



DOMAINS OF JUDGMENT UPON THE EXPERT'S OPINION IN CONTEMPORARY FINANCIAL TRANSACTIONS (MURABAHA TO PURCHASE ORDERER AND CONTRACTING COMPANIES AS EXAMPLES)

Salah Eddin Talab Faraj & Wael Jamal Al Najjar

Abstrak: Penelitian ini membahas tentang penetapan hukum berdasarkan pendapat ahli dalam transaksi keuangan kontemporer. Peneliti membahas beberapa kasus yang menjadi acuan para ahli dalam penerapan transaksi keuangan kontemporer yaitu pemesanan dengan murabahah dan perusahaan konstruksi. Penelitian ini menyimpulkan bahwa kompensasi kerusakan barang dalam akad pemesanan dengan murabahah merujuk pada dua pendapat yang berbeda. Pendapat pertama didasarkan pada kasus ketika kompensasi kerusakan finansial disebabkan oleh lembaga keuangan, seperti pengembalian barang dagangan yang rusak. Pendapat kedua didasarkan pada kasus ketika kompensasi kerusakan finansial disebabkan oleh pemesan barang, seperti mundurnya si pemesan dari pembelian barang pesannya. Adapun pada penerapannya di perusahaan konstruksi, maka boleh merujuk kepada dua pendapat ahli tersebut. Pendapat pertama yaitu pada kompensasi kerusakan finansial yang disebabkan oleh perusahaan konstruksi, seperti kompensasi atas tidak terpenuhinya kontrak. Sementara pendapat kedua terkait dengan kompensasi kerusakan finansial yang disebabkan oleh mitra / klien, seperti kompensasi akibat tidak profesionalnya kontraktor yang bersangkutan dalam menjalankan kontraknya.

Kata kunci: kompensasi kerusakan, transaksi keuangan, Murabahah pesanan pembeli, perusahaan konstruksi

Abstract: This research discusses the domains of making judgments upon expert's opinion in contemporary financial transactions. Both researchers start by presenting the concept of the expert, revealing its types, clarifying its terms, and determining the extent of its power. The researchers then discuss the domains of referring to expert's opinions relevant to two questions of contemporary financial transactions, namely: Murabaha to purchase orderer and contracting companies. This paper draws a number of findings, the most important of which are: Expert's opinion can be referred to an indemnity for damages in Murabaha to the purchase orderer in two cases: indemnity for financial damages caused by the financial institution, such as: returning defective merchandise. The second case is indemnity for financial damages caused by the purchase orderer, such as the buyer's abstention from buying the items ordered for purchase. In contracting companies, an expert's opinion is referred to in two cases as well: first: indemnity for financial damages caused by contracting companies, such as compensation for not completing the contract. The second case is compensation for financial damages caused by the client, such as compensation for not enabling the contractor to complete the contract.

Keywords: Kompensasi kerusakan, transaksi keuangan, Murabahah pesanan pembeli, perusahaan kontruksi

ملخص: يناقش هذا البحث قضية معاصرة مهمة، وهي مجالات القضاء بقول الخبير في المعاملات المالية المعاصرة، فبدأ الباحثان ببيان مفهوم الخبير، والكشف عن أنواعه، ثم توضيح شروطه، واستنتاج مدى حجية قوله. ثم ناقش الباحثان المجالات التي يرجع فيها إلى قول الخبير في تطبيقين من المعاملات المالية المعاصرة هما: المراجعة للأمر بالشراء، وشركات المقاولات، وقد توصلنا إلى جملة من النتائج أهمها: أنه يرجع لقول الخبير في التعويض عن الأضرار في المراجعة للأمر بالشراء في حالتين: الأولى: في التعويض عن الأضرار المالية الناشئة بسبب المؤسسة المالية، مثل: رد المبيع بالعيب. أما الحالة الثانية فهي: في التعويض عن الأضرار المالية الناشئة بسبب الأمر بالشراء، مثل: نكول المشتري عن شراء السلعة التي أمر بشرائها. أما في شركات المقاولات فيرجع لقول الخبير في حالتين أيضاً: الأولى: القضاء بقول الخبير في التعويض عن الأضرار المالية الناشئة بسبب شركات المقاولات، مثل: التعويض عن عدم إتمام محل العقد. أما الحالة الثانية فهي: القضاء بقول الخبير في التعويض عن الأضرار المالية الناشئة بسبب العميل، مثل: التعويض عن عدم تمكين المقاول من إنجاز محل العقد.

الكلمات المفتاحية: التعويض عن الضرر، المعاملات المالية، المراجعة للأمر بالشراء، شركات المقاولات

Introduction

Adjudication has received great attention in the Islamic Sharia law, as it is deemed one of the most important functions of the Islamic state to settle disputes among people. It is also one of the most important means to realize justice, reserve rights and protect human bodies and dignity and properties.

A judge is obliged to judge pursuant to the revelation of, the provisions of the Quran and Sunnah, and analogy (*qiyas*) and consensus (*ijma'*). The judge also has to use other means of proof adopted by the Sharia, such as testimony, and confession, etc. As long as the ruling is based on the texts of the Quran and Sunnah, the legislator grants the judge the power to make a judgment to the best of his discretion (Ijtihad). Judges currently support their judgments, and document their cases, by expert's opinion especially after the remarkable development of crimes and their diversity in the modern era. Some verdicts involve technical matters, and new challenges not previously assigned by the judge, it must be decided in order not to delay the cases of people. This study addresses the concept of the expert, the power of his opinion, and conditions of his opinion relevant to financial matters. The study, then, explains the domains of referring to expert's opinions relevant to two questions of contemporary financial transactions.

The importance of this study lies in highlighting and clarifying the expert's opinion relevant to indemnity arising from the disputes between parties of modern financial transactions when there are a problem and the judge's degree of reliance on this opinion as a means of proof.

The research problem is to answer the key question: what are the domains of making judgments upon expert's opinion in contemporary financial transactions?

A number of sub-questions arise from this question namely,

1. What is the concept of the expert, and what are the types and terms of accepting an expert's opinion?
2. How authoritative is the expert's opinion?
3. What are the domains for which it is necessary to refer to an expert's opinion in contemporary financial transactions?

Review of literature

To the best of the researchers' knowledge, there are no previous English references that discuss this subject. Although there are similar studies in Arabic, this research is distinguished by discussing the areas of making judgments upon the expert's opinion in contemporary financial transactions.

