



The Destruction of the Subject Matter of a Mokawala (Construction) Contract and its Effects in Islamic Jurisprudence

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Abstract:

The contract of Mokawala (construction contract) is one of the contemporary and independent contracts that has developed its own set of conditions and essential pillars. Jurists have examined its foundational elements, clarified its legal nature, and defined its conditions. Among its most important pillars is the contracted object, which represents the core and foundation of the contract.

Given the possible contingencies that may affect the contracted object, such as damage or destruction, the central question of this research emerges: What is the legal effect of the destruction of the contracted object on the termination of Mokawala contract?

- 1) The first section discusses the nature of Mokawala contract.
- 2) The second examines its legitimacy from an Islamic legal perspective.
- 3) The third clarifies the concept and scope of the contracted object.
- 4) The fourth analyzes the effect of the destruction of the contracted object on the contract's termination.

The study concludes with the key findings and outcomes.

Keywords: Destruction of subject matter; Construction contract (Mokawala); Contractual subject matter; Contract effects; Islamic jurisprudence.

Résumé :

Le contrat de Mokawala (contrat de construction) est l'un des contrats contemporains et autonomes qui a développé son propre ensemble de conditions et de principes fondamentaux. Les juristes ont examiné ses éléments constitutifs, clarifié sa nature juridique et défini ses conditions. Parmi ses principes fondamentaux figure l'objet du contrat, qui en constitue le cœur et le fondement.

Compte tenu des imprévus susceptibles d'affecter l'objet du contrat, tels que les dommages ou la destruction, la question centrale de cette recherche se pose : quel est l'effet juridique de la destruction de l'objet du contrat sur la résiliation du contrat de Mokawala ?

- 1) La première partie traite de la nature du contrat de Mokawala.
- 2) La deuxième examine sa légitimité d'un point de vue du droit islamique.
- 3) La troisième section clarifie le concept et la portée de l'objet du contrat.
- 4) La quatrième section analyse l'effet de la destruction de l'objet du contrat sur la résiliation de celui-ci.

L'étude se termine par la présentation des principales conclusions et résultats.

Mots-clés : Destruction de l'objet du contrat ; Contrat de construction (Mokawala) ; Objet du contrat ; Effets du contrat ; Jurisprudence islamique.



Introduction:

Praise be to Allah, the Lord of the Worlds, who says in the Quran: (But Allah has permitted trading and forbidden interest)Al-Baqarah [275], and peace and blessings be upon our Prophet Muhammad, the Ummi Prophet, who said: 'The greatest offence of Muslims is whoever asks for something that is not forbidden, and it is forbidden because of his question.'¹Then peace and blessings be upon his good companions, of whom Omar ibn al-Khattab said: 'Let no one sell in our market except those who have been educated in religion,' may peace and blessings be upon them.

With the ongoing development of financial transactions methods, jurists are in constant search for the rulings of tools and mechanisms that affect financial contracts. This is driven by a concern that the taxpayer may fall unknowingly into the hidden Shari'ah prohibitions through these new methods and tools, and thus fall into a forbidden and corrupt transaction, that contradict with the purposes of the Shari'ah, which is to protect people's money and rights.

Among the contracts that have emerged in recent times is the contract of *mokawala*, which exists numerous forms and continues to evolve. One of the key issues that that arises in this contract relates the delimit of this contract, especially in case of the contract object damage.

This issue has raised the attention of many researchers who have addressed the nature of contract and clarified its terms and conditions and controls. Among them is Dr. Abd El Rahman Al-Aied, whose book *The Contract of Mokawala*, was greatly beneficial to my research. His work prompted me to

highlight this issue from a brief juristic perspective, with the aim of presenting a clear and precise foundation for those interested in the subject.

Research Problems:

This study aims to answer the following questions:

- What is the Meaning of the concept of the Mokawala contract?
- What is the legitimacy of the Mokawala contract?
- What is the nature of the contracted object in the Mokawala contract?
- What is the effect of damage to the contracted object on the termination of the contract?

Research Objectives:

This research paper attempts to achieve the following objectives:

- To clarify the essence of the Mokawala contract.
- To address the juristic portrayal of the cases of damage to the contracted object in the mokawala contract.
- 3. To examine the juristic perspective with the aim of identifying the provisions governing the termination of the contract when the contracted object is damaged.

