

Supply contract and its juristic characterization

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Abstract

The research provides a vision of the supply contract and its legitimacy. It includes an agreement between the seller and the purchaser upon the sale of goods or the provision of services once or on stages in return for a price to be paid according to the agreement or when the goods or services are provided. It has been demonstrated that contemporary jurists see that this contract is one of the contemporary contracts, as their opinions are different, because of the difference in the juridical characterization of this contract, so that if the subject matter of the contract is a commodity that needs to be manufactured, the contract shall be characterized to be an *Istisnā' a* contract, and if the subject matter of the contract is a service provided, the contract shall be lease contract.

However, if the subject matter of the contract in Supply Contract is purchasing a commodity, then the jurists have resorted to several doctrines to characterize the contract, as some of them have characterized the same based on similar nominate contracts, as some have characterized the same to be *Salam* (Advance Payment) Agreement; some of them have characterized the same to be as sale contract on description; some have considered as the same to be binding deal; some have characterized the same to have of the image of purchase of a permanent work, some of them have resorted to ensnarement sale because of the similarity between them; and some of them have characterized the same to be a contract that has its own nature and that is different from the previous contracts.

Keywords: Supply, Sells, *Salam*, Contracts, *Istisnā' a*, Permanent work.

Introduction

Praise be to Allah, the Lord of the Worlds, and prayers and peace be upon the faithful Messenger of Allah, and upon his family and companions, and after, The characteristics of Islamic Sharia include validity thereof for each era and place, and its ability to deal with all developments, especially in this era, which witnessed an unprecedented development in various areas of life, and even these

developments are accelerating and non-stoppable, and they form a challenge to the scientists of the nation to demonstrate its legitimacy.

One of the areas that has witnessed a remarkable development is the development of commercial methods and techniques, as after the sale contract had been taking the deal picture in the markets, it was transferred remarkably to large commercial contracts, in which the supply of goods and services is contracted on and the impact thereof extends to periods of time that may be up to several years. This type of contracts has become known as supply contracts, so it was important to study this contract and add the new developments to the previous studies, by focusing on juristic characterization through demonstration of all contemporary researchers' opinions and discussions in characterizing and judging the same, so that this research forms a qualitative addition to the previous efforts discussed in the supply contract.

In this research, I followed the descriptive approach, with comparison and analysis, in which I presented scientist's opinions and evidences, and then the discussion and prevailing among them. Furthermore, I extracted the authentic Hadiths from their original sources, and defined the terms provided in this research.

Definition of the supply contract, forms parts thereof.

The supply in the language, in the sense of what has been supplied, namely it is said that, someone brings the thing, and from there, the horses entered the town if they entered a little bit, step by step.¹

¹ Ibn Mandhūr, *Lisā n Al-Arab*, p3 p.456,458, *Alfayrouzabā dī* , *Al-Qā moūs Al-Muḥ eet*, p1 p.415.

Definition of the term supply contract:

The supply contract is considered one of contemporary contracts; therefore, this contract was not defined by scholars in ancient times, but rather by contemporary jurists and researchers.

Al-Sanhūrī defined it as "a contract by which one party abides to provide the other party with something particular that is repeated for a period of time."²

And defined by Muhammad Taqī Othmanī as "It is an agreement between purchaser and seller, provided that the seller shall supply to the purchaser goods or items of specific descriptions at certain future dates against a particular price agreed upon between both parties."³

Dr. Abdul Wahab Abu Sulaiman defined it as: "A contract on a described service to be due and payable in aggregate or in installments at a specific time and place against known postponed price to be paid in aggregate or in installments"⁴.

In another definition of it, "A contract on a description of the debt payable at a known postponed price to a known time in a particular place"⁵.

Dr. Rafik al-Masri also defined it as an agreement whereby one of the parties undertakes to provide the other with goods described in one or several installments, in exchange for a fixed price that is often in installments, so an

² Al-Sunhūrī , Al-Waseet , p1 p.167.

³ Othmanī , "Supply and Tender Contracts " , Islamic Fiqh Academy", No. 12, P2 P.313.

⁴ Abu Sulimā n, Supply Contract. Research presented to the first conference of Islamic jurisprudence in the transactions of Islamic banks, University of Jordan,(1994), P.14.

⁵ Abu Sulimā n, Supply contract. Journal of Islamic Fiqh Academy, No. 12, p2 p.338.

instalment of the price shall be paid when a portion of the sold goods is supplied and received."⁶

Dr. Ali Abu Al-Basal defined it as "a contract abided by one of parties thereof to provide certain things periodically or continuously in return for fees to be payable by the other party."⁷

Through the previous definitions, we note that it is agreed upon that the supply contract involves the provision by one party of something in return for a deferred payment price and that the submitted item is often supplied periodically or continuously. Therefore, the same shall not be paid at the time of signing the contract.

Here, It should be referred to that the supply contracts are related to the sale of goods, foodstuffs, industrial stuff and otherwise, and to the provision of services, such as communications, electricity, hospitality and other services.⁸

Furthermore, execution of these contracts take an extended period, so that time is a fundamental element in executing the same and they are called time contracts.⁹

Forms and parts of supply contract:

The supply contract has several forms, these forms show how the goods or services are delivered and how price is paid, as through these various images of the supply contract, the nature and fact of this contract can be known.

