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Writing of Future Obligations: Historical Background & Application

Dr. Capt. Qamar Abad
Master Mariner-Advocate High Court
Visiting Faculty Member
School of Law, University of Karachi, Karachi
Email: qamarabad@gmail.com

ABSTRACT

In the present commercial world, despite a variety of communication skills and means of expression available, the writing has the uppermost priority. It dominates in clarity with lowest degree of misperceptions and disputing. The civilized world adopts the same for its ease and being less tainted with risks of disputes at the later stages of recovery in the future. The importance of writing especially the commercial deeds and transactions of future debts and obligations has its roots in pre-historic era. However, the history of writing including the writing of commercial and future obligations is quite interesting. It is evident that trades, wars and other communications between civilizations played vital roles in exchanges and developments.

Maritime commerce and trade also played vital role in development of civilizations and elevating the human in society in the world. The Mediterranean region during medieval periods played a significant role in law making and writing of commercial transactions. However, these practices were customary in Levant and Arab Peninsula several hundred years before. Al-Qur'ān, in the early 6th Century AD, directed the believers to adopt writing of commercial and future obligations by an expert scribe and witnessed. In the current paper, an attempt has been made to highlight the importance and background of writing of the future obligations.

***Keywords**: Writing Future Obligations, Contract, Maritime, Commerce, CPEC.*

1. Introduction

An obligation may be defined as:

> *"A formal, binding agreement or acknowledgment of a liability to pay a certain amount or to do a certain thing for a particular person or set of persons; esp., a duty arising by contract."*[1]

It is an act, omission or course of action to which a person (natural or legal) is morally or legally bound as a duty or commitment. It may be considered the condition of being morally or legally bound to do something or omit from doing something or a debt of gratitude for a service or favor to someone.

Generally speaking, it is a moral bond or duty which may be of necessity or of one's own and voluntary choice. The relationship binds the two or more parties together. For example parents' duty towards children is both moral as of necessity as well as a legal obligation to take care of them. Obligations of husband and wife towards each other are of choice resulting from a contract between them.

1.1. Future Obligations:

Future obligations are obligations occurring in future. In legal terms, future obligations may be regarded as a liability or duty to do something or refrain from doing something in future under the terms of a contract between the parties. For example, the obligation of a borrower is to pay back the lender under the terms of the contract. Non-fulfillment of obligations gives rise to rights of claims for compensation with or without penalty in addition to the principal amount. Future obligations or duties turn into liability as a debt due and payable, encumbering a certain sum of money, as soon as an agreement to sell converts into a contract of sale under the terms and conditions of the contract or by lapse of time.

2. Literature Review

2.1. Contract

A contract is a voluntary and deliberate agreement made between two or more parties legally binding the competent parties. Under the provisions of the Contract Act 1872 and the injunctions of *Islām*, it is not necessary that a contract should be in writing or witnessed or registered. However, other enactments may make it (contract) mandatory to be in writing and/or witnessed and/or registered. Contracts are usually written but may be spoken or implied (even by symbol), and generally have to do with a vast variety of affairs including employment, sale, lease, tenancy, agency, bailment etc.

2.2. Formation of a Contract

A contract is generally formed by a proposal (or a set of proposals) which may be

conditional or qualified; an acceptance by the person to whom the proposal is made; the acceptance unlike a proposal (or a set of proposals) must be absolute and unqualified; the absolute acceptance of the proposal (or a set of proposals) forms the relationship between the parties (proposer and acceptor) called a "promise"; every promise and every set of promises forming the consideration for each other (parties to the promise) is agreement(s); and every agreement enforceable by law is a contact.

There seems to be no considerable difference between Islamic point of views and provisions of the Contract Act 1872 concerning the formation of a contract.

2.3. Meeting (*Majlis*) for Contract

It seems necessary to discuss for clarity, the requirement of a meeting (*majlis*) for contract in accordance with the provisions of Islamic law of contracts. Under the Islamic law, it is emphasized that an offer and the acceptance should take place in one meeting (*majlis*). In this context, the word "meeting" or (*majlis*) has been used in broader meanings that a proposal necessarily requires to be accepted before it lapses or expires.

