Practical Application of *al-Ijārah al-Mawṣūfah fī al-Dhimmah*¹ (Forward Ijārah)

by

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¹ The literal or lexical meaning of *ijārah* is ‘lease’ or ‘rental’. *Al-ijārah al-mawṣūfah fī al-dhimmah* is a rental contract by which the lessor undertakes the obligation to provide a benefit, usufruct, or service in the future by means of a generic asset made determinate by specifications. This is different from *ijārah al-mu‘ayyanaḥ*, rental of a particular tangible asset suitable to generate the benefit or usufruct.
The Importance of the *Ijārah* Application

Islamic financial institutions have begun applying *ijārah* to the financing of usufruct, both through operational *ijārah* and lease-to-own contracts. The application of the latter has helped reduce reliance upon *murābahah* financing because there are benefits in *ijārah* for both contracting parties (the bank and its client). However, this paper is not the forum for going into that.

These institutions have now begun applying forward *ijārah* for the delayed financing of human services such as medical treatment, education, ordinary tourism as well as the performance of ‘Umrah and Hajj, celebrations, providing plane tickets by themselves or along with accommodation and other auxiliary services, communications, etc.

The 28th Session of the al-Barakah Symposium has already heard the paper, “The Parameters of *Ijārah* for Services, and the Practical Applications of Forward Ijarah,” in the areas mentioned. A *fatwā* (Resolution Number (4/28), was issued regarding the issue.

Now the application of forward *ijārah* has expanded to include a type of real estate lease for buildings and developments. The format is being widely used in addition to *istiṣnāʿ* and *istiṣnāʿ mawāzī* (parallel *istiṣnāʿ*). The way it works is that in the real estate development process a client may enter into a contract with a developer so as not to miss an opportunity, and then the client will turn to a bank for funding. It would be extremely difficult to terminate the existing relationship of the client with the developer unless the bank takes the place of the client in the contract—but not by taking responsibility for the debt—so the alternative is for the bank to enter into a contract by which it undertakes responsibility to provide a building of agreed specifications for the client and another contract for *istiṣnāʿ* with the developer so that the bank takes full responsibility for the contractual requirements of the lease. The suitability of this arrangement, or the solution to this circumstance by means of forward *ijārah* that ends in ownership, is that the subject of the contract is not a specific item. That means that the bank’s use of it to finance the client does not lead to the bank financing a debt [the client] owes to the developer. It also turns the relationship established between the two of them into a
three-way relationship with which all the parties (the developer, the bank and the client) can be comfortable.

Before going into the details of this kind of application, several issues should be examined. The most important of them is the bank’s leasing of benefits which it does not own yet at the time it concludes the contract with its client. It is well known that a lease is a sale of benefits (usufruct) and that it is prohibited for a person to sell what he does not possess. The same would apply to renting what one does not possess. This is the reason that the application of forward *ijārah* in Islamic financial institutions came late as compared to the application of two other types of leases: operational leases and rent-to-own leases.

It had become completely settled in people’s minds that a person must not rent what he does not possess or for which he does not possess the usufruct. This was based on an analogy with the prohibition of selling what one does not possess. Indeed, the basic rule is valid, but there are certain exceptions to it:

- When selling commodities a person may sell an item of precise specifications by assuming liability for its delivery, i.e., selling what the seller does not possess. This is called a *salam* (forward) sale.
- When it comes to leases (*ijārah*), it is permissible to rent an item when the lessor does not yet possess it or possess the right to its usufruct at the time of the contract. That is called forward *ijārah* (*ijārah mawsūfah fī al-dhimmah*). *Salam* and forward *ijārah* have many issues in common, with only one difference between them: Spot payment of the rent at the time of the contract is not a requirement for forward *ijārah*, whereas the commodity price must be paid up-front for *salam* sales.
Advantages of Forward Ijārah (Ijārah Mawsūfah fil al-Dhimmah)

The forward *ijārah* contract meets the needs of each of the following: the Islamic bank, the lessor, the lessee, and the banking business in general.

As for the lessor, the Islamic Bank, if it is sure of its ability to provide the needed *ijārah* property and wants a commitment from the potential tenant, it can enter into a forward *ijārah* contract, then possess the property and then, finally, hand it over.

This method is stronger than a promise to rent secured from a party interested in renting a particular item, because that promise does not bind the promisor to proceed with the contract. In the event of non-fulfillment of such a promise by the client, the only consequence is compensation for actual damage, with the client paying the difference between the promised rent and the rent agreed to by a replacement renter.

As for the renter’s need of the forward *ijārah* contract, it is, first, to ensure the strong possibility of obtaining the (expected) usufruct by virtue of the strength of a contract rather than a mere promise.

Second, it ensures the continuity of the usufruct. That is because the destruction of property leased using forward *ijārah* cannot terminate the contract; rather, the lessor must provide a substitute in order to allow the renter the continued utilization of the benefit.

As for banking practice, forward *ijārah* has allowed banks to finance activities that were not hitherto possible for them to finance when the transaction is structured as an exchange of money for money. Since it is impermissible to finance cash for cash to earn a profit, the alternative was to look at the usufruct for which the financing is done, which is obtained with an up-front payment, while the user of the benefit pays by a delayed payment, which may even be before the bank possesses the item or subject matter of the contract.

While it is impermissible for the bank to finance the client by making over to him the up-front fees for the service he desires, the bank does have the capability of taking possession of a stipulated usufruct through a forward *ijārah* contract and making an up-front payment to its actual provider. Then it can enter into a forward *ijārah* contract with its client for a similar service that is parallel to the first contract, without any contractual link between it and what the bank contracted [with the service provider]. This allows it to avoid trading in debts by selling something [particular] before taken possession of it.
A contract for forward *ijārah* is binding on the parties to the deal, and can remain valid even with the loss of the usufruct, since a replacement is to be provided in such a case.

This application differs from two other possible *ijārah* formats:

I- A particularized (*muʿayyanah*) *ijārah*, i.e., a lease [by the bank] with the service provider, after which it enters into a sub-leasing contract with the client for what it has leased. In such a case the service provider may refuse to allow the bank to sub-let its services, and the client may also not approve it in the end, even if he had proffered a binding promise to do so—and this happens in actual practice. The client may renge on his promise, forcing the bank to look for another lessee of the service and then seek compensation for damages from the reneger.

II- The second format is similar to particularized *ijārah* as mentioned above; i.e., a contract for a service with a specific provider and then a sublease of it; however, instead of securing a promise from the client, the bank secures the acquiescence of the service provider to the bank’s option to annul the contract (*khiyār* al-*shart*); but not all service providers are willing to accept that condition.
**Ijārah: Its Definition, Legality and Essentials**

**Definition:**

Linguistically, *ijārah* comes from the Arabic root word *ajara*; [Form IV] ʾajara, means ‘to rent out’, ‘lease out’ or ‘let’. Some say the original word is the noun *ujrah*, meaning ‘a rental payment’.

Technically: it is defined as an exchange contract for transfer of benefit or usufruct in return for compensation. The Mālikīs restrict the term *ijārah* to a contract for utilization of human services and what can be moved, excluding ships and animals; whereas they use the word *kirā*’ specifically for contracts for the utilization of land, buildings, ships and animals. Other scholars, however, consider *kirā*’ and *ijārah* to be synonymous.

The following definition of forward *ijārah* has been synthesized from a number of references: A forward *ijārah* contract can be defined as the commitment of the lessor to provide a benefit that has been thoroughly described (to the standards required in *salam* sales), such that potential conflict is eliminated, whether the benefit is from an object, such as rental of a car of certain specifications, or from a human service, such as tailoring or teaching. It is not a condition that the lessor possess the benefit when sealing the contract. Rather, the benefit can be fixed at a future date to enable contractor to secure the means of providing it at the appointed time.