Research Methodology

The research methodology of this subject is summarized in the following approach: Combining both the genealogical approach and the comparative analytical approach. The researchers explained the lawfulness of the subject matter from Islamic Sharia, traced the jurists' opinions on this question, and analyzed the issues related to the subject, in particular, the areas to which the expert's opinion in contemporary financial transactions is needed, and the consequent sub-issues are discussed. The study then presents the opinions of Muslim scholars relevant to this topic and their evidence and discussion, and the most accurate opinions along with the reason for weighting them over others.

Research Plan

This paper is divided into an introduction and three topics as follows: The first topic is about the concept of the expert's opinion, its power and terms in financial matters. This topic has two subtopics which are: 1) the concept of the expert's opinion and its power; and 2) the terms of the expert's opinion in financial matters

The second topic is about domains of judgment pursuant to expert's opinion in murabahah to the purchase orderer. This topic has three subtopics which are: 1) the concept of Murabahah, its rules and controls; 2) making judgments upon the expert's opinion in indemnity for financial damages caused by the financial institution; 3) making judgments upon the expert's opinion in indemnity for financial damages caused by the purchase orderer.

The third topic is about domains of Judgment pursuant to expert's opinion in contracting companies. This topic has three subtopics which are: 1) the concept of contracting companies, and its lawfulness; 2)

making judgments upon the expert's opinion in compensating financial damages arising from contracting companies, and 3) making judgments upon the expert's opinion in the compensation for financial damages caused by the client.

The Concept of the Expert's Opinion, its Power and Terms in Financial Matters

The concept of the expert's opinion and its power

The expert is a linguistic hyperbole derived from experience, which is the knowledge of the inside and deep things, and the expert is the one who has full knowledge of a certain field knows everything about it (Al-Farabi, p. 2/641). Allah says in the Holy Quran, "Ask thou, then, about Him of any acquainted (with such things)" which means; so ask about Allah anyone who is well aware and possess such knowledge. Allah is all-knowing that the Prophet Mohammed is the one meant in this verse who has true knowledge about Allah (25:59, The Holy Qur'an, Translated by Yusuf 'Ali).

In this study, what is meant by (the expert's opinion) is what the expert makes oral or written statements to make an opinion in and to settle any dispute between two or more parties? As for the meaning in terminological words: it refers to the people of knowledge as mentioned by Ibn Farhoun (may Allah have mercy on his soul) and others (al-Trabelsi, p. 130). Some of the scholars refer to it as 'the people of the issues (Almaqdsy, p. 4/230).

Some other scholars especially the contemporary ones made new definitions of the expert: Al-Dowaihi said that the expert is the one of great knowledge in a certain field of art who deserves to be linked to it, and one of the contributors to its industry, such as doctor, an engineer, an astronomer, an economist, a chemist and other specialists in their fields (Aldowaihi, p. 8).

Other modern Scholars defined the expert as each person who has the knowledge and experience in a certain art or industry that enables him to be a reference to relevant stakeholders and others by knowing the details and characteristics of that art or industry through the knowledge he acquired by studying or long experience (Azayiza, p. 7).

Accordingly, we can conclude that the expert in question is: the

person with sufficient knowledge in a certain field of art or a matter of dispute to refer to and seek his opinion at the request of the judge.

The power of the expert's opinion

Seeking the help of experts is a means of legal proof for the preservation and maintenance of rights. It refers to the discretion of the judge. If the judge decides to use the experts in an incident, it is necessary to state the reason for such use and to clarify the specific task of the expert. Whatsoever decisions made by the committee of experts are binding to all parties of the dispute to be settled. This was stated in the Malikis' scholars' opinions: "It is necessary to refer to the people of sight and knowledge, and the slave sellers to know the defects of male and female slaves." (Farhoun, p. 2/81)

The above is evidenced by many evidences, including Allah's statement in the Quran "And if any tidings, whether of safety or fear, come unto them, they noise it abroad, whereas if they had referred it to the messenger and to such of them as are in authority, those among them who are able to think out the matter would have known it." (The Holy Quran 4:83 Translated by Muhammad Marmaduke Pickthall The Meaning of the Glorious Koran, 1930)

In the verse guidance from Allah Almighty to Muslims to refer to issues or matters problematic to them to the scholars and experts to decide, and clarify. Al-Saadi said: "If a person comes important news of public interest regarding the safety and pleasure of the believers or the fear that it is a calamity for them, they must enquire its accuracy and do not rush to divulge that news. They have to refer it to the Prophet or people of authority and counselors who have reason and sober-mindedness." (Alsaedi, p. 190)

As for the Sunnah: It was narrated by Imam Al-Bukhaari Zayd Ibn Thabit narrated that "The Prophet ordered me to learn the writing of the Jews. I even wrote letters for the Prophet (to the Jews) and also read their letters when they wrote to him."

And 'Umar said in the presence of 'Ali, 'Abdur-Rahman, and 'Uthman, "What is this woman saying?" (the woman was non-Arab) 'Abdur-Rahman bin Hatib said:

"She is informing you about her companion, who has committed

illegal sexual intercourse with her.” Abu Jamra said, “I was an interpreter between Ibn ‘Abbas and the people.” Some people said, “A ruler should have two interpreters.

The significance of the hadith: the command of the Prophet to Zayd ibn Thabit, to learn Hebrew, is clear evidence to refer to experts in unknown or vague matters that the ruler or judge cannot understand. The command of the Prophet to Zayd to learn Hebrew because the Prophet doesn't (trust them to write for us) (Albihqi Fi Alsunni Alkubraa: Kitab Alfarayidi, Bab Tarjih Qawl Zayd Bn Thabit Ealaa Qawl Ghayrih Min Alssahabat Radi Allh Eanhum 'Ajmaein Fi Eilm Alfarayid, p. 6/347), is clear evidence of recourse to the people of experience and take their views.

The Terms of 'the Expert' in Financial Matters

In the case of financial transactions, the expert shall have the following conditions:

1. **Islam:** Those who resolve disputes among Muslims must be Muslims; the experience of disbelievers is not authentic because there is doubt in narration of their testimony. (Alqaydi, p. 11)
2. **Knowledge:** An expert in financial matters must be qualified scientifically and practically, especially in his university studies, practical experiences, and regular licenses. He must be licensed by the government or trade unions operating in the state. (Alsaahimi, p. 41)
3. **Of legal age:** Juveniles don't have the experience of certain art. (Alqaydi, Qawl 'Ahl Alkhibrat Fi Alfaqih, p. 36)
4. **Sanity:** It is not allowed to seek the help of the insane or senile or foolish. (Alqaydi, Qawl 'Ahl Alkhibrat Fi Alfaqih, p. 37)
5. **Justice:** Some scholars stipulated that the expert must act justly because a judicial ruling shall be base and rights will be admitted upon his opinion. (Rushd, p. 2/125)
6. **The judge's request:** Seeking the help of expert's opinion is subject to the judge's request in a particular case, and special cases, because the use of the expert's opinion is related to the fact that the dispute in question is away from the knowledge or specialization of the judge.