Research methodology:

This study begins by clarifying the central issue in each case and presenting the range of juristic opinions surrounding it. The research adopts a multi-methodological approach, combining the inductive method; through which relevant juristic opinions and classical references are gathered; with comparative and analytical methods that



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evaluate the reasoning and evidence behind each view. The goal is to arrive at the most substantiated and preponderant opinion on the matter.

This study comprises four sections:

- The Concept of the Mokawala Contract.
- Legitimacy of the Mokawala Contract.
- The Nature of the Contracted Object in the Mokawala Contract.
- The Effect of Damage to the Contracted Object on the Termination of the Mokawala Contract.

1. The Concept of Mokawala Contract in Language and Terminology

Knowing the concept of the Mokawala contract is one of the basic steps in building a jurisprudential study of this type of contract, because the clarification of the term contributes to controlling the subject of research and defining its scope accurately, and in this context, this section addresses the concept of the Mokawala contract in both respects: This is a prelude to the jurisprudential judgements that will be based on it in what follows.

1.1. The Concept of Mokawala in Language

The verb kawwal "قاول" is used in language with the meanings of discussion, negotiation and argument, from which it is said: "He negotiated with him in the matter", i.e. negotiated and argued with him in it.

It is also said: "He contracted the construction", i.e., he gave him the work on a pledge to do it in exchange for an agreed wage, as it is said: "He contracted him for twenty thousand to build him a house"; that is, he assigned him the work

according to a specific agreement on completion and responsibility.ⁱⁱ

Therefore, the term Mokawala 'Construction' in linguistic usage revolves around the meaning of negotiation, agreement and undertaking to carry out a work, which is the basis for defining the terminological concept that will be explained later.

1.2. The Concept of Mokawala in terminology

The jurists in the past did not have a meaning for the term Mokawala, but the legal scholars termed it as suchⁱⁱⁱ, but with the popularity of this contract and the jurists' characterization of it with other similar contracts, a number of definitions were given. The most important of which are the following:

Al-Zuhaili defines the term Mokawalaby saying: "Mokawala: A contract whereby one party undertakes to make something or perform a work in return for a fee that the other party undertakes to pay."^{iv}

It is similarly defined as: "An agreement whereby one of the contractors undertakes to make something for the other contractor, or to perform a work in return for a financial consideration, which the other contractor undertakes."^v

Abu Qurayn adds to the previous two definitions: "without being subject to his control or supervision."^{vi}

On the other hand, Dr Mohammed Labib Shanab defines Mokawala as follows: "A contract that means that a person performs a certain work for the account of another person in exchange for a fee, without being subject to his supervision or will."^{vii}

Based on various definitions of Mokawala, this study concludes that the Mokawala contract refers to an agreement



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between two parties in which one agrees to perform a clearly defined task within a specified time frame and for a known compensation.

2. Legitimacy of the Mokawala Contract.

The legitimacy of modern contractual forms is one of the key issues in contemporary jurisprudence, especially in light of the evolution of legal frameworks and the diversification of transactional models. The Mokawala contract is considered one such modern contract. Although it was not recognized under this specific name by classical jurists, contemporary scholars have worked to establish its permissibility by aligning it with established Islamic contracts, notably Ijarah (hiring) and Istisna'a (manufacturing or commissioned work).

The Mokawala Contract oscillates between two permissible contracts, and does not include both at the same time. Al-Kasani said, "Whatever includes the meaning of two permissible contracts is permissible."^{viii}

This inclusion is more permissible if it takes the form of an alternative.

From a jurisprudential standpoint, the Mokawala contract is rooted in two recognized forms of contracts in Islamic law:

- If the contractor provides only labor, while the materials and tools are supplied by the employer, the contract aligns with Ijarah al-Adjeer al-Moushtarak (hiring of a common laborer).
- If the contractor provides both labor and materials, the contract aligns with Istisna'a.

On this basis, jurists maintain that the Mokawala contract is permissible in both cases, as both Ijarah and Istisna'a are valid contracts in Islamic jurisprudence.

