

Arabicness and the Past Tense in the Formula of Contracts: A Jurisprudential-Linguistic Analysis of the Evidence for Their Requirement

Seyyed Hosein Al Taha *¹

Submitted: 2024.08.18 | Accepted: 2024.10.20

Abstract

Abstract Summary In Imāmī jurisprudence, a central question regarding the contractual formula (ṣīghat al-‘aqd) is whether "Arabicness" (‘arabiyyah) and the "use of the past tense" (māḍawiyyah) constitute independent Sharī‘a-based conditions (shart shar‘ī) for legal validity, or whether validity depends primarily on the customary signification (dalālah ‘urfiyyah) of constitutive intent (inshā’). Proponents of formal linguistic requirements rely on the practice of the Infallibles (fi’l al-ma‘ṣūm), juristic consensus (ijmā’), the semantic explicitness (aḏhariyyah) of past-tense forms, and legal principles of caution. Conversely, opponents—particularly among later jurists—invoke the unrestricted scope of transactional proofs (iṭlāqāt), the presumption of non-requirement, rational social practice (sīrat al-‘uqalā’), and customary intent. Utilizing a descriptive-analytical methodology, this study examines and evaluates the jurisprudential arguments for both positions. The findings demonstrate that neither Arabicness nor the past tense possess independent Sharī‘a-based conditionality (shartiyyah). Rather, the fundamental criterion for contractual validity is the realization of constitutive intention and the customary capacity of an expression to signify transactional intent. Although past-tense formulations offer superior semantic explicitness in creating legal obligations, this clarity does not, in the absence of explicit, independent evidence, establish a mandatory Sharī‘a requirement.

Keywords: : Arabicness, past tense, contract, linguistic analysis, expressions.

1. Associate Professor of Jurisprudence and Fundamentals of Islamic Law, Faculty of Theology and Islamic Studies, Shahid Chamran University of Ahvaz, Ahvaz, Iran.

(shaltaha@scu.ac.ir)

Introduction

A contract, as one of the most important means of generating Sharīʿa-based and legal effects, is founded upon the realization of the contracting parties' constitutive intention. In Imāmī jurisprudence, the manner in which this intention is expressed and the form that must be employed in the context of constitutive declaration have long been subjects of debate and disagreement. One of the most important manifestations of this disagreement concerns the validity of linguistic and morphological characteristics of contractual expressions, particularly "Arabicness" and the "use of the past tense" in the formula of offer and acceptance. The significance of this issue arises from the fact that, if these two attributes are considered necessary, the formation of a contract will be restricted to a particular linguistic form. Conversely, if such attributes lack independent Sharīʿa-based significance, the criterion for the formation of a contract must be sought beyond the linguistic form itself, namely in the signification of the expression, or any other customary means, with respect to the constitutive intention and the realization of the contractual content.

Accordingly, the discussion of Arabicness and the past tense is not merely a dispute over the formal characteristics of expressions; rather, it concerns the jurisprudential basis of the relationship among "expression," "meaning," and "constitutive declaration," as well as the extent to which linguistic characteristics affect the realization of the essence of a contract. The central issue is whether the use of Arabic and the past tense in the contractual formula constitutes a Sharīʿa-based condition for the validity of the constitutive declaration, or whether these attributes have been considered relevant merely because of the prevalence of their use and the customary explicitness of certain expressions in the context of constitutive declaration. Among Imāmī jurists, there is no consensus on either issue. Some have inclined toward requiring Arabicness, relying on arguments such as the practice of the Infallibles, the explicitness and apparent signification of Arabic expressions, the alleged absence of the contractual title from non-Arabic constitutive declarations, and the principle of the minimum certain case. In contrast, opponents of this requirement have relied on the principle of non-requirement, the generality and unrestricted scope of the evidence concerning contracts, and the sufficiency of the customary signification of an expression to constitute a contract. With respect to the past tense, the majority of earlier jurists, emphasizing the greater explicitness of the past-tense formula in conveying constitutive intention and its distinction from the present tense and imperative, have tended toward recognizing its validity as a requirement. Conversely, a group of jurists, relying on the principle of non-requirement, the unrestricted scope of the relevant

evidence, and the possibility of constitutive declaration through other linguistic forms, have not regarded the past tense as a necessary condition.

Accordingly, the question of the validity of Arabicness and the past tense ultimately returns to whether particular linguistic and formal characteristics possess independent significance in the formation of a contractual constitutive declaration, or whether the criterion is the customary and constitutive signification of the expression with respect to the intended meaning. On this basis, the present study seeks to answer four fundamental questions. First, does Arabicness constitute a condition for the validity of constitutive declaration in contractual formulas from the perspective of jurisprudential evidence, and to what extent are the arguments of its proponents and opponents valid? Second, assuming that Arabicness is required, what is meant by Arabicness, and do the morphological and syntactic correctness of expressions and their freedom from grammatical error or incorrect usage also affect the validity of the formula? Third, is the use of the past tense a condition for the realization of a contractual constitutive declaration, and what role does the semantic difference between the past tense and the present tense, imperative, and other linguistic forms play in this issue? Fourth, considering the totality of the jurisprudential evidence and the semantic foundations of expressions, what is the ultimate criterion for the validity of a contractual formula, and can Arabicness and the past tense be regarded as independent and substantive attributes of the formula for purposes of contractual validity? Answering these questions makes it possible to assess more precisely the relationship between the linguistic structure of the contractual formula and the essence of contractual constitutive declaration. Although the issue of Arabicness and the past tense has been discussed within the broader treatment of contractual formulas in jurisprudential works, it has also received attention in some contemporary studies, either independently or in conjunction with one another.

