

## Legal Nature of “Hire Purchase” in Iranian and Islamic Law

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Received: April 16, 2016 Accepted: May 10, 2016 Online Published: December 29, 2016

doi:10.5539/jpl.v10n1p7

URL: <http://dx.doi.org/10.5539/jpl.v10n1p7>

### Abstract

Hire purchase contract in Iran law is known as conditional hire contract which is based on article one of the executive direction. It is a correct, legal and applicable contract which has useful privilege and is used in order to easily and holistically access to economic interest and sustainable development. Therefore it is necessary to explain it in law and Islamic law also to approve its laws and regulations. The objective of this research is to investigate the legal nature of hire purchase in Iran and Islamic law. This research is based on descriptive and library methods. According to the results due to the lack of law records in civil code, hire purchase has not been explained in Iran law and needs to be characterized separately.

**Keywords:** hire purchase contract, sale and purchase, cancelation of contract, lessor right

### 1. Introduction

There is no doubt that the legal nature of each contract consists of parties common intentions and personal wills. Although most of the time when the parties outward will is based on customary law or supplementary law on the supposition that there is no certain regulation, the most important thing is focusing on the parties will. Hire purchase contract can be considered as one of the ambiguous contracts.

One of the English authors has defined hire purchase as an agreement through which goods owner has rented them to the tenant. Therefore the tenant has the right of possession if he/she fulfills the contract terms and payments. (Abazari Fomeshi, 2013). Another author has defined it as a contract in which the goods are delivered to the person who has agreed to pay the installments based on the hire contract and has the right to purchase the goods after paying the installments. Before the tenant right agreement, the goods can be drawback to the owner (only after installment payment because before that he/she doesn't have the purchase right) and before the tenant right agreement, there is no purchase contract (Abazari Fomeshi, 2013).

Higher purchase is also called ordinary rent in which the total leasehold installments are equal to the price and hire of that object in limited period of time whether total price of rent is paid en bloc at the end of the period or is paid in form of installments (Monzar Ghahf).

In general, hire purchase is a contract in which goods are rented to the tenant when he/she paid the installments. Therefore rights of possession can only transfer when the installment payment is finished or if there is any other condition, when the parties fulfilled the conditions. Due to the complex nature of hire purchase contract, it is not easy to distinguish it from other contracts. Except rent and sale that are the results of this contract, sale and mortgage contracts have their similarities and differences (Pakdaman, 1994).

Tag El-Din and Irwani (2007) studied implementing the Islamic hire purchase in dual banking systems in Malaysia to offer practicable solutions to help provide better and more legitimate structured implementation of Islamic hire purchase in financial institutions. They aimed to examine some critical issues arising from the implementation of *al-ijarah thumma al-bai'* (hire purchase) from jurist, legal, and practical perspectives.

Therefore this research is conducted in order to interpret this contract and identify its advantages and nature especially in Iran law due to the contract's ambiguities. Therefore the research objective is to clear all the ambiguities and compare this with other contracts in Iran law and judicial precedent. We hope that other researchers use this research to do more research on this topic and interpret it in both qualitative and quantitative manners.

## 2. Legal Nature and Features of Hire Purchase Contract

Analyzing the legal nature of this contract is important because its rules and consequences are identified. If we consider this contract as hire or sale specific contract, then we have the responsibility of applying its rules in legal institution. On the other hand if we consider it as a kind of contract that has its own specific rules and consequences and is separate from other contracts, each rule must be identified and explained in a separate manner.

- Hire purchase contract is a contract which has its own conditions of purchase.

Proponents of this interpretation believe that interest purchase and bare ownership transfer condition can be considered as the parties' common objectives. In fact hire purchase is also called conditional rent but not unconditional rent (absolute). According to conditional hire whenever the tenant fulfills the contract terms, lessor is obliged to transfer the bare ownership to the tenant (Khavari, 1992).

katuzian believes that the only thing that comes to mind about the legal nature of hire purchase is that it is a rent contract. This contract has its own specific condition and although this condition is very important compared to rent contract it has adminicular nature and can't affect or change the nature of principal contract (Katuzian, 1992).

According to the article one of the executive direction in 28/9/1982, hire purchase contract is a rent contract in which the tenant must pay the leasehold in limited period of time. Also banks must stipulate in the contract that the tenant will possess the leasehold only when he/she paid the last installment or liquidated the whole price of rent in limited period of time.