2.4. Competency to Contract

Similarly, the qualifications and competency of the parties to a contract according to the provisions of the Contract Act 1872 do not appear differing in principle from the Islamic laws of contracts. The question as to what is the age of majority may differ which the Contract Act 1872 has dealt with by making it in accordance with the law to which the parties are subject.[2]

2.5. Duty to Fulfill Contractual Obligations

Every contract creates certain rights and duties for each of the party to the contract. All parties to a contract may expect a fair benefit from the contract but it does not mean that each party will benefit from it to an equal amount. The notion of voidable contract and the remedy available to one of the party seeking a contract voidable where its consent was caused by coercion, fraud or misrepresentation gives powers to court to declare the contract voidable at the option of that party whose consent was so caused.[3]

Injunctions of *Islām* as well as the provisions of the Contract Act 1872 emphasize strongly on fulfilling contractual obligations by the parties and bind them to performance of their duties. In Qur'ān, Allah Commands:

يٰٓاَيُّهَا الَّذِيْنَ اٰمَنُوْٓا اَوْفُوْا بِالْعُقُوْدِ[4]

'O ye who believe, fulfill all of your obligations'.

And in the Contract Act 1872, under sec. 37, the parties to a contract have been made duty bound to perform their respective promises unless dispensed with or excused under the law.[5] Duty of performance does not terminate on the death of

the promisors but it continues beyond it and representatives of the promisors become liable for performance. However, such performance is subjected to the law and the intention of the parties in accordance with terms and conditions of the contract. The terms and conditions of the contract always prevail if not contrary to law and the courts are bound to decide accordingly.

2.6. Future Obligations Criticism

The permissibility of the future contracts/obligations has been a topic of debate for Muslim scholars. The conservative Muslim scholars have criticized them mainly on the five grounds.

The goods are not present or in existence when the contracts are made. The validity of sale becomes questionable only as a paper transaction; a contract of sale in which the seller is short of possession of the goods, he actually agrees to sell; falling short of the condition of "*qabḍ*" or taking ownership of the goods prior to possible resale of the goods; the transactions turns into sale of one debt for another; and since the subject matter of the sale (goods) is not present or in existence, and actually possessed by the seller at the time of entering into a future contract, there exists a great possibility of undue speculations amounting to gambling.

The above mentioned reservations and criticism by conservative Muslim scholars appears to be in cases of sale of goods only. Our topic relates to the future agreements in general and not limiting to the sale of goods and obligations created in consequence thereof. The permissibility of future contracts is not the topic of this discussion. We are rather concerned with the origin and background of the writing of future contracts.

3. Writing versus Oral Comparison

Writing always, has been superior and clearer than verbal as it eliminates confusions and errors of narration or intentional unauthorized changes made during communications. Its importance has always been recognised and practiced by the mankind. Even the Divine Commands, though revealed direct from the Creator on the selected prophets, were at the earliest opportunity reduced into writing for preservation. The law of evidence gives preference to documentary evidence against oral or verbal evidence. The documentary evidence is regarded as "Primary" evidence.[6] And the document itself produced in the court for inspection is deemed sufficient proof of its existence in the absence of any allegations on its veracity. Whereas, oral accounts of the contents of a document given in the court by some person who has seen the document himself is admissible in the court but only as secondary evidence.[7] The latter (oral) is considered weaker in value than the former (written). This principle has

been devised on scientific facts keeping in view the limitation of human intelligence and senses resulting in varying perceptions by different people under similar circumstance. Even same person may have varying perceptions and understanding of words spoken in varying circumstances. It is therefore, beyond doubt that writing is always preferable and beneficial against oral promises and agreements.

Writing of commercial deeds and agreements bear its own importance in the commercial markets all over the world. This importance cannot be undermined during past, present or future. Whenever commerce grew up in any region of the world, writing of agreements of all kind also grew up. The maritime commerce is one of the examples.