Among these is a study supervised by Ḥamīd Masjed-Sarā'ī that examines, from a jurisprudential perspective, the requirement of the past tense and Arabicness in the formulas of contracts and unilateral legal acts, while also examining the jurisprudential positions and the arguments advanced by proponents and opponents of these requirements. The validity of the past tense in contracts has likewise been addressed independently in another study by Ḥamīd Masjed-Sarā'ī. Nevertheless, the originality of the present study does not lie merely in revisiting the issue itself. Rather, its contribution consists in examining Arabicness and the past tense simultaneously from a jurisprudential-linguistic perspective; analyzing the semantic and constitutive foundations of contractual expressions; distinguishing between the morphological and syntactic characteristics of an expres-

sion and its signification of constitutive intention; and critically evaluating the arguments for and against requiring each of these two attributes. In other words, the present study seeks to move beyond merely reporting the divergence of juristic opinions and to clarify whether Arabicness and the past tense possess independent Sharī'a-based significance in themselves, or whether their validity ultimately depends on the extent to which they signify the realization of constitutive intention and convey the customary understanding of the contractual meaning.

1. Conceptualization of Arabicness and Past Tense in the Formula of Contracts

In Imāmī jurisprudence, the contractual formula (*ṣighat al-ʿaqd*) serves as the evidentiary vehicle through which contracting parties manifest their constitutive intent (*inshāʾ*). Because a contract belongs to the domain of legal constructs (*ītibārāt*), a fundamental distinction must be drawn between the essence of the contract and the verbal form employed to express it. The primary criterion for contractual validity is the expression's capacity to convey the intended legal effect and establish offer and acceptance according to customary understanding (*urf*), rather than adherence to a rigid linguistic structure (Khūʾī, 1417 AH, vol. 2, pp. 302–304).

Within this framework, "Arabicness" (*arabiyyah*) denotes executing the offer and acceptance in Arabic. However, jurists distinguish between the mere adoption of the Arabic language and the morpho-syntactic correctness required to adequately convey constitutive meaning. An expression may be lexically Arabic yet fail to establish a valid contract if structural or morphological defects undermine its customary indication (*dalālah*). Consequently, several jurists hold that language per se is not intrinsically relevant; rather, any expression conventionally understood to signify offer or acceptance suffices to form a contract (Anṣārī, 1415 AH, vol. 3, p. 335; Khūʾī, 1417 AH, vol. 2, p. 302).

In contrast to Arabicness, which concerns linguistic and lexical composition, the requirement of the past tense (*māḍawīyyah*) pertains to verbal morphology—specifically, whether constitutive intent must be declared using past-tense verbs (e.g., *biʿtu*, *qabiltu*) or whether non-past forms, such as the present tense (*abīʿuka*), imperative (*biʿ hādhā*), or active participle (*anā bāʿiʿun*), are permissible (Ḥillī, n.d., vol. 1, p. 202). The emphasis on *māḍawīyyah* stems from the customary explicitness of past-tense verbs in denoting completed legal acts. Nevertheless, semantic clarity does not automatically yield a Sharī'a-based requirement (*shart sharʿī*). Present-tense or non-past formulations accompanied by contextual indicators (*qarāʾin*) can equally signify immediate constitutive intent.

Accordingly, prominent jurists such as Shaykh Anṣārī and Imam Khomeini have accepted the validity of non-past formulas, noting that while the past tense aligns with juristic precaution (*iḥtiyāt*), it is not a strict condition for validity (Anṣārī, 1415 AH, vol. 3, p. 335; Khomeini, n.d., vol. 1, p. 511). A conceptual distinction must therefore be maintained between morphological tense and constitutive function. Ultimately, both Arabicness and māḍawiyyah converge on the question of customary signification. If the contractual formula is divinely prescribed (*tawqīfī*), establishing these two attributes as mandatory conditions requires explicit religious evidence. If, however, the fundamental criterion remains the realization of constitutive intention via customary indication, formal linguistic characteristics possess relevance only to the extent that they impact customary comprehension.

2. Jurisprudential Evidence for the Requirement of Arabicness in the Formula of Contracts

A prominent group of early Imāmī jurists—including Sayyid ‘Amīd al-Dīn, Fāḍil al-Miqdād, Muḥaqqiq al-Karakī, and al-Shahīd al-Thānī—maintained that expressing offer and acceptance in Arabic is mandatory for contractual validity when the parties are capable of doing so (Anṣārī, 1415 AH, vol. 3, p. 135; al-Shahīd al-Thānī, 1410 AH, vol. 3, p. 225). Proponents rely on four primary arguments:

2-1. Following the Practice of the Infallible

This argument posits that the Prophet Muhammad and the Imāms executed contracts using Arabic expressions, establishing an actionable precedent (*fl’l al-ma’ṣūm*). Muḥaqqiq al-Karakī viewed this practice as an act requiring emulation (al-Karakī, 1414 AH, vol. 4, p. 60). However, critical analysis reveals that the use of Arabic likely stemmed from sociocultural context rather than legislative intent (*maqām al-tashrī*). Because commercial transactions belong to validated social practices (*umūr imḍā’iyyah*) rather than divinely originated acts (*umūr ta’sīsiyyah*), an act of an Infallible does not demonstrate that contractual expressions are *tawqīfī* (divinely fixed) unless its binding normative character is explicitly established (Anṣārī, 1415 AH, vol. 3, p. 135; Aḥmadī et al., 1400 SH, p. 194).

2-2. Argument from *A Fortiori* (*Qiyās al-Awlawiyyah*)

Proponents argue that if an Arabic non-past formulation is invalid, a non-Arabic expression must, *a fortiori*, be invalid, as Arabic aligns more closely with scriptural forms (Anṣārī, 1415 AH, vol. 3, p. 135). Shaykh Anṣārī refutes this analogy, arguing that semantic clarity takes precedence over language. A non-Arabic past-tense phrase (e.g., Persian *forūkhtam*, "I sold") may convey constitutive intent far more clearly under customary understanding (*urf*) than an Arabic present-tense phrase. Furthermore, if the premise regarding non-past forms is disputed, the *a*

fortiori inference collapses (Anṣārī, 1415 AH, vol. 3, p. 135; Aḥmadī et al., 1400 SH, p. 194).

