

Chapter – 2

ISLAMIC LAW OF CONTRACT

True / False Questions

1. Business transactions are extremely regulated aspect of Shari‘ah as they are not subject to change over time and place and their underlying philosophy is retained.

Answer: False

Diff: 2

Page Ref: 43

LO: 1

2. Islam establishes the need to lawfully acquire property and validates all measures and policies towards the protection of such right.

Answer: True

Diff: 1

Page Ref: 44

LO: 1

3. The Prophet (PBUH) entered into series of contracts with merchants and customers while managing the business of his first wife Khadijah.

Answer: True

Diff: 2

Page Ref: 45

LO: 1

4. Islam gives an authentic right of acquisition of property to all.

Answer: True

Diff: 1

Page Ref: 44

LO: 1

5. It is an ethical behaviour for a trader to exploit unsuspecting buyers who are not aware of the prevailing market price.

Answer: False

Diff: 2

Page Ref: 46

LO: 1

6. *'Aqd'* can be defined as an agreement among contracting parties which is concluded through an offer and acceptance with the consequences of binding legal obligation for one party.
Answer: False
Diff: 2
Page Ref: 47
LO: 2
7. The Sharī'ah puts a cap on the amount of profit one must make while carrying out a particular business.
Answer: False
Diff: 2
Page Ref: 48
LO: 2
8. The underlying principle regulating profits in business transactions is that a commodity should not be sold at more than 20% of its cost.
Answer: False
Diff: 2
Page Ref: 48
LO: 2
9. The meeting of minds among the parties to the contract is important is considered one of the most important elements of a contract.
Answer: True
Diff: 2
Page Ref: 49
LO: 2
10. *Muwa'adah* is a unilateral (one-side) contract in a contractual form which may either be conditional or unconditional.
Answer: False
Diff: 2
Page Ref: 49
LO: 2
11. The concept of *wa'ad* is based on the principle of fulfilment of promise in all dispositions.
Answer: True
Diff: 1
Page Ref: 49
LO: 2
12. There is general consensus amongst the Muslim jurists on the binding nature of *wa'ad*.
Answer: False
Diff: 2
Page Ref: 50
LO: 2

13. The majority of jurists opine that fulfilling *wa'ad* is obligatory and it is usually enforceable.
Answer: False
Diff: 3
Page Ref: 50
LO: 2
14. The conditional bilateral promise occurs when a party promises to sell a commodity and the other party agrees to buy it if certain conditions occur.
Answer: True
Diff: 1
Page Ref: 51
LO: 2
15. The Qur'an and Sunnah have barely addressed legal aspects on contractual relationships and terms of contract that form the basis of the modern Islamic finance transactions.
Answer: False
Diff: 2
Page Ref: 51
LO: 2
16. The circumstances of a particular contract determine its legal consequences.
Answer: True
Diff: 1
Page Ref: 56
LO: 3
17. A unilateral contract is binding for the person who makes it, as well as on the person in whose favor it has been made.
Answer: False
Diff: 1
Page Ref: 54
LO: 3
18. Quasi contracts can sometimes be enforceable but in other circumstances are not.
Answer: True
Diff: 3
Page Ref: 56
LO: 3
19. Classification of contract according to its legal consequences puts emphasis on the extent of validity or binding nature of the contract.
Answer: True
Diff: 3
Page Ref: 56
LO: 3

20. The legal consequence of a valid contract is its voluntarily nature.
Answer: False
Diff: 3
Page Ref: 57
LO: 3
21. All valid contracts are enforceable, but all enforceable contracts are valid.
Answer: False
Diff: 3
Page Ref: 57
LO: 3
22. A contract may be considered deficient if it is lawful in its substance but unlawful in its description.
Answer: True
Diff: 2
Page Ref: 57
LO: 3
23. The underlying rule in void contracts is that they do not need to be validated by the consent of the contracting parties.
Answer: False
Diff: 3
Page Ref: 57
LO: 3
24. The terms "void contract" and "deficient contract" are identical so they can be used interchangeably.
Answer: False
Diff: 3
Page Ref: 57
LO: 3
25. A contract of sale involves the exchange of property for a well-defined consideration in accordance with the consent of at least one party to the contract.
Answer: False
Diff: 2
Page Ref: 59
LO: 3
26. The four elements of a valid contract of sale are offer and acceptance, subject matter, consideration or price, and legal capacity of the parties.
Answer: True
Diff: 2
Page Ref: 60
LO: 3

