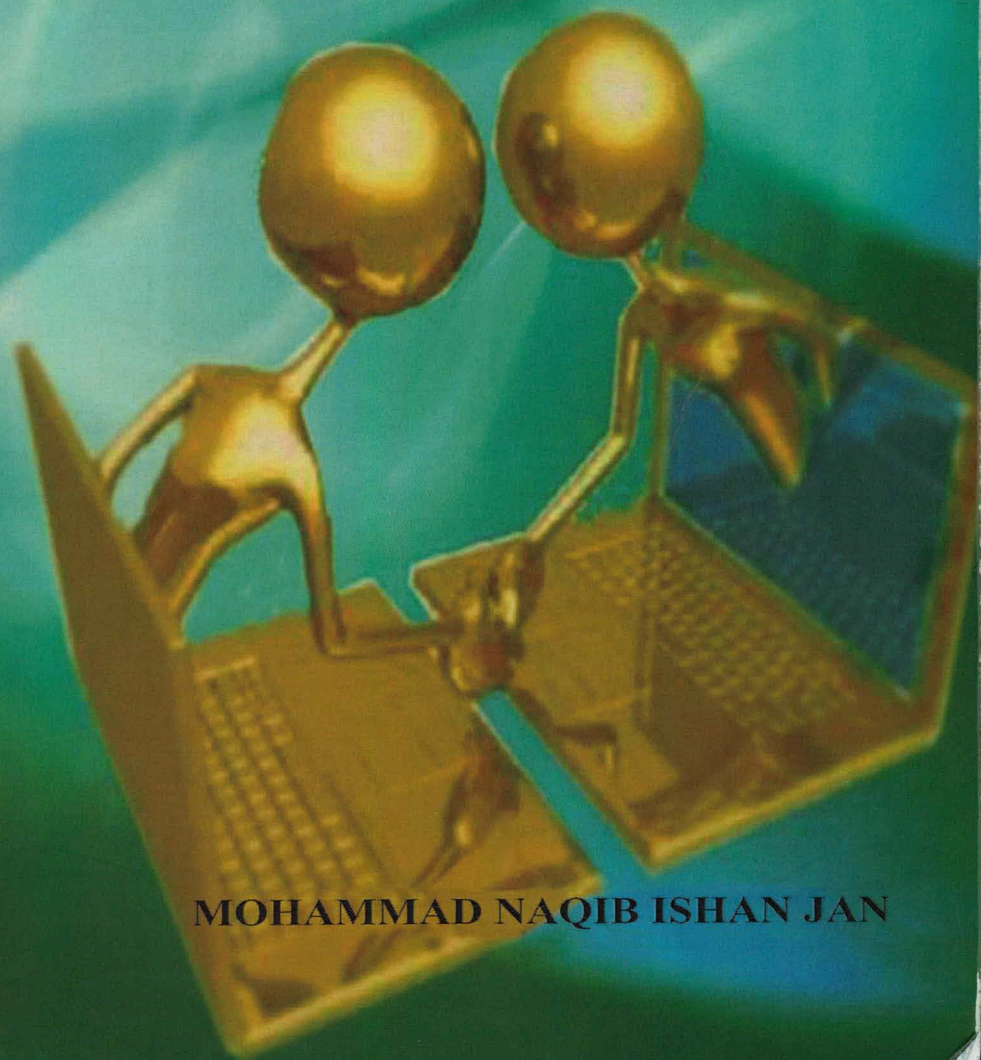


LAW AND COMMERCE : THE MALAYSIAN PERSPECTIVE



MOHAMMAD NAQIB ISHAN JAN

LAW AND COMMERCE: THE MALAYSIAN PERSPECTIVE

MOHAMMAD NAQIB ISHAN JAN

LLB (HONS) (IIUM), MCL (IIUM),
Ph.D (IIUM)

ASSOCIATE PROFESSOR,

COORDINATOR OF ALTERNATIVE DISPUTE
RESOLUTION UNIT,

AHMAD IBRAHIM KULLIYAH OF LAWS (AIKOL)
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA



IIUM Press

Published by:
IIUM Press
International Islamic University Malaysia

First Edition, 2011
©IIUM Press, IIUM

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without any prior written permission of the publisher.

