

FATAWA LEASING 2006

Leasing in General

Subject: Leasing in Islamic Perspective

From: Said through Islam online

Sent: Thursday, December 29, 2005 6:20 AM

Question

Dear Dr. Monzer, Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

What is the Islamic ruling regarding leasing? What if the company that I am buying from is financing but I have to pay a fixed amount every month? Jazakum Allahu Khairan for your constant help

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Said

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

Leasing, in general, is permissible; however, some car lease contracts may have conditions that are not permissible such as the interest and penalty clauses for delayed payment.

Financing from the seller may take the form of interest that makes it not permissible (cash sale plus interest for installment). It may take a permissible form also (sale on installment at a price that is higher than the cash price). Although the difference may appear superficial, it is in fact not: 1) a matter of principle (an increment in a loan is not permissible and not morally and factually justified); 2) if you allow increment in a loan, you justify interest on delinquency, this is clearly not permissible according to the Qur'an; and there are other more complicated differences.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: a question on Ijarah, is it a sale of services?

From: umar

Sent: Friday, August 18, 2006 4:38 AM

Question

Dear Dr. Monzer

I am omar from Syria currently studying in institute of higher education in England, Preparing my project for MA degree in Islamic banking and finance about ijara contract in Islamic banks, I have come across the sale of services by which the bank buys the service, say education from the university then sells (not rent it) to the customer against fixed price paid by the customer

in installments, my question is can we consider this transaction as ijara or it should be a sale? And is this practice permissible in this form from the Shari'ah perspective?

Jazaka allahu khayrn for your time to consider my question. Yours truly,

Omar

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Umar

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

the answer to your two question is: YES, of course. What is Ijarah other than a sale of usufruct/ service? The distinction between usufruct and service is coined by me and I am the only one who uses it in my papers. When you take a taxi, you are getting a service (a mixture of the product of the driver her car) but when you go a Avis and rent a car, that is usufruct only because it is a "service" of an asset without human element with it. Consequently while renting an apartment is a purchase of usufruct, and hiring a tutor is employment, registering for 12 credit hours in a university by paying tuition is getting a service. All these three forms are covered by the same Shari'ah rulings under the title Ijarah. Ijarah is applicable to assets as well as to human services. AND IJARAH IS A SALE that transfers property of what is sold. The Manafi' are properties sold in Ijarah and can be sold by the purchaser without the condition (that is known in sale) of actual possession because You cannot possess Manafi' except by consuming them!

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Car Lease/Purchase

Subject: Car leasing

From: Abdel kandil [mailto:moutalib@msn.com]

Sent: Wednesday, September 20, 2006 4:44 AM

Question

Dear Brother, Assalamoulaykoun

I'm a muslim living in Morocco, I have a question about leasing how can we differ lease with normal credit or payment in installment as ultimately the total cost of the car for example will be the same if we took money from bank or do it as a lease-purchase? Jazakoum Allah khayr Regards

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Kandil

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

The difference is apparent in the ownership. Who owns the car in leasing? Certainly the lessor and it is entitled to the rent as an owner. This is absolutely permissible in Shari'ah. In installment sale, when done properly, the total of installments is the price of the car and a commodity has a higher deferred price than its cash price because a commodity (car) has intrinsic utility through time. When installment sale is done improperly (as in conventional banks): you buy the car cash from a dealer and get a loan from the bank to pay its price and then the debt of the bank (created by the loan) is paid on installments, the increment here is in the debt and a debt is mute, it does not create increment because it has no intrinsic utility (this is essentially the difference between a debt and a commodity). This is not permissible in Shari'ah because it is not true, it does not reflect reality. A similarity in the final amount one pays does not justify the second form of transaction.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

From: Abdel

Sent: Thursday, September 21, 2006 8:20 AM

Question

Dear Brother,

Thanks for your answer, though here in Morocco they are three parties involved the car owner or the company, the lessor (bank or any leasing agency) and the lessee or the customer what do you think. Regards

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Kandil,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

I know it is three parties but your interpretation of them is incorrect. They are: a seller to lessor (car dealership), a lessor that buys from the dealer and leases/sells to you (the bank) and a lessee/final buyer (but now it leases and then buys from the lessor/new owner interim owner).

