

THE OPTION OF SIGHT UNDER ISLAMIC *SHARI'AH* AND ITS APPLICABILITY TO ELECTRONIC DIRECT PURCHASE ADMINISTRATIVE CONTRACTS IN THE UAE

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ABSTRACT

Electronic transactions are an important development to traditional commerce. People (including government entities), nowadays, buy goods without going to the traditional markets because they find their needs and buy them via the Internet. This development of commerce, which results from developments in communication technology, has proliferated and facilitated marketing across a wide range of stakeholders, some of which has resulted in deceit and cheating. This happens when merchants exploit the remoteness between their products and government departments by delivering goods which differ from those that have been agreed upon. Or, it may happen when merchants falsely describe their products. These methods of deceit and cheating are addressed in Islamic law by legislating the option of sight which gives the purchaser right to rescind the contract upon viewing the item. This analytical study discusses the appropriateness of the option of sight with administrative e-purchases in view of the fact that the government department usually sees pictures or videos of the item online. Hence, this study discusses whether or not electronic pictures and videos provide government departments with sufficient knowledge the about the item and, accordingly, trigger the option of sight.

Keywords: Option of Sight, Rescind the Contract, Electronic Administrative Contracts.

INTRODUCTION

Options “*Khayarat*” and their various types have been legislated for two main reasons: either to avoid and redress any deficiency in the mutual will of the parties (i.e. when they overlook to state some conditions in their contract), or to give the parties the chance to re-evaluate their contractual position or inspect the subject-matter of the contract.

Options, under Islamic “*Shari’ah*”, could either be specified by law without need for being inserted into the contract, such as the option for defects and the option of sight, or could need special stipulation by the parties for their insertion, such as the option of rescission.

The option of sight (also known as the option of inspection) is one of the most applied options in contracts under Islamic law, giving the party the opportunity to redeem himself from his contractual position upon seeing the subject-matter of the contract.

This study attempts to shed light on an important aspect of the option of sight, namely the possibility of its application in electronic administrative contracts, specifically electronic direct purchase administrative contracts in the UAE.

The study of the option of sight in Islamic jurisprudence is necessarily related to the study of absent subject-matters of contracts, whether described or not, and whether their absence was due to their nonexistence at the contractual session or due to being invisible, though present, at the contractual session.

Jurists are agreed regarding the permissibility of present and visible subject-matters, but disagreed regarding contracting over absent subject-matters. Their disagreement regarding absent subject-matters led to their disagreement upon the permissibility of the option of sight, considering that the ruling is closely connected to the permissibility or prohibition of selling absent subject-matters.

Accordingly, this paper addresses the concept of the option of sight by defining it under Islamic *Shari'ah* as well as the UAE legislation. It also addresses the views of jurists regarding the permissibility of the option of sight by presenting the related evidence. It further examines the applicability of the option of sight to electronic contracts, particularly its applicability to electronic direct purchases in administrative contracts under the UAE legislations.

As we will see later, the option of sight is an option given to the buyer in the sale contract. According to this option, if the buyer does not see the sold item at the time of drafting the contract, he will have the choice of inspection prior to accepting the goods, wherein he either accepts the sold item or refuses it. This is the rule in the traditional contracts. As for the electronic contract, the buyer may or may not have this option. This is because the buyer sees the item through electronic means. The assumption here is that the buyer does not have this option because he already saw it through screens and electronic means. This paper explores this presumption.

The scope of this paper does not cover the application of the option of sight in government purchases through tenders and bids. This is because tenders and bids carried out by the government require strict procedures that usually provide no room for mistakes regarding the subject-matter of the tenders and bids.

What is an Electronic Administrative Contract?

An electronic contract is:

“An agreement in which the affirmative acceptance is accepted on an international network of remote communication, by means of an audible means visible through the interaction between the offer and acceptance (Mujahid, 2000; Al-Manzalawi, 2005).”

Some also recognise it as:

“The contract in which the offers of goods and services expressed by various technological means, especially the Internet, are combined by persons who are suppliers in a different country or countries, with an acceptance that can be expressed through the same media as the completion of the contract (Salameh, 2000).”

Furthermore, Article 1 of UAE Federal Law No. (1) of 2006 On Electronic Commerce and Transactions defines an electronic transaction as:

“Any deal, contract or agreement concluded or performed, in whole or in part, through Electronic Communication.”

Electronic communication is also defined under the same Article as: *“the sending and receipt of Data Messages,”* while data messages are defined as:

“Electronic information sent or received by electronic means, whatever the method of retrieval at the place of receipt.”

Electronic contracts are governed by the provisions of the general theory of the contract. The significance of these contracts is the extent to which its electronic nature affects its authority (Mohamed, 2005). Meanwhile, an administrative contract is:

“A contract concluded by a legally authorised person for the purpose of managing a public facility and shows its intention to adopt the general laws by including in the contract condition(s) not commonly practised in private legal contracts” (Al-Tamawi, 1984; Al-Waitry, 1979).

The administrative contract is also defined as:

“The contract in which a government department is a party and submitted to the rules of the administrative law” (Jamal, 2009).

These definitions highlight that, in the administrative contract, one of the parties is a state body. They also show that the contract is subject to the rules of administrative law. The main character in this law is that it aims at achieving purposes that serve the public interest and facilitate the management of public departments (Jamal, 2009).

Article 24 of UAE Federal Law No. (1) of 2006 On Electronic Commerce and Transactions, states that government departments may conduct procurements through electronic means. The Article provides:

1. Government Departments may, within the scope of their legal duties: put out tenders and receive bids relating to Government procurement by Electronic means.
2. In any case where the Government decides to perform any of the functions in subsection (1), the Government may specify: the manner, method and process by which Government tenders are put out, bids are received, and Government procurement is made.

Moreover, Article (57) of the Procurements, Tenders and Bids Manual issued pursuant to the provisions of Law No. (6) of 2008 on Procurements, Tenders, Bids and Warehouses for the Emirate of Abu Dhabi, provides for:

Procedures for Purchases, Tenders and Bids using Electronic Methods

The procedure for purchases, tenders and bids using electronic methods shall be subject to the same rules and conditions stated in this Manual Procedures of electronic purchases, tenders and bids shall be applied alongside paper procedures until such time as fully replaced by electronic procedures, such application being optional for third parties.

Characteristics of Electronic Administrative Contracts

Electronic administrative contracts have the following characteristics:

1. The electronic administrative contract is no different in terms of subject or parties from conventional administrative contracts, but rather in terms of the method of conclusion and means of proof. It can be used for all goods and services, sellers or service providers, tenants or consumers. This type of contract is also concluded between individuals and public entities (El-Abasiri, 2002; Hashim, 2019).
2. Electronic contracts are considered a special type of remote contract. Remote contracts are defined as “any contract relating to the supply of a product or service initiated by the supplier, without a physical presence concurrent with the consumer, using remote communication technology to transport the commodity and purchase order from the consumer (Al-Damluji, 2002)”.
3. The implementation of the electronic administrative contract differs from the implementation of a conventional contract. The electronic contract can be concluded and executed via the Internet. There is a possibility of the delivery of the products through electronic delivery, such as computer programs, music recordings and medical consultations (Al-Damluji, 2002).
4. The electronic administrative contract also differs from the conventional contract as it can be authenticated via electronic signature. Also, electronic payment methods can be used such as electronic money, bank cards and electronic commercial paper (Saleh, 2007; Majed, 2007). The electronic administrative contract is characterised by the right of unilateral repudiation on part of the administrative, unlike the general rules in conventional contracts where the contract cannot be unilaterally repudiated once the offer is accepted. For electronic contracts, the law gives the parties the right of repudiation due to being unable to check the specifications of the subject-matter of the contract, and to know its characteristics before concluding the contract (Abtan, 2006; Al-Janabihi, 2005).

