

The Theory of Unforeseen Circumstances in Islamic Jurisprudence and its Legal Implications for the Salam Contract: An Analytical Study

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Abstract

This article examines the theory of unforeseen circumstances in Islamic jurisprudence and its legal implications for the Salam contract. Salam is a forward sale contract characterized by deferred delivery and exposure to fluctuations in prices and delivery conditions, which makes it particularly sensitive to exceptional economic disruptions. The study adopts an analytical and foundational methodology, tracing juristic concepts related to unforeseen circumstances and analyzing resolutions of contemporary fiqh councils alongside the views of classical and modern jurists (Al-Durayni, 1997; Al-Sanhuri, 2011). The research finds that, although Islamic law upholds the fundamental principle of the binding force of contracts, it simultaneously pursues the higher objectives of justice, removal of hardship, and prevention of harm. When exceptional, general, and unforeseen events impose excessive burden on one contracting party, Sharia permits judicial intervention to restore contractual balance by modifying obligations, distributing losses, granting a grace period, or rescinding the unperformed portion of the contract. The study further demonstrates that the Salam contract falls within the scope of this theory, subject to specific conditions related to the nature of the event, its impact on performance, and the absence of negligence on the part of the debtor. The article contributes to the contemporary fiqh of transactions by linking established juristic maxims with current realities, especially in light of global crises that have severely affected Salam and other deferred sale contract.

Keywords: Unforeseen Circumstances, Salam Contract, Binding Force of Contracts, Contractual Balance, Hardship, Islamic Jurisprudence of Transactions

Introduction

Contracts occupy a central place in Islamic law for regulating civil and commercial transactions. Classical jurists devoted great attention to defining their pillars and conditions, clarifying their legal effects, and affirming the principle that a valid contract is binding on both parties once concluded in accordance with Sharia requirements (Al-Zuhayli, 1985). This

principle ensures stability in dealings and protects rights by requiring parties to honour their commitments.

At the same time, Islamic jurisprudence does not overlook the maqāṣid of alleviating hardship and preventing harm, particularly in contracts whose execution is deferred or extended over time. In such cases, exceptional and unforeseen events may occur after conclusion of the contract that are beyond the parties' control and cause a serious imbalance between their obligations. If strict adherence to the binding nature of the contract under these circumstances leads to excessive hardship for one party and undermines the intended justice of the transaction, the application of general Sharia principles becomes necessary (Al-Durayni, 1997).

The Salam contract represents a prime example of this tension. Salam is an exceptional forward-sale contract permitted contrary to analogy due to people's need for pre-paid financing of future goods. Its performance depends on future conditions, including availability of the subject matter and stability of prices, and is therefore highly exposed to economic shocks and disruptions. Examining how the theory of unforeseen circumstances operates within the Salam framework is thus a timely and complex issue that requires both juristic grounding and practical analysis.

Research Problem, Questions, and Objectives

The core problem addressed by this study is the contractual imbalance that may arise in a Salam contract when exceptional and unforeseen circumstances occur after its conclusion and before, or during, performance. Such circumstances can make it extremely burdensome for one party, often the seller obligated to deliver goods, to fulfil the contract on the agreed terms, thereby threatening the economic equilibrium of the transaction and frustrating the purpose of Sharia in permitting Salam, which is facilitation, mutual benefit, and fairness (Al-Sanhuri, 2011).

This raises a fundamental tension between two established principles: the binding nature of contracts on the one hand, and the obligation to remove hardship and prevent harm on the other. The research seeks to answer the following questions:

1. How is the theory of unforeseen circumstances defined and conceptualized in Islamic jurisprudence?
2. What are the conditions and scope of its application in contracts with deferred performance?
3. To what extent can this theory be applied to the Salam contract, and what legal consequences follow in terms of modifying or terminating obligations?

Accordingly, the main objectives are:

1. To clarify the concept and juristic foundations of the theory of unforeseen circumstances.
2. To identify its pillars and conditions of application as articulated in classical fiqh and contemporary resolutions of Islamic Fiqh Academies.
3. To analyze its specific impact on Salam contracts, including possible judicial interventions to restore contractual balance.