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Paying off the Total Lease for Car before Going for Hajj

From: Sr. Allison through Islam online

Sent: Thursday, January 26, 2006 3:18 AM

Question

Dear Dr. Monzer, Assalamu Alaykum wa Rahmatullahi wa Barakatuh,
Inshallah, My husband and I would like to go on hajj in 2006. Alhamdulillah all our debts are paid. However we have a car that we lease. We have no intention of buying the car. We want to lease it and turn in back to the company in 2 years. We pay our lease monthly on the car. Do we have to pay off the total lease before we go on hajj? I view the lease as renting the car; however, could the 2 year lease be seen as a debt that must be paid before going on hajj? May Allah reward you and your family for your help. Jazakum Allahu Khairan for your constant help

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Sr. Allison

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

Technically a lease creates a debt for the rental payments. but it as strong as other debts because extracting future usufruct of the car are not sure at present. In other words, an incidence may happen when the lessee is unable to use the car for reasons caused by the lessor. But this issue is irrelevant to going for Hajj. For going to Hajj, there is no such requirement as "paying all debts." It is true that a due debt has a priority over spending for Hajj, but a debt that is not due (as the case of monthly payments) does not have such a priority as long as one has the intention and ability to pay it when it becomes due. This means that you don't have to settle your lease before going to Hajj anyway.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Leasing Car in US

From: Yasser through Islam online

Sent: Sunday, January 22, 2006 3:52 AM

Question

Dear Dr. Monzer, Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

According to Shari'ah is it permissible to lease a car in United States? I found two contrary fatwas on your website. One is saying it is permitted and the other is saying it is not permissible to lease a car (Fatwas of Imam Zoubir Bouchiki and Dr. Monzer Kahf). Can you please clarify this in detail. If there are two opinions please provide the details on both opinions. I am confused and would like some guidance on this issue. Jazakum Allahu Khairan for your constant help

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Yasser

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

Sorry for the confusion and I can't guarantee that this answer will even solve it especially that I am one of the owners of the disputed opinions.

Car leasing is permissible as a matter of principle. a given lease contract may have clauses that violate Shari'ah and if such a violation is basic to the contract the contract itself becomes void. I am personally aware of a car lease contract that is prevalent in southern California and this contract does not have a violation that is basic to the contract. It has a penalty interest; but a penalty is not essential to the contract because you buy a car and you intend to honor your contract, not default on it. Of course, such a clause is Haram to impose by a Muslim but it is not Haram to accept as a lessee as long as you intend to pay on time and you are capable to do so. I don't know the basis of rejecting such a lease contract but I suspect it is either an exaggerated consideration of the penalty clause or inadequate accessibility to the contract I refer to. By the way, I never said that any car lease contract in America is permissible. I've always said that I need to see the contract to give my opinion on it, but I know the contract that is prevalent in South California!

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Rent Determination and Authority intervention

Subject: Raising the rent significantly

From: Numan

Sent: Monday, January 15, 2007 9:51 AM

Question

Dear Dr. Kahf,

I hope all is well. I would like to ask you for a favor. I have a meeting with the Rent Dispute Committee (Muslim Country) and the landlord in a few days. Can you send me the ruling on raising the rent significantly for existing tenants?

The landlord is asking for a huge increase and is citing the current rental fees in the market. I am not alone. Many tenants are complaining.

I have been in the apartment for 3 years already. He is asking for almost double the amount.

Jazak Allahu Khayrun,

Numan

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Numan

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

the hard fact is: rent is a sale agreement (sale of usufruct) that requires the consent of the two parties. Each can ask for any condition and price that please him/her. When the law (though sometimes very oppressively) limits the rights of the tenant or the owner, these restrictions are

considered implicit conditions of the contract. but if the law does not limit the increase to a certain percentage then what is fair is the market prevailing rate. In case of dispute you check with experts who can estimate the fair market value. Of course this applies to a new period, i.e., at the date of renewing the contract not to the current period that is covered by the current agreement. In other words, if the agreement is for one year renewable automatically if no notice is given within say 30 days of its expiration, the new consent on rent and other conditions applies for the renewal and not before it. In other words, renewal requires new consent and agreement on the rent and if the rent is not satisfactory to either party the contract cannot be renewed and the apartment must be vacated at the end of the current rental period.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf
