



الجامعة الإسلامية العالمية ماليزيا  
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA  
بِوَسِيْلَةِ سُنَّتِي اِسْلَامِيَّةٍ اَنْبَارًا اَبْحَثًا مِلْدِيَّةً

**TERMINATION OF OBLIGATION  
(*SUQŪṬ AL-MŪJABĀT*) IN ISLAMIC  
COMMERCIAL LAW**

**BY**

**RUSNI BINTI HASSAN**

**INTERNATIONAL ISLAMIC UNIVERSITY  
MALAYSIA**

**MARCH 2004**

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(*SUQŪṬ AL-MŪJABĀT*) IN ISLAMIC  
COMMERCIAL LAW**

**BY**

**RUSNI BINTI HASSAN**

**A THESIS SUBMITTED AS A REQUIREMENT  
FOR THE DEGREE OF  
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**AHMAD IBRAHIM KULLIYYAH OF LAWS  
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## ABSTRACT

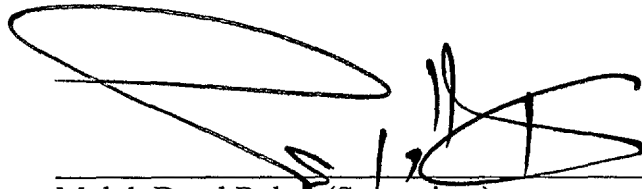
This research examines the modes and procedures of termination of contractual liabilities as prescribed by the *Sharī'ah*. This concept is known as *suqūṭ al-mūjabāt*. The *Sharī'ah* provides certain specific methods to be used by the parties to a contract wishing to relinquish or terminate their financial liabilities and/or obligations. The common method is the fulfillment (*al-īfā'*), especially the payment (*qaḍā'*), of a debt. A contractual obligation can also be discharged by inventing a release agreement (*al-ibrā'*), or novation agreement or compromise (*tajdīd al-mūjabāt*). Apart from that, the *Sharī'ah* provides that where two persons are mutually indebted to one another their obligations may be extinguished by action of set-off (*al-muqāṣṣah*). Fusion of liabilities (*ittiḥād al-dhimmah*) on the other hand, occurs when the capacities of creditor and debtor is merged into the same individual. On grounds of public policy, the existence of obligations is limited with respect to time. The institution of extinctive prescription (*al-taqādum*) defines the periods within which the debts can be enforced as well as the cut-off point for debt's extinction on account of the creditor's failure to demand within the time prescribed. The general principles of *suqūṭ al-mūjabāt*, as provided by *Sharī'ah* and expounded by the traditional Muslim jurists are examined and analysed accordingly, to provide a better understanding on the *Sharī'ah* principles of *mu'āmalāt* related to termination of contractual liabilities. As such, the research also examines the practicability of these principles in order to explore the possibility of introducing them into the contemporary commercial transactions.

## ملخص البحث

يطمح هذا البحث لدراسة الأنماط، والإجراءات التي يتوسل بها، لإنهاء المسؤوليات التعاقدية، على ضوء قواعد الشريعة الإسلامية. ويعرف هذا المفهوم "بسقوط الموجبات". والشريعة الإسلامية شرعت وسائل معينة، من شأنها المساهمة في التسوية بين المتعاقدين، إزاء رغبتهم في إنهاء مسؤولياتهم المالية، أو أى التزامات مماثلة. والمنهج الشائع في هذا الخصوص، هو ما يعرف "بالإيفاء"، والذي يتجسد أساسا في "قضاء" الدين. كما يجوز تأدية الالتزام التعاقدى، من خلال التواضع أو الاتفاق على ما يسمى "بالإبراء" أو إبرام "عقد تجديد مديونية" أو على سبيل التسوية من خلال "تجديد الموجبات". علاوة على ذلك، تنقضى الالتزامات في الشريعة الإسلامية، بين شخصين بإجراء "المقاصة" إذا ما كان كل منهما مدينا للآخر، ويحصل "اتحاد الذمة" في حالة اجتماع صفة "الدائن" والمدين في شخصية واحدة، ويخضع وجود هذه الالتزامات، للاعتبارات الزمنية. ولقد حدد مفهوم "التقادم" بالمدة التي تكون خلالها الديون ملزمة، و تتقادم بانتهائها في حالة عدم وفاء الدائن بالديون المطالب بها المدة المحددة. وفي هذا البحث عملنا على دراسة و تحليل، مبادئ "سقوط الموجبات" على النحو المبين في الشريعة وكما شرحها فقهاء المسلمين، بغية الوصول إلى فهم أفضل لمبادئ الشريعة ذات الصلة بالمعاملات، و المتعلقة "بإنهاء المسؤوليات التعاقدية". وتأسيسا على ذلك، فإن البحث نظر إلى مدى تأثير هذه المبادئ، وإمكانية الأخذ بها في مجال المعاملات التجارية المعاصرة.

