

<https://doi.org/10.48047/AFJBS.6.15.2024.8639-8648>



African Journal of Biological Sciences

Journal homepage: <http://www.afjbs.com>



Research Paper

Open Access

Examining the Conditions of Leasing From the Perspective of Jurisprudence and Law

Maryam Sadeghi¹

¹ Department legal Expert of National Cartographic Center of Iran (NCC) and Master Science of Jurisprudence and Law in Islamic Azad University, North Tehran branch- Iran

Volume 6, Issue 15, Sep 2024

Received: 15 July 2024

Accepted: 25 Aug 2024

Published: 05 Sep 2024

doi: [10.48047/AFJBS.6.15.2024.8639-8648](https://doi.org/10.48047/AFJBS.6.15.2024.8639-8648)

Abstract

Leasing is a contract by which the tenant becomes the owner of the usufruct of the leased property. The purpose of the present research is to examine the conditions of leasing from the perspective of jurisprudence and law. The research method is descriptive-analytical and uses library resources. From the perspective of Shiite jurists, there are many differences between sale and leasing, including in a sale, the seller directly sells the usufruct, but in leasing, the lessor empowers the lessee to use the property. Sale is the subject of the transfer of ownership, while leasing is the subject of the transfer of usufruct. Specifying the duration in leasing is a condition of the validity of the contract, and its absence causes the invalidity of the contract. Leasing, like sale, is a transferring contract, and its effect is the transfer of usufruct to the lessee, meaning that after the contract, he becomes the owner of the usufruct of the leased property or, in other words, during the lease period, he uses the same authority and rights as the owner and takes control of the right to benefit from the property. In leasing, the transfer of usufruct is done in exchange for a certain consideration, meaning that the lessee also gives or undertakes to pay a certain amount to the lessor.

Keywords: Leasing, Consensus, Compensatory Contracts, Conditions of Consideration

Introduction

Leasing is one of the most important commutative contracts, and today the relationship between the owner and the tenant is not just a private relationship, so the establishment of commutative justice is the main goal. The groups of the lessor and the lessee

are placed against each other like two distinguished social classes, and the regulation of their relations is of special importance, so that the government is forced to intervene in it and is forced to gradually increase its mediation, and sometimes also play the role of a manager and leader.

The most important advantage of leasing over sale is that sale is the physical transfer of properties in exchange for a known amount, but leasing is the transfer of the usufruct of benefits in exchange for a known amount, which may also be from usufructs or properties. Leasing is a contract whose subject is the transfer of a known usufruct in exchange for a known consideration. The word "contract" in this definition is the genus that includes all contracts. And with the qualification of "transfer of usufruct," the contract of leasing is excluded from the sale and compromise, which relate to properties, and with the qualification of "consideration," it is excluded from the bequest of usufruct, as in the qualification of "known," the assignment of usufruct as mahr (dowry) is also excluded, since in exchange for mahr, there is no known and specific consideration, but rather against it is the vulva, which is a limited and specific matter¹.

The purpose of the temporariness of the lease is that the benefits must be used within a specified period. Article 468 of the Civil Code in this regard stipulates: "In the lease of things, the lease term must be specified, otherwise the lease is void..." The reason for the temporary nature of the lease contract is that if the financial benefits are permanently transferred to another person, it weakens the ownership of the property. Based on Article 498 of the Civil Code, states: "If the leased property is transferred to another person, the lease shall remain in force unless the lessor has stipulated the right of termination in the event of transfer." It becomes clear that within the lease contract, it is possible to stipulate the option for the lessor in case the lessor sells the lease².

Historically, there is no doubt about the transferential nature of the lease contract. Because the Imami jurists have explicitly stated this and have particularly noted that as a result of the contract, the lessee becomes the owner of the benefits for the entire period, and for this reason, after the delivery of the leased property to the lessee, the entire rent must be paid in cash.

