

Research Article

Lease-to-Own Sale and Its Shari'ah Classification: A Comparative Jurisprudential Study with Civil Law

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Abstract: Islamic Shari'ah embodies the conclusive and complete form of divine legislation. It is not limited to a specific period or community. Rather, it encompasses all of humankind. This can be seen in the following Qur'anic verse: "And We have not sent you except to all mankind..." (Saba' 34:28). Therefore, its fundamental principles have the power to remain applicable throughout different eras of history. They can also be executed in spite of the ever-changing nature of social and economic life. In the realm of human life, renewal (Tajdid) embodies an innate principle that enables progress and development in civilizations. The dynamic needs of individuals, communities, and states require adaptations that meet the requirements of different situations. In contemporary life, many fields have faced tremendous changes. This has given rise to new contractual forms. Among them is the lease-to-own contract. It embodies a new contractual form that has become intimately associated with economic growth in contemporary life. Islam, as a complete and integrated system, guides humankind to the right path to attain blissful life and progress. It also provides answers to problems faced in different stages of life. Through the flexibility and vitality bestowed upon it by God Almighty, the Islamic legal system accompanies the growth of human civilizations. This adaptability also enables it to deal with newly emerging issues and make appropriate Shari'ah rulings on them. In this regard, the lease-to-own contract has emerged as one of the most significant contract forms that demand precise juristic and legal evaluation. The contract form has elements of leasing and sale, which are intricately linked with one another, thereby demanding precise evaluation of the contract form from the juristic point of view. Considering the increased usage of this contract form in modern-day financial practices, various scholarly views have emerged on the true nature of this contract form and its appropriate juristic classification within the broader realm of Islamic Jurisprudence. It has, therefore, become imperative to evaluate the corresponding provisions of civil law with regard to similar contract forms to establish points of convergence and divergence with the Islamic Jurisprudence provisions. The current study, therefore, attempts to explore the true nature of the lease-to-own contract, various views of contemporary jurists on this contract form, and its corresponding provisions of civil law, with the aim of ascertaining its precise juristic classification that corresponds with the objectives of Shari'ah and establishes the true worth of Islamic Jurisprudence as an appropriate legal code for human life at all times and in every context.

Keywords: The Holy Qur'an, Prophetic Sunnah, Islamic Shari'ah, Jurists, Sale, Lease, Challenges, Solutions, Conditions, Positive Law.

1. Introduction

Islamic jurisprudence (Fiqh) is characterised by its authenticity and its orientation toward practical realities [1]. Instead, it focuses on concrete situations, dealing with individual issues and offering definite decisions and answers [2]. Islamic jurists of various schools of thought have over the years analyzed various contractual relationships, including sale and leasing contracts. The validity of these contracts was established through the use of the Holy Qur'an, the purified Sunnah, and other recognized sources of legislation [3]. Based on these issues, the Islamic jurists were able to come up with detailed rules and interpret the consequences of these transactions. Moreover, scholars of the Islamic schools of law were able to come up with detailed rules that function as guidelines to issues that are newly emerging [4]. They serve as the recognized interpreters of Shari'ah, and throughout various periods, Muslim scholars have remained to deduce laws on emerging issues [5] and changing conditions through various juristic methodologies and principles. Consequently, Islamic jurisprudence is characterized by a certain breadth and order that is beyond that which is attainable in man-made laws [6]. However, emerging issues in modern times have introduced new forms of contracts and laws that were not discussed or known in Islamic jurisprudence [7]. One such agreement is that of a lease to own sale contract. This type of agreement was first conceptualised from the French term known as (Vente-Location), which literally means "lease-sale." This type of agreement was described by legal writers using different nomenclatures, such as "disguised lease" and "lease-sale," among other terms.

Islamic law, being a form of divine legislation, is considered to have completeness and applicability in all periods of time. This means that despite the elapse of time, it is still possible for such legislation to

govern modern-day social and economic activities. It is in this respect that with the advancement of civilization and developments in ownership, different types of contracts have emerged that were not known in previous times. Among such agreements is that of a lease to own contract, which was developed in association with the modern-day growth of economics and finance. This type of agreement, however, has been subject to different opinions by scholars regarding its origin, nature, and validity. It is in this respect that the present study aims to determine the nature of such a contract, different opinions by modern-day scholars regarding it, and how it is viewed in civil laws with the aim of classifying it in jurisprudence precisely.

