where a right or debt is transferred from one creditor to another or from one debtor to another.

Additionally, it may involve the modification of an obligation, as in agreeing to attach a condition to an obligation, or the termination of an obligation, as in payment or release, which extinguishes the obligation (Yahya, p. 91; Al-Qadi, p. 11; Al-Sadah, Al-Sahabi, p. 203; Al-Ghayyati, p. 62; Talbi, p. 23; Bin Shouaikh, p. 30; Makhloof, p. 14; Al-Murjah, p. 59, 60; Al-Zuqrad, Abd El-Qader, p. 24, paraphrased).

Based on the aforementioned definition of the contract in legal doctrine, the following elements must be present:

- **Mutual Agreement of Wills**: There must be at least two wills that are interconnected, forming a common intention or consent, which is the cornerstone of the contract. Thus, unilateral legal acts such as wills or promises of reward are not considered contracts in legal doctrine.
- **Intent to Produce a Legal Effect**: If the intent is not to produce a legal effect, it is not a contract. For example, inviting a friend to lunch and the friend accepting the invitation is not a contract but merely an agreement, as the parties did not intend to create a legal obligation. Therefore, if the inviter changes their mind or the invitee fails to attend, there is no liability.
- **Private Law Context**: The agreement must fall within the scope of private law. Treaties between states, governed by public international law, are not contracts subject to the rules of the theory of obligations. Similarly, agreements involving public functions, such as those between a government employee and the state, are governed by administrative law rather than the theory of obligations.
- **Financial Transactions**: The agreement must pertain to financial transactions. Marriage, although involving the mutual agreement of wills within private law, is not subject to the general rules applicable to contracts because it falls outside the realm of financial transactions (Sanhouri, The Mediator, Vol. 1, p. 931-041; Sanhouri, Theory of the Contract, p. 38-48; Yahya, p. 92-02; Markos, Vol. 1, p. 75-85; Al-Sadah, Theory of the Contract, Vol. 1, p. 301 et seq.; Abd El-Baqi, p. 53, 45; Jameel, p. 25 et seq.; Ghanem, Vol. 1, p. 94; Al-Attar, p. 72; Zaki, p. 63; Farag, p. 62; Al-Baih, p. 32-42; Al-Ghayyati, Shahin, p. 62-72; Talbi, p. 23-25; Bin Shouaikh, p. 30; Makhloof, p. 13, 14; Al-Otoum, Al-Omar, p. 13, 14; Al-Zuqrad, Abd El-Qader, p. 24-28; Al-Murjah, p. 59, 60, paraphrased).

It is worth noting that while the Egyptian Civil Code and the Saudi Civil Transactions Law do not define the contract, they do specify how it is formed. Both Laws stipulate that a contract is formed through the mutual agreement of two wills, i.e., the correlation of offer and acceptance, to produce a legal effect in accordance with the legal provisions governing the formation of contracts.

Article 89 of the Egyptian Civil Code states: "A contract is formed once two parties exchange expressions of identical wills, provided that any additional formalities required by law for the formation of the contract are observed."

Similarly, Article 13 of the Saudi Civil Transactions Law states: "A contract arises from the correlation of offer and acceptance to produce a legal effect, provided that any formalities required by the regulatory texts for the formation of the contract are observed."

Third Section

A Comparative Analysis of the Essence of the Contract in Islamic Jurisprudence, Egyptian Civil Law, and the Saudi Civil Transactions Law

After examining the essence of the contract in Islamic jurisprudence, civil law, and the Saudi Civil Transactions Law, it becomes evident that their definitions of a contract are almost identical or consistent, particularly with regard to the

second, specific meaning of "contract" in Islamic jurisprudence. This meaning does not consider unilateral acts as constituting a contract, a view adopted by both Egyptian civil law and Saudi Civil Transactions Law in their essence and content. These Laws treat unilateral will as a source of obligation rather than a contract, due to the differences in characteristics, essence, and rules between unilateral acts and contracts (Shahin, p. 11, paraphrased). Consequently, each Law—whether Islamic jurisprudence, civil law, or the Saudi Civil Transactions Law—limits the concept of a contract to agreements formed through mutual consent, whereas what is established through unilateral will is not considered a contract but rather a unilateral act that results in a one-sided obligation.

