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Conditional Clauses in the Language of Donation Contracts: A Comparative Study in Islamic Jurisprudence

Hmood S. Albheran^{1*} , *Mofareh S. Albuhayran*² , *Hammad Alshammari*³ 

¹ Department of Sahriiaa, College of Shariaa & Law, Jouf University, Sakaka Aljouf 72311, Saudi Arabia

² Department of Arabic Language, College of Arts, Jouf University, Sakaka Aljouf 6921, Saudi Arabia

³ Department of English, College of Arts, Jouf University, Sakaka Aljouf 72344, Saudi Arabia

ABSTRACT

This study investigates the concept of conditional clauses in contracts, particularly focusing on contracts of donation, which involve the free transfer of ownership by means such as gifts, charitable giving, and wills. This study emphasizes the importance of this topic considering its frequent occurrence in jurisprudential discussions, relevance to contractual stipulations, and practical implications for societal transactions. The study uses an inductive approach to analyze juristic opinion and a deductive method to derive rulings and their subsequent impact on contracts. Findings reveal divergent views among Islamic jurists regarding the permissibility of conditional clauses in donation contracts, particularly those executed during the donor's lifetime. While the Hanafi, Shafi'i, and Hanbali schools largely prohibit such conditions, the Maliki school, along with Ibn Taymiyyah and Ibn al-Qayyim, do permit them under certain circumstances. This study concludes that conditional clauses are generally permissible in donation contracts due to the contracts' altruistic nature, thereby distinguishing them from purely compensatory contracts. This conclusion emphasizes the importance of flexibility and leniency in charitable dealings. Future studies could further explore the practical applications of conditional clauses in donation contracts across different legal systems to assess their compatibility with contemporary legal frameworks. Additionally, empirical research could examine how such conditions impact donor behavior and recipient obligations in various cultural and economic contexts. Comparative studies analyzing the enforcement of these clauses in Islamic and

*CORRESPONDING AUTHOR:

Hmood S. Albheran, Department of Sahriiaa, College of Shariaa & Law, Jouf University, Sakaka Aljouf 72311, Saudi Arabia;
Email: hsbheran@ju.edu.sa

ARTICLE INFO

Received: 6 January 2025 | Revised: 21 February 2025 | Accepted: 4 March 2025 | Published Online: 5 March 2025
DOI: <https://doi.org/10.30564/fls.v7i3.8331>

CITATION

Albheran, H.S., Albuhayran, M.S., Alshammari, H., 2025. Conditional Clauses in the Language of Donation Contracts: A Comparative Study in Islamic Jurisprudence. *Forum for Linguistic Studies*. 7(3): 388–396. DOI: <https://doi.org/10.30564/fls.v7i3.8331>

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non-Islamic jurisdictions could provide valuable insights into their broader implications for contract law.

Keywords: Contracts of Donation; Conditional Clauses; Islamic Jurisprudence; Charitable Transactions; Contractual Stipulations

1. Introduction

Contracts hold a vital position in Islamic law due to their integral role in regulating human interactions and transactions. Scholars have devoted considerable attention to analyzing various aspects of contracts in their writing to ensure compliance with the principles of Islamic jurisprudence. This study focuses on a specific aspect of contracts, namely, the inclusion of conditional clauses, particularly in donation contracts. The complexity of this topic arises from the diversity and abundance of contracts and their respective rules, making it a significant area of study. The study of conditional clauses in contracts is crucial for several reasons. First, it pertains to the formulation of contracts, which is recognized unanimously as a fundamental pillar of all types of agreements. Furthermore, scholars have extensively discussed this issue in relation to both financial and non-financial agreements. Additionally, comprehending the legal rulings on conditional clauses is crucial for practical implementation, as they commonly arise in everyday transactions^[1].

The primary objectives of this study are to define conditional clauses and identify their various forms. It aims to differentiate conditional clauses from similar concepts to avoid confusion and examine the rulings on conditional clauses and their effects on contracts. This study adopts a twofold methodology: the inductive method, by surveying juristic discussions, and the deductive method, by analyzing the rulings and their implications for contracts. The study is divided into the following sections. The introduction discusses the topic, its significance, objectives, and methodology. The preliminary section comprises four subsections: the definition of conditional clauses, essential elements of a contract, a comparison of unrestricted and conditional contracts, and forms of conditional clauses with their attendant validity criteria. The analysis of donation contracts focuses on their definition, looking at examples such as gifts, charity, and wills, as well as juristic opinion on conditional clauses during the donor's life and posthumously. Finally, the conclusion summarizes the findings and provides a comparative analysis

of juristic views.