2. Research Problem

It is evident that modern society has experienced significant changes, and with this, new types of contractual agreements have come into existence, with the lease to own contract being one of the most notable ones. Although it is evident that this type of contract is gaining popularity among people, especially in relation to business and real estate deals, there is a great deal of ambiguity in relation to its legal status, such as whether it should be considered a sale or a lease, and whether the conditions that are incorporated in this type of contract are legal in nature and permissible in Islam or not, which may pose a great risk to those who are not able to determine its correct status in Islamic jurisprudence and may engage in activities that are considered impermissible in Islam.

3. Significance of the Topic

The importance of this issue becomes clear in situations where a leasing arrangement is established either between two individuals or between one individual and one institutional entity such as a company or a bank, on condition that all legal requirements for validity are fulfilled. In such situations, the seller, in his role as an instalment's vendor, seeks to ensure that the purchaser fulfils his obligation to pay the instalments within a specific timeframe without any delays. However, the seller is concerned about his potential financial loss in the event that the purchaser fails to meet his obligation. In order to address this concern, the seller may use the lease-to-own contractual agreement. The practicality of this type of contract becomes clear in situations where the buyer becomes insolvent prior to fulfilling his obligation to pay all instalments. In this context, since ownership is retained by the seller until the full price is paid, the asset is not included in the list of assets belonging to the bankrupt buyer and therefore is not included in the list of assets to be sold among creditors. Instead, the seller is entitled to retrieve his asset in exchange for refunding the instalments he has already received. Thus, in this situation, the seller is protected from any potential financial loss. This situation is distinguishable from deferred sale contracts, in which goods sold are included in the debtor's estate and are distributed among creditors.

4. Reasons for Choosing the Topic

The rationale for choosing this particular topic lies in the need to understand the lease to own sale in terms of its applicability in modern contractual arrangements, which are still in the process of evolution and have significant implications for the economic activities of people in general. In view of the fact that this form of contract is becoming increasingly popular in modern contractual arrangements, it is essential to understand its legal status in the framework of Islamic law. Accordingly, the objective of this study is to provide clarity to the Islamic legal ruling pertaining to the validity of this form of contract, whether it is valid or invalid. In this regard, the objective of the study is to help people conduct their economic activities in a manner that is approved by God and not prohibited by Him.

5. Research Hypothesis

The assumption of this research is based on the possibility of the existence of an initial contract, whether it is a sale contract or a leasing contract, that gives the right to one of the parties to withhold delivery. It might be that this contract simply reflects a commitment of intention to sell or to lease, but it does not possess the power to bind and therefore does not reflect a contract. It might also be that this contract reflects a commitment to agree to a sale through leasing, where there is gradual transfer of ownership from the moment of agreement to the completion of the payments of the instalment. It might also be that the contract reflects an agreement to lease where there is a condition to transfer the ownership once the instalments are paid. The research hypothesis is based on analyzing these forms of contracts, examining the legal objections to them, and studying the juristic efforts to classify the contract and define its nature.

6. Research Methodology

The current study will employ a comparative inductive analytical method based on primary sources of Islamic jurisprudence and will attribute the opinions to the jurists. Once the opinions are gathered and analysed, the study will identify the most preponderant opinions and analyse the attempts of jurists to classify the contract of lease as an own sale contract.

7. Structure of the Study

Consequently, this study is divided into an introduction, three sections, and a conclusion in order to present the key findings in a manner that reflects their importance. The first section is devoted to clarifying the primary terms included in the title, in addition to the fundamental concepts associated with them. This section is divided into two parts. The first part is concerned with clarifying the conceptual framework of the title and its various applications in sales transactions. The second part is concerned with clarifying the legal objections and conditions related to the lease-to-own sale contract, including conditions related to sales dependent on other conditions or contingencies, in addition to conditions related to pledge and lease contracts. The third and final section is concerned with analysing the jurisprudential classification of the lease-to-own sale contract in Islamic

law in comparison with those classifications in positive (civil) law. This section is divided into three parts, with emphasis on the positive (civil) law perspective from a comparative analysis. In the concluding section, the study, through its analytical discussion and review, reaches certain findings that hold considerable importance for scholars and require critical evaluation.

8. The Conceptual Framework of the Title

8.1 Definition

Prior to examining the issue of the lease-to-own sale, clarifying its Shari'ah classification, and assessing its legitimacy, it is essential to first establish the meanings of the concepts of sale (bay') and lease (ijarah) [8], and to explain their fundamental definitions, which constitute the conceptual foundation upon which the present study is based.

