

# Al-Shaykh Murtada Al-Ansari and His Opinions on the Elements of the Validity of Contracts<sup>1</sup>

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## ABSTRACT

The importance of the study was represented in shedding light on the life of Al-Shaykh Murtada al-Ansari and his views on the elements of the validity of contracts. The study also dealt with his lineage, birth, family, and teachers from whom he received knowledge through their hands. The study also dealt with the students who were taught by him. And the sayings that were said by scholars about him. One of the books highlighted in this study is the book Al-Makasib. At the end of the study, the researcher discusses the expected results of this study.

## INTRODUCTION

Working on contracts and studying them scientifically attracts many disciplines, scientific programs, and research methods more attention, as it is a social, temporal, multi-dimensional reality, and therefore it is one of the inter-fields that mediates many scientific branches, as thinking about it occupies the interest of a wide range of social actors. In the public space such as: legislators and businessmen, economists, psychology, law, language, accounting science, and others, and it has become clear, in the light of some contemporary sociology theories, that what constitutes the public social space is a set of understandings, undertakings, contracts, deals, agreements, and contracting, which takes place at every moment, between the various social parties within the social fabric, and with all that these agreements entail in terms of duties and mutual rights between the parties, and what they contain of the conditions and options that must be fulfilled. when practicing work, trade, and dealing with people, to know these duties and rights, and to avoid falling into the forbidden, consuming money unjustly, or getting involved in usury, which confirms the importance of this aspect of general social life: the care of the Ahl al-Bayt school (peace be upon them) with legislative knowledge, And what

it produces towards determining what achieves social harmony, non-disparity, or divisions, which is caused by the loss of rights, as a result, of the differences that occur between the dealers, as the mutual obligations between the parties constitute the largest percentage of the practices of social actors, which causes division due to the contradiction of interests and differences over the interpretation of these obligations and the limits of commitment to them. Hence the jurisprudence studies, in The framework of the teachings of Ahl al-Bayt (peace be upon them), in an in-depth and accurate manner. It deals with the smallest details in the field of contracts, especially with the emergence of Sheikh Al-Ansari's book Al-Makasib, which included the most accurate discussions and comparisons in this field of knowledge, and the foundations for a new style of scientific research in comparative jurisprudence. So the research focused on looking at the life of the sheikh and his leadership in addressing diligence and jurisprudence, and looking at his methodology in the book of earnings. It includes necessity and choice in the strength of the contract and its effect, and a statement of the elements of the contract, including: linguistic conditions, the conditions of nodal loyalty, the performance of the contract and its effect.

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## THE FIRST TOPIC: THE LIFE OF SHEIKH AL-ANSARI AND HIS APPROACH IN THE BOOK AL-MAKASIB

### The First Requirement: The Life of Sheikh Ansari

#### Lineage and Birth:

He is Murtada bin Muhammad Amin bin Murtada bin Shams al-Din bin Muhammad Sharif bin Ahmed bin Jamal al-Din bin Hasan bin Yusuf bin Ubaid Allah bin Qutbuddin Muhammad bin Zaid bin Abi Talib. His lineage ends with the companions of the Prophet Jabir bin Abdullah al-Ansari.<sup>(i)</sup>

#### His Birth:

The sheikh was born in the city of Dezful, south of Iran, on the eighteenth of the sacred month of Dhu al-Hijjah in the year (1214 AH), corresponding to the third day of May 1800 AD, in a house of knowledge and piety, and his birth was on the day of Ghadir, corresponding to 1214 AH.<sup>(ii)</sup>

#### His Family:

Sheikh Al-Ansari was from a noble Arab family from the Banu Khazraj of Al-Qahtaniyya without any dispute. This family was distinguished by knowledge, piety, and honor.<sup>(iii)</sup>

As for his father, Muhammad Amin, he was one of the learned scholars and promoters of the clear religion, and he was one of the notables of the city of Dezful, and he had three children: the translator, and the sheikh was a literary jurist, a fundamentalist memorizer of the Qur'an, and Sheikh Muhammad Sadiq, who was a great scholar of destiny, virtuous ascetic, and the interval between one and the last was ten years, and the sheikh the translator was more Loving and kind to his father from his two brothers.<sup>(iv)</sup>

His venerable mother, the virtuous daughter of Sheikh Yaqoub bin Ahmad Shams al-Din al-Ansari, who was one of the great scholars. (v) Sheikh al-Ansari had three wives:

First: the daughter of Sheikh Hussein Al-Ansari, his first teacher.

Second: the daughter of Mirza Murtada al-Muti'i al-Dazfuli.<sup>(vi)</sup>

Third: Her name is unknown, but she was from the people of Rasht or Isfahan.

His brother: Sheikh Mansour, about whom Jaafar Al Mahbooba said: He was a virtuous scholar and

worker. After the death of the Sheikh, he took his place in leading the congregation in their mosque in Najaf.