Leasing is a type of sale because each of the parties to the lease has the right to transfer, so leasing is the sale of usufructs, and usufructs are like properties, so the transfer of usufruct during life and after death is valid. Leasing is the sale of usufruct, and for this reason, the people of Medina have considered it a sale, they have called its consideration "rent" (Ojrat), and God has called the consideration of breastfeeding "rent." "And if they breastfeed for you, then give them their rents."³ And the rent is the consideration for the usufruct, and therefore in the chapter of marriage, they have called the dowry "rent."⁴ From the perspective of Shiite jurists, there are many differences between sale and lease, including in a sale, the seller

¹ Shahid Thani, "Al-Rawdhat al-Bahiyyah fi Sharh al-Lam'at al-Dimashqiyyah", vol. 2, p. 1.

² Katouzian, Nasser, "Civil Law: Specific Contracts", pp. 382 and 17.

³ Qur'an, Surah at-Talaq, verse 6.

⁴ Al-Kasani al-Hanafi, Alaa al-Din Abu Bakr ibn Mas'ud, "Bada'i' al-Sana'i' fi Tartib al-Shara'i'", vol. 4, p. 173.

directly sells the usufruct, but in a lease, the lessor empowers the lessee to use the property. The subject of sale is the transfer of properties, and the subject of lease is the transfer of usufructs⁵.

Specifying the duration in leasing is a condition of the validity of the contract, and its absence causes the invalidity of the contract⁶. Considering the mentioned points, the purpose of the present research is to examine the conditions of leasing from the perspective of jurisprudence and law.

Theoretical Foundations of the Research

Definition of Leasing

Leasing is not the infinitive form of the verb "to rent, to lease, to lease out". Leasing is the simple infinitive (ajr, ajra, and ijarah). Leasing is synonymous with ajr. Ajr in the language means the reward for an act, wages, remuneration, and commission.

The Imami jurists have defined leasing as follows: Leasing in terminology means: the transfer of an act or usufruct in exchange for a known consideration, or in other words, leasing is the transfer of a known usufruct in exchange for a known consideration, or a contract whose result is such.⁷

Leasing is a contract whose subject is the transfer of a known usufruct in exchange for a known consideration. The word "contract" in this definition is the genus that includes all contracts. And with the qualification of "transfer of usufruct," the contract of leasing is excluded from the sale and compromise, which relate to properties, and with the qualification of "consideration," it is excluded from the bequest of usufruct, as in the qualification of "known," the assignment of usufruct as mahr (dowry) is also excluded, since in exchange for mahr, there is no known and specific consideration, but rather against it is the vulva, which is a limited and specific matter.⁸

Article 466 of the Civil Code: "Leasing is a contract by which the lessee becomes the owner of the usufruct of the leased property..."

Temporariness of the Lease Contract and Permanence of the Sale Contract, the lease contract is temporary, while the sale contract is permanent. The purpose of the temporariness of the lease is that the benefits must be used within a specified period. Article 468 of the Civil Code in this regard stipulates: "In the lease of things, the lease term must be specified, otherwise the lease is void..." The reason for the temporary nature of the lease contract is that if the financial benefits are permanently transferred to another person, it weakens the ownership of the property.⁹

The lease contract is usually concluded between two people. Sometimes the lease is of external properties, such as someone leasing a house, a shop, a car, or a horse from another

⁵ Shahid Thani, "Masalik al-Afhām fi Sharh Shara'i al-Islām", vol. 1, p. 320.

⁶ Ayatollah Golpayegani, Sayyid Muhammad Reza, "Majma' al-Masa'il", vol. 2, p. 48.

⁷ Allamah Hilli, Hasan ibn Yusuf ibn Ali ibn Mutahhar, "Tahrir al-Ahkam", vol. 1, p. 241.

⁸ Shahid Thani, "Al-Rawdhat al-Bahiyyah fi Sharh al-Lam'at al-Dimashqiyyah", vol. 2, p. 1.

