

GENERAL

Classification Of Gifts, Endowments And Charitable Contributions

How are gifts, endowments and charitable contributions classified?

Gifts, endowments and charitable contributions are classified according to the circumstances in which they are given:

1. without a will, during the giver's lifetime, they are considered to be from the giver's personal property;
2. without a will, after the giver's lifetime, they are considered to be part of the bequest;
3. in a will, they are considered to be part of the bequest; and
4. with or without a will, if they are given under circumstances that ultimately lead to the testator's death (e.g. illness, war, travel, etc.), they are considered bequests.

Items Sold By Weight

What constitutes items sold by weight?

An item sold by weight includes anything that is customarily weighed before transacting, such as meat, grain and vegetables.

Transacting "Like" Items Sold By Weight

Is a transaction involving "like" items sold by weight deemed valid?

A transaction involving "like" items sold by weight (e.g. one type of wheat for another) is valid. When transacting any like goods sold by weight, it is obligatory that they be of equal weight and, if not transacted on spot, be kept separately.

Trading "Like" Items Sold By Weight But Different In Quality

May I trade two "like" items sold by weight even if they differ greatly in quality?

When two "like" goods sold by weight are traded and whose difference in quality is substantial, they should first be denominated in cash.

Transacting Dissimilar Items Sold By Weight

Is a transaction involving dissimilar items sold by weight deemed valid?

It is permissible to trade two different goods of different weights (e.g. 1 kg of rice for 5 kg of wheat) and, if not transacted on spot, the goods should be kept separately.

Trading Inherently Similar But Customarily Dissimilar Items Sold By Weight

May I trade two items sold by weight that are inherently similar but are customarily regarded as dissimilar?

In cases where two products sold by weight are inherently similar to one another but the value addition to one makes it something that is customarily regarded as a different product altogether, one item should be denominated in cash before transacting it with the other item. Such as with wheat and flour, where both are inherently similar to one another because the base product is still wheat, but because flour is a different end-product altogether having undergone extensive value additions, wheat and flour are regarded as substantively different.

Items Sold By Measurement

What constitutes items sold by measurement?

An item sold by measurement includes anything that is customarily measured or counted before transacting, such as cloth, eggs, and types of fruit.

Trading Like Items Sold By Measurement

May I trade like items sold by measurement?

It is permissible to transact any like goods sold by measurement or counting (e.g. one type of orange for another). It is not obligatory that they be equal weight, but they must be equal in measure or count, and the transaction must be conducted on spot.

Transacting Dissimilar Items Sold By Measurement

Is a transaction involving dissimilar items sold by measurement deemed valid?

It is permissible to trade two different goods of different weights (e.g. 1 dozen oranges for 2 dozen apples) and, if not transacted on spot, the goods should be kept separately.

Trading Inherently Similar But Customarily Dissimilar Items Sold By Measurement

May I trade two items sold by measurement that are inherently similar but are customarily regarded as dissimilar?

In cases where two products sold by measurement or counting are inherently similar to one another but the value addition to one makes it something that is customarily regarded as a different product altogether, one item should be denominated in cash before transacting it with the other item. Such as with fruit and fruit juice, where both are inherently similar to one another because the base product is still fruit, but because fruit juice is a different end-product altogether having undergone a degree of value addition, fruit and fruit juice are regarded as substantively different.

Trading Items Of Different Categories

May I trade an item sold by weight with an item sold by measurement?

It is valid to trade an item customarily sold by weight with an item customarily sold by measurement or counting (or vice versa). It is permissible to agree upon any rate of exchange; it is a condition for the validity of such a trade that the items be of different categories.

Deferring Payment When Transacting Items Of Different Categories

May I defer payment when transacting an item sold by weight with an item sold by measurement?

It is permissible to defer payment (or exchange) when transacting items sold by weight with items sold by measurement or counting (or vice versa); it is a condition for the validity of such a trade that the items be of different categories.

Transacting An Item With Cash, Gold, Or Silver

May I defer payment or agree upon any rate when buying an item?

It is permissible to agree upon any rate of exchange or to defer payment when buying any item sold by weight, measurement or counting with cash, gold, or silver.

Theft – Benefit Derived From Wrongfully Acquired Property

May I keep any benefit derived from wrongfully taken property?

It is impermissible to keep for oneself the benefit derived from wrongfully taken property (e.g. profits from the sale of real estate purchased with wrongfully taken money); while the property should be returned to the owner, the resulting benefit should be distributed in charity. It is also impermissible to keep for oneself the benefit derived from property (e.g. profit) one does not own without the owner's permission, even if there is no intention to wrongfully take the property itself but to merely benefit from its usufruct (e.g. borrowing a vehicle, milking a cow or investing money without the owner's permission).

Cashing Time-Bound Cheque

Is it permissible for me to try and cash a cheque seven months after I received it when it said it would be void after 60 days?

It would not be permissible since "void after 60 days" is a condition upon which this transaction is based. You will have to initiate a new transaction with the payer by requesting a new cheque.

Shariah-Board Approval

(i) If a conventional bank borrows funds from an Islamic bank with excess funds for 30 days based on an FX Commodity Murabaha, will the conventional bank require a Shariah board? (ii) A bank short of funds in the FX Commodity Murabaha is involved in both conventional and Islamic banking. If its conventional banking arm borrows funds from a purely Islamic bank will the transaction require the borrowing bank's Shariah board approval?

For both (i) and (ii): Only an institution claiming to be Islamic, have Islamic products, or conduct Islamic transactions, whether such an institution is Islamic or conventional, requires an opinion from a Shariah board.

Compensation For Deriving Benefit From Wrongfully Taken Property

Am I liable to compensate another from any benefit I derived from wrongfully taking their property?

It is obligatory to monetarily compensate individuals or institutions to the extent that one benefits from the wrongdoing; children or the insane who misappropriate are compensated for by their

guardians; it is not a condition that individuals compensate with their own money, though if no one compensates, the wrongdoer remains liable.

Dealing In Stolen Property

May I deal in stolen property?

It is impermissible to deal in stolen property that one is certain is stolen; if there is doubt then it is permissible to deal in though it is always superior to avoid the doubtful.

Transacting With Person Who Deals In Stolen Property

May I transact with a person who deals in stolen goods?

The permissibility of transacting with a given source that might deal in stolen property depends on the extent to which the source's wealth is unlawful and the degree of certainty to which the one determines the extent of this unlawfulness. One should determine the unlawfulness of the source's earnings according to that which is reasonably apparent; it is neither recommended nor preferred to seek out information about the unlawfulness of a source's earnings.

Misappropriating Non-Muslim's Wealth

Can a Muslim misappropriate the wealth of a non-Muslim?

Islam does not differentiate between Muslims and non-Muslims in the matter of misappropriation. Some Muslims mistakenly regard the theft of non-Muslim property to be commendable. Rather, any kind of theft is forbidden.

Copyright

What does Islam say about copyright?

It is obligatory to abide by the laws of copyright and intellectual property unless doing so compels one to do something impermissible or refrain from something obligatory according to the standards of Islamic Sacred Law; it is permissible to store printed or electronic copyrighted material for oneself or to share it with others in a limited manner that does not financially or otherwise harm the copyright owner.

Returning Wrongfully Acquired Property

Am I liable to return any wrongfully acquired property?

It is obligatory to return wrongfully taken property to the rightful owner as soon as one is able, even if at one's own expense assuming no harm comes to one's own or another's life or property. The one who misappropriated is obligated to make every kind of reasonable effort to return the property (or its equivalent market value, if applicable) to the rightful owner. The one who misappropriated is obligated to return the very item that was taken, regardless of depreciation, unless the item was lost or destroyed ("destroyed" refers to extensive damage that seriously diminishes the usefulness of something), in which case he repays monetarily an amount equivalent to the market value of the item, even if he was not responsible for its loss or destruction.

Compensation In Form Of Market Equivalent

May I compensate for misappropriation by returning the equivalent market value of the misappropriated item?

If the owner and the one who misappropriated both agree that the owner will take the equivalent market value of the misappropriated item rather than the item itself, the item becomes permissible for the one who misappropriated to keep and use. Market value is measured as the highest market price between the times of theft and loss, destruction or unavailability.

Misappropriation By Children Or Insane Persons

Who is responsible for misappropriations by children or insane persons?

Guardians are responsible for returning items misappropriated by a child or insane person under their charge, and if applicable, compensating rightful owners or paying charity on behalf of the child or insane person; it is obligatory for one to return items misappropriated during childhood oneself.

Misappropriation In Childhood

Am I liable for any misappropriations by me during my childhood?

It is obligatory for one to return items misappropriated during childhood oneself.

Repaying Misappropriated Usufruct

How do I repay misappropriated usufruct?

Misappropriated usufruct (e.g. electricity, rental property) is repayed monetarily an amount equivalent to the rental cost of similar usufruct for the amount of time it was misappropriated.

Beneficiary Of Misappropriation

Is one who benefits from misappropriation liable to repay, even if he was not involved in the act of misappropriation?

Repayment is the responsibility of the one who misappropriates, not the responsibility of the one who merely benefits from the misappropriation (e.g. if the father steals food and the family benefits, only the father is liable to repay), unless the beneficiary is also involved.

Altered Misappropriated Goods

What is my liability with regards to misappropriated goods that are altered in a way that affects their market value?

If a good is neither damaged nor destroyed but merely altered in a manner that increases or decreases the value of the good, the owner is entitled to choose whether to demand compensation or accept the good back as it is.

Change In Market Value Of Misappropriated Goods

Am I liable for fluctuations in the market price of misappropriated goods?

The one who misappropriated is not responsible for changes in value caused by fluctuations in market prices.

Third-Party Bona Fide Ownership Of Misappropriated Goods

What is the liability of a third party that acquired misappropriated goods bona fide?

Third parties (i.e. non-thief and non-owner) who acquire the stolen property, whether by purchase, loan, endowment, gift, inheritance, bequest, or other means, are obligated to return the item to the

original owner (and compensate for damage and depreciation), even if they had no prior knowledge of the property's misappropriation.

Misappropriated Items Lost And Repayed For, And Subsequently Found

What is my liability as regards misappropriated items lost and repayed for and subsequently found?

If items wrongfully taken and subsequently lost had been compensated for and *then* found, there are two options: 1) if the compensation is equal to or greater than the market value (at the time of misappropriation) the item is not returned; 2) if the compensation is less than the market value (at the time of misappropriation) the original owner decides whether to take the item or accept the compensation as it is. For lost or unclaimed property, or property found on one's premises, the property should be returned to its rightful owner.

Unable To Locate Owner In Case Of Misappropriated Money

What is my liability as regards misappropriated money if the owner is not traceable?

If money was taken and every reasonable effort has been made to locate the original owner but he is untraceable or no longer exists, the one who misappropriated should give the money away in charity; it being superior to give charity to those eligible to receive zakat rather to an ordinary charity; while the debt would be cleared, it would be superior, but not obligatory, to continue searching for the original owner; it is impermissible to give the money away in charity when one is able to locate the rightful owner.

Misappropriation By Group Of Individuals

What is the liability in case of misappropriation by a group of individuals?

If a group of individuals misappropriate property, each individual is only responsible for his share of the involvement; in the absence of a quantifiable division of responsibility, the default assumption is that everyone share's the blame equally; the individual is not responsible for non-payment by other members of the group.

Consideration Upon Return Of Misappropriated Property

Is it permissible to demand compensation upon repayment of misappropriation of property?

It is impermissible to demand any form of consideration for returning misappropriated property, though the owner is entitled, at his own discretion, to make a reduction in the repayment or to make a gift of reward to the one returning, provided the gift is not a condition for the return.

Informing Owner Of Misappropriated Property Upon Return

Am I liable to inform the owner of misappropriation of property upon its return?