His second brother: Muhammad Sadiq, about whom Jaafar Al Mahbooba said: He was a virtuous scholar, pious and pious

#### His Study:

He studied at the beginning with his uncle Hussein from the faces of the scholars of his city, then he traveled with his father to Iraq when he was twenty years old, and at that time the scientific leadership was for both Sayyid Muhammad al-Mujahid and Sharif al-Ulama, and as a result of his talent and ability, Sayyid Mujahid asked his father to leave him in Karbala to study, so he stayed They took from the two professors referred to for four years, then Karbala was besieged by the soldiers of Daoud Pasha, so the scholars, students and some of the neighbors left it, and he was in the sentence to the Kadhimite scene, and he returned from it to his homeland, and he stayed there for nearly two years.<sup>(vii)</sup>

The sheikh had a strong desire to complete his studies and to travel around the country to meet scholars and imams, perhaps one of them would achieve his goal. As he was rarely impressed by the one he chose or filled his eyes with, so he returned and resided in it for a year differing with the honorable scholars, then he went out to Najaf, and it took Sheikh Musa al-Jaafari two years until he departed from him intending to visit the scene of Khorasan, passing on his way to Kashan, where he won the meeting of his teacher al-Naraqhi Sahib curricula; Which prompted him to reside there for about three years, studying and writing, until Al-Naraqhi was never tired of studying and discussing him. . And it was narrated from him: He said: I met fifty mujtahids, not one of whom was like Sheikh Murtaza.[Then he went out to Khorasan, where he stayed for several months, then returned to his country, passing through Isfahan during the days of the presidency of the two authors of readings and signs, and the first insisted on him to reside, so he refused and went out to his homeland Dezful, and he returned it. In the year 1244, he stayed for five years.<sup>(viii)</sup>

Then he went out to Iraq, and Najaf came in the year 1249, the days of the presidency of Sheikh Ali Ibn Sheikh Jaafar and the owner of the jewels, in their first heyday. The students disagreed with him, and he laid the foundation for the modern science of

fundamentals among the Shiites and his well-known method, until he ended up with the leadership of the general front in the east and west of the land after the death of the two previous sheikhs. And his books and their study became the source of knowledge for the people of knowledge. There was no one left who did not benefit from them. He used to dictate his lessons in jurisprudence and fundamentals every morning and afternoon in the Indian mosque, where its space was crowded with more than the four hundred student scholars. And that was on the eighteenth of Dhu al-Hijjah 1214 AH, coinciding with the anniversary of Eid al-Ghadir, and he began the seminary study in his hometown.

Al-Ansari traveled in the year 1232 AH to Iraq to visit Karbala and Najaf, so he settled in Najaf to complete his studies, and he was apprenticed there by a number of professors.

He practiced teaching in Najaf, and a large number of clerics were taught by him, including: Muhammad Hassan Al-Shirazi, Muhammad Kazem Al-Khorasani, Muhammad Taha Najaf, Muhammad Hussein Al-Shahristani, Hussein Al-Nouri Al-Tabarsi, Muhammad Hassan Al-Mamqani, Habibullah Al-Rashti, Ahmed Al Taan.

### His Religious Authority

When Muhammad Hassan al-Najafi, known as (the owner of the jewels), fell ill in the year 1266 AH, he ordered that all the scholars be brought to him, so everyone attended except for Murtaza al-Ansari. And when he finished praying, he appeared with him, so he made him sit beside him, and he took his hand and placed it on his heart and said: Now it is good for me to die.

Then he said to those present: This is the reference after me, then he said to the sheikh: Reduce your precautions, for Sharia is lenient and easy, and this work of the owner of the jewels was only to introduce the personality of Murtada al-Ansari and his knowledge, otherwise the reference is not amenable to the testament, so Sheikh al-Ansari took over the leadership of the Shiites and its reference in 1266 AH to 1281 A.H. <sup>(ix)</sup>

### His Writings:

The sheikh left great traces, <sup>(x)</sup> including:

1. A Treatise on Inheritance, 2. A Treatise on Taqiyyah, 3. A Treatise on Tayammum, 4. A Treatise on Five, 5. A Treatise on the Rule of Harm and Harm, 6. A Treatise on Resolving the Dead, 7. A Treatise on Compassion and Harassment, 8. A

Treatise on Tolerance In the evidences of the Sunnahs (also printed in the footnote of the most trustworthy on the letters), 9. A Treatise on the Rule of He Who Owns a Thing is the Owner of Recognizing It ( ), 10. A Treatise on the Rituals of Hajj, 11. A Commentary on Accompanying Laws, 12. A Commentary on the Survival of Servants, 13. A Commentary on the Pursuit of a Student, 14. A Treatise on the Knowledge of Men It is close in size to the scholar's summary of that science, and there is a copy of it in the library of Imam Reza, peace be upon him, and the writer completed it in the year of the Sheikh's death (1281 AH), , 15. A treatise on responding to those who say that the news is definite, and the sheikh referred to it in a treatise on conjecture from his fara'id, 18. The Book of Purity, which is a simple, printed and published inferential book. Commentaries have been commented on it, including those of our father Sheikh, Sheikh Muhammad Husayn al-Subhani, who died in the year (1392 AH). These letters contain clear evidence of the maturity of his opinion and the clarity of his mind, 19. Al-Fareed: famous for its letters, 20. The Principles of Jurisprudence: a huge volume containing sixty-two fundamental studies, and its original copy is in the treasury of Al-Mujaddid Al-Shirazi in Samarra , 21. Discourses of attention: It is his lectures on the fundamentals of jurisprudence, the section on verbal investigations, written by his student, Sheikh Abu al-Qasim bin Muhammad bin Ali Hadi al-Nuri al-Mazandarani, famous for the famous Balantari al-Faqih (1236\_1292), and it was printed and spread, 22. A treatise on diligence and imitation, it was printed in a collection of treatises on jurisprudence and fundamentalism in 1404 AH, and it is interesting that the great sheikh, although he was visually impaired and reading at nights may have been difficult for him, wrote a complete Qur'an in his honorable handwriting and he is present among his grandchildren, may God gather him with the Qur'an and his family.

