

Review

Fifty legal issues in one verse: an analytical study of Qur'an 2:282

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The Holy Qur'an is a comprehensive Book of guidance for the whole mankind. As the final revelation of Allah (SWT) to the seal of Prophets Muhammad (PBUH), it has been made to reign as the eternal and universal perfect way of a blissful life in this world and hereafter. It is a scripture of faith and rituals and a divine code of infallible laws. The Qur'an is considered the primary source of Islamic law (Shari'ah). It proves its divinity and comprehensiveness in the fact that its provisions are albeit brief and straightforward, multiple of legal rulings and benefits may be extracted from one chapter, portion, verse, sentence or even a word there from. This paper proves the comprehensiveness of the Qur'an. Here, in legal subjects alone, fifty issues are extracted and analyzed from a single verse. The Verse, number 282 of chapter two (Surah al-Baqarah), is the longest verse of the Qur'an. It comprises of crucial legal issues, mostly involving Islamic law of contract and Islamic law of evidence. The paper relies mostly on classical books of the exegesis of the Qur'an (tafsir) and Islamic jurisprudence (fiqh), in enumerating and analyzing the extracted points. The legal issues are discussed sequentially in accordance with the sequence of the wordings of the verse itself. The paper aims at presenting the crucial role of the Qur'an in contemporary legislations and the importance of referring to the Qur'an as the final solution for the Muslim world in confronting contemporary challenges within and beyond the ambit of law.

Key words: Qur'an, verse, Islamic, legal.

INTRODUCTION

This paper is an abridged jurisprudential exegesis of one verse from the Holy Quran (*al-Baqarah: 2:282*), from legal perspective. The verse is the longest in the Qur'an. Its main topic focuses on debts and trade transactions. The relationship of the verse with legal issues is clear, in that it enshrines rulings governing the formalization of contractual agreements, rights and duties of contracting parties, judicial issues relating to legal drafting, law of evidence, procedure and ethics of legal practice. The aim of the paper is to display the comprehensiveness of the Holy Qur'an and its significance to judiciary and legal practice in the contemporary dispensation. Specifically, it shows the relevance of the Qur'an in determining rights and duties in contractual relations. The paper summarily enumerates fifty issues relating to law, with a brief jurisprudential elaboration. With the aid of textual authorities for further elucidation, the legal issues were

discussed based on the commentaries and verdicts of past and contemporary Muslim jurists such as Ibn al-Arabi, Al-Qurtubi, Al-Sa'di, SayyidQutub, IbnUthaymin, etc. Other issues were derived from literatures of Islamic jurisprudence and their relationships with the verse were expounded respectively. Some of the issues enumerated are inter-related to each other and may be seen, by merely observing the title, are closely related or repeated. However, a look at the analysis manifests the solitary benefit and importance of each point.

TRANSLATED VERSION OF THE VERSE

"O you who believe! When you contract a debt for a fixed period, write it down. Let a scribe write it down in justice between you. Let not the scribe refuse to write as Allah



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has taught him, so let him write. Let him (the debtor) who incurs the liability dictate, and he must fear Allah, his Lord, and diminish not anything of what he owes. But if the debtor is of poor understanding, or weak, or is unable himself to dictate, then let his guardian dictate in justice. And get two witnesses out of your own men. And if there are not two men (available), then a man and two women, such as you agree for witnesses, so that if one of them (two women) errs, the other can remind her. And the witnesses should not refuse when they are called on (for evidence). You should not become weary to write it (your contract), whether it be small or big, for its fixed term, that is more just with Allah; more solid as evidence, and more convenient to prevent doubts among yourselves, save when it is a present trade which you carry out on the spot among yourselves, then there is no sin on you if you do not write it down. But take witnesses whenever you make a commercial contract. Let neither scribe nor witness suffer any harm, but if you do (such harm), it would be wickedness in you. So be afraid of Allah; and Allah teaches you. And Allah is the All-Knower of each and everything" (Al-Hilali, 1404).

THE EXTRACTED LEGAL ISSUES AND THEIR ANALYSIS

Connecting between the spiritual and temporal aspects of man: a fundamental feature of Islamic law

The fact that Allah has attached the rulings governing these detailed matters of contract with faith, opening the verse with '*O you who believe*', means that Islamic law regulates matters of contractual relations between man and man as it does in relations between man and his Creator (Al-Munajjid, 1421). In essence, this demonstrates the approach of Islamic law in relating the temporal aspect of man with his spirit. By so doing, when the interior part of man is regulated by the concept of *Iman* i.e., faith, it reflects the exterior part which shall be the parameter for regulating the contractual affairs of man. As a result of compliance, the Muslims would become a model of array in demonstrating the best kind of contractual transactions among mankind. Reiterating the essence of the tie between man's interior and his exterior, the Prophet, peace be upon him (herein after PBUH), said: Truly in the body there is a morsel of flesh, which, if it be good, the whole body is good as well, and which, if it is diseased, all of the body is diseased as well. Truly, it is the heart (Al-Bukhari, 1422)".

