

FATAWA LEASING 2000-2021

From: Umer

Sent: Wednesday, October 14, 2020

Subject: Guaranteed rent

Question:

Asalam u alaikum

I hope you are doing great.

I want to ask your opinion about fixed or guaranteed rent schemes There are 2 scenarios

1) we buy off plan property and developer give fixed rent in percentage for 1-5 years normally.

In this case property is actually not on rent rather in development phase and essentially what we are getting in rent is may be interest on our money in my opinion.

2) In other case, there is property which is developed and ready to be rented. We give estate agents this property and they give us fixed rent in percentage and they essentially sublet the property for more (such as hotel apartments / shops/ flats etc) short term and long term rents.

Is it permissible to get this type of fixed rent as we are not getting money on money rather it's rent on property but it's fixed.

Your valuable opinion is much appreciated.

Regards

Umer

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Umer

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Buying a real estate property and renting it to seller is always permissible as long as there is a real property and it is delivered to the buyer or its agent and rental contract becomes effective by making rental deserved when there is real usufruct enjoyed by the lessee.

The above means that what you said is exactly correct; case one is not permissible because what is called rent in it is interest on the advanced money. In the second case there is a real property whose utility is given to the lessee who happens to be the previous owner of the property.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Best Regards

Dr. Monzer Kahf

Professor, Islamic Finance & Economics

www.kahf.net <<http://www.kahf.net/>> ; www.kahf.com/blog <<http://www.kahf.com/blog>>

Follow up

Thanks Dr Monzer

So kind of you for your reply.

So in second case, I have to buy the property, take possession and then do the rental contract separately with the seller or 3rd party which can be of any number of length duration?

The fact is the seller further sublet the property is fine? Even if they suffer loss they will pay me the fixed rent is also permissible?

Waiting for your kind reply

Regards

Dr. Saeed

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Umer

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Kindly notice two important points:

1. A real property must be physically existing and available to be used, i.e., able to generate its usufruct. If this is the fact, you can take possession through an agent, even if it were to be the seller itself.
2. Ijarah is a full fledged sale. This is why the usufruct must be available. Also, this is why once you surrender the usufruct to a lessee, it is his matter what he does with it, gain or loss is always his.

So: fix pre-known rent is a must in Ijarah because it is a price, lessee (buyer) can do whatever he likes including sub-leasing at his own risk, and price (rent) is guaranteed provided you continue delivering what you sold (usufruct).

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Best Regards

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From: Saeed

Sent: Saturday, October 3, 2020

Subject: Interest clause in rental agreement as landlord

Question:

Asalam u alaikum

I hope you are well.

I want to clarify one thing in rental agreement I have couple of rental properties in UK. It's standard to have interest clause for late payment in the rental agreement which I came to know recently.

I have been renting my properties for more than 10 years and I have never charged any interest, nor I have any intention of doing it INSHAALLAH in future.

I have done my own research about interest clause and that the contract is valid but clause is not valid.

I just want to clarify is it same ruling if the interest clause is given by landlord with no intention of charging any interest at all.. can I keep the rental income and get benefit from it? I am planning to sell the properties in due course since I came to know about this interest clause in the agreement. I think it will be difficult for me to take out the clause from contract as it is managed by estate agents.

Kindly guide me as per shariah ruling.

Regards

Dr. Saeed

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Saeed

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

You are correct that in a rent contract, the clause of interest is void and the contract remains workable. This is unlike a loan contract where the contract itself is void because the interest clause in it is central not peripheral.

But it is Haram for a Muslim to sign a contract in which there is a clause that may expose him to earn interest (of course or pay it unless out of necessity).

The solution I suggest is not to stop renting or sell the rental property but rather to ask you agent (the asset management company) to strike this clause from your rental contracts that it makes on your behalf. The solution is not to avoid rental unless you want that for other reasons.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Best Regards

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Follow up

Many thanks brother Monzer for such a prompt response. Much appreciated

Just one query that until the clause is removed or if it's not removed for any reason , is it permissible to use the rent income or shall I not use it and give it to charity.

Your reply will be really useful in this matter.

Thanks in advance.

Regards

Dr. Saeed

My Answer:

The rental income is halal and you can use for any personal use including goint for Hajj.

The reason: You didn't intend to charge interest and actually did not charge actually any interest in the past as you mentioned in your first email.

Sent from my iPhone

From: Saeed

Sent: Wednesday, August 26, 2020 3:17 PM

Subject: Guaranteed rent scheme

Question:

Asalam u alaikum

I hope you are well.

My question is about guaranteed rent scheme. There are schemes where you can give your house or shop or flat to the company who sublet it. They give you fixed rent for example 10% on the total price of the property. They usually get more income than that which they keep.

Is this contract permissible?

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Saeed

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I cannot give an opinion on the guaranteed rent scheme unless you give me full description as it is in the contract you sign, but the idea of renting a property to a company for a guaranteed amount is certainly permissible, it is the core of lease\Ijarah contract as known in Shari'ah. The contracted rent is a debt on the lessee and it is guaranteed by him and it can be supported by any collateral or lien. The effect of Ijarah contract is to make the usufruct owned by lessee and the latter becomes free to sell it to whom he pleases, in other words, it will have full authority on subletting the property.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Best Regards

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From: HABIBULLAHI

Sent: Monday, July 6, 2020

Subject: Delinquency in leasing

Question:

As-salaam Alaikum Warahmatullahi Wabarakatuhu,

Dear Prof.

I hope this mail reaches you at peace time.

1. We have a customer that was financed with Ijarah Wa Iqtina facility for building of a school. Everything was fine and the project was completed and commissioned. However, two weeks ago there was a heavy rain followed by strong windstorm in Kano, that destroyed the school roof and also affected the school neighbors, by dumping the school roof on their houses. The roof of the bank's customer removed and caused damage to his neighbor's houses most of whom requested for repairs or compensation for damage. In order to maintain cordial relationship with his neighbors, the customer of the Bank mobilized fund and immediately carried out the repairs. The customer is therefore requesting, that the bank also need to share and contribute part of the amount spent for the repairs, as the bank owns certain portion in this Ijarah Wa Iqtina facility.
2. The second request of the customer is that the bank charged him penalty/additional rental for unavoidable default which was caused by the pandemic of covid-19 by dwindling the economies of most countries. The customer argued that he did not default intentionally rather due to closure of all schools and thus preventing the schools from collecting school fees. As at the time of writing this email the school could not pay salaries to their staff because most parents have not paid second term school fees when schools were closed by the Federal Government.

In addition, the Federal Government through the Central Bank has given directives to Banks to extend the tenure of facilities to their customers without charging extra amount, subject to the approval of the Central Bank.

The customer requested for restructuring of the facility and extension for additional six months. According to the school, despite the default is not willful and the directives by Central Bank, our Bank charged them penalty/additional rent on the facility during the default/lockdown period. He said he could not believe what he saw as outstanding amount. For extending the facility from 31/05/2020 to 31/01/2021 the total rental/profit amount changed from 77,276,266.18 to 95,678,028.64 following as examples which he said even conventional Banks will not charge this amount for default of similar period.

The Branch is asking for some guidance before responding to the customer to the following questions:

- a. How did the difference of 18,401,762.46 calculated?
- b. Why is the system taking only rent for the early instalment rather than Principal and Rent?

Kindly find attached the two first and Second payment schedules as well as his complaint letters for your guidance.

Regards

Habibullahi

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. HABIBULLAHI

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I look at this query in the light of the previous one that you withdrew because the attachments of the previous one are very relevant. The explanation in this email is not complete and does not allow us to give informed opinion.

1. For the damage caused to the building and to neighbors: Definitely this damage is shared by the owners of the school building who are the Customer and the Bank in proportion of their ownership at the time of damage incident. BUT I SUPPOSE THE BUILDING IS INSURED AND THIS DAMAGE, WHEN IT HAPPENED, SHOULD HAVE BEEN REPORTED TO THE INSURANCE COMPANY AND IT SHOULD HAVE TAKEN CHARGE OF IT;

Now if the building is not insured and/or if the insurance does not cover damage caused to others and/or if the contractor (if the building is still under contractor's warranty) does not accept responsibility, all these ifs should be investigated and whoever made serious a lapse or mistake must be charged for his/her mistake. In other words, the bank should not carry any loss of any substance as a result of this natural insurable damage. It may be the Customer's fault or any staff fault.

2. The Nadhirah **نظرة** for payment: There is no doubt that the epidemic is a strong reason for applying the Verse 2:280 by delaying payment for six month. This can and must be applied at discretion of the Bank according to situation of each Customer. The Justification given in the letter of the Customer regarding school fees seems a valid one to make a good reason for delaying payment. There are different ways of delay without any additional charge which vary in accordance to the specific situation of each Customer. Part of the situation is whether school fees for the second semester will be paid later by students or not, you need more info and more discussion with the Customer. The Nadhirah of Verse 2:280 means

without any increments or fees or additional cost to the Customer as the creditor is the one who loses the unearned rent for the period. What does that mean? And what a moratorium of debt payment (in conventional sense of Central Bank and other conventional practitioners in the Western countries) mean?

It means either of the following two choices (depending on situation of Customer and negotiation with him):

- a. Delaying the payment due on 31\5\2020 in its exact amount for six months to 30\11\2020 while keeping the payments of 30\9\2020, 31\1\2021 and later payments as they are, OR
- b. Pushing for six month all payments without any change in their amounts and new dates will be 30\11\2020, 31\3\2021, 31\7\2021 and remaining to same months of future years.

Without any change in the amount of all installment and no recalculation of rentals. This is the meaning of the Nadhirah, it does not mean charging additional profit and additional time.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Best Regards

Dr. Monzer Kahf

Professor, Islamic Finance & Economics

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FATAWA LEASING 2019

From: HABIBULLAHI

Sent: Friday, 15 November 2019

Subject: Ijara wa Iqtina

Question:

Dear Prof.,

Assalaamu Alaikum Wa Rahmatullah Wa Barakaatuhu,

XXXXXX was granted an ijara wa iqtina facility of N60 million in august 2019 to finance purchase of a property in Abuja. The facility was granted a rate of 22% p.a. over a period of 5years with an equity contribution of N9 million.

The customer lost the property he intended to purchase before concluding the approval process and as such we could not disburse on the facility. However, he has just gotten an offer to purchase a parcel of land at APO estate Abuja for the sum of N32 million. He is requesting the bank to finance the purchase of the land to the tune N25 million while he provides a down payment of N 8 million.

We therefore, seek your view on this facility on how we can make it Shari'ah compliance.

Thanks.

HABIBULLAHI

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Habibullahi

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I see these as two separate issues completely independent one from the other.

The case of the property that is no more available for the Bank to purchase and give on lease\purchase is a closed matter. May be the Bank should investigate the reasons why such lost transactions happen after spending time, effort and money on them. There is a need to make procedural changes that avoid the occurrence of such losses.

The second proposed transactions should be studied on its own merits. It is permissible to finance the purchase of land on Murabahah. Financing on Ijarah must be realistic, would the rent of an empty land in the market amounts to the rental that we intend to charge the customer. If the market does not afford such rental (around 22%) for an empty land we must not use this contract for financing it.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Best Regards

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Reply

Assalaamu Alaikum Wa Rahmatullah Wa Barakaatuhu,

Dear Prof.,

We have a customer who applied for payment of his staff salary for the month of November through Ijarah service.

According to the relationship, the date of the application was 22nd October, 2019.

However, the offer letter indicates the approval of the facility was issued on the 5th of November 2019.

The issue in controversy is that can we finance the payment of salary for the month of November, when the service has already been rendered half way by the workers?

We humbly seek your guidance and advice on this transaction.

We equally seek your opinion as to the best way to finance this service in shariah compliance manner.

Thanks.

Abdulrahman

My Answer:

This is what happens when the response is slow.

Ijarah finance must be contracted before the beginning of financed period. Otherwise the UJrah become a debt.

Quickly offer him financing December salaries instead. You may also contract workers (with his guarantee) to pay December salaries in advance so that they receive them at the missed date of November pay checks.

Sent from my iPhone

Monzer Kahf

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Best Regards

Dr. Monzer Kahf

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From: Aslam

Sent: Monday, August 12, 2019

Subject: Car Leasing/Buying/Financing

Asalaamualaikum wr wb Dr. Kahf,

I hope this email finds you well, Eid Mubarak to you and your family.

I wanted to ask your qualified opinion on the following issues around buying/leasing a car in Canada (province of Ontario) so that I can insha'Allah make a good decision in the near future. (if it is relevant, I generally follow the fiqh opinions in line with al-Maghrib Institute Shuyookh but would probably classify myself as Hanbali):

- As I understand it, one is allowed to lease a car regardless of interest rate as it is essentially renting. However are we allowed to buy out the car at the end of the lease if the option is available? This is the easiest option on paper for me moving forward.

Yes, as long as it is an option. If it is obligatory to buy at a given pre-determined price, there will be a problem of suspending a sale on a future date and unknowability of the then conditions of the object. This is a serious violation of Shari'ah principles of sale.

- Is financing a car permissible with any interest rate or only 0%? I ask because I am not taking a loan as far as I understand. However I have been told that these can be 3 party deals with myself, the dealership and a bank with interest involved and thus impermissible (even with the rate at 0%).

Financing with three parties at zero interest may have either of two implications: 1) the bank is actually merely a guarantor to the seller, it guarantees that you are going to fulfill your installements, or 2) there is in fact interest under different names; service or administrative charges, etc. The second is Haram and the first is permissible. To best of my knowledge Banks in the US and Canada do not do the first possibility at all. A third situation may exist in which the dealer absorbs the bank interest; this situation is also permissible for the purchaser and Haram for the dealer, if he is Muslim.

In one Word, any interest is Haram, whether a rate of an amount. 0% interest is not interest so do not worry about it as long as you pay the price of the car.

- Reading an online fiqh response (<https://www.seekersguidance.org/answers/general-counsel/is-leasing-a-car-permissible/>) it seems like late payment fees could void the lease contract from an Islamic perspective - is this true?

Any late payment fee/charge that is in excess of the actual additional cost that is caused by delinquency is considered Riba, haram to earn and to pay. However, signing a late fee condition, even if in excess to actual cost, is not Haram with the condition that you are sure of yourself that you will never be late. (this can easily be done through auto payment via your bank or by authorising the lessor to collect). This means that it is in your hands to make his condition inapplicable.

I very much appreciate your help. May Allah SWT bless you immensely.

Best,

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Aslam

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Please do not unnecessarily sophisticate yourself of being hanbali or a follower of Maghrib Shuyukh. In Islamic finance, the OIC Fiqh Academy, always avoid all that and in fact one cannot build Islamic finance in contemporary life on one Madhhab...! Please see below:

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Best Regards

Dr. Monzer Kahf

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FATAWA LEASING 2018

From: ahmad

Sent: Saturday, December 22, 2018

Subject: leasing in shopping plaza

ASA Dr. Kahf

I have a question regarding an investment in a shopping plaza for lease, if one of the tenants sells bacon/pork from an islamic standpoint. what do you think, again I am not getting involved in the selling part, the tenants who lease the shopping place in my plaza is the one who is selling it

AHMAD

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Ahmad

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

If you lease that shop with an implicit (like chains that normally sell pork) or explicit condition to sell pork the lease contract is not permissible (and not valid from Shari'ah point of view, not fro, legal point of view in America), contracts for other shops in the plaza are not affected and their contracts remain intact. Income from non-permissible contract is Haram and should be given to Muslim charity.

If there is no such explicit or implicit condition, such as renting for restaurant in Amman, Jordan where restaurants normally do not serve pork, and the lessee later decided to serve pork or liquor the lease is permissible and when you know that the lessee serves any Haram you wait until renewal date and exercise your right of not renewing the lease, meanwhile what you get is permissible InShaAllah.

Lastly, investing in a plaza where the manager does not observe these rules in leasing shops is inappropriate especially there are other investments usually available. I do not consider that similar to investment in shares of company because of the important differences between companies and small real estate investment in which a partner usually has a say and counted vote. In companies' share we still seek the least evil but tolerate a small % of Haram of course with application of the purification principle (estimating the % of Haram and giving it to charity).

Wa Allahu A'lam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Best Regards

Dr. Monzer Kahf

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From: محمد

From: Omar

Sent: Tuesday, October 16, 2018

Subject: Re: Car Lease Contract Review

Assalamu Alaykum Dr. Kahf,

Questions:

- would it be possible to engage a 3rd party leasing company to purchase a vehicle from a private seller (not dealer) and lease it to me?
- the 'assignee' on the lease contracts in Canada (Audi, Honda, etc.) is usually a finance company, this is OK?

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Omar

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

The answer is YES to both questions. In Fact, Islamic Banks are engaged the same manner by the customer to buy an asset and lease it to the customer with a promise by the latter to buy it piecemeal during the lease period. And the Islamic bank is a finance institution anyway.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Best Regards

Dr. Monzer Kahf

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From: Omar

I believe that's how all lease agreements in Canada work. They state the "assignee" is the financing company and when you get insurance the financing company is listed on the policy.

This means that most auto lease agreement in Canada are permissible then? (despite some minor violations)

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Omar

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

If the ownership is transferred to it, there must be no problem as long as an owner is the lessor.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Best Regards

Dr. Monzer Kahf

From: Omar

Are the conditions negligible in section 16? or are they big violations under the shari'ah?

I've pasted section 16 below for reference:

"16. DAMAGE, LOSS OR DANGER TO VEHICLE. Except as noted below, you are responsible for the risk of loss, damage, or destruction of the Vehicle until you return the Vehicle to a location approved by VCI. You must directly notify VCI at the time you return the Vehicle. If the Vehicle is damaged, destroyed,

stolen, confiscated by any governmental authority, abandoned, or subject to undue peril, you will notify VCI as soon as possible and VCI shall have the right to terminate this Lease. If VCI terminates this Lease, the amount of your liability will be determined according to Paragraph 23 and you agree to pay VCI this amount less any insurance loss proceeds VCI receives.

If the Vehicle is damaged, you must use the insurance proceeds to repair it. If the Vehicle is declared a total loss by the insurer, regardless of the cause, VCI shall have the option of terminating the Lease or replacing the Vehicle with another similar vehicle. If VCI terminates this Lease due to the Vehicle being destroyed or stolen and you have complied with the insurance requirements of Paragraph 6B, paid the deductible required by the insurance, and kept all your other promises under this Lease (including making required payments that become due while awaiting a settlement from your insurance company, and paid your responsibility for Excess Kms Charges [15] on a prorata basis of the number of months you had possession of the vehicle prior to the loss), VCI shall be entitled to and will accept the insurance proceeds in full satisfaction of your liability.

