



THE LEGALITY OF THE PRACTICE OF HIRE-PURCHASE TRANSACTIONS: PROBING THE COMMON AND ISLAMIC LAW PERSPECTIVES

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Abstract

This paper examined the legality of the practice of hire-purchase transactions, probing the perspectives of both common law and Islamic law. The hire-purchase system widely utilized method of acquiring goods through installment payments has become a common practice in various legal systems. This paper adopted doctrinal methodology with the historical and analytical approaches through the use of primary and secondary sources as contained in published and unpublished materials. The paper reveals that the practice of hire-purchase under Islamic Law is not without exceptions. The paper further juxtaposed the common law and Islamic law perspectives and recommended among other the practice of hire-purchase by the Islamic Communities.

Keywords: Hire-Purchase, Legality, Common Law, Islamic Law and Transactions

1.0. INTRODUCTION

The practice of hire-purchase transactions occupies a significant space in modern commercial practices and it provides individuals and businesses with

a flexible means of acquiring goods through installment payments.¹ Hire-purchase is a contractual arrangement that involving the transfer of goods to a buyer who agrees to pay for them in installments which leads to the full ownership upon the completion of payments. The paper evaluates the principles and regulations of hire-purchase transactions within the context of common and Islamic law.

Hire-purchase under *Shari'ah* is a commercial transaction involving a lease agreement (*Al-Ijarah*) and selling agreement (*Al-Bay*). Wherein the customer leases an asset from the bank for a specific period of time, on an agreed upon rental payment, after the expiration of the lease contract, the customer has an option to enters into a sale contract (*'aqd*) with the bank to acquire the asset at an agreed price², this is against the long term lending on the bases of interest *riba*. Although, the concept of hire-purchase in Islamic law may have gone through modifications, as a result of which *Al-Ijarah Thumma al-Bay*³ came into existence it is still in accordance with the *Shari'ah*.⁴

At Common Law, there is no specific rule as to the form which Hire-Purchase agreement should take; it seems that Hire-Purchase agreements in respect of certain commodities are made in a uniform manner.⁵ Hire-purchase by nature is akin to contract of bailment and sale, the hirer may exercise the option of purchase in hire purchase agreement; otherwise he is merely a bailee.⁶ It is against this backdrop that this work probes the perspectives of Islamic Law on the legality of the operation of Hire-Purchase transactions.

2.00 AN APPRAISAL OF THE COMMON LAW POSITION OF HIRE-PURCHASE

Hire-purchase agreement at common law is where the owner of a chattel transfers the possession of such chattel to another called the “hirer” for an agreed period of time upon payment of agreed price. On condition that the

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¹Sale of Goods (And Hire-Purchase) Law in Nigeria 193

² Awang M.D and Mohemet Asutay Maqasid Al-Shariah ‘Perspective on the Implementation of Hire-Purchase Act 1967 in Malaysia with Reference to Al-Ijarah Thunmma Al-Bai’ Financing Contract’ *Malaysian Journal of Consumer and Family Economics* 36

³This means contract of lease ending in sale

⁴Abdurrahman R.A, *The Philosophy of Islamic law Of Transactions* (CERT. Publications Kuala Lumpur Malaysia, 2001).

⁵Okany M.C, *Nigerian Business Law* (Africana-Fep Publisher Ltd., Lagos 2001) 487

⁶Uvieghara E. E, *Sale of Goods (And Hire-Purchase) Law in Nigeria* (1996) 167

hirer may buy or return the chattel.⁷ Hire-Purchase is also perceived to be a contract of bailment of goods under which the hirer is entitled to the possession and enjoyment of the goods in return for a specified rent.⁸ Also, the hirer is given an option to purchase the goods at any time during the subsistence of the hiring contract, or to continue the hiring until the hire rent reach a stated sum. And the property in the goods automatically passes to the hirer.

In the case *Agbaje v Idowu*⁹ hire-purchase was defined as a contract under which the owner of a chattel lets it out on hire and undertake to sell it to or that it shall become the property of hirer-conditionally on his making a certain number of payment. No property passes to the purchaser until making of the last payment.

Under Common Law, Hire-Purchase agreement may either be in oral or written form.¹⁰ It is important that the Hire-Purchase agreement is evidence in writing, if by its terms it is not to be performed within one year.¹¹ Regardless of the above statutory provision, Hire-Purchase in practice today, whether they are to take effect immediately or in future date, are to be reduced into writing¹². Reason being that, if the agreement is in writing, the right and obligations of the parties are clearly set out and much doubt is eliminated. Moreover, it gives the parties the right to modify terms.

Notwithstanding the diversities in formation, Hire-Purchase agreement must have a clause which states the owner's intention to let and that of the hirer agreeing to hire the goods. This shows the mutual promises of the parties;¹³ a clause which empowers the hirer to determine (terminate) and return the goods;¹⁴ and a clause giving the hirer the right option to purchase the goods for a nominal sum at the end of the hiring.¹⁵ Moreover, there are some other essential terms that are to be included in the agreement

3.00 AN XRAY OF HIRE PURCHASE IN PRACTICE UNDER THE NIGERIAN LAW

⁷Orojo J.O *Nigerian Commercial Law And Practice* (Sweet & Maxwell, London) 1983

⁸Achike O, *Commercial Law in Nigeria*, (Fourt Dimention Publishing, Enugu, 1985), 13.

⁹(2011) 7 SCM, 29; Cf; *Afrotec Technical Services (Nig) Ltd v Mia & Sons Ltd & Anor* (2000) LPELR 219.

¹⁰Ibid (n8) 360.

¹¹Section 4 Statute of Fraud 1677.

¹²CU Ilegbuna Nigeria Hire Purchase Law, (4th Edn Dimension Publisher Ltd & Co Enugu, 2000), 96.

¹³Ibid (n8) 360. .

¹⁴Ibid

¹⁵Ibid.

The Act defines Hire-Purchase as an agreement for the bailment of goods under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee.¹⁶ This definition comprises of all form of Common Law Hire-Purchase agreement. This is because, at Common Law, all agreement for bailment of goods which confer upon the bailee an option to purchase falls within the definition.

Similarly, if the property in their goods is to vest automatically in the hirer on due performance of all terms and condition of the agreement but subject to power on his part to terminate the agreement if he so wishes, the agreement is one ‘under which the property in the goods will or may pass to the bailee.’¹⁷As compare to the position at Common Law, all the Hire-Purchase intended to operate within the provision of the Act must comply with the requirement of the Act.¹⁸

The requirements include that Information as to the Cash Price of the Goods, e.g. it is the provision of the Act that, before the Hire-Purchase agreement is entered into, in respect of any goods, the owner shall state in writing to the prospective hirer, otherwise than in the note or memorandum of agreement a price at which the goods may be purchase by him for cash (cash price).¹⁹

Secondly, it should be noted that the inserting in the Hire-Purchase agreement by the hirer that he had inspected the goods and observed the cash price will not in itself satisfy the proviso to section 2(1) unless the hirer in fact inspected the goods. Therefore, oral evidence is admissible to disprove such statement.

Written Note or Memorandum of Hire-Purchase Agreement: The Hire-Purchase act does not specifically requires that Hire-Purchase agreement should be in writing. It only requires a memorandum of the agreement be made and signed by the hirer and by or on behalf of other parties to the agreement.²⁰

According to section 2(2)(b), the note or memorandum of agreement must contain the statement of Hire-Purchase price of the goods, the cash price of the goods, and the amount of each of the installments and the date when it is payable; a statement of the deposit paid; a statement of the true rate of interest; a list of the goods to which the agreement relates sufficient to

¹⁶Section 20 Hire-Purchase Act (Cap. H4) LFN 2004.

¹⁷Ibid (n12) 22.

¹⁸*Joe Allen & Co Ltd v Sani Adewale* (1929) 9 NLR 111.

¹⁹Ibid (n16)S 2(1)

²⁰Ibid (n16) S 2(2)(a)

identify them; a notice of the hirer's right to terminate the agreement and the restriction on the owner's right to recover the goods, which must be in the terms prescribed in the schedule to the Act and be at least as prominent as the rest of the content of the note or memorandum of agreement.²¹

It is also added in the regulation that, the note or the memorandum must include the statement of the installment payable in respect of installation and maintenance where applicable it was held in *Nigeria Ports Plc v BP PTE Ltd*²² that, it is a duty on the bailee to keep safe custody of goods in his possession. Also the installments of Hire-Purchase price as payable over a period of 36 months, except in some goods which are allowed to be paid over a period of 48 months.

Furthermore, payment of the minimum payment permissible which is generally 10 percent,²³ delivery of copy of the Memorandum to the Hirer, a copy of the memorandum shall be delivered to the hirer within fourteen days of the making of the agreement²⁴

There exist however a provision that where in opinion of the court, it is believe that, it is fair and just and the interest of the hirer will not be jeopardized, it may overlook the failure to comply with the requirement of the Act(section 2)²⁵. However, where any of these requirements is neglected, the Hire-Purchase agreement is rendered enforceable against the hirer; the owner will be denied of his right to enforce the Hire-Purchase agreement. Thus, he cannot sue to recover any money due under the agreement;²⁶ he cannot also enforce any guarantee relating to the Hire-Purchase agreement;²⁷ it also denied him the enforcement of any right to recover the goods from the hirer.

Furthermore, the hirer is statutorily privileged to use the goods without paying for it. However, he may be liable for conversion if he parted with the goods to a third party. Besides, the owner can recover the goods from the third party.²⁸ Also no security given by the hirer in respect of the money payable under the Hire-Purchase agreement or in respect of money under

²¹Ibid (n16) S.2(2) (c)

²²[2012] 18 NWLR (Pt.1333) 454 SC.

²³Ibid (n12) 98.

²⁴Ibid (n16) S 2(2) (d).

²⁵Ibid (n8) 364.

²⁶Ibid (n12) 99.

²⁷Ibid.

²⁸*Yusuf v Oyetunde* (1975) 2 ALR Comm. 201.

contract of guarantee relating to the agreement shall be enforceable.²⁹ Where the owner seizes the goods under an agreement which does not comply with the statute, he has committed a breach of contract.³⁰ In that event, the hirer shall be awarded damages.

4.00 HIRE-PURCHASE UNDER SHARI'AH

Hire purchase is a combination of two dealings in the Islamic law. It is a combination of *Al ijarah*, which is to hire a particular thing for one's benefit at a particular time with a specific agreement; and *Al-bay* i.e. a sale. *Al-ijarah* has its origin from many provisions of Qur'an and Hadiths of the Prophet (S.A.W).

Hiring is permissible because the Qur'an says that 'if you had pleased, you might certainly have taken a recompense for it.'³¹ In the same vein, the Qur'an Allah says

...and if you wish to engage a wet-nurse for your children, there is no blame on you as long as you pay what you promised for according to usage; and be careful of (your duty to) Allah and know that Allah sees what you do.³²

Allah refers to *ijarah* in the glorious Qur'an in relation to hiring of Prophet Musa by Prophet *Shu'ayb* upon the recommendation of one of his daughters, after Musa has helped them in watering their flocks.³³

Said one of them: O my father! Employ him; the best of those that you can employ is the strong man, the faithful one.³⁴ And if they suckle your offspring, give them their recompense.³⁵

Give the workers his wages before his perspiration dries.³⁶ Hire-purchase is a completely unique and different kind of transaction compared with other forms of transactions. It's a kind of transaction which involves two different kinds of transaction. It is referred to as *alijarah thumma al-bai'*, meaning lease ending in sale or *ijarah mutahiya bitamleek* which means leasing with an undertaking from the lessor to sell the subject matter to the leasee at the

²⁹Ibid (n12) 100.

³⁰Ibid.

³¹Qur'an Ch. 18:77.

³²Qur'an ch.2:233.

³³Doi A.I, Shari'ah: Islamic Law (Ta-Ha publishers ltd. London 2008) 574.

³⁴Qur'an ch.28 :26.

³⁵Qur'an ch.65:6.

³⁶Sahih Muslim, Sunnah, vol. 11, .817.

expiration of the rental terms³⁷. Looking at the concept “*alijarah thumma al-bai*”, it suggests two separate things, which are to be treated separately. The first stands for the lease, while the second stands for sale. With this features, it shows that two stages which requires two separate agreement. In *alijarah thumma al-bai*. The first agreement deals with lease, while the second agreement deals with the sales. However, the lease agreement must reflect the intent of the lessor to lease to the lessee, and subsequently transfer the ownership of the leased asset to the lessee at the expiration of the lease agreement upon a predetermined price; this will come to play at the second stage. Thereby, the first transaction which is the lease will determine the guideline for the subsequent transaction (sale). *Ijarah* the leasing is meant to run for a specific period of time upon payment of specified price over the agreed duration. The second aspect of the transaction is *bai*’, sale or purchase which comes into existence after leasing. It is worthy of note that, the first contract must have been terminated before the commencement of the second contract Reason was that, the prophet (saw) was reported by Ahmad and At-Tirmithi to have said; it is not lawful for a Muslim to make two deals combined in one; rather, each transaction should be made separately.³⁸

The significant of this transaction cannot be overemphasized. It is not only beneficial to the lessor who collect rent during the subsistence of the lease but also the lessee who have the opportunity of using goods, items or an asset which he could not have ordinarily got if he were to pay for it completely³⁹. And also have the hope of gaining the ownership of such subject matter upon payment of agreed consideration at the expiration of the lease.

The contract of hiring is refers to in Arabic as *Al- ijarah* it originated from the word *ajara*, meaning remuneration or reward. This may come in any of the following ways. It may either be hiring of human being called *ijarah*, or, hiring of animal, property or land called *kira*.⁴⁰ *Al-ijarah* is a contract of proposed and known usufruct with a specified and lawful return or compensation for the effort or work which has been expended.⁴¹ Some jurist defined *ijarah* as ownership of the right to the benefit of using an asset for a

³⁷Salahudeen A *Islamic Banking Finance and insurance: A Global Overview* (Noordeen Publisher, Kuala Lumpur Malaysia 1429/2009) 30-31

³⁸Abu Bakr Al-jaza’iry Minhaj Al-Muslim (vol. 2 Darussalam 2001) 208.

³⁹IA Nurdianawati, and WD Asyraf, *A Critical Appraisal of Al-ijarah Thumma Al-bay’ Operation Issues and Prospects.*, a Paper Presented at the 4th International Banking and Finance Conference, Monash University of Malaysia Kuala Lumpur 13th-14th Nov-2013.

⁴⁰Ibid (n33) 573.

⁴¹Abdullah A,H *Sales and Contracts in Early Islamic Commercial Law* (The Other Press, Malaysia, 2007) 226.

period in return for a consideration. Islamic scholars have defined *ijarah* according to their own perceptions.

According to the Maliki school of *fiqh*, *ijarah* is regarded as a contract which relates to permissible usufruct for a particular period and a particular consideration⁴² As for *Shafi'* school of *fiqh*, it is contract for a defined intended liable to utilization and accessibility for a particular compensation⁴³. For Hambali School of *fiqh*, they have defined *ijarah* to be contract for a particular permissible usufruct which is taken gradually for a particular period and a particular consideration.⁴⁴ According to Hanafi school, it is a contract which enables possession of a particular intended usufruct of a lease asset (*Ayn*) for a consideration⁴⁵

Al-ijarah to be defined in accordance with its present day commercial world means given something on rent. For this to happen, a client will make a demand of a selected asset to be financed by Islamic financial institution(s). The Islamic financial institution will then purchase the asset from the manufacturer. The Islamic financial institution as the owner of the asset (lessor) leases it to the client who is the (lessee) for fixed period of time upon a specified consideration. And also give the leasee the opportunity to purchase at a predetermined price. Simply put, it is a situation where a lessor leases out an asset to the leasee at an agreed rent for fixed term and thereafter have the option to purchase the asset⁴⁶. The lessor is called *mu'jir*, the leasee is called *musta'jir*, the subject matter i.e. asset is called *ma'jur* while the rent is called *ujrah*⁴⁷. And the price paid for purchase at the expiration of the lease is called the purchase price.

⁴² Al-fiqh Alaa Al-Madhaib Al-Arbaa available on <https://www.arabicbookshop.net/kitaab-al-fiqh-ala-al-madhaib-al-kitab-al-fiqh-ala-al-madhaib-al-arbaa/222-311> assessed on 31/3/2024

⁴³ Ibid

⁴⁴ Ibid.