3.1. The Rhodian Sea Law-The Earliest Written Law

Rhodian Sea Law, or Byzantine law, also titled *Lex Rhodia* purportedly developed around 900-800 B.C. by the people of Rhodes, said to be the earliest codified law, some fragments of which could survive in their original form and acknowledged by Roman law. It is generally considered as a source of admiralty and maritime law.[8] It transpires that whether or not any maritime code was promulgated by the Rhodian Lawmakers, the rules of general average, historically, have their source and authority in the Rhodian Sea Laws.

It is generally believed that the present maritime laws or the law of the commerce on sea is continuation of the Rhodian and Roman laws. Robinson in this regard writes:[9]

In *Scotia,*[10] it was observed by the Court that despite having been a local code, Rhodian law after having been acceptable to the maritime world is supposed to have been the earliest system of marine rules.

3.2. Athenian Maritime Laws- Contracts Written in the Market of Athens

Around the fifth and fourth century B.C. the Athenian empire with a strong naval force without any rival in the area dominated and influenced the commercial trade of the Mediterranean Sea, particularly the Aegean Sea. The famous port of Piraeus having its three working harbors was the center of trade for export and import of goods. Major exports included olive oil, silver, and handicrafts whereas the imports mainly included high quality food stuff and cereals.

3.3. Naval Loans- Bottomry & Respondentia

The maritime commerce in Athens reached its maturity at this time and a system of naval loans developed with its special features of repayment becoming due only on successful completion of an adventure and the ship or the cargo making security for the loan. These loans latter became popular as Bottomry and

Respondentia. The former being a loan against the ship herself as security and the latter against the cargo pledged as security for the loans. As mentioned earlier, these transactions were different in nature from the usual borrowing and lending. They were payable only after successful completion of the adventure for which the loans were written. The said loans with the passage of time took the shape of marine insurance especially "Hull & Machinery" and "Cargo" insurance. The loans though mutually and voluntarily agreed upon between the parties naturally gave rise to disputes in repayment and claims arising in accordance with the terms of the contracts.

3.4. Introduction of Special Commercial Maritime Courts

For the purpose of resolving issues of borrowing and repayment of loans as well as disputes arising from considerable trade activities, Athens created *dikai emporikai,*[11] special commercial maritime courts, distinct from civil categories and with unique procedures. In some respects, they resembled the juridical counter part of the administrative authorities and akin to the officials of the ports. In contrast to the general rule prevailing at that time that 'a foreigner has no rights," these courts were open to individuals of foreign nationalities and citizenship. Giving foreigners rights of suits in commercial activities, in return attracted enormous trade and commerce in the jurisdiction.

3.4.1. Metics or Metoikos

It seems interesting to make reference to the status of foreigners in the city of Athens at the particular period of time. In ancient Athens, foreigners were treated separately from their own citizens and were referred to as *metics*, which is a derivation from the word *"metoikos"* a combination of *meta* and *oikos*, literally meaning "change dwelling[12]. *Metics* had no right to vote in elections, could not own property, and had to pay taxes for their residing[13]. And in return they (foreigners) were allowed to remain and reside in the city, engage in commerce, work at a profession and utilize the free services of the city, including the public festive.[14]

Metics, undoubtedly enjoyed the status as free-born, clearly distinguished from foreign-born slaves widespread in ancient Greece, their status definitely remained inferior to that of the citizens in the city. Like in the grand procession of the P*anathenaia*[15], a magnificent annual festival, *metics* were assigned inferior and subservient roles such as carrying trays and water. They were not included among the members of the procession while immortalizing in marble carvings on frieze of *Pathenon.*[16]