⁹ Katouzian, Nasser, "Specific Contracts", vol. 1, p. 353.

person to use the benefits and become the owner of those benefits. In this case, the one who has leased the house, etc. is called the "lessor," and the one who has become the owner of the benefit of the house or the like is called the "lessee," i.e., the one who has leased. Sometimes the lease contract is for the use of the work and expertise of another, in which case the employer is called the "lessee" (employer) and the one employed is called the "hired."¹⁰

A lease (ijara) is a type of sale (bay'), as each party in a lease has the right of ownership transfer (tamlik). Therefore, a lease is the sale of usufructs, and usufructs are equivalent to tangible assets. Thus, the transfer of ownership of usufruct is valid both during life and after death. A lease is the sale of usufruct, which is why the people of Medina have classified it as a sale. For this reason, the compensation in this contract is called "rent" (ujrah), and Allah has called the compensation for breastfeeding "wage" (ajr). "فَبِأَنَّ أَرْضَعْنَ لَكُمْ فَاتُوا هُنَّ أَجُورَهُنَّ"¹¹. Wage is compensation for usufruct, and thus in the chapter on marriage (nikah), dowry (mahr) is called remuneration (ajr).¹²

According to Shia jurists, there are many differences between a sale (bay') and a lease (ijara), including In a sale, the seller directly sells the benefit, but in a lease, the lessor empowers the lessee to use the asset and benefit from it¹³. A sale is designed for the transfer of tangible assets, while a lease is designed for the transfer of benefits.¹⁴

Mentioning the duration in a lease is considered by jurists as a condition for the validity of the contract, and its omission results in the nullity of the contract.

Results

Legitimacy and Pillars of Lease

The legitimacy of a lease, like the legitimacy of a sale, does not need proof because it is one of the necessities that leaves no room for ijtihad or taqlid.¹⁵ Just as jurists referred to the Quran, Sunnah, consensus, and reason to confirm the legitimacy of sale, they have also relied on three of the four sources of Islamic law - the Quran, Sunnah, and consensus - to confirm the legitimacy of a lease.

1- Quranic Verses

For the legitimacy of the sale, we will suffice with three verses from the Quran:

1- أَحَلَّ اللَّهُ الْبَيْعَ ¹⁶... Allah has permitted trade.

2- رَجُلًا لَا تُلْهِيمُهُمْ تِجَارَةً وَلَا يَبِيعَ عَنْ ذِكْرِ اللَّهِ - ¹⁷... Men whom neither commerce nor sale distracts from the remembrance of Allah.

3- فَاسْعَوْا إِلَى ذِكْرِ اللَّهِ وَذَرُوا الْبَيْعَ - ¹⁸... Hasten to the remembrance of Allah and leave trade.

¹⁰ Feyz, Alireza, "Principles of Jurisprudence and Usul", p. 479.

¹¹ Surah At-Talaq: 65/6.

¹² Al-Kasani al-Hanafi, Ala al-Din Abu Bakr ibn Mas'ud, Bada'i' al-Sana'i' fi Tartib al-Shara'i', Vol. 4, p. 173.

¹³ Mousavi Golpayegani, Mohammad Reza, Bulghat al-Talib fi al-Ta'liq 'ala Bay' al-Makasib, Vol. 1, p. 17.

¹⁴ Shahid al-Thani, Masalik al-Afham fi Sharh Shara'i' al-Islam, Vol. 1, p. 320.

¹⁵ Mughniyah, Muhammad Jawad, Fiqh al-Imam al-Sadiq, Vol. 4, p. 258.

¹⁶ Al-Baqarah: 2/275.

¹⁷ An-Nur: 24/37.

¹⁸ Al-Jumu'ah: 62/9.