**The Legality of Particularized Ijārah**

The legality of *ijārah* is a unanimously agreed ruling; therefore, there is no need to provide evidence for it. The wisdom for its legality is that it makes it easier for those who do not possess a commodity to obtain its utility. As such, it is valid to lease an item immediately at the time of the contract or at a specified future date, whether the subject of the contract is the benefit from a particular source or item or the obligation to provide a generic item defined by

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2 Al-Muṭṭaqrī̔, al-ʾMagrib; Ibn Faris, Majūyis al-Lughah, under the root a-ja-ra
3 This is the Hanafī’s definition. The Mālikīs define it as the transfer of usufruct for a price. The Shafi‘īs define it as a contract on a defined usufruct capable of being given out with a permissible known or fixed price. And the ʾHanbalīs define it as a contract on a permissible defined usufruct or benefit that will be utilized bit-by-bit throughout a defined period on a defined property or defined in liability (forward) for a price, or a contract on a permissible service for a known price. See (Ibn ʿĀbidin, 6:2), (Dasūqī 4:3), (al-Qalyūbi, 3:47), (Kashshāf al-Qanāʾ 3:546)
specifications (forward ijara). When the term ijara is used without qualifications, it refers to the lease of a particular item. However, this does not imply any form of suspension or contingency of an ijara contract because, fundamentally, an ijara contract does not accept or allow any suspension, according to the majority of scholars.

The Legality of Forward Ijara in Particular

There is no need to mention the evidence for the legality of particularized (mu’ayyanah) ijara because it is so well known. As for the forward ijara contract, which the Shafi’is and Hanbalis consider valid, they have not provided specific reasoning to support its legality in particular. That is because those who consider it similar to a salam sale in stipulating the same conditions for both would consider the proofs for salam to be proofs for the legality of forward ijara as well. As for those who apply all the conditions of salam to forward ijara except for advance payment in full, they would rely upon the evidence for ijara in the absolute sense to be evidence for this particular form of it. However, I have not found evidence in either madhab for forward ijara in particular.

Ijara Is a Binding Contract

Ijara is a binding contract and, therefore, it cannot be terminated unilaterally. However, it can be legally terminated if an option to annul is stipulated at the time of the contract or in case of legal excuses. Any of the following options can be added to an ijara contract by stipulation: the option to annul without explanation (khiyar al-shart), the option to annul if payment is delayed (khiyar al-naqd), and the specification option (khiyar al-ta’yan). The Shari’ah also permits the option to annul due to a defect, without need to stipulate such an

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4 According to the Shafis it is confined to forward ijara and not to the specified or described (forward ijara), except where the appointed time of the contract is minimal (al-Quliaby 3:76).
5 Translator’s note: Khiyar al-naqd could also refer to a refund option: the seller, after receiving payment has the right, within a period agreed upon by both parties, to dissolve the contract by refunding the payment. See Nazih Hammad, Mu’jam al-Mustalaqa al-Maliyyah wa al-Iqtiyadiyyah fi Lughat al-Fuqaha’, (Damascus: Dar al-Qalam, 1429:2008), p. 206.
6 Translator’s note: A contract may be enacted with a certain range of choices, and the purchaser can specify, at the time of taking actual possession, which of the choices he wants. For example, a trader says, “I will sell you any of these three garments for $10.” The buyer would then have the right to choose which garment in particular he would like to receive. Ibid., p. 202.
option in the contract, for it is impermissible [for a seller] to disclaim responsibility for hidden defects.

**The Pillars of Ijārah and Its Two Types**

The essential elements (*arkān*) of both types of *ijārah*, particularized (*mu’ayyanah*) and forward *ijārah*, are similar. According to the majority of jurists, these essential elements are:

- The *ṣīghah* (statements of offer and acceptance). It concludes with any wording that signifies the transfer of benefits for an exchange of a price thereof. *Ijārah* can also be valid without the utterance of statements of offer and acceptance through *mu’āṭāh* (simple exchange of an item for payment without any accompanying statements).
- However, differences in wording have implications, for those who uphold the validity of forward *ijārah*, regarding whether or not it is necessary to pay the rent up-front. [Some say that it is when] when the word *salam* or related terms is used [while it is not when] the lessor undertakes the responsibility of providing a generic benefit of stipulated specifications (i.e., by using the word *ijārah* or related terms).
- The subject matter (the benefit or usufruct and the rental payment).
- The contracting parties (the lessor and lessee). The conditions pertaining to them are well known, i.e., maturity and legal competence to enter into contracts.
Classifications of Ijārah

There are a number of ways to classify ijārah, according to variations in contract wording or characteristics or conditions attached to either the rental or the payment. Of all that, we are only interested in two classifications.

Classifications of Ijārah According to Subject Matter

Ijārah contracts are divided, according to their subject matter, into: **leases of things (ijārat al-ashyā’)**, such as buildings, animals and various types of equipment; and **leases of persons (ijārat al-ashkhāṣ)**, according to the traditional wording. What is meant by that is human services, which is why modern terms for it include ‘labour leasing’ or ‘leasing of services’; for example, construction, tailoring, teaching, transport, medical services, and employment in companies and ministries, etc.

As such, examples cited for ijārah vary; for example, renting a house is an example of leasing a thing (ijārat al-ashyā’) and any service provided by a human being is a lease of a person (ijārat al-ashkhāṣ) or of labour.⁷ The ijārah of things is simply the renting of their usufruct; for instance houses, means of communication, heavy equipment and other things needed by individuals and organizations. The term ‘ijārah of things’ is really an abbreviation because leases are actually contracts for benefits, but the benefits are only accessible by the transfer of the things from which those benefits come.

With regard to the rental of things, one can conceptualize a lease to be for either a specific item or for a generic item that the lessor undertakes to provide in accord with stipulated specifications.

Ijārah can also be divided into operational leasing and ijārah that ends with ownership of the leased property. Both of these types of ijārah can be either particularized or by means of forward ijārah.

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⁷ *Sharḥ Muntahā al-Irādāt* (2:351)
Classification of *Ijārah* According to the Utility Provider

The previous division can be further subdivided. When leasing a service the *ijārah* is divided into what is known as general or collective hiring⁸ and what is known as special or private hiring (or the hiring of single utility provider [*ajīr wāḥid*]).

Note that forward *ijārah* is applicable only for general or collective hiring because a private employee is of necessity a particular individual; thus, the service he provides cannot by definition be a generic service for which a contractor assumes responsibility.

Other Classifications and Their Different Considerations

*Ijārah* is divided, in terms of subject matter, into particularized *ijārah*, which is effected on a physical subject matter that is existent and owned⁹ by the lessor. However, the subject matter of forward *ijārah* either doesn’t exist at all or may exist but is not owned by the lessor at the time the contract is confirmed; despite that, it will be determined and specified for a future time when it will be possible for the lessor to deliver it.

*Ijārah* is likewise divided into that which is executed immediately or that whose execution is assigned to a future date. A forward *ijārah* contract would, of necessity, be of this latter type because its subject matter is either non-existent or not owned by the lessor at the time the contract is confirmed; therefore, its execution needs to be assigned to a future period in which the lessor should be able to take possession of the locus of the leased benefit, which was not specified at the time the contract was entered into.

Assigning the *ijārah* to a future time in which the lease can be executed is entirely different from subjecting the lease to suspension. In the first case the contract becomes operative when it is signed, but its effect is delayed. However, when a contract is suspended it does not become operative until the stipulated condition comes into existence.