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Omar

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Of course we deal here with leases that have conditions imposed on the basis of take it or no deal given by institutions that are not committed to Shari'ah compliance. Under these circumstances, it seems from a quick reading (I cannot now spare the time for researched reading) that the second template has lesser violations of Shari'ah, but giving accurate evaluation requires time and detailed research. Please see below for main quick points:

PFAFF Lease

The interest close for any delinquency is not permissible. This can be tolerated if you make arrangement to avoid any delay in monthly payment,

The early termination A and B are not balanced at all; this create unequal responsibilities in the contract: termination by lessor must make it (not the lessee) responsible for any potential liability,

Section 15 is also unbalanced putting all kinds of damage together is unfair. E.g., stolen without neglect and confiscation by government without lease violation by lessee are responsibility of lessor not lessee,

Audi finance

Interest clause is same,

Section 16 here is less unbalanced than in the Pfaff template,

I did not notice early termination by lessor here,

Wa Allahu A'lam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Best Regards

Dr. Monzer Kahf

FATAWA LEASING 2017

From: Jawad

Sent: Thursday, December 14, 2017

Subject: Question: Regarding Leasing of Cars

Question:

Asalaam – o – Walekum,

I was given your contact information from Mansoor.

I have a question that I want to get answered from an Islamic perspective.

Car financing has interest component in it and therefore it isn't allowed in Islam per my knowledge.

How about car leasing? It has money factor in its calculation? Has someone inquired about that? I know in layman terms it is car rental but if you look deep into it they use money factor.

FYI I do not intend to buy the car at the end of the lease.

I am attaching sample contract that the leasing company provided for reference

Thank you

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Jawad

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Before giving you my opinion on this please let me make this important

ntroduction/explanation: our Shari'ah is founded on Rahmah and realism. This means while justice is very important facilitating affairs of people as they are in fact on the ground is a major objective. The sources of this Shari'ah came from the Most Knowing, Most Expertise **العليم الخبير**. The Qur'an [2:275] prohibits Riba but did not deny similarity between Riba and sale transaction (including lease as lease is a sale of usufruct). In other word, our Shari'ah rejects any increment on debt (Riba) but not profit for financing.

Over time and in our days, financing became a profession independent from other trades (to acquire an asset/goods you find one who sells it different from one who finances it). This combination of Rahmah by facilitating affairs of people with realism by differentiating between increment of debt and profit on financing resulted in the acceptance of the creation of Islamic finance institutions (Islamic banks, Islamic installment sale companies and Islamic lease companies) which are based on providing finance through sale (called Murabahah) and lease (now internationally known as Ijarah to distinguish it from western-practiced lease). In other words, while we reject time value of debt (and money provision because it means debt) because debt does not generate any added value, we accept financing profit in sale (Murabahah: buy cash and sell on credit at a higher price) and financing rent in Ijarah (because

rent is the price of usufruct) because both financing sale and lease generate added value that is paid for in the form of profit and rentals.

Now we come to your lease contract. This is a very typical American car lease contract. It has two side violations of Shari'ah which make the difference between lease and Ijarah: 1) the delinquency fine of 5% in Section 18; and 2) the gap protection of Section 29. The first because a delinquency gives entitlement to any actual damage cause to the creditor but not to an automatic increment and therefore any automatic increment is actually Riba, and the second because the owner in lease must bear the liability risk of its own leased property which must not be thrown on the lessee.

I said these are side violations because (although the lease in America is calculated on the basis of interest) the first is in your hand, in a sense that you can stop it by authorizing your bank to make automatic payments and therefore avoid any late payment charge, and the second is a rare case (although it happens sometimes) and you have no choice to change it because the mentality of lessor, being based on interest, cannot accept such a change. We consider it an unjust condition imposed by the power of lessor and system behind it.

You may take this lease and take precaution against any late payment and be careful in driving with prayers to Allah that the gap protection clause may never be invoked.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Best Regards

Professor Dr. Monzer Kahf

Islamic Finance & Economics

From: Imran

Sent: Saturday, September 30, 2017

Subject: Opinion re providing legal advice (leasing company)

Question:

Dear Professor Monzer Kahf,

Assalamu Alaikum,

I'm a lawyer who's been engaged by a client for assistance regarding obtaining financing from either a leasing company or a bank within a very short period of time to fund the purchase of a commercial building.

While there are many Islami banks and at least one Islamic leasing institution in Bangladesh, they are not as swift as some of the more conventional banks/leasing companies in the country in providing their service (which is problematic for my client).

In this situation I would request your opinion as to whether it would be sinful for me to do the following:

1. Advising client to obtain financing from a particular leasing company which is not Shariah compliant and assisting him in the preparation of the relevant security documents. (I will not be issuing, signing or witnessing any of the finance documents containing the 'interest' clauses).
2. I read in an earlier fatwa of yours that a lease agreement which contains a default clause (requiring payment of interest) is not necessarily haram for the person receiving the loan as he does not intend to default when obtaining the loan. In this particular case, my client is well off

and inshallah will be able to repay the instalments in time. Also, there is no question of not 3buelezz3ing ownership of the building to the client upon payment of the instalments. In such situation, is it sinful for me to act as a legal adviser/consultant in helping him obtain the finance from the conventional leasing company by drafting the security documents (but not the lease agreement, which would be a standard document) and negotiating with the leasing company on his behalf?

3. Would your response be any different in case of the client obtaining financing from a conventional bank with my assistance?

I'm suffering from a serious mental dilemma and would appreciate your early reply.

May Allah reward you for your great service.

Jazakallahu Khairun

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in Dear Br. Imran Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I know that most conventional lease contracts are close to the Islamic. If the only problem is the interest in case of delinquency and your client is sure that he will not delay any payment, e.g., he may make arrangement of automatic payment from his bank. I do not think the contract with the conventional lease company or a conventional bank is not permissible.

If the contract is permissible, it is also permissible to help negotiating sad drafting it.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Best Regards

Professor Dr. Monzer Kahf

Islamic Finance & Economics

From: Abuelezz

Sent: Tuesday, September 19, 2017

Subject: Car financing

Question:

Assalam 3buelez Dr Monzer,

Hope you are doing well.

Could you please answer the question below.

Thank you so much

I need your advice on below matter.

We want to buy a 2nd car for house and can't afford to buy on cash. I am able to get financing at 0% interest but in that case monthly installment is quite high. However I do have a leasing option with much less monthly installment but it has an interest rate. Is it admissible to take such option in this scenario and pay interest?

Jazak Allah

Wassalam,

Noaman

Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Shaikh 4buelezz

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Lease normally does not have interest, it has rent as a monthly payment. It seems that our Brother Mr. Zaheer may have not understand it well. The rent may have been calculated on the basis of interest and this what is usually done. This does not mean interest, it means it is rent and based on the rate of interest. It remains rent. If the brother wants to be sure send me the blank copy of the contract and I will give him my exact opinion on it.

He should also be careful to avoid any delinquency in payment of the monthly rent as any such delay usually adds interest to the installment. Lease contracts, in US and Canada, normally have a clause on interest on delayed payments. This clause is tolerated provided one does not make any delay so that the clause does not come into application.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Best Regards

Professor Dr. Monzer Kahf

Islamic Finance & Economics

From: Khaled

Sent: Wednesday, August 02, 2017

Subject: Car Lease

Question:

Assalamu Alikum Dr. Monzer,

Inshallah this finds you well and in good health. I heard that you blessed our community in Calgary with a visit to talk about Islamic Finance recently. Mashallah, may Allah reward you for giving so much of your time for the community to educate and promote the principles that please the All Merciful.

May Allah make your reward Al Ferdous, and may he allow us to follow in your footsteps and achieve even a small sliver of what you have achieved.

I received a request from a friend to look at the attached leasing contract (from a halal perspective). I was going to supply the answer below. Knowing that you are my teacher, and much more learned than I, I wanted to get your opinion to see if my advice to him is acceptable.

Jazakum Allah khair

Assalamu Alikum,

Thank you for sending me the lease contract. I'm including the opinion of shk Monzer Kahf who is a world renowned scholar on the topic of Islamic finance, one who I consider my teacher. You can find more information on him here:

<http://monzer.kahf.com/about.html>.

"Leasing as a principle is permissible. We should realize that in an economy that is ridden by interest even the seller of bread will refer to interest because he buys flour on interest-based credit. Car lease contracts in America and Canada most likely will have certain clauses that

violate Shari'ah such as interest on delinquency and closing the gap when the car is totaled. But calculating the payment on reference to interest is not itself a problem."

You will notice the reference to interest on late payments on page 3 of the contract under the heading: LATE CHARGE.

Having said this, one needs to keep in mind that in Canada, a non-Muslim country, there is a lack of leasing companies/contracts issued on Shariah compliant basis. Under such a condition, scholars accept the entering of contracts with problematic clauses (e.g. interest on late payments) provided that users abide by the condition of not delaying any payment beyond the deadline, so as not to incur interest charges. This is the same condition usually required when entering into an interest based credit card contract (along with the additional condition of not withdrawing cash on the credit card through a cash withdrawal).

To quote shk Monzer again: "scholars argue for the permissibility to enter into a credit card contract in Western countries with these conditions because:

- 1) the contract makes yours (the user of the credit card) the choice to invoke the interest clause, which can be avoided by paying in full during the grace period
- 2) Using a credit card has become almost a necessity for Muslims who live in the Western countries as they are needed for many transactions and they have great convenience"

Based on the above, I would be inclined to say that such a lease contract (assuming you don't delay your payments) should be acceptable, and Allah knows best.

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Khaled

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Thanks a lot for your always very kind emails and I hope to meet with you again the soonest possible.

I reviewed this lease agreement and I agree with your statement below about it. I would take it as permissible under the condition of being sure that no delay will happen in any payments. I have another issue, smaller though but important: this contract in the area of Warranty seems to avoid the lessor responsibility regarding the leased vehicle. Lessor is required to bear responsibility of invisible defects not only to the limit of manufacturer warranty but also to any other defect that may have taken place in the warehouse of the lessor before delivery, for which the manufacturer does not bear liability. The text of the warranty seems to me too stiff to an extent that I doubt its permissibility under Canadian law not only under Shari'ah. (suppose a rare case where some equipment that is not related to functioning the vehicle was stolen while in the warehouse, and this is only detected by the lessee three month after delivery, here according to this contract, the lessor is not responsible for it but definitely it should be liable for this defect). This is a minor issue that may arise in a very rare case, for this we may let go not that it is ok from Shari'ah point of view. Issues of major repair and maintenance and insurance are Ok from Shari'ah point of view on the ground that these are a liability of the lessor but by agreement are considered as part of the rent so that the lessee bears this responsibility on behalf of the lessor.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Best Regards

Professor Dr. Monzer Kahf

Islamic Finance & Economics

From: Wassim

Sent: Tuesday, February 07, 2017

Subject: Sharia compliant credit union in California

Question:

Assalamu Alaikum dear Monzer I attended your Islamic financing in London Ontario about 5 months ago. Thank you, you explained it very well. Do you know any financial institutions that already have facilitated the sharia compliant investments so I can save time? I live in San Jose California now and want to buy a house, thanks.

My Answer:

In san Jose area there is an Islamic housing Cooperative. Check with Manzoor Ghori or others in the Islamic center there. No Islamic union that offers Islamic finance in California unfortunately.

Best Regards

Professor Dr. Monzer Kahf

Islamic Finance & Economics

From: Wassim

Sent: Tuesday, March 14, 2017

Subject: Re: Sharia compliant credit union in California

Question:

Assalamu Alaikum Amm Monzer its Wassim again, I have a couple of questions for you regarding halal/haram one leasing a car in San Jose California and the other is is permissible to work as a real estate agent?

Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Wassim

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Car leasing contracts in California are very close to the Islamic contracts. one thing must be realized that is if I want to formulate the text of the contract I wouldn't make it the way you see it (e.g., it mentions interest in several places). But since we are talking about a form that you do not have a say in its making and you either take it or leave it and the contract is essentially leasing and it is in fact leasing in reality, I would look for two points only. 1) the interest clause in case of delay. This clause is always there but although in the contract you can always avoid petting it trigger by being definite on not making any delay, by setting a recurrent payment in your bank account. 2) the clause of closing the gap in case of an accident and insurance payment being short of the balance. That can be covered by your insurance policy or at least by praying that an accident dot not happen. In other words, the car insurance in most areas is a lot less violating the Shari'ah rules than the conventional finance that is plainly interest-based.

For working as a real estate agent, you only help in selling real estate properties, what is wrong in that? Just do not volunteer to help in searching for financing which is done by other specialists anyway.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Best Regards

Professor Dr. Monzer Kahf

Islamic Finance & Economics

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My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

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Car leasing contracts in California are very close to the Islamic contracts. one thing must be realized that is if I want to formulate the text of the contract I wouldn't make it the way you see it (e.g., it mentions interest in several places). But since we are talking about a form that you do not have a say in its making and you either take it or leave it and the contract is essentially leasing and it is in fact leasing in reality, I would look for two points only. 1) the interest clause in case of delay. This clause is always there but although in the contract you can always avoid

petting it trigger by being definite on not making any delay, by setting a recurrent payment in your bank account. 2) the clause of closing the gap in case of an accident and insurance payment being short of the balance. That can be covered by your insurance policy or at least by praying that an accident dot not happen. In other words, the car insurance in most areas is a lot less violating the Shari'ah rules than the conventional finance that is plainly interest-based. For working as a real estate agent, you only help in selling real estate properties, what is wrong in that? Just do not volunteer to help in searching for financing which is done by other specialists anyway.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Best Regards

Professor Dr. Monzer Kahf

Islamic Finance & Economics

From: noureddine

Sent: Tuesday, January 10, 2017

Subject: Car leasing

Dear Sheik ,

a few years ago .I respected your fatwa and I stuck to Islam .I didn't buy a house with interest. Alhamdu Lillah I have now a very comfortable house completely loan-free.

But I contact you today because I need a car . As a family man I need a car in order to go on holiday and in order to bring my children to sport and to the mosque .

I was thinking on leasing as I consider it permissible because I buy a service which is transport and not a car . Such contracts are calculated probably with a formula which contains interests . To me I want to lease a car because I do know nothing of cars and I am not interested to knowing nothing on cars .I use a car and when it costs me to much I take another . Also a leasing contract obliges me to stick to a number of kilometers which is a motivation to keep to a healthy life style and use the bike now and then .

Like I said; I thought it was permissible but I will inshallah keep stopping on the commandments of Allah Almighty.

It is important for me to follow the precepts of Islam .I have other options of course like a 0% interest-loan for car which is largely available .

thank you

Jazakumu Allah Khairan anna

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Noureddine

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Car lease contracts in America and Canada are generally Ok from Shari'ah point of view except for two conditions which are: 1) interest on delayed installments; here you have to be very

keen to avoid any delinquency in payment; and 2) closing the gap in case of insufficiency of insurance payment if an accident (may God forbid) happens. This you should also try to avoid. The cost difference between zero interest and leasing is very small. I prefer, from Shari'ah point of view, the) interest purchase because it usually has no non-permissible clauses other than the interest on delay which is in your hand to avoid

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Best Regards

Dr. Monzer Kahf

FATAWA LEASING 2016

From: Shabeel

Sent: Tuesday, April 19, 2016

Subject: Interest-based loan in the form of lease

Hi Monzer,

May Allah forgive our sins.

Is it permissible for a lessee to earn from a leased property, as per Islamic Sharia law?

Example: Lessee has taken a leased apartment, and lessee earns from it by renting it out to other tenants. And there is a contract made with lessor that lessee will pay a fixed percentage (say 15%) of rent to lessor till the agreement ends. Since there is less market risk for the lessee, does it considered as interest or is it permissible as per sharia law if it's all defined clearly in a written contract between lessee and lessor? Does this come under Ijarah?

Regards

Shabeel

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Shabeel

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Ijarah is permissible and its fixed income is OK rather for each Ijarah period the rent must be fixed at the most at the beginning of the period. this is not interest and BTW fixation is not the reason of prohibition in interest, rather the reason is being an increment in a debt.

If you rent a car for \$500 a month and the contract permit, it is OK to rent it to somebody else for 600.

The point of 15% is confusing, I did not understand it, please rewrite it clearer and I will answer it.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Shabeel

Wa Alaykum Assalam wa Rahmatullah wa Barakatuh.

Thanks for your prompt reply. Highly appreciated. May Allah reward you for your help. Ameen.

I will try to explain further.

The lessee is my uncle. We are basically from India.

My uncle took the leased apartment for 5,00,000 INR. The agreement between the lessor and lessee says that:

- 1) Agreement to lease the property for a period of three years and can extend/withdraw the agreement based on mutual consent later.
- 2) Lessee is allowed to sublet the apartment to other tenants and get/earn rent from it.
- 3) Lessee needs to pay fixed amount of INR 1500 to lessor every month as part of rent, water bills and maintenance cost.
- 4) The minor maintenance like plumbing, electrical , carpentering works be borne by the lessee during the agreement period.

Lessee have presently given the leased apartment to a tenant, where tenant pays 11000 INR to lessee every month, with a hike in rent 5% every year as per government norms and as per written rent agreement. INR - Indian Rupees.

Regards

Shabeel

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Shabeel

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

This is permissible, but your uncle is a loser if he is renting all the property to a tenant as you mentioned. This is because the rent he collects is 396,000 while he pays 500,000 + 54,000 (1500X36).

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Shabeel

Sent: Wednesday, April 20, 2016

Subject: Lease contracts with some conditions.

Oh no , one thing forgot to mention.

If the contract/agreement ends between lessee and lessor, lessor will give back 5,00,000 INR back to lessee.

My Answer:

Please give more details. This is important and affects the Fatwa what are the conditions of returning this amount and any other details.

Prof. Dr. Monzer Kahf

From: Shabeel

Sent: Thursday, April 21, 2016

Assalamu Alaykum,

I will try to list down the major points completely:

- 1) Lessor is the sole and absolute owner of the schedule premises (apartment.)
- 2) Lessee has paid an amount of Rs 5,00,000 as cash to Lessor.
- 3) This agreement amount shall not carry any interest, and shall be refunded to lessee at the time of vacating the premises.
- 4) Agreement is executed for the period of 3 years , and may renew further based on both parties mutual consent.
- 5) During this period lessor should not pay any interest to the lessee.
- 6) Lessee agreed to pay an amount of Rs. 1500 to lessor every month as part of rent, maintenance and water bills.
- 7) Lessee should pay the electricity bills during this period without fail.
- 8) The scheduled premises should be used only for residential purpose and should not be used for any other purposes.
- 9) Whereas lessee can sub-let or under-let the said premises to any other person and Lessor agrees the same.
- 10) In case any delay to refund the amount by the lessor to the lessee , the period will be continued till the refund of the amount .
- 11) At the time of vacating lessee should do painting work on the premises.