3.4.2. Special Features of the Courts

Unlike other courts, special provisions were made for assuring a defendant's

presence at the following trial. It later forms basis for an action in rem against a ship, its cargo or even its freight. Getting a judgment and decree in favor has too little significance or benefits in provision of relief for plaintiff if an efficient and speedy system of execution of the decree is not available. The Athenian courts, having regards to it, not only provided efficient courts to decide the commercial matters brought before them but also a unique and effective mechanism was made available which could be adopted to enforce the judgment of the maritime commercial tribunals. The courts resembled more with and adopted the summary procedures in order to render decisions without any delay. The Athenian commercial maritime courts were remarkable and peculiar in rapidity, supra-nationality and rigors. The speediness of the procedure of the maritime commercial courts generally meant that the adjudication was made to complete within 30 days of its initiation. With such features, Athenian commercial maritime law was in accord with various modern systems which give special consideration to time-preference for commercial actions. These courts had jurisdiction over contracts made in writing in the markets of Athens involving the sea-trade between Athens and other ports.[17] The establishment of these courts laid down foundation for adjudication of maritime claims and issues through their decisions in the form of precedents. It was the dominant maritime power in the western world from 8th to 4th century B.C. Athenian supremacy in the region with values of the Hellas (Greek) civilization assured that its maritime commercial law and courts were accepted throughout the Mediterranean world and in its neighborhood. Indeed its influence endured Athens and is the only area of classical Greek law that maintained its originality and wasn't replaced entirely by Roman models in later centuries. Codified during the Roman period in the form of Rhodian Sea Laws, it went on to influence the subsequent development of European commercial and maritime law. The Athenian Code appears to be limited to the written contracts made in Athens and perhaps registered which could be enforced in the courts of Athens.

3.4.3. Appointment of Scribe or Clerk on Board

But, writing of commercial transactions in the region generally became popular and customary during medieval periods. The first known codified maritime law in written form, of the medieval period, popularly known as "the Maritime Ordinances of Trani 1063 A.D., for the first time made employment of a scribe or a clerk on board ship compulsory as well as writing of all the transactions and agreements on board ship in a "Book" or "Register", kept on board. The entries were not limited to the carriage of goods or passengers on board but also the Agreements with crew employed on board.

A number of maritime codes and enactments were introduced in writings and enforced in the medieval periods in the Mediterranean region and its neighborhood. The region of Mediterranean Sea and the adjacent waters were the areas well developed and rich in trade especially the trade by sea. Various goods were carried on water from place to place in the region including the North African countries, Egypt and the Arab world. The medieval codes and enactments of maritime laws of the Mediterranean and Western Europe, adopted various beneficial practices and enactments of the Arabs and Islamic world in the neighborhood. This constructive adoption was especially a consequence of Crusades between the Roman Church and the Islamic Empire in the vicinity across the Mediterranean Sea. Naval encounters between the two rivals resulting in many exchanges of traditions, usages and war tactics. The long and destructive wars between the Roman Church and the Muslim (Arab) Empire, on one hand brought evils, miseries and hatred among the people in the region and on the other hand, the civilizations across the Mediterranean Sea learned and adopted much from each other's. Such is evident from the maritime enactments and codes of the same period.

4. The Scribe

A scribe is a person who writes books or documents by hand and may keep track of records. The traces of scribes and their functions, in nearly all cultures and their literatures are found in common since ancient times. With the developments of technology of printing and copying, scribes and their work declined. However, it still exists, though not common as it used to be in past. In various societies with low literacy rates, street letter writers and readers are still available.

4.1. The Scribe in Al-Qur'ān

Scribes or clerks have been in existence and popular far long even pre-historic, perhaps from the time human learnt writing, for performing various functions in daily lives of people. The relevant verses from Holy Qur'ān address the necessity and importance of writing and employing a scribe for writing commercial transactions between individuals and parties. These Commands also describe the duties and responsibilities of a scribe and witnesses to a transaction and ensure proper protection for them against any evil they may face due to their being a scribe or witness. The translation of the relevant verses is as below:

> *282. O believers, when you negotiate a debt for a fixed term, draw up an agreement in writing, Though better it would be to have a scribe write it faithfully down; And no scribe should refuse to write as God has taught him,*

And write what a borrower dictates and have fear of God, his Lord, and not leave out a thing. If the borrower is deficient of mind or infirm, or unable to explain, let the guardian explain judiciously;
And have two of your men to act as witnesses; but if two men are not available, then a man and two women you approve, so that in case one (woman) of them is confused the other may remind her.
When the witnesses are summoned they should not refuse (to come).
But do not neglect to draw up a contract, big or small, with the time fixed for paying back the debt. This is more equitable in the eyes of God and better as evidence and best for avoiding doubt.
But if it is a deal about some merchandise requiring transaction face to face, there is no harm if no (contract is drawn up) in writing.
Have witnesses to the deal, (and make sure) the scribe or the witness is not harmed. If he is (harmed) it would surely be sinful on your part. And have fear of God, for God gives you knowledge, and God is aware of everything.
283. If you are on a journey and cannot find a scribe, pledge your goods (against the loan); And if one trusts the other, then let him who is trusted deliver the thing entrusted, and have fear of God, his Lord. Do not suppress any evidence, for he who conceals evidence is sinful of heart; and God is aware of all you do.[18]