### His Teachers

- (1) Sayyid Sadr al-Din al-Amili, who died in 1264 AH.
- (2) Sheikh Muhammad Saeed Al-Dainouri, who died in the year 1250 AH.
- (3) Sheikh Hussein Al-Ansari Al-Dazfuli, who died in 1253 AH.
- (4) Mulla Muhammad bin Hassan al-Mazandarani, known as Sharif al-Ulama, who died in 1245 AH.
- (5) Sheikh Musa bin Sheikh Jaafar Kashif Al-Ghita', who died in 1241 AH.
- (6) Sheikh Ali bin Sheikh Jaafar Kashif Al-Ghita', who died in 1254 AH

(7) Sheikh Muhammad Hassan, owner of the jewels, who died in 1266 AH.

(8) Al-Sayyid Muhammad Al-Mujahid, who died in the year 1245 AH.

(9) Mulla Ahmad al-Naraqī, who died in 1245 AH.

#### His Students:

After the fame of Sheikh Al-Ansari covered the horizons, he became a destination for students of knowledge, rather he was the destination of many scholars and scholars, and he was attended by nearly a thousand, even if we follow the period between the middle of the thirteenth century AH and the beginning of the fourteenth we would have found that most of the prominent scholars among the investigators were among his students. Sheikh Murtada Al-Ansari counted three hundred and fifteen brilliant students along with their translators.<sup>(xi)</sup>

#### Among his most important students:

(1) Sayyid Ahmad al-Tafreshi, who died in the year 1309 AH.

(2) Sheikh Jaafar Al Shushtari, who died in 1303 A.H.

(3) Sayyid Jaafar al-Qazwini, who died in 1316 AH.

(4) Sheikh Jaafar Kashif al-Ghita', who died in 1290 AH.

(5) Sayyid Jamal al-Din Asadabadi, who died in 1314 AH.

(6) Sheikh Muhammad Jawad Al-Hulawi bin Al-Sheikh Mashkour, who died in 1272 AH.

(7) Mirza Habibullah Al-Rashti, who died in 1312 AH.

(8) Mirza Hassan Al-Ashtiani, who died in 1319 AH.

(9) Sheikh Muhammad Hassan Al Mahbooba, who died in 1306 AH.

(10) Mujaddid Al-Shirazi Muhammad Hassan, who died in 1312 AH.

(11) Sheikh Muhammad Hassan Al-Mamaqani, who died in 1323 AH.

(12) Al-Sayyid Hussain Al-Kouh Kamri, who died in 1291 AH.

(13) Mirza Hussain Al-Nouri, who died in 1320 AH.

(14) Sheikh Muhammad Taha Najaf, who died in 1323 AH

#### What the scholars say about him:

There are many sayings about him, including:

1. His teacher, Sheikh Ahmed Al-Naraqī, who died in the year 1245 AH, said in his license: (And he was among those who diligently sought the request and expended effort in this request and won the best and

best fortune, and he was blessed with the best multiplied share of piercing gold, sound understanding, accurate investigation, graceful missteps, piety, piety, and adherence to that trustworthy handhold, noble knowledge and authentic politeness. The perfect virtuous and the working scholar. <sup>(xii)</sup>

2. Sheikh Al-Nuri Al-Tabarsi, who died in the year (1320 AH) said: (Among its effects is the sincerity of his faith and the signs of sincerity of his allegiance - that is, Jabir bin Abdullah Al-Ansari - that God Almighty favored him and brought out from his loins the victory of religion and religion, with knowledge and investigation, accuracy and asceticism, piety, worship and grace. With what those who preceded him did not reach him, and those who lag behind him do not hover around him, he devoted himself to his books, writings and investigations to all those who grew up after him from among the scholars and the honorable jurists....)

3. Sheikh Abbas al-Qummi, who died in the year 1359 AH, said: "The greatest sheikh, the most knowledgeable, the ascetic, the one of this age, and who is the one, the seal of the jurists and the mujtahids, and the most perfect of the divine among the firm scholars, who is endowed with the role of his thoughts inspired by the shadows of darkness from the nights of ignorance, and who is illuminated by the light of the suns of his sight in secret." The corners of the paths of rationality and evidence that end with the leadership of the Imamiyyah in knowledge, piety, diligence and piety, the divine scholar, and the investigator without a second.....<sup>(xiii)</sup>

Yes, He is the individual essence of which time does not produce an equal except in moment after moment, or in century after century, and His sacred secret was the center of the circle of virtues. He revived his intellect, and mortified his soul, until his majesty was subtle and his coarseness was gentle.

Sheikh Al-Subhani said: (Sheikh Al-Ansari is like a shining sun that needs no definition, and his writings, opinions, and the books and treatises that have emerged from those who observed him bear witness to this. However, this does not prevent us from examining the opinions of others among his teachers and students regarding him, and for this we quote Fragments from the sayings of the scholars regarding him) <sup>(xiv)</sup>



**His Death:**

He died at the age of sixty-eight, and that was on the eighteenth of Jumada al-Thani in the year 1281 AH in the honorable Najaf in his house in the locality of al-Huwaish, so Mulla Muhammad al-Talqani washed his pure body, and the master Ali al-Shu Shatri prayed for him. Then his funeral took place and he was buried in the room connected to the path of qiblah in the sanctuary of the Commander of the Faithful (peace be upon him), and his grave is known until now. May God be pleased with him the day he was born, the day he died, and the day he is raised alive, and God made us among those who follow his path. <sup>(xv)</sup>

