

Application Of Quality Standards In The Pillars And Conditions Of The “Istisna” “Manufacture” Contract

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Article Info	Abstract
<p>Article History</p> <p>Received: June 01, 2021</p> <p>Accepted: January 04, 2022</p> <hr/> <p>Keywords : Istisna, Individuals, Peoples, Jurisprudence</p> <p>DOI: 10.5281/zenodo.5818015</p>	<p><i>The concept of quality is one of the basic features of our present era, due to its wide use, and the increasing demand for it in many aspects of our contemporary life. There is no doubt that quality can only be achieved by diligent and hard work. Moreover, it is a technique by which humans enhance the individual and societal level through which they achieve success and accomplish the satisfaction of Allah, the Almighty. The Istisna “manufacture” contract is one of the important contracts in this era, because industrial progress has been active and flourished between individuals and peoples. The need for contracting to obtain or manufacture some product that is needed by individuals and countries has arisen. Accordingly, I wanted to reveal what came in Islamic jurisprudence and related to this by applying quality standards in the pillars and conditions of the Istisna “manufacture” contract.</i></p>

Introduction

As a matter of fact the pillars of the contract are the part and parcel of the contract, so the Islamic Sharia was thereto address the Islamic transactions which have the entire dependable pillars thereof. The contract is the pillar of the Islamic transactions. Istisna’ “manufacture” contract is one of such transactions, and its pillars are the pillars of sale, in order to achieve perfection in issuing its rulings and its conditions which are the basic complement to its pillars with the aim to raise the contract to the highest standards of quality, accuracy and perfection thereof. The conditions of Istisna’ “manufacture” are the conditions of sale, and the terms of the Istisna’ “manufacture” contract are related to its pillars. Accordingly, each pillar has some conditions. In this manner, each pillar and its related conditions will be presented to show their quality.

1- Quality in the form and its related conditions:

• Quality in form:

The form is the offer and acceptance, and it is the first pillar which is agreed upon by all jurists. It is the only basic pillar of the Hanafi school. The offer is the first statement issued by one of the two contracting parties, in order to establish the disposition whereby it necessitates and establishes the disposition. As for the acceptance, it is the second statement issued by one of the two contracting parties, in order to establish the disposition and whereby the contract is completed. (1).

I will review some issues related to the form to indicate their quality, as follows:

The offer is to say “I will do or make for you” or something that indicates the same, and the acceptance is to say you “bought or accepted” and the like. If the offer is uttered in the past form, then istisna’ “manufacture” is valid, because the words offer and acceptance are found in a way from which the indication of their mutual consent is obtained. Then it is clear as if the offer had preceded the acceptance. Contrary to Abu Hanifa (2), this is a good word, whose meaning is useful, and achieves satisfaction, because it is the criterion for the validity of commercial exchange and the transfer of possession. But if the form rather than the past tense, the possibility of dissatisfaction may arise, and when satisfaction is not achieved, the ruling on istisna’ “manufacture” is affected, by analogy with the sale, and the jurists had statements about it. Their statements represent a clarification of the contractual quality criterion, and therefore the jurists raised the following issues:

The form in interrogation

The jurists agreed that the offer and acceptance should not be concluded in the interrogative form (3), because it is not considered an appropriate criterion for quality, because the possibility of acceptance in it is remote, and if the contract is completed in this way, the litigation occurs.

“Istisna” “manufacture” contract in Offer:

Offer ‘Muataat’ requires that the buyer pay the price and take the thing sold, which is not possible in the Istisna ‘manufacture’ contract, due to the delay in delivery of the sold item. As for the absolute sale, the contract is possible in it because the price and the appraiser are present at the time of the contract.

The conditions of the form in the sale do not differ from the form in other financial contracts (4).

B - Quality in terms of the form.

The offer and acceptance are the two elements that make up the contract form. They are the evidence and the sign of the inner matter, which is satisfaction, which they express. The jurists have set some conditions for them to maintain and enable them to correct and clarify the contract, they are summarized as follows:

First: That the council of the offer and acceptance is united, and this condition means the issuance of acceptance after the offer in the council of the contract without separating them with a pause, if the two contracting parties are present in the council of the contract. But, if one of them is present and the other is absent - then the absentee’s acceptance is considered upon his knowledge of the present party’s offer, if the offeror does not know; whether it was received by letter or other means of communication, provided that the offeror did not retract his offer before acceptance. So, we find that the union of the council of the contract is an important quality standard; because it leads to quality, perfection, and agreement without being tricked or flawed.

