The Provisions of the Option of the Condition in Jurisprudence and its Impact on Dealers

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Abstract

This research aims to clarify the choice of condition provisions in order to show the extent of using those jurisprudential provisions acheived the commercial dealers satisfaction. The researcher used inductive approach, and jurisprudential comparative approach between jurists' doctrines. This research gives an imprtant result that the condition of choice is the most important condition between dealer, because it acheives the complete satisfaction sharia has recommended in commercial dealings in order to gain blessing in commerce, and unfortunately, by looking at dealing between people nowadays, the researcher notice that this condition is not common, which means jurists should study provosions of choice condition and focus on such condition in commercial dealings.

Keywords: option of condition, blessing, the satisfaction of trade dealers.

أحكام خيار الشرط في الفقه وأثره بين المتعاملين

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ملخص

هدف هذا البحث إلى التعرف على خيار الشرط بين الفقه والواقع بهدف الكشف عن مدى استفادة الناس في هذا العصر من الأحكام الفقهية الضابطة لرضا المتعاملين الذي يُعتبر أساساً في التعامل التجاري. واتبع الباحث المنهج الوصفي التحليلي والمنهج الاستقرائي ومقارنة أقوال الفقهاء وسرد أدلتهم على ما ذهبوا إليه من أقوال مع اختيار الرأي الراجح في المسألة، وخلص البحث إلى مجموعة من النتائج من أهمها: إن خيار الشـــرط من أهم أنواع الخيارات وتكمُن أهميته في تحقيق الرضـــا الكامل والإرادة الكاملة في إمضاء التعامل التجاري وتحصيل البركة والخير لجميع أطراف التعامل التجاري.

الكلمات المفتاحية: خيار الشرط، البركة، رضا المتعاملين بالتجارة.

An Introduction:

The laws of Islam came to regulate all the affairs of life because these laws and rulings reduce the intensity of differences and hatred between people. After all, the life of society is dominated by the interaction of people with each other, so there is no life without organization and discipline, mainly because people deal with each other in the increasing financial transactions. It is possible to disagree

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because of attaching souls to money and people's keenness to achieve their interests.

Rulings and legislation focused on satisfying people's financial transactions to achieve the foundations of commercial dealings stipulated by the wise legislator.

Among the provisions that support the achievement of complete satisfaction in commercial transactions are the provisions legislated by the wise legislator concerning the option of the condition. The possibility of the situation is one of the options initiated in financial transactions to ensure the satisfaction of the dealers and the availability of complete will in addition to deliberation in the completion of the commercial trade and its completion. This research was a statement and clarification of the option of the condition and its provisions and its impact on the contract and taking into account the practical application of the possibility of the situation between people dealing in buying and selling.

Research problem:

This research clarifies the provisions related to the option of the condition and the possibility of benefiting from it at present, noting its impact on the satisfaction that must be available in commercial transactions, especially since it is stated these days that this option is not. We used it in our commercial dealings, and even in some cases trying to stipulate the non-existence of the opportunity; hence this study was to clarify the importance of the option of the condition and its impact on satisfying the contracting parties and thus on the contract.

Study questions:

This study came to answer several questions that revolve around the option of the condition, considered one of the ameliorative legislation that complements sales and commercial transactions. This study came to answer the following:

First: What are the parties to commercial transactions that enable them to use their right to enjoy the rule of the condition?

Second: What is the reason for choosing the condition and its impact on contracts?

Third: What is the extent of the practical application of the provisions of the conditional option between commercial traders by jurisprudence point of view?

Fourth: What are the Jurisprudential results of activating the conditional option in recent financial transactions?

Research aims:

This research aims to determine the following:

1- Parties to commercial transactions that enable them to use their right to enjoy because of the situation.
2- The reason for choosing this condition and its impact on contracts.
3- The extent of the practical application of the provisions of the conditional choice between commercial traders by jurisprudence point of view.
4- The Jurisprudential conditional results of activating the dependent option in recent financial transactions.

Research Importance:

The theoretical importance of the research lies in the subject of the study, "choosing the condition between jurisprudence and reality," as it has a new addition to human knowledge, as no one has touched on the subject of research, according to the understanding of the researcher.

And since the practical importance lies in the research, he may benefit from this research:

1- Workers in public institutions, universities, institutes, colleges, and others.
2- Personnel working in the educational process and preparing curricula and academic content.
3- Those work in the fatwa field, preaching, guidance, and religious guidance.
4- Merchants in sales and workers in commercial transactions.

Research Methodology:

In this research, I relied on the inductive approach, comparing the sayings of the jurists, and limiting their evidence to their expressions while choosing the correct opinion on the subject.

After reviewing the statements of the scholars, I link these issues to contemporary reality and find out the extent of modern benefit from these legislations that complement sales and achieve the necessary satisfaction to resolve commercial transactions.

The research plan consisted of the following:

Introduction, where the importance of the study, its problem, and methodology are explained.
The first topic: is the concept of the option of the condition.
The second topic: stipulating the option of non-contractors.
The third topic: is the reason for choosing the condition and the contracts that accept it.