Perpustakaan Negara Malaysia

Cataloguing-in-Publication Data

Mohammad Naqib Ishan Jan

Law and Commerce: The Malaysian Perspective

Include index

ISBN 978-967-0225-43-2

ISBN: 978-967-0225-43-2

Member of Majlis Penerbitan Ilmiah Malaysia – MAPIM
(Malaysian Scholarly Publishing Council)

Printed by :
IIUM PRINTING SDN. BHD.
No. 1, Jalan Industri Batu Caves 1/3
Taman Perindustrian Batu Caves
Batu Caves Centre Point
68100 Batu Caves
Selangor Darul Ehsan

CONTENTS

<i>Authors' Profile</i>	i
<i>Preface</i>	v
<i>Contents</i>	ix
<i>Table of Cases</i>	xxvii
<i>Table of Legislation</i>	xlix

PART I

The Malaysian Legal System: An Overview

Chapter 1

Law and Legal System in Malaysia: An Overview

THE NATURE OF LAW.....	2
Definition of Law.....	2
Sources of Law.....	5
Written Law.....	5
Federal Constitution.....	5
State Constitution.....	6
Act, Enactment or Ordinance.....	6
Subsidiary Legislation.....	7
Unwritten law.....	9
Common Law.....	9
Reception of English Common Law in Malaysia.....	9
Customary Law	11
Islamic Law.....	13
Islam in Malaysia.....	15
Syariah courts in Malaysia.....	17
LAW MAKING AND LAW ENFORCEMENT MACHINERY....	20
Legislature to make Law.....	22

Judiciary to enforce the Law.....	25
Hierarchy of Courts in Malaysia.....	27
Special Court.....	28
Federal Court.....	28
Court of Appeal.....	29
High Court.....	30
Original Jurisdiction - Criminal Jurisdiction.....	32
Original Jurisdiction - Civil jurisdiction.....	33
Specific Jurisdiction.....	33
Family Division.....	33
Appellate Jurisdiction.....	34
Revisionary Jurisdiction.....	34
Muamalat Division.....	34
New Commercial Court.....	35
Sessions Court.....	36
Magistrates' Court.....	37
Arbitration.....	37

PART II

Law of Contract: Fundamental to All Aspects of Commercial Law

Chapter 2

The Nature of the Law of Contract

THE DEFINITION AND TYPES OF CONTRACT	49
Definition of Contract.....	49
Types of Contract.....	50
THE GOVERNING LAW.....	51
The Contracts Act 1950.....	51
English Common law.....	53
THE REQUISITS OF A VALI CONTRACT.....	54

Chapter 3

The Primary Elements of an Enforceable Contract

PROPOSAL (OFFER).....	57
ACCEPTANCE.....	60
CONSIDERATION.....	63
INTENTION.....	70

Chapter 4

Intention to Create Legal Relations

ISSUES PERTAINING TO INTENTION TO CREATE LEGAL RELATIONS	76
Domestic Agreements.....	76
Agreements between Husband and Wife.....	76
Car Pool Agreements may Involve the Necessary Intention.....	78
Arrangements between Parents and Children.....	79
Other Social Arrangements.....	80
Commercial Agreements.....	81
Letters of Comfort.....	82
CONCLUSION.....	84

Chapter 5

Parties to Contract

CAPACITY TO CONTRACT	88
Legal Competency.....	88
Effect of Contract Entered by Minor.....	88
Effect of Misrepresentation of Age by a Minor.....	89
Recovery of property Transferred under a Contract Entered by Minor.....	90
Exceptions to the General Rule in Capacity to Contract.....	92
Persons of Sound Mind.....	94
PRIVITY OF CONTRACT	95
The Origin and Development of Privity of Contract at Common Law.....	95
The General Rule of Privity of Contract in Malaysia....	96
The Exceptions to the General Rule in Privity of Contract.....	97
CONCLUSION.....	100

