

## The Effect of The Validity of The Contract According to Taj Al-Din Al-Subki

By

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### Research Summary

Taj al-Din al-Subki, may God have mercy on him, authored his book, JAM 'AL-JAWAMI' (USUL AL-FIQH), to be a concise and inclusive of the issues of this science, by which students can dispense with anything else, he made a distinguished effort in it, which was witnessed by the great scholars of his time, yet it is not without criticism, or objection to some of its issues, especially in the field of defining jurisprudential terms; As it is required in the definition that it be inclusive of the descriptions of the defined, preventing others from entering it, and what came out of this principle is Al-Subki's definition of the term (validity), where Al-Aizari objected to it that it is neither comprehensive nor prevented, Because validity means the effects on it, and we find in the definition of Al-Subki has Some traces were left behind with the validity of the contracts, and on the other hand, some traces were found with the invalidity of the contracts, and this constitutes a violation of the definition from the viewpoint of Al-Aizari, so discussions took place about it, and the answers came to clarify its truth, so I collected in this research what is related to this issue of sayings and evidence, In this research there was a clear treatment of this issue after presenting the definition, the reference to it, the answer and the discussion, and citing the words of the investigating scholars, then giving preference to the correct saying.

**Keywords:** validity of the contract, USUL AL-FIQH, Al-Subki, Al-Aizari

### Introduction

I praise You, my Allah, for Your blessings, and I thank You for Your greater bounties, and I bear witness that there is no god but You, you alone, without a partner, and I bear witness that our Prophet Muhammad is Your servant and Your Messenger, may God's prayers and peace be upon him and his family and companions, and may the peace and blessings of Allah be upon him more.

Then...

I have seen a book full of jurisprudential objections and scholarly discussions, which its author singled out to collect the objections to \_ JAM 'AL-JAWAMI' (USUL AL-FIQH)\_ , and to discuss the answers that al-Subki answered to those objections, he called it \_ Al-Buruq Al-Lawamie in what was reported on the JAM 'AL-JAWAMI'\_ in which he discussed several issues; So he questioned, objected and discussed, and the largest share of jurisprudential issues was taken, so the choice fell on studying them, leaving what was related to theology, logic, or grammar, which had no direct relation to the principles of jurisprudence, or the elicited of Sharia rulings.

Among these issues in which the disagreement occurred between them, the definition of (validity), and the definition of the effect on it, and this research is held to clarify the concept of (validity) and its reality according to Al-Subki and to determine the concept of the effect on it, and what Al-Eizari mentioned in terms of refutation and objection.

### **Research importance:**

validity is a term circulated by scholars, and a concept widely used by scholars. Every act of worship or transaction is not without being described as (validity or invalidity), so it is the duty of those who work with (USUL AL-FIQH) to visualize them, realize their reality, and know the effects of correct worship and correct transactions; For that, it had to be researched and studied.

### **Research methodology:**

In my research, I have taken an analytical approach based on the presentation of the objection, its analysis, and then the discussion of the answer, conclusion, and preponderance.

#### ***Research plan***

The research plan required divided into two sections, and each section included requirements.

#### ***The first section***

Introducing the book (JAM 'AL-JAWAMI' and Al-Buruq Al-Lawamie), which has two requirements.

#### ***The first requirement***

A brief definition of a book; JAM 'AL-JAWAMI' (USUL AL-FIQH)

#### ***The second requirement***

A brief definition of a book; Al-Buruq Al-Lawamie in what was reported on the JAM 'AL-JAWAMI'.

#### ***The second section***

Explanation of the validity at the Scientists and scholars and the consequences thereof. It has three requirements.

#### ***The first requirement***

The presentation of the objection and Al-Subki's answer to it.

#### ***The second requirement***

Determining the reality of the objection, and discussing the answer.

#### ***The third requirement***

A summary of the issue and preponderance.

Then the conclusion and the most important results, then a list of sources and references

#### ***The first section***

Introducing the book (JAM 'AL-JAWAMI' and Al-Buruq Al-Lawamie), which has two

requirements.