Second: acceptance is in juxtaposition with the offer, so the offer is not in one subject, and the acceptance is in another subject (5). If the acceptance is contrary to the offer, then the contract is invalid (6). This condition fulfills the compatibility criterion, which in turn leads to a valid contract, and secures it from the occurrence of disagreement after the contract, upon delivery of goods or receiving money, so each one unites on what the other said .

Third: Not separating the offer from acceptance with any statement or action that indicates rejection. If it was issued by one of the two contracting parties after the offer, and before acceptance, any act or statement that indicates turning away, the offer is invalidated, then there is no consideration for acceptance after that, and the Hanafis have stated that if acceptance contradicts the offer with anything whatsoever, it is a new offer that needs another acceptance (7). This is because the separation can give other indications that ultimately lead to a conflict between the two parties, as it may express the rejection of the other party and his non-acceptance without a statement, which leads to ambiguity in the transaction between them, so it is not known whether or not the acceptance is granted. The acceptance that is issued after the offer may not be compatible with it in any way, so it is not clear because of the break or the pause which took place and it leads to a rift between them when paying and delivering. Therefore, the quality of this condition is that it preserves the form from defects, which in turn brings the two contracting parties benefit and increases profit.

Fourth: Clarity in the form in its words and in its language. The form must be clear and understandable to both parties, far from ambiguity and concealment (8). So, Istisna’ ‘manufacture’ is contracted in terms that express the will of the contracting parties, because words are one of the means of expressing the will of the two contracting parties. Istisna’ ‘manufacture’ may be done by writing, because it is one of the means of expressing contentment. The choice of the council is established for the person who is written to him as long as he is in the acceptance council, and the choice of the writer extends until the option of the party written to is cut off (9). Istisna’ ‘manufacture’ also takes place by reference, provided that it is understood by the other party.

Quality in the two contracted parties and their related conditions:

1-2 quality in the two contracted parties:

By the two contracting parties, we mean the seller and the buyer. In the istisna ‘manufacture’ contract, the manufacturer who performs the work and the manufactured for party who requests the work in a specific capacity; The two contracting parties are the basis for the formation and emergence of the contract, and upon their expression, the effects of the contract and its provisions follow, so it was necessary to set standards and controls for both contracting parties so that the contract is completely valid and correct and has its effects. The permission to create the contract is not based on its generality, that is, it is not suitable for any contracted party, so we will shed light on the part related to the contract, which is the Al-Fuduli contract (10).

The best forms that represent the transfer of ownership and the exchange of goods and products between the seller and the buyer, is the possession and the guardianship, as it is considered an appropriate criterion for quality in financial transactions, so that they take place in their best and optimal forms (11). If someone who has no guardianship and no ownership undertakes the process of buying and selling, what is the ruling regarding it?

The ‘fuqahaa’ jurists differed regarding the ruling on Istisna’ ‘manufacture’ ‘Al-Fodoli’ middleman by analogy with the sale, according to two opinions:

The first opinion: that the Al-Fuduli contract is invalid according to the Shafi'is, and the Hanbalis agreed with them, and they said that it is not valid even if it is permissible after that; because he is not the owner and is not authorized in the case of the contract (12).

The second opinion: The contract of the Al-Fuduli is valid, and is suspended on the permission of the owner. If it is permitted, it becomes valid, and if rejected, it becomes invalid, which is the opinion of the Hanafis and Malikis(13).

Evidence:

First: The owners of the first opinion inferred that “Al-Fodoli” middleman’s contract is invalid according to the Sunnah:

On the authority of Hakim bin Hazam, said: “O Messenger of Allah, a man comes to me and wants me to sell him goods, then I buy them from the market and sell them to him”, Prophet Mohammed answered him: “Do not sell what you do not have.” (14)

Significance aspect: Prophet Mohammed (PBUH) forbade selling a person what he does not own, and “Al-Fodoli” middleman cannot deliver the thing sold because it does not belong to him, and this prohibition included it.