The believers have been directed for the sake of clarity and avoiding difficulties and disputes arising from commercial transaction to reduce them into writing and to appoint a Scribe who should write the contract mutually agreed upon by the parties and dictated by the one who owes or who has the obligation (to fulfill). The appointment of a scribe for the purpose of writing a commercial transaction is for multiple advantages. It ensures fairness and equity in writing of what is mutually agreed upon by the parties as a valid contract; provides technical support in the matters of complex and technical nature of the contracts as a scribe having knowledge and expertise better than others, is believed to understand the transaction and write it in a simpler way leaving no or lesser room for its misinterpretation at a later stage or misconstruing for unfair gains; it helps supporting the society by sharing wealth with others as appointment of a scribe provides economic assistance to its members adopting the noble profession as a scribe; it facilitates the commerce and trading with availability of suitable person(s) in sight and available who could do the job of writing and concluding a commercial deed.

The Scribe has been made duty bound to act impartially between the parties. He has been directed to write justly, without any fear or favor. However, a scribe

being an expert and qualified person in writing different kinds of documents, may speak for clarity and removal of any ambiguity which may arise due to selection of words and phrases. The scribe, if required, may explain, in the presence of all the parties thereto, as what the transaction speaks in its written form. A scribe has been reminded by Allah (God) that the ability of writing, is by virtue and kindness of Allah and by His grace and he (scribe) had no control in that and as such he must have fear of Allah while writing a transaction and when requested to write, he must not refuse but if he has a valid reason for such refusal. For example, if he fears that he may not remain impartial or free from prejudice due to his relationship with one of the parties or by virtue of having direct or indirect interests in the transaction or in relation therewith, he may decline to accept the job leaving it for another one.

4.2. Remuneration for Scribe and Allowances for Witnesses

Based on the injunctions of *Islām*, jurists have justified entitlement of remuneration for a scribe and claims of the witnesses for reasonable and legitimate travelling allowances and other expenses as their rights. Denial of such rights amounts to harm them and is not permissible. A scribe or witnesses when appearing before a court to testify a document or adduce evidence are required to be dealt with as respectable people of society discharging their noble legal duties and must never be kept waiting unreasonably or caused any kind of inconvenience in doing so.

4.3. Application to Commercial Documents

Translator's note mentioned above has rationally discussed and analyzed the application of the Divine Commands and mentioned the commercial documents of the age as the subject matter thereof. Such documents and transactions may include Letter of Credit (L/C), Bills of Lading (B/L), Pro-note or Promissory note and the documents of the kind creating future financial obligations. The Holy Book has revealed very clearly the philosophy behind the Commands which warrants the writing of the transactions, and preferably by a well versed scribe. In today's commerce, a lawyer may be regarded as a scribe and the job may include the vetting of the commercial contracts. Qur'ān for further protection suggests the deal when reduced into writing, to be witnessed by two men or if two men are not available, by one man and two women. According to the translator's interpretation and view, only one of the two women, in reality, is the witness, the other being only to help her (the witnessing woman) or assist her in recalling the facts of the deed if necessary in a state of confusion. The role of the second woman is in no respect undermines the testimony of a woman to half of a man as has been wrongly alleged by some people. It is rather a classical

phenomenon of testimony of its own kind to give protection to future debts. Women, even in today's world of equal opportunities, are less exposed to the commercial activities than men. The nature of testimony in financial and commercial matters naturally demands for the protection which Qur'ān has provided. It must be remembered that at the time of revelations, established courts of law were not in existence. These protections are limited to the special kind of commercial transactions and not in the ordinary transactions where simple pledging of goods for a loan has been considered sufficient as a customary practice.

