

Istihsan in Bay' Al-Istijrar: Recontextualising Ibn 'Abidin's Thought for Contemporary Mu'amalah Contracts

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Abstract: Debates on *Bay' al-Istijrār* often revolve around permissibility of take now pay later arrangements, yet the decisive tension lies in the method of *istihṣān* and the limits of *gharar*, especially regarding price certainty and the moment a contract is formed. A normative Islamic law inquiry at the level of doctrine applies conceptual, historical, and philosophical approaches, using document study based on Radd al-Muḥtār 'alā al Durr al Muḥtār Sharḥ Tanwīr al-Abṣār as the primary source for *bay' al-istijrār* and Nasamāt al Ashār as a supporting source for *istihṣān*. Ibn 'Ābidīn's argument frames the permissibility of *Bay' al-Istijrār* not as an unregulated appeal to habit, but as *istihṣān* that operates after *naṣ*, *ijmā'*, and *qiyās* are examined. Contract formation is understood to occur with each act of taking the goods, so the subject matter exists at the moment of sale and defined price must be knowable at the time of taking. End of period calculation functions as a settlement record, not as a device to postpone price certainty. *Urf* serves to clarify practical standards when it qualifies as *urf ṣaḥīḥ* and does not conflict with *naṣ*, while *urf fāsid* is rejected because it expands uncertainty. Recontextualisation to contemporary *mu'amalah* is directed toward technical tests of price standards, proof of delivery, rules on unilateral price changes, and accessible dispute resolution, so *istihṣān* supports facilitation without sacrificing certainty.

Keywords: *istihṣān*; *Bay' Al-Istijrār*; Ibnu 'Ābidīn; Contemporary Mu'amalah.

Abstrak: Perdebatan *bai' al-istijrār* sering berputar pada status kebolehan akad ambil dulu bayar kemudian, padahal titik perdebatan yang lebih menentukan berada pada metode *istihṣān* dan batas *gharar*, terutama pada kepastian harga dan momen terbentuknya akad. Artikel ini mengkaji hal tersebut dari sisi hukum Islam normatif pada ranah doktrin menggunakan pendekatan konseptual, dengan teknik studi dokumen atas Radd al Mukhtār 'alā al Durr al Mukhtār Sharḥ Tanwīr al Abṣār sebagai sumber utama *bai' al istijrār* dan Nasamāt al Ashār sebagai penguat pembahasan *istihṣān*. Argumentasi Ibnu 'Ābidīn menegaskan bahwa kebolehan *bai' al-istijrār* tidak disandarkan pada kebiasaan tanpa kontrol, melainkan pada *istihṣān* yang bekerja setelah jalur *naṣ*, *ijmā'*, dan *qiyās* diperiksa. Akad dipahami lahir setiap kali pengambilan barang terjadi, sehingga objek hadir pada saat akad dan kepastian harga wajib dapat diketahui pada momen pengambilan barang. Perhitungan pada

akhir periode diposisikan sebagai rekap pelunasan, bukan ruang untuk menunda kepastian harga. *'Urf* berperan sebagai penjelas standar praktik selama berstatus *'urf ṣaḥiḥ* dan tidak menabrak *naṣ*, sementara *'urf fāsid* ditolak karena memperluas ketidakpastian. Rekontekstualisasi dalam mu'amalah kontemporer diarahkan pada uji teknis atas standar harga, bukti serah terima, aturan perubahan harga, dan mekanisme penyelesaian sengketa, sehingga *istihṣān* menjaga kemudahan tanpa mengorbankan kepastian.

Kata kunci: *Istihsan*; *Bay' Al-Istijrar*; Ibnu 'Ābidīn; Muamalah Kontemporer.

Introduction

Bay' al-Istijrār refers to a form of contract that can be described with the phrase take first and pay later. *Bay' al-Istijrār* is one of the contracts that has generated controversy among jurists of fiqh. Ibn 'Ābidīn, who died in 1252 H and is widely recognised within the Ḥanafī school,¹ regards *Bay' al-Istijrār* as permissible, as stated in his work *Radd al-Muḥtār*. Re-examination of *Bay' al-Istijrār* remains necessary today in order to read the flexibility of Islamic law through *istihṣān* (juristic preference) when dealing with transactional needs that are not fully regulated explicitly in the *naṣṣ* (scriptural texts). Close attention to Ibn 'Ābidīn's view also sheds light on the dynamics of *ijtihād* (juristic reasoning) as jurists responded to the socio-economic realities of their time. Studies on Ibn 'Ābidīn have generally focused on his general *fatwā* positions or on *Radd al-Muḥtār*, while research that specifically examines the *istihṣān* approach in *Bay' al-Istijrār* and connects it to modern contracts remains limited.

Contemporary transactional practices generate diverse forms of economic relationships that demand more detailed legal clarification.² *Bay' al-Istijrār* in this discussion is not positioned as a modern transaction in itself, yet many modern transaction patterns display mechanisms that resemble *Bay' al-Istijrār*.³ A methodological discussion of *Bay' al-Istijrār* needs to be linked with the discourse on *istihṣān*, as indicated by Ibn 'Ābidīn. The main point of controversy regarding the validity of this contract, according to many jurists, lies in the potential *gharar* (excessive uncertainty) related to price and the existence of the goods. That concern becomes the central focus here, then connected to the implementation of *Bay' al-Istijrār* within contemporary mu'amalah (transactional practice) in order to assess the effectiveness of *istihṣān* in the process of Few studies treat *istihṣān* as the key lens for reading *Bay' al-Istijrār*, and this limitation reflects a deeper debate in uṣūl al fiqh (principles of Islamic jurisprudence). Within the Ḥanafī tradition, *istihṣān* is often regarded as an important

¹ Ahmad Yani Anshori and Landy Trisna Abdurrahman, "History of the Development of Mazḥab, Fiqh and Uṣūl Al-Fiqh: Reasoning Methodology in Islamic Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 9, no. 1 (2025): 273–98, <https://doi.org/10.22373/sjhk.v9i1.25355>.

² Muhammad Abdillah Lusiana, Muhammad Harun, Fauziah, "Istihsan Concept in Multi Contract Online Transactions of Go-Food Services in The Go-Jek Application," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 22, no. 1 (2022): 95–108.

³ Yogi Kurniawan and Muhajirin Muhajirin, "Istihsan and ITS Implementation in the Field of Islamic Economics and Finance," *Jurnal Indonesia Sosial Teknologi* 5, no. 4 (2024): 1781–92, <https://doi.org/10.59141/jist.v5i4.1024>.

method of *ijtihad* for safeguarding *maṣlaḥah* (public benefit) and maintaining legal flexibility, and Ibn 'Abidin is among the scholars who used it extensively.⁴ A contrasting position is found among Shāfi'ī scholars, especially Imām al Shāfi'ī, who rejected *istiḥsān* on the ground that it opens space for subjectivity, commonly summarised as *ḥukm bi al hawā* (ruling driven by personal desire).⁵ This disagreement is not merely a historical note within madhhab traditions. It persists as an epistemological question in academic discussion, asking whether *istiḥsān* truly functions as an instrument of legal discovery or whether it is only practical rationalisation framed as legal reasoning. The problem matters because Bay' al-Istijrār demands clarity on methodological limits when *qiyās* (analogical reasoning) and general principles are insufficient. The tension becomes sharper in Islamic economics and finance, where *mu'āmalah* often follows custom and need, while controlling *gharar* requires clear standards.⁶

Earlier studies on Bay' al-Istijrār remain dominated by general discussions of *fiqh* and have not yet concentrated on Ibn 'Abidin's *istiḥsān* as the main analytical framework. Abdul Aziz al-Syabīb maps the diversity of juristic opinions on sales with deferred payment, then affirms the permissibility of Bay' al-Istijrār when the price is clear and does not fluctuate sharply, including its possible use in supply contracts and *murābahah* (cost plus sale) in banking.⁷ Yāsir Farooq emphasises a use first pay later pattern under the condition that it follows proper rules,⁸ while Fāṭimah Musy'īl highlights the requirement of market pricing and the absence of uncertainty.⁹ Shaza El Shimey and colleagues argue that the structure of Bay' al-Istijrār helps distribute the risk of price fluctuations because the pricing mechanism is known to both parties on a specified date.¹⁰ Rahmat and colleagues observe a store practice of deferred payment in which the price remains the same as upfront payment,¹¹ while Joanna Goard and Aba Oud propose an explicit formulation based on price boundaries to clarify the underlying contractual principle.¹² This body of research indicates a shift in the debate

⁴ Alimatul Farida et al., "Peran Istiḥsān Dalam Dinamisasi Pemikiran Hukum Ekonomi Syariah," *Jurnal Mu'allim* 5, no. 2 (2023): 320–32, <https://doi.org/10.35891/muallim.v5i2.3640>.