8.2 The Linguistic and Terminological Meaning of Sale

Examining the nature of the lease-to-own sale contract requires first defining the concept of sale from both the linguistic and the technical perspectives, as outlined below:

8.3 Sale in the Linguistic Sense

The term bay' (sale) is defined linguistically as follows: "He sold (ba'a) a thing, and I bought (bi'tuhu) it; I sell it as a sale (bay'an)," with its less common morphological form being maba'ah [9]. Al-Fayumi explained that, linguistically, bay' denotes "to sell something; he sells (yabi'uhu) it, the thing sold is mabi', and the seller is ba'i'." The word bay' is considered one of the opposites (al-*qaddad*) of shara' (to buy), and either of the contracting parties may be termed a seller. However, when the term ba'i' (seller) is used in absolute terms, it generally refers to the party offering the commodity. Additionally, bay' may denote the object of the sale itself, as in the expression "a good sale," and its plural form is buyu' [10]. From these linguistic explanations, it is apparent that the essential meaning of bay' involves exchange and transfer of ownership, that is, the transfer of property in return for compensation [11].

Sale in the technical or juristic sense is defined as "an utterance indicating the transfer of ownership from one owner to another for a known compensation; mere delivery without words is not sufficient" [12]. The Qur'an states: "Allah has permitted trade and forbidden usury" (Al-Baqarah 2:275). Ullah, et al. [13] observed that sale does not necessarily confer ownership in all its aspects but rather includes ownership of the object together with its usufruct. The essence of a sale contract lies in "the connection between one obligation and another" [14]. Jurists from other Islamic schools have defined sale as "an exchange of property for property in a specified manner," implying both the transfer of ownership and the acquisition of the object. Collectively, these definitions indicate that a sale constitutes the transfer of property from one person to another for a known consideration, accomplished through the mutual binding of the obligations of the seller and the buyer arising from the transaction [15].

9. The Contract of Lease (Ijarah) in Language and Terminology

9.1 First: Lease in the Linguistic Sense

Linguistically, *ijarah* refers to "compensation or wage given for work". The term *kira'* is frequently used interchangeably with *ajr* (wage), and the *ajr* of a worker is defined as "what is given to him in exchange for the effort exerted in his work" [16]. *Ijarah* is also defined as "a contract for transferring usufruct in return for a known compensation". This linguistic interpretation corresponds closely with the technical meaning that is pertinent to this study [17].

9.2 Second: Lease in the Technical (Juristic) Sense

Jurists have defined it as the transfer of usufruct in return for compensation. More particularly, the definition of the contract of lease has been offered as "a contract whose effect is the transfer of usufruct for a known compensation, subject to offer and acceptance" [18] [19]. The contract of *ijarah* is an act of declaration with the legal consequence of the transfer of a known usufruct in return for

compensation. It is a binding contract. There is agreement among scholars of the Imami school of thought as well as other schools of thought that *ijarah* means the transfer of usufruct in return for compensation [20]. From the above, it is very clear that the term "*ijarah*" linguistically means wage or rent, while juristically it means the transfer of usufruct in return for compensation. It is to be noted that the contract of sale differs from the contract of lease as the former entails the transfer of the object itself, while the latter entails the transfer of the usufruct of the object.

10. The Lease-to-Own Sale

10.1 First: The Lease-to-Own Sale According to Jurists

The lease to own sale, also known as *al-bay' al-ijari*, has been defined as: "The agreement between two parties in which one of the parties rents an item to the other in return for rent or instalments, whether monthly, quarterly, yearly, or in any other period. When the lessee completes the payment of all instalments within the stipulated period and returns the rented item to the owner at the end of the period of lease, both parties agree to sell the item or equipment to the lessee in its current state for an amount that both parties have agreed to in the final sale transaction." [21]. The lease to own sale has also been further defined as: "In transactions involving land, houses, vehicles, or other goods, the seller retains ownership of the item until the buyer completes all price instalments. The contract initially takes the form of a lease, with the stipulation that ownership is transferred to the buyer upon payment of the final instalment. Therefore, ownership does not pass to the other party until full payment is made." In essence, the lease-to-own sale constitutes a deferred sale with retention of ownership. It may also be described as an arrangement between two parties whereby one leases to the other an asset suitable for leasing—such as land, a building, a vehicle, a ship, an aircraft, or machinery—against regular periodic payments (monthly, yearly, etc.). Once the lessee completes the scheduled instalments—for example, ten payments—ownership of the asset is transferred to the lessee upon payment of the final instalment. From the foregoing definitions, it is evident that the lessor (seller) remains the controlling party in the lease-to-own sale, with ownership contingent upon full payment of the price [22].

