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Iraqi Contract Law and Sharia Law: A Blended Concept

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Abstract

Contract law is a crucial aspect that aids in maintaining business partnerships and protecting contracting parties. Businesses can build relationships and engage in transactions more quickly if they comprehend the elements that render a contract enforceable and the potential repercussions of breaching an agreement. However, contract law principles might vary from country to country. Moreover, despite numerous parallels, Islamic and Sharia law treat contract law differently than western law. Furthermore, Sharia law is frequently distinct and more stringent than the laws of many Muslim nations. In this study, the researcher analyzed Islamic and Sharia contract law with Iraqi Contract law to determine whether Iraqi law is a hybrid of Sharia and western law. Despite being slightly more flexible, it was discovered that Iraqi contract law is mainly founded on and adheres to sharia teachings and contractual criteria.

Keywords: Contract Law, Iraqi Law, Sharia Law.

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1. Introduction

Concerning the applicability of Islamic and Sharia law, there is a continuing discussion in the present day. In most nations, western legal systems contrast with Sharia or Islamic law. This raises questions about the applicability and accessibility of Sharia law in the modern day. However, countries such as Saudi Arabia, Iran, and Sudan, among others, have rigidly adhered to the Islamic Sharia in their legal systems and are renowned for upholding the punishments and legal concepts of the seventh century (Anwar, 2021).

The current legal system can be viewed as an adaption of Islamic and Sharia law. Legal restrictions and punishments in Iraq are not as stringent and severe as in Iran or Saudi Arabia (Nawaf Jaber Alhomoud, 2022). However, the legal system's fundamental principles are still founded on Sharia law. Regarding contract law, Islamic law contains a few basic rules that must be followed when making a contract; beyond these norms, the rule of the contract is regarded as the rule for the contracting parties. The Quran and Heidi guide the drafting of contracts following Islamic law (Denisova, 2021). The various principles of a contract's legality under Islamic or Sharia law are comparable to those in western contract law. However, the standards of ethics and natural justice lack the western commercial and business contract laws, which are the foundations of Islamic contract law. The Quran contains contractual maxims that form the basis for formulating Islamic contracts (Anwar, 2021). Over 40 verses in the Quran concern commercial contracts and, according to Islamic law, business transactions and payments for items to be delivered in the future, as well as some of the laws discussed in the Islamic Doctrines (Anwar, 2021).

In this study, the researcher will compare and contrast Sharia law and Iraqi contract law to determine whether Iraqi contract law is a hybrid of western and Islamic Sharia law. The paper begins with a literature review on Sharia law, Islamic law, and the adaptability of these concepts relative to western law. This is followed by a summary of contract law under Sharia, contract law under Iraq's legal system, and an evaluation of whether the Iraqi legal system combines Islamic and western law.

2. Literary Review

2.1 Meaning of Sharia and Islamic Law

The word Sharia means "the correct path" in Arabic (Alghafli, Hatch, & Marks, 2014). Based on two sources, the Quran and the Hadith, it refers to the divine guidance Muslims seek to ensure that they follow the moral path in life (Alghafli et al., 2014). Sharia is influenced by Christianity, Judaism, and other Abrahamic religions but consists primarily of the interpretive traditions articulated by Muslim scholars throughout the centuries.

Sharia and Islamic Law cannot be viewed as equivalent. The Muslims believe that Sharia relates to the ideal standards of purity, while Iman is the only language that God can speak and comprehend. In contrast, Islamic law in several nations with a Muslim majority is based on interpretations of Sharia (Ironclad, n.d.). To offer a reasonable understanding of Sharia, one must have a profound grasp and knowledge of the Quran and Sunnah, be fluent in Arabic, and have a general command of legal theories and the law. However, over the years, no standard degree of skill or amount of study qualifies a Muslim jurist or a Muslim legal expert, resulting in varying

interpretations of Sharia law (Ironclad, n.d.). This leads to various opinions on any legal issue (Ironclad, n.d.; Krasauskas & Mačernytė-Panomariovienė, 2021).

Islamic law differs from country to country. It is influenced by the local community and its customs and has changed over time to adapt to an ever-changing environment (Affi & Affi, 2014). Muslim scholars can declare a fatwa, also known as a legal opinion, based on their interpretation of Sharia in response to a Muslim community member or a government requesting their counsel on specific concerns. The observance of fatwas is a topic of discussion amongst various Islamic groups. Shiite Muslims believe that the fatwas must be followed and are bound to follow the fatwas that the religious authority requires.