27. There is a consensus amongst Muslim jurists on the literal definition of *riba* and what constitutes *riba*.
Answer: False
Diff: 1
Page Ref: 65
LO: 4
28. The two types of *riba* transactions are *riba al-nasi'ah* and *riba al-bai'*.
Answer: False
Diff: 1
Page Ref: 67
LO: 4
29. *Riba al-nasi'ah* relates to loan trade and *riba al-fadl* relates to loan.
Answer: False
Diff: 2
Page Ref: 67
LO: 4
30. Bai' al-Gharar contracts are speculative or uncertain contracts which involve excessive risks.
Answer: True
Diff: 2
Page Ref: 68
LO: 4
31. Bai' al-Gharar contracts are lawful financial contracts thus are permitted in Islamic Law.
Answer: False
Diff: 2
Page Ref: 68
LO: 4
32. The rationale behind the prohibition of any business transaction that involves speculative elements is to avoid unnecessary risk-taking, which will eventually lead to disputes between the parties.
Answer: True
Diff: 2
Page Ref: 68
LO: 4
33. Speculative contracts which contain uncertain elements constitute the second major prohibition of contracts under the Sharī'ah.
Answer: True
Diff: 3
Page Ref: 68
LO: 4

34. *Riba* is forbidden in Islam due to its resultant harmful economic, social, psychological and spiritual effects.
Answer: True
Diff: 2
Page Ref: 68
LO: 4
35. Despite its harmful effects on personal levels, *riba* could have positive implications on the state level evidenced by the economic welfare witnessed in the majority of Western countries.
Answer: False
Diff: 3
Page Ref: 68
LO: 4
36. The majority of jurists and Muslims believe the bank interest is equivalent to *riba* and must be avoided.
Answer: True
Diff: 2
Page Ref: 68
LO: 4
37. The prohibition of *Maisir* or *Qimar* arises from the premise that the agreement between the parties involves certain immoral and undue benefits based on false hopes in the contract.
Answer: True
Diff: 2
Page Ref: 71
LO: 4
38. There is no contradiction between Islam's strong attitude towards people earning their means of livelihood in a legitimate manner through hard work and making some gains through the game of chance.
Answer: False
Diff: 3
Page Ref: 72
LO: 4

Multiple Choices Questions

1. The rule in *fiqh al-mu'amalat* is that all transactions are permissible as long as they:
- a) are not tainted with prohibited gain
 - b) do not involve usury, deception, speculation, and undue profits
 - c) do not engage prohibited items
 - d) **all of the above**

Diff: 2

Page Ref: 43

LO: 1

2. Which one of the following statements regarding earning a living is true?
- a) according to Al-Nawawi, the best ways through which one can earn a living are agriculture, trading, and manufacturing
 - b) Imam al-Mawardi prefers a particular means of livelihood whereby people earn their living with their own hands regardless of the type of work they do
 - c) **any earnings received from clean and just business dealings or work are permissible in Islam**
 - d) all of the above

Diff: 3

Page Ref: 46

LO: 1

3. Unlawful earnings involves:
- a) excessive gains in business transactions and undue profits
 - b) excessive commissions and service charges by some banks and financial institutions
 - c) exploitation of fellow beings while acquiring one's property
 - d) **all of the above**

Diff: 2

Page Ref: 46

LO: 1

4. All of the following are examples of unlawful earnings except:
- a) short-measures in trade through underweight
 - b) hoarding to inflate prices at a later period
 - c) **earning through musharakah mode of finance**
 - d) money-lending that involves usury

Diff: 2

Page Ref: 47

LO: 1

5. All forms of contracts fall under either of the following two classifications:

- a) *wa'ad* and *musharakah*
- b) *muwa'adah* and *murabahah*
- c) ***wa'ad and muwa'adah***
- d) *murabahah* and *musharakah*

Diff: 2

Page Ref: 49

LO: 2

6. which of the following statements is true?