**The Second Requirement: Lights on the Earnings Book:**

This book is considered one of the most accurate works of the sheikh in jurisprudence, as it has enjoyed a high and prestigious position in the Shiite academic community, and it is still one of the original sources of jurisprudence. Since the beginning of the publication of the book, Shiite scholars have written several explanations, comments, and translations on it (it may also be called the Book of Stores, and it was published in search of the most gains Forbidden issues in his full effort in encompassing its perceptions of its detailed evidence with extreme accuracy, and a generous chest in the investigation of sayings and evidence, as he has done in all his writings) <sup>(xvi)</sup>

In his book, Al-Ansari relied on the original sources, like other jurists, so the Holy Qur'an was his first source, then the hadiths of the Prophet Muhammad (PBUH), his news, and narrations about the imams of Ahl al-Bayt (peace be upon them) with the jurisprudential sources that were written by those who preceded him. A section of the book's sections is devoid of any reference to this or that jurist or to his books. <sup>(xvii)</sup>

This book contains three original parts:

**Section One: Forbidden Gains**

This section studies permissible and prohibited earnings and trades, and the Sheikh discussed each of them independently. The types of forbidden earnings that the sheikh referred to in the book are divided into five types, namely:

**The first type:** trading in things that are called in Sharia the evil eye, such as buying and selling urine, blood, semen, the dead, wild dogs and pigs, wine and alcoholic beverages; <sup>(xviii)</sup>

**The second type:** trading in things that are permissible to buy and sell in and of themselves, but they are prohibited by the intent and intent of their seller or buyer, such as buying and selling idols, crosses, gambling machines, musical instruments, gold and silver utensils, selling grapes to those who intend to exchange them for wine, and selling weapons to the enemies of religion.

**The third type:** trading in things that have no benefit or interest.

**The fourth type:** Earnings that are the same work that is forbidden and not the thing that is sold or bought, such as combing (make-up) women in a way that causes deception and confusion for the groom, combing and decorating men or women in a way that resembles the opposite sex, astrology, keeping stray books, bribery, insulting believers, witchcraft, Sorcery, deceiving others in transactions, fun and forbidden music, backbiting, gambling and.... <sup>(xix)</sup>

The fifth type: making a living on obligatory deeds, such as taking payment for performing the prayers, burying the dead, and.... <sup>(xx)</sup>

**Conclusion:** In the final chapters of the book, the author researched some issues such as the prohibition of buying and selling the Holy Qur'an, the prizes that are taken from unfair rulers, and other issues similar to these issues.

**Section Two: The Book of Sale**

There is inferential and detailed research on buying and selling in this section as well. In this section, the writer studied the important and basic issues of buying and selling in detail. The topics of this section have been presented in several studies:

The Sheikh also raised several topics, such as the condition of Arabic in the contract, submitting the buyer's request (positive) to the seller's acceptance, and several other issues and conditions.

Research on the terms of the contractors. In this topic, the writer referred to the conditions that were put forward in jurisprudence regarding the seller and the buyer. Conditions such as reaching the two parties, and seriousness in the intent when: the transaction, the choice, the ownership of the two parties over the price and the appraiser. <sup>(xxi)</sup>

A research about curious selling, in which the issue of validity and invalidity of such transactions was raised.

A detailed research on the criteria of the valuer (the thing that is intended to be bought and sold) and the price (the value of the thing).<sup>(xxii)</sup>

### Section Three: Book of Options

In this section, the writer talks about the places in which the two parties can cancel the transaction and expresses this ability by option. In his book, the sheikh discussed seven options in detail, namely the option of the council, the option of the animal, the option of unfairness, the option of delay, the option of condition, the option of seeing and the option of defect. At the end of the topic, the writer presented topics such as: the provisions of the option, the provisions of arrest and the issue of selling cash and forgetfulness.<sup>(xxiii)</sup>

### THE SECOND TOPIC: THE STRENGTH OF THE CONTRACT AND ITS CONSTITUENTS IN THE BOOK OF EARNINGS.

#### The First Requirement: Choice and Obligation and its Impact on the Transaction:

The idea of the influencing ability of the contract, or the influence of the contract, appears early in the research of the sale contract, starting from the discussion of the elements of a valid contract, with the occurrence of the sale event, and the contract of the seller and the buyer, which expresses their satisfaction, choice and freedom as conscious, adult, aware of what they are doing, From here, this contract between the seller and the buyer should have an effectual ability derived from this voluntary act of conducting the transaction.

This influence derives from choice, all obligations derive from it, foremost of which is the movement and transfer of ownership, the transfer of ownership of the sold/commodity to the buyer, the transfer of ownership of the price/cash, to the ownership of the seller, and the necessity of delivery and receipt, and this is what is observed and prevalent in Muslim markets, from The occurrence of deliberative sale / giving, in the sense that the conditions and controls accompanying this choice are complementary and formal, aiming to highlight this content that the two contracting parties have undertaken.

This type of sale contract, which derives its strength from the will of the contracting parties to carry out the sale transaction, is the one that influences the transfer and transfer and is binding on the transaction, in the view of custom at the level of circulation and application, because it expresses mental maturity. And the mental, among the dealers,

in order to achieve the interests of both parties, and that the will is what entails the legal and legal obligation.

Hence, this direct influence is the result of this rational choice, and not a direct result, as some think, of the conditional manifestations in the endorsement of this will, or the imposed obligations, such as: words and their specific considerations, or behavioral formalities in conducting the consensual formula, such as the arrangement condition, or Malls, but such things come, foremost of which is the use of words in order to express the existence of this choice, and the sale process, according to what achieves this need and desire of the dealers lurking in the minds.