### *The first requirement*

#### *Defining \_JAM 'AL-JAWAMI' (USUL AL-FIQH) \_*

When Al-Buruq Al-Lawamie in what was reported on the JAM 'AL-JAWAMI' by Al-Eizari was closely linked to Al-Subki's book, JAM 'AL-JAWAMI' (USUL AL-FIQH); As it is in fact objections to the phrases of JAM 'AL-JAWAMI', and questions with the issues and subjects contained in it, it became necessary to introduce the two books, so that the reader could know the origin of which Al-Aizari mentioned his objection.

JAM 'AL-JAWAMI' (USUL AL-FIQH); Taj al-Din al-Subki is a concise book on the USUL AL-FIQH, well-known among scholars, accurate in terms, eloquence in expression, collected from about one hundred books on USUL AL-FIQH (Al-Attar, 1997), with an investigation, accuracy, and abbreviation, and It includes a summary of what is in its two books: (RAFE ALHAJIBI) and (AL-IBHAJ FI SHARH AL-MINHAIJ) with scientific additions, and superior eloquence in the abbreviation, he arranged it on prefaces and seven books that have the classification cycle in the science of USUL AL-FIQH (Al-Subki T. A.-D., 2003).

The best person who describes JAM 'AL-JAWAMI' and shows its reality; is its author; He says: "The one who comes from the science of the USUL, with the definitive rules, the extent of the knowledge of the two originals, the extent of those who are serious and well-rounded, coming from about a hundred compiled books that narrate and pass on; surrounding the summary of what is in my commentary on (AL-MUKHTASAR) and (AL-MINHAIJ), with many more" (Al-Subki T. A.-D., 2003).

### *The second requirement*

Introducing AL-BURUQ AL-LAWAMIE in what was reported on the JAM 'AL-JAWAMI'.

When \_JAM 'AL-JAWAMI' (USUL AL-FIQH) \_ reached fame and spread, and scholars paid attention to it, the people of seriousness and diligence decided to preserve, study and teach it, one of those people was: Shams Al-Din Al-Aizari, he read the book, put on it questions to inquire about, and sent these questions to Taj Al-Din Al-Subki, the owner of JAM 'AL-JAWAMI'; He asks him to answer them, remove confusion, clarify what is unclear, and clarify what is problematic; He called it (AL-BURUQ AL-LAWAMIE in what was reported on the JAM 'AL-JAWAMI'), so Al-Subki gave "answers", not all of which were accepted and delivered, as Al-Eizari wanted; roll up his forearm; The motives of discussion and response, discussion and refutation sparked in it, so he discussed the answers in a heated scientific debate, and concluded from them in a huge book called (AL-BURUQ AL-LAWAMIE in what was reported on the JAM 'AL-JAWAMI').

Al-Eizari said: "He was sent AL-BURUQ to his compiler, while he was in the midst of his mandate, so he praised him and answered him" (Al-Sakhawi, 2008) (Al-Suyuti, 2002) (Al-Shawkani, 1999).

And he said in the introduction: "And when it reached him, and the veil was lifted from her, he was blessed with answers that were sometimes clear and sometimes hidden, in a word

that spread beyond the understandings of the beginner, and here I am mentioning the objections and answers” (Al-Eizari, 2021).

When Al-Eizari saw that some of those answers were beyond understanding, and were beyond comprehension, he proceeded to discuss them and clarify their truths.

And he said at the end of the book: “This is the last thing he concluded from clearing the objections, and their answers by way of summary, not understanding and comprehensiveness of rightness” (Al-Eizari, 2021).

### ***The second section***

Validity and its effect between Taj al-Din al-Subki and al-Eizari.

### ***The first requirement***

The concept of validity according to Al-Subki and the objection to it.

Before proceeding to determine the effect on validity, it is necessary to clarify the concept of validity, and its reality in the tradition of the Scientists, and then proceed to present the objection, discuss and answer and what is related to them.

So, validity in the language means “disease will go away, and innocence from every flaw and doubt, validated validates validity” (Al-Farahidi, 2003). It is "safety and non-disruption" (Al-Shanqiti, 2001).

According to the Scientists, it has more than one meaning, as it is diverse to validity in acts of worship, and validity in contracts and transactions, and also has a concept among the theologians, and a concept according to the scholars and Scientists (Al-Mardawi A. S., 2000).

idiomatically it is: “the concurrence of the two-faced act in the occurrence of the Shariah” (Al-Subki T. A.-D., 2003) (Al-Ansari, 2006) (Al-Hasani, 1986).