However, despite this agreement, we find that the definition provided by Islamic jurisprudence may be more logically coherent and precise compared to the definitions found in Egyptian civil law and the Saudi Civil Transactions Law (Al-Sharana'bi, p. 443) for several reasons:

1. Explicit Identification of Contractual Components in Islamic Jurisprudence:

The definition of a contract in Islamic jurisprudence is distinguished by its explicit identification of the components that constitute a contract: offer and acceptance. This is because mere concurrence of wills cannot be identified unless manifested through visible means such as words, actions, or gestures since the will itself is an internal matter that can only be inferred from external expressions. Therefore, the definition of Islamic jurisprudence is comprehensive and restrictive.

In contrast, the definitions provided by civil law and the Saudi Civil Transactions Law overlook this clarification and simply refer to "the concurrence of two wills." However, there may be cases where two wills agree on contracting without one moving toward the other, thus failing to form a valid contract, as in the case of a promise to sell or similar situations. Hence, their definition is non-restrictive (Al-Sharana'bi, p. 435).

2. Emphasis on the Material Aspect of Consent in Islamic Jurisprudence:

The definition in Islamic jurisprudence highlights the material aspect of mutual consent, which consists of offer and acceptance (Al-Attaar, p. 72). This approach takes into account the apparent will of the contracting parties (Sanhouri, Sources of Rights, 1/60), i.e., the expression of intent.

Thus, Islamic jurists define a contract as: "the connection of offer and acceptance..." where offer and acceptance are merely ways to express this intent.

However, it should be noted that this principle is somewhat mitigated by the rule: "In contracts, consideration is given to intentions and meanings, not to words and forms," as stated in Article (3) of the Majalla al-Ahkam al-Adliyya (Ali Haydar, 1/82).

On the other hand, the definitions in civil law and the Saudi Civil Transactions Law emphasize the personal aspect, focusing on the inner will, i.e., the true intent of the contracting parties.

Therefore, they define a contract as: "an agreement or concurrence..." (Jab Allah, pp. 13, 33).

3. Objective Orientation in Islamic Jurisprudence:

The definition in Islamic jurisprudence reflects an objective orientation, as it establishes the effect of a contract (i.e., its impact on the subject matter) immediately upon its valid formation, thereby changing the state of the object from one condition to another. This objective orientation is what leads Islamic jurisprudence to prioritize apparent will over inner will. In contrast, the subjective orientation focuses solely on creating personal obligations on the part of the contracting parties (Sanhouri, Sources of Rights, 1/60; Shahin, p. 11)

CONCLUSION

Praise be to God, with His grace and guidance, I have completed this research. In this conclusion, I present the findings that I have reached through my study, as follows:

- The term "contract" in the terminology of Islamic jurists has two meanings: a general meaning and a specific one. The general meaning is that a contract refers to any legal act that results in a legal ruling, whether it originates from one party or multiple parties. The specific meaning, however, is that a contract refers to the binding connection between an offer made by one party and its acceptance by another, in a manner that produces a legal effect on the subject matter (i.e., the object of the contract). Alternatively, it can be defined as the mutual relationship between the offer and acceptance, established in a lawful way, which manifests its effect on the subject matter.

The specific meaning of the contract is more commonly used by jurists and is also favored by most contemporary scholars because it is more precise than the general definition, which considers legal acts broader than contracts. Thus, the specific definition encompasses accurate criteria and standards that provide the correct legal characterization for every act without ambiguity or confusion. Furthermore, the specific definition of the contract is widely accepted and well-known among jurists, almost exclusively dominating the terminology. It is the default understanding unless otherwise specified, as evidenced in the works of jurists when discussing contracts.

In contrast, under Egyptian Civil Law and the Saudi Civil Transactions Law, legal scholars and commentators define the contract as "the convergence of two or more wills to produce a legal effect, whether that effect involves creating, transferring, modifying, or terminating an obligation."

This is the prevailing definition in both Egyptian and Saudi legal doctrines, although the phrasing may vary slightly from one scholar to another. Some civil law scholars argue that there is no need to specify the type of legal effect agreed upon by the parties in the definition of a contract. They contend that it makes no difference whether the effect involves creating, transferring, modifying, or terminating an obligation, or whether it pertains to non-financial rights. Therefore, they define the contract simply as "the convergence of two wills to produce a specific legal effect." This definition aligns in substance with the previous one but is more concise.