Electronic contracts are concluded without the physical presence of the parties. It is not possible to ascertain the eligibility of the other party described in the contract and the safety of the product from defects. There is also uncertainty in its verification and implementation. Online contracts through direct communication methods, however, allow a virtual presence of parties and a comprehensive dialogue of the contract and its implementation, where there is no time difference between the offer and acceptance. The contract is also concluded online (Al-Shawabkeh, 2013; Al-Damluji, 2002).

The Option of Sight under Islamic Shari’ah

Islamic law introduced the theory of option “*al-khayar*” which is applied in the contract law. Islamic law regulates several types of options, with each dedicated to regulating a specific aspect in the contract. The option of sight is one of these options, which is designed to prevent cheating and protect the purchaser. While this option is important in the conventional contract, it may be more important in the electronic contract. This is because the item is usually absent in this contract, i.e. the purchaser in the electronic contract does not see the item in its material form. He may see it through pictures or videos via electronic means. Sometimes, he may receive only descriptions without pictures. This raises questions such as whether these pictures and videos are enough to provide the required knowledge about the item to the purchaser. If deemed sufficient, do they then forego the option of sight?

To discuss these issues, the article is divided into two sections. The first section discusses the concept of option of sight and its basic rules. Meanwhile, the second section is dedicated to discussing whether the electronic pictures and videos are sufficient to forego the option of sight or not.

Definition and Basis of Option of Sight

Option of sight means that:

“A person who enters into a contract dealing with a certain object, which he has not seen, has the right of cancelling or confirming the contract upon seeing the object” (Kharofa, 1997; Razali, 2010).

It may also be defined as:

“If a person buys a piece of property without seeing such property, he has an option upon inspection thereof of either cancelling the sale or of ratifying it (Article 320 of al-Majalla al-Ahkam al-Adaliyyah) ¹”

Some classic Muslim jurists defined the option of sight as *“the right of the party who did not see the thing sold at the time of formation of the contract either to confirm or to cancel the contract”*.

Thus, the option of sight is an option given to the party (the purchaser in the sale contract) who did not see the item at the time the contract was drafted. This party, on the basis of this option, has the right to rescind the contract or confirm it when he sees that item which they agreed upon (Abu-Ghuddah, 1985).

Article 226 of the UAE Federal Civil Transactions Law No. 5 of 1985 provides:

“The option to inspect shall arise in contracts liable to cancellation in favour of the person to whom the disposition is made even though not expressly stipulated if the subject-matter of the contract has not been seen, and is specified.”

Article 228 of the same law further provides:

“The option to inspect shall not prevent the contract becoming effective but will only prevent it becoming binding on the person in whose favour the option exists.”

In the *al-Hanafi* School, this option is given to the purchaser as part of the Islamic law and the parties do not have to agree on this option. In other words, the purchaser has this option whether he stipulates this option in the contract or not (Al-Kasany, 1986; Abu-Ghuddah, 1985). Meanwhile, the *Maliki* School says that the party should stipulate this option in the contract. Failure to stipulate it means that he does not have the right to rescind the contract when he sees the item (Abu-Ghuddah 1985; Al-Umosh, 2010).

This option is based on the statement reported from the Prophet (PBUH) which provides

“He who buys something which he has not seen has the option, upon seeing it, either to accept or to refuse it”².

Besides this tradition, in the era of the companions of the Prophet (PBUH), Talhah ibn Abd Allah bought land from Uthman ibn Affan. Neither the purchaser nor the seller had seen the land at the time the contract was concluded. Somebody said to Uthman that he had a raw deal. Somebody also said the same thing to Talhah. Uthman said *“I have the option because I sold something which I have not seen”*. They agreed that Jubayr ibn Mut'im would judge between them. He judged that the option is to Talhah (the purchaser), but not to Uthman. This judgement

is concluded in the presence of a group of the companions of the Prophet (PBUH), and none of them rejected the judgement³ (Kasany, 1986).