Legality of trade transactions in Islamic law

In the verse, Allah mentions: "*A present trade which you conduct among yourselves*". This indicates Islamic

recognition of trade transactions and contracts in general. Furthermore, albeit the verse in question was revealed for the purpose of regulating some kinds of contract, i.e., debt related transactions, as observed by Ibn Abbas; the verse further shows the significance of contractual agreements in general, since the said topic falls within the subject of trade transactions. Allah, in His Noble Book, the Qur'an, and the Prophet (PBUH) through his honorable *Sunnah* (Prophetic Tradition), pointed out the ruling on transactions because of people's need for them; people in general need food, clothes, houses, vehicles and other necessities of life in addition to different luxuries which are obtained through trade. He added that concerning analogical deduction, trade transactions are permissible because people's needs are interdependent, and people grant nothing for nothing. A person does not give what he has, money or goods, in return for nothing. So, wisdom necessitates the permissibility of trade in order to enable people to get their needs (Al-Fawzan, 1423).

Legality of Dayn/Qard (debt/loan) agreements (Al-Qurtubi, 2003)

In the technical definition by most jurists, *al-qard* and *al-dayn* are synonymous and stand for meaning to give something to the borrower on the basis that he will return its equal in due course (Al-Munajjid, 1982). However, the Hanbalis differentiate between the meanings of the two terms. According to them, *al-dayn* refers to a debt agreement whereby a binding due time for payment is stipulated and the debtor is bound by the said agreement. On the other hand, *al-qard* is an agreement for a loan that need no time stipulated for payment, and the debtor is made at ease to pay at his convenience (Al-Munajjid, 1982). All jurists unanimously agree on the legality of loans and debts (Ibn Qudamah, 1405 AH). The most cited authorities for the legality include the verse in question.

Legality of al-Salam transaction

Al-Salam/al-Salaf, otherwise referred to as payment in advance is a sale agreement whereby the price is paid in lieu of the subject matter which is to be supplied later. It has been defined by Muslim jurists as "a contract according to which the price of a clearly defined item is paid in advance at the place of concluding the contract, and the sold item is to be delivered later (Al-Fawzan, 1423)."

Bukhari and Muslim collected on the authority of Ibn Abbas that when the Prophet (PBUH) migrated to Medina and found its people paying in advance, the price of fruits to be delivered later, after a year, two or three; he said: whoever pays in advance, the price of a thing to be delivered later should pay it for a specified measure, at

specified weight, for a specified period (Al-Bukhari, 1422). Al-Fawzan narrates that Ibn al-Mundhir and other scholars report that all scholars uniformly agree that sale transactions based on *salam* are permissible in Islamic law (Al-Fawzan, 1423).

Definiteness of the subject matter is a condition in the contract of Salam (Al-Sa'di, 2000)

This rule, according to al-Sa'di, is inferred from the verse wording '*specified*'. He pointed out that specification of a definite subject matter about which the contract it concluded is a condition of validity. This ruling is also explained in the earlier cited *Hadith* that says "whoever pays in advance, the price of a thing...", indicating that the said 'thing' must be specified. Illustrating this condition, al-Misri said the merchandise bought in advance be determinately known by volume, weight, quantity, or yardage in terms of a familiar measure. Hence, it is not valid for someone to say "the weight of this stone," or "the capacity of this basket," if the stone's weight or basket's capacity is not known (Al-Munajjid, 1982).

Stipulation of a definite time as a condition in Salam (Al-Sa'di, 2000)

Both the verse and the *Hadith* contain explicit provisions for definiteness of time. The provision '*for a specified period*', is clear that specification of a definite time for payment is condition for the validity of this type of transaction (Al-Fawzan, 1423).

Documentation of debt agreements for the purpose of evidence (IbnKathir, 1999)

Pointing out this ruling, IbnKathir said this portion of the verse directs Allah's believing servants to record their business transactions when their term is delayed, to preserve the terms and timing of these transactions, and the memory of witnesses, as mentioned at the end of the Ayah, '*that is more just with Allah; more solid as evidence, and more convenient to prevent doubts among yourselves*' (IbnKathir, 1999).

Obligation of writing the agreement on the scribe (solicitor) (IbnKathir, 1999).

This ruling was extracted from the provision, '*and let among you write...*' IbnKathir expounded on that in the following words: "Those who know how to write should not refrain from writing transaction contracts when asked to do so (IbnKathir, 1999)."

Also, in his commentary, Qurtubi stressed the *scribe*

obligation on the part of the scribe to write down the agreement, adding that the ruling is more emphatic when there is no other competent scribe other than he who was consulted to write the deal (Al-Qurtubi, 2003).