Therefore according to this definition, hire purchase is a contract in which interest purchase is transferred to the tenant and its only difference with rent contract is purchase condition which is in favor of tenant. Like other contracts, hire purchase contract is one of the civil code specific contracts and commutative contract that is applicable in bank operations without gavel law (for instance, partnership, mortgage, and reward contracts). In this contract after receiving the price of rent, the tenant possesses the interest. Although hire purchase is not an unconditional rent and is related to contract condition. According to this condition contract whenever the tenant fulfills the terms of contract, banks are obliged to transfer the bare ownership to the tenant (Khavari, 1990).

"In hire purchase contract the rental period shouldn't be more than leasing properties and because the lifetime tables of these properties are served to the banks, in order to know each property's lifetime you need to refer to its table and identify the rental period.

It seems that the hire – purchase contract is regarded as a credit contract in the Iranian law and is supported by a definition mentioned in the article 1 of the executorial direction of the hire- purchase contract"(Banking training center, 1989).

It is obvious that by the hire-purchase, the common purpose of the parties isn't conveyance of profit but accord on transferring of object of lease. But according to the conditional feature of the hire-purchase contract, in order to pay the consideration, a party gets credit facilities and the transferring of the object of lease is dependent upon the tenant obligations i.e. payment of main and interest amount of the received facilities. We should consider that the hire-purchase contract is the one in which rent as the payment installment, after termination of term of lease, differentiates it from the lease, in such a way that the theory is theory is confirmed that generally the hire-purchase isn't regarded as lease (Akbarie, 2004/05).

Another differentiating feature of lease from the hire-purchase is sale license of the object of lease before termination of term of lease. According to the article 498 of the civil law, if the object of lease is transferred to another person, the lease is running, but the lack of awareness of transferee give him right of cancellation.

### 2.1 Features of Hire-Purchase

As before mentioned, the hire-purchase is a contract independent from other contracts which have specified characteristic. Although some of these features are common with other ones, there are some conclusive features which discriminate it from other contracts. These features include:

#### 2.1.1 The Hire-Purchase Is a Relative Contract

The most important feature of the hire-purchase includes its credit aspect, in such a way that in this contract lessor is creditor and tenant is credit receiver. "The credit contracts are those that formed from combination of two joined contracts. One is a main contract that can be sale and another one is credit contract which is the measure of discrimination of all groups of credit contracts. Article 2-311 of the consumption law of France about the credit contract required that the credit is the one that granted with specified interests by natural or legal persons, and the creditor should be administrator of the credit operation, and the credit operation includes some

contracts such as sale by installment and hire-purchase. The creditor is a profession owner like as a bank, and the credit receiver is a consumer. The hire-purchase contract has included in the aforementioned article of consumption rule because of their credit role”.

According to the rule of mentioned credits, some contracts are which meet one main contract (such as sale) and become dependent on it, and by them we mean those credits that are granted during contract agreement for funding of commodity achievement or service.

Credit action of the hire-purchase has different states including a) the lessor has been the owner of object of lease in advance and the lessee hasn't involved in its preparation, and here the hire-purchase isn't expressed within a contractual group because in this case just the contract which has been made between the two mentioned person will be occurred, b) or the lessor hasn't been the owner of object of lease in advance and has purchased it with involvement of the lessee in order to lease him, which in this case the hire-purchase contract is expressed as a contractual group. So, the first contract is a sale between third party and creditor, and after ownership of creditor, the second contract is made between the creditor and credit receiver, which is occurred based on the hire-purchase contract.

### *2.2 Hire- Purchase in Writing*

According to the general rule of contracts, the principle of consent is running for all contracts else there is a wording against it. In fact the principle of consent is one of important results of dominion of law principle; meanwhile some of contracts are accompanied with exceptional procedures which observing these procedures are among the main bases of contract agreement. In relation with hire-purchase agreement we should consider that whether the consent principle is required for them or not, or because this is a kind of granting bank or profit facilities it needs exceptional procedures. Since, hire-purchase hasn't been considered as a definite contract in the Iranian civil law, we should assume it is based on the consent. Considering some of legal matters which have been appointed about the hire-purchase, we can affirm necessity of it being in writing implicitly.