10.2 Second: The Lease-to-Own Sale in Positive (Civil) Law

The lease-to-own sale is among the contractual arrangements recognised by certain civil legal systems, although it was not explicitly addressed by earlier Muslim jurists. Some contemporary jurists have sought to justify its permissibility using arguments that are not robust from a *fiqhi* or *uṣūlī* (legal-theoretical) perspective [23]. Legal scholars frequently refer to the lease-to-own sale as a "disguised lease" or a "lease combined with a promise of sale." It entails an agreement in which two parties contract to lease a specific item for a defined period at a specified rent, on the condition that if the lessee fulfils all obligations, the arrangement converts into a sale, with the lessee becoming the owner and the paid rent being treated as instalments towards the purchase price.

Another definition describes it as an agreement where one party delivers an item to the other in exchange for periodic payments regarded as rent for its use. Once the lessee completes all payments by the end of the agreed term, ownership of the item automatically transfers to him upon payment of the final instalment. A lease may also be defined as an arrangement between a seller and a buyer in which the buyer is regarded as a lessee of the item until all instalments are paid, at which point he becomes the owner: "If a sale is made on deferred payment, the seller may retain ownership until the price is paid in full, even if delivery has already occurred."

Paragraph two of the same article adds: "If the price is payable by instalments, the contracting parties may agree that the seller retain part of it as compensation for the cancellation of the sale if all instalments are not paid. However, the court may, depending on circumstances, reduce the agreed compensation in accordance with the rules on liquidated damages."

From these provisions, it is clear that the seller's objective is to safeguard himself against the buyer's potential insolvency or the disposal of the sold property. Should the buyer become bankrupt while still regarded as a lessee, the seller—being the legal owner—retains full ownership of the item [24].

11. Categories of Sale with Respect to Price and Description

To clarify the classifications of the lease-to-own sale in civil law, it is necessary first to review the types of sale according to the disclosure of price, which jurists have categorised into four forms:

- Simple Sale (*musawamah*) – The sale of a known item for an agreed price without specifying the cost, profit, or loss.
- Cost-Plus Sale (*murabahah*) – A sale in which the cost price is disclosed along with a known profit margin.
- Loss-Sale (*muwaḍa'ah*) – A sale conducted at the cost price minus a specified reduction.
- Par Sale (*tawliyyah*) – A sale at the exact cost price, without any increase or decrease.

All four are acceptable, but *musawamah* is best. The sale in which the cost is revealed and a profit margin is added is acceptable by consensus among jurists [25]. According to the Shafi'i school, "Murabahah sale is valid without dislike, as Allah says: 'Allah has permitted trade.'" (Al-Baqarah 2:275) From the above quotes, it is clear that a sale in which costs and profit are revealed is accepted by all jurists belonging to any school of thought.

12. Types of Sale According to Deferred Conditions

- Jurists have also distinguished between different types of sale based on whether the price (*thaman*) or the object of sale (*mabi'*) is deferred, and have identified four types of sale:
- Cash Sale (*Bay' al-Naqd*) – This is the sale of an existing commodity in exchange for an immediate price. This type of sale is valid according to consensus.
- Sale of Debt for Debt (*Bay' al-Kali bi-l-Kali*) – This type of sale, in which both the price and the commodity are deferred, is not permitted according to an authentic narration.
- Deferred Payment Sale (*Bay' al-Nasi'ah*) – This type of sale, in which an existing commodity is sold in exchange for a price to be paid in the future, is valid and commonly used. An example of this type of sale in modern times is the instalment plan, in which the commodity is immediately delivered to the buyer, while the price is paid in instalments.
- Advance Payment Sale (*Bay' al-Salam*) – In this type of sale, the price is paid in advance, while the commodity is delivered subsequently. This type of sale is permitted according to consensus. [26].