Regards

Shabeel

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Shabeel

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

This is a clear RIBA contract. The Riba in it is the usufruct (time use) of the apartment for 3 years. this is Riba in kind although there is no Riba in money as you said (no interest). The in-kind Riba is as Haram as the money Riba there is no single difference. You did not mention earlier that there is a condition to return the 500,000 which was paid simply as a loan not as rent for the apartment. The fact that it must be returned makes it fully Riba transaction. Any benefit from the apartment is as Haram as the Riba itself. This includes residing in it as well as renting it and getting rent.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: مجد

Sent: Monday, January 18, 2016

Subject: هل يلزم الأجير بردّ الأجرة إذا امتنع المستأجر عن المتابعة

بسم الله الرحمن الرحيم

هل يلزم الأجير بردّ الأجرة إذا امتنع المستأجر عن متابعة العمل

My Answer:

الأخ المحترم مجد
لسم الله عليكم ورحمة الله وبركاته
بأنه يلزم للمستأجر ردّ الأجرة للأعمال مدة العقد وحين يشروط عقد العمل أن يخصص على المالك قبلون الذي جرى التعلق تحت
سلطة مالك قبلوية. وليس له التخليص من لجزء غير المدفوع من الأجرة إلا بعرض الفلاس حسب شروطه مالك قبلوية
والإجرائية وعن نيوكون العمل واحدا من الغراماء طبقا ليه من أجرة مدة العقد.
فإذال حياك بينهما مدة عقد فحسب بل شروط مالك قبلوية لأن هاء العقد المستمر على العمل.
مع أسامى القوي وأعزالت حية
أ. د. فذرق ف

FATAWA LEASING 2015

From: Abdul muied

Sent: Tuesday, August 04, 2015

Question: Lease dispute

Dear Sir Assalamualikum,

Below is the case involving a shop and some issues surrounding its renting. We will be grateful if you can enlighten us on this important issue.

The case -

People involved in the case?

The Landlord

Tenant 1

Tenant 2

In 1996, a shop was transferred to tenant 2 from tenant 1 with the approval of the Landlord. The Landlord didn't have any problem as he was concerned for his monthly rent. The tenant 2 as per the business deal, and as per the local business custom, gave Tenant 1 an amount of Rs 40000, again with the knowledge of the Landlord, to vacate the space of the shop. Now, after 19 years the Landlord demanded a sum of 3 lac from tenant 2 or made the offer to vacate the shop and leave it. The landlord wishes to give the shop to someone else from where he can get 3 lac or so and then also the monthly rent. It is to be noted that when the shop was handed over to the tenant 2, there was no agreement with regards to the time period it was going to be with tenant 2.

Questions that we would like to have answers for ?

1. Is it legitimate for the Tenant 2 to vacate the shop considering the sudden demands of the landlords?

This question is incorrect, it is better: would the landlord have a right to ask the tenant 2 to vacate? My answer is yes considering that there was no deadline of the contract, we apply the general rules of terminating with a notice that is usual and customary. It may be one month or

three month notice, usually not more. The landlord has this right because it is his property. The amount paid by tenant 2 to tenant one is between them and the landlord then did not object to all arrangements of that time. The tenant 2 did not set a date of deadline to protect his rights.

2. How proper is the demand of 3 lac or any some of money by the landlord in between?

The landlord may ask for a higher rent at each renewal of contract. The renewal is either every month or maximum each year as long as there is no date determined in the contract. if he asks for a lump sum (this 3 lacks) there must be with it a determination of a period, such as for renewal for three years I want you to pay me now 3 lacks and every month x amount. asking for such a payment with no contract deadline makes the transaction incomplete and must either be cancelled or deadline added. Then this amount becomes as an addition to the rent which may then consists of now x amount and y amount every month. This is permissible.

3. Even if the shop is vacated how much money should tenant 2 demand, considering he was demanded a sum of Rs 40000 in 1996 that he gave?

He has no right to demand any amount. Shari'ah does not give such a right unless there is a contract for a given period and he is asked to vacate before end of contract. American laws consider such a demand if it happens, criminal!. He paid the 40000 consensually then.

4. Who should give that demanded sum of money to the tenant 2 ? landlord or the tenant 3?

No one is obligated to do so., it is a matter of consensual and negotiable contracts.

Thanks and Regards,

Abdul Muied

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu 'ala Sayyidina Muhammad, wa 'ala Aalihi wa Sahbihi Ajma'in

Dear Br. Abdul Muied

Assalam Alaykum wa Rahmatu Allah wa Barakatuh

Please see my answers below your questions:

Wa Allah A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

FATAWA LEASING 2014

From: Umar

Sent: Wednesday, June 04, 2014

Question: Ijarah in Islamic Finance

Dear Sir,

I am a financial consultant from Nigeria with residence in Kano. I have some questions relating to Islamic financing which I want to have your views on. The questions are inter-related and are as follows:

1. In an Ijarah Financing, when is the Ijarah rental supposed to be paid by the lessee? Is it on

receipt of the Asset by the lessee or on actual disbursement for the assets by the lessor?

Rent is payable at any time by consensual condition in the contract. It can be long before, before or at time of delivery of asset to start deriving usufruct. It can also be delayed to a short or long. It can be lump sum or installments. It has nothing to do with date of beginning of usufruct or its duration. All there is: this y rent is for this x period.

2. Is it permissible under Shari'ah to accrue and charge rental on the money disbursed by the bank before the delivery of the asset to the lessee (i.e. before taking possession by the lessee)?

Accrual No. But I can make a contract for 10 month at rent 120 each month when I know that there is 2 month period before delivery. If I want to get 10% on my disbursement, the amount I collect is 1200 anyway (it is equivalent for 10% per month for the whole period of disbursement). Payment date can be distributed on 12 month although accrual is for 10 month only.

Money does not earn rent because it does not produce usufruct.

3. Is it permissible under Shari'ah to accrue for rental on an Ijarah facility for an asset under construction before the actual delivery of such to the lessee and the deferment of such payment until such a period after the lessee takes possession of the asset.

Don't mix thing. This is answered in the 1 and 2.

4. Is it permissible under Shari'ah to charge rent on the principle of 'time-value- of money' for amount used in acquiring the asset that will be leased to a lessee subsequent to his (lessee's) taking possession of the asset.

Time value of money is not real, it is fake. Time value of assets is real. The difference is utility generated by assets not by money. An Islamic bank maximizes the return to depositors and shareholders through calculation higher rent per unit of time for the period of usufruct so that it compensate for the period of disbursement without usufruct.

I look forward to receiving your reply.

Thank you sir,

Umar

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu 'ala Sayyidina Muhammad, wa 'ala Aalihi wa Sahbihi Ajma'in

Dear Br. Umar

Assalam Alaykum wa Rahmatu Allah wa Barakatuh

Please see my answers below your questions:

Wa Allah A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

FATAWA LEASING 2013

From: Samy

Sent: Thursday, July 18, 2013

Question: Car lease transfer

Dear Dr. Monzer, as-Salamu Alaykum wa Rahmatu Allah wabarakatu.

I hope this e-mail finds you in the best of health and Iman.

Below is a financial question from a community member in Canada about car lease from another person who had the car lease with interest.

Here is the question

I am interested in taking over a car lease from somebody. This person leasing the car for \$387 a month . She is willing to pay some money every month so my lease payment becomes \$269. That means she is paying 118 \$ a month. I will take over the lease. However the contract of that lease is based on 2.99 percent interest. Is that allowed even though she is giving me a big difference way more than the amount of the interest rate.

Jazakum Allah Khayran.

Imam Samy, Ottawa Main Mosque

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu 'ala Sayyidina Muhammad, wa 'ala Aalihi wa Sahbihi Ajma'in

Dear Br. SAMY

Assalam Alaykum wa Rahmatu Allah wa Barakatuh

If it is a lease, it cannot be based on interest. In a lease you pay rent not interest. It is true that all leases (their rentals) are calculated by using an interest rate. If this is what you mean, it does not matter as long as it is a lease. Otherwise if it is based on interest then it is interest!

The transaction as described is permissible in its idea because a lessee may sub-lease at any rate of rental. What remains is the detailed conditions. In Leases in North America usually there are two conditions that violate Shari'ah: 1) interest in case of delinquency and 2) filling the gap (continue pay rent although there is no car available to use) in case of accident. Delinquency interest can be avoided by punctuality in payment and let us pray that no accident happens.

Wa Allah A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

FATAWA LEASING 2012

From: Ayaz

Sent: Saturday, October 27, 2012

Location: Belgium

Question: figuring interest element in car rent invoice

Salaam upon your Dr Kahf,

I have read some of your fatwas but I'm not very sure if I have found the answer to my problem.

I wanted to offer a car to my father, but a halal car without taking any loans and interest, and therefore decided to sign the contract on renting a new car from the car dealer on a basis of 5 year. Hence the total amount of the car is divided in 60 months and gives up a 'rent' that we need to pay every month consecutively and the rent will remain the same for the following 60 months. At the end of the contract it is not possible 'to buy' the car according to the contract because we are just renting the car, however the car dealer said that is possible to buy the car but we'll have to pay market value of that car in order to buy it and have complete ownership. Throughout the 60 months the owner of the car is the car dealer.

Now where the problem arises is that when they will send us the invoice every month say \$1000 a month (I.e. the rent of hiring the car) they will also tell us the amount of interest that are incorporated in those \$1000 in order to show as financial charges in our company. But for us it is a rent just like for all other things if the car dealer has constituted the rent for us with interest charges then we can't do anything. It is just like if we're renting a house from someone who has taken a house loan from the bank and when we are paying the rent to the owner, the owner with that money pays the bank which includes interest also, so that means that we can't rent a house or flat because the owner will pay the loan and the interest charges with it.

If you could please tell us according the Shari'ah law if the car renting on long term is permissible in Islam? If not, may you give us an alternative?

May Allah give you health and the highest place in Jannah.

Jazaka Allah

Ayaz

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Ayaz

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

The renting as described in your question is permissible. Whatever the car dealer mentions in the invoice or even in the contract is permissible as far as your side is concerned. Laws in some countries require the car dealers to mention the implicit rate of interest in long term rental agreements. This disclosure is meant to protect consumers and does not affect the rental contract.

Alternatively: to agree with the seller to buy the car on installments at a higher price. This is also permissible even if the seller calculates the price differential in the basis of interest. Of course a third alternative is to buy cash or use any of the offers of zero interest which some car dealers make sometimes.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Youssef

Sent: Tuesday, August 28, 2012

Question: Car leasing

Assalam Alaykum Dr. Monzer,

I am presently looking at leasing or buying a vehicle. I would like to know if the attached agreement would be permissible? In addition I was wondering if there are any of the car companies like Dodge or Honda or Toyota financing that is permissible for leasing or buying?

Please let me know

Jazaka Allah Khayran

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu 'ala Sayyidina Muhammad, wa 'ala Aalihi wa Sahbihi Ajma'in

Dear Br. Youssef

Assalam Alaykum wa Rahmatu Allah wa Barakatuh

I looked at the attachment. But I cannot give you a fatwa on such a long agreement without studying it in details. That will take me at least 4-6 hours and I cannot schedule it before the end of September. While I give Fatwa free of any charge I do charge for my time when I need to spend time for research and evaluation. My charge is \$495 per hour. If you agree I need an advance payment and I can give you my opinion on this contract between Oct. 4 and 7.

Wa Allah A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

FATAWA LEASING 2011

From: Jamal

Sent: Friday, September 16, 2011

Question: interest penalty in car leasing

Salam Alaykum Brother Monzer,

Last year I leased a car from VW and before I leased it I asked a local brother who has some knowledge and he said as long as the lease contract does not contain any interest it should be fine. I looked up the lease and I did not find anything talking about paying interest including the section that talks about the default payment, it only mentioned a \$15.00 penalty for late payment, so I signed the lease.

This year I want to lease a Nissan car for my wife and two kids but when I looked under the lease terms I found that Nissan charges 6% interest per annum for default payment so I stopped the process and hoping I can find an answer from you on this issue.

Also I should mention that when they checked my credit score they gave me a higher monthly payment because I don't use credit cards nor have mortgage or loans and my credit score is low. The finance person told me that he calculates something called money factor to figure out the monthly payment and as he described it he said it is a form of interest. Is that OK?

Jazaka Allahu Khair and May Allah bless you for helping us reaching the right path.

Jamal

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Jamal

The inclusion of interest in calculation does not matter as long as it is not a part of the contract. Because it is of course expected that interest in an interest dominated economy would affect rent lease and profit in sale.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Farhan

Sent: Wednesday, August 03, 2011

Location:

Question: quoting interest in car leasing

Dear Br. Kahf,

I hope you are doing well. I have a question re: leasing a car. Is it permissible in Islam. When I talk to the dealers about leasing they quote a certain money factor and the usual company approving a lease is either a bank or a financial institution. I worry if this contract has anything similar to interest or Riba. Can you comment about this situation based on your understanding?

Jazakum Allahu Khairan

Farhan

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Farhan

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Leasing as a principle is permissible. We should realize that in an economy that is ridden by interest even the seller of bread will refer to interest because he buys flour on interest-based credit.

Car lease contracts in America and Canada most likely will have certain clauses that violate Shari'ah such as interest on delinquency and closing the gap when the car is totaled. But calculating the payment on reference to interest is not itself a problem.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Mahasin

Sent: Thursday, February 03, 2011

Location: Canada

Question: buying property on lease hold

Assalamu Alikom W Rahmatu Allah W Barakatuh:

I need your advice; I have Lease Hold property till year 2073. I paid for that 210,000.00, I paid 1/2 of that, and carry 1/2 as mortgage.

Now, I am in position to pay the mortgage. But I am scared if I pay the mortgage, I might lose the lease hold property for any reason, as you know I own nothing from the property. What is your advice keeping mortgage on this lease hold is HARAM OR NOT. I am 64 years old single women, and I am afraid to put all my eggs in one basket.

Thank you so much in advance for your advice.

MAHASIN

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Mahasin,

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I don't know about the conditions of lease hold in Canada, what happens after it expires. I cannot therefore advise you about it. However, it is not a new practice in Canada or in UK. Lease hold is been there for centuries. I think normally it is renewable for another 99 years. Besides, you still have 73 years and I am sure it is better that you settle the loan on it if you can. This does not affect its price and prices will not decline in the long run even with the declining number of years. With your age now, you will still gain over its purchase price whenever you sell it.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

FATAWA LEASING 2010

From: Habib

Sent: Tuesday, July 20, 2010

Question: Is Sale of assets in Sukuk and buying them back prohibited?

Dear Br. Dr. Monzer,

I had a quick question from a discussion we had on Sukuk transaction while you were here. If an obligor sells an existing asset for a period of time (say 5 years) to investors, pays rent on it for the period, and buys back the asset at maturity—if I understood correctly you mentioned that this transaction is not Shari'ah compliant. You mentioned that this transaction resembles bai al-Inah, but is there any specific source that forbids this transaction?

Best regards,

Habib

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Dr. Habib

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

To have a text for everything one may think of. The argument is based on Inah itself as this form fulfills the same pattern and the cash for cash with increment idea. It was discussed in the conference that we had recently on Sukuk and resolved that it is Inah. Also a court case in Kuwait in 2004 considered it a loan with interest and the ownership in it is in the kind of security ownership (al Rahn al Ihtirazi).

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

FATAWA LEASING 2009

From: Azam

Sent: Sunday, November 08, 2009

Location: Sri Lanka

Question: high cost of Islamic lease

Dear Prof. Dr. Monzer Kahf,

Assalamu Alaykum Sheikh,

A fellow Muslim colleague in my work place needs to buy a used car which is worth Sri Lankan Rupees 700,000/= (US \$ 700) through leasing. He has inquired regarding this from an Islamic Leasing Company (Claimed as Shari'ah Compliant) here in Sri Lanka.

Their main terms & conditions are as follows:

- 1- The Lessee (My Friend) will contribute an initial payment Rs.100,000/=
- 2- The lease period will be 03 years
- 3- The monthly lease rent will be RS.28,200/= (Total Cost = Rs.28,200 X 36 Months = Rs.1,015,200/=)
- 4- The ownership remains with the Lessor (The Leasing Company) till the completion of lease rentals.

Technically the company is charging Rs.415,200/= (Rs.1,015,200 – Rs.600,000) in excess. In other words, the company is charging 69.2% in excess.

What is your opinion about this transaction? Is it really Shari'ah compliant?

Appreciate your kind reply with this regard.

Jazakallahu Khairan

Regards,

Azam

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Azam

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

The contract is Shari'ah compliant from the point of view of the methodology of contracting in contrast with interest-based lending.

On the other hand if the contract contains overpricing, this makes it abusive and exploitative. Exploitation and abuse of a client because he/she does not accept to go to one's competitors is also Haram.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Irfan

Sent: Tuesday, September 15, 2009

Location: Oman

Question: which scenario is better in car leasing?

Dear Dr. Monzer

I am sure you get a lot of emails on car leasing issue. My name is Irfan and I am working in Oman, my question is again on the car leasing.

Here in Oman we unfortunately do not have any Islamic financial institute, hence following are some of the main leasing scenarios:

- Dealers make hire purchase deals with you for installment sales.
- Lease on operating lease with maintenance on lessor and buy back option at a certain period end usually at depreciated value of the car.
- Dealers refer to some conventional banks or specific leasing companies who finance lease you the car, u make at least 20% down payment, the specific car is owned by the lessor however usually maintenance is still borne by the lessee, rate of profit is calculated in relation to the prevailing interest rates.

Can you advise which mode is more nearer to Shari'ah compliance; please note lease on operating basis is more costly.

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Irfan

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Among the three scenarios below the first one, when done as known conventionally (most likely taken from U K practices) has certain problems of conditional sale, sale suspended on a future date and also interest. This may make it the worst of the three.

The second and third can be closer to Shari'ah. Second scenario is the best if it has no interest clause for delayed payment (from the point of lessee, this clause can be tolerated if lessee can assure himself that he will not delay any payment). The maintenance in the third option may

not create any serious problem (although the principle is that maintenance is on the owner) because you can make the lease for the period of manufacturer's warranty. In this case there is no maintenance to worry about. Further, in cars especially, having insurance on the lessee (the driver/user) may be more relevant and it can be an implicit part of the rent anyway. In both again the clause of interest on delayed payment remains an issue to sign but tolerated as mentioned above.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Sherif

Sent: Sunday, September 06, 2009

Location:

Question: Is a rented property subject to Zakah

Assalamu Alaykum.

I saw your answer to question on this regard at

<http://www.quranforall.org/fatawaa/zonrentalproperty.htm>

I think there is one additional factor to consider here, if you consider it appropriate. The analogy of investment asset should also consider if the asset is liquid or fixed. In the case of livestock it is liquid, and can be disposed of piecemeal. (Sell or give away any one out of 40) Whereas, agricultural land cannot be easily sold off like that. Rental buildings are hence more aptly compared with agricultural land than livestock and Allah knows best.