Literature review:

After the researcher reviewed the previous studies and the researcher's knowledge, he did not find a study similar or close to the current research, so the researcher tried by presenting several studies to pay attention to the subject of the condition. Among these studies:

1) The option of the condition: a comparative study between the Shafi'i and Hanafi schools of thought by the Indonesian researcher Ahmed Sheridan, 2013, Al-Azhar University, in which the researcher spoke about the option of the condition and its rulings in. Comparison between the Shafi'i and Hanafi schools.
2) The Monetary Option in Islamic Jurisprudence and its Contemporary Applications by Dr. Muhammad al-Muhammad, University of Damascus, in which he spoke about the reality of the monetary option and its contemporary applications in Islamic banks and its relationship to the monetary option and condition.
3) Choosing the Condition between Islamic Jurisprudence and Positive Law 2016, by researcher Yasser Basem Al Sabawi, University of Sharjah. The researcher dealt with choosing the state and its provisions in Islamic jurisprudence and the UAE Civil Transactions Law.

However, these researchers still need to address the issue of activating the conditional option in recent commercial transactions and its impact on the commercial process and the need to revive it among people again as a highly influential legislation in satisfaction and blessing in commercial transactions.

Section One: The concept of conditional option, its legitimacy and types.

The first requirement: is the concept of conditional option:

And the choice is derived from the choice in the indication of its meaning, and it is a request for the best of the two things, which is the choice the choice, and what is meant in jurisprudence: that one or both parties have the right to sign. or terminate the contract(1). It was prescribed to be a means to complete contentment, to ensure its safety, and to build it on sound foundations(2). The Malikis and some jurists call it the cooling option(3).

The option of the condition is in the language of adding something to its cause, so the word option is added, and the word condition is added to it, so the reason for this option is a condition linked to the contract that gives the right. on condition. Two parties or one of them terminates the agreement or signs it within a known period, for example, the buyer says: I bought the commodity with such-and-such, to

choose on this day, and the seller agrees on his condition. , or the seller says, I sold you the commodity for such and such, on the condition that I have the option on such a day, so the buyer agrees, or the seller and the buyer put a condition on such a day, so each of them agrees to what the other stipulated(4).

The second requirement: the legitimacy of the option of the condition:

The continuation of the choice of condition in the two Sahihs came in the era of Ibn Omar. May God be pleased with them: The man of the Ansar named Habban bin Munqith Al-Ansari was changed in the sale. Is this correct? He complained to the Messenger of God, may God bless him and grant him peace, and said to him: If you pledge allegiance, say no, and you are good in every commodity. I bought it for three nights(5).

On the authority of Muhammad bin Yahya bin Hibban, that his grandfather was unjust in selling, and the Prophet, may God's prayers and peace be upon him, said to him: If you sell, say: There is no cheating on you, for that is it, Every commodity I bought with an option for three nights." - Al-Bukhari said: (No cheating).

And it was said: It is specific to love because he was afflicted with a disease in his head and broke his tongue, and he used to deceive the merchants and return the goods to the merchants and say: The Messenger made me three options"(6).

The third requirement: are the types of options:

The options are two types:

The first type: is fixed options according to the condition, and they are of two types, the first type is called the appointment option, and the second type is called the conditional option. Mentioned the origin of the legislation of the two options mentioned by the head of the bill of the two options in the Sharia. That is, the Sharia guaranteed it and authorized it due to its need to boil it.

Sometimes in commercial transactions, if the owner of the need stipulates that, it is proven by his case for it(7).

The second type: are options prescribed by Sharia, which are of two kinds. Among the possibilities is what is proven by an explicit text on its legitimacy, and among them is what is established by evidence and the necessity of completing commercial transactions.

The conditional option has been legislated in special cases that require the two parties to the contract or one of them to negotiate, search and investigate, or refer to consultation again. He may get out of his

position and lose such a deal, so it is prescribed for him to stipulate the option in a certain period to search and ask, which is called the option. from condition[8].

Confirms that the option of the condition was legislated for exceptional circumstances and that the option contradicts the necessities of sale that require possession and necessity immediately after the contract's completion because the condition's choice prevents control, necessity and release. Acting is permissible when needed[9].

Accordingly, the conditional option is a condition of the right to choose and enjoy a period the before full acceptance of the contract and acting for the contract to be built on a firm foundation of satisfaction. Confirms the share of glue from the Sharia Paying attention to what can be called supporting rulings in commercial transactions, as approval is the basis for permissibility and prohibition, so is one of the essential provisions in commercial dealings.

The fourth requirement: the parties enjoy the option of the condition:

After talking about the meaning of the option of the condition and its origin in the Sharia and explaining that it is a right that is proven in commercial transactions with conditions, the Sharia does not prove this in people's dealings from the beginning but instead is based on it. The legislator has established its legitimacy for those merchants who want to use it when they need it. This leads to talking about the parties who have been granted the right to stipulate this right for themselves in commercial transactions.

First: The seller, one of the parties, is entitled to enjoy the option clause in commercial transactions.

The seller may stipulate and say to another person: I sold this book to you for fifty piasters, provided that I can sign this sale or cancel it within three days, for example, and the buyer accepts that.

Accordingly, the seller can initially stipulate this right for himself, regardless of his condition for the other party.

This occurs when the seller needs to use this clause because he wonders if he is delighted with the current transaction.

Second: The buyer is the second party with the right to stipulate the option in commercial transactions[10].