Among the verses that explicitly declare the benefit in lease as lawful are:

وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلَّا مَا مَلَكَتْ أَيْمَانُكُمْ كِتَابَ اللَّهِ عَلَيْكُمْ وَأَحْلَ لَكُمْ مَا وَرَاءَ ذَلِكَ أَنْ تَبْتَغُوا بِأَمْوَالِكُمْ مُحْصِنِينَ غَيْرَ
¹⁹«مُسَافِحِينَ فَمَا اسْتَمْتَعْتُمْ بِهِ مِنْهُنَّ فَآتُوهُنَّ أُجُورَهُنَّ فَرِيضَةً وَلَا جُنَاحَ عَلَيْكُمْ فِيمَا تَرَاضَيْتُمْ بِهِ مِنْ بَعْدِ الْفَرِيضَةِ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا

And [also prohibited to you are all] married women except those your right hands possess. [This is] the decree of Allah upon you. And lawful to you are [all others] beyond these, [provided] that you seek them [in marriage] with [gifts from] your property, desiring chastity, not unlawful sexual intercourse. So for whatever you enjoy [of marriage] from them, give them their due compensation as an obligation. And there is no blame upon you for what you mutually agree to beyond the obligation. Indeed, Allah is ever Knowing and Wise.

«...²⁰ فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ» If they breastfeed your child, pay them their wages according to the customary agreement between you.

أَهُمْ يَقْسِمُونَ رَحْمَتَ رَبِّكَ نَحْنُ قَسَمْنَا بَيْنَهُمْ مَعِيشَتَهُمْ فِي الْحَيَاةِ الدُّنْيَا وَرَفَعْنَا بَعْضَهُمْ بَعْضًا سُلْخًا وَرَحِمْتَ رَبِّكَ خَيْرٌ مِمَّا
²¹«يَجْمَعُونَ» Is it they who would portion out the Mercy of your Lord? It is We Who portion out between them their livelihood in the life of this world: and We raise some of them above others in ranks, so that some may command work from others. But the Mercy of your Lord is better than the (wealth) which they amass.

2- Narrations

Regarding sale, there are many narrations that jurists have cited. From these narrations, we present one that has been mentioned specifically about sale:

يَا مَعْشَرَ التُّجَّارِ، الْفِقْهَ ثُمَّ الْمَتْجَرَ، الْفِقْهَ ثُمَّ الْمَتَجَرَ وَاللَّهُ لِلرَّيَا فِي هَذِهِ الْأُمَةِ أَخْفَى مِنْ ذَبِيبِ النَّمْلِ عَلَى الصَّفَا، صُونُوا أَمْوَالَكُمْ
²²«بِالْصَّدَقَةِ، التَّاجِرُ فَاجِرٌ وَالْفَاجِرُ فِي النَّارِ، إِلَّا مَنْ أَخَذَ الْحَقَّ وَاعْطَى الْحَقَّ

O merchants, first learn jurisprudence, then engage in trade. By Allah, usury in this nation is more hidden than the crawling of an ant on a smooth rock. Protect your wealth through charity. The merchant is immoral, and the immoral is in the Fire, except for one who takes what is right and gives what is right.

There are also narrations about leases in hadith books. Among these narrations is one reported by the three sheikhs (Kulayni, Saduq, Sheikh Tusi):

(Muhammad ibn Sinan from Abi al-Hasan (peace be upon him): سَأَلْتُهُ عَنِ الْإِجَارَةِ فَقَالَ: صَالِحٌ
 لَا يَأْسَ بِهِ إِذَا نَصَحَ قَدْرَ طَاقَتِهِ وَقَدْ أَجَرَ مُوسَى بْنُ عِمْرَانَ عَلَيْهِ نَفْسُهُ²³....»

Muhammad ibn Sinan asked Musa ibn Ja'far about a lease, and he said: It is proper and there is no problem with it when it is within one's capacity. Indeed, Moses son of Imran hired himself out to others.

3- Consensus

The permissibility of a lease, like a sale, is a matter of consensus. Just as jurists claimed consensus for the legitimacy of the sale, both Sunni and Shia jurists consider the

¹⁹ An-Nisa: 4/24.

²⁰ At-Talaq: 65/6.

²¹ Az-Zukhruf: 43/32.