When returning misappropriated property, it is not a condition that the taker inform the owner that the property had been misappropriated; rather, the property may be returned by any means possible, whether as a gift, secretly or openly, provided the one returning does not accept any form of consideration in return.

Unsure Of Misappropriated Amount

What must I do if I am unsure of the amount misappropriated?

If the one who misappropriated is unsure of the amount taken, it is recommended to estimate a bit on the higher side.

Begging

What does the Shariah say about begging?

Begging is offensive for those not in need, where a person in “need” is defined as one unable to feed oneself and one’s dependents for a period of a day, whether due to an inability to earn a livelihood or because of physical incapacity caused by illness or old age. Further, it is offensive for the individual not in need to accept voluntary charity. For the individual unable to fulfill the basic requirement of feeding one’s family for the day, begging is permissible. Begging while pretending to be needy is absolutely forbidden.

Giving To Professional Beggars

Is it permissible to give to professional beggars?

It is offensive to give to professional beggars.

Giving To Beggar When Certain Of Unlawful Usage

Is it permissible to give to a beggar when certain that he will use the money unlawfully?

It is impermissible to give to any beggar that one is certain will not use the money lawfully; it is offensive to give to any beggar that one doubts will use the money lawfully.

Engaging In Doubtful Transactions

Is it permissible to engage in doubtful transactions?

As a general rule, it is offensive to engage in the doubtful. In relation to commercial dealings, any transaction in which one doubts its permissibility it is offensive to engage in.

Transacting With Muslim When Doubtful Of His Source Of Income

May I transact with a Muslim when doubtful of his source of income?

It is offensive to enter into a transaction with a Muslim when there is doubt about whether the worth that he derived directly from unlawful earnings exceeds 50%.

Entering Into Contract That Entails The Unlawful

Is it permissible to enter into a contract that directly entails or assists in the unlawful?

It is unlawful to enter into a contract that directly entails the unlawful (i.e. work that is itself unlawful or even assists in the unlawful) or to work for an employer (even if one does not participate directly in the transactions) whose primary business is unlawful (e.g. interest-based banking, insurance, futures trading).

Deriving Benefit From Unlawfully Gained Property

Is it permissible to derive benefit in any way from unlawfully gained property?

It is impermissible to buy, sell, trade, use, rent, borrow, finance, invest in, bequest, endow, gift, give in charity, put up as collateral, give a guarantee for or derive any form of benefit from unlawfully gained property that one is certain is unlawfully gained; if there is doubt then it is permissible though it is always superior to avoid the doubtful.

Accepting Compensation From Unlawful Source

Is it permissible to accept compensation from a source whose earnings are unlawful?

It is impermissible to accept any form of compensation from a source when the recipient is certain that the very earnings used in the transaction were unlawfully gained; though if the recipient is doubtful about the unlawfulness of the earnings then taking compensation is permissible because one assumes that one takes from the lawful portion of the earnings.

Dealing With Someone Of Lawful As Well As Unlawful Earnings

Is it permissible to deal with someone who has both lawful and unlawful earnings?

It is permissible to deal with an individual or institution whose lawful and unlawful earnings are mixed, provided the unlawful portion does not exceed the lawful portion, in which case it is impermissible if one is certain of it; if one is uncertain, it is permissible to assume that the lawful portion is greater, to the extent that it is reasonably possible, it is superior to avoid doubtful wealth altogether, though not obligatory.

If one is certain that a given source's unlawful wealth exceeds the lawful portion, one is forbidden from dealing with the source unless one is certain that the very earnings one receives are from the lawful portion.

In determining the lawfulness of a source's earnings, the recipient is only expected to rely on that which is reasonably apparent, such as publicly-available information, rather than attempt to uncover that which is hidden; it is neither recommended nor preferred to seek out information about the unlawfulness of a source's earnings, though if one happens to learn something that was otherwise not apparent, one is expected to act accordingly.

Giving Money Or Property When Certain Of Unlawful Use

Is it permissible to give money or property to someone who may use it unlawfully?

It is impermissible to give money or property to a party when one is certain it will not be used lawfully, and offensive when one doubts whether the money or property will be used lawfully.

Conditional Acceptance

Is a conditional or partial acceptance to an offer to contract valid?

Acceptance is valid only with respect to the whole offer; the sale would be invalid, for example, if a buyer transacted a part of the saleable item at the price of the whole item without the seller's consent (e.g. "100 kg of grain at the rate of 1 tonne").

Conditional Transaction

Is a transaction that is conditional upon other agreements or future events valid?

The transaction should be free of all conditions with other agreements, whether conditioning or being conditioned by a second agreement or a future event outside of the transaction.

Dowry

What is the status of dowry in Shariah?

Whereas a marriage payment is from the husband to the wife, the dowry, a common cultural practice in Muslim countries, is from the wife to the husband; dowry is neither forbidden nor recommended, but merely permissible provided that it is not stipulatory or excessive, but rather a moderate and voluntary gesture of goodwill; demanding dowry from the wife or her family is strictly impermissible.

Supporting One's Parents

What are the rights of parents with regards to receiving support from their children?

With money that is above basic needs, both men and women are equally obligated to support those of their Muslim or non-Muslim parents (grandparents, great grandparents, and their direct ascendants) stricken by poverty (obligatory only when there is poverty), even if the parents are capable of earning.

Money that is "above basic needs" is measured as the typical maintenance for oneself (and one's wife, if applicable) necessary for one day before spending it on one's parents; the one obligated to pay zakat al-fitr is obligated to support his or her parents. In order to satisfy this obligation, which includes sons paying for their father's marriage (including marriage payment and subsequent maintenance of the father's wife if the father is poor) and sons and daughters repaying any debts the parent incurs in order to cover living expenses, one is even compelled to sell property in excess of one's needs.

If more than one child is financially qualified to support the needy parent, the obligation of

providing support is shared equally among the children, regardless of the child's gender or financial status (provided the zakat al-fitr minimum is reached); women are only obligated to provide support if they earn or have sufficient money of their own.

Obligation To Support Parents If One Is Needy Out Of Both

Who is obliged to support a needy parent: their spouse or their children?

If one parent is needy and the other is not, the obligation of providing support first returns to the parent who is not needy, then the obligation goes to the children.

Hierarchy Of Supporting One's Dependents

What is the hierarchy or order of precedence in supporting one's parents?

The right of one's mother comes before the right of one's father (respectively for grandparents, great grandparents, and their direct ascendants); and the right of one's parent comes before the right of one's child; though this precedence is only relevant in the absence of sufficient funds to support everyone.

Claiming Back Maintenance Provided To Parents

Is it permissible to claim back any maintenance provided to parents?

The one supporting the parent is not entitled to claim any portion of the obligatory or non-obligatory maintenance that has already been provided.

Supporting Parents Who Are Not Needy

Is it obligatory to support one's parents even when they are not needy?

It is not obligatory to provide one's parent with financial support when they are not needy, though it is still recommended to give if they ask.

Supporting Children

What does the Shariah say regarding the obligation of supporting one's children?

Both men and women are equally obligated to support their children until the child reaches adulthood, including those of their Muslim or non-Muslim children (grandchildren, great grandchildren, and their direct descendants) stricken by poverty (obligatory only when there is poverty), even if these children grow to adulthood while they are still impoverished.

The obligation of support rests on parents who have the means to do so once they have paid the typical maintenance for themselves (and one's wife, if a husband) necessary for one day before spending it on one's children. In order to satisfy the obligation to support one's child, which includes repaying any debts the child incurs in order to cover the child's living expenses, one is even obligated to sell one's own property in excess of one's needs.

The right of the younger child comes before the right of the older one (respectively for grandchildren, great grandchildren, and their direct descendants); but the right of one's parent comes before the right of one's child; though this precedence is only relevant in the absence of sufficient funds to support everyone; male and female children have an equal right to maintenance.

Supporting Relatives

What does the Shariah say regarding supporting male and female relatives?

One is obligated to support one's needy male relatives (i.e. brother, uncle, cousin, nephew, etc.) who are unable to support themselves as a result of an illness or disability, though if they are needy for reasons other than illness or disability supporting them is merely recommended; the proportion of their financial support in relation to one's direct dependents is the same as the proportion of their inheritance in relation to one's direct dependents. One is also obligated to support one's needy unmarried female relatives (i.e. sister, aunt, cousin, niece, etc.) who are unable to support themselves regardless of the causes of their neediness; the obligation of supporting needy married females returns to the husband. The one supporting the relative is not entitled to claim any portion of the obligatory or non-obligatory maintenance that has already been provided.

Accepting Welfare Payments From Government

Is it permissible to accept welfare payments from the government?

It is permissible to take welfare payments, provided one fulfills the conditions necessary to be eligible; it is impermissible to lie about one's circumstances in order to receive welfare, even if the source of the payments is a non-Muslim government.

Debtor Performing Pilgrimage

Is it obligatory to perform the pilgrimage if one is in debt?

Debtors may perform the pilgrimage if the creditor grants permission to delay repayment until after the pilgrimage. Generally, when a debt (whose amount exceeds the cost of pilgrimage and its related obligations, such as providing for one's family during one's pilgrimage) is outstanding, the pilgrimage is no longer obligatory, though its performance is still valid if performed with the creditors consent.

Pilgrimage With Borrowed Money

Is it permissible to perform the pilgrimage with borrowed money?

A pilgrimage performed with borrowed money is valid provided the conditions for performing pilgrimage are met and the creditor obliges. The debtor is entitled to perform the pilgrimage without taking permission from the creditors if the debtor has no arrears and if his performing the pilgrimage does not hinder his ability to continue repaying the creditor on schedule. It goes without saying that one may not take an interest-based loan in order to perform pilgrimage.

Pilgrimage Without Creditor's Consent

Is it valid to perform the pilgrimage without taking permission from the creditors?

The debtor is entitled to perform the pilgrimage without taking permission from the creditors if the debtor has no arrears and if his performing the pilgrimage does not hinder his ability to continue repaying the creditor on schedule.

Pilgrimage With Borrowed Money – Whether Obligation Is Lifted

Is the obligation to perform pilgrimage lifted if one borrows money to perform the pilgrimage?

The obligation to perform the pilgrimage is lifted once one performs it – whether through borrowed money or otherwise.

Delaying The Obligatory Pilgrimage

Is it permissible to delay performing the pilgrimage even if it is obligatory and one possesses the means?

Once the physical, logistical and financial conditions exist for performing the pilgrimage, the individual is obligated to perform it that same year, and to delay doing so without a valid reason is impermissible, though no less obligatory; non-performance becomes a sin if the person dies while having had reasonable opportunity to perform the pilgrimage.

Earning An Income – Whether It Is Obligatory

Is it obligatory to earn a halal income?

It is obligatory to earn a lawful income if one is unable to support oneself and one's dependents without doing so, though it is merely permissible if one is able to support oneself and one's dependents without earning.

Brokers Charging Fee

Is it permissible for brokers to charge a fee for their service?

It is permissible for brokers and managers to charge a fee for their services, either as a pre-agreed fixed amount or as a pre-agreed percentage of the stock's price or the fund's net asset value.

Investing In Unlawful Business

Is it permissible to invest in anything that could be used in unlawful ways?

It is impermissible to invest in anything when one is certain the investment will not be used lawfully, and offensive when one doubts whether the investment will be used lawfully.

Accepting Stolen Investment

Is it permissible to accept an investment that may have been stolen?

It is impermissible to give or take investment when one is certain the investment itself is stolen; if there is doubt then it is permissible to give or take the investment, though it is always superior to avoid the doubtful.

Interaction Between Shareholders Or Partners And Their Influence On Business

Is it a condition for the validity of an investment that the partners or shareholders interact or exert influence on the business?

It is not a condition for the validity of an investment (e.g. stocks, mutual funds, business partnerships) that partners or shareholders of the business physically interact with one another or even meet with each other a single time, or that they exert any form of direct or indirect influence on the running of the business; it would be permissible for none of the shareholders to ever meet or even to know one another, provided the managing partners of the business maintained a level of interaction, though not necessarily physical, customary for the success of the business.

Financing An Unlawful Business

Is it permissible to finance anything that could be used in unlawful ways?

It is impermissible to provide financing when one is certain the money will not be used lawfully, and offensive when one doubts whether the money will be used lawfully.

Earnest Money

Is it permissible to accept or pay earnest money?

It is permissible to accept or pay earnest money (arbutun) in the Shariah.

Bank's Bidding For A Tender Offered By Itself

In the event of a bank offering a tender to the general public, is it permissible for a department of the bank to participate in bidding for that tender?

It is permissible for a department of a bank to bid for a tender offered by the same bank. In case the bid is found to be suitable, it will be permissible for the bank to award the tender to its department.

Brokerage Fees

Is it lawful for the bank to pay a brokerage fee to a party who brings in people interested in leasing unoccupied properties being offered by it?

Yes, it is permissible to pay such a brokerage fee as such a payment is like a commission paid to one who brings a client or customer to the bank.

Seeking Return Of Brokerage Fee

Is it lawful to seek the return of a brokerage fee paid to a broker if the deal is dissolved after the contract is signed?

The amount paid as the brokerage fee is the right of the broker and may not be taken back after the contract is signed regardless of whether or not the contract is subsequently dissolved.

Combining Guarantee With Agency

What is the Shariah position in regard to purchasing automobiles from a certain person with the understanding that he will serve as a paid agent for the sale of cars as well as act as guarantor for the buyers for any possible damages that may occur?

It is not permissible to appoint the same person as an agent and as a guarantor during the same time period.

Owner's Guarantee

Is it lawful for the bank to accept the guarantee of an owner for a contractor constructing a building for the guarantor himself?

It is lawful for the bank to accept the guarantee of an owner for a contractor in the construction of something for the guarantor himself since the guarantor acts as a surety in relation to the work that is taking place between the contractor and the bank. The fact that the construction is undertaken in the guarantor's interest has no bearing on the matter.

Payment Of Trade Bills

Is it permissible to make payment to the exporter on the arrival of the shipping documents for the goods and before delivery is taken?

It is lawful to pay the exporter upon arrival of the bill of lading and before the goods are delivered.

Lawful Payment Of Trade Bills

What are some lawful methods for paying trade bills?

The importer pays local currency to the bank in return for the purchase price at the time of payment. The bank accepts this amount until it has sufficient foreign currency in its reserves to purchase the foreign currency at the current rate of exchange.

If anything remains of the local currency, the bank returns it to the importer. If the amount is insufficient, the bank requests the importer to make up the difference. Thereafter, the foreign currency is transferred to the exporter.

Another permissible way of clearing payment is for the importer to pay local currency to the bank on the understanding that the payment is in return for the amount of obligation in foreign currency at the current rate. The bank receives this amount as the exporter's agent and the importer is cleared of responsibility. The exporter receives the full price of the goods through the bank which he may collect in local currency or alternatively have the bank as its agent convert it into foreign currency before making the transfer.

The Merchant's Request With Regard To Paying Bank Percentage Of Value Of Goods

Is it permissible for the merchant or the importer to pay the bank a 20% profit margin on the deal in order to guarantee the transfer of the value of the goods to the exporter within a month? If not, what is the Shariah compliant way of executing such a transaction?

It is not lawful for the importer to pay the bank 20% as profit margin on the deal in order to guarantee the transfer of the value of goods to the exporter as that would be analogous to the importer borrowing the price of the goods from the bank at that rate. The Shariah-compliant way of executing the transaction is by means of a Musharakah.

The bank becomes the merchant's partner in the ownership of goods by purchasing a portion of the goods in foreign currency. Thereafter, each has the right to contract for a commercial partnership which accords both partners the right to dispose of all the goods and share profits on the basis of an agreement between them. In this way the merchant is able to transfer the price of the goods to the exporter in foreign currency paid by the bank. If a loss occurs, it is absorbed by partners in proportion to their share of investment capital.

Sale Of Goods That Have Yet To Clear Customs

Is an export sale based on a sample of the goods lawful and will it be considered complete regardless of whether or not the goods have arrived at the port?

An export sale based on a sample of the goods for approval by the importer is lawful whether or not the merchandise has arrived at the port.

Islamic Bank Compelled To Deposit Money For Interest

In case local regulations require all banks to deposit a certain amount of money in a conventional bank at a specified interest rate, what does an Islamic bank do?

In such a case, the Islamic bank has the option of entering into a Mudarabah contract with the conventional bank. The Islamic bank assumes the role of investor, while the conventional bank is the working partner. The working partner invests the money contributed by the investor in lawful investments, and the proceeds are divided as per the Mudarabah contract.

Fees For Transfers

Is it permissible for the bank to charge a fee for the services it provides such as money transfers. Will it be lawful for the bank to increase its fee for this service in proportion to the amount transferred?

It is permissible for the bank to charge a fee for services such as money transfers. The fee charged must be in proportion to the service being provided. Therefore, if the bank concludes that the costs differ with differences in the sums to be transferred, the bank may increase its fee with increases in the sums. If, however, the costs do not differ, then a higher fee for a larger sum may not be charged.

Islamic Bank Depositing In Conventional Bank

Is it permissible for an Islamic bank to deposit funds in a conventional bank?

Islamic banks should seek to maximize their dealings with other Islamic banks, but in case of genuine need an Islamic bank may deposit funds with a conventional bank provided no interest is taken or given. If its withdrawals exceed the deposited amount so that the conventional bank becomes the Islamic bank's creditor, under no circumstances should interest be paid.

Tax Payments On Reserves

What is the Shariah ruling with regard to the bank's payment of income tax from the amount deducted annually for the investment risk reserve?

Where applicable, the bank must pay tax from the amount deducted annually for the investment risk reserve.

Mutual Loans

If a bank requires dollars for one month, is it permissible to request another bank to grant this amount as an overdraft on its account there, without a fee but in exchange for something of equal value, such as dirhams, on the basis that when the dollars are returned the dirhams will be returned as well?

It is permissible to exchange these kinds of interest-free loans provided no fee, payment, or penalty is attached to them.

Unclaimed Funds

What should the bank do with money held in accounts for extended periods of time for which there is no claimant?

These amounts may be given away in charity. If the rightful owner returns, he must be informed of what was done. If he still demands the money, the bank is financially obligated to provide compensation from its charitable accounts.

Unclaimed Cheques

What should the bank do with outdated, unclaimed cheques issued in favor of clients whose accounts are now dormant?

It is permissible to give these funds away in charity after the bank has made every attempt to contact the client. If the owner returns after the funds have already been given away, he must be informed of what was done and if he still demands payment he must be reimbursed from the general shareholder's account.

Repayment From Interest Bearing Accounts

If a client maintains accounts at an Islamic bank but also holds an interest-bearing account at a conventional bank, is it lawful for the Islamic bank to accept funds that have come directly from his interest-bearing deposits?

It is lawful for the Islamic bank to accept these funds because there is no connection between the Islamic bank and the source of these amounts. The one dealing directly in interest is considered culpable.

Assistance In Cash And Kind

Is it permissible for the bank to offer assistance in cash or kind to its current and investment account holders in return for the business they conduct with the bank?

It is permissible for the bank to offer assistance in cash or kind to its current and investment account holders provided that this is not stipulated as a condition at the time of the opening of the account, or becomes an expectation or customary practice. It is only permissible for the bank to provide assistance as a gesture of goodwill.

Charging Fees For Late Repayment

Some debtors have the ability to repay on time but continue to defer. Is the bank permitted to charge them a fee?

It is not lawful to charge anything above the due amount for a delay in repayment regardless of whether the delay is intentional or not. Instead the bank should seek legal recourse against the debtor and at the time of entering into the transaction should include a charity clause entitling the payment of penalties to a designated charity.

Purchase Of Business License

Is it lawful to purchase the business license of a company that operates on the basis of riba when it is being sold and none of its riba-based assets remain, with the intention to make its operations Shariah-compliant?

It is lawful to purchase the business license of a business whose operations are riba-based for the purpose of making them Shariah compliant.

Interest From Bank Deposits

What is the Shariah ruling in regard to a Muslim depositing his money in a conventional bank?

It is unlawful for a Muslim to deposit his money in a conventional bank when it is possible to deposit the money in a comparable Islamic bank.

Deposits In Conventional Banks In Muslim And Non-Muslim Countries

Is the prohibition of interest the same in whether one deposits in a bank located in a Muslim or a non-Muslim country?

The ruling in regard to depositors taking interest is the same whether the bank is located in a Muslim or in a non-Muslim country. The interest earned on the deposits is unlawful for the Muslim to consume or use to his personal benefit.

Profits And Losses To Overdrawn Accounts

Savings accounts in the bank are usually investment accounts. When the investments yield profit, the account holders share the profits in proportion to the amounts credited. Is it permissible for the bank to overdraw these accounts by allowing depositors to withdraw amounts greater than their current balances?

It is permissible for the bank to allow the accounts to be overdrawn however, in the event that they are overdrawn such that no balance remains in them, then whatever the bank has paid out to the client will be considered an interest free loan and will not be a part of the profit or loss.

Fee For Guaranteeing Operation

What is the Shariah ruling with regard to an agreement with a vendor in which he is required to inspect new cars for the bank and guarantee their operation for a certain period of time in return for charging a certain fee?

It is lawful that a fee be paid to a vendor for the inspection of the cars and their repair when they break down. On the other hand, an agreement that a certain amount will be given to him for guaranteeing any damage sustained by each car during a period of time in addition to his pledging to repair the same is a contract for something undefined and therefore invalid.

Commission For Finding Clients

Is it lawful for the bank to receive a commission for Takaful policies based on the number of policies taken out by clients having purchased cars through the bank?

It is lawful for the bank to receive a brokerage fee for serving as an intermediary between the client and the insurance company. This fee is linked directly to the amount of the bank's effort, ascertainable through the insurance documentation.

Transferring Right To Benefits

Is it lawful to transfer a right to benefits from a Takaful insurance plan to the purchase pledger at the conclusion of a Murabaha sales contract?

It is lawful to transfer a right to benefits from a Takaful insurance plan to the purchase pledger at the conclusion of a Murabaha sales contract, where he also serves as the bank's agent in settling accounts with the insurance company. Once the damage or loss to the goods if any is recompensed, the client does not require recourse to the bank and may deal directly with the Takaful company alone.

Two Accounts Into One

Is it permissible for the bank to join two accounts into one in the name of both individuals with the understanding that each of the two will have the right to withdraw the entire balance or a part of it even after the death of the other? Also is it lawful to grant a third person wishing to remain anonymous, a right to access the account as well?

It is permissible for the bank to join two accounts into one in the name of both individuals with the understanding that each of the two will have the right to withdraw the entire balance or a part of it even after the death of the other. They are both agents and the agency of one will not be disrupted by the death of the other. With regard to adding a third member who wishes to remain anonymous, the bank requires that a document be produced with the signature of the present depositor in which he admits that the deposit also belongs to another person whose name is mentioned but must be kept in secret by the highest authorities of the bank.

Permissibility Of Debit Card In Islamic Finance

Are Islamic Financial Institutions permitted to issue debit cards?

The use of a debit card is permissible provided the user does not exceed the available balance. This avoids any resulting interest charges. It is also permissible for the Islamic bank to charge an annual fee for providing the debit card facility to the client. For the avoidance of doubt, by debit card we mean a card that allows the client to access his existing bank account to pay for products or services with available funds.

Permissibility Of Charge Card

Are Islamic financial institutions permitted to issue charge cards?

