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Re-Evaluating Contractual Relativity: Third-Party Effects in Islamic and Positive Legal Frameworks

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Abstract
This study compares the principle of contractual relativity and its exceptions regarding third-party effects in Islamic jurisprudence and positive law. Employing a doctrinal-comparative methodology, it identifies key convergences and divergences in how both systems treat general successors, special successors, and creditors. The research finds that while both systems uphold the core principle, they develop distinct mechanisms for third-party protection, rooted in different foundational philosophies (Sharia vs. autonomy of will). A key novelty lies in the critical analysis revealing that classical juristic tools (like waqf, wasiyya) serve functions analogous to, but conceptually distinct from, positive law exceptions (like stipulation pour autrui). The study concludes that technological advancements necessitate contextual application of the principle, not its abandonment, and offers targeted recommendations for legal harmonization and judicial training to enhance transactional justice and stability.

Keywords: Relative Effect of the Contract, Islamic Jurisprudence, Positive Law, Contract Theory.

I. Introduction

Contracts are fundamental to socio-economic organization, binding only their parties under the principle of relativity. However, modern transactional complexities increasingly involve third parties, creating a tension between contractual autonomy and third-party protection that this research seeks to address.

The central challenge lies in reconciling the preservation of contractual autonomy with the need to protect third parties affected by agreements to which they were not a party. This research is significant as it provides a timely comparative analysis that can inform legal harmonization efforts in hybrid jurisdictions and enrich theoretical discourse on the evolving nature of contractual obligations.

Foundational scholars like Weber and Salmond established the principle of relativity as axiomatic, yet their analyses remain largely abstract. This research aims to analyze the principle of the relative effect of contracts with regards to third parties through an in-depth comparative study between Islamic jurisprudence and positive law. The research

seeks to achieve several key objectives, including: identifying the philosophical and legal foundations upon which the principle of contractual relativity rests in both systems, and clarifying the scope of this principle and the limits imposed by the nature of the legal relationship. It also aims to explore the similarities and differences in how general successors, special successors, and creditors are treated in the context of the relative effect of contracts, and to analyze the legal and jurisprudential treatment of each category. Additionally, the research aims to explore exceptions to this principle, such as promising for a third party and stipulations in favor of a third party, analyzing their conditions and effects in both Islamic jurisprudence and positive law, while also highlighting points of convergence and divergence.

The scope of this research is limited to studying the relative effect of contracts on third parties, focusing on the general principles governing this matter without delving into the specifics of contract types or validity conditions, except to the extent necessary for understanding the contract's effect on third parties. The research also focuses on the general principles of Islamic jurisprudence and the positive civil law, utilizing examples from contemporary legislation to clarify the concept, without entering into detailed comparisons between the laws of specific countries. The significance of this research lies in its scholarly contribution to deepening the understanding of a pivotal principle in contract theory and in presenting a comparative analysis that enriches legal discourse on the issue of the relative effect of contracts, highlighting the jurisprudential and legal foundations that serve as a reference for the application of this principle in contemporary contexts. This research also constitutes a qualitative contribution to the legal literature. It may serve as a reference for researchers, students, and legal practitioners seeking a deeper understanding of the relationship between contracts and third parties.

Although Islamic jurisprudence and positive law have each addressed the principle of the relative effect of contracts separately, the existing literature primarily focuses on doctrinal explanations and, where applicable, distinctions between jurisdictions—namely, states with Islamic law systems and the United Nations framework on contract law. Those researchers primarily emphasize legislated cases concerning general successors, special successors, or creditors' rights, lacking a comparative analysis of the two systems for these categories. Furthermore, the existing scholarship on the principle of the relative effect of contracts, especially concerning emerging developments in contract law such as smart contracts and blockchain-based transactions, is noticeably scarce, resulting in a substantive gap within the literature. Addressing this gap requires a comprehensive comparative analysis that not only interrogates doctrinal exceptions but also assesses how these exceptions, as articulated in the ASCL and in general transactional principles, can be operationalized within modern transactional environments.[1]

[1] Tudor R. Popescu. "Some Aspects of the Principle of Relativity Effects of the Contract in the Light of the Romanian New Civil Code." *Journal of Advanced Research in Law and Economics* 6, no. 2(2015): 299–

This article will consist of several sections. After the introduction, it will be explained about the struggle regarding the development of law in the area of contracts taken from the principles of Islamic law and positive law. Followed by imprisonment on theoretical aspects as a foothold for analysis. Not only that, the article will also be equipped with a description of the principle of relative contracts and their analysis. Lastly, is the conclusion.

II. Contract Development: A Literature Review

Legal and jurisprudential studies have extensively examined the principle of the relative effect of contracts, considering it a cornerstone in defining the scope of contractual obligations and rights. This diverse and profound body of literature forms the foundation upon which this research is built, highlighting the intellectual and practical developments of this principle in both Islamic jurisprudence and positive law.

Foundational scholars such as Weber and Salmond treated the principle of relativity as axiomatic. Yet, their analyses remain largely abstract and provide limited insight into their practical exceptions or comparative dimensions. While El-Sanhoury and classical jurists like Al-Kasani provide crucial doctrinal grounding, their works often lack critical engagement with the underlying justifications for exceptions. Comparative studies by Al-ʿUmrānī and Saad identify surface-level similarities and differences but fail to conduct a granular analysis of how mechanisms for protecting creditors or defining special successors diverge in practice and philosophy. This body of work, though valuable, reveals a critical gap: the absence of a comprehensive, critical comparative analysis that evaluates how exceptions in both systems are conceptually justified and practically applied, particularly in light of modern challenges.

This research fills the identified gap by providing a detailed comparative analysis that critically examines the conceptual foundations and practical applications of third-party exceptions in both Islamic jurisprudence and positive law. Its novelty lies in its critical analysis, which reveals that classical juristic tools (such as waqf and wasiyya) serve functions analogous to, but conceptually distinct from, positive law exceptions (like stipulation pour autrui), thereby challenging the superficial equivalencies often drawn in existing literature.

