

## THE ISLAMIC CONCEPT OF MEETING PLACE AND ITS APPLICATION IN E-COMMERCE

by

ABDULRAHMAN ALZAAGY

*Since the emergence of electronic commerce, a massive development and a considerable increase has occurred in every aspect of business life worldwide. The conducting of commercial activities via the World Wide Web (Internet), in particular, has played a significant part in the development of the commercial and economical sectors in many parts of the world.*

*Initially, commercial activities conducted electronically were not, specifically, regulated because it was commonly perceived that regulations might disturb and hinder the growth of e-commerce. However, as a result of the notable expansion of electronic market activities globally, many legal disputes and concerns have surfaced. This indicates the need for regulations to govern the new activities. Various countries and organisations globally have introduced rules and guidelines, based on their national laws, as a response to such need. However, little has been done to regulate the phenomena according the Islamic legal system. The scarcity of specific Islamic rulings for the online market has dissuaded many Muslim traders and customers from participating in electronic commerce.*

*It is obligatory upon Muslims to implement Islamic rules in every aspects of their life including commercial ones. From a purely commercial perspective, Islam has provided its followers with general guidelines which must not be ignored or infringed. Intentionally, the door is left open for market activities to be ruled on according to what the most suitable and beneficial approach would be, based on prevalent trade practises and customs. Since the early phase of Islam, comprehensive efforts have been offered to regulate the Islamic commercial sector. However, in the case of electronic commerce there remains a need for further examination by Muslim jurists and appropriate Islamic rules are required for the development of this new phenomenon.*

*The emerging electronic market has given rise to many legal issues; one of the major themes is online contracting or the 'electronic contract'. Generally speaking, one possible approach to regulating electronic contracts would be the adaptation of existing rules from the off-line world, for online contracting. This approach would not only retain consistency but also provide minimal hindrance to the development of e-commerce.*

*There are numerous smaller legal issues which stem from the larger theme of the law of contract in Islamic law. The focus in this paper will be the Islamic concept of parties' 'sitting place' of transactions. As a starting point, attempt will be made to define, in brief, the concept and explain its importance in the Islamic legal system. The discussion will be divided into two main situations; where the transaction is conducted with both parties in the same place (in one another's presence), and the other case where the parties form the contact at a distance from each other. The issue of when the contract will be concluded and legally enforceable in the above two cases will be discussed next. Clarification will be provided afterwards to the Islamic notion of parties' option to withdraw after the conclusion of the contract known as "Option of Sitting Place". An attempt will then be made to apply the concept of parties' sitting place of contract to the online market. The application of the concept to e-commerce will thus be based on the real world Islamic commercial rules.*

## **Introduction: What is the Islamic Legal System? [1]**

It is appropriate to begin with providing a brief explanation of the law of Islam before going to the focused area of this paper. It is intended, however, that this account will outline, in short, those aspects of the system of most relevance to the core point of this research – it is not aiming at an extensive examination of the Islamic legal system.

The law of Islam, or in the Arabic term, *Sharia*, differs, to some extent, from any other standard text-based legal system as understood in the West. What is generally understood by the term 'law' in English is only a part of the much wider concept of *Sharia*. Schacht maintains that "*Sharia* is not law in the modern sense of the word any more than it is on account of its subject matter".<sup>1</sup> Calder and Hooker define the concept *Sharia* as follows - it "designates the rules and regulations governing the lives of Muslims".<sup>2</sup> A

<sup>1</sup> Schacht J. (1987), *First Encyclopaedia of Islam*. Leiden, vol. 7, p. 321.

<sup>2</sup> Calder N. and Hooker M. B. (1974), *the Encyclopaedia of Islam*. Leiden, p. 321

fuller definition would add that *Sharia* covers all aspects of human existence, including life after death.<sup>3</sup> Because of its breadth of scope, the term *Sharia* cannot be rendered in English by any single word. The closest approximation may be 'religion', though *Sharia* implies a stress on the prescriptive side of religion. It covers and enjoins rules for the widest possible range of man's life both in this world and the next, and thus comprises the ethos of religion, the tenets of the law, and the bases of other disciplines. It governs, in short, man's conscience, intellect and acts, and his relation with God (Allah), himself, his environment, and other men.<sup>4</sup> In other words, *Sharia* regulates all aspects of human life, including the commercial.

