sound mind, intellectual capacity and discernment. Any person who lacks one of these qualities is presumed to have a restricted ahliyat al adaa′, provided that such a person reaches the age of discernment. Any human being will be presumed to have full ahliyat al adaa′ upon reaching the age of maturity and satisfying its requirements.

It has been alleged that Islamic law does not recognize the concept of legal personality. Such a view can be generally rejected as incorrect. Although classical Muslim scholars did not apply this concept to partnerships, this fact can be explained by the social and economic conditions of their time, when partnerships generally comprised a limited number of individuals. In contrast, the concept of the legal personality is well-established under Shari′a with respect to such institutions as the public treasury, the waqf 'charitable trust', schools, hospitals and mosques, all of which are recognized as having the capacity to hold and exercise rights, and accept liability for obligations independent of their administrators. Parties to arbitration should have full capacity in order to be able to exercise their rights.[25] Alahliyah, as represented above, is only theory, as when it comes to actual application, the law summarizes Alahliyah in two main contexts only: majority and prudence. In the next few paragraphs, the requirements of majority and prudence under Shari′a as applied in Saudi Arabia will be examined.

The Legal Capacity Requirements for Natural Persons

In addition to satisfying the requirements of Shari′a contract law, a valid arbitration agreement requires the parties to the agreement to satisfy the requirements of legal capacity, i.e., to have reached a certain age and have a certain level of mental ability at the time of concluding the contract. Classical Islamic scholars tend to treat every case on its own merit, identifying the criteria according to age, sign of puberty and also on the attainment of a defect-free physical and mental maturity with which the person can reach a reliable standard in transactional matters.[26] A general legal competence to engage in legal transactions requires two basic qualifications: majority and prudence.

Majority

'Make trial of orphans until they reach the age of marriage; if then ye find sound judgment in them, release their property to them.'[27] The majority age is not exactly fixed under Shari′a law, neither by classical scholars nor today; however, the above-quoted verse indicates that it is around the age of puberty. Unlike most

25 A. Lerrick and Q. Mian, *Saudi Business and Labour Law* (2nd edn., Graham & Trotman, 1987), pp. 106–107.

26 Ibid.

27 The Quran 4: 6.

Western legal systems, Shari′a did not fix an exact age of majority. Some early Muslim scholars such as Abo Hanifa fixed the age of majority at 18 for males and 17 for females.[28] The most general support was given to the age of 15 for both males and females, by reason of the act of Prophet Muhammad. The Prophet did not allow anyone under the age of 15 to join the army during his lifetime. The Islamic fiqh rejected the fixing of any definite age for legal majority and adopted the principle that legal majority is attained with physical puberty. In Saudi Arabia nowadays, the majority age is a matter of dispute between different public authorities. The Ministry of Justice follows the teachings of Shari′a and accepts it as the age of physical puberty, which varies from one person to the other. This discussion does not relate to the recent controversy regarding marriageable age, because marriageable age varies according to the time, place and circumstances of each case. Such issues are left to local custom and tradition.

Before the age of 15, a person needs to obtain permission from his guardian in order to perform a valid action. In this case, the father of a minor is his guardian by default, following the Hadeeth of the Prophet when he said: 'You and your property belong to your father.' If the father is not present, the testamentary guardian appointed by him should have priority over anyone else. In the absence of the father and testamentary guardian, the paternal grandfather and the court-appointed guardian will follow respectively.[29] On the other hand, a person will have some restrictions on his actions until the age of 18, like the ability to work in the public sector. The restriction might also extend to the age of 21 for travelling outside the country.

Prudence

The Arabic legal term for prudence is *rushd* and a prudent person is called *rashid*. Ibn Qodamah described a prudent person as the person who shows protective safeguarding of his property and soundness in the ordering of his income.[30] The general trend restricts the scope of prudence to being required in financial matters only, whereas some scholars argue that prudence means sound judgment with regard to religion as well as property, so that a sinful or religious hypocrite may not be qualified as rashid, just as he may not qualify as a witness. The latter argument has been generally rejected in favour of the view that an impious Muslim might lack prudence in matters of religion, but if he has prudence in property dealings, then he has full competence to transact.[31]

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28 Y. Haddad and B. Stowasser, *Islamic Law and the Challenges of Modernity* (1st edn., Altamira Press, 2004), pp. 222–24.