The primary objective of this study is to identify and critically analyze the points of convergence and divergence between Islamic jurisprudence and positive law regarding

309. https://doi.org/10.14505/jarle.v6.2(12).05. Mădălina-Laura Veleşcu, Ion Verzea, Adrian Vilcu, and Rachid Chaib. "The Multidisciplinary Solution to the Maintenance Contracts Management Problem." *Proceedings of the International Conference on Business and Economics* (July 2025): 1–12. https://doi.org/10.2478/picbe-2025-0193. Hassan Khudair Abbas and Azhar Mahmoud Lahmod. "The Role of Will in Determining the Law Applicable to Smart Contracts." *Journal of Legal Studies on Technology* (August 2025): 1–10. https://doi.org/10.55284/tk86rz79. S. S. Panchenko. "Peculiarities of Defining the Term of Simultaneous Civil Law Contracts." *Journal of Civil Law Studies* (June 2025): 45–56. https://doi.org/10.24144/2788-6018.2025.03.1.45.

the extension of contractual effects to third parties. To achieve this, the study employs a doctrinal-comparative methodology, analyzing primary sources (the Quran, Sunnah, classical fiqh texts, and civil codes) and secondary literature.

III. Autonomi of Will: A Concept

The principle of contractual relativity rests on two distinct foundational pillars in the systems under comparison. In positive law, the doctrine of "autonomy of will" (Autonomie de la volonté) is paramount. This doctrine posits that individuals are the sole architects of their legal obligations, and a contract, as an expression of converging wills, cannot impose duties on a non-consenting third party. This principle is enshrined in Article 1134 of the French Civil Code, which states that "agreements legally formed take the place of law for those who have made them."

Conversely, Islamic jurisprudence anchors the principle in the maxim "*al-muslimūn ʿalā shurūṭihim*" ("Muslims are bound by their conditions"), derived from Prophetic traditions. The maxim emphasizes the sanctity of covenants and affirms that contractual terms are binding upon the parties, provided they do not conflict with the principles of Sharia. The concept of "*al-ʿaqd sharīʿat al-mutaʿāqidīn*" ("the contract is the binding law of its parties") further reinforces this principle by establishing that rights and obligations are personal and confined to the contracting parties. While the outcomes in both systems often converge, their philosophical foundations differ fundamentally: one is rooted in individual autonomy, whereas the other is grounded in communal obligation and divine law.

IV. Principle of the Relative

As emphasized in the introduction, the principle of the relative effect of contracts stipulates that a contract binds only its parties and does not create rights or obligations for third parties. In positive law, this principle reflects the autonomy of will, granting individuals full freedom to create obligations through their voluntary consent. A contract, as defined in most civil law systems, is an agreement between two wills intended to produce legal effects, and these effects cannot be extended to anyone who has not expressed such consent. Jean Goudemet affirmed this in *Théorie Générale des Obligations*, where he notes that the power of a contract lies in the shared will, and this power cannot extend beyond the parties whose wills have converged.[2] This rule, as emphasized by legal scholars, safeguards both individual autonomy and transactional predictability. Goudemet notes that permitting third-party obligations without consent would undermine the foundational principle that contractual power derives exclusively from the parties' convergence of wills, thereby destabilizing the entire contractual framework.

[2] Jean Goudemet, *Théorie Générale des Obligations* (Paris: Domat Montchrestien, 1935), 156-158, where he notes that the power of a contract lies in the shared will, and this power cannot extend beyond the parties whose wills have converged..

Consistent judicial rulings in positive legal systems, such as those from the Egyptian Court of Cassation, demonstrate that contracts, as a general rule, do not create obligations for third parties, and any exception to this principle must be based on explicit legal texts or unambiguous contractual agreements.[3]

In Islamic jurisprudence, the principle of contractual relativity is rooted in the maxim "*al-muslimūn ʿalā shurūṭihim*" ("Muslims are bound by their conditions) and the doctrine "al-ʿaqd sharīʿat al-mutaʿāqidīn" ("the contract is the binding law of its parties"). While the former maxim broadly addresses the enforceability of contractual conditions in Sharīʿa-compliant agreements, the latter specifically affirms that contractual rights and obligations are confined to the parties to the contract. Together, these principles establish that, as a general rule, third parties are neither bound by nor entitled to rights arising from contracts to which they are not parties. Islamic jurisprudence also emphasizes that contracts bind only those who enter into them, and that the rights and duties arising from a contract become entitlements or debts of the contracting parties. Ibn ʿĀbidīn, in *Hashiyat Ibn Abidin*, indicates that a contract creates rights and obligations between its two parties, and that the general principle in contracts is their binding nature between the contracting parties.[4] This principle reinforces the concept of justice in transactions, in that no other individual can be burdened with the consequences of a contract to which they were not a party or did not participate in its conclusion. Despite the absence of the exact Western formulation "relative effect of contracts", the jurisprudential content clearly reflects this concept. While the principle establishes that contracts primarily bind only their parties, Islamic jurisprudence recognizes substantive mechanisms through which third parties may acquire rights or incur obligations. Doctrines such as *waqf* (endowment), *wasiyya* (bequest), and succession rules are not marginal exceptions but integral components of the Sharia framework that enable third-party effects. These mechanisms, however, operate through distinct legal channels—either as independent dispositions (*waqf*, *wasiyya*) or by operation of law (inheritance)—rather than as direct extensions of bilateral contracts. This structural distinction separates Islamic jurisprudence from the contractual exceptions of positive law, such as stipulation pour autrui, where third-party rights arise directly from the contract itself. Accordingly, Islamic jurisprudence places significant emphasis on the intention of the contracting parties in determining a contract's effects; if their intention is to restrict those effects to themselves, the contract cannot be extended to others.[5]

It is essential to note that the concept of a "party" to a contract is not limited to the natural or legal person who physically signs the agreement; it also encompasses those

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[3] See Egyptian Court of Cassation (Appeal No. 123 of 1985, Session 15/5/1985)

[4] Muḥammad Amīn Ibn ʿĀbidīn, *Ḥāshiyat Radd al-Muḥtār ʿalā al-Durr al-Mukhtār* (Beirut: Dār al-Fikr, contemporary ed.).