13. Juridical and Shari'ah-Based Objections Regarding the Validity of the Lease-to-Own Sale

The juristic and Shari'ah-based objections put forward by scholars regarding the validity of the lease-to-own sale contract may be summarised as follows [27]:

13.1 Two Sales in a Single Sale

The combination of sale and lease in one contract leads to issues in the validity of the lease to own sale, as the usufruct and ownership are being transferred at the same time. As a result, the contract is considered to have two functions, that of a lease and that of a sale, at the same time. This, in essence, is considered to be in clear contradiction to the prophetic edict of "two sales in one sale." The Prophet Muhammad (peace and blessings be upon him) said, "The Messenger of Allah forbade two sales in one sale." According to Al-Tirmidhi, the hadith has been graded as *ḥasan ṣaḥīḥ* (sound and authentic). According to another hadith, "He forbade two transactions in a single transaction." As a result, all the schools of thought in Islam have agreed that, according to the hadith, it is not permissible for a person to agree to two sales in one sale. There have been several interpretations of this hadith, and the most prominent ones are as follows:

13.2 Dual Pricing within a Single Offer

Other jurists were of the opinion that the prohibition extends to a case where two contracts are included in one contract, such as when the seller says, "I sell you this item for one hundred if paid in cash, or for one hundred and twenty if paid in two months." If the buyer says, "I accept," without indicating which price he is choosing, and they conclude the contract without clarifying, the contract is binding but

uncertain as to which price is being applied. This form is considered invalid since it fails to meet the condition of a definite price and term, which are among the basic conditions for a valid offer and acceptance (sighah). The acceptance must correspond to the offer, while in this case, the offer fluctuates between two sales. The prohibition, according to the jurists, is due to the ignorance of the price, which makes it a contract involving gharar, or sale of uncertainty, prohibited under Islamic law. Another opinion is that the underlying reason for the prohibition is that it might lead to an area for usury (riba) to develop. Al-Najafi, however, argues that the offer made by the seller is valid, and the acceptance applies to either the cash or credit term. Al-Jawahiri, on the other hand, argues that the contract is valid since "the acceptance functions as an offer, and the offer as an acceptance."

13.3 Combining Two Contracts in One

This scenario refers to the fusion of two distinct contracts—such as marriage and sale, or loan and lease—within a single transaction. For instance, a person might lease a house for a month and simultaneously sell a garment for a specified price in the same agreement. Jurists differed on whether such a situation falls under the prohibition of two sales in one sale. The Hanafi, Maliki (except Ashhab), Shafi'i, and Hanbali schools ruled that such a contract is invalid. Malik stated: "Marriage and sale may not be combined in a single contract." However, Ashhab, a Maliki jurist, permitted such an arrangement [28].

13.4 Combining Sale and Lease

Jurists of the Maliki, Shafi'i, and Hanbali schools permitted the combination of a sale and a lease within a single agreement, provided that the payment is allocated according to the respective value of the sale and the lease [29]. Malik stated: "There is no harm in combining, within a single transaction, the purchase of one item and the lease of another."

14. The Imami Jurists

Imami (Twelver Shi'i) jurists also examined the prophetic narrations prohibiting two sales in one sale or two transactions in one transaction, as illustrated when a seller offers an item for one dinar for immediate payment or two dinars for deferred payment over one or two months. Ibn Zuhrah al-Halabi explained that the Prophet (peace be upon him) forbade two sales in one sale because of ambiguity concerning the price and the term, as in the example where the seller states, "I sell it to you for one-dinar cash for one month or two dinars for three months," and the buyer responds, "I accept."

Jurists have differed regarding the validity of a transaction when the buyer accepts while remaining uncertain ('ala safqat al-taraddud — "on hesitation") [30], producing two principal opinions. The first opinion holds that the transaction is invalid due to the presence of gharar (uncertainty) and ignorance of essential terms. Accordingly, the prophetic prohibition serves as guidance, indicating that such a transaction is legally incomplete because of its uncertainty [31]. A narration from al-Sukūni, reported from Imam Ja'far al-Ṣādiq (peace be upon him) from his father and forefathers, states: "Ali (peace be upon him) ruled in the case of a man who sold an item with two conditions—one price for cash and another for credit. When the buyer accepted the goods under that condition, he ruled that the sale stood at the lower of the two prices and the longer of the two terms, meaning that the buyer is obliged only to pay the lesser of the two prices with the deferred term."