29 J. Nasir, *The Islamic Law of Personal Status* (2nd edn., Graham & Trotman Ltd, 1990), p. 215.

30 Supra n. 4, Ibn Qodamah, Vol. 6, p. 610.

31 N. Coulson, *Commercial Law in the Gulf States: The Islamic Legal Tradition* (1st edn., Graham & Trotman, 1984), pp. 32–36.

Incapacitated Persons

Muslim scholars have identified several mental and physical defects that constitute impediments to legal capacity; consequently, those who suffer such defects have a restricted legal capacity. These defects can be either natural or incidental defects.

Natural Defects

Minority and insanity Infants and insane people are not allowed to conclude any kind of contract and they must be represented by their guardians. The actions of infants and insane people are null and void and not capable of ratification. The incompetence of the insane does not require the prior issue of a judgment to the effect that the party is insane, except in the Maliki teachings.[32]

Mental derangement is a weakness of mental faculties causing a person to have a limited ability in understanding, mixed reasoning and a defective ability of execution. Mental derangement could be severe, similar to insanity; and in this case such mentally deranged persons would have the legal status of insane persons, causing their ahliyat al adaa′ to be obsolete. Alternatively, it could be slight mental derangement; in this case mentally deranged persons would have a restricted capacity similar to that of discerning children.[33]

Mortal illness According to article 1595 of the Majalla, mortal illness, 'maradh almout', is 'a sickness where, in the majority of cases, death is very likely to happen [… I]n the case of a male, [… he would] become unable to deal with his affairs outside his home, and in the case of a female, she [… would become] unable to deal with her domestic duties, death having occurred before the expiration of one year by reason of such illness whether the sick person has been confined to bed or not'.[34] Mortal illness might deprive the individual of the capacity to contract; mortal illness is an original concept of Shari′a. From the above-quoted definition, for a person to be declared incapacitated, four requirements should be fulfilled: it should be a hopeless illness such as cancer or AIDS; the patient should be aware of his illness; the death of the patient as a result of his illness should be expected within one year; and he must have committed a detrimental act towards his heirs or creditors. An arbitration agreement can be annulled by the patient's heirs or creditors if it contains a present or harmful action against their interests.[35] Annulment of an arbitration agreement requires a court order.

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32 Supra n. 9, Saleh, p. 27.

33 Supra n. 18, Zahraa, p. 253.

34 A. Arrawi, 'Principles of the Islamic Law on Contracts', *George Washington Law Review*, 36 (1953), pp. 32–36.

35 Ibid.

Incidental Defects

Intoxication As a general rule, a person under the influence of alcohol or drugs loses his legal capacity for as long as remains intoxicated. An incapacitated person under this category, as it has been defined by Abo Hanifa, is a person who is unable to distinguish the earth from the sky.[36] The Hanafi school holds an extreme position with regard to intoxicated people. According to the Hanafies, the legal competence of a man is not affected when intoxication results from a voluntary act. It is affected only when alcohol is taken by accident or for medical reasons. To a lesser degree, the Malikies give an intoxicated person the option to ratify his action after regaining his consciousness. The Shafi′es and the Hanbalies deny the legal competence of an intoxicated person and disregard his acts.[37]

Insolvency An insolvent '*moflis*' is a person whose debt exceeds his assets and who is therefore unable to discharge his liability for such debts. It has been argued that a person may be regarded insolvent if he attempts to place his assets beyond the reach of his creditors. In some cases, when a debtor delays payment, a judge may, upon the petition of the creditors or heirs, issue an injunction forbidding the insolvent person from disposing of his assets.[38] This anticipatory restriction of legal capacity is called *hajr*; scholars have based it on the practice of Prophet Muhammad and his companions. All forms of commercial conduct of the insolvent are invalid unless approved by a judge or by the creditors.[39]

Shari′a Contract Law in Relation to Arbitration Agreements and Arbitration Clauses

Parties to the dispute should agree to arbitrate as a prerequisite for the commencement of arbitration proceedings. Such an agreement takes the form of either an independent agreement or a contractual clause incorporated within the main contract. Unlike arbitration under the Code of the Commercial Court of 1931, the Arbitration Act of 1983 regards arbitration agreements and clauses as binding and enforceable. As a general rule, we can say that all contracts and transactions are lawful and binding unless someone finds clear evidence to the contrary. Prohibition of the contract should be established by a clear Shari′a text or through accurate reasoning.[40] Shari′a maintains the parties' freedom to contract.