[5] Souad Ezzerouali and Yassine Chami, "Inclusion of Definitions in Legislative Drafting: A Necessity or a Luxury?," *Mazahib* 22, no. 1 (2023): 37–64

who act on their behalf with valid legal authority. In positive law, an agent (*wakil*), whether acting under statutory or contractual representation, is treated as an extension of the principal when concluding a contract, and the legal effects of that contract fall directly upon the principal. This follows from the rules of agency, under which the agent's will is deemed to be that of the principal. Thus, all rights and obligations arising from the agent's actions are attributed directly to the principal. Pothier articulates this clearly in Traité des Obligations, explaining how the effects of a contract concluded by an agent extend to the principal. Similarly, in Islamic jurisprudence, an agency contract (*wakalah*) is an agreement in which one person (the principal, or *muwakkil*) authorizes another (the agent, or *wakil*) to perform a legal act on their behalf. This authorization causes the effects of the contract to be directly attributed to the principal, such that the rights and obligations created by the contract are attributed not to the agent but to the principal. The agent in such arrangements is regarded merely as an instrument for executing the principal's will, as emphasized by Ibn Qudāmah in al-Mughnī, who states that "the agent is a trustee, and all actions taken by him are attributed to the principal."[6] While both systems achieve similar practical outcomes—attributing contractual effects to the principal rather than the representative—their conceptual foundations diverge significantly. In Islamic law, *wakāla* is rooted in the concept of trust (*amāna*), where the agent acts as a fiduciary carrying out the principal's will. In contrast, civil law agency operates as a technical legal fiction whereby the agent's acts are juridically imputed to the principal. Despite these philosophical differences, both systems uphold the principle of contractual relativity by ensuring that the true contracting party (the principal) bears the rights and obligations, not the intermediary. One could argue that this extension of parties is not a true exception to the principle of contract relativity, but rather an application of the principle of representation of will.

In contrast, while Islamic jurisprudence does not employ the exact term "relative effect of contracts," its substantive equivalent is reflected in the binding nature of covenants between parties. The maxim *"al-muslimūn ʿalā shurūṭihim"* (Muslims are bound by their conditions) primarily governs the enforceability of agreed terms, provided they do not contravene Sharia. However, this maxim operates within a broader framework where third-party effects may arise not only from the contract alone, but also from unilateral dispositions (e.g., *waqf*, *wasiyya*) or public-interest considerations.

. In positive law, general successors are considered an extension of their predecessor's legal and financial personality. Upon succession, heirs assume the predecessor's financial liabilities. Thus, all financial rights and obligations owed by the predecessor are transferred to them, except for those that are personal in nature and cannot be transferred. This principle is established in most civil laws, as seen in Article 152 of the Egyptian Civil Code, which states that "the effect of the contract extends to the

[6] Muwaffaq al-Dīn Ibn Qudāmah, *Al-Mughnī* (Cairo: Maktabat al-Qāhirah, contemporary ed.).

contracting parties and the general successor, without prejudice to the rules related to inheritance." The rationale behind this is that heirs receive the entire estate, including all its components. Therefore, the contractual obligations concluded by the predecessor become part of this estate, and heirs cannot claim rights while rejecting obligations. Ahmed El-Sanhoury, in his commentary on Article 152 of the Civil Code, emphasizes that heirs are considered an extension of the predecessor's personality, and their rights and obligations transfer to them under the applicable legal framework in such matters.[7]

While the general rule holds that a contract binds only its parties (*al-ʿaqd sharīʿat al-mutaʿāqidīn*), Islamic law recognizes that third parties may acquire rights or obligations through mechanisms intrinsic to the *Sharia* system—such as *waqf* (endowment), *wasiyya* (bequest), or rules of succession. These are not peripheral exceptions but integral institutions through which the legal order accommodates third-party interests without violating the consensual core of contractual obligation.

The jurisprudential maxim "the wealth belongs to the heir after the deceased" signifies that heirs assume the deceased's property and financial rights. Consequently, contracts entered into by the deceased, insofar as they create financial rights or obligations, continue to generate legal effects even after death. For example, if the deceased concluded a sale contract, the price would constitute a debt upon them, and this debt transfers to the heirs after their death, as does the right to receive the sold item. Ibn Taymiyyah, in his *fatwas*, states that what results from the contracts of the deceased, in terms of rights, transfers to their heirs.[8] This significant convergence between positive law and Islamic jurisprudence regarding general successors can be explained by practical reasoning and the necessity of ensuring the continuity of legal and financial relationships after death, and avoiding chaos in transactions.

Special successors, however, represent one of the most debated issues concerning the limits of the relative effect of contracts. A special successor is someone who acquires a real right (in rem) over a specific asset from their predecessor, such as a purchaser of real property, a donee, or a legatee. As a general rule, a special successor is not affected by contracts concluded by their predecessor before the transfer of the right, as such contracts create personal rights between the predecessor and the third party and do not affect the thing itself unless they have a real effect. Nevertheless, exceptions exist in positive law, whereby some rights and obligations may be transferred to the special successor if those rights or obligations constitute a part of the elements transferred. For example, neighborhood obligations, easements (rights of servitude), or conditions imposed on property ownership. This falls under the theory of "conditions attached to

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[7] ʿAbd al-Razzāq Aḥmad al-Sanhūrī, *Al-Wasīṭ fī Sharḥ al-Qānūn al-Madanī: al-ʿUqūd allātī Taqaʿ ʿalā al-Milkīyah.*

[8] Taqī al-Dīn Aḥmad, Ibn Taymiyyah. *Majmuʿ al-Fatāwā.* Madina: King Fahd Complex for the Printing of the Holy Qurʾān, (1328 AH).

the thing (res)," which holds that certain obligations are considered accessories of the thing itself and therefore transfer with it to the special successor. Marcel Planiol affirms this in Traité Élémentaire de Droit Civil, noting that fundamental rights follow the property to which they are attached and that neighborhood obligations constitute absolute obligations.[9] In positive law, the conditions for the effect of a contract to extend to a special successor include: (1) the contract being concluded before the special successor's acquisition, (2) the right or obligation arising from the first contract being related to the subject matter of the disposition, and (3) the special successor being aware of the existence of this right or obligation, or the contract being registered and publicized.