Conventionally, the sources of Islamic law are put at four: *Qura'an*,<sup>5</sup> Prophetic Traditions,<sup>6</sup> consensus,<sup>7</sup> and analogy.<sup>8</sup> No other source is formally recognised, yet certain supplementary sources, such as considerations of public interest and people's customs and traditions, have had, and continue to have, their respective shares, albeit in varying degrees, in the development of the law.

It is vital to note that there are four major schools of thought followed by many Sunni Muslims, namely, Hanafi, Maliki, Shafii and Hanbali. Within the confines of a conference paper, it is not possible to provide a

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<sup>3</sup> Dien Mawil izzi (2004), *Islamic Law from Historical foundation to Contemporary Practice*. Edinburgh: Edinburgh University Press, p. 35.

<sup>4</sup> Owsia Parviz (1994), *Formation of Contract, a Comparative Study under English, French, Islamic and Iranian Law*. Landon: Graham and Trotman, p. 17

<sup>5</sup> The *Qura'an* is the Holy Script of the Muslim and the foremost source of the law of Islam. The Arabic term *Qura'an* literally means 'reading' or 'recitation'. It may be defined as "the book containing the speech of God revealed to the Prophet Muhammad in Arabic and transmitted to us by continuous testimony." The Revelation was conveyed to the Prophet by the Noble Angel Gabriel. See, Kamali Mohammad Hashim (1991), *Principles of Islamic Jurisprudence*. Cambridge: The Islamic Texts Society, p. 14.

<sup>6</sup> In jurisprudential terms, the *Sunnah* refers to the Prophet's sayings, his acts, and whatever he has tacitly approved. In the law, the source of prophetic traditions is considered as a divine text which must be complied with without contesting. The significance of this source in the law comes in line after the Holy Book. It should be mention that these two divine sources are classified in jurisprudential point of view as primary sources.

<sup>7</sup> Consensus or juristic agreement is comes under the secondary sources of the law. It is defined as an agreement of the jurists among the Muslim community in a particular age, after the death of the Prophet Muhammad, on a legal question. See, Rahman Ghazi Shamsur (1981), *Islamic Law "As administered in Bangladesh"*. Bangladesh: Islamic Foundation, p. 23.

<sup>8</sup> Technically, legal analogy functions to assimilate the injunction of one case and applies it to a similar one that has no specified injunction. A similarity between the two cases must exist initially, with regard to both their nature and their reason. It is, basically, a device used by jurists to compare cases.

comprehensive examination of the subject matter, in a comparative way, between all these schools.

Hence, focus in this paper will be given to the most accurate and mostly followed rules in the Islamic doctrine, based on valid and strong evidence. In the following section the concept of contract, in general, will be defined from the Islamic point of view and then special attention is going to be given to the contract of sale in particular.

### **The Islamic Law of Contract: Definitions [2]**

To start with, it is apt to indicate that the evolution of the Islamic law of contract, in particular, is distinctive from any other legal system. Its rules were originally based on certain provisions addressing diverse issues of contract which were derived from the primary sources.<sup>9</sup> These provisions, in fact, were general and did not go into detail to address all aspects of contract. Subsequently further developments have been carried out by Muslim jurists from different Islamic school of thoughts. Developments of the law of contract have mainly been elaborative approaches to the provided, concise, maxims that deal with commercial activities, which were put forward in the Qura'an and the Traditions of the Prophet. Public interest and trading practises and usages are the key bases for those established rules to deal with the commercial section of law.

However, it must be considered that those developments of law were formed by human thoughts based, as said, on prevalent commercial customs which vary from time to time and from society to society. Hence, such human rules are not sacred rules which must be followed all the time by all Muslims everywhere - they can be altered or even ignored when they seem inappropriate for particular periods or for certain groups.

The term contract can be defined in a general sense as putting a tie to a bargain. In contrast to the confined meaning of the word in other legal systems, the word contract is used in Islamic law<sup>10</sup> in a very wide and comprehensive manner. Accordingly, this term covers not only the relation between parties in a bargain, but also comprises any sort of relation, as all

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<sup>9</sup> They are the Holy Book and the Prophetic Traditions.

<sup>10</sup> In the Muslim Holy Book, it is said, "perform your contracts", See Chapter 5, verse no. 1.