36 Supra n. 9, Saleh, p. 28.

37 Supra n. 29, Nasir, p. 47.

38 N. Aghndies, *Islamic Theories of Finance: With an Introduction to Islamic Law and Bibliography* (1st edn., Gorgias Press, 2005), pp. 215–16.

39 See Diwan Almazalim, Decision No. 60/D/4 of 1989.

40 S. Mahmoud, *Arbitration Codes: Comparative Study between the Arbitration Codes of Saudi Arabia, Kuwait and Egypt* (2nd edn., Dar Alkotob Alqanoniyah, 2007), p. 56.

In relation to the Hanbali school, Ibn Taymiyyah concluded that a contract cannot be revoked without the mutual consent and satisfaction of all the parties, except when it provides for an obvious violation of Shari′a law, i.e., it prohibits a lawful issue or legalizes a prohibited one.[41] The important aspects of Shari′a contract law in relation to arbitration agreements and arbitration clauses will be examined with reference to the fiqh treatises and common practice in Saudi Arabia. This is because there is no code or act to regulate commercial contracts, the practice being totally based on the traditions of Shari′a.

Contract under Shari′a

The Meaning of 'Contract'

Shari′a recognizes a contract as a legally valid activity and encourages the parties to any agreement to perform their obligations in accordance with the terms of the contract. The Quran states: 'You who believe, fulfil any contracts you may make.'[42] The Arabic term *aqd* is translated into English as 'contract'; however, it carries a deeper meaning than a normal contractual relationship. The literal meaning of the word aqd is 'tie' or 'bond'. There is no precise equivalent of the technical term 'contract' in Western jurisprudence, as a contract under common law involves, in addition to the intention to create a legal relation, the basic requirements of offer, acceptance and consideration. Under Shari′a contract law, however, a contract does not necessarily require the agreement of all the parties, because the term aqd may describe a unilateral action that is binding and effective even without the consent of the other parties in some events. For instance, a gift contract and the dissolution of a marriage by the husband are valid actions with no need for the other parties' acceptance.[43] The juristic use of the word aqd might lead to a presumption that scholars have been using the word in its etymological sense, i.e., following the root of the word rather than its technical use.[44]

Unlike other legal systems, a contract under Shari′a covers all kinds of obligations in all aspects of life such as religious obligations to Allah, the political obligations expressed in treaties, the obligation of *Bay'ah* to the political leader and commercial obligations.[45] The following Quranic verse supports the view that a contract involves all aspects of life including faith and personal religious

41 Ibid.

42 The Quran 5: 1.

43 Supra n. 31, Coulson, p. 18.

44 M. Hamid, 'Islamic Law of Contract or Contracts', *Journal of Islamic and Comparative Law*, 3 (1969), pp. 1–11.

45 N. Mohammed, 'Principles of Islamic Contract Law', *Journal of Law and Religion*, 6 (1988), pp. 115–16. Bay′ah is an Arabic term describing the oath of allegiance to the political leader. Bay′ah has been in practice since the time of Prophet Muhammad.

affairs: 'Fulfil the covenant of God when you have entered into it, and break not your oaths after you have confirmed them.'[46] There is no precise definition for contract in Shari′a treatises but most of the classical scholars define it as 'offer and acceptance'. Some scholars require the intention to enter into the contract except in issues related to personal status, i.e., marriage and divorce where the contract will form even if there is no intention.[47] Some Western scholars assume that a contract in Islamic law is merely a legal undertaking – there is a dispute among the different schools of fiqh over the essentials, which are different from the Western definition of a 'binding promise'.[48]

Formation of a Contract

To form a contract under Shari′a, a number of conditions have to be fulfilled. First of all, for a contract to be valid, it should not contradict Shari′a principles. This means that the contract should not involve any prohibited subject matter and should be procedurally valid in the sense that there should be no uncertainty, or '*gharar*'. Moreover, a commercial contract is of no value without satisfying the essential conditions of offer and acceptance.[49] Shari′a contract law is far easier than modern Western laws; however, this simplicity may turn into complexity in modern commercial contracts, especially when the contract is to be concluded by means other than the traditional one of having the parties to the contract physically gather and conclude the contract with the witness of other qualified persons. In addition to the parties' legal capacity requirements to join the contract, Shari′a requires that the parties should sustain mutual agreement during the transaction session, known as Khiar Almajlis.