But the jurists (may God Almighty have mercy on them) mentioned a number of conditions and controls that they believe must be met in the form of the contract, in order for the contract to gain the power of influence or enhance the power of enforcement, or validity, which are tantamount to the existential elements of the contract, such as: that the contract be in words, and taking into account some The particularities considered in the words, including: the condition of using the Arabic language, the condition of using the past tense form, and that there is a distinction in the words of affirmation from the words of acceptance, and that the offer takes precedence over acceptance in the form of the contract, as well as the jurists stipulated the relationship between the offer and the acceptance, as they stipulated the performance in the contract , and the congruence in content between the offer and the acceptance, and so on.

Hence, in every situation in which these conditions, rules, or elements that must be observed in the contract were violated, it was necessary to claim that the contract was out of the level of validity, loss of effect, or unnecessaryness, even though the sale is between the seller and the buyer, that they derive their strength from the will of the contracting parties. And the freedom to undertake the transaction, and it was done in one way or another through deliberation, and working with the prevailing, without careful attention to these scientific details, conditions, or restrictions, which the jurists propose as conditions for the completeness of the sale process, and the acquisition of legal legitimacy.

And from the research of the jurists in the field of the contract and its investigations and the conditions that they placed on the contracting parties

and on the substitutes, the importance of the contractual influencer appears, as confirmed by Sheikh Al-Ansari, in his first discussion on this current contract, and among the elements of the contract: With its possessive statement, the way out is the image of the ability of the two parties to directly pronounce. <sup>(xxiv)</sup>

The text shows the importance of direct utterance by the two contracting parties, in the occurrence of the sale incident in its complete, effective form. Without using the language in conducting the sale process, the two contracting parties have fallen into the danger of the transaction between them deviating from the form of the giving and deliberative sale transaction, and then the incident is lost, The status of the contract is complete, and it loses its ability to influence whether on the level of necessity in the sale, or on the level of obtaining ownership.

Sometimes, explicitly, he says in refuting a sentence of the sayings of the jurists who do not see necessity in deliberative selling: (And as for what we previously strengthened in the issue of giving: that Arab selling necessitates ownership and that the principle in ownership is necessity, it is necessary to rule by necessity in every A resource that did not establish a consensus on non-necessity, which is if the transaction is devoid of the creation of the word directly, or if the word originating with it, the transaction is one of which the consensus is not to indicate necessity, and as for other than that, the principle is necessity) . <sup>(xxv)</sup>

In this text, and at the end of the text, the sheikh announces (the obligation), as Sheikh Al-Ansari proves the obligation with the correct giving transaction, which is based on the customary deliberation in the method of understandings when conducting sales.

Then, Sheikh Al-Ansari tries to establish the theory of the influential power of the contract, which goes beyond the conditions and determinants of the words that the famous scholars say, towards setting the totality of conditions and controls in the verbal and behavioral manifestations of the contract, the conditions of the contracting parties, the conditions of the two substitutes, and the options, in the context of this influential power and its influence.

### **The Second Requirement: The Elements of a Valid Speculative Sales Contract:**

Most of the sales investigations lead their research in the elements of correct research and are based on a set of rules and controls for all jurists,

including the specific verbal use, the pronunciation in the past tense, and the introduction of offer and acceptance, with conformity to the content of the contract in order to prove the strength of the contract and its impact on the correct transaction.

Sheikh Al-Ansari expressed the nodal influence through the occurrence of contracting in the sale with words and indicated that these words are accompanied by intentions among the contracting parties. The contract does not derive its strength from words, but rather there is a hidden will that forms the intention in the behavioral nature so that the process of transmission and transition takes place among the contracting parties. : (It is assumed that what is decided in the issue of giving: The intention itself or with its disclosure other than words does not affect the transmission and transmission, so there was no verbal contract here that the understanding takes place) . <sup>(xxvi)</sup>

With this text, the Sheikh affirmed that the intention of the contracting parties is the source of power that affects the effect of the contract at the time of the sale, and this text was directed to Fakhr al-Muhaqqiqeen, the author of the book (Al-Iddh), who said that the will to achieve the correct contract lies in the words, and the intention has no interest in the occurrence of the sale. He replied: (Then it may be claimed that the contracts affecting the transfer and transfer are legal, suspensive reasons, as it was narrated about the clarification that for each contract it is necessary for the Lawgiver to put a special formula for it by induction, so it is not limited to the certainty, and it is a speech that does not reach it according to those who have observed the fatwas of scholars, please. On the numerous narrations that follow, some of them are necessary).<sup>(xxvii)</sup>

From the foregoing, we can say that Sheikh Al-Ansari establishes the process of moving to the sale process and its practice within the combination between the will and the intention of the two parties, then the transition to the linguistic formula with the use of intentions in the mind in realizing the sale event. The appraiser is sent to the buyer, and here we see that the words and linguistic usage reveal the real influence on the origin of the correct transaction.