And the buyer has the right to stipulate it for himself from the beginning, so he says: I bought it from you, on the condition that I have a choice of three days, and the seller accepts that[11].

The buyer can initially stipulate this right for himself regardless of the other party.

The stipulation of this right may be one of the first methods, which is the seller for himself, or it may be from the second party, which is the buyer for himself. It is permissible to stipulate for each of them, so the seller says: For example, I sold you this book on the condition that each of us has the option to terminate this contract.

And you spend it in three days, and Jupiter accepts it(12).

Accordingly, the condition of the option for the contract may be issued by its owner to him. For example, if the seller says: I sold this thing to you on the basis that you have the option to sign the contract or terminate it for three days, and the buyer accepts, and in this case, the right of the choice belongs to the buyer, not to the seller, and the buyer may stipulate it to the seller, and his example is that the buyer says: I bought this thing from you on the basis that you have the option in Signing or rescinding the contract is three days, and the seller accepts that(13).

"It is permissible to stipulate the option for each of the contracting parties, and it is permissible for one of them without the other, and it is permissible for them to stipulate a period for one of them and the other without it because that is their right, but it is permissible out of kindness to them, so how they agree to it is permissible"(14) .

Accordingly, the duration of the option may vary between the two contracting parties; for example, the seller says: I sold you this book on the basis that you have the opportunity for two days to sign or annul this sale and that I have three options to sign or cancel this sale. This refers to the reassurance achieved in commercial dealings when one of the commercial parties stipulates it in favor of the other party. This is what is in it from stimulating the commercial process and achieving many gains at the level of trust between the dealers.

Among the issues based on the permissibility of disparity between the parties to the option in the duration of the contract is the permissibility of stipulating the opportunity in one of the things that are contracted upon and not the other. This is permissible because the right to choose the condition both of the contracting parties. Still, it has been proven and acceptable in Shari'a out of kindness to both of them and to achieve complete satisfaction with the commercial dealings.

As long as consent has occurred from the right holders, there is no objection to stipulating the option in one of the two sales without the other.

The other evidence for the permissibility of stipulating it in one of the two sales without the other is the analogy of buying what has preemption and what does not, i.e., buying

them together; it is correct(15).

For her, or the contract is dissolved in only half of the house, and the contract remains in the other half with its price, he becomes a partner to the seller, each of whom has a familiar half (16).

Section Two: Option clause for non-contractors.

As previously stated, it has been established that the option is permissible for both parties to the contract, the seller and the buyer alike, and this condition can be applied to one or both of them. Each party can stipulate it themselves. He may require it for others, too. In addition, it may specify the option in the contract to a foreigner, who is a person other than the two contracting parties, so the seller or the buyer will determines it for him. It can be imagined when the seller or the buyer wants to stipulate the foreigner's approval of the transaction due to his knowledge of it. His example is when the seller or the buyer says: I sold the book to such-and-such, or I bought such-and-such a book, provided that so-and-so has the option to sign or cancel the contract within three days and accepts the other end[17]. The purchaser stipulated the possibility of his interest in this sale from him, and example husband buys something for the house, and the choice is required for wife's house. Likewise, if the purchaser stipulates the option of the gifted person, such as buying a gift for a specific person, but he does not know the suitability of this gift to the mentioned person, the option him is to proceed with that. Sell or return the itemor replace it.

"Contracts are considered as a main method used to organise financial dealings between dealers, and the dealers affected by such method"[18].

Among the contemporary images of the merchants themselves is what is called among them buying by selling; that is, the first merchant buys from the wholesaler a group of goods, but the first merchant, who is the retailer, requires a wholesaler that the seller takes place in the goods that are popular with his customers in the region in which he works. Will not sell Unpopular goods, return the goods to him and get his money back. This type of conditional option is as if it is dependent on the desire and will of the clients, and today's traders practice it in this way and under the name "buying for the sake of selling ."It is a conditional choice for nonpartisans. The sale is instead the desire and will of a third party, the last customer with whom the second merchant deals in this process.

The condition of choice for the foreigner differed in the ruling of the jurists:

Abu Hanifa[19], Malik[20], and Al-Shafi'i[21] went on to say:

It is valid to say that it is permissible, and its condition is the foreign option. It is a condition for itself and a power of attorney and proves that the contracting party and the foreigner have the right to annul it.

And they have, in what they went to, that the choice depends on their conditions and delegates them to them, and it was possible to correct their needs and implement their behavior, and the Messenger says: "Muslims are on their conditions"[22]. If the two contracting parties agree, then there is no problem.

Zufar differed in this matter, and he said: “It is not valid to stipulate the option for a foreigner in the contract because it is proof of some of the effects of the contract for someone other than the one who contracted it, so it is not permissible, such as making the price to someone other than the purchaser.” Imam Zafar considers the option of the condition to be one of the effects of the contract, and it is not permissible to prove it to anyone other than the contracting party.

Stated that it is permissible for one of the two contracting parties to whom the option is stipulated to delegate someone else to sign or terminate the contract in suspension. If he is permitted to charge this after the agreement, there is no objection to deputizing someone else on his behalf during the contract. The requirement of the option for a foreigner is a matter of deputizing him; therefore, it was established for the two stipulated and the condition for him(23).