⁶ Al-Masrī , Supply and Tender Contracts. Journal of Islamic Fiqh Academy, No. 12, p2 p.447.

⁷ Abu Al-Basal, Contract of Procurement and Supply, p. 201.

⁸ Ibid, p. 236, Al-Masrī , Contract of Supply and Tenders, Journal of Islamic Fiqh Academy, No. 12, p 2 p.447.

⁹ See: Al-Zarqā , General jurisprudence, p1 p.644.

The most prominent forms of the supply contract can be indicated in the following points:

- 1- Agreement upon that the payment of the price shall be deferred so that it coincides with delivery of the commodity or one of them precedes the other in deference according to the terms of the contract.
- 2- The purchaser should pay a deposit, insurance, or guarantee to be calculated from the price of the goods, of which delivery is postponed.
- 3- Each contracting party shall pay an amount to be calculated on the basis of the percentage of the price to ensure that each of them is bound by the contract and execution thereof. this amount shall be deposited with a third party or the market administration to ensure the execution of the contract by both parties and the seller shall refund the payment made at the time of execution and what the purchaser has paid shall be calculated as part of the total price.
- 4- Delivery of the commodity shall be in various instalments and payment of price shall be deferred.
- 5- In some of supply contract forms, that the purchaser needs the commodity on regular various periods, as appropriate, provided that the whole price shall be paid or part thereof shall be deferred to a particular time after making all required payments in full as per what is stated in the contracts of nutrition in refuges, hospitals, airports and other similar contracts, for which all the qualities, required levels and delivery according to a specific schedule are met completely.¹⁰

It is noted in the previous forms that the price is deferred wholly or partially, but the goods sold will be postponed either to be delivered once or in intervals.

¹⁰ Abu Sulimā n, Supply Contract, Journal of Islamic Fiqh Academy, No. 12, p2 p.348,349.

Supply Contract has several divisions with different considerations:¹¹

1- Is divided in terms of the contracting parties' freedom to accept or reject the contract to:

A- Standard supply contracts: These contracts are entered into between two parties, one is a company and the other is an individual, so one of them is strong and dispensing and the other is has need. The strong imposed his conditions, such as the relationship between the electricity company as a supplier and the beneficiaries from the electricity company, and therefore the company imposes its conditions that it wants and be standard with all beneficiaries.

B- Free supply contracts: Here, the parties to the contract are equally free to establish the contract and stipulate the conditions of each party.

2- The nature of the contract is divided into:

A- Administrative supply contracts: contracts that are usually made between the state and government institutions on the one hand and ordinary parties, such as individuals and private sector companies on the other hand. When the state needs some goods, it contracts with these companies.

B- Private supply contracts: In which the parties to the contract are ordinary individuals or private companies, so the state does not exist in this type.

3- They are divided in terms of supplier's work into:

A- Ordinary Supply Contracts: the contracts, in which the subject of the contract is a described movable property agreed upon.

B- Industrial Supply Contracts: the contracts, in which the subject of the contract is something to be manufactured, and these contracts might be private and might be administrative.

¹¹ Al-Mutlaq, Contract of supply - the study of legitimacy –" Journal of Imā m Muhammad Ibn Sūood University, No. 10, p.39.

In order to know the judgment of supply contract, it is necessary to characterize this contract juristically, as it is a contemporary contract, but it is meant by characterization: determining the recent occurrence to refer the same to a juristic origin pointed out by Islamic doctrine to have juristic descriptions, namely to give these descriptions to the recent occurrence when it is proven that there is similarity between the origin the recent occurrence in fact. ¹²

Since the contracted stuff in supply contracts differs from one contract to another, this difference must be taken into consideration on juristic characterization.

If the supply contract deals with a commodity to be manufactured, this contract is recognized as an Istisnaa contract and this is agreed upon by contemporary jurists.¹³

This contract is likely to be correct legitimately, because the Istisnaa Contract states that there must be a commodity on contracting, and the commodity price shall not be paid in advance..¹⁴

If the supply contract deals with the contracting on the provision of services, such as communications, electricity and hospitality, the contract will be recognized as a lease contract of joint tenancy¹⁵.

Services here come step by step, as they are not obtained at the time of signing the contract, and the rent shall be deferred, as it is not required to accelerate the

¹² Shubair, the adaptation of the jurisprudence, p.30.

¹³ Othmanī , Supply and Tender Contracts, Islamic Fiqh Academy, No. 12, P2 P.313, Al-Masrī , Supply and Tender Contracts. Journal of Islamic Fiqh Academy, No. 12, p2 p.478.Abu Al-Basal, Contract of Procurement and Supply, p.211

¹⁴ Ibn Nujaim,. Al-Bahr Al-Raeq, p6 p.185, Decisions and Recommendations of the Islamic Fiqh Academy, Session No. 7, p.224.

¹⁵ Abu Al-Basal, Contract of Procurement and Supply, p.232

payment of rent in the lease contract, and has been agreed upon by the jurists, Hanafis¹⁶, Malikya¹⁷ Shaafa'is¹⁸ and Hanbalis¹⁹. Fiqh

Juristic Characterization of supply contract for purchasing goods based on previous contracts.