According to the article 17 of the executional direction, in the hire-purchase contract, banks are required to state that the mentioned contract is an enforceable document according to the mutual agreement and is subjected to the regulations of enforcement of registered deeds. It is obvious that without contract agreement there is no possibility that the mentioned contract being used as an enforceable document.

There are similar implied conditions in the hire-purchase and supply of goods contracts. The ratio of parties' freedom for excluding contract from hire-purchase contracts and regulations may necessitate that a contract be arranged in writing. For example by virtue of 1974 consumer credit act of England, the credit contract of consumer should be prepared in a special form according to law, else it is just be enforceable by the court order against the debtor and engaged. The problem here is that whether in the case of lack of hire-purchase in writing the contract hasn't been made or is lack of sanction when the contract is made verbally. To find a solution, we should consider whether if the feature of being in writing is among the main procedures or the superficial ones. It is obvious that if this feature is regarded as one of fundamental bases of contract, missing it will makes the contract void (Daksbery, 1995).

Repudiation of hire-purchase contract if we regard this contract as a sale, it includes the option in sale of animal, option of meeting place, and option of delay. Because we considered it a lease, these options aren't included in the “hire-purchase” contract, but other legal options, which are present in all of contracts, are also included in this contract. For example, if object of lease isn't correspond with the descriptions provided in the contract, the tenant has the right of cancellation. It is obvious that the case is satisfied where a specified object is absent and became clarified through description. The option is originating from the implied obligation of lessor to the adaptation of object of transaction with the mentioned descriptions. With a binding contract, in addition to the legal cases, we can predict some cases for both of parties, as the right of cancellation. For example, in the case of delay in payment of installment, or violation of other conditions provided in the contract, the lessor has the right of cancellation.

### *2.3 Rights and Duties of Parties*

As we know the legal nature of hire-purchase contract, it is obvious that the duties of parties are the same as rights and duties specified in the lease. But because the condition of ownership of property has implied in the mentioned contract, it borrows some rights and duties from the purchase contract. So, the rights and duties of lessor and lessee include:

- 1) Lessor has the right of claim for installment in three terms.
- 2) If lessee doesn't fulfill the contract terms, for example doesn't pay the installments in due date, the lessor has the right of cancellation and can prevent from the purchase condition. The result is that the lessor can ask for

eviction in some assumed cases.

3) In the event that tenant become bankrupt, the owner has a right to take back all his properties from him without being forced to interfere with other creditors. According to Article 529, deposit property in the hand of trader is reclaimable and should be included in the discussion.<sup>1</sup>

#### *2.4 Lessor Duties*

Like other lease contract, lessor is obliged to fulfill the following measures according to hire-purchase contract:

- 1) He has to submit the tenement without any damage and defect. In addition, tenement should be submitted in a manner that third party's right does not belong to him by the end of lease duration. In other words: the tenement should be the lawful property of the lessor by the end of lease contract.
- 2) Repairs and all expenses that are required for tenant should be removed by lessor, unless another condition is determined (Article 486 of the civil right).
- 3) He should provide required information for usufruct of tenement with tenant.
- 4) Any actions that are contrary to tenement should be avoided.
- 5) Since the commitment to objects is the same as furniture and equipment; so the lessor is obliged to pay transfer cost, including tax and tolls and registration fee in notary public- using criterion of Article 381- unless it is inconsistent with contract.
- 6) The lessor is obliged to submit the property after the tenement being evacuated by him.

#### *2.5 Tenant Right*

- 1) The tenant has a right to receive tenement without any defect and utilize its facility during lease duration.
- 2) The tenant can deliver property to the third party for repair when he possesses it (Article 485 of the civil Code).
- 3) Since contract in question involve hire-purchase condition, tenant has a right to avoid possession transferred by owner to tenement; because hire-purchase condition remove possession of owner in lawful state like sale condition which customer can not possess transferred occupations (Article 460 of the civil Code)

#### *2.6 Tenant Duties*

- 1) The tenant is obliged to pay rent installment at the appointed time and on the condition stipulated in contract.
- 2) Tenement is deposited in the hand of tenant and if he should guarantee any violation in maintenance duties (Article 490 of the Civil Code).
- 3) Tenant should use tenement in accordance with contract condition. Violation against the issue will be subject to the cancellation of contract by lessor (Article 492 of the Civil Code).

