

الإجارة

Ijārah

Definition:

Ijārah means “to hire.”

Ujrah means “the fee.”

There are two types of hiring:

1. Usufruct – The right to use and enjoy the profits and advantages of something belonging to another as long as the property is not damaged or altered in any way.
2. Services

Some examples of **hiring usufruct** are:

- hiring a house,
- a property or
- a machine.

The fees paid in lieu of hiring such usufruct is known as *Ujrah*.

Some examples of **hiring services** are:

- hiring employees,
- obtaining the services of a mechanic or
- visiting the doctor.

The basic condition of *Ijārah* is that everything must be specified.

For example,

- if a person hires a house, the period of hiring as well as the rental must be specified.
- if one hires an employee, his wages as well as his term of employment must be specified.

If there is any ambiguity in the hiring, the contract will become void.

Car hiring, renting of accommodations and time shares fall under *Ijārah*.

الشركة - *Shirkah*

Definition:

Literally: *Shirkah* means partnership.

Practically: it means two or more persons jointly owning an item, or contracting jointly for profit.

Types:

1. *Shirkah al Milk al Ikhtiyari*:

Shirkah means partnership; *Milk* means ownership and *Ikhtiyari* means volition/voluntarily

Both parties have a direct option in taking the joint ownership of the item.

Example: Zayd has \$50,000. ‘Umar also has \$50,000 and both decided to pool their money and purchase a vehicle. That is partnership in purchasing. The vehicle now belongs to both Zayd and ‘Umar.

2. *Shirkah al Milk al Gher Ikhtiyari*:

Shirkah means partnership; *Milk* means ownership and *Gher Ikhtiyari* means non-volition/non-voluntarily

Both parties do not have a direct option in taking the joint ownership of the item.

Example: Zayd and ‘Umar are brothers and their father, Yūsuf passed away. Yūsuf left behind a house. Zayd and ‘Umar both inherit the house and are now partners in the house.¹

3. *Shirkah al Amwal*:

Shirkah mean partnership and *Amwal* means capital.

The partners jointly invest capital into a commercial enterprise

Example: Zayd and ‘Umar wish to enter into a joint investment scheme. They decided to open a supermarket. Both contribute \$250,000 each. The business will belong to both Zayd and ‘Umar.

- Zayd and ‘Umar can decide and agree on their capital of contribution as well as the profit sharing ratio.

¹ *Shirkah al Milk Gher Ikhtiyari*: Both parties do not have a direct option in taking the joint ownership of the item.

- The capital contribution can be equal and it could also be unequal.
- The profit ratio could also be equal or unequal.

Example: Zayd and ‘Umar contribute \$250,000 each in a super-market. The profit ratio could be equal, for example 50% each, or unequal, for example 40% and 60%.

4. Shirkat al-Sana’i:

Shirkah means partnership and *Sana’i* means service.

This type of partnership is where two or more persons of the same skill form a partnership and provide services on condition that they share the income. Other names for this type of partnership are *Shirkah al Abdaan*, *Shirkah al A’maal* and *Shirka al Taqabal*.

Example: Yaqūb and Yūsuf are medical practitioners. They open a surgery and agree to treat patients. All the fees are put into one pool and then the earnings are divided accordingly to mutual agreement. The same could be practiced by painters, tailors, lawyers and barbers.

5. Shirkat al-Wujūh:

Shirkah means partnership and *Wujūh* literally means face.

In this context, it refers to credit worthiness. Practically it means two people do not have anything and they are people of respect and integrity. They approach people for loans or purchase goods on credit and then do business. People consider their respect and offer them loans or goods on credit.

Example: Sulaymān and Dāwūd are poor people but highly respected. They approach Aslam and request him to give them goods on credit. Aslam considers their respect and gives them goods on credit. Suleiman and Dawud do business and share the liability and profits equally.

Mudārabah - المضاربة

Definition:

Literally : to travel.

Shar'i terminology: A type of partnership where one partner outlays his wealth and the other offers his skills on condition they share the profit according to mutual agreement.

Terms: Mudārabah, Mudārib, Rabb al-Māl

Rabb al-Māl: Partner who provides the capital

Mudarib: Partner who manages the business venture

Example:

Yūsuf enters into a partnership with Yaqūb. Yūsuf is to put R100,000 and Yaqūb is to do business with the R100,000 on condition they share the profit at, for example, 50%. Yūsuf is the Rabb al-Māl and Yaqūb is the Mudārib. Yūsuf could stipulate the type of business Yaqūb is supposed to do or leave it open to Yaqūb to do any type of business he feels appropriate.