Despite such evidence, there is disagreement among classical Muslim jurists concerning the permissiveness or prohibition of the option of sight for absent items. The group who prohibits selling the absent item prohibits the option of sight. Meanwhile, the group who permits selling the absent item permits the option of sight (Abu-Ghuddah 1985). The *Shafi'i* School is the first group, and the *Hanafi*, *Maliki* and *Hanbali* are the second group. Namely, the *Shafi'i* School prohibits the option of sight because it prohibits selling the absent item. However, the majority of jurists permit the sale of absent items if their presence in the future is certain, and as such they permit the option of sight in such sales (Abu-Ghuddah 1985; Al-Umosh, 2010).

The Meaning of Sight

Here, sight means that the thing sold should be known by the purchaser. Thus, the sight does not necessarily mean looking by the eyes. Rather, it means having accurate knowledge of the thing that is being sold whether this knowledge is obtained by the eyes or by any other sense (Abu-Ghuddah, 1985). Accordingly, Art 323 of “*Majallat al-ahkam al-adliyyah*” (The Ottoman Courts Manual (Hanafi)) provides:

“The object of the option of sight is to ascertain the nature of the thing sold and the whereabouts thereof. Example: A person who examines the outside of a plain piece of cloth which is the same on both sides; or a piece of cloth marked with stripes or flowers; or the teat of a sheep bought for breeding; or the back of a sheep bought for killing; or who tries the taste of things for eating and drinking and who later makes a purchase, has no option of inspection (sight)”.

According to that, the nature of the thing sold plays an important role to lead to the required knowledge. Some things are known by the sense of sight such as cars, houses, etc. Others are known by the sense of smell such as perfumes, while yet others are known by the sense of taste such as foods. Further, some things are known by touch such as clothes and dresses, and some by the sense of hearing such as music (Abu-Ghuddah, 1985).

Thus, the option of sight takes its name not because the sight is the only method that inform the party about the thing sold, but because it is the most important method which leads to the required knowledge (Abu-Ghuddah, 1985). Therefore, the Muslim classical jurists introduced the option of sight to the blind person when he buys an item, i.e. if this option is linked with sight then it would be meaningless to award this option to a blind person (Abu-Ghuddah, 1985).

Muslim jurists linked the idea of sight with the idea of knowing the thing sold. Namely, the purpose of sight is to give perfect knowledge about the thing sold to the buyer. If the knowledge of the buyer was defective as a result of not seeing the thing sold, then the option is given to him. Consequently, seeing the entire thing is not required. It is sufficient to see part of it as long as this part provides accurate knowledge of the item (Al-Sanhori, 1998).

Conditions of Option of Sight

The option of sight is given to the purchaser on the basis of several conditions. They are:

1. The object of the contract should be a specified thing (Abu-Ghuddah, 1985; Kharofa, 1997).

2. The contract in which the option stands should be rescindable such as the sale contract, the rent contract, division of valuables and the like. This condition is required because the effect of this option, as abovementioned, is to rescind or confirm the contract (Abu-Ghuddah, 1985).
3. The thing sold should not have been seen at the time when the contract is formed or before that time. If it is seen, the option is foregone (Abu-Ghuddah, 1985).
4. The party who has the option (the purchaser) should see the thing sold after drafting the contract. If he does not see it, he will not have the option until he sees it (Abu-Ghuddah, 1985).

Effect of Option of Sight

The person who enters a contract for an item which he has not been seen at the time of formation of the contract, has this option when he sees it, at which time, he may confirm the contract or rescind it. Thus, this option renders the contract, after formation, rescindable until the holder of the option (the purchaser in the sale contract) decides either to confirm the contract or cancel it. Confirming the contract occurs by saying a statement indicating his consent such as “*I accept the item*” or “*I agree on the contract*” or anything leading to the same effect (Abu-Ghuddah, 1985). Confirming the contract may also occur by disposal “*conduct*” indicating the consent of the party as if the purchaser rents the thing sold to a third party after he sees it. Thus, if the contract is confirmed, it becomes binding and the option is terminated. On the other hand, if it is rescinded, the parties return to the position before forming the contract, i.e. the purchaser returns the sold item to the seller and the seller returns the amount paid to the purchaser.

