

validity and invalidity.

3. The obligation force of the agreement subject of this contract is the same force of the preliminary conditions to contracts and obligations.

- Agreements to conclude the contracts subject of this paper have five types:

1. Agreement on usury tricks which is prohibited
2. Agreement on usury excuses which is also prohibited.
3. Agreement on legal eases which is permissible.
4. If two persons agree to show a sale contract

which they did not intend implicitly for fear of an unjust authority or otherwise and agree that if they show it, it will not be an accomplished contract between them. This is not subject to the terms of sale.

5. Agreements in each of which several consecutive and connected contracts and promises are included and have been designed in a specific way under certain conditions that govern them as a single indivisible transaction that aims at realizing a specific function which the two parties wished to have. These agreements are permissible.

The Point of Reference to Document Divorce and the Role of the Judge

Sheikh Sulaiman I. Al-Afqah

Abstract

The present paper discusses the point of reference to document divorce and the role of the judge in documenting divorce cases.

Divorce is a legal issue that has been elaborately discussed in the Holy Qur'an and the Prophet's Sunnah. Muslim scholars have also given it a great deal of attention, and many books and treatises were penned on it.

The first chapter of the paper discusses many cases of people with relation to divorce and tells many stories which contain violations of the provisions of the Holy Qur'an and the manners of divorce.

The second chapter is the main section of the paper where the author states that the point of reference in connection with the documentation of divorce are the Shariah judges even in the countries which apply secular laws.

Cases related to documentation of divorce are of two types:

1. A man who has not yet divorced his wife but appeared before the judge asking for divorce. He should be familiar with the provisions and manners of divorce. If not, he should be taught.
2. A man who has already divorced his wife and appeared before the judge to document such a divorce. If he has divorced in a way contrary to the manners established by the Shariah, he should return his wife. Some scholars argued that he must do so. If he has violated the number of the divorce statement, he should be taught so that people would comply with the provisions of the Shariah.

The third chapter of the paper exhorts judges to teach people the rules and manners of divorce. Judges and muftis are the most knowledgeable of people's need to know these provisions.

Financial Transactions Cards: Types and Rules

Dr. Abdullah S. Al-Bahouth

Abstract

This paper discusses plastic cards used in financial transactions, their types and the rules that apply to each type.

The author discussed in the introduction a number of books and treatises penned by a number of Muslim scholars and researchers on this subject.

The author listed a number of financial transactions cards and elaborated on:

1. The definition of financial transactions cards,

2. Types of cards,

3. Characteristics of each type of cards,

4. The rules applicable to the use of each type of cards.

The types of cards he discussed are:

- Automated teller machine card, Debit card, Store card, Discount price card, Stored value card, Smart card, Charge card, Credit card.

The author discussed several issues and legal comments on the use of financial transactions cards.

Connivance to Conclude Multiple Contracts under a Single Transaction

Prof. Dr. Nazih Hammad

Abstract

A connivance to conclude multiple contracts means concluding several contracts under a single agreement.

- Jurists used the term "connivance" for several meanings:

1. A covert agreement between two parties (explicitly or implicitly) to conclude multiple lawful contracts with the purpose of playing with usury.

2. An agreement between the seller and another person to increase the price of his goods to deceive others to purchase rather than to purchase it himself.

3. Two persons conniving with each other to deceive others that an agreement has been concluded between them while the reality is contrary to this.

4. Prior explicit or implicit agreement between two parties to conclude a lawful transaction with the purpose of having a legal excuse.

5. An agreement of intentions between two parties in the preliminary negotiations leading to an agreement composed of multiple contracts and consecutive connected promises under certain terms and conditions that control them as one unit aiming at performing a specific function meant to be completed in the manner agreed before concluding the agreement as used in modern financial transactions.

- An agreement that is concluded by explicit words may also be concluded according to what norms may dictate as the case may be and as supported by evidence of actual practice.

- The characteristics of the agreement subject of the paper according to the Islamic jurisprudence are three:

1. It is an agreement between two parties to conclude future contracts and promises.

2. This agreement is a condition preliminary to such contracts and promises and are subject to the legal conditions of permissibility, prohibition,

Rules of Insolvency in Islamic Jurisprudence Compared to Saudi Laws

Sheikh Ahmad Abdullah Al-Jaafri

Abstract

This study discusses the Islamic juristic rules that apply to debtors who own nothing more than their living needs compared to the rules established in the Saudi laws.

- The insolvent debtor is the one who owns nothing more than his living needs.

- The bankrupt debtor is the one whose funds do not pay for his mature debts.

- The Insolvent under the law is the bankrupt according to Muslim jurists.

- Lawyers limit the term “insolvent“ to the legally insolvent merchant.

- Who claims to be insolvent and is believed to be so by the creditor should not be detained. Rather he should be given a grace period until he is capable of paying his debts.

- The statement of wealthy debtor who claims to be insolvent should be disregarded. The judge has the right to sell his property to pay his debts or detain him until he pays his debts.

- If the conditions of the person claiming insolvency are unknown and his debt becomes mature upon his option, the creditor’s statement that the former is not insolvent is the one that should be considered. He as the right to request detaining the debtor until he pays his debt or proves to be insolvent.

- If the conditions of the person claiming insolvency are unknown and his debt becomes mature without having the option to set the date of payment, his statement supported with oath should be taken unless the creditor proves that he is wealthy.

- The debtor has the right to ask the creditor to make an oath that he does not know that the debtor is insolvent. If the creditor makes the oath to this effect, he has the right to ask detainment of the debtor until he pays his debt or proves to be insolvent. If the creditor declines to make the oath, the person claiming insolvency shall make the oath that his insolvent.

- The judge, with the support of pertinent authorities, shall do his best to investigate the conditions of the person claiming insolvency by all means possible.

- Insolvency is proved by relevant evidence represented by the testimony of two men having full legal capacity. If necessary, the judge may ask the testimony of three persons having full legal capacity, that of one man and two women or that of one person along with the oath of the person claiming insolvency.

- The person testifying that a certain person is insolvent or not should combine both legal capacity and familiarity with the conditions of the person for or against whom he testifies.

- The judge may request the person claiming insolvency to make an oath and provide evidence at the same time. Sometimes, these two requirements are mandatory.

- The time of hearing the testimony of insolvency is left to the discretion of the judge, either before, during or after detainment of the debtor.

- For detaining the person claiming insolvency, the creditor should ask for the same.

- A father may not ask detainment of his son unless he declines to support his sons whom he should support if he is capable to do so.

- A procrastinating woman may be detained in a special jail for women that meets legal conditions after exhausting all efforts to force her to pay her debts.

- If insolvency is proved, the insolvent person should be released from prison and should not be asked to pay until he becomes wealthy enough. However, this does prevent pertinent authorities from monitoring him.

- The Islamic Shariah exhorted creditors to give insolvent debtors enough time to pay their debts.

- In treating the problem of insolvency, the Islamic Shariah set a balance between mercy unto the insolvent debtor and avoiding harm to the creditor. The early jurists set rules for various cases of insolvency.

- The majority of laws on insolvency and bankruptcy applicable in Saudi Arabia are taken from the Islamic Shariah and none of them contradict the provisions of Shariah. However, they require to be complemented by other rules related to insolvency.