Second: The owners of the second opinion infer that the contract of “Al-Fodoli” middleman is valid and is subject to the permission of the owner according to the Sunnah:

On the authority of ErwaAlbarqi (May Allah be pleased with him), he said that Prophet Mohammed (PBUH) gave him a Dinar to buy his sheep, he bought him two sheep, he sold one of them for one Dinar, and came to him with a Dinar and a sheep, therefore, Prophet Mohammed asked Allah the Almighty to bless his sale, and therefrom if he bought the dust, he would make profit out of it(15)

Significance aspect:

That Prophet Mohammed (PBUH) had permitted Erwa to buy a sheep for him, but he had bought two sheep and sold one of them, and he returned to the Prophet (PBUH) with a Dinar and a sheep, i.e. more than his request, then the Prophet (PBUH) gave permission thereof, rather he prayed for him to be blessed. So, if it was not permissible, then, Prophet Mohammed would have denied him doing it, and that was nothing but goodness and quality in his legislation.

Most correct opinion:

What the Hanafis and Malikis said is what is distinguished by its quality and accuracy in saying. As they advocated the validity of “Al-Fodoli” middleman’s contract; if the person concerned or the owner permits it, and in that contract there is an interest for both parties, because the contract of “Al-Fodoli” middleman is like the contract associated with the condition, it is not binding and does not have its effects except after the approval of the person concerned, and if he sees that the contract is in his interest, he authorized it, without that condition, the contract is not completed, in order to preserve the right of the owner, and not to cause him harm and loss, or the occurrence of fraud from the act of “Al-Fodoli” middleman, so that he does not become bound by contracts that he did not authorize, or even that he does not want them, and he may be inflicted with loss (16). Quality emerged on the other hand in the condition of the Hanafis that it is not permissible for “Al-Fodoli” middleman to sell for himself (17). It is considered a sort of observing the interest of the owner, so that he does not miss out on the benefit and profit from the sale. “Al-Fodoli” middleman’s contract for himself is not the same as the contract he issues for others

This saying has good quality and soundness when they allow “Al-Fodoli” middleman to do the work of the owner, because he may notice a benefit or gain when the owner is busy. This achieves benefiting from the movement of the markets, increasing trade, and circulating money, and thus making profits, and seizing opportunities to increase profits. When “Al-Fodoli” middleman does this, he saves the owner time to follow the conditions of the market, and to trade what he deems appropriate to do, and he simultaneously preserved the right of the owner to return the matter to him for his approval or rejection; because he is the owner of the money.

A - Quality in terms of the conditions of the two contracting parties:

There are conditions that must be met by the two contracting parties:

The first condition: that the contracting person is capable of disposal and dealing, i.e. he has the capacity to perform the same. The jurists have agreed on the validity of the contract being issued by a sane, adult, rational person who is not interdicted for any reason, and thus he is qualified for the Istisna’ “manufacture” contract, and therefore the contract is valid and enforceable by both parties.(18).

The second condition: The Hanafis stipulated in the contract that he should not be an agent on both sides, neither in buying nor selling (19), and the quality standard was met in him because he might satisfy one of them at the expense of the other, which leads to enmity and quarrels between them.

The third condition: Guardianship means that the contracting party has the authority to enable him to implement the contract and enact its legal effects on him. This authority arises from his being an owner who acts on his own behalf or on behalf of the original owner by agency or guardianship.

Guardianship is of three types, they are as follows:

The first: Guardianship in principle and it belongs to the competent person if he concludes a contract for himself, and he is the person who undertakes the contract by himself as he is the person concerned, this is due to the completeness of his capacity in disposal of transactions. He is the guardian over himself and his money, and he has the full right to complete or invalidate the contract (20).

The second: The legal guardianship of a person over others, which is represented in the guardianship of the father, grandfather, guardian, judge, ruler or guardian, over those who are incompetent, such as the young boy, the insane, and the one interdicted for his foolishness or others. This state is legally proven without the guardianship of the owner himself. (21).

The third: It is the guardianship of the agent, which proves the owner's authorization of another person. He authorizes him to do what he himself can do. All the contracts he is entrusted to implement are proven valid thereof. (22)

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3-The fourth condition: that the manufacturer has the ability to deliver the manufactured product, and this is achieved by his ability to manufacture, prepare, and conform to the required and contracted specifications and conditions, and then deliver them thereof (23).