## APPROVAL PAGE

The thesis of RUSNI BINTI HASSAN has been examined and is approved by the following:



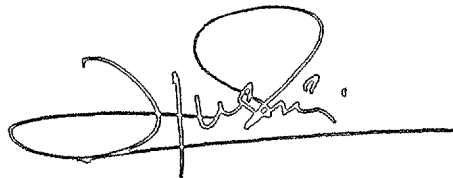
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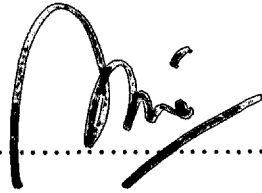
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I hereby declare this thesis is the result of my own investigations, except where otherwise stated. Other sources are acknowledged by footnotes giving explicit references and a bibliography is appended.

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**ISLAMIC COMMERCIAL LAW**

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# TABLE OF CONTENTS

<i>Abstract</i> .....	ii
<i>Approval Page</i> .....	iv
<i>Declaration Page</i> .....	v
<i>Copyright Page</i> .....	vi
<i>Acknowledgement</i> .....	vii
<i>Table of Contents</i> .....	viii
<i>Transliteration Table</i> .....	xii
<i>Glossary</i> .....	xiii
<b>CHAPTER 1: INTRODUCTION</b> .....	1
Scope of Research.....	2
Objective of Research.....	4
Methodology of Research.....	6
Overview of Studies on <i>Iltizām</i> and <i>Suqūt al-Mūjabāt</i> .....	8
<b>CHAPTER 2: NATURE OF THE OBLIGATION (<i>AL-ILTIZĀM</i>)</b> .....	22
<i>Al-Iltizām</i> and <i>Al-Mūjabāt</i> Defined.....	25
Essential Elements of Obligation.....	30
Sources of Obligation.....	46
Effects of Obligation.....	50
<b>CHAPTER 3: TERMINATION OF OBLIGATION (<i>SUQŪṬ AL-MŪJABĀT</i>)</b> .....	61
Scope of Application of <i>Al-Isqāṭ</i> .....	65
<b>CHAPTER 4: DISCHARGE BY PERFORMANCE (<i>AL-ĪFĀ'</i>)</b> .....	74
Nature of <i>Al-Īfā'</i> .....	76
Parties to <i>Al-Īfā'</i> .....	79
Subject Matter of <i>Al-Īfā'</i> .....	86

