

Lease Agreement



DARUL IFTAA MAHMUDIYYAH
35 CANDELLA RD. SHERWOOD, DURBAN
T : 031-207-5772 F: 086-692-7275

Table of Contents

Lease Contract.....3

Lease Agreement.....6

Lease Contract

1. Parties: The parties to this agreement are:

The landlord:

Name: _____

Address: _____

City/State/code: _____

Phone: _____

The tenant:

Name: _____

Address: _____

City/State/code: _____

Phone: _____

2. Property: The landlord shall rent to the tenant a property located at:

Address: _____

City/State/code: _____

3. The term of this lease shall be _____ commencing on: ____ (day) of _____ (month) ____ (year) until ____ (day) of _____ (month) ____ (year).

4. The rent shall be R _____ / month payable on the _____ day of every month, in advance.

5. The following appliances and furniture are included in the rental of these premises:

6. Security Deposit: Upon the execution of this Agreement, the tenant shall deposit with the landlord the sum of

_____ Rands (R_____)

Receipt of which is hereby acknowledged by the Landlord, as a security for any damage caused to the premises during the term of the lease.

Such deposit shall be returned upon the termination of this agreement.

7. Notices: All notices shall be in writing and shall be given to the Tenant at the property; All rental payments and all notices, which shall be in writing, shall be given to the Landlord at:

(Name of landlord or landlord's representative) : _____

(Address) _____

(Phone) _____

In case of any emergency, the tenant shall contact the following person:

TENANT AGREES

1. Usage of Property: The tenant shall use the property for residential purposes only. The tenant agrees not to engage in or permit any household member, relative, guest, invitee or agent to engage in any unlawful use of the dwelling unit, common areas or grounds.

2. Damage: The tenant shall use all appliances, fixtures and equipment in a safe manner and only for the purpose for which they are intended for. The tenant shall not litter, destroy, deface, damage or remove any part of the dwelling unit, common areas or grounds. The tenant shall pay amounts due for repairs for property damage, reasonable wear and tear caused by the intentional or negligent conduct of the tenant, members of the tenant's household, relatives, invitees, guests or agents.

3. Alterations: No substantial alterations, additions or improvements shall be made by the tenant in or to the dwelling unit without the permission of the landlord in writing. Such consent shall not be unreasonably withheld, but may include the tenant agreeing to restore the dwelling unit to its prior condition before moving out.

4. Subleasing: The tenant shall not assign this agreement or sublet the dwelling unit without the written consent of the landlord. Such consent shall not be withheld without good reason. This clause shall not prevent the tenant from having guests for reasonably short periods of time.

5. Termination: Upon termination of this agreement, the tenant shall vacate the premises, remove all personal property belonging to him/her and leave the premises as clean as she/he found them (normal wear and tear and damage by unavoidable casualty excepted). The tenant shall be required to return all keys to landlord immediately upon vacating. The tenant agrees that any personal property left in or about the premises after the tenant has

vacated shall be considered abandoned property. The landlord may sell or otherwise dispose of the abandoned property without any liability to the tenant.

LANDLORD AGREES

1. Maintenance of Dwelling: The landlord agrees to maintain the premises in a structurally sound condition.
2. Destruction of Premises: If the premise is rendered uninhabitable due to a fire, flood or any other natural disaster during the term of this agreement, then this agreement shall be thereupon terminated.
3. Notification of Termination: The landlord shall not terminate this lease except for serious or repeated breach of the tenant's obligations hereunder. In cases of non-payment of rent, the landlord may terminate the tenancy by a written _____ day notice to vacate.

CHANGES

No changes or additions to this lease shall be made except by written agreement between the landlord and the tenant. This lease and any attachments represent the entire agreement between the landlord and the tenant.

WHEREFORE, we, the undersigned, agree to this Lease, by signing two copies (one for the Tenant and one for the Landlord).

LANDLORD

TENANT

(Signature)

(Signature)

(Date of signature)

(Date of signature)

Lease Agreement

Al-Ijarah (hiring) contract has a number of terms and conditions in addition to the common terms and conditions that apply to other contracts. Hereunder are the basic terms and condition of *Ijarah*:

1. Leasing is a contract whereby the owner of an item transfers its usufruct to another person for an agreed period of time, at an agreed amount.¹
2. Everything must be clear and specified. There must not be any ambiguity in the contract as this may lead to a misunderstanding in future.
3. The leased item must have a valuable use. Therefore, things having no usufruct at all cannot be leased.²
4. It is necessary for a valid contract of lease that the **leased property remains in the ownership of the lessor**, and only its usufruct is transferred to the lessee. Thus, anything which cannot be used without consuming cannot be leased out. Therefore, the lease cannot be effected in respect of money, eatables, fuel and ammunition etc. Their use is not possible unless they are consumed. If anything of this nature is leased out, it will be deemed to be a loan and the rules concerning the transaction of a loan shall apply. Any rent charged on this invalid lease shall be an interest charged on a loan³.