- a) ***Wa'ad* is a unilateral undertaking and *muwa'adah* is a bilateral undertaking**
- b) *Wa'ad* is a unilateral undertaking and *muwa'adah* is a bilateral undertaking
- c) Both *wa'ad* and *muwa'adah* are bilateral undertakings
- d) None of the above

Diff: 3

Page Ref: 49

LO: 2

7. Muslim scholars have classified Shari'ah contract of sale according to:

- a) its nature,
- b) its circumstances
- c) its legal consequences
- d) **all of the above**

Diff: 1

Page Ref: 52

LO: 3

8. The classification of Shari'ah contracts into different types is based on:

- a) the primary sources of Qur'an and *Sunnah*
- b) general principles of the Shari'ah
- c) the judgments made by learned jurists through independent legal reasoning and deduction (*ijtihad*)
- d) **b and c**

Diff: 3

Page Ref: 52

LO: 3

9. Contracts can be classified in accordance to their nature and this classification includes

- a) commercial contract
- b) **unilateral contract**
- c) civil contract
- d) all of the above

Diff: 3
Page Ref: 52
LO: 3

10. Classifying contracts according to their nature includes:

- a) unilateral contracts (*'aqd infiradi*)
- b) bilateral contracts (*'aqd thuna'i*)
- c) quasi contracts (*shibh al-'aqd*)
- d) **all of the above**

Diff: 2
Page Ref: 52
LO: 3

11. If any contract was created by the mere operation of law without a formal agreement between the parties, it becomes:

- a) a unilateral contract
- b) a commercial contract
- c) **a quasi contract**
- d) none of the above

Diff: 2
Page Ref: 53
LO: 3

12. The most prevalent form of contract in modern Islamic financial transactions are:

- a) informal contract
- b) **bilateral contracts**
- c) negotiable contract
- d) contracts of partnership (*shirkah*)

Diff: 3
Page Ref: 55
LO: 3

13. A quasi contract:

- a) is a contract by its very nature
- b) **is an arrangement that is not really a contract but resembles one**
- c) is an obligation that originates by an agreement between parties
- d) None of the above

Diff: 3
Page Ref: 55
LO: 3

14. The legal consequences of a contract may result in a(n):

- a) valid contract (*Sahih*)
- b) invalid or deficient Contract (*Fasid*)

- c) void contract (*Batil*)
- d) **all of the above**

Diff: 2
Page Ref: 56
LO: 3

15. A contract that is lawful in its substance but unlawful in its description is considered:

- a) binding contract
- b) **deficient contract**
- c) void contract
- d) none of the above

Diff: 2
Page Ref: 57
LO: 3

16. The substance of a contract comprises all the following EXCEPT:

- a) the offer
- b) acceptance
- c) **the parties**
- d) the subject matter

Diff: 1
Page Ref: 57
LO: 3

17. The pillars (*arkan*) of contract in Sharī'ah include:

- a) place of the contract
- b) witnesses to the contract
- c) **subject matter of contract**
- d) date of the contract

Diff: 1
Page Ref: 58
LO: 3

18. Which one of the following is not an element of a valid sales contract?

- a) offer and acceptance
- b) subject matter
- c) **witnesses**
- d) consideration or price

Diff: 2
Page Ref: 60
LO: 3

19. Types of legal capacity in a contract (*ahliyyah*)
- a) ***ahliyyah al-wujub and ahliyyah al-'ada***
 - b) *ahliyyah al-wujub and ahliyyah al-fard*
 - c) *ahliyyah al-'ada and ahliyyah al-fard*
 - d) *none of the above*

Diff: 2
Page Ref: 62
LO: 3

20. Among the prohibited forms of contracts in Islam are:
- a) *bai' munabazah,*
 - b) *bai' muhaqalah,*
 - c) *bai' al-mulamasah*
 - d) **all of the above**

Diff: 2
Page Ref: 64
LO: 4

21. Which one of the following contracts is not among the prohibited forms of contracts in Islam?
- a) *bay' al-Gharar*
 - b) *bay' al-Riba*
 - c) ***bay' al-salam***
 - d) *bay' Muzabanah*

Diff: 2
Page Ref: 64
LO: 4

22. -----is a kind of pre-Islamic sale contract where it is agreed that when the seller throws an item to the impending buyer, it becomes binding on the latter to buy it. It also means battering items without inspection
- a) *bay' al-Hisat*
 - b) ***bay' al-Munabadhah***
 - c) *bay' Muzabanah*
 - d) *bay' al-Gharar*