Time for <i>Al-Īfā'</i> .....	95
Place of <i>Al-Īfā'</i> .....	101
Methods of Payment in Current Commercial Transactions.....	105
<b>CHAPTER 5: NOVATION (TAJDĪD AL-MŪJABĀT)</b> .....	113
Nature of <i>Tajdīd al-Mūjab āt</i> .....	114
<i>Tajdīd al-Mūjab āt</i> and <i>Hiw ālah</i> .....	118
<i>Tajdīd</i> By The Exchange of Creditor.....	124
<i>Tajdīd</i> By The Exchange of Debtor.....	126
<i>Tajdīd</i> By The Exchange Subject Matter.....	128
<i>Tajdīd</i> and Legal Subrogation ( <i>Ḥulūl al-Qānūnī</i> ).....	130
<i>Tajdīd</i> and Conventional Subrogation ( <i>Ḥulūl al-Ittifāqī</i> ).....	131
Distinctive Features of <i>Tajdīd al-Mūjab āt</i> .....	132
Conditions of <i>Tajdīd al-Mūjab āt</i> .....	147
Effect of <i>Tajdīd al-Mūjab āt</i> .....	151
<b>CHAPTER 6: SET-OFF (AL-MUQĀSSHĀH)</b> .....	155
Nature of <i>Al-Muq āsshah</i> .....	156
The Meaning of <i>Al-Muq āsshah</i> .....	158
Legality of <i>Al-Muq āsshah</i> .....	160
Subject Matter of <i>Al-Muq āsshah</i> .....	168
Types and Conditions of <i>Al-Muq āsshah</i> .....	186
<i>Al-Muq āsshah al-Qānūniyyah</i> .....	187
<i>Al-Muq āsshah al-Ṭalabiyyah</i> .....	196
<i>Al-Muq āsshah al-Ittifāqiyyah</i> .....	198
Effect of <i>Al-Muq āsshah</i> .....	200
Set Off In Commercial Banking Transactions.....	201
<b>CHAPTER 7 : FUSION OF OBLIGATION (ITTIHĀD AL-DHIMMAH)</b> .....	207
Nature of <i>Ittiḥād al-Dhimmah</i> .....	208
Modes of Operation of <i>Ittiḥād al- Dhimmah</i> .....	210
<i>Ittiḥād al-Dhimmah</i> via Inheritance ( <i>al-Irth</i> ).....	210

<i>Ittiḥād al-Dhimmah</i> via Bequest ( <i>al-Waṣiyyah</i> ).....	213
<i>Ittiḥād al-Dhimmah</i> via Security ( <i>Kafālah</i> ).....	215
<i>Ittiḥād al-Dhimmah</i> via Transfer of Debt ( <i>Ḥiwālah</i> ).....	219
<i>Ittiḥād al-Dhimmah</i> via Lease ( <i>Ijārah</i> ).....	221
<i>Ittiḥād al-Dhimmah</i> In The Modern Commercial Transactions.....	224
<b>CHAPTER 8 : WAIVER (AL-IBRĀ')</b> .....	227
Definition of <i>Al-Ibrā'</i> .....	228
Proof of <i>Al-Ibrā'</i> .....	230
<i>Al-Ibrā'</i> and <i>Al-Isqāf</i> .....	234
Essential Elements of <i>Al-Ibrā'</i> .....	240
Parties to <i>Al-Ibrā'</i> .....	241
Subject Matter of <i>Al-Ibrā'</i> .....	253
Offer and Acceptance In <i>Al-Ibrā'</i> ( <i>Ṣīghah Al-Ibrā'</i> ).....	261
Types of <i>Al-Ibrā'</i> .....	265
Effect of <i>Al-Ibrā'</i> .....	273
Application of <i>Al-Ibrā'</i> in Commercial Transactions.....	275
<b>CHAPTER 9 : EXTINCTIVE PRESCRIPTION (AL-TAQĀDUM)</b> .....	285
Nature of <i>Al-Taqāḍum</i> .....	286
Types of <i>Al-Taqāḍum</i> .....	290
Duration of <i>Al-Taqāḍum</i> .....	294
Commencement of <i>Al-Taqāḍum</i> .....	300
Interruption of <i>Al-Taqāḍum</i> .....	302
Effect of <i>Al-Taqāḍum</i> .....	305
Application of <i>Al-Taqāḍum</i> In Commercial Transactions.....	306
<b>CHAPTER 10 : CONCLUSION</b> .....	308
<i>Bibliography</i> .....	319
<i>Appendix I (Provisions Relating to Termination of Obligations in Fiqh Islāmī)</i>	
<i>Appendix II (Guideline for Settlements of Debts by Set-Off)</i>	