For the avoidance of doubt, by charge card we mean a credit accessing instrument for which the debt incurred is to be paid off to the bank within a month's time. The charge card does not provide a revolving credit facility and the card holder is obliged to repay within a stipulated period. If the card holder delays payment beyond the established period of free credit, an interest amount is imposed. The bank does not charge any percentage on purchases but receives a percentage commission from the party accepting the card for purchases made by the card holder. The bank charges its client a merchant service fee.

In Islamic finance, the charge card is permissible as long as the holder is not obliged to pay interest at any time. The financial institution is permitted to charge the card holder to pay a sum of money as a guarantee for providing the charge card facility.

The amount taken as a guarantee is accepted by the financial institution based on a Mudarabah. The profit earned from the Mudarabah is shared between the card holder and the institution according to an established ratio.

The institution must stipulate that the card holder may not use the card for any non-Shariah-compliant activity or purpose. The bank reserves the right to withdraw the card if it is used in contravention to Shariah rulings.

Prohibition Of Credit Card In Islamic Finance

Are Islamic financial institutions permitted to issue credit cards?

It is not permissible for an institution to issue credit cards that provide an interest bearing, revolving credit facility where the card holder pays interest to pay off debt in installments.

Cash Withdrawal Using Card

Is it permissible to withdraw cash using a card?

It is permissible to withdraw cash using a card for which only a flat service fee is charged. It is not permissible to withdraw cash using a card which charges a fee that varies with the amount withdrawn. This would be analogous to interest.

Permissibility Of Benefiting From Privileges Offered By Card Issuing Authorities

Is it permissible to benefit from privileges offered by card issuing authorities?

It is permissible to benefit from all Shariah-compliant privileges offered by card issuing authorities such as discounts to hotels and airline tickets. However, it is prohibited to avail non-Shariah-compliant privileges such as access to conventional life insurance, entrance to bars, and discounts at music concerts.

Investment

In case of an investment opportunity to purchase and develop land into commercial units where the investors group is comprised of Muslims and non-Muslims, so long as one's capital is not from a ribawi source, does the probable ribawi source of investment of the other partners undermine the Shariah-compliance of the project?

If you are a co-investor in a project, it is not a condition that other investors' money be attained by Shariah-compliant means. You are only responsible for ensuring that the project that you are investing into is Shariah-compliant. If the project developer secured the funds through ribawi financing (e.g. he purchased land through an interest-based bank loan), it is permissible to invest in the project provided that 1) your transaction be Shariah-compliant and 2) the project itself purchases something that in and of itself is Shariah-compliant (ie. no casinos, bars, etc.).

Possibility of Making A Credit Card Islamic

How can a credit card be made Islamic?

There are numerous structures currently prevailing in the market, most of which would not comply with AAOIFI. It would be difficult to make a credit card Islamic without turning the card into a pure debit or charge card. The provision of credit on a cash for cash basis requires some aspect of unlike exchanges, which would be ribawi.

Islamic Bank's Action in Case of Client's Inability to Pay Installments

If a person takes a car loan from an Islamic bank, goes bankrupt and is unable to repay half of the loan, what action does the Islamic bank take and how is it different from the conventional bank's?

In Islamic finance there are no car loans. If you mean a car financing, this can be done in various ways, most commonly using Ijarah or Murabaha. The rulings for bankruptcy vary according to the product structure, but assuming it is an Ijarah, then if the lessee (the one using the car) goes bankrupt and is unable to pay for the remaining lease period, he is not required to pay the bank for the unused portion of the lease but, depending on the kind of Ijarah, he may be required to pay the bank for the direct loss between the price the bank paid for the car and the price when the bank goes back to the market to sell the car.

Exchange Traded Notes

What is the Shariah ruling on exchange traded notes?

Exchange traded notes are problematic for a number of reasons foremost of which are 1) they are debt securities, and 2) they do not take actual ownership in anything, where payment is for the linked performance of a particular index not for the price change in the equity ownership of a particular asset.

Permissibility Of Conventional Car Lease

Is a conventional car lease permissible as the interest involved in the lease is similar to renting?

Islamic leasing (Ijarah) and conventional leasing, while similar in many respects, differ enough that it would be misleading to simply say, as in the question, that it is permissible even if there is interest as leasing is similar to renting.

According to the resolution of the Islamic Fiqh Conference regarding impermissible lease-to-own contracts, in No.12, Vol. 1, p.698, Resolution 110 (4/12):

‘Secondly – impermissible instances of the contract:

- a) A rental contract that ends in the ownership of the rented corpus in return for the rental payments made by the lessee during the tenure without concluding a new contract such that the rental (contract) transforms spontaneously at the end of the tenure into a sale contract.

- b) The rental of a corpus to a person for a known rental value for a known period of time, with a sale contract conditional on the complete payment of all rent agreed upon during the specified time or appended to sometime in the future.
- c) A real rental contract which is concurrent with a sale with a condition option to the benefit of the lessor and which is deferred to a distant specified date (the end of the period of the rental contract).'

In addition to the above, there may be other impermissible conditions in the contract including, but not limited to:

1. Requiring the lessee to make major maintenance payments;
2. Requiring the lessee to take conventional insurance when Islamic insurance is available;
3. Requiring the lessee to pay the lessor late payment penalties rather than pay a designated Shariah-compliant charity;
4. Sub-leasing clauses that do not accord with the Shariah;
5. Interest-based securitizations of the car lease.

Role Of Money

What is the role of money in an Islamic economy?

Money is a medium of exchange for conducting Shariah-compliant transactions.

Islamic Finance Career Opportunities In India

Are there any career opportunities in Islamic finance in India?

Both India's Prime Minister and Central Bank have made public statements recently indicating their wish to explore Islamic finance as a possible parallel market in India. At present, there are no regulatory laws in place specifically designed to address Islamic finance, however, this may be changing soon as the country wishes to attract foreign capital through Sukuk and other financing structures. In terms of career opportunities, meeting key people in the industry, including regulators, bankers, lawyers, and scholars now may position you well for career opportunities at the "ground floor" of the industry as opportunities become available in the coming months and years. Prospective Indian employers of Islamic finance professionals will look at demonstrated interest in Islamic finance, such as work experience, internship experience, and practical certifications.

Permissibility Of Day Trading

Is day trading permissible where the price position of a financial instrument is opened without purchasing it? A profit is made if the price goes in the suggested direction and there is a loss if it goes against it. It is also commonly referred to as spread betting in the UK.

Speculating on the position of a price is not permissible. In Islamic finance, it is a condition when dealing in shares that actual equity come into the buyer's ownership.

Shariah Audit

What is a Shariah audit?

A Shariah audit is a review of a bank's products and transactions in light of the Shariah, usually conducted internally by the Shariah team consisting of a Shariah scholar(s) and a Shariah coordinator.

Weightages

What is the Shariah basis for assigning weightages?

Weightages are a permissible means by which banks are able to assign relative returns based on various tenures and investment tiers for large groups of account holders or investors. The Shariah basis is that for those products in which weightages are appropriate, it is permissible for both parties to pre-agree ratios on some equity based products.

Permissibility Of Rebates And Rollovers

Can the installment amount be reduced for an early payment? In case of default, is it permissible for the bank to charge the client an increased installment amount?

According to scholars, rebates for prepayments are not permissible if it becomes customary practice, or is stipulated in the agreement or becomes an expectation. In the case of default, rolling over is not permissible.

Mortgaging An Asset

Can an asset be mortgaged in a Shariah-compliant way as giving something as security is a known concept in the Shariah?

Assets may permissibly be used as security, however, mortgaging involves doing so based on interest so it would not be accurate to say that an asset may be mortgaged in a Shariah-compliant way.

Permissibility Of Tawarruq/Monetization

What is the Shariah basis for the permissibility of Tawarruq? How do Islamic banks use it?

Tawarruq is a permissible sale-based financing structure. AAOIFI distinguishes it from Bai al Inah, which is impermissible, in standard 30/2: "Monetization refers to the process of purchasing a commodity for a deferred price determined through Musawama or Murabaha, and selling it to a third party for a spot price so as to obtain cash. Whereas Inah refers to the process of purchasing the commodity for a deferred price, and selling it for a lower spot price to the same party from whom the commodity was purchased." There are detailed controls that AAOIFI enumerates in sections 30/4 and 30/5 that must be adhered to in order to ensure the validity of the transaction. In general, the fuqaha permit Tawarruq but caution that due to its nearness to an interest-based transaction it should be provided selectively only on an as needed basis. It is unfortunate that it has become one of the most popular transactions in Islamic finance for which the best way out is to limit Tawarruq and innovate into equity-based transactions such as Musharakah and Mudarabah.

Investment In Commodity And Currency Funds

Why are Muslims not investing in commodity and currency funds despite their increasing popularity?

If by commodity and currency funds what is meant is what is typically available in the conventional market, the reason is that most of these funds are based on futures contracts which are not permissible to buy and sell. It is important to note, however, that Muslims may, of course, buy and sell commodities and may trade in currencies provided the rules for these are followed.

Concept Of Promise In Islamic Finance

What is the concept of the promise in Islamic finance?

Although Islam prohibits the execution of a future sale, it is permissible to make a *promise* for a future sale. For instance, if a sales transaction for a car that will be delivered a month later cannot be

executed, a promise may be made for its future sale. It is important to note that the promise and the actual contract of sale be independent of one another. A promise is legally binding and accompanies stipulations which serve as deterrents to default. In turn, this requires the client to make good on any loss that the bank may face as a result of a breach.

Perishables

What is the ruling with regard to the return of perishable goods like food stuffs carrying expiration dates, for compensation in cash or in kind?

It is lawful to come to an agreement stipulating return of food stuffs after their expiration date in return for recompense either in cash or in kind.

Unclaimed Funds

What should the bank do with money held in accounts for extended periods of time for which there is no claimant?

These amounts may be given away in charity. If the rightful owner returns, he must be informed of what was done. If he still demands the money, the bank is financially obligated to provide compensation from its charitable accounts.

Unclaimed Cheques

What should the bank do with outdated, unclaimed cheques issued in favor of clients whose accounts are now dormant?

It is permissible to give these funds away in charity after the bank has made every attempt to contact the client. If the owner returns after the funds have already been given away, he must be informed of what was done and if he still demands payment he must be reimbursed from the general shareholder's account.

Contests For Account Holders

Is it permissible for the bank to offer incentives such as contests for prizes to every lessee who opens an account with the bank and gives it the right to deduct lease payments directly from these accounts?

It is permissible to offer incentives such as contests for permissible prizes to attract lessees to open accounts at the bank in order to have their lease payments deducted directly from them.

Monthly Giveaways

Is it permissible for the bank to offer prizes through a drawing as an incentive to lease?

It is permissible for the bank to offer prizes through a drawing as an incentive to lease.

Privileges For Account Holders

Is it permissible for the bank to offer privileges to holders of certain types of accounts?

It is lawful for the bank to offer account holders, whether in general or only to a specific group, special privileges such as gifts and prizes provided these privileges are not made conditional upon opening an account and are not mentioned at the time of opening an account.

Trusts And Commissions

What is the status of trusts and commissions in the Shariah?

Trusts and commissions are permissible as a general rule, but become recommended acts by the trustee or the agent intending something good thereby; offensive acts by the one suspecting that the trust might be betrayed, whether due to incompetence (e.g. an adolescent executing the merger of two companies), negligence (e.g. a traveler managing rental property) or incapacity (e.g. a person expecting to die while overseeing an equity fund) thereby; and unlawful acts by the one intending harm or expecting the betrayal of the trust thereby.

GIFT

Gift Giving Invalid Without Consent

May a person coerce another into giving or accepting a gift?

The giver and the recipient must agree to the gift; a gift coercively taken from the giver or forcefully given to the recipient is invalid; agreement may be written, spoken or unspoken (e.g. a nod).