⁵ Bakhtiar Hasan, "Penolakan Imam Syafi'i Terhadap Istiḥsān Sebagai Salah Satu Metode Istiḥsān Hukum Islam," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 15, no. 01 (2018): 58–73, <https://doi.org/10.30631/alrisalah.v15i01.379>; Wardatun Nabilah et al., "ISTIḤSĀN DALAM LITERATUR SYAFI'ĪYAH (Telaah Istiḥsān Dalam Kitab Al-Mustaṣfa Al-Ghazali)," *JURIS (Jurnal Ilmiah Syariah)* 20, no. 1 (2021): 77, <https://doi.org/10.31958/juris.v20i1.3323>.

⁶ Nofiardi Nofiardi and Muhammad Irfan Helmy, "Istiḥsān-Based Waqf in The Carotai Tradition in Tanang River Community, Agam District, West Sumatera," *AHKAM: Jurnal Ilmu Syariah* 24, no. 2 (2024): 365–78, <https://doi.org/10.15408/ajis.v24i2.37582>.

⁷ Abdul Aziz Al-Syabīb, "Bay' al-Istijrār wa Taṭbīqātuhu al-Mu'aṣirah" (Jamiah al-Imam Muhammad bin Suud al-Islamiyyah, 1430).

⁸ Muhammad Munir Azhar Yasir Farooq, "Legal Study Regarding Sale of Istijrar, Similar Sales and Research on Current Implementations," *Haṣara Islamicus* 09, no. 01 (2020): 61–74.

⁹ Fatimah Ismail Muhammad Musy'īl, "*Ḥukm Bay' al-Istijrār wa Taṭbīqātuhu al-Mu'aṣirah: Dirāsah Fiqhiyyah Muqāranah. Tajdid al-'Ulum al-'Arabīyyah wa al-Islāmiyyah bayna al-Aṣālah wa al-Mu'aṣarah, al-Mu'tamar al-'Ilmi li-Kullīyyat al-Dirāsāt al-Islāmiyyah wa al-'Arabīyyah lil-Banīn bi-Dasūq*", (Kairo-Mesir) 102 (2021): 201–57.

¹⁰ Shabir Hakim Shaza El-Shimey, Umar Idris, "Istijrar Contracts—an Untapped Gem in Hedging Price Risk in Commodity Accumulators," *Journal of Archaeology of Egypt ...* 18, no. 13 (2021).

¹¹ Galuh Mustika Argarini Rahmat, Musdalifah, "Praktik Jual Beli Bahan Bangunan Dengan Sistem Pembayaran Tempo (Istijrar) Dalam Perspektif Ekonomi Islam," *At-Tamwil: Kajian Ekonomi Syariah* 5, no. 2 (2023): 120–37, <https://doi.org/10.33367/at.v5i2.1483>.

¹² Joanna Goard and Mohammed AbaOud, "Pricing of Al-Urbun and a Class of Al-Istijrar Islamic Contracts under the Black-Scholes Framework," *Mathematics* 12, no. 2 (2024): 1–11, <https://doi.org/10.3390/math12020252>.

from permissibility as a status toward operational issues, particularly price clarity and the mitigation of *gharar* (excessive uncertainty).

Current debates on *istihṣān* within the Ḥanafī school move around two nodes, conceptual legitimacy and application to new transactions. Aykul shows that a definition of *istihṣān* linked to *qiyās*, meaning leaving a ruling in a similar case due to stronger evidence, is used to respond to classical criticism that labels *istihṣān* as arbitrary.¹³ Çiftci's study of Zūfar ibn Huẓayl demonstrates that *istihṣān* practice in the early period is complex and cannot be reduced to a single pattern.¹⁴ Similar tensions appear in contemporary *fiqh al-mu'āmalah* when *istihṣān* is used to interpret modern practices, including the permissibility of regulated short selling that is justified as *ijārah* (lease contract) through *istihṣān* in the Malaysian setting. Debate on Ḥanafī contracts grounded in '*urf*' (custom) and *ḍarūrah* (necessity) also appears in studies of *bay' al wafā'*, which is often seen as difficult to classify within established contract categories yet gains legitimacy through habit and need.¹⁵ Unresolved questions for *Bay' al-Istijrār* include the limits of '*urf*' as a basis of reasoning, the status of *istihṣān* as a technical exception or a substantive *ijtihād* (juristic reasoning), and whether *istijrār* is more properly read as a sale or closer to *ijārah*.

The research gap visible in earlier studies indicates that *Bay' al-Istijrār* is still more often treated as a topic in *fiqh al-mu'āmalah* discussed in general juridical normative terms at the level of practice, while an approach that places Ibn 'Ābidīn's construction of *istihṣān* as the primary entry point remains uncommon. Earlier research explains the range of juristic opinions, maps requirements for price clarity, or presents applications in specific modern practices, yet it does not specifically trace how Ibn 'Ābidīn constructs legal argument when *Bay' al-Istijrār* confronts the general rule rejecting sales of *ma'dūm* (non-existent subject matter), and when *gharar* concerns price and the existence of goods.¹⁶ The position taken here responds to that need by placing Ibn 'Ābidīn at the centre, then reading *Bay' al-Istijrār* through *istihṣān* as a methodology of *istinbāṭ* (legal derivation) operating behind the contract's permissibility, especially where *ijmā'* (consensus) and '*urf*' function as the basis for an exception to *qiyās*. This positioning matters so the discussion does not become a repetition of the literature, but a more directed reading of one scholar and one distinctive mechanism of legal reasoning.

Two related questions guide the study. One asks how Ibn 'Ābidīn understands the use of *istihṣān* in *Bay' al-Istijrār*. Another asks how his *istihṣān* based reasoning relates to contemporary *mu'āmalah* contracts. The discussion does not treat *Bay' al-Istijrār* as a label to be applied indiscriminately to modern transactions that only appear similar. Instead, Ibn

¹³ A. Aykul, "Discussions Around Legitimacy of the Istihṣān's Definitions in the Early Period," *Cumhuriyet İlahiyat Dergisi* 26, no. 1 (2022): 173–90, Scopus, <https://doi.org/10.18505/cuid.1071242>.

¹⁴ A. Çiftci, "Zufar Ibn Hudhayl's Approach to Istihṣān from the Founding Imams of the Hanafi Sect," *Cumhuriyet İlahiyat Dergisi* 21, no. 1 (2017): 107–46, Scopus, <https://doi.org/10.18505/cuid.291054>.

¹⁵ Diky Faqih Maulana and Abdul Rozak, "Istihṣān as a Finding Method of Progressive Islamic Law in the Industrial Revolution Era 4.0," *El-Mashlahah* 11, no. 2 (2021): 127–45, <https://doi.org/10.23971/elma.v11i2.2981>; M.M. Sahid et al., "Contextualizing Islamic Law Through Istihṣān: An Analysis of Customary Inheritance Practices in Air Nipis Sub-District, South Bengkulu," *Jurnal Ilmiah Mizani* 11, no. 2 (2024): 501–10, Scopus, <https://doi.org/10.29300/mzn.v11i2.5155>.

¹⁶ Sirajul Arifin, "Gharar Dan Risiko Dalam Transaksi Keuangan," *TSAQAFAH* 6, no. 2 (2010): 312, <https://doi.org/10.21111/tsaqafah.v6i2.123>; Waeibrorheem Waemustafa, *Theory of Gharar and Its Interpretation of Risk and Uncertainty from the Perspectives of Authentic Hadith and the Holy Quran: Review of Literature*, figshare, 2016, 7762839 Bytes, 7762839 Bytes, <https://doi.org/10.6084/M9.FIGSHARE.4042998.V1>.

'Ābidīn's argument is reread as a normative measure, identifying the elements required so that resemblance in practice does not become an unregulated justification, and so that claims of *maṣlahah* (public benefit) do not conceal *gharar* that must be assessed carefully. This direction also clarifies the study's novelty and aims. Novelty lies in reading Bay' al-Istijrār through Ibn 'Ābidīn's construction of *istiḥsān*, rather than merely adding contemporary examples. The analysis traces how *istiḥsān* works in his legal argument, especially where *ijmā'* (consensus) and *'urf* (custom) serve as justifying grounds, then tests implications for contracts that require price certainty, certainty of subject matter, and dispute prevention.¹⁷ Expected results emphasise requirements, limits, and rationale, not permissibility alone.