Fairness to both parties in writing (Al-Sa'di, 2000)

The phrase '*let a scribe write it down in justice*' may also include another requirement. Besides the requirement of the scribe to be an upright person in his own personality, it is an additional condition that he in discharging his duty of writing contractual agreements, he must be fair to both parties. Elaborating this ruling, IbnKathir had this to say: "the scribe is not allowed to cheat any party of the contract and is to only record what the parties of the contract agreed to, without addition or deletion (IbnKathir, 1999)."

Competency in legal drafting (Al-Sa'di, 2000)

The term '*scribe*' refers to the writer of the document. The phrase '*as Allah has taught him*' means that only a competent writer is worthy for the job. The fact that a scribe is employed to write down the agreement between the creditor and the debtor in writing implies that only a competent scribe is required. This, according to al-Sa'di, is a fundamental requirement, for the wisdom behind this requirement cannot be achieved if an incompetent scribe is employed. Competency here refers to his ability and knowledge of legal drafting or any reliable documentation that may serve as reliable evidence in law. The authority given to the document in question requires that only authorized and competent personnel should be consulted. Abu Hurayrah narrated that a Bedouin came to the Prophet (PBUH) and asked: "When would the Hour (Doomsday) take place?" In his reply, the Prophet (PBUH) said: "When honesty is lost, then wait for the Hour (Doomsday)." The Bedouin said, "How will that be lost?" The Prophet said, "When the power or authority comes in the hands of unfit persons, then wait for the Hour (Doomsday)" (Al-Bukhari, 1422).

Reliability of documentary evidence

The term '*write*' in the verse indicates that the written information is reliable evidence. The significance of documentary evidence in economic and legal affairs cannot be over-emphasized. This is because, a documented information of evidence is stronger than an oral one. IbnUthaimin elaborated that the Prophet (PBUH) illustrated the significance of documentary evidences when he stressed the recommendation for writing a will instead of declaring an oral one. Narrated Abdullah bin Umar: Allah's Apostle said, "It is not permissible for any Muslim who has something to will to

stay for two nights without having his last will and testament written and kept ready with him (Al-Bukhari, 1422)".

The virtue of legal profession

The emphasis laid in this verse on the three terms: *'justice'*, *'evidence'* and *'testimony'* apparently indicate the crucial role of legal practitioners in the protection of rights. Also, in the contemporary legal system, the functions of the scribe referred to in the verse, is usually borne by a legal practitioner (solicitor). The work of a lawyer, solicitor or an advocate in drafting contractual agreements and protection of rights and interests of people is of great impact in the contemporary world. Generally, a lawyer refers to a specialist in or a practitioner of law, one as an attorney, counselor, solicitor, barrister or advocate whose profession is to conduct lawsuit as to legal rights and obligations in a particular matter (Zulkifli, 2008). In the classical Islamic jurisprudence, a legal practitioner is called *al-Wakilbil-Khusumah*. In the contemporary Islamic legal system, he is called *al-Muhami*. All the four Schools of Islamic jurisprudence agree on the legality of the profession with slight differences between them on some matters relating to procedure (Al-Juzayri, 1994). The basis of the legality of legal profession is the Qur'anic injunction that says: "And help one another perform righteousness and piety, and do not help one another in evil and transgression (Qur'an: al-Maidah, 5:3). Also, Anas bin Malik narrated that the Messenger of Allah said: "Support your brother whether he was unjust or the victim of injustice." He was asked, "O Messenger of Allah! We know about helping him when he suffers injustice, so what about helping him when he commits injustice?" He said, "Prevent and stop him from committing injustice, and this represents giving support to him (Al-Bukhari, 1422)".

Legality of earning through legal drafting (Al-Kayaharasi, 1404)

The phrase *'let him write'* in the verse contains another legal ruling on a contemporary issue. As regards drafting the agreement by the scribe, if it be a solicitor, it is permissible according to all jurists to charge reasonably, the parties to the agreement for his service. However, if he does it as charity, his reward is with Allah. In an authentic *Hadith*, the Prophet (PBUH) mentioned that it is a type of charity to help a worker and to do something for a feeble person (Al-Bukhari, 1422).

Solicitor is required to be 'Adl

From the verse, it is pellucid from the wording: *'katibunbil 'adl'* that the scribe (herein meaning solicitor, advocate,

etc.), is required to be *adl* (an upright and just person). Only an *'adl* person can be trusted to treat his clients, discharge his duties and deal with opponents with justice. As an agent of his client, a lawyer is required to have qualities similar to those of a judge in Shari'ah court, as the duties of both are inter-twined (Al-Juzayri, 1994). According to Sa'di (2000), it is apparent from the provision, *'let a scribe write it down in justice'*, this implies the requirement of the scribe to be a just and upright person. He pointed out that without this quality, the authority and authenticity of the document of agreement will be questionable. An upright person as defined by Ibn al-Asim is one who eschews capital offences, and, in most cases refrains from the light ones (Ibn Asim, 2011).