Impermissibility Of Restricting Gift's Usage

May the giver of the gift attach restrictive conditions to the usage of the gift?

It is impermissible for the giver to impose conditions on how the gift will be used by the recipient.

Physical Possession Not Requirement For Valid Gift Giving

Must the giver be in physical possession of the gift intended to be given?

Physical possession by the giver is not a condition of valid gift giving; for example, it is permissible to gift an item that has already been entrusted to a trustee merely by stating so.

Gifting To Children

What is the ruling on gifts given to children?

Gifts to children are of two types: 1) gifts given to the parent or guardian for the ostensive purpose of benefiting the child, are the property of the parent or guardian (who is closest in relationship to the giver) who may use the gift in any manner they choose; and 2) gifts given directly to the child, in which case the child owns the gift and the parent or guardian (in the order of guardianship) keep it on the child's behalf.

Gift Should Leave Giver's Possession

Must the gift be separated from the giver's property?

The gift should be separated from the giver's property and until it is separated it remains the property

of the giver, even if he considers the gift as having been given.

Gifting One's Share In Undivided Property

Would it be permissible for an individual to gift his share in an undivided, shared property?

It is impermissible to gift one's share in an undivided property shared by two or more individuals, unless all the owners of the property gift the entire property or the gift giver's property is divided from the rest, provided the property is dividable.

Permissibility Of Taking Back Gift With Recipient's Agreement

Is it permissible to take back a gift?

It is impermissible to take back a gift, unless the recipient agrees to its return (except for children and the insane, whose permission is invalid).

Taking Back Gift In Which There Has Been Substantial Value Addition

The recipient has agreed to a gift's return, but the gift has increased considerably in its worth due to substantive value addition (e.g. gold turned to jewelry). Would it still be valid for the giver of gift to accept the gift's return?

It is permissible to take back a gift that the recipient willingly returns, unless the value-addition to the gift is substantial enough to have increased the value of the item (e.g. gold turned to jewelry), in which case it is impermissible to do so even if the recipient is willing (though the recipient is entitled to gift the item). It is, however, permissible to take back a gift that the recipient willingly returns if the value-addition created by the gift is separable from the gift itself, such as the capital gains earned from gifted company stock or the offspring produced by a gifted animal; the original gift is returnable but not the value-addition (though the recipient is entitled to gift the item).

Reclaiming Gift Before Possession

What is the exact time before which the giver may reclaim his gift?

The giver may reclaim a gift before the recipient takes constructive possession of it, but not after, however insignificant the gift.

Validity Of Mistakenly Given Gift

Is a gift given by mistake considered a valid gift?

A gift given in error is still considered to have been given validly and may not be reclaimed by the giver unless the recipient agrees to its return. Once the gift is validly reclaimed, ownership rights return to the claimant.

Gift Not Returnable Once Giver Or Recipient Dies

Would the gift be returnable if either the giver or the recipient dies?

No gift is returnable once either the giver or the recipient dies.

Rules Pertaining to Gift Giving

What are the rules pertaining to gift giving?

Gifts, or hiba, must have an offer, an acceptance, and possession. The offer should be made in such a way that the intention of the person giving the gift should be clearly understood by the one receiving it. This may take place without the exchange of a verbal offer and acceptance.

The intention of the gift giver and the acceptance of the receiver may be expressed merely by their manner, such as a nod. Once a gift is sent to a person and he takes possession of it, it is equivalent to an exchange of an offer and acceptance between both parties.

In a sale and purchase transaction, the offer and acceptance must take place while both parties are present, however, in the offer and acceptance of a gift, the presence of both parties together is not a prerequisite. In the event that after an offer and before an acceptance has taken place either party passes away, the offer and acceptance is automatically annulled. A contract of gift may not be made for the future.

GUARANTEE

Circumstances That Discharge Guarantor Of His Obligation

Under what circumstances is the guarantor discharged of his obligation?

Guarantees last the duration of the obligation unless:

1. the creditor cancels the obligation;
2. the obligation transfers to another obligor, in which case the guarantee itself cancels; or
3. the creditor cancels the guarantor's obligation but continues to maintain the obligor's obligation.

Situations When Guarantors Are Not Required To Fulfill Contract

Under what circumstances are guarantors not obliged to fulfill a contract on behalf of an obligor?

Guarantors are not obliged to fulfill a contract on behalf of an obligor unable to do so if either:

1. the obligation is not yet due, or
2. the creditor grants a period of respite and now asks for fulfillment of the obligation during the period of respite.

Guaranteeing For Conventional Bank

Is it permissible for an Islamic bank to guarantee the work a client intends to do for a conventional bank?

It is not permissible for an Islamic bank to guarantee equipment, buildings or contracts for any form of work a client intends to do for a conventional bank.

Charging For Guarantee

Is it lawful to charge a fee for providing a guarantee?

It is unlawful to charge a fee for providing a guarantee. If providing the guarantee actually incurs cost, such as for services, it is lawful to charge a fee but not for issuing the guarantee itself.

Demanding Guarantee

When a client forwards a request for the purchase of goods and the bank decides that it requires a guarantee before going through with a Murabaha, is it permissible to seek a check of guarantee from the surety?

It is permissible for the bank to seek a check of guarantee from the surety upon the receipt of which a letter will be issued to him explaining that the check will only be cashed in case of non-payment by the client. Even if one payment is delayed, all subsequent payments will fall due.

Obtaining Guarantee From the Purchase Pledger

What is the Shariah ruling with regard to obtaining a guarantee from the purchase pledger in a Murabaha sale to ensure the arrival of merchandise in good condition?

It is permissible from a Shariah perspective to obtain a guarantee from the purchase pledger in a Murabaha sale to ensure the arrival of merchandise in good condition.

Guarantees From Conventional Banks

Is it permissible for an Islamic bank to request its client to present a guarantee from a conventional bank in order to close a deal?

It is not permissible for an Islamic bank to request its client to present a guarantee from a conventional bank.

Fees In Proportion To Value

May the fees of the bank increase or decrease with the value of a guarantee particularly when the services required for each guarantee differ in proportion to its value?

It is not lawful to charge a fee for issuing a letter of guarantee since it is a contract for which compensation is not taken. It is permissible however to charge a fee for the effort expended by the bank in the process of issuing a letter of guarantee for actual services.

Voluntary Guarantee In Mudarabah

Is it permissible for the manager in a Mudarabah to voluntarily guarantee the capital investment?

It is not permissible for the manager to guarantee the capital investment in a Mudarabah because he cannot be held responsible for the loss of capital unless he is guilty of willful negligence or dishonesty. It is lawful, however, to have a third party guarantee the Mudarabah capital.

Fees For Suretyship And Agency

Is it permissible to charge fees for both suretyship as well as agency covered in the letter of guarantee?

A letter of guarantee covers both suretyship and agency. It is not lawful to charge a fee for suretyship however it is permissible to charge a fee for agency. Costs for issuing a letter of guarantee include the collection of information about the client and his business, a study of the project for which the guarantee is issued and related expenses customary in such practice.

Fees In Proportion To Amounts Guaranteed

When issuing a letter of guarantee, is it lawful to link the fee to the value of the guarantee and the period for which it is to remain valid?

It is not lawful to take a fee for merely providing a guarantee, however, it may be charged in return for actual services like the preparation of studies, professional consultation and the provision of administrative services.

Guaranteeing Client's Payments

What is the Shariah ruling with regard to the bank issuing letters of guarantee on behalf of its clients to individuals or financial institutions?

It is lawful for the bank to issue letters of guarantee on behalf of its clients, however, it is not lawful to take a fee in return for the guarantee unless the fee is based on actual expenses. The bank should take every measure to ensure that the letter of guarantee is not issued to institutions dealing in interest.

A Surety's Sharing In Profits

Is it lawful for a client holding an investment account with the bank to stand surety for an institution seeking financing for a Murabaha deal from the bank? May he seek a share of the profits earned from the institution's commerce in the goods guaranteed to the bank?

The client's suretyship for the institution is lawful. The bank freezes the client's account for the amount owed to it by the institution on the condition that the returns from the investment during the period of the freeze accrue to the client.

It is not lawful however for the client to share in the profits of the institution in return for its suretyship as suretyship is a voluntary contract.

Percentage Based Fees

Is it lawful to charge a percentage based fee for documentary credit or letters of guarantee?

It is not permissible for the bank to charge a percentage-based fee for letters of guarantee or documentary credit. It is lawful, however, for it to charge an amount for the services it offers to its clients. Such a sum may vary with the value of the guarantee or documentary credit in accordance to the differing degrees of administrative services required.

Permissibility Of Two Parties Guaranteeing Each Other In Contract

Is it permissible for a party to guarantee the principal or profit of another party in a contract?

It is impermissible for any party to guarantee the principal or profit of another party in a contract. A third party may, however, serve as guarantor.

The Merchant's Request With Regard To Paying The Bank A Percentage Of The Value Of The Goods

Is it permissible for the merchant or the importer to pay the bank a 20% profit margin on the deal in order to guarantee the transfer of the value of the goods to the exporter within a month? If not, what is the Shariah compliant way of executing such a transaction?

It is not lawful for the importer to pay the bank 20% as profit margin on the deal in order to guarantee the transfer of the value of goods to the exporter as that would be analogous to the importer borrowing the price of the goods from the bank at that rate. The Shariah-compliant way of executing the transaction is by means of a Musharakah. The bank becomes the merchant's partner in the ownership of goods by purchasing a portion of the goods in foreign currency. Thereafter, each has the right to contract for a commercial partnership which accords both partners the right to dispose of all the goods and share profits on the basis of an agreement between them. In this way the merchant is able to transfer the price of the goods to the exporter in foreign currency paid by the bank. If a loss occurs, it is absorbed by partners in proportion to their share of investment capital.

Permissibility Of Guaranteed Capital

Are guaranteed capital products permissible, namely Euro funds with guaranteed capital in life insurance?

No. Also conventional life insurance is impermissible. This is not to be confused with the allowance of third-party guarantees which are allowed in some cases. Please read AAOIFI's Shariah Standard on guarantees for more information.

IJARAH

Period Of Lease Begins With Delivery Of Property Or Service

Does the lease, and the obligation of rent, begin with the finalization of the lease agreement or with the delivery?

The lease itself, and the obligation of rent, begins with the delivery (and usability) of the leased property or service, not with the finalization of the agreement.

Ijarah of Consumable

May I create an Ijarah agreement of a consumable item?

The leased asset should not be a consumable item, like food, whose quantity reduces with consumption, but rather a durable, like machinery or property, whose market value might depreciate, but quantifiably remains the same.

Leased Property (Or Service) May Only Be Used For Intended Purpose

Is it permitted to use the leased property or service for purposes other than the ones identified in the lease contract?

The property (or service) may only be used for its intended purpose, or as agreed upon with the lessor.

Leased Property

May the lessor sell all or part of the leased property to a third party during an existing lease contract?

The lessor may sell all or part of the leased property to a third party during the lease. The property may only be sold if ownership is also transferred to the new lessor. The original lessor may not sell only the right to receive rent and still maintain ownership.

Ijarah: Basics Of Liability Distribution

How is the liability for damage distributed between the lessor and the lessee in an Ijarah agreement?

The lessee is liable for damage to the property caused by wear and tear, and other factors within the lessee's control while the lessor is liable for damage resulting from ownership, barring lessee negligence.

Lease Period

When does the lease period begin?

The lease, which may even be fixed for a future date, commences with the delivery (and usability) of the leased property or service.

Sub-Leasing Leased Property Or Service

May the lessee sub-lease the leased property or service to a third-party?

The lessee may sub-lease the property or service to a third party with the lessor's permission. In the Hanafi school the sub-lease may only be at a rate less than or equal to the original lease, though the lessee may charge a higher rent if, with the lessor's permission, he increases the property's value by developing it. In the Shafi'i and Hanbali schools no such condition applies and the lessee may agree any amount of rent with the sub-lessee, assuming the lessor permits sub-leasing.