²² Hurr al-Amili, Muhammad ibn al-Hasan, Wasa'il al-Shi'a ila Tahsil Masa'il al-Shari'a, Vol. 12, p. 282, Book of Trade, Chapters on Etiquettes of Trade, Chapter 1, Hadith 1.

²³ Sheikh Saduq (Ibn Babawayh al-Qummi), Abu Ja'far Muhammad ibn Ali ibn al-Husayn, Man La Yahduruhu al-Faqih, Vol. 3, p. 106, Hadith 90.

permissibility of the lease to be a matter of consensus. Among them are Allamah al-Hilli, Ibn Idris, Sheikh Tusi, Fayd Kashani, and Bahrani, who, after citing noble verses and narrations to argue for the legitimacy of a lease, claimed consensus among jurists. Sheikh Tusi and Allamah al-Hilli have said in the discussion of lease: Only Abd al-Rahman al-Asamm does not consider lease permissible and believes that there is gharar (uncertainty) in the lease contract, and the Prophet (peace be upon him) prohibited gharar. *نَهَى النَّبِيُّ (صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَ سَلَّمَ) عَنْ بَيْعِ الْغَرَرِ*.²⁴

Elements of Lease

1. Common elements between sale and lease

The elements of a lease, like a sale, consist of three components (contract, contracting parties, and considerations).

1- Contract: This refers to the words or actions that indicate an exchange.

2- Contracting parties: The two parties who carry out and realize the exchange (lessor and lessee).

3- Considerations: The two things being exchanged and upon which the contract is based.²⁵ (benefit and rent) We will explain each of these in detail in the following chapters.

2. Conditions of lease

A lease contract, like a sale, is a proprietary contract. A lease is also a proprietary contract like a sale, and its effect is the transfer of ownership of benefit to the lessee. In other words, after the contract, the lessee becomes the owner of the benefits of the leased property, or more precisely, during the lease period, they have the same authority and rights of use as the owner and gain the capacity to benefit from the property at their discretion. In a lease, the transfer of ownership of benefits is done in exchange for a specified consideration, meaning the lessee also gives or commits to give property to the lessor.

Leasing is giving the benefits of movable or immovable property to another, or the benefit of a person, in exchange for property. A lease contract is not concluded with the word "loan," nor with the word "sale." For example, if one says, "I sell you the residence of this house for one year," a lease contract is not concluded because the subject of sale is the ownership of the property. Also, if in the offer one says "I give you ownership," it is not sufficient; they must say: "I give you ownership of residing in this house for a year" for it to be valid. The use of Arabic words in the lease contract is considered valid, and the use of past tense in the lease contract is considered valid because the lease contract is binding. Lease, like sale, is concluded with words in the past tense.²⁶

Lease, like a sale, is concluded with Arabic words. Some jurists believe that the use of Arabic words is not necessary, but rather any words that convey the intended meaning in any language are sufficient. For mute individuals, gestures take the place of words in lease contracts, just as we stated for sale contracts.

²⁴ Hurr al-Amili, Muhammad ibn al-Hasan, *Wasa'il al-Shi'a ila Tahsil Masa'il al-Shari'a*, Vol. 6, p. 330, Chapters on Etiquettes of Trade - Chapter on Permissibility of Trading with the Distressed, Hadith 3.

²⁵ Mughniyah, Muhammad Jawad, *Fiqh al-Imam al-Sadiq*, vol. 4, p. 258.

²⁶ Al Kashif al-Ghita, Muhammad Husayn, *Tahrir al-Majallah*, vol. 1, p. 142.

If in a lease contract, a house is rented for one month but the duration is not mentioned, the lease is void, although some have considered it permissible. A lease is a binding contract and is not invalidated except by termination and mutual consent of the parties, or by one of the reasons that cause termination. It is not invalidated by the death of one of the parties. Is a lease invalidated by the death of one of the parties or not? The prevailing opinion among jurists is that the lease contract is invalidated. As we know, endowed property can be leased while it cannot be sold. So if the leased property has been endowed to the lessor and they lease it out, it is valid.²⁷

The sale of an endowed property is not valid, but its lease is valid.