⁴⁵ Ibid

⁴⁶ Ibid.

⁴⁷ Ghazali *etal* An Introduction To Islamic Economics & Finance (CERT Publications Kuala Lumpur, Malaysia 2008) 13.

5.00 FACTORS PROHIBITING THE PRACTICE OF HIRE-PURCHASE UNDER *SHARI'AH*

There exist some elements that are so fundamental to the validity of a contract under *Shari'ah*. They are *gharar* and *riba*. It is worthy of note that this two concept must be avoided by Islamic finance in all circumstances⁴⁸

The prohibition of these two elements, are so fundamental to the extent that if they exist in any contract under *Shari'ah*, they render the contract void and unacceptable under *Shari'ah*. These terms are specifically prohibited in the verses of the glorious *Qur'an* so also is the traditions of the prophet. The Muslim jurists have unanimously prohibited the practice of these doctrines in any transaction under *Shari'ah*. Since Hire-Purchase is also a contract under *Shari'ah*, for it to be valid and acceptable under *Shari'ah*, it must not have any element of these two doctrines.
i. ***Gharar***

This means a subject matter which the vendor is not in a position to hand over to the buyer.⁴⁹ Definitions have been given by jurists from various Islamic schools of thoughts; according to Hanafi School *gharar* is something which its consequence is undetermined. As for Maliki School, it means an uncontrolled subject matter such as bird in the air or fish in the water. Shafi'i has given it a general description and define it as something which in its manner and its consequence is hidden.⁵⁰

Gharar has been prohibited in verses of the *Qur'an* and *Hadith* as it can be liken to gambling because it occurs in transactions where both the subject matter and the price is not ascertainable and are under suspicion.

Allah says:

They ask you about intoxicant and gambling. Says in both of them there is a great sin and means of profit for men, and there sin is greater than their profit ...⁵¹ .

The prophet also forbids the sale of the young still unborn animal when the mother is not part of the sale. In view of the above prohibiting provisions, we

⁴⁸Uddin,Md Akther, *Principles of Islamic: Prohibition of Riba, Gharar and Maysir*, INCEIF, (Kuala Lumpur, Malaysia).

⁴⁹Zahrudin A.R, *Contract and the Product of Islamic Banking*, (CERT Publications Kuala Lumpur, Malaysia 2010)

⁵⁰Ibid (n4) 129.

⁵¹*Qur'an* Ch.2:219.

should not see *gharar* as been meant to discourage commercial ventures but what is discourage is the uncertainty that is built at the inception of the transaction which will in the end create a profit for one party and a corresponding loss to the other.⁵² Also, this doctrine is prohibited to protect the interest of the weak party in a contractual relationship. This is as result of the prophet (S.A.W) been a vast and experienced merchant who has knowledge of human nature. It is not uncommon among human being in secular transaction that parties are stronger than the other. So, the disadvantaged party needs to be protected. Hence, when the transaction is examined and it is devoid of *gharar*, the purpose of such transaction is said to have been fulfilled. However, where there is an atom of it in a transaction, such transaction will be held void under Islamic law.

ii. *Riba*

This term is literarily refers to as ‘*usury*’ or ‘*interest*,’ but going by the *Shari’ah* definition; it has a broader meaning than what is suggested in the above dictionary meaning.⁵³ In the *shari’ah* context, it is defined as an unlawful gain derived from the quantitative inequality of the counter values in transaction.⁵⁴ The jurists are of divergent opinion as to the description of the term. However, they have unanimously agreed to it prohibition⁵⁵.

Riba in the language of law signifies an excess in legal standard of measurement or weight in one of two homogeneous articles opposed to each other in a contract of exchange, and which the excess is stipulated as an obligation upon one of the parties⁵⁶. There several verses of the glorious Qur’an where Allah has gradually prohibit *riba*.⁵⁷

And whatever you lay out as usury, so that it may increase in the property of men, it shall not increase with Allah; and whatever you give in charity, desiring Allah’s pleasure it is these that shall get manifold.⁵⁸

Also, the prophet (SAW) in his Hadith prohibits *riba*.

⁵²Ibid (n4) 129

⁵²Amodu M.L, et al, *Contemporary Issues on Islamic Jurisprudence, A Book Published in Honour of the Honourable Justice Idris Legbo Kutigi* (Rawel Prining Press 2009) 126.