Literature Review

The modern formulation of the “theory of unforeseen circumstances” emerged in civil law scholarship but has clear roots in Islamic jurisprudence. Works by Al-Durayni (1997), Al-Ghanayim (2008), and Al-Mu’ini (1990) have shown that classical fiqh contains dispersed rules dealing with calamities (*jawā’ih*), excuses, and changes in circumstances that justify modifying or rescinding contracts. These include discussions among Mālikī and Ḥanbalī jurists on general calamities affecting agricultural leases and sales, and the broader theory of necessity and hardship in Sharia (Al-Zuhayli, 1985).

On the legal side, Al-Sanhuri (2011) and Al-Zarqa (1960) elaborated the civil-law doctrine of unforeseen circumstances and its conditions, such as the exceptional and general nature of the event, its unpredictability, the absence of fault, and the excessive burden imposed on the debtor. Comparative studies by Banī Aḥmad (2006), Salim (2008), and Fawdah (1999) have explored similarities and differences between the Islamic and civil-law approaches.

Resolutions of the Islamic Fiqh Academy of the Muslim World League (Al-Majma’ al-Fiqhī al-Islāmī, 2004) and other juristic bodies have further clarified the application of this theory to modern contracts, especially supply, construction, and long-term service agreements. However, detailed application to specific nominate contracts such as Salam remains relatively limited. This article contributes by applying the general theory to Salam in a systematic way, using both classical jurisprudence and contemporary practice.

Concept and Pillars of the Theory of Unforeseen Circumstances

Linguistically, “circumstances” (*zurūf*) denotes conditions or situations, while “unforeseen” (*ṭāri’ah*) refers to events that occur suddenly and unexpectedly (‘Umar, 2008; Qala’ji & Qunaybi, 1988). Contemporary jurists and legal scholars define the theory of unforeseen circumstances as a set of rules that address the impact of unexpected and unavoidable general events that occur after the conclusion of a contract and before its complete performance, making the execution of obligations extremely burdensome and threatening the debtor with severe loss beyond the usual level (Al-Durayni, 1997; Banī Aḥmad, 2006).

From the various fiqh and legal definitions, three main pillars can be distilled:

1. Existence of a contractual obligation with deferred performance. The theory applies only where there is a contract whose performance extends into the future, such that a temporal gap exists between conclusion and execution. This includes long-term leases, supply contracts, construction agreements, and deferred sale contracts such as Salam and Istinā’ (Al-Sanhuri, 2011; Al-Zuhayli, 1985).
2. Occurrence of exceptional, general, and unforeseen circumstances. The event must be unusual in kind or intensity, general in its impact on a region or sector, and not reasonably foreseeable at the time of contracting. Examples include war, large-scale epidemics, sudden closure of trade routes, or extraordinary price surges caused by external shocks (Al-Tirmanini, 1971; Al-Ghanayim, 2008). Ordinary market fluctuations remain part of the normal risk of trade and do not trigger the theory.
3. Transformation of performance into an excessively burdensome obligation. The unforeseen event must result in such a severe disruption of contractual equilibrium that fulfilling the obligation in its original form imposes unbearable hardship or disproportionate loss on the debtor, while the creditor continues to benefit from the contract. The criterion of “excessive hardship” is flexible but is assessed objectively in

relation to the contract itself rather than the personal wealth of the parties (Fawdah, 1999; Salim, 2008).

When these pillars are fulfilled and the debtor is free from negligence, Islamic jurisprudence allows intervention to rebalance the contract, drawing on maxims such as “hardship invites facilitation” and “harm must be removed” (Al-Zuhayli, 1985).

Scope of Application in Contemporary Fiqh Decisions

In 1402 AH, the Islamic Fiqh Academy of the Muslim World League issued a landmark resolution on unforeseen circumstances and their effects on contract rights and obligations (Al-Majma' al-Fiqhī al-Islāmī, 2004). The Academy distinguished between ordinary commercial loss, which has no effect on contracts, and extraordinary loss arising from exceptional and general events. For contracts with deferred or periodic performance, such as supply, construction, and service contracts, the Academy held that, where such events cause unusually large losses not attributable to negligence, the judge may modify contractual obligations by distributing the excess loss between the parties or, where appropriate, terminate the unperformed portion of the contract.