Among these components of the contracts are:

1. Linguistic conditions.
2. The conditions of the contractual loyalty.
3. Al-Manjiziyah contract and its impact

### 1. Linguistic Conditions:

One of the conditions and controls mentioned by many jurists is the requirement to use the Arabic language when conducting the contract formula, as if the contracts concluded in other languages are valid contracts, but they are not binding on the two parties, because the Arabic language affects the effectiveness of the contract, as it is one of the conditions and obligations. that consolidate the contract and increase the ability of the Arab contract to influence, however, Sheikh Al-Ansari, in the light of the theory of the ability of the contract itself, to influence without the need for these particularities, in its capacity as an expression of the will and choice of the contracting parties, and it is sufficient to show this will in any language that the contracting parties use in daily use and with which they understand each other: Al-Din and Al-Fadil Al-Miqdad and Al-Muhaqqiq and Al-Shaheed Al-Thani: Considering Arabic in the Contract for Tradition, as in Al-Maqasid Mosque, and because it is not valid in Arabic other than the past tense, it necessitates that it is not valid in a language other than Arabic in a first way. And on both sides there is nothing hidden. And the weaker of them: the prohibition of the validity of the contract on a non-Arab, so the stronger is its validity on a non-Arab). (xxviii)

Then some jurists add another condition that overlaps with the condition of using the Arabic language, which is the condition of using the grammatical form of the past tense, in the sense of non-necessity and effective effectiveness in the contract when using the present tense in the statement of conducting the sale process between the two parties and understanding, as well as refusing to use the imperative form, at that time: (The well-known, as from more than one: the condition of the past tense, but rather in the reminder: the consensus is that it does not occur with the word "I sell you" or "buy from me"), and perhaps it is due to its frankness - the past - in the construction, since the future - in the word I sell you - is more like a promise, and an order - It is desirable for me to invoke, not affirmative, although the intent of creating in the future - the creation of the future verb - is contrary to the customary, and from the judge in Al-Kamil and Al-Mahdhab: not considering it - i.e. the past tense - and perhaps it is for the generalization of sale, trade and the generality of contracts. And what is indicated in the sale of the camel, and the milk in the udder: of the offer by the expression of the present tense, and the content of what is indicated by it in the marriage, and this - negating the condition of the past - is not devoid of strength, if the explicitness of the

present tense is imposed in the construction in a way that does not need the presumption of the denominator, so meditate) (xxix)

Thus, it becomes clear how Sheikh al-Nasari deconstructs the well-known words of the jurists in imposing such conditions, or their consensus, on these such obligations, claiming that they strengthen the credibility of the contract, or work to support the ability of contracts to influence or to be necessary, in the process of transfer and transition. Although, in fact, they are brakes that stop the work of the contract and its function that was entrusted to it, and establish the ineffectiveness of the agreement, as it is unnecessary.

There is another pattern of obligations in establishing the contract formula, and it is from the formal behavioral aspects, such as the obligation to submit the offer to acceptance during the understanding and execution of the formula, or in fact the expression of will and choice, so that the buyer precedes the seller, for example, in expressing his will to accept this sale. The jurists went to the invalidity of submitting the acceptance to the offer, and that is because of the defect in the understanding or it is contrary to what is customary. Which weakens the effective power of the contract, and denies its necessity, but Sheikh Al-Ansari (may God have mercy on him) does not see this condition as important in that, and he relies on the words of Sheikh Al-Tusi in minimizing the importance of this condition, and he quoted from Sheikh Al-Tusi lengthy paragraphs in order to prove Lack of consensus on this condition, as long as al-Tusi accepted acceptance over offer in many contracts, as it is in the marriage contract. Sheikh al-Ansar mentioned his words at length). (xxx)

From Al-Ansari's discussion of the sheikh, it becomes clear to us how to benefit from directing comparative research, and from the words of Sheikh Al-Tusi in the matter of the marriage contract. It is a more important contract than the sale contract, which benefits from the influencing power of the contract, even if it is contrary to what is customary in the deliberative understandings of contracts, when acceptance is given over the affirmative in completing such contracts, and that is based on the influencing power and ability to be based on will and choice and not on these formal matters, and so he said in conclusion to the sum of what It was stated in this denial of the condition, after a lengthy discussion it may be obtained from what we have mentioned: the validity of presenting the acceptance if it was with the wording (I bought, according to



whom you knew, rather it is apparent that the sheikh was divorced in the dispute, since he was only exposed to the prevention of convening by affirmation and affirmation, and I knew that the master was not like this in the rich, where he released Considering the offer and the acceptance, and thus guarding against its contracting by giving and by accepting the affirmation, and the same is apparent in Al-Halabi's release in Al-Kafi, where he did not mention the presentation of the offer from the conditions of the contract).<sup>(xxxii)</sup>

Sheikh Al-Ansari will go on to question these conditions proposed by scholars and jurists, and to judge them in the light of inferential logic, in which he relies on negating their words that necessitate this or that condition, by exposing the contradictions and differences that occur between these words when dealing with different contracts, as well as by denying consensus. which some claim, and they are movable groups, and they are not fully obtained and are not immune from the presence of violators, hence Sheikh Al-Ansari said at the end of this research, words in which he regrets the claim of such groups, which are rapidly becoming popular in scientific research, which diminishes their importance and weakens their cognitive credibility and value. by my life, something like this weakens the reliance on the transmitted consensus, and we have pointed out the likes of that in its sources - in the fundamentalist research.<sup>(xxxiii)</sup>

