

Part 2 Chapter 6: Laws Pertaining To Contracts And One-Side Decisions

272. It is obligatory upon every duty-bound person to fulfill his/her pacts and commitments. In Islamic law, pacts are of three types:

1. Pacts that God has made with His servants, such as the obligations and prohibitions that God has charged upon His servants through His prophets.
2. Pacts people make with themselves such as an oath, vow, or promise to perform or abstain from a specific act.
3. The commitments people make with each other, including mutual agreements or contracts (*'aqd*)—such as business dealings—and one-sided resolutions—such as divorce, acquittance, and annulment of a contract.

All the above are considered by the Islamic law pacts and covenants and it is obligatory to fulfill all of them according to their conditions. A brief example of each is stated in the following issues.

273. It is obligatory upon both parties of an irrevocable contract (*'aqd-e lazim*) to act according to their agreement and to undergo all of its effects and stipulations, whether the contract is verbal, written, practical, or reciprocal delivery. An *'aqd* is a contract based upon the consent of both parties. There are two types of contracts (*'aqd*):

- 1) Irrevocable contracts: The contracts whose parties have no right to revoke except in special cases.
- 2) Revocable contracts: The contracts whose parties have the right to revoke at any time.

Whatever is commonly considered a contract is an irrevocable contract unless there is evidence to the contrary; thus, violating such a contract is forbidden.

Now let us refer to a few irrevocable contracts:

1. Transaction (*mubaya'ah*), i.e. buying and selling: It is obligatory upon the selling party to transfer the purchased commodity to the buyer after concluding the deal, and it is obligatory upon the buying party to pay the set price to the seller, except in certain cases. It is forbidden for the two parties to violate the contract.

2. Lease (*ijarah*; a contract comprising the possession of benefit, which is a job or the like, in return for compensation): It is obligatory upon the lessor to convey the leased property, service, etc. to the lessee. In property lease, the property must be conveyed, and in hiring people, the hired person must be made available. It is obligatory upon the lessee to pay the rent to the lessor. It is forbidden for any of the parties to violate the contract except in special cases.

3. Endowment (*waqf*; endowment of property to be devoted to a religious or charitable purpose): It is obligatory on the donor and the beneficiary to act according to the endowment contract after delivery of the endowed property and concluding the contract. It is forbidden for the donor to revoke or change the endowment stipulations after the closing of the contract. It is forbidden for others to annul or change the endowment stipulations after the death of the donor, whether the endowment is public, such as mosques, schools, and bridges, or private, such as endowed to the children of the donor exclusively, except in some cases.

4. Settlement (*sulh*; a transaction involving seeking agreement between two persons on possessing of a property or canceling of a debt or a right, be it with compensation or free): It is obligatory upon the parties of a settlement contract on an ambiguous property, a disputed debt, or an action to act according to the articles of the contract, and it is forbidden for them to violate these articles except in special cases.

5. Will (*wasiyyah*; a formal declaration involving investment with ownership or authorization of a certain disposal after death): It is obligatory upon the executor of a will to act according to its articles after accepting and confirming it. To violate any of these articles is forbidden. It is also forbidden to refrain from acting upon the will, delay it beyond the required time, change the aim of the testator, or refrain from acting upon some of its articles. It is also forbidden for a testator to will unfair things, such as depriving certain heirs of their inheritance, deciding not to pay the dues of a creditor, or using the property for sinful actions.

6. Matrimony: It obligatory upon the two parties to act upon the lawful responsibilities after the concluding of this holy covenant. Refraining from acting upon any of the marriage responsibilities is a violation of the covenant and strictly forbidden.

7. Sharecropping (*muzara'ah*): This is a farming contract by which usually one party pledges to supply land, water, and facilities and the other undertakes sowing and cultivation of crops. It is obligatory upon the two parties to act according to this contract, and it is forbidden to violate it.

8. Share-irrigating contracts (*musaqat*): This is a contract comprising the agreement of irrigating and watching over the trees of another person to a specified term with a share of the produce. It is obligatory upon the two parties to act according to the contract, and to dissolve it is violation of the contract, which is forbidden.

9. Mortgage (*rahn*): This is a property given as pledge for a debt. After the contract is made, it is obligatory for the debtor to deliver the collateral to the creditor who must keep it as security for the debt. It is forbidden for either of the parties to take possession of and make changes in the mortgaged property or to violate the contract, except by the consent and agreement of both parties.

10. Competition (*musabaqah*): In Islam, horseracing, some other types of races, and archery have been declared permissible. After determining the conditions, the prize of the race, and the success of the winner, it becomes obligatory to give the prize to the winner and it is forbidden to violate the transaction. The same conditions are applied to the shooting competitions.

11. Guaranty (*dhaman*): This is when one person undertakes the debt of another person. When such contracts are concluded, it becomes obligatory upon the guarantor to consider himself the debtor and to pay the guaranteed property to the creditor. To violate such contracts is forbidden.

12. Debt Transfer (*hawalah*): This is a transaction in which a debtor refers the creditor to another person, i.e. a second debtor, for receiving his/her due. It is obligatory upon the debtor and the party who accepts the debt transfer to act upon the contract, the violation of which is forbidden.

13. Surety (*kafalah*): This is when a person undertakes to present a third party who owes a debt or blood money, or deserves retaliation whenever the entitled party requests. After concluding the contract, it becomes obligatory upon the guarantor to bring the debtor at any time the owner of the right wants, and if she/he cannot ensure his/her presence, the guarantor her/himself must pay the debt or blood money.