2-3. Inapplicability of the Concept of "Contract" to Non-Arabic Formulas

This premise asserts that non-Arabic expressions do not fall within the legal rubric of a "contract" (*ʿaqd*) and are thus excluded from general command evidence such as "*Fulfill the contracts*" (*ʾawfū bi-l-ʿuqūd*, Q. 5:1). Shaykh Anṣārī considers this the weakest argument, as customary convention (*urf*) defines a contract by mutual agreement and constitutive intent, not language. Restricting the semantic concept of *ʿaqd* exclusively to Arabic lacks rational or textual justification (Anṣārī, 1415 AH, vol. 3, p. 135; Aḥmadī et al., 1400 SH, p. 191).

2-4. Reliance on the Certain Minimum (*al-Qadr al-Mutayaqqan*) and the Principle of Invalidity

Proponents argue that Arabic formulas represent the certain minimum of valid contracts, whereas non-Arabic formulas remain subject to doubt, triggering the default principle of contractual invalidity (*aṣl al-ʿadam* / *aṣl al-fasād*) (Aḥmadī et al., 1400 SH, p. 194). However, practical legal principles (*uṣūl ʿamaliyyah*) apply only in the absence of primary evidence. General scriptural proofs (*adillah ʾām-mah*)—(such as "*Allah has permitted trade*" (Q. 2:275) and "*trade by mutual consent*" (Q. 4:29)—validate transactions without language restrictions, overriding the need to resort to the certain minimum or the principle of invalidity (Khūʾī, 1417 AH, vol. 2, p. 302; Aḥmadī et al., 1400 SH, p. 194).

In summary, none of the four arguments establish that "Arabicness *qua* Arabicness" holds independent Sharīʿa-based conditionality (*shartiyyah*). Evaluating non-Arabic contracts requires turning to the opposing arguments based on customary signification and general transaction evidence.

3. Jurisprudential Evidence for the Non-Requirement of Arabicness

In contrast to the classical requirement of Arabicness, many later Imāmī jurists—including Shaykh Anṣārī and Imam Khomeini—hold that Arabicness is not a condition for contractual validity. They maintain that the primary criterion is the clear, customary indication (*dalālah ʿurfiyyah*) of constitutive intention (*inshāʾ*), regardless of language (Anṣārī, 1415 AH, vol. 3, p. 135; Khūʾī, 1417 AH, vol. 2, p. 302). Their arguments are structured across seven main points:

3-1. The Presumption of Non-Requirement (*Aṣl al-ʿAdam*)

Establishing any formal requirement for contractual validity requires positive Sharīʿa-based proof. Because transactions belong to validated social practices (*umūr imdāʾiyyah*) rather than divinely initiated rituals (*umūr taʾsīsiyyah*), the practice of the Infallibles in using Arabic reflects their contemporary linguistic environment rather than a legislative mandate. Given the pervasive daily necessity of contracts, the absence of an explicit textual prohibition against non-Arabic

formulations strongly supports the presumption that Arabicness is not required (Anṣārī, 1415 AH, vol. 3, p. 135; Khū'ī, 1417 AH, vol. 2, pp. 302–304).

3-2. Generality and Unrestricted Scope of Transactional Proofs

Primary scriptural evidence governing commerce—including "*Allah has permitted trade*" (Q. 2:275), "*trade by mutual consent*" (Q. 4:29), and "*fulfill the contracts*" (Q. 5:1)—applies unconditionally without restricting contractual validity to a specific language. Conceptualizing a "sale" or "contract" depends on the underlying legal relationship rather than its linguistic medium; thus, non-Arabic agreements fall squarely within the scope of these general proofs (Khū'ī, 1417 AH, vol. 2, pp. 302–304).

3-3. Customary Signification (*Dalālah 'Urfiyyah*)

Language is merely an instrumental vehicle for communicating constitutive intent. Within a given linguistic community (e.g., Persian speakers using *forūkhtam* "I sold" and *kharīdam* "I bought"), expressions that conventionally signify the immediate establishment of a legal relationship fulfill the essential purpose of offer and acceptance. The intrinsic language of the utterance is legally irrelevant so long as customary understanding (*urf*) comprehends the transactional intent (Anṣārī, 1415 AH, vol. 3, p. 135).

3-4. Consensual Nature of Transactions and *Binā' al-'Uqalā'*

Commercial transactions rely on the established practice of rational beings (*binā' al-'uqalā'*). Because the Sharī'a endorses customary transactional norms (*imḍā'*), verbal forms are not divinely fixed (*tawqīfī*). Consequently, any mode of expression recognized by rational social convention as creating binding obligations remains valid unless explicitly forbidden by sacred law (Anṣārī, 1415 AH, vol. 3, p. 135).

3-5. Primacy of Substantive Proofs over Practical Principles

Resorting to practical legal principles (*uṣūl 'amaliyyah*)—(such as the certain minimum (*al-qadr al-mutayaqqan*) or the default principle of invalidity (*aṣl al-fasād*)—is permissible only when primary substantive proofs (*adillah ijthādiyyah*) are absent. Because general scriptural texts affirmatively validate contracts without language restrictions, there is no legal basis for restricting their scope through secondary practical principles (Khū'ī, 1417 AH, vol. 2, pp. 302–304).

