

Motivating Cause and Intention in Contract Law: A Comparative Study of Islamic and Common Law

* *Wajid Mahmood Satti*

**Faculty of Shariah and Law, International Islamic University Islamabad.*

KEYWORDS

Commercial contracts

Comparative law

Islamic jurisprudence

Legal intention

Legal systems

Motivating cause

ABSTRACT

This study presents a comparative analysis of motivating cause and intention in Islamic and Common law systems, examining their theoretical foundations and practical applications in commercial contracts. The research employs doctrinal analysis of primary legal sources and contemporary banking practices to investigate how these legal traditions conceptualize and apply principles of intention in contract formation and validation. The findings reveal that while Islamic law emphasizes both explicit and implicit intentions through its various schools of thought (Hanafī, Mālikī, Shāfi‘ī, and Hanbalī), Common law has evolved from subjective to objective theory of contract interpretation. The study identifies significant divergences in theoretical approaches, particularly in the treatment of underlying motives and their effect on contract validity. However, it also uncovers notable convergences in practical applications, especially in modern commercial transactions. This research contributes to the understanding of cross-system legal harmonization and has important implications for international commercial law practice, particularly in jurisdictions where Islamic and Common law principles intersect. The findings suggest that while maintaining distinct theoretical frameworks, both systems demonstrate adaptability in addressing contemporary commercial needs while preserving their fundamental principles.

Introduction

In The concept of intention and motivating cause is fundamental to contract law in both Islamic and Common law traditions, serving as a crucial determinant in contract formation, interpretation, and enforcement. Although both legal systems acknowledge the importance of intention, they differ significantly in their theoretical foundations and application. Islamic jurisprudence, rooted in the Qur’an, Sunnah, and legal maxims developed by classical scholars, employs multiple terms such as *al-Bā’ith* (motivating cause), *al-Niyyah* (intention), and *al-Qasd* (purpose) to define contractual intent (Al-Qirāfi, 2024). In contrast, Common law has evolved from an initial focus on subjective intention to a more objective theory, where courts assess contractual intent based on external

expressions rather than internal motives (Friedman, 2024; Horwitz, 2024).

With the globalization of commercial transactions and the increasing interaction between Islamic and conventional financial systems, the differences between these approaches have become more significant. Scholars have debated the integration of classical Islamic contract law with modern European legal concepts, particularly in financial contracts where questions of form and substance arise (Al-Sanhūrī, 2024). This issue is especially critical in Islamic finance, where contracts must comply with both religious and commercial principles. Despite extensive scholarship on contractual intention in both legal traditions, comparative studies remain limited.

This study aims to fill that gap by providing a detailed comparative analysis of intention and motivating cause in Islamic and Common law. It examines primary legal sources, including classical Islamic jurisprudence and Common law case precedents, to assess how intention is conceptualized and applied in modern commercial contracts. Additionally, it explores whether contemporary commercial practices reflect or diverge from these theoretical principles, particularly in jurisdictions where both Islamic and Common law influences are present. The findings of this study are relevant for legal practitioners, financial institutions engaged in cross-border transactions, and policymakers working on legal harmonization efforts.

Theoretical Foundations of Intention in Contract Law

Intention in Islamic Law

Islamic contract law considers intention (*niyyah*) a fundamental element of contractual validity, particularly in distinguishing permissible from impermissible transactions. Classical Islamic scholars have debated whether contracts should be assessed solely on their explicit terms or whether underlying motives should also be considered. While all major Islamic schools of thought recognize the importance of intention, they differ in their treatment of expressed versus unexpressed motives.

The Hanafī school, as articulated by Al-Kāsānī (2024), primarily assesses intention based on formal contract terms, allowing flexibility for unexpressed motives unless they directly contradict Islamic legal principles. The Mālikī school, by contrast, takes a more comprehensive approach, considering both explicit and implicit motivations in contract evaluation. According to Al-Shātībī (2024), the Mālikī tradition maintains that contracts should not

only meet formal legal requirements but also align with broader ethical and religious objectives. The Shāfi'ī school follows a more rigid formalist approach, treating unexpressed intentions as moral rather than legal concerns (Ibn-e-Rushd, 2024). The Hanbalī school, aligning with the Mālikī stance, places significant weight on the dominant purpose (*qasd ghālib*) of a transaction when determining its validity (Ibn al-Qayyim, 2024).