### **3. Performance Guarantee and the Necessity to Control Hire-Purchase Contracts**

Institution that often takes action to sign hire-purchase contract with credit receiver party, they should find a solution for violations which are incurred by tenant, and most solutions has been designed in the interest of credit institution and fulfill their requirement, it is rarely seen that credit institution and leasing firms gets deprived of their interest. Therefore, if necessary predictions are considered in a contract and parties accept it based on the content of Article 10, civil code, these predictions should be followed.<sup>2</sup>

According to the first theory, obligor who is considered the cause of loss, does not force to undertake equivalent interests along with agreeable price in the market, but his duty is to compensate the loss arising from violation in performing commitment. For instance, if oblige spends cost and make preparations for commitment subject, and then these costs gets destroyed by the violation of obligor, he is obliged to pay the cost. However, according to the second theory, he should pay agreeable price and lost interest, in addition to this amount, in order to change

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<sup>1</sup> Article 468

<sup>2</sup> inferred from Article 485

<sup>1</sup> Article 460

<sup>2</sup> Article 490

<sup>3</sup> Article 492

the obligor's condition into the condition after contract performance (Safaei, 2003).

Contrary to French law, contractual damage is ruled in British law so that obliged party are placed in situation after performing contract and violator should compensate the loss according to his interest.

In exceptional cases, to compensate cost undertaken by claimer, as the violation is useless, order is issued to pay the loss, of course, in such cases, the goal is to put claimer in a situation that existed before signing the contract.

Of course, there is no especial regulation to determine loss rate, and this issue depends on the court's opinion, based on part 51 of sale goods act enacted in 1979, when seller avoid to receive the goods and there is no market for the considered goods, loss rate, differentiation will be between market's contractual and trade price.

According to the Article 50 of the same act, when buyer avoid to accept goods or pay the cost, market funds for goods, loss rate, will refer to differentiation between contractual price and current price of market, when the goods has to be accepted (Mohaghhegh Damad, 2002).

### *3.1 Necessity of Legal and Economic Supervision of Hire-Purchase Contracts*

Implied that hire-purchase contract is a credit contract and a replaced, which should be considered for having a determined framework, the other issue to be considered is necessity of legal and economic supervision of these contracts.

Of high importance is necessity of government supervision and control. These contracts should be controlled and monitored legally and economically, because lack of balance between both parties makes the weaker party accepts the conditions mentioned in the contract by the other party; this causes the most credit contracts convert to supplemental contract and facilitates profiteering of such stronger party as credit and financial institutions. So it is necessary to supervise and monitor performance of such institutions legally and economically in order to modify the procedure of giving loan and respecting rights of consumers (in fact, lessee). Though some partial monitoring and supervision rules have been placed, there is not legal supervision at all, and this reveals the necessity of proper approach for legal control (Safaei, 2003).

Iranian legislator facilitates considering such rules in Iranian Law. On one hand, due to increasing necessity and needs, the people incline to apply such contracts; on the other hand, the procedure for legislation and policy making is considerably slower than the rate of establishment of leasing institutions in Iran. Therefore, it is necessary to codify rules and regulations for hire-purchase contracts.

## **4. Conclusion**

With regard to the legal nature of hire-purchase contract, the main issue is that, if regarded as lease contract, considering lessee pays the leasehold monthly, how the lease nature of contract should be changed and converted to sale on expiry of the term and after payment of all installments, and how the leasehold would be regarded as price of transaction. Definitely, it is not a free and irrevocable transfer of ownership because the belonging is not the common intention of both parties and also irrevocable transfer of ownership is not consistent with the nature of such contracts; according to prevalent procedure, the real intention is to sale not transfer of ownership irrevocably. In civil Law, Article 338, sale is defined as ownership of corpus of property in return for known, and Article 466 denotes lease is a contract wherein the lessee owns the profits of tenement. Hire-purchase contract is dependent on the principal conditions of validity of transactions and public rules of contracts and the agreed conditions between both parties; it should be noted that certain effects of sale and lease contract are not applicable for hire-purchase contract, though it may have some effects of sale and lease. So certain identity of hire-purchase contract should be considered, avoid using specific titles of sale and lease (like lessor and lessee) for hire-purchase contract. As it discussed, it seems that what known as hire-purchase is neither lease nor sale, and not a combination of them, rather it is a contract with specific properties categorized as contracts in Article 10, Civil Law; however, legislator should characterize such contracts as separate category in order to modify and adjust the relations between both parties.

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