The Time in which the Holder of the Option Rescinds or Confirms the Contract

Primarily, the option of sight produces its effect at the time of sight, but not before it. Therefore, the holder of the option has the right to refuse the thing sold when he sees it even if he confirms the contract beforehand. This means that the time in which the holder of the option sees the thing sold is the borderline and the base on which the contract is finalised (Abu-Ghuddah, 1985). But a question arises, should the holder of the option confirm or rescind the contract after the sight immediately? Or he is not provided a timeframe? The classical jurists disagree on this issue. Some of them said that the holder of the option is not limited with a specific time, i.e. he can confirm or rescind the contract at any time after the sight even though his decision is delayed (Al-Kasany, 1986; Abu-Ghuddah, 1985). Other jurists said that the holder of the option should issue his decision immediately when he sees the thing sold, i.e. there should be no gap of time between the sight and the confirmation/rescission. Accordingly, they said if he sees it and keeps silent, the silence is considered confirmation and the option is dropped (cancelled) (Abu-Ghuddah, 1985).

The Extent to Which the Electronic Pictures and Videos Achieve the Required Knowledge about the Item

The option of sight is given to the party if he does not see the item at the time of formation of the contract. This occurs in the conventional contract when the item exists in a place far from the parties, or if a hindrance prevents seeing that item. But in the electronic contract, the item may be seen by electronic media such as the computer screen. Technology has

enabled the merchants to display their products via electronic means at a high level of accuracy. Does this sight then annul the option of sight?

Classical Muslim jurists did not discuss this issue because electronic media had yet to exist. Nevertheless, they discussed how sight could be exercised through several means. This discussion may be useful in clarifying the extent of appropriateness of electronic means to cancel the option of sight. The following are some applications of the option of sight in ways similar to electronic media:

Sight via a Catalogue or Brochure

Muslim jurists liken the sale which occurs via a catalogue or brochure as the sale which occurs via a “*Dafter*” (notebook). The “*Dafter*” in which the sale is concluded usually contains descriptions and details about the thing sold. The majority of classical Muslim jurists said that the contract here is binding and not rescindable provided that the thing sold conforms to the descriptions mentioned in the “*Dafter*” i.e. the option of sight is cancelled here unless the thing sold differs from the descriptions. Meanwhile, the “*Hanafi*” School does not agree with the jurists and argue that the contract is not binding and the purchaser has the right to rescind the contract when he sees the thing sold (Al-Kasany, 1986).

Sight of a Sample (Unmothaj)

Some merchants depend on samples to promote their products (such as samples of cloth, samples of carpet, etc.). This happens by distributing these samples to retailers. On the basis of seeing these samples, the customer obtains knowledge about the item and decides if he wants to buy it or not. The majority of Muslim jurists said that if the sale contract is concluded according to the sample, the thing sold should conform to that sample. Thus, the purchaser will have the option of sight and, accordingly, he has the right to rescind the contract.

Sight via Glass

The majority of classical Muslim jurists believe that seeing the thing sold through a glass is not enough to obtain accurate knowledge of the item. Thereby, this form of sight does not cancel the option of sight, i.e. the right to confirm or rescind the contract remains with the purchaser when he sees the item directly.

Sight via a Mirror

Seeing the item via a mirror is also not enough to obtain accurate knowledge of the item in the viewpoint of the majority of Muslim jurists. This is because here sight is not seeing the item itself, but a reflection of the item. Accordingly, the purchaser remains having the option of sight even if he sees the item via this method (Al-Kasany, 1986).

Sight via a Screen

The sight via screen is similar to the previous mentioned cases. It is most similar to the sight which occurs via glass or a mirror. Accordingly, the same juristic reasoning (deduction) may be applied on the sight via a screen taking into consideration the difference between the

actual item and the reflection in terms of the actual specifications. Then, it can be concluded that the sight which occurs via the screen is not enough to introduce perfect knowledge about the thing sold. Thereby, the party who holds the option of sight remains having this option although he sees the item through the screen. Thus, this party has the right to confirm or rescind the contract at the time when he sees the item directly without an intermediary.