Al-Shafi’i went in another saying, and some Hanbalis agree with this opinion because the option is one of the contract provisions. It is related to the contracting party, and because the alternative is associated with considering the contracting party to collect luck for himself, it is not for others(24). This opinion is also answered by the fact that giving a third party with experience in the field of commerce the “after option” right is also a matter related to obtaining luck for itself, especially if He did not have the experience to judge such trades. As we have mentioned, giving a third party the option may be due to the existence of a direct interest for this party in the sale and purchase process intended to be completed.

Section Three: The reason for the option of the condition and the contracts that accept it:

Part (1): the reason for choosing the condition, is that the primary reason for proving the option of the state is the stipulation in the contract by one of the two contracting parties. That is why it is called the option of the condition; that is, it is the choice caused by the state. But it is known that the sale contract is one of the necessary contracts and that the option of the condition inevitably makes it not required, so the state's option was a reason to change some of the effects of the sale contract. Still, this condition was not invalidated and signed valid despite its opposition to the reality of the sale and its necessities and products because the Sharia contained it and approved it. It was reported that Habban bin Munqith Al-Ansari used to cheat in sales and that his family had referred his matter to the Prophet. May God bless and grant him peace, hoping he would prevent him, so the Prophet said to him: "If you pledge allegiance, say no; Khalaba is the choice for three days." Khaleda is deception, and this is explicit permission from the noble, this condition and law. For this option(25).

Part (2): Contracts that accept the option of the condition. In general, contracts are divided into two parts:

The first section: is an oath that does not accept annulment, such as marriage, divorce, manumission, and return, and this does not receive the option of the condition because it contradicts its requirements(26).

May answered that they stipulated the validity of the condition of the option in the endowment with Abu Yusuf. However, it is necessary and does not accept the annulment, and I learned that the state of the opportunity in it is not restricted to three days. The mosque's endowment is excluded because the condition of the option in it is invalid by agreement(27).

This type of contract is necessary, but it is not meant for compensation, so an option is not proven in it because the alternative is proven to know the luck in the fact that the payment is permissible for what goes from his money. The compensation here is not intended in itself, such as the endowment and the gift.

The option in these contracts is clear harm.

Also attached to these contracts are (28) what is necessary from one of its parties without the other, such as the mortgage, as it is needed in the right of the mortgagor. Still, it is permissible in the mortgagee's right, so there is no option because the mortgagee dispenses with the permissibility of his request by proving another option. After all, the option allows him to sign the contract to preserve his right. This right has been established for him by the mortgage, and the mortgagor is dispensed with the option being selected for him in the first place until he takes possession of it. The guarantor and guarantee have no choice because they entered voluntarily, were satisfied, and were adults.

And among the contracts are what is permissible from both parties, such as partnership, speculation, royalty, agency, deposit, and will. These do not prove an option, dispensing with their permissibility and being able to annul them in the origin of their status.

Among the contracts are what is necessary for one of the contracting parties to be independent, such as transfer and taking pre-emption, so there is no choice in them because whoever does not consider his consent has no choice. It may prove the option to the transferor and the intercessor because it is a net worth in which compensation is intended, so it is similar to the rest of the sale(29).

The second section: Necessary contracts intended for compensation, and it is not required to receive in the council, so the option of the condition is proven in it, and the same is reconciliation in the sense

of sale and gift in return for consideration because mentioned the news in the Sunnah of the Prophet in the sale and what is in its meaning.

Section Four: (And the time of his condition).

The jurists differed about the time when it is permissible for the option to be stipulated, so according to the Hanafis, this condition is only valid after the contract. Still, instead it is good at two times:

First: If it was during the contract. For example, if the seller says: I sold this book to you on the condition that each of us has the option to terminate this contract or sign it for three days.

Secondly: It is correct for the Hanafis to stipulate the option[30] after the end of the contract with the agreement of the two contracting parties, and they considered that this condition is attached to the contract as if it had been stipulated in it, thinking that whoever possesses the termination of the contract has the power to make it unnecessary in a first way.

Imam Ahmed and Imam Al-Shafi'i[31] disagreed with that, and they maintained that this option is not required except during the contract.

Section Five: Option period.

The condition of choice among the jurists was the origin of the saying of the Prophet to Habban bin Munqith, and he was deceived in the sales[32]: "If you pledge allegiance, say no to Khalaba, and I have the choice of three days. Before the two contracts, as follows: Abu Hanifa[33], Al-Shafi'i[34], and Zufar[35] went to the fact that this option is temporary for a period not exceeding three days, and their evidence for what they went for:

Part (1): The stipulation of the option, however, it is, is a condition that contradicts the obligation of the contract, which is the proof of ownership and its responsibility, but its permissibility was proven by the hadith of Habban bin Munqith, in contrast to analogy and the hadith was mentioned by the option within a known and limited period, which is three days, and it's being contrary to analogy, so what is beyond that and the addition to it remains based on analogy unless That was in its meaning or less than that[36].