Chapter 6

Distinction between Void and Voidable Contracts

VOIDABLE CONTRACT.....	105
------------------------	-----

Meaning of Voidable Contract.....	105
Circumstances Where Contract becomes Voidable....	106
Coercion.....	106
Undue Influence.....	107
Fraud and Fraudulent Misrepresentation.....	109
Burden of Proof for Fraud	110
Fraudulent Misrepresentation.....	113
Elements of fraud and misrepresentation.....	114
There must be a Representation of Fact.....	114
A representation of law.....	115
An expression of opinion.....	115
Fraud or misrepresentation under section 340 (2) (a) of the National Land Code.....	119
Exception to section 19 of the Malaysian Contracts Act.....	122
VOID CONTRACT	122
Meaning of Void Contract.....	122
Circumstances where Contract becomes Void.....	122
Doctrine of Severance	129
Agreements Void If Object or Consideration is Void ..	131
Agreement in Restraint of Marriage Void.....	132
Agreement in Restraint of Trade	133
Agreements in Restraint of Legal Proceedings Void ...	133
Agreements' Void for Uncertainty	134
Agreements By Way of Wager Void	135
CONCLUSION.....	136

Chapter 7

Discharge of Contract

DISCHARGE BY CONSENT OR AGREEMENT BETWEEN THE PARTIES.....	141
DISCHARGE BY PERFORMANCE.....	144
Time and Place of Performance	145
Effect of Failure to Perform	145
DISCHARGE BY BREACH OF CONTRACT.....	147
BREACH DUE TO REPUDIATION OF THE CONTRACT....	150
DISCHARGE BY FRUSTRATION OR IMPOSSIBILITY OF PERFORMANCE.....	150
CONCLUSION.....	153

Chapter 8 Remedies for Breach of Contract

TYPES OF REMEDIES.....	155
Damages.....	155
Section 74 of the Contract Act 1950 and Remoteness of Damages.....	156
First Limb of Section 74(1)	159
Second Limb of Section 74(1)	160
Quantum of Damages.....	161
Expectation loss.....	161
Reliance loss.....	162
Proof of Damage.....	163
Duty to Mitigate.....	163
Section 75 of the Contracts Act 1950.....	164
Rescission.....	167
Specific Performance.....	168
Injunction.....	169
Mareva Injunction	170
Anton Piller Order	170
<i>Quantum Meruit</i>	171

Chapter 9 Law of Contract in Shariah

THE PILLARS OF A CONTRACT.....	176
Offer (<i>Ijab</i>) and Acceptance (<i>qabul</i>) <i>sighah</i>	177
The Existing of two Properly and Qualified Contracting Parties (<i>Al-'Aqid</i>).....	178
Subject Matter of Contract (<i>Mahal al Aqid</i>).....	179
THERE SHALL BE NO IMPEDIMENTS AFFECTING THE VALIDITY OF THE CONSENT.....	181
The Elements of Gharar.....	183
CONCLUSION	183

PART III

E-Commerce

Chapter 10

E-Commerce and the Practice in Malaysia: An Overview

DEFINITION OF E-COMMERCE.....	186
E-COMMERCE AND E-CONTRACTS.....	186
THE REGULATORY FRAMEWORKS.....	187
By the United Nations.....	187
E-commerce Regulations.....	188
The Malaysian laws.....	189
OTHER RELEVANT STATUTES	191
TYPES OF E-COMMERCE.....	191
Business to Business (B2B).....	191
Business to Consumer (B2C).....	191
Consumer to Business (C2B).....	192
Business to Employee (B2E).....	192
Consumer to Consumer (C2C).....	192
ADVANTAGES AND DISADVANTAGES	193
LEGAL ISSUES IN E-COMMERCE	194
Breach of Online Contract	195
E-Commerce and Privacy Issues	196
E-Commerce and Consumer Protection.....	199
E-Commerce and Web Advertisement	200
E-COMMERCE AND ADMISSIBILITY OF ELECTRONIC	
RECORDS IN ELECTRONIC CONTRACTS.....	202
COMMERCE AND OTHER RELATED MATTERS.....	203
Electronic Data Interchange.....	203
Taxation on internet services.....	204
THE CHALLENGES IN E-COMMERCE.....	205
THE FUTURE OF E-COMMERCE.....	206
Virtual Dressing Rooms.....	207
Improved Supply Chain Process.....	207
Sharing of Product Lists and More Choices.....	208
Easier Transactions and Better Delivery Options.....	208
Secured Transactions.....	208

