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**Leasing Contract
in Fiqh and Law**

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Introduction:

Praise be to Allah, by Whose grace good deeds are accomplished and completed. Prayers and peace be upon the Messenger of Allah, the Truthful.

Tadamon Islamic Bank has the pleasure and honour to present to the reader this book: “The Leasing Contract”, as one of its publication series, which is concerned with the contracts of financial transactions and relevant laws, as well as banking applications, *fatwas* (interpretations) and annual symposiums held by the bank. Our aim is to enrich the field of banking with scientific practical information. The contracts of financial transactions are the mechanisms, methods and investment types through which financial resources are utilized and bank deposits are activated and mobilized, in order to meet the needs of customers and businessmen for financing their various projects, and to gain revenues and benefits from such transactions.

The leasing contract, the subject of this book, is an old concept, as old as the benefit gained from properties owned by others, and the need of other people to utilize these properties versus whatsoever is agreed upon. It is as changeable as the changes of people’s needs to benefit which, are not confined by time, place or environment. Therefore, the legality of a contract is continuous and changeable according to the needs of people, within the framework of the total principles of *fiqh* (Islamic jurisprudence). The book handles the definition of a leasing contract, the evidence of the legality of working with it, its principal elements and conditions. We put emphasis on the conditions of the place of a leasing contract, which is the benefit from the hired property, as well as the duration of leasing, how the benefit is gained and the limits of dealing

with it. We also include the general rules of the commitments of the lessor and the lessee (one who uses the property) and how the contract is annulled and canceled. All these are handled according to fiqh and the regulating rules, without boring details or defective abbreviation.

The book mentions some types of leasing to be included in the (Sudanese) Civil Transactions Act of 1984, such as leasing agricultural lands, the contracts of muzara'a (muzara'ah), mussaga (musaqah), *mugharasah* (a type of orchard leasing) and leasing of the physical assets of endowment.

The book has defined two types of banking applications of leasing contract, namely, a leasing contract on a possession basis and a leasing contract on an operation basis (as quoted from applications of Dallah Al-Barakah and Al-Rajhi Co.).

The book concludes with samples of some applications of leasing contracts for real estate, means of transport, muzara'a and leasing on a possession basis. We hope that this book forms a modest and simple addition to previous publications, a test of authentication of banking practicing and a reference for multiple applications of leasing contracts in all sectors.

May Allah grant us success and support.

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The Leasing (*Ijarah*) Contract (1)

Definition:

A. In Arabic *Ijarah*, *'Ujrah* and *Kiraa* have the same meaning, i.e. leasing or rental. If you say, for instance, he hired the house, it means he used it for his own interest against paying of a lease to its owner. *Kiraa* could mean the hire paid against the hired thing or to the hired person (the lessee).

The lessor could be called in Arabic *A'jir*, *Mukrin* or *Mukarin..* etc.

B. Definition of *Ijarah* (leasing) in Islamic fiqh⁽²⁾:

1. The Hanafiya: *Ijarah* is making possession of assets against compensation.
2. Malikiya and Hanabla: The I'jar is taking possession of a permissible thing within a known period against compensation.
3. Al-Shafi'iyah: I'jar is a contract on an intended, known and permissible interest (benefit), liable to be permissible or affable, versus a known compensation.

C. Definition according to the law:

The Civil Transactions Act of 1984 defined the leasing contract as follows: leasing is allowing possession by means of a lessor to the lessee (the hiring person), of an intended benefit from the hired thing, for a certain period, versus a known compensation (A. 295).

The Islamic legality of the leasing contract:

The leasing contract is a legitimate contract, according to evidences from Qur'an and Sunnah (traditions of the Prophet Mohammed (pbuh)).

It was approved by (Jumhoor Al-'Ulamaa) i.e. the majority of Muslim scholars, although some of them did not approve it.

A. Evidence from Qur'an:

Verse: “Then one of the two women came to him walking with shyness. She said: ‘indeed my father invites you that he may reward you for having watered for us’. Surah Al-Qasa: 25).

Allah, the Sublime also says: “One of the women said, ‘O my father, hire him, indeed, the best one you can hire is the strong and the trustworthy.’ He said, ‘Indeed I wish to wed you one of these, my two daughters, on (the condition) that you serve me for eight years; but if you complete ten, it will be (as a favor) from you....’” Surah Al-Qasas: 26-27).

Al-Qurtabi interpreted verse 25 above as follows: This verse is evidence that leasing used to be legitimate and known by these people, and it used to be in any religion, because it is a necessity for the creation instinct, and a benefit resulting from cooperation between people⁽³⁾.

As for the interpretation of the verse: ‘There is no blame upon you for seeking bounty from your Lord...’ (Surah Al-Baqarah: 198), that this verse was (revealed) about the Hajj (pilgrimage) of Al-Mukari, i.e. the one who owns and hires animals for other people during the occasion of Hajj. It was reported that a man came to Ibn ‘Umar (may Allah be pleased with him and his father), and said: we are a people who hire our animals to other people and we pretend, therefore, that we have no (reward) of Hajj. Ibn ‘Umar said to him: (Do you not perform the duties of ihraam (interdiction), wuqoof (attendance at Arafat for a certain period of time) and stoning (throwing small stones at Al-Jamarat areas).

The man answered: Yes, then Ibn ‘Umar said: you are pilgrims, and added that a man asked the Messenger of Allah (pbuh) about what you asked me for, but the Messenger of Allah did not answer him, before the Allah revealed: ‘there is no blame upon you...’, after which the Messenger (pbuh) said: You are pilgrims.

Allah, the Almighty also says: “..... And if they breast-feed for you then give them their payment.....”. Surah At-Talaq: 6).

B. Evidence from Sunnah:

1. The hadith (statement) of the Prophet (pbuh) in which he says: “Give the hired person his recompense before his sweat (of work) dries up”.⁽⁴⁾ This order of giving the recompense is an evidence of the legality of leasing.
2. The Prophet (pbuh) says: “Any one who hires a person should tell him the recompense thereof”.⁽⁵⁾
3. Saeed Ibn Al-Mussayab reported from Sa’ad (may Allah be pleased of him) that he said: ‘we used to hire the leaseholds (lands) against the products therein, but the Messenger of Allah (pbuh) prevented us, and ordered us to hire it with gold or notes (money)’.⁽⁶⁾
4. Ibn Abbas (may Allah be pleased of him) reported that the prophet (pbuh) underwent a cupping operation and he gave the operator his recompense.⁽⁷⁾

C. Ijmaa’ (Unanimity) :

5. The whole nation-at the time of the prophet’s companions, unanimously approved the hiring, because of the need of people for benefits, such as the need for physical assets, and because the sale contract on assets is permissible, therefore leasing contract on benefits is permissible as well.⁽⁸⁾

D. Scholars who did not permit the leasing contract and their evidences:

Leasing contract was not approved by Abu Bakr Al-Asum, Ismail Ibn’Aliyah, AL-Hassan Al-Basri, AL-Qashani, Al-Zahrawani and Ibn Kessan, because leasing is selling of the benefit, and benefits are absent (not payable) at the time of ratifying the contract, and are fulfilled gradually with time. The absent should not be sold, and it is not permissible to add selling for something (happens) in the future.⁽⁹⁾

As reported from the book of Al-Badaai', Abu Bakr Al-Asum said that leasing is not permissible. His syllogism, as AL-Kassani said, was based on the fact that leasing is a selling of benefit, and benefits are absent, and the absent could not be sold, and it is not allowed to add selling against what could be taken in the future, such as adding selling for things taken in the future. Therefore, there is no way of permitting it neither for consideration of the present or the future. However, he said, we liked the permission according to Qur'an, Sunnah and unanimity.⁽¹⁰⁾

Ibn Rushd debated that if the benefits are absent at the time of ratifying the contract, they are often fulfilled (expected). Shariah observes what benefit could be fulfilled and that benefit whose chance of being fulfilled and not fulfilled is equal.⁽¹¹⁾ The ijmaa' of approving leasing by the companions of the Prophet (pbuh), before the existence of those who go up against it, is evidence against them (those who do not permit leasing).

Principal elements of a leasing contract:

- A. The two contract parties: i.e. the lessor (owner of the property) and the lessee (one who desires to hire the property).
- B. Form of statement: composed of the consent (positively) from one party and the acceptance from the other party).
- C. Subject of contract: the benefit from the hired property and the recompense paid therefor.

2. Principal element according to Al-Hanafiyyah:

According to the idea of Al-Hanafiyyah scholars, the principal element of the leasing contract is the statement composed of consent (positively) and acceptance. They shortened it in just the statement, because the principal element, according to their idea, is what the existence of a thing depends on, and it constitutes a part of the fact of that thing. It is expressed in

terms of uttered statement or the like, e.g. written statement, signal or action.

As for the other elements i.e. the two parties and the subject, they are necessary elements for the formation of the contract, and regarded as conditions in the statement.

The majority of scholars are of the opinion that the principal element is the element upon which the existence of a thing depends, even if it is not a part of the fact of that thing. Therefore the elements of contract, according to them, are: the contract parties, the statement and the subject of contract.⁽¹²⁾

Conditions of the leasing contract:

1. The conditions about the parties are: qualification (aptitude) for contracting (*ahliyyah*) and *wilayah* (the right of dealing).
 - **The Civil Transactions Act of 1984, under Article 296, states the following:**
1. For the ratification of the leasing contract, aptitude of the two parties, at the time of contracting, is a condition.
2. For the execution of the contract, the lessor or his agent must have the right to deal with the hired thing.
3. The hiring by the officious (one who is not the owner) depends on permission from the one who has the right of dealing, according to the acknowledged conditions therefore.
4. The *iyjab* (positive consent) and acceptance forming the statement, must be specific and indicative that the intention of the two parties is a leasing contract, that the positively and acceptance must be consistent, that positively and acceptance must be in one meeting, (i.e. they should be connected together) and that no party should show no sign or action which could be regarded as denial of the contract.

1. Executable leasing contract:

It is the leasing contract which must be executed at ratification, i.e. it is done in a form free of conditions and not added to a time in the future. It must be valid and effective at once, if other elements and conditions are fulfilled. An example of executable leasing contract: the lessor says to the lessee: I hire you my real estate, which is built on the land piece number so and so, for one year, starting from so, against a payment of so many dinars. The lessee says: I accept.

2. Connecting the leasing contract to a future time:

The leasing contract could be ratified with connection to a future time, according to the idea of the majority of scholars, and the effects thereof will be realized only after the coming of that future time, i.e. the positively (consent) is stated in connection or addition to a future time. The lessor could say, for instance, I hire to you my land transport fleet, which is composed of so vehicles with so and so specifications, for one month, starting from the first day of the coming month, for the payment of so and so. The lessee then accepts. This contract is ratified at once but its effect, i.e. benefiting from the fleet, will not be existed before the fixed date in the future (the first day of the coming month). Al-Shafi'iyyah (followers of Al-Imam Al-Shafi'i), however, did not permit adding a future time for the leasing contract.

3. Suspension of the leasing contract on a condition:

This means that the contract's existence (validity) is suspended on the existence of another thing, and this is not permissible. The difference between this and the addition of future time is that the condition – suspended contract will not be ratified at once although its effects are in the future. The leasing contract is not ratified if the lessor says, for example, I hire to you my house in the area of so, with a payment of so if you travel to another town. This contract is false, because it is a

condition-suspended. This is because making financial possessing, except in case of a will, does not accept suspension.⁽¹³⁾

Suspension, however, could be a promise of a contract in the future, or of an executable contract ratified at the time in which contracting is unsuspending and not added to a future time.

The civil transactions act permits addition of leasing to the future, in Article (302) which states: Addition of leasing to a future period is permissible, and obligatory in the contract, unless the hired thing is an endowment or orphan wealth, which shall not be added to a future period over one year.⁽¹⁴⁾

The subject of a leasing contract and its conditions:

The subject being hired could be a benefit from a physical property, such as a leasehold (land rented), or hiring of buildings, establishments, equipment, vehicles, airplanes, ships... etc. The subject of leasing could be a man's work, in which the person is called the hired person (Al-Ajeer), or the employee as we see in the case of employing the labourers, medical doctors, engineers and professionals.

As leasing is conducted on the benefits of properties, because benefits are the subject of the leasing contract agreed upon, therefore the physical properties are regarded as substitutes of the benefits thereof in the leasing contract, and, hence, the existence of these properties is regarded as the existence of their benefits, until the correlation between the two parties of the contract is realized. Their correlation will be connected with an existing physical thing, because the benefit is not an existing thing and has no identity independent of identities and physical properties from which this benefit is derived.

