The Eighth lecture

1. Text:

Under an Istisna'a contract, the financier provides funds to a supplier who agrees to manufacture, construct, assemble or package a specific asset. As a result, the financier acquires title to the asset and immediately sells or leases it back to the supplier.

Istisna'a is a contract of exchange with deferred delivery, applied to specified made-to-order items. Istisna'a differs from Ijara in that the manufacturer must procure his own raw materials.
Otherwise the contract would amount to a hiring of the seller's wage labour as occurs under Ijara. Istisna'a also differs from Salam in that in point (a) above, the subject matter of the contract is always a made-to-order item.

In addition other differences are that:

- The delivery date need not be fixed in advance.
- Full advance payment is not required.
- The Istisna'a contract can be cancelled but only before the seller commences manufacture of the agreed item(s).

Sharia'a rulings for Istisna'a are as follows:

a) The nature and quality of the item to be delivered must be specified.
b) The manufacturer must make a commitment to produce the item as described.
c) The delivery date is not fixed; the item is deliverable upon completion by the manufacturer.
d) The contract is irrevocable after the commencement of manufacture except where delivered goods do not meet the contracted terms.
e) Payment can be made in one lump sum or in instalments, and at any time up to or after the time of delivery.
f) The manufacturer is responsible for the sourcing of inputs to the production process.

It is also permissible for the bank to enter into Istisna'a contract in the capacity of seller to a client who needs to purchase a particular commodity and then draw a Parallel Istisna'a contract in the capacity of a buyer with another party to make (manufacture) the commodity agreed upon in the first contract.

The first Istisna'a can be immediate or deferred (as regards the payment). The payment terms in the second

The practical steps of an Istisna'a sale and Parallel Istisna'a are as follows:

1) **Istisna'a sale contract**:

The buyer expresses his desire to buy a commodity and makes an Istisna'a request to the bank with a specific price. The timing of payment, whether cash or deferred, shall be subject to agreement.
The bank usually calculates what it will actually pay in a Parallel Istisna'a contract plus the profit it deems reasonable.

The bank puts itself under an obligation to manufacture a certain commodity and to deliver it in a specific period subject to agreement (the bank puts into consideration whether the due date is the same or after the due date of its receipt to the commodity in the parallel contract).

2) Parallel Istisna'a contract:

The bank expresses its desire to order the manufacture of the commodity it has undertaken to manufacture in the first Istisna'a contract (with the same specification as in the first contract) and agrees with the manufacturer on the price and the date of delivery.

The seller puts himself under obligation to manufacture the specific commodity and to its delivery on the agreed due date agreed.

3) Delivery and receipt of the commodity:

The seller delivers the manufactured commodity to the bank directly or to any party at the place decided by the bank on the contract.
The bank delivers the manufactured commodity directly to the purchaser or authorises any party to deliver the commodity to the purchaser, who has the right to make sure that the commodity satisfies the specification demanded in the contract.