The Termination Of Lease

What events result in termination of the lease?

The lease terminates when one or more of the following events occur:

1. the property or service becomes worthless;
2. both parties mutually decide to terminate the agreement;
3. one party unilaterally terminates the lease if the other party contravenes the agreement.

When the lease terminates:

1. the lessor reclaims physical possession of the leased asset and continues sole ownership;
2. the lessor may demand compensation from the lessee to the extent of any damage to the leased property;
3. the lessor may not demand that the lessee pay any of the remaining rent;
4. the contract may not stipulate in the agreement that the property transfers to the lessee upon termination, as a gift or otherwise, because the Shariah forbids that one contract condition another; in this case, a lease contract conditioned by a transfer of property contract.

Some scholars allow that, in a separate contract, the lessor may unilaterally promise to sell at a specified price or gift the leased property to the lessee. Upon termination, the lessee may opt to take ownership of the property, but the lessor may not force the transfer. The lessee, on the other hand, may enforce the lessor's promise.

Penalties On Late Rental Payments

In case of late payment, can the lessor charge the lessee a penalty?

If the lessee is late in paying rentals, the lessor may not gain any benefit from a penalty, because the money becomes a debt, and any receipt in excess of a debt is riba. Rather, the contract may stipulate that in the event of delayed payment, the lessee must pay a certain amount to a specified charity.

The Lessor's Obligation To Pay For Insurance

Whose responsibility is it to pay for any legally required insurance and who is entitled to receiving any payout from the insurer?

The lessor is obligated to pay any legally required insurance on the leased property; any payout by the insurer should go to the lessor and the net amount (i.e. total payout less total premiums paid) should be given away in charity to avoid riba.

Wrongfulness Of Trading Rental Claims Without Transferring Ownership

What is said of trading rental claims without transferring the proportionate ownership of the leased asset?

Ownership, not the right to claim rent, represents the tradable portion of the certificate. The Shariah permits the trading of assets, not of money, for profit, and a rental claim is a receivable that represents money. So trading rental claims without first transferring ownership is forbidden. But it is acceptable for many buyers seeking ownership and many sellers seeking profit to trade Ijarah certificates like common securities in a capital market.

Restrictions On Rental Usage

May the owner put restrictions on the usage of the rented property or service?

The owner is entitled to specify how the property may or may not be used or the rented service conducted.

Cancelling Rent

May one of the parties to the rental contract, before the expiration of the rental period, cancel the rental contract unilaterally?

It is impermissible for the tenant or the owner to cancel the rental contract before the expiration of the rental period without the consent of the other party.

Commencement Of The Lease

Is the commencement of the lease, and the resultant rental obligation, according to usage or according to the terms of the contract?

The lease, and the resultant rental obligation on the lessee, commences according to the contract, not according to usage, provided the leased asset is usable at the time the lease period commences. If the rental period has begun, but the tenant has not begun using the property (provided the asset is available to use), the tenant is still obligated to pay rent.

Lessor's Right To Withhold Leased Asset

Under what circumstances may the lessor exercise his right to withhold the leased asset?

The lessor is entitled to withhold the leased asset if the lessee delays payment, as long as the benefit from the usufruct of the property or the execution of services has already occurred, unless parties on both sides agree.

Events Resulting In The Cancellation Of The Lease Agreement

When is the lease agreement cancelled?

The lease agreement is cancelled if:

1. the tenant or the owner pass away;
2. the tenant or the owner agree to cancellation;
3. the property or service rented out is of unacceptably low quality.

Advanced Deposits

Is it permissible to pay an advanced deposit on a lease to the lessor and can the lessor withhold it if the lease agreement is cancelled before it begins?

It is permissible to pay an advanced deposit to the lessor, but it is impermissible for the deposit to be withheld by the lessor if the lessee cancels the agreement before its commencement.

Lessee's Liability For Loss

When is the lessee liable for loss?

The lessee is responsible only for loss, damage or theft resulting from his own negligence, but not otherwise; it is improper for the lessee to make a general promise to pay for all loss, damage or theft before any even occurs, or to make such a promise after a loss, damage or theft occurs but when the cause is still unknown.

Legality Of Ijarah

What are some of the legal bases for the permissibility of Ijarahs?

The Quran states, "And if they suckle your (offspring), give them their recompense." (Al-Talaq: 6) And the Prophet Muhammad (Allah bless him and grant him peace) said, "He who hires a worker must inform him of his wage." (Al-Bayhaqi from Abu Hurayra)

Islamic jurists have been in consensus on the legal validity of Ijarah from the time of the Prophet (Allah bless him and grant him peace) stating that Ijarah makes it possible to lease assets to those who are in need of them, thereby making it a suitable and profitable transaction for both parties—the lessor gets consideration in exchange for leasing his asset while the lessee is able to acquire and use an asset that he would otherwise not have been able to.

Usufruct As Subject-Matter Of Ijarah Contract

Why is usufruct, rather than the asset being leased, treated as the subject-matter of an Ijarah contract?

Usufruct is treated as the subject matter of an Ijarah contract because its utilization is the purpose of leasing the asset. The contract is being drawn only so that the lessee is authorized to benefit from the usufruct of the asset being leased. The asset is not being transacted, the right to use the asset is.

Timing Of Ijarah

When does the contract of Ijarah come into effect?

Unless otherwise agreed, an Ijarah contract comes into effect immediately after the conclusion of the contract. It is permissible to defer an Ijarah to a future date agreed upon by both parties.

Contingent Ijarah

Is it permissible to make an Ijarah contingent on the occurrence of a future event?

It is not permissible to make the contract of Ijarah contingent on the occurrence of a future event. However, it is permissible to make specific provisions within the Ijarah contract contingent upon the behavior of either party. This entails, for example, that both parties may agree to reduce the rent in the event of early payments by the lessee.

Leasing Usufruct Of Jointly-Owned Asset To Partner Or Third Party

Is it permissible for the owner of a jointly-owned asset to lease the asset to his co-owner?

It is permissible for a co-owner to lease his share of the jointly-owned asset to another co-owner or to a third party.

Ijarah Of Asset Providing No Independent Utility

Is the Ijarah of an asset permissible when it does not provide any utility independently but is only used in conjunction with another asset?

It is permissible to lease assets that are not capable of giving benefit as independent units – such as machinery parts which do not function independent of the machine they belong to. However, if the lease is one that ends in ownership (Ijarah Muntahia Bittamleek), it would not be permissible to lease such assets.

Ijarah Rental Payments In Kind

May Ijarah rental payments be made in kind?

Similar to a regular sale transaction, Ijarah rental payments may be made in cash or in kind. Any

valid consideration in a contract of sale may be agreed upon as rent in a contract of Ijarah.

Deferred Ijarah Rental

Is it permissible to defer Ijarah rentals to a mutually agreed upon date?

It is permissible to defer Ijarah rentals by mutual consent of the contracting parties.

Usufruct As Consideration For Ijarah Rental

Is it permissible to agree upon usufruct to be used as consideration for an ijarah rental?

It is permissible for Ijarah rentals to be paid in the form of usufructs.

Benchmarking Ijarah Rentals

Is it permissible to benchmark Ijarah rentals?

This relates to whether it is permissible to omit specifying the Ijarah rentals at the time of executing the contract; instead, agreeing on an “equivalent rent” that is either benchmarked against a known and acknowledged standard or is identified by expert appraisal. Islamic jurists are at a consensus that, while it is necessary to fix the amount of rental for the first period of rental payment, the rentals for the remaining period may be benchmarked against known and acknowledged standards or be open to expert appraisal.

Altering Ijarah Contract To Modify Rental Period

Is it permissible to alter an existing Ijarah contract in order to change the period of rentals from yearly to monthly and so forth?

It is permissible to alter an existing Ijarah contract in order to change the frequency of rentals. However, this should not have any effect on any liabilities outstanding from the date of the contract.

Obligation Of Lessor To Deliver Leased Asset

What is the lessor’s obligation with regards to delivering the leased asset?

The lessor is obliged to deliver the asset and all associated leased items necessary to transfer the usufruct to the lessee and leave it to the lessee's disposal until the end of the lease term. Any accident that hampers the lessee from utilizing the usufruct—not being an accident caused by the lessee—must be corrected by the lessor.

Defect In Leased Asset

What is the liability of contracting parties in case any defect is found in the leased asset?

A defect is defined as a compromise or diminishment of the usufruct. In such a case, the lessee has the option to rescind the contract. The lessee may, however, continue to use the usufruct provided he is paying the agreed-upon rentals.

Obligations On Lessee Regarding Leased Asset

What are the obligations of the lessee regarding the usage of the leased asset?

The lessee should utilize the leased asset according to the customary practice by which similar assets are used. He should take all measures to preserve it from any damage or defect. The lessee is entitled to derive benefit from the usufruct in the manner provided for in the contract. The lessee may not utilize the usufruct in a manner that is beyond the scope of the Ijarah contract.

Liability Of Lessee Regarding Damage To Leased Asset

What is the liability of the lessee regarding damage to the leased asset?

The leased asset is in the possession of the lessee as a trust and damage resulting from the lessee's negligence is borne by the lessee.

Leased Asset Being Used For Unlawful Purposes

What should a lessor do upon becoming aware of a lessee's intention to utilize a leased asset for unlawful purposes?

If the lessor becomes aware of a lessee's intention to utilize a leased asset in unlawful ways, he should rescind the contract. Any rental payments earned before rescission are lawful for him to accept, while all subsequent rentals are unlawful. However, if the core purpose of the Ijarah contract is lawful—such as leasing a car—the Ijarah is not rendered unlawful by any sins on the part of the

lessee.

Maintenance Of Leased Asset

What is the liability of the lessor and the lessee regarding the maintenance of the leased asset?

The leased asset is in the ownership of the lessor and is rented to the lessee as a trust in return for its usufruct. Therefore, the maintenance of the leased asset is the responsibility of the lessor. The lessee is entitled to reimbursement of all maintenance expenditures made by him with the permission of the lessor, either in the contract or otherwise. However, if the lessee pays for maintenance of the leased asset without the permission of the lessor, he is not entitled to compensation. It is important to note that maintenance here is referred to as major maintenance (ie. engine overhaul) according to customary practice for that particular asset. Minor maintenance (ie. cleaning) would typically be the responsibility of the lessee, depending on the customary practice of that particular asset.

Maintenance Responsibility On Lessee

What is the legal status of a lease contract that makes maintenance of the leased asset the responsibility of the lessee?

An Ijarah contract that makes the lessee responsible for the maintenance of the leased asset is considered void.

Responsibility Of Lessor and Leased Asset Defect

What is the responsibility of the lessor if a defect is found in the leased asset?

It is the responsibility of the lessor to undertake all necessary repairs that enable the lessee to make use of the asset in accordance with the terms of the Ijarah contract. Whether the defect occurred after the execution of the contract, or was present on the contract date unbeknownst to the lessee, is of no consequence.

Repair Of Known Defect In Leased Asset Existing At Contract Date

What is the liability of the lessor regarding defects in the leased asset existing on the contract date and known to the lessee?

The lessor is not obliged to repair any defects existing on the contract date and known to the lessee

unless stipulated otherwise in the Ijarah contract.

Rights Of Lessee In Case Of Default In Repair Of Leased Asset

What are the rights of the lessee in case the lessor refuses to repair the defects in the leased asset?

The lessee has the right to rescind the Ijarah contract in case the lessor refuses to repair any defects in the leased asset that occurred either after the contract date or were existing at the contract date but were unknown to the lessee.

Charging Lessee With Insurance Of Leased Asset

Is it permissible for the lessor to charge the lessee with the insurance of the leased asset?