# TRANSLITERATION TABLE

ا	a	ز	z	ق	q
ب	b	س	s	ك	k
ت	t	ش	sh	ل	l
ث	th	ص	ṣ	م	m
ج	j	ض	ḍ	ن	n
ح	ḥ	ط	ṭ	ه	h
خ	kh	ظ	ẓ	و	w
د	d	ع	‘	ء	’
ذ	dh	غ	gh	ي	y
ر	r	ف	f		

## short vowels

—َ a

—ِ i

—ُ u

## long vowels

—َā

—ِī

—ُū

## diphthongs

—َaw

—ِay

## doubled

—َuww

—ِiyy

## GLOSSARY

(The spelling of some terms used in the literature is variable. The word which appears first is the one that has been used in the thesis)

<i>'adillah tafşilliyyah</i>	– detail proofs
<i>'afw</i>	– pardon
<i>ahliyyah</i>	– capacity
<i>ahliyyah al-adā'</i>	– capacity to exercise the rights or obligations
<i>ahliyyah kāmilah</i>	– complete legal capacity
<i>ahliyyah al-wujūb</i>	– capacity to receive or inherit rights and obligations
<i>ajal</i>	– term; delay
<i>al-adā'</i>	- payment
<i>al-'aqd al-mu'allaq</i>	- contingent contract
<i>al-ḥajr</i>	– interdicted person
<i>al-ibrā'</i>	– waiver; release
<i>al-ifā'</i>	– discharge by performance
<i>Al-irth</i>	- inheritance
<i>al-ithrā' bi lā sabab</i>	– gaining wealth without lawful means
<i>al-ma'qūd 'alayh</i>	– object or subject matter of contract
<i>al-muqāṣṣah</i>	– set-off
<i>al-muwaffī</i>	- performer
<i>al-muwaffī lah</i>	– the person to whom the performance is made
<i>al-muwarrith</i>	- the ancestor
<i>al-taqādum</i>	– extinctive prescription; lapse of time
<i>al-taqādum al-muksib</i>	- acquisitive (or positive) prescription
<i>al-taqādum al-musqit</i>	- extinctive (or negative) prescription
<i>al-tarikah</i>	- legal estate
<i>al-wārith</i>	- legal heirs
<i>al-wafā' bi al-muqābil</i>	– discharge by substitution
<i>'amal</i>	– work; job
<i>al-'amal al-dār</i>	– harmful act

<i>'amal al-manfa'ah</i>	– beneficial acts
<i>'amal ghayr mashrū'</i>	– illicit acts
<i>'aqār</i>	– immovable property
<i>'aqd</i>	– contract
<i>'āqil</i>	– of sane mind
<i>'arḍ</i>	– merchandise; commodities
<i>arkān</i>	– pillars (of contract)
<i>aṣl</i>	– source; origin; root
<i>'ayn</i>	– property which can be determined on its attributes
<i>bāligh</i>	– age of majority
<i>bāṭil</i>	– void, null and void
<i>bay'</i>	– sale
<i>bay' al-dayn</i>	– sale of debt
<i>bay' al-kāli' bi al-kāli'</i>	– sale of deferred debt with deferred debt
<i>bay' qabla qabḍih</i>	– selling (of a thing) before its delivery
<i>buṭlān</i>	– void, null and void
<i>buṭlān al-'aqd</i>	– invalidity of contract
<i>bulūgh (bāligh)</i>	– age of puberty or majority
<i>dā'in</i>	– creditor
<i>ḍamān</i>	– liability; guarantee
<i>ḍarar</i>	– harm; damage; disadvantage
<i>ḍarūrah</i>	– necessity
<i>ḍaruriyyah 'amaliyyah</i>	– practical necessity of the case
<i>ḍa' wa ta'ajjul</i>	– discount; pay early for discount
<i>dayn al-ḥāl</i>	– immediate debt
<i>dayn al-mu'ajjal</i>	– deferred debt
<i>dhimmah</i>	– care as a duty of conscience; legal personality
<i>dilālah zāhirah</i>	– evident or clear proof
<i>diyah</i>	– blood money or fixed amount of compensation where the value of <i>diyah</i> is determined traditionally by the number of camels, gold or silver of equivalent value.
<i>duyūn al-'arḍ</i>	– commodities debt
<i>duyūn al-mithliyyāt</i>	– comparable debt