The contemporary jurists differed in juristic characterization of the supply contract for purchasing particular goods, some considered this contract to be nothing other than one of the nominated contracts, and there have been several doctrinal characterizations of this contract in the following points:

1. Characterization of the supply contract as a Salam Agreement²⁰

A Salam contract is the sale of something in debt²¹ and it is required to deliver the price at the time of signing the contract and to delay delivery of the sold stuff for a specific time.

The Hanafis²², Shaafa'is²³ and Hanbalis²⁴ went to stipulate paying the price at the time of signing the contract.

¹⁶ A group of scientists. Al-fatā wā Al-hindeyya, p4 p.417.

¹⁷ Al-Khurashū , Sharḥ Al-Kharshū , p7 p.36.

¹⁸ Al-Shā fi'ī , Al-Um, p4 p.23.

¹⁹ Ibn Qudā mah, Al-Mughnī , p5 p.257.

²⁰ Al-Masrī , Contract of Supply and Tenders, Islamic Fiqh Academy, No. 12 , p2 p.478, Abu Al-Basal, Contract of Procurement and Supply, p.232, Draghma, Contract of Supply, p.20.

²¹ Al-Sherbenī , Mughne Al-Muḥ tā j p2, p.102.

²² Al-Sarakhasī , Al-Mabsūt, p12 p.127.

²³ Al-Dimyā tī , I'ā nat Al-Tā libī n, p3 p.18,19.

²⁴ Al-Bahūtī , Kashā f Al-Qinā`a, p3 p.304.

The Maalikis went to that it is permissible to delay payment of the price for one, two or maximum three days.²⁵

However, both price and commodity delay in the supply contract, which is different from the Salam contract, unless we stipulate in executing the supply contract to expedite or accelerate payment of the price at the time of signing the contract, in order for this characterization to be correct.

2. Characterization of supply contract as sale contract of description.

This sale is called, sale on descriptions, and the elements of this contract are:

- A- The commodity that is not found at the time of signing the contract, and that may not exist in the importing country.
- B- The contract shall be made on the basis of description or sample view.
- C- The purchaser shall not pay the price immediately, but pays the same when it receives the commodity, either in one payment or in installments.²⁶

The supply contract is similar to the sale on descriptions of the goods, either in the subject or description of the contract in absence of compensations and even its purposes, it can be measured and given judgment, or considered as one of the modern images of selling descriptions²⁷.

Rather, the supply contract is distinguished from the sale of the absent description with several advantages that remove ignorance and prejudice and these features include²⁸:

²⁵ Al-Ḥattā b, Mawaheb Al-Jaleel, p4 p.515.

²⁶ Abu Sulimā n, Supply Contract, Journal of Islamic Fiqh Academy, No. 12, p2 p.338, Al- Mutlaq, Contract of supply - the study of legitimacy –" Journal of Imā m Muhammad Ibn Sūood University, No. 10, p.33, Shwaideḥ ,and, Abu Harbeed,, supply and entrepreneurship contract, p.11

²⁷ Abu Jazar, Sanctions and Guarantees in Supply Contract, p.18

²⁸ Abu Sulimā n, Supply Contract, Journal of Islamic Fiqh Academy, No. 12, p2 p.399, 400.

1. In terms of default to delivery and ignorance, as in the supply contract, the purchaser is assured of the seller's ability to deliver the sold goods and cares about making sure of the same by taking financial guarantees through an insurance institution in the simplest trade contracts.
2. In terms of ignoring the type and characteristics, as in the supply contract, each party seeks to demonstrate the most special characteristics and the quantities thereof, in addition to the delivery date without delay or procrastination.
3. In terms of the risk of purchasing what is not good and proper, as the trader does not presently enter into the supply contract until it ensures that the commodity will be delivered properly and securely to owners thereof.

However, the characterization of the sale on description was objected through several aspects:

1. Sale on description is different from the supply contract; as the sold item sold in the sale on description is in owned by the seller and exists in its possession, but it does not exist at the time of signing the contract and the view option is proven to the purchaser, as the sale shall be made an absent item with the description thereof.²⁹
2. The periods of selling the absent item are short and not exceeding one, two or three days, such periods were non-existent according to some jurists, and were considered as expediting and accelerating the sale of goods in

²⁹ Al-Masrī , Supply and Tender Contracts. Journal of Islamic Fiqh Academy, No. 12, p2 p.479, Journal of Islamic Fiqh Academy, No. (12), p2 p.531,559,561. Where this objection was received in the discussions of the Synod

the Salam Contracts, but in the supply contracts, the periods are much longer, namely one year or more or less.³⁰

3. Some of the jurists, who have permitted sale on description, stipulate that the price of the goods shall be paid at the time of signing the contract, so that it will be out of sale of debt with debt.

The Hanafis³¹ and Hanbalis said the same in their correct doctrine³² and Al-Zaharia³³.

The Maalikis did not stipulate that the price shall be paid; because the sale occurred immediately, but they have limited this condition to the sold items that cannot be changed³⁴.

In supply sale, the price shall not be paid in advance, but it both price and commodity are deferred or postponed.

3. Characterization of supply contract as an understanding and meeting between the parties but the actual sale is not made until the sold items are delivered³⁵.