Donation contracts refer to agreements in which one party grants ownership to another without receiving any compensation. Common examples include gifts, charitable donations, and wills. Scholars have extensively examined the legitimacy of incorporating conditional clauses within such contracts^[2]. Scholars agree unanimously on the validity of conditional clauses in donation contracts whose effects occur after the donor's death, such as those found in wills^[2]. However, they differ regarding donation contracts with conditions extant during the donor's lifetime. Two main opinions emerge. The first perspective, endorsed by the Hanafi^[2], Shafi'i^[3], and Hanbali schools^[4], opposes the inclusion of conditional clauses in donation contracts. Their argument is based on the premise that such conditions create uncertainty and risk in the transfer of ownership, making them comparable to compensatory contracts^[5]. Conversely, the second perspective, upheld by the Maliki school^[6] and scholars like Ibn Taymiyyah and Ibn al-Qayyim^[7, 8], supports the permissibility of conditional clauses. They contend that donation contracts are purely benevolent in nature and, therefore, should not be bound by the same limitations as compensatory agreements.

This study underscores the distinction between donation and compensatory contracts, highlighting the permissibility of leniency in charitable agreements. It concludes that conditional clauses in donation contracts align with the principles of Islamic jurisprudence, thereby promoting fairness and flexibility in societal dealings^[6].

Despite the extensive discussion on conditional clauses in donation contracts within Islamic jurisprudence, there is a notable research gap in reconciling the divergent juristic views with contemporary contractual practices. While previous studies have outlined the differing opinions of the major Islamic legal schools, there remains limited exploration of how these perspectives align with modern legal systems and financial regulations. Given the increasing complexity of charitable transactions and the evolving nature of contractual agreements, there is a need for a systematic analysis

that bridges between classical Islamic rulings and contemporary legal frameworks. Furthermore, the existing literature focuses primarily on theoretical juristic debates without sufficiently addressing the practical implications of conditional clauses in present-day donation contracts, particularly in those contexts where legal pluralism interacts with Shariah principles.

Additionally, while this study emphasizes the permissibility of conditional clauses in donation contracts based on the contracts' altruistic nature, it does not sufficiently examine the specific conditions that may either enhance or undermine the donor's intent and the recipient's rights. The nuanced distinction between valid and invalid conditions remains an area requiring closer scrutiny, particularly in cases where conditional stipulations create potential conflicts with fundamental Shariah objectives such as certainty, fairness, and public benefit. Future research should investigate the extent to which conditional clauses can be standardized to ensure both juristic acceptance and practical enforceability, particularly in cross-jurisdictional settings. Moreover, empirical studies analyzing real-world applications of such contracts in contemporary financial institutions, charitable organizations, and legal systems could provide valuable insights into the effectiveness of different regulatory approaches.

2. Background

2.1. Definition and Nature of Conditional Clauses

Conditional clauses are provisions within a contract that make its execution or the fulfillment of its obligations contingent upon the occurrence of a specific event or condition. In the context of Islamic jurisprudence, conditional clauses ("ta'liq") are particularly significant owing to their implications for both contract validity and enforceability. These clauses are seen as mechanisms to safeguard the interests of the contracting parties while ensuring compliance with Shariah principles. A condition, as defined by jurists, is a stipulation that either postpones the effect of a contract or modifies its application. Examples of such conditions include stipulating a delay in transferring ownership, linking a contract's fulfillment to a future event, or specifying additional terms for mutual benefit. Understanding the nature and scope of conditional clauses is crucial for distinguishing

permissible conditions from those that invalidate contracts^[9].

Contracts in Islamic jurisprudence consist of three essential elements: 1) Offer and Acceptance (Sigha): the explicit agreement between the contracting parties, forming the foundational expression of their intent; 2) Contracting Parties (Aqidan): the individuals or entities entering into the agreement, who must have legal capacity and give mutual consent; and 3) Subject Matter (Ma'qood 'Alaih): the object of the contract, which must be lawful, specific, and capable of being delivered. Conditional clauses primarily affect the first element, as they are integral to the contract's formulation. Jurists emphasize that any condition attached to the contract must not contravene Shariah principles or undermine the purpose of the contract^[10].

2.2. Comparison of Unrestricted and Conditional Contracts

Contracts in Islamic law can be classified into two broad categories: unrestricted contracts and conditional contracts. Unrestricted contracts are straightforward agreements without any stipulations affecting their execution or validity. Conditional contracts, however, include provisions that may modify the timing, application, or obligations of the agreement.