Presence of the two parties in majlis al-aqd

Majlis al-aqd refers to the place for the conclusion of the agreement. The two parties to the agreement, namely the debtor and the creditor or their representatives must be available during the formalization and conclusion of the agreement. This is in order to ensure fairness to each party and to avoid any loopholes in the agreement that may jeopardize the authenticity of the document. This rule as extracted by IbnUthayminis from the phrase in the verse *'between you'*, which addresses the parties.

The party to dictate the statement is the debtor (Ibn al-Arabi, 2003)

As regards the dictation of the agreement, the party that incurs the liability should be the one to declare the obligation born by him. The debtor in case of a debt agreement here is responsible for the declaration of his liability and obligation in favour of the creditor. The wisdom here is that the statement made by debtor is considered a binding confessional statement (Ibn al-Arabi, 2003). Furthermore, the requirement the likelihood of false declaration against him, had it been made by the creditor.

Confessing party must be fair in his statement concerning his obligations

The verse declares a categorical statement on this rule in *and let him diminish not anything of what he owes'*. It is to this effect that the verse emphasized on the significance of God's consciousness in the debtor's declaration (Al-Qurtubi, 2003). He is not allowed therefore to make any statement that contradicts the actual agreement or relieves him from any liability.

Authenticity and binding nature of confessional statements in evidence (Al-Sa'di, 2000)

A voluntary confessional statement made by a person

on whom liability lies is stronger in law of evidence than any other means of proof (Audah, n.d). Here, Allah did not require the debtor to declare his confession of liability for the creditor except to show that his confession is binding.

Priority of the debtor's statement in the acceptability of evidence (Al-Sa'di, 2000)

Giving the authority of dictation to the debtor by the verse implies that in case of conflict of evidence between the creditor and the debtor on the facts of the agreement, the evidence of the debtor is prevails (Al-Sa'di, 2000). The wisdom is that since the obligation lies on him, and the authority of dictation is given to him, and that his statement is considered as confessionary evidence; for the sake of justice, his evidence, in the event of conflict is given preference to avoid double jeopardy on him.

Whatever benefit accrues to the subject matter belongs to the real owner (Al-Sa'di, 2000)

Imam Sa'di expounded in the light of the phrase '*and he should not diminish anything thereof*', that it further means all that is attached to or may accrue in future to the subject matter belongs to the real owner and the party that holds it as security cannot take anything thereof. Although the verse refers to debt agreements, the ruling extends to other matters involving obligation by means of analogy. In case of borrowing or mortgage for instance, all that may accrue to the collateral like say, animal reproduction, fruits of a tree, rent of a house, etc., returns to its owner unless otherwise permitted by law (Al-Fawzan, 1423).

Legality of the appointment of a guardian on behalf of an incapable party

If the person that bears liability is legally incapable; that is to say a minor, fool, imbecile, insane, etc., the verse says their guardian stands on their behalf. A guardian is a person authorised to act and stand on behalf of another, due to the latter's corporeal or incorporeal deficiency. Guardianship may be either on the person or on his property. It may also be either full or partial (Al-Zuhaili, n.d).

In this context, guardianship of the property of an incapable party where the guardian is authorized to act on their behalf is classified into three:

(i) Dejure guardianship (legal or natural guardian):

The person entitled to be the natural guardian of the property of the minor are father, executor appointed by father's will, father's father and the executor appointed by the will of father's father. The guardian has the power to sell immovable property of the minor, and is required to bear the ward's maintenance as well.

(ii) Certified guardianship: In the absence of a natural guardian, the duty of appointing a guardian for the protection and preservation of the minor's property falls to the Court. The Court takes into consideration the welfare of the minor. Legal guardians of the property of a minor have power to sell or pledge the goods and chattels of the minor for the minor's imperative necessities.

(iii) De Facto guardian: A de facto guardian is a mere custodian of the minor's person and property but has no right over either. They have only responsibilities towards the minor's person or property or both, but no rights in respect thereof. They are usually the relatives of the minor but without rights to be the guardian under the Islamic law. He is an officious intermediary (*Fuduli*) with the minor's property and has no status or position to alienate it without Court's permission. He has no power or authority to alienate the minor's property. A sale by a de-facto guardian of the minor's immovable property without Court's permission is void and not merely voidable (Roy, 2010).

'Adalah is a condition in guardianship

It is clear from the wording of the verse '*then let his guardian dictate in justice*', that only an upright person with the quality of '*adalah*' is competent for guardianship. Hence, a grossly immoral, unfaithful, treacherous, traitorous, fraudster or corrupt person is not eligible for guardianship. In addition, if the ward is a Muslim, the guardian is required be a Muslim too (Al-Zuhaili, n.d).