3- Quality in the contracted product and its related conditions:

A - Quality of the contracted product:

What is contracted in the Istisna "manufacture" contract is the product, the work, and the price. The dispute occurred among the Hanafis as to whether the product of the contract is the product itself or the action on two sayings (24):

The first opinion: The majority of the Hanafi School are of the opinion that what is contracted is the product itself and not the workmanship which represents the work of the maker.

The second opinion: For some of the Hanafis, including Abu Saeed Al-Baradei, that what is contracted is the work itself (25).

Evidence:

The owners of the first opinion inferred that what was contracted is the product as follows:

1 - The option of seeing is proven for the manufactured product, and the option of seeing is only in the sale of the seen product, so this indicates that what is contracted is the seen product and not the work (26).

2- If a man contracted a manufactured product with another man, and then the latter brings the first the product made by another person, but according to the manufacturing specifications, and he accepted it, then the contract is valid. This indicates that the contracted seen product is the criterion. If the work was indicated, then this is all invalid, and the contracted product was not accepted but from the first manufacturer.

3- The purpose of the person who needs the manufactured product is the made product itself with the specifications he wants, and according to his desire. If he takes it as he asked, then he achieved what he wants, and as for the manufacturer, it is secondary to him.

Second: The owners of the second opinion inferred that what was contracted is work as follows:

1 - Istisna' "manufacture" is a process of making use of it; and naming of the contract is evidence that it is the contracted thing.

Most correct opinion:

What became clear to me is that the most correct opinion is that what was contracted in the Istisna' "manufacture" contract is the seen product and the action "work" is dependent. The seen product is the main purpose of the person who needs the manufacturing of the contracted product, and it is the first purpose for him. If he got the manufactured product as he wants, and according to the required specifications, then he achieved his goal regardless of the identity of the manufacturer. The need for this manufactured product is the reason for the contract itself. For this reason, it received great importance, and some jurists made it the only thing that was agreed upon, and the work is nothing but a tool to achieve the manufactured product and bring it forth (27), and this does not mean that the work is the work of the contracted manufacturer himself. If a man makes something for another man, and he brings it from the manufacture of someone other than the contracted manufacturer, but with the same conditions and specifications, it is permissible (28) even without the knowledge of the person who wanted the manufactured product. This gave room to the first manufacturer in training his apprentices (29).

B- Quality in the conditions of the contracted product:

In this contract, the jurists stipulated a number of conditions, some of which fall under the general conditions of sale, and some of them are specific to the Istisna' "manufacture" contract without other contracts. It had some important conditions that are considered as quality and protection standards for the contract, including the following:

First: A statement of the type, amount, and description of the manufactured product, because it does not become known except through the said specifications, as it came in Bada'i Al-Sana'i (The Wonders of Making): The conditions for its validity are the indication of the type, amount, and description of the manufactured product, because it is sold, so it must be known (30). Some of the quality standards when manufacturing the product is; to indicate the type of the manufactured product, number of pieces, and the description by which the product is intended to be produced.

These specifications and standards imposed by the jurists are for the benefit of both parties, which prevent conflict or dispute when the manufactured product is delivered. It is also the quality in setting these standards and specifications which remove the ignorance that may lead to a potential dispute (31).

Second: That what is intended to be manufactured should be something in which people are dealing with, and what is meant by this condition is that Istisna' "manufacture" is only valid in goods that people are accustomed to manufacturing. However, if the manufactured product does not fall under the scope of the products dealt with between people, then Istisna' "manufacture" is not permissible according to the Hanafi jurists. In addition, the Hanafi jurists mentioned examples of some of what people used to manufacture in their time.

Third: One of the conditions of the contracted product is the stipulation of a term in the Istisna' "manufacture" contract:

Addressing dispute:

The Hanafi jurists agreed that if the Istisna' "manufacture" contract was without a specific period, then it is valid without dispute. They also agreed that if the stipulated term is less than a month - and that is because the minimum term for civil contract in their opinion is a month - then it is an Istisna' "manufacture" contract without dispute, because mentioning the term here is for urgency, not for giving a period of grace. But if the stipulated period is a month or more, then there is a difference of opinion, does it become civil contract, or remain istisna' "manufacture" contract?