Diff: 2
Page Ref: 64
LO: 4

23. ----- holds that bank interest is not *riba*. It merely represents one's dividends for depositing the money in the bank's account.
- a) **liberal view**
 - b) conventional view
 - c) Islamic view
 - d) contemporary view

Diff: 3
Page Ref: 65
LO: 4

24. Classical examples of *gharar* mentioned in the Sunnah include contracts of sale for the following:

- a) newly born calf
- b) fish in the sea**
- c) ripe fruits in the market
- d) all of the above

Diff: 3
Page Ref: 69
LO: 4

25. The power to sell is denied in the following circumstances in order to avoid elements of uncertainty (Bai' al-Gharar)

- a) things which, as the object of a legal transaction, do not exist.
- b) things which exist but which are not in possession of the seller or the availability of which may not be expected
- c) things which are exchanged on the basis of uncertain delivery and payment.
- d) all of the above**

Diff: 3
Page Ref: 69
LO: 4

26. "A contract among two or more persons involving the exchange of money or other valuables depending upon the uncertain outcome of a staged event" is:

- a) *gharar*
- b) *qimar***
- c) *musharakah*
- d) *Bai'*

Diff: 3
Page Ref: 71
LO: 4

27. Among the many destructive outcomes of Maisir or Qimar is/are the following:

- a) hostility and hatred is usually generated among the players
- b) destruction of the source of families' livelihood of
- c) turning the players away from the remembrance of Allah and to neglect fundamentals of Islamic pillars such as the five canonical prayers.
- a) all of the above**

Diff: 2
Page Ref: 72

LO: 4

Short Answers

Question – 1

Identify at least five sources for gains that are prohibited in Islamic law.

Gains derived from the following sources are prohibited in Islamic law:

1. earning a living through money lending that involves usury
2. trading in prohibited items such as intoxicating wine, pork, and dead animals
3. gambling and lotteries
4. earning short measures in trade
5. hoarding to inflate prices at a later time
6. adulterating commodities and trading in defective items
7. earning through prostitution
8. misappropriating public funds.

Page Ref: 47

LO: 1

Question 2:

Discuss the different juristic definitions and interpretations of the term ‘*aqd*’.

Although there are numerous definitions for the word ‘*aqd*, they are all based on two major interpretations of the term: one is general and the other is specific. In the general sense, ‘*aqd* can be defined as any thing or disposition that is intended to be performed by a person as of their own will or through mutual agreement. For example, unilateral contracts such as *talaq* (divorce), *wasiyyah* (bequest), or *nikah* (marriage). On the other hand, the word ‘*aqd* has been given a specific interpretation that has resulted in its restricted usage. According to this specific interpretation, a contract can be defined as an agreement among contracting parties that is concluded through an offer and acceptance with the consequences of binding legal obligation.

To summarize, a ‘*aqd* contract is an agreement between two or more parties on a particular subject matter identified by them that is to be concluded through offer and acceptance and triggers an obligation upon them. There must be consensus *ad idem* among the parties before it can be regarded as a binding contract.

Page Ref: 47

LO: 2

Question 3:

Discuss the ruling of the International Islamic Fiqh Academy regarding government intervention in price fixing.

The International Islamic *Fiqh* Academy ruled that:

Government should not be involved in fixing prices except only when obvious pitfalls are noticed within the market and the price, due to artificial factors. In this case, the

government should intervene by applying adequate means to get rid of these factors, the causes of defects, excessive price increases and fraud.

Page Ref: 48

LO: 2

Question 4:

Contrast the different views of Muslim jurists regarding the binding nature of *wa'ad*.

Muslim jurists disagree on the binding nature of *wa'ad*.

1) The majority contend that fulfilling *wa'ad* is recommended in financial transactions. The jurists who uphold this view include those of the Shafi'i school, some Maliki jurists, and Abu Hanifah. They believe a promise is like a gift that only becomes binding after it has been delivered.

2) On the other hand, the majority of the Maliki scholars believe that fulfilling *wa'ad* is obligatory and is usually enforceable. Ibn Shubrimah, a Maliki jurist, argues that *wa'ad* is binding and enforceable except in cases where non-fulfillment is otherwise justified.