The confession of a doliincapax, fool, imbecilic and insane is void (Al-Sa'di, 2000)

The fact that the verse requires the guardian of an incapable person to dictate on his behalf due to his inability to make a valid dictation, indicates that the latter's confessionary statement cannot be binding on him (Al-Sa'di, 2000). Hence, if his confession is not enforceable in civil matters, then it is a fortiori unenforceable in criminal matters.

Islamic law advocates civilization and free education for all (Al-Sa'di, 2000)

It is important to note that the phrases '*let him write*', '*as Allah has taught him*' and '*and Allah teaches you*' stress the significant role of education on the Muslim *Ummah*. According to jurists, the requirement of writing down these contractual agreements signifies the necessity of literacy and education on Muslims. This, they added, is because of the legal maxim that says: '*a matter without which an obligatory goal cannot be achieved, then, seeking for that matter is itself obligatory too*' (Al-Sa'di,

2000).

Implementing this, the Prophet (PBUH), upon realizing the significance of education, accepted the redemption of some captives from the battle of Badr in lieu of teaching ten young companions each. This scheme became one of the Prophet's first influential projects that made a positive impact intellectually, on the young companions and the new Islamic government led by the Prophet (PBUH). For instance, Zayd Ibn Thabit was one of the young beneficiaries of the scheme (Al-Shami, 1993). Soon after, the Prophet (PBUH), sent him for a special course to study Hebrew and other international languages of their time for the prophet's international relations, and that was that. Zayd narrates:

"The Apostle of Allah (peace be upon him) ordered me (to learn the writing of the Jews), so, I learnt for him the writing of the Jews. He said: I swear by Allah, I do not trust Jews in respect of writing for me. So I learnt it, and only a fortnight passed that I mastered it. I would write for him when he wrote (to them), and read to him when something was written to him." (Abu, n.d).

Eventually, Zayd was appointed the secretary of the Prophet's government and for Abubakar and Umar respectively as well (Ibn Abdul-Barr, n.d).

The significant role of testimony in contractual agreements

The requirement of witnesses in contracts by the verse such as: '*And appoint two witnesses from amongst your men*' and '*appoint witnesses when you transact*', shows the significance of testimony in contractual agreements. This is in line with the objective of Shari'a in protecting the rights of all parties to contract. It not only promotes mutual brotherhood by preventing means of unnecessary disputes, it also safeguards the property of both parties from falsified claims. Abdullah Ibn Abbas (may Allah be pleased with him) narrated that the Prophet (PBUH) said: "If people were to be granted things according to their mere claims, some people would have claimed the blood and property of other men..." (Al-Bukhari, 1422).

The minimum requirement of witnesses in contracts is two men or a man and two women

The Qur'an is unambiguous in mentioning the minimum requirement of witnesses as for testimony in this verse. In essence, it means that at least, two men or a man and two women are required. The number of witnesses generally depends on the type of proceeding. In criminal proceedings for instance, two men are generally required, save the case of adultery and fornication wherein four witnesses are required. In civil matters, it may be either two men or a man and two women as in contract, a single man with his oath or women alone as explained in the

Sunnah depending on the cases (Ibn al-Qayyim, n.d).

Unacceptability of the testimony of a doliincapaxin contracts (Al-Sa'di, 2000)

A minor does not meet the requirement of *ahliyya* (capacity) to contract, therefore they cannot be witnesses to it. In this verse, Allah says: "But if the debtor is of poor understanding, or weak, or is unable himself to dictate, then let his guardian dictate in justice". This means that the minor, being a weak person, needs another to act on their behalf as they cannot stand for themselves, so, they cannot stand a fortiori for testimony on behalf of others. However, their testimony may be accepted, according to Malik, in matters relating to injuries involving children alone provided there is corroboration in the facts of the evidence (Al-Qurtubi, 2003).

Validity of women's testimonies in Islamic law

Mentioning two women as witnesses in the verse indicates the validity of women's testimonies in Islamic law. Although in some cases, women's testimony is not valid generally, in some others, women can give testimony together with their men counterparts or even individually as the case may be. In the book of Bukhari, Uqba bin Al-Harith narrated that he had married a lady called UmmYahyabint Abu Ihab. He said. "A black slave-lady came and said, 'I suckled you both.' I then mentioned that to the Prophet who turned his face aside." Uqba further said, "I went to the other side and told the Prophet about it. He said, 'How can you (keep her as your wife) when the lady has said that she suckled both of you (i.e. you and your wife?)" So, the Prophet ordered him to divorce her. In this and similar cases, the testimony of a single woman is accepted (Al-Bukhari, 1422).