<i>duyūn al-naqd</i>	– currencies debt
<i>duyūn al-ṭa‘ām</i>	– foodstuff debt
<i>far ā‘iḍ</i>	– the proportion allotted to the heirs under the law of succession.
<i>faskh</i>	– cancellation; abrogation
<i>fāsīd</i>	– voidable; irregular
<i>fi lī</i>	- actual
<i>fiqh</i>	– Islamic jurisprudence
<i>fuḍūlī</i>	- unauthorized agent
<i>fur ū‘</i>	- branches ( of <i>Fiqh</i> )
<i>ghalaṭ</i>	- mistake
<i>ghanīmah</i>	– property of non-Muslim taken from war
<i>gharḍ</i>	- objective; aim; purpose
<i>gharar</i>	– uncertainty; risk
<i>ghaṣb</i>	– wrongful misappropriation
<i>ghayr ṣaḥīḥ</i>	- not valid; void
<i>ghayr lāzim</i>	– not binding
<i>ḥaḍānah</i>	– right of custody
<i>ḥadīth (pl. aḥādīth)</i>	– tradition
<i>ḥalāl</i>	– lawful
<i>ḥaqq (pl ḥuq ūq)</i>	– right(s); laws
<i>ḥaqq Allāh</i>	– right of God
<i>ḥaqq ‘aynī</i>	- proprietary right
<i>ḥaqq al-habs</i>	– right to retain
<i>ḥaqq al-‘ibād</i>	– right of individuals
<i>ḥaqq al-muṭālabah</i>	– right to claim
<i>ḥaqq intifā‘</i>	- right to use
<i>ḥaqq shakhṣī</i>	- personal right
<i>ḥarām</i>	– forbidden; prohibited
<i>hibah</i>	– gift
<i>ḥīlah (pl. ḥiyal)</i>	– legal strategem; ruse
<i>ḥiwālah</i>	– assignment of debt; transfer of debt
<i>ḥiwālah ḥaqq</i>	– transfer of right



<i>ḥiw ālah muṭlaqah</i>	– unrestricted assignment of debt
<i>ḥiw ālah muqayyadah</i>	– restricted assignment of debt
<i>ḥukm (pl aḥkām)</i>	– legal ruling of the <i>Sharī‘ah</i>
<i>ḥul ūl al-ittifāqī</i>	- conventional subrogation
<i>ḥul ūl al-qānūnī</i>	- legal subrogation
<i>‘īb ādah</i>	– worship
<i>i‘ārah</i>	– borrowing
<i>ib āḥah</i>	– permissibility
<i>ib ṭāl</i>	– annulment
<i>iddah</i>	– waiting period of a woman after termination of marriage
<i>iḥs ān</i>	– good deed; goodness
<i>iḥr āz</i>	- acquisition
<i>īj āb</i>	– offer
<i>ij ārah</i>	– contract of service or hire; lease
<i>ijm ā’</i>	– consensus opinion of Muslim jurists
<i>ijtih ād</i>	– rational considerations (of Muslim jurists)
<i>ikhtil āf (khiḷ āf)</i>	– different opinion between the Muslim jurists
<i>ikhtiyār</i>	– free will; freedom of choice
<i>ikr āh</i>	– duress, coercion
<i>iltiz ām (pl iltiz ām āt)</i>	– obligation (s)
<i>im ḍā’</i>	– ratification
<i>iq ālah</i>	– reversal; rescission (of contract)
<i>‘iq ār</i>	- immovable property
<i>inqi ḍā’</i>	– termination; expiration
<i>inqi ḍā’ al-iltiz ām al-aṣl</i>	– termination of the original obligation
<i>inqi ḍā’ al-iltiz ām al-tābi‘ah</i>	– termination of obligation accessory
<i>inti qāl</i>	– transfer
<i>ir ādah</i>	– free will
<i>ir ādah al-ḡāhirah</i>	– clear manifestation of will
<i>ir ādah al-ḥaqīqīyah</i>	– actual intention or will
<i>ir ādah al-b āṭinah</i>	– hidden will
<i>ir ādah al-munfaridah</i>	– unilateral disposition