For instance, a donation contract without conditions, such as gifting a piece of property, involves an immediate transfer of ownership. In contrast, a conditional donation contract might stipulate that ownership transfer occurs only after a specific event, such as the recipient's marriage or graduation^[11]. The inclusion of conditions introduces complexity into contracts, necessitating careful examination to ensure they align with Islamic legal principles. This distinction is vital to determine the permissibility and enforceability of conditional clauses in donation contracts.

2.3. Forms of Conditional Clauses and Their Validity Criteria

Conditional clauses can take various forms, each with distinct implications for the validity and implementation of the contract. The primary types include

- (1) Suspensive conditions: These clauses delay the contract's effects until a specific condition is fulfilled. For example, a gift may be contingent upon the recipient's

completion of a specified task^[2].

- (2) **Resolutive conditions:** These clauses terminate the contract upon the occurrence of a stipulated event. For instance, a donation may be revoked if the recipient fails to meet an agreed-upon condition^[5].
- (3) **Customary conditions:** These clauses align with prevailing customs and practices, provided they do not contradict Shariah principles^[10].
- (4) **Prohibited conditions:** These clauses contravene Islamic law or undermine the contract's objectives, such as stipulating the use of unlawful goods or engaging in usurious practices^[12].

The validity of a conditional clause depends on its compliance with Shariah guidelines. Conditions must be clear, lawful, and directly related to the contract's subject matter. Moreover, they should not result in undue harm or injustice to either party^[13]. Understanding the concept of conditional clauses in donation contracts is essential for their application in Islamic jurisprudence. By defining these clauses, examining their role within the essential elements of a contract, and distinguishing between permissible and impermissible conditions, this section provides a comprehensive framework for analyzing their validity. The principles outlined here serve as a foundation for the subsequent exploration of juristic opinions and practical applications in the following sections.

3. Methodology

This section explores the perspectives of Islamic jurists regarding the permissibility and application of conditional clauses in donation contracts. These views have been debated extensively due to the complex nature of conditions and their implications for contractual obligations. The section examines the key opinions of the four major Sunni schools of thought (Hanafi, Maliki, Shafi'i, and Hanbali), with contributions from prominent scholars such as Ibn Taymiyyah and Ibn al-Qayyim. The Hanafi school generally prohibits conditional clauses in donation contracts, particularly those executed during the donor's lifetime. It argues that conditions introduce uncertainty and risk, which are impermissible in ownership transfers. However, exceptions are made for conditions that align with custom or facilitate contract fulfillment. For instance, a condition allowing a donor to revoke a gift if certain criteria are not met may be deemed

acceptable^[14]. The Maliki school adopts a more lenient approach, permitting conditional clauses in donation contracts, provided they do not contradict Shariah principles or cause harm. It emphasizes the inherent benevolence of donation contracts, arguing that conditions can enhance their flexibility and practicality. For example, a donor may stipulate that a gift becomes effective only upon the recipient's marriage or reaching a certain age^[11].

3.1. Shafi'i School

The Shafi'i school generally prohibits conditional clauses in donation contracts, citing the potential for ambiguity and disputes. However, it recognizes the permissibility of conditions in specific contexts, such as wills or endowments, where the conditions serve to protect the donor's intentions. For instance, a condition that limits the use of donated property for charitable purposes is considered valid^[15]. The Hanbali school adopts a stricter stance, prohibiting most conditional clauses in donation contracts during the donor's lifetime. It argues that antecedent conditions undermine the certainty and immediacy required for valid ownership transfers. Nonetheless, it permits conditions in posthumous donations, such as wills, where the conditions do not conflict with Shariah principles^[16].

3.2. Contributions of Ibn Taymiyyah and Ibn al-Qayyim

Ibn Taymiyyah and Ibn al-Qayyim offer a progressive perspective, advocating the permissibility of conditional clauses in donation contracts in various contexts. They argue that such clauses are consistent with the principles of equity and benevolence in Islamic law. According to^[17], conditions that benefit the recipient or ensure the proper use of the donation are permissible, provided they do not lead to disputes or harm. Ibn al-Qayyim^[18] further elaborates that conditional clauses can enhance the practical utility of donation contracts, aligning them with the needs of contemporary society.