Controversial Nature of Sharia and Islamic Law

As evidenced by historical and contemporary legal disputes, Muslims and non-Muslims engage in lengthy discussions regarding Sharia and Islamic law (Affi & Affi, 2014). Sharia attracts controversy primarily because the legal systems of most secular nations, which adhere to a modern structure of law, contrast with Sharia and Islamic law (Affi & Affi, 2014). Numerous observers of the legal system assert that Sharia law is inflexible and cannot adapt to reflect the modern values of the western legal system (Coulson, 2017).

There are several controversial themes, but some of the more prevalent are mentioned below.

The first area of contention is Corporal Punishment. Following the traditional interpretation of Islamic law, crimes such as blasphemy, adultery, theft, etc., carry severe punishments, which, in modern legal systems, could be construed as a violation of human rights (Coulson, 2017). Among these punishments are flogging, stoning, and amputation, among others. However, highly stringent evidentiary conditions must be met before the imposition of such punishments, leading Muslim scholars of the modern era to understand these punishments as deterrents rather than punitive (Coulson, 2017). Due to local and international backlash, most countries with a Muslim majority do not impose such harsh punishments. In recent decades, however, countries such as Indonesia, Saudi Arabia, Qatar, Iran, Nigeria, Sudan, and Afghanistan have employed amputation and other forms of corporal punishment.

Another controversial topic is Jihad. Most non-Muslims interpret Jihad as the actions that armed Muslim extremists take. However, Jihad is one of the most significant tenets of Sharia, and its meanings refer to striving and making efforts to achieve some moralistic goal. The efforts may require armed action against injustice or simpler acts like pursuing knowledge and striving to make oneself moralistically better (Coulson, 2017). Religious intolerance is another misunderstood tenet of Islam and Sharia law. Critics repeatedly pointed out in history that Muslim states are intolerant towards nonbelievers. The Hadith and Quran instruct us to show tolerance towards non-Muslims. Still, most Muslim countries have low tolerance towards blasphemy and apostasy (Hkikmat, 2021; Jordan, 2003; Roberts, 2021).

Furthermore, interpretations of Sharia addressing the form of governance are a contentious topic. As "Mutual Consultation" is favored in the Quran, most modern experts assert that Sharia primarily favors a democratic administration (42:38 Quran). Similarly, Al-Azhar University released a declaration supporting the

transition to democracy under Sharia law during the Arab Spring (Coulson, 2017). However, nations such as Iran and Saudi Arabia claim that Sharia necessitates a non-democratic government (Coulson, 2017; Kusuma et al., 2021).

Women, minorities, children, and other socially vulnerable groups have inconsistent rights under Sharia and western law (Wright, 2019). Morally and spiritually, the Quran accords women to the same standing as males. Nevertheless, there are specific roles in the family and society that women must play and others that men must play. There are constraints on how women can dress and converse with non-mahram that make Sharia's teaching on women's rights problematic (Wright, 2019). These norms and restrictions fall under a Muslim woman's modesty standards. However, governments deploy sexist laws and prohibitions to control women under the guise of Sharia.

In contrast, the Sharia laws are not as communicated in actuality. Comparing Sharia law to western law, homosexuality is also a significant issue. According to Sharia, homosexuality is a sin, and all major Islamic nations discriminate against LGBTQ+ individuals (Robinson, 2021).

2.2 Room for Reform in Sharia Law

Some Muslim academics feel that the Islamic principles of "Tajdid" provide grounds for changing or abolishing Sharia law procedures. This concept proposes that Islamic nations should update their laws and legal systems to meet the needs of the present day. Many historians argue that the purest form of Islam is to adhere to the same religious tenets followed in the seventh century (Robinson, 2021).

In addition, there is a substantial disagreement between what the Quran permits and what society and local customs have affected in Sharia interpretations. For instance, Muslim feminists have contended over the years that sexist interpretations of the Sharia derive from sexist social standards rather than Islam, constituting one of the most significant conflicts (Robinson, 2021). Other scholars argue that these Islamic principles and rules are adaptable and malleable since Islamic law prescribes or requires relatively little, the most important of which are piety, humility, and faith in Allah (Abu-Ghudda, 2020). Modern governments have been known to modify losses deemed Islamic or Sharia-based. When Saudi Arabia allowed women to drive in 2018, it was argued that Islamic values and rules do not mandate such actions. Still, those societal and cultural standards have influenced Sharia law (Khashoggi, 2018). In modern civilization, there is room for Sharia law reform dependent on the individual or culture from whom interpretations are derived. According to the Hadith, the laws must be updated to meet the needs of the times while remaining true to the spirit of Islam.