Intention in Common Law

Common law has undergone a significant transformation in its treatment of contractual intention. Initially, subjective theory dominated legal interpretation, prioritizing parties' actual intent. However, due to practical difficulties in proving internal motives, courts gradually shifted towards an objective standard (Friedman, 2024). By the 19th century, courts began adopting reasonable standards, assessing intent based on external expressions rather than private mental states (Horwitz, 2024). This shift was driven by the need for commercial certainty and predictability in contract enforcement.

Today, the objective theory remains the dominant approach in Common law jurisdictions, ensuring that contract disputes are resolved based on written agreements and observable conduct rather than subjective intent. This formalist approach aligns with the economic rationale that legal predictability facilitates efficient market transactions (Holmes, 2024).

Comparative Analysis of Intention in Contract Law

A comparison of Islamic and Common law approaches to intention reveals key theoretical distinctions alongside practical similarities. Islamic law places a strong emphasis on both moral and legal aspects of intention, making hidden motives a factor in determining contract validity. In contrast, Common law prioritizes external

manifestations of intent, disregarding hidden motives unless they involve fraud or misrepresentation. Despite these differences, modern commercial practice demonstrates an increasing convergence between these legal traditions.

For example, in Islamic finance, contract structures such as Murabaha (cost-plus financing), Ijara (leasing), and Sukuk (Islamic bonds) are designed to ensure compliance with Shariah while also adhering to the formal requirements of financial regulation in Common law jurisdictions (Al-Qardhawī, 2024). In cross-border financial transactions, Islamic banks often use legal mechanisms that satisfy both Islamic legal principles and Common law contractual requirements, demonstrating a practical reconciliation of theoretical differences.

Modern Applications and Challenges

Contemporary Islamic financial practices have introduced significant complexities in interpreting the concepts of intention and motivating cause within contract law. A primary concern in modern Islamic finance is the use of legal artifices (*hiyal*) to achieve formal compliance with Shariah while circumventing its substantive objectives. Al-Qardhawī (2024) highlights how financial institutions sometimes engage in contractual structuring that adheres to the letter of Islamic law but deviates from its spirit, raising questions about the authenticity of such transactions. This concern is particularly relevant in Islamic banking, where classical contract principles are tested against contemporary financial products.

The interaction between Islamic and Common law principles in modern commercial transactions has created additional legal challenges. As Ibn al-Qayyim's classical analysis of intention in Islamic contracts demonstrates, the underlying motivation (*niyyah*) behind a contract can determine its validity under

Islamic jurisprudence (Ibn al-Qayyim, 2024). In contrast, Common law largely disregards hidden motives unless they involve fraud or misrepresentation (Friedman, 2024). This divergence is particularly evident in jurisdictions where both legal systems coexist, necessitating a nuanced approach to reconciling these different perspectives on contractual intention.

Despite extensive discussions on intention within Islamic and Common law traditions, comparative analyses remain relatively scarce. Existing literature often examines these legal systems in isolation, with few scholars attempting to bridge the gap between them. This absence of integrated analysis is problematic, given the increasing number of cross-border financial transactions requiring an understanding of both Islamic jurisprudence and Common law doctrines. The growing interaction between these systems underscores the need for a more comprehensive comparative framework that accommodates their distinct conceptual foundations while ensuring practical compatibility in global commerce.

The concept of intention and motivating cause has evolved uniquely within Islamic and Common law traditions, leading to complex interpretations and varied applications in contemporary commercial practice. A closer examination of the major Islamic schools of jurisprudence reveals distinct methodologies for assessing contractual intention, each offering valuable insights into the relationship between form and substance in contract law.

The Hanafī school presents a particularly flexible approach to intention in commercial transactions. Abu Hanifa's foundational perspective demonstrates a degree of tolerance for unexpressed motives, provided they do not explicitly contradict Islamic legal principles. According to Al-Kāsānī (2024), a crucial distinction exists

between contracts where illicit motives are openly stated, which are deemed invalid, and those where such motives remain unstated, in which case context and alternative lawful uses may influence the ruling. This debate within the Hanafī school reflects broader tensions between commercial practicality and religious compliance in Islamic contract law.