In Islamic jurisprudence, there is no exact equivalent to the term "special successor" with the same positive legal connotation; however, comparable legal applications exist. Some rights are considered incidental to the transferred thing, such as the right of pre-emption (*shufa'a*), or easements (like the right to access the property for a specific purpose). When property encumbered by an easement is sold, the easement automatically transfers to the buyer, as it is considered an integral part of the property's ownership. Jurists justify this because the right in question is a real right rather than a personal one, and thus inherently follows the property through successive transfers. Ibn Qudāmah encapsulates this principle succinctly, noting that "rights attached to the thing transfer with the transfer of the thing.".[10] This convergence in outcomes demonstrates that both systems acknowledge the importance of maintaining certain obligations and rights that are integral to the transferred thing, thereby ensuring the stability of real rights and protecting public interest.

Nevertheless, it is observed that Islamic jurisprudence does not extend the transfer of rights and obligations to the special successor to the same extent as positive law does. Instead, it focuses more on explicit or accessory real rights. In contrast, the positive law may expand this scope to include certain personal conditions or obligations that become part of the thing that are legally imposed or contractually agreed upon.[11]

Creditors represent another category of persons whose relationship with contracts concluded by the debtor raises extensive discussion about the relative effect of contracts. Creditors, in principle, are not considered parties to the contracts concluded by the debtor, and therefore, the contract can neither bind them nor create direct rights upon them. However, the debtor's financial liability constitutes the general guarantee for all their creditors. Consequently, any disposition concluded by the debtor, whether a sale, gift, or mortgage, directly affects this liability and can lead to weakening the general

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[9] Marcel Planiol, *Traité Élémentaire de Droit Civil* (Paris: Librairie Générale de Droit et de Jurisprudence, 1900).

[10] Muwaffaq al-Dīn Ibn Qudāmah, *Al-Mughnī*.

[11] Yassine, Chami, Ahmad Ahmad, Mohamad Hidayat Muhtar, Kevin M. Rivera, and Viorizza Suciani Putri. "Admissibility of Lawsuits Based on Interest under Algerian Civil and Administrative Procedures." *Jambura Law Review* 6, no. 2 (2024): 286–303.

guarantee for creditors. In positive law, creditors are provided with legal mechanisms to protect their rights from the debtor's harmful dispositions. Among the most prominent of these mechanisms are: the indirect action (*Action Oblique*), which enables the creditor to exercise their debtor's rights and file lawsuits on their behalf if the debtor is reluctant to do so or neglects to collect their rights, thereby preserving the elements of the debtor's liability and strengthening the general guarantee. Another mechanism is the Paulian Action (*Actio Pauliana*) or action for unenforceability of disposition, which enables the creditor to challenge dispositions concluded with the intention of harming their creditors, thereby rendering these dispositions unenforceable against the creditor. Julien Bonnecase affirms this in *Traité Théorique et Pratique de Droit Civil*, where he describes the Paulian Action as a mechanism to protect creditors' rights from the debtor's fraud.[12] The action for simulation (*Action en Simulation*) is another mechanism to protect creditors' rights, enabling the creditor to prove the simulated nature of a contract concluded by the debtor with the intention of concealing a real disposition harmful to creditors.[13]

Although both systems treat the principal as the true contracting party, the underlying rationales differ: civil law agency operates as a legal fiction that imputes the agent's acts to the principal, whereas Islamic *wakāla* is grounded in the fiduciary duty (*amāna*) of the agent, who acts as a trustee rather than a mere conduit of will.

Jurists underscore the importance of safeguarding creditors' rights against debtor dispositions that could undermine their claims. When a debtor is insolvent, the court may impose an interdiction (*ḥajr*) over the debtor's assets to prevent harmful transactions. Creditors may also compel the liquidation of specific assets to satisfy debts. Such protections are well-established in Islamic jurisprudence, particularly in relation to bankruptcy and interdiction. Furthermore, the principle of legal circumvention (taḥawwul ʿalā al-sharʿ) can be applied to invalidate simulated transactions undertaken by a debtor for the purpose of defrauding creditors. Where such a simulation is established, creditors may seek disclosure of the actual transaction and the reinstatement of assets into the debtor's patrimony. This illustrates that Islamic jurisprudence affords meaningful safeguards for creditors, albeit through mechanisms distinct from those recognized in positive law.

The exceptions to the principle of the relative effect of contracts are among the most crucial aspects that highlight the flexibility of legal systems and their ability to adapt to the challenges posed by evolving contractual relationships. Among the most prominent of these exceptions in positive law are promising for a third party (*promesse de porte-fort*) and stipulation for the benefit of a third party (*stipulation pour autrui*).

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[12] Julien Bonnecase, *Traité Théorique et Pratique de Droit Civil*, 2nd ed. (Paris: Librairie Générale de Droit et de Jurisprudence, 1928).

[13] Yassine Chami and Maya Khater, "The Influence of Maliki Jurisprudence on the French Civil Law in Terms of the Opposability of the Relative Effect of Contract to Third Parties: A Comparative Study," *Malaysian Journal of Syariah and Law* 13, no. 1 (2025): 123–133.