Part (2): The Hanafis also inferred that the principle denies the condition's permissibility because it is a denial of the proof of ownership, which is the obligation of the contract, so it is not valid like the rest of the duties of the contract. What is behind it on the original"[37]? Zufar disagreed with Abu Hanifa that the owner of the option, who exceeded the three days in his condition, approved the contract within the three days, it is permissible according to Abu Hanifa, in contrast to Zufar, who

said that the agreement was corrupt, so it does not turn permissible[38] Abu Hanifa believes that the corruption of the contract rises with the height of the spoiler. Still, Zufar does not see A corrupt agreement as liable to be turned into a valid one[39].

Part (3): They cited the hadith of Al-Misraa, which specified the option with three[40].

The second opinion: Ahmed bin Hanbal[41] and the two companions[42] said that it is temporary, according to what the contracting parties see as recommending it for a period that it needs in their view, and the opinion of Imam Malik[43] closest to this opinion.

They cited several pieces of evidence, the most important of which are:

First: His saying: "O ye who believe! fulfil (all) obligations. Lawful unto you (for food) are all four-footed animals, with the exceptions named: But animals of the chase are forbidden while ye are in the sacred precincts or in pilgrim garb: for Allah doth command according to His will and plan." [Al-Ma'idah: 1], and His saying: "The Muslims are on their terms"[44], and according to the agreement, the contract is according to the period. Agreed upon The option of the condition of the contract is valid, so it may be more than three days if the parties to the agreement agree[45].

Secondly: The Hanbalis inferred that the number of days in the option of the condition is an estimated right that depends on the situation, so it is due in its estimation to the one who stipulated it, such as the term or it is a period attached to the contract, so what they agreed upon is permitted as the original[46].

Third Opinion: The Hanbalis and the two companions inferred that legislated the option of the condition for quenching, and in some cases, it may require a period longer than three days, so its duration is similar to the period of postponement, and they said that the appointment of the three for Habban from the Messenger was only for its sufficiency and his lack of need for more than the number of days, and this leads us to The saying that there is no objection to the mention of the three days being a subject for measuring other than them because it is a reasonable ruling on the cause and reason, and not a particular order[47]. So whoever said to Khalabah: "It is proven that he has the choice whether he is wronged or not" [48].

Fourth Opinion: They cited what was reported on the authority of Ibn Omar that he allowed the option to be two months[49].

Fifth Opinion: They are inferred from what was narrated in the hadith of Ibn Omar; may God be pleased with them: "The two sales are by choice as long as they do not separate, except for the sale of the option"[50]. was explained by what was mentioned in it from another wording: "For one of them to say to the other, choose"[51]. This narration is absolute for any limit or number, so he may stipulate the number of days that suit him.

Among the Maliki expressions in this regard: "Malik said, selling the option is when a man says, 'I will buy this garment or this house from you… and I will have it on you this day, Friday, or month…' Malik said: As for the dress, there is nothing wrong with it being in it." With the choice of today, the two days, the like, and whatever was more than that, there is no good in it(52).

And Sahnoun says: "I hated selling the option for the long term because it involves deceit and gambling"(53).

The correct view is what the majority went to regarding the permissibility of adding more than three as long as the period is known. This is because the two hadiths are in two cases where the need does not exceed three. Otherwise, it will result in harm to the seller.

Here, the condition is by agreement between the two parties to what each of them sees as fulfilling his need, and the requirements can differ according to things, people, customs, times, and regions(54).

It supports the weighting of the opinion that increasing the three days in the option period is permissible. Only legislated the option of condition to ward off ignorance on behalf of the inexperienced purchaser, and how many of them are in general these days, especially with people preoccupied with matters of their lives, jobs, raising their children, and providing a livelihood for them. The other party is also in control of the nature of the commodity and not negatively affected by the offered period, which is related to the prevailing custom(55).

Section Six: What nullifies the option of the condition.

The option of the condition ends in several forms. The choice may be dropped explicitly, by indication, or by necessity, as follows(56):

First: The option is forfeited explicitly, such as if he says I lost the chance, nullified it, conducted the sale, or accepted it, so the choice is invalidated because it has been legislated for rescission. It is also explicit that he says I canceled the contract, revoked it, or nullified it because the choice is between annulment and permission, so whichever one was chosen, the option fell.

Secondly: the loss of the option is an indication: and it is achieved by the disposal of the opportunity for him, a behavior indicating the preservation of the ownership and proving it.

Suppose the option is for the purchaser, the commodity is in his hand, and he offers it for sale. In that case, his disposition invalidates the opportunity for him because his offer of the sold item for sale is a choice on his part for the price. The price does not become his property except after the ownership is established in the exchanger, which is the seller. This case uses evidence, but if the option is for the seller, he offered it for sale (offering the commodity for sale). There are two narrations regarding this disposal of Imam Abu Hanifa. It is more correct that this disposal of him is considered a forfeiture of

his option because it is evidence of keeping the property. After all, he does not reach the price of someone else except by taking ownership from him, which is impossible. The seller has the right to own the commodity to a third party, except by forfeiting the option and rescinding the first contract with the buyer.

Third: The forfeiture of the option is a necessity(57): and this is in several cases, such as the death of the party who has the chance in its period before he chooses, and the forfeiture of the option is also a necessity(58) if the period of the opportunity has passed without a choice, so whoever has the option must necessarily sell.