The Islamic Fiqh Academy has affirmed this position, defining the Mokawala contract as one in which a party commits to carry out a task or produce something in return for a pre-agreed payment.

It is considered valid whether the contractor provides labor only Ijarah, or both labor and materials (Istisna'a).^{ix}

There appears to be no known disagreement on this issue among contemporary jurists or researchers, as the opinion has settled on the permissibility of the Mokawala contract. This judgement is derived from a number of legal principles, foremost among them is that: the evidence of the permissibility of the Ijarah contract and the permissibility of the Istisna'a contract as an independent contract in terms of its nature and rulings, which is not attached to Forward sale contract (Salam).^x

3. The Contracted Object in the Mokawala Contract.

The contracted object or the object of the contract is the core and purpose of the the contracted object; or the object of the contract, is central to the contract's legal effect and its intended outcomes. It represents the very subject matter around which the agreement revolves, serving the practical and legal interests of the contracting parties. The object can be material (e.g., in contracts of sale, mortgage, or gift), immaterial (e.g., in marriage contracts), or benefit-based (e.g., rental contracts involving property or labor).^{xi}

In the case of Mokawala, the nature of the contracted object depends on the specific arrangement between the contractor



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and the employer. It is not restricted to labor alone, and can take one of the following forms:

- If the contractor agrees to perform a specific task while the employer supplies the tools and materials, then the contracted object is considered to be a benefit, namely, the contractor's effort or service. For example, a contractor hired to build a house using materials provided by the employer.
- If the contractor is responsible for both the task and the provision of materials and tools, then the contracted object becomes the final product; that is, the completed work itself.
- Therefore, the object of the Mokawala contract may be either a benefit or property, depending on the terms agreed upon between the contractor and the employer.^{xii}

4. The Effect of Damage to the Contracted Object on the Termination of the Mokawala Contract.

The study of the effect of damage in contractual contracts is a critical area in Islamic jurisprudence, as such damage can have significant implications for the validity, continuity, or termination of a contract.

In particular, the Mokawala contract presents unique challenges. Unlike other contracts, it may involve pure labor, or labor combined with materials that the contractor is obligated to provide. This dual nature gives the question of damage special importance, especially when evaluated through the lens of Ijara (lease) contracts, which share

structural similarities in terms of benefit and time-bound commitments.

This section aims to explore the effect of damage to the contracted item on the termination of the Mokawala contract, examining three key scenarios:

- 1) **Damage to the Contractor's Benefit:** This refers to the contractor's inability to perform the work, most notably in the case of death. The contract's fate depends on whether the agreement was tied to the contractor's individual identity and qualifications.
- 2) **Damage to the Contracted Object:** This concerns the subject of the contract itself. It focuses on distinguishing between a specific item (ayn mu'ayyanah), and an item generically owed by the contractor (fi dhimmah of the contractor). This distinction affects both liability and impact on the contract.
- 3) **Damage to the Object on Which the Contractor's Work Depends:** This refers to property owned by the employer and used as the basis for the contractor's work, such as a house being renovated. The study addresses the consequences if this property is partially or completely damaged during the execution of the contract.

The discussion of these cases draws on a jurisprudential analogy with the Ijara contract, given that both types involve the provision of a benefit over a set period. This analogy allows for the application of established Ijarah rulings while recognizing the specificities and objectives of the Mokawala contract.

Based on this methodology, the research aims to present a disciplined Accordingly, the research aims to offer



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a disciplined jurisprudential framework, grounded in classical legal texts and reliable juristic sources. Through a methodical presentation and analysis of scholarly opinions, the study clarifies the practical legal consequences of each type of damage and its impact on the continuation or termination of the Mokawala contract.

4.1. Damage to the Contractor's Benefit (Death of the Contractor)

4.1.1. *Delimiting the Disputed Issue*

The jurists agree that the Mokawala Contract is terminated immediately upon the Jurists agree that the Mokawala contract is nullified upon the contractor's death; provided the contract stipulates that the work must be carried out by the contractor personally, or that the contractor's identity and qualifications were a fundamental aspect of the agreement. This often applies in cases involving skilled professionals such as doctors and painters.