3-6. Independence of Constitutive Intention (*Inshā'*) from Language

There is no logical or legal dependency between executing an *inshā'* (creating a legal construct) and using the Arabic language. If a non-Arabic expression performs the exact constitutive function as an Arabic formula (e.g., *bi'tu*), the contractual effect is fully realized. Both Shaykh Anṣārī and Imam Khomeini emphasized that contracts formulated in any language are valid so long as constitutive

intention is conveyed (Anṣārī, 1415 AH, vol. 3, p. 135; Khomeini, n.d., vol. 1, p. 106).

3-7. Core Synthesis: Customary Signification as the Ultimate Criterion

The debate over Arabicness reduces to whether contractual expressions are *tawqīfī* (divinely prescribed) or *ʿurfī* (customary). In the absence of evidence establishing fixed divine forms, the decisive criterion remains the capacity of an utterance to convey constitutive intention under customary understanding. Language operates as a semantic variable rather than an independent Sharīʿa-based condition.

4. Jurisprudential Evidence for the Requirement of the Past Tense in the Formula of Contracts

The majority of earlier Imāmī jurists maintained that contractual formulas must be expressed in the past tense (*māḍawiyyah*), holding that non-past forms (such as present-tense or imperative formulations) are insufficient when past-tense formulations are available. For instance, in *Tadhkirat al-Fuqahāʾ*, ʿAllāmah al-Ḥillī rejected sales concluded via present-tense verbs (e.g., *abīʿuka* "I sell to you") or imperative verbs (e.g., *ishtari minnī* "buy from me") and asserted juristic consensus (*ijmāʿ*) on this invalidity (Ḥillī, n.d., vol. 1, p. 202). Because no explicit textual proof directly mandates the past tense, its proponents rely primarily on juristic fame, semantic clarity, and customary usage.

4-1. Jurisprudential Fame and Claimed Consensus

Proponents invoke ʿAllāmah al-Ḥillī's claimed consensus as proof of an Infallible's ruling. However, the probative value of this consensus is undermined by significant juristic disagreement. Qāḍī Ibn Barrāj did not condition contractual validity on the past tense, Shaykh Anṣārī identified considerable strength in the validity of non-past formulas, and Imam Khomeini held that non-requirement is the apparent juristic position, regarding the past tense as merely an act of juristic precaution (*iḥtiyāt*) (Anṣārī, 1415 AH, vol. 6, p. 171; Khomeini, 1418 AH, vol. 1, p. 106). Furthermore, because jurists largely base their preference for the past tense on semantic and customary analysis rather than textual devotion (*taʿabbud*), their agreement does not independently reveal a divine legislative mandate.

4-2. Greater Explicitness of the Past Tense (*Aḥzarisiyyah*)

The main substantive argument for *māḍawiyyah* rests on its superior capacity to denote the immediate realization of a legal act (e.g., *biʿtu* "I sold"). In contrast, present-tense verbs (*mudaʾarīʿ*) carry semantic ambiguity, as they may denote either current execution or a future promise to contract (Anṣārī, 1415 AH, vol. 6, p. 171). Nevertheless, greater semantic explicitness does not imply exclusive validity. Present-tense verbs accompanied by contextual indicators (*qarāʾin*) can

clearly convey immediate constitutive intent, rendering the difference one of clarity rather than legality.

4-3. Semantic Differences Among Verbal Tenses

Proponents emphasize that past-tense verbs naturally denote completed acts, present-tense verbs denote ongoing or future actions (promissory intent), and imperative verbs denote requests. However, this argument conflates primary lexical designation (*waḍʿ*) with contextual usage (*istiʿmāl*). Expressions that originally signify request or promise can acquire immediate constitutive signification within a contractual session. Unless customary understanding fails to perceive contractual formation from non-past forms, primary lexical meanings cannot invalidate the contract.

4-4. Customary Usage in Contracts and Unilateral Legal Acts

Because conventional jurisprudence and social practice predominantly employ past-tense formulas (e.g., *biʿtu*, *qabiltu*, *anqahtu*), proponents argue that the Sharīʿa's endorsement (*imḍāʿ*) applies strictly to these customary forms, representing the certain minimum (*al-qadr al-mutayaqqan*). However, a form's lack of conventionality does not inherently prove its Sharīʿa-based invalidity. Unless non-past forms fail to satisfy the customary concept of a contract (*aqd*), they remain within the scope of validating legal texts.

4-5. Distinguishing Explicitness from Sharīʿa-Based Conditionality

The core flaw in requiring the past tense is the confusion between linguistic explicitness and Sharīʿa-based conditionality. Demonstrating that *biʿtu* is more explicit than *abiʿuka* is a linguistic observation, not a legislative mandate. As noted by Shaykh Anṣārī and Imam Khomeini, semantic clarity justifies preferring the past tense out of precaution, but establishing it as an absolute Sharīʿa requirement (*shart sharʿī*) demands independent divine evidence, which remains absent (Anṣārī, 1415 AH, vol. 6, p. 171; Khomeini, 1418 AH, vol. 1, p. 106).

5. Jurisprudential Evidence for the Non-Requirement of the Past Tense

In contrast to the prevailing view, a group of Imami jurists have not regarded the past tense as a condition for contractual validity and have considered the formation of a contract through non-past-tense expressions possible. The basis of this position is that, in the formation of a contract, the relevant criterion is the expression's indication of the contracting parties' constitutive intention and intended meaning, rather than the particular morphological form of the verb. Therefore, if a present-tense verb, imperative, or another expression is clearly used in the context of creating a contract and customary understanding likewise recognizes its constitutive meaning, the mere fact that the expression is not in the past tense does not invalidate the contract. Qāḍī Ibn Barrāj did not regard the past tense as a condition, Shaykh Anṣārī considered the formation of a sale through a

non-past-tense expression to possess considerable strength, and Imam Khomeini likewise regarded the apparent position as one of non-requirement of the past tense and accepted the possibility of constituting a contract through the present tense (Ibn Barrāj, 1406 AH, vol. 2, p. 179; Anṣārī, n.d., vol. 6, p. 171; Khomeini, 1418 AH, vol. 1, p. 511).

