

18. ISTISNA

Istisna is a sale transaction where a commodity is transacted for before it comes into existence. It is an order to a manufacturer to manufacture a specific commodity for the purchaser. The manufacturer uses his own material to manufacture the required goods.

In an Istisna, the price must be fixed with the consent of all parties involved. All other necessary specifications of the commodity must also be fully agreed on.

Cancellation of Contract

After giving prior notice, either party can cancel the contract before the manufacturing party has begun its work. Once the work starts, the contract cannot be cancelled unilaterally.

Difference Between Istisna and Salam

Istisna	Salam
The subject matter of Istisna must be something which needs to be manufactured.	The subject can be anything that may or not be manufactured.
The Istisna price does not necessarily need to be paid in full in advance. It is not even necessary to pay the full price at delivery. It can be deferred to any time according to the agreement of the parties. The payment may also be made in installments.	The price has to be paid in full in advance.
The time of delivery does not have to be fixed in an Istisna.	The time of delivery is an essential part of the sale.
The contract can be cancelled before the manufacturer starts the work.	The contract cannot be cancelled unilaterally.

Difference Between Istisna and Ijarah:

Istisna	Ijarah
The manufacturer either uses his own material and if it is not available with him, obtains it to make the ordered goods.	The material is provided by the customer and the manufacturer uses only his labor and skill meaning that his services are hired for a specified fee paid to him.

Istisna	Ijarah
The purchaser has a right to reject the goods after inspection as the Shariah permits somebody who purchases a thing not seen by him, to cancel the sale after seeing it. The right of rejection only exists if the goods do not conform to the specifications agreed upon between the parties at the time of contract.	Right of rejection of goods after inspection does not exist.

Time of Delivery

As pointed out earlier, it is not necessary in an Istisna that the time of delivery be fixed. However, the purchaser may fix a maximum time for delivery which means that if the manufacturer delays the delivery after the appointed time, he will not be bound to accept the goods and to pay the price.

In order to ensure that the goods are delivered within the specified period, some modern agreements contain a penal clause to the effect that in case the manufacturer delays the delivery after the appointed time, he shall be liable to a penalty which shall be calculated on a daily basis. Can such a penal clause be inserted in a contract of Istisna according to the Shariah? Although the classical jurists seem to be silent about this question, yet they have allowed a similar condition in the case of Ijarah. They say that if a person hires the services of a person to tailor his clothes, the fee may be variable according to the time of delivery. The hirer may say that he will pay Rs. 100 in case the tailor prepares the clothes within one day and Rs. 80 in case he prepares them after two days.

Based on the same analogy, the Istisna price may be tied to the time of delivery, and it is permissible if it is agreed between the parties that in the case of a delay in delivery, the price will be reduced by a specified amount per day.

Istisna as a Mode of Financing

Istisna may be used to provide home financing. If the client owns land and seeks financing for the construction of a house, the financier may undertake to construct the house on the basis of an Istisna. If the client does not own the land and wants to purchase that too, the financier can provide him with a constructed house on a specified piece of land. The financier does not have to construct the house himself. He can either enter into a parallel Istisna with a third party or hire the services of a contractor (other than the client). He must calculate his cost and fix the price of the Istisna with his client that allows him to make a reasonable profit over his cost. The payment of installments by the client may start right from the day when the contract of Istisna is signed by the parties. In order to secure the payment of installments, the title deeds of the house or land, or any other property of the client may be kept by the financier as a security until the last installment is paid by the client. The financier will be responsible to strictly conform to the specifications in the agreement for the construction of the house. The cost of correcting any discrepancy would have to be borne by him.

Istisna may also be used for similar projects like installation of an air conditioner plant in the client's factory, building a bridge or a highway.

The modern BOT (buy, operate and transfer) agreements may be formalized through an Istisna agreement as well. So, if the government wants to build a highway, it may enter into an Istisna contract with the builder. The price of Istisna may be the right of the builder to operate the highway and collect tolls for a specific period.

Uses of Istisna

- Home financing
- Financing of plant / factory / building
- Booking of apartments
- BOT arrangements
- Construction of buildings and plants