Al-Mardawi said: “Most of the Scientists single out each one of the validity in the acts of worship, and the validity in the transactions, each separately, because it is not possible to collect the different facts in one definition (Al-Isfahani, 1986), but that is specific as if the truth is wanted to be distinguished from the other by the subjective ones, and as for others, it is permissible, so we combined them between them. In one definition, for his truthfulness on both of them (Al-Mardawi A. S., 2000).

Al-Subki said: “With the validity of the contract, you will arrange its effect” (Al-Subki T. A.-D., 2003).

Al-Aizari cited this phrase, as it was too short to provide a definition. It is an indication of the comprehensiveness of the effect that resulted from the validity of the contract, and it is known that some of the contracts are valid, yet their effect is left behind, or some of their effects; Therefore, al-Subki’s statement fell short of allocating some effects; Therefore, the objection requirement should come with a comprehensive prohibitive term (Al-Zarkashi, 1998).

Al-Aizari said: “And it is said to him: to prevent him from being expelled by selling before taking possession of it (Al-Aini, 2000), because it is valid, and it does not entail disposition at all, and its effect is not absolute disposition” (Al-Eizari, 2021).

### ***The second requirement***

Determining the reality of the objection and discussing the answer

The reality of objection and the source of the confusion lies in defining what is meant by (validity in the contract), and then specifying the intended use of this term for each one of them, this is sufficient to form a clear picture of the issue, a correct perception of the objection, awareness of the points of view, and the conclusion of the dispute according to the rules and principles; The course of what Al-Aizari mentioned on the work is due to the verification of validity in some contracts, but the effect has been left behind. On the other hand, some contracts are invalid but have some effects. Then he decided that the effect of the sale is the ability to dispose of the thing sold; Because it is one of the effects of the contract.

His objection included two things:

#### ***The first***

The validity of the contract, and left behind of some of its effects; Like selling before taking possession of it (Al-Tahawi, 1996).

#### ***The second***

The invalidity of the contract and some effects are caused by it (Al-Ramli, 2009); As in the invalid khula, which results in Baynunah, and invalid writing, it results in emancipation, and this is one of the effects of the contract (Al-Eizari, 2021).

Al-Subki paved the way for his answer to the objection with an introduction, in which he said: "The effect is arranged as a deferred MUBTADA in the utterance, and the validity of the contract is JAR WAMAJRUR in the subject of the ALKHABAR, related to an object or settled, it was presented obligatory, because the pronoun returns from the MUBTADA (Al-Aqili, 1980), which is a distraction in its impact on some of ALKHABAR, And it is the validity of the contract, so the pronoun of MUBTADA on some of ALKHABAR, he is given the permission to present ALKHABAR according to the Almighty's saying: {Or are there locks upon their hearts? (Quran), If it had been presented, the pronoun would refer to a later in word and rank. I knew the secret of presenting ALKHABAR in our saying: (And the validity of the contract). And the meaning: is that taking place of the effect is occurring by the validity of the contract, and nothing else. This is better than the definition of those who define the validity of contracts depending on its effects" (Al-Subki T. A.-D., 1999).

So Al-Aizari built his discussions of the answer on that premise, then ruled that the purpose would not be achieved, and denied its meaning, which Al-Subki meant, as he said: "It is not said: This is only given to the one who says: "The validity of the contract results in its effect" by making the validity is MUBTADA and the resulting effect is ALKHABAR, as he understood by Al-Baydawi's statement, where he said: " validity follows the purpose" (Al-Baydawi, 2008).

so by adding the B letter, is refused; Because the concept of causation; To requires restriction in ALKHABAR (Al-Taftazani, 2000); Because we say: What was said about causation is closed; Because it is like the concept of the adjective that indicates the negation of the ruling except for the aforementioned (Al-Eizari, 2021).



This guidance by Al-Aizari is explicit in rejecting Al-Subki's words, and his dissatisfaction with referring to MANE ALMAWANIE book, as will be shown.