⁵⁴Ibid 127.

⁵⁵Ibid (n49)

⁵⁶Ibid (n4) 124.

⁵⁷Ibidp125.

⁵⁸Qur’an Ch.30:39.

Exchange gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, salt for salt, measure for measure and hand to hand. If the article exchange belong to different genera, the exchange is without restraint provided it takes place in a hand to hand transaction.⁵⁹

In another tradition reported by Jabir, the messenger of Allah cursed the one who accept *riba*, the one who paid *riba*, the one who recorded *riba*, and the two witness of it, saying they were all alike.⁶⁰

This is so prohibited by *Shari'ah* because of the injustice caused on the part of the needy and the encouragement of the accumulation of wealth in the hand of one individual. In fact, the Islamic economic system disapproves accumulation of wealth in a few hands because it can paralyze the whole society and nation. For this, Allah provides that goods and wealth shall be circulated and distributed among all classes of the society.⁶¹ Allah say in the Qur'an condemned every slanderer, defamer, who amasses wealth and considers it a provision⁶².

6.00 HIRE-PURCHASE UNDER COMMON LAW AND SHARIA'H: COMPARISM

The most alarming similarities between the hire-purchase under Common Law and Islamic Law are that it is operative under both laws. It is a financing system which tends to meet the demand of the public. It is used as a medium of assisting the masses to acquire certain basic necessities of life which they are not like to have the capacity to acquire it in cash. But hire-purchase gives them the capacity because payment will be made by installment⁶³.

This is the same reason that calls for the adoption of this practice under both Common Law and Islamic Law. Any of the parties to the contract can terminate the agreement at any time and return the goods to the owner⁶⁴. both under common and Islamic law.

Another area of similarity is the nature of Hire-Purchase. Under both laws, it is a form of bailment at the first stage; the hirer is a bailee who only has the right of use over the property but not over the owner. And for the bailee to

⁵⁹Muslim, Sahih, vol. iii, 1211

⁶⁰Ibid, 1218

⁶¹Ibid (n4) 127.

⁶²Qur'an ch.104:1-2

⁶³Ibid (n12) 25.

⁶⁴Ibid, 3.

assume title to the property he must exercise the option to purchase by paying a nominal sum⁶⁵ and this is often referred to as the Hire-Purchase price. In the area of duties of owner and hirer, both systems are virtually the same except that the owner has the obligation to sell and the hirer to buy under Islamic law.

Under Common Law, where any of these requirements of the Law is neglected, the Hire-Purchase agreement is rendered enforceable against the hirer the owner will be denied of his right to enforce the Hire-Purchase agreement. Thus, he cannot sue to recover any money due under the agreement. Whether the hire-rent or damages for breach.⁶⁶ Also, the owner cannot enforce any guarantee relating to the Hire-Purchase agreement.⁶⁷ And again, the owner denied the enforcement of any right to recover the goods from the hirer. Where there is non-compliance, the hirer is statutorily privileged to use the goods without paying for it⁶⁸. Whereas under the Islamic Law, no default on the part of the owner, will guarantee any privilege to the hirer, to the detriment of the owner.

Under the Common Law, where the hirer defaults in payment of hire purchase installment, it causes additional profit to the owner and a loss to the hirer. The area of focus is the minimum payment clause concept which is provided as a compensation for some loss suffered by the owner. This often gives the owner the opportunity to benefit more, because, in cases where the hirer might have paid more than the minimum required, the excess will still not be returned to the hirer and also the property will still be revert back to the owner and that forms additional profit for the owner.

However, under Islamic law, it is unwarranted. Failure of the hirer to pay the due sum will only manifest to debt to be paid by the hirer subject to all the rules guiding payment of debt.⁶⁹ *Shari'ah* sees excess in the payment of debt for late payment as *Riba* which is prohibited according to the provisions of the Glorious Quran which says, and that 'whatever you lay out as usury, so that it may increase in the property of men, it shall not increase with Allah.'⁷⁰

Under common law, the death of the parties does not terminate the agreement but passes the rights and liabilities to the trustee. While under Islamic law,

⁶⁵Ibid.

⁶⁶Ibid, 99.