Chapter 11

The Law of Electronic Contract in Malaysia: Issues and Challenges

THE MEANING AND SCOPE OF ELECTRONIC CONTRACT.....	217
THE FUNDAMENTAL PRINCIPLES IN E-CONTRACT LAW..	218
LEGAL LANDSCAPE OF E-COMMERCE IN MALAYSIA.....	222
Digital Signature Act 1997	223
Computer Crimes Act 1997.....	223
Communications and Multimedia Act 1998	224
Payment systems Act 2003	225
Electronic Commerce Act 2006	225
Minimum Guidelines on the Provision of the Internet Banking Services by Licensed Institution	226
Other Laws Applicable for Oline Environment	226
E-CONTRACT UNDER THE ELECTRONIC COMMERCE ACT 2006: THE BASIC FEATURES.....	228
Functional Equivalence and the Legal Recognition ...	230
Legal Recognition of Electronic Message	231
The Requirement of Writing	231
The Requirement of Signature	232
The Requirement of Seal, Witness and Originality ...	233
The Formation of Electronic Contract	234
ELECTRONIC CONTRACT AND THE CHALLENGE OF DATA PRIVACY.....	235
Personal Data Protection Act 2010	236
The Seven Data Protection Principles	237
ELECTRONIC CONTRACT AND THE CHALLENGE OF SYSTEM SECURITY.....	241
CONCLUSION.....	244

PART IV

Sale of Goods: The General Principles

Chapter 12

Sale of Goods Law: A Prologue

BACKGROUND OF THE SOGA 1957 (MALAYSIA).....	251
---	-----

THE APPLICABLE LAW IN SALE OF GOODS LAW IN MALAYSIA.....	255
Section 14 of SOGA 1979 UK: Satisfactory Quality....	258
SCOPE OF THE SALE OF GOODS ACT 1957	259
DEFINITION OF GOODS UNDER THE SOGA	261
CLASSIFICATION OF GOODS.....	262
FORMATION OF THE SALE CONTRACT.....	264
DISTINCTION BETWEEN SALE AND AGREEMENT TO SEL.....	265
NATURE OF THE SALE OF GOODS CONTRACT.....	269
CAPACITY TO MAKE A SALE OF GOODS CONTRACT.....	270
FORMALITY AS AN ELEMENT OF A SALE OF GOODS CONTRACT.....	272
PRINCIPLE FOR DETERMINATION OF PRICE OF GOODS.....	273
SALE OF GOODS LAW: AN ISLAMIC PERSPECTIVE.....	275
CONCLUSION.....	279

Chapter 13

Implied Terms under the Sale of Goods Act 1957

DEFINITION OF THE SALE OF GOODS CONTRACT	284
A Contract of Sale.....	284
An Agreement to Sell.....	284
Price.....	285
Goods.....	285
Implied Terms.....	286
Right to sell.....	286
IMPLIED WARRANTY AS TO QUIET POSSESSION.....	289
IMPLIED WARRANTY THAT THE GOODS ARE FREE FROM ENCUMBRANCE.....	290
IMPLIED CONDITION THAT GOODS CORRESPOND WITH DESCRIPTION.....	290
THE FORM OF THE DESCRIPTION.....	290
EXTENT OF THE DESCRIPTION.....	291
SALE BY SAMPLE AND DESCRIPTION.....	293
THE RELATIONSHIP OF DESCRIPTION AND QUALITY..	294
CAVEAT EMPTOR.....	295
Implied condition as to quality under Section 16(i)(a).....	296
Buyer's reliance on the sellers' skill and judgment....	298

DISCLOSURE OF PURPOSE.....	301
IMPLIED CONDITION AS TO MERCHANTABILITY QUALITY.....	302
Meaning of merchantable quality.....	303
SALE BY SAMPLE.....	307
EXCLUSION OF IMPLIED TERMS.....	310

Chapter 14 Transfer of Title

THE GENERAL RULE.....	314
EXCEPTIONS TO THE <i>NEMO DAT</i> RULE.....	317
Estoppel.....	317
Sale by Mercantile Agent.....	318
Sale by One of Joint Owners.....	320
Sale under Voidable Title.....	321
Disposition by Seller in Possession after Sale.....	322
Dispossession by Buyer in Possession after Sale.....	323

Chapter 15 Rights and Remedies of the Buyer and the Seller

RIGHTS AND DUTIES OF THE SELLER.....	330
RIGHTS AND DUTIES OF THE BUYER.....	332
REMEDIES.....	334
DAMAGES FOR NON-DELIVERY.....	335
Damages.....	335
Compensation for Breach of Contract where Penalty is Stipulated For	336
Specific Performance.....	337
Restitution.....	337
Expectation Loss.....	338
Reliance Loss.....	339
Remedies for Seller.....	339
Right to Forfeit Deposit.....	340
A Lien.....	341
Stoppage in Transit.....	342
Resale by Seller.....	342
CONCLUSION.....	342