Jazakallahu Khairan for taking time to read my submission on this.

Sherif

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Sherif

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I don't agree with you because of the change in the composition of wealth people hold. Investment real estate and business fixed assets are a major item of wealth in our age, agricultural land was not of any weight at the time of the Prophet. Besides, the Prophet obligated Zakah on two large golden bracelets although they cannot be divided. Zakah is obligatory on the rich, be he rich by owning inventory or real estate, other investment or business fixed assets. Because these are the rich in our time not anymore the owner of 40 sheep! As for payment, it can be delayed until liquidation and it can also be a factor in liquidating unproductive fixed assets/investments.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Sami

Sent: Monday, August 17, 2009

Location: Fulda, Germany

Question: Car leasing

Dear Prof Monzer Kahf

Assalamu o Alaykum

I want to know that how the Car leasing (Ijarah) offering in Pakistan Mezaan Bank is Halal. I shall ask u this question in detail later, but first as you know, the banking system (Invented by Jews) is itself against the fundamentals of Islamic Monetary system, whatever the name we give for our heart satisfaction. What I know basics about a bank is:

A bank is an institute, which gives out money to people from its right hand (e.g. 10 \$), and gets back from people (e.g. 15 \$) over a period of time. The more the period, the more the bank profit is.

Which means an institute that always gets fat and fat, wealthy and wealthy, no loss at all. This is I hope totally essence of Riba, against Shari'ah.

Now all the banks of the world (Islamic, non-Islamic, etc.) are doing the same thing. Loan less money, get more money, i.e. a transaction of money in which bank is always on safe side, bank bear no loss at all, Bank gets wealthy always in every deal.....! Would you disagree with me.....?

Please reply me, so that I may ask you further, how the Car Ijarah of Mufti Taqi Usmani in Pakistan is Halal.

Wassalam

Sami

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Sami

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Please before asking me you need to make some research of your own about banks, banking system, monetary system, Islamic banking and the Islamic economic system. Once you make a good reading of about 3000 pages in this area, then you will be qualified to ask questions because you seems to be in need for more info. There are many sources on the internet about these issues please consult them.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Faisal

Sent: Wednesday, April 29, 2009

Question: is car leasing contract in U K permissible?

Dear Dr. Kahf: Assalamu Alaykum Wa Rahmatullah Wa Barakatuh.

My question is regarding Car Leasing. I understand that you have addressed this issue quite few times and I have read your answers as well. As you have mentioned in your answers, until you see the terms of contract you cannot finally comment whether it is Halal or haram. I have attached the copy of terms and conditions of the contract .I would be grateful to you and God Will BLESS you if could help me. Although it is not mentioned in the contract but I asked the car leasing company a specific question and answer was: 'If the leased vehicle will be stolen or completely destroyed, the leasing company continues to charge the lease rent till the settlement of the insurance claim. Is it permissible/halal? As you know almost all leasing company impose a penalty/extra charge for late payment. Is it permissible?

Jazakallahu Khair

Dr. Faisal

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Faisal

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I reviewed this so called "hire purchase agreement." It has a thousand and one violation of Shari'ah not only those you mentioned. The basic structure of it is interest not hire. If it is offered by a company that is not the owner of the car, it says amount of credit and interest added. Insurance is on you without being considered as a part of the rent, you close the gap in case of insufficient insurance it charges interest on delay and more... I wouldn't accept this contract it is in multiple gross violations. It is much closer to interest installment than to lease.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Faisal

Dear Dr. Kahf: Assalamu Alaykum Wa Rahmatullah Wa Barakatuh.

My question is regarding Car Leasing. I understand that you have addressed this issue quite few times and I have read your answers as well. As you have mentioned in your answers until you see the terms of contract you cannot finally comment whether it is Halal or haram.

I have attached the copy of terms and conditions of the contract. I would be grateful to you and God Will BLESS you if could help me.

Although it is not mentioned in the contract but I asked the car leasing company a specific question and answer was: ' If the leased vehicle will be stolen or completely Dr Faisal destroyed, the leasing company continues to charge the lease rent till the settlement of the insurance claim. Is it permissible/halal?

As you know almost all leasing company impose a penalty/extra charge for late payment. Is it permissible?

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Faisal

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I reviewed this so called "hire purchase agreement." It has a thousand and one violation of Shari'ah not only those you mentioned. The basic structure of it is interest not hire. If it is offered by a company that is not the owner of the car, it says amount of credit and interest added. Insurance is on you without being considered as a part of the rent, you close the gap in case of insufficient insurance it charges interest on delay, and more... I wouldn't accept this contract it is in multiple gross violations. It is much closer to interest installment than to lease.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: mohamed

Sent: Tuesday, March 17, 2009

Question: Renting a property purchased on interest-mortgage

Dear Dr. Monzer,

Assalamu Alaykum wa Rahmatullah wa Barakatuh,

Following is a financial question:

Should a person who rents a residential place be concerned about the possibility of an existing mortgage on the property (which translates into Riba)? Is the renter obliged to investigate such thing before renting? Basically, can one live and pray in a place that is purchased via mortgage?

Asalum -al-Alaykum

Jazakum Allahu Khairan for your constant help

Muhammad

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Mohamed

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

The renter is not responsible about the action of the owner of the house. This means that you do not ask the owner how he got the house and what loans are on him when you rent. This is not your responsibility and none of your business.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Mohammad

Sent: Saturday, March 14, 2009

Question: Ijarah as an Islamic finance mode

Assalaamu Alaykum Sh. Monzer,

What is your opinion about Ijarah Funds or 'Ijarah contracts' - particularly in light of modern Islamic Banking institutions?

Jazaka Allah Khayr.

Fi Aman Allah

Mohammad

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Mohammad

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Ijarah funds and Ijarah contracts are one of the best forms of Islamic financing. Ijarah contracts are perfectly all right. We should notice a couple of differences between Islamic Ijarah and lease that exists in the west. Basically two differences: 1) a basic principle in Islamic Ijarah is that rent is due against usufruct, if there is no usufruct no rent is due. In Western lease there may be a gap where rent continues while there is no usufruct; and 2) In Islamic Ijarah there must be no interest for delay of any payment. A high penalty may be imposed but it must go to charity. I encourage Ijarah funds if it is economically viable. BTW, you can securitize Ijarah contracts because it is a real asset that is securitized.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

FATAWA LEASING 2008

From: Nusry

Sent: Monday, September 08, 2008

Question: Zakah on Property for (Resale & Rent)

Dear Respected Scholar,

I am living in Sri Lanka; I need to clarify a small doubt with regard to Zakah payment.

My Question is,

Last month we bought a House (Our intention was to rent it out and sell it after maybe in few years) we normally fulfill our Zakah in the month of Ramadan and we already have a residence where we currently live. As I can see we have to pay Zakah on the House we purchased please correct me if I am wrong.

My Next question is, do we need to give Zakah on the Rental Income and Market value of House both, since we have not still given it for rent InShaAllah maybe from next month we will be renting out the premise, then do we need to take into consideration the rental income for Zakah next year, And also since in few years' time we might sell it do we need to consider the market value and calculate Zakah on that also for next year.

Our intention of buying another House was because we didn't want to keep money in conventional banks (We calculate the interest of any money kept on such and give it away to the needy) We thought it would be good to invest in a house and rent it out and in the future if necessary to sell it off if a need arises or if we come across a better option otherwise.

Could you guide us on the Islamic Ruling on this matter?

Expecting a reply from you Jazaka Allahu brother.

Regards

My Answer:

Bismillah al Rahman al Rahim

Al Hamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Nusry

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Let me assume that today is your due Zakah day, here is the way to calculate Zakah on your properties: The market value as of today of this house + any other investments + business net worth + any cash you have on hand and in banks + any saving accounts, etc. + any debt you own on other persons - your personal any family expenses until next time you get income (suppose you are salaried on monthly basis) - any debts that you think are not going to be paid by your debtors - any amount due on you for business expenses, maintenance of building (including this house and your residence) provided they are going to be paid out of existing Zakatable assets as of today (I.e. not out of future cash flow/income).

Please notice that rent of this house if any or any other property and profit of investment, etc. all have entered in this calculation because these rent and incomes are either cash or debt on others or already spent (so they are included in not spent).

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Samy, Islam on line

Sent: Monday, May 05, 2008

Question: Islam's Stance on Leasing a Vehicle

Dear Dr. Monzer,

Assalamu Alaykum wa Rahmatullah wa Barakatuh,

Is leasing a vehicle Halal or haram considering the following: 1. the leasing company factors in profit using a Riba calculation? 2. Full coverage is required for the car.

Jazakum Allahu Khairan for your constant help

Yours, Sami

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Samy,

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Please remember that whenever we deal with Fatwa for actions/transactions done under the system of interest credit we would be looking at the Islamic finance paradigm from the angle of interest-based lending. This is what creates hesitations in our mind regarding the "factoring of interest within the rental amount." The plain fact is: Islamic finance is an approach to profit making finance but not through the process of lending/interest. In other words, it is a finance that has its own philosophy that is essentially based of "dealings with real goods and services and facilitating their reaching to consumers/users without making it possible to assign any increment to debts because that is unjust as debts cannot by their own nature create increments". Of course if you own a car you can lease it to a user and make profit out of that transaction. This is financing through goods and assets not through assigning increments to debts because the usufruct of the car is derived through time and it has value. Car leasing is permissible although the car dealer has factored interest within the rental amounts and insurance is made required on it. By the Way, Insurance is not that of a taboo, there is a very respected and rational argument that it is perfectly permissible whenever it is not interest-based! I subscribe to this view.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Samy, Islam on line

Sent: Tuesday, April 22, 2008

Question: Renting a House Where the Owner Runs a Liquor in the First Floor

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh,

My husband and I are looking to move to a bigger house as we are expecting. We found a house on second floor of a building and the owner runs a liquor and pharmacy store in the first floor. The house has a separate entrance. Is it permissible to stay on rent in this house?

Jazakum Allahu Khairan for your constant help

Yours,

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Samy

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

In the United States and other non-Muslim majority country it is permissible. I should say literally it is also permissible even in Muslim neighborhoods because the rental agreement has nothing to do with what do the owner do in her/his other properties or with other persons. However, you must remember that in America there is concentration of crimes, as statistics tell, around liquor stores and night clubs, would you like to live next door to such places? I strongly recommend you to find some other area to live in!

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Saqib

Sent: Tuesday, March 11, 2008

Question: Job in leasing company, HALAL?

Asalamu Alaykum

I want one clarification that I'm a student of finance in Pakistan. Currently I have an opportunity of job in a leasing company in the Internal Audit department which is not directly linked to leasing business. My question is, whether the job in a leasing company is halal because leasing is HARAM in Islam but the prospective company deals in commodity lease.

Regards,

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Saqib

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Leasing is Halal, NO ONE IN THE WORLD CAN CLAIM IT HARAM. There are INTEREST clauses in conventional lease contracts these are not permitted in Shari'ah and these contracts (that contain interest clauses) are Haram to issue and sign especially in a country like Pakistan (in contrast to Muslim minority countries where there are no Shari'ah compatible alternatives, then some of these contract may be tolerable to accept but not to issue if the issuer is Muslim). Working in a lease company in jobs that do not require you to issue, write or sign interest containing contract is not Haram. As an auditor, if you audit on the accounts after contracts are signed I don't see anything not permissible in this job. But if you are required to review an interest-containing contract before it is issue, as a part of the issuing procedure then this auditing function is part of writing the contract. Writing a contract that contain interest clauses is not permissible and may be, Na'uthu bi Allah, covered by the Curse of God as mentioned in the Authentic Hadith in this regard.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Rekia

Sent: Sunday, March 09, 2008

Question: Renting a property to alcohol seller

Assalamu Alaykum,

I have a commercial building that I rent. The people who rent my building sell alcohol and lottery. At the time I rented to them I was far away from Islam. Alhamdulillah I am practicing Muslimah now. The rent money I get is my source of income. Is these money haram?

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Rekia

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

The principle is that it is forbidden to rent a property as a place to serve alcohol drinks. This of course applies when serving alcohol is a major line of business such as liquor stores and alcohol loaded restaurants/ball rooms.

Accordingly, for those shops in your building on which this principle applies you should abstain from renewing the contract and meanwhile give to Muslim charity as much as you can of the net rent of such shops.

If the main line of business is not alcohol such as grocery stores that have a small section for liquor or a beer machine or a lottery sale whereby these forbidden things do not make a major part of the business, space-wise (the contribution to net profit of these things is not of your concern), It may not be specifically Haram to rent to such businesses unless the rent contract mentions a right to sell alcohol or lottery (such a clause in your rent contract is not permissible because intentionally you must not rent your property to non-permissible activities).

Here again it is of course better to include in your rental contract a clause that forbids these thing in your property and meanwhile you may continue with these rentals and give charity as much as you can to the extent of your estimation of the proportion of your property that is used for non-permissible activities from the Shari'ah point of view.

The idea of giving to charity is derived from the verse that ascertains that good deeds wipe out bad actions. This means that along with charity you should also make as much as you can of prayers, Duaa and seeking God's forgiveness (Istighfar).

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Muhammad

Sent: Tuesday, February 19, 2008

Question: Payment of key money in lease

ASALLAMUALAKOM,

Dear Sir,

My question is: an example,

A person took a flat by rent, of amount of 20000us\$, for 1 year and he is transferring his flat to my name, and he want 3000\$ key money from me, and the rent of building belong to me, and I sell this flat to other person take from him 5000\$as a key money, and transfer to his name, and then the rent of the flat belong to him.

So kindly please tell me if it is JAEZ OR NOT?

Please if u reply to my email,

Thanks

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Muhammad

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Here is someone buying some goods for 20,000 then he decides to sell it and found someone who gives him 20,000 plus 3,000, would you see anything wrong in that? This is of course permissible AS LONG AS YOU SELL WHAT YOU OWN ON HAND. In renting, you bought the usufruct of a building for example for 4 years for 20,000 payable on four installments 5000 for each year. It is permissible to sell the thing you bought, all of it or only the remaining part, that is before the beginning of the 4 year or after using it for some time, for an amount larger than the amount you purchased it for and make the payment as: you pay me now 3000 and then pay the owner of the building 5000 every year if you sell all the usufruct, or the rent of the remaining period if you used it for some time and re-rent it for the rest of the time. This is the KEY money.

There is another practice of it that is caused by WRONG UNJUST LAWS that exist in some countries. Laws that say: once you rent for a year, the rent contract will be repeated forever for the same rental amount and the owner has no right to evict the lessee and has to accept the same amount of rent (there are usually certain exceptions that are difficult to practice). Under these unjust laws, the will of the owner is not to rent for ever and not at the same rent, market rents normally increase but the rent of this asset must remain fixed. This gives a chance to the lessee to profiteer from key money because he gives the right to renew the contract to the new lessee. This key money and remaining in the property after the expiry of the contract without willful consent of the owner ARE HARAM in my opinion. (I know that there exists some scholars who would argue that this is permissible on the ground that the law is not oppressive but necessary to establish justice between lessees and land lords, this may be correct under certain unusual circumstances, but most countries that made such laws abandoned them later because it turns out that they made market distortions and reduced investment in housing and other commercial constructions and they made more harms and more injustice than benefit and justice).

Wa Allahu A'lam

Wa Al Hamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

FATAWA LEASING 2007

From: Suhaib

Sent: Sunday, July 22, 2007

Question

Dear Dr. Kahf: Assalamu Alaikum Wa Rahmatullahi Wa Barakatuh.

I have two questions to ask you about with respect to Islamic financing. The first question pertains to Leasing Contracts. Is it permissible in Islam to sign a leasing contract for a car (new

or used)? If there is a percentage of profit in the leasing contract or not, does that make any difference? The second question is with respect to retirement benefits. There is a retirement plan called the 401K which takes a monthly deductible and collects it until retirement. Is this permissible in Islam? I thank you in advance and Jazakallahu Khair.

Suhaib

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Suhaib

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Leasing is permissible in Shari'ah but to advice about signing a lease contract I need to see that contract because many of the lease contracts in America have certain conditions that are not permissible. This is especially so in the case of delinquency, interest inclusion in the contract and rental payment in case of total damage of the insured asset (especially in car leasing). Retirement programs such as 401K and IRA are permissible to offer and to accept from employers. However, in both one has to select shares investment funds that are permissible from Shari'ah point of view. You know, shares of companies whose main line of business is prohibited are also prohibited to own and to invest in within a mutual fund. There are funds that follow Islamic criteria for investment both in US and Canada and in several other countries.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

Subject: Raising the rent significantly

From: Numan

Sent: Monday, January 15, 2007

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

FATAWA LEASING 2006

Subject: Car leasing

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

Sent: Wednesday, September 20, 2006

Question

Dear Brother, Assalamoulaykum

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

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

From: umar

Sent: Friday, August 18, 2006

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

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

From: Sr. Allison through Islam online

Sent: Thursday, January 26, 2006

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

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

FATAWA LEASING 2005

Subject: Leasing in Islamic Perspective

From: Said through Islam online

Sent: Thursday, December 29, 2005

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: Leasing a Car

From: mohamad

Sent: Sunday, July 03, 2005

Question

As-salamou alaikoum akhi Dr Monzer, Inshaa Allah all is well.

Brother, I know you have received many questions related to the topic of Car Leasing, but I would like to get some re-assurance.

My employer: QANTAS offers me the option of getting a novated financial lease, where I pay a regular lease rental every month which is taken out from my Gross pay (ie pre tax).

The cost involves: Interest rate, operating cost (insurance, fuel, maintenance and registration) and rental for having the car (you can view examples at <http://www.cwfl.com.au> in the calculators section).

At the end of 60 months there is a residual value (25% of the original price) that you can pay to own the car.

As this payment is coming out from my pre tax salary, I believe it is halal as tax for Muslims is not permissible under shari'ah and the portion of tax that I pay is covering the interest portion and hence I am not receiving that money anyways (in the long run, it works out cheaper for me to buy the car this way and reduce my tax simultaneously).

Can you please clarify, whether I am on the right track or whether the lease is haram or halal?

May Allah reward you for your help. Please copy your reply to

Was-salamou alaikoum wa rahmatul laahi wa barakatoh. Your Brother

Mohamad

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. Mohamad,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh I looked at the website you gave and run an example. It seems to me that you made 2 mistakes in your question, although one of them does not affect the Shari'ah ruling but you need to understand them both.