Contract Law in General and Islamic Law

A contract is an agreement between two parties that can be utilized in court to compel compliance with the deal (Markovits & Atiq, 2021). Contract law typically controls contract formation, performance, and the formulation of a reasonable remedy in case of a breach (Legal Information Institute, 2022). Everyone in business utilizes contract law. Contract law is used by businesses and consumers when purchasing and selling items, when applying for a license for their products or

operations, and when drafting employment agreements, insurance contracts, and more. Contract law facilitates these transactions and prevents misunderstandings between contracting parties. In addition, contracts give parties greater confidence in their joint business and enable them to engage in transactions on explicit terms. A contract is primarily composed of three elements under the modern legal system: an offer, an acceptance, and a consideration (Ironclad, n.d.).

Under Islamic law sources, no all-encompassing contract law theory encompasses all types of contracts (Saudilegal, 2022). Instead, Islamic law treats distinct sorts of transactions individually. For instance, sales, loans, recruiting contracts, agency contracts, and guarantee contracts are handled independently. Because some rules apply to one type of contract but not necessarily to another, this is the case. Under Islamic law, a contract's conditions are considered the law between the parties. Generally, the parties to a contract are free to negotiate the terms of the agreement, taking into account only the Islamic principles that must be observed. Important among these principles are interest and contractual clarity (Saudilegal, 2022).

Several Qur'anic verses condemn interest, known as "riba" in Arabic (Uddin, 2015b). Consequently, Islamic law, as defined by the Sharia, leaves no space for the question that the contract must not contain any interest payment requirements. The rule against Gharar specifies that the contract must have no doubt or unreliability (Uddin, 2015b). It is believed that an Islamic agreement must be devoid of speculation and uncertainty due to the contracting parties' perfect knowledge of the different circumstances that could influence the transaction's outcome. Therefore, a contract governed by Sharia or Islamic law must mention the damages and punishment that the contracting parties may incur in the event of a breach or uncertainty over the fulfillment of the contract.

3. Overview of Iraqi Contract Law

In statute number. 40 of 151, modified, the Civil Code of Iraq contained the contract law of Iraq. Contractual principles in Iraq are typically based on the Egyptian Civil Code, which was inspired and influenced by European civil law. The Iraqi civil code is divided into an introduction and two major sections. The initial section addresses general issues such as relevant legal sources, the distinction between legal entities and individuals, applicable legal norms, and specific arrangements. The Iraqi Contract law includes a provision for a 4 percent rate of interest on delinquent payments related to civil matters. The first portion is devoted to obligation law, which provides for standard requirements of contract law such as barter transactions, sales, gifts, loans, partnerships, insurance, leases, and agency. The second portion addresses property rights and related problems. Contract law in Iraq is concerned with establishing rules supporting the autonomy of contracts, with only a few obligatory and limited constraint principles typically imposed to protect vulnerable parties. A contract is formed by acceptance and offer under this law. The conventional concept of consideration is unnecessary. Even while it can be promised and assured that the parties would be legally bound, the contract must not be reduced to paper. The subject matter of the contract should be highlighted and should not violate public order or morality. In any Muslim context, this signifies that the agreement must comply with Sharia and not violate its norms and restrictions (Zedalis, 2009).

The Iraqi contract law legislation stipulates that a party is not responsible for compensating non-performances or delays in contract performance if the cause is beyond their control. Furthermore, the requirements created by Iraqi law to influence any force majeure occurrence imply that parties entering into commercial contractual limits also include "standard force majeure clauses." (Stigall, 2006). The Iraqi court is reluctant to interpret force majeure clauses in favor of a contracting party against government institutions or the Iraqi administration in the event of war or civil upheaval. The court in Iraq has the legal authority to establish precise regulations governing the breaking of any contract. If fulfilling the obligation would be more burdensome for that party, the court may issue a ruling in which damages are given instead. In contrast, the party can be asked to make arrangements so that the contract can be terminated and compensation in damages can be sought (Stigall, 2006).

Typically, the court will attempt to place the parties in the positions and forms they would be in if the contract could be carried out. If the claim involves gross negligence or fraud, the amount of damages awarded cannot be enhanced by the amount of loss incurred or the amount of lost margin that was calculable at the time the contract was signed. It is entirely up to the parties to agree on the contractually specified damages. However, the emphasized amount of damages may be reconsidered, and the courts may make equitable changes if the prior agreement was unjustified (Yassin & Nayef, 2021). The parties may find the limitations on responsibility in the case of a breach of the contract to be acceptable. Consequently, it may diminish damages held or regarded as "indirect." Any creditor's lost profit may be considered a loss.