With regard to a particularized (*mu‘ayyanah*) *ijārah* lease, it is not permissible to contract for something that the lessor does not possess at the time. Someone who does so is termed as *mukārī muflis* (a bankrupt lessor). He deserves to be interdicted from entering into contracts,

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⁸ Al-BahūtĪ says that the hiree in this case is called *ajīr mushtarāk* (common hiree) because he accepts work from the generality of the people so they share his services 2:365. See al-Nawawī, *al-Rawdah*, 5:288; and Ibn Qudāmah, *al-Mughnī*, 5:360; and Shaikh Almād Ibrāhīm, *al-Mu‘āmalāt al-Shar‘īyyah*, p. 161.

⁹ The item is physically seen at the time of the contract.
and the public should be warned about dealing with him; however, the interdiction of his dealings is not on a par with the interdiction placed on a person who is bankrupt in the original sense.¹⁰

¹⁰ Restrictions will be placed on a bankrupt lessor because he will definitely destroy people’s wealth (al-Mawsū‘ah al-Fiqhiyyah, 17:86).
The Contract’s Subject Matter (Usufruct/Benefits and Compensation)

The Benefit

The lease or *ijārah* contract is concluded on benefits, not on objects. Ownership of benefits does not necessitate ownership of the property itself, while ownership of property does necessitate ownership of its benefits. That is what distinguishes an *ijārah* contract for things from a sales contract. With regard to the leasing of persons, the benefit is their labour and services because these persons are fully free human beings and not slaves; therefore, they cannot be owned.

_Ijārah of Things Does Not Confer the Right to Consume or Deplete_

It is required in leasing that receiving the benefit does not involve the consumption of the thing which is its vessel. Therefore, it is not valid to rent a candle for lighting, or soap for washing, or food to eat, because the benefits cannot be enjoyed without destroying the things themselves. However, the majority of the scholars allow leases to be contracted for a primary benefit that would implicitly involve the consumption of a thing, when the widespread custom of a people regards the consumed substance to be ancillary to the leased object; for instance, using water in leased houses or gardens; this is consumed in the process of utilizing the property. Another example is the thread or dye consumed when someone is hired to sew or dye clothes. That is because these substances are considered ancillary to the benefit. This would also apply to the food and other substances a lessee consumes when forward *ijārah* is used to finance travelling.

The Conditions of Usufruct

**First:** The benefit should be determined at the time the contract is confirmed to an extent that precludes disputes.

This entails knowledge of its locus, amount and specifications. It is achieved by seeing or by a thorough description that takes the place of seeing. The lease is binding when there is no difference between what is provided and the stipulated specifications. However, if it differs from the specifications, the lessee’s option to annul will come into effect. A benefit is
determined by [stipulation of] the task or its duration, or both, according to the majority of scholars.

**Second:** the benefit must have a value recognized by the Sharī‘ah.

That means the benefit should be legal; thus, *ijārah* of forbidden benefits, such as hiring someone to mourn for a dead person by wailing or other prohibited acts, is not allowed. Such contracts are invalid, and no compensation is due for them.  

**Third:** the ability to utilize the benefit

It is incorrect to lease usurped property except from the usurper himself. Likewise, it is incorrect to lease out a missing car because doing so is *gharar* (deception), which is prohibited.

**Fourth:** leasing out an undivided (*mushā‘*) asset

It is permissible for one co-partner to lease out undivided property to another because the ability to deliver such property and its subsequent utilization is practically possible in this given situation. As for leasing undivided property to a third party other than a co-partner, it is also permissible, according to the Shāfi‘ī School and the two companions of Abū Ḥanīfah.

Other scholars, however, hold that it is impermissible to rent out undivided property because the objective of leasing property is to fully utilize its benefits, which is not possible with undivided property. This is the opinion of Abū Ḥanīfah and the Ḥanbalīs.

**Conditions of the Benefit in a Forward Ijārah Contract**

The fulfillment of the characteristics required in a *salam* contract is also a condition for the validity of a forward *ijārah* contract because different purposes require different specifications. If a description is not sufficiently rigorous it will lead to later disputes. If the

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12 Translator’s note: for example, joint ownership of a piece of land or a house when no particular part of the property belongs to a particular partner; rather, they all share in ownership of the entire property in proportion to the capital contributed, for instance.
characteristics required in a salam contract are thoroughly outlined in a forward ijārah contract it eliminates ambiguity and potential future conflict. This requirement fulfills the same purpose as the requirement in particularized leasing that the leased item be known, which is achieved by any means that distinguishes it [from other things], even by pointing at it. With regard to forward ijārah, a complete description of the benefit is the substitute.

1. The conditions of valid sales should be fulfilled in the sale of the utility or benefit. (This is a condition common to sales in general.)
2. The benefit should be something for which it is possible to undertake responsibility for supplying in a generic sense. Forward ijārah is not applicable to real estate because land is not fungible; however, it is applicable to buildings.
3. The object described must have utility. This is also a common condition. It is because the existence of the utility is what justifies entitlement to compensation.
4. There should be no contractual link between the contractor’s agreement with the service provider and his agreement with the client of the service in forward ijārah.
5. It is impermissible for the renter in a forward ijārah contract to sublease a rented benefit until the initial lessor has taken full possession of the usufruct and has transferred it to the renter, such that the latter becomes specifically the owner of the benefit and has the ability to utilize it. It is only at that point that he can sublease it.

Having said this, there are two conditions which cannot be imagined to apply to a forward ijārah contract. They are among the conditions specific to particularized ijārah contracts. They are:

• First, the lessor’s ability to deliver the specific thing being leased. This condition is not applicable to forward ijārah since it is a mere description yet to materialize. Forward ijārah is not contracted for a specific source of benefit about which there is apprehension that the lessor will be unable to deliver it.
• Ownership of the benefit at the time the ijārah contract is concluded. This is achieved by becoming the owner of the object to be leased or leasing it from its owner in order to sublease it. However, this condition is not relevant to a forward ijārah contract because it is perfectly valid for the described subject matter to be non-existent at the time the contract is concluded. The substitute for the condition of possession is the

Translator’s note: being of such nature or kind as to be freely exchangeable or replaceable, in whole or in part, for another of like nature or kind. See: http://dictionary.reference.com
confirmed obligation on the lessor to make the subject matter available at the agreed time.  

**Determination of Usufruct in Forward and Particularized Ijārah Contracts**

There are two ways to determine usufruct:

1. to determine it by a fixed, known duration, e.g. a month, a year, etc. A lessor can say “I hereby lease you a car with such-and-such specifications (describing it thoroughly) for such-and-such a period.”

2. to determine it by a specified task; for example, to carry something on a vehicle of such-and-such specifications to such-and-such a place. There is a difference in opinion regarding the permissibility of combining both a specified period and a specified task together.

Scholars have mentioned that both these means are applicable to forward as well as particularized *ijārah* contracts.

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15 Examples of these conditions can be cited in the Shāfi‘ī School: (Mughnī al-Muštājī, 2:406; Sharḥ al-Rawḍah, 2:405) and in the Ḥanbalī school: (Matālib Uli al-Nuhā, 2:580; Sharḥ Muntahā al-İrādāt, 2:361).


Secondly: Compensation

Conditions of the Rental Fee\textsuperscript{18}

The rental fee or wage is what the lessee is obliged to provide as compensation for the benefit utilized. All that is suitable as payment in a sale contract is equally suitable to be a rental fee in an \textit{ijārah} contract. Therefore, it is also required that the rental fee be known and duly specified. If it is what can be established as liability, such as \textit{dirhams}, \textit{dīnārs} or what is sold by volume, by weight or by amount, it should be made known by specifically mentioning its genus, type, characteristics and quantity. Excessive indeterminacy leads to disputes regarding the payment, which makes the contract void. However, if the renter has already utilized the benefit, the rental fee is the going market rate for a comparable service.\textsuperscript{19} It is permissible for payment to be by some part of what the labour produces:

If the payment is some portion of undivided property that results from the labour of the worker, it can be compared with \textit{muḍārabah}\textsuperscript{20} or \textit{musāqāh};\textsuperscript{21} therefore, it is permissible to rent an animal and appoint half of what is earned by to be its rental fee, or to lease a car for half its proceed or lease a piece of land for half its produce. This is the Ḥanbalī view, while the Ḥanafīs disagree.