Difference between Shirkah and Mudārabah:

In Shirkah, both partners contribute the capital investment and in Mudārabah, only one person contributes the capital investment.

Contemporary Implementation:

Generally, Islāmic Banks invest funds on the basis of Shirkah and Mudārabah.

The depositors and the Bank, both could invest their money in a Shirkah venture or the depositors offer their money for investment and the Bank invests the money without any contribution from their side. The latter is Mudārabah. The depositor is the Rabb al-Māl and the Bank is the Mudarib.

Wakālah - الوكالة

Definition: Wakālah means agency.

Contextually it means to depute someone to carry out a certain act on one's behalf.

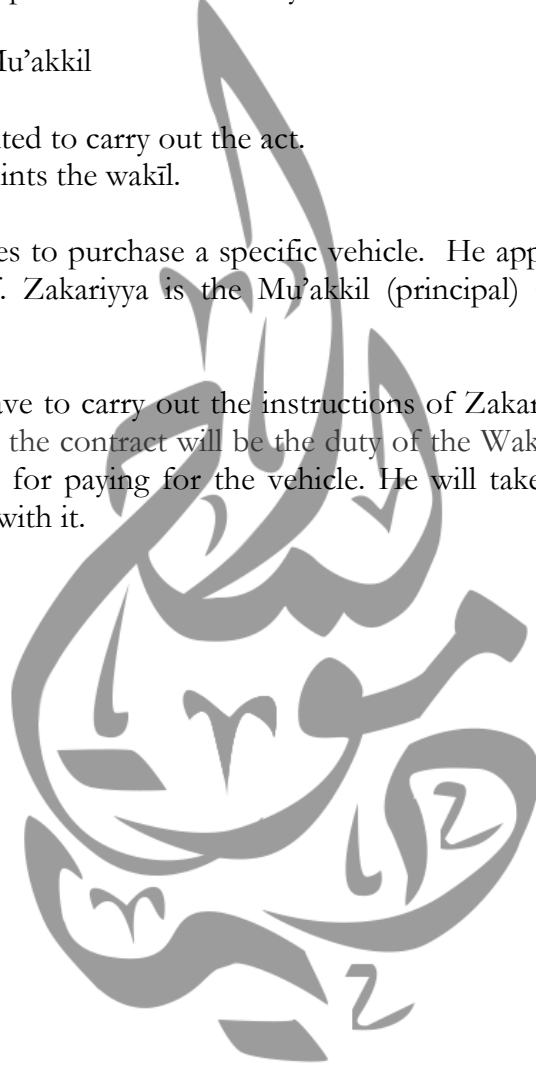
Terms: Wakālah, Wakīl, Mu'akkil

Wakīl : One who is appointed to carry out the act.

Muwakkil : One who appoints the wakīl.

Example: Zakariyya wishes to purchase a specific vehicle. He appoints Harūn to purchase the vehicle on his behalf. Zakariyya is the Mu'akkil (principal) and Harūn is the Wakīl (agent).

In Wakalah, Harūn will have to carry out the instructions of Zakariyya. However, all of the obligations that flow from the contract will be the duty of the Wakīl. In the above example, Harūn will be responsible for paying for the vehicle. He will take the vehicle back to the seller if anything is wrong with it.



Kafālah - الكفالة

Definition: Kafālah means surety.

In terminology, it refers to extending a personal guarantee for debts or loans.