5.1. The Presumption of Non-Requirement of the Past Tense

The first basis is the presumption of non-requirement. Whenever there is doubt concerning the validity of a particular attribute of the contractual formula, establishing its status as a condition requires valid Sharīʿa-based evidence, and the predominance of a particular verbal form in customary usage is insufficient to establish that it possesses independent legal-religious significance. Accordingly, the past tense cannot be regarded as a condition for contractual validity without independent evidence.

The presumption of non-requirement, however, does not by itself establish the validity of constitutive expressions in non-past forms. Rather, it operates against the claim that the past tense is a necessary condition and demonstrates that mere jurisprudential fame or the prevalence of past-tense usage cannot substitute for Sharīʿa-based evidence. If valid ijtihādī evidence establishing the requirement of the past tense exists, there would be no occasion to invoke this presumption.

5.2. The Generality and Unrestricted Scope of the Evidence for the Validity and Enforceability of Transactions

A more significant argument is based on the generality and unrestricted scope of the Sharīʿa-based evidence establishing the validity and enforceability of transactions. Qurʾanic verses such as “Allah has permitted trade” (aḥalla Allāhu al-bayʿ), “trade by mutual consent” (tijārat an ʿan tarāḍin), and “fulfill the contracts” (awfū bi-l-ʿuqūd) make sale, trade, and contract the subjects of legal rulings without apparently imposing any restriction concerning the grammatical tense of the verb or specifically requiring the past-tense formula. Accordingly, if a present-tense expression or another form conventionally signifies the realization of a sale or contract, excluding it from the scope of these unrestricted evidentiary texts requires specific evidence. This argument is based on distinguishing between the “concept of contract” and the “verbal form through which it is expressed.” Evidence such as “Allah has permitted trade” concerns sale as a transactional relationship, rather than a particular past-tense verb that may be used to constitute it. Therefore, a mere difference in the morphological structure of the expression, in the absence of specific evidence, cannot restrict the unrestricted scope of the relevant evidentiary texts.

5.3. The Non-Inclusion of the Past Tense in the Concept of Contract and Sale

The past tense is not part of the concept of contract or sale; rather, it is merely one of the ways in which such a relationship may be expressed and constituted. The concept of sale denotes a legal relationship between the parties, not a particular morphological form. Accordingly, if the contracting parties use a present-tense verb with the intention of immediately creating a transactional relationship, and this meaning is clear according to customary understanding, the mere use of the present tense cannot prevent the application of the concept of sale. On this basis, a distinction must be made between the “grammatical structure of an expression” and its “constitutive function in the context of use.” What matters for the formation of a contract is the expression of the intended legal meaning. Therefore, if an expression, in the context in which it is used, can clearly establish a contractual relationship, it cannot be excluded from the concept of contract merely because it is not in the past tense; such a restriction would require specific Sharīʿa-based evidence.

5.4. The Capacity of the Present Tense to Convey Constitutive Meaning

The most important argument advanced by those who reject the requirement of the past tense is the capacity of the present tense to convey a constitutive meaning. Although, in its primary linguistic designation, the present tense may refer to either the present or the future and may therefore have a weaker apparent signification of the immediate realization of an act than the past tense, this does not mean that it lacks the capacity to constitute a legal relationship. For example, if a speaker, intending to constitute a sale, says *abīʿuka hādhā bi-kadhā* (“I sell you this for such-and-such”), and the contextual circumstances indicate that the intention is to establish the sale immediately in the same contractual session, interpreting the statement as merely a promise to sell in the future would be inconsistent with customary understanding of the contractual context.

Accordingly, a distinction must be made between “weakness of apparent signification” and “absence of signification.” *Biʿtuka* may be more explicit than *abīʿuka* in conveying the immediate formation of a contract, but this difference ultimately justifies preferring the past tense in terms of clarity or precaution, not treating it as a Sharīʿa-based condition.

5.5. Traditions Indicating the Use of the Present Tense in the Constitution of Marriage

Certain traditions concerning marriage are also relevant to the possibility of constituting a contract through a non-past-tense expression. In a tradition transmitted from Abān ibn Taghlab, Imam al-Šādiq, while explaining the manner of concluding a temporary marriage (*mutʿah*), states: “You say: I marry you temporarily according to the Book of Allah and the Sunnah of His Prophet ... and when she

says: Yes, she has consented, and she is your wife, and you are the person most entitled to her.” In this tradition, the expression *atazawwajuki* (“I marry you”) is expressed in the present tense in describing the manner in which the temporary marriage is concluded (al-Ḥurr al-ʿĀmilī, 1409 AH, vol. 21, p. 32). Another tradition transmitted from Thaʿlabah likewise states: “You say: I marry you temporarily according to the Book of Allah and the Sunnah of His Prophet, in a marriage and not in fornication ...” Here too, *atazawwajuki* is used as part of the verbal formulation of marriage (al-Ḥurr al-ʿĀmilī, 1409 AH, vol. 21, p. 32).

The significance of these traditions lies in the fact that they demonstrate that a non-past-tense form has, at least in certain transmitted reports, been used within the structure of a marriage contract. Nevertheless, the mere presence of the present-tense verb does not conclusively establish that the expression was used as an offer (*ijāb*), because *atazawwajuki* uttered by the man may be regarded as a prior acceptance (*qabūl*), with the offer being made by the woman. Even so, the tradition at least supports the proposition that the formation of marriage is not necessarily dependent upon the use of the past tense by both parties and that the validity of the expression must be assessed in light of its context and constitutive function.