In such instances, the contractor's personality becomes the subject of the contract. Therefore, their death results in the loss of the object of benefit, rendering the contract void; similar to how a lease contract is canceled when the rented object is destroyed. This view is clearly articulated by **Al-Sherbini**, who stated:

"It is cancelled by the death of the hired labourer because he is the subject of the contract, not because he is the Mokawala party".^{xiii}

However, if the contract does not contain such a clause, or if the contractor's personality is not considered in the contract, the scholars differ on whether the death of the contractor terminates the contract or not.^{xiv}

4.1.2. *Juristic Perspective*

Jurists have expressed two main opinions regarding the effect of the contractor's death on the Mokawala contract:

First Opinion: The majority of scholars – including the Maliki, Shafi'i, and Hanbalis, hold that the contract does not terminate with the death of the contractor.^{xv}

Their arguments are as follows:

- **Analogy with Sales Contracts:** The Mokawala contract is akin to a sale, as both involve a form of barter. Thus, like sales, they are not nullified by the death of either party.^{xvi}
- **Contract Based on Work, Not Person:** The contract is not contingent upon the person of the contractor, but on the work agreed upon. If the contractor dies after performing part of the work, the obligation persists and may be continued by others or settled from the estate.^{xvii}

Second Opinion: According to the Hanafis, a view also held by Al-Sha'abi, Al-Sha'abi, Sufyan Al-Thawri, Al-Leith bin Saad, and Ibn Hazm of Al-Zahiri school, the contract is terminated by the death of the contractor.^{xviii}

Their rationale includes:

❖ The Mokawala contract, in cases resembling the hiring of a common laborer, is seen as a renewable contract, hour by hour, tied to the benefit derived from the contractor's continued presence. If the contractor dies, the anticipated benefit is no longer achievable, leading to the contract's dissolution.^{xix}

**This reasoning, however, is debated. Critics argue:**

▪ If the benefit is owed to the employer, its loss through death is akin to a lost debt, it remains an obligation upon the estate. ^{xx}Heirs cannot reject contracts that form part of the deceased's obligations, as these are included in the inheritance.^{xxi}

4.2. Preponderance

Given the comparative strength of the arguments, the majority opinion is more compelling: the contractor's death does not necessitate cancellation of the contract – unless the contractor himself was a condition of the agreement (i.e., if the employer explicitly required him personally to perform the work due to his unique qualifications).

However, the employer has the right to cancel the contract if the heirs lack the capacity or guarantees necessary to fulfill the remaining obligations. In such a case, the value of completed work and expenses incurred should be included in the estate according to the contract terms and prevailing custom Orf(custom).^{xxii}

4.3. Damage to the Contracted Object

In a Mokawala contract, the contracted object is often fundamental to the contract's performance, especially in cases where the employer provides specific materials or items needed for the contractor's work. When this object is damaged, it raises important juristic questions about the contract's continuation or termination.

The nature of the contracted object, whether it is specific (ayn mu ayyana) or a fungible item described in liability

(mawṣoufa fi al-dhimmah), has a significant impact on legal responsibility and the stability of the contract.

This section addresses this issue by delimiting the issue under dispute, stating the position of the jurists, presenting their arguments, inferences and preponderance, within a disciplined framework that takes into account the principles of comparative jurisprudence.

4.4. Delimiting the Disputed Issue

Jurists agree on the following points:

- If the contracted object is fungible and described in liability, its destruction does not terminate the contract. The contractor must replace it, as the object was not itself the subject of the contract – the obligation remains based on fulfilling the benefit described.^{xxiii}
- If the object is specific and is destroyed before any part of the contract term is completed, the contract is terminated, as the intended benefit becomes impossible to realize.
- If the object is destroyed after part of the contract term has elapsed, the contract is terminated for the remaining period only, not retroactively.^{xxiv}

However, jurists disagree on whether the contract should be voided for the past period in such a case.

4.5. Juristic Perspective

Jurists have two different opinions regarding the Mokawala contract, for the past period of time:

First Opinion: Hanafis, Malikis, Shafi's, and Hanbalis hold that the contract does not expire for the past period.^{xxv}

Their reasoning:



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If the employer has already received part of the benefit, it is akin to receiving the contracted object. Therefore, damage occurring after the benefit is delivered does not invalidate what has already been executed.^{xxvi}

Second Opinion: Some Shafi'is and Hanbalis scholars argue that the Mokawala contract does expire, even retroactively.