- The definition of a contract in Islamic jurisprudence, Egyptian Civil Law, and Saudi Civil Transactions Law is largely unified or consistent, particularly in relation to the second, specific meaning of the contract in Islamic jurisprudence. This specific meaning does not consider unilateral acts as contracts, which is consistent with the approach taken by Egyptian Civil Law and the Saudi Civil Transactions Law. Both legal Laws treat unilateral wills as a source of obligation rather than as contracts, due to differences in their characteristics, essence, and legal implications compared to contracts. Consequently, each Law—whether Islamic jurisprudence, Egyptian Civil Law, or the Saudi Civil Transactions Law—reserves the term "contract" for acts involving mutual consent, while unilateral acts are not considered contracts but rather unilateral obligations that result in one-sided commitments.

Despite this agreement, the definition provided by Islamic jurisprudence may be more logically coherent and conceptually precise than that of Egyptian Civil Law and Saudi Civil Transactions Law, as previously explained.

Finally, all praise is due to Allah, the Lord of the Worlds, and may peace and blessings be upon our Prophet Muhammad, his family, and all his companions.

REFERENCES AND BIBLIOGRAPHY

First: The Holy Quran:

Second: Books on Quranic Interpretation and Sciences:

- Ahkam Al-Quran, by Abu Bakr Ahmad bin Ali Al-Razi Al-Jassas, published by Dar Ihya Al-Turath Al-Arabi – Al-Tarikh Al-Arabi Institution, Beirut, Lebanon, Edition: 1412 AH - 1991 AD.
- Anwar Al-Tanzeel wa Asrar Al-Ta'weel (Tafsir Al-Baydawi), by Nasir Al-Din Abu Saeed Abdullah bin Umar bin Muhammad Al-Shirazi Al-Baydawi, published by Dar Sader, Beirut, undated.
- Tafsir Al-Jalalayn, by the esteemed scholars Jalal Al-Din Muhammad bin Ahmad Al-Mahalli and Jalal Al-Din Abdul Rahman bin Abu Bakr Al-Suyuti, published by Maktabat Al-Nahda, Baghdad, undated.
- Al-Jami' Li Ahkam Al-Quran (Tafsir Al-Qurtubi), by Abu Abdullah Muhammad bin Ahmad Al-Ansari Al-Qurtubi, published by Dar Al-Rayan Lil-Turath, undated.
- Tafsir Al-Quran Al-Azim (Tafsir Ibn Kathir), by Imad Al-Din Abu Al-Fida Ismail bin Kathir, published by Maktabat Al-Mujallad Al-Arabi, Cairo, Publisher: Al-Maktaba Al-Tawfiqiya, undated.
- Fath Al-Qadeer: Al-Jame' Bayn Fannay Al-Riwaya wa Al-Diraya Min Ilm Al-Tafsir, by Muhammad bin Ali bin Muhammad Al-Shawkani, published by Dar Al-Wafa for Printing, Publishing, and Distribution, Mansoura, First Edition, 1415 AH - 1995 AD.

Third: Books on Lexicography and Definitions:

- Al-Qamus Al-Muhit, by Majd Al-Din Muhammad bin Yaqub Al-Fayrouzabadi, published by Dar Ihya Al-Turath Al-Arabi, Beirut - Lebanon, First Edition, 1997 AD.
- Kitab Al-Ta'rifat, by Al-Sharif Ali bin Muhammad bin Ali Al-Sayyid Al-Zayn Abu Al-Hasan Al-Husseini Al-Jurjani Al-Hanafi, published by Dar Al-Fikr for Printing, Publishing, and Distribution, Beirut – Lebanon, First Edition, 1989 AD.
- Lisan Al-Arab, by Abu Al-Fadl Jamal Al-Din Muhammad bin Makram bin Manzur Al-Ifriqi Al-Masri, published by Dar Sader – Beirut, Publisher: Dar Al-Fikr for Printing, Publishing, and Distribution, Third Edition, 1994 AD.
- Mukhtar Al-Sihah, by Muhammad bin Abi Bakr bin Abdul Qadir Al-Razi, published by Dar Al-Hadith, Cairo, First Edition, 1421 AH - 2000 AD.
- Al-Misbah Al-Muneer, by Ahmad bin Muhammad bin Ali Al-Fayoumi Al-Muqri, published by Dar Al-Hadith, Cairo, First Edition, 1421 AH - 2000 AD.
- Al-Mu'jam Al-Wajiz, compiled by the Arabic Language Academy in Cairo, special edition for the Ministry of Education, 1411 AH - 1991 AD.