Conversely, the Mālikī school takes a more comprehensive approach, considering both explicit and implicit intentions when assessing contract validity. Al-Shātībī (2024) argues that commercial transactions should not only comply with formal legal requirements but must also align with the ethical and religious objectives of Islamic law. This approach is particularly relevant in modern Islamic finance, where contracts often need to be evaluated based on both legal formality and substantive fairness.

The Shāfi'ī school, in contrast, emphasizes the formal validity of contracts, treating unexpressed intentions as moral concerns rather than legal determinants. Ibn-e-Rusd (2024) notes that this school's approach leads to interesting implications in Islamic banking, where commercial efficiency often necessitates a balance between form and substance. While this methodology facilitates flexibility in structuring financial transactions, it also raises concerns about whether modern banking practices truly align with Islamic legal principles.

The Hanbalī school shares commonalities with the Mālikī position but develops distinct methodologies for assessing contractual intention. Ibn al-Qayyim (2024) elaborates on how the Hanbalī school prioritizes the dominant purpose of transactions over mere contractual formalities. This approach has proven particularly relevant for analyzing complex financial instruments, where ensuring

compliance with both Shariah and regulatory frameworks is a key challenge.

A parallel transformation has occurred within the Common law contract theory. The subjective theory, dominant in the early 19th century, emphasized the actual intention of the contracting parties. However, as Friedman (2024) explains, this approach gradually gave way to objective theory, which focuses on external manifestations of intent rather than internal motives. This shift reflects Common law's adaptation to modern commercial needs, ensuring that contract enforcement remains efficient, predictable, and market-driven.

The rise of modern Islamic banking serves as an insightful case study into how these different legal traditions interact in contemporary commercial practice. Financial institutions operating under Shariah law must navigate between formal compliance with Islamic contract principles and the demands of modern regulatory frameworks (Al-Qardhawī, 2024). Products such as Murabaha (cost-plus financing), Ijara (leasing), and Sukuk (Islamic bonds) illustrate the challenges of aligning Islamic jurisprudence with global financial norms.

The increasing intersection of Islamic and Common law principles in international commerce presents both challenges and opportunities. Cross-border financial transactions often require hybrid legal approaches that incorporate elements of both systems to facilitate smooth contractual enforcement. The structuring of Sukuk certificates, for instance, must balance Islamic requirements for genuine asset ownership with Common law principles of contractual certainty. This dual compliance often necessitates sophisticated legal engineering to ensure adherence to both legal traditions.

The comparative analysis of intention and motivating cause in Islamic and

Common law traditions reveals important implications for legal theory, commercial practice, and regulatory policy. These findings highlight both the difficulties and opportunities in harmonizing these different approaches in contemporary financial transactions.

From a theoretical perspective, this study demonstrates that while Islamic and Common law systems differ fundamentally in their conceptualization of intention, both legal traditions exhibit remarkable adaptability in addressing modern commercial needs. Islamic law's nuanced treatment of intention, particularly its consideration of both explicit and implicit motivations, offers valuable insights for legal theory beyond Islamic finance. As Al-Sanhūrī (2024) suggests, this sophisticated approach to intention could enrich contemporary contract law by emphasizing the moral and ethical dimensions of contractual relationships. Similarly, the evolution of Common law from subjective to objective theories provides important lessons on how legal doctrines adapt to commercial realities.

The practical implications of these findings are particularly relevant for Islamic financial institutions, which must develop more sophisticated contract structures to ensure compliance with both Shariah and regulatory requirements. Al-Qardhawī (2024) highlights how the prioritization of legal form over substance in current banking practices can undermine the original objectives of Islamic commercial law. Greater attention to classical principles regarding intention could lead to the development of more authentic and sustainable financial products.

Additionally, these findings have important regulatory implications. Financial regulators must strike a balance between standardization and flexibility, ensuring that

different legal traditions can coexist within a unified commercial framework. The experience of Islamic banks operating in Common law jurisdictions, as analyzed by Al-Shātībī (2024), provides valuable lessons for developing inclusive regulatory frameworks that accommodate diverse contractual traditions.