1. The promise to procure (Promesse de porte-fort)

Promising in favor of a third party is a formal exception to the principle of contract relativity. In this arrangement, one person (the promisor) undertakes to ensure that another person (the third party) performs a specific act or assumes a particular obligation. This promise does not directly bind the third party; instead, it binds the promisor themselves to guarantee the fulfillment of that act or obligation. If the third party does not ratify this promise, the promisor becomes liable to compensate the other contracting party for any damages incurred. The Egyptian Civil Code, in Article 153, stipulates that: "If a person undertakes on behalf of another, the third party is not bound by this undertaking. If the third party ratifies the undertaking, it takes effect against them from the date of its conclusion. Suppose the third party does not ratify the undertaking. In that case, the promisor is obliged to compensate the other contracting party for the damage incurred". This is affirmed by Firas Al-Abedin, "*Promising in favor of a Third Party: a Comparative Study,*" where he describes it as a "formal exception". The person who promises in favor of a third party does not bind the third party, but instead binds themselves to guarantee the fulfillment of the third party's obligation. This exception preserves the principle of contract relativity by not directly binding the third party. Yet, it creates a personal obligation for the promisor, offering a guarantee to the other party through the promisor's undertaking.[14]

In Islamic jurisprudence, no term precisely corresponds to "promising in favor of a third party" with the same conditions and legal effects as those found in positive law. However, some jurisprudential forms approximate this concept, such as suretyship (*kafala*) and guarantee (*daman*). Suretyship is an undertaking by one person (the guarantor) to guarantee a debt owed by another person (the principal debtor). If the principal debtor fails to solve their debt, the guarantor becomes responsible for its fulfillment. This resembles, in its outcome, the promisor's obligation to guarantee the act of a third party. Positive law generally considers general successors to be an extension of their predecessor's legal and financial personality. Upon succession, heirs assume the predecessor's financial liabilities. Thus, all financial rights and obligations owed by the predecessor are transferred to them, except for those that are personal in nature and cannot be transferred. This principle is set forth by most civil laws, such as Article 108 of the Algerian Civil Code, which states that[15] "the effect of the contract extends to the contracting parties and the general successor, without prejudice to the rules related to inheritance." As comparative succession scholars like Zweigert and Kötz note, this

[14] Firas Al-Abed, *Al-Taʿahhud ʿan al-Ghayr fi al-Qanun al-Madani: Dirasah Muqaranah* [*Promising for a Third Party in Civil Law: A Comparative Study*] (Alexandria: Dar al-Jamiʿah al-Jadidah, 2008).

[15] bordrbala, M. Musaḥamat al-Taʿlīm al-Qānūnī fī al-Taṭwīr al-Tashrīʿī li-Qānūn al-ʿUqūd al-Jazāʾirī (Algiers: ASJP, 2023).

reflects a functional necessity to preserve transactional continuity across generations (*An Introduction to Comparative Law*, 1998). Ahmed El-Sanhoury similarly affirms that heirs are considered an extension of the predecessor's personality, inheriting both rights and obligations under the applicable legal framework.[16] Promising in favor of a third party in positive law creates a personal obligation for the promisor even before the third party's ratification, whereas in Islamic jurisprudence, suretyship focuses on the guarantor's obligation to secure the debtor's liability. This contrast highlights that Islamic jurisprudence generally operates within the established framework of undertakings on behalf of others, while positive law develops specific contractual exceptions to achieve particular practical objectives. In both systems, agency (*wakalah*) is a mechanism of representation, not an exception, creating rights for third parties. The agent acts as an extension of the principal's will; therefore, the principal is the true contracting party, and all rights and obligations flow directly to them. This is not an extension of the contract's effect to a third party, but a confirmation of the principle of relativity, as the contract binds the principal (the represented party) and the other contracting party. Thus, agency reinforces, rather than contradicts, the core principle.

2. Third-party beneficiary (Stipulation pour autrui)

A stipulation for the benefit of a third party is a substantive exception to the principle of the relative effect of contracts. It allows two persons (the stipulator and the promisor) to conclude a contract that creates a direct right for a third person (the beneficiary) who is not a party to the contract. This right is established directly in the beneficiary's legal sphere without the need for their prior acceptance, and the beneficiary can directly claim it from the promisor. This exception is essential in many contemporary contracts, such as life insurance policies, where the insured stipulates the payment of an insurance sum for the benefit of their heirs or a specific person after their death. These heirs or the designated person can then directly claim the amount from the insurance company. This is reflected in Article 154 of the Egyptian Civil Code, which provides that "it is permissible to stipulate in a contract for the benefit of a third party if the stipulator has a material or moral interest in the performance of this stipulation." Charles Aubry and Charles Rau, in Cours de Droit Civil Français, likewise observe that stipulation for the benefit of a third party constitutes an exception to the principle of contractual relativity, justified by the shared intention of the stipulator and the promisor to confer an advantage on the third party.[17]

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[16] Bayram Galdibarmak, Abdolhamid Mortazavi, Mehdi Mohammadian Amiri. A Comparative Study of Guaranty Contracts in General Jurisprudence, Islamic Jurisprudence, and Contemporary Laws (Kurdish Studies, Vol. 11, No. 3, 2023).

[17] Charles Aubry and Charles Rau, *Cours de Droit Civil Français*, 4th ed. (Paris: Librairie Hachette et Cie, 1869).

In Islamic jurisprudence, there is no term equivalent to "stipulation for the benefit of a third party" with the precise modern conventional meaning found in positive law. This implies the creation of a direct and enforceable right for a third party by the promisor upon the mere conclusion of the contract. However, this does not mean the absence of the idea or similar effects within the Islamic jurisprudential system. Islamic Sharīʿa, due to its comprehensive and flexible nature, encompasses numerous rules and legal mechanisms that achieve objectives identical to stipulations for the benefit of a third party, albeit through different contractual frameworks or juridical dispositions. Although these jurisprudential forms do not replicate stipulation for a third party in their exact conditions or legal effects, they nonetheless provide effective means of conferring benefits on third parties in ways that remain consistent with the principles of *fiqh* and the overarching objectives of Sharīʿa.