Ibn Al-Qayyim says that the leasing contract could be conducted on physical properties themselves, the same as on benefits, such as leasing of the lactating mother for her milk.

The Civil Transactions Act has adopted the idea of the majority of scholars, in Article 297 which states:

“The (thing) contracted upon in the leasing contract is the benefit”.

The conditions related to the issue under contract in the leasing contract:

These include the following:

1. The benefit should be legitimate according to Shari’ah, as it is not permissible to contract about unlawful things (disobediences).⁽¹⁶⁾
2. The benefit should be well known and identified in such a way as to give no chance of ignorance which leads to dispute.⁽¹⁷⁾

Adequate recognition of the benefit should be one of three methods; these methods are:

Statement or mentioning and description of the benefit or indication of its nature. The Civil Transactions Act of 1984 put a condition for the benefit contracted upon, that it should be adequately recognized in such a way as to prevent a dispute (A. 297/2B).

3. The submission of the benefit under contract should be feasible i.e. there is a possibility of delivering the subject of the benefit which is the hired property.⁽¹⁸⁾

If the benefit is connected with any right apart from the right of the lessee, then the leasing will be suspended until this right is fulfilled.

Leasing of the Common (Al-Mushaa’):

This is connected with the ability of submission and recognition of the benefit. Therefore, if the common part i.e. the common benefit, is hired to the partner, the lease is correct. If the common part is hired to another one (not the partner), or to a certain partner among other partners, it was said that the lease is true, because only renouncing is required to submit the hired property, which is feasible. Another opinion says hiring is not true because it is impossible to submit the common part to the lessee except

through *Al-Muhaya'ah* (alternation in the process of benefiting), and the lessee deserves nothing but the effect of the leasing contract. Therefore, alteration in benefiting at the same time is a condition and an effect of the permission of the contract. Alternation, being a condition of the permission of the contract, should precede it, and being an effect of it, it should come after it. Because it is impossible that the alteration can precede the contract and come after it at the same time, the contract is not true in this case.⁽¹⁹⁾

As alternation in benefiting is possible, through an agreement between the lessee and the lessor's partner, correctness of hiring is preponderant in this case.

4. The subject of benefit should be free of defects which violate the benefit contracted upon, or prevent it to take place, unless the lessee recognizes and accepts these defects.

The Civil Transaction Act states that the lessor shall submit the subject (hired thing) and anything relevant to it in a condition through which the intended benefit is completely fulfilled. Submission is carried out by enabling the lessee to catch the hired thing without an obstacle which hinders the benefiting from it, in such a way as to be at his possession without interruption, till the termination of the hiring period (A. 306/1, 2). The Act has treated the defects of the hired thing in Article (312) as follows:

- A. The lessor guarantees to the lessee all the defects of the hired thing that hinder the utilization thereof or degrade it in a massive manner, and he does not guarantee the defects which are used to be forgiven or renounced according to traditions.
- B. The lessor does not guarantee the defect if the lessee had already known that defect at the time of contracting, or that it had been possible to be known by him.

- C. If the consequence of the defect is that the lessee is deprived of utilization of the hired thing, he could ask for cancellation of the contract or reduction of the hiring rate, provided the guarantee of any harm as a result of that defect.
 - D. The provisions of the defect's alternative in a sold thing are also applied in the existence of the defect in hiring, as long as the hiring nature is not violated.
 - E. Any agreement that exempts from the guarantee of defect shall be regarded as false.
5. The subject of benefit must be known to the lessee at the time of contracting.

The lease duration:

If the benefit under contract is liable to extension and continuity, and mentioning its name is not sufficient to determine its volume, it is sufficient to complete the knowledge about it, to mention its duration, so that this will be its rate. Examples of this situation are the leasing of houses, land and transport vehicles sometimes. Specification of the duration of leasing is one of the methods of recognizing the thing under contract. If the duration is mentioned without specification, such as a year, a month... etc., the lease shall commence from the time of contract, if the starting time is not stated, and there is no alternative condition, then the lease duration starts from the time of the alternative's dropping.

If, however, a specified duration is mentioned with respect to the start and end of the lease duration, then this duration shall be applied, unless a new event takes place. Leasing is valid if it is conducted as a month by month or day by day.. etc lease.

With respect to the lease duration, the Civil Transactions Act, article (301) states the following:

1. The lease duration must be known in advance and in an obvious method.
2. The lease duration could be as long as the lifetime of the lessor or the lessee, and in this case the contract ends with the end of the lifetime of the lessor or the lessee.
3. The contract provisions could state that it continues as long as the lessee pays the rent and adheres to its legal conditions, and in this case the contract provisions are regarded as if they state that the duration continues for the lifetime of the lessee.
4. If the duration is not specified in the contract, or not clearly agreed upon, then the duration is regarded as the shortest unit of time adopted according to tradition, with consideration to the type of the rented thing, the nature of relations between the two parties and the purpose of leasing.
5. If there is no certain tradition or if the court fails to specify a certain tradition, then the leasing contract should be assumed as taking a duration of not more than one year.

The Act has exempted the wealth of endowment and the orphan from the absolute or long duration. The Act has limited its duration with a leasing of only five years, not liable to be increased unless by permission from the area in question. Article (304) states the conditions in which the lease duration could be increased according to an extreme necessity.

The Building Leasing Act of 1991 includes statements about the lease duration. One example of these statements talks about the conventional leasing in Article (14) which states:

1. After its termination the contracted leasing changes into a conventional leasing with the same conditions of the contracted leasing, as long as these conditions are consistent

with the provisions of this Act, except the right of asking for the amendment of the hiring rate.

2. The termination of the period of conventional leasing is as follows:
 - A. For the leanings whose contracts had finished before the enforcement of this Act, seven years should elapse from enforcement of the Act.
 - B. For the leanings whose contracts have started after the enforcement of the Act, seven years should elapse from the date of being changed to conventional leasing.

Article (15) of the same Act states the following about the conventional terms, in item No. (2):

If the lease duration has been for unspecified period, it should be regarded as finished after the elapse of one year starting from the date of any written notification to the lessee about the termination of the leasing.

How is the benefit fulfilled when leasing physical properties?

The lessee has the right of utilizing the leased property according to the terms agreed upon in the leasing contract. If there was no agreement about the utilization of the property, then the utilization shall be fulfilled according to the traditions in these situations.

According to this, if the lessee uses the benefit in a different way which is contrary to the conditions of the leasing contract and the traditions, a matter which leads to a harm, then this is regarded as a violation from the lessee, and he should guarantee the harm. Other lighter and lower violations are permissible according to Shari'ah, because the contentment of the lessor with some sort of harm, is regarded as a contentment with a similar or lower thing to the harm.

The act has mentioned the right of utilization in many articles, some of which include:

1. Article (305/1) of the Civil Transactions Act states the following: If the leasing contract is done in a correct way, the right of utilizing the hired thing transfers to the lessee.

Article (306/1) states that the lessor shall submit the hired thing and the relatives thereof, in a condition which fulfils the intended utilization fully.

Article (309)/6 states that the lessor has the right to prevent the lessee from doing any activity which leads to damage or change on the hired thing, or from installing any tools or equipment which may harm the hired thing or lower its value.

Article (315/3) states the following:

The lessee has no right to exceed the limits of utilizing the hired thing which are agreed upon in the contract. If there was no agreement, the utilization shall be according to traditions (convention).

Article (315/4) states that if the lessee exceeds the limits of utilization, or violates the adopted convention, the lessee has to guarantee the consequent harm.

One of the cases of utilizing the hired thing is to enable another one to use it. Article (320/1) states the following:

The lessee has the right to bend the hired thing to another (party), or enable that other party to use it, wholly or partly, without compensation as long as the other party uses it the same way.

The Building Leasing Act of 1991 has mentioned some cases of vacation and recovery of possession, due to maltreatment of the hired thing or not using it at all. These constitute some causes by which the lessor can ask for vacation and recovery of the hired building.

Article 11/1, items B, C, G, K, L, of the Act state the following:

The court issues a verdict of vacation in any lawsuit raised by the lessor concerning the recovery of possession of any building in any of the following cases:

- B. If the lessee, the people sharing him the building or the persons having permission from the lessee to use the buildings commit a repeated behaviour that causes disturbance to any one of the neighbours, the disturbed neighbour has the right to raise a lawsuit of vacation after the elapse of one month from the date of notifying the lessor.
- C. Existence of evidence that the buildings or any part of it are used for practicing any action contrary to general politeness and condemned by the law gives the right of the affected neighbour to raise a lawsuit of vacation of the building after one month of notifying the lessor.
- G. If the building is not used by the lessee for more than six consecutive months without reasonable cause, and he does not have a possession for the current use.
- K. Violation of any one of the terms of the leasing contract, which is not in contradiction with the provisions of this law.
- L. Misuse of the buildings by the lessee which causes physical damage to it.

Types of Leasing:

Leasing is divided into many types, according to the differences in the intended benefits of the leasing contract, and according to the special terms which are different from one kind to another.

1. Leasing of physical properties benefits:
2. Leasing on a work:

The first type is divided into two types:

- A. Leasing of physical properties which go back to the lessor after the end of the contract period (e.g. operational leasing).
- B. Leasing of physical properties whose properties transfer to the lessee after the end of the contract (possessing leasing), either through a

separate sale contract or through any type of contracting or behaviour apart from sale.

The second type i.e. leasing on work, is also divided into two types:

- A. A leasing in which the hired person (employee) confines his work to the lessor (employer) (private employee), i.e. the employee dedicates all his time and effort to the service of the employer.
- B. A leasing in which the employee serves other persons (common employee). Examples of this are craftsmen and labourers who work for more than one person. Work contracts are usually organized by work and employment laws and regulations.

Limits of lessee's dealing with the benefit under contract:

1. Specifying the statement in the leasing contract on the user if the benefit is different with different users:

The lessee has to confine the use to himself, if this is stated in the leasing contract. The lessee has no right to enable others to use the hired thing. If he violates this condition, he is regarded as a usurper, and if the hired thing is damaged or defected, he must guarantee the damage, defect or harm occurred.

Putting the statement in the leasing contract in a generalized manner without specifying the user in person, if the utilization is not different according to the user. If there is no statement in the leasing contract specifying the utilizer, i.e. the utilization is generalized and not specified or limited. In this case the utilizer will be the first one who utilizes the benefit under contract, and this will be as if it were a condition in the contract that it shall not be used by other parties.

2. A state in which the benefit is not different according to the user, like boarding a car, in which the lessee is not bound to a specified benefit, being mentioned as condition or not in the contract. Here

the condition is a false, and the lessee has the right to hire the hired thing to another or to lend it thereto, because he is the owner of the benefit the matter which gives him permission of action, and there is no use in restriction, because the benefit does not vary according to the user. Every user is like the other user.⁽²⁰⁾ Nevertheless, if the lessee wants to hire the hired thing to another, he has the right to do so, unless this other person is the owner of the property, because the owner cannot hire his own property. However this matter is controversial, because the majority of scholars say that benefit is a wealth. Therefore, the lessee has the right to hire it to anyone who wants to utilize it, whether the lessee is the owner of the hired thing or not, because the benefit has become under the possession of the lessee due to the recompense paid for it. The same goes for the recompense paid against the benefit; it becomes a property of the owner, as compensation for his property benefit, which is transferred to the lessee according to the leasing contract.

The Civil Transactions Act of 1984 permits the leasing of a hired thing, by permission from the lessor. Article 320/2 states the following:

The lessee has no right to hire the hired thing, wholly or partly, to another person except through permission or clear agreement from the lessor.

This verdict was confirmed by the Building Leasing Act of 1991, which regarded it as one of the stated terms in every leasing contract. Article (15/A) states the following: The lessee has no right to renounce the buildings, or to hire them in underlying way or to renounce their possession or the possession of any part of it by any other means except through a written agreement from the lessor.

Rights and obligations, however, are not affected with the new lessee, but he will be affected by the cancellation of the contract with the first lessee, according to the Civil Transactions Act of 1984, in which article 320, items 4, 5 state the following:

320/4: If the lessee hires a hired thing, according to permission from the lessor, the new lessee displaces the first one with all the rights and obligations made in the first contract.

320/5: If the leasing contract with the first lessee is annulled, the lessor has the right to annul the contract with the second lessee and to recover the hired thing.

In all the conditions of the lessee's action, the first lessee shall be bound to the benefit's limits, which he had possessed, in terms of type and time (type-wise and time-wise), Item 3 Article (320) of the Civil Transaction Act.