Page Ref: 50

LO: 2

Question 5:

Discuss the International Islamic Fiqh Academy resolution aimed at resolving the controversy over the binding nature of *wa'ad*.

The resolution rules that "a unilateral promise (*wa'ad*) (which is issued unilaterally by either the orderer or the client) is by religion binding upon the promisor except where otherwise justified. It is also judicially binding if it is made contingent upon a reason and a promise (*wa'ad*). In such cases, the consequences of the binding character of the unilateral promise (*wa'ad*) are determined by either the fulfillment of the unilateral promise (*wa'ad*) or by reparation for losses actually incurred as a result of the non-fulfillment of the unilateral promise (*wa'ad*) without justification.

Page Ref: 50

LO: 2

Question 6:

Discuss the legality of *muwa'adah*.

The legality of *muwa'adah* has been affirmed by modern jurists as being binding on the orderer of the assets provided:

- the bank owns the goods,
- the goods are in the bank's possession,
- the goods are sold to the purchaser with an agreed specification of profit,
- the bank bears the ownership risk until delivery, and
- the bank undertakes to accept redelivery if the goods turn out to be defective.

Page Ref: 51

LO: 2

Question 7:

Identify the six types of bilateral contracts sanctioned by Muslim jurists.

The six types of bilateral contracts approved by Muslim jurists are:

- Contracts of exchange (*mu'awadah*)
- Contracts of security (*tawthiqat*)
- Contracts of partnership (*shirkah*)
- Contracts of safe custody (*wadi'ah*)
- Contracts relating to the use of an asset (*ijarah*)
- Contracts relating to the performance of a work or rendering of specific services

Page Ref: 55

LO: 3

Question 8

When is a contract considered valid (*sahih*) and what is the legal consequence of a valid contract?

- A contract is regarded 'valid' when it is concluded in its normal manner with an effective offer and acceptance, and the parties have the legal capacity to enter into the contract.
- The legal consequence of a valid contract is its binding nature since the parties have showed their desire to create a binding legal relationship.
- The consideration must be valuable to warrant the description of a valid contract.

Page Ref: 57

LO: 3

Question 9:

What are the four pillars (*arkan*) of Shar'ah Contracts?

The four pillars (*arkan*) of Shar'ah Contracts are:

1. Form (*sighah*)
2. Parties to the contract (*al-aqidan*)
3. Subject matter and price of the contract (*al-ma'qud alaih*)
4. Intention to create legal relations and meeting of minds

Page Ref: 58

LO: 3

Question 10

What is Legal Capacity in a Contract?

In the literal sense, legal capacity, ' otherwise known as *ahliyyah* simply means aptitude, fitness, suitability, competence, qualification, or absolute fitness. In the juristic sense, *ahliyyah* has been defined as 'the ability to acquire rights and exercise them and to accept duties and perform them accordingly'.

One basic idea derived from the juristic definitions given above is the cardinal qualification of a person to be able to receive rights, and at the same time bear and discharge obligations. These qualities enable him/her to conduct certain transactions competently in accordance with the state of their legal capacity, which will attract some legal consequences.

Page Ref: 61-62

LO: 4

Question 11:

Describe the five-stage revelation process of the prohibition of *riba*. Support your answer by applicable textual evidence from the holy Qur'an.

The five-stage revelation process of the prohibition of *riba* is:

1. Exhortation
2. Stark warning
3. Total abhorrence
4. Prohibition
5. Total prohibition and repercussions

(Refer to Table 2.3 p. 66 for applicable textual evidence from the Holy Qur'an)

Page Ref: 68

LO: 4

Question 12:

Explain the reasons behind the prohibition of *riba*.

The reasons behind the prohibition of *riba* are its resultant harmful effect on:

(a) The economy. The economic effects of *riba* are counterproductive as it encourages people to keep money idle and unproductive thus, financial resources are kept in the hands of a few in society.

(b) Social life. The outcome of such behavior cultivates enmity between rich and poor - undoubtedly having negative implications and causing serious damage to the social fabric of the *ummah*.

(c) the psychological and spiritual wellbeing of people individually, and the collective social fabric. The worst effect of *riba* relates to the state level, where the whole economy crumbles as a result of economic slavery by creditors.

Page Ref: 68

LO: 4