Fourth: Books on Islamic Jurisprudence:

- Al-Ikhtiyar li Ta'lil Al-Mukhtar by Abdullah bin Mahmoud bin Mowdood bin Mahmoud Abi Al-Fadl Majd Al-Din Al-Mosuli, published by Al-Azhar Institutes, 1415 AH - 1994 CE.
- Al-Insaf fi Ma'rifat Al-Rajih min Al-Khilaf 'ala Madhhab Al-Imam Ahmad bin Hanbal by Ala' Al-Din Abu Al-Hasan Al-Mardawi, published by Dar Al-Kutub Al-Ilmiyya, Beirut - Lebanon, 1st edition, 1979 CE.
- Al-Bahr Al-Zakhar Al-Jami' li Madhahib 'Ulama' Al-Amssar by Ahmed bin Yahya bin Al-Murtada, published by Dar Al-Kitab Al-Islami in Cairo, no date.

- Tahdhib Al-Furuq wa Al-Qawa'id Al-Saniyya fi Al-Asrar Al-Fiqhiyya by Muhammad Ali bin the late Sheikh Hussein, Mufti of the Maliki school, published by Dar Al-Ma'rifa, Beirut - Lebanon, no date.
- Hashiyat Al-Dasouqi by Muhammad bin Ahmed bin 'Arifah Al-Dasouqi Al-Maliki, on Al-Sharh Al-Kabir by Abu Al-Barakat Sayyid Ahmed bin Muhammad Al-'Adawi known as Al-Dardir, published by Dar Al-Kutub Al-Ilmiyya, Beirut - Lebanon, 1st edition, 1417 AH - 1996 CE.
- Hashiyat Al-Shalabi by Shihab Al-Din Ahmed Al-Shalabi, published by the Great Amiriyah Press in Bulaq – Egypt, by Dar Al-Kitab Al-Islami, 1315 AH.
- Hashiyat Al-Sheikh Al-Sharqawi 'ala Sharh Al-Tahrir by Sheikh Al-Islam Zakariya Al-Ansari, published by Dar Ihya' Al-Kutub Al-Arabiya for its owners Isa Al-Babi Al-Halabi and partners in Egypt, no date.
- Durar Al-Hukkam Sharh Majallah Al-Ahkam Al-'Adliyya by Ali Haydar, published by Dar Al-Kutub Al-Ilmiyya, Beirut, no date.
- Radd Al-Muhtar 'ala Al-Durr Al-Mukhtar, Hashiyat Ibn 'Abidin, on the commentary of Sheikh Ala' Al-Din Muhammad bin 'Ali Al-Haskafi on Tanwir Al-Abssar by Shams Al-Din Al-Tamratachi, published by Dar Al-Ma'rifa, Beirut - Lebanon, 2nd edition, 1428 AH - 2007 CE.
- Al-Rawd Al-Murbi' bi Sharh Zad Al-Mustaqni' fi Fiqh Imam Al-Sunnah Ahmad bin Hanbal by Mansour bin Yunus Al-Bahuti, published by Dar Al-Kutub Al-Ilmiyya, Beirut - Lebanon, 1st edition, 1418 AH - 1997 CE.
- Al-Rawda Al-Nadiya Sharh Al-Durar Al-Bahiya by Abu Al-Tayyib bin Hassan bin 'Ali Al-Husseini Al-Qanoji Al-Bukhari, published by Dar Al-Turath, no date.
- Dawabit Al-'Uqud: A Comparative Study in Islamic Jurisprudence and Comparison with Secular Law and Its Jurisprudence, by Dr. Abdul Hamid Mahmoud Al-Ba'li, published by Maktabat Wahba, no date.
- Al-Sharh Al-Saghir by Ahmed bin Muhammad bin Ahmed Al-Dardir, published by Mustafa Al-Babi Al-Halabi and Sons Publishing and Printing House, Egypt, last edition, 1327 AH - 1925 CE.