This characterization leads to the mandatory problem of promise, as the Fiqh Academy at its fifth session did not consider the necessity of promising of meeting between the parties, but if the same is unilateral, it may be binding.³⁶

³⁰ Al-Masrū , Supply and Tender Contracts. Journal of Islamic Fiqh Academy, No. 12, p2 p.480.

³¹ Al-Sarakhasī , Al-Mabsūt, p12 p.127, Al-Kā ssā nī , , Badā`i Al-Sana`e p5 p.163.

³² Ibn Mufleḥ , Al-Mubde'e, p4 p.27, Al-Mardā wī , Al-Insā f, p4 p.299.

³³ Ibn Ḥazm, Al-Muḥ alā , p8 p.337.

³⁴ Al-Dardī r, Al-Sharḥ Al-Kabī r, p3 p.27

³⁵ Othmanī , Supply and Tender Contracts, Islamic Fiqh Academy, No. 12, p2 p.314

³⁶ See: Decisions and Recommendations of the Islamic Fiqh Academy, p.156

However, Sheikh Othmanī sees that it is possible to say that promise is necessary or obligatory when needed, but the need to keep the promise is represented in the following:

1. The need of business enterprises to execute this type of contracts to be able to plan their business activities, so this is possible only with an irrevocable contractual obligation, by which the required materials are obtained at specific times in the future.
2. The need to oblige meeting is evident in supply contracts and other types of contemporary business, especially in international trade, and failure to conduct the meeting causes severe damage to the other party.³⁷

In order for the meeting to be binding according to this saying, the agreement should, be clear and determining the quantity, descriptions and price of the sold item , or on a specific known basis determining the price with due diligence of the sold item and/ or price thereof, but if the agreement ignores such matters, the meeting is not considered binding.³⁸

The parties objected the obligation of meeting, as they see that it is not different from the sale added to the future that is not agreed upon.

This objection was replied to by the fact that meeting is not a reason for transferring ownership and accomplishing the sale, but by the sale is done through offer and acceptance.

Therefore,, the effect of obligatory meeting does not surpass what the judge can do to oblige both parties to accomplish the contract on the promised date, as if one of them fails to keep his promise, the judge shall bind upon it of

³⁷ Othmanī , Supply and Tender Contracts, Islamic Fiqh Academy, No. 12, p2 p.313,314, 316.

³⁸ Ibid, p2 p.319

incurring the actual financial damage caused due to its default to keep the promise.

Thus, the sale added to the future is different from the binding meetings; as if one of the parties provides in the meeting a real acceptable excuse preventing him from keeping the promise, he shall be considered as excused and shall not be forced neither to accomplish the contract nor to pay the indemnity.

In the sale added to the future, when it is defaulted to execute the same, the sale shall not be automatically terminated, but needs to be nulled and avoided through mutual consent.³⁹

Characterization of supply contract as meeting has been objected, as, that its nature indicates that it is a binding contract, in which offer is linked to acceptance effect thereof is imposed.⁴⁰

4. Characterizing the supply contract as a purchase from permanent worker known to people of the city:⁴¹

Al-Malikiyya have mentioned that it is permissible to purchase from a permanent worker, such as a baker, butcher, and cooker without requiring acceleration of the price, so that it takes every day something known and pursues to take and the price delays tender, and this sale has two forms:

- 1- To contract with him to take bread with 10 dirhams per day for example and termination shall be proven to both of them.

³⁹ Ibid, p2 p.317,319

⁴⁰ See: Discussions and responses to the research submitted to the twelfth session of the Islamic Fiqh Academy in the magazine of the Academy, p2 pp. 532,535,550,552.

⁴¹ Abu Sulimā n, Supply Contract, Journal of Islamic Fiqh Academy, No. 12, p2 p.412.

2- To take portion from him and divide the same on days. In such case, neither party shall have the right to termination.⁴²

It was indicated that this type of sale is permissible through what was done in the city where Salem bin Abdullah bin Omar was quoted as saying: " "We were purchasing meat of pounds, with a dinar, taken every day and the price is given.. Nobody saw that as a debt to debt, and they did not see anything wrong."⁴³

Al-Maalikiya stipulated two conditions for permitting the sale of people of the city;, start to take to the goods and the origin of the same with the seller as this is not absolute Salam. Therefore, the price may be delayed, and nothing shall be purchased, so the total amount of money may be delayed if the advance payment is made.⁴⁴

However, it was narrated about Imam Malik what is to prevent him from this sale and made him consider the same a debt with debt and he said that it is meant that the price of what is taken every day shall be paid to the seller, so they did not agree upon a number of pounds, as when the purchaser takes something, he shall pay the price of the same to the seller and neither party shall continue to do that, unless a contract of a known number of pounds is made, as whenever the purchaser takes anything, he shall pay the price thereof to the seller..⁴⁵

⁴² Mā lik, Al-Mudawwannah Al-Kubrā , p10 p.292, Al-Ḥ attā b, Mawaheb Al-Jaleel, p4 p.538, Al-Dussoūqī , Hā shiyat Al-Dussoūqī , p3 p.216, Aleesh, Manh Al-Jaleel, p5 p.384

⁴³ Mā lik, Al-Mudawwannah Al-Kubrā , p10 p.293

⁴⁴ Aleesh, Manh Al-Jaleel, p5 p.385

⁴⁵ Ibid, p5 p.385.