5.6. The Practice of Rational People and the Non-Exclusivity of Constitutive Acts to the Past Tense

The practice of rational people (*sīrat al-ʿuqalāʾ*) likewise supports the non-requirement of the past tense. In transactional relationships, rational people do not restrict the formation of contracts to the use of past-tense verbs. Rather, whenever the parties clearly and intelligibly express their intention to establish a transactional relationship, they regard the agreement as having been formed. Accordingly, differences in the morphological structure of expressions, so long as they do not interfere with the understanding of constitutive intention, cannot in themselves render a contract invalid. This is also consistent with the *imḍāʾī* nature of transactions. If the Sharīʿa has validated the established practice of rational people in transactions, the general principle should be the validity of rational methods of expressing intention, unless specific evidence prohibits a particular method or validates a specific form. Just as the predominance of Arabic usage during the time of the Infallibles does not, by itself, establish that Arabicness possesses independent Sharīʿa-based significance, the predominance of the past tense in contractual expressions cannot, by itself, establish that the Sharīʿa has designated it as the sole valid form of constitutive declaration.

5.7. Distinguishing between the Grammatical Tense of the Verb and the Time of the Formation of the Legal Relationship

Ultimately a distinction must be made between the grammatical tense of the verb and the temporal moment at which the legal construct is established. *Inshā'* consists in creating a legal relationship through intention and its expression, and the grammatical tense of the verb does not necessarily correspond to the temporal moment at which that legal relationship is created. Although the past tense linguistically denotes the past, it is used in the context of constitutive declaration to create a legal relationship in the present. Similarly, the present tense may, through contextual indicators, be used to create a legal relationship immediately. Therefore, it cannot be inferred merely from the temporal structure of a verb that constitutive declaration is possible only through the past tense. The criterion for the validity of the contractual formula is the expression's capacity to convey constitutive intention and its customary signification of the creation of the intended legal relationship. Within this framework, the past tense may be preferred because of its greater clarity, but such preference does not necessarily entail that it constitutes a *Sharī'a*-based condition.

6. Analysis of the Relationship between Linguistic Structure and the *Sharī'a*-Based

Validity of the Contractual Formula An examination of the arguments for and against the requirements of Arabicness and the past tense demonstrates that two distinct dimensions must be distinguished when evaluating the contractual formula: the linguistic and semantic structure of the expression, and its *Sharī'a*-based validity in the context of constitutive declaration. Conflating these two dimensions may lead to treating characteristics such as Arabicness or the past tense—which may contribute to the clarity of the constitutive meaning at the linguistic level—as conditions for the *Sharī'a*-based validity of a contract, whereas there is no necessary connection between the “semantic characteristics of an expression” and its “independent *Sharī'a*-based significance.” From a linguistic perspective, the morphological, syntactic, and semantic structure of expressions affects the degree to which they apparently convey a particular meaning. For example, the past tense in many cases has a stronger apparent signification of the realization of an act than the present tense and may therefore be more explicit in the context of constituting a contract. Similarly, Arabic expressions may provide Arabic-speaking interlocutors with a more direct understanding of the content of a contract. Nevertheless, these characteristics are primarily semantic and communicative properties rather than *Sharī'a*-based rules.

Therefore, merely establishing the greater explicitness of an Arabic or past-tense expression is insufficient to establish that it constitutes a Shari'a-based condition. With regard to Arabicness, if a non-Arabic expression can clearly and conventionally convey the same meaning that an Arabic expression conveys in the context of constitutive declaration, the difference in language should not, by itself, result in a difference in Shari'a-based validity. In a Persian-speaking context, for example, expressions such as *forūkhtam* ("I sold") and *kharīdam* ("I purchased") may be used to constitute a sale. In such a case, the relevant criterion is not the language of the expression *qua* language, but its communicative and constitutive function according to customary understanding. The same analysis applies to the past tense. Although the past tense may, because of its greater apparent signification of the realization of an act, constitute a clearer form for expressing constitutive intention, greater clarity does not necessarily entail exclusive Shari'a-based validity.

A present-tense verb, imperative, or another expression may likewise, in a particular context and in light of relevant contextual indicators, clearly convey the meaning of establishing a contract. Accordingly, a distinction must be made between "explicitness in constitutive expression" and "capacity for constitutive expression." The past tense may be more explicit, but this does not mean that non-past forms lack constitutive capacity. This point becomes clearer through the distinction between *waḍ'* (original linguistic designation) and *isti'māl* (contextual use). An expression may have a particular meaning according to its primary linguistic designation, yet convey another meaning in actual use in light of its context and contextual indicators. Accordingly, although the present tense is capable of referring to the present and the future, it may be used in the context of constitutive declaration to create a legal relationship in the present. Likewise, although the past tense has a grammatical structure referring to the past, it is used in constitutive declaration to establish a legal relationship in the present. Therefore, the grammatical tense of a verb and the temporal moment at which the Shari'a-based or legal relationship is established do not necessarily coincide.

On this basis, the role of customary understanding (*'urf*) can be distinguished at two stages. First, customary understanding determines whether an expression, within its particular context, signifies the intention to constitute a contract and its intended meaning. Second, once such signification has been established, it must be examined whether the Shari'a has additionally imposed a specific requirement, such as Arabicness or the past tense. Accordingly, any linguistic characteristic that contributes to greater clarity of an expression is not necessarily a condition for the Shari'a-based validity of a contract; transforming a linguistic

characteristic into a legal-religious condition requires valid evidence. On the basis of this distinction, the validity of a contractual formula can be analyzed in three stages.