Mutual Consent

The most important condition for the validity of any contract is the mutual consent of the parties to the contract. The legal basis of this rule is the following Quranic verse: 'O you who believe! Transfer not unjustly the property of one another among yourselves except by your mutual consent.'[50] In accordance with the teachings of this verse, a contract concluded under duress is null and void. Consent should be voluntary and parties should freely choose to make the promise. In addition to mutual consent Shari′a requires mutual satisfaction, as contracts concluded against

46 The Quran 16: 91.

47 A. ben Gasim, *Hashiyat Alraoud Almourbi' Sharh Zad Almostaqna* (1st edn., Almatba′a Alahliyah Liloffset, 1976), Vol. 4, p. 327. See also, supra n. 4, Ibn Qodamah, Vol. 4, p. 271.

48 Supra n. 31, Coulson, p. 18.

49 A. Alkhenain, 'Contracts Involving Uncertainty', *Ministry of Justice Journal*, *Saudi Arabia*, 13 (2002), pp. 170–73.

50 The Quran 4: 29.

the will of one of the parties can be revoked if one of the parties challenges it. Classical Shari′a scholars distinguished between consent and satisfaction, because consent can be obtained without satisfaction, as in the case of hard bargaining, which is considered to be a sort of duress. The only exception to this requirement is contracts made by an authority against insolvents to pay off creditors – these require neither consent nor satisfaction.[51]

Mutual agreement is the foundation of most kinds of contract under Shari′a. Mutual consent happens when one party gives an explicit offer, in Arabic called ijab. The party who receives the offer should give an unequivocal acceptance, or qoboul. If these two steps are taken correctly, the contract will be legally binding as long as the parties do not change their minds before leaving the place at the conclusion of the contract. In normal circumstances, if a contract has been concluded in conformity with all the relevant provisions of Shari′a, not only is the contract valid and binding on the parties, but its conclusion is also permissible, albeit with certain performances having become obligatory.[52]

Khiar Almajlis

Khiar Almajlis is another important doctrine under Shari′a contract law. Khiar Almajlis is the option of cancelling a contract after its conclusion without bearing any liability. This cancellation method is available in the period between the moment of concluding the contract and the time of leaving the place at the conclusion of the contract. The option of Khiar Almajlis is available to all the parties to a contract – when one of them decides to use it, the contract will be annulled without any liability. The concept of Khiar Almajlis is similar, to some extent, to the cooling-off period in Western laws. The basis for this doctrine came from the following Hadeeth of Prophet Muhammad, in which he said: 'The buyer and the seller have the option to cancel or to confirm the contract before they separate from each other.'[53]

With regard to a conditional sale, the Prophet said: 'No deal is settled and finalized unless the buyer and the seller separate, except if the deal is conditional.'[54] In this case, the validity of a contract depends on the conditions stipulated in it. Furthermore, Khiar Almajlis is not the only cancellation method under Shari′a

51 Supra n. 47, ben Gasim, Vol. 5, p. 332. See also I. Algari. 'The Formation of the Contract in Islamic Shari′a', *Ministry of Justice Journal, Saudi Arabia*, 11 (2001), pp. 1–13.

52 J. Schacht, 'Problems of Modern Islamic Legislation', *Studia Islamica*, 12 (1960), pp. 99–129.

53 A. Albukhari, *Aljame' Alsaheeh (Saheeh Albukhari)* (1st edn., Dar Aljeel, 2005), Vol. 3, Chapter 34, Hadeeth No. 320.

54 Ibid., Vol. 3, Book 34, Hadeeth No. 326.

contract law; other forms of Khiar apply to some cases such as conditional sales, fraud, defects, mistakes and misrepresentations.[55]

In circumstances where one of the parties to the agreement wishes to cancel or amend the contract on one of the cancelling grounds, the damaged party will have the option of cancelling the contract without bearing any liability toward the other parties.[56] After the end of the cooling-off period, i.e., leaving the venue after concluding the contract, the contract is final and ready for execution.

Nominate and Innominate Contracts

Unlike other laws, Shari′a pays very little attention to the distinction between nominate and innominate contracts. Shari′a established the rule that in matters of civil and commercial dealings, any agreement not specifically prohibited by Shari′a is valid and binding on the parties and can be enforced by the court. In the Aramco Award of 1958, the arbitration tribunal stated: 'Aramco's concession must be considered as an innominated contract sui generis.' Moreover, the law gives full recognition to the rule *Pacta Sunt Servanda* with a few moral and religious exceptions in cases where the execution of the contract leads to a violation of Shari′a.[57]

Nominated commercial contracts under Shari′a law are:

- *Bai'* – a sale, which is the transfer of the subject matter of the contract for consideration;
- *Hibah* – a gift, which is the transfer of the subject matter without consideration;
- *Ijara* – a lease, which is the transfer of the right of using the subject matter for consideration;
- *Ariyyah* – a loan, which is the transfer of the right of using the subject matter without consideration; and
- *Salam* – such contracts can be equivalent to futures contracts.