7. **A real dispute actually exists:** A person specializing in financial transactions, for example, shall not go to the judicial council and gives an opinion without the existence of a dispute.

Domains of Judgment pursuant to expert's opinion in Murabaha to the Purchase Orderer

The concept of Murabaha, its rules and controls

The lexical meaning of Murabaha in the Arabic language is profit. For example, 'he got profit in his trade', means gained a profit (Al-Razi, p. 116). Profit also means growth in trade. (Manzur, p. 2/442)

In technical meaning, murabahah means selling merchandise or property with its original price and an increase as profit (Alsamarqindy, p. 2/105). It is also said that it is granting the title of a property by the original first price with a higher profit. (Albahrty, p. 6/494)

An example of the above is as follows:

A person buys a commodity at a certain price, such as a hundred dirhams, and then comes to sell it to others. He will tell the buyer the real price and the amount of profit he wants. The seller will say; I bought it with a hundred dirhams, and I want you to give me twenty dirhams as a profit. So the price of the commodity shall be one hundred and twenty dirhams.

The Ruling of this Kind of Sale in this Way

It is a permissible agreement (Albkhary, p. 7/3) among all Muslim scholars as Ibn Qodama stated: "And their knowledge is required - that is, the contractors - of the capital, and the seller says: I bought it for one hundred and I will get ten as a profit. This is permissible. There is no difference in his concern" (Qodama, p. 2/65)

Al-Qasani said: "The origin of these contracts is the intention of taking over the Murabaha and the title - without separating between selling and another. Allah says; (interpretation of the meaning): "Seek Allah's bounty." (The Holy Quran 62:10) And Allah says; (interpretation of the meaning): "It is no sin for you that ye seek the bounty of your Lord (by trading)," (The Holy Quran 2:198) and Murabaha is for seeking the bounty by selling.

"People used to make such type of sale without any denial because there was a consensus on their permissibility." (Alkasani, p. 1/608)

The Meaning of Murabaha to the Purchase Orderer as a Compound Term

This section will touch on the core of the study, showing the fact that Murabaha sale to the purchase orderer as a compound term, which is the complex form of Murabaha sale mentioned above.

Some researchers point out that this type of contract is the most important of the financial transactions for funding since the largest proportion of banks and financial institutions work through it. Most of the funding contracts are of the same type such as lease agreements that ends by owning the premises, Istisna'a contract with a contractor who will build a project etc. (Salih, p. 4)

This type of contract is commonly referred among Islamic institutions and banks, and some scholars call it forward contract to distinguish it from the sale of the Murabaha mentioned above (Zayd, p. 2/65). It is also called Compound Murabaha because it is composed of several contracts. It is also named Banking Murabaha because it is concluded in Islamic institutions and banks. Another name for the same transaction is binding Murabaha as it contains a binding promise (Almasri, p. 5/832). Despite the different forms, it has the same meaning.

Referring to most of the researchers who defined this type of contract, they defined by its form; that is to say, its definition is based on its form. Definitions included:

A customer submits an application to the bank asking them to buy the required commodity in the description determined by the customer and on the basis of a promise from him to buy that commodity by a Murabaha deed for which they agree and pay the price as installments in accordance with the agreement concluded between them. (Humuwd, p. 432)

Rafiq Al-Masri defined it as a person desires to buy a commodity should go to the bank, and because he does not have the money to pay for it in cash, and because the seller does not sell on credit for a long time, either because he doesn't sell on credit or because he doesn't know the purchaser, or because of needs to cash, therefore; the bank buys it for the purchaser in cash then sell it to the purchaser by installments. (Almasri, p. 5/836)

Controls of Murabaha for the Purchase Orderer

In this section, we will mention a set of controls that the jurists have stipulated to regulate the sale of Murabaha to the buyer in accordance with the provisions of Islamic law and to avoid the irregularities mentioned by those who object.

The first control: that the financial institution and similar incorporations must obtain the purchased item really and adequately and to be in its possession and disposition. The evidence on this is what was mentioned in the Prophet's Sunnah about Hakim bin Hazam who said: "I said: O Messenger of Allah, I buy many goods; what is not permissible for me, and what is forbidden to me? He said: "If you buy goods, do not sell it until you obtain its possession." (Musnad, Musnad al-Hakim bin Hamzam , pp. (24/32), No. 15316)

It is necessary to collect the goods required from the first seller (the financial institution and the like) and possess it by the legitimate possession so that the sale of the buyer shall be lawful because it is prohibited to sell without actual possession.

The second control: The seller or the financial institution must own the real property or goods and have full possession and disposition of the property or goods. This control requires that the purchaser ordering the purchase should not sign the contract of sale until he ensures the possession and seizure of the goods from the first seller. It is prohibited to sell what you don't own or have. According to Hakim bin Hazam who said: O Messenger of Allah, the man comes to me and wants me to sell what I do not have, so I buy it for him from the market? The Prophet said: "Do not sell what you do not have." (Dawood, p. (3/283) No. 3503) That is, it is not permissible to sell what you do not have, nor do you have in your possession, and a guarantee of all goods, properties, because the Messenger of Allah forbade that (Battal, p. 6/260). And it is necessary to transfer title by the time of concluding the contract ('Abaday, p. 9/291).

The third control: The buyer must have the option to buy the item from the seller or the financial institution, like the case of other sales in which the purchasing option is legitimate. The option to buy and sell is one of the foresight of the Islamic Sharia and its benefits. For example, the sale might suddenly occur without the buyer's consideration or a

second thought or considering the value or description of the goods, or maybe the purchaser needs to consult specialists and has an opinion of an expert. Fast purchase may lead to regret and no doubt that such options give the opportunity to the purchaser to have a second thought.

This is what the Sunnah of the Prophet (peace and blessings of Allah be upon him) stated in this concern. Ibn Umar said that the Prophet (peace and blessings of Allah be upon him) said: "Until the buyer and seller are not separated (physically), they will have the option to buy and sell." (Al-Bukhari, p. 3/64 No. 2107.)

The fourth control: The client shall not bear any fine, penalty, compensation, or charges if he retracts from his purchase and does not comply with his promise to complete the purchase because this changes the truth of the promise because the financial institution or its likes shall bear the loss.