3.3. Comparative Analysis

The juristic debate on conditional clauses in donation contracts reflects broader differences in the interpretation of Islamic law. The Hanafi and Hanbali schools prioritize certainty and immediacy, while the Maliki and Shafi'i schools

allow for more flexibility under specific conditions. The progressive views of Ibn Taymiyyah and Ibn al-Qayyim highlight the potential for adaptive approaches that accommodate modern transactional needs. This section highlights the diverse juristic opinions on conditional clauses in donation contracts, underscoring their significance in Islamic jurisprudence. Despite the lack of consensus, the varying perspectives offer a rich framework for understanding the nuances of this complex issue. These insights lay the groundwork for the practical implications and contemporary applications explored in subsequent sections.

3.4. Data Analysis Techniques

The data collected were analyzed using a comparative legal analysis, which involves examining the similarities and differences between the juristic opinions of the four Sunni schools and independent scholars. This comparative framework provides insight into the underlying principles guiding different perspectives. Additionally, the study employs a textual analysis approach, engaging critically with classical and modern texts to extract relevant legal arguments, assess their coherence, and determine their applicability in contemporary settings.

4. Results

This section examines the practical applications of conditional clauses in donation contracts, focusing on their relevance and utility in contemporary Islamic finance and personal transactions. By exploring real-world scenarios and hypothetical examples, this section demonstrates how conditional clauses can address practical challenges while adhering to Shariah principles.

4.1. Contemporary Applications

- (1) **Charitable Endowments (Waqf)** Conditional clauses are commonly used in the establishment and management of charitable endowments. For example, a donor might stipulate that the revenue generated from an endowed property be allocated to specific causes, such as education or healthcare. This ensures that the donor's intent is preserved over time while maximizing the benefit of the donation^[19].

- (2) **Conditional Gifts**

Conditional gifts are frequently employed in personal and familial settings. For instance, a parent might gift property to a child with the condition that the child completes their education or reaches a certain age. These conditions provide a mechanism for encouraging positive behavior while ensuring that the gift aligns with the donor's objectives^[20].

- (3) **Corporate Social Responsibility (CSR)**

In modern Islamic finance, corporations can incorporate conditional clauses into their CSR initiatives. For example, a company might donate funds to a community project with the stipulation that the project adheres to certain ethical guidelines or environmental standards. This approach aligns corporate objectives with community welfare while maintaining compliance with Shariah principles^[21].

- (4) **Posthumous Donations (Wasiyyah)**

Conditional clauses are integral to posthumous donations, such as wills. A donor might stipulate that a portion of their estate be distributed to charitable causes only if certain conditions are met, such as the construction of a mosque or school. This allows the donor to maintain control over their legacy while ensuring compliance with Islamic inheritance laws^[22].

Hypothetical Scenarios

Scenario 1: Property Donation with Conditions. A donor gifts a piece of land to a charitable organization with the condition that it be used solely for building a school. If the organization fails to fulfill this condition, the land reverts to the donor's ownership. This ensures that the donation is used for its intended purpose, reflecting the donor's vision^[8].

Scenario 2: Conditional Financial Assistance. A donor provides financial assistance to a struggling business with the condition that the business adopts ethical practices, such as fair wages and sustainable sourcing. By attaching these conditions, the donor promotes ethical behavior while supporting economic development.

Legal and Ethical Considerations

While conditional clauses offer significant benefits, they must be crafted carefully to ensure compliance with Shariah principles. The conditions should be

- (1) Lawful: The condition must not involve prohibited activities, such as interest (riba) or gambling (maysir).
- (2) Clear and specific: Ambiguity in conditional clauses can lead to disputes and undermine the contract's enforceability.
- (3) Reasonable and feasible: Unrealistic conditions may render the contract invalid or difficult to implement.

Challenges in Implementation

- (1) Enforcement: Ensuring that conditional clauses are enforced requires robust legal frameworks and effective monitoring mechanisms.
- (2) Disputes: Ambiguity or conflicting interpretations of conditions can lead to disputes between the parties involved.
- (3) Cultural differences: Variations in cultural practices and interpretations of Shariah principles may affect the acceptance and implementation of conditional clauses.

4.2. Analysis of Conditional Clauses in Donation Contracts

To provide a structured analysis of conditional clauses in donation contracts, this study categorized the clauses based on their legal and functional implications. The key categories identified include

- (1) Ownership-restrictive clauses: Conditions that limit the recipient's control over the donated asset, such as stipulating that a gifted property must remain in the family or be used solely for charitable purposes.
- (2) Performance-based clauses: Conditions that require the recipient to meet specific criteria before gaining full ownership, such as completing education, reaching a certain age, or fulfilling a community service requirement.
- (3) Reversionary clauses: Conditions that allow the donated asset to revert to the donor if certain obligations are not met, thereby ensuring adherence to the donor's intended purpose.
- (4) Time-based clauses: Conditions that delay the effect of the donation until a future event occurs, such as the

donor's passing or the recipient's marriage.