The previous characterization has been replied to through that there is a difference between purchasing from a permanent worker and a supply contract, as it is stipulated in the permissibility of the sale of people of the city that the purchaser shall commence to take the goods, and this is expressed in the known jurisprudence rules of the jurists that receiving the advanced payments shall be considered as receipt of final payments. . There is no accounts receivable, but there is continuity from the first day, on which the purchaser takes the first portion until the end of the month or on the date of the sale that was known.⁴⁶

5. Familiarity with Istijrar Sale:⁴⁷

Al-Hanafiyah stated that Istijrar Sale is permitted, and this is the goods person purchases from the seller if he pays the prices of the same after consumption.⁴⁸

And this has been replied to through that this contract is subject to dispute with the Hanafis, as some of them prevented the same, because it is sale of non-existent, which is not valid.⁴⁹

The Istijrar Sale is different from supply contract, because the goods in Istijrar Sale are consumed and prices of the goods are paid consecutively without delay. The goods are taken from the seller as they are, according to the custom of not selling , such as lentils, salt, oil and similar goods and then purchased

⁴⁶ Journal of Islamic Fiqh Academy, No. 12, p2 p.546, Aleesh, Manh Al-Jaleel, p5 p.385

⁴⁷ Journal of Islamic Fiqh Academy, No. 12, p2 p.536, Al-Zarqā , Fatā wī Al-Zarqā , p.487,488

⁴⁸ Al-Hasqaftī ,. AL-Durr Al-Mukhtār, p4 p.516

⁴⁹ Ibn Ā bdeen, Ḥ ā shiyat Ibn Ā bdeen, p4 p.517.

after consumption. This is similar to a guarantee for the damaged goods with permission from the owner thereof. .⁵⁰

The juristic characterization of supply contract for purchasing goods on the grounds that it has its own nature.

Some contemporary jurists tended to characterize the supply contract considering it as a contract that has its own nature. It does not follow any of the nominated contracts, especially Salam and Istisna'a contracts, even if they are similar in certain characteristics of the contract or taking some of their provisions, as it is a contract that has its own provisions⁵¹.

Based on this nature, we judge to permit the same according to what is necessary because it is permitted and not violating the legal text.

One of the reasons for permitting the same is the existence of what is necessary and this is represented in the following:

- 1- As for the seller: The seller aims from entering into the supply contract to necessary things including:
 - A- Ensuring and making sure of marketing the commodity traded or produced by the seller, so that it avoids market recession and commodity stagnation.
 - B- Ensuring that the workforce is working in its trade or industry without deficit or default in paying the wages.
 - C- The ability to continue at a certain rate and level without decline in trade and without a decline in output of the industry or agriculture.

⁵⁰ Ibid, p4 p.516

⁵¹ Journal of Islamic Fiqh Academy, No. (12), p2 p.532, 535, Abu Jazar, Sanctions and Guarantees, p.22

2- As for the purchaser: he can get the commodity he wants on the dates determined in the future without delay⁵².

The requirement of permissibility is the need to execute a supply contract, as this need is general for nations and peoples in all countries of the world, regardless of their civilized and social level, and that preventing this contract results in wasting necessary interests in people's life people, and these interests transcend the impediment.⁵³

Economic life in all societies is based on prior arrangement and preparation of production processes. This applies to industry, trade, transport, agriculture, education and all other activities, regardless of the different levels.

The industry strategic need for supply contracts and future lease contracts are actual needs that if are not met, the industry cannot work efficiently and thus get it out of market competition.⁵⁴

Sheikh Al-Zarqa has justified the permissibility of the supply contract because of the urgent need to freedom in contracting methods due to the development of the general economic life⁵⁵.

But for the absence of the impediment, it is the absence of what is violating the legitimate rules and purposes thereof, as in transaction contracts, there are many various ranges and different types according to the elements of the contract, some of which are attributed to the capacity of the contract, and some are attributed to the case, in which the contract has been signed..⁵⁶

⁵² Abu Sulimā n, Supply Contract, Journal of Islamic Fiqh Academy, No. 12, p2 p.393.

⁵³ Ibid, p2 p.394, Abu Al-Basal, Contract of Procurement and Supply, p.231.

⁵⁴ Abu Sulimā n, Supply Contract, Journal of Islamic Fiqh Academy, No. 12, p2 p.395, quoting a research contract supply to Dr. Munther Qahaf.

⁵⁵ Al-Zarqā , General jurisprudence, p2 p.710.

⁵⁶ Abu Sulimā n, Supply Contract, Journal of Islamic Fiqh Academy, No. 12, , p2 p.397.

In order to say that any new contract is permissible, it must not contradict with a clear text or explicit unanimity on its subject; and it must also be free and clear of usury and similar acts, and of blunders, fraud, deception, and taking people's property through falsehood; and it shall not cause damage to others or to deprive anyone from his legitimate right⁵⁷.

To clarify the absence of the impediment in the supply contract, it is necessary to address the impediments, by which the supply contract can be objected, and these impediments are represented in specific points:

- 1- The reason for default to delivery, because the sold goods do not exist on contracting.

To reply to that, one of the necessities of the supply contract is to assure the purchaser of the seller's ability to deliver the sold goods on time; his care about ensuring the same, in addition to taking guarantees that might be financial to fulfill the contract.

