POLICY VS. DEDUCTION: FINANCE LEASE BETWEEN FORMAL PROPERTY AND ECONOMIC SUBSTANCE

A Thesis Submitted to the
Department of Law

In partial fulfillment of the requirements for
the LL.M. Degree in International and Comparative Law

By
Akram Korany

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The American University in Cairo
School of Global Affairs and Public Policy

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has been approved by

Professor Hani Sayed____________________________________________
Thesis Adviser
Affiliation________________________________________________________
Date ____________________

Professor Amr El Shalakany_________________________________________
Thesis Second Reader
Affiliation_________________________________________________________
Date ____________________

Professor Hatem Soliman___________________________________________
Thesis Third Reader
Affiliation_________________________________________________________
Date ____________________

Professor Hani Sayed_______________________________________________
Department Chair
Date____________________

Nabil Fahmy, Ambassador _______________________________
Dean of GAPP
Date ____________________
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Is finance lease a financial instrument or property contract? This is the question that has been recently debated among the policy makers and practitioners in the Egyptian Leasing market within the discussions about the amendments of the Egyptian Leasing Law. Instead of the formal approach of the recent law, the suggested amendment debatably heads the economic reality of the transaction approach on the basis of it is more adequate to the substance of finance lease. This thesis critically examines the two approaches through representing the recent formal approach of Egyptian law, and the American approach of finance lease as an example of the economic reality of the transaction approach. This thesis argues that both approaches are formalistic in the sense they look to some labels to attach to them rights and liabilities as a matter of logical deduction. Furthermore, this thesis argues that this question is a policy question that its answer will affect the bargaining powers of parties and the architect of jural relationships among the parties of the transaction.
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