Hiring of buildings without permission from the lessor, is one of the causes of vacation and recovery of these buildings from the first lessee. Item (j) of Article (11) of the Building Leasing Act of 1991 states that the court shall issue a verdict of vacation following a lawsuit raised by the lessor to recover the possession of any building if hired wholly or partly in an underlying way without the consent of the lessor.

The lessee's responsibility towards the leased property:

The leased property is regarded as a trust in the possession of the lessee, as long as he does not exceeds his rights in benefiting from this property according to the conditions of the contract. Bearing this mind, if the hired property is damaged without aggression or default from the lessee, there is no guarantee against him. If he maltreats the property or neglects its maintenance, he will guarantee any damage or defect emerging from this negligence. The same verdict applies if the lessee exceeds his right in

benefiting from the property as indicated in the contract or known by convention.⁽²¹⁾

The Civil Transactions Act, 1984 has mentioned these provisions within the statements about the obligations of the lessee. Article (315) states the following:

1. The hired thing is a trust at the hands of the lessee, therefore he guarantees any decrease, damage or loss affecting the hired thing as a result of default or aggression by him. He has to maintain and keep it as a normal person does.
2. If there are multiple lessees, every one of them guarantees the harms resulting from his own aggression or default.
3. The lessee has no right to overdo or exceed the limits agreed upon in the contract in utilizing the hired thing. If there was no agreement, he has to use it according to the known contention.
4. If the lessee exceeds the limits of agreement or violates the convention, he has to guarantee any damage resulting from his behaviour.
5. The lessee has no right to make any change in the hired thing without consent from the lessor, unless this change is necessary to maintain the hired thing and does not result in any harm to the lessor.
6. The lessee shall be committed to make the repairs agreed upon or known by convention that he was to undertake them. During the leasing period the lessee has to clean the hired thing from accumulated dust, wastes and any things that he is assigned to do according to the known convention. Likewise, the lessee has no right to prevent the lessor from making necessary repairs in the hired thing (Article 316/1).

Maintenance and repair of the hired property:

Al-Hanafiyyah scholars say that the owner (lessor) of the hired property is committed to maintain it in such a way as to be good and valid for being used by the lessee according to the leasing contract.

However, according to them, the lessor shall not be compelled to do so, as the owner shall not be compelled to repair his ownership, but the lessee has an option of canceling the lease due to the defect in the hired thing under the contract. This is also the opinion of Al-Malikiyyah.

Works which must be done by the lessee, according to the convention, he must do them. For other works done by the lessee according to a request from the lessor, which includes repairs... etc, the lessee has the right to ask the lessor for the costs of these works unless he donates this.⁽²²⁾

If the lessee makes some repairs which must be done by the lessor, this will be a donation from the lessee and he deserves no payment from the lessor, unless he had done this by permission from a judge.

Al-Shafi'iyah and Al-Hanablah see that the duty of the lessor is to keep the safety and repair of the hired property, and the lessee has the right to annul the leasing contract if the lessor neglects the repair of the hired property.

The Act, however, says that the repair is the guarantee of the lessor. Article (309) of the Civil Transactions Act of 1984 states the following:

1. The lessor shall be obliged to repair defects taking place in the hired thing, which can affect the intended utilization thereof.
2. The lessee can have permission from the lessor with respect to repairs and recovery of costs of maintaining the defects according to the recognized rates. If the lessor prevents the lessee from making the repairs and does not make them by himself, the lessee has the right to annul the contract, or to have permission from a court enabling him to make the repairs and to ask the lessor to pay him the costs of repairs and the lawsuit.

3. If the repair of the defect is the duty of the lessor, but there was not way of being told by the lessee, the latter can make the repairs and ask the lessor to pay him the costs thereof within the limits and rates of the convention.
4. If the lessee – according to permission from the lessor – new buildings or repairs in favour of the hired thing, he has the right of recovering the costs from the lessor within the rates of convention, even if this right was not mentioned as a condition.
5. The lessee has no right to recover anything from the lessor if he has done the repairs only in his own personal benefit, unless they agree otherwise.

The Building Leasing Act of 1991 has also stated the responsibility of the lessor with respect to the repairs, unless exemptions have been made clearly, and the lessee has the right to recover the costs of repairs if he has not been committed thereto article (17) of the mentioned Act states the following, under the heading of repairs:

“The lessor is responsible for all the repairs which do not lie under the commitment of the lessee in an obvious and clear way in the leasing contract, and if the buildings need necessary repairs, the lessee has to inform the owner in a suitable period about making these repairs. The lessee can do these repairs at his own expense within suitable rates, provided that he has the right of recovering the costs from the lessor with a rate of 25% of the monthly or periodic hiring payment until he acquires the whole costs of repairs.”

The rent:

The rent stands for what the two contract parties regard as compensation against the benefit. Both the recompense and the benefit constitute the subject of leasing contract, and it is what we meant in the definition of leasing as (possession... benefit... compensation against a known thing).

Conditions of the rent:

1. Anything permissible as a price of a sale is also permissible as a rent in leasing. The rent could be a benefit even though it is not accepted as a price if the types of the two benefits are different.

Therefore, the recompense must be a wealth (money), as agreed upon by all scholars.

2. The recompense must be well known in such a way as to negate ignorance which leads to dispute.

Knowing the rent and negation of its ignorance could be achieved by the following:

- A. Through a comparative viewing of the contract or advance (previous) viewing, provided that this viewing's period is not long to the extent that it normally changes if the rent is existing and specified.
- B. If the rent is postponed as a promise, it should be known and specified in terms of type, quantity (rate) and attribute (description).⁽²³⁾

Article (298) of the Civil Transactions Act states the following:

1. The rent must be known in terms of type and quantity if it is money and in terms of type, description and quantity if it is not money. If the rent is unknown, the lease could be annulled, and the period before the annulment should be paid for as in similar conditions. The rent could be physical property, a loan, a benefit or any other payment adopted in selling.

Article (299) in the same Act states the following:

1. "The two parties of the contract shall identify the rent or a similar recompense (recompense in similar situations), its increase or decrease and the periods (times) of increase or decrease.

2. “If the two parties are not in agreement about the recompense, the similar recompense, the increase or decrease thereof, the court in question shall determine these things in a shortest possible period.”

- The similar recompense here means the similar recompense agreed upon or identified by the court.

The criteria and principles of identifying the similar recompense, however, are included in Article (300) of the above-mentioned Act, which states as follows:

1. When specifying the similar recompense, the following principles should be considered:
 - A. The additional recompense as a result of additions and repairs in the building or defects after the first agreement about the recompense.
 - B. The people’s need for accommodation and buildings abundance according to demand and supply.
 - C. The purpose of leasing.
 - D. The location of real estate.
 - E. The date of leasing.
 - F. Fees and taxes.
 - G. Engineering consultations.
 - H. Cost of living.
2. Asking for increase in leasing is not permissible before the elapse of three years starting from the date of the latest increase.
3. Amendment – of increase or decrease – shall be valid from the date of verdict.

The main recompense was stated in the Building Leasing Act of 1991 in Article (5) as follows:

1. The main recompense of buildings shall be as follows:

- A. For the rented buildings: the recompense agreed upon through a contract not expired at the time of issuance of this Act.
 - B. For buildings not hired at the time of issuance of this Act: the recompense agreed upon by the two parties.
 - C. For buildings hired in an unidentified recompense, or whose leasing contract has expired and not been vacated at the issuance of this Act, or whose contract will be expired after the issuance of the Act, the recompense shall be the fair one determined by the court.
2. When estimating the fair recompense the court shall consider the following criteria:
- A. Costs of buildings.
 - B. Land value.
 - C. Average of recompenses of similar buildings existing in the same quarter or locality.

Regarding the amendment of recompense, Article (6) of the Building Leasing Act, 1991 states the following:

Both the lessor and lessee have the right of asking amendment of the recompense:

- A. After the termination of the contract period in which the leasing becomes conventional.
- B. After the elapse of three years from the date of the last recompense made by the court, or agreed upon outside the contract.

The maximum legal and permissible increase, according to this Act, has been mentioned in Article (7) which states the following:

The maximum permissible increase in the main recompense of any building shall be:

- A. A sum of not more than 6% per year of any costs spent by the lessor in making amendments or additions to the building.

- B. A sum not more than the difference between the fees actually paid by the lessor and the sum which was used to be paid as fees (taxes) during the period of paying the main recompense, if the lessor is obliged to pay the fees according to the terms of leasing contract.

The increase, however, shall not be due or gained before the elapse of one month from the date of written information to the lessee regarding the intention of increasing the recompense (A. 8). The lessee can recover any increase not allowed by the Act.

Paying the recompense in advance is legal (after the contract), which is used to be called the advanced payment. It is also legal to be deferred or paid in installments in the contract. In the executable leasing, it is permissible to put a condition of paying the recompense in advance.

If the leasing is linked to a future time, then the condition of advanced leasing payment is false and not obligatory because it contradicts the nature of leasing, because the nature and requirement of added leasing is to postpone the effects thereof to the time to which it was added. The effects thereof include possessing the recompense to the lessor. Therefore possessing and execution of the recompense is deferred to that added time, and it is not permissible to violate this requirement through making a condition of advance payment, as this will be a cancellation of the contract requirement.

The lessor has a right – in the executable leasing – to refrain from delivering the hired property, until the recompense whose condition is to be paid in advance, is paid, and he has the right of canceling the contract if it is not paid.

The condition of postponing the recompense or paying it in installment in the contract shall be executed whether the leasing is executable or added. In this case, however, the owner of property has no right to detain it until

the recompense is paid, because the recompense is not obligatory before the arrival of its date.

If such conditions are not mentioned in the contract, convention should be followed. If there is no convention applied in paying the recompense, then it shall not be paid except the benefit is achieved.⁽²⁴⁾

Article (298) of the Civil Transactions Act of 1984 states the following:

1. The recompense is due after the achievement of benefit or the ability of achieving it. It is permissible to put a condition of advancing, postponing or paying the recompense by installments in certain times.
2. If the date of paying the recompense is not identified in the contract, it becomes absolutely due after the achievement of benefit or the ability to achieve it. The date of the recompense for a unit of time, however, shall be determined according to convention, or otherwise be determined by a court according to a request from the benefit deserve.
3. The recompense is not due for any period before the submission of the hired thing, unless the lessee was the cause of not being submitted. Any rent paid before the submission of the hired thing is recoverable or can be subtracted from the due recompense.

Article (9) of the Building leasing Act of 1991 stated the time and place of paying the recompense as follows:

The recompense and any legal increase thereof are due in the time and place specified in the contract. If there is no statement in the contract, it can be paid at the end of each month in the working place or house of the lessor.

The increase, however, is not due or acquired before the elapse of one month from the date of a written declaration from the lessor to the lessee including the intention of increasing the rent. (Article 8).

The Building Leasing Act of 1991 forbids the owners from asking for any additions apart from the rent as a condition for ratification, renewal or continuation of a leasing. If this added money is paid, the payer has the right to recover it, provided that the provisions mentioned above shall not be applied to ratification, renewal or continuation of a leasing for seven, or more, years (Article 16/1).

Item (2) of the same article states that the lessor of accommodation buildings for persons apart from public companies, institutions and corporations and embassies and international organizations... etc., has no right to ask for advanced rent for more than three month.

Committees of recompense estimation:

The Act has tackled the differences between the parties of contract about the rent, increase or decrease through setting of committees from experienced and specialized members, composed by the commissioner in question in order to estimate these things. The decisions of these committees can be appealed before a provincial judge, but they are regarded as obligatory if there is no appeal or refute against them during a period of fifteen days from the date of informing the parties in writing, (Article 299/3, 2) of the Civil Transactions Act.

Illegal bonus (*Khlo Ar-rajal*):

This is a sum of money asked by the owner or lessee of the building to be paid by a new lessee who wants to rent it. It is different from the rent which must also be paid in the future.

This is paid against the renouncing by the owner or the lessee from his right of using the benefit in favour of the new lessee.

In this meaning, this allowance is permissible according to the Shariah as seen by some scholars. These scholars see that compensation of this right is permissible, and, in the same time, this right could be renounced without compensation. This is the idea of some scholars of Al-Hanafiyyah, Al-Malikiyyah and Al-Shafi'iyyah.(25)

Some scholars, however, say that this allowance is not permissible because it lies within the framework of consuming (gaining) money by falsehood, which is prohibited and not permissible.⁽²⁶⁾

The first idea was shown by Dr. Wahba Al-Zuhaili, in his book *Islamic Fiqh* and its evidence (S.4, P 751), whereas the second idea was adopted by Shiekh Badr AL-Mutwalli Abd-Al-Basit, the legal advisor of the Kuwaiti Finance House.