The Mālikīs permit leasing of a piece of land in exchange for a portion of its proceeds if the fee can be quantified, say half the gleanings of an olive orchard. They consider it to be a type of \textit{juʿālah},\textsuperscript{22} a more lenient contractual form than \textit{ijārah}.\textsuperscript{23}

\textsuperscript{18} See the research presented by Dr. Maḥmūd ʿAlī Ḥasan Muṣliḥ on \textit{ijārah}.

\textsuperscript{19} Ḥāshiyat Ibn Ṭābilīn, 6:51; al-Ikhtiyār, 2:522; Kash-shīf al-Qinā’, 3:552; al-Muḥadh-dhab, 1:399.

\textsuperscript{20} A form of partnership between a party who supplies only capital and another party who supplies only entrepreneurial skills and experience. The silent partner with capital gives it to the entrepreneur to use in trade. The two parties share in any profits at a proportion stipulated in the contract. Any losses are borne by the provider of capital.

\textsuperscript{21} Translator’s note: \textit{Musāqāh} is an agricultural form of \textit{muḍārabah}: an owner of trees contracts with a worker to perform the labour required to produce a crop from the trees in exchange for a share of the fruit. \textit{Muzāra’aḥ} is a similar agreement for the cultivation of sown crops.

\textsuperscript{22} Translator’s note: \textit{Juʿālah} is a contract to perform a particular action for a particular compensation. In that, it is a type of \textit{ijārah}, but it is non-binding, so there are fewer conditions for its validity. For instance, someone can announce, “Whoever finds my lost camel will get such-and-such a prize.” This task could take an hour or a month, so its indeterminate nature would make it invalid as a binding contract. Also—and this is why it was cited here—in \textit{juʿālah} the hirer can stipulate, “Whoever sews me a garment like this in one day will get such-and-such.” If the worker completes it in one day, he is entitled to the compensation, but if he takes longer he is not. Both parties in \textit{juʿālah} have the option to cancel before the work starts, but once the work starts the requestor of the work loses that option. See http://www.islam-qa.com/ar/ref/21239.

\textsuperscript{23} Al-Ikhtiyār, 2:60
The Lessor’s Taking Possession of His Rental Fee

The rental fee can be claimed or possessed up-front if that has been stipulated in the contract or if it is the prevailing custom. Similarly the fee can be accelerated even without any preconditions or it can claimed after the contracted benefit has been utilized. Does the lessor become entitled to the rental fee by merely initiating the *ijārah* contract itself or only after the benefit has been utilized?

The Shāfi‘īs and Ḥanbalīs take the view that the rental fee is claimable by merely concluding the *ijārah* contract. The Ḥanafīs, however, favour the view that the rental fee cannot be taken up-front by merely sealing the *ijārah* contract. That is because the lessor does not deserve the fee all at once; rather, he deserves it bit-by-bit in installments concurrent with the renter’s utilization of the benefit. They derive their proof from the Holy Qur’an, 65:6: “If they suckle your infants, pay them for it.” The verse indicates that payment becomes due upon completion of the service, as the command to deliver payment is arranged as a consequence of delivery of the service of breastfeeding.24 Also, payment is in exchange for utilization of the benefit or part of it, so it is not deserved in its entirety until the benefit has been delivered in its entirety.

The Mālikīs stipulate that the rental fee should be paid up-front in forward *ijārah* if usufruct utilization has not begun within three days of sealing the contract. This is so the transaction does not turn into the sale of a debt for a debt, which is prohibited in the Sharī‘ah.

As for the Shāfi‘īs and Ḥanbalīs, they stipulate that if the *ijārah* contract is a forward contract for a service, for instance, the rental fee comes due by entering into the contract. The fee becomes a debt for which the renter becomes liable. However, the payment of the rental fee can only take effect after completion of the work required if the worker accepts jobs from the public, or with the passage of the [agreed-upon] period if the worker works for a single employer.

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Juristic Texts on Forward *Ijārah*

Al-Bahūtī says: “*Ijārah* is of two types. One type is effected on a specific designated asset while the other is for a benefit [assigned to the future] on [the lessor’s] liability.”

Al-Minhājī, in his valuable book, *The Essentials of Contracts and Conditions*, says, “*Ijārah* is of two types:

1. *Ijārah* of a corporeal or tangible asset, such as rental of real estate or of a specific animal [or vehicle] to ride or carry goods, or the renting out of a particular person’s service to sew, etc.

2. *Ijārah* on an assigned liability (forward *ijārah*), such as: rental of a car of certain specifications or guaranteeing to someone the performance of a service like sewing or construction.”

If a person says “I have employed you to do such-and-such,” is the result particularized *ijārah* or the commissioning of a liability? There are two opinions about such a statement. The more obvious of the two is the first opinion. It can be considered as a particularized lease because the hirer has identified the worker he expects to produce the work.

Al-Bahūtī said in another place:

If the *ijārah* is directed toward a person for sewing or construction, commissioning him with a liability, it is not necessary to identify a particular shirt or building.

If it is particularized, then the shirt to be sewn or the building to be built must be determined with regard to its width, height, length, and the tools used to build it.

Similarly, if an employer hires a person to take care of his sheep or something else, he may either hire him to personally take care of his sheep, in which case he wouldn’t mention the tools to be used, or he can hire him on a forward-*ijārah* basis to take care of sheep of certain specifications, in which case he would mention the tools needed for the job. Like that, [the lessor] should tailor the

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25 Al-Bahūtī, *Sharḥ Muntahā al-Irādāt*, 2:365. He is one of those who pointed out that little has been said about forward *ijārah*. He states: “He started with the conditions for forward *ijārah* due to the paucity of comments on it...” 2:360.

26 That is, without specifying any person who will sew or build.

27 Al-Minhājī, *Jawāhir al-‘Uqūd wa al-Shurūṭ*, 1:360. This is the only reference work that gave detailed elaboration of forward *ijārah*.
mention in each instance according to its particular circumstances, paying attention to whether it will be particularized or a generic liability.  

Having said this, the Ḥanbalis turned the binary classification of ḥārah (particularized and forward) into a tripartite classification as follows:

Ibn Muflīḥ said in al-Furū’:

Ḥārah is classified into a number of types:

1. Ḥārah of a corporeal asset, which is similar to an item for sale; this is revokable if its future usufruct is impaired at the inception (of the contract) or while part of the period remains.
2. Ḥārah as a liability to provide a generic item meeting certain specifications. For this the specifications of salām must be fulfilled; and should it be usurped or destroyed or should a defect appear in it, a substitute is mandatory. However, if it becomes impossible to replace it thehirer has the option to annul. It automatically dissolves with the passage of [the appointed] time if its period of validity has been fixed.
3. A forward contract for a designated benefit, like tailoring, for which liability is undertaken. [The liability] must be precisely determined so as to eliminate potential conflict.

Ibn Qudāmah also mentioned the same tripartite classification scheme in al-Kāfī. Al-Bahūṭī, too, mentioned it in Sharḥ Muntahā al-Īradāt with further subdivisions that make it clearer. In it, as he mentions, ḥārah can be of a corporeal asset... or of a forward benefit.

This latter ḥārah is of two types:

1. One is a service regarding specific items, such as saying, “I hire you to carry this luggage to such-and-such place with your own vehicle for such-and-such [payment].”
2. The other type is leasing a service by description [on liability]. For example, “I hire you to carry for me such-and-such materials, of such-and-such specifications, to Makkah for such-and-such [payment].”

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Al-Minhāji said:

...[T]he first is an *ijārah* on liability [forward *ijārah*], say: to build or sew or teach reading and writing or to go for Ḥajj [in place of another]. He would write “So-and-so undertakes to sew for so-and-so such-and-such, or to build for him such-and-such, or to teach him such-and-such, or to perform the compulsory Ḥajj and Umrah on behalf of so-and-so, the deceased, starting from such-and-such a place...”\[32\]

Al-Nawawī cautioned that if someone says “I have mandated [liability] or committed you to sew for me a garment, of such-and-such specification...and you should sew it yourself,” the contract is not valid because of the element of *gharar* imbedded in it. It is similar to a *salam* contract for a specific item.\[33\]

**The Hirer Takes the Exclusive Right [to the Benefit] in Forward *Ijārah***

Imām al-Nawawī explained that even though the benefit in a forward *ijārah* contract is not identified with a particular source and the contract is not subject to dissolution should [the source of] the benefit be destroyed, the hirer, after receiving what conforms to his specifications, shall be accorded the exclusive right to it:\[34\]

If the lease is for a riding animal [car] by forward *ijārah*, and the hirer receives it, but it was found defective, the hirer shall have no option to rescind the contract; rather the lessor shall replace it. Moreover, although the forward *ijārah* contract for a riding animal [car] cannot be abrogated by its destruction or impairment, the hirer does gain by it exclusive right to the usufruct; therefore, he has the right to then sublet it.

If the lessor decides to replace the asset, does he have the legal right to do so without permission from the hirer? There are two opinions within the madhhab about this. The most authentic is that of the majority [of our scholars], who prohibit the lessor from replacing the leased asset without permission from the hirer because of [its infringement of] the hirer’s right.

The other opinion was put forward by Abū Muḥammad and favoured by al-Ghazālī: if the lessor uses words like “I lease a riding animal [car] of such-and-such specifications to you,” it is impermissible for the lessor to replace it, but if he

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\[33\] Ibid 1:260. He restricted real estate leasing to particularized *ijārah*.

\[34\] Al-Nawawī, Rawḍat al-Ṭālībīn, 5:223. We have added the modern equivalent for ‘animal’ in the original text (i.e., car).
phrases it, “I commit myself to providing you a ride on a riding animal [car] of such-and-such specifications,” then substitution is permissible.35

The Effect upon the Contract of Specifying the Institutional Service Provider: Is it Still Forward Ijārah?

It is obvious that the way financial institutions apply forward ijārah with regard to services is to, without fail, specify the entity with which it has contracted to actually provide the service, such that the educational institution, hospital or airline is mentioned. The specification of the institution, however, differs from the specification of the particular instructor or doctor, etc. It is obligatory not to specify the latter. However, the question remains: Does the specification of the institution alter the Sharī‘ah classification of the lease from forward ijārah to particularized ijārah?

The Sharī‘ah Supervisory Board for Abu Dhabi Islamic Bank conducted research on this issue and concluded, in Resolution No. (8/3/2006-1), that the leasing of services such as education, medical treatment, transportation, etc. is all regarded as forward ijārah if the specification is limited to a designation of the legal entity that will, organizationally, provide the services, as long as there is no specification of the particular individuals who will actually be providing the service.

The determining consideration for shifting the nature of a contract from forward ijārah to particularized ijārah is the specification of the individual who will actually provide the service. If the individual is specified, then it is particularized ijārah; but if the individual is not designated it is forward ijārah. The predominant practice of the banking business is to not specify the individual who will actually provide the service.

Ibn Qudāmah mentioned in al-Mughnī:

If the ijārah contract is for an employee [of the contractor] for a fixed period or otherwise, and if the employee then falls sick, no one else can substitute for him because the ijārah contract was effected for his labour in particular, not for a

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35 The lessee’s exclusive right to the benefit, after taking over the forward ijārah asset, gives rise to some ambiguity in that no difference [was recognized] between [forward ijārah] and particularized ijārah, despite the existence of a clear difference between them. Particularized ijārah confers upon the lessee the exclusive right to the benefit as soon as the contract has been sealed. Hence, it is impermissible for the lessor to replace such asset except with the agreement of the lessee, which would make it essentially a swap of the specific benefit for the new benefit. Forward ijārah, however, does not confer upon the lessee the exclusive right to the benefit by virtue of the contract. The right is only established by taking over the asset.
generic liability; the labour of another was not contracted for. The contract was only drawn up for a specific [worker]. This example is similar to a situation in which a person buys a specific item; it is impermissible for [the seller] to give him something else or make a substitution for it. On the contrary, if the contract was a forward contract assigned to a liability, it is permissible to replace a defective [source of benefit], and the contract shall not become void should [the source of benefit] be destroyed after its receipt. The sale of a specific item is entirely different, as is the ijārah contract [for a specific item].

It does not matter if the [contractual] service provider is a legal entity that is not capable of benefiting from such services. That is because it is not required for the validity of possession of a service that the entity which takes possession of it should utilize it itself, as long as it has been given the permission to possess it on behalf of another (by subleasing). In this case that other is the bank’s customer.

**Juristic Texts on Spot or Deferred Rental Fee in Forward Ijārah**

The Shāfi‘īs and Ḥanbalīs have differentiated between a forward ijārah contract worded like a salam contract; say, for example: “I give you this money on a salam basis to rent a house of such-and-such specifications” or “...to hire the service of a bricklayer of such-and-such qualities to build a wall.” If the lessor accepts the offer, the rental fee must be given up-front in the contract session in order to avoid the sale of a debt for debt.

If, however, a forward ijārah contract does not use the terms salam or salaf; say, for example: “I commit him to an obligation to do such-and-such,” in this condition, immediate payment of the rental fee is not compulsory. They took the Sharī‘ah criterion into consideration here and did not make advance payment a condition for forward ijārah.

It is worth mentioning here that some Shāfi‘ī reference works state without qualification that it is compulsory to pay the rental fee for a forward ijārah contract on the spot. It seems that

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36 Al-Mughnī with al-Sharḥ al-Kabīr, 6:34. Some modifications have been made to the examples by substituting a contractor for a slave.

37 Sharḥ Muntahā al-Irādāt, 2:360; al-Nawawī, Rawḍat al-Tālibīn, 5:613, Jawāhir al-‘Uqūd, 2:321. The latter said that in the event of the execution of ijārah contract, the rental fee can be paid immediately or deferred; 1:277. Ibn Qudāmah also made reference to the two opinions in al-Kāfi, 2:321.

38 Among the scholars who support this opinion is Qāḍī Zakariyyā in his book Asna al-Maṣālik, 2:406. He said in it, “It is indeed a salam contract for usufruct.” Also among those who referred to this opinion is al-Minhājī 1:261, 293, 277; “And it the rule of the capital in a salam contract.” Al-Khatīb al-Shirbīnī in Mughnī al-Muḥtār, 2:406.
they were referring to the basic rule and not stipulating an absolute condition [covering all permutations of the contract].

The following are some samples of Shāfi‘ī and Ḥanbalī declarations (regarding advance payment in forward *ijārah* contracts). Nawawī said in *al-Rawḍah*:

As for the *ijārah* which applies to a liability, it is impermissible in it to delay payment of the rental fee or to make a substitution for it. It is also impermissible to transfer responsibility for its payment to a third party or to a source of expected income. Nor is it permissible to waive it. Rather, it is mandatory to deliver it during the contract session just like the mandatory submission of the capital in a typical *salam* contract; because the [forward *ijārah* contract] is simply a *salam* of usufruct. If the rental payment is visible [at the contract session] but its quantity is unknown, there are two opinions, just as for the capital in a standard *salam* contract.

This is if the forward *ijārah* contract has been sealed with and worded like a typical *salam* contract, say: “I give you this dīnār for an animal to transport me to such-and-such a place.” If, however, the contract is worded like a typical rental contract, such as, “I hereby rent from you an animal of such-and-such specifications to carry me to such-and-such a place,” there are two opinions in the *madhhab* about this. The difference is based on whether the preponderant consideration should be given to the wording or the meaning. The most correct opinion, according to the Iraqi (jurists), Abū ‘Alī, and al-Baghwī, is that it will be treated like a *salam* contract. Others, however, favoured the opposite opinion.39

Ruḥaibānī, in his book *Maṭālib Ulū al-Nuhā*, said:

If *ijārah* is contracted on a forward basis, (and is worded like a *salam* contract), say: “I am giving you this dīnār in exchange for the services of a servant of such-and-such specifications,” and the lessor accepts, (payment is to be made at the time and place) in which the contract was confirmed so that this *ijārah* does not lead to trading one debt for another. However, deferring the utility to a fixed time in the future is allowed.

However, if the contract was enacted with the word *ijārah*, the service can be made use of before [the lessor] takes possession [of the payment].40

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39 Al-Nawawī, *Rawdat al-Ṭālibīn*, 5:613
Differences between Particularized and Forward Ijārah and between Forward Ijārah and Salam

Basically, there is no difference between a forward and a particularized ijārah contract. To this end, al-Minhājī cited an example of a person who rents an animal or a car to ride to a particular destination; he receives the car accordingly, and the period in which it would be possible to reach the destination elapses; therefore, full payment of the rental fee falls due, whether [the lessee] got the expected utility from the car or not. In this case it makes no difference whether the contract was for forward ijārah or particularized ijārah.\textsuperscript{41}

Al-Minhājī went on to cite another example that illustrates the conflicting considerations of treating the two contracts similarly, based upon the essential similarities, or differently. He said,

Is it permissible to stipulate the option to annul, good for three days, in an ijārah contract? Abū Ḥanīfah, Aḥmad [ibn Ḥanbal] and Mālik said it is permissible, whether the contract is particularized or forward ijārah. Al-Shāfiʿī, with regard to particularized ijārah, had one opinion, that it is not permissible. As for forward ijārah, he expressed two opinions about that.\textsuperscript{42} Al-Shīrāzī, in al-Muhadh-dhab, expressly ruled out the option to annul a forward ijārah contract.\textsuperscript{43}

A Summary of the Differences between Forward and Particularized Ijārah Contracts

1. A forward ijārah contract cannot be revoked in the event the source of the utility is destroyed. The lessor is mandated to provide an alternative to the destroyed utility source, even at the inception of the contract. The lessor is obligated to provide the utility source at the appointed time and cannot offer the excuse that the asset he intended to provide was destroyed. However, in particularized ijārah the contract dissolves, whether the asset is destroyed before or after the lessee takes possession of it.

2. If what has been intended for carriage or tailoring is destroyed along the way, the lessee has a right for substitution. This feature gives financial institutions, when financing services, the prerogative to change the beneficiary it had named in its

\textsuperscript{41} Jawāhir al-ʿUqūd, 1:266.
\textsuperscript{42} Al-Shīrāzī, al-Muhadh-dhab, 1:400.
\textsuperscript{43} Jawāhir al-ʿUqūd, 1:272.
agreement with the actual service provider, should the client decide to renege or forgo
the service.

3. There is no possibility of an option to annul due to a defect in [the asset for] a forward
İjārah contract because the lessor is required to replace the defective object. This is
different from particularized İjārah, in which the lessee has the confirmed right to
annul the contract in case the asset is defective. In fact, it is impermissible [for the
lessor] to repudiate responsibility for defects in any İjārah contract.

4. When the service in a forward İjārah contract is transport of an object, the cost of
packaging the item shall be borne by the lessee, as opposed to particularized İjārah,
for which the packaging cost shall be borne by the lessor.⁴⁴

5. The provision of related complementary services to the usufruct. For example, if the
service is transportation of a person, the lessor must provide the necessary help to
facilitate embarking and disembarking.

6. There is no need for detailed explanation after mentioning the type of utility if such
details make no difference to the utility that is the subject matter of the contract.
Scholars have exemplified this feature with mention of the [details of the] cloth when
renting the service of a tailor or the building for which repairs are sought. In these
examples it is sufficient to specify the type of repairs or tailoring required from the
hired person.

7. To start utilizing the benefits immediately is not allowed in a typical forward İjārah
contract; rather this usufruct will normally be stipulated for a time in the future. On the
contrary, in particularized İjārah utilization of the usufruct may be immediate or
stipulated for a time in the future. This is the view of schools of thoughts other than
the Shāfiʿīs, who prohibit assignment of [a particularized] İjārah contract to a future
date.⁴⁵

⁴⁴ Al-Nawawī, al-Rawdah, 5:220
The Difference Between Forward Ijārah and Salam Regarding Spot or Deferred Payment of the Rental Fee

A forward ījārah contract is similar to a salam contract in that forward ījārah is contracted for possession of a specified future benefit established as a liability of the lessor while salam is contracted for sale of an item whose delivery is the liability of the seller.

However, forward ījārah differs from salam in a key point: in forward ījārah the rental fee is not required up-front as it is in a salam contract, according to the weightiest opinion among those who consider forward ījārah lawful. The reason for this is that the ījārah contract occurs at a future time, and the fee is not deserved until after the lessee has utilized the usufruct contracted upon in the contract. According to how they described it, the lessor acquires the right to the fee in a way similar to a shepherd’s acquisition of the right to payment. Therefore, as the lessee utilizes a portion of the leased asset at a particular time, the corresponding portion of the fee becomes due to the lessor. This characteristic is no different for forward ījārah than it is for particularized ījārah. Hence, in both forms of ījārah it is permissible to delay the rental fee. This is unlike the prohibition of delayed delivery by both sides in a sale contract, which is warranted because a sale contract occurs immediately and does not accept assignment to the future. Therefore, it becomes mandatory that at least one of the two contract parties benefit immediately from the exchanges of countervalues in a sale. The seller in a salam contract enjoys the advance payment, while the buyer in a delayed-payment sale enjoys the immediate possession of the sold item. However, if there is a delayed delivery by both sides, neither of the two parties enjoys any immediate benefit.
Practical Application of Forward *Ijārah* in the Provision of Services

*Ijārah* of services is the provision of benefits by certain organizations, individuals and their assistants. These benefits are associated with persons who possess expertise and skills that enable them to provide the desired services, whether directly or indirectly. Institutions acquire these benefits for an immediate payment; then they make them available to those in need of them in exchange for one deferred payment or payment by installments.

The most suitable format for this activity of making benefits available [to others] is labour leasing. This form of lease differs from the leasing of things in some of its applications, although both leases are similar in structure and conditions. They converge in being the sale of benefits to users. Thus, it is mandatory that both exchanged items be known to the parties at the time of contract. In other words, they must know both the rental fee to be paid and the service or benefit to be utilized.\(^{46}\)

If the benefits are provided to the general public through numerous contracts, and they are defined in terms of a specific task in exchange for specific renumeration, i.e., the contractor is obligated to provide the required benefit to his counterpart in the contract, while the contractor maintains the right to accept other contracts beside it, this type of *ijārah* contract is known as common *ijārah* (and the worker is known as a general contractor [*ajīr mushtarak*]).

However, if the contract is between the service provider and a particular beneficiary, and the provider undertakes to reserve the stipulated period of time entirely to providing the stipulated service exclusively to that one beneficiary, this is an exclusive, private *ijārah* contract (*ijārah khāṣṣah*). An example of this would be a doctor who limits himself for a particular period to treating one particular patient or family or a particular number of families and to not attend to anyone but the stipulated party. The service provider in this case is called a private employee (*ajīr khāṣṣ*). The rulings governing private service apply to such arrangements:

- No part of the service provider’s time stipulated in the contract shall be diverted to anyone other than his private lessee or lessees.

\(^{46}\) We previously mentioned that the focus of the 28th symposium was the parameters of service leasing and the practical application of forward *ijārah*; hence there is no need to repeat that here. It can be accessed in the book *Buhšt fi Fiqh al-Mu’āmalât*, 9:37-38 especially since it includes examples of contract templates being applied in financing various services based on forward *ijārah*. 
Entitlement to wages is applicable once the potential interest of the applicant has been provided, even if he does not come forward to utilize it in the times specified in the contract. Other provisions and rulings pertaining to private employees apply.

It was pointed out earlier that the forward *ijārah* contract is unsuitable for application in hiring a private employee because the private contractor is specified while the parameters of a forward *ijārah* contract require non-assignment of the subject matter of the contract.
Two Ways in which Financial Institutions Finance Leasing Services

The first alternative is for the financial institution to take possession of the benefit, i.e., the service it intends to finance, for a certain period, and during that period it makes the benefit available to its end-users, after having secured the agreement of the lessor (the person or entity that owns the service) that the contract between them gives it the right to sublease the service to others. The contractors bind themselves to provide the services to the sublessees. The contract in this case is a particularized ījārah contract. However, there is a potential risk involved in this format, for the financial institution, after having acquired the service, may not find end-users for it. To remedy this, the institution may secure promises from end-users beforehand, and the subject of such a promise is well known. Alternatively, the institution may demand an option for itself from the lessor, as was explained earlier.

The second alternative is for the financial institution to provide a service to its clients by means of a forward ījārah contract, which does not require designation of, say, a doctor, but describes the required service (i.e., the acts and process) sufficiently to preclude potential future conflicts.

In a forward ījārah contract it is possible for the lessor (financial institution) to conclude the ījārah contract even before taking possession of the usufruct of the subject matter it wants to lease out. After concluding the ījārah contract with its client, the financial institution will then enter into another contract with the doctors or organization that will provide the service, stipulating that those entities provide the services to itself or to the clients it identifies.

Having said this, there should be no conditional linkage between the first contract involving the client and financial institution and the second contract between the financial institution and the service provider. This so because it is impermissible to dispose of the usufruct in a forward ījārah contract before taking possession of the subject matter, which particularizes it. That would make it—according to the correct practice—a form of parallel leasing.

Greater clarification will now be provided of the various applications of forward ījārah in the service sector as well as in real estate development.
Some Practical Samples of Forward Ijārah Applications

Its Application in Medical Treatment

Forward *ijārah* is applied in financing medical services in cases where a patient is required to pay for the service up-front but he or she does not have the amount or finds it difficult to pay it all at once. In such a case, the Islamic bank ascertains the expected price for the treatment from the hospital in order to know exactly the total cost of the treatment or operation, including the cost of the necessary medicines, since they are considered ancillary to the primary service. Then the bank concludes a contract with the patient.

In such case, it is not necessary that one of the two contracts precede the other because this transaction is not the hiring out of a particularized benefit whose owner can sublease it only after acquiring it; rather, it is a forward *ijārah* contract.

However, it is required there should be no link between the two contracts. In other words, the bank should not sublet to the patient the service the hospital has undertaken liability to provide because it is not permissible to sell something before taking possession of it. Otherwise it is considered parallel *ijārah*. There is, however, no problem in specifying a certain hospital for the treatment; it is only the specific physician who cannot be specified in order for the service to remain as a forward *ijārah*. That is because the consideration is who will actually provide the service, not the organization for which the physician is working.

Its Application in Educaion

Forward *ijārah* contract as applied in financing educational services does not differ in its mechanism from the financing of medical services. That is, educational service is obtained by leasing educational seats for an immediate payment. Students who are in need of such benefits are then financed by leasing to them comparable services for payment paid in installments or at some later date. The service provider is requested to allow the student clients to utilize the aforementioned benefits.
It is worth mentioning that the forward \textit{ijārah} contract has been applied in previous decades, as was cited by al-Minhājī in \textit{Jawāhir al-‘Uqūd}, who mentioned as examples of it the teaching of the Holy Qur’an and calligraphy.\footnote{He said, in 1:295, “The most preferable is to apply forward \textit{ijārah} in construction, tailoring, teaching calligraphy and the Holy Qur’an and Hajj”. [Forward \textit{ijārah}] is more preferable here because the usual situation is that the lessor changes employees and those entrusted with those tasks, so it would not be suitable to assign them for it as it will become particularized \textit{ijārah}.”}

Again, as mentioned previously, it is required that the contracting parties not combine the two contracts together. In addition, the teachers who will actually be providing the educational service should not be specified. However, there is no harm in specifying the university or institute.

\textbf{Its Application in Hajj, Umrah and Tourism}

\textit{Hajj} comprises a package of different services provided by multiple entities, such as transport companies (airlines, ships or cars) as well as hotels or furnished apartments. These services can be financed by the bank’s commitment to provide them by entering into an \textit{ijārah} contract with those wishing to go on a journey for \textit{Hajj} or \textit{Umrah} and obtaining such services from a single entity (such as a tourist agency) or from multiple service providers using forward \textit{ijārah} contracts. These services would include food as an ancillary to the primary service. The same Sharī‘ah parameters mentioned in the section on medical treatment must be observed here. This application is not confined to the example mentioned above but for financing any travels for tourism.

\textbf{Some Practical Applications of Forward \textit{Ijārah} in \textit{Hajj} Services from the Classical \textit{Fiqh} Works}

Al-Minhājī cited some examples of forward \textit{ijārah} contract with an immediate rental fee and a deferred usufruct.

One person hires another, with the latter leasing his service to transport the lessee and his wife on a conveyance of stipulated properties. The lessor will have to describe clearly what he will be carrying for both of them (the lessee and his wife), such as their luggage, needs, accommodation, cloth, furniture, provisions, water, etc. He (the lessor) should accurately determine everything by weight.
Furthermore, [the lessor] should mention the type of tent, cooking utensils, etc. and that he will protect them from the heat and cold, and he should thoroughly describe what a pilgrim will need on the journey. Moreover, he should state, “from this city to that... and then to Makkah, then to ‘Arafāt, then to Minā, then to Makkah again, then to the revered City of the Prophet (peace be upon him) and then to Yanbū’, to ‘Aqabah, then to Cairo, etc.”

He would mention also, say: on a camel provided from [the lessor’s] wealth, traveling in the company of the Royal Caravan from Damascus or the one from Egypt or Aleppo or Kufah or Gaza, both going and coming.

Also, that he would carry for him, on the way back, dates, nuts, rice, leather from Ṭā’if, and other types of customary gifts. For each type he should stipulate a certain weight.

[It is] a valid and legitimate ījārah contract for a payment of such-and-such amount due upon enactment by the aforementioned lessee to the aforementioned lessor in the presence of witnesses. [That is] a Shari‘ah-compliant method of payment receipt. It is permissible to make this payment immediately or to delay it.

The service provider must acknowledge his full awareness, according to the standards of the Shari‘ah, of all that he has contracted to do, such that all ignorance is negated. He should say, “The journey will be embarked upon with the approach of such-and-such, accompanying the aforementioned caravan, traveling in safety.” And he shall complete the process in line with what has been mentioned earlier. 48

**The Application of Forward Ījārah in Transportation (Ticketing)**

Travel service is based upon movement from one place to another by some means of transportation. Currently, the most important of all these means are airlines, which provide this service through a document, i.e., the plane ticket.

Financing of this service is provided through a forward ījārah contract by renting seats on a flight of a given airline; then receiving the tickets. Then the equivalent transportation benefit is rented to the client, who is given the tickets.

[Another permutation of] the funding process is conclusion of an agreement between the bank and a tour operator, whereby the bank will assume ownership of the service from the tour operator in return for an immediate fee payment. Afterwards, the bank will lease such services to a retail travel agency for a deferred payment. Delivery of the tickets to the retail agency...

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48 Al-Minhājī, Jawāhir al-ʿUqūd wa al-Shurūṭ, 1:277. What he mentioned has clear history value, and, of course today, it is being applied to travelling services from the start of the journey and whatever the situation requires from transporting, cargo, residence and its related issues... etc.
will be considered transferal of the usufruct, i.e., providing it access to the utility. Afterwards, the retail travel agency will market that service by a third lease concluded with its client. This method has been applied in previous eras to various means of transportation by hiring a transport contractor on his liability and obligation to provide an unspecified animal.

To make sure that complete transportation service is provided, [scholars] mandated the lessor to help the lessee mount the hired animal. Nowadays, airlines provide boarding corridors from the gates, and stairs to get passengers to their seats on the plane, with additional ancillary services such as meals.

**Its Application in Communications**

Communication service is achieved through the use of technological devices and means that provide the utility in question. Obtaining them enables a person to communicate. Access to the benefits is made available through cards that entitle a lessee to obtain the communication services.

This service can also be funded through the application of forward *ijārah*. The service is rented out by an immediate fee payment. It is then leased to offices and individuals, who in turn lease it out to those who desire the service. This, too, is done using forward *ijārah*, since there is no specification of a particular piece of equipment by which the benefit is provided.

**Its Application in Celebrations**

A client may approach a bank to finance a wedding reception, a graduation or some other legal celebration because he can not obtain such service from its providers except by an up-front payment for the venue, equipment, etc. The bank obtains the service from the providers by making an immediate payment based on a forward *ijārah* contract. This is so because the equipment and appliances by which the services are provided are not designated.

However, there is no harm to designate the company that will provide the service. After that the bank leases a corresponding service to the client for a delayed payment without linking the two contracts and making them contingent on each other.
Some Uses of Forward Ijārah in Real Estate Development

Real Estate Development

In real estate development, the real estate developers sell units or lease them for a long period (usually 99 years). The units will then be sold to citizens or leased out to non-citizens. The sale is structured as *istișnāʿ*, while the lease is structured as forward *ijārah*. The common practice is for the client to make a (non-refundable) cash payment equal to 10% of the total price of the real estate. Then the client approaches the bank to finance the rest.

The bank accordingly will seal what is known as a memorandum of understanding with the real estate developers by which it will arrange the financing process for individual purchasers and define the liabilities of all parties. The real estate will be registered under the name of the bank or in favor of the bank in the developer’s register (as an alternative to a pledge, which is sometimes not possible due to legal difficulties).

Then the real estate will be registered with the relevant authorities under the name of the bank, after the required payment has been settled with the developers and the completed property has been delivered, or under the name of the client after the financing fee has been fully settled; [this varies.] according to varying circumstances. In the practice of Abu Dhabi Islamic bank, the distinction is made according to the following considerations:

**First Condition**

- The client must be a citizen of the UAE and have purchased from the developers and have paid 10% of the total price; under this circumstance, the following occurs:
  a) The bank agrees to enter into the contract of forward *ijārah* along with a promise to transfer ownership to the client against an undifferentiated (*mushāʿ*) share of 90% of the property.
  b) The contract is concluded among three parties; the bank, the client, and the developer. On the basis of this contract the contractual relationship between the client and developer on 90% of the real estate is dissolved. The bank purchases an undifferentiated share of 90% of the property from the developer by the same contract with the same conditions as the boilerplate agreement signed by the developer and the client after removing or changing any clauses that violate Shari‘ah stricture. (The client has to sign an agreement to the dissolution [of his/her agreement with the developer]; next the developer signs its agreement to the dissolution and its consent to
transact with the bank; then the bank must sign its contractual agreement with the developer.)

c) On the delivery date the bank and client will receive the real estate from the developer. The client then takes physical possession of the property so that the rental process can commence and the property be readied for use. The client will then manage it to turn it into a revenue stream (if the citizen is willing to lease it to others). It is preferable that the [government] loan provider make its loan payment first in order to start construction of the building; then the construction of the part financed by the bank will be completed. However, the loan provider usually insists that the part financed by the bank should be built first. In order to get out of this problem, and to give the client freedom in construction, and to make the bank the owner of the entire project so as to provide it a guarantee, the following instrument should be used:

d) A contract of Ḣabīlah is concluded between the bank and the client by which the client is the builder and the bank is the requester of construction. The contract should provide for a payment by the bank due on the date of delivery and the amount of this installment is equal to that of the government loan.

e) The client enters into contractual agreement with a contractor in arrangement with the government body that has contributed the loan, on the condition that the bank approves; (however, the contractual relationship between the client and the contractor should be independent; the bank should not be involved in it).

f) A forward ijārah lease is concluded between the bank (lessor) and the client (lessee), with a provision that a rental payment is due on the date of delivery (corresponding to the delivery date of the Ḣabīlah contract), and the amount shall be equal to that of the government loan.

g) On the delivery date, the bank receives the (housing) project from the client (builder). The bank then delivers it to the client as a tenant so that the lease contract will come into effect.

h) An offset is concluded between the Ḣabīlah payment and the rental payment, which are of the same value and both of which come due on the same date (the date of delivery).

i) The lease period should be at least a year in order to dissipate the suspicion of performing Ḥāmah. However, the lease contract period here is usually 20 years or more.
Note: an *istiṣnā‘* contract cannot be applied here (between the bank and the client) because the client will be a subcontractor (by parallel *istiṣnā‘*). Also, *ijārah* provides the advantage that the rent can be changed, seeing as the lease is for a long term.

Real estate finance, in general, tends to use *ijārah* (with the promise to transfer ownership of the asset) due to the following reasons:

a- to take advantage of changing rent, if funding is provided for long time.

b- when the bank arranges contractually to treat the client as a contractor rather than deal with an independent contractor. This is because many clients wish to have the freedom to supervise and control the project by contracting separately with a building contractor. The condition here is that the lease should be for one year or more in order to dispel the suspicion of performing *‘inah*.

c- If the client has signed a contract with a contractor, and the contractor has initiated the work and completed part of the project, and then the client needs further financing, the bank will be unable [in these circumstances] to contract directly with the contractor, so the contract will be with the client as the primary contractor against a common share in the project. A common share of comparable specifications can than be leased by a forward *ijārah* contract.

**Document Appropriation:**

The financing documents that are drawn up for the procurement of equipment needed for the construction can be arranged as an agreement with the client as the primary contractor, whereby the equipment is leased to him by a forward *ijārah* contract for a year or more.49

All praise is for Allah, by whose favour all good deeds are completed.

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49 These practical applications related to real estate development, are products endorsed by the Shari‘ah Advisory Board of Abu Dhabi Islamic Bank. These documents have been summarized by the Director of the Board, Shaykh Usayd al-Kaylani. May Allah reward him.