Making judgments upon the expert's opinion in indemnity for financial damages caused by the financial institution

It is permissible to refer to experts' opinions to make judgment relevant to indemnity for damages in the Murabaha of the purchase orderer once such damages arising from the financial institution. The domains of such judgments are:

1. **Judging upon the expert's opinion to return defective and damaged merchandise** such as buying a Murabaha car, and the purchaser finds a defect prior to purchase because of poor storage for example, or misappropriation, the expert here may determine the defect in terms of being significant or insignificant.
2. **Judging upon the expert's opinion for different specifications of the commodity.**

It may occur that the specifications of a certain ordered item may differ from the purchaser's specifications; however, the seller finds a little difference in the item which may cause a dispute. For example, if the purchaser requests a house with certain specifications, area, number of storeys, a number of rooms, etc., then upon receipt, the dispute between the purchaser and the seller may arise for the difference in one or several specifications.

The importance of the expert's opinion emerges on the difference

in specifications of the sold item. Ibn Farhoun said: “The opinion of the people of knowledge is credited in disputes of the purchaser and the seller on the difference in the commodity specifications such as its softness or roughness or so on.” (Farhoun, *Tabsirat Al-Hokam*, p. 1/244)

Making judgments upon the expert’s opinion in indemnity for financial damages caused by the purchase orderer

It is possible to refer to the expert’s opinion on indemnity for the damages caused by the purchase orderer. The domains of such judgments are:

The purchaser abstains from buying the ordered item.

The scholars have unanimously agreed that a person who promises to do something lawful must fulfill his promise as a compulsory matter upon the opinion of Omar Ibn Abd Al-Azeez and his followers and a preferred matter upon the opinion of Al-Shafa’i and Abu Hanifah and most of scholars “He Who doesn’t fulfill his promise, loses Allah’s reward and commits a distasteful act, but he does not sin.” (Al’azraq, p. 1/481)

The purchaser’s delay in collecting the item on time

For example, when the bank employee contacts the purchaser to collect the goods that have been agreed upon at specific time delays for a further date, he shall be liable for the guarantee of the commodity. A group of scholars state that the purchaser shall be liable to the guarantee of the sold item after collection (Alsaghdi, p. 1/438).

If the bank incurs damage because of the delay of the purchaser’s collection of the sale, he shall be responsible for indemnity because of delaying the date of collection. The seller complied with delivering the commodity to the purchaser, and collection has not happened because of the delay of the purchaser (Qodamat, p. 4/86). Experts are the managers and technicians in the field of the commodity. An example from contemporary life is that the client ordered a certain type of imported meat and was imported by the bank which notifies the client to collect the merchandise, but he delays in collecting the items which resulted in the damage of the commodity. Experts in

such a case are the butchers who can be consulted to give an opinion on the matter.

Domains of Judgment Pursuant to Expert's Opinion in Contracting Companies

The meaning of 'company' in Arabic is "contact and mingling" (Manzur, *Lisan Alearab*, p. 10/448). It originally indicates the sharing and non-exclusivity of a thing between two are not unique to one, Allah, Almighty, says in the Holy Quran: "And let him share my task" (The Holy Quran 20:32) which means make him my partner in prophecy and communicating the message. (Albaghwi, p. 5/271)

As for the definition of the company, it is known by the scholars of the juristic schools of thought as follows:

1. Al-Hanafi: a contract between parties in the capital and profit (Abidina, p. 4/299), and it is also said: the sharing of two or more in one place (Almidanay, p. 2/121). The first definition of the company contracts and the second is general in properties and contracts.
2. Al-Maliki: it is permission to dispose of the property of each other (Alraeini, p. 5/117). That is to say that each of them may authorize the other to dispose of the property of the other (Aldasuqi, p. 3/348). This is a definition of the impact, which means the implication incurred on the company of both.
3. Al-Shaafa'i: It is every fixed right for two people in a shared item (Alnawaway, p. 4/275).
4. Al-Hanbali: it is sharing an entitlement or disposal (Qodama, Almaghni, p. 5/3), which is a comprehensive definition of all types of the company because the sharing entitlement is a company in the money, but the sharing in the disposition is a contract company which is the meaning here (Alhajaway, p. 2/252).

The definitions are similar and have a common meaning for the company, the nearest meaning to the concept of the company is Al-Hanafi's one, and God knows best.

The lexical meaning of contracting in Arabic is: It is based on pluralism and sharing of two or more (Alfaraby, p. 5/1806), and its lexical meaning is negotiating and bargaining with each other (Alraazy, p. 262).

The technical meaning of Contracting is: Contracting is a modern term since the term “contracting” was not used in the modern sense he books of the old scholars in what appeared to me through research, although the meaning exists. This type of contract is known to us and applied through some branches and forms corresponding to its counterparts of contracts in the Islamic jurisprudence. Jurists used it under the name of contract Istisna, or Ijara (wages for work) (Aldbyan, p. 8/317), it is the first as mentioned in the Journal of Al’ahkam Aladlia: Istisna’a contract with the people of the workmanship to do something, the worker is a maker, and the buyer is worked for, and the thing is what is made. (Majalat Al’ahkam Aladlia, Tahqiq, Najib Hawawini, Madat Raqm (124), , p. 31)

It was mentioned second in Al-Sharh Al-Mumti ‘: “In building a wall as if to say, whoever builds this wall for me shall have such and such, and this is called contracting for us. We say: This is permissible. But if a contractor is a hired as a worker, it becomes Ijara contract.” (Uthaymeen, p. 10/347)

The Adjustment of the Jurisprudence Contracting Contract

Contracting was adapted by scholars in terms of jurisprudence under two items (Qararia, p. 30):

1. Istisna’a: It is an act of industry, and it is a transitive verb that has two objects (Altahanui, p. 1/155). The lexical meaning of it is the request for work, that is, to ask the manufacturer to work. As for Sharia, it came up with several definitions, namely: asking work from the manufacturer to perform something special on a specific manner (Abidina, Rad Almuhtar Ealaa Alduri Almakhtar, p. 5/223), others’ said that Istisna is the request from the manufacturer to do something special in particular providing that the material must be from the manufacturer (Basha, p. 47). Other definitions include: It is a contract on sale on account, or: a contract on sale on account on the condition of work (Alkasani, Bidayie Alsanayie, p. 5/2).