Al-Aizari said: "He answered about: (The validity of the contract results in its effect) by referring to MANE ALMAWANIE book (Al-Subki T. A.-D., 1999), and he suggested that the B letter has increased it to precaution against this objection, and it is not rejected, and "this is as much as we negated in the entry; That the causation is in the place of the concept of the attribute, and as for the reference, there is no answer in it" (Al-Eizari, 2021).

The truth is that this introduction mentioned by Al-Aizari and its discussion, was not the focus of the answer about this objection, but the answer of the revenue came after it, which is to define the meaning of his saying (the consequent effect) on the validity of the contract, and here I record my astonishment and amazement at Al-Eizari's action, as I find that he has deviated from the point of the research And he twisted the necks of speech, so he risked denying that the answer was given by Al-Subki's words in many of the objection, and in this in particular, even though it is extremely clear, appropriate and verifiable.

Al-Subki said: "The answer to this is that (action and benefit) is not the effect of the contract, rather its effect is the acquisition of (ownership), which results in the permissibility of benefit on his condition, and one of his conditions is that it is not an option, not every owner benefits, don't you see that he does not have intercourse with his female concubines as long as menstruation? (Al-Mawardi, 1994) (Al-Kasani, 1986) Otherwise, it is always necessary, and the mortgaged is not benefited, etc., and none of that is detrimental to his ownership.

then; The effect: the ownership, not the benefit and the like. This answer is correct, especially according to the opinion of the one who makes the ownership at the time of the option for the buyer, and he does not pay him who says that it is suspended; Because with the expiration of the option, it becomes clear that the owner was also his, so the effect was taking place, but it did not appear to the impediment, which is the option, nor that it is the ownership of the seller; Because the effect and this situation is the holding of the sale as a reason for obtaining the ownership If the preventing option expires, it occurs" (Al-Subki T. A.-D., 1999) (Al-Iraqi, 2004).

What answer does Al-Aizari want after this answer? To rush what he has mentioned, and what investigation can be reached by those who want to investigate the issues; There is no doubt that al-Subki's answer is sufficient for what he intended, as he clarified in an explicit and clear expression what he meant by (effect) is the ownership, not the absolute benefit that al-Aizari meant.

This understanding was strengthened by more than one who worked in JAM 'AL-JAWAMI', and he acknowledged the validity of the phrase al-Subki and its fulfillment of the intended meaning.

The Iraqi Wali al-Din said: "The meaning is that taking place of the effects, which is what the contract is legislated for, such as taking action of the sale and enjoying the marriage, is the reality of the validity of the contract and not otherwise, and this is better than defining the validity of the contract by the taking place of effect (Al-Zarkashi, 1998), the taking place of effect is not the same as validity, Rather, it arises from it, although if he expressed this phrase: (the validity of the contract results in the taking place of effect) (Al-Mardawi A. A.-D.-H., 2013), he would have mentioned that the effect may lag, such as the sale before possession of

it, or during the time of the option, so the expression of the author was that (the validity of the contract results in the effect) (Al-Subki T. A.-D., 2003) more suited, that is, the taking place of effect, if it is found, then it is the result of validity, and it is not necessary from it that validity is accompanied by the taking place of effect” (Al-Iraqi, 2004) (Al-Mardawi A. S., 2000).

Al-Zarkashi was not satisfied with stating the correctness of the phrase of the author which he mentioned in JAM 'AL-JAWAMI' (Al-Subki T. A.-D., 2003) ,and its safety from objection, but he also indicated its preponderance over other phrases.

He said: “There is a difference between our saying: validity results in the taking place of effect, and the taking place of effect results from validity, for the first requires that where it is found, it results in the effect, and on this, the objection comes with the sale before the possession, or during the time of the option, because it is valid, and it has no effect. The buyer does not have the right to take action with the possibility of separating from him, for the effect is not benefit, but rather the acquisition of ownership that results in the permissibility of benefit, and the second does not require that, but rather that the effect if found its origin from the validity, and its absence does not necessitate the absence of validity, and with its safety from objection” (Al-Zarkashi, 1998) (Al-Hanafi M. M., 1983).