Priority of men over women in testimony (Al-Sa'di, 2000)

Islam equitably guarantees protection for the rights for both men and women in both religious and temporal matters. However, this does not mean that Islam recognizes the equality of man and woman in everything. In some matters, men are given priority of competence over women while in others, women are given priority over men, depending on the suitability of each gender in a particular matter. On the issue of women's testimony, the philosophy of Islamic law as mentioned in the verse is that a woman may easily forget or get confused. In this case, the law does not reject woman's testimony, but rather requires the presence of another woman to give a full and corroborative testimony. This does not mean that

a woman does not understand or that she cannot remember things, but she is weaker than man in these aspects, usually. Scientific and specialized studies have shown that men's minds in these aspects are more perfect than those of women. For instance, clinical researches suggest that women experience much higher rates of Alzheimer's disease than men. According to experts, Alzheimer disease accounts for 60 to 70% of cases of dementia. It is a chronic neurodegenerative disease that usually starts slowly and gets worse over time. The most common early symptom is difficulty in remembering recent events (short term memory loss). As the disease advances, symptoms can include: problems with language, disorientation (including easily getting lost), mood swings, loss of motivation, not managing self-care and behavioural issues (Burns, 2009).

Muslims are competent witnesses for one another

In the light of Allah's command: "And get two witnesses out of your own men", it is understood that only Muslims are eligible to testify in Muslims' cases, because, 'your own men' refers to Muslims as they belong to one another as brothers (Al-Ishbili, 2003). This is the general rule. However, there is exception to this rule as in the case of a will by a Muslim declared in the state of journey. In this case, the view of the majority is that a non-Muslim *Kitabi* (i.e. a Jew or a Christian) can make testimony for a Muslim, as mentioned in *al-Ma'idah* (Al-Qurtubi, 2003).

Obligatory nature of giving testimony

Suits are supported and established by testimonies. Without testimonies, rights would have been lost. A fact can only be ascertained through evidence and the backbone of evidence is testimony. Jurists rule that in the light of Allah's statement in this verse, "And witnesses should not refuse when they are called", it is an individual obligation (*fard 'ayn*) on any person who is called to give evidence in court to appear and serve justice (Abdul-Fattah, 2004).

Testimony must be voluntary

Scholars have agreed that witnesses must give their testimonies free of charge as means of charity for the sake of Allah, as custodians of justice. They added that if the witness claims for payment for his testimony, then that amounts to corruption. However, if the witness needs transport to the court or any other thing that relates to the purpose of his appearance, then only that can be borne by the beneficiary (Al-Kharshi, n.d).

Witnesses may remind one another in court proceedings

Although witnesses are independent from each other in their testimonies, if two or more witnesses are giving testimony on the same fact based on their collective information, there is no harm in their assistance of one another (Al-Sa'di, 2000). This comes where one of them forgets a particular issue or is lost somewhere within his narration of an incident in the fact. The rationale behind this is clear in that it assists the court in reaching a reliable conclusion of evidence given in one case on one fact by one testimony for one party. Although this is more applicable in case of women testimony as the verse says, "so that if one of them (two women) errs, the other can remind her", it is also applicable in men where the need arises, though it may be more common in women as pinpointed earlier.

'Adalah is a condition in testimony

As mentioned under guardianship, *'adalah* is a required condition for the validity of testimony and the eligibility of witness. Allah's requirement to get witnesses and his statement "whom you agree as witnesses" indicate that only an upright person of good character and integrity is acceptable as a witness (Al-Sa'di, 2000).

'Adalah is ascertained by custom

In ascertaining the quality of *'adalah*, custom shall be applied. What is meant here is that what the people consider as qualities of good character and whom their regard as an upright person is deemed *'adl*. Thus, both parties must agree to the quality of the witness at the time of his appointment. Also, the judge is given the discretion to decide whether or not a person called for witness qualifies the quality of *'adalah*.

The negative impact of false and wrong evidence on justice

The objective of the verse can be seen from its wordings on witness that its requirement is not just testimony, but a solid testimony based on truth, honesty and fact. It requires upright and trustworthy witnesses. It mandates the witnesses to accept the invitation and appear in court. It emphasizes on men more than women. It allows the witnesses to remind each other in narrating the true facts. All these are for the purpose of concluding the judgment with justice. On the other way round, it manifests the negative impact of false or erring evidence in the dispensation of justice. The wisdom behind its stress on testimony is that wrong evidence dismantles the solid

structure of justice and jeopardizes Islamic objective of justice for all. In this aspect, Allah says, "Except those who bear witness to the truth, and they know" (Qur'an: 43: 86).

Documents must be clean, intact and free from loopholes

Although documents are reliable evidence as per this verse, not all documents are acceptable. The requirement by the verse that the parties should not get weary of writing the agreement much or less and should not omit anything thereof indicates that only an intact, complete and clean document is applicable. Hence, any document that neglects necessary information and specification as regards the parties or the agreement, e.g., names of parties, subject matter of the contract, date of agreement and the date of payment, etc., is not sufficient. On this, the Prophet (PBUH) said, whoever pays in advance, the price of a thing to be delivered later should make it for a specified measure, at specified weigh, for a specified period.