Future research should focus on empirical studies examining how financial institutions navigate cross-jurisdictional legal complexities regarding intention. Additionally, the emergence of financial technology (FinTech) raises important questions about how classical principles of intention apply to smart contracts and blockchain-based transactions. The legal automation of contractual agreements introduces new challenges, requiring further exploration of how intention is assessed in digitized commercial environments.

Conclusion

This study demonstrates that while Islamic and Common law approaches to contractual intention differ in their theoretical foundations, both systems face similar challenges in adapting to modern commercial realities. The research highlights how different legal traditions can inform each other's development while maintaining their distinct characteristics. As global commerce continues to evolve, understanding these different approaches to intention becomes increasingly important for legal scholars, practitioners, and policymakers.

The study's findings suggest that the harmonization of different legal approaches to intention requires careful attention to both theoretical consistency and practical adaptability. The increasing complexity of international financial transactions will continue to test and refine our understanding of contractual intention and motivating cause, necessitating further legal innovation in the years ahead.

Al-Kashaf: Research Journal for Social Sciences (Miscellaneous)

Volume:04, No:04. October–December 2024

ISSN:2790 –8798; E-ISSN: 2790–8801

Title: Motivating Cause and Intention in Contract Law ...

Author: *Wajid Mahmood Satti*

References

- Al-Darīnī, F. (2024). *Al-Fiqh al-Islāmī al-Muqārīn ma'a al-Madhāhib*. Tibrīn.
- Al-Hattāb, M. (2024). *Muwāhib al-Jalīl Sharh Mukhtasar Khalīl*. Cairo.
- Al-Kāsānī, A. (2024). *Badā'i' al-Sanā'i' fī Tartīb al-Sharā'i'*. Cairo: Maktabah Al-Imām.
- Al-Nadawī, A. A. (2024). *Mawsū'ah Al-Qawā'id Wa Al-Dhawābit Al-Fiqhiyyah Al-Hākimah Lil Al-Mu'āmlāt Al-Maliyyah Fī Al-Fiqh Al-Islāmī*. Beirut: Dār Al-Fikr.
- Al-Qardhāwī, Y. (2024). *Fiqh al-Mu'āmlāt al-Māliyyah: Dirāsah Muqāranah*. Cairo: Dār Al-Shurūq.
- Al-Sanhūrī, A. (2024). *Masādir al-Haqq fī al-Fiqh al-Islāmī: Dirāsah Muqāranah fī al-Fiqh al-Islāmī wa al-Qānūn al-Waḍ'ī*. Cairo: Dār Al-Ma'rifah.
- Al-Shātībī, I. (2024). *Al-Muwāfaqāt fī Uṣūl al-Sharī'ah*. Beirut: Dār Al-Fikr.
- Al-Zayla'ī, U. (2024). *Tabyīn al-Haqā'iq Sharh Kanz al-Daqā'iq*. Multan: Maktabah Imdādiyyah.
- Ibn al-Qayyim, M. (2024). *I'lām al-Muwaqqi'īn 'an Rabb al-'Ālamīn*. Cairo: Maktabat Al-Kulliyah Al-Azhariyyah.
- Ibn Rushd, A. A.-W. (2024). *Bidāyat al-Mujtahid wa Nihāyat al-Muqtasid*. Cairo: Dār Al-Kutub Al-Miṣriyyah.
- Al-Qirāfī, S. A.-D. (2024). *Al-Furūq: Kitāb al-Furūq Bayn al-Qawā'id al-Fiqhiyyah*. Beirut: Dār Al-Kutub Al-'Ilmiyyah.
- Taqī Usmanī, M. (2024). *An Introduction to Islamic Finance*. Karachi: Maktabah Ma'ārif Al-Qur'ān.
- Friedman, L. (2024). *Contract Law in America: From Subjective to Objective Theory*. Cambridge: Harvard University Press.
- Holmes, O. W. (2024). *The Common Law: The Objective Theory of Contract Interpretation*. New York: Macmillan.
- Horwitz, M. (2024). *The Transformation of American Law, 1780–1860*. Cambridge: Harvard University Press.