The seller shall, in exchange for the financial and legal guarantees that the purchaser imposes on him, enter into and sign the contract making sure of accomplishment thereof his financial position shall allow the same.⁵⁸

- 2- The reason for ignorance of the sold goods.

Ignorance does not exist in the supply contract, because both contracting parties care about determining the responsibility of the other and to indicate the type of the sold goods and delivery date thereof, as well as the purchaser cares about indicating the type, description, quantity and delivery date of the same without delay or procrastination from the seller's side.⁵⁹

⁵⁷ Al-Qarrī , , Emerging Contracts, Its Controls and Examples ,Islamic Fiqh Academy, No 10, p2 p.538.

⁵⁸ Abu Sulimā n, Supply Contract, Journal of Islamic Fiqh Academy, No. 12, p2 p.399.

⁵⁹ Ibid, p2 p.399.

3- The reason for selling what is improper In the supply contract, traders all over the world give the first and the most important consideration to delivery of their goods properly to purchasers' hands, but it becomes impossible at the present to execute the supply contract without insurance ensuring the safe and proper delivery of goods to their owners⁶⁰

The previous three impediments are related to aleatory in contracts, and their absence will lead to eliminate aleatory from the supply contract, even if we suppose that there is a slight aleatory, it can be tolerated and does not affect the validity of the contract.⁶¹

And supposed that there are a blunder and aleatory, the need is urgent and general in the status of necessity, which makes this aleatory forgiven or tolerated and does not form an impediment on the validity of these contracts.⁶²

Furthermore, the aleatory that might happen due to changing the prices with delay in receiving the same, exists in the form of the Salam Sale, in which the price of the commodity is deferred, so that there is no difference in aleatory between one deferred payment or two deferred payments, especially if the acceleration and deference have an effect on determining the price of sold commodity.⁶³

And the absence of the impediment includes that supply contract shall not violate the legal provisions, and the possibility of conflict between the supply contract

⁶⁰ Abu Sulimān, Supply Contract, Journal of Islamic Fiqh Academy, No. 12, p2 p.393,400

⁶¹ Ibid, p2 p.400, Shwaideh ,and, Abu Harbeed,, supply and entrepreneurship contract, p.7.

⁶² Shwaideh ,and, Abu Harbeed,, supply and entrepreneurship contract, p.7, 8

⁶³ Al-Masrī , Supply and Tender Contracts. Journal of Islamic Fiqh Academy, No. 12, p2 p.486

and some of the Hadeeths shall be subject of discussion among the jurists, and these Hadeeths include:

1- The Hadeeth of Ibn Umar and Rafa Ibn Khadij: "The Prophet (peace be upon him) forbade the sale of debt with debt"⁶⁴

The deduction from the hadeeth regarding the supply contract is that the seller sells his goods at a deferred price and this represents price debt due and payable by the purchaser, and the purchaser purchases the commodity without receipt, and this represents the debt of sold goods due and payable to the seller, so both of them are debtor and creditor to each other with different considerations.⁶⁵

Since both the commodity and price in the contract are deferred, this contract may legitimately carry the image of sale of debt with debt .⁶⁶

2- The Hadeeth of Hakim Ibn Hazzam said: "The Prophet (peace be upon him) forbade me to sell what I do not have".⁶⁷

⁶⁴ Al-Ḥ̣ā kem, Mustadrak Al-Ḥ̣ā kem, Book of sales, p2 p.65 No.(2342), Al-Ḥ̣ā kem said: This is a saḥ eeḥ ḥ adeeth on the condition of a Muslim, Al-Bayhaqī , Sunan Al-Bayhaqī , Book of sales (What is stated in the prohibition on the sale of debt with debt) p5 p.290 N0.(10316), Abd Al- Razzā q, Musannaf Abd Al- Razzā q, Book of sales (term by term) p8 p.90 No.(14440), weak Ḥ adith, see: Al-Albā nī , Irwā `a Al-Ghalī l, p5 p.220 No.(1382)

⁶⁵ Abu Sulimā n, Supply Contract, Journal of Islamic Fiqh Academy, No. 12, p2 p.401.

⁶⁶ Othmanī , Supply and Tender Contracts, Islamic Fiqh Academy, No. 12, p2 p.313.

⁶⁷ Al-Tirmidhī , Sunan Al-Tirmidhī , Book of sales (What came in the hatred of selling what you do not have) p3 p.534 No.(1232), Abu Essa said: That is Ḥ assan's Ḥ hadeeth.

And In a narration: "I said, O Messenger of God: The person comes to me and asks me to sell what I do not have, so I purchase the same from the market and then sell the same to him, the prophet said: do not sell what you do not have ".⁶⁸

The significance of the previous

Hadeeth is that the subject of supply in many cases is not owned by the seller at the time of the contract, so it becomes a sale of what the man does not have, and the place of supply may not exist, so that the sale becomes a sale of what does not exist.⁶⁹

It might be replied to this saying that there is a similarity between the supply contract and the two prohibition images in the two previous hadeeths as follows:

First: The supply contract differs from the sale of debt with debt, where the differences can be clarified in the following points:

- 1- The supply contract is not like the sale of debt with debt, because the debt becomes due and payable by one of the parties to the other and this is not debt in the supply contract. The supply contract requires deference of paying the price until the goods are delivered, unless the purchaser voluntarily chooses to pay the same.⁷⁰
- 2- The prohibition against sale of debt with debt means that a man purchases something for a -date, if the date becomes due and he has no money, he says: sell the same for another date with increase in the price, and the seller sells the same and no payment is made between both of them .⁷¹

⁶⁸ Al-Tirmidhī , Sunan Al-Tirmidhī , Book of sales(What came in the hatred of selling what you do not have) p3 p.534 No.(1232), Al-Bayhaqī , Sunan Al-Bayhaqī , Book of sales (Who said that it is not permissible to sell the absentee) p5 p.267 No(10202)

⁶⁹ Othmanī , Supply and Tender Contracts, Islamic Fiqh Academy, No. 12, p2 p.314.