<i>isqāṭ</i>	- termination
<i>istibdāl</i>	- performance by substitute; replacement
<i>istiḥālāh al-tanfīdh</i>	- impossibility of performance
<i>istiḥsān</i>	- preferences
<i>istiṣnāʿ</i>	- contract of manufacture
<i>ittiḥād</i>	- unity (of <i>majlis</i> )
<i>ittiḥād al-dhimmah</i>	- confusion of obligation; <i>confusion</i>
<i>ʾitq</i>	- manumission; freeing the slave
<i>ʾiwaḍ</i>	- compensation
<i>jināyah</i>	- criminal law; criminal offences
<i>jins</i>	- species; kind
<i>kafālah bi al-nafs</i>	- security for person
<i>kafālah bi al-māl</i>	- security for property
<i>kafīl</i>	- guarantor
<i>khaṭāʾ</i>	- wrong
<i>khiyār</i> (pl. <i>khiyār āt</i> )	- option (s)
<i>khiyār al-ʾayb</i>	- option of defect
<i>khiyār al-majlis</i>	- option of contractual session
<i>khiyār al-taʾyīn</i>	- option of designation
<i>khiyār al-tadlīs</i>	- option of fraud
<i>kināyah</i>	- allusory; allusion
<i>lāzim</i>	- binding
<i>madīn</i>	- debtor
<i>maḥall</i>	- subject matter; object (of contract)
<i>maḥjūr ʾalayh</i>	- person under judicial restriction; restricted person
<i>mahr al-mithl</i>	- average amount of dower which is implied in the marriage contract when no specific amount has been fixed
<i>majhūl</i>	- unknown
<i>majlis</i>	- contractual session
<i>majnūn</i>	- insane; unsound mind
<i>māl</i>	- property
<i>māl mutaqaawwim</i>	- valuable property; property or usufruct which is legally accepted in the <i>Sharīʾah</i>

<i>manfa'ah</i>	– usufruct or benefit
<i>māni'</i>	- hindrance
<i>manqūl</i>	– movable property
<i>marad al-mawt</i>	– death sickness
<i>maṣādir</i>	– sources
<i>mashrū'</i>	- legal
<i>maṣlahah</i>	– human good; benefit; interest
<i>ma'tūh</i>	– idiot; imbecile; defect of mind or intellect
<i>milkiyyah</i>	– right of ownership
<i>mu'āṭah</i>	– by conduct (disposition)
<i>mu'āmalāt</i>	– transactions; commercial transactions
<i>mu'āwaḍah</i>	– synallagmatic transaction; contract of exchange
<i>mubāh</i>	– permissible; legal
<i>muflis</i>	– insolvent; bankrupt
<i>muḥāl</i>	– person who receives the transfer; creditor
<i>muḥāl 'alayh</i>	– transferee; substituted payer (transfer of debt)
<i>muḥīl</i>	– transferor (transfer of debt)
<i>mūjabāt</i>	– obligations
<i>mukallaf</i>	– legally capable man
<i>multazam bih</i>	– subject matter of obligation
<i>multazim</i>	– person who has taken up the responsibility; obligor
<i>multazim lah</i>	– person who receives the obligation; obligee
<i>mumāthalah al-ṣifat</i>	– unanimity of attribute
<i>mumāthalah al-jins</i>	– unanimity of type
<i>munāwalah</i>	– hand over
<i>murtahin</i>	– mortgagee
<i>murūr al-zamān</i>	- lapse of time
<i>muṣālah</i>	- beneficiary
<i>muṣāqāt</i>	– contracts for the lease of agricultural land with profit-
<i>muta'āqidayn</i>	– the (two) contracting parties
<i>muzāra'ah</i>	– agricultural contract (where landlord provides seed, land and the worker provides labour)
<i>nafaqah</i>	– maintenance