The Sudanese law adopted the second idea, i.e., the prohibition of an allowance. Article 165/1/C of the Civil Transactions Act of 1984 states the following:

It is regarded as prohibited richness: anything acquired as untrue return (illusion) for any contract, obligation, allowance or any payment which does not constitute a real return or a legal right, as well as any amounts of money acquired through real estate or land leasing on purpose of making defects in the rights of lessees or in the rent.

Termination of a lease:

The leasing contract ends with the end of its duration, unless there is a legitimate reason which justifies the contract's continuity.

Leasing also ends due to annulment or reasons of annulment, as well as death, unless there is a reason for the continuation after death.

The lease can be cancelled due to the following conditions:

1. Destruction of the hired property if it has been nominated.
2. If one of the two parties of the contract chooses the condition's option in the contract, i.e., one of the two parties or both of them or

any body apart from them has the right of canceling or signing the contract within a known and reasonable period. If one of these parties cancels the contract, then it shall be cancelled.

3. If the lessee has put a condition of seeing the hired property, if he finds it consistent with the description that he had accept, he can sign the contract, but if he finds it otherwise, he has the right of canceling the contract.
4. If the lessee has put a condition that the hired thing should be free of certain defect, but he finds the same defect. In this case he has the right of canceling the contract. The same thing applies if the defect takes place after the contracting, but the lessee does not like it, because it affects the utilization of the hired property.

It is worth mentioning that cancellation of the contract due to options is one of the cases in which the obligatory contracts, such as leasing contracts, are cancelled.⁽²⁵⁾

5. Occurrence of an excuse to the lessor or the lessee which requires the cancellation. The control of this excuse is that if the leasing continues, there will be a harm to one of them.

According to Al-Hanafiyyah, the annulment and continuation of leasing through excuses are the same. However, the majority of scholars say that the leasing shall not be cancelled due to excuses, or due to the refusal of the lessee to utilize it, because leasing is like selling in its obligation.

6. According to Al-Hanafiyyah, the leasing can be cancelled by the death of the lessor or the lessee. The majority of scholars, however, see that the right shall be transferred to the heirs.

The idea of scholars is that the leasing contract is an obligatory contract, according to the majority of scholars, so it shall not be cancelled except through the conditions of cancellation of obligatory contracts, e.g.

occurrence of defects or absence of the source of benefit, as Allah, the Sublime, says (And fulfill the contracts). Because the leasing is a benefit – based contract, it is similar to marriage contract, and because it is a return – based contract, it shall not be cancelled due to death like sale.

Although the Hanafiyyah agree with the majority of scholars that the leasing contract is obligatory, they say that it can be cancelled by excuse. In case of a death of one of the two parties, the leasing is annulled, because if the contract exists, the benefit possessed by the lessee through the contract, or the recompense possessed by the lessor becomes due to another party not linked with the contract, matter which is not permissible, because the transfer from the owner to the heir is not applicable in owned benefit or recompense. The leasing contract is ratified hour by hour on benefits. So, if we agree the transfer from the owner to the heir, it looks as if we agree the transfer of a thing not owned by the owner to the heir, because the property possession has been transferred to the heirs. Benefits are usually applied on the ownership of the heir, and hence the lessee does not deserve it, because he has not signed the contract with the heir.⁽²⁶⁾

Article (318) of the Civil Transactions Act of 1984, under the heading: Contract cancellation, states the following:

The lessee has the right of canceling the contract if:

- A. The execution thereof causes an obvious harm to people or wealth, whether directly to the lessee or to the successor who uses the hired thing.
- B. An event occurred which hinders the execution of the contract.

Other cases of canceling the contract in the Act include the following:

1. Ignorance about the recompense: Article 298/1 includes:..... if the recompense is unknown, cancellation of the leasing is permissible, and recompense paid in similar situations could be applied for the period prior to the cancellation.

2. If the units of the hired thing are less than mentioned in the contract: Article (307/1) states: If there is a decrease (in the number of hired units), the lessee has the option of canceling the contract. Article (307/2) states: If the rent of each unit is nominated in the contract, the lessee shall be committed to the nominated rent of any additional units, and the lessor shall be committed to subtraction of the rent of the reduced units. The lessee has the option of canceling in both cases.
3. With respect to maintenance obligatory to the lessor: Article (309/2) states: if the lessor refuses to make the repairs and prevents the lessee from making them, the lessee can cancel the contract.
4. If the lessor makes disturbances with respect to utilization of the benefit: Article (311) states as follows:

If the actions made by the lessor against the lessee – as mentioned in Article (310) lead to deprivation of the lessee of using the hired thing according to the contract, the latter has the right of asking for cancellation of the contract or reduction of the recompense.
5. Defects which hinder the utilization of the hired thing or massively reduce the value thereof. Article (312/3) states: If the defect hinders the lessee from using the hired thing, the lessee has the right of demanding cancellation.
6. Making repairs which violate the utilization Article (316) states:
 1. The lessee has no right to prevent the lessor from making necessary repairs on the hired thing.
 2. If the consequences of these repairs violate the utilization of the hired thing by the lessee, the latter has the right of

canceling the contract unless he continues living and using the benefit till the end of repair works.

3. If the utilization of hired thing is not reached at all, the recompense falls off from the lessee from the time of missing the benefit.
4. If missing of the benefit is partial but it affects the utilization of the intended benefit, he has the right of canceling the contract, and the recompense will drop from the date of cancellation.
5. If the lessor repairs the hired thing before cancellation, the recompense shall be reduced with a rate equal to the magnitude of benefit being missed, and there is no option of cancellation.
6. Prevention from benefiting by law; Article (317):
 1. If the concerned authorities issue an act preventing from full utilization of the hired thing, without any cause from the lessee, the leasing is cancelled and the rent drops from the date of prevention.
 2. If the prevention violates the use of some of the hired thing to the extent that it affects the intended benefit, the lessee has the right of canceling the contract, and the recompense drops from him from the date of informing the lessor.

The statements about termination of leasing were mentioned in Article (321) under the following items:

1. The leasing shall be terminated according to the agreement between the two parties in the contract, and it is permissible to put a condition that it shall be automatically renewed.

2. If the leasing contract ends, and the lessee is still using the hired thing through explicit or implicit consent of the lessor, the contract is regarded as renewed with the same previous conditions.
3. If the lessee incorrectly uses the hired thing after the end of the leasing contract, he shall be committed to pay the similar recompense of the period of using the hired thing, as well as guaranteeing any harm occurring to the hired thing or to the lessor.
4. The leasing does not end due to the death of one of the two parties, although the heirs of the deceased have the right of canceling the contract if they prove that the contract's burden has become heavier than their potentials after the death of their father.
5. Any of the two parties has the right of canceling the contract as a result of a sudden excuse happens to him, but he shall guarantee the harm resulting from this cancellation to the other party, within the limits of convention.
6. If the lessor is the one who demands the contract's termination, the lessee shall not be compelled to return the hired thing before he has the compensation or adequate insurance.

Some examples of leasing:

There are many types of leasing which are elaborated and discussed in details in the books of fiqh. The same elaboration is found in the Civil Transactions Act of 1984, and modern transactions have produced move kinds with specific names in order to be distinguished from other types. These types include:

First: The leasing of agricultural land:

Articles 322-328 include many statements about the leasing of agricultural lands, which can be summarized as follows:

1. Leasing of agricultural lands is permissible with explanation of the types of crops implanted therein, or leaving this to the lessee to plant

what he likes (A. 322). Anyone who leases without restrictions with respect to what he plants, has the right to plant all over the year (A. 325).

2. It is not permissible to make executable leasing on the land which has already been occupied with unknown other plant, unless the lessee was the owner of the plant (A. 323/1).
3. The leasing of the land occupied with plant, and the owner thereof shall be asked to uproot his plant, whereas the land shall be submitted to the lessee as follows:
 - A. If the land was legally planted and the crop was ripe at the time of leasing.
 - B. If the land was illegally planted, whether the crop was ripe or not (A. 323/2 (A,B)).
4. It is permissible to lease the plant – occupied land according to the rule of a time-added leasing, i.e., to delay the leasing benefit to a time in which the land is free of plant (A. 323/3).
5. If some body hires a land for planting, the leasing includes all the rights thereof, but the planting tools and the decision – relevant things of the land are exempted, unless stated in the contract, and if so, the lessee has to maintain these tools and to use them according to the ordinary and known usage of such tools (A. 324).
6. If the lease duration has finished before the crop ripens, and the lessee has no hand therein, the plant shall remain hired with the similar recompense until it ripens and is harvested (A. 326).
7. As for the best exploitation of the land, the following conditions should be considered, unless there another statement or convention which entails otherwise:
 - A. The lessee shall exploit the agricultural land according to the ordinary and known types of exploitation. He should do his best

to keep the land valid for production, and he has no right to change the benefit from the land to the extent that this change's effect extends beyond the period of leasing.

B. The lessor shall make the necessary repairs upon which the achievement of the intended benefit depends. The lessee, however, has to make the repairs needed for the ordinary utilization of the lands in addition maintenance of water-wheels, drains, paths, bridges and water-wells. (A. 327/A-C).

8. If water overwhelms the hired land, such that its sowing becomes difficult, or if it is deprived of water and its irrigation becomes impossible or very costly, or impossible to be planted owing to force of circumstances, then the lessee has the right of canceling the contract, without paying the recompense.

If the crop was distracted before harvest, due to force of circumstances, the lessee has to pay a recompense equal to the period before the crop destruction, and he shall not pay for the rest of the duration, unless he has the ability to plant as before, in which case he has to pay for the rest of the duration.

However, the contract shall not be cancelled, nor the recompense, or some of it, be dropped, if the lessee has had a guarantee from any body for his harm (A. 328).

Second: Muzara'a contract:

Definition: Muzara'a is a contract of investment of an agricultural land between the landowner and the investor, such that the crop shall be shared between them according to shares agreed upon. (A. 329 of the Civil Transactions Act).

Terms of soundness (legality) of the muzara'a contract:

These include the following according to Article 330:

1. (A) The land shall be known and valid for agriculture.

- (B) The type of planting or seeds shall be nominated or be left to the planter's choice.
 - (C) The share of every party in the crop shall be estimated according to a common rate.
2. No agreement is permissible in which one of the two parties has a share of a previously determined volume of the crop or a crop of a certain site of the land or anything apart from the crops.
 3. It is not permissible to make a condition of picking the seeds or the Zakat of the land from the crop's origin before dividing the shares.
 4. The duration of muzara'a shall be specified, in such a way as to be consistent with the achievement of the goal thereof, otherwise the contract will be allocated for one agricultural cycle.

Effects and commitments of the muzara'a contract:

1. In the muzara'a contract, the crop is common between the two parties of the contract, and they divide it according to the shares agreed upon. (A. 331/1).
2. The land owner commits himself to submit the land in a condition valid for agriculture together with its accompanying rights e.g. watering, path... etc., in addition to anything assigned for its exploitation if this thing is connected to it as a decision-connection. The owner also shall commit himself to maintain the agricultural tools if they are in need due to ordinary usage (A. 332).
3. The planter commits himself to the duties of planting works, keeping and maintenance of plant, costs of irrigation channels... etc., till the time of harvesting. The costs of the crop after harvesting and any expenses afterwards until the time of dividing the shares, shall be paid by the two parties according to their shares. The planter shall commit himself to exert the efforts usually exerted by an ordinary person, to the planting and maintenance of the land and taking care

of the plant and crop. If he fails to do so, and his failure results in harm, he shall guarantee this harm.

The planter may not hire the land by himself or to let other persons planting it, without the consent of the land's owner, otherwise the latter has the right to cancel the muzara'a. If the land was already planted at the time of cancellation, and the seeds were from the owner, he has the right of recovery and of compensating the planter. If the seeds were not his, he has the option of recovering the lands with its plant, and paying the price of seeds to the planter, and of leaving the plant to the planter till the time of harvest, and paying the planter a similar recompense and any harm occurred to him (A. 333).

Termination of muzara'a contract as a result of termination of period:

The muzara'a contract ends with the end of its duration. If the duration ends before the ripening of the plant, the planter has the right of asking the continuation until the plant ripens, but he has to pay the similar recompense of the land, according to his share of the crop for the additional period. The expenses on the crop thereafter shall be divided by the land's owner and the planter according to their shares (A. 334).