Further, if we refer to the above meaning of sight, we find that this option does not depend solely on the sense of sight (seeing by eyes), but on the all senses. As such, electronic media is still unable to introduce the perfect information about the thing sold. For example, if the purchaser sees the clothes via the screen, he may not get enough knowledge about them. He may need to touch and smell them to get the required knowledge. In another example, products which are classified as foodstuffs cannot be properly known via electronic media. In the case of carpentry, seeing it may not be enough, and the customer may need to touch and smell the item to decide if it suits the initially intended contract. Thus, the senses work together to introduce the required knowledge about the product (the item).

The Application of the Option of Sight for Electronic Direct Purchase Administrative Contracts in the UAE

Definition of the method of direct purchase

The direct purchase method is defined as a general administrative contract through which a person wants to enter into an administrative contract with him directly. It differs from the method of tender and does not rely on advertisements or the existence of committees. The management communicates directly with trusted organisations or individuals and contracts them directly. This method is called direct purchase (Abdali, 2014 & 2016). It depends on contracting with the expert without restrictions in comparison with the bidding method that relies on legal provisions in choosing the lowest price offer. The ability to verify the experience is absent, resulting in an increased risk to the management (Abd, 2011).

Electronic Administrative Contracts Using Direct Purchase Method in the UAE

The administration, without resorting to tenders, can procure goods and services through the direct contracting method. This method can take one of two forms: either procuring the goods or services directly from one supplier, or inviting offers from a number of suppliers to be submitted either through fax or closed envelopes for the concerned department to choose (see Article 1 of The Procurements, Tenders and Bids Manual issued pursuant to the provisions of Law No. (6) of 2008 on Procurements, Tenders, Bids and Warehouses for the Emirate of Abu Dhabi). This direct purchase method is considered an exception to the general rule for procurement using tenders for public interest considerations.

The direct purchase method, from its title, is conducted directly between the public body and the supplier(s), and when the purchase is to be conducted through electronic means, the supplier(s) deliver the offer either through the website or through email. Then, the public body would negotiate with the supplier(s) and, if the offer is accepted, would dispatch acceptance through electronic means. The contract is considered concluded once the offeror is notified of the acceptance.

The Procurements, Tenders and Bids Manual issued pursuant to the provisions of Law No. (6) of 2008 on Procurements, Tenders, Bids and Warehouses for the Emirate of Abu Dhabi, under Article (24) provides for direct purchase through offers, by stating:

1. Contracting is concluded using direct purchase through offers for procurement of goods and services the value of which is between 25,000 AED and 50,000 AED, and upon approval of the tenders and bids committee for any contract exceeding that sum.
2. At least three offers shall be invited from qualified suppliers and contractors registered in the suppliers and contractors register.
3. Offers shall be submitted by fax or any other means.
4. The purchases department or any similar department shall attend to the purchases provided that the procedure is approved by the head of the administrative body to which this department is subject.
5. The method of direct purchase through offers may be used based on assignment orders for the execution of services not exceeding 50,000 AED in cost.

Article (25) of the same manual provides for government purchases through direct order:

1. Contracting may be concluded through direct order for procurement of goods and services the value of which does not exceed 25,000 AED.
2. Contracting through direct order shall be concluded by the concerned departments.
3. Contracting through direct orders may be concluded for procurements valued between 25,000 AED and 50,000 AED through the purchases department when necessary, provided the approval of the head of the concerned administrative body is obtained.
4. Contracting through direct orders may be concluded for procurements valued above 50,000 AED through the purchases department when necessary, provided the approval of the tenders and bids committee is obtained.
5. The contractor shall be totally liable for guaranteeing and maintaining the project for a period of one year starting from the date of initial submission. During this period, the contractor shall be obliged to repair any defect in the procured goods resulting from mal-execution/performance, and shall incur any costs resulting therefrom.

When does the Option of Sight Come into Effect in Government Purchases?