In a sale, the object does not need to have the capacity to remain intact in a way that it continues to exist. However, the object of a lease, like a loan, must be such that the property itself remains intact after use. In this respect, a lease is similar to a loan, and there is a rule stating: "Everything that can be validly loaned can be validly leased."²⁸ Just as a sale by mutual agreement (mu'atah) is valid, a lease by mutual agreement is also valid.²⁹

The reason for the validity of mu'atah is not the essence of mu'atah itself, but rather that it falls under the definition and title of sale, and is thus subject to the evidence for mu'atah, as well as the practice of rational people and their endorsement of mu'atah. Therefore, any mu'atah that fits the definition of a contract, such as a lease or a gift, or any unilateral act, is valid. So as long as the term "lease contract" applies to a mu'atah lease, this lease is valid and is covered by the evidence for lease contracts. This is similar to the case in sales. If the term contract or unilateral act is not applied to a mu'atah, that mu'atah would be invalid because we doubt the validity of such a mu'atah, and the principle is that no effect is given to such doubtful mu'atah.

3. Conditions for the contracting parties

The lessor and lessee must be of legal age, sane, mature, and not under interdiction. They should not be minors, insane, foolish, or prohibited from making transactions, as was stated for sale. Interdiction due to childhood, mental deficiency, bankruptcy ruling, or slavery applies, and it is also a condition that neither party be under interdiction in their transactions unless the coercion is rightful. What was said about coercion regarding the lifting of judgment, accountability, and effect applies in cases where the coercion is wrongful and occurs due to oppression and transgression, which is called wrongful coercion. However, in rightful coercion, which is the opposite, none of these rulings apply.³⁰ As mentioned in the case of an unauthorized sale (fuduli), its validity depends on the owner's permission; similarly, in an unauthorized lease, its validity depends on the owner's permission. The validity of both unauthorized lease and sale depends on the owner's permission.

4. Conditions for the considerations

²⁷ Al-Shahid al-Thani, *Al-Rawdah al-Bahiyah fi Sharh al-Lum'ah al-Dimashqiyah*, vol. 2, p. 4.

²⁸ Al-Muhaqqiq al-Thani (Al-Karaki), *Ali ibn Husayn, Jami' al-Maqasid fi Sharh al-Qawa'id*, vol. 7, p. 87.

²⁹ Al-Kashif al-Ghita, *Muhammad Husayn, Tahrir al-Majallah*, vol. 1, p. 142.

³⁰ Feyz, *Alireza, Muqaranah wa Tatbiq dar Huquq-e Jaza-ye Islam*, vol. 1, p. 291

The lease contract, like a sale, is a compensatory contract with two subjects: the leased object and the compensation for benefits. The leased object, which is the subject of the contract, is of two types:

Benefit: The property whose benefit is being leased, as stated in Article 446 of the Civil Code, is technically called the leased property.

Work: Lease is a covenant contract, and the employee commits to performing a specific task for the lessee.³¹

4. Being Known

The leased property, like the sold item, must be known. The first condition for the considerations is that each of them must be known. However, there is disagreement among jurists about the method of making the rent known. According to Sheikh Tusi's opinion, seeing the rent is sufficient for it to be known, and it's not necessary to know its exact amount. If the rent is measurable, weighable, or countable, it must be known through measuring, weighing, or counting. What is known by sight, if not measurable, weighable, or countable, must necessarily be seen or its qualities must be described in a way that removes ambiguity and makes it specific and known.³² Article 216 of the Civil Code states: "The subject of a transaction must not be ambiguous except in special cases where general knowledge of it is sufficient."