Chapter 16
Disputes and Issues Relating to Sale and Purchase of
Land in Malaysia

THE NATURE OF LAND OWNERSHIP AND GOVERNING LAWS.....	346
TYPE OF LAND OR PARCEL.....	348
THE SALE AND PURCHASE AGREEMENT.....	348
ISSUES RELATING TO SALE AND PURCHASE OF LAND... 350	
SPA Conditional upon Compliance with Restriction in Interest.....	350
Other Conditions Attached to the SPA.....	351
Purchase Subject to an Existing Tenancy.....	352
Purchase of Property Subject to a Charge Action.....	353
Effect of Pending Land Acquisition.....	354
DISPUTES RELATING TO SALE AND PURCHASE OF LAND.....	356
Late Delivery of Vacant Possession.....	356
Abandoned Housing Projects by Developers.....	357
Poor Workmanship or Quality.....	358
CONCLUSION.....	359

PART V
Hire Purchase

Chapter 17
A Review on the Application of Malaysian Hire
Purchase Act 1967 and the Recent Amendment 2010

MEANING OF "HIRE PURCHASE" UNDER HPA.....	368
MEANING OF "GOODS" UNDER THE HPA.....	370
Formation of the Hire Purchase Agreement	371
Pre-Contractual Obligations.....	371
Construction of a Hire-Purchase Agreement.....	372
Post Contractual Obligations.....	372
RIGHTS AND PROTECTIONS OF HIRERS.....	373
STATUTORY RIGHTS OF THE HIRER.....	376
REPOSSESSION OF GOODS BY THE OWNER AND RIGHTS OF THE HIRER.....	377
Procedures Prior to Repossession.....	379

Procedures during Repossession.....	380
Procedures after Repossession.....	381
INSURANCE.....	382
CONCLUSION.....	383

Chapter 18

Islamic Hire-Purchase (Al-IjarahThumma al-Bay') (AITAB)

DEFINITION OF IJARAH.....	387
IJARAH VS KIRA.....	388
LEGALITY.....	388
The Qur'an	388
The Sunnah.....	389
Consensus of Scholars.....	390
DEFINITION OF ISLAMIC HIRE-PURCHASE (AITAB).....	390
AITAB VS INSTALLMENT SALE.....	391
AITAB VS OPERATING LEASE.....	391
PRACTICAL STEPS OF AITAB.....	392
JURISTIC CONSTRUCTION OF AITAB (AL-TAKYEEF AL-FIQHI).....	392
LEGAL RULING FOR AITAB.....	393
AREA OF APPLICATION.....	397

PART VI

Law of Agency

Chapter 19

Agency Law

MEANING OF AGENT.....	400
CREATION OF AGENCY: AUTHORITY.....	400
Express and Implied Appointment.....	401
Doctrine of Estoppels.....	402
Ratification.....	403
Necessity.....	404
APPOINTMENT BY COHABITATION.....	405
OBLIGATIONS OF AGENT TO PRINCIPAL.....	405
RIGHTS OF AGENT.....	409

AGENT AUTHORITY.....	410
TERMINATION OF AGENCY.....	412

Chapter 20

Agency in Islamic Law

DEFINITION OF AGENCY (WAKALAH).....	419
DISTINGUISHING AGENCY FROM OTHER RELATIONSHIPS.....	420
Agency and Deputation (<i>niyyabah</i>).....	420
Agency and Guardianship (<i>wilayah</i>).....	420
Agency and "Will" (<i>wasiyyah</i>).....	420
Legality of Agency.....	421
Qura'n.....	421
Hadith.....	422
Consensus.....	422
NATURE OF AGENCY CONTRACT.....	423
PILLARS OF AGENCY CONTRACT.....	424
CONDITIONS FOR AGENCY VALIDITY.....	424
Conditions for Contract Language.....	425
Conditions for Principal.....	426
Conditions of Agent.....	426
Conditions for Object of the contract.....	426
Agency in Transactions and Financial Rights.....	427
DELEANINGS WHICH DO NOT ACCEPT LEGAL REPRESENTATION.....	429
Agency in Testimony (<i>al-shahadah</i>).....	429
Agency in Acts of Worship.....	429
Agency in <i>hudud</i> and other Punishments.....	430
Agency in establishing <i>hudud</i> crimes.....	430
Agency in Executing <i>Hudud</i> Punishments.....	430
Agency in Executing Retaliatory Punishment.....	431
TYPES OF AGENCY	431
Restricted Agency (<i>wakalah muqayyadah</i>).....	431
Unrestricted Agency (<i>wakalah mutkaqah</i>).....	431
Obligations of agent to principal.....	432
Obligations of principal to agent.....	432
Legal effects of contracts performed by agents.....	433
TERMINATION OF AGENCY CONTRACT.....	433