## 2. The conditions of the contractual loyalty.

One of the conditions and controls mentioned in the words of the past jurists is the condition of temporal harmony between the offer and the acceptance, so that the acceptance comes directly after the offer. They mentioned many approaches to establish this condition, including linguistic ones, such as the exception approach, and the necessity for the excluded to communicate with the excluded from it, and some of them are jurisprudential, such as: Continuity in defining the luqtah, or continuity in repeating the paragraphs of the call to prayer, and other analogies that necessitate the connection of parts of the work to each other, so that if the separation occurred between these parts, the work is invalid, and it must be resumed again, but Sheikh Al-Ansari, and in light of the influential ability to choose The contracting parties, and the possibility of expressing this will in order to complete the sale and complete the deal, does not see much importance for this condition, as it is like other controls issued by the social body, in order to consolidate the act of

selling, but in reality it impedes the performance of the work, the alignment of the interests, and does not increase the influencing ability of the complex in anything, and it invokes what the custom sees as deliberative necessities when the prevailing or deliberative sale occurs, so the sheikh presents a perceptive approach to the communicative image of the work, and that it is subject to evaluation Custom, as well as rooted in a narration that can be benefited from in getting rid of this officer, and this, of course, is in line with his method of dealing with these conditions: (I say: the bottom line is that if the order is gradual, little by little, if it has a financial form in custom, then in the order of the ruling that is attached to it in the Sharia, it is necessary to consider its communicative form. The permeation of the chapter violates its communicative identity, and therefore the contract is not valid, if the chapter is excessive in length, such as a year or more, and the discipline of that is only by custom, so it is in every matter according to it... And it appears from Sahl Al-Saadi's advanced narration, regarding the issue of offering acceptance, the permissibility of separating between offer and acceptance, with long, foreign words based on what the group understood that acceptance is the saying of that companion of her two wives, and the offer is his saying (may God bless him and his family and grant him peace) after Long chapter: I married her to you for what you know of the Qur'an -).<sup>(xxxiii)</sup>

Thus, it is clear from the text how Sheikh Al-Ansari continues his approach in minimizing the importance of considering these conditions, as is the case with the condition of the guardian in repeating the acceptance after the offer, or building the contract formula continuously, as long as it is an expression of the real influence, which is the audacity of the contracting parties. The statement of this matter will appear more with the following condition, which is permissibility in contracts.

## 3. Rewarding Contracts and their Impact:

The condition of performance in the contract, and it means that the contract takes place free of hesitation, or the contract depends on the occurrence of something or something. completeness of conditions, It is the one from which the contract derives its ability to influence the transfer and transfer to the king, and the ability to enforce, because contracts and rhythms are received from the Lawgiver, and if they are, then they are dependent on these controls and rules. From the achievement, the loyalty, the past, and other stripes of the

contracting parties and the compensation, and it is not permissible to transgress them at that time.

Thus, the matter becomes exacerbated with the implementation, and the failure to put the contract in the context of assertiveness and determinism, where the problem of non-implementation, or when the contract is suspended on something, becomes a major entry point for the possibility of the contract being invalid, or not being useful, and then it is not far from the possibility of a consensus claim by the jurists. On this matter, that is, in the circles that tend towards caring for the complexity of the conditions in contracts and caring for the controls in order to strengthen the credibility of the contract, and for this reason the Sheikh said about the implementation and the consensus on preventing it: (That it is not dependent on something with the instrument of the condition, that the two contracting parties intend for the transaction to take place in the form of the presence of that thing, not in anything else. And those who stated this - the necessity of implementation in the contract -: the sheikh and the ornaments, and the scholar and all those who were late for it, such as the two martyrs And the second investigator and others (May God Almighty sanctify their souls..... And on the preface to the rules, the claim of consensus on it, and the apparent paths in the matter of the condition of completion in the endowment are agreed upon. And it seems that there is no disagreement about it, as more than one admitted it, even if the majority did not object In this regard, and evidenced by: the content of their fatwas and the complexities of consensus regarding the requirement of performance in the agency).<sup>(xxxiv)</sup>

And with this unanimous, transmitted, and emphasis on considering this condition, and its celebration by the jurists, the work of Sheikh Al-Ansari, to reduce the importance of this condition, will become a painstaking work, and a arduous path, and therefore you see here he presented many inferential approaches that would weaken this condition He prolonged his standing and discussions, and tried to present a number of possibilities in the models of commentary and its divisions. He said: The detail of the speech is that the commented upon is either known verification, or it is probable verification, and in both ways, either its known or probable realization is in the present or the future and according to predestination, or the condition is of what is valid for the contract, such as the existence of a thing. From what is legally valid to be owned, or from what is valid to be taken away from the property, such as other than the mother of

the child, and the non-endowed, and the like, and the purchaser being from those whom it is legally appropriate to possess, as if he is not a slave, and with whom the contract is permissible if he is an adult, and either it is not like that, then the comment, either it is permitted, or it is necessary from the speech, such as his saying: (I possess you this Friday), and his saying in the loan and gift: (Take this on this day in return for it), or (Take it without consideration on Friday). Ownership is dependent on the realization of the Friday immediately or in the future, and for this reason he bears the sign at the end, and his son in the clarification, the invalidity of the sale of the heir's money inherited by the assumption that he is alive; reasoning that the contract, even if it was completed in the form, but it is pending, and the estimate: If my heir dies, I sold you It was not known to be obtained at the time of the contract, so it appears that it is not defamatory.<sup>(xxxv)</sup>