Muslims are instructed to fulfil the rights of Allah, for example, by observing the Five Times Prayers, Fasting, and so on, and the rights of the servants of Allah, like good neighbourliness, kindness and mercy to all human beings and animals.<sup>11</sup>

Noel J. Coulson emphasises the fact that “contract in Islamic law is in no sense the precise equivalent of the technical term contract in Western jurisprudence, which involves, certainly at the common law, the two basic essentials of agreement and consideration”.<sup>12</sup> In contrast with the Western contractual laws, the Islamic law of contract does not represent only the bilateral contract - it also encompasses the unilateral contract. The unilateral contract is binding and effective without the need of the consent of the other involved party in the contract, such as the repudiation of a marriage by the husband or, in times past, the formal manumission of a slave. The wide application of the term contract in the Islamic legal system comprises moreover all contracts that lack the inclusion of consideration between contracting parties. To give an example, gift dealing is considered in the Doctrine as part of the general system of contract. To sum up, Coulson stressed that a contract in Islamic doctrine means no more and no less than a legal undertaking.<sup>13</sup>

### **The Contract of Sale [2.1]**

There are certain types of contract recognised in the Islamic legal system. It is out of the scope of this research to examine all those kinds of contract. For the interest of this research, attention is given solely to the contract of sale.

Various definitions have been given to provide apt description of the contract of sale. Amongst others, it is said that sale is “the exchange of one commodity for another, one of which is called the object, and the other the price”, or “the transfer of ownership<sup>14</sup> of property for another”.<sup>15</sup> In another

<sup>11</sup> Doi Abdur Rahman I (1984), *Shariah: the Islamic Law*. London: Ta Ha Publishers, p. 356.

<sup>12</sup> Coulson Noel J (1984), *Commercial Law in the Gulf States: the Islamic Legal Tradition*. London: Graham and Trotman, p. 18.

<sup>13</sup> Ibid.

<sup>14</sup> Ownership in the Islamic doctrine means the relationship between man and his property which is under his control. There are three types of ownership of a property, physical possession of the property, right of disposal of the property, and the proprietary rights. See, Doi Abdur Rahman I, *Shariah: the Islamic Law*, op cite no. 11, p. 356.

<sup>15</sup> Abd al-Rahman al-Jaziri (7<sup>th</sup> Edn), *Kitab al-Figh ala al-Madhahib al-Arba*. Cairo: Dar Ahya al-Turath al-Arabi, vol. II, p. 147

simpler and shorter form, sale is defined as “an exchange of property”.<sup>16</sup>

For the contract of sale to hold a legal value, a variety of fundamental conditions must be met. There are five major elements for the contract of sale widely recognised in the Law. These essential components are set out as follows: a) consent and intention to contract, b) capacity of the contracting parties, c) an object of sale, d) consideration, e) an agreement between the contracting parties (formations of contract). The heart of this paper discusses the element of formation of contract, as follows.

### **Formation of Contract “Parties’ Agreement” [3]**

It is a basic presumption that there are no contractual obligations to be legally considered when there is no obvious agreement taking place between the contracting parties. The agreement is deemed to be formed when a firm offer by one party is unequivocally accepted by the other. The offer and acceptance methodology does not constitute formality in the Islamic contractual legal system. It is only a means to find out the inner will and consent of the contracting parties.<sup>17</sup> Based on the mode of offer and acceptance, a decision is able to be made whether a free agreement has been reached in transactions or not.

An offer is the initial proposal which is made by one of the parties to show his willingness and interest to form a contract. Acceptance, in turn, is the later response from the other party to demonstrate his consent to the offer.

Yet, the mere occurrence of the offer and acceptance does not itself render a contract absolutely legitimate. In order for a transaction to be legally concluded and to take legitimate effects in the Doctrine, certain supplementary conditions have got to be fulfilled. To demonstrate the significance of these elements in the law, it must be stressed that if one or more of those conditions are not met, the contract will not be validly formed.

Those essential conditions are put as follows: the offer and acceptance must be so obvious in indicating the absolute will of the contracting parties to enter into commercial relations, the acceptance must be completely

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<sup>16</sup> Ibn Othaimeen Mohammad (2004), *Al-Sharh al-Momtea Ala Zad al-Mostagnea*. Dammam, Saudi Arabia: Dar Ibn al-Jozi, vol. 8, p. 95.