<i>nikāḥ</i>	- marriage
<i>niyyah</i>	- intention
<i>nushūz</i>	- recalcitrant (wife)
<i>qabḍ</i>	- delivery or acceptance (of the subject matter)
<i>qabūl</i>	- acceptance
<i>qaḍā'</i>	- payment; fulfillment
<i>qaṣd</i>	- intention
<i>qarḍ</i>	- loan of fungible commodities
<i>qawlī</i>	- verbal; oral
<i>qiṣāṣ</i>	- retribution
<i>qiyās</i>	- analogical reasoning
<i>radd</i>	- restoration
<i>rāhin</i>	- mortgagor
<i>rahn</i>	- pledge; mortgage
<i>rashīd</i>	- prudent man
<i>ribā</i>	- usury; excessive interest
<i>ribawī</i>	- pertaining to ribā; ribā commodity
<i>riḍā</i>	- consent
<i>ruq'ah</i>	- promissory note
<i>rushd</i>	- prudence; integrity;
<i>ṣā'</i>	- cubic measure of varying magnitude
<i>sabab</i>	- cause; motivating cause
<i>ṣabiyy</i>	- minor
<i>ṣabiyy ghayr mummayyiz</i>	- minor who has not attained the age of discernment
<i>ṣabiyy mummayyiz</i>	- discerned minor
<i>ṣadaqah</i> (pl. <i>ṣadaqāt</i> )	- charitable; donations
<i>ṣafīh</i>	- prodigal
<i>sīghah</i>	- expression of offer and acceptance
<i>ṣaḥīb al-ḥaqq</i>	- right bearer
<i>ṣaḥīḥ</i>	- valid; sound; legal
<i>salam</i>	- future contract
<i>ṣakk</i>	- cheque
<i>ṣarf</i>	- money-changing; currency exchange

<i>ṣarīḥah</i>	– explicit; express
<i>sharī‘ah</i>	– the law of Islam
<i>sharṭ</i> (pl. <i>shurūṭ</i> )	- condition (s)
<i>shirkah</i>	– partnership
<i>shuf‘ah</i>	– pre-emption
<i>suftajah</i>	- letter of credit
<i>sulḥ</i>	- amicable settlement
<i>sulṭah al-shar‘iyyah</i>	– legal authority
<i>sunnah</i>	– recommended; approved
<i>suqūṭ</i>	- termination
<i>sūrah</i>	– chapter of the Quran
<i>tabarru‘āt</i>	– contract of charity or gifts
<i>tajdīd</i>	– substitution; replacement
<i>tajdīd al-mūjabāt</i>	– novation
<i>takhlīyyah</i>	– abandonment
<i>ṭalāq</i>	– divorce
<i>tanājush (najsh)</i>	– false offer made to the contract with the intention to
<i>tarāḍī</i>	- mutual consent
<i>taslīm</i>	– delivery
<i>taṣarruf</i> (pl. <i>taṣarrufāt</i> )	– disposition (s); right of possession; right of disposal
<i>taṣarruf fi lī</i>	- actual or verbal disposition
<i>taṣarruf qānūnī</i>	- legal disposition
<i>taṣarruf qawlī</i>	- oral or verbal disposition
<i>taṣarruf ikhtiyārī</i>	- willful disposition
<i>ta‘wīd</i>	- restitution
<i>ta‘zīr</i>	– discretionary punishment in Islamic law
<i>udhr shar‘ī</i>	- legal excuse
<i>ujrah</i>	– payment of wages
<i>‘uqūd</i> (pl. of <i>‘uqd</i> )	– contracts
<i>‘urf</i>	– custom, practice
<i>uṣūl al-fiqh</i>	– principles of Islamic jurisprudence
<i>uṣuliyyūn</i>	– legal theorists
<i>wadī‘ah</i>	– deposit

<i>wājib</i>	– obligatory
<i>wakālah</i>	– agency
<i>wakīl</i>	– agent
<i>walī</i>	- guardian
<i>waqf</i>	– endowment
<i>waṣf</i>	– characteristic; quality
<i>wasīṭah</i>	– mediator
<i>waṣīyyah</i>	– bequest
<i>yamīn</i>	– oath
<i>zakāt</i>	– alms tax