3. Forms that may serve to benefit third parties within Islamic Jurisprudence

Among the most prominent jurisprudential forms that achieve the goal of benefiting third parties are:

Conditional Gift (*Hiba bi shart al-awad aw al-iltizam*): A thing may be granted to a person (the donee) on the condition that the donee performs a specific act or undertakes a particular obligation for the benefit of a third person (the beneficiary). For example, a donor might gift real estate to a person on the condition that the donee spends the income from it on a specific poor person or a charitable organization. In this case, the poor person or charitable organization benefits from this condition, even if they were not a direct party to the gift contract.[18] This is addressed by Ibn Rushd in *Bidayat al-Mujtahid*, where he discusses gifts and their conditions, arguing that a condition in a gift, if it conforms to the objectives of *Sharia*, is valid and must be fulfilled, which can lead to the benefit of a third party.[19] Conditional Gift (*Hiba bi Shart*): A donor may grant property to a donee on the condition that the donee fulfills an obligation benefiting a third party—e.g., dedicating rental income to a poor individual. This differs from *hiba muʿawwaḍa* (gift with counter-gift), as the condition here serves a third-party interest rather than constituting reciprocal consideration. Ibn Rushd validates such conditions when they align with *maqāṣid al-Sharīʿa*. However, the third-party beneficiary typically lacks direct enforceability against the donee, unlike the *stipulation pour autrui* beneficiary in civil law.

Bequest (*Wasiyya*): A bequest is a legal disposition that enables a third party to benefit after the death of the testator. A person can bequeath a portion of their wealth

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[18] Ahmad Tabrez.. "Comparative Study of Gift under Islamic Law and Transfer of Property Law: Indian Perspective." *SSRN Electronic Journal*, September 2009. https://doi.org/10.2139/ssrn.1471926.

Azlin Alisa Ahmad, Siti Mutiara Mohd Azman, Nadhirah Nordin, and Salmy Edawati Yaacob, "Shariah Parameters for Conditional Hibah in Preference Shares Structuring," *International Journal of Academic Research in Business and Social Sciences* 10, no. 11 (November 2020): 258–272, https://doi.org/10.6007/IJARBSS/v10-i11/7928.

[19] Ibn Rushd, *Bidayat al-Mujtahid wa Nihayat al-Muqtasid*, vol. 2 (Beirut: Dar Al-Kotob Al-Ilmiyah, n.d.).

or a specific asset to someone who is not among their heirs (the legatee), and this legatee benefits directly from the bequest after the testator's death without being a party to any contract. Ibn ʿĀbidīn, in his *Hashiya*, indicates that: "a bequest is permissible for a non-heir", which can create a right for the legatee, highlighting the ability of a bequest to benefit a third party.[20] A bequest thus achieves the objective of benefiting a third party. Still, it differs from a stipulation for the benefit of a third party in positive law in terms of the time of enforceability of the right (after death) and the nature of the disposition (a unilateral voluntary act, rather than a contract between two parties).

Endowment (*Waqf*): *Waqf* is considered one of the most important and oldest *Sharia* dispositions that benefit third parties. It is regarded as a cornerstone of the social and economic system in Islam. *Waqf* is the permanent dedication of an asset, making it inalienable, and dedicating its usufruct (benefits) for charitable or religious purposes. When an endower dedicates a property (immovable or movable) to a specific entity (such as the poor, students of knowledge, or hospitals), this entity benefits from the income or services of the *waqf* without being a party to its creation. Beneficiaries of a *waqf* acquire rights that are typically usufructuary and contingent upon the *mutawalli*'s (trustee's) administration. While *waqf* by design serves third-party interests—such as the poor, students, or mosques—their entitlement is not always directly enforceable in court as a personal claim against the *waqf* corpus. Instead, it is a collective or conditional right governed by the founder's stipulations and the trustee's fiduciary duty, reflecting a communal rather than individualistic conception of third-party benefit.[21] In this context, Al-Kasani emphasizes the legitimacy of *waqf* and its nature as an ongoing charity that benefits others, indicating its direct effect on the beneficiaries.[22]

Agency Contract (Aqd al-Wakalah) or Commission Agency (Wakalah bi al-'Umula): In certain forms of agency, especially commission agency or agency by mandate, the agent may conclude a contract in their own name but for the benefit of their principal. Agency (*Wakalah*): An agency is not a mechanism for benefiting third parties, but rather a form of legal representation. The principal is the true contracting party, and the agent acts as their fiduciary conduit. Even when the agent contracts in their own name (e.g., in *wakalah bi al-ʿumūlah*), the legal effects accrue directly to the principal by virtue of authorization, not as a third-party beneficiary. Thus, agency reaffirms—rather than extends—the principle of contractual relativity.

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[20] Muḥammad Amīn, Ibn ʿĀbidīn. *Ḥāshiyat Radd al-Muḥtār ʿalā al-Durr al-Mukhtār*. 651.

[21] Fauzan Ulwan Fadhlurrahman, Muhammad Diaz Wahyu Darmansyah, and Yogi Permana Adi Citra. "Managing Islamic Endowments (Waqf): Legal Challenges and Strategic Approaches for Sustainable Development." *Journal of Islamic Law and Legal Studies* 2, no. 1(2025): 16–25. https://doi.org/10.70063/-.v2i1.65.

[22] ʿAlāʾ al-Dīn Abū Bakr, Al-Kāsānī. *Badaʾiʿ al-Ṣanaʾiʿ fī Tartīb al-Sharāʾiʿ*.220.