In addition to that, if the object of the contract is damaged or destroyed for any reason whatsoever, it is in the hands of its possessor from among the two contracting parties when the option is for him, and accordingly, if the thing sold is damaged in the hands of the buyer. The opportunity is for him or perishes in his hand, and the option is for him. His choice invalidates and obligates the sale contract about him. There is no difference in whether the damage or destruction is due to a heavenly cause or an assault on him by the seller, the buyer, or someone foreign to the contract.

Section Seven: The effect of the conditional option in the contract:

As a result of stipulating the vote in the agreement, two things follow:

First: The jurists agreed that the choice of the condition prevents the binding of the agreement about those who have this condition, so it is permissible for the one who stipulated it to grant the contract within the limited period and may sign it(59).

Second: The jurists differed in the order of the provisions of the contract and its effects on it in the period of the option, according to two sayings:

The first opinion: The majority of jurists think that the provisions of the contract and its effects on it do not follow in the period of the option.

Second: The jurists differed in the order of the provisions of the contract and its effects on it in the period of the option, according to two sayings:

The first saying: The majority of jurists are of the opinion that the provisions of the contract and its effects on it do not follow in the period of the option.

The obligation is not established on the one who has the option by mere contract, but rather it is delayed until the option expires and the contract becomes binding. If the condition of the option is the seller, the seller does not depart from his possession, because the sold one only departs from his

possession with his consent, and there is no consent with the condition of the option. As for the price, it departs from the possession of the purchaser because it is not He has the choice. The jurists differed regarding the entry of the price into the property of the seller, and it is more likely that it entered because it left the property of the buyer, so it must enter the property of the seller so that it does not become loose(60).

And if the condition of the option is the buyer, then the price does not go out of his possession and he does not have to pay it to the seller.

It was delayed until the option expired. The thing sold comes out of the seller's possession because he does not have the opportunity. The dispute occurred regarding the entry of the sold item into the buyer's control. The correct thing is that it entered because it came out of the seller's possession, so it must enter into the buyer's possession so that it is not loose.

But the option is for the two parties, each seller and the buyer. In that case, the thing sold does not depart from the seller's property, nor does the price belong to the buyer's property, and the disposition of one of them is not carried out in exchange for the other.

The second opinion: The Shafi'is(61), the Malikis in the expression(62), and the Hanbalis, according to the more correct(63) view, think that the option of the condition does not affect the provisions of the contract and its effects.

And the most correct is the saying of the majority because it leads of delaying obligations until the option ends. After all, satisfaction is only complete if the option ends(64).

This confirms the power of choice in negating the necessity of the contract and its implications because of the effect of selection on satisfaction, which is the cornerstone of commercial sales and transactions.

What confirms this power that the option of the condition enjoys in exchange for the necessity of the contract and its effects on it is the temporal condition that the jurists stipulated for the possibility of the state to be valid.

The jurists stipulated that the option condition is during the contract and cannot occur before the agreement.

But the Hanafis permitted the condition of the option after the contract, whether the period was long or short, and it is attached to the contract at that time, as Ibn al-Humam says: "It is permissible to secure the option of the condition to the sale. They agreed to annul the vote, so they had the right to append the opportunity to the contract after the council, as they had in the contract council(65).

Al-Shafi'i and Ahmad disagreed and did not allow the option to be appended to the contract after its formation and obligation. It is a necessary contract, so it did not become permissible By saying(66).

And the most correct is what the Hanafis went to[67] because the contracting parties have the right to terminate the contract by dismissal.

There is nothing wrong with making the contract permissible but not necessary for a specific period upon which they agree. Suppose they decided to annul it after obligating it by dismissal and agreement. In that case, it is more appropriate for them to agree on something lighter than annulment, which is to make the contract permissible and unnecessary. Hence, it becomes clear to us the power of the option of the condition in making the agreement acceptable and not necessary, whether the state of the option came during the exception of the contract or the shape of the vote was after the necessity of the agreement and its contract with a long or short term, as the Hanafi scholars say.

is due to confirm the linkage of the conditional option with the fundamental pillar of the permissibility of commercial dealings, which is the achievement of complete satisfaction from the parties to commercial transactions. Accordingly, the strength of the conditional option came from the power of its association with the basis of the trade solution. And sales, which is satisfaction between the dealers.

Section Eight:

Contemporary practical application of the option of the condition between the dealers After talking about the actual image of the conditional option in Islamic jurisprudence, and the clear jurisprudence vision of this option and its benefits and its impact on the commercial process in general and on the satisfaction of the two parties to the transaction in particular, which is considered the basis for resolving sale and commercial dealings, "Money is respected and should be respected by human"[68] it was necessary to stand now on the contemporary application of this option and its activation and clarification The extent of the impact of reviving this option and dealing with it on commercial dealings.

- What is the extent to which the option of the condition is applied in contemporary commercial dealings?

First: The issue of who may stipulate the option: when looking at recent commercial dealings, we find that most of what happens to specify the option is on the part of the seller, and it has become well-known among the dealers, although Islamic jurisprudence confirms its application from both contracting parties, and even allows that the option is conditional on another party according to the opinion of most Jurists who speak on this issue as previously discussed. And this condition is also if it was signed by the seller and gave it to the buyer, wishing and favoring him, then in many cases, it is by exchange only without return. The buyer is almost deprived of the right to choose, which the legislation came with only

for his sake, to protect him, and to achieve his satisfaction. Accordingly, consumer protection associations must consider restoring this right, activating it again, and molding it into an easy legal framework. This law becomes an arbiter between the seller and the buyer.

