

Sunnite Religious View about Jurisprudence Nature of Istisna Contract

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ARTICLE INFO

Article history:

Received 07 Dec 2015

Received in revised form 09 Jan 2016

Accepted 29 Jan 2016

Keywords:

Legal nature,

Istisna,

Sunni school,

Client

ABSTRACT

Objective: Istisna infinitive verb in the lexicon of Matter Production and about Istisna in the sense of seeking to build or do something. If one of the carpenters wants to build a ladder for him, literally this is Istisna; it makes no difference that the Client provides wood and gives the carpenter or joiner to prepare it and then build a ladder. It also does not matter, the manufacturer plans to have donations or to receive a certain way to build ladders. **Methodology:** Hanbali, Maliki and Shafi'i scholars, such as, Istisna only if HP is in the form, you accept. Certainly in the eyes of the entire world after the four Sunni schools, in the form of the contract if the contract Istisna fit him in the sense that the ceremony, all contract manufacturing order or in accordance scholars paid the owner of a day or two later, Istisna absolutely correct contract and Tommy's legitimacy. **Results:** Sunni religious scholars in two formats, therefore, were correct Istisna : a) in the form of HP to maintain all the terms of the contract. B) In the form of independent by the terms of its specific features. Although newly conclude a contract Istisna is not there from the distant past, but there is no consensus on its nature. **Conclusion:** Religions Maliki, Shafi'i and Hanbali Sunni religions, mainly in the form of HP to maintain all the terms of the contract and its characteristics Istisna correct, only the Hanafi School as an independent By from HP and other contracts, corrected.

1. Introduction

1.1 Istisna Expressional Conception

Istisna is a contract between two persons, whether natural or legal, to produce a particular commodity or project or plan with specified features in the future that the order of the recipient (contractor) in exchange for the sums agreed in time, makes a commitment, raw materials and goods required for the preparation and implementation of projects directly within the specified time, the product or project to deliver to the employer.

The following points are significant in defining Istisna:

1. Istisna Since the contract (contract), it is necessary that both sides hereof (such as capacity and in accordance with Articles 210 to 213 of the Civil Code) and has given that in accordance with our rights, originally the contracts, it is satisfactory (not formal) , or intention and is merely intended contract manufacturer is willing , Ali al-Qaida, the contract should be in accordance with Article 191 of the civil law with everything that implies intent of this contract; be fulfilled. Unless the law provides otherwise; as the "General Conditions provisions of the Treaty" and "the pre-sale building" official document where necessary, the parties can, individuals or representatives of organizations, institutions, companies, and economic and non-economic enterprises.
2. At the time of conclusion of the contract is nonexistent product or scheme and purpose of the contract, build and create it.
3. Istisna about goods flows that can be built and natural products such as fruits and vegetables and whole grains does not flow. Selling the goods in the form of HP can be achieved. Although the packaging and the production of these goods can be put in the form of Istisna.

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DOI: <https://doi.org/10.24200/jsshr.vol4iss01pp26-28>

4. The contract shall be determined in accordance with Article 339 of the Civil Code (Katuzian, 2001-a) , but do not need all or part of it, to be paid in the ceremony, but can be agreed upon by the parties and the remaining part of the deposit before starting work physical fitness improvement or independent work with specific timing or as a whole, to be paid in installments to the builder or contractor.

5. Raw materials and other equipment for the manufacture of the product with all the characteristics to be sure, by order of the recipient, should be provided and the amount that the customer pays, including all final goods and services that are used to deliver goods or the design contract is required, should be provided (Katuzian, 2001-b).

2. Materials and method

2.1 All Types of Istisna

With notice to the regulations Istisna council of money and credit signing of the central bank can be divided into two types:

I) Istisna Sell: bank is allowed to buy the commodity in accordance Istisna and pay it in installments or with Government Ministries to sell the buyer in this way is commonly called Istisna II) Istisna parallel: the bank can be completed as a commodity seller and buyer enters into a contract with clear terms Istisna and then as a buyer and in accordance with a parallel Istisna Istisna sign a contract with the manufacturer of the product described in this way the so-called parallel Istisna called.

2.2 Istisna Contract Elements

Istisna be done to achieve the following five pillars:

1. Client: who manufacture certain products or construction specific plan to another (maker's contractor) the order;
2. Order taking (makers' contractor) who accepts a particular item or make a specific plan with specific features within the specified time and deliver to the other party. Order the donor and recipient can be person or entity;
3. The offer and acceptance. This contract, like all other contracts can be verbal, written, or practical evidence of the will and consent of the parties to the contract to be signed to do this;
4. The subject of the contract product or design that identifies with the characteristics and conditions stated in the text of the contract or order has been build based on the circumstances, was agreed by the parties;
5. Contract Amount: The amount that is necessary to plan goods manufacturer or contractor to perform the work specified in the schedule to be paid by the Client (Nazarpour, 2011)

In this section we briefly commenting on the identity of the four Sunni schools of jurisprudence Istisna discussed.

3. Results and discussion

3.1 Hanafi School

The religious scholars believe, Istisna fits into the contract of sale and contract HP is independent of the contract. Article 388 Laws form of formulated in accordance with Hanafi jurisprudence, states, inasmuch fireproof statesman vending "If someone tells Artisan: good person for me to make and artisan accept a certain amount, Istisna sale is concluded. How much cash it part in cash and part or all of the following after them. If the material which makes the item; it is constructive. But if the raw material is from the Client, the lease contract can be fulfilled and not Istisna (Salus, 1992) after the Hanafi scholars Istisna placed in a contract of sale; independent contract from HP, cash and credit (Ward, 2009; Zlotnick, 2001).