The theoretical contribution lies in mapping the way Ibn 'Ābidīn uses *istiḥsān* when interpreting Bay' al-Istijrār, which enriches the literature of classical *fiqh al-mu'āmalah* and strengthens the discourse of *uṣūl al-fiqh* on the position of *istiḥsān* as a method of *istinbāṭ* (legal derivation) and its relevance for developing contemporary Islamic legal theory. Another theoretical contribution addresses the need for academic references for further studies that connect Ḥanafī fiqh with modern contracts in the field of Islamic business law. Practical contribution is directed toward providing an alternative analytical framework for Dewan Syariah Nasional (DSN MUI), or other fatwa institutions, when formulating contemporary contract products that require strong classical grounding. Practical contribution also offers an *istiḥsān* based formulation for modern contracts that are not explicitly regulated in classical fiqh texts, including supply contracts, installment contracts, and framework agreements. This practical orientation is also intended to support the Islamic finance industry in developing products that respond to market needs while maintaining the line of *maqāṣid al-sharī'ah* (objectives of Islamic law), particularly the protection of property and transactional justice.

The theoretical framework is built around two complementary lenses. *Uṣūl al-fiqh* is used to examine *istiḥsān*, with attention to its relationship with *qiyās*, the position of *ijmā'*, and the way *'urf* functions as a basis for legal reasoning. *fiqh al-mu'āmalah* is used to analyse contract structure, validity requirements, dispute generating elements, and vulnerable points of *gharar* in Bay' al-Istijrār. The study is framed as normative Islamic law research at the doctrinal level and employs conceptual, historical, and philosophical approaches. The conceptual approach clarifies the limits of *istiḥsān* and how it operates as a legal exception. The historical approach situates Bay' al-Istijrār within lived *mu'āmalah* traditions and traces juristic responses through madhhab instruments. The philosophical approach assesses the normative rationale for choosing *istiḥsān*, moving beyond the wording of rulings toward their reasons and boundaries. Primary sources focus on Radd al Mukhtār 'alā al Durr al Mukhtār Sharḥ Tanwīr al Abṣār and Nasamāt al Ashār. Data are gathered through document study, organised into an argument map of Ibn 'Ābidīn's premises and conclusions, and then tested for consistency. Prescriptive analysis derives implications for modern *mu'āmalah*, especially price clarity, the role of *'urf*, contractual equivalence, and tolerable *gharar*.¹⁸

¹⁷ Necmeddin Güney, "Maqāṣid Al-Sharī'a in Islamic Finance: A Critical Analysis of Modern Discourses," *Religions* 15, no. 1 (2024): 114, <https://doi.org/10.3390/rel15010114>.

¹⁸ Muhammad Naeem et al., "A Step-by-Step Process of Thematic Analysis to Develop a Conceptual Model in Qualitative Research," *International Journal of Qualitative Methods* 22 (October 2023): 16094069231205789, <https://doi.org/10.1177/16094069231205789>.

Results and Discussion

Ibn 'Abidin's View on Applying *Istihsan* in Bay' al-Istijrar

Reading *Bay' al-Istijrar* through *istihsan* requires references that are genuinely authoritative within the Ḥanafī school, since discussion of this type of contract touches general legal maxims, social practice, and standards of transactional validity. Ibn 'Abidin al-Dimashqī, whose full name is Muḥammad Amīn ibn 'Umar ibn 'Abd al-'Azīz 'Abidin al-Ḥusaynī,¹⁹ is known as a leading jurist of the Ḥanafī school in the region of al-Shām, and is described with titles such as *faqīh al-diyār al-shāmiyyah* and *imām al-Ḥanafīyyah fī 'aṣrihi*, in the late period of Ottoman rule. Ibn 'Abidin's juristic authority did not emerge from academic reputation alone, since the community of Damascus recognised him as a reference for fatwā through his position as Amīn al-Fatwā. Questions of *mu'āmalah* were not treated as abstract debate, but were tested through concrete legal needs. This *iftā'* tradition provides the context for why an *istihsan* based reading of *Bay' al-Istijrar* becomes significant, because *istihsan* appears where the order of legal rules must be maintained while daily practice also demands solutions that remain clear and do not undermine the aims of the *sharī'ah*.²⁰

Ibn 'Abidin's most prominent work is *Radd al-Muḥtār* 'alā al-Durr al-Mukhtār, a detailed commentary on *Durr al-Mukhtār*, a major text in the Ḥanafī school.²¹ *Radd al-Muḥtār* offers explanation and clarification that enrich Ḥanafī understanding and prevents discussion from turning into mere repetition of quotations, since its character as a *ḥāshiyah* (marginal commentary) gathers, organises, and weighs *tarjih* (preferential evaluation) of madhhab opinions on questions of *mu'āmalah* that intersect with *'urf* (custom) and social needs.²² Ibn 'Abidin's intellectual contribution is also visible in his ability to integrate diverse views within the Ḥanafī school. In certain issues, Ibn 'Abidin adopts positions from other schools when a more comprehensive solution is considered necessary, while still taking into account the historical and social conditions of his time.²³ A critical and analytical stance in evaluating legal sources helps in addressing complex problems, while his detailed engagement with *qawā'id fiqhīyyah* (legal maxims) keeps *Radd al-Muḥtār* relevant for Islamic legal education and

¹⁹ Muḥammad Amīn ibn 'Umar ibn 'Abd al-'Azīz 'Abidin al-Dimashqī al-Ḥusaynī was born in Damascus in 1198 H, corresponding to 1784, and died on 21 Rabī' al-Thānī 1252 H, corresponding to 1836. Known by the laqab (honorific epithet) Ibn 'Abidin, which is linked to a family designation, he is also reported to have a line of *nasab* (genealogical lineage) traced to Ja'far al-Ṣādiq. Spiritual formation was pursued within the ṭarīqah Naqshbandīyyah (Naqshbandī Sufi order) through Shaykh Khālid al-Naqshbandī in Damascus, and a *risālah* (treatise) titled *Sal al-Ḥusām al-Hindī* is also attributed to him. His learning was undertaken with a number of the *masyāyikh* (senior scholars) of Damascus, and he trained students who later became muftī and officials in fatwā institutions in al-Shām, Beirut, and the Ḥijāz. Many works were left behind, including *Radd al-Muḥtār* 'alā al-Durr al-Mukhtār, *al-'Uqūd al-Durriyyah fī Tanqīḥ al-Fatāwā al-Ḥamidiyyah*, and *Nasamāt al-Ashḥār* 'alā Ifādat al-Anwār 'alā Kitāb al-Manār.

²⁰ Sayyid Mohamed Ajmal Abdul Razak Al-Aidrus and Mohammed Farid Ali, "A TRANSLATION AND COMMENTARY OF IBN 'ABIDIN'S AL-'ILM AL-ZĀHIR FĪ NAF'I AL-NASAB AL-ṬĀHIR (EVIDENT KNOWLEDGE ON THE BENEFIT OF PURE LINEAGE)," *Al-Shajarah Journal of the International Institute of Islamic Thought and Civilization (ISTAC)* 19, no. 1 (2014): 311, <https://doi.org/10.31436/shajarah.v19i1.311>.

²¹ 'Alī Jum'ah, *Al-Madkhal ilā Dirāsati Al-Maḥābiḥ Al-Fiqhīyyah* (Dārussalām, 2001); Anshori and Abdurrahman, "History of the Development of Maḥḥab, Fiqh and Uṣūl Al-Fiqh: Reasoning Methodology in Islamic Law."

²² R. Abdulhalik et al., "Law Basics in Hanafi Madhab," *European Journal of Science and Theology* 16, no. 1 (2020): 83–90, Scopus.

²³ Jum'ah, *Al-Madkhal ilā Dirāsati Al-Maḥābiḥ Al-Fiqhīyyah*.

practice as social needs develop. Focus on Bay' al-Istijrār and *istiḥsān* gains a strong foundation from this character, because a contract is not treated as a self-contained formula. A contract is treated as a legal relationship that must preserve fairness in exchange, control *gharar* (excessive uncertainty), and remain aligned with established custom.²⁴

Ibn 'Ābidīn defines *fiqh* as knowledge of what constitutes the rights and obligations of the person. This definition is attributed to Imām Abū Ḥanīfah and is read broadly because it includes *'ilm al-kalām* (theological discourse) and *taṣawwuf* (Sufism), since both are regarded as part of *fiqh* within that understanding.²⁵ 'Ilmu al-kalām is referred to as *fiqh al-akbar* (greater jurisprudence). *Uṣūl al-fiqh* is understood as the discipline that studies the conditions of the evidences that lead to *sharī'ah* rulings, derived from four foundations, al-Qur'ān, ḥadīth, *ijmā'*, and *qiyās*. Evidences leading to legal rulings are also understood through three primary divisions, al-Qur'ān, ḥadīth, and *ijmā'*, while *qiyās* is positioned as the fourth evidence drawn from those three sources.²⁶

Al-Qur'ān is understood as legal evidence in the form of revelation that is recited, al-matlūw (recited revelation). Sunnah is understood as revelation that is not recited, *ghayr al-matlūw* (non-recited revelation). *Ijmā'* is understood as evidence grounded in the agreement of the community, while *qiyās* is understood as the fourth legal proof derived from the three earlier sources.²⁷ This structure matters because discussion of *istiḥsān* operates within the domain of *istidlāl* (inferential reasoning), meaning an effort to identify a basis for legal determination when a problem cannot be explained adequately through the most common pattern of *qiyās*.²⁸