PART VII
Consumer Protection

Chapter 21
The Nature of the Law on Consumer Protection

AN OVERVIEW OF THE CONSUMER PROTECTION ACT 1999.....	438
NEW REGULATIONS ON UNFAIR CONTRACT TERMS.....	440
LIABILITY FOR DEFECTIVE PRODUCTS.....	444
MANUFACTURER'S LIABILITY FOR BREACH OF IMPLIED GUARANTEES.....	445
MANUFACTURER'S LIABILITY FOR BREACH OF EXPRESS GUARANTEES.....	447
MANUFACTURER'S LIABILITY UNDER PART X.....	449
THE TRIBUNAL FOR CONSUMER CLAIMS (TCC).....	454
CONCLUSION.....	456

PART VIII
Negotiable Instruments and Franchise Law

Chapter 22
Negotiable Instruments

DEFINITION OF NEGOTIABLE INSTRUMENTS.....	464
TYPES OF NEGOTIABLE INSTRUMENT.....	464
Statute: Bills of Exchange 1949.....	465
Promissory Notes.....	465
Cheque.....	465
Mercantile Custom.....	465
Bankers' Draft.....	465
Bank Notes.....	466
Travellers' Cheques.....	466
Treasury Bills.....	466
Share Warrants.....	466
Dividend Warrants.....	466
Debentures.....	467
DEFINITION AND CHARACTERISTICS OF BILLS OF EXCHANGE.....	467
FUNCTIONS OF BILLS OF EXCHANGE.....	470

THE ELEMENTS OF BILLS OF EXCHANGE.....	471
Consideration.....	471
Capacity to Contract.....	471
Negotiation of Bills.....	471
Acceptance.....	472
Endorsement	473
Delivery.....	474
Liability of the Parties.....	475
Holder.....	476
Holder in Due Course.....	476
Holder for Value.....	477
ISSUES OF BILLS OF EXCHANGE.....	477
Forged Signatures.....	477
Inchoate Bills.....	477
Presentment for Payment.....	478
Procedure of Dishonour.....	479
Noting and Protest.....	479
CHEQUES.....	480
Definition	480
Characteristics	480
Legal Effect on Cheques.....	480
Crossing of Cheques.....	482
Alteration on a cheque.....	482
PROTECTION OF THE PAYING BANKER.....	483
PROTECTION OF THE COLLECTING BANKER.....	484
TERMINATION OF A BANKER'S AUTHORITY TO PAY....	484
ANTI-MONEY LAUNDERING ACT 2001.....	485
CASE LAWS ON NEGOTIABLE INSTRUMENTS.....	486
SHARIAH PERSPECTIVES ON NEGOTIABLE INSTRUMENTS.....	497
Definition of <i>Sukuk</i>	497
Basic Structure of <i>Sukuk</i>	499
Purpose and Benefits of <i>Sukuk</i>	499
Comparison with Bonds.....	501
Comparison between <i>Sukuk</i> and Bond.....	502

Chapter 23 Franchise Law in Malaysia

FRANCHISE IN MALAYSIA.....	504
Definition.....	505

The Law.....	506
FRANCHISE AGREEMENT.....	507
Duration.....	510
Fees and Promotion Fund.....	512
FRANCHISE BUSINESS.....	512
Conduct of the Parties.....	513
Offences.....	513
CONCLUSION.....	515

PART IX

Other Related Topics

Chapter 24

Civil Court Jurisdiction over Islamic Banking Cases – Muamalat Division of the High Court