<sup>17</sup> Aron Zysow (1985-86), the Problem of Offer and Acceptance: A Study of Implied-in-Fact Contracts in Islamic Law and the Common Law, *Cleveland State Law Review*, 34 (1), 69-77.

compatible in every parts with the offer, both the offer and the acceptance must be communicated to each party involving in the contract, and ultimately, the connection of the offer and the acceptance must be carried out at the parties' meeting place of transaction. Further elaborations will now be provided on the concept of meeting place as it is applied in the Islamic law of contract.

In dealing with this concept, this paper is divided into three main sub-headings; to start with, pointing out, in brief, the meaning of parties' sitting place. This is followed by examining the idea of meeting place in face-to-face transactions. The next part of this discussion is devoted to the sitting place theory based on contracting between absentees.

### **The Meaning of Meeting Place [3.1]**

To properly understand the discussion of this section, it is important to initially describe the unique principle of the meeting place in the Islamic legal system. Amongst other definitions, article 181 of the Othman Justice Rules Magazine (*the Mejelle*) classifies the parties' meeting place as "the meeting that is convened for contract making." This definition, as can be observed, seems to be insufficient, and the term still needs further elaboration. Hence, another definition, which provides more clarification and precise details, is put forward for this legal principle as "the time span during which the involving parties are together to engage with the forming of contract without being busy by something else not related to the negotiated bargaining by any of them".<sup>18</sup>

Thus, the theory of meeting place is considered according to the latter definition as one unit of time. The unity of the meeting place means that the offer and the acceptance must be made at the same time during which the parties are facing each other to conclude the contract, without anything that could divert their attention away from it. Needless to say, the contract must be carried out in the exact place where the involved parties originally

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<sup>18</sup> It is indicated that this definition is adopted by a large number of Hanbali, Shafi and Maliki scholars. See, al-Shafiy Jaber (2001), *Majless al-Aqd fi al-Figh al-Eslamy wa al-Qanoon al-Wadhei*. Alexandria: Dar al-Jameah al-Jedeedah, pp. 90-92, Shalabi Muhammad (1966), *Al-Madkhel fi al-Ta'areef be al-Figh al-Eslami wa Qawaed al-Melkiah wa al-Uqud fih*. Dar al-Taleef Publisher, pp. 408-409, and Al-Ebraheem Muhammad (1986), *Hokom Ejra'a al-Oquud bewasa'el al-Etesalat al-Hadeetha*. Jordan: Dar al-Dhiya, p. 50.

initiated their negotiation as they, sometimes, may be involved in business dealings while walking or riding or even travelling in a place and hence, such a place is not applicable in the law.

Strictly speaking, the offer and the acceptance can never be, in a practical sense, contemporaneous since the offer ceases to exist before the acceptance 'comes to life'. Thus, to enable the necessary connection to take place, the meeting place is regarded as one unit of time. As such, the offer is deemed to be in existence so long as the contracting parties continue their commercial engagement. The main purpose behind the formation of the theory of sitting place in the Islamic legal system is to determine the allowed time length for the offer to be legally stand for acceptance without bringing potential damage to the offering party, by delaying the issuance of acceptance for a long time after the breaking up of the parties from their meeting place,<sup>19</sup> nor damaging the accepting party as the theory provides him with more time to contemplate the worth and the benefit of the proposal before making any rushed decision.

### **The Theory of Sitting Place in Face-to-Face Transactions [3.2]**

According to Islamic rules, in the case where both parties are in the presence of each other, it is not legally accepted that the offer is made in one place and the acceptance is initiated in a different one. Consequently, for a contract to bear a legal effect, the offer and acceptance must be communicated at the same place where both parties gather to form their agreement. So, for example, when one party meets another one in a place, e.g. the place of work, and offers his car with a certain value, but the other party has not approved the offer until both parties have separated from each other - in such a case, unless it is agreed for that proposal to be extended for a longer time, there would be no valid conclusion of the transaction. This is due to the fact that the acceptance was not issued at the same time during which both parties gathered to negotiate the commercial bargaining.

Yet, it should be mentioned that the application of the setting place idea in the Muslim commercial doctrine is conditional on the absence of parties'

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<sup>19</sup> Zaidan Abdul-Kareem (1982), *Almadkhal Lederashat al-Shariah al-Eslamiyyah*. Beirut: al-Resalat Ltd, pp. 290-291.



agreement to extend the validity of the offer to a certain period of time in which the acceptance must be made within this designated period.