The leased property, like the sold item, must be specific. It is closer to the truth that seeing the rent is not sufficient from considering it through one of the three methods: measuring, weighing, or counting. In its explanation, it is stated that if the rent is something that in a sale, seeing it is sufficient, such as land, then in a lease, seeing it as rent is also sufficient. However, most Shi'a jurists consider it necessary to specify the amount of rent. Therefore, for rents that are measurable and weighable, it is necessary to use measurement or weight to determine their amount. If the amount is not specified, there is a possibility of harm to either or both parties of the contract.³³

5. Ability to Deliver

The leased item, like the sold item, must be deliverable. One of the conditions related to the leased property is that it must be possible for the lessor to deliver it to the lessee. Therefore, leasing a runaway animal or slave is not valid, even if something else that can be delivered is added to it, or like usurped property, unless the lessee is stronger than the usurper and can take the property from them. Article 372 of the Civil Code states: If the seller has the ability to deliver some of the sold item but not the other part, the sale is valid for the part that can be delivered and invalid for the other part. Article 367 of the Civil Code states: "Delivery means giving the sold item to the buyer's possession in a way that enables all types of possession and benefits..."

³¹ Al-Jaziri, Abd al-Rahman, *Al-Fiqh 'ala al-Madhahib al-Arba'ah*, vol. 3, pp. 128-129.

Khomeini, Ruhollah Musavi, *Tahrir al-Wasilah*, vol. 1, p. 570.

³² Mughniyah, Muhammad Jawad, *Fiqh al-Imam al-Sadiq*, vol. 4, p. 259.

³³ Allamah al-Hilli, *Tadhkirat al-Fuqaha*, vol. 2, p. 290.

The leased property, like the sold item, must exist. Article 361 of the Civil Code states: "If in a specific sale it is found that the sold item does not exist, the sale is void." Article 470 of the Civil Code states: "The leased item must be deliverable, and if it does not exist, delivery will not be possible."

6. Benefiting from the Leased Property

The leased property, like in a sale, must have a rational benefit or, in other words, have value. The leased item should inherently have a benefit. Leasing something that cannot be used is void, such as leasing land for farming that has no water and rainwater is not sufficient or beneficial for that cultivation. Such a lease is void because it is consuming people's property in a false manner.³⁴ Article 215 of the Civil Code states: "The subject of a transaction must have value and entail a legitimate rational benefit."

Conclusion

The aim of this research was to examine the conditions of lease from both jurisprudential and legal perspectives. The investigations showed that the lessor and lessee must be of legal age, sane, mature, and not under interdiction. They should not be minors, insane, foolish, or prohibited from making transactions, as was stated for sale. Interdiction due to childhood, mental deficiency, bankruptcy ruling, or slavery applies, and it is also a condition that neither party be under interdiction in their transactions, unless the coercion is rightful. What was said about coercion regarding the lifting of judgment, accountability, and effect applies in cases where the coercion is wrongful and occurs due to oppression and transgression, which is called wrongful coercion. However, in rightful coercion, which is the opposite, none of these rulings apply.

The lease contract, like a sale, is a compensatory contract with two subjects: the leased object and the compensation for benefits. The leased object, which is the subject of the contract, is of two types: benefit, which is the property whose benefit is being leased, as stated in Article 446 of the Civil Code, technically called the leased property; and work, where lease is a covenant contract, and the employee commits to performing a specific task for the lessee.

The leased item, like the sold item, must be deliverable. One of the conditions related to the leased property is that it must be possible for the lessor to deliver it to the lessee. Therefore, leasing a runaway animal or slave is not valid, even if something else that can be delivered is added to it, or like usurped property, unless the lessee is stronger than the usurper and can take the property from them.