^{xxvii}

Their argument:

Since the entire contracted benefit was not delivered, the contract is voided in its entirety, requiring a return to like-for-like compensation (ojrat el-mithl).^{xxviii}

4.6. Preponderance

The stronger position is that of the first opinion: the contract remains valid for the past period, as the benefit was realized and no cause for annulment existed during that time. Therefore, the contract is considered stable.^{xxix}

5. Damage to the Object on which the Contractor's Benefit Depends

The object on which the contractor's benefit depends; such as a building in a renovation contract or a machine in a maintenance contract; is integral to fulfilling the Mokawala contract. If this item is damaged or destroyed, particularly before the contractor begins work, a key juristic dispute arises: Does this destruction nullify the contract?

This is particularly relevant in agreements where the employer provides the work environment or materials, while the contractor provides only labor, as is the case in the maintenance of special equipment, buildings or fixtures. Jurisprudential ruling differs depending on whether the item

is described in the liability or the particular item itself. This issue is explored in detail through the following aspects.

This following elements aim to delimit the disputed Issue, present the juristic opinions concerning damage to a specific object, and outline the key aspects of reasoning, discussion, and preponderance. This will be done in accordance with the methodological requirements of the fundamentalist comparison between schools of thought.

5.1. Case Scenario

Consider a case where a contractor signs a maintenance contract with an institution. The institution is responsible for providing the tools and materials. The contractor's role is to perform maintenance on a specific property (e.g., a building's electrical system). Before any work begins, the building collapses. Does the damage to the object on which the contractor's benefit depends lead to the termination of the contract, or does it remain valid despite the impossibility of performance?

5.2. Delimiting the Disputed Issue:

Agreement: If the damaged object is a fungible item described in liability, the contract remains valid.^{xxx}

Disagreement: If the damaged object is specific, jurists differ on whether the contract is terminated.

Juristic Perspective

Jurists are divided on the issue of a damaged object, with two primary opinions:



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First Opinion: According to some Malikis^{xxxii}, Iraqi Shafi'is^{xxxiii} and Hambalis^{xxxiii}, the contract is terminated if the object is specific and damaged.

Reasoning: The contracted benefit cannot be fulfilled without this specific item, so its destruction makes performance impossible, thereby nullifying the contract.^{xxxiv}

Second Opinion: The more common opinion among the Malikis^{xxxv}, and the preferred view among Shafi'is and Jamaa.^{xxxvi}, holds that the contract is not terminated.

Rationale:

The damaged object is seen merely as a means of performance, not the subject of the contract itself; so it is similar to the passenger and the luggage assigned for carrying.^{xxxvii}

Scholars have deliberated this view saying that: In these cases, the contracted benefit is inseparable from that specific object. The only possible way to fulfill the contract is via that item. Once it is destroyed, the benefit becomes unattainable.^{xxxviii}

5.3. Preponderance:

Given the clarity and strength of the first opinion's arguments, the more probable ruling is that the Mokawala contract is terminated when the object upon which the contractor's benefit depends is destroyed.

Conclusion:

This study has reached the following conclusions:

- The Mokawala contract is a contract where one party undertakes to perform a specific task for the other within a defined period and for agreed-upon compensation.
- The Mokawala contract is a modern contract. It is a permissible contract by scholarly consensus, whether the contractor provides only labor (Ijarah) or both materials and labor (Istisnaa).
- The contracted object may relate to the benefit or the object itself, depending on the terms agreed upon by the contractor and the employer.
- Damage to the contracted object in the Mokawala contract is either damage to the contractor's benefit, damage to the contracted object itself, or damage to the object on which the contractor's benefit depends.
- The death of the contractor does not necessarily terminate the contract unless the contract was contingent on the contractor's personal performance or qualifications. The employer may demand termination of the contract if the heirs do not have sufficient guarantees for the proper execution of the work.
- The contract remains valid for the past period in case of partial damage, as the benefit has already been realized. The contract has not been exposed to anything that causes its termination, so the contract is stable.



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If a designated object is destroyed, it becomes a valid cause for termination, as the contracted benefit can no longer be achieved.