It must be added that in this case where the offer was agreed to be open for acceptance for a particular time, such an offer cannot be cancelled until that specified period ends without acceptance being made.<sup>20</sup> However, when there is no agreement to extend the offer for a certain period, the offering party has the right to withdraw his offer at any time before acceptance. Not only that, under the option of meeting place, both parties can even cancel the contract after it was concluded. In the following discussion, consideration will be given to the idea of the Islamic option of meeting place in face-to-face transaction.

### **The Option of Meeting Place [3.2.1]**

The option of meeting place is one of the recognised Islamic rights of options. Accordingly, each of the contracting parties bears the legal right to rescind the sale after it has been concluded by the acceptance of the offer so long as the meeting place continues.

This option provides extra time for both parties to thoughtfully re-contemplate and reconsider the benefit and the worth of their commercial dealing after it is concluded. This option took its authority in the law from a tradition attributed to the Prophet according to which he said:

*“When two persons enter into a transaction, each of them has the right to annul it so long as they are not separated and are together (at the place of transaction); or if one gives the other the right to annul the transaction. But if one gives the other the option, the transaction is made on this condition (i.e. one has the right to annul the transaction), it becomes binding. And if they are separated after they have made the bargain and none of them annulled it, even then the transaction is binding.”<sup>21</sup>*

This Prophetic Saying was clear in recognising the validity of the option of meeting place. Prophet Muhammad plainly conferred both contracting parties the option of annulling the sale at any time before separation. The word separation is defined as either or both contracting parties physically

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<sup>20</sup> See the Religious Decree of the Islamic Law Institute (Majma'a al-Figh al-Eslami). This was set out in its sixth Conference which was held in Jeddah from 14-20 March 1990.

<sup>21</sup> *Sahih Muslim*, tradition no. 3658, translated into English by Siddiqi Abdul Hamid (2000), India: Kitab Bhavan, p. 971.

leaving the place of transaction. The determination of what constitutes physical separation is left to the prevailing trading practices and customs. So, when it is customary that the contracting parties have separated from the meeting place of transaction, then the contract is legally deemed to be irreversible.<sup>22</sup> Hence, the meeting place option is terminated as soon as either or both contracting parties depart from the place in which both parties gathered to form the bargain.

### **The Application of Meeting Place in Contracting between Absentees [3.3]**

It is a common practice, particularly nowadays with the advent of modern technological devices, that contracts are being conducted where parties are at a distance from each other. This can be classified in a legal sense as contracting between absentees. Hence, in such a contract, the offering party initiates his proposal in one place and the receiving party receives it in a different location. Contracting between absentees is a contract which is concluded between two contracting parties who are not gathered in one place of bargaining.<sup>23</sup>

The essential difference between a contract which is formed in the presence of the involved parties from a contract whose parties are absent is the existence of some period of time which is needed for the offer to reach the receiver of it and for the acceptance to reach the offering party. There is no such gap of time when the contract is formed in the presence of two parties as both the offer and the acceptance are heard instantly as soon as they are pronounced by the contracting parties.

As was mentioned above, it is an essential condition that the offer and the acceptance must be connected in a unified meeting place. When both parties are contracting in the presence of each other, it is visible that the meeting place is the place where the offer is made. In the case of contracting inter

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<sup>22</sup> Various examples of when parties' parting or separation is taken place were set out. Amongst others, in a large market, parting is established by walking away until one does not hear the other's common talk; and on a ship by going to different levels, and in a house by one leaving the house or going to a different room. See, al-Joroshy Sulaiman (2003), *Nadatiah al-Aqd wa al-Khiyarat fi al-Figh al-Eslamy al-Moqaran*. Libya: Dar al-Kotob al-Watanyya, pp. 161-162.