Al-Attar answered what Al-Aizari related to the fact that the B letter is causal, and Al-Subki’s phrase indicated a limitation, which necessitated his insufficient to allocate some contracts and take them out of the rule of validity, and his argument is that the effect is not taking place, he said: "His saying (and the validity of the contract) Al-Amidi explained the validity of the contract in the taking place of its effect (Al-Amidi, 2001), and he was followed by others, such as Ibn al-Hajeb, al-Adud and others from the commentators of AL-MUKHTASAR (Al-Isfahani, 1986) (Al-Hanafi M. M., 2005), and the author cautioned that this is leniency, and that the investigation is that the validity of the contract is a description of the contract, which is its approval of the Sharia, If that description is found, the effect is taking place, for it is the origin of the taking place of the effect (Al-Subki T. A.-D., 1999), as the commentator said, is that the validity is the source of the effect, so it appeared that his saying (and the validity of the contract) is an appealing statement, and not from gossip (Al-Subki T. A.-D., 2003), and it became clear the secret of the different style” (Al-Attar, 1997) (Al-Sinaawy, 1928).

This guidance included the refutation of the objection, the desirability of the answer, and the good reasoning, with the utmost clarity, especially as the investigators from the imams agreed in this regard, and among them is Imam Al-Amidi when he said: “Whoever interprets the validity of the contract with the permission of the legislator to benefit from the contracted upon, then he is invalid; The sale on the condition of the option is valid unanimously, even if the permission of the legislator to benefit from the estimation of the annulment is not achieved before the expiry of the period.” (Al-Amidi, 2001).

Taqi Al-Din Al-Subki said: “validity is not the taking place of the effect, but rather it being such that the effect is consequent on it, and the meaning of that is that it occurs in a specific way, and this is a rational matter, but it’s called legitimate, given that the Sharia has an entrance” (Al-Subki & Abdel-Wahhab, 1995).

***The third requirement: a summary of the issue and preponderant.***

It seems to me that after the presentation of the objection and the discussion that was

associated with it, Al-Eizari has moved away from the meaning and reality of the objection. As the presumed is to specify the meaning intended by the word (effect), which was mentioned in the definition of validity; Because knowing its meaning for everyone who uses it is enough to clarify the expression, and memorize the meaning, so that the appropriate detail of the reality of the answer and the refutation of the objection will be obtained.

It became clear from the foregoing that what is meant by the validity of the contract according to Al-Eizari is an absolute benefit, while we find Al-Subki has carried (the effect) to a different meaning; He went on to state that the legal effect of the sale contract is the ownership, not the absolute benefit, so it became clear that the intent of each of them is different from the intent of the other, and thus the wise legislator did not put the contract except to benefit his purpose after his ruling was proven, so the benefit of the sale is contingent on the fact that it has become The ownership of the buyer, which Al-Subki calls validity (Al-Hanbali, 1999).

Accordingly, it is more likely for me, which leaves no way to hesitate, for the correctness of Al-Subki's statement, and his realization of the issue, in a strong manner, accurate understanding, and a short phrase, he precisely specified the intended meaning, from his saying (the effect of the contract), where he said: "action and benefit is not the effect of the contract, but rather its effect is the acquisition of ownership, which results in the permissibility of usufruct on its condition" (Al-Subki T. A.-D., 1999).

## **Conclusion and the most important results**

1. It is no secret that Al-Subki wrote his book after reviewing more than a hundred works on USUL AL-FIQH. His imagination was filled with the sayings of the imams in this regard, so he remembers their sayings and distinguished their doctrines. Then he formulated his style, strength of knowledge, and ability to investigate his book full of investigation. There is no coast to its extent, and this justifies the keen interest of scholars in it throughout the ages.
2. stating and objections are important in enriching the book and collecting its benefits. They were a matter of pride and appreciation by scholars. They used to collect everything that was problematic in their books, and they would answer about it from that what Imam al-Subki did in his (MANAE ALMAWANIE to JAME ALJAWAMIE).
3. Al-Aizari's scrutiny and his raising of the subtleties of issues in \_ JAME ALJAWAMIE\_ is evidence of his intense care, and his great interest in extracting the benefits and pearls contained in the phrases, which can only be extracted with solid knowledge, extensive knowledge, long meditation, and careful consideration.
4. Al-Subki's statement and his answer regarding determining the effect on validity were more accurate and more correct than Al-Eizari's opinion, excluding some individuals from the rule does not invalidate its generality.

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