Although the agent is a party to the apparent contract, the ultimate effect of the contract is intended to fall upon the principal.[23] Al-Sarakhsi in *Al-Mabsut* elaborates on the rules of agency and how the effects of the agent's actions are attributed to the principal.[24]

Despite the existence of jurisprudential forms that achieve the objective of benefiting a third party, the fundamental difference lies in the fact that stipulation for the benefit of a third party in positive law creates a direct and enforceable right for the beneficiary from the contract during the lifetime of the original contracting parties (the stipulator and the promisor). As soon as the contract is concluded, the beneficiary becomes an original right-holder who can claim it judicially, unless they reject the stipulation. This direct legal power of the beneficiary is what distinguishes a stipulation for the benefit of a third party.

In contrast, in Islamic jurisprudence, these forms are often related to gratuitous dispositions (like gifts, bequests, and endowments) that affect rights after death (in bequests) or constitute a secondary obligation (in some forms of conditional gifts). They may not always grant the beneficiary a direct right to claim with the same legal force recognized in positive law; instead, their right may be linked to the obligation of the promisor or donee. Furthermore, the jurisprudential classification of these cases differs, as they are traced back to known contractual principles or dispositions in *fiqh* (such as sale, lease, agency, gift, bequest, endowment), and a general rule is not established that permits stipulation for the benefit of a third party as a distinct "legal theory" in itself.

4. The principle of a-Masalih al-Mursalah as a Foundation for Benefiting Third Parties

Nevertheless, the principle of *"al-Masalih al-Mursalah"* (unrestricted public interests) in Islamic jurisprudence can provide a strong basis for justifying certain forms of stipulation that benefit a third party, especially if they serve a public interest, reduce disputes, and enhance transactional stability. *Al-Masalih al-Mursalah* refers to interests for which there is no specific religious text (from the *Quran* or *Sunnah*) explicitly endorsing or invalidating them. Their consideration is left to human *ijtihad* (independent reasoning), provided they do not contradict a *Sharia* text and achieve a predominant benefit. Suppose an agreement between two parties dictates that one provides a service to the other in exchange for the other providing a service to a third, and this agreement achieves a predominant legitimate interest and does not violate an explicit text from the Quran, Sunnah, or Ijma' (consensus). In that case, this can be accepted in Islamic jurisprudence. Imam Al-Shatibi, in *Al-Muwafaqat*, emphasizes the importance of al-Masalih al-Mursalah as one of the

[23] Dilfuza Imamov. "International Distribution Contract and Agency Contract: Similarities and Differences." *Review of Law Sciences* 9, no.1 (2025): 18–30. https://doi.org/10.51788/tsul.rols.2025.9.1./VDTI3639. Oumkeltoum Boughaba and Naima Mekkaoui. "Special Methods for Terminating a Commercial Agency Contract." *Sustainable Development Goals Journal* 13, no.2 (2025). https://doi.org/10.55908/sdgs.v13i2.4309.

[24] Shams al-Din, al-Sarakhsi. *Al-Mabsut*.

subsidiary sources of legislation, serving the objectives of *Sharia*.[25] This demonstrates that Islamic jurisprudence can adapt to emerging changes. Still, by rooting them within established Sharia principles and rules, it ensures that expanding the benefit to third parties does not lead to a breach of the principles of justice or the fulfillment of covenants.[26]

This in-depth discussion also raises vital questions about the future of the principle of the relative effect of contracts in light of rapid developments in electronic contracts, smart contracts, and blockchain. Will these developments fundamentally change the concept of "parties" to a contract? Will they diminish the importance of the principle of contract relativity or reinforce it with new mechanisms adapted to the digital environment?

Smart contracts, for example, are self-executing computer programs stored on a blockchain, whose terms are automatically executed upon the fulfillment of certain conditions. These contracts may be concluded between two parties. Still, their effects can extend to other individuals in innovative ways, such as automatically releasing financial payments to pre-specified beneficiary accounts or transferring ownership of digital assets without the need for intermediaries.[27] Smart contracts are self-executing protocols that automate the enforcement of pre-agreed terms on a blockchain. While they may designate beneficiaries (e.g., automatic fund transfers), the legal status of these beneficiaries remains governed by underlying substantive law—not by the technology itself. Blockchain enhances transparency and execution efficiency but does not alter the juridical definition of a "party" or independently create third-party rights. The legal effect still depends on whether the underlying agreement satisfies the doctrinal requirements of the applicable legal system (Islamic or positive).

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[25] Abu Ishaq al-Shatibi, *Al-Muwafaqat fi Usul al-Shari'ah*, ed. contemporary edition (Cairo: Matbaʿat al-Taqaddum, 1884).

[26] Mohammad Zaini Yahaya and Shofian Ahmad. "Konsep Al-Masalih Al-Mursalah Menurut Penggunaan Imam Malik." *Journal of Fatwa Management and Research* 5, no.1 (2018): 1–15. https://doi.org/10.33102/jfatwa.vol5no1.89. Liana Ab Latif and Hidayatul Sakinah Mohd Zulkifli. "Imam al-Ghazali's Concept of Masalih Mursalah in Informal Talaq Ta'liq: A Critical Study of Selected Selangor Syariah Court Cases." *International Journal of Academic Research in Business and Social Sciences* 15, no.3(2025): 567–580. https://doi.org/10.6007/IJARBSS/v15-i3/24812. Zeeshan Rais Khattak. "Examining Conditions of Maṣāliḥ Mursalah Fulfilling the Higher Objectives of Islamic Law (Maqāṣid al-Sharīʿah) in the Modern Age." *SSRN Electronic Journal* (2022). https://doi.org/10.2139/ssrn.5012881.