Solicitors are enjoined to work hard for the essence of their job

As custodians of justice, solicitors are required to be hardworking in discharging their duties for the sake of justice. The verse says they should not get bored or weary of their work in drafting the documents of agreements, be it big or small. IbnKathir added that: "You should not become weary" in the verse means, do not be discouraged against writing transactions and their terms, whether the amount involved is large or small (IbnKathir, 1999).

Testimony is graded in hierarchy

It is apparent from the verse that the requirement of two men in the first category of testimony followed by a man and two women indicates the grading of testimony into levels. Furthermore, it means that where there is conflict of evidence in a particular case, judgement is based on the grade of testimony if any. IbnFarhun (n.d) enumerated six grades of testimony (where no oath is required) in the following: (1) testimony of four men (2) testimony of two men (3) testimony of one man and two women (4) testimony of women alone (5) testimony of one man (6) testimony of children.

Documentary evidence is preferable in the sight of Allah

Documenting evidence is, as Allah says, 'more just with

Allah'; thus indicating its significance. Demonstrating this significance, Allah mentions in the Qur'an that He documents all the deeds of His servants for record and evidence. "And all things We have recorded with numbers (as a record) in a Clear Book" (Qur'an: 36:12). "This Our Record speaks about you with truth. Verily, We were recording what you used to do" (Qur'an: 45:29). "And Our Messengers (appointed angels in charge of mankind) are by them, to record (Qur'an: 43:80)." Also, in the *Hadith*, Muslim collected on the authority of Abdullah bin 'Amr bin al-'As who said he heard the Prophet (PBUH) saying: "Allah has recorded the destinies of all creatures, fifty thousand years before He created the heavens and earth." The nature of man, in most cases, is the denial of facts that cannot be proved by documentary evidence. In the *Hadith* of Abdullah bin Abbas, the Prophet (PBUH) narrates that the first person to deny facts was Adam (AS). When Allah created him and displayed his offspring for him, he asked: O Lord! Who are these people? Allah said: They are your children. Every human being's life is written between his eyes. Among them was a man with the brightest face. For him was written only forty years of age. Adam said: O Lord! Who is this fellow? Allah said: This is your son Daud (David). His life span is written forty years. Adam said: O Lord! Increase his age. Allah said: This is what I have written down for him. He said: Then I give him sixty years of my age. Allah said: This is between you and him. Live in Paradise. He lived there as long as Allah wished. Then he was descended from it to earth. Adam was counting his age. Then the death angel came to him. Adam said to him: You have come earlier. For me, one thousand years have been written. The angel said: Yes, but out of them you have given sixty years to your son Daud. Adam denied that so his successors also denied. He forgot, so his successors also forgot. From that day, Allah ordered writing down and making witnesses (for pledges) (Al-Shaybani, n.d).

Judges must uphold the concept of justice as vicegerents of Allah

Allah stresses on the significance of justice in many portions of the Qur'an. In this verse alone, Allah mentions the term '*justice*' three times; in "*let a scribe write it down in justice between you*", "*let his guardian dictate in justice*" and "*that is more just with Allah*". In other similar portions of the Qur'an, Allah mentions that justice is His commandment. "Verily! Allah commands that you should render back the trusts to those, to whom they are due; and that when you judge between men, you judge with justice. Verily, how excellent is the teaching which He (Allah) gives you! Truly, Allah is ever All-Hearer, All-Seer (Qur'an: 4:58)." He places justice in the position next to *taqwa*(piety). "Oyou who believe! Stand out firmly for Allah and be just witnesses and let not the enmity and

hatred of others make you avoid justice. Be just: that is nearer to piety, and fear Allah. Verily, Allah is Well-Acquainted with what you do (Qur'an: 5:8)." He says He loves the just ones. "And if you judge, judge with justice between them. Verily, Allah loves those who act justly (Qur'an: 5:42)." These and other related verses represent the true picture and objective of Islamic law which judges are bound to uphold.

Legal practitioners must abstain from doubts and uncertain facts

IbnUthaymin observed from the verse that the phrase: *"and is more convenient to prevent doubts among yourselves"*, indicates that Muslim are encouraged to abstain from all acts or omissions that may create doubts about their integrity. Also, all matters of uncertainty must be avoided as well. Thus, judges must safeguard their integrity by abstaining from all indecent acts. As legal counsels, lawyers should ascertain the truth of, or innocence of their clients. All other people must practice the same, in accordance with the ethics of their respective professions.

The crucial role of modern technology on equity

It is clear from Allah's requirement for witnesses and record of debt-based contractual agreements and His comment that such requirement is in order to avoid doubts, that whatever may assist in enhancing smooth dispensation of justice and the attainment of equity is significant and welcome. Meanwhile, modern technology assists significantly in enhancing a smoother dispensation justice. Before, documents were written by hand on leaves and then on papers, etc. Now, documents are drafted by use of typewriters and then by computers. Printers and photocopiers are used to produce duplicate copies of documents. The Information Technology also assists in storing important data about the parties; such as their pictures, thumbprints, voices of their oral conversations, etc. This development undoubtedly assists justice in documenting facts, hence avoiding doubts. Considering the differences between the past generations and the contemporary world in people's sincerity and law abidance, population, overcrowding litigations and so on, it is clear that the use of modern technology in contracts is imperative. Also, their impact on easier and faster justice is apparently positive. Justice delayed is justice denied.