The effect of death on the muzara'a contract:

If the land's owner dies before the ripening of the plant, the planter shall continue work until the ripening of the plant, and the heirs have no right to prevent him.

If the planter dies before the ripening of the plant, his heirs shall replace him in work until the ripening, even if the land's owner refuses (A. 335/1-2).

The fate of crop after the cancellation or abolition of the muzara'a contract:

If the muzara'a contract is cancelled or it is shown that it is not true or been abolished, the whole crop shall return to the planter, if the other party is the planter, he has the right of similar work rate, and if he is the land's owner, he has the right of similar land rate.

In the two above mentioned cases, the similar work recompense or the similar land recompense shall never exceed the share of each one in the crop (A. 336/1-2).

Third: Musaqaaah contract:

Definition:

Musaqaah is a joint contract of exploitation of trees between the owner of these trees and another party who fosters and maintains them, against a known share of its fruits. The tree, here, means any plant whose roots remains in the ground for more than one year (A. 337 of the Civil Transactions Act of 1984).

It is noted here that, although musaqaah is defined as a joint contract for exploiting trees, the legislator has classified it as one of the types of leasing, such as muzara'a, co-planting... etc.

Soundness terms of musaqaah:

In order that the musaqaah be sound and correct, the share of each party in the crop must be estimated according to a common rate (A. 338).

Musaqaah is an obligatory contract; therefore, none of the two parties of the contract has the right of canceling it without a justifying excuse (A. 339).

The duration of musaqaah:

1. If the duration has not been mentioned in the contract, the duration shall be until the harvest of the first crop during the year of contract, unless the convention states otherwise.

2. If a duration was fixed in the contract, based on the possibility of the appearance of the fruit, but it has not appear, no one of the two parties deserves anything against the other. (A. 340/1-2).

Expenditures and works of musaqaah:

The following provisions shall be followed – unless otherwise agreed upon-with respect to expenditures and works needed by musaqaah:

- (A) Works needed for trees service and growth, quality and maintenance of the crop until it ripens. These services include irrigation, fecundation and trimming and these are the planter’s duty. However, fixed works which are not done every year, such as wells drilling and establishment of crops stores, are the duty of the trees owner.
- (B) The financial costs needed by ordinary care and exploitation, such as the costs of fertilizers and pesticides, to until the time of ripening, all these are under the duty of the trees owner.
- (C) Expenses after the ripening, such as the costs of picking and storing, are under the duty of the two parties, each one according to his share in the corp. (A. 341/A-C).

Musaqaah of other:

The Act prevents the partner of musaqaah to be enveloped in musaqaah with another person, without permission from the tree owner. If he does, the owner has the options of either taking the whole crop, and paying a similar work payment to the worker, or leaving the crop to them and demanding a similar recompense for musaqaah from the first partner in musaqaah, as well as a guarantee for the harm occurred to him as a result of that action (A. 342).

The effect of rights on works and expenses in the musaqaah:

(A. 343) states the following:

1. If the trees or fruits are due, and the two parties in the musaqaah or one of them spent money or performed effective work in the growth

of trees or fruits, the following consequences shall prevail, as the case may be:

- A. If the deserving party accepts the musaqaah contract, he shall replace the own who spent money for trees against the provider of water in all rights and obligations resulting from the contract, and the deserving shall pay to the trees payer all the useful costs and expenses which he had spent according to convention.
- B. If the deserving does not accept the contract, and the musaqaah was made according to trust, without knowledge of any one of the two parties, owing to the rights the deserving has the options of either taking his right and paying a similar recompense to the water provider as well as paying to the one who paid for the trees for what useful costs he has spent, according to convention. Another option is that he may leave the crop to them until the end of the season, and he takes from the tree payer a fair compensation, according to convention, to compensate him for the benefit he has missed as a result of waiting.
- C. If the two parties of the musaqaah are of bad intentions, at the time of contracting, the deserving has a right of taking his due and nothing against him for both of them.

If one of the two parties has a bad intention and the other has a good intention, The latter deserves a fair compensation from the deserving, according to convention, for what improvement he has made on the fruit or trees through expenses or work.

Failure to work or dishonesty of the irrigator:

Article (344) states the following:

If the irrigator fails to work or he was dishonest with respect to the fruits, the tree owner has a right of canceling the musaqaah, and he has to pay a

similar work recompense to the irrigator for the period before cancellation.

Termination of musaqaah period:

(A. 345) speaks about the termination of musaqaah as follows:

1. If the musaqaah duration ends, the contract also ends, and if the fruits look not ripe, the irrigator has the options of either continuing work up to the ripening of fruits, without a recompense paid by him to the share of the trees owner, or refusing the work.
2. If the irrigator refuses the work, the trees owner has three options: either to divide the fruits according to the condition agreed upon, or to give the irrigator the value of his share or to expend on the fruits till they ripen and to subtract this from the share of the irrigator from the fruits.

Effect of the death of one of the contracting parties on the musaqaah contract.

Article (346) mentioned this as follows:

1. Musaqaah shall not be cancelled due to the death of the tree owner, and his heirs shall not prevent the irrigator from continuing his work according to the contract.
2. If the irrigator dies, his heirs have the options of either canceling the contract, or continuing. However, if they choose canceling and the fruits have not ripened yet, they deserve a share, after the fruit ripens, equal to the work done by the deceased before death.
3. If there is a condition that the irrigator shall work with oneself, the musaqaah be cancelled by his death, and his heirs deserve when the fruits ripen – a share equals to his work.

Application of the muzara'a contract provisions on musaqaah:

Article (347) states the following:

The provisions of muzara'a shall be applied on musaqaah, in the cases which are not mentioned in the previous statements with respect to the musaqaah.

Fourth: Al-Mugharasah contract:

Definition: It was defined in Article 348 as follows:

1. It is permissible to make a contract of musaqaah in a shape of mugharasah i.e., making an agreement between a land owner and another person, in which the former submits the land to the latter, who implants trees therein and takes care of the plants. He can establish his own facilities and tools, in a specified period of time, after which the land and the establishments therein shall be a company between them according to the agreement.

Application of musaqaah provisions on mugharasah:

Article 348 under item (2) states the following:

The provisions of musaqaah shall be applied on mugharasah, as long as there is no contradiction with its nature.

Fifth: Endowment leasing:

Authority of endowment leasing:

Article (349) states the following:

1. The administration of endowment is responsible for leasing it.
2. If the administrators responsible from leasing are two, it is not permissible that one of them takes the decision without regarding the idea of the other.
3. If a Mutwalli (head) and a supervisor have both been appointed for the endowment (administration), the former has no right to make leasing without taking the idea of the latter.

Article (350) states the following:

1. The Mutwalli has no right to hire the endowment for his own benefit, even with a similar recompense, unless accepting this from a court.

2. The Mutwalli can hire from the origins or branches (of the endowment) with a recompense exceeding the similar recompense after permission from the court.

Similar recompense: Article (353) states the following:

1. It is not permissible to hire the endowment with a rate less than the similar recompense, except in cases of minor difficulty, in which the lessee shall be committed to complete it later and to pay the reduced amounts for the passed period of the contract. The lessee has the options of either canceling the contract or accepting the similar recompense for the residual period.
2. The similar recompense shall be estimated by experts at the time of the contract ratification, and causal change – during the contract period – shall not be considered.

Consulting the endowment authority in taking a court permission:

Article (357) states the following:

In matters in which permission from a court is required, the view of the Islamic endowment authority shall be considered before issuing the permission if it is in favour of the endowment.

The provisions of leasing contract shall be applied on endowment leasing, as long as they are not contradictory with the statements of endowment leasing (A. 358).

Possessive and operational leasing:

(From the book of: The Shar'ia Evidence of Leasing ⁽²⁹⁾, with some disposal).

Introduction:

Leasing ended with possessing is regarded as one of the most important forms of transactions in some Islamic banks, after the form of co-profiting. It is similar to co-profiting in the preliminary stages of execution. The start point of this process originates from the need of the

bank customers to possess assets and physical properties, to cover their activities. It is the customers who specify the specifications of the required assets, as they are more acquainted with the importers of these assets.

The processes of possession-based leasing, therefore, often start with direct communications between the customers and the importers, to have the details about the commodity specifications, prices, dates of delivery... etc. After that, the customer proceeds to the bank to have a leasing financing, in which the bank purchases the assets and hires them to the customers.

General principle of the leasing which ends with possessing:

The contract of this type of leasing is legally (Shari'a) a leasing contract, although the hired thing will revert to the lessee by the end of the lease duration. Therefore, the leasing provisions must be applied to this contract until the asset's ownership is transferred to the lessee.

Explanations:

Islamic banks use leasing as a form of financial investment. They own and possess assets in order to be at the disposal of customers to benefit from these assets versus having a known compensation, which is termed by scholars as leasing on benefits.

Banks use two types of this sort of leasing, namely:

Operational leasing and possessive leasing, which is also called possession-ended leasing. The principal difference between them is that the hired assets revert to the hiring bank in operational leasing. In this type the bank, after the contract termination, seeks a new lessee, and the lessor (owner) bears the dangers of market recession and lowering of demand of these assets, which can lead to its non-exploitation.

In possessive leasing, however, the hiring bank (lessor) does not purchase the assets to be hired, before making sure of the body that is going to hire

the asset and to possess it eventually. The hired assets, therefore, do not remain in the ownership of the lessor after the contract termination, as in the operational leasing, but they will transfer to the ownership of the lessee. Therefore, the scholars define the possessive leasing as a leasing agreement in which the lessee benefits from the hired thing, according to a known recompense and duration, provided that the ownership of the hired asset reverts to the lessee during the duration of leasing or by the end of it. The possessive leasing contract has been met with much concern, and many research papers and studies have been conducted on it by the Shari'a authorities of Islamic banks, and the subject has been addressed by Islamic fiqh symposia and academies. The fiqh view about it is that it is permissible, provided that the contract shall be a leasing contract from start to end, after which the ownership shall be transferred, through any type of transferring of ownership, e.g. donation, sale with reasonable price, or with actual price... etc.

One of the fatawi (Islamic interpretation) of the First Fiqh Symposium of the Kuwaiti Finance House States the following:

“If a contract is ratified between an owner and a lessee, in which the lessee benefits from the hired thing, against a determined recompense and installments divided into known periods provided that the contract ends with the ownership of the hired thing by the lessee, then this contract is legal and sound, if the following are considered:

- (A) Control of the lease duration and application of its provisions throughout this duration.
- (B) Determination of the sum of each installment of recompense.

(C) Transfer of ownership to the lessee by the end of the duration through donation, as a response of a previous promise between the owner and the lessee.”

The Shari’a (legal) position of the possessing-ended leasing contract is not far out of being an ordinary leasing contract during the contract duration. Therefore, all the leasing contract provisions apply to it, until the possession of the hired asset by the lessee, after which the lessee becomes an owner – rather than a lessee – of the hired asset. This position was mentioned in the fatwa of Al-Baraka symposium which states as follows: “The possessing-ended leasing is a leasing contract according to Shari’a, although the hired asset will revert to the lessee by the end of the lease duration through a promise. The provisions of leasing shall be applied on this contract until the hired asset is sold or donated to the lessee through an offer and acceptance at the same time”.

It is known that the consequences of application of the leasing provisions on the possessing-based leasing include the responsibility of the lessor against the results of damage and defect not caused by an aggression or default from the lessee, in addition to his responsibility of making basic maintenance and paying the costs of insurance and taxes etc. with respect to the hired asset.

In this respect, the Shari’a position towards the possessing-based leasing is different from the legal position, which often regards it as a sale due to the reversion (fate) thereof, and treats it the treatment of deferred sale, except that the ownership remains in the name of the lessor (seller).

In fact there are many positions and descriptions of the possessing-based leasing, from the legal point of view, mentioned by a number of contemporary researchers. It is obvious, from these descriptions, that there is no single position or description for the possessing-based leasing contract, and that its position and legal nature are ranged between sale

plus retention of ownership until the reception of full price, and the contract of installments sale under the cover of leasing and the pure leasing.

