

# CONTRACTS

## Joining Two Contracts

*Is it permissible to join two separate contracts into one?*

It is permissible to join two separate contracts (even if they are related) into one (e.g. a home sale contract combined with a vehicle lease agreement), provided neither one conditions the other.

## Permissible Conditions In Contract

*What conditions are acceptable in a contract?*

Besides the permissible pre-agreed conditions that exist in a typical contract, the following conditions are also permissible:

- Condition of Payment: Where a good or service will be delivered according to payment;
- Condition of Receipt: Where a payment will be made according to delivery of some good or service;
- Condition of Collateral: Where a specified good secures the underlying price of a contract;
- Condition of Guarantor: Where a specified individual becomes legally obligated to ensure payment;
- Condition of Caveat Emptor: Where the seller declares himself free of responsibility for any defects, assuming the seller could not have been aware of any defects at the time of the sale;
- Condition of Payment Deferral: Where the date of deferred payment is clearly specified and agreed upon in the contract;
- Condition of Industry Practice: Where the contract includes a permissible condition that is accepted as the industry standard in the locality in which the transaction is conducted.

## Execution Of Contract

*When does a contract become executable?*

Unless otherwise noted because of the nature of the transaction itself, such as an ijarah property whose delivery is fixed for a future date, contracts are effective immediately.

## Termination Of Contract

*How is a contract terminated?*

Contract termination may be deliberate or automatic. A contract may be terminated deliberately and unilaterally if it is non-binding. Examples are an agency contract or a contract of gift or loan. It may also be terminated by exercising an option provisioned in the contract at the time of its execution. A binding contract such as an Ijarah may be cancelled by mutual consent. A contract expires automatically once it reaches the end of its term. It also expires due to damage or loss to its subject matter. For instance, an Ijarah is annulled if the leased asset is stolen or destroyed before delivery to the lessee, due to invalid conditions or circumstances affecting it, or as a result of the death of one of the contracting parties.

## **Ikala**

*What is an Ikala?*

An Ikala is the termination of a contract based on mutual consent. A contract may be terminated only if the subject matter possesses the same attributes with respect to quality and quantity as it did at the time of the sale. The money reimbursed to the buyer must be equal to the price paid at the time of the execution of the contract. If the subject matter of the sale has been consumed, the contract cannot be terminated.

## **Cancellation Of Contract On Basis Of Time**

*Is it valid for both parties to agree on the unilateral cancellation of a contract within a specified time period?*

Both parties may agree in the contract that either party may cancel the transaction unilaterally, without having to supply a reason, within a specified number of days.

## **Cancellation Of Contract Of Employment**

*May a contract of employment be cancelled at any time by either party?*

Where one party (employer) hires another party (employee) to perform a service, either party is entitled to cancel the contract at any time, though if the employer cancels the contract after the employee begins work, the employer is obligated to pay for work done at the agreed upon rate; but if the employee cancels, whether work had begun or not, the employee is entitled to nothing.

## **Cancellation Of Contract Upon Inspection Of Transacted Item**

*Is a buyer entitled to cancel a contract upon inspection of the item?*

If a buyer purchases an item without having first seen it, he is entitled to return it upon physical inspection without delay, whether provided for in the contract or not, even if the item is not of low or defective quality; particularly relevant in cases where delivery occurs considerably later than the finalization of the contract (e.g. mail-ordered purchases);

if a seller sells an item without having first seen it, he is not entitled to demand it back, though the buyer is still entitled to return it upon inspection;

if physical inspection proves satisfactory at first (having inspected a part of the item to ascertain the quality of the whole, when it is customary to do so, as is commonly done with larger quantities of fungible goods), but because the item's quality varies markedly within itself (e.g. in a grain silo the visible grain is of satisfactory quality while the rest is not) the buyer discovers only later that the uninspected portion of the item is of low or defective quality, it is permissible to return the unsatisfactory portion of the item (if practicable, otherwise the whole item) once inspected.