The leased item must be something that can be utilized while preserving its essence. Therefore, leasing bread for eating or firewood for burning is not valid. According to Article 471 of the Civil Code, for a lease to be valid, it must be possible to benefit from the leased property while preserving its original form. This means that the property whose benefit is being leased must be of a nature that is not destroyed by its use. If the property is consumed by its use, such as sweets, fruits, and similar items, it cannot be the subject of a lease. This

³⁴ Mughniyah, Muhammad Jawad, *Fiqh al-Imam al-Sadiq*, vol. 4, p. 259.

condition is necessary for the validity of all contracts where the benefit is separated from the property and independently becomes the subject of the contract, such as in usufruct, endowment, and loan. However, it's possible that some items which are destroyed by use may have a rare benefit that doesn't lead to the destruction of the property. In such cases, leasing for that specific benefit would be valid.

References

Al Kashif al-Ghita, Muhammad Husayn, "Tahrir al-Majallah", Qom - Tehran: Maktabat al-Firuzabadi and Maktabat al-Najah, 1940.

Al-Jaziri, Abd al-Rahman, "Al-Fiqh 'ala al-Madhahib al-Arba'ah", Beirut, Dar Ihya' al-Turath al-'Arabi, 2nd edition, 1986.

Al-Hurr al-'Amili, Muhammad ibn al-Hasan, "Wasa'il al-Shi'ah ila Tahsil Masa'il al-Shari'ah", edited by: Abd al-Rahim Rabbani Shirazi, Beirut - Lebanon, Dar Ihya' al-Turath al-'Arabi; n.d.

Khomeini, Ruhollah Musavi, "Tahrir al-Wasilah", Qom, Mu'assasat al-Nashr al-Islami, n.d.

Al-Shahid al-Thani, Zayn al-Din ibn 'Ali al-'Amili al-Juba'i, "Al-Rawdah al-Bahiyah fi Sharh al-Lum'ah al-Dimashqiyah", Qom, Markaz al-Nashr al-Tabi' li-Maktab al-'Ilam al-Islami, 10th edition, 1997.

Sheikh Saduq (Ibn Babawayh al-Qummi), Abu Ja'far ibn 'Ali ibn al-Husayn, "Man La Yahduruhu al-Faqih", edited by: Sayyid Hasan Musavi Khorasan, Beirut, Dar Sa'b and Dar al-Ta'aruf, 1981.

Allamah al-Hilli, Abu Mansur al-Hasan ibn Yusuf ibn al-Mutahhar al-Asadi, "Tahrir al-Ahkam", n.p., Mu'assasat Al al-Bayt (peace be upon them), lithograph edition, n.d.

Allamah al-Hilli, Abu Mansur al-Hasan ibn Yusuf ibn al-Mutahhar al-Asadi, "Tadhkirat al-Fuqaha", Tehran, Manshurat al-Maktabah al-Murtadawiyah li-Ihya' al-Athar al-Ja'fariyah, lithograph edition, n.d.

Feyz, Alireza, "Muqaranah wa Tatbiq dar Huquq-e Jaza-ye 'Umumi-ye Islam", Tehran, Ministry of Culture and Islamic Guidance, 3rd edition, 1994.

Katouzian, Naser, "Huquq-e Madani 'Uqud-e Mu'ayyan", Tehran, Sherkat-e Enteshar, 4th edition, 1992.

Al-Kashani al-Hanafi, 'Ala' al-Din Abu Bakr ibn Mas'ud (Malik al-'Ulama'), "Bada'i' al-Sana'i' fi Tartib al-Shara'i'", Beirut - Lebanon, Dar al-Fikr, 1999.

Al-Muhaqqiq al-Thani (Al-Karaki), 'Ali ibn al-Husayn, "Jami' al-Maqasid fi Sharh al-Qawa'id", Qom, Mu'assasat Al al-Bayt 'Alayhim al-Salam li-Ihya' al-Turath, 1st edition, 1987.

Mughniyah, Muhammad Jawad, "Fiqh al-Imam al-Sadiq", Qom, Intisharat-e Quds-e Muhammadi, n.d.

Al-Musavi al-Gulpaygani, Sayyid Muhammad Reza, "Bulghat al-Talib fi al-Ta'liq 'ala Bay' al-Makasib", written by Sayyid Husayni Milani, Qom, Matba'at al-Khayyam, 1979.