⁷⁰ Abu Sulimā n, Supply Contract, Journal of Islamic Fiqh Academy, No. 12, p2 p.402

⁷¹ Ibn Al-Atheer, Al-Nehā yah Fī Ghareeb Al-Ḥadeeth , p4 p.194.

- 3- One of the meanings of selling debt with debt is that the man sells his debt to the purchaser with another debt to a third party .⁷²
- 4- The postponement of both debts in supply contracts is irrelevant to the sale of debt with debt, as both debts in the supply contract are different, in which a commodity is exchanged with money. Thus, this is not included in usury, which is forbidden.⁷³

After mentioning the previous differences, the supply contract cannot be carried on the image mentioned by some of the modernists and jurists as an explanation of its meaning, as there is no mere similarity in a certain aspect between two things, namely, the absence of a both compensations at the time of signing the contract, requires to give judgment of one of them to the other. However, the jurists expanded on the meaning and representation of the Hadeeth as a precaution, and then their views differed in determination and representation of the same.⁷⁴

Some researchers have considered that forbidding the sale of debt with debt is not an impediment against the validity of supply contracts and contracting, in addition to the general need to it, and the need takes the status of necessity generally or specially.⁷⁵

Second: As for the reply to the inference with the Hadeeth of Hakim Ibn Hazzam "Do not sell what you do not have" is as follows:

- 1- It is meant to sell the thing without selling the description, and the evidence of that is that the Salam Agreement is permissible, and it is the sale of what

⁷² Abu Sulimā n, Supply Contract, Journal of Islamic Fiqh Academy, No. 12, p2 p.402

⁷³ Al-Masrū , Rafū q , Tenders of administrative contracts, supply contracts and public works contracts, Islamic Fiqh Academy, No 9 , p2 p.220.

⁷⁴ Abu Sulimā n, Supply Contract, Journal of Islamic Fiqh Academy, No. 12, p2 p.403

⁷⁵ Shwaideh ,and, Abu Harbeed, supply contract and contractor p.9

he does not have immediately, so the prohibition on selling what the seller does not have is considered a mistake.⁷⁶

- 2- It is called for the sale of a certain item that the seller does not have,, but it belongs to others, then sells it and seeks to collect and deliver the same to the purchaser.
- 3- It can be intended to sell what cannot be delivered, even if it is due and payable.
- 4- It can also be meant by the Salam that is due and payable immediately, if he has nothing to pay.
- 5- It may be meant delayed Salam if he is not sure of paying the same as usual.⁷⁷

The subject of the prohibition in this Hadeeth is the sale of specific items, and the seller is concerned by the same, , and this means that the seller who is subject to this prohibition is between one of two things; either cannot collect and deliver the commodity or does not know whether he can collect the same or not. The supply contract does not have the meaning of the prohibition contained in the Hadeeth, because it is similar to sale on description, and the seller executes the contract when he is confident to receive the sold commodity on time.⁷⁸

The sold commodity in the supply contracts either exists with the supplier or not at the time of signing the contract, but it is most likely to exist on the due date thereof, and the supplier may be the producer or trader of the sold commodity and can deliver the same.⁷⁹

And the prohibition against selling what man does not have and selling the non-existent item is because of the incapability of delivery rather than non-existence.

⁷⁶ Al-Khattābī , Ma'lem Al-Sunan, p3 p.140

⁷⁷ Ibn Al-Qayyem, I'lām Al-Mowaq'een, p2 p.19.

⁷⁸ Abu Sulimān, Supply Contract, Journal of Islamic Fiqh Academy, No. 12, p2 p.406.

⁷⁹ Shwaideh ,and, Abu Harbeed, supply contract and contractor, p.12.

Ibn al-Qayyim says: "It is not said in the Holy Qur'an or in the Sunnah of the Messenger of Allah (peace be upon him) nor in the words of any of the companions that selling the non-existent item is not permitted, neither in general word nor in a general sense, but the Sunnah states forbidding the sale of some things that are non-existent, and forbidding the sale of some things that are existent, so the problem in prevention is neither in non-existent nor existence. Rather, the Sunnah forbade sale of aleatory, which he is not capable of delivering the same, whether it is existent or not, such as selling the fugitive slave and the stray camel, even if it exists, as sale requires the delivery of the sold commodity.⁸⁰

Thus, it turns out that nothing in the contract of supply leads to aleatory, which is a reason for preventing the sale of debt with debt, sale of non-existent and otherwise.⁸¹

He replied to those who said that the supply contract has a special nature and that it is an emerging new contract, by saying that the goods on which the supply contract is executed can either be existent or not, and the jurists have stated the provisions of the sale of described things, which are described as absent, or of things that do not exist at the time of signing the contract.⁸²

In characterizing the supply contract, the researcher likely thinks that the same is related to the industry, as the contract is considered an *Istisnaa* contract and no objection here to delay the price.