¹ ومنها أن يكون المعقود عليه وهو المنفعة معلوما علما يمنع المنازعة فإن كان مجهولا جهالة مفضية إلى المنازعة يمنع صحة العقد وإلا فلا .

الفتاوى الهندية - ج 4 - ص 411 - مكتبه رشيدية

² ومنها أن تكون المنفعة مقصودة معتادا استيفاؤها بعقد الإجارة ولا يجري بها التعامل بين الناس فلا يجوز استئجار الأشجار لتجفيف الثياب عليها

الفتاوى الهندية - ج 4 - ص 411 - مكتبه رشيدية

³ ولا تجوز إجارة الدراهم والدنانير ولا تبرهما وكذا تبر النحاس والرصاص ولا استئجار المكيلات والموزونات لأنه لا يمكن الانتفاع بالعين إلا بعد استهلاك أعيانها

الفتاوى الهندية - ج 4 - ص 453 - مكتبه رشيدية

5. In jurisprudence the jurists commonly discuss the *Ahliyyah* (eligibility) to carry out any particular act. There are four pre-requisite for one to be considered eligible: a) Muslim b) Free c) Sane d) Adult

In *Ijarah*, the only condition for eligibility is to be sane. That means an insane person cannot be an employer or an employee. Being a Muslim is not necessary. The employer or the employee may be a non-Muslim. To be a free person is also not necessary. A slave who is granted permission from his master may be an employer or employee. To be an adult is also not necessary. A minor who has reached the age of understanding may be an employer or employee on an issue that is of benefit to him/her. If there is a possibility of a loss, for example, in buying, selling, hiring, etc. then the minor requires the consent of his/her guardian to ratify such a deal.⁴

Lease agreement

1. The hired property must be in a useable condition *i.e.*, the lessee should be able to use the property for it's intended purpose.⁵

⁴أما شرائط الانعقاد فمنها العقل حتى لا تنعقد الإجارة من المجنون والصبي الذي لا يعقل ، وأما البلوغ فليس من شرائط الانعقاد ولا من شرائط النفاذ عندنا حتى إن الصبي العاقل لو آجر ماله أو نفسه فإن كان مأذونا تنفذ ، وإن كان محجورا تقف على إجازة الولي عندنا ، وكذا لو آجر الصبي المحجور نفسه وسلم وعمل وسلم من العمل يستحق الأجر فيكون الأجر له ، وكذا حرية العاقد ليست بشرط لانعقاد الإجارة ولا لنفاذها عندنا فينفذ عقد المملوك إن كان مأذونا ويقف على إجازة المولى إن كان محجورا ، وإسلامه ليس بشرط أصلا فتجوز الإجارة والاستئجار من المسلم والذمي والحري والمستأمن ، وأما خلو العاقد عن الردة إذا كان ذكرا فشرط في قول أبي حنيفة ، وعندهما ليس بشرط .
الفتاوى الهندية - ج 4 - ص 410 - مكتبه رشيدية

⁵ومنها أن لا يكون بالمستأجر عيب في وقت العقد ووقت القبض يخل بالانتفاع به فإن كان لم يلزم العقد ومنها سلامة المستأجر عن حدوث عيب به يخل بالانتفاع فإن حدث به عيب يخل بالانتفاع به لم يبق العقد لازما
الفتاوى الهندية - ج 4 - ص 411 - مكتبه رشيدية

2. The duration of the lease should be mentioned clearly at the time of the contract.⁶
3. The rental amount should be mentioned in the contract.⁷
4. The rental amount can be fixed at different amounts for different phases during the lease period.

EXAMPLE 1:

A leases his house to B for a total period of 5 years. The rent of the first year is fixed at R2000 per month, and the rent of every subsequent year shall be 10% more than the previous one. This lease is VALID.

EXAMPLE 2:

A puts a condition in the agreement that the rent of R2000 per month is fixed for the first year only. The rent for the subsequent years shall be fixed each year at the opinion of the lessor. This lease is VOID, because it is uncertain⁸.

5. Lease of a jointly owned property is permitted and rentals shall be distributed between all the joint owners according to the proportion of their respective shares in the property.⁹

⁶ صح العقد على مدة معلومة أي مدة كانت قصرت المدة كالיום ونحوه أو طالت كالسنين ، كذا في المضمرات
الفتاوى الهندية - ج 4 - ص 415 - مكتبه رشيدية

⁷ ومنها أن تكون الأجرة معلومة
الفتاوى الهندية - ج 4 - ص 411 - مكتبه رشيدية

⁸ لا بأس باستئجار الأرض إلى طويل المدة وقصيرها بعد أن تكون معلومة كما إذا استأجرها عشر سنين أو أكثر هذا إذا كانت
مملوكة
الفتاوى الهندية - ج 4 - ص 439 - مكتبه رشيدية

ولو آجره من رجلين يجوز وكل واحد من المستأجرين يملك منفعة النصف شائعاً⁹
الفتاوى الهندية - ج 4 - ص 448 - مكتبه رشيدية

6. The lessee is not permitted to use the leased property in a manner contrary to what is permitted by the contract. In particular, the lessee is not allowed to cause damage to the leased property.¹⁰
7. The lessee is liable to compensate the lessor for every harm caused due to misuse or negligence on the part of the lessee.¹¹
8. The leased asset shall remain in the risk of the lessor throughout the lease period in the sense that any harm or loss caused by factors beyond the control of the lessee shall be borne by the lessor.¹²
9. The lessor cannot charge any additional amount if the lessee delays payment of the rent.¹³

¹⁰ وَيَجُوزُ اسْتِجَارُ الدَّوَابِّ لِلرُّكُوبِ ، وَالْحَمْلِ فَإِنْ أَطْلَقَ الرُّكُوبَ جَازَ لَهُ أَنْ يُرَكِّبَهَا مَنْ شَاءَ وَكَذَا إِذَا اسْتَأْجَرَ ثَوْبًا لِلْبَسِ وَأَطْلَقَ ، فَإِنْ قَالَ : عَلَى أَنْ يَرَكِّبَهَا فُلَانٌ ، أَوْ يَلْبَسَ الثَّوْبَ فُلَانٌ فَأَرَكَّبَهَا غَيْرُهُ ، أَوْ أَلْبَسَ الثَّوْبَ غَيْرُهُ كَانَ ضَامِنًا إِنْ عَطَبَتْ الدَّابَّةُ ، أَوْ تَلَفَ الثَّوْبُ ، وَكَذَلِكَ كُلُّ مَا يَخْتَلِفُ بِاخْتِلَافِ الْمُسْتَعْمِلِ فَأَمَّا الْعَقَارُ وَمَا لَا يَخْتَلِفُ بِاخْتِلَافِ الْمُسْتَعْمِلِ فَإِذَا شَرَطَ فِيهِ سَاكِنًا فَلَهُ أَنْ يُسْكِنَ غَيْرَهُ ، فَإِنْ سَمَّى قَدْرًا ، أَوْ نَوْعًا يَحْمِلُهُ عَلَى الدَّابَّةِ مِثْلُ أَنْ يَقُولَ خَمْسَةُ أَفْفَرَةٍ حِنْطَةً فَلَهُ أَنْ يَحْمِلَ مَا هُوَ مِثْلُ الْحِنْطَةِ فِي الضَّرْرِ أَوْ أَقَلُّ كَالشَّعِيرِ وَالسَّمْسِمِ
مختصر القدوري - ص 375 - ادارة القرآن و العلوم الاسلامية

¹¹ (و لا يضمن ما هلك في يده او بعمله) كتخريق الثوب من دقه الا اذا تعمد الفساد فيضمن كالمودع فتاوى الشامى - ج 6 - ص 70 - 71 - ايج ام سعيد

¹² (و لا يضمن ما هلك في يده او بعمله) كتخريق الثوب من دقه الا اذا تعمد الفساد فيضمن كالمودع فتاوى الشامى - ج 6 - ص 70 - 71 - ايج ام سعيد

(قَوْلُهُ وَلَا يَضْمَنُ إِخ) اَعْلَمُ أَنَّ الْهَلَكَ إِذَا بَفِعَلَ الْأَجِيرِ أَوْ لَا ، وَالْأَوَّلُ إِذَا بَالْتَعَدَّى أَوْ لَا . وَالثَّانِي إِذَا أَنْ يُمَكِّنَ الْإِحْتِرَازَ عَنْهُ أَوْ لَا ، فَفِي الْأَوَّلِ بِقِسْمِيهِ يَضْمَنُ اتِّفَاعًا . وَفِي ثَانِي الثَّانِي لَا يَضْمَنُ اتِّفَاعًا وَفِي أَوَّلِهِ لَا يَضْمَنُ عِنْدَ الْإِمَامِ مُطْلَقًا وَيَضْمَنُ عِنْدَهُمَا مُطْلَقًا . وَأَفْقَى الْمُتَأَخَّرُونَ بِالصُّلْحِ عَلَى نِصْفِ الْقِيَمَةِ مُطْلَقًا ، وَقِيلَ إِنَّ مُصْلِحًا لَا يَضْمَنُ وَإِنْ غَيَّرَ مُصْلِحٌ ضَمِنَ ، وَإِنْ مَسْتَوْرًا فَالصُّلْحُ أَحَدُ ح وَالْمُرَادُ بِالْإِطْلَاقِ فِي الْمَوْضِعَيْنِ الْمُصْلِحِ وَغَيْرِهِ .
فتاوى الشامى - ج 6 - ص 64 - 65 - ايج ام سعيد

¹³ كل قرض جر نفعاً حرام

10. The lease period shall commence from the date on which the leased asset has been delivered to the lessee, whether the lessee has started using it or not.¹⁴
11. The *Ijarah* contract can be terminated by mutual consent of the two parties.
12. The *Ijarah* contract shall be cancelled by any valid excuse, such as the tenant becoming insolvent and being unable to pay the rent. In such a scenario the contract of lease will be terminated.¹⁵
13. If the lessee contravenes any term of the agreement, the lessor has the right to terminate the lease contract.¹⁶
14. The *Ijarah* contract will end by the death of one of the two parties.¹⁷

فتاوى الشامى - ج 5 - ص 166 - ايچ ايم سعيد
احسن الفتاوى - ج 7 - ص 318 - ايچ ايم سعيد

¹⁴ وكما يجب الأجر باستيفاء المنافع يجب بالتمكن من استيفاء المنافع إذا كانت الإجارة صحيحة حتى إن المستأجر دارا أو حانوتا مدة معلومة ولم يسكن فيها في تلك المدة مع تمكنه من ذلك تجب الأجرة ، كذا في المحيط الفتاوى الهندية - ج 4 - ص 413 - مكتبه رشيديه

¹⁵ وَتَنْفَسِحُ الْإِجَارَةُ بِالْأَعْدَارِ كَمَنْ اسْتَأْجَرَ دُكَّانًا فِي السُّوقِ لِيَتَّجَرَ فِيهِ فَذَهَبَ مَالُهُ وَكَمَنْ آجَرَ دَارًا ، أَوْ دُكَّانًا فَأَفْلَسَ وَلَزِمَتْهُ دُيُونٌ لَا يَقْدِرُ عَلَى قَضَائِهَا إِلَّا مِنْ ثَمَنِ مَا آجَرَهُ فَسَخَّ الْقَاضِي الْعَقْدَ وَبَاعَهَا فِي الدَّيْنِ مختصر القدوري - ص 389 - ادارة القرآن و العلوم الاسلاميه

¹⁶ وحكم أجير الواحد أنه أمين في قولهم جميعا حتى أن ما هلك من عمله لا ضمان عليه فيه إلا إذا خالف فيه والخلاف أن يأمره بعمل فيعمل غيره فيضمن ما تولد منه حينئذ هكذا في شرح الطحاوي .

الفتاوى الهندية - ج 4 - ص 500 - مكتبه رشيديه
فأما إذا أفسد بأن خالف في صفة ما أمر به ذكر أن صاحب الجلد بالخيار إن شاء ترك الخف عليه وضمنه قيمة جلده ، وإن شاء أخذ الخف وأعطاه الأجر فإن ترك الخف عليه وضمنه فلا أجر عليه ، وإن أخذ الخف فإنه يعطيه أجر مثل عمله في خرز الخف غير منعل .

الفتاوى الهندية - ج 4 - ص 519 - مكتبه رشيديه

¹⁷ وَإِذَا مَاتَ أَحَدُ الْمُتَعَاقِدَيْنِ وَقَدْ عَقَّدَ الْإِجَارَةَ لِتَفْسِيهِ انْفُسَخَ الْعَقْدُ

We advise one to put a Mediation/ Arbitration clause such as:

Ay dispute arising from or in connection with this contract shall be finally resolved in accordance with the standard conditions of Mediation/Arbitration of the Darul Iftaa Mahmudiyyah Sherwood, Durban, by an arbitrator appointed by the Darul Iftaa or any other competent Darul Iftaa.

NOTE: The above-mentioned are broad rules regarding a lease agreement. If any individual wishes to add any specific condition, he may do so and attach it to this document. The conditions must not conflict with the integrals of Shariah. As such we advise that the contract be sent to a Mufti or an Alim for revision and verification so that all the conditions come in conformity with the dictates of Shariah.

Live like brothers and Deal like strangers

Remember to reduce all your dealings in writing

مختصر القدوري - ص 388 - ادارة القرآن و العلوم الاسلامية