⁶⁷Ibid.

⁶⁸Ibid, 100.

⁶⁹<<http://www.kantakji.com>> accessed 22 July 2014

⁷⁰Qur'an ch.30:39.

the death of the parties put an end to the agreement as the Qur'an says that 'no bearer of burden shall bear the burden of another'⁷¹ it is on the strength of the above verse that we deduced the fact that, the death of a party to *ijarah* terminates the contract,⁷² because, the existence of the parties is of paramount importance to the execution of the contract, as such, their interest cannot devolve on their heirs.⁷³

Under common law, at the expiration of the hiring agreement and completion of installments, the property is transferred to the hire upon exercise of the purchase option, under the same agreement because he hires to buy. However, under Islamic law, the transfer of title of the property will come under another agreement entirely different from that of hiring agreement. Though, the transfer may either take the form of gift or it is sold at a nominal price.

Under the Islamic law, the purchase price of the asset is determined by a fair market value of the assets as determined by the expert at the time of purchase as agreed by the parties⁷⁴. Under the Common Law as it is in practice, the price is not to be compared to the market value because it places huge interest on it, which in most case leads to default of payment and eventually result in termination of the agreement. However, it is agreed to by the parties.

Notwithstanding the fact that parties have the privilege to terminate the agreement at any point in time, under both common law and Islamic law, upon formation the hirer will only pay the outstanding installment if any. And if he so wish, he can acquire title to the property at a pre-determined purchase price.⁷⁵ As for Hire-Purchase under Common Law termination which is majorly caused by breach on the part of the hirer and entitles the owner to compensation for depreciation of value and it is referred to as minimum payment clause.⁷⁶

Hire-Purchase under the Islamic Law is interest free while that of Common law is interest based. The interest placed under the Common Law is always heavy while that of Islamic Law targeted profit. And the profit is reasonable and convenient.

⁷¹Qur'an ch.6:164.

⁷² Ibid (n41) 231

⁷³ Ibid

⁷⁴Ibid (n45) 31.

⁷⁵Ibid.

⁷⁶Ibid (n12) 308.

7.0.0: CONCLUSION AND RECOMMENDATIONS

This paper examined the legality of the practice of hire-purchase transactions from both common law and Islamic law perspectives. The concept of hire-purchase is recognized under both the Islamic law and English law. Prior to the enactment of the Hire Purchase Act in Nigeria, the applicable Common Law principles were harsh and mainly for the capitalist because in those times the owner have the veto power to do and undo with the hirer who default in payment. The owner could violently take possession of the goods hired out, taking an undue advantage of the hirer.

It is hereby recommended as follows:

- i. That the practice of hire purchase is not alien to Islamic Law though it is only being practiced among the members of Muslim community and the Islamic co-operative society. It is believed that it is high time to give it popularity being a new product of Islamic commercial system. For the establishment of Islamic banking in Nigeria, this should be made one of their products and will surely of benefit to everyone irrespective of faith.
- ii. It is equally recommended that there should be a workshop, conference or seminars, wherein scholars in Islamic law will educate people on how hire-purchase under Islamic Law operates. They should lay emphasis on its importance and differences as against the conventional system. This will make people to appreciate it more. Researchers have shown that, in countries where Islamic banking had been in operation, most of their customers are people of other faith. This is not for anything, but for its convenience and reliability. If this is done, Islamic based Hire-Purchase will attract massive patronage than the conventional one.
- iii. Hire-Purchase under the Islamic Law is introduced to create an alternative for people, since the conventional operation seems to be failing the masses. Still if the conventional Hire-Purchase is put on review, and thereby operates side by side with the Islamic Hire-Purchase, and it will allow people to have a perfect choice to choose whichever one they deem fit. Hence, for this to be achieved, the Hire-Purchase Act needs amendment. The Law is archaic and mostly inappropriate to the present day commercial practice.
- iv. Nigeria being a secular state, where Islamic Law is not operative under commercial Law, it is advisable that there should be a codified Law to guide the operation of Hire-Purchase under the Islamic Law. Shari'ah Court of Appeal should have the power to adjudicate on any dispute arising from the hire-purchase agreement made under the Islamic Law so that the conventional court will not remain the last resort when a dispute arises.