4.4. Provisions of *Qānūn-e-Shahādat* Order, 1984 – Future Obligations/ Debts

The law of evidence enshrined in the above mentioned statute makes provisions accordingly in strict compliance with the Divine Commands in the Holy Qur'ān.[19]

4.5. Developments in Writing Commercial Transactions

After such clear directions, it is believed that practices of writing the future financial obligations became order of the day and customary among Muslims. The beneficial commercial practices based on Divine Commands were adopted by not only the believers but also those living in and around the Arabian Peninsula carrying out business and trade with Arabs. Customary practices, especially, the trade practices were imported and exported with movements of the traders to and from Arab world to Mediterranean region and Europe. Levant (the Syrian region) was center of the trade between the West and the East. Goods from across the Mediterranean and around were carried to Levant (Syria) and from there to the Arab and African continents either by sea or on land and vice versa to the West.

4.6. Crusades and Development of Writing in Europe

The crusades despite its plight, played a significant role in exchange of traditions, cultures, practices and usages of business and trade. Many writers are of the view that "Rules of Oleron" also called 'Rolls Oleron', which are among the basis of modern maritime laws, were collected and prepared from the customs and practices of the trade by sea after return of King of England, Richard I from the holy land (Jerusalem). It can be assumed that the King was motivated for the job during his stay in the holy land and while traveling thereto. According to Cleirac, in the introduction to his work on Les Us et coustumes de la mer (Bordeaux, 1647), "Eleanor of Aquitaine, having observed during her visit to the Holy Land that the collection of customs of the sea contained in 'The Book of the Consulate of the Sea' was held in high repute in the Levant[20,] directed on her return that a record should be made of the judgments of the maritime court

of the island of Oleron (at that time a peculiar court of the duchy of Guienne), in order that they might serve as law amongst the mariners of the Western Sea."[21] He states further that "Richard I. of England, on his return from the Holy Land, brought back with him a roll of those judgments, which he published in England and ordained to be observed as maritime and commercial laws of England. Some writers including R. G. Marsden doubted the story of Richard I. having brought back the Rolls of Oleron to England."[22]

4.7. Scribe in the Ordinances of Trani 1063 A.D

The Ordinances made it compulsory for a ship to take a scribe or clerk on board, sworn to be honest and loyal.[23] The duties of a scribe or clerk included writing accurately all the current transactions made between owner or master of a ship and merchants for hire of the ship or carriage of goods on board. Such transactions were only to be made and written while the ship was in a port, in the presence of the merchant or a witness if the merchant was not present. The agreements with mariners were also required to be made in the same manner by the scribe, in presence of the concerned mariner and master of the ship. Any covenant not made in the prescribed manner was held to be of no value.[24] The appointment of a scribe or clerk on board ships and recording of all the current transactions and of goods loaded on board has been regarded as first step towards the introduction of bill of lading in the coming centuries. Many writers call it the first phase of evolution of bill of lading and charter parties.

4.8. Scribe in "The Barcelona Code of 1258"

The Spanish written code also includes the strict legal requirement for employment of a scribe on board ships. It reads:

"Also: we order that every ship and vessel shall have a sworn clerk on every voyage, which clerk shall not write anything in the contract book of that ship or vessel unless both parties are present, namely the captain and the merchants, or the captain and his mariners; and the said clerk shall be a good and lawful man, and shall make out the expenses truly and lawfully, and all the mariners shall be expected to swear to the captains of the ships and vessels that to the best of their ability they will save, protect, and defend the captain and all his goods, and his ship or vessel, and its rigging and equipment, and all the merchants going with it, and all their goods and merchandise, by sea and land, in good faith and without fraud. Moreover, the said clerk shall be at least of the age of twenty years, and if the captains of the said ships or vessels do not wish to have the said clerk they shall not leave Barcelona or any other place in which they may be, until they have another clerk, if they can find one."[25]

5. Conclusion

Based on the study, it can be concluded that exercise of compulsory writing of documents especially commercial deeds and trade documents introduced with dawn of *Islām* in the Arab peninsula during 6th Century A.D. Their significance in commerce and trade remains well recognized and un-debatable. It can be said that developments of trade and commerce all over the world has really benefited from the exercise of writing the contracts and future obligations instead of dealing with them orally. In order to enjoy smooth relationships with individuals, groups, nations, we need to have the contracts and transactions agreed upon, in writing with maximum clarity and free from any ambiguity. It is only possible when the agreements especially those creating future obligations are prepared and written by experts with sufficient knowledge and experience. The agreements so written must be vetted by a lawyer having appropriate knowledge and experience. Failure otherwise in the world of commerce, may result in extraordinary losses and damages in addition to undue legal battles.