Ibn 'Ābidīn also mentions a classification of evidences according to their level of connection with *naqli* proofs (transmitted proofs). A proof that is *qaṭ'i* in transmission and *qaṭ'i* in meaning, such as *muḥkamāt* verses and *mutawātir ḥadīth* whose meanings are *qaṭ'i*, establishes rulings of obligation and prohibition. A proof that is *qaṭ'i* in transmission but *ẓannī* in meaning, such as verses open to *ta'wīl* (interpretive reading), establishes rulings of obligation and *makrūh taḥrimī* (prohibitively disliked). A proof that is *ẓannī* in transmission but *qaṭ'i* in meaning, such as *āḥād ḥadīth* with *qaṭ'i* meaning, also establishes rulings of obligation and prohibition. A proof that is *ẓannī* in transmission and *ẓannī* in meaning, such as *āḥād ḥadīth* with *ẓannī* meaning, establishes rulings of sunnah and *mustaḥabb* (recommended).²⁹

'Abdul Laṭīf Ṣāliḥ explains that Ibn 'Ābidīn's influence in Islamic *fiqh* is clearly visible, and many later writers followed his methodological steps. Ibn 'Ābidīn did not merely recognise the social condition of the Muslim community, but also analysed problems and proposed relevant solutions. Ibn 'Ābidīn was able to move beyond certain limitations imposed by earlier jurists, and thus strengthened, corrected, refined, reviewed, and examined a range of issues in a deeper manner. This description supports the placement of Ibn 'Ābidīn

²⁴ Muhammad Amīn Ibnu 'Ābidīn, *Nasyru Al-Urfi fī Binā'i Al-Aḥkām 'alā Al-Urfi World League of Hanafi Scholars* 2020, 1st ed. (World League of Hanafi Scholars, 2020).

²⁵ Ibnu Abidin, *Nasamat Al-Ashar*, Cet-3 (Maktabah al-Rusyd, 1418), p.10.

²⁶ Abidin, *Nasamat Al-Ashar*, p. 10.

²⁷ Abidin, *Nasamat Al-Ashar*, p.10.

²⁸ Maulana and Rozak, "Istihsan as a Finding Method of Progressive Islamic Law in the Industrial Revolution Era 4.0."

²⁹ Yunus Ahmad Salih Mahmud, "Manhaj Ibn 'Ābidīn fī al-Tarjīḥ bi-Āyāt al-Qur'ān al-Karīm," *Majallah Bubus Kulīyyat Al-Adab*, n.d., 3–25.

as a figure associated with the revival of modern fiqh and with a shift from a period of stagnation toward renewal and progress.³⁰

Linguistically, *istihsan* means choosing what is better, and scholars agree on that basic sense. Some scholars define *istihsan* as moving from one *qiyas* to a stronger *qiyas*, or selecting a specific *qiyas* supported by stronger evidence. Al-Kurkhi, a Ḥanafī scholar, explains *istihsan* as changing a ruling on the basis of stronger evidence. Imām Mālik defines it as choosing the strongest proof or considering *maṣlahah juz'ī* (partial public benefit) that stands against a *dalil kullī* (general proof). Wahbah al-Zuhaylī summarises two core points, selection of *qiyas khafi* that is stronger than *qiyas jali*, and the exception of a *juz'ī* case from a general rule.³¹

Istihsan is one of the debated methods of Islamic legal derivation. Use of *istihsan* belongs to *istidlal*, meaning a search for a basis that is not stated explicitly in al Qur'ān, ḥadīth, *ijma'*, or *qiyas*. Shāfi'ī scholars reject *istihsan* because it is seen as lacking grounding in al-Qur'ān or ḥadīth, while Ḥanafī scholars support *istihsan* because it is viewed as the stronger basis, especially in situations of *ḍarurah* (necessity) that ease social affairs.³² Critiques of *istihsan*, including those associated with Imām al Shāfi'ī, often arise from differences in how *istihsan* is defined, so that at the level of practice the disagreement does not always produce a sharp divergence in every case. Contemporary relevance of *istihsan* is also linked with the need to determine the legal status of new cases that are difficult to resolve through *uṣūl al fiqh* methods within a single madhhab or a single line of thought. The purpose of *istihsan* is stated as avoiding *maḍarrah* (harm) and achieving *maṣlahah* (benefit), so *istihsan* is understood as opening space for developing and modifying law in order to remain responsive to changes over time.³³

According to Ibn 'Ābidīn, *istihsan* is more often used to refer to *qiyas khafi*, while *qiyas jali* is more commonly referred to simply as *qiyas* to distinguish the two. This aligns with *uṣūl al ijtihad* of the Ḥanafī school (foundational principles of juristic reasoning in the Ḥanafī school), which emphasises that *istihsan* essentially operates through two broad patterns. A first pattern takes the form of a strong *qiyas khafi* (implicit or less apparent analogy) when facing *qiyas jali* (manifest or more apparent analogy), producing *ta'arud qiyasayn* (a conflict between two analogies), then the mujtahid performs *tarjih* by selecting the stronger analogy. A second pattern takes the form of *istithna' mas'alah juz'iyah min asl 'amm* (an exception of a particular case from a general rule) because a *dalil* requires such an exception.³⁴ Many Ḥanafī's *uṣūl al fiqh* works describe *istihsan* as *qiyas khafi qawī fī muqābil qiyas jali* (it conflicts with *qiyas jali*, so the jurist gives priority to the analogy judged to carry the stronger legal force) or as *istithna' mas'alah juz'iyah min asl 'amm aw qā'idah kullīyah li dalil yaqtadī dhālik* (excluding a particular case from a general principle or a universal legal rule, because a specific *dalil* [authoritative proof] requires that exception). These formulations show that *istihsan* does not stand as personal preference, but as a methodological choice when an apparent *qiyas* leads to

³⁰ Muhammad bin Abdul Latif Salih, *Ibn 'Abidin wa Atharuhu fī al-Fiqh al-Islāmī: Dirāsah Muqaranah bi al-Qānūn*: 2, Cet-1 (Dar al-Basyair, 2001).

³¹ Wahbah Al-Zuhaili, *Uṣul Al-Fiqh al-Islami*, Cet-1 (Suriah : Dar al-Fikr, 1986).

³² Syarifah Gustiawati Mukri et al., "Revitalization of Istihsan Bi Al 'Urfi in Sharia Financing: Fatwa Study 2010-2018," *Journal of Islamic Economic Laws* 6, no. 1 (2023): 1–12, <https://doi.org/10.23917/jisel.v6i1.17436>.

³³ Hasan, "Penolakan Imam Syafi'i Terhadap Istihsan Sebagai Salah Satu Metode Istinbath Hukum Islam."

³⁴ Wahbah Az-Zuhayli, *Uṣūl Al-Fiqh Al-Ḥanafī*, 1st ed. (Dārul Al-Maktabī, 2001).

consequences considered less appropriate. *Istihsan* in fiqh subfields is also often applied through *naṣṣ* and *ijma'* when both stand against the commonly used *qiyas jalī*, since in certain situations *qiyas* needs to be restrained so that it does not close the space of facilitation already preserved by other proofs.³⁵

That explanation is also intertwined with the way the Ḥanafī school organises the sources of *ijtihād*. According to Wahbah al-Zuhaylī, the working order of the mujtahid begins by examining the *naṣṣ* of al Qur'ān and al Sunnah, then *ijma'*, followed by *qiyas*, before moving to *istihsan* and *urf* when needed. This direction is often reinforced through the report of the ḥadīth of Mu'adh ibn Jabal regarding stages of decision making, along with a reported statement of Abū Ḥanīfah, “*akbudhu bi kitāb Allāh fa in lam ajid fa bi sunnati Rasūl Allāh, fa in lam ajid fī kitāb Allāh wa lā sunnati Rasūl Allāh akbadhtu bi qawl al ṣaḥābah* (I take guidance from the Book of God, then from the Sunnah of the Messenger of God, and if I do not find it in either, I adopt the Companions' opinions).” It means then when a matter has no direct answer, *ijtihād* proceeds through *qiyas* and *istihsan*. At this point, *istihsan* does not bypass the chain of proofs, but operates after the foundational evidences have been examined, and is used to avoid the rigidity of *qiyas* when *qiyas* produces hardship or departs from the aim of improving mu'āmalah. A further statement attributed to Abū Ḥanīfah, “*yamḍī al umūr 'alā al qiyas fa idhā qabūḥa al qiyas yamḍīhā 'alā al istihsan mā dāma yamḍī lah* (matters proceed on the basis of *qiyas*, yet when *qiyas* yields an objectionable outcome, judgment proceeds by *istihsan* as long as it provides a viable basis),” illustrates *istihsan* as a choice when *qiyas* is judged to yield something *qabīḥ* (morally or legally objectionable), then the mujtahid seeks a path that better fits legal benefit and transactional order.³⁶