LEGISLATING POWERS OVER ISLAMIC BANKING LAWS.....	520
ARTICLE 3(1) OF THE FEDERAL CONSTITUTION AND ITS IMPLICATIONS ON ISLAMIC BANKING INDUSTRY.....	521
CIVIL COURT JURISDICTION OVER ISLAMIC BANKING CASES.....	523
MUAMALAT DIVISION OF THE HIGH COURT.....	524
MUAMALAT DIVISION OF THE HIGH COURT VIS-A-VIS SHARIAH ADVISORY COUNCIL OF BANK NEGARA MALAYSIA.....	532
CONCLUSION.....	534

Chapter 25

The Nature, Concept and Epistemological Development of the Law of Bailment: A Prolegomenon

THE NATURE OF THE LAW OF BAILMENT.....	538
SOURCES OF THE LAW OF BAILMENT IN MALAYSIA.....	540
ELEMENTS OF BAILMENT.....	541
Subject Matter	542
Delivery	542
Purpose	543
Contract	543

PROVISION ON RETURNING THE GOODS AFTER THE PURPOSE IS SERVED.....	543
CLASSIFICATION OF BAILMENT.....	544
DUTIES OF THE BAILEE.....	546
RIGHTS OF THE BAILEE.....	548
Bailee's Right of Particular Lien.....	548
Bailee's Right of General Lien.....	549
Right Regarding Delivery of Goods to one of Several Joint Bailors.....	550
Right Regarding Delivery of Goods to Bailor without Title.....	550
Right to Claim Damages for Non-Discloser of the Faults in the Goods Bailed.....	551
Right to Claim Payment for Necessary Expenses	552
Right to be indemnified by the Bailor.....	552
Right to Claim Compensation for Safe Custody.....	553
LIABILITY OF THE BAILEE.....	553
Liability under Bailment Contract.....	553
Liability of Bailee for Tort.....	555
Liability of Negligence.....	556
BURDEN OF PROOF IN THE LAW OF BAILMENT	557
RESPONSIBILITY OF THE BAILEE: AN ISLAMIC SPIRITUAL PERSPECTIVE.....	560
CONCLUSION.....	561

Chapter 26

The Tort of Negligence

THE DUTY OF CARE.....	566
The Scope of Duty of Care.....	567
Reasonable Foreseeability	567
Proximity	568
Public interest.....	568
NEGLIGENT STATEMENTS.....	568
The Need for a Special Relationship – Knowledge of Victim.....	571
From Knowledge to Foresight.....	572
From Foresight Back To Knowledge.....	575
Avoiding and Excluding Liability.....	579
Professional negligence insurance.....	579

The Present Position Regarding Duty of Care- A Summary.....	580
THE DOCTRINE OF <i>RES IPSA LOQUITUR</i>	581

Chapter 27

Islamic Commercial Law

DEFINITION OF COMMERCIAL LAW.....	586
THE EVOLUTION OF ISLAMIC COMMERCIAL LAW.....	587
THE ISLAMIC REFORM.....	588
THE BASIC CONCEPT AND PRINCIPLES OF COMMERCIAL LAW.....	590
Justice and Goodness.....	590
Transparency in Commercial Dealings.....	592
Prohibition of Gharar.....	592
Circulation of Wealth and Prohibit Hoarding and Monopoly.....	594
CONCLUSSION.....	594
INDEX	597

CHAPTER 13

IMPLIED TERMS UNDER THE SALE OF GOODS ACT 1957

by

MOHD. AKRAM BIN SHAIR MOHAMED*

Many contracts involve sale of goods. The contracts for the sale of goods are essential to healthy national and international trade. Statutes have played a crucial role in the development of special rules of law in this area; especially since the English Sale of Goods Act 1893, upon which the Malaysian Sale of Goods Act 1957 (SOGA) is essentially based. This was primarily concerned with needs of commercial buyers and sellers. In the twentieth century, the interests of consumers became increasingly recognized and this is reflected in the English Sale of Goods Act 1979 (which by virtue of Section 5 (2) of the Civil Law Act 1956, applies in the States of Sabah and Sarawak only). The formation of the Sale of Goods contracts, the elements that may invalidate them to a large extent and their discharge are still largely regulated by the Contracts Act 1950.

The Sale of Goods Act 1957 basically focuses on the contractual elements which are particularly crucial to the needs of the buyer and the seller of goods like the terms governing the nature and quality of goods sold the transfer of ownership, performance obligations and the means of contractual