- Sharh Al-'Inayah 'ala Al-Hidayah by Akmal Al-Din Muhammad bin Mahmoud Al-Babarti, published by Mustafa Al-Babi Al-Halabi and Sons Publishing and Printing House, Egypt, no date.
- Al-Sharh Al-Kabir by Shams Al-Din Abdul Rahman bin Qudama Al-Maqdisi, published by Dar Al-Hadith – Cairo, 1425 AH - 2004 CE.
- Sharh Kitab Al-Nail wa Shifa' Al-'Aleel by Muhammad bin Yusuf Atfiyash, published by Maktabat Al-Irshad – Jeddah, Saudi Arabia, 3rd edition, 1405 AH - 1985 CE.
- Sharh Al-Majalla by Sulaim Baz Rustum Al-Lebanani, published by Dar Al-Kutub Al-Ilmiyya, Beirut - Lebanon, no date.
- Al-Sharikat fi Al-Fiqh Al-Islami: A Comparative Study, by Dr. Rashad Hassan Khalil, 2nd edition, 1994 CE.
- Fath Al-Wahhab bi Sharh Minhaj Al-Talib by Abu Yahya Zakariya Al-Ansari, published by Dar Ihya' Al-Kutub Al-Arabiya, Isa Al-Babi Al-Halabi and partners, no date.
- Al-Furuq by Imam Ahmed bin Idris Al-Qarafi Al-Maliki, published by Dar Al-Ma'rifa, Beirut - Lebanon, no date.
- Fiqh Al-Imam Ja'far Al-Sadiq: Presentation and Evidence, by Muhammad Jawad Maghniyyah, published by Dar Al-Tayar Al-Jadid – Dar Al-Jawad, Beirut, no date.
- Fiqh Al-Kitab wa Al-Sunna fi 'Uqud Al-Mu'amalat, by Dr. Muhammad Abdul Maksoud Jaballah, 1st edition, 1997 CE.
- Mukhtasar Ahkam Al-Mu'amalat Al-Shar'iyya by Ali Al-Khafif, published by Al-Sunna Al-Muhammadiyya Printing Press in Cairo, 3rd edition, 1950 CE.
- Al-Muhalla by Abu Muhammad bin Sa'id bin Hazm Al-Zahiri Al-Andalusi, published by Maktabat Dar Al-Turath – Cairo, no date.
- Al-Madkhal li Dirasat Ba'd Al-Nazariyyat Al-'Ammah fi Al-Fiqh Al-Islami, by Dr. Abdul Wadud Al-Sariti, published by Dar Al-Matbu'at Al-Jami'iyya – Alexandria, 1997 CE.
- Al-Madkhal li Dirasat Al-Fiqh Al-Islami, by Dr. Ramadan Ali Al-Sayyid Al-Sharnabasi, published by Maktabat Al-Jalaa Al-Jadida in Mansoura, 3rd edition, no date.
- Al-Madkhal li Dirasat Al-Fiqh Al-Islami, by Dr. Musa Abdul Aziz Musa, published by Maktabat Al-Qalam in Mansoura, 2000 - 2001 CE.
- Al-Madkhal li Al-Fiqh Al-Islami – Its History, Sources, Theory of Ownership and Contract, and Its General Principles, by Sheikh Isawi Ahmed Isawi, published by Dar Al-Ta'lif Press, Maktabat Sayyid Abdullah Wahba, 1st edition, 1969 CE.
- Murshid Al-Hairan ila Ma'rifat Ahwal Al-Insan fi Al-Mu'amalat Al-Shar'iyya 'ala Madhhab Al-Imam Al-A'zam Abu Hanifa Al-Nu'man by Muhammad Qadri Pasha, published by Dar Al-Afaq Al-Arabiya, 2nd edition, 1424 AH - 2003 CE.
- Masadir Al-Haqq fi Al-Fiqh Al-Islami: A Comparative Study with Western Jurisprudence, by Dr. Abdul Razzaq Al-Sanhouri, published by Al-Tarikh Al-Arabi Institution – Dar Ihya' Al-Turath Al-Arabi, Beirut - Lebanon, 1st edition, no date.