This view was criticised by Sheikh Al-Jawahiri, who stated that "there is no ambiguity when the price is specified, and the increase resulting from delayed payment is an invalid condition, though the contract itself remains valid." He further clarified that this differs from lease contracts in which the rent may vary over time, such as when one states, "If you sew it today, your price is one dinar; if you sew it tomorrow, half a dinar." He concluded that the ambiguity lies not in the description of the price, but in the essence of the price itself, whereby the seller and buyer, despite agreeing to the transaction, do not know the final sale price. The second opinion maintains that the sale contract is valid per se but is prohibited if it contains an element of usury. The basis of this view is that a contract of sale conditional upon an increased price for delayed payment constitutes hidden riba, which the Prophet (peace and blessings be upon him) forbade. If the contract contains usury, the condition is considered invalid, but the contract itself remains valid, as the invalidity applies only to the condition and not the contract per se [32].

Al-Allamah al-Hilli stated, "The more likely opinion is that the sale is valid, because the harm falls on the buyer, and this does not affect the validity of the sale." Similarly, the First Martyr affirmed, "The more likely opinion is that the sale is valid. The buyer is obligated to pay the lower price and may delay payment. The seller must accept the lower price. The increase constitutes usury, which explains the prohibition, yet does not invalidate the contract. Therefore, the increase is equivalent to postponing the price."

It is evident from the aforementioned prophetic traditions that the prohibitions against 'two transactions in one' do not extend to compound contracts.

14.1 Fourth Objection: The Lease-to-Own Contract

The lease-to-own contract, as the name implies, begins as a lease in which the parties agree that, if the lessee pays all instalments, ownership of the leased item transfers to them at the end of the contract. For instance, the parties may agree to lease a particular item for a specified period and payments, which are treated as instalments towards the purchase of the item, provided the lessee fulfils their obligations.

However, this arrangement has been objected to on several grounds. There is a lack of a determined price at the time of sale completion, as every sale requires a definite price, but at the conclusion of the lease term, no specific sale price exists since the paid instalments were originally rent payments. Moreover, the amount of rent may not necessarily correspond to fair market value ('urwat al-mithl), as it may comprise the price of the item along with an additional amount that is mutually agreed upon. In addition, the real intent of the contracting parties may also come into question, as their real intent may not be to enter into a lease agreement. Rather, their real intent may be to sell and buy. The seller (the lessor) may use this type of contract to ensure security in payment, while the buyer (the lessee) may want to use the item without making full payment. Moreover, the lessor may not have a personal interest in the item but may facilitate the buyer in this regard. Therefore, one of the fundamental requirements for the validity of a contract, i.e., acceptance that corresponds to the offer, may not be met, as the acceptance may be ambiguous.

14.2 The Lease-to-Own Sale as a Lease Coupled with a Suspensive Sale Condition

As the lease contract by its nature involves the transfer of usufruct on the basis of a specified compensation, it is valid and binding, as the declaration itself ("I lease," "I rent") indicates that it is indeed a lease contract. However, in lease-to-own contracts, an additional condition is specified, namely that the lessee becomes the owner upon completing all the payments. The condition, if valid, must be fulfilled; if invalid, the contract may be deemed void. Hence, the ownership of the leased item constitutes a sale with the suspension of the condition of completing all instalments. As the validity of the added condition may differ depending on its nature and effects, it is necessary to discuss the nature of contract conditions and the rules that apply to them.

15. Types of Conditions

15.1 First: According to Imami Jurists

Conditions, according to Imami jurists, are defined as "the condition whose lack leads to non-existence, even though the presence of the condition does not necessarily lead to existence." The Imami jurists derive the valid condition and its application through three major principles, namely, the condition should not contradict the Quran or the purified Sunnah, should not contradict the essence of the contract, and should not be based on uncertainty or ignorance.

15.2 Second: Valid Conditions According to Hanafi Jurists

Hanafi jurists define a condition as an obligation in respect to an act that does not yet exist, using a specific formula. They classify valid conditions in a contract into three types: a condition that is compatible with a contract, a condition whose validity is confirmed by textual evidence, and a condition validated by custom ('urf).

15.3 Third: Valid Conditions According to Maliki Jurists

Maliki jurists classify valid conditions attached to a lease contract into three types: a condition that aligns with the contract, a condition specifying a particular act in relation to the subject matter of the contract, and a condition that may conflict with the essence of the contract but serves a charitable purpose.

15.4 Fourth: Valid Conditions According to Shafi'i Jurists

Shafi'i jurists state that valid conditions attached to a lease are of two kinds: those that serve the interest of the contract and those that conflict with the contract's essence but contain a charitable meaning. They also provide concrete applications for these conditions.

