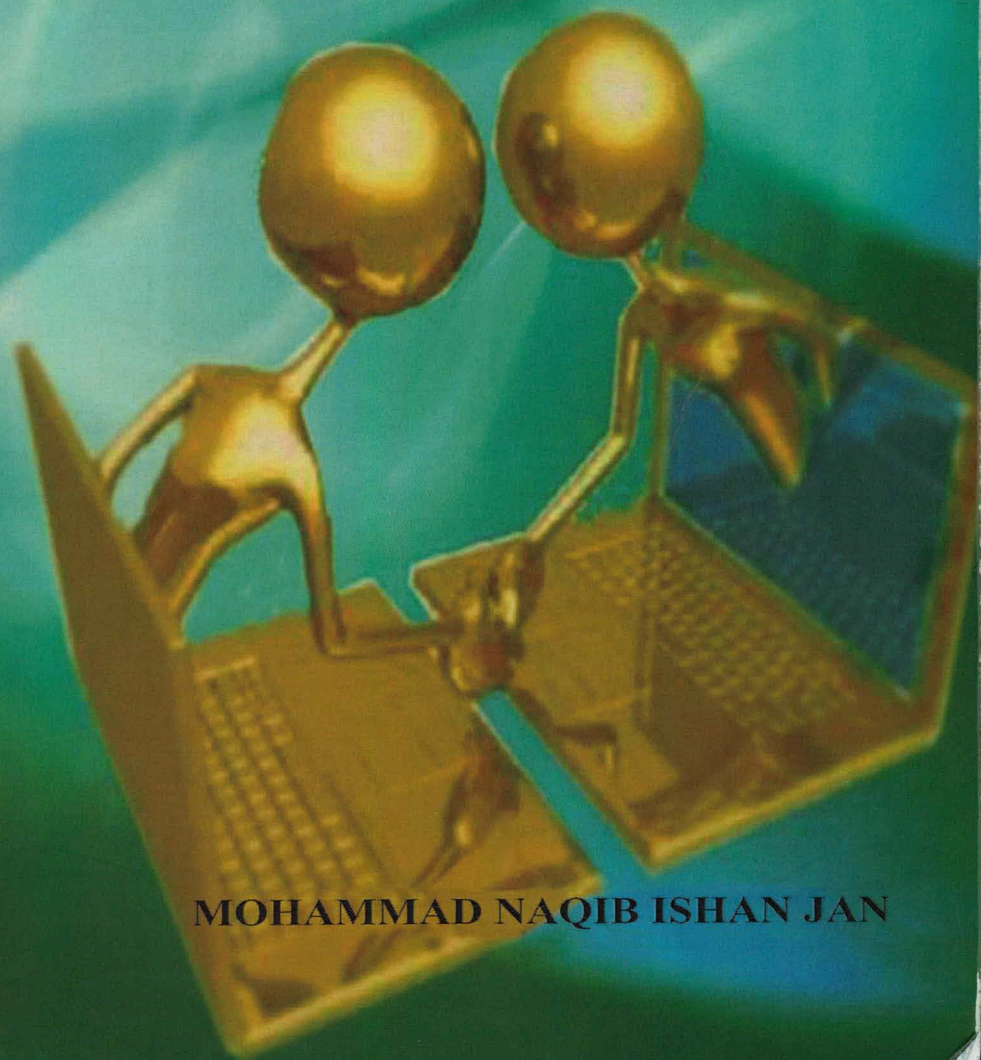


LAW AND COMMERCE : THE MALAYSIAN PERSPECTIVE



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LAW AND COMMERCE: THE MALAYSIAN PERSPECTIVE

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CHAPTER 9

LAW OF CONTRACT IN SHARIAH

by
FAUZIAH MOHD NOOR

Contracts are essential part of the economic system of free enterprise. They are the basis of Islamic law of transactions. Hence, Islamic law gives special protection to contracts. Without such protection, people would find it very difficult to plan transactions. The right to make and carry out contracts is fundamental to liberty and is protected by Islamic law. Its faithful execution is a duty stated by the Quran to the effect : "*o you who believe! Perform your contracts*" (*Al-Maidah, 5:1*). A contract in Islamic law is simply a legally recognized undertaking. To make a contract, one party must propose a relationship to another party.

The Arabic word for contract is "*aqd*," which literally means "tying, knitting, joining, locking." In the dictionary of Lisan al Arab, they say, *aqad al Ahad* which means to make a covenant and *aqad al Yamin* to mean give an oath. So the word *aqd* carries the meanings of covenant and fulfillment. The plural of the word '*uqud*' is mentioned in the Holy Quran, in commanding the faithful to keep their covenants. '*Aqd*' is basically an exchange of promises between two or more parties resulting in an obligation to do or refrain from doing some lawful act intended to result in legal relations or legal consequences which are enforceable in law.¹