The resolution emphasized several conditions: the event must be general and exceptional; it must not be foreseeable at the time of contracting; its effects must be unavoidable; and the resulting hardship must exceed normal commercial risk. The judge is instructed to rely on expert opinion and to seek a solution that best achieves justice and removes undue hardship. These criteria align closely with the classical fiqh discussions on calamities and hardship, demonstrating that the modern “theory” is in fact a systematic articulation of well-established juristic principles.

Effects of the Theory on the Salam Contract

Given its structure as a forward sale with immediate payment and deferred delivery, the Salam contract is particularly prone to disruption by unforeseen circumstances. The subject matter may become scarce or impossible to obtain, production costs may rise sharply, or transport routes may be closed, making delivery on the agreed terms extremely burdensome or impossible.

When the conditions of the theory are met in a Salam contract, several legal options become available:

1. Adjustment of the creditor's obligations. The judge may decide that justice requires increasing the counter-obligations of the purchaser, for example, by raising the agreed price within reasonable limits, so that the unexpected increase in cost is not borne solely by the seller. The purchaser is then given the choice either to accept the adjustment or to terminate the contract with fair compensation (Al-Sanhuri, 2011; Ibn 'Abidin, 1966).
2. Reduction of the debtor's obligations. Alternatively, the court may reduce the quantity to be delivered or relax certain specifications in order to restore a reasonable balance between benefit and burden. If the unforeseen circumstance ceases, the contract may return to its original state; if its effects intensify, further reduction or partial rescission may be warranted (Al-Thalib, 1991).
3. Suspension of performance and granting of a grace period. Where the hardship is expected to be temporary, for instance, when prices are inflated due to a short-term disruption in supply chains, the judge may suspend performance until conditions improve,

provided that the suspension does not cause disproportionate harm to the other party (Ibn Qudamah, 1388).

4. Termination of the unperformed portion of the contract. If rebalancing proves impossible or the burden remains intolerable, the judge may terminate the contract with respect to the part not yet executed, while ensuring equitable compensation for the affected party. This option is used sparingly and only when it best serves justice and the objectives of Sharia (Al-Majma' al-Fiqhī al-Islāmī, 2004).

These mechanisms show that the theory of unforeseen circumstances does not abolish the binding nature of Salam; rather, it introduces a controlled and principled flexibility that protects both parties from ruinous outcomes.

Findings and Conclusion

The study leads to several key findings:

1. The theory of unforeseen circumstances, though articulated in modern legal terminology, is firmly rooted in Islamic jurisprudence through maxims and rules that emphasize removal of hardship, prevention of harm, and achievement of contractual justice (Al-Durayni, 1997; Al-Zuhayli, 1985).
2. The binding force of contracts remains a fundamental principle in Sharia, but it is not absolute; it is subject to exceptions when exceptional, general, and unpredictable events cause serious imbalance and excessive hardship.
3. Islamic jurisprudence recognizes the legitimacy of judicial intervention to restore contractual balance in contracts with deferred performance, even if earlier texts did not formulate this as a separate "theory." Practical applications are evident in discussions on calamities, excuses, and changing conditions.
4. The Salam contract, because of its deferred obligations and sensitivity to market fluctuations, lies squarely within the field of application of this theory.
5. The application of the theory to Salam is conditional upon strict criteria, including the exceptional and general character of the event, its unpredictability and unavoidability, the severity of the hardship imposed, and the absence of negligence by the debtor.
6. Once these conditions are met, the Sharia judge may adjust or terminate the contract through various means, such as modifying obligations, distributing losses, granting a grace period, or rescinding the unperformed portion, so as to achieve fairness and prevent harm.

In conclusion, the theory of unforeseen circumstances provides an important juristic tool for addressing disruptions that affect Salam and other deferred contracts in modern economies. By integrating classical principles with contemporary realities, it enables Islamic finance to respond flexibly yet faithfully to crises that threaten contractual justice.

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