1. The item of interest used in the example is an explanatory item, it is not a contractual item. What does this mean? It means that there will be no rental and interest together but that the rental is calculated on the basis of the interest rate. Car (and other items) leasing is permissible in general (I say in general because certain lease contracts may include some clauses that violate the Shari'ah rules such as interest on delinquency) and it does not matter if the amount of rent is calculated on the basis of interest. As a matter of fact, we know that all Islamic financing is calculated on the basis of interest in our today's world because Islamic financing makes a small percentage of the market and being above or below the market wipes you out! It must be clear in your mind that in a lease contract there is only rental that is usually payable on monthly basis. Car leasing is permissible in my opinion; there are scholars who argue otherwise on the basis of who pays the insurance. But my argument in car leasing is that although insurance in general is the responsibility of the owner but in cars insurance is much more affected by the driver than by the owner because the car is a moving object unlike a building (even in building the argument that an owner can shift the cost of insurance to the lessee as an in-kind part of the rent is also strong).

2. Taxes are definitely not Haram. They are very often permissible in Shari'ah, that is when the government does not have other resources to finance its activities that are approved by the representative of its people. Unfortunately this criterion applies more to Western countries today than to the Muslim countries that live mostly under dictatorships. But on the other hand, using all legal ways to reduce one's taxes is definitely permissible in both the law and the

Shari'ah and one, Muslim or not, is always encouraged to use all such methods to reduce one's taxes.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Please Help me with the will of Allah

From: saqib

Sent: Thursday, May 19, 2005

Question

Assalam o Alikum

Sir, I have been your site <http://monzer.kahf.com> and very glad to see field of experties, I love to learn about Islam. So please help me out with the will of Allah in a very common case.

Is car leasing valid in Islam. I am not discussing the issues related to car leasing. I know you have better knowledge. Just explain me the matter in your opinion.

On the other hand I have studied a lot about it. But in vain, couldn't achieve any conclusion.

What is the issue in Islamic banking and their car leasing policies?

Saqib

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. Saqib,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

The principle of car leasing is permissible in Islam. Some car leasing companies may include conditions that are not compatible with the Islamic law. Therefore, we need to look at a specific contract and see that it is compatible with Shari'ah. If a contract is offered by an Islamic bank that has a Shari'ah committee that reviews its contracts while it consists of knowledgeable persons, you should feel comfortable with such a contract.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Leasing and Lease ending with ownership

From: suriani

Sent: Sunday, March 20, 2005

Question

Subject: question

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

Dear DR,

- DR, about comparison between al-ijarah thumma al-bai' with ai-ijarah muntahia bittamleek in AAOIFI, what is scope that I should be focus? now I just focus about different both of them from definition scope. as I know, in ijarah muntahia bittamleek has many situations.so, is true DR, al-ijarah thumma al-bai' is a part of ijarah muntahia bittamleek?

thanks Dr. Sincerely,

Suriani

My Answer

Dear Student Suriani

Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

1) Ijarah muntahiah bi al tamlik is: a lease contract that comes to an end by either of the following:

1. giving the asset as a gift at the end of the lease to the lessee
2. selling the asset to the lessee, at the end of the lease at a market price
3. selling the asset to the lessee, at the end of the lease at a pre-set price
4. selling the asset to the lessee, on installments during the lease whereby the rent will be declining and the share in the asset owned by the lessor also declining, so that with last payment the property is transferred.

Remember that each Islamic bank select a name of its own for its form of Ijarah. Ijarah thumma al Bay' should mean one of the last three.

Best Regards, Wassalam,

Sincerely,

Monzer Kahf

Subject: RIBA and Car leasing in New York

From: Hasan

Sent: Sunday, February 20, 2005

Question

Assalaamu Alaikum Brother,

I have a very specific question about car financing and RIBA in New York, USA as I am looking for a new car but I am very confused now. With the change in the current law, most of the companies are not offering regular car leasing which was earlier HALAL.

Now I have two option.

Option 1)

They call it SMART BUY option, it is pretty much the same as regular leasing of the car, I will be making monthly payments for a fix period of time as a rental payments but in this case I will be the owner of the car means I will be holding the title for this car and calculation method for the payments is interest based and the person can buy this car by making one big balloon payment at the end of the contract period.

Option 2)

In second option, for example if the cash value of the car is \$10000 dollars and interest is \$2000 for the period of 3 years, so the person will be paying in total \$12000(cash value plus interest). This amount will increase or decrease if someone make the payments early or defer the payments, and this is RIBA.

But I spoke to few car dealers to avoid the interest(RIBA), they can buyout the interest rate in advance, what it means is, they pay this \$2000 interest to the bank in advance and make the fix loan amount, now the total loan still will be \$12000, it will be fixed amount and will not increase or decrease for the fixed period of time. Either if I make my payments next day or in 5 years, loan amount(\$12000) will not change, Whatever payments I will make will go towards my principal amount. Will it become murabahah in which someone buys something and sell to someone with cost plus profit and is it HALAAL.

Need help, please let me know either both options are halal or which one is preferable...

Wassalaam

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. Hasan,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

If you make the contract with the car dealer for say 12000, it is permissible as installment sale. But if you make the contract with the bank for a loan and interest is paid in advance (this 2000) it is then a loan and interest.

Further notes: I think there must be more info than what you gave. In option one how come you have the title and then you said you can buy the car? In option 2, it is normal in leases that if you do not pay an installment the next month installment will be calculated differently because it will include a penalty (that is sometimes permissible to a certain limits) and the rental part of it will be higher than when you pay regularly (this difference is also permissible).

Please notice that paying interest in a lump sum or on installment does not change its nature.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

From: Hasan

Question

Assalaamu Alaikum Brother Kahf, Thank you so much for your reply.

If I am right and what I understand from your email, if the cash value of the car is \$10000 and the interest on this loan is \$2000 for the period of lets say 3 years. In this case the loan will be \$10000 and the interest will be \$2000. And it is RIBA.

If the car dealer pays the interest \$2000 upfront and make the total loan \$12000 that will not fluctuate over the 3 year period then it is permissible.

Also in option one earlier when we use to lease the cars in New York, we do not have any title not any other document except the registration certificate from motor vehicles office but with the new law change, instead of leasing the cars they call it SMART BUY option in which the first lien holder is the bank and they issue the title on my name.

Please let me know if I am right as I am confuse in this new situation with the recent law change. Wassalaam

Hasan

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. Hasan,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

For option 2, NO, if the contract is done with the bank as a loan without interest of 12000 in the example, this is permissible. The same if it is done with the dealer to buy the car on installment for 12000. But if it is done with the bank as a loan for 10000 plus interest of 2000, it is then Riba even if it is paid in advance and no fluctuation.

A Smart Buy is a buy not a lease. Does it give you the option after say 3 years to return the car or do you have to buy it then for an agreed amount given in the contract. If there is no option, it is then a purchase on installments with a balloon at the end. If there is option, it looks to me as a lease but I can't be sure unless you give me more details on the kind of lien and what is exactly written in the smart buy agreement.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

FATAWA LEASING 2004

Subject: Ijarah-based Islamic Bonds

From: Jeff

Sent: Tuesday, October 19, 2004

Question

There was a front-page article on it in the Wall Street Journal a couple of weeks ago--I'll try to look for it. It made the news because investors are using it to avoid taxes, and the feds are planning to look at closing this ""loophole."" It works like this: a city leases its subway system, telephone system, or just about any hard asset to a group of investors for an up-front cash payment, which includes an ""imputed"" interest charge. The investors get to deduct this imputed interest charge from their federal and state taxable income, lowering their income taxes. But since city governments don't pay federal income tax, they DON'T have to pay income taxes on the receipt of this imputed interest. The investors then lease the asset back to the city for a monthly lease payment with a similar ""imputed"" interest portion of each payment, but these can be lower and are stretched over a long period of time, so the net tax effect is that the investors get a big up-front tax writeoff and only pay this back very slowly over a long time period. This tax problem is not an issue, however, when the government leasing the asset is the same as the taxing government or if both parties are nongovernmental commercial entities.

Jeff

From: Muhammad

Sent: Tuesday, October 19, 2004

Assalamo alaikum wa rahmatullah

Brother Jeff, can you refer me to a source (preferably available on the Internet) in which I can get details of what is currently done in US: Renting XX for a lump sum, then getting it back on periodical payment as rent.

The problem with Qatar Global Sukuk is it clearly says: A piece of land is sold at a price, taken back on lease with periodical payment, after 7 years purchased back at the price on which it was sold.

We have to go deeper into it otherwise we are vulnerable to the charge; It is lending money for 7 years at a rate with principal paid back after 7 years. I

await brother Dr. Monzer's comments on this.

Regards

Muhammad

From: Jeff

Dear Brs. Drs. and Monzer,

Question

Assalamu Aleikum and Ramadan Mubarak.

As pointed out by Mahmoud at the Dubai conference in March, this trick of making a "nonbinding promise" to return the property to the government is unnecessary anyway. The government can just lease the property to the sukuk holders under a long-term lease (say, 30 years) with upfront payment, and the sukuk holders can lease it back to the government for the same 30 year term with monthly payments. During the whole time, the government technically retains ownership of the property, and at the end of the 30 years both contracts are fulfilled and the government gets custody of the property back. This kind of thing is done all the time in the US.

Jeff

My Answer

Assalamu Alaykum wa Rahmatullahi wa Barakatuh and Ramadan Mubarak, I didn't receive a copy of your letter to Br. Jeff in this regard and I am responding to the copy of his answer that included your original. I don't know how Qatar issued its Sukuk but my comment that it may very well seem like money for money with payments in between and the truth may be either to confirm this picture, (I am hearing lately from the lenient Shari'ah scholars ideas that it is sufficient that you may leave loose the condition of returning the property to the government at the end of the lease to fulfill the Shari'ah requirement; although we know the fact that no body want to keep such a property in her/his ownership; it is similar to escaping the bad condition of binding promise in Murabahah by having it binding only on the customer but on the bank so that it is permissible to be binding from one side only in spite of the fact that we know the bank doesn't want the merchandise and binding it to sell to the customer is meaningless any way) or to negate it by making a real long term ownership of the leased property and having a body that represent the ownership sharers. This is my opinion may democratize public utilities and public properties and may have useful and at the same time real long term effects.

Best Regards, Wassalam,
Sincerely,
Monzer Kahf

Subject: car lease and installment sale

From: Dr. Mujeeb

Sent: Monday, October 18, 2004

Question

AsSalaamu Alaykum: Ramadhan Kareem & Mubarek Brother Monzer. InshaAllah, the new assignment is fruitful and easy! Three items:

A friend who knows you well, Brother Ahmad asks you the following through me as he does not use internet:

A used-car businessman sells cars on the basis of deferred payments/installments (without interest). He has approached financing (mortgage) companies to sell these contracts in a package for about two-third of the balance amount. DOES SHARIAH ALLOW SUCH TRANSACTION WITH MORTGAGE COMPANIES?

Some mortgage companies pay a flat percentage of the balance upfront, while others pay most upfront and some as they receive payments from the car owner. DOES SHARIAH DIFFERENTIATE BETWEEN THE TWO OPTIONS?

Regards,
Mujeeb

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. Dr. Mujeeb,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

Please give my Salam and Ramadan Mubarak for our Br. Ahmad and inform him that the sale of undue-yet debts whether they are a result of installment sale or any other contracts for any thing less than the face value of the debt is prohibited in Shari'ah and it makes no effect on the ruling whether the whole proceed of this sale is paid at the time of the sale or any part of it. This amounts to pure Riba and there are 2 resolutions of the OIC Fiqh Academy to this effect: one about discounting of future IOU's and one about sale of debts.

On the other hand, sale of Ijarah (lease) contracts at any price is permissible because the holder of lease contracts still own the cars themselves.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Leasing and the Financing Contract

From: Jeff

Sent: Wednesday, October 06, 2004

Question

Assalamu Alaikum:

I hope you and the family are well. I just wanted to touch base with you pertaining the structure of the financing agreement. The 'STANDARD TERMS' agreement that is used for conventional mortgages is the major obstacle in any of my discussions. Is there a way for us to use the standard terms agreement with an attached schedule with the Islamic terms? I know that the Guidance example had a fatwa indicating that even when the word interest is used to cover requirements for tax deductibility, the scholars have found it to be permissible (or at least that is what I remember from two years ago in Washington). Any thoughts on this? I'm just really struggling with this as it truly is difficult .

Thank you.

Wassalaam,

Jeff

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. Jeff,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

We may under extreme circumstances use a standard agreement provided that we clearly redefine the terms in a way that makes them stand in court. I assume: if we do that we go back to square one because it will have the same effect on investors as a brand new contract.

The example of tax reporting is different. It is an external document, not a part of the contract.

One other point: why do we need to use a standard term contract? is it for the ability to resell it to investors? In resale, we have to use only a lease purchase contract because Murabahah cannot be resold without indulging in interest (discounting is interest). do you have a standard lease purchase that is known in Canada? if so, would you email me one so that I can look at it and suggest either changes or an addendum. The main items in both the Islamic and conventional lease purchases are very similar, differences come only in peripheral matters relating to insurance, liability, delinquency fines and the like.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

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

My Answer

Dear Br. Jeff,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

I think this long-term Ijarah for a lump sum payment coupled with another long term Ijarah payable yearly between the same two parties on the same asset is not permissible. This is Ijarah of 'Inah.

On the other hand, we should notice that in the Qatar Sukuk, the issuer of the Sukuk is the trustee. Hence it could issue such document without even mentioning that it represent an asset, because the trustee is the owner of the asset and it is the distributor of all revenues and amortization. The Sukuk documents clearly mentioned that the sale and Ijarah are between the trustee and the government. It seems that the binding clause is permissible, though not really needed because what would the Sukuk holder do with their Sukuk after full amortization of their principal anyway? Reminder, Br. Prof. Nejatullah, isn't this the same condition that Islamic banks have in their buy and lease back agreements? To the best of my knowledge all Islamic banks practice this form of financing, with the binding condition although some of them restrict it to cases of replacing an already existing interest based loan.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Accounting Handling of Ijarah

Subject: accounting handling of Ijarah

From: Sadaqatk

Sent: Monday, September 27, 2004

Question

Dear Dr. Monzer Kahf

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

I Hope, by the grace of all mighty Allah, you together with family would be in good health. We are also fine here.

Once again, I would like to have your valuable feedback on the Ijarah lease finance product

My understanding is as follows:

Classification of Ijarah lease:

1. Operating Ijarah (where legal title is not transferred to lessee at the end of the lease)

Accounting practice in lessor books:

- a) Leased Assets shall be recorded under " Investments in Ijarah Assets"
- b) Leased Assets shall be depreciated as per bank policy for similar type of assets
- c) Ijarah revenue shall be recorded as lease rent income

2. Ijarah Muntahia Bittamleek (a lease that concludes with the legal title in the leased assets passing to the lessee)

Accounting practice in lessor books:

Option 1

- a) Leased Assets shall be recorded under " Investments in Ijarah Assets"
- b) Leased Assets shall be depreciated as per bank policy for similar type of assets
- c) Ijarah revenue shall be recorded as lease rent income (total cost + profit)

d) On receiving the total lease amount, Write off/dispose assets from book and transfer legal title

Option 2

a) Leased Assets shall be recorded under “ Investments in Ijarah Assets”

b) Leased Assets shall not be depreciated

c) Apportion the total lease rent amount into principal & profit and apply as under:

Dr. Cash 110

CR. Leased assets cost 100

CR. Lease rent income 10

Under this option, asset is shown as “Receivable” and also not depreciated. Whereas, against the payment lease assets is directly reduced and finally the receivable become zero after the last payment

In your opinion, what the right practice ??

I shall appreciate if you kindly spare few minutes from your precious time and respond

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. Sadakat,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

Your representation is correct.

The second option is not accepted by the Accounting Standard on Ijarah of the AAOIFI because even in Ijarah Muntahiyah bittamlik the asset remains in the ownership of the lessor and the books must reflect this fact.

Suppose a reason happened where it becomes permissible, according to Shari'ah, to break the lease. Although such an incidence is very rare and usually covered by insurance, the Accounting Standard requires that ownership must be clearly in the hand of lessor until it is transferred. This makes option one a better reflection of this understanding of reality.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Lease/Purchase as a Form of Islamic Home Financing

From: Adnan

Sent: Monday, September 20, 2004

Question

Assalam-O-Alaikum Brother Monzer Kahf.

I got your reference thru a family member, and I need some guidance as to the best way and best place to get financing to buy a home. I am currently residing in Florida. Please advise.

JAZAKALLAH

Wasalam

Adnan

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. Adnan,

I can't suggest to you a specific company because I do not make advertisement to companies. There are several companies in America that provide what they call Islamic financing. some of them are not truthful to their claims.

The criteria to select are two: 1) the contract itself (not the propaganda brochure) must say it is either Murabahah, Musharakah or purchase lease rather than LOAN for interest ; and, 2) the contract must have been reviewed by respected Shari'ah specialist. regardless of names and propaganda, a company that does not have its contract reviewed and approved by a specialist is not truthful.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Islamic house finance companies in America

From: Fakher

Sent: Tuesday, July 20, 2004

Question

AslaaMuAlikum Dr. Monzer,
my case briefly:

I am currently Alhamdullilah living in a house that I got thru a private murabaha deal" from one of the brother in Asutin few years ago. I am planning to INVEST (not a need or must) in a bigger house if I can find a pure islamic way to finance it. So I have no such Dharoura (must) to buy a new house. But, I would like to buy a bigger one since the realstate market is down and I want to kind of invest my savings in a bigger property.

I have been in contact with an Islamic financing company who uses the lease method and told me they offer a 100% islamic mortgage. Are you familiar with their finanacial method? is there any loop holes or down sides with it?.

Do you know of any other islamaic institutes in the US you can recommend? Please advice.

JazakaAllahuKair

Fakher.

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. Fakher

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

I refrain from giving a Fatwa about specific entities but I can give you the clue or test and you make your own judgment. There are two test that will indicate whether a company offers

Shari'ah compatible contracts: 1) the text of the contract, not the propaganda materials or the verbalization, must state that this financing is not interest based, is not a loan but some other form of financing such as lease purchase, installment sale and any other contract that is susceptible to being Shari'ah compatible. If the contract says loan and interest, it is loan and interest no matter what the verbalization about it or its propaganda advertisements may be; and 2) even if the contract does not mention loan or interest, it must have been reviewed by a Shari'ah knowledgeable and trustworthy scholar because even other contracts may actually have violations in Shari'ah from the angle of Riba and from other angles too. Please apply these two tests to whatever you are offered by any company and do not go for names only because names very often do not represent the reality.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Alternatives to Buy a House in NA

From: Islam on line

Sent: Wednesday, June 09, 2004

Name of Questioner Syed

Country of Residence Bangladesh

Question

Dear scholars, as-salamu `alaykum. I'm a Muslim, living in USA, and need to buy a house. I am aware that Islam forbids usury. I am also aware that Shari'ah allows to relax the prohibition if there are no other alternatives available to the person and there is a real need for the residence because of family, children, safety areas, etc. Buying a house has become a necessity for me. I have tried hard to get a loan Islamic way. I have found two institutions (.....) which claim that their loans are Sharia based. If I get loan from any of them I have to pay at least \$200 more/month compared to if I avail conventional interest based loans. By paying \$200 more/month, I will not be able to save almost any money. All my relatives and friends are of the opinion that these type of so-called ""Islamic loans"" are worse because it is charging a lot more in excess and hence putting me in financial difficulty instead of alleviating it. In this situation, is it OK to buy a house using interest-based loan or should I still go with the Sharia-based loans? Jazakum Allah Khayran.