Drafting contracts of sale is recommended

Unlike debt-based contracts where drafting is obligatory, the verse states that in contacts of sale, drafting and

recording transactions is recommended and encouraged, though not obligatory. The verse says: "Save when it is a present trade which you carry out on the spot among yourselves, then there is no harm on you if you do not write it down". This is in order to make business transactions easier and more conducive for small scale businessmen and their local consumers. However, this may not include formal contracts of sale involving large capitals, companies, corporate bodies, etc. Drafting and record in such tractions may be necessary. It is understood from the phrase: 'then there is no harm on you if you do not write', that when there is likelihood of causing harm by not writing, writing becomes compulsory. It is apparent that harm may be caused if such big contracts of sale are not recoded.

Testimony in contracts of sale is recommended

As mentioned above in the requirement of drafting, same facts and issues apply in the requirement of witnesses for sale transactions. Allah says in the verse: *'But take witnesses whenever you make a commercial contract'*. This ruling, according to the preferred view, is not compulsory. This is because the Prophet (PBUH) performed business transactions and he neither drafted nor took witnesses.

Immunity from harm for solicitors

The phrase: *'let no harm be inflicted on a Scribe'*, indicates that solicitors are granted immunity from any harm be it corporeal or incorporeal with respect to their job. Hence, a losing party is not permitted to retaliate on the counsel of his opponent. Also, in case it appears that the client is at fault or was found guilty of an offence, the law will not convict the counsel for abetment or conspiracy, as he was only discharging his legal duty.

Immunity from harm for witnesses

Same as above, witnesses are granted immunity from any harm pertaining to their testimonies as well. Witnesses should not be deterred or prevented from appearance for testimony. Hence, the victim of their testimonies is warned against inflicting any harm on them before or after giving evidence.

Solicitors' remuneration charges should be reasonable

What is said in favour of the solicitor applies to their clients as well. There should be no harm upon the clients. The service charges claimed by the solicitor from the

client must be reasonable. Reasonability here means the amount claimed should be in accordance with, and reflect the financial status of the client, nature of the contract, amount of service, etc. According to al-Sa'di, if the client is not able to pay and the drafting is such necessary, as in the case of a poor man looking for financial assistance in debt, and requires drafting, the solicitor is obliged to help and draft the agreement free of charge (Al-Sa'di, 2000). In this verse, Allah instructs the solicitor not to refuse writing, as his gratuitous profession was a result of Allah's grant.

Non-compliance amounts to disobedience to God

All the aforementioned rulings of this verse, especially the latter ones, must be complied with. Allah describes non-compliance as *fusuq*, meaning disobedience to his commandments. This in essence means that beside its being a legal obligation, it is a religious obligation as well. It also warns all those concerned by the verse to carry out their respective obligations to avoid being categorized as *fasiqun*.

The role of Taqwa and the Qur'an on human intellectual development

The Holy Qur'an is a perfect guidance for mankind. Its teachings lead to prosperity. Only those who follow its teachings and guidance attain the level of *taqwa* (piety and righteousness). The concluding remark of this verse is that those who have *taqwa* are eligible to have a special bounty of intellectual excellence and continuing improvement in their learning skills. By virtue of this verse, Muslims are admonished to be more pious and God-conscious so as to lead the world in all aspects of civilization through the light of the teachings of Allah. "So be conscious of Allah; and Allah teaches you. And Allah is the All-Knower of each and everything". The teaching of Allah to mankind is primarily through the Qur'an. In relation to law, the Qur'an is, but not only, a code of amazing laws. It teaches mankind how to make laws based in justice and equity. Its laws are divine, supreme, eternal, comprehensive and suitable for the intellectual development of all and sundry for all spaces and times (SayyidQutub, n.d).

CONCLUSION

From the foregoing, the Holy Qur'an proves its comprehensiveness and suitability for all people, times and spaces. If a single verse from the Qur'an can produce up to fifty legal issues, then the Qur'an as a whole with 6236 verses is absolutely able and up to bringing solution to the cotemporary global challenges in all aspects of human endeavour; in spiritual, intellectual,

social, legal, political, economic and security challenges. With respect to contemporary legal challenges in the Muslim world in particular, the crucial role of the Qur'an in legislation and judiciary cannot be overemphasized. However, in order to display manifest evidence on the signicance and suitability of the noble Qur'an for all people to appreciate, embrace and apply; there is need for further researches by Muslim scholars in collaboration with scholars from other relevant fields of studies, with a view to presenting convincing points on the crucial role of the noble Qur'an in our contemporary world.

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