If the contracted item is a service provided, the contract shall be lease contract, and there is no objection here to postpone the rent fees.

⁸⁰ Ibn Al-Qayyim, *I'lā m Al-Mowaq'een*, p2 p.28

⁸¹ Othmanī , *Supply and Tender Contracts*, Islamic Fiqh Academy, No. 12, p2 p.314.

⁸² See: *Journal of the Islamic Fiqh Academy*, The response was received in the discussions of the Council at its twelfth session, No. 12, p2 p.559.

If the contracted item is a commodity, then it may not postpone the payment of the price together with delaying the delivery of the commodity, because this is of the sale of debt with debt.

Although the supply contract is a form of contemporary contracts, it is a sale contract, in which the delivery of goods and price is delayed, and this matter has been discussed and was not permitted by jurists..

But for the need to such a contract or universal norms accepting the same, this does not justify to permit the same with previous form thereof.

Therefore, the alternative is that there is a promise not binding any or both parties to purchase a particular commodity in the future. When delivery is made or the sold item is confirmed, a new sale contract in respect of the commodity that is actually delivered shall be executed. Here, there is no objection to delay payment of the price, because it is permissible to delay the price in the sale contract after receiving the commodity.

As for saying that the contract is free of aleatory and that the goods have been delivered, the contract may be entered into without the formula of Salam, as we say that the risk of not delivering the commodity still exists, because the sold item is not available at the time of signing the contract. In addition, the risks of not receiving the commodity appear in the supply contract, especially when the duration thereof is several years and the subject of supply is of huge quantities. Therefore, acceleration of the price as stated in the Salam Agreement indicates the purchaser's certainty of the possibility to receive the commodity, as it does not accelerate the whole price while doubting delivery of the goods.

The Islamic Fiqh Academy has issued at its twelfth session concerning the supply contract, its text, which states the following:

- 1- Supply contract: A contract, under which a first party undertakes to deliver known goods that are periodically deferred within a specific period to another party in exchange for a certain amount deferred wholly or partially.
- 2- If the subject of supply contract is a commodity requiring industry, the contract shall be Istisna'a and shall be subject to provisions of Istisnaa Contract.
- 3- If the subject of supply contract is a commodity not require industry and to be due and payable, it shall be delivered on the due date, and this is done in one of following ways:
 - A- The importer shall expedite the whole price at the time of signing the contract, as this is a contract that takes the status of Salam, so it is permissible under its terms that are considered legitimate.
 - B- If the importer does not expedite the whole price at the time of signing the contract, this is not permissible, because the contract is based on the meeting binding between the parties, and the decisions of the Academy No. 40 and 41 has been issued, which includes binding meeting is similar to the contract itself, so the sale here is of the sale of debt with debt, however, if the meeting is not binding any or both parties, then it will be permissible, provided that the sale shall be made under a new contract or by delivery.⁸³

⁸³ Decisions and Recommendations of the Islamic Fiqh Academy Session No. 12 pp.365,366.

Conclusion

After completing of this research with God's help and favor, important several results can be reached, including:

- 1- A supply contract is a contract that includes an agreement between two parties upon selling goods or providing services once or on intervals against a known price to be paid according to the agreement or when the goods or service are obtained.
- 2- The supply contract shall be between individuals and shall be called free supply contracts; between individuals and companies and shall be called standard supply contracts; as well as between individuals or companies and between state and government institutions and shall be known as administrative supply contracts.
- 3- The contemporary jurists' opinions differed in the juridical characterization of the supply contract. If the subject of the contract was a commodity that needs manufacturing, the contract would be characterized as an Istisna'a contract. If the subject of the contract was a service to be provided, the contract would be lease contract.
- 4- If the subject of the contract in the supply contract is the purchase of a commodity, then the jurists have gone to characterize the contract to doctrines; as some of them have characterized the same by looking at similar nominated contracts; some have characterized the same as a Salam contract; some have characterized the same as a sale contract on description; some have considered the same as binding meeting; some have characterized the same to have the purchase image of a permanent worker; some have made use of Istigrar Sale, because of the similarity between them; and some have characterized the same as a contract that has its own nature and differs from the previous contracts.

- 5- The research also discussed the most important objections made on this contract, because it includes the image of the sale of debt with debt and it also contains aleatory, as the goods contracted on do not exist at the time of contracting.
- 6- The researcher is likely to say that the supply contract is permitted for the commodities requiring manufacturing and for the services provided by the companies, because is the same are not to be existent at the time of signing the and price thereof is not to be paid, but for executing the supply contract in respect of the goods sold, the price shall be expedited and not deferred at the time of signing the contract. Thus, the contract is a Salam Agreement.

In the event that price cannot be paid in advance, the alternative shall be to execute a supply agreement containing a promise not binding both parties or any of them in order to regulate the relationship between them, so that sale will be executed thereafter when the commodity is present and a new contract will be executed or the same and price thereof will be delivered.

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