## **Cancellation Of Contract Based On Quality Of Product**

*Is it valid to cancel a contract due to the low or defective quality of the product?*

Products found to be of low or defective quality (such that their quality is below what is purported to be the case or what is customarily considered acceptable, and its usefulness is negatively affected thereby) are returnable (immediately upon discovery of the unsatisfactory quality) within a specified amount of time after delivery, assuming the low or defective quality existed at the time of the transaction but was not disclosed.

“Discovery of unsatisfactory quality” means that the item is seen (e.g. land), and if necessary, used (e.g. car) or consumed (e.g. food), in a manner customary to it before determining its quality. If the defect is not immediately discernible without use (e.g. operation of a new vehicle over long distances in hot weather), the seller is still obligated to compensate the buyer for the defect.

Qualitative or quantitative misrepresentation of any aspect of a good or service is impermissible and constitutes fraud, grounds for the aggrieved party to rescind the agreement at any time. The buyer, nevertheless, still has the choice of whether or not to accept the defective item. If the buyer decides to keep the item as it is, the buyer is not thereby entitled to a compensatory discount, though it is still permissible for the seller to offer a discount.

### **Canceling Contract Due To Over-Pricing**

*Is it permissible to cancel a contract if there is a substantial difference between the transaction price and market price?*

If the difference between the market price and the transaction price is substantial enough at the time of payment, the transaction may be cancelled by the buyer. Though jurists do not seem to specify the degree of difference between the market and transaction prices constituting “substantial,” a percentage may be incorporated into the contract itself.

### **Canceling Contract By Mutual Agreement**

*Is it permissible to cancel a contract by mutual agreement of parties?*

Under all circumstances, transactions may be cancelled by mutual agreement at the original rates.

### **Canceling Contract Unilaterally**

*Is it permissible for a party to cancel a contract unilaterally?*

Unilateral cancellations are only permissible if both parties mutually agree beforehand that either party may unilaterally cancel; it is recommended to agree to a cancellation that the other party proposes.

### **Waiving Payment For Transaction**

*Is it permissible for one of the parties to a contract to waive payment for the transaction?*

The party that undertakes the monetary risk associated with a transaction, not his representative, is entitled to waive payment for the transaction.

### **Artificial Contracts**

*What is meant by an artificial contract?*

Artificial contracts include the following:

*Hazal/Unserious Transacting*

When it is clear that two parties are not serious about actually entering into a contract, such a contract, if executed, comes under the classification of Hazal.

For instance, a sales transaction mentioned as a joke.

#### *Taljeeah/Secret Understanding*

A Taljeeah is when parties agree to conduct a contract ostensibly in a permissible manner but actually derive impermissible benefits.

There are 3 kinds of secret understanding:

- a) The parties do not wish to conduct a contract right from the start execute it anyway.
- b) The parties agree a secret price.
- c) The parties agree that one or both parties are involved in the contract for ostensive purposes but are not the real parties.

#### *Sukar/Transacting When Intoxicated*

A contract executed in a state of intoxication is considered an artificial contract.

#### *Khataa/Transacting In Error*

A contract executed as a mistake or on the basis of an error is also referred to as an artificial contract.

For instance, if a party mistakenly quotes an inappropriately small price for an asset.

### **Effect Of Invalid Conditions On Commutative And Voluntary Contracts**

#### *What makes a contract void or invalid?*

There are some conditions which render contracts void or invalid. A commutative contract is rendered void based on the stipulation of an invalid condition. For instance, if a person selling a car stipulates that he will use the car for three days every month for the first six months after it has been sold to the customer, such a condition annuls the contract. However, the stipulation of an invalid condition in a voluntary contract does not invalidate it. The condition remains invalid and may be removed without rendering the contract ineffective. For instance, a contract of gift is not annulled by the inclusion of a void condition.