

Comparative Study of Hire-purchase in Iran and English Common Law

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Abstract

Hire-purchase is a mutual interest contract. Regarding its commutative nature, exchangeable items that are against each other are exchanged in contracting process, so if contract is null or is canceled for any reason according to the contract terms, in the way that transferring possession is impossible, relevant actions will be based on the contract if funds entitled monthly installments are determined in. Therefore, the current paper aims to comparatively study hire-purchase in Iranian and common law. Analytical-descriptive method is applied in the paper. The findings indicate the difference between hire-purchase in Iran and common law is that contract for common law is just utilized for movable properties; while in Iran law it is utilized for both movable and immovable properties. In England law, hire purchase is a specified contract. According to the England hire purchase law and consumer credit law in 1974, hire purchase is a contract in which leased goods are transferred from creditor to the credit receiver instead of using periodic payment. It happens only when the credit receiver fulfills the contract terms. In other words the hire purchase contract used in England law is a hire contract with tenants' rights of possession, while it has not been explained in the Iranian law.

Keywords: lease contract, hire-purchase, common law

1. Introduction

Human take action sign various contract to remove many of their problems. Such contracts have taken various forms overtimes, some of them are newly established and it is required to get acquainted with conflicts and performance guarantee, for instance, the contract can be referred to hire-purchase that is interpreted as lease contract provided transferring possession. In this form, buyer contract may not cover the overall price of product but it can pay percentage of amount. Consequently, the contract allows the buyer to use the goods monthly, so long as produce's amount and its interest are paid by buyer, he can use it but if he couldn't pay such amount, the original goods are returned to the owner.

In other words, economic and social requirement that are appeared for society every day require new mechanisms and guidelines. One of these strategies that are highly important for efficiency as an economic indicator to attain development and evolution is hire-purchase contract. It is legal institution that is based on common law. The contract is a combination of lease and objective hire-purchase. Such contract is not signed for long time in religious jurisprudence view point, for this reason, it is not considered in civil code. So in this regard, the current paper is adaptive studies of hire-purchase in Iran and common law. In addition, the study of legal position of the contract has been regarded; therefore, the aforementioned rules and regulations have been analyzed in England act. It is hoped that subject turn into a conventional topic for further research of researchers and qualitative and quantitative development of the research.

Library and descriptive method is utilized for methodology. Using the method, we investigate into articles, law Journal, magazine, newspapers, scientific and legal databases of world internet network, votes of courts as well as interview with layers, sophisticated experts of ministry of justice. Afterwards, research topics have been obtained by the analysis.

1.1 Definitions and Concepts of Hire-Purchase

Hire-purchase: in Iran law, there is a sale that its mutual promise is changed as object of share to buyer (Katozian,

2015).

In the Article 57 of the third chapter in banking operation act without lucre enacted in 1983 and the first article of executive instruction, hire-purchase enacted by credit and money council in 1985:

"Hire-purchase in a kind of contract that lessee is obliged to take the possession of tenement at the completion of period and condition stipulated in the contract".

The contract has rooted in European and American countries and it has found its way to our country. So the word (location-event, leasing¹) has been translated as hire-purchase or selling-renting (Jafari langrudi, 1999). In spite of simplicity and unambiguity, presented definition in the aforementioned act has been stipulated based on contract and many of the issue related to the contract, including installment and its nature, as well as parties intention has remained in summary (katozian, 2015).

Definition of hire-purchase in common law is contract by which goods are hand over to person who has agreed to pay installment as rent, and when mentioned installment was paid, he has the right for goods purchase (dabsen, 1991).

The origin of hire-purchase is common law. As legal system of common law is not basically "written act" and the law is not considered among its initial source. Because of many misuses of "hire-purchase" contract that are committed by financial company businessman and it is signed inequitably to their interest, British legislator decided to make the contract and its nature legalized to support the poor party, thus some acts are being signed in 1938 and then in 1954 and 1964, finally a single act can be extracted and approved out of mentioned acts named hire-purchase contract (consolidating hire-purchase Act). In 1974, consumer credit act (consumer credit Act) was replaced by hire-purchase enacted in 1964 and 1965 (except chapter 3) (dabsen, 1991).