First, the linguistic capacity of the expression to convey the intended meaning must be established. Second, its customary and constitutive signification in the context of use must be established. Third, the existence or absence of a specific Sharī'a-based prohibition or requirement must be determined. At the first stage, the morphological and syntactic structure affects the expression's capacity to convey meaning. At the second stage, customary understanding and contextual indicators play a role in identifying the constitutive intention. At the third stage, Sharī'a-based evidence determines whether the Sharī'a has considered a particular characteristic necessary for the validity of the contract. Accordingly, although Arabicness and the past tense differ in nature—the former being an attribute of language and the latter an attribute of the morphological form of the verb—they converge at the ultimate criterion for evaluating the contractual formula: whether these characteristics are themselves the subjects of a Sharī'a-based ruling or whether they are relevant merely because of their possible role in conveying constitutive intention. In the absence of independent evidence establishing their Sharī'a-based significance, a linguistic or morphological characteristic cannot be transformed into a condition for contractual validity.

This analysis does not mean that linguistic structure is irrelevant. An expression may be Arabic and in the past tense yet fail to establish a contract because of ambiguity or the absence of constitutive intention. Conversely, a non-Arabic or non-past-tense expression may, within a particular context, clearly signify the intention to establish a contract. Therefore, a distinction must be made between a "linguistic condition" and a "semantic condition." A linguistic condition, such as the use of Arabic, concerns the language in which the expression is formulated, while the past tense, if regarded as a condition, concerns a particular morphological form. A semantic condition, by contrast, concerns the expression's capacity to convey the constitutive meaning and to provide customary evidence of the contracting parties' intention. Consequently, the ultimate criterion for the validity of the contractual formula should be sought in the "constitutive validity of the expression"; that is, the expression must, in the context of its use, constitute customary evidence of the intention to create a legal relationship and must convey the content of the contract in a sufficiently clear manner. Arabicness and the past tense may, insofar as they contribute to the clarity of signification, have linguistic relevance; however, without independent Sharī'a-based evidence, this semantic advantage cannot be transformed into a Sharī'a-based condition. Therefore, the linguistic structure of the contractual formula and its Sharī'a-based validity are

two related but distinct domains. Linguistic structure determines the expression's capacity to convey meaning and the degree of its apparent signification, whereas Shari'a-based validity requires valid evidence.

On this basis, the greater explicitness of the past tense or the prevalence of the Arabic language cannot directly establish the Shari'a-based requirement of the past tense or Arabicness. The ultimate criterion is the realization of constitutive intention and the valid and customary signification of the expression in conveying the meaning of the contract. Accordingly, whenever an expression—whether Arabic or non-Arabic, past-tense or non-past-tense—clearly signifies, in the context of its use, the intention to establish a contract, and there is no specific evidence prohibiting its use, its linguistic or morphological characteristics alone cannot prevent the validity of the contract.

Conclusion

The issue of the validity of Arabicness and the past tense in the formula of contracts ultimately raises the fundamental question of whether the linguistic structure of an expression, by itself, can constitute a basis for the Shari'a-based validity or invalidity of a contract. An analysis of the jurisprudential evidence and linguistic considerations demonstrates that the answer cannot be derived solely from the formal characteristics of expressions, because there is a fundamental distinction between the "structure of an expression" and its "constitutive function." In the context of a contract, an expression serves as a means of communicating constitutive intention, and its significance for contractual validity depends upon its capacity to convey that intention in a valid and intelligible manner. Accordingly, Arabicness in itself cannot be regarded as a Shari'a-based condition for the validity of the contractual formula.

Although the use of Arabic, particularly in an Arabic-speaking environment and in many jurisprudential texts, has constituted a conventional form of constitutive declaration, this does not necessarily entail that Arabicness possesses independent Shari'a-based significance. What is essential for the formation of a contract is that the expression or wording employed conventionally signifies the creation of the intended legal relationship. Therefore, if a non-Arabic expression can perform this function without ambiguity, the mere difference in language cannot negate its validity. Within this analysis, Arabicness is transformed from a merely formal characteristic into a semantic issue: the language used is relevant only insofar as it affects the understanding and constitutive signification of the expression. With regard to the past tense, a distinction must likewise be made between "the greater apparent signification of the past tense in realizing the constitutive act" and "the Shari'a-based requirement of the past tense for contractual

validity.” The past tense is, in many cases, a clearer form for expressing constitutive intention; however, this semantic advantage, by itself, does not entail the invalidity of other linguistic forms.

A present-tense verb or other verbal forms may likewise acquire a constitutive function depending on the context, contextual indicators, and the speaker's intention. Thus, the relevant criterion here is also not the morphological form of the verb but the “constitutive function of its use.” From this perspective, it may be concluded that the relationship between language and jurisprudence in the issue of contractual formula is a sequential rather than an independent and subject-based relationship. Linguistic structure initially determines, at the level of signification, whether an expression is capable of conveying a constitutive meaning. Subsequently, at the jurisprudential level, and where specific Sharīʿa-based evidence exists, that same linguistic structure may become the subject of a legal ruling. In the absence of such independent evidence, a linguistic characteristic cannot be transformed into a Sharīʿa-based condition merely because of its prevalent usage, jurisprudential fame, or greater explicitness.

The conclusion, therefore, is that the valid criterion for evaluating the formula of contracts is the “customary capacity of an expression to convey constitutive intention and signify the creation of a legal relationship.” Arabicness and the past tense can transcend the level of mere linguistic characteristics and affect the Sharīʿa-based validity of a contract only if valid and independent evidence establishes their independent significance. Otherwise, the use of the past tense or Arabic language may, at most, contribute in certain cases to greater clarity and the removal of uncertainty in the context of constitutive declaration; its absence does not, by itself, render the contract invalid. Accordingly, the jurisprudential analysis of the contractual formula requires a distinction between the “linguistic form,” “constitutive signification,” and “Sharīʿa-based validity,” and requires avoiding the transformation of a linguistic characteristic into a legal-religious condition without establishing valid evidence.