<sup>23</sup> Al-Shafiy Jaber, *Majless al-Aqd fi al-Figh al-Eslamy wa al-Qanoon al-Wadhei*, op cite no. 18, p. 252.

absentees the theory has been extended in the Islamic doctrine by construction. Due to the natural difference of the contracting with an absent party from the contract whose parties are present, it was put forward that the meeting place in contracting between absentees is the place where the receiving party becomes fully aware of the content of the sent offer via a messenger or a letter or other means of communication.<sup>24</sup>

The idea of the unity of meeting place is an essential condition in contracting with the present parties. However, an actual application of the unity of the meeting place, as said above, is not conceivable in contracting between absentees. Hence, a constructive unity was established for such contracting. The concept of a constructive unity of meeting place means that the acceptance has to be made in the very place where the offer came to the knowledge of the receiver. In other words, it was provided that the unity of meeting place denotes that the acceptance must be issued before the receiver physically departs from the place where the offer came to his knowledge.<sup>25</sup>

However, this rule appears to be theoretical rather than practical as, for example, in the case of contracting between absentees using the letter method, sometimes, the content of the letter will be read while the receiver is walking or driving and thus more time is needed for him to consider the value of the offer. So, the unity of meeting place as indicated is difficult to apply. Furthermore, it is a very common that letters are opened while the receiver is alone without any one present and hence, neither the offering party nor any other person except the receiver can know for sure when and where the offering letter is read and also when the physical departure has taken place. Therefore, it would be apt to say that the acceptance in contracting in the absence of one party must be made within a reasonable time taking into account the nature of the contract and surrounding circumstances and trading customs. If the acceptance is not issued within a reasonable time, then the offer will be terminated and thus, there is no possible valid conclusion of contract.

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<sup>24</sup> Mosa Muhammad (1996)., *Al-Amwal wa Nathariyya al-Aqd fi al-Figh al-Eslamy*. Cairo: Dar al-Fekr al-Arabi, p. 237, and Al-Joroshi Sulaiman, *Nadatiah al-Aqd we al-Khiyarat fi al-Figh al-Esslamy al-Moqaran*, op cite no. 22, p. 34.

<sup>25</sup> Al-Qarehdagy Ali (2002)., *Mabda' al-Ridha fi al-Uquud*. Beirut: Dar al-Bashaier al-Eslamiyyah, p. 1093.

### **The Option of Meeting Place in Contracting between Absentees [3.3.1]**

Unlike the case of contracting while parties are present, the option of meeting place will not be available for the parties in contracting between absentees. The tradition from which the idea of the option of meeting place derives authority presupposes that the parties are contracting in the presence of each other in one meeting place, thus, this option cannot be applied in the case of contracting with an absent party.

In contrast to this view, it has been argued that the meeting place option is not so limited. Accordingly, the receiving party in contracting between absentees has the option to repudiate the contract at any time before he physically leaves the place where he receives the offer. Likewise, the offering party can cancel the contract at any time before the meeting place of the receiver 'breaks up'.<sup>26</sup> However, this rule appears to be theoretical and thus hard to apply in practice in the trading environment since it is impractical to know when the receiver leaves the meeting place. Yet, it is logically sensible that the acceptance can be revoked at any time before it is communicated to the offering party.<sup>27</sup>

### **Conclusion: The Implementation of the Islamic Principle of Meeting Place in E-Commerce [4]**

As an essential part of Muslim's beliefs, Islamic law is seen as a system of life and a sole constitution for Muslims proper and suitable for all times and places. By reliance on the Book of Allah and the teachings of Prophet Muhammad and all other vital sources, *Sharia* is wide enough to accommodate any emerging small or big matter in a way that is promoting, not contrasting with, the development of human civilisation throughout ages and eras.

Hence, generally speaking, it is believed, after thoughtful observation, that this new kind of trading known as e-commerce is absolutely conformable with general principles and rules of Islamic law.<sup>28</sup> Accordingly, it is

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<sup>26</sup> al-Qarehdagy Ali, *Mabda' al-Ridha fi al-Uquud*, op cite no. 25, p. 1093.

<sup>27</sup> Rayner S.E. (1991)., *The Theory of Contracts in Islamic Law*. London: Graham and Trotman, p. 112. See, Dubai Contract Code (1971)., Article 7 (2).

<sup>28</sup> This thought was given in a juristic gathering to study the electronic commerce under the law of Islam which took place on 23 March 2000 at al-Azhar University in Cairo, cited after, Al-Sanad Abdulrahman (2004)., *Al-Ahkam al-Fighiyah letaamolat al-Electroniyah*. Riyadh: Dar al-Warrak, p. 167.

permissible to carry out all types of trading activities through cyberspace so long as it is not in contradiction with some key aspects of *Sharia*.<sup>29</sup> It is not the aim of this short essay to provide an extensive examination of e-commerce in every aspect under principles of Islamic law of contract - focus is given here to applying the Islamic concept of meeting place in the electronic sphere. In concluding this essay, discussion below will be divided into two main parts - forming a contract using instantaneous electronic tools and non-instantaneous methods of communication.