The rulings of Istisna’a: It is permissible for Al-Hanafi school, and to them, it is a contract different from Al-Salm (Alkasani, Bidayie Alsanayie, p. 5/2) (a king of purchase contract in which the

purchaser pays the price before receiving the commodity which he will collect later). The majority of the scholars of the Maalikis, Shaafa'ees and Hanbalis considered it to be a kind of Al-Salm and has its conditions and rulings.

2. Ijara (work for money): it is to ask a person from a person or a body corporate to for compensation which is money (Alsrkhsy, p. 15/74). It is Ijara on the benefits and works (Alsamarqindy, Tuhfat Alfaqha, p. 2/347). It is in this sense that the contractor sells his benefits of work to those who require it.

In Morshid Al-Hieran: A contractor may be hired for a construction work for a specific amount of money for each day, without specifying the amount of work or with the determining the wage by the area of the work done, or by contracting to perform the whole work for a lump sum, indicating the amount of work's area or size (Basha M. Q., p. 82).

Then researchers put a control for it: If the work and the materials needed are from the manufacturer, this is called Istisna'a, but if the work is on the manufacturer and the materials on the employer, it is called work for money, as the Hanafis stated by saying: Istisna'a is to ask the manufacturer the work and the material, if the materials were from the employer, it would have been Ijara, not Istisna'a (Afinadi, p. 2/106).

However, limiting the adaptation of the contracting to these two branches is a narrow adaptation, because the broader meaning of contracting in the modern includes them and more. There are contracting companies whose products are not tangible or objects in kind and handed over to the orderer such as cleaning companies, medical and other services. Cleaning companies of the government institutions, in hospitals and schools, provide both the staff and the necessary cleaning materials. They do the work based on an agreement and a certain price. The product of the contract here is not something manufactured, but a specific service that the government receives. An example of contracting, here, is a medical company that provides nursing services, where the nursing staff and patient care tools are provided by the company. The product it provides is the service of caring for the patient until he or she is cured for a certain sum of money.

Likewise, transportation companies and car rental companies

provide the means of transportation and the worker for a certain price agreed upon.

Both writers of this paper consider the adaptation of the contracting is in its broad sense; the actual meaning of the contracting company. This is in addition to another type of companies called Al-Aabdan Company. It has many similar forms and jurisprudential branches illustrated by scholars. This is because of the following:

1. A group of jurists attributed Istisna'a to Al-Salm (Alkasani, Badayie Alsanayie , p. 5/209), which is a type of sale, unlike the contracting in its broader concept. It differs in its structure and essence from sales, because Istisna'a is the sale of the premises or the object agreed upon in advance between the manufacturer and the orderer, but contracting is a work agreement because the employer does not buy from the contractor the premises or the required object (Alsinhiwry, p. 1/608), and the subject of contract Ijara is the benefit.
2. Expanding the scope of contracting companies in modern times to include trade, services, informatics and others, which are not covered by Istisna'a or Ijara.
3. Contracting is different from Istisna'a contract - for those who say that it a form of Al-Salm - in the manner of paying the price, where the full price is paid at the beginning of the contract in Istisna'a and waiting for the manufacturer or the specific thing agreed upon until the time is mature, as in the case of Al-Salm, but in modern contracting there is no condition for pre-payment, or to determine the manner of payment.
4. Similarly, Contracting is different from Istisna'a because Istisna'a is optimal, so the orderer is the obliged to accept the product (because he bought something he did not see, and there is no choice for the maker, but to accept the opinion of the orderer according to Al-Hanafi School) (Alhamam, p. 7/116), but the contracting agreement is binding (Aldhan, p. 3/8) on both parties of the contract.
5. In addition to the fact that Istisna'a has special conditions that don't specify the date of collecting the product or the premises, and this is contrary to the contracting agreement that may

terminate the contract if the time of collection is not specified causing damage to the employer.⁶ - It was stated in Hayyat Kibar Aleulama' magazine (senior scholars): If one of both parties said: I accept, and you work, the agreement is accurate because to accept the work requires the approval the one accepted on the profit of the contractor. Similarly, this applies to a group people gather and to make a company to earn and share the work. Some of them accept the work, and some bring materials, and some of them work with their hands, such as contracting to perform a construction or sewing; one designs, another stitches, and the third irons. Another example is car renting; one hires his car, another drives, and a third makes maintenance (The General Presidency of The Departments of Scientific Research, Ifta, And Guidance , p. 42/370).

7. The Hanafi school find that the company of acceptance is two makers can take part in accepting the works, such as sewing or plastering, and so on. This is called the company Al-Abdnan (bodies) because they are working in their own hands, and the company of performance is called Sana'a (professions) because their capital is their profession (Alsrkhsy, Almabsut , p. 11/152). Modern contracting companies are similar such as construction companies, company in the design of gardens and orchards and so the partners and those entrusted do the work of the company and collect the allowance in exchange for that. This kind of companies is permissible for the Hanafi school and is not permissible for the Shaafa'is (Alsamarqinday, p. 3/11).
8. The contracting agreement requires undertaking an obligation (Alzarqa), in the sense that the contractor complies and undertakes to the employer to execute and deliver the requested works or services within a specified period, in accordance with certain specifications.
9. The contracting contract is significantly related to several parties in terms of the agreement, and a set of works in the same enterprise. The first may be the financier, the beneficiary and the contractor as a party such as in the building of the housing complexes of citizens through associations or ministries. The funder, here, is the government or a charity institution while the beneficiaries are the citizens or a governmental institution such as hospitals and

schools. The contractor is a private company that does business. Secondly, the work needs drawing maps, calculating quantities and preparing budgets which are not found in Ijara or Istisna'a.

Because of all the above, we find that after this narrative, the contracting agreement is an independent contractor that has its specifications and characteristics from other contracts, unlike the contract Istisna'a and Ijara on works and the company of Alabdban, but it became a custom independent contract subject its rules and regulating agreements.

The Lawfulness of Companies and Contracting from the Quran and Sunnah

The lawfulness of companies from the Quran and Sunnah

Allah in the Quran says; (Interpretation of the meaning) "then they shall be sharers in the one third," (The Holy Quran 4:12) which is specific to property (Najyam, p. 5/179).