# CHAPTER ONE

## INTRODUCTION

Islamic Commercial law, or *Fiqh al-Mu'āmalāt*, is an Islamic legal term constituting an important area of law dealing with contract and transaction issues. It covers a variety of dealings and transactions to meet the needs of society. Although this area of law is essentially governed by the Divine regulations and principles of Qur'ān and Sunnah, this area of law generally remains open to rational considerations (*ijtihād*) and may be regulated, prescribed or proscribed on the basis of *maṣlaḥah* (public interest) and *urf* (customary practice).

The foundation of Islamic law of contract lies firmly in the Quranic verse which reads as follows:<sup>1</sup>

يٰۤاَيُّهَا الَّذِيْنَ ءَامَنُوْا اَوْفُوْا بِالْعُقُوْدِ

“ O ye who believe, fulfill your obligations”

In fact this Quranic verse is considered the basis of the general concept of obligations. The word '*uqūd*' covers the entire field of obligations, including those that are spiritual, social, political and commercial. In the spiritual realm, '*uqūd*' deals with the individual's obligation to Allah; in social relations the term denotes the relations between men and women including the contract of marriage; in the political arena it encompasses treaty obligations; and similarly, in the field of commerce, it covers the whole spectrum of obligations of parties in regard to their respective undertakings.

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<sup>1</sup> *Sūrah al-Mā'idah* 5:1

Obligation (*al-iltizām*) is a temporary bond or tie which binds the parties who are subject to the obligation. It consists of contractual and tortious liability. However Muslim scholars seem to accede that the contract is the dominant source that generates obligations. This is because the nature of the contract, be it a binding contract (*‘aqd lāzim*) or non-binding contract (*‘aqd ghayr lāzim*),<sup>2</sup> creates an obligation to the contracting parties. Thus, a promisor is under a legal duty to perform his contractual obligation. An obligation can be performed voluntarily or by force. Enforced performance is secured either specifically, if possible, or *in lieu*, that is by way of damages. Accordingly, performance of an obligation (whether voluntary or by force) is basically the direct effect of such an obligation.<sup>3</sup>

## SCOPE OF THE RESEARCH

The study discusses and analyses the specific ways and means to cease or terminate the responsibility of the parties resulting from obligations. Since the area of obligation is very much related to the law of contract, the study will also deal with the matter and will critically analyse the principles of contract in relation to the law of obligations. However, the main area of the study will be on the means and procedures of termination of obligation (*suqūṭ al-mūjabāt*). Thus, the traditional view of Muslim jurists will be considered and analysed to see its applicability and compatibility to

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<sup>2</sup> *‘Aqd lāzim* or binding contract is a contract which cannot be revoked unless by the agreement of both contracting parties such as the contract of sale (*bay’*) and lease (*ijārah*). *‘Aqd ghayr lāzim* or non-binding contract, on the other hand, is a contract which can be revoked by either party at any time even without the consent/permission of the other party. This type of contract includes partnership (*shirkah*), agency (*wakālah*), bequest (*waṣīyah*), deposit (*wadī‘ah*), etc. However, there could be situations where a contract is binding on one party only, such as the contract of mortgage (*rahn*) where the mortgagor can revoke the contract even without the mortgagee’s consent, but the mortgagee cannot do so unless with prior consent of the mortgagor. Zaydān, ‘Abd al-Karīm Zaydān, *al-Madkhal li Dirāsah al-Sharī‘ah al-Islāmiyyah*, Mu’assasah al-Risālah, Beirut, 11<sup>th</sup> ed., 1989, p. 307.

<sup>3</sup> ‘Abd al-Nāṣir Tawfīq al-‘Aṭṭār, *Nazarīyyah al-Iltizām fī al-Sharī‘ah al-Islāmiyyah wa al-Tashrī‘āt al-‘Arabiyyah*, n.p., n.d., pp. 8-9 & 19-22.