In Article 189, consumer credit act enacted in 1974, hire-purchase is defined as follows:

'Hire-purchase – that is different from conditional sale- is a contract that has the following items:

- A) Accordingly, the products are offered for rent in lieu of paying installments.
- B) Ownership is transferred to that person provided that the agreed conditions are realized by lessee including:
 - 1) the right to select purchase to be applied by lessee
 - 2) Each personal task to be done by both parties (for example issuing the letter of clearance or drawing up document in an office).
 - 3) any other obvious event which was determined in the contract to be realized

In fact, difference between the hire purchase in the Iran law and common law is that this contract in the latter is just used in the case of movable properties, while it is used both for moveable and immovable properties in the Iran law (lease –sale contract is only used for movable properties in French law. In addition, while contracting it can be stipulated that the lessee return it to the owner after hiring. But in Iran law it seems that this condition is against the requirements of the contract and causes its invalidity and even it is in conflict with contract foundation in the Iran law. Because the aim is to provide facilities in order to make individuals owner.

The only available definition of "hire purchase" in the Iran law was first introduced in an Article of an interim executive directive on the "hire purchase" which was adopted in Nov 17, 1982 by the money and credit council. Based on the Article, the "hire purchase" is a contract in which it is stipulated that the lessee must return the tenement to the owner at the end of the lease term if the contract conditions have been met (Virtual Department of Iran Legal Researches site, Keyvani).

2. Hire Purchase Contract Concept in Iranian Law and Foreign Law

It is difficult to distinguish the hire purchase from other contracts because of its complicated nature. Except lease contract and sale which are some effects of this contract, there are some similarities and differences between the hire purchase and sale contract and mortgage contract (Pakdaman, 1994).

¹ It is compound word that is combined by two words of location-event. The first word refers to rent and the second denote sale. The contract has been adopted from American act. American calls it leasing. It is defined as " contract that the owner of immovable property (apparently lessee and it is called achetur locataire) can be own the tenement after paying some installments. The contract is called sale (Jafari langrudi, 1990). There is another contract entitled credit rent: it is a contract that lessor is usually a specific firm that conducts banking affairs or financial institution.

Hire purchase contract is different from installment sales contract, since in the former ownership is not conveyed until the latest installment has not been paid, while in the later ownership is conveyed even if it has not been paid. In 1982, the government was responsible to control these contracts and determine the payment term and minimum deposit. In this contract the ownership is principally belongs to its holder and the customer just uses the profit of that good before paying the last installment. After paying the last installment he/she becomes owner of the contract subject and can use it (Oxford dictionary of law).

The “hire purchase” may be the first term which was used in the UK law and was defined in the Article 189 of the Consumer Credit Act adopted in 1974 as: this contract that is apart from the agreement on conditional sale is a contract that has the following specifications:

- a) a good is rented to the renter in exchange for installment payment
- b) The ownership of the good will convey to the renter if agreed conditions are respected by him/her or one or some of the following conditions occur: 1- hire-purchase is applied by lessee 2- each special event which was supposed to be done is accomplished (The consumer Act, 1974, Art 189).

Therefore, if we call this contract “hire purchase” or “leasing” as Americans have called it that way, or if we name it like the French as “Credit Bail” all mean that the renter is granted authority to purchase at the end of the rental term (Musavi Sh, 1994).

What is important is that it earned special position when new legal establishment was entered to the UK and other European countries law and it can be said that it has its unique features and principles. Although in the beginning of such installations arrival in their law, some lawyers tried to match its nature and characteristics with one of the contracts that were detected until that time, soon afterwards they found that a special position should be given to this legal establishment to cover its exclusive characteristics.

Legal establishment of the “hire purchase” contract also entered the Arabic countries. Ethiopian Civil Code, Article 2412-2728, Libya civil law, Article 419, Iraqi law Article 534 and Syrian law, Article 398 accepted the “hire purchase” contract and emphasis is on the concept of renter’s purchase authority after paying the rent. However in the typical form of the “hire purchase”, lessee is given a right of possession immediately after signing the contract and in return pays a part of the contract rate in cash and whenever the remaining is paid by installments, its possession will be conveyed to the renter (Tafreshi. et al, 2001).

2.1 Types of “Hire Purchase” in Iranian Law

- 1- a contract in which the hire purchase is inserted as affirmative condition

In this kind of contract, lessor transfers the tenement to the lessee at the end of tenancy, if he/she subjects to the contract provisions. In this case, merely installment payment is not sufficient and lessee deserves possession by paying installments according to the contract contents. Lessor must return the same tenement in exchange for the sum which was determined in the beginning or based on amortized commodity daily price or for free (Khodabakhsh, 2005).