Nonetheless, it must be guaranteed that these are the inevitable results of non-performance or suspension of obligation performance. The damages may not exceed the loss incurred unless in circumstances or scenarios involving fraud or "gross negligence." (Ali, 2021). The contractually stipulated damages are not due if the debtors establish that the creditors have suffered no loss. The court may reduce the agreed-upon amount if it is grossly excessive or if the obligations have been partially met. The Iraqi contract law also stipulates a 4% interest rate on late payments in civil matters (payments due on unsecured loans or in a personal capacity) and a 5% interest rate on commercial issues/matters (transactions in the business course or secured debts) from the date a claim is filed with the payment courts. The parties may exercise a right to choose a different interest rate, but it must be ensured that the rate cannot exceed 5% (Ibrahim, 2022).

4. Overview of Sharia law regarding contracts

According to Islam, a contract is "an expression or statement of alliance/matching between the positive proposal produced by the contractors and the level of acceptance of the other independent person in such a way that it influences the subject of the contract." The commercial law of Sharia, known as "fiqh muamlat" in Islamic legal parlance, is a required field of law that addresses contract issues and the legal ramifications resulting from a contract that is deemed valid, avoidable, or void. Certain conditions must be met for a contract to be legitimate under Sharia law. It could be a fair contract based on the offered or offeror, acceptance or offer, consideration, or the topic matter. Each party to a contract must possess the legal authority to enter into a contract. In Islamic norms and legislation, the ability for

transactions is measured or estimated using two conditions: puberty and discretion. Thus, contracts from an Islamic perspective are drafted with three defining characteristics, which reduce/eliminate exploitation in transactions and thereby avoid unjust enrichment. These include the avoidance of Riba (Interest), Gharar (Uncertainty), and speculation (Maysir) (Syafriana, 2022).

"offeror or offeree" is the opening and preceding element of any transaction deemed legal under Sharia law. To enter into a contract, both parties must possess legal standing. According to Allah Subhanahu Wa Ta'ala's explanation in verse 6 of Surah Noor, transactional competence in Islamic law is primarily determined by the two factors of maturity and discretion: *"Look at the orphans by investigating their capabilities until they reach the age of getting married, then if you find them enabled of basic judgment, hand over to them their owned property."*

The possession capacity of each party is the most essential and vital factor. Following Islamic Sharia, "Ahliyyah" has been added. Therefore, Islamic scholars describe capability as a trait that qualifies a person to acquire rights and assume responsibilities and obligations. The second element of a legitimate contract in "Shariah law" is *ijab and qabul*, also known as the offer and acceptance (Hanifuddin & Fauzi, 2021).

The offer refers to a specific action that demonstrates the establishers' desire or consent, which is said to be the "first stated word" by one of the contractual parties. The offer may be made orally or in writing. According to Shariah law, "Qabool" denotes any remark indicating consent to the request (*ijab*). The jury of Muslims interprets "qubul" using two unique techniques. The majority stated that qubul is performed by the person or buyer to whom the subject substance of the contract is directed, regardless of whether it occurs first or last. The Hanafi School has a more practical method in which qubul is defined as the word stated after that in conjunction with the term for a subsiding later. It might be communicated by either the buyer or the seller. This is very similar to the normatively prevailing law. The offer and acceptance can also be concluded using representative means or modern forms of communication, such as fax, e-mail, telephone, and any letter with supporting documentation.

The third contract element under Sharia law is "mahal al-aqd," which must be appropriately defined as anything that can be preserved for use when needed. The term "mal" is frequently translated as any property. The phrase "property" can be given to those objects that involve any visible presence in the outside world, referring to the sale of things that are anything fixed and perceptible individually following designation at the sale. A contract must contain a reference or location, "mahal-al-aqd," which is later identified as the subject of the contract. The contract's reference location is its subject matter, designated as the place of application for its regulations, and does not interfere with its determination. Islamic law emphasizes existence, legality, deliverability, and speedy determination (IslamicMarkets, n.d.). The need for lawfulness is the lawfulness of the associated object, that is, any allowed thing to trade that should be of legal value, and the "sabab," which are the underlying reasons, should adhere to the law. The parties to the contract must legally own the thing, which is "qabd." (Bakti et al., 2022) The existence problem assumes that the object of the agreement must be present when the contract is finalized. Thus, the object is deemed

capable of specific delivery, and its value, quantity, and essence must be briefly described. According to Islamic Jurisprudence, the subject matter of a contract must be human property, as in the sale granting and mortgage-like benefits. In this case, if the nature of the subject does not support this form of transaction, the contract and transactions are null and void. Although a contract that contains the rental of the land is appropriate and accurate, an agreement that includes the sale of the donated property is irrelevant. There are a few circumstances relevant to the topic. The existence of subject matter is required.