Contracts other than these five are innominated and are permissible only as long as they do not violate the principles of Shari′a and public order.

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55 In addition to Khiar Almajlis, there are a few types of options mentioned in Shari′a treatises, namely: Khiar Alshart – conditional sale; Khiar Ala′ib – where the buyer has the option of cancelling the contract for a defect in the subject matter; Khiar Alro′yah – where the validity of the contract is subject to the inspection of the goods; Khiar Ghalat or 'mistake' – where the parties reserve the right of cancelling the contract if it is concluded by mistake, i.e., if one of the parties buys the wrong goods; Khiar Altadlees – where the parties have the right to cancel the contract in case of fraud.

56 See, generally, supra n. 31, Coulson, pp. 56–74.

57 See, generally, S. Habachy, 'Property, Right, and Contract in Muslim Law', *Columbia Law Review*, 62 (1962), pp. 450–73.

Special Conditions – 'Shorout'

Fiqh treatises define special conditions as conditions that are irrelevant to the fundamental nature of the contract. Some scholars do not accept such conditions, an attitude that shows how far Shari′a law tries to keep commercial contracts as simple as possible. However, simplicity can work as an impediment in some modern transactions.[58] In this sense, a loan agreement should not involve a condition that is not reasonably relevant to the concept of loan, such as sale or lease, as, if the parties wish to stipulate something other than the main subject matter of the contract, they should do so in a separate agreement. For instance, hire-purchase contracts were the subject of much debate in the last decade because the condition of obligatory sale of the subject matter after the termination of the lease period was not relevant to the lease contract under Shari′a. Scholars who opposed such contracts argued that having two different kinds of obligations, i.e., sale and lease, under the same contract may create a degree of uncertainty. Hire-purchase contracts were eventually legalized under the condition that the provisions related to the sale of the subject matter after the termination of the lease period changed to be a non-binding promise; otherwise, such contracts are null and void.[59]

With regard to banking transactions, the known practice of *Altawarrouq* is debated continually among scholars nowadays – some prohibit it, while others allow it with restrictions. An Altawarrouq transaction is a contract wherein a customer requests a bank to acquire a specific commodity, usually one with a stable price such as metals, on his behalf. The customer will repay the bank the cost of the commodity plus an agreed margin in instalments. The customer then requests the bank to sell the commodity right away in the commodity spot market.[60] An Altawarrouq contract involves three main irrelevant obligations, as the bank will be seller, broker and agent at the same time. First, the bank will act as broker and seller in the credit sale of a commodity from the bank to the client. Second, the bank will act as agent for the client in the second sale of the commodity. When looking at the nature of Altawarrouq, the reasoning of the scholars who prohibit it is obvious, because the purpose behind this transaction is not interest in the commodity at issue but the acquisition of immediate financing without having to take out a loan and pay interest. Although such transactions do not involve interest, they do involve a great deal of prohibited gharar, or uncertainty, as a result of having two or more different irrelevant obligations in one contract.[61]

58 Supra n. 4, Ibn Qodamah, Vol. 4, p. 224.

59 See the Council of Senior Ulama of Saudi Arabia, Decision No. 52 dated 29/10/1420 H. (2000) Riyadh, Saudi Arabia.

60 J. Sole, *Introducing Islamic Banking into Conventional Banking System* (IMF Working Paper No. WP/07/175, International Monetary Fund, 2007).

61 '*Majma' Alfiqh Alislami*', the Islamic Fiqh Council of the Muslim World League, Decision No. 19 dated 22/10/1428 H. 3/11/2007. Makkah, Saudi Arabia.

Prior to the enactment of the Arbitration Act of 1983, Shari′a courts failed to recognize arbitration clauses as valid dispute settlement clauses. This was because judges regarded them as conditions that were irrelevant to the nature of the contract.[62] However, there is no doubt that arbitration agreements and arbitration clauses are valid agreements as long as the dispute is solvable through conciliation.