### **The Application of Meeting Place in E-Commerce Using Instantaneous Electronic Devices of Communication [4.1]**

In face-to-face transactions, there is no timing interval in communicating both the offer and the acceptance. As can be observed, there is no timing break in the case that a contract is formed via electronic instantaneous forms of communication. It is not important to identify all those instantaneous methods as this is not ideal in our current time with the tremendous and fast development of technology. It is sufficient, however, to stress that when both the offer and the acceptance are instantly communicated via cyberspace, the method that is used there to convey the parties' will is classified as instantaneous. Sometimes this type of instant electronic communication may be in the form of a voice, such as by telephone, or voice and picture such as with video conversation via the Internet (e.g. msn messenger), or instant writing such as with chat-rooms on the Internet.

Unlike the contract with the presence of both parties in one place, parties are located in different places when contracting using such forms of communication. As a result, a legal problem has emerged on whether such contract is regarded as face-to-face transaction or contracting in the absence of parties.

In response to such concern, it has been said that such new kind of trading using instantaneous methods of communication should be regarded as similar to the contract while both parties, in reality, face each other, even though they are not physically together.<sup>30</sup> The reason for such a conclusion

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<sup>29</sup> Ibid.

<sup>30</sup> Al-Ebraheem Muhammad, *Hokom Ejra'a al-Oquud bewasa'el al-Etesalat al-Hadeetha*, op cite no. 18, p. 105.

is that the communication of the offer and the acceptance in both types of contract is done immediately without any delay. Hence, the forming of an electronic contract using instantaneous tools should be through the same rules as in face-to-face transaction.

Thus, by analogy with the face-to-face transaction, the principle of meeting place is an essential element for the validation of contracting using instant electronic forms. As indicated earlier, the meeting place is the period during which both parties are involved in negotiating business dealing without any of them being busy with something outside the scope of their commercial discussion.

Therefore, in applying the meeting place in contracts formed via instant tools of communication, the time during which both parties communicate would be regarded as the meeting place. So long as both parties continue their business talking through such methods, the meeting place is deemed to be valid; yet, the meeting place is terminated as soon as their conversation is ended or switched to another unrelated topic.

The option of meeting place is also applied in the forming of contract using instantaneous methods of communication. The option can be practised so long as both parties are still bargaining via the electronic sphere. The option of meeting place comes to an end when the instant communication between the offering party and the receiver is interrupted. For example, in the case of the telephone being used to conclude the contract, the option of meeting place is terminated at the time that the phone is hung up.<sup>31</sup> In the msn messenger example, the option of meeting place is deemed to be finished when both of the contracting parties, or one of them, sign out or leave the room where their instant conversation was held.

### **The Meeting Place in e-Commerce Using Non-Instant Forms of Communication [4.2]**

When there is no instant connection between the offer and the acceptance, this kind of contract is known as contracting between absentees. In such contracts, parties are located in different places at the time of forming the

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<sup>31</sup> Al-Tayyar Abdullah (1997), *Khiyara al-Majles wa al-Aeeb fi al-Figh al-Eslami*. Saudi Arabia: Dar al-Maseer, p. 136.

bargaining and also there is a considerable timing interval between the issuance of the offer and the acceptance and the knowledge of both of them by the contracting parties.

It is believed that such a gap between the connection of the offer and the acceptance exists in the forming of electronic contracts using non-instantaneous tools of communication. As a result, this type of contract should be treated in every aspect under the Islamic law of contract as the same as contracting between absentees. In times past, the messenger and the letter were the most famous non-instant means to carry parties' commercial wills; however, many other diverse means have been emerging with the advent of technology in our modern life, such as fax, telegram, interactive websites, e-mails, to name but a few. In such devices, there is no direct link between the contracting parties, and the offer and the acceptance are not instantly connected. Hence, such contract is deemed in the law as contracting between absentees and it is regulated accordingly.<sup>32</sup>

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<sup>32</sup> See above the sections of The Application of Meeting Place in Contracting between Absentees, and The Option of Meeting Place in Contracting between Absentees.

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