References & Notes:

[1] Bryan A. Garner, ***Black's Law Dictionary***, (Thomson West, 9th ed).

[2] Contract Act 1872, s-11: Every person is competent to contract who is of the age of majority according to the law to which he is subject……

[3] Contract Act 1872, s-19: When consent to an agreement is caused by coercion, fraud, or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused……

[4] Al-Qur'ān 5: 1.

[5] Contract Act 1872, s-37: The parties to a contract must either perform, or offer to perform, their respective promises unless such performance is dispensed with or excused under the provisions of this Act, or of any other law……promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract.

[6] Primary evidence: "Primary evidence" means the document itself produced for the inspection of the Court.

[7] ***Qānūn-e-Shahādat*** Order, 1984, art. 74- Secondary Evidence: Secondary evidence means and include…. (5): oral accounts of the contents of a document given by some person who has himself seen it.

[8] Garner, ***Black's Law Dictionary***, 7th edition, defines Rhodian Law:

The earliest known system or code of maritime law, supposedly dating from 900 B.C. Rhodian law was purportedly developed by people of the island (Rhode), located in the Aegean Sea and now belonging to Greece. The ancient inhabitants of Rhode are said to have controlled the seas and because of their commercial prosperity and naval superiority. Despite the uncertainties about its history, Rhodian law has often been cited as a source of admiralty and maritime law. It quotes further *Grant Gilmore & Charles L. Black Jr.:*

> "A strong tradition says that a maritime code was promulgated by the Island of Rhode, in the eastern Mediterranean, at the height of its power; the ridiculously early date of 900 B.C. has even been assigned to this suppositious code, a date accepted uncritically by some legal scholars. But even the existence of such a code has been pretty well cast in doubt, and we know next to nothing of its contents, if it existed. It is interesting to note, however, that the root principle of the highly distinctive maritime law system of general average…… is clearly stated in Justinian's Digest, and that the Rhodian law is invoked as authority."

[9] Robinson, "***An Introduction to American Admiralty***", 21 Cornell L. Q. 46 (1935)

[10] ***The Scotia***, (1872) 14 Wall. 170.

[11] Maritime commercial suits in Athens involved maritime imports and exports. Traders and shipowners were parties but also foreigners and metoikoi (a foreign resident of Athens, one who did not have citizen rights in his or her Greek city or state (*polis*) of residence). The suit could be brought on only in winter months when maritime traffic was resting. The tradition in some form continues as the shipowners and operators repair and renovate their vessels during winter making them ready for next season.

[12] Flexner, Stuart Berg et al (ed.), ***The Random House Dictionary of the English Language, Second Edition Unabridged***, (New York: Random House, 1987), p. 1210.

[13] Henry, Madeleine M., ***Prisoner of History: Aspasia of Miletus and Her Biographical Tradition***, (New York: Oxford University Press, 1995), p. 12.

[14] Gagarin, Michael, ***The Oxford Encyclopedia of Ancient Greece and Rome***, (Oxford: Oxford University Press, 2010), Vol. IV, p. 415.

[15] THE PANATHENAIA was an Athenian festival celebrated every June in honour of the goddess Athena. The Lesser Panathenaia was an annual event, while the Greater was held every four years.

[16] Parke, H.W., ***Festivals of the Athenians***, (London: Thames and Hudson, 1977), pp. 44-45.