15.5 Fifth: Valid Conditions According to Hanbali Jurists

For Hanbali jurists, valid conditions attached to a lease are divided into four types: conditions inherent to the nature of the contract, conditions serving the interest of the contract, conditions requiring performance of an act related to the subject matter, and conditions with a charitable aspect, such as mandating that half the rent be given in alms to the poor.

16. Invalid (Void/Corrupt) Conditions

An invalid (or corrupt) condition is one that lacks the necessary elements for validity and, therefore, carries no legal effect.

16.1 Invalid Conditions According to Imami Jurists

Imami jurists maintain that when the requirements for validity are unmet, the condition is null and not binding by consensus. The question arises whether the invalidity of the condition affects the contract itself. Many early and later Imami scholars assert that the invalidity of the condition renders the contract void. They identify three types of invalid conditions that vitiate the contract: (a) a condition that is impossible to perform, (b) a condition resulting in gharar (uncertainty) or jahalah (ignorance), and (c) an unlawful condition. Other jurists—some early but primarily later authorities—argue that the invalidity of a condition does not annul the contract. Ibn Idris al-Hilli observes: "The addition of this void condition to the contract does not invalidate it; rather, the condition itself is void while the contract remains valid." Apparent Conclusion: Consequently, a void condition—if considered void—does not automatically annul the contract. Only a condition that undermines the fundamental pillars or validity of the contract will render the contract void.

16.2 Invalid Conditions According to Hanafi and Maliki Jurists

Hanafi and Maliki scholars concur that conditions which invalidate commutative contracts fall into two categories: conditions that produce gharar, and prohibited conditions.

16.3 Invalid Conditions According to Shafi'i Jurists

Shafi'i jurists classify invalid conditions into two types: (1) those that invalidate the contract, and (2) those that are invalid but do not invalidate the contract.

16.4 Invalid Conditions According to Hanbali Jurists

Hanbali jurists similarly divide invalid conditions into two categories: (1) invalid conditions that annul the contract, and (2) invalid conditions that leave the contract intact.

16.5 Third: Suspension (Ta'liq)

"Suspension" refers to a conditional clause linking the effect (apodosis) to the condition (protasis). It represents the attachment of the effect of one statement to the fulfilment of another, e.g., "I sell you my land if so-and-so consents." Difference between suspension and condition: Suspension is inherent in the structure of the act through "if" or similar expressions, whereas a (contractual) condition establishes that something not yet in existence arises from another not yet in

existence via "if" or its equivalents. Jurists of the Imami, Hanafi, Maliki, Shafi'i, and Hanbali schools maintain that commutative contracts—including transfers of ownership—cannot be suspended upon a condition, since such contracts take immediate effect. Suspending them contradicts the essence of the contract and introduces risk, as the contract vacillates between existence (if the condition is met) and nonexistence (if it is not). Apparent Conclusion: It is indisputable among the Islamic schools that a void condition carries no binding force, regardless of type. While classifications vary—and sometimes overlap—the Imami and Hanbali analyses of contractual conditions appear more comprehensive and systematically presented; thus, this division is preponderant.

16.6 Fourth: Void Conditions in Positive (Civil) Law

The Iraqi Civil Code specifies circumstances in which a condition attached to a lease is void. Article 131(3) provides that a contract may be coupled with a condition provided it is not legally prohibited, or contrary to public order or morality; otherwise, the condition is void while the contract remains valid unless the condition motivated the contract, in which case both the contract and the condition are void.

Apparent Conclusion: A condition attached to a lease is void in two instances: (1) if it contravenes statutory provisions, and (2) if it violates public order or morality. These circumstances determine the effect on the contract:

If the void condition was not the motivating factor for the contract (a superfluous condition), the condition is void but the lease remains valid.

If the void condition was the reason for entering the contract (a contract-invalidating condition), both the condition and the contract are void.

16.7 Section Three: Juristic and Legal Characterization of the Lease-to-Own Sale Contract

Several attempts have been made to characterise the lease-to-own sale in Islamic jurisprudence. Three of these are presented below:

Subsection One First Attempt: Instalment Sale — The Concept of Instalments in Language and Legal Usage, with Related Terms

This form of sale is now widespread and is conventionally called instalment sale (bay' al-taqsit). Its definition is outlined below.

16.8 Topic One: "Instalments" — Linguistic and Technical Meanings

16.8.1 First: Linguistic Usage of Taqsit

Partitioning/Dividing: to separate something into known parts; e.g., "he divided (qashta) the thing," and regarding a debt, "he made it into known parts payable at specific times."