References

- Āmilī, Muḥammad Jawād Ḥusaynī. (1412 AH). *Miftāḥ al-Karāmah*. Qom: Madīnat al-ʿIlm. [in Arabic]
- ʿĀmilī, Zayn al-Dīn ibn ʿAlī (Shahīd al-Thānī). (1410 AH). *Al-Rawḍah al-Bahiyyah fī Sharḥ al-Lumʿah al-Dimashqiyyah*. Qom: Muʿassasat Āl al-Bayt. [in Arabic]
- Anṣārī, Murtaḍā. (1415 AH). *Al-Makāsib*. Qom: Muʿassasah Bāqirī, 1st ed. [in Arabic]

- Ardabīlī, Aḥmad ibn Muḥammad. (1418 AH). Majma' al-Fā'idah wa al-Burhān fī Sharḥ Irshād al-Adhhān. Qom: Jāmi'at al-Mudarrisīn fī al-Ḥawzah al-'Ilmiyyah. [in Arabic]
- Fakhr Ṭūsī, Javād. (1410 SH). Dar Maḥḍar-e Shaykh Anṣārī: Sharḥ Bay'. Qom: Dār al-Ḥikmah, 2nd ed. [in Persian]
- Hillī, Fakhr al-Muḥaqqiqīn, Muḥammad ibn Ḥasan. (1413 AH). Īdāḥ al-Fawā'id fī Sharḥ Mushkilāt al-Qawā'id. Qom: Mu'assasah Ismā'iliyyān. [in Arabic]
- Hillī, Ḥasan ibn Yūsuf ('Allāmah Hillī). (n.d.). Tadhkirat al-Fuqahā'. Tehran: Maktabat al-Murtaḍawiyyah. [in Arabic]
- (1419 AH). Qawā'id al-Aḥkām. Qom: Jāmi'at al-Mudarrisīn fī al-Ḥawzah al-'Ilmiyyah. [in Arabic]
- (1419 AH). Mukhtalaf al-Shī'ah. Qom: Mu'assasat Āl al-Bayt. [in Arabic]
- Ḥusaynī 'Āmilī, Muḥammad Jawād. (1419 AH). Miftāḥ al-Karāmah fī Sharḥ Qawā'id al-'Allāmah. Qom: Madīnat al-'Ilm. [in Arabic]
- Ḥusaynī Marāghī, Sayyid Mīr 'Abd al-Fattāḥ. (1418 AH). Al-'Anāwīn al-Fiqhiyyah. Qom: Daftar-e Tablīghāt-e Eslāmī. [in Arabic]
- Ibn Barraj, 'Abd al-'Azīz ibn Naḥr. (1406 AH). Al-Muhadhdhab. Qom: Daftar-e Enteshārāt-e Eslāmī. [in Arabic]
- Īrawānī, Bāqir. (1418 AH). Durūs Tamhīdiyyah fī al-Fiqh al-Istidlālī. Qom: Markaz-e Jahānī-ye 'Ulūm-e Eslāmī, 1st ed. [in Arabic]
- Jabā'ī 'Āmilī, Zayn al-Dīn ibn 'Alī. (n.d.). Masālik al-Afhām ilā Tanqīḥ Sharā'i' al-Islām. Qom: Dār al-Hudā. [in Arabic]
- Karakī, 'Alī ibn Ḥusayn (Muḥaqqiq al-Thānī). (1414 AH). Jāmi' al-Maqāsid fī Sharḥ al-Qawā'id. Qom: Mu'assasat Āl al-Bayt, 2nd ed. [in Arabic]
- Khomeinī, Sayyid Rūḥ Allāh Mūsawī. (n.d.). Taḥrīr al-Wasīlah. Qom: Enteshārāt-e Eslāmī. [in Arabic]
- (1418 AH). Al-Bay'. Qom: Mu'assasah Tanzīm wa Nashr Āthār Imām Khomeinī. [in Arabic]
- Khū'ī, Sayyid Abū al-Qāsim. (1417 AH). Miṣbāḥ al-Fiqāhah. Qom: Maktabat al-Dāwarī. [in Arabic]
- Khawānsārī, Mūsā. (1412 SH). Munyat al-Ṭālib fī Sharḥ al-Makāsib. Qom: Jāmi'at al-Mudarrisīn fī al-Ḥawzah al-'Ilmiyyah. [in Arabic]

Makārim Shīrāzī, Nāṣir. (1418 AH). Al-Qawā'id al-Fiqhiyyah. Qom: Mu'assasat Āl al-Bayt. [in Arabic]

Najafī, Muḥammad Ḥasan. (1418 SH). Jawāhir al-Kalām fī Sharḥ Sharā'i' al-Islām. Tehran: al-Maktabah al-Islāmiyyah, 4th ed. [in Arabic]

Narāqī, Mullā Aḥmad. (1415 AH). Mustanad al-Shī'ah fī Aḥkām al-Sharī'ah. Qom: Mu'assasat Āl al-Bayt. [in Arabic]

Rūḥānī, Sayyid Muḥammad Ṣādiq. (1412 AH). Fiqh al-Ṣādiq. Qom: al-Maṭba'ah al-'Ilmiyyah, 2nd ed. [in Arabic]

Suyūrī, Jamāl al-Dīn Miqdād ibn 'Abd Allāh. (1418 AH). Al-Tanqīḥ al-Rā'i' li-Mukhtaṣar al-Sharā'i'. Beirut: Dār al-Kutub al-'Ilmiyyah. [in Arabic]

Ṭūsī, Muḥammad ibn Ḥasan. (1411 AH). Al-Khilāf. Qom: Jāmi'at al-Mudarrisīn fī al-Ḥawzah al-'Ilmiyyah. [in Arabic]