

## Transfer of ownership in the lease acquisition

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**Abstract:** To determine the time of ownership transferring in the lease contract acquisition, the nature and type of contract must first be determined. The nature of the contract shall be diagnosed when the ownership is transferred from the lessor to the lessee. Different theories about the nature of the lease acquisition contract are presented in this chapter, each one must be considered in its place, therefore, to achieve the ultimate goal it is necessary to review the law and how the occurrence of a condition of the lease acquisition will feel more than anything else. Others believe that the transmission time of lease contract acquisition should be examined how the condition of the acquisition is inserted in the contract. We must consider that there is a difference between the verb condition and the result condition as the result condition will be enforced and there is no need for the parties will to resolve. In contrast the verb condition is provided with the parties will.

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### Introduction

Nowadays, it is frequently observed that individuals perform transactions with each other, to meet their economic needs. What is more frequently observed than before is the contracts made between individuals but cannot be included within the forms of contracts specified in the civil law. Although, the establishment of nominate contracts by the legislator is done in order to meet people's needs, and such contracts which are referred to as nominate contracts are created by the public, they engender new requirements with the passage of time. It is clear that accurate implementation of such contracts is strongly dependent on accurate legislation and making comprehensive laws related to this category of contracts. The hire – purchase contracts is viewed as one of such contracts like the insurance contract.

Although countries like England possess a customary law, they have embarked on the approval of special, written laws related to hire – purchase in order to organize and regulate such laws. In our country, Iran, this contracts is an under – researched area receiving little attention by legislators. It is imperative that enough care is taken for such

contracts from two angles: first, these newly – fledged contracts are increasingly growing. Of course, this rapid growth will continue in the future. Therefore, making perfect, written laws can reduce the number of court cases which result from this disorganized state. From the other hand, one of the parties invaded in such contracts which frequently appear as credit contracts, is the group of consumers who cannot afford to buy their required goods in cash at one time. They, therefore, resort to signing such contracts in order to meet their needs. If we are to support the consumers' rights, it is necessary to make comprehensive laws regarding these contracts so that consumers' rights support would become a reality.

One of the problematic areas related to this contract is the fact that the time for the transfer of title is not specified in the current hire – purchase contracts. When the time for the transfer of title is not specified in this contract, and the contract is rescinded for some reason or the object of lease, is spoiled, it is not clear whose the object is or who is responsible for the spoilage and waste. When the time for transfer is not specified, it is not clear when the corpus of

property will be transferred to the lessee, and that to whom the create profits belongs in this contract.

The present paper seeks to make a review on various opinions on hire – purchase, and to consider the time for the transfer of title.

### 1. A study of the Hire – purchase Contract (the Lease Contract Acquisition) as a Mortgage Contract

The hire – purchase contract like insurance is a new contract that has appeared due to the current circumstances of the society. In spite of the fact that, it does not have a long record and history, it's legal nature can be inferred and extracted from the rules and circumstances of other contracts.

It is possible to give an appropriate answer to the criticisms made on this contract by scrutinizing the legal resources, or to make amendments to its probable deficiencies. The exact knowledge of the nature of the hire – purchase contract is of great importance in determining its related rules and circumstances since the circumstances of contracts differ from each other. In the case of acceptance, each viewpoint influences the approach to the transfer of title and hire – purchase conditions in a different way. So, if we consider the hire – purchase contract as a contract of lease, it will be viewed as a contract governed by the rules of civil law and other of lease contract. But if we consider it as a contract of sale, the hire – purchase contract will include the specific options of sale contract such as the option in sale of animals, option of meeting, option for delayed payment of price.

#### 1.1. The Viewpoint of Hire – purchase as a Lease Contract

According to the by – law of the No – Usury Banking Operation Law, hire – purchase is a lease contract which stipulates that the lessee gains the ownership of the corpus of property after the end of lease time, and realization of contract conditions.<sup>1</sup> This by – law explicitly considers the hire – purchase contract to be a lease contract which is implementable in the form of a lease contract. Although this is a by – law approved by the cabinet, and it does not enjoy the validity of written laws, it is stringent.

Some believe that this contract is very similar to lease contract, and it is a kind of conditional lease. They maintain that the condition of the transfer of the ownership of the object of release in this contract is an affirmative condition (verb condition) not a result condition<sup>2</sup>.

<sup>1</sup> . Article 57 of the bylaws of the third season of interest-free banking law

<sup>2</sup> .Khavari,Mohamadreza,1990, Banking Law/Bahrami,2012, Signing a Lease Application,/Mousavi Shahri, 2012Study of

According to this viewpoint, hire – purchase contract is viewed as a lease contract in which there is a condition that states that the ownership is transferred after the condition is realized.

#### 1.2. The Viewpoint of Hire – purchase as a Sale Contract

The advocates of this viewpoint believe that in order to specify the nature of contract, it is necessary to identify the final aim and ultimate intention of the contracting parties, and in the study of transfer, this point must be considered. In hire – purchase or Lease Contract Acquisition, the main aim is to sell the commodity but lease is an introduction to it. Therefore, it is the sale that occurs under the contract and lease is just a pretext for the mortgage and installment of the price of the object of sale.

Through Sales by installment in the hire – purchase contract, the property is finally sold to the lessee. Therefore, the installments of the object of lease are not equivalent to the real rent of the object but equivalent to the installments of the price of the object of release plus the interest allocated. In fact, it is a kind of sale by installment which is done by the vendor for the sake of higher guarantee.

The Iranian banking system uses this contract for giving debts currently. The procedure of this contract, and the way it is used escalates the illusion that what has been done is sale by installment rather than simply the contract of lease. That's because the banks use it in conditions and circumstances which are exactly the cases of giving debts for sale by installment. But they avoid using sale by installment and sale contract for some reasons, including higher security and guarantee.

According to the French Law of Credits, hire – purchase is a contract in which lessor puts the object of lease at the disposal of the lessee, and accepts the commitment that the ownership is transferred to the lessee at his wish after the full payment of the installment or end of the contract.

From the other hand, the lessee accepts the commitment that he or she will pay the installments to the lessor at the due times. Considering the French Law of Credit Consumption, one can infer that hire – purchase is different from other similar contracts such as credit sale or credit lease.

In spite of the fact that the existence of this contract is dependent on the sale contract signed by the owner of the object of lease and the lessee, according to the French Law of Credit consumption, it falls under the category of credit contract, and the creditor appears as the vendee in the sale contract but as the lessor in the lease contract. Therefore, it is the

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creditor that transacts with the vendor not the creditor<sup>3</sup>.

### 1.3. The viewpoint of Hire – purchase as a Mixed Contract

According to this viewpoint, hire – purchase contract is to be considered as the collection of two contracts: one is the lease contract which provides the lessee with the right of occupancy, and the other is the sale contract which the ownership of the property transfers to the customer. In fact, this contract is divided into two separate contracts which altogether create the compound noun of hire – purchase. As the English compound noun of hire – purchase indicates the viewpoint of mixed contract points to the two legal transactions of lease and sale.

In the sight of Islamic Jurists, hire – purchase is a mixed contract composed of lease and sale in which the apparent will of the contracting parties indicate a lease contract but it contains a condition as an integral part of the contract which allows the lessee to gain the ownership of the object of lease if (s) he fulfill the obligations. The enforcement of the right of ownership is in fact an acceptance that is related to sale, and after the full payment of all the installments of the object of lease, and the lessee's will, the sale contract is implemented, and the ownership of the property is transferred to the lessee.

Some others believe in the duality of the contract in order to arrive at an accurate conclusion about the nature of this contract. From one hand, they believe that this is a lease contract between the contracting parties having all the effects and consequences of lease, but from the other hand they consider it to be a sale contract in dealing with third parties. This is questionable because how it is possible to analyze a single contract in a different way making different conclusions based on this dichotomy.<sup>4</sup>

This is in contradiction with our legal fundamentals. The contract is either lease or sale each has different effects and consequences. The analysis and interpretation of the nature of a contract must originate in the contract per se not in its relationships with third parties.

Some others believe that this contract is a lease contact as far as the contracting parties are concerned, but it is a sale contract so that the rights of the contracting parties are protected from damage. One of the consequences of this viewpoint is that the lessee is

not recognized as the owner during the contract time but the creditors can detain and arrest the object of lease because they can consider it as a property belonging to the lessee.

In criticizing this viewpoint, one can say that in this case, the rights of the third parties are trespassed, and that the rights of the contracting parties are preferred, because if the lessor becomes a debtor, the lessor can refer to the contract as a contract of sale thus seizing the object of lease. Whereas the contract signed by the two is a contract of lease. Thus, this viewpoint can damage the rights of the third parties.

### 1.4. The viewpoint of Hire – purchase as an Independent Contract

In a general categorization, contracts are divided into nominate and innominate contracts. A nominate contract is a contract for which a certain name can be found in the law, and the conditions and consequences of which are specified by the legislator. In the contrary, any contract which has no special name and format in the law but is valid according to the material 10 of the civil law, and the consequences and effects of which are specified according to the general rules of contracts and the principle of the functionality of will is an innominate contract.

The advocates of the viewpoint of hire – purchase as an independent contract believe that in spite of the fact that each of the above – mentioned viewpoints describe some characteristics of the hire – purchase contract, none of these viewpoint is perfect. That's because each of the above contracts are different from this contract in some circumstances. These differences cause these contracts not to be considered as equal.

This situation makes problematic the inclusion of hire – purchase in the form of any of the nominate contracts. In fact, if this contract had been a part of the traditional, nominate contracts such as sale and lease, there would have been no necessity for giving it a special name. Obviously, the developers of hire – purchase contract have been familiar with contracts such as sale, lease, mortgage, loan or the above – mentioned mixed contracts. If hire – purchase had fallen under the category of traditional, they would have stated their goal of establishing it in the form of one of the above – mentioned contracts.

Speaking so, there is no doubt that the frameworks of lease contract and sale contract cannot include hire – purchase. So, two alternatives are left: One is that hire – purchase is analyzed according to the material 10 of the civil law and this contract is included within it. The other alternative is that hire – purchase is recognized as a new, nominate contract being incorporated in the law. So, its rules and conditions must be approved by law. It should be considered which of the two alternatives is more

<sup>3</sup> .Abdolrasoul Ghadak,2012 Dependence on consumer credit contracts in France, Journal of Legal Studies, Office of International Law,ni 33-34,

<sup>4</sup> . Masoudi, Alireza, Legal nature of the condition of the lease acquisition, Journal of the Bar Association, no 191,p123

correct and more compatible with legal principles. Some experts believe those leases that are accompanied by the condition of transferring the ownership are gradually being incorporated in the law, and that new rules are set for them. Thus, one can claim that hire – purchase is per se a nominate contract having its own legal and customary rules and circumstances.

In criticizing this viewpoint, one can say that as it was mentioned above, the principal rule for specifying the legal nature of any legal act. Consist in considering the mutual will of the contracting parties. Although, hire – purchase has always been viewed in the traditional way, and it has been tried to include it within one of the similar, nominate contracts, it should be noted that this contract has its own characteristics in spite of some similarities with traditional, nominate contracts<sup>5</sup>.

It is a common and frequent contract in the contemporary society. This contract has received a customary adoption in the society. It constitutes a large part of transactions presently regarding the second alternative, it should be noted that this contract has already been recognized in the by – law of No – usury Banking operation. Although, this by – law doesn't enjoy the validity and standing of a law approved by the parliament, it is in effect and stringent.

#### 1.5. Other viewpoints about the Nature of Hire – purchase Contract

One of the ways to study the legal nature of hire – purchase contract is to consider contract of settlement by compromise. According to the material 758 of the civil law, settlement by compromise in transactions doesn't have the conditions and special rules of that transaction although it yields the result of the transaction. Therefore, if the object of compromise is the original, the result will be that very result of sale with no enforcement of the conditions and rules specific to sale. Thus, there won't be possibility of claim by the vendor who cannot take place in this contract. The developers of the civil law have formulated the Articles 752, 758, and 762 in a way that two individual who want to perform a transaction like sale can term their transaction as compromise settlement – without having an intention of tolerance and avoid following all the rules of sale.<sup>6</sup>

<sup>5</sup> . Plynvl and rippers vol 10, p 219, quoting: Katouzian, (1994), pp. 79 Katouzian, civil rights gratuitous transactions, contracts, Directive Possession (certain contracts), Volume 1, Fifth Edition, published Feb. Publishing Company in cooperation with Borna  
<sup>6</sup> . Katouzian,Naser (1989), Partnerships and Peace,P129

The hire – purchase contract can be interpreted as a contract of settlement by compromise in a sense. Based on this view, the contracting parties can specify the conditions of the contract of settlement by compromise through mutual consent. An advantage of this view is that there is no condition of identity and even the equivalence of the both considerations in the contract, and that the contracting parties can formulate a condition otherwise. This condition is correct and valid and does not weaken its validity.

There is also another viewpoint about the similarity of the contract of hire – purchase with the contract of mortgage. Based on this viewpoint, these two contracts are similar in the sense that the lessor the commodity at the request of the lessee. He puts to rent it for accessing his payment, but the transfer of ownership to the lessee is done just after the lessee has paid the last installment. That's why in some lawyers view hires – purchase is as a contract of mortgage which is subject to all the conditions governing the contract of mortgage. In criticizing this view, can say that according to the article 34, the creation of guarantee is not a primary intention and aim in hire – purchase contracts.

In cases where a security or guarantee is made for the object of mortgage, the regulations of this law will govern the contract depending on whether the property is transferable.

In addition, during the enforcement of contracts the rental value that the lessee pays is equivalent to amortization of the object of lease with respect to time of contract, and the payment value with the payment of an installment, the lessee does not gain ownership of the object of lease so that he can become the owner of a part of the object in return for the rental value that he has paid.

Therefore, hire – purchase contract is not basically subject to the regulations of the Article 34.

Some others believe that there is no difference between the contract of hire – purchase and the contract of debt. That's the case because the lessor obtains a commodity by his own capital, then lends it to the lessee, and receives a payment as rental value through the hire – purchase contract. In fact, it is the repayment of the debt plus the interest.

In criticizing this view one can say that hire – purchase does not consist in a contract of debt because from the legal point of view, the lessee gives the payment simply for utilizing the commodity. The difference between purchase in cash and the value of hire- purchase does not lie just in interest. The money the lessee pays is the money paid in order to acquire the commodity through the installment.<sup>7</sup>

<sup>7</sup> . . Katouzian,Naser (2001), Civil rights of certain contracts, ,P434

2. A study of Hire – purchase and the condition made as an integral part of the contract

Irrespective of the legal nature of the contract and its comparison and contract with other contracts in the civil law, some Law researchers consider it with regard to the way that the condition is inserted. They believe that in order to consider the transfer of ownership in the hire – purchase contract, the time for the transfer of ownership is to be considered with respect to the way the condition of ownership (purchase) is inserted.

Maybe, it is inserted in the contract that the lessee will have the right to the ownership of the commodity through the payment of lease installment. In this case, the ownership of the commodity will be different depending on whether the inserted condition is a condition of corollary or an affirmative condition.

The appearance of the contract indicates that the condition is condition of corollary because the lessee will become the owner of the object of lease if he acts upon the conditions inserted in the contract, and that the transfer of ownership will take place automatically on the condition.

Nevertheless, some lawyers hold that the condition of ownership (purchase) is an affirmative condition not a condition of corollary. It means that it is the bank will transfer the ownership of the object of lease to the customer after the end of contract time.

Therefore, the relationship between the customer and the bank is a relation of lease in the hire – purchase lease.<sup>8</sup>

**2. 1. The Transfer of Ownership to the Lessee in the form of the Affirmative(Verb) Condition**

In the case that the condition of the transfer of ownership is in the form of an affirmative condition, the lessee proposes the condition that the transfer of ownership is possible after the end of contract term and the lessee agreed in that provided contract with transferring of ownership. In this contract, the ownership condition will not be performed automatically and the transfer of ownership requires a creative intention other than the initial intention in the contract.

This condition is not automatically after all other conditions are met. If the lessee doesn't perform the condition after its requirements are met, the ownership of the object of lease will not be transferred.<sup>9</sup>

In considering the existing provisions and conditions of the lease acquisition, some lawyers consider it as an affirmative condition. Their reason is

the Article 57 of the No – usury Banking Operation By – law. The text of this Article defines the condition of ownership (purchase) as lease acquisition is a contract in which is proposed the condition that the lessee gains the ownership of the object of lease after the contract term if conditionally he has acted upon the condition inserted in the contract. They believe that if the lessor transfers the ownership of the object of lease to the lessee after the specified time without receiving any additional payment, this is the right that is created for the lessee, and that the lessee can Withdrawal it.<sup>10</sup> Of course, it can be said, this condition can also be interpreted as a result condition, and that the transfer of ownership is done automatically after the end of contract term without any need for the lessor's taking any action.

The lease acquisition contract with the verb condition can be perceived and performed in two ways. The first is the lease acquisition contract with the unilateral promise of sale, and the second is lease acquisition with the bilateral sided promise of sale. If the contract is of the form of a lease contract with the unilateral promise of sale, it is just the lessor that is committed to performing the sale but the lessor is free to accept the ownership of the object of lease or return the object of lease to the lessor. In this type of contract, the lessee has no obligation to purchaser the object of lease at the end of the contract, but it is only the lessor who is obliged to perform a sale transaction, and to transfer the ownership. In contrary, the lessee has no obligation to gain the ownership of the object of lease, and can end the contract as a contract of lease. But if he is willing to gain the ownership of the object of lease, the lessor is committed transferring the ownership to him. The lessee is committed to paying the installment of the rental value and returning the object of lease if he doesn't want to own it, he has no option but paying the installments. This type of lease acquisition or hire – purchase is possible in two forms depending on the way the lessor is committed to transferring the ownership:

a) The contract of lease is just accompanied by one condition as an integral part of the contract. Based on these conditions, the lessor is committed to sell the object of lease and transfers its ownership to the lessee. At the end of the contract, the lessor will be committed to acting upon his obligation at the request of the lessee. Therefore, the transfer ownership will be regarded as a condition as an integral part of the contract, and is simply a commitment to sale on the part of the lessor. It means that the lessor is committed to creating the offer of

<sup>8</sup> . Khavari, Civil rights of certain contracts,

<sup>9</sup> . Provisions and conditions of the lease acquisition, Research Journal of Shahed University

<sup>10</sup> . Provisions and conditions of the lease acquisition, Research Journal of Shahed University

sale after the payment of installments by the lessee. In this sort of contract, the main purpose of the contracting parties consists in a contract of lease in which gaining some profit is intended by the contracting parties. The condition of ownership is termed as a conditional lease here, and the condition of the transfer of ownership of the object of release is referred to as a descriptive condition.<sup>11</sup>

This kind of lease contract is accompanied by a condition of ownership. So, if the time of the contract expired, and the lessee pays all the installments, but the lessor doesn't act upon his obligation it is possible to force the committed to act upon his obligation in conformity with all the general laws and like any condition as an integral part of the contract.

b) The other way of the lessor obligation is that the lessor declares the offer of sale contract as an integral part of the lease contract. This offer will be valid up to the end of hire – purchase (lease acquisition) contract. If the lessee accepts the offer, it will be put in effect. The lessor announces his offer about the transfer of the ownership of the original when the lease contract is signed.

## 2. 2. Transfer of Ownership as a Condition of Corollary (result condition)

According to the Article 236 of the civil laws, the condition of corollary is realized by the condition per se provided that the acquisition of that corollary is not dependent on a certain cause. When the corollary is a legal condition as an integral part of the contract meaning that the contract of condition is automatically put into effect by the occurrence of the contract, this condition is referred to as the condition of corollary.

In hire – purchase (lease acquisition) contracts the object of lease is sometimes is transferred in the form of rent. In that case, the lessee pays the price of the original and the interest together in installment. The ownership of the object of lease will be transferred to the lessee automatically at the end of the contract. In such cases, the lessee will be also committed to keeping the promise. He must agree to own the object of lease based on the contract. In fact, the pre – determined result of the lease is sale and the lessee's ownership of the object of lease. If the lessee avoids this, it will be certainly an instance of breach of promise and the violation of the contract.

During the time of lease both the lessor and the lessee are committed to keeping the promise, and after the expiration of the time of contract, the ownership of the object of lease will be transferred to the lease without any need for an intervention or

action on part of the lessor. It means that the ownership will be transferred after the full payment of installment and the expiration of the contract, and that the contracting parties needn't take any certain measure.

Here or this question may arise that is that what happens in these types of contracts is of an accessory character with the previous obligation being accessory which is formulated as a condition of corollary in the contract the existence of which is dependent on the original contract or the condition appearing in the contract doesn't have the conventional concept of condition, and is viewed as the principal goal and constraint of the contract?

This question virtually manifests its effects in the nature and consequences of the contract. In the first state its nature is stated as a contract of lease in which the condition of ownership (purchase) at the end of the contract is created as a collateral clause of the corollary as an integral part of the contract. The existence this condition is dependent on the original contract. If the void, the contract will not be null and void. In that case, the other contracting party has just the right to the termination of the contract. But in the second supposition, one can say that the common, mutual goal of the contracting parties has been nothing but the transfer of ownership from the very beginning of the contract. So, they have delayed the transfer of ownership to a later time when the lessee pays the last installments. In the following, these two states will be considered.

The ownership condition of corollary as an Accessory obligation; In this state, the condition of corollary is stated in the form of an accessory and collateral obligation as an integral part of the lease contract. So, condition is used in its conventional sense. In this case, the condition is accessory to the original contract. It means that it will be considered as an accessory, and the collateral obligation has a distance from the original contract.

This condition is subject to its own regulations especially where there is a void clause, that is to say, where there is an impossible, useless and illicit condition but the contract is valid (Article 232 of the civil law) unless it is a repugnant or unknown condition in a way that t leads to ignorance about the two consideration.

In this case, both the condition and contract will be null (Article 233 of the civil law). In hire – purchase contracts, it was stated in the affirmative condition that the condition was an accessory obligation as an integral part of the original contract taking its validity from the contract itself. But in the discussion about the condition of corollary, two different states may occur. If the ownership condition is in the form of a collateral clause, the nature of hire

<sup>11</sup> . Shirvani, A comparative study of acquisition and lease rental provided in the form of contracts in Iran, Tehran university

– purchase is not outside the contract of lease, but the lease is constrained by the condition of corollary. It means that the lessor puts the benefits from the object of lease at the disposal of the lessee in return of receiving money or a property for profit – making for a specified period of time.

Whenever the lessee acts upon his obligations regarding the full payment of installments, he will become the owner of the original after the expiration of lease and the payment of the last installment. The contracting parties have pronounced the transfer of ownership from the lessor to the lessee after the payment of the last installment of the rental value. Therefore, there is no need for pronouncing the creative will about the transfer of ownership. The ownership condition of corollary as a principal condition based on this viewpoint, the ownership condition appearing in the contract is the contracting parties' real goal and purpose. Lease is a means to the achievement of this intention. In this state condition loses its conventional sense and gets its proper sense. So, if the condition is void, or its realization is made impossible because of any reason, the mutual agreement will be terminated, and naturally the contract will be void. In this case, one can say that condition means a constraint on the contract. It means that the transfer of ownership is formulated as a constraint in the hire – purchase constraint. When a contract is constrained, the constraint becomes the main theme of the original contract making it constraint and pending. In this case, contrary to the previous case, the condition, independently becomes the original intent for signing the contract and in fact, the contract becomes accessory to it. So, if the condition which is the main intent of the contracting parties is void, its preliminary condition will be void too.

In hire – purchase contracts, it is said that since gaining the ownership of the original is intended from the very beginning of the contract, the condition will be the main character of the contract. If the condition is void, the contract will be null and void too.<sup>12</sup>

In this viewpoint, the mutual intent of the contracting parties is emphasized. It is said that what originally motivates both parties to get involved in the contract is the transfer of the ownership of the object of occupancy, but the transfer of ownership has been postponed to a later time. An additional reason other than the intent of the contracting parties has been put forward in order to prove the current view. So, all the time, a portion of the price is placed exactly against the condition. Thus, in addition to the ordinary rental

value, a sum is added to it so that the ownership of the object of lease would be transferred to the lessee. But in the conventional condition, it is impossible that a portion of the price is placed against the condition.

### Conclusion

The only definition of hire – purchase which exists in the Iranian Law dates back to 1983, November, 26 when the Iranian council of money and credit approved the temporary by – law of hire – purchase. This definition appeared in the first article of the above by – law so, it can be noted that an extreme case of poor, inadequate legislation prevails on hire – purchase. New, adequate legislation is critically necessary in this regard.

One of the problems which appear in the study of this contract consists in the time for the transfer of ownership. It means that it is unclear in this contract when the ownership will be transferred to the lessee.

This issue can be treated in two ways: one is the study of the nature of this contract some lawyers view hires – purchase as a nominate contract in the law by nature. They believe that it is a contract like the contracts of lease, sale, settlement by compromise etc. if the viewpoint of such lawyers is accepted; one must say that the hire – purchase contract follows these contract. It is concluded that all the rules and regulations of the traditional, nominate contracts must govern the hire – purchase contract regarding the transfer of ownership.

Some others have adopted another approach into considering the hire – purchase contract. They believe that it is subject to the Article 10 of the civil law regarding the innominate contracts. They hold that the contract has its own legal entity, and that it must be interpreted according to contracts and their conditions.

It should be noted that although all these approaches are acceptable but each has its own disadvantages. Therefore, some suggestions are made in order to solve the problem suggestion.

Contract of partnership is a combination of three contracts of mandate, bailment, and company. But it has its own nature in the law. The laws and regulations of this contract have been developed by the legislator in a systematic way. The hire – purchase contract can be regarded as a contract like partnership, share cropping and irrigation composed of several contract.

It is composed of contracts of sale and lease. The specific nature of this contract must be taken into consideration. Generally, it should be noted that the best way to specify the time for the transfer of ownership is to make new, specific laws on this contract. The current by – law is inefficient not

<sup>12</sup> .Khodadoostan, Teymour, 1989, Lease acquisition of the rights provided Iran with French law, master's thesis, Emam Sadegh University

sufficing for removing the deficiencies and differences.

From other hands, as its name implies, this by – law is a simply a by – law approved by the cabinet, thus lacking in legal effect so, the best choice is to develop written laws for this contract which possesses legal effect. The suggested law states that the hire – purchase contract is a necessary contract according to which one of the contracting parties puts a property at the disposal of the other, and that its ownership will

be transferred automatically after the last installment being paid.

But as for now, since such a law has not been made yet, it is suggested that this contract be considered as an in nominate contract so that it would be subject to the Article 10 of the civil law. The conditions of the transfer of ownership in this contract can be specified based on the condition (s) of the contract.

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