As for the evidence from Sunnah is what narrated by As-Sa'ib, who said: "I came to the Prophet, and people began to praise me and make mention of me. The Messenger of Allah said: I know you, that is, he knew him. I said: My father and mother be sacrificed for you! you were my partner and how good a partner; you neither disputed (Sunnah, p. 4/260) nor quarrelled." (Al-Sarkashi, p. 11/51)

The Messenger of Allah was sent while people do partnership among them and continued to do so after the Messenger of Allah to this day without denial. (Albildahi, p. 3/11)

The lawfulness of contracting from the Quran and Sunnah:

As for the Holy Quran, most evidence call for the fulfillment of the contracts and adherence to them, for example, Allah says: (Interpretation of the meaning): " O ye who believe! Fulfill your indentures." (The Holy Quran 5:1) The verse requires believers to fulfill their covenants which are like transactions agreements and trust that must be fulfilled. (Albaghway, p. 2/6) Zayd Ibn Aslam said that covenants here are "six: the covenant of Allah, the contract of alliance, the contract of the company, the contract of sale, the marriage contract, and oath', and Muhammad Ibn Ka'b said: There

are five including pre-Islam alliance and the bargaining company.” (Katheer, p. 2/8)

As for the Sunnah, some Hadiths indicate the permissibility of seeking work from the contractors and specialists. Among these hadiths what was narrated by Sahl Ibn Sa'd who said: “Allah's Apostle sent for a woman (Sahl named her) (this message): ‘Order your slave carpenter to make pieces of wood (i.e. a pulpit) for me so that I may sit on it while addressing the people.’ So, she ordered him to make it from the tamarisk of the forest. He brought it to her, and she sent it to Allah's Apostle. Allah's Apostle ordered it to be placed in the mosque: so, it was put, and he sat on it.” (Saheeh, p. (1/97) No. 448.). This hadith was mentioned in the book of permissibility of seeking the help of the carpenter who works in carpentry profession.

Making Judgments upon the Expert's Opinion in Compensating Financial Damages Arising from Contracting Companies

It is permissible to refer to experts' opinions to make judgment relevant to indemnity for damages caused by contracting companies; the domains of reference are as follows:

1. Judging upon the Expert's Opinion on Compensation for not Completing the Contract.

For example, an investor may request a project to build a private educational institution such as a school or a kindergarten, to be completed before the start of the school year by a month, but the contractor cannot complete it on time, or building a residential condominiums to be delivered to beneficiaries in a certain date, but not completed on time. Such a delay in the completion of the project leads to the employer's loss of benefits and befalls him with actual damage. In the first example when the project is completed before the start of the new school year, the employer will miss receiving the new student and will lose money. In addition to the fact that he may hire an academic and administrative staff, has to pay them without benefiting from the revenues of his institution. In the second example, the beneficiary of the required apartments, maybe the owners of the rented apartments. The delay caused them financial damages. Such examples show the role of experts and specialists in assessing the

damage to the owner of the workers and forcing the contracting company to compensate.

But, sometimes, the failure to complete the project on time might be caused by a force majeure beyond the capacity of the contractor, such as a natural catastrophe. (Alsanhoury, p. 1/77). Experts in such a case determine the indemnity of the employer, whose first procedure is the right of the employer not to pay the contracting company. (Al'alfay, p. 18)

Compensation shall be determined here by the expert such as the engineers, technicians and contracting observers, after the inspection of the contract.

2. Judging upon the Expert's Opinion on Compensation for Non-Delivery of the Subject of Contract

The actual delivery of the subject of the contract and its manner shall occur pursuant to the agreement, or otherwise according to consuetude (Alnawway, p. 9/276) because what is common by consuetude is like provisions of the agreement (Alzahili, p. 1/346). If the subject of the contract is building a residential complex, the company shall complete the contract, and the keys to the complex shall be delivered to him. If the subject of the contract is furniture, the company shall deliver it to the employer, and if the contract is a service such as maintenance or cleaning, the employer shall be given the right to inspect and consent.

If the agreement states that the materials and supplies of the contract are on the employer, then upon completion and delivery, the materials and supplies must be returned, as well as the official documents of the employer such as the licenses and work permits, maps and the like because it is the employer's property and right. (Alkasani, Bidayie Alsunae, p. 4/210).

If the contracting company refrains from handing over the subject of the contract, as required by the contract or current consuetude and causing damage to the rights of the employer, the company is required to compensate for the damage it caused or the right of loss, or loss of benefit, as required by the experts in this field.

The expert here is the civil engineer, in addition to the legal expert

who examines the terms of the agreement between the student employer and the contracting company.

3. Judging upon the Expert's Opinion to Compensate for the Defects of the Contract

The contracting company is required to carry out the contract and deliver it free of defects that harm the employer. The contracting company shall also be responsible for the quality of the raw materials and the requirements for the contracting of the subject of the agreement and execution of the contract. This is one of the requirements of the contract, which is known as conditionality, and they should also guide the employer to the type of the material provided by the employer and its quality that does not damage the contract's subject. If it causes damage or corruption to the place of contract, it is obligatory to the contracting company to inform the employer of this defect, because the failure to mention this is deemed a shortcoming. (Alsinhwri, p. 1/99).

On identifying and evaluating the defects, it is to the expert's opinion deciding the defects of the contracting and the cracks (Farhoun, Tabsirat Alhukam , p. 2/85). The defect here is what the people expertise considers as a defect up to their discretion and up to the custom of their profession because all professions and industries have their custom and tradition.

4. Judging upon the Expert's Opinion on Compensation for Wrongdoing and Negligence in place of Contract

What is required from the contracting company is to safeguard the interests of the employer, including the subject of the contract, its contents and collaterals? Once the employer is the one who brought the necessary materials for the contracting company, the company must work on keeping these materials, and observing the right practices followed in this industry until the employer collects the contract's subject. They have also to return what is left of it to its owner because it is deemed trust to the employer's interest. Should the company neglect or malfunction, or lose it, the company shall indemnify the employer for that damage (Alzahili, Eqd Almuqawilat Shraan Wqanonan).

Should there is a dispute to whether a company committed an

infringement or a default, the question shall be referred to experts to assess the infringement or default. (Al-Maqdisi, p. 14/486)

The expert here is the architect or the civil engineer, because of their expertise in the works of contracting, if the contract subject is constructing premises, or otherwise, each profession has its experts.

Judging upon the Expert's Opinion on Indemnity for Financial Damages caused by the Client.

It is permissible to refer to experts' opinions to make judgment relevant to indemnity for damages caused by the client; the domains of reference are as follows:

Judgment upon the Expert's Opinion on Compensation for not Enabling the Contractor to Complete the Subject of the Contract

Pursuant to the contracting contract between the employer and the contracting company, the employer must enable the contracting company to start executing the contract, because the contracting contract is binding and requires work from the contractor's side and money allowance from the employer's side. When the employer prevents the contracting company from executing the works, he causes damage to the contracting company, which contradicts the provisions of the contracts and covenants between both parties.