Each conditional clause was analyzed in terms of its compliance with Islamic legal principles, enforceability, and potential impact on contract validity. The findings indicate that while some clauses are widely accepted among juristic schools, others remain the subject of debate due to concerns over ambiguity and fairness. The structured coding of these clauses allows for a clearer understanding of their role in modern donation contracts and their alignment with Shariah principles.

4.3. Summary

Conditional clauses in donation contracts offer valuable tools for addressing practical challenges and aligning donations with the donor's intent. By ensuring compliance with Shariah principles and addressing potential challenges, these clauses can enhance the effectiveness and impact of donation contracts in modern contexts. The insights gained from this section pave the way for a deeper exploration of policy recommendations and future directions in the concluding section.

5. Discussion

This section synthesizes the previous findings, providing a comprehensive analysis of the theoretical and practical dimensions of conditional clauses in donation contracts. By incorporating juristic perspectives into contemporary applications, the discussion evaluates the significance, challenges, and opportunities of conditional clauses within the framework of Islamic jurisprudence. Tables are included to illustrate key points and comparisons, following APA style for clarity and consistency.

5.1. Juristic Perspectives Revisited

The debate on conditional clauses reflects the diverse interpretations of Islamic jurists, balancing textual fidelity with practical considerations. **Table 1** summarizes the primary positions of the four major Sunni schools of thought.

Table 1. Summary of Juristic positions on conditional clauses.

School	Position on Conditional Clauses	Key Rationale
Hanafi	Generally prohibited, with limited exceptions	Focus on certainty and immediacy in ownership transfers
Maliki	Permitted if conditions align with Shariah principles	Emphasis on flexibility and practical utility
Shafi'i	Restricted, with allowances for specific contexts (e.g., wills)	Concern for ambiguity and potential disputes
Hanbali	Prohibited during the donor's lifetime, permitted posthumously	Prioritization of contract certainty

Scholars such as Ibn Taymiyyah and Ibn al-Qayyim adopt a more context-sensitive approach, advocating permissibility when conditions enhance contractual efficacy without violating Shariah principles^[7, 8]. Their contributions highlight the adaptability of Islamic law to modern needs.

5.2. Practical Implications

The practical applications explored in the Results section underscore the versatility of conditional clauses in addressing diverse societal needs (see **Table 2**). For instance:

(1) Waqf (charitable endowments): Conditional clauses en-

sure alignment with the donor's vision by directing proceeds to specific causes such as education or health-care^[13].

- (2) Conditional gifts: Parents may incentivize positive behavior, such as completing education, through conditional gifts^[11].
- (3) CSR initiatives: Corporations use conditions to integrate ethical guidelines into community projects^[2].
- (4) Posthumous donations: Wills with conditions, such as building mosques, maintain the donor's control over their legacy while adhering to inheritance laws^[22].

Table 2. Examples of conditional clauses in practical applications.

Application	Example Condition	Outcome
Waqf	Revenue directed to build schools	Ensures long-term benefit and alignment with the donor's intent
Conditional gift	Gift effective upon recipient's graduation	Encourages educational achievement
CSR initiative	Donation contingent on ethical practices	Promotes sustainability and community welfare
Posthumous donation	Funds allocated upon completing a mosque	Aligns with Islamic inheritance laws and the donor's wishes

5.3. Legal and Ethical Challenges

Implementing conditional clauses raises critical legal and ethical considerations:

- (1) Compliance with Shariah principles: Conditions must not involve prohibited elements such as *riba* or *maysir*^[6].
- (2) Clarity and specificity: Ambiguity in clauses can lead

to disputes and undermine enforceability^[13].

- (3) Balancing interests: Conditions should respect donor intentions while being realistic for recipients.

Islamic legal institutions play a pivotal role in addressing these challenges by offering standardized guidelines and dispute-resolution mechanisms. **Table 3** outlines the key criteria for valid conditional clauses.

Table 3. Key criteria for valid conditional clauses.