Second: The issue of the duration of the option: Most of the recent commercial transactions are very far from activating the choice of the condition between the two trades, and if it has activation by one of the parties, then its duration in most cases does not exceed one or two days, despite the expansion of Islamic jurisprudence, as we have seen in the option period among the jurists, which was proposed In it, the jurists have their deep opinions, and the most correct in it is what the Malikis said that the period depends on the sale or the contract in terms of what some types of arrangements need for a period that differs from other agreements depending on the nature of the commodity contracted upon.

This is another disruption to an aspect of the option of the condition that came to serve the commercial dealers and achieve the satisfaction principle necessary for the retail process's success, delicacy, and perfection. Especially since the Legislator has guaranteed the right of the commodity owner to maintain and protect it for the duration of the option, instead, they considered that any disposal of the item is regarded as a cancellation of the vote and proof of the sale and its signature.

Third: The issue of stipulating that the option not be conditional. Is disabling the choice of the condition appears ultimately with many merchants and sellers who write in their retail stores the phrase: "The goods that are sold are neither returned nor replaced."

This means he does not work with this legitimate condition legislated by the wise Legislator to achieve satisfaction and blessing in commercial dealings.

Many shops allow the exchange of the piece only without returning it, which means the condition of not withdrawing from the sale. It means the inability of the buyer to stipulate the option and deprive him of the legal rights that the Legislator gave him. Unfortunately, this may portend a severe matter: extracting the blessing from commercial transactions, which we all complain about. Sometimes we wonder why the benefit from our money, our time, our lives, and our health is removed. Perhaps the answer lies in commercial dealings based on domination from the strongest side, which is the seller in its various forms (merchants, malls, shops, etc.); let us pay attention to the issue of choice, perhaps the disruption of such laws confirming satisfaction in commercial dealings is one of the leading causes of such a problem.

Fourth: The issue of the wrong application of the option of the condition by the buyer: This is noticed in recent commercial transactions when he stipulates the option and uses the commodity and then returns it to the seller under the pretext of specifying the option, renouncing the provisions related to the use of the item and the consequent conditions, guarantee and necessity for sale according to the

wisest jurists according to the issue at hand as this user and use led to a decrease in the value of the basket and the delay in the desire of buyers to accept it.

This foretells and indicates a deeper problem, which is ignorance of the provisions of the option of the condition and its rules, which leads to the existence of a perception.

For the seller, it is an option that does not serve his interests but instead leads to his falling into a loss.

Although the principle in the option of the condition, if applied according to what the Lawgiver wanted, is that it be a way and a means to promote commodities, and this promotion is considered a value and benefit sought by sellers and merchants. Add to this the facilitation and facilitation of the trading process achieved by the option of the condition and even the avoidance of heavy losses. It is necessary to set the provisions of the opportunity as legal articles that are easy to understand and apply to both dealers and oblige them according to the type of each commodity. Their application is supervised by consumer protection associations, which is excellent for commercial dealings, achieving satisfaction, and even reducing retail discounts. This is done by specifying the option period for cars in a way that suits them and clothes. These matters are also controlled by controls, including removing the wrapping, for example, from the goods affected by this removal, and other rules governing and regulating the dealers' rights following the provisions of Islamic law.

Fifth: The issue of misusing the option of the condition and considering it a means of using the commodity for the buyer without the intention to complete the sale.

As we have said, the principle is that the use of the commodity is considered a forfeiture of the option and the signing of the sale and completion of it. Still, unfortunately, some buyers use this option the wrong way and even try to oblige the seller to return based on their false understanding of this option. It also came in favor of the buyer in the first place, but it also achieved the seller's interest. On the seller's side, by applying this option, as stated in Sharia's provisions, this condition motivates customers to buy and turn out for the commodity. This in itself is a good promotion for the seller to achieve through the contemporary application of the option of the conditional product, which is considered one of the most profound and most accurate jurisprudential investigations that are very useful in Islamic jurisprudence, but rather which is regarded as a valve in front of achieving and completing the commercial process with total satisfaction.

Sixth: The probationary period in government and private jobs is a practical application of the option of the condition. It is used to choose the right person for the right job.

Results and Recommendations:

After presenting the research with these demands, the study came up with the following results:

1- The option of the condition is one of the beneficial provisions and rules for commercial dealings that affirm and achieve satisfaction, just as satisfaction is the basis of blessing in commercial transactions. Must use All necessary means to achieve it.

2- The absence of the conditional option from the contemporary application does not mean that this jurisprudential product is not valid for this era, but rather an ignorance of it is what led to its exclusion, just as the use of circumvention in the conditional option caused an estrangement between this option and merchants and generated their unwillingness to deal with it.

3- The condition option would lead to increased commercial promotion, revitalization of commercial activity, and reduction of heavy losses that may occur due to dissatisfaction, leading to the loss of customers and, thus, the lack of commercial deals.

4- The absence of applying the option of the condition and its use among commercial dealers is considered a clear indication of their ignorance of its provisions and the great benefits it brings to all parties if applied correctly, as the legislator wants.

5- The option of the condition is stronger than the contract in its necessity because it can influence this necessity by negation or affirmation.

6- I recommend the necessity of continuing the research with the conditional option and trying to benefit from it in activating commercial transactions Especially banking, study the effectiveness of conditional options in online business dealings and social networking. I also recommend codifying the provisions of the dependent choice and obliging those dealing with it from the concerned authorities to monitor the market and protect consumers, producers, and everyone who deals commercially.

Margin list:

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(4) Muhammad Reda Abdul-Jabbar Al-Ani and Ibrahim Fadel Al-Dabo, Jurisprudence of Transactions and Criminalities, (Ministry of Higher Education and Scientific Research, University of Baghdad), 1st edition, p.: 23.

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(8) See: Al-Khafif, Ahkam Al-Muamalat Al-Sharia, p.: 331.

(9) Ibn Mufleh, Al-Mubdi' fi Sharh Al-Muqni' (d. 884 AH), A: 4, p.: 66. See: Ali Ahmad Al-Salus, Jurisprudence of Sale, Authentication and Contemporary Application, (Cairo: Dar Ibn Al-Jawzi, 2014 AD), 1st edition, p.: 539

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(12) Ali Al-Khafif, Sharia Transactions Rulings, p.: 332.

(13) See: Al-Mawsili, Al-Ikhtiar, C (H), p.: 13.

(14) Al-Saloulis, Jurisprudence of Sale and Authentication, p.: 539.

(15) Al-Saloulis, ibid., p.: 539

(16) See: Al-Hafif, Financial Transactions, pp.: 333-334, with an arrangement.

(17) See: Al-Hafif, the previous reference, p.: 332. And Al-Salous, Jurisprudence of Sale and Authentication, p.: 540.

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(30) Abu Zakariya Muhyi al-Din Yahya ibn Sharaf al-Nawawi (d.: 676 AH), al-Majmoo' Sharh al-Muhadhdhab, "with the completion of al-Subki and al-Mutai'" (Dar Al-Fikr), vol.: 9, p.: 199.

(31) See: al-Mawardi, al-Hawi al-Kabeer, vol. 5, p. 67. Durar al-Hakam Sharh Gharar al-Ahkam, vol. 2, pp. 152-155.

(32) Al-Hafif, Sharia Transactions Rulings, p. 333. And Muhammad bin Saleh bin Muhammad Al-Uthaymeen (d.: 1421 AH), Al-Sharh Al-Mutti' on Zad Al-Mustaqni', (Dar Ibn Al-Jawzi, 1422-1428 AH), 1st edition, A: 8, p.: 277.

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(41) Ibn Muflih, for a creator in explaining al-Muqni', vol.: 4, p.: 66.
(42) Al-Marghaniani, Al-Hidaya Explanation of the Beginning of the Beginner, vol.: 3, p.: 29
(43) Malik bin Anas bin Amer Al-Asma'i Al-Madani (d.: 179 AH), Al-Mudawwanah, (Dar Al-Kutub Al-Ilmiyyah, 1415 AH / 1994 AD), 1st edition, vol.: 3, p.: 206.
(44) Narrated by Al-Bukhari with an explanation of Fath Al-Bari, vol.: 4, p.: 451.
(45) Ibn Mufleh Al-Mubdi' in Sharh Al-Muqni', vol.: 4, p.: 66.
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(47) Al-Khafif, previous source, p. 334. And see: Mansour bin Yunus bin Salah al-Din al-Bahuti (d.: 1051 AH), Kashshaf al-Qinaa' on the content of persuasion, (Dar al-Kutub al-Ilmiyyah), vol.: 3, p.: 202.
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(50) Sahih Al-Bukhari, 2109, A: 3, P: 64.
(51) Sahih Al-Bukhari, 2109, A: 3, P: 64.
(52) Al-Madani, Al-Mudawana, Vol.: 4, p.: 206. See: Ibn Rushd, Bidayat al-Mujtahid, Vol.: 2, p.: 158.
(53) The same source, A: 3, p: 207.
(54) Al-Salous, Fiqh of Sale and Authentication, p.: 553.
(55) Al-Salous, the previous source, p.: 554. The hadith in Sahih al-Bukhari, vol.: 3, p.: 92.
(56) Al-Samarqandi, Tuhfat al-Fuqaha', A: (H), p.: 66-67. And see: Al-Hafif, Sharia Transaction Rulings, pp. 341-342. And see: Al-Kasani, Bada'i Al-Sana'i', Vol: 5, p. : 71.
(57) Al-Hafif, Sharia Transaction Rulings, pp.: 342-343.
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(61) Al-Nawawi, Al-Majmoo', vol.: 9, pp.: 199-201.
(62) Al-Desouki, Hashiya Al-Desouki, Vol. 3, p. 103.
(63) Ibn Muflih, Al-Mubdi`, vol.: 4, p. 71. And Al-Bahuti, Mansour bin Yunus bin Salah Al-Din Ibn Hassan bin Idris Al-Bahuti Al-Hanbali (d.: 1051 AH), Al-Rawd Al-Murabba', Sharh Zad Al-Mustaqni', (Dar Al-Mu'ayyad - Al-Risala Foundation), A: 1, pp.: 324-325.

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