The Hanafi jurists differed on two opinions:

The first opinion: Imam Abu Hanifa and those of his companions who agreed with him believe that the Istisna' "manufacture" contract should be free of a term, and if a term is stipulated, then it becomes a civil contract, and the well-known conditions of civil contract are stipulated therein, otherwise it becomes an invalid istisna' "manufacture" contract, and it does not become like that unless the term is a month or more, but if the term is less than a month, then it is istisna' "manufacture" contract according to consensus of all the Hanafi jurists (32).

The second opinion: According to the two Imams Abu Yusuf and Mohamed, the two companions of Abu Hanifa, that stipulating the term in Istisna' "manufacture" contract does not invalidate it, nor does it make it a civil contract, rather it is better than the absolute termed contract (33).

Evidence for the first opinion:

1- The term in selling is one of the characteristics necessary for the civil contract; so its mentioning indicates the civil contract; in meaning, even if it is not mentioned explicitly, like the guarantee with the condition the original voidance thereof, otherwise it is transference of the meaning. In case it does not come with the transference meaning, then, the criterion in contracts is the intention, purpose and meaning interpretation.

2- That the postponement is concerned with debts; as it is set up to delay the claim, and to the delay of the claim, it is only in a contract in which there is a claim, and that is only in the civil contract, as there is no debt in Istisna' "manufacture" contract. (34)

Evidence for the second opinion:

1- It is customary to stipulate the term in Istisna' "manufacture" contract, but it is permissible to deal therewith, so the intention is to expedite the work, not to delay the claim from the manufacturer, so it does not depart from being Istisna' "manufacture" contract (35). Whereas the intention of the civil contract is to delay or postpone the claim, and therefore delay or postponement is stipulated therein.

2- The expression is a reality in Istisna' "manufacture" contract, so it is carried on its reality. So, the mentioning of Istisna' "manufacture" requires that it be only a contract of Istisna' "manufacture", because the wording is real in it and it is possible to work thereof. As for the mention of the term, it necessitates that it be in a civil contract, rather, it is possible that it is Istisna' "manufacture" which leads to the haste of the work of the manufactured product. With this possibility, the term is one of the requirements of Istisna' "manufacture" contract and is not related to the civil contract. (36)

Most correct opinion:

Looking at the two opinions, we see that what the two companions (Imam Abu Yusuf and Imam Mohamed) held regarding the permissibility of specifying a period for the Istisna' "manufacture" contract is a priority, and it is what we choose because of the great benefit that it accrues to the person who wants the manufactured product. This achieves quality in the contract, and cuts off the dispute, as the failure to specify a period causes the manufacturer to procrastinate in delivery more than once, and this harms the person who wants the manufactured product and may exceed the harm to other parties rather than the person who wants the manufactured product, to those who benefit from the manufactured product or waiting for it.

The rule states that harm is removed, and Islamic law closes the doors of conflict and dispute, and the quality of this most correct opinion is confirmed by the decision of the Islamic Fiqh Academy, which stated that:

It is stipulated in the Istisna' "manufacture" contract that the term is specified therein (37).

Results of the research:

1- Istisna' "manufacture" contract is characterized by pillars, conditions, and criteria that are the same in all contracts, except for some of its special conditions, which are the statement of the type of the manufactured product, its amount and its required specifications, and that the contracted product is from what is being dealt with between people, and long term in Istisna' "manufacture". All of which are criteria of control and clarity to avoid potential dispute, disagreement and preservation of rights thereof.

2- If the Istisna' "manufacture" contract counted and fulfilled its pillars and conditions, then the ownership of the price is proven to the manufacturer if he presents the manufactured product as requested by him, as well as the contract establishes the ownership of the sold item by the manufacturer.

3- The Istisna' "manufacture" contract may include a penal clause that obliges the contracting party violating the terms of the contract to pay a fine to the party affected by that violation, because it is a condition that is in the interest of the contract, but that condition must be linked to actual damage and loss of benefits.

4- Quality has been established in the "Istisna'" "manufacture" contract for those who said that it is permissible for the person who wants the manufactured product to see his contracted manufactured product if the product is in violation of the agreed-upon specifications, and the manufacturer has no choice but to bring the manufactured product to the manufacturer to see it.

5- Quality in the "Istisna'" "manufacture" contract stipulates that the manufacturer may not require non defects, and his responsibility for the defects of what he has made must remain constant, until the manufactured product is examined by experts by modern means.

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