

Difference between Istisna and Ijarah

It should also be kept in mind that the manufacturer, in istisna', undertakes to make the required goods with his own material. Therefore, this transaction implies that the manufacturer shall obtain the material, if it is not already with him, and shall undertake the work required for making the ordered goods with it. If the material is provided by the customer, and the manufacturer is required to use his labor and skill only, the transaction is not istisna'. In this case it will be a transaction of ijarah whereby the services of a person are hired for a specified fee paid to him.

When the required goods have been manufactured by the seller, he should present them to the purchaser. But there is a difference of opinion among the Muslim jurists whether or not the purchaser has a right to reject the goods at this stage. Imam Abu Hanifah is of the view that he can exercise his 'option of seeing' (Khiyar-ur-ru'yah) after seeing the goods, because istisna' is a sale and if somebody purchases a thing which is not seen by him, he has the option to cancel the sale after seeing it. The same principle is also applicable to istisna'.

However, Imam Abu Yousuf says that if the commodity conforms to the specifications agreed upon between the parties at the time of the contract, the purchaser is bound to accept the goods and he cannot exercise the option of seeing. This view has been preferred by the jurists of the Ottoman Empire, and the Hanafi law has been codified according to this view, because it is damaging in the context of modern trade and industry that after the manufacturer has used all his resources to prepare the required goods, the purchaser cancels the sale without assigning any reason, even though the goods are in full conformity with the required specifications.

Difference between Istisna' and Salam

Keeping in view this nature of istisna' there are several points of difference between istisna' and salam which are summarized below:

- 1) The subject of istisna' is always a thing which needs manufacturing, while salam can be effected on any thing, no matter whether it needs manufacturing or not.
- 2) It is necessary for salam that the price is paid in full in advance, while it is not necessary in istisna'.
- 3) The contract of salam, once effected, cannot be cancelled unilaterally, while the contract of istisna' can be cancelled before the manufacturer starts the work.
- 4) The time of delivery is an essential part of the sale in salam while it is not necessary in istisna' that the time of delivery is fixed.