Jazakum Allahu Khairan for your constant help

Yours,

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. Syed

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

My reply has two folds: 1) you have to test any claim of being Islamic and be sure whether the claim is truthful. Two points must be looked at: a) whether the documents of the company give

you a loan or purchase/lease agreement. They may give a loan contract and yet say it is not a loan this is contradiction; and b) whether the contract offered to you has been subjected to Shari'ah scrutinization by any well known Shari'ah scholars.

2) If a true Islamic contract (that fulfils the above two tests) is above the market level, you must consider it as non-existing and act accordingly. But are you sure that these two companies are both above the market. One of them at least claims, to my knowledge, that it is competitive! Please if you find both above the market let me know the exact numbers each offers and their way of giving financing!

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Is Lease financing permissible?

From: Islam on line

Sent: Saturday, May 22, 2004

Name of Questioner omar

Country of Origin Morocco

Question

salam alaikoum is lesaing as way of financing purshases forbidden in islam, IN leasing you use for example a car for five year and you pay a renting amount each year, at the end of the conctrat y can pay the residual price of the car and you become the owner. The car is purchased by a bank from the supplier, the renting contract is between me and the bank, Is that Halal many thanks wa jazakoum allah kola khair

Jazakum Allahu Khairan for your constant help

Yours,

My Answer,

Bismi Allahi al Rahmani al Rahim,

Al Hamdu li Allahi Rabbi al 'Alamin, wa al Salatu wa al Salamu 'Ala Sayyidina Muhammad wa 'Ala 'Alihi wa Sahbihi 'Ajma'in,

Dear Br. Omer

Assalamu Alaikum wa Rahmatu Allahi wa Barakatuh

Yes, leasing is permissible if the bank owns the car and rent it to you. at the end of the lease contract you have the option to either hand the car back and walk away or purchase it for an amount that is determined in the contract as you mentioned. This is the principle of the leasing contract that is used in Islamic banks today. But you should be careful about any other conditions that may contradict the nature of lease.

Wa Allahu A'lam,

Wa al Hamdu li Allahi Rabbi al 'Alamin,

Wa Assalam,

Sincerely,

Dr. Monzer Kahf

Subject: Car Leasing in Pakistan

From: Amir through Islam on Line

Sent: Thursday, April 29, 2004

Question

Salam Alaykum

Car Leasing is very much popular in Pakistan now a days a few days back i have come to know that Leasing is the other name of Interest which is not allowed in Islam.Sir please help me for this problem because i have a car which is leased by a bank and some people told me that car leasing is allowd. I will wait for your positive response. With kind Regards Amir Sulehry

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. Amir

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

From the language and legal points of view, leasing is not interest. Leasing is permissible and interest in prohibited in our Shari'ah.

Some lease contracts may be constructed as loan contracts and what matter is always the substance not the name. In this case it become interest-based and therefore forbidden.

If your lease contract mentions that at the end of the lease you have the option to buy the car or not, most likely the contract is lease, not interest. And if you email me your specific contract I will be able to inform you of whether it is really compatible with the Shari'ah.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Leasing a car

From: feisal]

Sent: Thursday, April 22, 2004

Question

In the name of ALLAH, the Beneficent, the Merciful. Assalamu alaikum Dr. Kahf. JazakALLAH Kheir for responding so quickly and efficently to my questions. May ALLAH reward you for your generosity. I have one more question about leasing. You mentioned that leasing is permissible as long as it does not violate the teachings of the Shariah. Leasing a vehicle also involves some sort of interest rate even though a person technically does not own the vehicle. My question is, what exactly would make leasing haram? Isn't it almost the same as renting a vehicle? I would appreciate any light you can shed on this situation. May ALLAH be with you! Assalamu alaikum. Feisal

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. Feisal

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

When you rent a car from a car rental agency you pay rent per day, week or month. If the car breaks you just drop it and the agency gives you another car, why? Because in renting the responsibility of keeping the rented object in good conditions that provided the service for which it is rented belongs to the owner.

The same applies to leasing. Any condition that transfers this responsibility from the owner to the lessee violates the Shari'ah. Such conditions include any thing that makes the lessee responsible for major maintenance, those that are not caused by neglect or misuse by the lessee.

Besides, the OIC Fiqh Academy argued, in a resolution on this issue regarding the leasing practice of the Islamic Development Bank, that failure to give an option to the lessee to walk out at the end of the lease period (i.e., forcing the lessee to purchase the car at a given price) also violates the Shari'ah because it makes the contract a sale in which both object and price are deferred; this is not permitted in Shari'ah.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Financing a Vehicle and Leasing

From: Islam on line

Sent: Tuesday, April 06, 2004

Question

Dear Scholar Salam alaikoum I would like to know the difference between financing a vehicle and leasing a vehicle. After reading the fatawis on the website, I went to a dealer for a vehicle. When I read the contract, it says that the dealer sells the vehicle for an amount multiplied by 5.5% on 36 months then he transfers the property of the vehicle to the bank who will in turn gets the monthly payment directly from the seller until the vehicle is fully paid. Is this permissible since this is not leasing? How is that different from leasing? Jazakoum Allah khairan

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.

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

The contract you described is a cash sale with interest-based financing on 36 month. The dealer then sells it (actually it means discounts it) and get the cash amount. The bank will then receive from you the monthly installments.

In leasing, you pay to the dealer a monthly rent for a given period, 36 month. The dealers remain the owner of the car, and at the end of the period you are given the choice to either buy the car for a predetermined amount, give it back and walk away or negotiate a new lease

contract. The dealer may still sell the contract to a bank, this action of the dealer in both cases is none of your business.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Islamic lease financing and loans

From: Ed

Sent: Friday, April 02, 2004

Question

AL SALAM ALUKUM DR. KAHF.

I would like to buy a home in the U.S.A. in the Islamic way.

I spoke with a Muslim agent in Houston to get an Islamic mortgage loan.

He told that he can get me a lease loan from the bank without showing any interest term in the loan (only leasing terms).

However, my understanding is that the leasing amount is based on an interest rate the bank will figure out. But the contract loan will be written as a lease and not interest.

My question is this considered an Islamic loan or not. Is this acceptable in Islam or not.

Your answer is very important to me, and based on your answer I will make a decision to buy home or not.

Thank You

Wa Al Salam Alukum

My Answer,

Bismi Allahi al Rahmani al Rahim,

Al Hamdu li Allahi Rabbi al 'Alamin, wa al Salatu wa al Salamu 'Ala Sayyidina Muhammad wa 'Ala 'Alihi wa Sahbihi 'Ajma'in,

Dear Br.

Assalamu Alaikum wa Rahmatu Allahi wa Barakatuh

Lease is permissible even if the rate of the rent is set so that it equals the prevalent interest rate. What matters is the contract and the responsibilities/ownership it represents.

A lease cannot be described as a "lease loan" because in a lease the lessor is an owner of the property and an owner is entitled for rent if she sells the usufruct of the property. You need to read carefully the contract because in some lease contracts the ownership and the offer to sell the property may not be written carefully enough to reflect the Islamic requirement.

Wa Allahu A'lam,

Wa al Hamdu li Allahi Rabbi al 'Alamin,

Wa Assalam,

Sincerely,

Dr. Monzer Kahf

FATAWA LEASING 2003

Lease Contracts of Islamic Banks

Sent: Thursday, October 30, 2003

Name of Questioner Jan

Country . Pakistan

Question:

Dear Sir, Assalam-o-Alaikum, I hope you are in the best of health. I am a 25 year old computer professional from Islamabad, Pakistan. I read answers to questions posted on 17 June 2002 & 7 Oct 2002 and answered by Dr Monzer Kahf on "Car Leasing". I am in a huge dilemma since a Mufti Sahab from Islamabad, Pakistan told me that only the car-leasing product offered by Meezan Bank, Pakistan (Dr Taqi Usmani is on its Shari'ah Board) is Shari'ah-compliant and all the rest are Haram. Meezan Bank, unfortunately, is asking too high a price and it is out of my reach. I would greatly appreciate it if you could be kind enough to give your opinion on the following, even shortly:

1. If a bank offers leasing or rental (and not financing as it is offered by some banks in Pakistan) based on the following conditions, a. The car is in the name of the bank/leasing-company and not the individual b. The down payment is received initially (20% or 30%) c. Lease period is decided initially e.g. 5 years d. The monthly installment is decided initially e.g. Rs. 8000/- per month e. At the end of the tenure, the car is handed over to the buyer. The bank/leasing-company does not give the option that the buyer can either take back the down payment or the car itself. Is this OK according to Shari'ah? If a bank/leasing-company *also* offers the last option i.e. it offers the choice that the either the car can be acquired or the down payment taken back, is that OK according to Shari'ah? Thank you very much, Sami Ullah Jan Islamabad

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. Jan

Assalamu Alaikum wa Rahmatullahi wa Barakatuh.

There is no doubt that Shaikh Taqi Uthmani is a renowned Shari'ah Scholar and his opinion carries a lot of weight. This means that if al Meezan bank's lease contract is approved by Shaikh Uthmani, it must be good and compatible with Shari'ah.

This of course does not mean that other contracts that were not given to him for opinion are not good. Besides, Shaikh Uthmani was not, for sure consulted about the rate charged by al Meezan, because charging more than the market rate may be Ghabn that is forbidden or a result of monopolistic power that is also forbidden.

The first four conditions mentioned in your letter are OK; a lease under these conditions is permissible in Shari'ah. if the item e is not a condition in the contract but the lessor does not the car (because it got all its investment and return in it) and gives it away to the lessee, it is also permissible. But if e is made a condition in the contract there are people who object to it although almost all Islamic banks Shari'ah expert (including Uthmani) approve it in building lease/purchase and the trend among scholars is toward accepting it on the ground that the

contract includes an open offer on the part of the lessor to sell, at cost, the car/building and the lessee accepts this offer on piecemeal basis.

Retuning or not returning the down payment does not affect the Shari'ah-validity of the contract. Down payment may be considered a returnable security deposit or a partial payment of the rent of the car.

In one word, if the other clauses in the contract you mentioned are permissible in Shari'ah (and you need to be careful about them) the five points in your letter do not pose a problem from Shari'ah point of view.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

From: Islam on line

Subject: Lease Versus Mudarabah

From: Michael

Sent: Sunday, October 26, 2003

Question:

Bismillah,

Dear Shaikh Monzer Kahf,

AA,

Ramadan Karim wa Mubarak.

InShaAllah you are in good health.

Currently I am looking for sources in Qur'an and Sunnah, Ahadith, which are stating or enable us to follow from them that Musharakah is in preference of Ijarah and Murabahah.

I am missing in the overall discussions the Islamic foundation of it. May you help me out to include those sources in future articles if available?

Actually I enclosed a link to your website on my new portal: section "papers"

InShaAllah this pleases you.

Best regards wa Salam,

Michael

My Answer

From: Monzer Kahf

To: Michael

Sent: Monday, October 27, 2003 2:50 PM

Subject: RE: Ramadan Karim

Dear Br. Michael

Assalamu Alaikum wa Rahmatullahi wa Barakatuh,

Ramadan Mubarak to you and your family too,

There is no such preference in Shari'ah of Musharakah over Ijarah or Murabahah. You will not find any reference to such a thing in the Qur'an and Sunnah. It was only a fantasy by Ibn Taymiyyah that he med philosophical argument for it not a Shari'ah argument. It is carried over by the group of writers that like to distance themselves farther from any thing that carries the

slightest fixity, on an implicit assumption in their mind that fixity must be closer to prohibition because it is similar to interest. There was an article attacking Ijarah (actually from an Islamic/Marxist point of view that consider labor the source of value) is the Journal of the Center for Research in Islamic Economics, Jeddah, written by some sub-Continent Muslim (where this inclination is common) with the name of either Salim or Zubair, it was some time ago, early nineties or late eighties.

BTW, I recently met Nienhaus In Bahrain and he said that he knows you and you cooperate with his Center in Bokhom.

Best Wishes,
Wassalam
Sincerely,
Monzer Kahf

Question:

From: Michael

Dear brother Monzer Kahf,

As Salamu alaykum wa Rahmatullahi wa Barakatuh,

Indeed I know Prof. Nienhaus and I support him in some of his projects. Further to that I am publishing articles in German and English about Islamic Finance with the aim to promote it and to look up funding opportunities from the beginning of next year on. The business strategy comprises a company focusing and servicing the sales agents regarding Islamic financial products and the creation of a Shari'ah compliant leasing company. The memorandum will be finished till end of the year InShaAllah.

Thanks for your quick answer which clarifies for me the reason why so often is said that Musharakah has preference. I found e.g. in Usmani's "Introduction to Islamic Finance" the point on p. 19 "The real and ideal instruments of financing in Shari'ah are Musharakah and Mudarabah." Throughout his book I missed the foundation of it in Shari'ah. As this topic always rises up in discussions (and in the IBF Net) I wondered why I could not find any religious argument for it. The only one frequently cited was the closeness of Riba with pre specified Ribh which I cannot accept as this would forbid the Halal as well if consequently applied.

My limited knowledge leads to the point that our prophet Muhammad (s.a.s) himself did work on the basis of Mudarabah. Is this point right? Could we argue then that from the legal point of view all financing modes are acceptable (Halal) however our prophet (s.a.s) worked on the basis of Mudarabah, which points us to a non binding tradition?

Best regards wa Salam,

Michael

My Answer

Dear Br. Michael

Assalamu Alaikum wa Rahmatullahi wa Barakatuh,

The prophet business was all before revelation; it does not stand as a source of religion, not even for a preference. To the best of my knowledge there is no authentic report that he worked with Khadija, May God be Pleased with her, on Mudarabah. This appears in some of the biography books but it is not necessarily authenticated. Pre-assigned profit for capital is not permitted in business that is correct. But in sale and Ijarah you have to take the whole project.

A Lessor takes the risk of owning and managing and the lease contract is the final stage of his project. So is a trader/merchant, the sale contract is the final stage of his project. At this stage he may have a fixed profit. A trader has already taken the risk of his trade from the moment he purchased the goods. Murabahah to the purchase orderer is only quick module of a trader' project because it puts together the whole trading project and carries it to the limit of permissibility. This is why its two contracts must follow one another and there ought to be possession in between.

Besides, the time value is also denied by the same people, take for instance the article by M F Khan and my comments on it both published in the journal of the center of King Abdulaziz U, Jeddah.

Wassalam
Sincerely,
Monzer Kahf

Subject: Car Lease Contract Offered by Conventional Institutions

From: Siddiqi

Sent: Sunday, October 12, 2003

Question:

PLEASE HELP ME ANSWER THIS QUESTION

From: haroon

To: siddiqi

Subject: RE: Need help to understand Shari'ah point

Date: Wed, 8 Oct 2003 19:04:04 +0530

Dear Dr. Siddiqi Sb,

ASAKM,

Can you please look into my

Haroon

From: haroon

Sent: Monday, September 08, 2003 5:53 PM

Question:

Please guide me to understand Shari'ah point about below issue. It will help me to go or not to go for benefit of one of my salary component. Please reply ASAP. Wassalam. Haroon

In the name of Allah most beneficent most merciful.

By the grace of Allah, I am fine and expect you will be good in health and Imaan. I understood from Qur'an and Sunnah that "Muslim has to keep away oneself from transaction of interest ('soodi Karobar') in one or other form. In my current job I am in kind of situation where I am not able to decide firmly whether to take benefit of one of the salary components or not. Situation as below...I am working in Wipro Technology Ltd from past 3 years. From Oct, 2002 I am upgraded to position of manager. In my revised pay package, under salary component (called as Wipro benefit Plan ...WBP) I am eligible for Company leased car. Under this scheme, company decides EMI based on lease period. EMI is calculated from current interest rate and lease period. For example, current interest rate is 9% and one has opted for 5 years period of lease, it gets converted in interest rate Per Thousand per Month. EMI for 4 lac value car for period of 5 yrs lease will be = $400000 * 19.27/1000 = 7708$. In 5 yr one has to pay 462480 + 40000(10% of

car value for buy back at the end of lease period) =502480. If any eligible employee opts for this, he/she can get income tax rebate for EMI + CAR maintenance (including fuel). Lets say one spend 3000 monthly for car maintenance (including fuel). In this case total Income tax benefit for 5 years will be = (EMI + monthly car maintenance) * month in year * lease period * income tax slab = (7708 + 3000) *12*5*0.3 = 192744. In this case benefit to employee from his salary in 5 years = Income tax saved - (amount paid for car - car value) = 192744 - (502480 - 400000) = 90264. If employee buy car by his own or from out side finance company then he/she is not eligible for income tax rebate for any kind of investment on car. Company told this is as per directives of Direct Board of Taxes, India. If employee doesn't utilize his/her WBP component in listed benefit (CAR lease, HRA, phone bills, 2 children tuition fee , computer lease) then amount in WBP component will be paid as taxable (I fall in 30% slab of Income tax). It means, per above example, one has to loose 90264 from his/her salary in 5 years if not opting for company leased car. In first look I rejected company leased car option due to 'interest' factor involved in this, though due to my hectic office as well as family activities I am in need of car to save time. In the mean time my Muslim colleagues asked me about this scheme (as they also don't want to touch 'interest' unless it is clear). I just checked my mind whether I am taking extremist position and rejecting benefit which can avail or my stand is correct. To make my mind clear as well as satisfactory answer to my friends, I consulted people who are aware of Islamic Fish in detail. So far consulted people advice not go for this...Reason - As this transaction involved interest and car is not the basic need of life.

Please advise me how to take stand in above situation with details. I will be very grateful for earliest response. Note: - Just For your information, till this date I involved in interest transaction once only. It was to help other person. No one came to help him as well as I was not in position to help him. So I took loan on my credit. My stand till date, not to involve in 'interest' based transaction in either way.

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

Dearest Br. Dr. Siddiqi

Assalamu Alaikum wa Rahmatullahi wa Barakatuh.

You know this kind of question is in fact centered on Ijarah/leasing.

There is no doubt that Ijarah is permissible regardless of the tax authorities' distinction between financial and operational leases.

I did not figure out what the questioner meant by EMI but from his explanation I gathered it is the monthly payment. Lease contract that I saw in California give three options for the end of contract: give the car back and walk away, buy the car for a given amount (the questioner's 40000) or negotiate a new lease. If the contract is a lease contract and it gives options at the end of it (even if it leads you to the best of them that is to pay a given amount to buy the car), the way the monthly payment is calculated does not negate its permissibility even if this way is clearly mentioned in the contract.