Article (11) of the Warehouses and Receipt of Materials Manual issued pursuant to the provisions of Law No. (6) of 2008 on Procurements, Tenders, Bids and Warehouses for the Emirate of Abu Dhabi, provides:

Receipt of Direct Purchases

1. With regard to departments that do not have warehouses, direct purchases materials shall be initially received in a place designated for this purpose, or using any other receiving procedures as seems fit, and the concerned ordering department shall be directly notified of such receipt, or have the materials sent to it upon arrival and according to the nature of the materials.
2. The concerned ordering department shall examine the received materials to ensure their compatibility with the purchase order or the supply order in terms of quantity and specifications.

3. The concerned ordering department shall issue a paper or electronic permission of receipt of the actually delivered quantities which are in accordance with the specifications, the value of which shall be deducted from the appropriate expenditure clause.
4. Any received materials that are not in accord with the specifications or that exceed the ordered quantity under the purchase order or supply order shall be kept in a special location for their refund or exchange according to the circumstances., and the supplier shall be notified of such action in writing by the purchases department, and so shall be notified the financial department.

The application by the UAE legislator of the option of sight is evident in the abovementioned Articles 226 and 228 of the Civil Transactions Law, which could be applied in administrative disputes should any arise with relation to administrative procurement contracts. Moreover, the abovementioned Article 11 of the manual indicates that the UAE legislator effectuates the applicability of the option of sight on electronic direct purchases administrative contracts through subsection two of the Article. Subsection 2 gives the government entity or department ordering the purchase the right to inspect the purchased materials to ensure their compatibility, in terms of quantity and specifications, with the purchase order. Subsection 4 of the same Article further gives the government entity or department ordering the purchase the right to keep the materials in a special place for their refund or exchange in case the materials were not compatible to specifications or quantity stated in the purchase order.

Thus, the government entity has the right to inspect the purchased materials upon their receipt, and consequently rescind the contract if the government entity finds that the purchased materials through the direct purchase order are not compatible with the terms of the purchase order.

Protecting the interests of the buyer is achieved legally through the option of sight which is necessary for the contract. The UAE legislator in the Civil Transactions Law adopted this option in articles 226-230.

Article 226 of the UAE Civil Transactions Law states:

“The option of sight in contracts that are liable to annulment shall be established for those who have been ordered to act, even if they do not require it if they do not see the contract. Therefore, the buyer must be aware of the goods, and it is sufficient if the contract includes the sales statement and its basic description so that it can be identified. If it is stated in the contract of sale that the buyer is a salesman, the latter’s right to cancel the sale is dropped on the grounds that he is not aware of it unless it is proven that the seller has been cheated”.

This article shows that the buyer is permitted to buy something if he wants to return it. This right is fixed to the purchaser by law. This right is proved even if the buyer does not stipulate in the terms of the contract, and the result is that the seller’s knowledge of the sale is sufficient to lead to the cancellation of his right to invalidate the fixed contract.

Article (11) of Law No (6) for the year 2008 regarding the procurement, bidding, auctions and warehouses of the Emirate of Abu Dhabi with Article 227 of the UAE Civil Transactions Law shows that the option of sight remains until the sight is achieved within the agreed period or there is the absence of agreement on a specific time for the option of sight between the parties. This leaves it to the judge’s discretionary authority. The option of sight prevents the necessity of the contract and makes it a permissible contract. This is decided by Article 228 of the Civil Transactions Law:

“If the buyer has previously seen the sale before or at the time of the contract, and he knows what the salesman has of the specifications and defects, he does not have the option to satisfy him. The sight is not limited to knowing the place of the contract by looking but knowing it with any sense. The buyer, in the descriptions of the sale and its defects, must have the seller’s knowledge or be able to do so”.

In view of the foregoing, the option of sight in electronic direct procurement contracts gives the buyer the right to terminate the contract when he sees it. The contract is expressed as a correct, moderate, and non-hasty satisfaction and has the right to leave the contract after seeing it. The terms and conditions of the contract or the contract thereof are evidenced by the effect of the contract and its provisions. It may be money or financial evidence, benefits, or works. The jurists have stipulated conditions that must be met in the contract for it to be realised. If one condition is absent, and then the contract is void. The conditions are that the parties are aware of the terms of the contract to remove ignorance that would otherwise lead to dispute. The parties obtain knowledge of the contract either by seeing it, or a reference to it if it exists, or its characterisation should it is absent⁴.