It is permissible for the lessor to include a clause in the Ijarah contract making the lessee responsible for insuring the leased asset.

Maximum Term Of Ijarah Contract

What is the maximum term of an Ijarah contract?

There is no maximum time limit for an Ijarah contract.

Obligation Of Rent In Case Usufruct Does Not Meet Expectations

Is the lessee obliged to pay lease rentals if the usufruct does not meet expectations?

The lessee is obliged to pay lease rentals as long as the usufruct of the leased asset is at his disposal. However, he reserves the right to rescind the contract in the event that the usufruct does not comply with the terms of the Ijarah contract, after which no monthly rentals are due.

Withholding Lease Asset In Case Of Default In Lease Rental

Is it permissible for the lessor to withhold the leased asset if the lessee defaults on his lease payments?

It is permissible for the lessor to reclaim the leased asset if the lessee defaults on lease payments, though he would not be required to do so and could grant respite.

Lessee Sub-Leasing Leased Asset

Is it permissible for the lessee to sublet the leased asset?

It is permissible for the lessee to sub-lease the leased asset if the Ijarah contract does not prohibit it. The lessee is free to sublet at any rate, whether the same, higher, or lower.

Rescission Of Ijarah Contract In Case Of Damage Or Theft Of Leased Asset

Is it permissible for the lessor to rescind the Ijarah contract in case of damage or theft of the leased asset?

The lessor reserves the right to rescind the Ijarah contract in case of excessive damage to or theft of the leased asset.

Multiple Ijarah Contracts For Single Leased Asset

Is it valid to have multiple Ijarah contracts for a single leased asset? What is the status of such contracts?

It is permissible for contracting parties to draw multiple, concurrent, independent and periodical Ijarah contracts for the same leased asset, without any one being contingent on the other. Only the first contract is binding upon both parties. The subsequent contracts are considered supplementary and may be rescinded unilaterally.

Rescission Of Ijarah Contract In Case Of Defect In Leased Asset

What are the rights of the lessee regarding the rescission of an Ijarah contract when the leased asset contains defects?

If the leased assets contains or develops defects, the lessee may rescind the Ijarah contract, return the leased asset to the lessor and demand compensation for the period of defect. However, if the defect does not hinder utilization of the usufruct, the lessee may not rescind the Ijarah contract.

Similarly, if the defect is removed immediately by the lessor, before the lessee rescinds the contract, the lessee may not rescind. An expert technical opinion may be taken to determine whether the contract may be rescinded due to a particular defect in the leased asset. The lessee is permitted to exercise his above mentioned rights only in the case of an Ijarah of a specific leased asset.

Lease Rentals Upon Rescission Of Contract

What is the status of lease rentals due to the lessor at the time of the rescission of the contract?

The lessee is obliged to pay all lease rentals that were accrued up to the point of rescission, but not those outstanding after rescission.

Differentiating Between Invalid And Void Ijarah Contract

Is there any difference between an invalid Ijarah contract and a void Ijarah contract?

Islamic jurists have not differentiated between the two. A contract is prohibited if it does not fulfill the requirements of the Shariah, and prohibition necessitates non-existence of the contract. In an invalid or void contract, if the lessee benefits from the usufruct, or if time elapses during which the leased asset could have been utilized, the lessee pays equivalent rent, assessed as being the rent of similar usufruct.

Termination Of Ijarah Contract

When is the Ijarah contract deemed to have terminated?

The Ijarah contract is deemed to have terminated either by the contractual terms, one of the party's rescission, or the termination of the possible usufruct of the leased asset through theft, destruction, or the like.

Leasing Of An Asset To Multiple Lessees

Is it permissible for the lessor to contract an Ijarah with more than one lessee for the same asset?

It is permissible to lease the same asset to more than one lessee. If the lease terms are of identical duration, both lessees are entitled to utilize the usufruct during that period.

Status Of Advance Payment By Lessee In Contract Of Ijarah Involving Gradual Sale

What is the status of advance payments in a contract of Ijarah involving the gradual sale of an asset to the lessee?

Advance payment by the lessee in such a contract is considered a trust which the lessee gives in order to convey his seriousness to fulfill his promise of purchasing the leased asset at the end of the lease term. It is not considered part of the rental payment. If allowed for in the contract, the lessor may keep this advance payment should the lessee fail to honor his promise.

Charging First Month's Rent In Advance In Ijarah

Is it permissible for the lessor to charge the first month's rent in advance from the lessee?

The lessor may charge the first month's rent in advance only provided that the leased asset was purchased and received at the time of the contract.

Absolving Lessor From Responsibilities

Is it permissible to include a clause in an Ijarah contract absolving the lessor of all responsibilities towards the leased asset such as maintenance?

It is not permissible to include provisions in an Ijarah contract that absolve the lessor from his responsibilities towards the leased asset.

Recourse In Case Of Delayed Lease Payment By Lessee

What recourse is available to the lessor if the lessee delays lease payments?

The lessor has the right to charge late payment fees. This charge may consist of an administrative charge and a late-payment penalty where administrative charges are the right of the lessor while the late-payment penalty is paid to a designated charity.

Making Lessee Liable To Pay Future Rentals Upon Rescission

Is it permissible to include a clause in an Ijarah contract that makes the lessee liable to pay all remaining rentals in the event of rescission?

It is impermissible to include any clause that forces the lessee to pay all remaining rentals in the event of rescission. The proper procedure is to either continue with the contract until the end of the stipulated lease term or for the lessor to approve rescission, take back possession of the leased asset and relinquish claims to any further lease rentals.

Promise To Purchase Leased Asset At End Of Lease Term

Is it valid to include in the Ijarah contract a promise from the lessee to purchase the leased asset at the end of the lease term?

A promise to purchase a leased asset should be kept independent of the contract of Ijarah. However, if done separately, it would be permissible to enter into this unilateral promise at the same time as the Ijarah.

Registering Leased Asset In Name Of Lessee

Is it permissible to register the leased asset in the name of the lessee?

In general, the leased asset is owned by the lessor and should be in his name. However, in certain cases, the asset may be registered in the name of the lessee. This may be done for regulatory reasons or to make use of available exemptions. However, in such a case, a counter-bond is customarily taken from the lessee.

Time-Share Leasing Contracts

What is a time-share leasing contract and is it permissible?

A time-share lease contract is a permissible leasing structure where the lessor leases the same asset to multiple lessees for different time-periods, with none of the time periods overlapping with one another.

Assigning Of Usufruct By One Lessee To Another In Time-Share Lease Contract

Is it permissible for a lessee to assign the usufruct of the leased asset to another lessee of the same asset in a time-share lease contract?

The lessee may transfer the usufruct of the leased asset to another lessee of the same asset with the permission of the lessor. In such a case, the original contract between the lessor and the lessee to whom the usufruct is transferred is considered rescinded and a new contract is entered into.

Responsibility Of Lessor In Ijarah

In relation to the leased asset, what is the lessor responsible for?

With regards to the leased asset, the lessor is responsible for:

- The risk associated with the leased asset, during the entire period of lease, belongs to the lessor. It is the lessor's responsibility to replace the leased asset in case of any damage to it barring negligence on the part of the lessee.
- The major maintenance and insurance of the asset during the period of lease and the resulting expense is the lessor's responsibility entirely.
- At the time of the establishment of lease rentals, the lessor may cover his insurance cost, however, once the rentals have been fixed, any increase in the insurance premiums cannot be adjusted in the rental amounts to be paid by the lessee. The lessor will have to bear the additional insurance expense himself or adjust it to the rentals of the next ijarah term.
- The lessor may assume responsibility for insurance by making the client his agent to deal with the insurance company.

Rent In An Ijarah

What are the criteria for determining rent and remuneration in an Ijarah?

To determine rent and remuneration, the following criteria must be fulfilled:

- The Ijarah rental must be known and clearly defined. Different rentals may be established for different periods within an Ijarah or linked to a well known benchmark.
- Rental may be determined by the total cost of acquiring the leased asset. Once the rental amount has been fixed for a term of the Ijarah, there cannot be an increase in insurance costs. However, the rent for the remaining period may later be adjusted by mutual agreement to include the increased cost.
- The rental begins to accrue from the time the leased asset is delivered to the lessee and he is able to use it.
- Remuneration for a service Ijarah is determined in relation to time.

Floating Rental In Ijarah

What is a floating rental and what are the prerequisites for charging it?

A floating rental in an Ijarah refers to charging different rentals for different periods within the term of an Ijarah contract based on a well known and acknowledged standard or benchmark. In order to float rentals:

- The rent for the first period must be known. For instance, in the case of a 5 year lease for which the rent is to be paid quarterly, the rent for the first quarter must be known. Rent for subsequent periods may be set as floating rentals.
- The floating rental must be linked to a well known and appropriate benchmark and should be subject to a floor and a cap. For example the floor may be set at 9% and the cap at 18%. The rent may be allowed to float within these two limits.
- The rent based on the benchmark, must be decided at the beginning of each period, not at its end.
- It may be that during the period of lease, the benchmark ceases to be a reference any more as a result of a shift in market preference. In order to deal with such a situation, it is decided at the time of the agreement that in such a case, a new benchmark will apply.

Security In An Ijarah

How is an Ijarah secured?

The promise of the lessee to enter into a contract after the arrival of the asset is secured by the payment of a deposit known as the Haamish Jiddiah.

The Haamish Jiddiah is either set aside or deposited in a profit bearing account based on a Musharakah or a Mudarabah. The profit earned on it is given to the lessee.

If the client backs out from entering a lease contract, the bank may make up for its loss by entering into a new lease with another party or by selling the purchased asset.

If a new lease is established with another party, the difference between the cost of the asset and the sum of all the rentals with the new client are paid by the former lessee. If the asset is sold in the market, the lessee is expected to pay for the difference between the cost of acquiring the asset and its market price.

Furthermore, it is mandatory for the lessor to possess the asset or the usufruct of the asset in order to execute an Ijarah. If the bank is not in possession of the asset or its usufruct required on lease, it must acquire it from a third party.

The insurance of leased goods is an ownership related cost and is the lessor's liability throughout the period of the contract.

Rulings On Title Of Ownership Of Leased Assets

What is the ruling regarding the title of ownership of the leased asset?

Upon acquiring an asset, particularly for the purpose of an Ijarah Muntahayya bi Tamleek, the bank assumes the title of ownership.

When the lease expires, the ownership of the goods and their title is transferred to the client.

In certain cases, the asset may be registered in the name of the lessee early in the contract. This may be done for regulatory reasons or to make use of available exemptions. In such a case, a counter-bond is taken from the lessee to authenticate actual ownership.

The bank, as the owner, is responsible for the asset throughout the period of the lease. The client merely possesses the legal title of ownership for purposes of practicality alone. The insurance of leased goods is an ownership related cost and is the lessor's responsibility throughout the period of the contract.

Transfer Of Ownership Of Leased Asset

What are the ways by which the leased asset may be transferred to the lessee?

If a transfer of ownership is to take place at the end of an Ijarah, a document separate and independent of the Ijarah contract must be prepared.

The transfer of ownership may take place in one of the following three ways:

1. The lessee may undertake to buy the asset at the end of the period of lease for a certain amount that is mutually decided between both parties at the beginning of the contract. This amount may be the actual cost of the asset or any other nominal value.
2. The lessor may undertake to gift the asset to the lessee at the end of the Ijarah period.
3. The lessee may even purchase the asset during the period of the lease by making a complete payment of all the rentals owed by him or alternatively, the lessor may allow the lessee to purchase the asset at its market value.

Default In Ijarah

How does a financial institution deal with default in an Ijarah?

Like all other Islamic financial contracts, a penalty for a default in payment cannot be enforced. It is permissible for the lessor to maintain a security or collateral which can be liquidated in order to recover any outstanding debt. The creditor is permitted to make up for direct and actual costs through this liquidation.