It is worth mentioning that the practical application of the possession-ended leasing, as performed by the Islamic banks, requires the existence of multiple contracts and documents, in addition to the ordinary leasing contract ratified with the lessee customers. These contracts and documents shall be ratified according to arranged, independent and separate steps and these documents are:

- A document of leasing promise or the agreement of commercial co-operation; the so-called the principal leasing agreement. This type of documents constitutes the first step of transaction, and it contains the property needed to be purchased and its leasing, in a clear and explicit statement.
- After that, the purchasing contract of the asset, directly from the importer or through a previous independent agency to the person who desires to hire or else. It is not permissible to merge the agency contract with the leasing contract.
- After the direct purchase or via an agent, the leasing contract is ratified in its independent form. One of the wrong applications here, is linking the leasing contract with the contract of asset purchasing, which is not acceptable.
- In parallel with the ratification of leasing contract, the two parties shall agree on how the asset's ownership can be transferred to the lessee, by the end of the leasing, through an independent document too, whether by the suspended donation contract or by the promise of selling with symbolic price or the price agreed upon.

- Execution of the process of transferring the asset ownership to the lessee through an offer and acceptance issued from the two parties, in case of the promise document of selling or the promise document of donation. These latter procedures can be abandoned in case of ratification, by the lessor, of a suspended donation contract, provided that all installments be paid.

Controls of possession of the physical asset by the lessor:

The general principle:

The purchasing and possession of the asset by the lessor bank are completed before the ratification of a leasing contract if the lease is specified, or after the ratification if the lease is described in the promise. A condition shall be made that the purchase is the bank's responsibility, and the bank shall bear the consequences of the risks of its ownership, not to be transferred to the customer desiring the lease. Any behavior in which these risks are abandoned will lead to the confinement of the role of the lessor bank into only financing, which is prohibited according to Shari'ah.

Explanations:

Leasing is one of the compensation contracts in which the benefits of the hired things are possessed by a return. Therefore, the lessor must be the owner of the benefit, so that he can renounce its possession in favour of another person. This can be done by either taking possession of the hired properties themselves or of their benefits through hiring them from the original owner. In the possessing-ended leasing, however, the lessor must be the owner of the asset itself, because he is going to renounce this ownership in favour of the lessee by the end of the lease duration.

Islamic banks often purchase and own the assets which are going to be hired after the stage of promise to lease issued from the Islamic bank's customer. The Islamic banks do not ratify the leasing contracts before

genuinely enabling its possession because, in the specified leasing, the hired asset must be in possession of the lessor at the time of contract ratification.

How the ownership of the hired asset can be transferred.

The general principle:

In the possessing-based leasing, the method of enabling the lessee to possess the hired asset must be specified in a document attached to the leasing contract, but separate from it. This document may take one of four forms as follows: a document of promise to sale, a promise of donation, a donation contract suspended on a condition of payment, a document giving the lessee a right of the options of extending the lease, returning the hired asset or purchasing it at the market price.

Explanations:

In the possessing-ended leasing form, the ownership of the hired asset is transferred to the lessee by the end of the contract duration. In this form, therefore, the possession-enabling method shall be adopted.

Many of the resolutions and recommendations of the United Shari'a Board of Al-Barakah group have drawn the attention of the unsoundness of specifying the method of enabling the possession of the asset within an article of the leasing contract itself, but this must be through a document attached to the leasing contract, but independent from it. This may be done in fear of committing a prohibited action according to Shari'a such as making a condition in the contract or conditioning a contract in the contract. It is worth mentioning that Dr. Hassan Al-Shazali handled the details of this dilemma, and he reached a result in his research that these prohibited things are not found in the possessing-ended leasing contract.

Leasing linked with a promise of possessing through donation or sale:

The general principle:

It is permissible to link the possession based leasing with a promise of enabling of possessing, either in a shape of a promise of asset donation or a promise of selling thereof. A condition shall be put that this promise is made into a separate and independent document. The promise is obligatory to the lessor, and if there is a promise from the lessee of purchasing the asset, the obligation shall be by one party only, which is preferred to be the lessor who has promised to enable the lessee to possess the asset.

The second party shall be free because a two-party promising will take the shape and description of contract.

Attributes of enabling of possession promise and the controls on its execution:

The general principle:

In the possession-based leasing connected with a donation promise, the lessor commits himself to donate the hired asset to the lessee, after the end of the lease duration and payment of all the installments agreed upon.

In the possession-based leasing connected with selling, there are many types, according to the time of promise fulfillment during or after the lease duration, and according to the selling price, e.g. whether it is a reasonable price, genuine market price or a specific price in an agreement. These are all true and sound, because the aim is the occurrence of mutual consent about the price in the selling contract.

In all cases, however, the possession contract shall be ratified in a new form at the time of promise execution, and the parties shall not depend only on the first promise document in transferring the asset ownership.

Explanations:

The common shape of the possession-based leasing connected with a promise of donation is that the lessor promises to donate the hired asset to the lessee by the end of the lease duration and after payment of all the due leasing installments.

As for the possession-based leasing connected with selling promise, there are multiple types, such that the time of promise execution could be determined either at the end of the lease duration or during the period of contract.

If the time of executing the promise was determined to be at the end of the lease duration, the lessor shall promise to sell the asset at a reasonable price, because the leasing installments had included the asset price, although they are regarded as a lease.

If the possessing is to be at any time during the validity of the leasing of contract, there shall be a statement in the promise to sell that lessor commits himself to enable the lessee to possess the hired asset, during the lease duration in fixed dates. This idea was decided in the fatwa of the sixth symposium of Al-Baraka as follows:

“In the possession-ended leasing, the lessor/owner has the right of promising that he will sell the hired asset to the lessee in different times at different prices, from which the lessee can choose one in the future, and accordingly, the selling between the two parties can take place at once”.

In this case, the lessor can determine the selling price according to that one where he can fulfill his promise. This price could be the market price, the rest of due installments or the prices could be divided to be paid according to a timetable set to fulfill the promise. The aim, here, of determining the price is to achieve the agreement of the two parties. This was mentioned by the same above mentioned fatwa: (If the lessee, in the possession-ended leasing, desires to hasten the possession of the hired thing through purchasing before the end of the leasing period, the price

will be dependent on the agreement between the two parties, be it equal to the residual installment of leasing, or more or less than that, because the consideration lies only in the occurrence of agreement between the two parties about the price in the selling contract.”

It is obvious that the determination of selling price according to fulfillment of all the due leasing installment, in practical reality, can oblige the lessee to pay the price of the origin of the hired asset plus the decided profits, therefore, it is more fair to reduce the selling price and to keep the original value only, or the original value plus a reasonable increase. Or to determine the price according to the fatwa of the United Shari’a Board of Al-Baraka, through a fixed value in an approved timetable. This fatwa states:

“The board’s view is the permissibility of stating in the leasing contract the right of the lessee, at any time of the contract duration, to ask for the purchasing of the hired asset, provided that this shall be done according to the fixed value in the time table attached to the leasing contract, instead of the book value at the time of purchasing application. This is because the demand of the lessee to purchase with the fixed value in the time table is fairer than the book value, due to the increase therein over the similar recompense in the possession-ended leasing.”

In all these cases, there must be a new form of possessing the hired asset in fulfillment of the promise, and it is not permissible to transfer the ownership with only the promise document, because possessing is not done with the promise but with the contract, which does not accept linkage with the future. it must be ratified at once. This fatwa was mentioned in the Kuwait Finance House, as well as the fatwa of the Shari’a Advisory Board of Al-Baraka, which states:

“There is no problem to state, in the leasing contract, that the transfer of the hired asset ownership could be made after payment of the leasing

installments to the lessee, but there must be a selling contract at once, i.e., at the time of payment of all installments. This contract shall not be made at the beginning of leasing, because it is not usually added to the future, and there is no problem in promising of making the selling procedure at once.”

Some fatwas described the promise issued from the lessor as an offer linked with a time, and this is one-half of the contract period. If this is connected with the acceptance during the period of the offer validity, the contract shall be ratified at once. It is permissible that the lessee issues an acceptance including a time-connected purchasing, and the second party has the right of acceptance after which the contract is ratified.

Leasing connected with a suspended donation contract.

The general principle:

The leasing contract could be linked with a suspended donation contract, provided that all leasing installments are paid, because the majority of scholars prohibited the suspension of a sale on a condition.

Explanations:

Some contemporary experts have tackled the form of leasing connected with a selling contract, which is different from the leasing connected with a selling promise.

In the first form, the contract of the asset sale is conducted in parallel with the leasing contract, although its effect does not start before the end of the leasing contract and the fulfillment of the condition of during the entire leasing installment. So, it is a suspended sale contract, and does not need a new form to be achieved, and its effects are due just after the existence of the condition. This is different from the sale promise in which there are no mutual obligations, and it needs mutual obligations, and it needs a new additional form about the reciprocal offer and acceptance.

Dr. Hassan Al-Shazali, in his research about the possession-ended leasing, came to this form, and he gave an example of this: One could say: I give to you this commodity with a recompense of so and so, and if you regularly pay the recompense until the end of such and such year or month, I will sell you that hired commodity with a price of so and so. The other party says: I accept this. Dr. Hassan showed that this form is decisive in its indication, and has two contracts: an executable leasing contract and a condition–suspended sale contract, which means regularity in paying the recompense, which is so much in a period of so long. He showed that this is a suspension and not an addition to a certain time, because the time agreed upon was put in the shape of a condition, which is the payment of the recompense during this period.

Treatment of inability to transfer the ownership to the lessee:

General principle:

In case of failure to transfer the asset ownership to the lessee, due to any causes out of the responsibility of the lessor, and the paid recompense was more than the similar recompense, the previously paid recompense shall be reviewed in such a way as to achieve fairness to both parties, through referring to the similar recompense.

Explanations:

As previously mentioned, the ordinary leasing can be cancelled due to the destruction of the hired asset, and that the recompense drops off the lessee in case of complete damage to the hired asset, and, according to Shari'a, he shall not be compelled to pay all the leasing installments or to let him bear the consequences of the damage of the hired assets.

In the case of possession-ended leasing a very important issue arises, i.e., how to tackle the damage of hired property or the occurrence of any sudden event which leads to failure of transferring the ownership to the lessee.

Is the treatment only limited to refraining from asking the lessee to pay the future installments, as in the ordinary leasing? Or to consider the great harm occurred to the lessee, such that he can have the right to ask the lessor to pay back, for him some of the previously paid recompense, particularly, if we know that the recompense in the possession-based leasing does not constitute the true similar recompense, rather than the value of the hired asset plus the profits, of the lessor, although this is an internal arrangement which does not appear in the documents and contracts between the parties.

In these cases under which the lessor is unable to transfer the ownership of the hired property, due to any reason out of the lessee's responsibility, the accounting and auditing corporation of the Islamic banks showed that there are two different methods of treatment, depending on the way of making possession of the hired asset by the end of the contract. If the ownership is free i.e., by donation or reasonable price, the recompense, then, is inflated because the lessee had paid more than the read recompense in order to possess the hired asset eventually. Thus, the previous recompense shall be reviewed, in order to achieve justice for the two parties. This should be stated in the contract.

If possession, by the end of the leasing was made according to the market price or any agreement, the recompense shall not be reviewed, owing to the existence of leasing installments, and a residual value on which the ownership is based.

Types of possession-ended leasing (with disposal from the Book of Leasing) ³⁰.

There are many types of this leasing, some of them generated from application. They include main types and their branches. From them we consider those types which are required to be clarified from the viewpoint of Shari'ah, bearing in mind that all of them are targeted to the issue of

possession of the hired asset by the lessee, which makes it different from the known operation-based leasing contract.

First: Financial or Capital Lease:

This is the main type from which other types were derived. It contains all the attributes previously mentioned.

This type is divided according to the contracting parties as follows:

Direct Leasing:

It is a type of contract that gives a chance to the leasing company to acquire a new asset that was not in its ownership in the past. The lessor, in this case is the company that made the asset, e.g., an aircraft manufacturer or computer manufacturer.

The leasing company usually specifies the asset that it wants to acquire, and negotiates with the manufacturing company about the price and date of delivery. The company then makes some arrangements with a financing body or the lessor's company to buy the asset from the manufacturing company. Simultaneously, the lessee signs the leasing contract with the financing institution.

Leveraged Leasing:

This type of leasing has been evolved and developed in order to finance projects that need great capital expenses.

The most important attributes of this type of leasing are the existence of three parties in the contract, rather than the ordinary two. These are: the lessee, the lessor (owner) and the financing body, which could be a commercial or Islamic bank, a financing institution or a specialized leasing company. The difference is in the role of the lessor who purchases the required asset with partial financing (30% for instance), and then finances the balance (70%) through long-term financing from a financing body, with a guarantee of the asset in favour of the financing body. The leasing payments are assigned for the payment of financing installments.