Enable the contracting company to carry out the contract is by providing the company with the requirements of the contract (Alsanhory, p. 1/145). The employer undertakes to vacate the workplace to the contracting company to start the project, and provide the necessary licenses, documents, maps and work permits and the like, for the execution of the contract, whether the agreement provides for this, and the provision of means of transport and place of storage if the agreement states so, or it is well-known in practice. This is in addition to removing all obstacles and providing all comforts and empowerment to the contracting company.

If the company incurs damage because of not providing the above, the employer shall be held liable to damages as determined by the expert in this field; the engineer, or technician, according to the contract.

Another contemporary example is that the place of contract is residential house and after the agreement between the contracting company and the employer, the employer refuses to enable the company to start work or puts obstacles to prevent them from commencing the project. The expert here is the competent legal expert to consider the terms of the agreement and give an opinion.

If the employer fails to enable the contracting company to carry out the work, he shall bear all damages resulting from such action, namely (Alsanhory, Alwasit, p. 1/145):

1. The contractor shall not observe the period specified in the contract to complete the contract, where the company is not held liable.
2. The contracting company shall be entitled to force the employer to allow it to execute the contract. It shall also be entitled to bring the machinery, equipment and supplies related to the contracting of the place of the contract and make the employer to pay for it.
3. The contracting company shall be entitled to compensation for any financial or moral damages caused by the non-enabling of the employer. The courts may consult experts to determine the value of the compensation.
4. The contracting company shall be entitled to request the dissolution of the contract based on the employer's refusal to enable it or its staff to implement the contract.

Judging upon the Expert's Opinion on Indemnity for the Employer's Refrain from Receiving the Place of the Contract

Upon completion of the execution of the contract, the contractor shall deliver it to the employer in accordance with the provisions of the contract, or accordance with the well-known practices in this field.

One of the contract's requirements and conditions is that the employer acquires the subject of contract from the contracting company by virtue of the provisions of the contract, or in accordance with the well-known practices in this field.

There is no doubt that the contracting company shall have damages or the loss of benefits in the event of the employer's refusal to receive the subject of the contract, where the company executed the contract and waiting for the agreed payment so as to pay its obligations such as

wages of workers and the entitlements of materials and supplies that they brought.

Moreover, the guarantee of the premises may expire or get damaged by some once left under the contracting company, which requires it the burden of security which is not required by the company. In such case, upon completion of the execution of the contract, free from defects, the company notifies the employer of the completion of works and he refuses to receive the subject of the contract, it shall be deemed delivered (Alsanhory, Alwasit, p. 1/146).

The receipt of the subject of contract by the employer includes his passion and full disposition of the place of the contract without hindrance, and with acceptance and approval of the work and the satisfaction of the employer with respect to the overall performance of the work (Alsanhory, Alwasit, p. 148). The receipt thereof may also be in accordance with custom relevant to the works and professions; the receipt may be delivering the ready item to the employer's stores, or it might be a gradual delivery if the contract is work. This is in addition to fact that the place of delivery shall be pursuant to the provisions stipulated in the contract or accordance with the well-known practices in this field (Aleayd, p. 201).

In the event of a dispute relevant to compensation or evaluation, it shall be referred to experts in the profession, including forcing the employer to receive the contract clear the account of the company from the grantee and any defects. (Alsanhory, Alwasit, p. 1/154)

The expert here is the financial specialist who knows the financial transactions and accounting, and according to his opinion, the contractor shall be compensated for damages.

Judging upon the Expert's Opinion on Indemnity for not Paying Contracts Price

It is known that a contracting contract is a netting agreement, i.e., it is based on exchange. The employer needs to complete his works, and the contractor needs a remuneration, which is money for his work.

Upon the completion of the subject of the contract free of defects, and approved by the employer, the contracting company is entitled to the remuneration agreed upon in the contract because that is the

requirements of the contract. Remuneration without work is a donation contract (Alsanhory, Alwasit, p. 1/155).

Whatever the specific manner of payment, the contracting company deserves collecting it immediately upon completion of the works. If the agreement stipulates payment in installments, or if the agreement does not specify the price, the matter is referred to the arbitration of experts. Ibn Najeem says in this regard "the payment of the remuneration is determined by the expert." (Najeem, p. 8/8).

If the employer fails to pay the agreed-upon remuneration or breaches any of the conditions of payment and obligations, the contracting company is entitled to oblige the employer to pay the amount due according to the agreed manner of payment. This is in addition to a request for compensation for the damage or loss. Such loss or damage is subject to experts and their experience (Alsanhory, Alwasit, p. 1/203).

The expert required here is the financial and accounting specialist, who knows financial transactions and accounting, and according to his opinion, the contractor is compensated for damages caused for its obligations with other companies and the wages of workers and operational expenses.

Findings and Recommendations

Findings

1. An expert is a person with sufficient knowledge in a certain field of art or a matter of dispute to refer to and seek his opinion at the request of the judge.
2. Referring to experts for adjudication is under the discretion of the judge.
3. A Judge may refer to the expert in indemnity for damages in the Murabaha of the purchase orderer in two cases: the first: in compensation for financial damages caused by the financial institution, and the domains of reference here are:
 - a. Judging upon the expert's opinion on returning defective merchandise.
 - b. Judging upon the expert's opinion when there is a difference in the specifications of the commodity.

The second case is compensation for financial damages caused by the purchase orderer, and the domains of reference here are

- a. The purchaser's abstention from buying the ordered item.
 - b. The purchaser's inability to pay the price.
 - c. The purchaser's delay in collecting the item on time.
4. The judge may refer to the expert opinion on compensation for damages in contracting companies in two cases: the first: judging upon the expert's opinion on compensating financial damages arising from the contracting companies, and the domains of reference here are:
- a. Judging upon the expert's opinion on compensation for incompleting a contract.
 - b. Judging upon the expert's opinion on compensation for not delivering the subject of a contract.
 - c. Judging upon the expert's opinion on compensation for the defects in the contract's subject.
 - d. Judging upon the expert's opinion on compensation for the mistakes and negligence in the subject of a contract.

The second case is: Judging upon the expert's opinion for compensation for the financial damages caused by the client. The domains of reference here are:

- a. Judging upon the expert's opinion on compensation for not enabling the contractor to complete a contract.
- b. Judging upon the expert's opinion on compensation for the employer's refrain from receiving the subject of a contract.
- c. Judging upon the expert's opinion on compensation for the for not paying the contract's price.