It is clear from the above text, how Sheikh Al-Ansari transfers the speech from the search in the form of the formula to the research about the forms of reality, the reality of the matter around which the commentary revolves, or what the wills of the contracting parties can relate to, and he presents many images of this reality, and at the end of the above text, he mentions The sheikh is the first of the forms that the condition of suspension may affect, and it does not harm the sale process, which is something that is known to happen when the contract is concluded, such as, if this thing is mine, then I sold it, but Sheikh Al-Ansari in this particular requirement recalls the theory of the influencing power of the contract, and that When he responded to those who said the theory of causation of the contract, and that the contract is a reason for the occurrence of the cause, and its effects must follow upon its occurrence, so suspending its effect on a condition by the contracting parties represents an act contrary to the nature of the employment of contracts to obtain their related: (And this aspect is followed in weakness: what was said: that the apparent evidence of the causation of the contract is based on its cause at the time of its occurrence, so suspending its effect on a condition of the contracting parties is contrary to that. And in it, after turning a blind eye to the lack of confinement of the evidence of validity and necessity in such as the Almighty's saying (fulfill by contracts), because the evidence for the permissibility of sale, and - evidence - that people have dominion over their money is sufficient to prove that: That the contract is a reason for the occurrence of its meaning, so it

must be fulfilled according to its meaning, so there is no signifier who fulfilled the contracts, except that they fulfilled the covenant, in that the contract is like a covenant, if it is signed in the manner of suspension, so wait for the fulfillment of the commentator on it, in the fulfillment of the commentator, it does not necessitate non-fulfillment of the covenant. The conclusion is that if what is meant by the cause is the meaning of the contract, then its non-establishment from the creation of the contract is an axiom that cannot be contradicted. Its legal effect is the non-suspended property, and if it is suspended, then its effect is the suspended property, although the property's default on the contract is very many. Although what he mentioned does not apply to the same as his saying: I sold you if you wish or if you accept, it is not necessary here that the effect of the contract be left behind.<sup>(xxxvi)</sup>

In this lengthy text, Sheikh Al-Ansari presents an approach that indicates equality between the contract and the covenant, just as the anticipation of the occurrence of the pledged in reality comes in the light of the degree of the pledge of execution or dependence on something. Its effects come quickly and are completed, but if it is dependent on something, its fulfillment comes according to the occurrence of that thing, because the theoretical effect, which is ownership at the level of proof, is a natural result of the will of the contracting parties at this theoretical level, while the accomplished ownership is at the level of proof, and practical application is a final outcome after the fulfillment of what the contract was suspended on its occurrence, and this matter is known and circulated, and therefore linking the contract and the pledge to reality and what it revolves in the minds of the contracting parties, not with what is required in the formulas and words, of the formal controls, and therefore the contract described this approach between the pledge and the contract, and linking reality with awareness, will and self-satisfaction, because the validity of both the offer and the acceptance is its meaning based in the soul of the speaker, from the beginning of the contract until that the completeness of the cause is achieved, and the meaning of the contract is fulfilled with it, and that is why he said: (The concept of the pledge and the contract..... What is considered in it is customarily the consent of each of them to what the other creates when it is created, such as the one who exposes him to the stone with bankruptcy, foolishness, or slavery if imposed or death disease, and the principle in all of this: that if the obligor was rescinded before acceptance, the offer is canceled Likewise, if the

purchaser at the time of the offer was dissatisfied, or he was one of those whose consent is not considered as the minor, then the validity of both the offer and the acceptance would be valid in the same speaker, from the beginning of the contract until the full reason is achieved, and with it the meaning of the contract is completed, and if it is not If this meaning is present in the same one of them, or it has risen and its establishment is not considered, the meaning of the contract has not been fulfilled.<sup>(xxxvii)</sup>

Therefore, Sheikh Al-Ansari ended up weakening these conditions one after the other, and he emphasized in many conclusions that it is not possible to help support these controls, as in the condition of achievement:(In sum, proving this condition in contracts with the generality of their evidence, and the occurrence of many of them in custom on the basis of commentary without consensus, verified or transmitted: a problem) <sup>(xxxviii)</sup>

In this text, the sheikh (may God Almighty have mercy on him) seeks to return, or to return to citing the generality of the evidence of contracts and the obligation to enforce contracts, to emphasize the influencing power of the contract, since these evidences were received and they look at the lived reality, and not at the deliberative or formal formulas. Hence, it has no jurisdiction over the completed contract, so it includes the suspended ones, especially after the contracts were mentioned in the obstructions and the Shari'a. In fact, the influencing power of the contract is the outcome of the rational initiation of the transaction by the dealers, and their intent for the occurrence of the sale event for the benefit of the two parties, then the general comes from the legislator in order to sign this deal and the obligation, and the obligation to fulfill.

## RESULTS :

At the end of this research on the discussions and the weakening of the conditions or controls that had been imposed on the contract, as they are the elements of a valid, binding contract, Sheikh Al-Ansari arrives at the discussion of the repercussions of this disagreement between the two theories on the judicial position, and the settlement of litigations, when the fallout occurs from one or both parties. Then it is necessary to resort to the two theories: And they are, as we mentioned, the first theory that considers that the power of contracts and their influencing capabilities are ramified on these conditions and controls, linguistic and formal, and their priority over the influence of the world of mind,

mind and consciousness, and the second theory, the mental theory, which believes that contracts derive their influencing ability from the will, intent and intent of the contracting parties, and from Then you see a complete priority for the world of mind, consciousness and reason over words, conditions and formal controls, and in light of this it is possible to decide on the claims of the disputants, and then it is necessary to take both theories according to tradition or diligence.

From this, the problematic of considering these conditions, brakes, obstacles or controls becomes clear, as they turn into sources of sabotage of the contract and invalidity, in the event of disagreements, and they corrupt the phrase of those who see them as conditions, and are not a source for enforcing the contract, validity and necessity, and this is a hidden indication of the importance of Sheikh Ansari's theory, especially in the field Claims, and the separation of disputes, they prevent such differences in advance, as a result of the harmony that it assumes in terms of consistency between will, acceptance and satisfaction in the hearts of the contracting parties, and in realizing the benefits of the contract in reality.

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