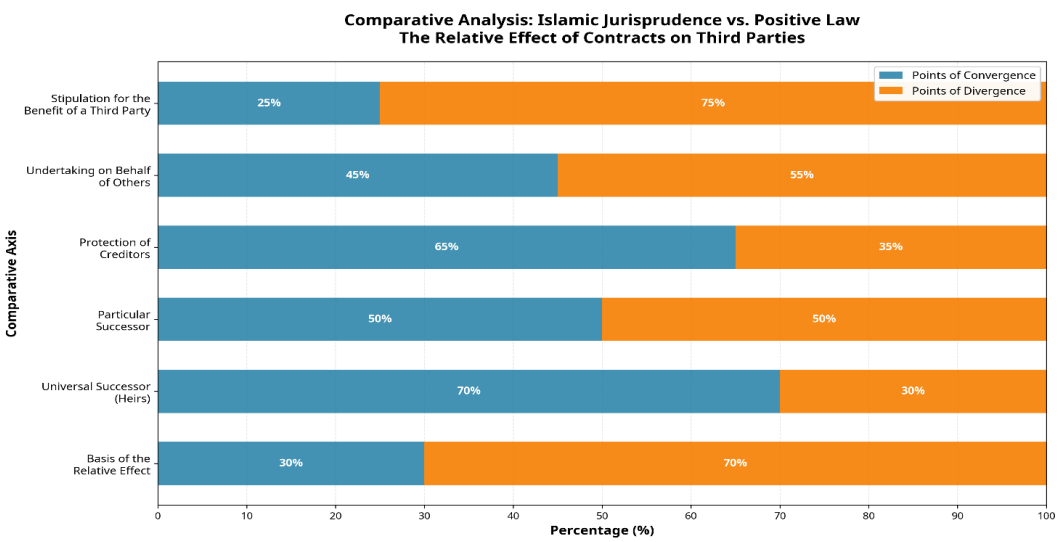
[27] David Nadler Prata, Humberto Xavier De Araújo, Cleorbete Santos, and Pratham Patel. "A Literature Review about Smart Contracts Technology." *International Journal of Advanced Engineering Research and Science* 8 no. 2 (2021): 1–4. https://doi.org/10.22161/ijaers.82.1. Kennedy Okokpujie,, Oghenetega Owivri, Olamide Olusanya, Samuel Daramola, and Morayo Awomoyi. "A Single-User Electronic Ticketing System Using ERC-721 Protocol for Smart Contracts." *Bulletin of Electrical Engineering and Informatics* 14 no.4(2025): 3110–3120. https://doi.org/10.11591/eei.v14i4.8806. Yongshun Xu, Heap-Yih Chong, and Ming Chi. "A Review of Smart Contracts Applications in Various Industries: A Procurement Perspective." *Advances in Civil Engineering*, (April 2021). https://doi.org/10.1155/2021/5530755.

These technological developments do not undermine the principle of contractual relativity; instead, they challenge its application in digital contexts. The core tenets—consent, party autonomy, and non-imposition of obligations on non-consenting persons—remain intact. What requires refinement are procedural and interpretive frameworks that ensure these principles are effectively operationalized in smart and algorithmic contracting environments.

Especially regarding how to define the party in a non-physical digital environment, and how to ensure the enforceability of contracts on third parties under systems that emphasize transparency and decentralization. In blockchain, all transactions are transparent and immutably recorded, which can enhance the concept of "knowledge" of rights and obligations for third parties, thereby potentially facilitating the extension of a contract's effect in some instances.

However, the fundamental principles governing contractual relationships, such as the necessity of free will and mutual consent, remain the cornerstone, even amid the rise of complex contracts. Smart contracts, for example, are ultimately an expression of the contracting parties' will, and this will must be respected. The challenge thus lies in applying these principles in new and innovative contexts, and in striking a balance between protecting the autonomy of the contracting parties' will and the necessity of safeguarding the legitimate interests of third parties in an increasingly complex and technological world. Expanding the recognition of direct third-party rights must be done with strict controls that prevent harm to the public interest or undermine the principle of legal certainty. Understanding these challenges can contribute to formulating future legal and jurisprudential frameworks that enable leveraging technological advancements while preserving the principles that ensure justice and stability in transactions.[28]

Figure (1): The Relative Effect of the Contract in Terms of Third Parties in Islamic Jurisprudence and Positive Law



* Source: Prepared by the researchers

The percentages shown in the graph were determined based on a qualitative and quantitative analysis of the areas of agreement and disagreement between Islamic jurisprudence and positive law in each comparison axis. These percentages were based on an analytical estimation approach that examined relevant jurisprudential and legislative texts, taking into account the relative weight of each axis in terms of the extent of agreement or disagreement between the two systems.

For example, if most schools of jurisprudence were found to be convergent in their rulings with those of civil law on a particular issue, the percentage of convergence was considered high (between 60% and 70%). If the convergence was partial or limited to specific applications, the rate was reduced to 40%–50%. The absence of overlap or contradiction in the legal basis was considered a reason for the high percentage of disagreement, which exceeded 70%.

Thus, the percentages do not represent numerical statistical measurements in the strict sense, but rather quantitative analytical indicators designed to clarify the degree of conceptual and applied convergence between the two systems under study.

IV. Conclusion

This study confirms that the principle of contractual relativity, while foundational in both Islamic jurisprudence and positive law, is dynamically applied through distinct exceptions aimed at achieving justice and protecting the interests of third parties. Its key contribution lies in revealing that apparent convergences (e.g., in treating heirs) mask deeper philosophical divergences, while seemingly different tools (e.g., waqf vs. stipulation pour autrui) can serve analogous protective functions. Crucially, the research demonstrates that technological innovations, such as smart contracts, challenge the application, not the validity, of the principle, necessitating context-sensitive legal interpretation.

Based on these findings, we offer two targeted recommendations: For Legislators in Hybrid Jurisdictions: Develop model legislative clauses that explicitly define the conditions under which contractual effects may extend to special successors, drawing on the convergent principles identified in both systems to enhance legal certainty. For

Judicial Training Institutes: Design specialized workshops for judges that focus on the conceptual distinctions between representation (agency) and true third-party beneficiary mechanisms, to prevent the misapplication of the relativity principle in complex cases.

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