Advance Rent In Ijarah

Is it permissible for the lessor to receive advance rent for an Ijarah?

It is permissible for the lessor to receive advance rent for an Ijarah. The advance rental is called arbun and may be retained by the lessor if the lessee backs out of the lease agreement before the expiry of its term. Although it is preferable that only the actual loss be made up for from the advance rent by calculating the difference between the rental received and the rental that would have been received had the lease remained effective.

Transfer Of Corpus And Usufruct In Ijarah

What is the difference between the transfer of the corpus and the transfer of usufruct in an Ijarah?

The transfer of the corpus refers to a change in ownership, while the transfer of usufruct refers to a change in the right to use something. The transfer of ownership of an asset to a third party refers to the transfer of both its corpus and its usufruct. If the usufruct is already leased to another party it may not be transferred, however, the rent based on this usufruct may be received by the new owner. The owner of the usufruct (ie. the lessee) may share the usufruct with a sub-lessee with the lessor's consent.

Responsibility Of Maintenance Of Leased Asset

Who is responsible for the maintenance of the leased asset?

There are two types of maintenance in an Ijarah:

- **Major Maintenance:** This refers to the maintenance that is necessary to ensure that the leased asset continues to exist and provide intended use. This type of maintenance is the lessor's responsibility.
- **Periodic Maintenance:** This refers to the regular maintenance related to the use of the asset. For instance, for a car given on lease, it is the lessee's responsibility to maintain proper oil and fuel levels.

If the leased car's engine ceases, it needs to be investigated whether the problem is a result of a manufacturing default, in which case it is the lessor's responsibility to have rectified, or if it is a result of gross negligence on the lessee's part, in which case the lessee is liable to pay.

Leasing To Riba-Based Bank

Is it permissible to lease to an interest-based bank so that it may open a branch?

A lease to a bank that is not Shariah-compliant must be avoided because such a lease would directly facilitate in an impermissible act, in this case interest-based banking.

Leasing To Companies Dealing Primarily In Interest

What is the Shariah ruling with regard to the lease of property to companies or institutions whose primary business is transacting by means of interest?

It is unlawful for a Muslim to aid in the impermissible, and leasing property to a company whose primary business is interest-based would be considered impermissible.

Leasing To Retailers Of Prohibited Items

What is the Shariah ruling with regard to leasing real estate to supermarkets, restaurants, hotels or tourist shops whose products may include Islamically prohibited items?

If the purpose of the lease is purely prohibited, like a bar or a nightclub, then the lease contract is prohibited because the subject of the contract itself is prohibited. It is lawful, however, to lease property to a business concern whose primary business is in lawful goods and services even if it is to a lesser degree supplemented by income from unlawful goods and services.

Dissolution Of Ijarah Contract

If the lessee returns an item that has been leased during a period for which payment has already been made in advance, is it lawful for the bank to again lease the item before the period of the previous lease has expired?

If the lessee returns the item as a result of compelling circumstances, the remainder of the lease payment must be returned to the lessee since the lease will be considered to have been dissolved for a valid reason.

If the lessee returns the item merely because he wants to and the bank agrees to the return, the remainder of the lease payment must be returned to the lessee based on a mutual dissolution of the lease.

If the lessee stipulates that the item must remain in his name until the completion of the lease period

and not be leased to another then the remainder will not be returned and the item will remain at the disposal of the lessee until the lease expires.

Seeking Dissolution Of Contract After Lease Has Begun

If a lease contract is mutually dissolved before it expires, is it permissible for the bank to deduct a part of the lease and insurance payments?

If there are compelling circumstances that leave the lessee with no choice but to dissolve the contract then the Ijarah will be considered dissolved from that date. The lessor will be entitled to receive payment for the period of the contract's validity whereas the rest will be returned to the lessee.

Gifting Leased Asset To Lessee On Completion Of Lease Payments

Is it lawful for the lessor to promise the lessee to gift him the leased asset on condition that the lease is paid in full?

It is lawful in an Ijarah to promise to make a gift of the leased asset to the lessee when the lease expires on condition that all payments are made in their entirety.

Offering To Sell The Leased Asset At Specified Time For Specific Price

Is it permissible to issue an offer in which a time is specified for the sale of the leased asset at a certain price?

It is permissible to issue an offer in which a time is specified for the sale of the leased asset for a certain price. The one making the offer is legally bound to honour the offer for the duration specified and the other party may accept or refuse it during the same period.

Sub-Leasing At Higher Rate

Is it permissible to lease something for a certain rate and then to sub-lease the same to another for a higher rate?

It is lawful to lease something for a certain amount and then sub-lease it to another for the same amount or for more or less so long as the lessor permits it.

Once the right to the usufruct passes from the first lessee's disposal by means of a later contract of lease it is no longer lawful for the first lessee to use what has passed from his ownership and become a debt owed to him by another.

Leasing At A Daily Increasing Rate

Is it permissible for the lessor and the lessee to agree on a contract of lease for a daily rent amount which increases such that each day the rent is higher than the day before?

Such an Ijarah contract is lawful since the increase is a part of the original contract and does not arise as a result of a delay in payment, which would be prohibited.

Reverting Of Part Ownership

Is it permissible for the bank to lease automobiles to a company for a specified period of time on the condition that half the ownership of the automobiles will revert to the company after the lease period has been completed?

It is permissible for the bank to lease automobiles to the company however to revert half the ownership of the cars to the lessee company after completion of the lease period is subject to rules concerning the promise to purchase. A new sales contract, separate and independent of the previous lease agreement, must be entered into in the event that the cars are to be sold.

Leasing Shares In Projects

What is the Shariah perspective with regard to the bank leasing out shares in projects to its investors in return for a variable monthly or yearly lease?

The Shariah permits the bank to lease out its shares in projects to its investors in return for a variable monthly or yearly lease so long as it is against tangible assets such as real estate and equipment. The bank must also ensure its understanding of the principles of lease and the benefit it may gain by making the monthly or yearly rent variable.

Purchasing Leased Asset Before Termination Of Period Of Lease

Is it lawful for the bank to agree from the beginning of the lease that the lessee will purchase supplies and equipment from the bank at the end of any year from among the years of a lease contract?

It is not lawful for the bank to agree from the beginning of the lease that the lessee will purchase

supplies and equipment from the bank at the end of any year from among the years of a lease contract since it would create gharar (contractual ambiguity leading to dispute) about the duration of the lease period and when it is to begin. This, however, does not prevent the two parties from agreeing that the second party will have an option to choose at the end of the first year and at the end of each subsequent year within the lease period, to consider purchasing the leased equipment. If the lessee decides to purchase the leased equipment, he must agree to make the installment payments for the entire period he benefited from the usufruct of the goods. With the exercise of such an option by the lessee, the lease contract will stand immediately terminated.

Leases As Financial Rights

Is it lawful for the bank to sell leases considering these contracts represent financial rights?

It is not lawful for the bank to sell leases because it does not own the right to the usufruct of the leased goods which is the financial right possessed by the lessee during the period of the lease.

Transferring Ownership Of Corpus Of Leased Asset To New Buyer

Is it lawful for the bank to sell leased equipment and supplies to a new buyer who will continue to honour the lease concluded between the bank and the lessee?

It is lawful for the bank to sell the leased equipment and supplies to a new buyer since doing so does not affect the lease contract. Ownership of the usufruct is transferred by way of a lease whereas ownership in the object or corpus is transferred by way of a sale contract; each is separate and independent of the other. It must be ensured however that the sale does not affect the rights of the original lessee in any way.

The Purchase Of Leased Equipment

What is the ruling with regard to the bank purchasing a leased asset?

It is permissible for the bank to purchase a leased asset that is already under lease. The bank as the new owner assumes the responsibility of the owner's share of the maintenance which includes everything essential to the running condition of the leased item so that the usufruct it was contracted for remains available to the lessee.

When To Begin Payments In A Lease

The bank leases land for the purpose of building a branch office. The improvements on the land and

the construction of the branch office require two years before it can be opened for business. When is the bank required to begin lease payments on the land; from the time of possession or from the time the branch office is opened?

Payments are required from the lessee from the time of taking possession of the item leased from the lessor. In the case mentioned, payments will be due as soon as possession of the land is assumed by the lessee.

Payment Before Receipt

Is it lawful for the lessor to demand payment before delivering the leased asset to the lessee?

It is not lawful for the lessor to demand any payment from the lessee before the asset of lease is delivered to him and he is able to benefit from its usufruct.

Demanding Payment Prior To Asset Delivery

Is it lawful for the lessor to demand payment before delivering the leased asset to the lessee?

It is not lawful for the lessor to demand any payment from the lessee before the asset of lease is delivered to him and he is able to benefit from its usufruct.

Leasing Something Not Yet Existent

Is it lawful to lease a building for which detailed architectural plans exist before it is built, on the understanding that it will be handed over as soon as it is completed?

It is not lawful to lease a building for which detailed architectural plans are drawn but has not yet been constructed as such a lease would be the lease of something not yet existent. Such ambiguity about the description of the building and the time it will be ready for occupancy may lead to dispute.

Property In Leasing Funds

Will it be lawful to offer previously leased properties in an investment fund?

Leased properties are not suitable for offering in an investment fund since the usufruct of the real estate becomes the possession of the lessee with the signing of the lease contract and there is no

way thereafter for the owner of the property to sell his share in the usufruct or for a partner to have a right to the earnings on his share of it. This is because what the owner retains after the lease is the counter value of the usufruct or the debt that has become the liability of the lessee and it is not permissible to sell debt.

Leasing And Managing Leases

Is it lawful for Islamic companies to lease equipment like airplanes and heavy machinery to other institutions for a certain period of time, i.e. ten years and then after two years, sell the equipment along with the leases to another company, all the while continuing to manage the equipment for the life of the leases, collecting the lease payments and delivering them to the new owners?

It is permissible for Islamic companies to purchase equipment that carries already concluded lease contracts for it. The lease will continue for as long as was specified in the Ijarah agreement, which is a binding contract. The first lessor is permitted to manage the equipment by collecting the payments from the lessee and guaranteeing that the lessee will honour his financial obligations.

Conditions For A Sublease

What are the conditions that must be met in order to sublease an asset?

The usufruct of an asset may only be subleased by the lessee with the owner's consent. The revenue generated by the sublease is distributed among the lessees proportionate to their ownership in the usufruct of the leased asset. At the end of the lease period, the asset is retrieved by the lessees from the sub-lessees and then eventually from the lessees by the lessor.

Permissibility Of Sale And Lease Back

When is a transaction of sale and lease back permissible?

In order for a sale and lease back transaction to be Shariah-compliant, and not be analogous to a buy back, the period of lease before the asset is repurchased should be at least one year and the agreement to sell the asset must be separate from the contract of lease. Such a transaction is not ideal but is permitted in certain circumstances to facilitate the genuine needs of customers seeking to avoid interest-based transactions.

Difference Between Conventional Hire Purchase And Islamic Lease With Option To Purchase

Are the concept, structure and features of a hire purchase the same or legally and fundamentally different from an Ijarah Thumma Al-Bai, i.e. lease with the option to purchase?

No they are not the same. A conventional hire purchase is not permissible in Shariah because the sale occurs at the end of the hire period although it is entered into at the beginning of the hire period. The Shariah-compliant version of the hire purchase avoids this by either transferring ownership through a conditional promise or by a promise to sell on the part of the owner at a nominal price. So in short they are different legally and structurally.

Ijarah Asset Possession

In an Ijarah contract who has the asset's possession and ownership and when is it transferred and on what consideration?

In an Ijarah, the lessor is the sole owner of the asset. The lessee is given usufruct of the asset for a particular usage over a particular period of time. Depending on the Ijarah, ownership may either remain with the lessor after the lease period, or the lessor may enter into a separate contract to transfer ownership to the lessee.