Equal Apportionment: al-Layth notes, "taqassata the thing among them," meaning they divided it equally.

Economising/Paring Down: "he apportioned the household expenditures sparingly."

16.8.2 Second: Technical (Juristic) Usage of Taqsit

Instalment sale is defined as a form of deferred sale (bay' al-nasi'ah) in which delivery of the item is immediate, while the price, in whole or in part, is deferred in known instalments (whether equal or not) for specified terms. Among Imami jurists, stipulating deferment of all or part of the price—even in multiple instalments (nujūm)—is valid by consensus and textual authority; this is termed nasi'ah. 'Uthmani defines instalment sale as: it is permissible for the price to be paid in instalments, provided due dates and amounts are specified at the time of contracting; instalments are called nujūm ("stars/instalments").

16.9 Topic Two: Terms Related to Instalments

16.9.1 The Term (al-ajal)

Linguistically: ajal denotes the period or duration of something and the time at which it falls due (Ibn Manzūr, Lisan al-'Arab, 11/11).

Technically: it is "the time fixed for the termination or maturity of a matter," e.g., "he set him a term." The Qur'an states: "...whichever of the two terms I fulfil, there is to be no injustice to me."

Al-'Aṭṭar writes: ajal is a future period certain to occur, to which execution of a matter is attached, or whose lapse is awaited before execution.

Another definition: it is the future period to which something is attached—either as a term for fulfilling or terminating an obligation—whether fixed by Shari'ah, courts, or the will of the obligor.

Preponderant view: the last definition is preferred for its breadth and relevance. The relationship between instalment (taqsit) and deferment (ta'jil/ajal) is general-particular absolute: every instalments involves deferment, while deferment may or may not take the form of instalments.

16.9.2 Tanjim (Staggering into Instalments)

Linguistically: tanjim refers to setting a due time; "the money was najama" means it was paid in instalments.

Technically: from najjama al-mal—to pay in instalments. Al-'Amili cites jurists: it includes delaying the najm beyond its time; deferring money to a set time; first applied to a specified time, then to the sum due under a manumission contract (mukatabah).

Apparent Conclusion: the technical meaning derives from the linguistic root: the deferred price is divided into several nujūm (instalments), each assigned to a term.

16.9.3 Nasi'ah (Deferred Sale): Previously Discussed under Section One

Topic Three: Instalment Sale in Positive (Civil) Law

Legal scholars offer various definitions. Abū al-Layl defines installment sale as a form of credit sale in which the price is payable in equal, regular parts over a reasonable period.

Article 534 of the Iraqi Civil Code provides:

"If the price is payable by installments, the contracting parties may agree that the seller retain part as compensation for rescission if all installments are unpaid. However, the court may reduce the agreed compensation in accordance with liquidated damages rules."

"If all instalments are paid, ownership transfers to the buyer from the time of sale, unless agreed otherwise."

If the buyer disposes of the item before full payment, Article 455 of the Iraqi Penal Code stipulates:

"Whoever purchases movable property for which the seller retains ownership until full payment and disposes of it without permission shall be punished by imprisonment up to one year, a fine not exceeding one hundred dinars, or either penalty."

Apparent conclusion: if the buyer knows ownership has not transferred yet and disposes of the item without consent, he violates the law.

17. Conclusion

This analysis of the lease-to-own sale, a modern form of contract recognized by positive law, underscores the importance of considering its status in Islamic jurisprudence and permissibility. Islamic Shari'ah is revealed to be a complete legal and ethical system that is fully capable of providing answers to complex and novel situations through an integrative methodology that combines ethical precepts with legal rules. Its dynamic character allows for adaptation to new situations without compromising core principles, as indicated by consensus among major Islamic schools in spite of significant differences in methodology. The lease-to-own sale is revealed to have certain practical problems in distinguishing lease from sale, as payments for lease are often used as instalments for sale price with ownership being transferred after full compliance. In civil law, such contracts are viewed as formalized instalment sales, but in Islamic law, suspensive conditions are viewed as being in conflict with the immediacy required in sale, creating gharar or prohibited uncertainty. However, if ownership is transferred after completion of the lease, with the lease being based on this condition, such a contract is valid in terms of Shar'i principles. In conclusion, modern contracts such as lease-to-own sales must be evaluated in terms of Shari'ah, which offers not just legal but ethical precepts for ensuring legality, justice, and principled resolution in modern transactions.

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