3.2 Maleki School

The religious scholars have not Istisna as independent contract, but in addition to discussions on topics related to Istisna have him. For example, in the book "Al-Kubra owner" during discussion HP as "in industry" Istisna been discussed. It is in this book: If anyone orders for pan, drinking cup, bowl copper, caps, jar, bowl or something that people usually go to the artisan and the characteristics of their orders for the day, if considers that an individual commodity, in which artisan witnessed there and not bet on it, and the head of public work or a day or two later pay in parliament, it is permissible self and it is necessary contract artisans at the time of the product to provide certain features. But if you take a long time to pay the forefront of public funds, corrupt contract. Shaafe School

The religious scholars, like al-Maliki, Istisna not approve and why certain topics were not allocated to Istisna. Shaafe view because the ordered item there and so disposed sale transaction is an example of the Prophet (PBUH) has forbidden it. Moreover, such a sale transaction in the same sentence is given, even if the product was not available, but the seller of the property, sell it, and now the destruction is not permissible, not permissible to sell it (Shazli, 1992)

Alam al-Shaafe in Shafei (2009), writes: If the condition that he be made a pot of copper, iron or copper and lead, is not permitted in any building is something that order, the current order. As mentioned, Shaafe contract manufacturing order not approves, but some form of order in making HP the contract has been discussed (Spielberger et al., 1970; Shahidi, 2001).

3.3 Hanbali School

Some scholars have asserted that the Hanbali Hanbali scholars, Istisna product is not correct. That artisans selling anything except for him. While the product is not available. So Hanbali, Maliki and Shaafe scholars, such as, Istisna only if they are in the form no doubt the four religions in the whole world, if Istisna fit him into marriage in the sense that the ceremony, all contract manufacturing order or in accordance scholars paid owns one or two days

after signing a contract Istisna Tommy is absolutely correct and legitimacy. But what is normal in society, pay all sums in ceremony; it up, part of the sums paid in parliament, so Istisna In this case, under the terms of the contract are not HP. So religions, Maliki, Shaafei, and Hanbali Istisna contracts that do not fit the mold him, because the analogy is not permissible. For this contract, the transaction is done on something that is nonexistent and the Messenger of Allah "Our licking" has forbidden. Although the product is also available in the HP deal, but with the Word of God that contract allowed him know the first rule of a license exception. Sunni religious scholars in two formats, therefore, were correct Istisna Sarakhsi (1994): a) in the form of HP to maintain all the terms of its contract and b) in the form of independent by the terms of its specific features (Mehrabizadeh, 2002).

4. Conclusion

Hanafi religious scholars believe, Istisna fits into the contract of sale and contract HP is independent of the contract. Maliki religious scholars have not Istisna as independent contract, but in addition to discussions on topics related to Istisna have him. As religious scholar Shaafei Maliki, Istisna not approve and why certain topics were not allocated to Istisna. Shaafei view because the ordered item there and so disposed sale transaction is an example of the Prophet (PBUH) has forbidden it. Some scholars have asserted that the Hanbali scholars, Istisna product is not correct. That artisans selling anything except for him. While the product is not available. So Hanbali, Maliki and Shaafei scholars, such as, Istisna only if they are in the form no doubt the four religions in the whole world, if Istisna fit him into marriage in the sense that the ceremony, all contract manufacturing order or in accordance scholars paid owns one or two days after signing a contract Istisna Tommy is absolutely correct and legitimacy. . Sunni religious scholars in two formats, therefore, were correct Istisna Sarakhsi (1994): a) in the form of HP to maintain all the terms of the contract. B) In the form of independent buying the terms of its specific features.

REFERENCES

- Katuzian, N. 2001-a. General rules of contract, Press Publishing Company, Tehran, 3.
 Katuzian, N. 2001-b. The Civil Rights: general rules of contracts. Tehran, corporation Publication, 1, 88-91.
 Mehrabizadeh, M. 2002. Impact of cognitive - behavioral perfectionism and guilt, Ahvaz ShahidChamran University.
 Nazarpour, M. N. 2011. Accuracy or Corruption Istisna Viewpoint Shiite and Four Sunni Schools of Law. Islamic Law Quarterly, Issue Twenty Eighth, 41.
 Salus, A. A., 1992. Held Istisna. Journal of the Islamic Fiqh Academy, 7(7), 295-300.
 Sarakhsi, Sh. 1994. Ketab Al- Mabsut C. 13, Beirut, Dar Al- kotob al- Elmiyat.
 Shafei, A. M. 2009. The book Al-Aam, al-Qahira, Dar Al-Shoayb.
 Shahidi, M. 2001. The agreements and commitments, Tehran, Majd.
 Shazli, H. A. 1992, Istisna'a and the position of Islamic jurisprudence of it in the form of contract or contract Istisna'a peace. Journal of Islamic jurisprudence, 7(7), 425-435.
 Spielberger, C. D., Gorsuch, R. L., & Lushene, R. 1970. STAI manual Palo Alto, CA: Consulting Psychologists Press.
 Ward, C. B. 2009. Stress management. Translated Book Author hot. Tehran: Arrows publication.
 Zlotnick, R. 2001. Twelve Steps to serenity: the stress management aspect of Alcoholics Anonymous. Unpublished Dissertation of PhD, Temple University.

How to Cite this Article:

Millanei A., Ghabooli Dorafshan M H., Bayrami A., Sunnite Religious View about Jurisprudence Nature of Istisna Contract, UCT Journal of Social Sciences and Humanities Research 4(1) (2016) 26–28.