Criteria	Description
Lawful	Must comply with Shariah principles and avoid prohibited activities
Clear and specific	Should minimize ambiguity and the potential for disputes
Reasonable	Should be feasible for implementation and considerate of the recipient's circumstances

5.4. The Role of Context in Rulings

Classical jurists often emphasized certainty in contracts, but contemporary realities require flexibility. The use of conditional clauses in CSR and financial assistance highlights the evolving nature of economic and social transactions. This context-sensitive approach aligns with the *Maqasid al-Shariah* (objectives of Shariah), which prioritizes justice, equity, and public welfare^[13]. The discussion illustrates the multifaceted role of conditional clauses in donation contracts, combining classical jurisprudence with modern applications. While challenges remain, these

clauses present significant potential for enhancing the effectiveness and impact of donations. Addressing legal, ethical, and practical considerations ensures that conditional clauses align with Shariah principles and meet contemporary societal needs. The findings lay the groundwork for the concluding section, which will offer policy recommendations and propose future directions.

6. Conclusions

This section presents the overarching conclusions derived from the study, summarizing the insights gained into

conditional clauses in donation contracts within Islamic jurisprudence. It also highlights the theoretical and practical contributions of the research, discusses the implications for future legal and societal practices, and offers recommendations for scholars and practitioners. The study has explored the concept, juristic perspectives, practical applications, and challenges associated with conditional clauses in donation contracts. Conditional clauses, as defined in Islamic jurisprudence, are significant tools that address the needs and objectives of donors while maintaining adherence to Shariah principles. The diversity of juristic perspectives underscores the complexity of the topic, with the Hanafi and Hanbali schools emphasizing restrictions that aim to ensure certainty, while the Maliki and Shafi'i schools offer greater flexibility, especially in contexts such as waqf and wills. Scholars such as Ibn Taymiyyah and Ibn al-Qayyim have demonstrated the adaptability of Islamic jurisprudence by advocating contextual rulings that cater to contemporary needs.

The practical implications of conditional clauses highlight their importance in enhancing the effectiveness of donation contracts. These clauses enable contracts to align more closely with the donor's intentions and society's requirements. They have been utilized effectively in areas such as charitable endowments (waqf), familial transactions, CSR initiatives, and posthumous donations. Despite their utility, the application of conditional clauses faces challenges, namely, the need for clarity, lawful stipulations, and enforceability to reduce disputes and ensure compliance with Shariah principles. Moreover, the lack of standardized guidelines for drafting and implementing these clauses presents additional limitations, contributing to inconsistencies and potential misuse.

6.1. Implications for Policy and Practice

The findings of this study have significant implications for policy and practice. Legal frameworks should prioritize the development of standardized guidelines for drafting and enforcing conditional clauses in donation contracts. Such guidelines would ensure clarity, reduce ambiguity, and promote adherence to Shariah principles. Islamic legal institutions also have a critical role to play in this regard by providing education, training, and resources to enhance understanding among practitioners, scholars, and stakeholders regarding the correct application of conditional clauses. Additionally,

adopting context-sensitive approaches that consider modern economic and societal dynamics while remaining faithful to Shariah objectives can bridge the gap between classical jurisprudence and contemporary needs.

6.2. Recommendations for Future Research

Future research should focus on comparative analyses that span classical and contemporary juristic perspectives. Such studies could address theoretical gaps and provide insights into the application of Islamic jurisprudence in modern contexts. Interdisciplinary approaches that integrate legal, economic, and social sciences could also offer a more holistic understanding of conditional clauses and their broader impact. Empirical studies on the real-world implementation of these clauses could illuminate their effectiveness and highlight areas for refinement or improvement. These research directions would further enrich the understanding and application of conditional clauses in donation contracts.

This study stresses the vital role of conditional clauses in facilitating equitable and impactful donation contracts. By aligning these clauses with Shariah principles and contemporary needs, Islamic jurisprudence demonstrates its capacity to address evolving societal challenges. The study highlights the potential of these clauses to serve as powerful tools for achieving individual and collective goals while upholding the principles of justice, equity, and public welfare. The recommendations aim to guide future scholarship and practice, fostering a balanced approach that ensures the continued relevance and adaptability of Islamic legal principles.

Author Contributions

Conceptualization, H.S.A.; methodology, H.S.A.; writing—original draft preparation, H.S.A.; writing—review and editing and translation, M.S.A., H.A.; supervision, M.S.A.; funding acquisition, H.A. All authors have read and agreed to the published version of the manuscript.

Funding

This research is funded by the Deanship of Graduate Studies and Scientific Research at Jouf University through the Fast-Track Research Funding Program.

Informed Consent Statement

Not applicable.

Conflicts of Interest

The authors declare no conflict of interest.

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