Terms: Kafālah, Asīl, Kafīl, Makfūl Lahu

Asīl: Original debtor whose debts is being guaranteed

Kafīl: One who guarantees for the debts or loans

Makfūl Lahu: Creditor whose money(credit) is being guaranteed

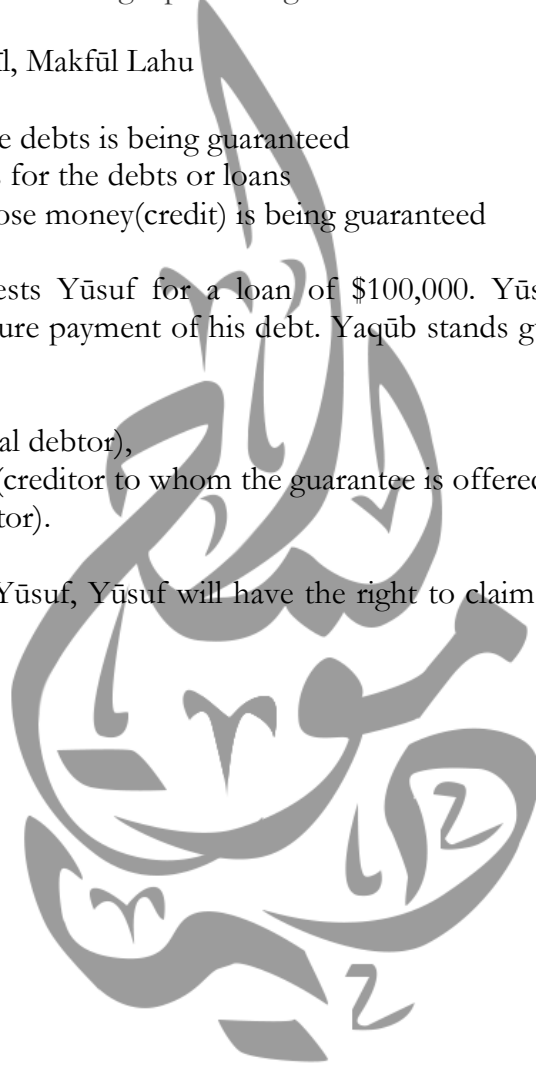
Example: Ebrahim requests Yūsuf for a loan of \$100,000. Yūsuf requests Ebrahim to provide a guarantor to secure payment of his debt. Yaqūb stands guarantee for Ebrahim for the \$100,000.

Ebrahim is the Asīl (original debtor),

Yūsuf is the Makfūl Lahu (creditor to whom the guarantee is offered) and

Yaqūb is the Kafīl (guarantor).

If Ebrahim does not pay Yūsuf, Yūsuf will have the right to claim from Yaqūb. Yaqūb will have to honour the debt.



Hawālah - الحوالة

Definition: Transference of debt

Term: Hawālah, Muhīl, Muhtāl Lahu, Muhtāl Alayhi,

Muhīl: the transferor of debt

Muhtāl Lahu: creditor who is owed

Muhtāl Alayhi: person who assumes the debt

Muhtal Anhu:

Example: Ebrahim owes Yūsuf \$100,000. Ebrahim requests Yaqūb to take over the debt and be indebted to Yūsuf for the \$100,000.

Ebrahim is the Muhīl (the transferor),

Yaqūb is the Muhtāl Alayh (person who assumes the debt) and

Yūsuf is the Muhtāl Lahu (creditor who is owed).

Yaqūb and Yūsuf must both agree to the transfer of the debt. Upon transfer, Yaqūb will no longer have a claim against Ebrahim.

Contemporary Implementation:

When one makes out a cheque, it will be considered as Hawalah. The Bank agrees to pay the debtors out on behalf of its client.

Hibah - الهبة

Definition: Gifting

Terms: Hibah, Wāhib, Mawhūb Lahu, Mawhūb Bihi

Wāhib: One gifting the item

Mawhūb Lahu: One who is receiving a gift

Mawhūb Bihi: Gifted Item

Example: Yūsuf gave Ahmad a car as a gift.

Yūsuf is the Wāhib (one gifting the item),

Ahmad is the Mawhūb Lahu (one who is receiving a gift) and the car is the Mawhūb Bihi (gifted item).

Conditions for Validity:

1. There must be Qabda (taking possession) of the Mawhūb Bihi. If the Mawhūb Lahu did not take physical possession of the Mawhūb Bihi, the gifting will not be valid.
2. The gifted item must be completely separate if it is of a divisible nature. For example, Yūsuf gave Ahmad his share of a jointly owned property without dividing it. Such a gift will not be correct.

In such an instance, as an alternative, Yūsuf may sell his share to Ahmad for a nominal amount. Division is not necessary in a sale.

Insurance - التأمين

It has been reported from Sayyiduna Abu Hurayrah ؓ that Allāh's Messenger ﷺ prohibited sales consisting of gharar (uncertainty). (Al-Tirmidhī)

In Shar'i terminology, gharar refers to suspending ownership on a future uncertain event.

Example: Yūsuf says to Qāsim, I am undertaking a journey to Iceland. If I die in this journey, then I give you my house.

Application: Yūsuf has suspended the ownership of his house to Qāsim on his journey to Iceland and his death. It is possible that Yūsuf will not travel to Iceland. If he does travel, he may not die. Therefore, such ownership contingent on a future event is invalid in Islām.

In insurance, a client pays the company premiums to secure payment upon various uncertain future events such as accidents, sickness, etc.

Such a transaction falls in the category of Gharar and is not permissible.