- 2- contract in which hire purchase is inserted as the corollary condition

The hire purchase may be considered as the corollary condition in the contract. Thus, lessee possesses the tenement at the end of contract by installment payment and there is no need for other legal acts by lessor. One the other words, lessee has received the commodity and is paying its cost and profits simultaneously. In fact, at the end of lease term and by payment of certain installments of rental prices becomes owner without and additional legal action (KhodaDustan, 1999). In this type, possession of the same tenement is conveyed to the lessee without requiring any new measure by lessor or lessee and if compliance with formalities is necessary (such as document making), they’re not ownership conveyor but manifester and are used to confirm the previous conveyance (Safaei, 2003).

2.2 Types of Hire-Purchase in Common Law

In common law, Hire-purchase can be categorized into two classes:

2.2.1 The Contract in Which Only the Lessor Is Obligated to Transfer

In this type of hire-purchase contract, the lessor makes a contract with lessee wherein he is obligated to give the ownership of tenement to the lessee at the end of the term in the case of lessee’s request and if the redemption of rent is affected. In this type, the lessee is under no obligation to take possession of actual tenement and can bring the contract to end as lease contract; but if desired to take possession of actual tenement, he can express his satisfaction and the lessor is obligated to transfer the ownership to the lessee (Katozian, 2014).

With regard to lessor's obligation for transferring ownership, there are two possible procedures for this type of hire-purchase contract:

- 1) Sometimes, for lessor, it is merely an obligation of sale; that is, the lessor is obliged to write the affirmation of sale after redemption of the last installment in case of lessee's inclination.
- 2) Sometimes, the lessor writes affirmation of sale in the hire-purchase contract. In such contracts, the condition of ownership is regarded as affirmation of sale by the lessor; as affirmation of sale is written in binding contract, this condition is regarded as a part of contract.

2.2.2 The Contract in Which Both Parties Are Obligated to Transfer

3. Different Views on Legal Nature of Hire-Purchase

3.1 Lease

When we talk about the legal nature of hire-purchase, what springs to the mind is that, by the nature, this contract is a lease contract. This lease contract contains a special condition; despite of high importance, it is of subordinate and ancillary nature and cannot affect the primary nature of contract. In fact, according to advocates of this opinion, it is the conditional ownership in contract which is not subordinate and of secondary importance. In most cases, lease is a way to achieve the principal end. This point of view considers this issue very simply and is not trying the relation between both parties; it uses the term "hire" in order to interpret the legal nature, but there is no doubt that how both parties relate is very important and determinant. In every interpretation, it is critical to consider the common purposes of both parties and their intention of making contract.

3.2 Sale

Proponents of this notion believe that the actual intention of both parties must be authenticated in order to determine the nature of contract. In hire-purchase, the main objective is sale, and lease is the starting point for that. So what is occurred is sale, and lease is a way to conceal for installment of price and taking the object of sale as collateral. It can be regarded as sale of cancelling condition which the actual ownership is transferred upon making contract, or as conditional sale wherein transfer of ownership is dependent on redemption of last installment, and then ownership is transferred at the end of term. The proponents of this theory interpret the actual intention of both parties, especially the lessee; what they perceive is sale of tenement by installment. So the total sum of installments does not equal the actual cost, rather it is the sum of cost of total installments and interest or accrued interest. In fact, this contract is related to sale by installment and seller prefers it because of high assurance. At the moment, Iranian banking system uses such procedure in order to make contract for redemption of a loan.

The procedure of this contract feed this thought that occurred is sale by installment not lease contract, because banks make such contracts for loan redemption; but they do not apply sale by installment and sale contract due to increased assurance.

3.3 Hire-Purchase as a Sale Contract

According to this theory, since the main objective and primary incentive of both parties is to transfer ownership of actual tenement, so such contracts are of sale type may be in one of the following form:

3.3.1 Hire-Purchase as Conditional Sale Contract

According to the theory, hire-purchase contract is a conditional sale wherein transfer of ownership is dependent on final redemption of loan installment; so during the contract term, the lessor would be the actual owner as transfer of ownership is not occurred; transfer of ownership is conditional upon redemption of installment and fulfillment of obligations by lessee.

For this theory, we should differentiate between two cases. If the suspending condition of contract is of subsequent event, i.e. redemption of installment leads to transfer of ownership to the lessee and rental is regarded as the price of transaction paid as installment, it should be accepted that lease is not the subject of contract because what affirm the actual intention of both parties is the sale which payment is by installment; so what prevents transfer of ownership at the time of making contract is contractual barrier deferring it to future time. In fact, contract should be regarded as sale by installment not deferred sale because, as it mentioned earlier, in deferred sale, ownership is transferred at time of making contract, though its payment is deferred; but for the case of hire-purchase contract, ownership is transferred after the final redemption of installment.