[17] The early commercial and maritime courts of Athens have been dealt in detail by Edward E. Cohen, in ***Ancient Athenian Maritime Courts*** (Princeton University Press, 1973). Athenian Courts under their jurisdiction mainly dealt with written agreements made in the markets of Athens and with complaints brought before them about a voyage to or from Athens and without any distinction or discrimination in respect of nationality of a ship, master,

merchant, seaman or any other person claiming against a ship's voyage. However in order to claim, presence of the ship was condition precedent of the commercial and maritime courts. The jurisdictions of the Courts as well as the procedures were well defined and well known in Athen.

[18] Al-Qur'ān, 2: 282-283, *Translation by Ahmed Ali,' A Contemporary Translation'.*

Translator's, Note on Verse 282: "The verse deals with a special kind of monetary transaction, as the word "*dain*" signifies. Generally translated as 'debt' (*dain),* also means, as here, 'bill of hand' which would be called "Letter of Credit" today. The conditions of an LC can be very tricky and complicated, and are often missed even by experienced businessmen and legal experts. That is why, perhaps, the Qur'ān emphasizes that the terms of the contract should be written down, preferably by a well versed scribe, who would today be equivalent to a lawyer. There being no established courts of law at that time, the Qur'ān suggests a further safeguard of having witnesses to the deal, namely, two men, and in case two men are not available, one man and two women of whom only one, in reality, is the witness, the other being just her helper in case she gets confused. That is why the role of the second woman is so clearly defined. These precautions have not been suggested in the case of a simple transaction face to face about merchandise, mentioned in the later part of the verse, and the simple way of pledging the goods against the loan is considered sufficient. The presence of two women does not mean that both are witnesses, or that the evidence of one woman is half of that of a man. In no other place in the Qur'ān two women have been suggested as witnesses except here, because this is a case of a special transaction and women, not being adepts at business, were more likely to get confused than men".

[19] Qanoon-e-Shahadat Order 1984, Art. 17: **Competence and number of witnesses**:

(1) The competence of a person to testify, and the number of witnesses required in any case shall be determined in accordance with the injunctions of *Islām* as laid down in the Holy Qur'ān and *Sunnah*:"

(2) Unless otherwise provided in any law relating to the enforcement of *Ḥudōd* or any other special law: —

(a) in matters pertaining to financial or future obligations, if reduced to writing, the instrument shall be attested by two men or one man and two women, so that one may remind the other, if necessary, and evidence shall be led accordingly; and (b) in all other matters, the Court may accept, or act on the testimony of one man or one woman or such other evidence as the circumstances of the case may warrant.

[20] 'Levant', an old term referring to countries of the eastern Mediterranean; Cyprus and some parts of southern Turkey are included according to some scholars whereas others not. But basically the Levant has throughout history meant Syria, Lebanon and Palestine. This means

Jordan, the West Bank (now under Israeli occupation) and Israel itself are part of the Levant. Source: Siddiqui, Muhammad Ali, *What is the Levant?*, Dawn June 17th 2014.

[21] ***Black Book of the Admiralty***- Royal Navy History. www.royal-navy.org.

[22] Ibid.

[23] Art. XVI.: We, the above said consuls, propound, say, and adjudge, that every master ought to take a scribe, who ought to be sworn in his commune to be honest and loyal. And the said master may not make him write anything which he has transacted with any merchant, unless the said merchant be present or some other witness. And the same case and terms shall be observed with the other mariners. And if he shall do or write otherwise or to the contrary, his register or book shall not be of any value, nor shall any faith be given to it; and if that scribe shall have received any merchandise from the merchants and it should be missing, let that scribe be responsible to make it good; and the said register ought to be covered with parchment.

[24] Art. XXX: The said consuls of the sea propound, say, and adjudge, that no [master of a] ship being on the sea ought to make any compact l or agreement, and that if he should maxe any such on the sea with merchants or with mariners, they are of no value or validity whatsoever, nor can any claim be made on the compacts themselves, except the ship be in port or in a place moored with four cables, or it shall be acknowledged by one and the other party, or be verified under the hand of the scribe, for witnesses cannot go wherever the ship goes.

[25] James I of Aragon, Medieval Sourcebook: ***The Barcelona Maritime Code of 1258;*** https://Sourcebooks.fordham.edu