Ḥanafī scholars, including Ibn 'Abidīn, classify *istihsan* into four types, *istihsan bi al naṣṣ*, *istihsan bi al ijma'*, *istihsan bi al qiyas khaṣī* (juristic preference based on a stronger implicit analogy), and *istihsan bi al ḍarūrah* (juristic preference justified by necessity). Wahbah al-Zuhaylī further explains this scheme by noting that mu'āraḍah al-*qiyas* (a situation where analogical reasoning is opposed by another proof) may arise from *al-athar* (transmitted reports, including textual traces from earlier authorities), or *ijma'*, or *ḍarūrah* (necessity), and when *qiyas* conflicts with a stronger *istihsan*, *wajaba al 'amal bi al istihsan idhā kāna aqwā* (acting upon *istihsan* becomes obligatory when it is stronger), and it is not justified to force *qiyas*. This outline confirms that the four types are not a terminological list standing on their own, but forms of countervailing evidences that enable the mujtahid to move away from an overly linear result of *qiyas*.³⁷

First, *istihsan bi al-naṣṣ* applies when a general maxim would yield one ruling, yet a specific *naṣṣ* requires an exception. A standard example is *bay' al-salam* (forward sale). *Qiyas* might treat it as invalid because the subject matter is not present at contract formation, yet a ḥadīth provides a controlled permission, *man aslama falyuslim fī kaylin ma 'lūm wa waḥḍin ma 'lūm ilā ajalin ma 'lūm* (whoever undertakes *salam* must specify a known measure, a known weight, and a known term). The condition of clarity shows that the exception is secured by knowledge standards that restrict *gharar*.³⁸ Second, *istihsan bi al ijma'* sets aside *qiyas* when *ijma'* establishes a different ruling. The frequently cited case is *'aqd al-istiṣnā'* (order to

³⁵ Jum'ah, *Al-Madkhal ilā Dirāsati Al-Maṣāhib Al-Fiqhiyyah*; Az-Zuhaylī, *Uṣūl Al-Fiqh Al-Ḥanafī*.

³⁶ Az-Zuhaylī, *Uṣūl Al-Fiqh Al-Ḥanafī*.

³⁷ Abidin, *Nasamat Al-Asbar*:p. 224-225.

³⁸ Abidin, *Nasamat Al-Asbar*:p. 224-225.

manufacture contract). *Qiyās* may view it as a sale without a deliverable subject matter ready at hand, yet Ḥanafī literature affirms *in 'iqād ijma' al muslimin 'alā ṣiḥḥat 'aqd al istiṣnā'* (a consensus among Muslims affirming the validity of *istiṣnā'*). Enduring practice and communal acceptance become the basis, since rigid application of a general maxim would disrupt ease in *mu'āmalah*.³⁹

Third, *istiḥsān bi al qiyās khafī* operates when two analogies compete. *Qiyās jalī* is apparent, while *qiyās khafī* requires deeper causal linkage. The example of *ṭabarāh su'r sibā' al ṭayr* (purity of leftover drink from predatory birds) illustrates this. *Qiyās jalī* may imply impurity, yet closer analysis locates the relevant *'illah* (effective cause) in the likelihood of *najāsah* (ritual impurity) mixing through saliva. When that link cannot be established with certainty, *qiyās khafī* becomes stronger and the leftover drink is not ruled impure.⁴⁰ Fourth, *istiḥsān bi al-ḍarūrah* responds to necessity when strict analogy would impose excessive burden. The example is *tathbīr al aḥwāḍ wa al ābār idhā waqa'at fihā najāsah* (purifying pools and wells affected by impurity by drawing a specified number of buckets). Pure *qiyās* could keep the water impure, yet human need requires a workable purification mechanism. Ḥanafī jurists treat the bucket specification as *istiḥsān* to avoid *ḥaraj shadīd* (severe hardship), aligning exception making with the aims of the Sharia.⁴¹

This outline of four types of *istiḥsān* is important for preparing a framework to read Bay' al-Istijrār. The central point is not merely to claim that *istiḥsān* provides flexibility, but to explain the form and boundaries of that flexibility. Wahbah al Zuḥaylī, in his discussion of Ḥanafī uṣūl al fiqh, emphasises that when *qiyās* and *istiḥsān* conflict, legal reasoning should move toward *istiḥsān* when *istiḥsān* is stronger, *wa idhā ta'ārada mujib al qiyās wa al istiḥsān wajaba al 'amal bi al istiḥsān idhā kāna aqwā*.⁴² This maxim provides a methodological basis for treating Bay' al-Istijrār, when it is read as an exception to a general rule, as requiring proof that it follows a strong *istiḥsān* path, whether it takes the form of *qiyās khafī* that outweighs *qiyās jalī*, or a partial exception demanded by *dalīl, ijma'*, or *ḍarūrah*, then supported by valid *'urf*.

Bay' al-Istijrār as a Mu'āmalah Practice and the Rationale of Ibn 'Abidin's Istiḥsān

The term *Bay' al-Istijrār* is well known among later Ḥanafī scholars and is also discussed within Shāfi'ī writings. Several Shāfi'ī sources tend to reject it due to uncertainty of price at the time of contract, although al-Sharwānī reports that Imām al-Ghazālī allows room for permissibility when the transaction is treated as similar to *bay' al mu'atāb* (sale concluded through exchange and delivery without a formal verbal formula), provided that the price is clearly understood by both parties.⁴³ Mālikī practice recognises a comparable pattern through the expression *bay' ahl al-Madīnah* (the transactional practice of the people of Madīnah), since residents of Madīnah were known for gradual purchasing in which goods are taken little by little according to need and payment is made at an agreed time. Ḥanbalī scholars such

³⁹ Abidin, *Nasamat Al-Ashar*.p. 224-225.

⁴⁰ Az-Zuḥaylī, *Uṣūl Al-Fiqh Al-Ḥanafī*, Abdulhalik et al., "Law Basics in Hanafi Madhab."a

⁴¹ Muslim S. Baymirov, "Al-Ashbah van-Nazair as a Source in the School of Hanafites," *International Journal of Culture and Modernity* 4, no. 2 (2024): 1–5, <https://doi.org/10.51699/ijcm.v4i2.21>.

⁴² Az-Zuḥaylī, *Uṣūl Al-Fiqh Al-Ḥanafī*.

⁴³ Syekh Ahmad bin Qasim al-Ibadi Syekh Abdul Hamid al-Syarwani, *Hawasyi Tuhfat Al-Muhtaj Bi Syarh al-Minhaj* (4) (Matbaah Mustafa Muhammad, n.d.).

as Ibn Qayyim refer to this model as *al bay' bimā yanqati'u bihi al si'ru* (a sale whose price becomes fixed at a particular point), a label that underlines that the key issue is not gradual taking by itself, but when the price is treated as certain and how that certainty is understood. Ibn Manẓūr calls it *al-wājibah* (a binding commitment), since there is a commitment to purchase and that obligation is fulfilled through gradual taking until completion.⁴⁴

Practice of *Bay' al-Istijrār* can be described through three simple features. First, the seller provides goods continuously and the buyer takes them according to need. Second, payment is deferred and made after the goods are used or after a certain period. Third, there is an initial agreement that allows the method of calculation and the timing of payment to be predictable. This third feature becomes decisive, since without an agreed framework, deferred payment easily turns into dispute, and dispute often begins with an unclear price.⁴⁵ Radd al-Muḥtār provides a direct entry into the permissibility of this practice. Ibn 'Ābidīn states *mā yastajirruhu al insānu mina al bayyā' idhā ḥasabahu 'alā athmānihā ba'da istihlākihā jāza istiḥsānan* (a practice where a person repeatedly takes goods from a seller and the price is calculated after consumption is permitted on the basis of *istiḥsān*). This statement matters because it names the basis of permissibility explicitly, so *Bay' al-Istijrār* is not treated as an unregulated habit, but as a custom supported by a methodological ground meant to prevent hardship in everyday transactions.⁴⁶ A general rule in sale requires that the object of sale exists at the time the contract is concluded, so selling what does not yet exist is commonly considered invalid.⁴⁷ Ibn 'Ābidīn notes that some scholars discuss tolerance for goods commonly taken from a seller without a formal verbal contract, such as lentils, salt, oil, and similar items, then once the goods are finished the total is calculated and purchased. Such explanations are often misunderstood as permitting a sale of non-existent goods. Ibn 'Ābidīn restrains that reading so it does not deviate, writing "*qultu kullu ḥadhā qiyās wa qad 'alimta anna al mas'alab istiḥsān*" (I say all of this is *qiyās*, and you already know that the issue is *istiḥsān*), meaning that a technical explanation forcing the case into analogy alone is not sufficient because the core lies in *istiḥsān* as a more fitting legal choice to preserve transactional order and avoid unnecessary burden.⁴⁸