In promise of sale, actual sale is not the subject of agreement, rather what is agreed is effectuate sale contract at future; so obligation of sale should not be regarded suspended because, in promise of sale, writing is not made to

prevent it from being conditional or suspended. So both parties intend to write it in future as agreed (Shahidi, 1998).

It should be considered that promise of sale by one party differs from obligatory affirmation of sale. Although both have the same outcome resulting eventually in making sale contract, the promise of concluding contract by one party is a kind of contract which consequence is obligation to promise after being accepted by the addressee. In hire-purchase contract, though sale is conditioned at lessee's consent and provided by lessor's promise, the contract is based on the lease and agreed condition; it is not affirmation of a complete legal action, rather it is one of the foundations of legal action. On the other hand, the offer is cancelled in the case of death or incapacity of one of the parties or expiring the term, but promissory agreement to conclude a contract is based on the complete actual contract and is immune to such events; so death and incapacity of both parties will not invalidate the contract and legal heirs of dead person will be rightful for such claims (Katozian, 2014).

3.3.2 Hire-Purchase as Sale Contract with Cancelling Condition

According to this theory, though both parties conclude a contract as a way to take out a loan and arising interest and to give collaterals for creditors, their real and actual intention is to make sale contract and exploit its advantages for transfer of ownership.

Therefore, hire purchase is selling along the suspended abrogating condition, in this way that the ownership is transferred to the lessee, so that the cited abrogation condition causes the contract cancellation primarily in case of lessee violation before any of the contract materials. If we accept such implication, we should admit that the rent is a kind of formal contract and it is not a reliable fact for lessee's creditors, and they have to count it as his/her properties in case of bankruptcy (Katozian, 2015).

Such selling comes along with abrogating condition of not paying the price which in this case (not to pay the price), the transferred ownership from the establishment of sale contract is canceled, but the customer is in charge of guarantee till fulfillment of the condition. The other implication includes that the sale along with ownership protection right is a kind of sale accompanied with condition of probation postponed the ownership transference until the full price payment. The contract is established immediately after wills interaction, but it will not pose any ownership and guarantee to the customer (Rahimi, 2000).

It is clear that the acceptance of this theory relied on existence of lessee ownership right prior to payment of all the installments, and it can be inferred that the good or the remarked land counted as his/her properties, therefore, in some particular cases such as bankruptcy he/she could be arrested by the will of creditors, while attention to the will and personal purpose make clear that all of such measures established to safeguard the accreditor before the imposed damages. And the in-transference of ownership by him/her until the installments full payment, aimed to bring up a kind of collateral to protect his/her rights, so the theoretical and practical result of this theory shows a contradiction and confliction with the common will of the two parties.

In other hand, implied by Civil Law Article 191, a contract is concluded provided that it is connected to what implies the intention. The used expressions in remarked contract and apparel will of the parties imply that the two parties had been concerned about rental contract, now if we relied on this idea (that the rent is formal and the real intention of the parties included the sale contract in which the suspended abrogating condition was concealed on it) the parties tended to make a contract. In case that the personal purpose is not get revealed, it will be effect-less in establishment of legal relation. Hence, upon the remarked citations, this implication is rejected and not acceptable.

4. Conclusion

In the current survey, the hire purchase contract is a kind of new one that can be achievable through one of the mentioned procedures, and it is in aligned with the religion law by observing the conditions. But some points should be stated to aware the parties that the contract conclusion be carried upon the features of this type of contract, in other case, the same issue will be brought up again which endanger the contract authenticity severely. The industrial and economic needs of the two traditional sale or rent contract form a new institute which has been gain lots of credit in the current world. Although, such group of expertise has not been loyal to the results of their analysis and they have not express their opinion solely and stick to this view that the hire purchase whether chosen by the lessee or resulted in ownership will be lead into independency. It seems that we should admit the hire purchase as new specific contract that has been recognized officially by the constitutor. Finally, the hire purchase is a type of authentic and normal contract with wide range of application and advantages to obtain more and better economic interests and reaching the sustainable development, hence, it needs to possess its real position throughout the law context. According the previous statements, the hire purchase contract that we deal

with it currently is nor a sale contract and not a rent, and even a mixture of the two contracts, but it is rather a unique contract with its exclusive specifications concluded in the realm of article 10 of the civil law because of the existed legal gap in Iran law. So it is reasonable that the legislator to specify and constitute such contracts in order to make adjustment throughout the remarked contracts such as insurance contract that made lots of troubles.

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