14. Donation (*hibah*; a contract involving transfer of ownership without compensation): In this revocable contract, taking back the donated property is allowed except in the following cases in which it is forbidden to take back the donated property:

A. Reciprocal Donations: This means that a person gives something as donation to another person who reciprocally gives her/him something in return, or that a person states as a condition that the donated person should give him/her a donation in return, even if the second person has not yet given her/him anything.

B. Donations intended for seeking nearness to God.

C. Donations to relatives and kinsfolk.

D. Donations that are consumed or destroyed while in the possession of the donee.

E. Donations that are no longer possessed by their recipients.

F. Donations whose donors have died and their heir demands their return.

G. Donations whose donees have died and the doner wants to retrieve it.

It is not forbidden to take back a donation except in these cases. Similarly, to cancel other revocable contracts is not forbidden, such as in limited partnership, trust, free lending, attorneyship, and mortgage for the recipient of mortgages.

274. After the composition of the majority of the one-sided contracts ('*qa*'), it becomes binding to fulfill these commitments, since to violate or cancel them is forbidden. Examples of one-sided obligations are stated below.

275. It is obligatory on all duty-bound persons to commit themselves to their proper oaths (*qasam*), i.e. oaths in God's name.

276. It is obligatory to act upon one's vow (*nadhr*), which is to undertake something as a duty to God.

277. It is obligatory to act upon a promise, which is to make a covenant with God to perform a certain act. Violation of any of these three commitments results in obligatory atonements. The details of these atonements can be found in the books of Muslim jurisprudence, under the title *kaffarat*.

278. Perjury (i.e. false swearing) is forbidden. In the terminology of Muslim jurisprudence, such false swearing is called *yamin ghamus*; which means an oath that drowns the person in an ocean of sins.

279. It is obligatory to protect deposits and trusts until they are given back to their owners. Trust stands for a property that is entrusted to a person by its owner, such as deposits entrusted to trustees, properties rented to a tenant, properties of an employer in the hands of the employees, and properties entrusted to the other party of a limited partnership contract, a sharecropping contract, and a share-irrigating contract.

280. It is obligatory to protect and return to the owner the trusts that have been kept in the custody of a person by permission of the law, such as found properties, foundlings, and properties accidentally forgotten inside a purchased house or chest.

281. It is obligatory to give full measure in weight, number, area, inspection, and any other unit, whether the measurement involves the delivery of sold merchandise, equivalence, price, payable loan, share of beneficiaries, or distribution of inheritance. Violation of giving full measure is strictly forbidden. In the terminology of Muslim jurisprudence, such violation is called *tatfif*, meaning giving a deficient or insufficient measure of something, be it a debt or one of the duties towards God.

282. It is obligatory to settle and pay up the debts and dues in their due times if their owner asks for

settlement and the debtor has the ability to pay, whether the liability is to a person, such as debts whose deadline has arrived, monetary atonements for causing death or loss of property, or a religious tax, such as *khumus*, *zakat*, and *kaffarah*. It is strictly forbidden to refrain from paying the dues and property of others, whatever the due may be and to whomever it must be paid, except in certain cases.

283. It is obligatory to pay the commission (*ju'alah*; a pronouncement involving taking upon oneself the rendering of a remuneration in return for a certain work) after the work is done accordingly. For example, if a person says, 'I will give whoever finds my car one hundred dollars,' and then a person finds it and gives it to its owner, the owner of the car must immediately pay the hundred dollars to the finder.

284. It is obligatory upon the partners in the possession of a property to distribute it among themselves when one of them asks for his/her share, on the condition that this distribution does not cause loss to them and does not make them pay anything.

285. It is obligatory upon a person who confesses something to act according to her/his confession as long as this confession causes him/her loss, but not benefit. For example, if a man admits having a child, he must provide for the education and living expenses of that child, but he does not have a parental right on him. If he dies, the child will inherit his wealth, but he will not be given inheritance if the child dies. If the father becomes poor, he does not have the right to take his living expenses from the child.

286. It is obligatory upon the creditor to grant his/her debtor respite if it is proved that the debtor does not have the ability to pay her/his debt. It is forbidden to pursue him/her, take legal action against her/him, and put him/her in jail. It is also forbidden to force her/him to sell his/her essentials of life, such as her/his house and furniture in order to pay his/her debt.

287. It is obligatory upon all duty-bound persons who feel the imminence of death to try their bests to return the trusts, properties, and debts they owe people, to perform the obligatory devotional acts they have missed, such as prayers, fasts, hajj and 'umrah, and make the physical and monetary atonements. In case a person is unable to make up all these missed duties, she/he must inform his/her heirs and bid their performance after her/his death.

288. It is forbidden to break a promise without acceptable reason, even if fulfilling this promise was not intended at the time of promising or the promising person has changed his/her mind later. However, this issue is subject to controversy.

289. It is forbidden for a borrower to use the lent property in a way other than stated in the contract. In this case, she/he is liable for the property if it is lost and must also pay the common fee for uses not stated in the contract.

290. It is forbidden for a person judged as bankrupt to take possession of and make changes in her/his own property if the judge determines him/her to be under interdiction, except for the properties that are not part of the confiscation, such as his/her private house, furniture, and living requirements.

291. Forbidden is the betrayal of trusts, which means to make impermissible disposition of trusts, neglect protecting them, and fail to safeguard them suitably thus exposing them to damage, whether these trusts belong to people or to God. In addition to being forbidden, this action also brings about liability. This law is also applicable to the trusts of non-Muslims. However, it is controversial issue.

292. It is forbidden for any of the partners to make disposition of the shared property or right before obtaining the permission of the other partners, except in necessary cases.

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