- Al-Mughni by Muwaffaq Al-Din Abu Muhammad bin Qudama Al-Maqdisi Al-Dimashqi Al-Hanbali, published by Dar Al-Hadith – Cairo, 1425 AH - 2004 CE.
- Al-Milkiyya wa Al-'Aqd fi Al-Fiqh Al-Islami, by Dr. Ahmed Mahmoud Al-Shafi'i, published in 1431 AH - 1992 CE.
- Al-Milkiyya wa Nazariyyat Al-'Aqd fi Al-Shari'a Al-Islamiyya, by Muhammad Abu Zahra, published by Dar Al-Fikr Al-Arabi in Cairo, no date.
- Al-Mawsu'a Al-Fiqhiyya, published by the Ministry of Awqaf and Islamic Affairs in Kuwait, 1st edition, 1994 CE.
- Al-Muhazzab fi Fiqh Al-Imam Al-Shafi'i by Abu Ishaq Ibrahim Al-Shirazi Al-Shafi'i, published by Dar Al-Kutub Al-Ilmiyya, Beirut - Lebanon, 1st edition, 1416 AH - 1995 CE.
- Nazariyyat Al-Haqq wa Al-'Aqd, by Dr. Muhammad Al-Shihhat Al-Jundi, published in 1415 AH - 1995 CE.
- Nazariyyat Al-'Aqd , by Ibn Taymiyyah, published by Markaz Al-Kitab lil Nashr – Cairo, no date.
- Al-Nazariyyat Al-'Ammah fi Al-Fiqh Al-Islami – Wealth, Ownership, and Contract, by Dr. Abdul Majid Mahmoud Matlub, published by Dar Al-Nahda Al-Arabiya in Cairo, 1415 AH - 1995 CE.
- Al-Nazariyyat Al-'Ammah lil Mu'amalat fi Al-Fiqh Al-Islami, by Dr. Muhammad Hussein Qandil and Dr. Sayyid Ridwan Jum'ah, published by Dar Al-Azhar lil Tibaa'ah in Damanhour, 1417 AH - 1996 CE.
- Al-Hidayah Sharh Bidayat Al-Mubtadi' by Burhan Al-Din Abu Al-Hasan Ali bin Abu Bakr bin Abdul Jalil Al-Rushdani Al-Marghinani, published by Dar Al-Kutub Al-Ilmiyya, Beirut - Lebanon, 1st edition, 1401 AH - 1990 CE.
- Al-Wajiz fi Ahkam Al-Milkiyya wa Nazariyyat Al-'Aqd fi Al-Fiqh Al-Islami, by Dr. Muhammad Muhammad Al-Mahdi, published in 1989 CE.

Fifth: Legal Books:

- Foundations of Obligations in Civil Law: Sources, by Dr. Mokhtar El-Qadi, 1973 edition.
- Principles of Law, by Dr. Abdul Munim Farag El-Sada and Dr. Muhammad Refaat El-Sahaby, published by Ain Shams Library, 1994 edition.
- Termination of Contracts by Cancellation and Rescission in Civil Law: A Comparative Study with Islamic Jurisprudence, by Dr. Ismail Abdel Nabi Shahin, Ph.D. dissertation from the Faculty of Sharia and Law, Cairo, 1982.
- Lessons on the Theory of Obligations: Sources of Obligations, by Dr. Muhammad Labib Shanab, published by Dar Al-Nahda Al-Arabiya, 1967–1977 editions.
- Commentary on Civil Law: The General Theory of Obligations, Contract Theory, by Dr. Abdul Razzaq Ahmed Al-Sanhuri, published by the Arab-Islamic Scientific Academy, Beirut, Lebanon, undated.
- Commentary on the Saudi Civil Transactions Law of 1444 AH: Sources of Obligations, by Dr. Naim Ali Al-Otaim and Dr. Adnan bin Saleh Al-Omar, published by Dar Al-Ijada, Riyadh, 1st edition, 1446–2024 AH.
- Commentary on the Saudi Civil Transactions System, by Muhammad Al-Murjah, Volume 1, 2003.
- Egyptian Civil Law No. (131) of 1894, issued on July 16, 1894.
- General Principles of Law, by Dr. Abdul Munim Farag El-Sada, 1414 AH–1994 edition.
- Principles of Law: Introduction to Law and the Theory of Obligations, by Dr. Nabil Ibrahim Saad, published by Dar Al-Maaref University, Alexandria, undated.
- Lectures on the Theory of Obligations, by Dr. Ismail Abdel Ghani Semhan, 1988–1998 editions.
- The Useful Guide to Sources of Obligations, by Dr. Abdul Hamid Osman Muhammad, published by Tanta University Press, 1420 AH.
- A Concise Overview of the General Theory of Obligations: Part One, Sources of Obligations, by Dr. Abdul Wadud Yahya, published by Dar Al-Nahda Al-Arabiya, Cairo, 1994.
- Encyclopedia of Saudi Civil Law, Volume One: Sources of Obligations, by Dr. Ahmed Mukhlif, published by Dar Al-Ijada, Riyadh, 1st edition, 1446–2024 AH.
- Saudi Civil Transactions Law, Royal Decree No. (M/191), dated 11/29/1444 AH.
- The Theory of Obligation in Islamic Jurisprudence and Arab Legislation, Volume One: Sources of Obligation, Contracts and Covenants, by Dr. Abdul Nasser Tawfiq Al-Attar, undated.
- The General Theory of Obligations, Book One: Sources of Obligations, by Dr. Jameel Al-Sharqawi, published by Dar Al-Nahda Al-Arabiya, Cairo, 1995.
- The General Theory of Obligations, Book One: Sources of Obligations, by Dr. Abdul Razaq Hassan Farag, 1994 edition.
- The General Theory of Obligations: Sources of Obligations, by Dr. Ismail Ghanem, published by Sayed Abdullah Wahba Library, undated.
- The General Theory of Obligations According to Kuwaiti Law: A Comparative Study, Volume One: Sources of Obligations, Voluntary Sources (Contract and Unilateral Will), by Dr. Abdul Hai Hijazi, edited by Dr. Muhammad Al-Alfi, Kuwait University Publications, 1420 AH–1982.

- The General Theory of Obligations, Part One: Sources of Obligations, by Dr. Abdul Munim Al-Badrwi, 1991 edition.
- The General Theory of Obligations, Part One: Sources of Obligations, A Comparative Study, by Dr. Lashin Muhammad Yunus Al-Ghaiti and Dr. Ismail Abdel Nabi Shahin, 2003 edition.
- The General Theory of Obligations, Part One: Voluntary Sources of Obligations, by Dr. Mohsen Abdul Hameed Ibrahim Al-Baih, published by Al-Jalaa Library, Mansoura, 1979.
- The Theory of Contract in Islamic Jurisprudence and Positive Law, by Dr. Abdul Munim Fargh El-Sada, published by Dar Al-Nahda Al-Arabiya, 1990.
- The Theory of Contract and Unilateral Will: An In-Depth and Comparative Study with Islamic Jurisprudence, by Dr. Abdel Fattah Abdel Baki, 1984 edition.
- The Comprehensive Commentary on Civil Law, Volume Two: Obligations, Volume One: Contract Theory and Unilateral Will, by Dr. Suleiman Markos, 2nd edition, 1978.
- A Concise Commentary on the Saudi Civil Transactions System: Sources and Rules of Obligations, Part One, by Dr. Rashid Eid bin Shuwaikh, published by International Publishing House, Riyadh, 1st edition, 1446–2024 AH.
- A Concise Guide to the Saudi Civil Transactions System, Book One: Sources of Obligations, Part One: Voluntary Sources, by Dr. Ahmed Al-Saeed Al-Zaghrad and Dr. Ashraf Abdel Azim Abdel Qader, published by Al-Rushd Library, Saudi Arabia, 2nd edition, 1441 AH–2020.
- A Concise Guide to Sources of Obligations: A Study Based on the Saudi Civil Transactions System, Royal Decree No. (M/191), dated 11/29/1444 AH, by Dr. Othman bin Taher Talibi, published by Dar Al-Ijada, Riyadh, 1st edition, 1446–2024 AH.
- A Concise Guide to the Theory of Obligations in Egyptian Civil Law, Part One: Sources of Obligations, by Dr. Mahmoud Jamal El-Din Zaki, published by Cairo University Press, 2nd edition, 1967.
- The Mediator's Commentary on Civil Law, by Dr. Abdul Razzaq Ahmed Al-Sanhuri, published by Egyptian Universities Publishing House, 1992.

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