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ⁱNarrated by Al-Bukhari in his Sahih: (7289), Kitab al-Iatisam al-Kitabwa al-Sunnah, chapter on what is hated about asking too much and asking for things that do not concern him, 9/95; similarly, Muslim in his Sahih: (2358), Book al-Fadail, a chapter on reverence for the Prophet (peace be upon him) and not asking him too much about things that are not necessary, or that are not related to a task, and things that do not happen, etc., 4/1831.

ⁱⁱAhmed Moukhtar Abd El-Hamid Omar and others, Dictionary of the Contemporary Arabic Language, World of Books, 1st edition, 1429 AH, /1872; and see: The Arabic Language Academy in Cairo, Waseet Dictionary, Dar al-Dawa, b.i./b.t., 2/767.

ⁱⁱⁱSee: Abd El- Rahman Al-Aied, Akd Moukawala (Contract of Contracting), Imam Mohammed Ben Saoud Islamic University, General Administration of Culture and Publishing, Riyadh, 1/1425H, 49.

^{iv}Ouahba Al-Zahaili, Fiqh Islamiwa Adilatoho (Islamic Jurisprudence and its Evidence), Dar Al-Fikr, Syria, Damascus, 4/BT, 4/3172.

^vRafikYounes al-Masri, al-Jami fi Ousoul al-Riba, Dar al-Kalam, Damascus, 1/1412 AH, 374.



^{vi}Abou KArain Ahmed Ab Aal, *El-Ahkem Ama Li AkdMoukawala (General Provisions of the Contracting Contract)*, Dar Al-Nahda - Egypt, 1/2003, 1.

^{vii}Mohamed Labib Chenab, *Charh Ahkam Akd Moukawala fi Dawaa Fiqh ((Explaining the Provisions of the Contracting Contract in the Light of Jurisprudence)*, Mansha'at Al-Maarif, 2/2004, 15.

^{viii}El-Kasani, *Badaia al-Sana'aa*, Dar al-Kutub al-Alamiya, 2/1406 AH, 5/3.

^{ix}See: *MajalatMojamaaFiqhIslami (Journal of the Academy of Islamic Jurisprudence)*, No. 14, Doha (Qatar), 8-13 Dou Elkiadah 1423H, 2003, J2/287=289.

^xSee: Abd Allah Ben Omar, *El Oukoud Modafa Ila Mithliha (Contracts added to the Like)*, Dar Konouz Seville for Publishing and Distribution - Riyadh, b.i./b.t., 124-125; and see: Abdul Rahman Al-Aied, *Contract of Contracting*, 161-162.

^{xi}See: Al-Zahaili, *Fiqh Islamiwa Adilatoho (Islamic Jurisprudence and its Evidence)*, 4/3019; Abou Zahra, *Milkiya wa Nadariyat Aakd ((Property and Contract Theory)*, Dar al-Fikr al-Arabi - Egypt, b.i./b.t., 254; and Al-Zarka, Moustafa Ahmed, *Al-Madkhal al-Fiqh al-'Am*, Dar al-Kalam, Damascus, 2/1425H, 1/400.

^{xii}See: Abd El Rahman Al-Aid, *Akd Moukawala (Contract of Contracting)*, 81.

^{xiii}Al-Sherbini, *Al-Ikaa'*, Dar al-Fikr - Beirut, B.T., 2/350.

^{xiv}See: Abd El-Rahman Al-Aaid, *Akd Moukawala (Contract of Contracting)*, 287, and see: Al-Debian, *Elmoamat Elmaliya Asalawa Mouasara (Financial transactions, Authenticity and Modernity*, King Fahd National Library, Riyadh, 2/1432H, 8/471

^{xv}See: Al-Mawak, *Al-Tadjwa Al-Iklil*, Dar Al-Koutub Al-Alamiya, 1/1416 AH, 3/316; Al-Cherbini, *Al-Moughni Al-Mouhtadj*, Dar Al-Fakr, Beirut, 1/1405 AH, 356; Ibn Kadama, *Al-Moughni*, Dar Al-Fakr, Beirut, 1/1405 AH, 6/38.