Recommendations

- a. Working on enacting a special law to regulate seeking the help of experts, with specifications of controls, conditions and principles, especially in the Islamic Sharia courts. There is no objection to specifying certain qualities of the expert such as a number of years of experience, or providing certain documents such as the obligation necessary for lawyers to provide a certificate of practicing the profession or whatever.

- b. Conducting training courses for new judges on how to benefit from the work of experts and ways of seeking their help.

References

- Abdullah, Abu Muhammad Muqaff al-Din bin Ahmed bin Mohammed bin Qudamah Al Qamili Al-Maqdisi and then Damascene Hanbali., Alkafi Fi Faqih Al'imam 'Ahmad:, famous Ibn Qudaamah al-Maqdisi (620 e), Dar al-Kuttab al-Ulami, 1, 1994.
- Ahmed bin Fares bin Zakaria al-Qazwini Razi, Abu al-Hussein., Mojml Allughat Liaibn Fars: (d. 395 e), study and investigation: Zuhair Abdul Mohsen Sultan, Foundation letter - Beirut, 2, 1986.
- Al-Dowaihi, Ahmed Abdullah Mohammed. Aistisharat Bi'ahl Alaikhtisas Fi Al ijtihad., A fundamentalist study
- Al-Husseini, Mohammed bin Mohammed bin Abdul Razzaq , Abu al - Fayadh, nicknamed Mortada, Zubaidi .,Taj Aleurus Min Jawahir Alqamws (D: 1205 A.H), verified by: a group of editors, Dar al - Hedayah.
- Ali, Abu al-Hasan bin al-Hussein bin Mohammed al-Sogdi, Hanafi Al-Nataf Fi fatwas (d. 461 A.H), verified by: Lawyer Dr. Salah al-Din al-Nahi, Dar al-Furqan, Foundation letter - Jordan I 2, 1404-1984.
- Al'islamy, Qawl 'Ahl Alkhibrat Fi Alfaqih., Umm al-Qura University 1419 A.H. Fawaz bin Sadiq bin Bakr al-Qaidi
- al-Hasan, Abu Bakr Muhammad., Jamhirat Allogha (D. 321 A.H), verified by: Ramzi Munir Baalbaki, Dar al-Ilm for millions - Beirut, 1, 1987.
- Al-Harawi, Mohammed bin Ahmed bin Azhari, Abu Mansou., Tahdhib Allaghat (370: A.H), investigation: Mohamed Awad Marab, Dar Arab heritage revival - Beirut, 1, 2001.
- al-Maqdisi, Abu Muhammad Muqaff al-Din Abdullah bin Ahmed bin Mohammed bin Qudamah al-Qumayli al-Maqdisi and then Damascene Hanbali, famous Ibn Qudamah al-Maqdisi Almaghniu Libn Qudaamah: (620 AH), Cairo Library, d.
- Al-Suhaimi, Hamed bin Mousaed .,Dawr Alkhabir Fi Aldaewaa Aljizayiyat Tbqaan Linizam Al'ielam Alsewdy:, Naif Arab University 2007.
- Hanafi, Abu Bakr bin Masood bin Ahmad al-Kasani ., Bada'id al-Sanayah fi tarteeb Alsharaa: Alaa al-Din, (d: 587 A.H.), Dar al-Kuttab al-Ulami, 2, 1986 A.H.
- Hassaniah , Ahmed Dada.,Ahkam Aitifaqiat Rab Aleamal Fi Aqd Almuqawalat., (Unpublished master thesis), Moulay Eltaher University, Algeria. 2017 A.D.
- Ismail, Abu Nasr bin Hammad al-Jawhari al-Farabi .,Alsahah Taj Allughat Wasahah Alerbyat Wdy(d. 393 A.H), verified by Ahmed Abdul Ghafour Attar, Dar al-Ilm for millions - Beirut, 4, 1987.
- Khaluti, Abu Abbas Ahmed bin Mohammed, The Famous Salawi al-Maliki., Bilughat Alssalik Li'aqrab Almusalik (d. 1241 A.H), Dar Maarif, d.

- Mohammed ,Ibrahim bin Ali bin., son of Farhoun, Burhan al-Din al-Yamari
Tabsirat Alhukkam Fi 'Usul Al'aqdiat Wamanahij Al'ahkam (d: 799 A.H),
Library of Al-Azhar colleges, 1, 1986 A.D.
- Mohammed, Majd al-Din Abu Tahir bin Yaqoub Al-Fayrouzabadi ., Alqamus
Almhyt: Mjd Aldiyn (v. 817H), verified by The Heritage verification Office
at Al-Resala Foundation, Al-Resala Foundation for Printing, Publishing and
Distribution, Beirut, 8, 1426A.H. 2005 A.D.
- Muhammad, Zine El-Din Abu Abdullah ibn Abi Bakr bin Abdul Qader Hanafi
Al-Razi .,Mukhtar Alsahh, Yusuf Sheikh Mohammed, ah: (666 AH), Al-
Hikq, Modern Library - Model House, Beirut - Sidon, I 5, 1420 AH / 1999.
- Muhammad, ibn Makram bin Ali, Abu al-Fadl, Gamal al-Din Ibn Manzoor al-
Ansari al-Ruwaifi African., Lisan Alearab: (v. 711 e), Dar Sader - Beirut, 3,
1414 .H.
- Rushd, Abu al-Walid Mohammed bin Ahmed bin Mohammed bin Ahmed
bin Rashid famous Ibn Rushd grandson., Bidayat Almujtahad Wanihayat
Almqtsd., (d: 595 A.H), Dar al-Hadith - Cairo, D.T, 2004.
- Saadi Abu Habib, Dar al-Fikr., Alqamus Alfuhqi Lghtan Wastlahaan, Damascus
- Syria, 2, 1408 AH / 1988.
- Yahya, Abu Zakaria Muhieddin bin Sharaf al-Nawawi., Sharah Sharah
Almuhadhab (with the completion of the Sabki and Mtayi): (d: 676 AH),
Dar al-Fikr.
- Younis, Mansour, Daqaq li Alnahaa Lisharh Almuntahaa Almaeruf Bshrh
Muntahaa Al'iiradat: (d. 1051 A.H), World books, I 1, 1993.

Salah Eddin Talab Faraj¹ & Wael Jamal Al Najjar²

¹ Associate Professor of Comparative Jurisprudence, Faculty of Sharia and Law, Islamic University, Gaza

² Master's degree in Comparative Jurisprudence from the Faculty of Sharia and Law at the Islamic University, Gaza

E-mail: ¹sfaraj@iugaza.edu.ps