1. The topic content is transportable.
2. confirmed subject
3. The topic matter must be appropriate.

Regarding the price, Islamic law does not restrict it to monetary value; instead, it may take the form of another commodity. The Islamic prohibitions against doubt necessitate the existence and identification of the price at the time of contract formation/completion. This cannot be adjusted subsequently about the market price, nor can it be left to the discretion of a third party (Al-Omari, 2022).

5. Blending of Sharia law in Iraqi Contract Law

Due to the complexity of the prevalent issue of contracts, Islam has created Quranic verses-based contract restrictions and principles that benefit both parties and treat them fairly. Sharia and Iraqi contract law are comparable in impartiality, favorability, and neutrality. Islamic and Iraqi contract law guarantee compensation as a remedy for breach of any contract. Both instances highlight the controlling, overseeing, and regulating laws. According to the Iraqi civil code, compensation is not payable if any of the following conditions are met:

1. The associated duty or responsibility became impossible to perform.
2. Foreign occurrences of force majeure prevented the debtor from completing the obligation.
3. The performance of the obligation was regarded unreasonably onerous, or 4. The failure of the other party is to meet its responsibilities.

Parties to a contract may emphasize the contract's performance certainty if the linked obligation cannot be performed well or at all without the debtor's participation. In this circumstance, the creditors may petition the court to compel the debtor to perform. The debtor would be required to pay the restriction fine, a "threatening" penalty for noncompliance. The imposition of compensations following Iraqi and Sharia law is intended to foster a sense of accountability between contracting parties. These two statutes protect contracts from regulation violations and unauthorized contract breaches. In each of these instances, the contract laws can be combined since, under Iraqi and Sharia Islamic law, one party assumes responsibility for the required obligation of the other (Razak, Tarshany, & Abd Al-Karim, 2022). In a contract/sale agreement, for instance, the commodity is relevant for the buyer, while the price is relevant for the seller. The inherent legal injunctions of the Quran and Hadith provide advice for contract formation within the Islamic confines of Islamic law and Sharia. Since these are the fundamental laws that other contexts adhere to, much of the Islamic contract's validity criteria are familiar to other nations. In the Western field of economics, ethical norms and natural justice are not

generally observed (Uddin, 2015a). The tertiary source of law, namely the past and present activity of Islamic and Iraqi jurists, provides the advice and originality necessary to ratchet up those contracts that promote global economic stability.

6. Conclusion

The primary purpose of contract law in Iraq and Sharia is to ensure that the agreement is aided and supervised and that transactions between the two parties proceed without incident. Sharia has a more significant significance in the long run because of the favorable terms and conditions applicable to both parties in a contract. The contract must be valid to be enforceable and legal, as any dispute can be resolved according to Sharia law and Islamic principles. The verbal agreement for the land transaction was deemed unenforceable because it was not in writing. According to Islamic law, written paperwork is required for all contracts. Any person who can breach or violate the conveyed legal norms is held accountable in the country's justice system. Iraq continues to adhere to the conveyed contract laws following Islamic values of communication and conduct. The violation of these is in no way permitted. Because Iraq's contract laws adhere to Sharia's principles, it can be said that "Iraq and Sharia's contract laws can be combined." Both are performed for the benefit of the contracting parties and to prevent future misunderstandings and contract violations. To avoid future fraudulent behavior on the part of either party, Sharia has made written documentation of contracts a necessity.

For each circumstance and condition, Islam has devised distinct principles and contract norms for people. Contracts have been drafted following Islam/Sharia based on three significant injunctions. These designs can eliminate transaction exploitation and prohibit unwarranted augmentation. Interest, uncertainty, and speculation are these factors. This Sharia law governs the Muslim world. It forms the basis of the relationship between God and man among Muslims and non-Muslims alike, as well as individuals and things vital to creation. Thus, Islamic Sharia contracts consist of three fundamental elements: an offer, an acceptance, and a consideration. The offer and acceptance address the agreement's objective between two parties entering a contract.

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