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 KULLIYYAH OF LAWS (AIKOL)
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA

IIUM Press
CONTENTS

Authors’ Profile....................................................................................... i
Preface..................................................................................................... v
Contents ................................................................................................. ix
Table of Cases........................................................................................ xxvii
Table of Legislation.................................................................................xl ix

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
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
Quantum Meruit............................................................. 171

Chapter 9
Law of Contract in Shariah

THE PILLARS OF A CONTRACT........................................... 176
Offer (Ijab) and Acceptance (qabul) sigah ..................... 177
The Existing of two Properly and Qualified Contracting
Parties (Al-'Aqid).............................................................. 178
Subject Matter of Contract (Mahal al Aqid)..................... 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 Online 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
Chapter 14
Transfer of Title

THE GENERAL RULE................................................................. 314
EXCEPTIONS TO THE NEMO DAT 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
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
**CONTENTS**

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 (*niyyabah*)......................... 420
  Agency and Guardianship (*wilayah*)....................... 420
  Agency and "Will" (*wasiyyah*)............................... 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 (*al-shahadah*)....................... 429
  Agency in Acts of Worship................................... 429
  Agency in *hudud* and other Punishments.................. 430
  Agency in establishing *hudud* crimes..................... 430
  Agency in Executing *Hudud* Punishments.................. 430
  Agency in Executing Retaliatory Punishment............... 431

TYPES OF AGENCY .................................................. 431
  Restricted Agency (*wakalah muqayyadah*)................ 431
  Unrestricted Agency (*wakalah mutkaqah*).................. 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
<table>
<thead>
<tr>
<th>THE ELEMENTS OF BILLS OF EXCHANGE</th>
<th>471</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consideration</td>
<td>471</td>
</tr>
<tr>
<td>Capacity to Contract</td>
<td>471</td>
</tr>
<tr>
<td>Negotiation of Bills</td>
<td>471</td>
</tr>
<tr>
<td>Acceptance</td>
<td>472</td>
</tr>
<tr>
<td>Endorsement</td>
<td>473</td>
</tr>
<tr>
<td>Delivery</td>
<td>474</td>
</tr>
<tr>
<td>Liability of the Parties</td>
<td>475</td>
</tr>
<tr>
<td>Holder</td>
<td>476</td>
</tr>
<tr>
<td>Holder in Due Course</td>
<td>476</td>
</tr>
<tr>
<td>Holder for Value</td>
<td>477</td>
</tr>
<tr>
<td>ISSUES OF BILLS OF EXCHANGE</td>
<td>477</td>
</tr>
<tr>
<td>Forged Signatures</td>
<td>477</td>
</tr>
<tr>
<td>Inchoate Bills</td>
<td>477</td>
</tr>
<tr>
<td>Presentment for Payment</td>
<td>478</td>
</tr>
<tr>
<td>Procedure of Dishonour</td>
<td>479</td>
</tr>
<tr>
<td>Noting and Protest</td>
<td>479</td>
</tr>
<tr>
<td>CHEQUES</td>
<td>480</td>
</tr>
<tr>
<td>Definition</td>
<td>480</td>
</tr>
<tr>
<td>Characteristics</td>
<td>480</td>
</tr>
<tr>
<td>Legal Effect on Cheques</td>
<td>480</td>
</tr>
<tr>
<td>Crossing of Cheques</td>
<td>482</td>
</tr>
<tr>
<td>Alteration on a cheque</td>
<td>482</td>
</tr>
<tr>
<td>PROTECTION OF THE PAYING BANKER</td>
<td>483</td>
</tr>
<tr>
<td>PROTECTION OF THE COLLECTING BANKER</td>
<td>484</td>
</tr>
<tr>
<td>TERMINATION OF A BANKER'S AUTHORITY TO PAY</td>
<td>484</td>
</tr>
<tr>
<td>ANTI-MONEY LAUNDERING ACT 2001</td>
<td>485</td>
</tr>
<tr>
<td>CASE LAWS ON NEGOTIABLE INSTRUMENTS</td>
<td>486</td>
</tr>
<tr>
<td>SHARIAH PERSPECTIVES ON NEGOTIABLE INSTRUMENTS</td>
<td>497</td>
</tr>
<tr>
<td>Definition of Sukuk</td>
<td>497</td>
</tr>
<tr>
<td>Basic Structure of Sukuk</td>
<td>499</td>
</tr>
<tr>
<td>Purpose and Benefits of Sukuk</td>
<td>499</td>
</tr>
<tr>
<td>Comparison with Bonds</td>
<td>501</td>
</tr>
<tr>
<td>Comparison between Sukuk and Bond</td>
<td>502</td>
</tr>
</tbody>
</table>

**Chapter 23**  
**Franchise Law in Malaysia**

**FRANCHISE IN MALAYSIA** | 504
| Definition                  | 505 |
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 Expaneses ................................................................. 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
NEGLIGENCE 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

THE DOCTRINE OF RES IPSA LOQUITUR

Chapter 27
Islamic Commercial Law

DEFINITION OF COMMERCIAL LAW
THE EVOLUTION OF ISLAMIC COMMERCIAL LAW
THE ISLAMIC REFORM
THE BASIC CONCEPT AND PRINCIPLES OF COMMERCIAL LAW

Justice and Goodness
Transparency in Commercial Dealings
Prohibition of Gharar
Circulation of Wealth and Prohibit Hoarding and Monopoly

CONCLUSION

INDEX
CHAPTER 25

THE NATURE, CONCEPT AND EPISTEMOLOGICAL DEVELOPMENT OF THE LAW OF BAILMENT: A PROLEGOMENON

by
MD. ABDUL JALIL* &
MD. NANNU MIAN**

The law of bailment is very important topic in the law of contract. Basically bailment can be a formal or an implied contract where there are two parties, such as the bailor and the bailee. The person who delivers the goods to another person under contract or for some other reasons is called the ‘bailor’ and the person whom the goods are delivered is called the ‘bailee.’ In this chapter, the authors discuss the nature of bailment, duties of the bailee, classification of bailment, rights and liabilities of a bailee, spiritual aspects of the bailee and finally they put concluding remarks. In this chapter descriptive and analytical research methodology has been applied to critically analyze the concept of the law of bailment.