E-commerce contracts (including online e-procurement) are transacted online, i.e. on the Internet. The description of the contract is accurately described accompanied by a picture, as in the traditional paper catalogue, possibly a three-dimensional photograph or a film clip (Mujahid, 2004), so that the shop is known to the contractor to avoid disputes. However, many of the traded contracts ensure that there is a difference between the description of the product and what it actually is, but this does not apply if the seller makes a mistake (Mujahid, 2004). This is consistent with the provisions of Article (11) and in particular paragraphs 2, 3 and 4 of Law No. (6) of 2008 regarding the procurement, tenders, auctions and warehouses of the Emirate of Abu Dhabi. It is also necessary to have a meeting on it. Accordingly, if two parties contract an e-commerce contract over the Internet on a non-defined contract description at the time of the contract, it can be a valid contract and prove the option of sight⁵, such as contracting for the work of a computer program. If any of these conditions are absent, then the contract is void.

Negating the Buyer’s Right to Sight in the UAE Legislation

Article 229 of the law stipulates that that possibility of seeing is not to be dropped. It is negated by the sight of the contract and accepting it explicitly or implicitly, just as the right is negated upon the death of the owner and the destruction of the contract in total or part. Thus, the conditions for negating the buyer are right to choose the option of sight is:

1. To state in the contract that the buyer is aware of the sale (his sight of the contracted goods and his satisfaction with it).
2. The right of the buyer to opt for the option of sight and therefore the annulment of the contract statute of limitations.
3. The buyer’s right to waive a claim of avoidance (the buyer’s disposition in the sale, gift or lease).
4. The buyer’s role in the sale.

The process of dissolution of the contract through the option of visibility is stipulated by Article 230 of the Civil Transactions Act that “the option of sight is cancelled by any act or statement indicated explicitly or signifying the condition of knowledge of the other contractor”.

CONCLUSION

Classical Muslim jurists did not discuss the issue sight which occurs via electronic media because such media did not exist at the time. Therefore, the issue of the sight which occurs via these media is controversial. Nevertheless, they (the classical jurists) discussed the sight which occurs via similar means such as through glass, a mirror and water. They decided that the sight which occurs via these means is insufficient to introduce the required knowledge about the item. Namely, they decided that this sight does not cancel the option of sight. Accordingly, the holder of this option still has the option of sight when seeing the item directly without an intermediary. By the virtue of the juristic reasoning principle (deduction), it can be concluded that the sight which occurs via electronic media takes the same verdict which is given to these mentioned means, i.e. the purchaser remains having the right to rescind or confirm the contract when he sees the item directly without an intermediary despite having seen the item via electronic media. We conclude from this that Islamic jurisprudence and the UAE legislator decide on the option of sight without requiring it to be stated in the contract in order to provide real protection to the contractor (buyer) to give him an opportunity to think and reflect.

ENDNOTE

1. See Article 320 of al-Majalla al-Ahkam al-Adaliyyah (The Ottoman Courts Manual (Hanafi)).
2. Sunan al-Baihaqy, number 10205. It is also narrated in Al-Darqutny 2004, Sunan al-Darqutny, no. 8. He (al-Darqatny) says this Hadeeth is weak because one of its narrators (Abu Bakr ibn Abu Maryam) is not perfectly trustworthy.
3. Al-Tahawy, A. Ibn M. I.B. (1399 AH). Explanation of the Meanings of Antiquities. Edited by Muhammad Zuhry al-Najjar, Beirut, Dar al-Kutub li Al-Malayeen.
4. Al-Nawwai, M. Y. b. S. (1405 AH). Garden of the Seekers and Pillar of the Mufti, Al-Maktabah al-Islami (3/358).
5. Turkmani, A.b.K. (1413 e), The Controls of the Contract in Islamic jurisprudence, The Library of the House of Modern Publications, Jeddah, Ed. 2, pp. 178–179.

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