The matters of major maintenance, insurance and property taxes (on the car) are normally known and made part of the rent by virtue of being explicitly charged to the lessee in the

contract, besides, major maintenance is normally covered by the manufacturer's warranty for the period of the lease.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: A new Ijarah-based Islamic finance company in Australia

From: Hassan

Sent: Friday, October 03, 2003

Question:

Assalamu Alaikum Dear Dr Kahf,

Just a simple (personal) question regarding the new Ijarah-based finance product. A couple of potential clients raised the concern that the Ijarah rate is reviewed and agreed upon by both parties on annual basis. The clients prefer to have it fixed for the period of the agreement (min of 15 years and max of 30 years) to avoid any deception!

Could you please advise me whether this feature of the product represents any shubha or makes the product not permissible?

Jazakum Allah Khairan,

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. Hassan

Assalamu Alaikum wa Rahmatullahi wa Barakatuh.

Yes, it is certainly permissible, and it is better because it removes doubts about possibility of exploitation in the future.

Who said that Ijarah has to be adjustable year after year? Ijarah can be for any period of time as long as the rented (leased asset can still serve its purpose (producing the sold usufruct) and it is a binding contract ('Acd Lazim). This is the form of lease/purchase used by Islamic banks all over the world. No Islamic bank uses a contract that adjusts the rent every year!

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Question:

From: Hassan

Assalamu Alaikum Dear Dr Kahf,

Due to the absence of any kind of Islamic business finance in Australia, some are resorting to different means in order to avoid conventional lending. What would be the requirements (Shari'ah wise) that we should look for if we were to consider the following scenario?

Can someone who is seeking Business finance sell part of his equity in his home (Refinance) and then buy it back through the Ijarah wa Iqtina and use the money for the business? Jazakum Allah Khairan,

Looking forward to hearing from you,

Wassalam

Sincerely,

Hassan

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. Hassan

Assalamu Alaikum wa Rahmatullahi wa Barakatuh.

This is a form of Bay al 'Inah that most schools of Fiqh consider prohibited. The Shafi'ites, who do not rely on intentions in business contracts, see each section of it permissible. On that basis, at least one Shari'ah Board of an Islamic bank (headed by Shaikh Qaradawi) permits this transaction as a way to replace interest-based loans (a customer comes with an interest-based loan that she/he wants to pay quickly and the Islamic bank buys the customer's building and leases/sells it back to the customer so that the customer can pay the interest-based loan.

I think the lack of other means of financing makes it probably a similar case and we must not stand in the way of Muslims who want to make their wealth grow if there is a way accepted by any of the schools of Fiqh!

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Question:

Dear Dr Kahf,

Jazak Allah Khairan for your prompt response. I would like to assure you that I have asked the question in my personal capacity. I needed to assure myself and put my family and friends mind at ease. I am also contemplating the idea of purchasing a house through this scheme inSha'Allah Allah.

Wassalam,

Hassan My Answer

Dear Br. Hassan

My Answer:

Assalamu Alaikum wa Rahmatullahi wa Barakatuh,

thanks for your clarification, can you please give me more and specific info about this company and whether it is by any means related to any other company in other countries? For instance we have recently a company in the American Muslim Market that does the same, it is called Guidance Financial. you can look at its ads on its website.

Wassalam

Sincerely,
Monzer Kahf

Question:

From: Hassan

Sent: Sunday, August 03, 2003 4:48 AM

To: Monzer@Kahf.net; Monzer@Kahf.com

Subject: A new Islamic finance company in Australia

Assalamu Alaikum Dear Dr Kahf,

Alhamdulillah, a new Islamic finance company has emerged in Australia. It relies on mortgage securitization as its source of funding to provide the Muslim community with home finance through Islamic Finance instruments

I would appreciate your opinion on:

The permissibility of financing homes through the offered Ijarah wa Iqtina'a product as well as the lawfulness of my earnings if I was to promote, mediate in and facilitate this product to other Muslims.

A brief background:

- * Median House Prices in most capital cities have soared e.g. in Melbourne \$325K and Sydney \$420 K (where 90% of the Muslim population reside)
- * The affordability rate for purchasing houses in Australia is at its lowest for the past 13 years
- * High housing costs forced the Federal Government to call in the Productivity Commission to investigate hurdles facing struggling first-home buyers (August 2, 2003).
- * The only other option available to the Australian Muslims is a co-op with limited resources; max finance \$160K per applicant, min deposit 20%, and waiting period between 12 to 18 months.

The product in question is the Ijarah wa Iqtina'a

Technique and features of the product:

- * Upon the approval of the finance application, the customer selects the property.
- * Pursuant to an Agency Deed between the customer and the financier, the customer purchases the property on behalf of the financier.
- * The financier then leases it back to the Customer for an agreed period (30 years)
- * The Customer's monthly installments (comprising of buy back of the financier's equity and rent components) progressively form an increase in his/her equity in the property so by the end of the 30 year contract the customer attains 100% equity for which the financier offers the option to the customer to buy the property for \$1.00
- * The Certificate of Title is in the Customer's name.
- * Rent rate is discounted on an annual basis to reflect ongoing occupancy costs
- * Any asset appreciation realized on subsequent sale of the property is entirely for the customer.
- * The financier interest is only in the full lease payment and other contractual obligations disclosed to the member at the outset.

I apologies for the long question and I am looking forward to receiving your answer at your earliest convenience.

Wassalam,
Hassan

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. Hassan

Assalamu Alaikum wa Rahmatullahi wa Barakatuh.

It is very delightful news to hear about a serious concern to provide house financing compatible with the Shari'ah to Muslim consumers in Australia.

Your personal part of the question, it is permissible to work in this kind of company or with it on promotion/commission basis. Just be sure that the customer holds the title certificate partly for her/himself and partly on behalf of the finance provider. in the state this can be done by virtue of the Mutual contract and special forms like a "quit claim."

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: legitimacy of leasing

From: Islam on line

Sent: Saturday, August 02, 2003

Name of Questioner Waseem

Country Pakistan

Question:

Dear Sir, Assalam Alaikum, Please let me know in detail, is leasing(getting things on installments/rent) Halal in Islam if the whole process is done within time period agreed at the time of agreement and no additional charges are paid. I need an urgent reply so please be needful. Jazakum Allah Khairan. Wassalam, Waseem.

Subject: Legitimacy of Leasing

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. Waseem

Assalamu Alaikum wa Rahmatullahi wa Barakatuh.

Leasing is permissible, no question about that in all schools of Fiqh. Leasing is covered under the general statement of permissibility of sale that is mentioned in the Qur'an (2: 279) because lease is a sale of the usufruct (the right to use) of a property. There is no differentiation in the Shari'ah between what is called financial lease and operational lease (this distinction is used practically for tax/accounting purposes only. Both operational and financial leases are permissible in the Shari'ah.

Sometimes certain conditions are attached to leases given by conventional banks that are not consistent with the Islamic lease such as charging the lessee with certain costs that are not

known/anticipated at the time of contract, such conditions are not permissible because in a lease contract the responsibility/cost of the lessee must be known exactly and determined in the contract itself.

Lease purchase is also permissible because the contract of lease and the contract of sale are not contradictory, they can go along together. Obviously lease/purchase consists of leasing the part owned by the bank and an agreement to sell the same on installment whereby the rent declines from one payment to the next in accordance with the distribution of ownership at that moment. This agreement is binding religiously; it is also binding in Islamic courts if breaking it causes any damage to the seller because it is actually a promise to make a series of sale contracts in the future each one of them is when each installment purchase is affected.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Further Explanation on Leasing

From: Islam on line

Sent: Saturday, May 31, 2003

Name of Questioner Mehdi

Question:

Salam Alaikum Dear scholars. I read pretty much every fatwa on the website about leasing. I still need a further explanation though. When it is about financing a car, in some instances, the car company is doing its own financing, so there is no third party involved but in others basically it is Riba (The car company gets the total amount from the bank and then you have to reimburse the bank with a fixed interest) My understanding of that is that it is not allowed (correct me if I am wrong). My problem is leasing, since you only lease the car with the intention of returning it at the end of the lease. In the case of the car company getting involved with a third party, (as described in financing above) does it still count as Riba? I am really mixed up after spending a long time researching the subject. A thorough answer would be much appreciated. Jazakoum Allah Khairan

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. Mehdi

Assalamu Alaikum wa Rahmatullahi wa Barakatuh.

Are you sure your description of the involvement of a third party in car leasing is exactly the way you describe it? You said "but in others basically it is Riba (The car company gets the total amount from the bank and then you have to reimburse the bank with a fixed interest)." To the best of my knowledge this description is incorrect and here is the way it goes "the car dealer puts a clause in his contract with you that he may assign this contract to a third party. This is usually a bank or a company's financing subsidiary such as Toyota finance company which is a subsidiary of Toyota company. It is true that the dealer gets the price of the car back, but the

lease contract remains as it is and you still pay the rent to the new owner of the car. you do not pay interest and it is not Riba. The car dealer sells his rented property to a third party. If the car dealer were a Muslim what he is doing is quite permissible in the Shari'ah. Remember that he is not selling a debt; he is selling a rented car. and notice that at the end of the lease you normally have the choice to return the car and walk out, to buy it at a given price or to make a new lease contract on it. where is the Riba then? I understand the confusion you got. it is caused by the knowledge you, and we all, have that banks and finance companies usually work on the basis of Riba and even when they make some contracts that are not loans but lease they still compare them with the interest and make their decision on the basis of this comparison. But that is the bank's business not yours. Your contract with it a lease contract and lease is permissible. How about if your bank accept to finance your home on the basis of lease/purchase instead of lending, wouldn't that be permissible even though the banks look at it as equivalent to lending from its point of view?

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Leasing Transaction

From: Islam on line

Sent: Saturday, May 03, 2003

Name of Questioner Muhammad

Country Pakistan

Question:

Can leasing transaction be regarded as an Islamic mod of financing?

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. Muhammad

Assalamu Alaikum wa Rahmatullahi wa Barakatuh.

Leasing is certainly one of the important modes of interest-free financing. It is one of the Islamic alternatives to Riba financing.

You need to remember that financing lease must fulfill all the implications of the lease contract known in Shari'ah including points related to insurance, maintenance, taxes and complete knowledge of all the cost of lease at the time of contract.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Can we take conventional house financing if the rent base is not available, expensive or troublesome?

From: Islam on line
Sent: February 24, 2003
Name of Questioner Saleem Country Canada

Question

We bought a house here in Calgary, Canada and being a Muslim and to avoid interest problem we got financing from Islamic CO-OP, out in Toronto. But in the first year we find out that Islamic CO-OP is just using Islam, trying to cheat all the times, lying, no service, very unprofessional, charging more than twice then other financial institutions and treating the peoples in very bad manner and also we got few threats from them guys and we end up buying our house from CO-OP through a bank and now we have mortgage from bank. I end up loosing about 20,000\$can, which I paid them as a rent in one year and plus lots of troubles with Islamic CO-OP. Now I am paying about half of the amount that i was paying to Islamic CO-OP and peace of mind. So my question, is it right or wrong to have mortgage from bank having a very bad experience with Islamic CO-OP. Thanks

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. Saleem

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

It is very unfortunate that you had bad experience with the Islamic Housing Co-operative of Canada, I know many Canadian Muslims who have excellent and rewarding experiences with it! However, If the available Islamic house financing institution charges more that the market rates or has conditions that are difficult to match a Muslim family in North America who needs housing through financing is permitted to resort to conventional mortgage through conventional institutions, because higher cost or difficult conditions makes the Islamic institution as if non-existing.

Wa Allahu A'lam
Wa Alhamdu li Allah Rabbi al 'Alamin
Wassalam
Sincerely,
Dr. Monzer Kahf

SUBJECT: Interest and rent in leasing

From: Islam on line
Sent: February 03, 2003

Question

What is really Riba and how it differs from rent and profit?

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. aziz
Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

(Riba) as defined in Shari'ah is simple. Let us take the story from its beginning: The word Riba means increment or increase in Arabic language. The word and its derivatives are used in the Qur'an in this linguistic meaning several times. But when the Qur'an used the word in the context of prohibition it is used with the identifying article "al." In other word the Qur'an prohibits "al Riba." It is exactly as you use the English words book or table or the book and the table. Al Riba means the increment that you know and you deal with not any increment (any increment can relate to any thing: to land to an animal to any thing that may increase. Do you know that the Arabic word for education "Tarbiyah" is one of the derivatives of the same root because education put an increment to the person. The same is "raising a child;" it is in Arabic "Rabba al Tift" because when you raise a child you make her grow, there is an increment!).

The prohibition of al Riba in the Qur'an is a reference to a specific identified transaction the Arabs used to have that is increment in a debt. a debt may exist for any reason: in a loan one becomes a debtor of the amount of money lent, as a result of a deferred sale one becomes a debtor of the amount deferred, in rent one becomes a debtor of the rental, if you are a partner in a private company and another partner buys you out for a given amount to be paid later, the purchasing partner becomes a debtor, and in the distribution of the estate of a deceased one heir may buy out another for a deferred amount, the buying heir becomes a debtor too. In this context al Riba equals the Latin-origin English word usury (the original meaning of usury is any increment; later in time they added the words exorbitant, excessive and above what the law allowed). Hence, in the context of a loan/debt Riba can be defined as any increment above the principal. The Qur'an specifically defined it as anything above the principal [2: 179]. When we talk about Riba with reference to finance this is the kind we always have in mind.

There are several Sayings about the prohibition of Riba, about 50 authentic Sayings. Some of these Sayings added another kind of increment that has become known as "the Riba [prohibited] in the Hadith." This is an increment in exchange contracts such as barter and sale. The Prophet, pbuh, prohibits certain kinds of exchange transaction that include certain increment that he called Riba too. So we have in addition to the prohibition of Riba in loans/debts another Riba that is in exchange. There are two kind of Riba in exchange: one that involves time that makes it very close to usury. This is when you buy a currency for another with a time span between the delivery of one and the other. the difference between the cash price and the deferred price is in fact the kind of Riba on debts/loans included in the price of the currency. This is prohibited. Obviously the currencies at the Prophet's time were gold and silver. This kind of Riba in exchange is also extended to food crops that are close to cash as they were in the society of the Prophet, pbuh, namely wheat, barley, raisin and date. Fuqaha added later other kinds by analogy. The point is that these other items are like cash in the society. The second kind of Riba in exchange does not involve any time span. This is when you exchange quantities of the same item, obviously the exchange would be redundant/irrational if there is no difference in quality. Good quality date for bad quality date cannot be exchanged unless quantity is equal. There is no denial of the differential value between them because the Prophet, pbuh, told the person: "sell the bad quality for money and buy with money the good quality." but no direct barter unless quantities are equal. Why is this prohibited? my explanation is: to avoid the problem of valuation, because when you sell and buy for money, the market determines the difference in value between different qualities of the same item but

when you barter only the two transactors determines this difference, this may not be fair, there may be exploitation because of any reason.

References: Best references are the Arabic commentaries of the Qur'an, look at the verses that mention al Riba, the Arabic sources of Hadith and Fiqh, chapters of sale and Riba. Secondary sources, contemporary writings; there are many books, no one alone gives you the whole story, especially if you want it in a concise form.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

FATAWA LEASING 2002

SUBJECT: Lease/purchase

From: M

Sent: August 10, 2002

Question

Assalamualaikum

Dr. I would like to know about al-Ijarah thumma al-bay'. Could you tell me all about it? Thank you. Wassalam.

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. M

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

It would have been nice if you told me your name.

I am sure you mean Ijarah and Bay' not bait. What mentioned applies to most car lease in the USA. The contract is a lease contract for three years with the rent consisting of a lump sum amount at the time of contract and a periodical amount every month. And at the end of the lease the contract specifies three options for the lessee: 1) to buy the car for a given amount; 2) to return it to lessor; or 3) to renew the lease for another period that they agree on. There is another form of this contract usually called Ijarah wa Iqtina' in which the contract has two elements together; 1) a promise to sell a portion of the property at a given price; and, 2) a lease of the part that is still owned by the lessor. Obviously, the share in the property of the lessor/seller declines which the execution of the promise each period the lessee/buyer purchases a portion, usually with the payment of the rent of the part the latter does not own. The total of purchase and rent can be formulated on the basis of equal monthly payment.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam
Sincerely,
Dr. Monzer Kahf

SUBJECT: Leasing is a legitimate alternative of buying with interest

From: Mohammed

Sent: Friday, May 24, 2002

Question

Jazak Allah Kier for the answer. The issue of interest has been brought up so many times in our discussions with some of the brothers. I was not intending to go into Haram Riba. My intention was to hear the answer from a trustworthy here in the U.S. I am not in a situation where I'm forced to go to Riba Alhamdu li Allah. I am more convinced right now to stay Riba free, mainly, because you influenced me more not to. So Jazak ALLAH keir again.

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. Mohammed

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

The question begins with is going to that internship as necessary as having a house for a family for which it is difficult to find other means of housing or house financing? I don't think so. If you want to study to improve your situation and also that of the community, then find Halal means to do that, this is an improvement, especially that wives are not the ones required to spend on the family!

The second question, I think you kind of too much narrowed an otherwise wide range of choices. There are every day ads for zero percent financing and there are many dealers who love to lease you without additional cost and there are many dependable \$ 6000 cars in our country.

By the way tell me who you are and where we met!

Wa Allahu A'lam

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Land rent for agriculture

From: Islam on line

Date: 2/25/2002

Name of Questioner Fatimah

Country Malaysia

Question:

What is your opinion about land rent for agricultural purposed in Islam?

My Answer,

Bismi Allah al Rahman al Rahim,

Alhamdu li Allah Rabbi al 'Alamin, wa al Salatu wa al Salamu 'Ala Sayyidina Muhammad wa 'Ala 'Hlihi wa Sahbihi Ajma'in,

Dear Sr. Fatimah

Renting land for agriculture is permissible in all the known Fiqhi schools.

Permissibility is based on the general rules of Shari'ah and the Saying that prevent renting it where the rent is crops cultivated on the same land. There are Ahadith that prevent renting it for Agriculture, Fuqaha argue that they are restricted to the cases that they the rent is part of the product of the land itself, especially that these Sayings are reported by a young companion (Sahabi), Rafi' Ibn Khadij and they stand against known principles in Fiqh such as freedom of disposition, right to make productive use of one' own property and permissibility of sale of usufruct (i.e., renting a property)

Wa Allahu A'lam

Wassalam

Sincerely,

Dr. Monzer Kahf

FATAWA LEASING 2001

SUBJECT: Car leasing

From: Islam on line

Date: 11/28/2001

Name of Questioner

Country

Question:

Salam aleykoum Dear beloved and respected brothers. I would like to know if it's permissible for a Muslim to lease/rent a car. Here is the situation, a car costs 30000 for example, the residual value is 10000 so the dealer takes the remaining 20000 multiply it by 3.3% and divide it upon the number of month you want to rent the car...at the end of the period you can give the car back or buy it at the residual value. No third party or any bank is involved in the process. Jazakoum Allah khairan.