Second: Sale and Leaseback:

This type of leasing exists when a business company has land, real estate or assets, and sells them to a financial institution and makes a contract with it to lease back the sold asset in order to continue using it.

The financing institution (the Islamic bank for example) pays to the selling company (the lessee) the market value equal to the asset. The total leasing installments paid by the lessee company (the seller), however, shall cover the price paid for the asset plus a suitable profit to the lessor.

The most important attribute of this type of financing is that the selling company acquires a great flow of money, which is equal to the sold asset price, and at the same time it keeps the asset in its possession for using, which provides the liquidity needed by it for other purposes.

Third: The installment sale and favouring the partner with the leasing:

This type of leasing is a process of merging and combination between installment sale and operational leasing in which the owner (the lessor), say the Islamic bank, agrees with the leasing body to sell it the owned assets in installments. A special advanced installment is paid first, and the other installments are paid during an agreed upon period. Thus the seller (the bank) and the purchaser become partners in the ownership of the asset with different shares.

In order to enable the partner to use the asset, the bank hires its shares in the asset (e.g., real estate), according to an operation-based leasing contract. As long as the purchaser pays the installments of the selling price, its share increases gradually in the ownership of the asset, and, hence, he has to pay a lower recompense against the using of the partner's shares. When the ownership is fully transferred, after the full payment of the installment, the partner ceases paying for the leasing, because the asset becomes completely under his ownership.

This type is different from the decreasing partnership in that it includes the utilization of the joint asset by the partner (the agent of the financing body), whereas the decreasing partnership could be conducted in purpose of leasing to the other, or making a production which can be sold to the other. Its nature and definition do not permit leasing at all or leasing to the partner in particular.

The Shari'a position of the leasing with ownership (possession-ended leasing):

We can refer only, in brief, to some general jurisprudence (fiqh) issues that are not assigned to this subject. These include that it is permissible to contract on an asset that is owned by the lessor or the seller. There is no problem if one process comprises two contracts of the financial compensations contracts, particularly selling and leasing. It is permissible to connect the contract with one condition or more as required by the contract. This achieves a legal benefit for any of the two parties of the contracts, does not contradict the real intention about the contract, does not violate a statement in Qur'an or Sunnah, does not lead to forbidden action or swindle, or that the condition is impossible.

The following is the fiqh position (description) of the shapes of "possession-ended leasing contract" in the light of the conditions therein, and the explanations of their stance according to the Islamic fiqh.

The Chosen Adaptation of the First Form:

The sound adaptation is to make the selling contract suspended on a condition of "payment of all leasing installments during the specified period, without violating any conditions therein". The form shall be: "if you pay me the installments agreed upon during this period (agreed upon), I will donate this commodity to you", and if the other party accepts, the donation contract then becomes a condition-suspended contract, subject to all conditions of condition-suspended contracts in

according to the Islamic fiqh. This type of donation has been controversial among the Islamic scholars (two different viewpoints).

This type of contract contains also two contracts i.e., leasing contract and selling contract. In other words, it is an executable leasing contract which is linked with a canceling condition, and a selling contract suspended on a condition, which is the payment of leasing installments within the determined contract period.

In this type of selling, a true price of the sold commodity is determined, which shall be paid by the lessee (the purchaser) after the end of the leasing period. By so doing the hired commodity has become sold to and owned by the (purchaser), in its physical nature and its benefit. He deals with it as any owner deals with his ownership.

The description of this agreement, here, is that it is regarded as a leasing contract-at the beginning – which shall be prone to all the provisions and legal effects of this contract.

After the end of the leasing contract, the condition-suspended selling contract, which is linked with the leasing contract, starts. This contract, in this shape, does not need a new form, as long as it has been made by the statements of (I sell) by the First Party, and (I accept) by the other. These statements are specific and precise, i.e., they contain no promise of selling or promise of purchase from the two parties.

The image in which the leasing is connected with a sale promise: In the two previous images (shapes), the form of selling is decisive:

“I sell and I purchase”. However, in other forms the leasing could be connected with a promise of selling or purchasing or a promise of both from the two parties “reciprocal promise”. The difference, here, is that the leasing contract is connected with a promise of selling, of purchasing or a promise of both from the two parties.

The Form in which Leasing is Connected with a Promise to Sell:

The selected view to be adopted in bank dealings comes from Al-Malikiyyah, which states that the promise is obligatory, and hence it must be fulfilled both from the legal and religious viewpoints.

The religious academy decision shall be considered, which states that the obligatory promise shall be from one party i.e., the lessor or the lessee not from both parties, in order to keep the difference between this and the contract.

The form in which there is a promise from the lessor to the lessee, after the termination of the leasing period, to choose between selling, extension of leasing or restoration of the hired thing:

This type is a leasing contract, linked with a selling promise, by a definite price or a market price, or linked with leasing extension or getting the commodity back to the lessor. There is nothing forbidden in this behaviour, because it is similar to the image of the leasing connected with a sale promise, with a real price. Moreover, it is more flexible to the lessee, i.e., it gives him the right of choosing between three options, after the end of the lease duration; purchasing the commodity, leasing extension or restoration of the commodity by the owner.

Transfer of ownership in the possession-based leasing:

It is permissible to mention in the leasing contract that the ownership of the hired asset shall be transferred to the lessee after the payment of leasing installments. However, a sale contract shall be made at the time of payment of all installments. This contract shall not be made at the beginning of the leasing period, because the sale contract cannot be linked to the future, but it is permissible to promise to make the selling in time.

The ownership can also be transferred through donation in its time, although the donation can be suspended on payment of all installments,

and the asset can automatically be transferred after the payment. This is because the donation can be suspended on something, if this thing occurs, the donation exists.

Operational leasing (taken from the book: Islamic Investment Tools, by Dallah Al-Baraka):

This leasing is one of the types of the Islamic investments, which the banks can use in order to benefit from money to cover the needs of their customers.

In this type of leasing the bank possesses the asset, which is usually good enough to be desired in the market. The bank, then, hires this asset to any one who desires to operate it and benefit from it, within a definite period of time agreed upon. After the end of this period, the asset comes back to the ownership of the bank, and can be hired to new customers... etc.

This type is distinguished with the persistence of the assets under the ownership of the bank, which can hire it many times, but it bears the dangers of market recession, low demand on the asset and the risk of being not used. These dangers require that the feasibility study includes a precise survey about the market needs.

Types of the operational leasing:

It is divided into two types:

1. Specified leasing: the leasing in which the hired thing is a real estate or asset which is known by indication or anything else which distinguishes it from other things.
2. Described leasing: Leasing on an asset described with known and specified descriptions, such as a car or ship which is not specified but it is described in such a way as to prevent dispute.

Domains of application of the operation-based leasing:

This type of leasing is suitable to assets of high values, which needs great amounts of money to be owned, and it may need a long period of time to be produced, such as airplanes and ships.

This type can also be applied to the industrial and agricultural assets and equipment, as well as transport and communication vehicles and equipment. The bank benefits from the persistence of the assets under its ownership and acquisition of the recompenses from selling its benefits.

On the other hand, the lessees benefit from fulfillment of their needs in the suitable time, with suitable payments, without bearing great capital expenses.

The Accounting and Auditing Organization for Islamic Financial Institutions in Bahrain, issued the financial accounting measure (standard) number (8), with respect to operation and possession-based leasing.

The same organization issued the Shari'a requirements of the forms of leasing and possession-ended leasing, within the textbook of the Shari'a Requirements of Investment and Financing Forms.

Possibility of Application of the Leasing Contracts as a form of Utilizing Money in Banks:

Money in banks:

It is natural that the bank, like a person, can own or enable others to own an asset or the benefit of that asset. It can own through selling and at the same time keep the ownership through leasing.

The lessor banks:

If the bank possesses equipment, tools, machines, real estate, land and any long-term assets, it has the right to hire the benefits of these assets to any one who desires, through the legal and suitable terms and controls. The bank becomes the lessor and the other party the lessee, and the process becomes a financed leasing.

The leasing is sound, whether the bank has owned these assets in the first place to hire it, or the asset has come into its possession after a process of clearance or speculation, and the result of a feasibility study, after comparison, was in favour of leasing against other options.

The way of achieving the benefit is different, according to the nature of each asset and to the ordinary using. The achieved benefit is measured with many tools; it is sometimes linked with time, or with definite areas or quality or quantity... etc.

For instance, if the bank possesses a tractor for plowing land, then it makes a contract with a lessee to plough his land; the plowing could be charged by hours or land area or with the amounts of seeds to be planted. By so doing the bank serves many people, particularly those who have no financial abilities to own machines and equipment, or who are not able to utilize these machines to their utmost capacity.

Hence, the bank has facilitated some of its resources to get benefits. At the same time, it can sell the used assets at suitable prices, in order to modernize its assets and widen the scope of its services. Thus it increases

the number of customers and achieves considerable revenues, as long as all these procedures are based on good economical, technical and social feasibility studies.

The entrance of the bank into the leasing market can lead to promotion and development of the leasing services, in addition to connecting the recompense in each field with the suitable realistic recompense, without exploitation of the people's need.

The bank as a lessee:

In addition to being a lessor, the bank can be a lessee, by hiring asset benefits from lessors. The bank usually resorts to this due to insufficiency of its own assets or due to absence of these assets and the feasibility study showed that it is better to hire than to own these assets.

By so doing the bank participates in activation of the market of these assets, in addition to achieve its own goal and benefit.

If some equipment and machines are too expensive for the bank to buy it alone, it can share other banks as partners.

Samples of Leasing Contracts

In the Name of Allah, Most Gracious, Most Merciful.

Real Estate Leasing Contract

This contract was ratified on Month of years, corresponding to day Month year (hijri), between:

First: Mr(s) hereinafter referred to, for the purposes of this contract, as the First Party (Lessor).

Secondly: Mr(s) hereinafter referred to as the Second Party (Lessee).

As the First Party is the registered owner of the real estate No. Square city of, and the Second Party desires to hire it, and the First Party has accepted, the two parties have agreed upon the following governing conditions:

1. The First Party hires to the Second Party the above mentioned real estate for a monthly rent of to be paid on the first day of each AD month.
2. The Second Party is committed to use the real estate for the purpose of accommodation, and has no right to alter this purpose except after the consent of the First Party in writing.
3. The Second Party is committed to pay the rent at the residence of the First Party.
4. The Second Party has no right to waive the building lease to any other person or to make sublease to it, except after the written consent from the First Party.
5. The Second Party has no right to make any fundamental alterations or changes in the buildings without the written consent from the First Party.

6. The Second Party is committed to keep the real estate in the condition in which he received it, and to submit it to the First Party after the end of this lease as it used to be.
7. The Second Party is committed to pay for his consumption of electricity, water, telephone etc, from the date of this contract.
8. The First Party is committed to pay for the taxes and other duties with relevance to the real estate, to the authorities in question.
9. The two parties agree that the duration of this contract is years(s), starting from, day..... Month Year Any one of the two parties has the right of terminating the contract before the end of its duration, provided that he tells the other party three months before the date of his desire to vacate.
10. In connection with the above mentioned, the two parties signed:

Signed By:

For/ The First Party

1-

I.C. No. date

2 -

I.C. No. date Issued in

Signed By:

For/ The Second Party

.....

I.C. No. date

Issued in

Witnesses:

1- I.C. No. date issued in

2- I.C. No. date issued in

Attestation / / / 2000

I,, advocate and commissioner in Khartoum, admit the soundness of the above contract, which was

completed in my presence and the presence of the two witnesses mentioned above.

Issued under my seal and signature on / /2000.

.....
Advocate and Commissioner for Oaths
In Khartoum.

In the Name of Allah, Most Gracious, Most Merciful.

Leasing Contract of (Transport Vehicle)

This contract was ratified on Month of
years, corresponding to day Month year
(hijri), between:

First: Mr(s) hereinafter
referred to, for the purposes of this contract, as the First Party (Lessor).

Second: Mr(s) hereinafter
referred to – for the purposes of this contract - as the Second Party
(Lessee).

As the First Party is the registered owner of the vehicle/truck
(mentioned in details/passengers/goods – in details), number
engine Chassis Mark registered in
....., and the Second Party wishes to hire it from the First Party,
who has accepted, the two parties have agreed upon the following
governing conditions:

1. The First Party hires the above mentioned vehicle or truck to the
Second Party for a monthly rent of, to be paid on
the first day of each AD month at the residence of the First Party.
2. The two parties agree that the period of leasing in this contract is
..... months/years (for example), and can be renewed
according to an agreement between the two parties.
3. The Second Party agrees to submit the vehicle/truck in the condition
in which he received it at the time of signature of the contract.
4. The Second Party agreed to do periodic maintenance every
..... to the vehicle/truck at his own expenses.
5. In the event of any defect to the vehicle/truck under this contract, or
if it needs a spare part or so which necessary to its movement, the

Second Party shall commit oneself to buy it at his own expenses, and he has no right to drive it or use it before the completion of these necessary parts.