Ibn 'Ābidīn also transmits the possibility that taking goods such as lentils may be treated as a sale through customary exchange and delivery, and in certain situations there is no need to state the price separately "*li annahu ma'lūm*" (because it is already known). An objection is also recorded, since prices can change and trigger disputes. Ibn 'Ābidīn fixes the response through the actual structure of the contract. This case is no longer treated as a sale of non-existent goods because the contract occurs each time the taking occurs. His wording is explicit, "*bal kullamā akbadha shay'an in'aqada bay'an bi thamanihī al ma'lūm*" (rather, each time something is taken, a sale is concluded at that moment with a known price). The practical meaning is straightforward. The object exists when the contract occurs, the price is

⁴⁴ Muaz bin Abdullah Abdul Hakim al-Suhaimi, Syahir al-Izhari, "Bay' al-Istijrār fī al-I'timād al-Mustanadī fī Ḍaw' Qarār al-Bank al-Markazī al-Mālīzī: Dirāsah Taḥlīliyyah Taṭbīqiyyah" *International Journal of Fiqh and Ushul Al-Fiqh Studies* 8, no. 1 (2024): 25–36.

⁴⁵ Ibnu Abidin, *Radd Al-Mukhtar Ala al-Durr Mukhtar Syarh al-Tanwir al-Absar* (7) (Riyad: Daru Alam al-Kutub, 2003), p. 30.

⁴⁶ Abidin, *Radd Al-Mukhtar Ala al-Durr Mukhtar Syarh al-Tanwir al-Absar* (7), p. 31.

⁴⁷ Arifin, "Gharar Dan Risiko Dalam Transaksi Keuangan"; Sami M. Abbasi et al., "Islamic Economics: Foundations and Practices," *International Journal of Social Economics* 16, no. 5 (1989): 5–17, <https://doi.org/10.1108/03068298910367215>.

⁴⁸ Abidin, *Radd Al-Mukhtar Ala al-Durr Mukhtar Syarh al-Tanwir al-Absar* (7), p. 31.

also clear when the contract occurs, while gradual taking functions as a technical mode of distribution.⁴⁹

An example Ibn 'Abidin cites from al-Walwāliyyah illustrates the difference between a valid and a defective transaction. A person who declares at the outset that one is buying one hundred mann of bread, then takes it little by little each day, is considered problematic because the goods claimed at the start are not specified and this involves uncertainty. A different situation occurs when someone hands over money and then takes bread each day without a single major verbal contract at the beginning. Permissibility in this form is explained by “*bi mujarrad al niyyah lā yan'qid al bay'*” (a sale does not come into existence merely by intention), meaning that the sale occurs through the act of taking by exchange and delivery, and at that moment the goods are clear.⁵⁰ This emphasis also explains why Ibn 'Abidin aligns the logic of *Bay' al-Istijrar* with *bay' al-mu'atāh*, as long as the price is known when the goods are taken. Ibn 'Abidin even argues that if *ta'atī* (concluding a sale through exchange and delivery) is valid when payment is made before taking, then deferring payment until after taking is more readily accepted, provided that the price remains clear at the time of taking.

Price must be known at the moment the goods are taken, because Ibn 'Abidin explains that the contract is not suspended on intention or an initial verbal declaration, but is formed each time the taking occurs, “*kullamā akhadha shay'an in'aqada bay'an bi thamanibī al ma'lūm*” (each time something is taken, a sale is concluded at that moment with a known price). Social practice may serve as a reference as long as that practice genuinely produces a price standard and a calculation method understood by both parties, so the space for dispute becomes narrower. Deferring payment does not invalidate the transaction, because the deferral concerns settlement, while the contract has already been formed when the goods are taken at a known price. The examples of bread and meat remain relevant because the prices of such goods can usually be determined at the time of taking, then the total payment is calculated after the successive takings accumulate.

Ibn 'Abidin's discussion of *Bay' al-Istijrar* shows that permissibility is available under certain conditions through the principle of *istihsan* (juristic preference grounded in a stronger basis than strict analogy). Four implicit ideas can be formulated from his exposition. A reminder is important, these points do not aim to replace his wording, but to organise the logic that is already present in his argument.

First, the general rule that prohibits selling goods that do not yet exist or whose existence is unclear remains acknowledged as a foundational reference, yet *Bay' al-Istijrar* is not left to stop at that rule when social practice demands an operational mechanism. Ibn 'Abidin describes repeated taking from a seller with calculation after use as *jāza istihsanan* (permitted on the basis of *istihsan*), meaning that calculation after consumption can be justified through *istihsan*. Price clarity remains the central safeguard, because validation is not meant to tolerate uncertainty, but to protect the order of transactions that commonly occur. Second, support for *istihsan* appears as a legal choice that avoids practical hardship without abandoning the need for certainty. *Istihsan* operates when *qiyās* based reasoning produces conclusions that are too rigid for recurring transactions, while social practice has already formed a pattern that both parties understand. *Istihsan* at this point functions as a balancing

⁴⁹ Abidin, *Radd Al-Mukhtar Ala al-Durr Mukhtar Syarh al-Tanwir al-Absar* (7), p. 31.

⁵⁰ Abidin, *Radd Al-Mukhtar Ala al-Durr Mukhtar Syarh al-Tanwir al-Absar* (7), p. 31.

device. The general rule is preserved, yet its application does not cut off daily *mu'āmalah* needs that proceed through gradual taking and deferred payment.

Third, social custom, *'urf* (recognised custom), becomes an explanation for how the contract is understood. *Bay' al-Istijrār* is not required to have one major verbal formula at the beginning, because such a formula may itself generate uncertainty about the subject matter, given that the contract is understood to form each time the taking occurs.⁵¹ Ibn 'Ābidīn's expression "*bal kullamā akbadha shay'an in 'aqada bay'an bi thamanihī al ma'lūm*" (rather, each time something is taken, a sale is concluded at that moment with a known price) places *Bay' al-Istijrār* as a transaction grounded in repeated acts of exchange and delivery, not in intention alone.⁵² Ibn 'Ābidīn also closes the justificatory gap based on intention, because a sale does not occur merely by intention, so validity still requires a real moment of transaction.

Fourth, agreement on price becomes the decisive condition for validity. A price known at the time of taking allows the contract to be formed validly through exchange and delivery, while a price that is not known opens the risk of dispute and prevents contract formation at the moment of taking. This boundary matters so that *Bay' al-Istijrār* is not treated as tolerance without measure, but as tolerance secured by price certainty and the legibility of the *'urf* standard.

Understanding the types of *istihṣān* discussed by Ḥanafī scholars helps position *Bay' al-Istijrār* within a more specific framework. Permissibility can be linked to *istihṣān* grounded in *ijmā'* (consensus) and *'urf*, because a widely accepted practice that runs consistently across places is often treated as a basis for legal determination when pure *qiyās* is insufficient. This formulation aligns with Ibn 'Ābidīn's emphasis that the case belongs to *istihṣān* rather than *qiyās* alone, "*qad 'alimta anna al mas'alab istihṣān*" (you already know that the issue is *istihṣān*), so the argument does not stop at analogy, but moves toward accountable considerations of transactional order in *mu'āmalah*.⁵³

Table 1.

Bay' al-Istijrār according to Ibn 'Ābidīn through an istihṣān approach

Aspect	Explanation
Definition of Bay' al-Istijrār	A sale in which the price is calculated after the goods have been used or consumed, according to the quantity or value of goods already taken
Approach through <i>istihṣān</i>	Ibn 'Ābidīn permits <i>Bay' al-Istijrār</i> by prioritising <i>istihṣān bi al-ijmā'</i> wa al- <i>'urf</i> (juristic preference grounded in consensus and recognised custom). <i>Qiyās</i> treats the sale as invalid when read as a sale without a subject matter or without price clarity, yet wide acceptance and a custom that forms a price standard allow it to operate as long as the price is known at the time of taking

⁵¹ Ibnu 'Ābidīn, *Nasyru Al-'Urfi fi Binā'i Al-Aḥkām 'alā Al-'Urfi World League of Hanafi Scholars 2020*.

⁵² Abidin, *Radd Al-Mukhtar Ala al-Durr Mukhtar Syarb al-Tamwir al-Absar* (7), p. 31.

⁵³ Maulana and Rozak, "Istihsan as a Finding Method of Progressive Islamic Law in the Industrial Revolution Era 4.0."

Case example	A merchant regularly provides goods to a regular customer. Taking occurs gradually according to need. Payment is made at the end of a period based on a price standard understood by both parties at the time of taking
Main purpose	To provide ease and flexibility in mu'āmalah transactions while safeguarding justice and maṣlahah (public benefit) for both parties

The philosophical meaning of the table on *Bay' al-Istijrar* with Ibn 'Ābidīn's *istihṣān* approach shows a relationship between legal flexibility and the need for certainty in transactions. The second table helps identify the value direction that operates within each aspect.

Table 2.
Philosophical meaning of Bay' al-Istijrar

Aspect	Philosophical meaning
Definition of Bay' al-Istijrar	<i>Bay' al-Istijrar</i> emphasises a repeated and continuing transactional relationship. Gradual taking and later payment require trust, yet that trust is still framed by intelligible certainty, especially a price standard at the time of taking
Approach through <i>istihṣān</i>	<i>Istihṣān</i> enables an exception from a general rule for the sake of <i>maṣlahah</i> by considering social custom that forms transaction standards. The exception does not remove the need for certainty, but directs reasoning so that formal justice does not sever the practical justice operating in <i>mu'āmalah</i>
Case example	Routine transactions without initial verbal price setting can function when both parties share an understood standard. The orientation is to maintain good social relations, fair agreement, and stable trade without opening a space for price disputes
Main purpose	To realise social justice and economic <i>maṣlahah</i> by balancing certainty of individual rights and social order, so transactions remain <i>shari'ah</i> compliant, workable, and beneficial for the parties

Ibn 'Ābidīn's *Istihṣān* in *Bay' al-Istijrar* within Contemporary *Mu'āmalah* Contracts

Istihṣān in the Ḥanafī school operates within a clear sequence of *istinbāṭ*, beginning with al Qur'ān, then the Sunnah, then *ijmā'*, followed by *qiyās*, and only then *istihṣān* when *qiyās* is no longer sufficient to resolve the issue.⁵⁴ This order can be read from the well-known response in the ḥadīth of Mu'ādh ibn Jabal, as noted in the introduction. A similar mode of reasoning is also attributed to Abū Ḥanīfah in his statement, “*akbuḏu bi kitāb Allāh, fa in lam ajid fa bi sunnati rasūl Allāh, fa in lam ajid fī kitāb Allāh wa lā sunnati rasūl Allāh akhadhtu bi qawli al ṣaḥābah*” (I take from the Book of God, and if I do not find it then from the Sunnah of the Messenger of God, and if I do not find it in the Book of God or the Sunnah of the Messenger of God then I take from the opinions of the Companions).⁵⁵ This formulation places *istihṣān* as an instrument that continues to work under the discipline of evidences, rather than as an independent free choice.

⁵⁴ Jum'ah, *Al-Madkhal ilā Dirāsati Al-Maṣāhib Al-Fiqhiyyah*.

⁵⁵ Az-Zuhayli, *Uṣūl Al-Fiqh Al-Ḥanafī*, Abdulhalik et al., “Law Basics in Hanafi Madhab.”

Istihsan is applied when *qiyās* produces consequences that are judged unsuitable or too restrictive for functioning *mu'āmalah*, especially when the effect generates hardship, widens dispute, or disrupts the justice that should be maintained.⁵⁶ A highly explicit formulation appears in the expression, “*yamḍī al umūra 'alā al qiyās, fa idhā qubīḥa al qiyās yamḍīhā 'alā al istiḥsān*” (matters proceed by *qiyās*, yet when *qiyās* becomes objectionable or inappropriate, matters proceed by *istiḥsān*).⁵⁷ The term *qubīḥa* provides an important methodological emphasis. *Qiyās* may be correct as an analogical pattern yet become inappropriate when applied to real social situations, so another path is required to close mafsadah (harm) and to safeguard maṣlaḥah (public interest).

The operational boundary of *istiḥsān* can also be clarified through a classical definition frequently cited in the Ḥanafī school. Al Karkhī defines it as “*an ya'dila al mujtahid 'an an yahkuma fi al mas'alah bi mithli mā ḥakama bihi fi naẓā'irihā li wajbin aqwā yaqtaḍī al 'udul 'an al anwal*” (a mujtahid departs from the ruling ordinarily applied in similar cases because a stronger consideration requires departing from the first ruling).⁵⁸ This definition makes *istiḥsān* operationally readable. *Istiḥsān* is not personal feeling, but a shift in ruling due to a stronger reason. The same explanation also points to two broad patterns of *istiḥsān*. A first pattern prefers *qiyās* khafī (a less apparent analogy) when *qiyās* jalī (a more apparent analogy) appears dominant but yields a less appropriate ruling. A second pattern excludes a particular case from a general maxim because a proof requires such an exception. This range is then elaborated into *istiḥsān* al sunnah, *istiḥsān* al ijma', and *istiḥsān* al qarūrah, such as permissibility supported by the Sunnah, permissibility of a contract affirmed through the collective practice of the community, and permissibility taken to prevent severe hardship in basic needs.⁵⁹

The domain of *'urf* also becomes central when *istiḥsān* is used to read *mu'āmalah* that lives within social habit. Definitions of *'urf* in the Ḥanafī uṣūl tradition describe it as something stable, acceptable to sound reason, and recognised by a sound disposition. Al Nasafī's formulation, “*mā istaqarra fi al nufūs min jibati al 'uqūl wa talaqqat hu al ṭibā' al salimah bi al qubul*” (something that settles in the self through rational judgement and is received with acceptance by a sound disposition), indicates that *'urf* is not a passing habit. Ibn 'Ābidīn's explanation of *'ādah* also strengthens this sense of stability, “*al 'ādah ma'khūdhah min al mu'āwadah, fa bi takrārihā wa mu'āwadatihā marrah ba'da ukhrā ṣārat ma'rūfah mustaqirrah fi al nufūs wa al 'uqūl*” (habit is taken from repeated practice, and through repetition over time it becomes something known and stable in the self and the mind).⁶⁰ This measure is relevant for contemporary transactions that often rely on market standards, administrative conventions, and repeated practices in trade.⁶¹

Its ethical boundary lies in distinguishing *'urf ṣaḥīḥ* (valid custom) from *'urf fāsid* (corrupt custom). Valid *'urf* operates as long as it does not contradict an explicit naṣṣ and does not transform what is lawful into unlawful or the reverse, while corrupt *'urf* must be

⁵⁶ Jum'ah, *Al-Madkhal ilā Dirāsati Al-Maḥābiḥ Al-Fiqhiyyah*; Suud Sarim Karimullah and Arif Sugitanata, “The Hanafi School of Islamic Jurisprudence Literature: A Historical Account,” *Journal of Islamic History and Manuscript* 2, no. 1 (2023): 1–20, <https://doi.org/10.24090/jihm.v2i1.7788>.

⁵⁷ Abidin, *Nasamat Al-Ashar*.

⁵⁸ Wahbah Az-Zuhaili, *Ushul Fiqh Al-Islami* (Darul Fikr, 1986); Jum'ah, *Al-Madkhal ilā Dirāsati Al-Maḥābiḥ Al-Fiqhiyyah*.

⁵⁹ Az-Zuhaili, *Ushul Fiqh Al-Islami*.

⁶⁰ Ibnu 'Ābidīn, *Nasyru Al-'Urfi fi Binā'i Al-Aḥkām 'alā Al-'Urfi World League of Hanafi Scholars* 2020.

⁶¹ Abidin, *Radd Al-Mukhtar Ala al-Durr Mukhtar Syarh al-Tanwir al-Absar* (7).

rejected because it implies disregarding explicit texts and following personal desire.⁶² The verse of Al-'An'ām: 116, “*wa in tuti' akthara man fi al ard yudilluka 'an sabil Allah*” (if you follow most of those on earth, they will lead you away from the path of God) functions as a reminder that the number of practitioners does not automatically make a practice correct.⁶³ This point matters when *istihsan* is used to read new economic practices. Legitimacy does not rest on widespread use alone. Legitimacy rests on testing clarity of rights and obligations, testing fairness, testing avoidance of destructive uncertainty, then testing conformity with the limits set by *naṣṣ*. This sequence allows *istihsan* to be read as juristic flexibility that remains disciplined. *Qiyās* remains a rational foundation, *istihsan* serves as a correction when *qiyās* produces inappropriate effects, while *'urf* functions as recognised social data as long as it is valid.⁶⁴

Contemporary *mu'āmalah* often shows situations in which goods or services are enjoyed first, while payment is completed later. Such patterns recall the mechanism of *Bay' al-Istijrar* discussed by Ibn 'Ābidīn, since the core is not the creation of a new contract, but the way a contract operates within repeated and familiar commercial relations. Examples can be seen in instalment transactions at supermarkets or wholesale stores, where customers take home necessities such as rice and cooking oil, then settle the payment gradually, on the condition that the price has been agreed from the outset or can at least be confirmed at the time of billing.⁶⁵ Similar patterns appear in car rental paid after the period of use ends, in restaurant dining where consumption occurs before payment, in pre order arrangements for goods not yet available while the item identity and price have been agreed, and in service provision such as contractors who complete work first and bill after the result is delivered. These examples are not intended as total equivalence, but as an indication that certain transactional structures operate through customary economic relations, deferred payment, and a need for certainty so that disputes do not arise.⁶⁶

A *qiyās* based reading often places *Bay' al-Istijrar* in a problematic position because it is linked with a contract subject matter that does not yet exist or is not yet under the control of the transacting party. Ibn 'Ābidīn, however, offers a justificatory route through *istihsan*, *'urf*, and *ijmā'*, so the issue does not remain trapped between general rules and practical realities. The emphasis is not to cancel the rule, but to set boundaries so that a widely practiced pattern does not become a gateway to *gharar*. *'urf* functions as an important basis, yet an epistemological question must be handled carefully so that legal reasoning remains disciplined.⁶⁷ To what extent can *'urf* outweigh a *qiyās* based rule, and what limits prevent it from opening space for legal manipulation. Such questions matter because sound *'urf* is not

⁶² Abidin, *Nasamat Al-Ashar*.

⁶³ Az-Zuhaily, *Ushul Fiqh Al-Islami*; Abidin, *Nasamat Al-Ashar*.

⁶⁴ Abdul Kholik and Mustofa Mustofa, “ISTIHSAN: Interconnection Of Traditional And Contemporary Thought,” *AL-SYAKHSIYYAH Jurnal Hukum Keluarga Islam Dan Kemanusiaan* 5, no. 2 (2023): 181–90, <https://doi.org/10.30863/as-hki.v5i2.5500>.

⁶⁵ Lusiana Lusiana et al., “Istihsan Concept in Multi Contract Online Transactions of Go-Food Services in The Go-Jek Application,” *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 22, no. 1 (2022): 95–108, <https://doi.org/10.19109/nurani.v22i1.11131>.

⁶⁶ Arif Nuraeni & Muttaqin Muhammad Ngizzul, “Istihsan Sebagai Metode Istimbath Hukum Imam Hanafi Dan Relevansinya Dalam Pengembangan Ekonomi Syariah,” *Tribakti: Jurnal Pemikiran Keislaman* 31, no. 1 (2020): 1–16, <https://doi.org/10.33367/tribakti.v31i1.957>.

⁶⁷ Alimatul Farida et al., “Peran Istihsan Dalam Dinamisasi Pemikiran Hukum Ekonomi Syariah.”

automatically identical with what is merely popular, so standards are needed to keep transactions fair and defensible.⁶⁸

Ibn 'Ābidīn also aligns *Bay' al-Istijrār* with *bay' al-mu'āṭah*, particularly in the idea that a contract can occur through reciprocal exchange without a formal verbal formula when its essential elements are clear.⁶⁹ The difference lies in timing of payment, whether immediate or deferred, and this difference raises validity concerns when facing *gharar* and deferred obligation. Price clarity therefore becomes decisive. Modern *mu'āmalah* often operates in environments of fluctuating prices, especially in digital and global transactions, so a further question becomes difficult to avoid. Can *istiḥsān* address the problem of dynamic pricing in digital and global transactions. Care is required, because justification for take first pay later patterns can only be maintained when price can be secured through an initial agreement, a clear market standard, or a mutually agreed mechanism that narrows the space for dispute. Strength of *istiḥsān* at this point appears as an instrument that opens space for accepting modern arrangements such as leasing, Sharia compliant credit cards, and pre order models that are not always easily justified through classical *qiyās*. Ibn 'Ābidīn's approach suggests that Islamic law can adjust to real economic practice without abandoning *shari'ah* principles, since *Bay' al-Istijrār* fundamentally relies on trust and tested social habit. At the contemporary level, this trust-based foundation can encourage Sharia regulation that emphasises transparency, certainty of rights and obligations, and healthy commercial social relations. *Istiḥsān* is also understood as a means of *takhfīf al-mashaqqah* (alleviating hardship), so its relation with *maqāṣid al-shari'ah* (objectives of Islamic law) functions as orientation rather than slogan. Within this space, Ibn 'Ābidīn's argument allows an expanded reading of non-physical transactions common in the digital era, including cloud services and virtual assets, as long as elements of price certainty, limits of benefit, and protection of weaker parties are maintained.⁷⁰ Use of '*urf* and *ijmā'* also indicates that Islamic law does not operate as a rigid system, but interacts with social reality, yet this interaction requires methodological discipline so that '*urf* does not turn into a reason that justifies anything.⁷¹

Ibn 'Ābidīn's view on *Bay' al-Istijrār* presents *istiḥsān* as an instrument that enables Islamic law to respond to socio economic needs without losing normative integrity, yet this should not become a pragmatic justification. Research limitations should be read as a work agenda rather than as a rhetorical closing. A dominant reliance on Radd al Mukhtār means that exploration of other works, including Nasamāt al Ashār, can still be expanded to strengthen the *Uṣūl al-Fiqh* foundation in use. Limited cross madhhab comparison also leaves room for critique, particularly because debates on '*urf* and *istiḥsān* outside the Ḥanafī school are known to be sharp and often touch epistemological roots. Applied discussion of modern products such as Islamic leasing, e commerce, and Islamic fintech also needs to move beyond examples toward tests of contractual equivalence and tolerable limits of *gharar*.

⁶⁸ M. Abdul Kharis JM. Muslimin, "ISTISHSĀN AND ISTISHĀB IN ISLAMIC LEGAL REASONING: Towards the Extension of Legal Finding in the Context of Indonesia," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 20, no. 2 (2020): 163–79, <https://doi.org/10.30631/alrisalah.v20i2.589>, hlm. 188.

⁶⁹ Abidin, *Radd Al-Mukhtar Ala al-Durr Mukhtar Syarb al-Tanwir al-Absar* (7).

⁷⁰ Johari et al., "Istiḥsān Method and Its Relevance to Islamic Law Reform: Content Analysis of Fatwa of Majelis Ulama Indonesia on Corneal Transplant," *De Jure: Jurnal Hukum Dan Syaria* 15, no. 1 (2023): 1–20, <https://doi.org/10.18860/j-fsh.v15i1.18442>.

⁷¹ Iskandar Usman, *Istihsan Dan Pembaharuan Hukum Islam*, 1st ed. (PT. Raja Grafindo Persada, 1994).p. 195.

Conclusion

Ibn 'Abidin's reasoning places *Bay' al-Istijrar* as a gradual transaction that can be justified through *istihsan* when *qiyas* generates hardship and increases the likelihood of dispute. *Istihsan* is understood as moving toward a stronger or more fitting proof, then anchored in *ijma'*, *'urf*, or *darurah* in line with Hanafi typology. A received practice must qualify as *'urf shahih* (valid custom) and must not contradict *naṣṣ* (explicit scriptural text). This foundation restrains *istihsan* so it does not turn into *hukm bi al-hawa'* (ruling driven by personal desire). The measure of permissibility lies in certainty of *thaman ma'lum* (a known price) at the moment the goods are taken, while later calculation functions as a record of the total quantity already taken. Contract formation is understood to occur through exchange and delivery, and this pattern explains the proximity of *bay' al-istijrar* to *bay' al-mu'ata'ah* (sale concluded through exchange without a formal verbal formula) as long as the essential elements remain clear.

Contemporary *mu'amalah* shows recurring transactions supported by price lists and periodic billing mechanisms, including routine purchases, digital trade, and subscription-based services. Relevance of Ibn 'Abidin's argument does not rest on procedural resemblance alone, but on conditions that can be tested. Certainty of a price standard should be traceable through price lists, transaction records, or an agreed pricing mechanism. Clarity of the contract moment at each taking should be supported by proof of delivery and fair return rules. *Gharar* is narrowed through price transparency, limits on unilateral price changes, and accessible dispute resolution procedures. *Istihsan* functions as *takhfif al-mashaqqah* (alleviating hardship), yet normative control remains necessary. *Maqasid al-shari'ah* (objectives of Islamic law) provides ethical orientation, especially protection of property and fairness in exchange.

Limits of this study appear in its dominant reliance on Radd al-Muhtār as the primary source, so cross verification with other works of Ibn 'Abidin and wider Hanafi literature remains underdeveloped. Space for cross madhhab comparison is also narrow, even though differences in attitudes toward *istihsan* shape assessments of *'urf* and *gharar*. Field verification of market practice has not been conducted, so the reading remains at the doctrinal level. Further research can develop operational indicators for *thaman ma'lum* and tolerable limits of *gharar*, then test them in online trade, pre order models, financing, and recurring service transactions, supported by examination of contract documents and *fatwa* institutional policies so legal assessment does not rest on assumptions.

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