My Answer

Dear Br. Mehdi

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

Al Hamdu li Allah wa al Salatu wa al Salam ala Rasuli Allah.

Leasing is a permissible contract in Shari'ah, certainly provided it has no other clauses incorporated in it that may make it prohibited.

The two parties of a leasing contract are free to negotiate desired conditions, especially amount and date of periodical rental payment, duration of the lease and down payment at the time of the contract, etc. If either the lessor or the lessee has a formula or an equation for her/his own calculation and own estimation of the conditions desired from her/his point of view, such formula or equation does not affect the permissibility of the contract as long as the contract itself does not have any interest clause or any other clause that is not permitted in Shari'ah (e.g., according to many scholars a clause determining an obligatory payment at the end of the lease and obligatory transfer of ownership is not permissible as it amounts to a deferred sale, while stating an amount with an option to purchase is permissible).

Accordingly, a lease contract that is exactly as you described in the question is permissible in Shari'ah.

Wa Allahu A'lam

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Purchase of a car through a lease contract

From: Islam on line

Date: 9/27/2001

Name Ishtiaq country Pakistan

Question

Is car purchasing allowed through a leasing bank or leasing companies?

My Answer:

Dear Br. Ishtiaq

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

Al Hamdu li Allah wa al Salatu wa al Salam ala Rasuli Allah.

To my knowledge some car leasing contracts available in the United States are permissible in Shari'ah.

The principle of car leasing is permissible. Usual permissible conditions for what is to be done at the end of lease period is to give choice to lessee to either purchase the car at an already given price, return the car to lessor and walk away as in any car rental, or renew the lease for a new period at negotiated terms.

Many car lease contracts contain special conditions that are either forbidden or disputable in Shari'ah. Examples of such conditions are paying interest on financed purchase price at the end of lease, interest on delayed payment of lease installment, obligatory purchase at the end of lease period at already determined price, etc. This means that we cannot give opinion on any specific car lease contract without carefully reading it, although the general principle of leasing is permissible.

Wa Allahu A'lam

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Car leasing in the USA

From: live Fatwa, Islam on line

Date: Aug. 1, 2001

Name: Ahmed Country United States

Question

What is your opinion on leasing new cars in the US? I am getting different opinions on it that there is some interest in it.

My Answer

Bismillah,

Al Hamdulillah wa al Salatu wa a' Salam ala Muhammad Rasuli Allah

The actual practice of car leasing in the United States may take different contractual scenarios that may differ from one state to another and from a financial institution to another.

Let me mention a contractual format that is used in California. The Lessee is required to pay regular amounts at certain periods, normally a month. In most of the cases you may be required to pay an initial payment, they call this a down payment. The lessor hands the car to the lessee with the title held in the name of the lessor (Financing corporation). At the end of the lease the lessee is given one of three options: A) to buy the car at a given price (normally below the list price of a car that old) B) to give the car back to the lessor C) enter into a new lease agreement with the lessor.

In most of these contracts there is a clause for penalty and interest on any late payments that are due. There are also limitations on the number of mileage permitted during the lease period. This kind of contract raises no problems from the view of Shari'ah and fits within the Islamic environment for a lease contract, except for the interest clause of late payment. This clause is not permitted in Shari'ah. The effects of this clause can be reduces for the people who are able to pay on time, even under difficult times. We come across this kind of clause in almost all transactions such as late payment on home rent, on electricity, and gas bill and almost all other contracts, not to speak about the credit card contract.

We Muslim in the United States (And in most western European countries) have to act under these conditions, until we are able to institutionalize our own laws as minority that has a special legal status and requirements.

So in the same way that we sign a credit card agreement with a clause on late payments, if we know that we are able to pay within the grace period without any delay to the interest bearing period, this kind of clause in car lease contracts is also tolerable with the condition that the person who signs it knows that he/she will pay on time.

The Shari'ah argument goes as so: you are given a contractual choice to pay on time with out any interest or to delay and pay interest, so we sign the contract accepting this choice and we know that we are going to choose the first alternative as if you are given a choice between beer and milk and you say "yes I accept" and then you go and select the milk. Accepting the choice between the Halal and the Haram is not forbidden, because as Muslims we should always select that which is Halal.

Wa Allahu A'lam

Wa Alhamdu li Allahi Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Can a lease be supported by a mortgage?

From: dialogue@islam-online.net

Date: 7/30/2001

Name of Questioner Country Sri Lanka

Question:

Dear Sir, this is regarding leasing systems. Is it permissible in Islamic for a bank to take mortgage on 1a property for leasing a vehicle? Please give me the answer. If the Islamic bank is not available then what we should do for our business and financial help. Best regards.

My Answer

Dear Br. Siraj,

Assalamu Alaykum wa Rahmatullahi wa Barakatuh

Al Hamdu li Allah wa al Salatu wa al Salam ala Rasuli Allah.

- Leasing is permissible in Shari'ah, and one may lease a car, a home or any other asset that may last for a relatively long time. Lease creates a debt on the lessee for the rental amount for the whole period of the lease. This debt may be supported by a lien, a mortgage or any other security. None of these practices is not permitted in Shari'ah. When a community doesn't have an Islamic bank, it has to create one, it is a kind of "Fard Kifayah" and until it is established, we should always realize that Riba is forbidden, it is one on of the worst sins, and the Shari'ah provides for the cases of necessities, the rule is that necessities relax the restriction.

Wa Allahu A'lam

Wassalam

Sincerely,

Dr. Monzer Kahf

We are explaining the situation more. Assalamu Alaikum.

In Sri Lanka we have an Islamic bank called Amana Investment Ltd. When we go for a leasing agreement with them to purchase a vehicle like car or any others for a value of one million, normally they ask us to mortgage an asset of two million worth (Market Value) and they value for the particular asset to be 1.5 million worth. On this they approve 75% as official value and also this will take a two months time to purchase the car. This is a very difficult procedure for small businessmen like us. On the other hand, the other leasing companies in the island, it is convenient to purchase assets in leasing terms, that is, they normally ask for just two guarantors and within two days time the car could be bought. But the only barrier is that, they include a clause in their contract, that, when the payment is delayed an interest of 2 percent has to be paid. In this situation what is the solution to be arrived at? In Islamic bank, they take no any risk in this connection and at any time from the start date of agreement to the end of it, they hold with them our mortgaged asset, its value is two times more than the car to be purchased. But in other leasing companies, they are taking more risk on this, and they say that they normally do not charge any interest even though the payment is delayed, but they compel us to sign on the agreement that contain the afore said clause. I need to buy a car. But I am not a position to go to Amana Investment in Sri Lanka. What should I do? Please answer my question.

My Answer:

Dear Br. siraj

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

Al Hamdu li Allah wa al Salatu wa al Salam ala Rasuli Allah.

Two points should be kept in mind: 1) - When we say that one has to deal with Islamic banks, if they exist in her/his area as a first priority, we always mean Islamic banks that provide similar services and similar products. If the Islamic bank in one's area provides services that are way below standards, we would be then comparing apple and oranges. Our Muslim financing services users are not required to tolerate higher prices or sub-standard services because someone established and Islamic Bank and he/she does not know how to manage it. In other

words, if an Islamic bank maintains inefficient management, charges higher prices and rates of markup or provides low caliber services in terms of customer relation, paper work requirement, conditions for financing, or time frame for a transaction, one may act as if such an Islamic bank does not exist at all and the Fatwa of general need (Hajah 'Ammah) applies. 2) - there is a distinctive difference between a penalty interest clause in an otherwise Shari'ah-compatible contract and an interest charging clause, and this difference affects the Shari'ah ruling on it. The example of a penalty interest clause in an otherwise Shari'ah-compatible contract is a clause that imposes interest on delinquent payments in a lease contract. A lease contract may be sound from Shari'ah point of view once it determines the period of lease, the amount of rent (that may include a lump sum and periodical payments). An option given to lessee to return or purchase the leased asset (say a car) at the end of the lease whether at a given price or at the market price at the time when the lease ends, is permissible. Conventional leasing companies usually add a penalty interest clause to the effect that if the lessee fails to stand to any of her/his obligations, she/he is required to pay interest for the delay. True, a Muslim lessor must not put such a clause in a lease contract and normally we don't accept to sign a contract with such a condition in it. But it is also true that when we deal with conventional lessors, we are subject to certain conditions that are to them essential to the contract and they do not accept to offer a lease without such a penalty clause for obvious reasons. such a penalty clause (in a contract imposed on us in a way of either take it as a whole or leave it) is not similar to an interest clause in lending since the latter is basic to the contract, the contract itself is based on Riba, while the penalty clause is only protective to the lessor, it does not make the essential substance of the contract, and the lessee has always the choice of abiding by the contractual time schedule, which he/she is required to do anyway, and hence avoid invoking the penalty clause. This certainly make the penalty clause lesser of an evil and for those persons who know of themselves that they are both keen and able to abide by the payment schedule, it is not forbidden to sign such a contract because it only gives them a choice between a Halal and a Haram and we are always exposed to such choice all our lives, Dunya itself is a home of tests and choices are always given throughout our passing between taking what is Halal or committing what is Haram.

With that in mind, I would say that for those persons who know that they are able and keen to be always on time, so they do not expose themselves to the penalty clause, it is not Haram to sign a contract with such a choice giving penalty clause in an otherwise Shari'ah-compatible lease contract, especially when there are no lease institutions that offer contracts without such a clause.

Wa Allahu A'lam

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Lease contracts in Pakistan

From: dialogue@islam-online.net

Date: 3/26/2001

Name of Questioner Zeeshan

Country. Pakistan

Question:

Is the leasing process permissible in Islam? Please give detailed views & knowledge?

Notes: i have read some comments on your site but not able to make any decision. I want to buy a car in this process, please tell me should i buy it or not? Help me

My Answer:

Dear Br. Zeeshan,

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

Al Hamdu li Allah wa al Salatu wa al Salam ala Rasuli Allah.

In principle, leasing is permissible; it is called in Fiqh Ijarah. Leasing can be for a short or long period. Many Islamic banks deal also with lease/purchase contract under different names, mostly lease ending with ownership, and the Ulama of these Islamic banks approve of it.

BUT I CANNOT GIVE YOU AN OPINION ON THE LEASE YOU WANT TO TAKE FOR A CAR WITHOUT READING THE PROPOSED CONTRACT. However, I can tell you this: if you are dealing with an Islamic bank that has a Shari'ah advisory board or committee, do not worry on the clause of the contract from the Shari'ah point of view. These contracts are usually reviewed by their Ulama.

Wa Allahu A'lam

Wassalam

Sincerely,

Dr. Monzer Kahf

FATAWA LEASING 2000

SUBJECT: Leasing of Cars and houses in North America

From: dialogue@islam-online.net

Date: 11/15/2000

Question

You ask about lease contracts available here in America for assets that live long such as houses and cars.

My Answer:

Dear Sister Faiza

Assalamu Alaikum wa Rahmatullahi wa Barakatuh,

Alhamdu li Allah wa al Salatu wa al Salamu ala Rasuli Allah.

Here are its highlights of my reply:

1 - Leasing is permissible in Shari'ah, as long as other conditions and requirements of contracting are satisfied. A lease for a long period such as many years is also permissible and a lease for a high rent or for a low rent is also permissible as long as the rent is reasonably fair and agreeable to both parties. This applies to what is known as operational lease like the lease for one year renewable one gets when one rents an apartment in a complex or an office in a building.

2 - The characteristics of a lease include that lessor remains owner of the asset, she/he is required to hand over the asset to the lessee and always maintain it in usable status. This means that taxes, insurance and maintenance expenses are the responsibility of lessor. A permissible lease must fulfill these characteristics. These characteristics also require that rent

must be known at the time of contract and must not include any part that is not known at the time of the contract

3 - Leases that provide for lessee to become owner of the leased asset after a number of years or payments are usually called financial lease, lease/purchase, hire/purchase or lease-to-own agreement. These are the leases that need careful study because they actually combine two contracts together: a sale and a lease. If the conditions in these leases reflect the fact that lessor is the owner of the asset, though a kind of ownership that is declining (because the lessee purchases a few shares of the asset with each payment of the rent) the lease is then permissible. But if the conditions in such leases relieve the lessor of all responsibility related to the asset, the lease is then a cover of an interest-based contract. This means that some individual conditions in those kinds of leases (that are made here in America without being studied and commented on by a Shari'ah expert) may be incompatible with Shari'ah, and no one can give a blanket statement about financial leases without studying the conditions of a given contract.

Wa allahu a'lam,

Sincerely,

Monzer kahf

SUBJECT: Leasing of equipment from Europe to Algeria

From: scitech@islam-online.net

Date: 10/25/2000

Questions:

- 1- Is it lawful to practice "leasing" of cars and equipment from occidental banks?
- 2- Is there any difference between leasing equipment practiced by the Islamic banks and those of Europe? Notice that the equipment is for investment in Algeria.
- 3- In Algeria all banks are practicing loans with interest even for investment and there Muslims are given up far from economic development (lot of young brothers are without work and many fathers of Muslim families are without work, especially in sub-Saharan region) due to this problem. What is the solution? How should Muslims from Algeria take part in the economic development if they can't develop their own projects?

My answers:

Dear Br. Omar

Assalamu Alaikum,

Alhamdu li Allah wa al Salatu ala Rasuli Allah,

1 - Leasing in Shari'ah is the sale of the use (technically called usufruct) of an asset that over-lives the period of the lease. Its basic conditions are the same as in contracting in general: legal competence of the two parties, knowability of the obligations of the two parties of the contract, and lack of any condition that contradicts the nature of the contract. Leasing is a very amenable contract and can be used as a financing mode.

One of the implications of leasing, in both Islamic and Western laws is that the lessor is required to deliver the leased asset (car or equipment) to the lessee and to always maintain it in usable state. This means that insurance is the lessor's responsibility. Thus the majority's view is that in a Shari'ah compatible lease, insurance and major maintenance must be on the lessor.

Consequently a lease that put these on the lessee, as the case of most financial leases in Europe and America, is not Shari'ah compatible.

I argue that major maintenance, i.e., that is related to the main function of the car or equipment is insurable. And the insurance premium is either itself known from the time the lease agreement is done for the whole period of the lease or the service of insurance is well known and definable at the time of the contract. This means that you can charge insurance and maintenance insurance, or at least the service, i.e., the insurance coverage to the lessee, because any obligation that is well known and definable at the time of the lease contract can be made part of the rent. There is a great convenience in charging insurance on cars and equipment to lessee because both insurance and maintenance and their costs are highly affected by the operator, especially in cars.

This means that in my opinion most leases made in the West, called usually financial leases may very well be permissible in Shari'ah. BUT NO ONE CAN GIVE AN OPINION ON ANY LEASE CONTRACT WITHOUT READING IT AND LOOKING AT ALL ITS CLAUSES. What I mentioned is the principle only.

2 - In leases of Islamic banks, the leased asset is usually either given as a gift at the end of the lease or sold at a price determined then between the two parties, while in most leases in Europe and America the price of selling the car after the end of the lease is predetermined in the lease itself.

3 - Muslims in Algeria are required to establish Islamic banks to the extent that fulfills their needs. There is only one small Islamic bank at present in Algeria and many others are needed. Riba-based lending and borrowing are prohibited in Shari'ah.

Wa Allahu A'lam,

Sincerely,

Monzer Kahf

SUBJECT: Variation in the contractual rent with the amount of initial investment of lessor and with sale of lessor's interest in the property

From: Murtada

Date: 10/12/2000

My Answer

Dear Br. Murtada

Selamet,

I can give an initial view on these two questions, they still need more research.

1- Making differences in lease prices (rent) depending on the variation in percentage of down payment to total amount of the purchase price of the property seems to be permissible. Of course by different we mean different rates of rent. These rates may also vary with variation in the period of the lease, collaterals given and trust worthiness of the lessee, as long as the rates of rent are definite and known at the time of the contract. It should be noted that such differences must be standardized in such a way that we keep treating the equals equally.

2-Sale of a "lease to own" contract for a debt or cash is permissible in principle because what you are selling is the interest or share of lessor in the property. But please give me some more details of how it works and what is the use of the debt certificate, etc.

It is good to have a lease form used in the Middle East; it Probably reflects most or all of the Islamic requirements, but it still needs to be studied...

Wa Allah A'lam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Car leasing in the USA

From: Islam on line

Date: 8/2020/00

Dear Brother Harun,

Question

assalamu Alaikum,

here are my answers to your three questions;

Bismi Allah, wa Al hamdu li Allah , wa al Salatu wa al Salamu ala Rasuli Allah.

question two:

Is car leasing contract in America permissible in Shari'ah?

My answer:

The principle is that leasing is permissible in Shari'ah. It can be for a short or long period. In leasing , lessor remains the owner of the least asset and she/he is responsible to make it always available for the lessee to extract the benefit (service) she/he purchases because a lease contract is in fact a contract to sell the service (benefit or usufruct) of thing that outlives the lease period.

The rent can be a lump sum, periodical payments or any combination of both. Hence the down payment is in Shari'ah part of the say three year period rent of the car, i.e., the rent consists of, say, 36 monthly payments plus an up-front payment of \$ 1500.00. This is one way of doing it and it is permissible in Shari'ah.

The stumbling block is the payment of insurance and maintenance.

Minor maintenance and all wear and tear may be part of the responsibility of the lessee. Major maintenance is insurable. Major maintenance are things that relate to the main function of the usability of the car, such as failure of engine or transmission.

Insurance is thus part of the expression "making the leased asset available to the lessee to extract its benefits". I argue here that this may be applicable for building or fixed machinery insurance but it does not apply for moving machines like cars. In cars, the quality, experience and abilities of the driver, distance driven, composition of the whole environment of driving, etc. are essential factors in the amount and frequency of insurable hazards, and consequently the insurance premium. Under these circumstance I think that we include in the rent an insurance service (that is: a provision of well defined service that protects the investment of the lessor in the vehicle) and hence we consider the rent to be as follows: monthly payment for a given number of months, front or down payment and a service of insurance sufficient to protect the investment of the owner/lessor in the car.

Terminating a lease contract before maturity is permissible by mutual agreement, even if the conditions of termination are stipulated in the lease contract itself.

Finally, three notes: 1- The lessee has nothing to question about the sources of funds of the owner/lessor, whether this source is Riba based or not is not part of the contractual

relationship between them. 2- The questioner mistakenly used the word lessor for the user of the car. The lessor is the owner .3- We assumed permissibility of insurance in this answer, this is a big and separate issue.

Wa Allah A'lam

Dr. Monzer Kahf