Termination of the Contract

Shari′a contract law shares many of the common grounds for dissolving a contract with Western laws. As with English law, a contract will be discharged when both parties have satisfactorily performed their contractual obligations. Furthermore, in accordance with the principle of freedom of contract, parties to the contract can terminate it by mutual agreement in the same way that they established it.[63] Under Saudi law, mutual agreement to terminate a contract is treated, to some extent, in a way similar to a conciliation award, because the law does not provide any teachings with regard to remedies and liabilities in such instances. However, Shari′a did introduce the principle of Aloqoud Aljai′za. There is no exact equivalent of this term in Western laws, as the direct translation of this group of contracts is 'permissible contracts', which is meaningless for the reason that entering into most kinds of contracts is permissible. However, the term may be used to describe non-binding contracts. The most popular forms of non-binding commercial contract are wakalah, or 'agency', and the mudarabah company.[64] The most important feature of these kinds of contract is unilateral termination, except in mudarabah where the only condition is to give notice to the other party unless the terms of the contract provide for certain obligations. Shari′a scholars restrict the principle of freedom of contract by the doctrine established by the 'La Dharar wa La Dhirar' Hadeeth of Prophet Muhammad, which translates as 'there shall be neither unfair loss nor the causing of such loss'. This doctrine is important not just in the field of contracts, but also as one of the main bases of fiqh teachings in all aspects of life. Accordingly, the principle of 'La Dharar wa La Dhirar' allows any party to annul a contract if they have experienced serious prejudice as a result of the execution of the contract.[65]

In relation to arbitration, some fiqh schools consider appointing arbitrators for non-binding contracts, as the parties can revoke them at any time during arbitration

62 N. Albejad, *Arbitration in Saudi Arabia* (1st edn., Institute of Public Administration, 1999), p. 30.

63 See, generally, G. Samuel, *Contract Law: Cases and Materials* (1st edn., Sweet and Maxwell, 2007), pp. 475–505.

64 A mudarabah company is a form of commercial partnership where one partner gives money to another for investing it in a commercial activity.

65 See, generally, S. Alsadlan, *Alqawaid Alfiqhiyah Alkubra wa Matafarra' Minha* (1st edn., Dar Balancia, 1997), especially Chapter 5.

proceedings. However, the arbitration agreement is a binding agreement, as will be seen when discussing the arbitration law of Saudi Arabia.

The Arbitration Agreement and the Arbitration Clause in Islamic Law

The Arbitration Agreement

There is no mention of a model arbitration clause or agreement in the classical Shari′a treatises; however, the general rules of Shari′a contract law are applied to arbitration agreements. An arbitration agreement can be formed by an offer and an acceptance or by any word or action that indicates the intention of the parties to refer the dispute to arbitration.[66] The Majalla set a few conditions for the validity of the arbitration agreement, which are:

- the dispute must already have arisen and be clearly defined;
- the parties must have agreed to arbitration by a reciprocal offer and acceptance and they must say the following to the arbitrator – 'arbitrate between us because we have appointed you as an arbitrator';
- the arbitrator must be appointed by name; and
- the arbitrator must have the capacity to be a witness.[67]

With the exception of the Maliki school, which considers the appointment of an arbitrator as irrevocable, the appointment of an arbitrator is revocable up to the point of the issuance of the award, except where the appointment has been confirmed by a court or if the arbitration agreement contains a provision for the non-revocation of the arbitrator. The Maliki school stresses the irrevocability of the appointment of arbitrators and the arbitration agreement in the light of the following Quranic verse: 'O you, who believe, fulfil the contracts.'[68] This verse calls for the fulfilment of all contractual obligations, and the arbitration agreement is a binding contract. In addition, assuming that the arbitration agreement is not a binding obligation, it will undermine the strength of arbitration as an effective dispute settlement mechanism.

The arbitration agreement should be documented in writing to prevent any future disputes regarding the arbitration.[69] Islamic law encourages the recording of all debts and contracts, as the Quran states: 'When you deal with each other, in

66 M. Ibn Taymiyyah, *Majmou' Alfatawa* (2nd edn., The Ministry of Islamic Affairs of Saudi Arabia, 1995), Vol. 29, p. 20.

67 A. Alahdab, *Altahkeem Ahkamouh wa Masaderouh* (1st edn., Naoufal Publications, 1990), p. 26.

68 The Quran 5: 1.

69 See, generally, A. Al-Kenain, 'Tadween Almorafa′a Alqadaiyah', *Al-Adl Journal*, 2 (1999), pp. 76–115.