6. In the event of any permanent stoppages or damage to the vehicle/truck, due to a default from the Second Party, the Second Party shall be committed to pay the full value to the First Party.
7. The First Party is committed to undertake the total insurance for the vehicle/truck.
8. In the event of an accident or damage to the vehicle/truck, or occurrence of an event out of the control or responsibility of the Second Party, during the leasing period, and it is covered by the insurance, the First Party shall go to the insuring body. If the damage was due to the negligence of the Second Party and not covered by the total insurance, the Second Party shall pay the value of the mentioned damage fully to the First Party.
9. The Second Party is committed to pay all the roads fees.
10. The Second Party is committed to renew the vehicle/truck licence in the legally determined time, provided that the First Party pays this value to the Second Party, within the legal limits, and the Second Party shall display the supporting documents.
11. The Second Party is committed to use the vehicle/truck under the contract by himself or by his delegated representative, who has an official mandate from the concerned authorities to drive the vehicle under this contract. In case of violating this condition, the Second Party is committed to bear all the consequences of this violation.
12. The Second Party is committed to preserve the vehicle and its following accessories.
 - (A)
 - (B)

- (C)
- (D)
- (E)

13. The Second Party is committed to present a bank, real estate or guarantee letter, to pay for the price of the vehicle, in the event of his failure to return it to the First Party.

14. In connection with the a/m conditions, the two parties signed:

Signed By:

For/ The First Party

1-

I.C. No. date

2 -

I.C. No. date Issued in

Signed By:

For/ The Second Party

.....

I.C. No. date

Issued in

Witnesses:

1- I.C. No. date issued in

2- I.C. No. date issued in

Attestation / / / 2000

I,, advocate and commissioner in Khartoum, admit the soundness of the above contract, which was completed in my presence and the presence of the two witnesses mentioned above.

Issued under my seal and signature on / /2000.

.....

Advocate and Commissioner for Oaths

In Khartoum.

In the Name of Allah, Most Gracious, Most Merciful.

A Crop Sharing Contract

This contract was ratified on this day Month of years, 14 (hijri), corresponding to Month of Year of 2....., between:

Firstly: Mr(s) hereinafter referred to, for the purposes of this contract, as the First Party.

Secondly: Mr(s) hereinafter referred to – for the purposes of this contract – as the Second Party.

As the Second Party owns/possesses/ hires the land or project number, which is free of restrictions and obstacles, and as the bank forwarded a feasibility study with respect to the land validity for the agriculture/animal breeding of for the season(s) of, and as the Second Party asked the First Party to share him a Share cropping/animal breeding contract, and the First Party agreed, the two parties agreed on the following:

1. The First Party is committed to offer or provide the following production inputs:
 - A. Tractors or equipment necessary for plowing and leveling of the land, the tractor, plowing machine, harvest machine, fuel and additional manpower.
 - B. Seeds (quality and quantity and types).
 - C. Fertilizers (types and quantity).
 - D.
 - E.
2. The Second Party offered the land/project, described above as a participation in this contract.

3. He is committed to manage the project, and cultivation of the land in all the agricultural stages, which include land preparation – cleaning – agriculture (planting) – spray – harvest, and all other operations with relevance to agriculture, according to the terms agreed upon in this contract, and to exert the required effort and care to achieve the benefit of the two parties, and he will be responsible for any attack or default in all these stages.
4. A special account shall be opened for this share cropping in the bank of, in which the sale revenue is deposited.
5. The Second Party provides the First Party with periodic and regular information about the running of work, and the First Party has the right of direct supervision, at any time, by himself or his agent.
6. The product shall be marketed after an agreement between the two parties, and in the best available prices.
7. If the Second Party fails to fulfill his commitments mentioned in this contract, owing to inability, disease or any other thing. The First Party has the right to choose another suitable person to fulfill these commitments, such that the expenses paid to this person for this work or a party of it, shall be subtracted from the percentage (share) allocated for the Second Party.
8. The product inputs, mentioned in article (1-), and provided by the First Party, shall be regarded as a trust in the hands of the Second Party, until they are used in the planting process.
9. The Second Party is committed to present a guarantee to the First Party in order to secure the First Party's rights in this contract.
10. The product of this share cropping contract shall be a common property for the two parties, and shall be divided – after Zakat (charity) – as follows:

11. Insurance of the plant – according to the provisions of Islamic Shari’ah – is permissible, and paid by the two parties.
12. If there is a loss, Allah forbid, it shall be at the expense of each party according to his share in the share cropping according to this contract.
13. This share cropping process shall be cleared on or before month of Year of

Signed By:

For/ The First Party

1-

I.C. No. date

2 -

I.C. No. date Issued in

Signed By:

For/ The Second Party

.....

I.C. No. date

Issued in

Witnesses:

1- I.C. No. date issued in

2- I.C. No. date issued in

Attestation / / / 2000

I,, advocate and commissioner in Khartoum, admit the soundness of the above contract, which was completed in my presence and the presence of the two witnesses mentioned above.

Issued under my seal and signature on / /2000.

.....

Advocate and Commissioner for Oaths

In Khartoum.

Explanatory Notes about the Share cropping contract

Definition of share cropping contract:

It is a contract between two persons or more, to invest on an agricultural land, by planting it, such that the product will be common between them, and divided according to the percentages and shares agreed upon in the product division.

Forms of the share cropping contract:

These are five forms as follows:

- A. The land offered by a person and the work plus production inputs form the other person.
- B. The land and production inputs form a person and the work form another person.
- C. The land plus work from a person and the production inputs from another.
- D. The land from one person, the work from a second person and the production inputs from a third person.
- E. The work from one person, the inputs from another one and the land is hired (with a definite recompense and has nothing to do with the product (crop).), whether it was hired from one of the two parties or from other persons.

General provisions of the share cropping contract:

- In any of the above mentioned images of share cropping contract, the land owner or the worker or farmer has the right of participating in the production inputs and of taking part in whole or in part, of it.
- The land shall be valid for the plant needed by the parties.
- The production inputs included all the needs of planting such as tools, machines, equipment, seeds, fertilizers, pesticides ... etc.

- It is not necessary that the party who offers the inputs shall be a possessor of these inputs.
- The parties of share cropping can hire the necessary needs of planting at any stage thereof.
- The commitment of the worker or farmer include, preparation and leveling of the land, preparation of basins, channels, cleaning, harvesting, supervision and care, unless otherwise agreed upon.
- The production inputs are trust under the hands of the worker and farmer, therefore he has to use it in a normal way and according to the agreement between the parties of contract.
- The farmer and worker in the share cropping contracts shall guarantee any loss, contracts shall guarantee any loss, damage or harm in the production inputs, owing to his attack, default or misuse.
- It is permissible to take a loss guarantee for the loss resulting form any neglecting by the worker.
- The parties have the right of choosing the sort and type of the plant or plants to be planted, as well as the period, seasons, cycles and areas of the planting, and the way planting, irrigation and harvest can be done.
- The product includes cereals, seeds, fodder, plant stems and leaves and every thing grows as a result of the plant or by its cause, as well as the sale price, and return of these things, etc.
- The product shall be common between the parties of the share cropping contract, and shall be divided according to the shares agreed upon, and there is no condition that the shares should be equal, but none of the parties shall be deprived of the product.

- It is not permissible to make a condition that one of the parties shall have a certain part or volume of the production, or the production of a certain part of the land. It is not permissible also to make a condition about the way and shape of a division in such a way as to lead to a possibility that one of the parties has the product and deprives one party or more than one party.
- The parties can agree that one of them shall have any increase of a certain volume of production, or shall have a share greater than his normal share agreed upon in the product division.
- The parties have the right of dividing the product and crop, according to the shares agreed upon, at any stage agreed upon by the parties, provided that no one of the parties is negatively affected (harmed).
- In case of the loss a part from neglecting or default, any one of the parties bears what he had offered in the planting process, i.e., the seeds, fertilizers etc., shall be lost by the one who had offered them, the worker loses his effort and the one who had offered the inputs loses the part consumed in the process etc.
- The parties have the right of making Islamic insurance to the crop and product.
- The Zakat (charity) of the crops shall be extracted on the harvest day, and according to the shari'a amounts and controls, and shall be expended according to the Zakat Act. Any other product, a part from crops, is subject to the Zakat according to the value and price thereof.
- Implanting of trees or their irrigation shall not be a separate process from the share cropping contract.

In the Name of Allah, Most Gracious, Most Merciful.

Contract of a Possessive Lease

This contract was ratified on Month of year of 20__, between:

First:

1. Bank of hereinafter, referred to, for the purposes of this contract, as the First Party, lessor of a possessive lease.
2. Mr.(s) hereinafter, referred to, for the purposes of this contract, as the Second Party-lessee of a possession-based leasing.

As the Second Party asked the First Party to buy According to the specifications mentioned in and to hire it according to the form of possessive leasing, and as the First Party accepted the offer and bought the required according to the mentioned specifications in, the two parties agreed on the following conditions:

1. The First Party hires to the Second Party the Mentioned above and in the invoice.
2. The Second Party is committed to hire the mentioned in paragraph (1) above, for a monthly recompense of
3. The two parties agreed that the lease duration shall be years(s) starting from and ending in
4. The Second Party is committed to pay the mentioned recompense in item (2), at the residence of the First Party, as follows:

.....
.....

.....
.....
.....
.....

5. The First Party is committed to submit the hired asset to the Second Party on (date), and the Second Party shall write an affidavit of receiving the hired asset.
6. The Second Party is committed to return the hired asset in the condition he received at the time of signing this contract, if he violates his obligation of paying the recompense as stated in paragraph (4) above.
7. The Second Party is committed to present a guarantee in favour of the First Party, equivalent to the value of the hired asset with a percentage of %.
8. The Second Party is committed to make a total Islamic insurance of the hired asset in favour of the First Party.
9. The Second Party is committed to use the hired asset according to its purpose, and to take care of it, as much as the keen person does.
10. The Second Party is committed to conduct periodic maintenance to the stoppages resulting from his use of the hired asset.
11. The Second Party is committed to pay any fees, taxes ... etc with relevance to the use of the hired asset.
12. The First Party is committed to waive the hired asset in favour of the Second Party, through a separate sale contract, after the execution, by the Second Party, of all the commitments mentioned in this contract:

Signed By:
For/ The First Party

Signed By:
For/ The Second Party

1-
I.C. No. date I.C. No. date
2 - Issued in
I.C. No. date Issued in

Witnesses:

1- I.C. No. date issued in
2- I.C. No. date issued in

Attestation / / / 2000

I, , advocate and commissioner in Khartoum, admit the soundness of the above contract, which was completed in my presence and the presence of the two witnesses mentioned above.

Issued under my seal and signature on / /2000.

.....
Advocate and Commissioner for Oaths
In Khartoum.

Conclusion

This book from the bank about leasing contract has included the most important definitions in the leasing contract, from the view points of fiqh and law. Therefore it was shortened and abbreviated. It has tackled the contract definition and its legality from the viewpoints of Qur'an, Sunnah and unanimity of scholars. It has also handled the principal elements and conditions of the contract, as well as the form, parties, the hired asset, the commitments of the lessors and lessees of the hired asset and their rights, in addition to the general provisions and termination of the contract.

The provisions of some types of leasing, e.g., agricultural land leasing, the contracts of co-implanting have also been shown as well as the endowment leasing. As for the contemporary banking applications of leasing contract, the book has shown the provisions of the possession-based leasing and the operation-based leasing, as they are practical applications which have been received with much approval and consent, because they fulfill the needs of banks and customers, particularly in Saudi Arabia and the Gulf States.

Finally the book has showed some draft examples of leasing contracts as applied in real estates, transport vehicles, share cropping and possession-based leasing.

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3. Al-Jami’ Li Ahkaam Al-Qur’an (Collection of Qur’an Rulings) 13:271.
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7. Reported by Al-Bukhari, Ahmad and Muslim, Al-Bukhari added in the term: and if (were prohibited (suht), he should not take it), Subul Al-Salaam 3:80, Naylu Al-Awtaar 5:285.
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