^{xvi}See: Ibn Rushd, *Bidayet El- Moudjtahid*, Dar al-Hadith, Cairo, b.i. 1425, 4/14; al-Nawawi, *al- Madjamoua*, Dar al-Fikr, b.i./b.t., 15/88; Ibn Kadama, *Al-Moughni*, 6/38.

^{xvii}See: Waldibian, *Mouamalat Maliya (Financial Transactions) Asalawa Mouasara*, 8/473.

^{xviii}See: Al-Kasani, *Budaiyat al-Sina'a*, 4/222; Ibn Hazm, *al-Mahalla*, Dar al-Fikr - Beirut, b.t./b.t., 7/5-6.

^{xix}See: Al-Zailai, *Tabyin al-Hakikah*, the Grand Printing Press al-Amiriya - Cairo, T1/1313 AH, 5/144.

^{xx}See: Abd El-Rahman Al-Aaid, *AkdMoukawala (Contract of Contracting)*, 287, and see: Al-Debian, *Elmoamalat Elmaliya Asalawa Mouasara (Financial transactions, Authenticity and Modernity)*, 8/472.

^{xxi}See: Ibn Rajab, *Elkawaid (The Rules)*, Sadik Charity Press, Egypt, 1/1352 AH, 48.

^{xxii}See: Waldibian, *Mouamalat Maliya (Financial Transactions) Asalawa Mouasara*, 8/473-474, and Abd El Rahman Al-Aied, *Akd Moukawala (The Contract of Contracting)*, 288-289.

^{xxiii}See: Al-Kasani, *Bidaiyat Al-Sana'a*, 4/223; Ibn Koudama, *Al-Moughni*, 6/56.

^{xxiv}See: Al-Moughni, Ibn Kodama, 6/30; Mawsoua Fiqhiya Kouwaitiya, Ministry of Endowments and Islamic Affairs of Kuwait, 1404/1427 AH, 7/26

^{xxv}See: *FatwaHindiya (Indian Fatawa)*, a committee of scholars headed by Nizamouddin al-Balkhi, Dar al-Fikr, T2/1310 AH, 4/461; al-Dardir, al-Sharh al-Kabir, Dar al-Fikr, BD/BT, 4/29; al-Ghazali, al-Wajeez, Dar al-Arqam, Beirut, Lebanon, 1418 AH, 413; and Ibn Kodama, *al-Moughni*, 6/30.

^{xxvi}See: Ibn Kodama, *Al-Moughni*, 6/30.

^{xxvii}See: Al-Nawawi, *Raoudat al-Talibin*, Al-Maktab al-Islami, Beirut-Damascus-Amman, 3/1412 AH, 5/240/241; Al-Mardaoui, *Al-Insaf*, Hadjar for Printing, Publishing, Distribution and Advertising, Cairo, Egypt, 1/1415 AH, 14/44

^{xxviii}See: *Raoudat al-Talibin*, 15/441.

^{xxix}See: Abd El Rahman Al-Aied, *Akd Moukawala (Contract of Contracting)*, 294.

^{xxx}See: Ibn Kodama, *Al-Moughni*, 6/56.

^{xxxi}See: Al-Khorchi, *Sharh Moukhtar Khalil*, Dar Al-Fikr for Printing, Beirut, b.t./b.t., 7/30. In an opinion of the Malikiya, there is a distinction between the termination of the contract if the cause of the damage is **342**



contractor, and the non-termination of the contract if the cause of the damage is an emergency such as a celestial event; this distinction is not supported by any evidence. See: Minhadj al-Tahseel, Dar Ibn Hazm, 1st edition 1428H, 7/362.

xxxii See: Al-Nawawi, Raoudat al-Talibin, 5/244.

xxxiii See: Ibn Kodama, al-Moughni, 6/56.

xxxiv See: Ibid.

xxxv See: Radjradji, ManahidjEttahsil (Methods of Collection), 7/361-362.

xxxvi See: Al-Nawawi, Raoudat al-Talibin, 5/244.

xxxvii See: Ibn Hadjar al-Haythami, Tohfat al-Mohtadj, The Great Commercial Library of Egypt by Mustafa Muhammad, B.I. 1357 AH, 6/175.

xxxviii See: Abd El Rahman Al-Aied, Akd Elmoukawala (Contract of Contracting), 296.