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Research Article

UNVEILING ISLAMIC BUSINESS AND INVESTMENT LAW: A COMPARATIVE ANALYSIS

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ABSTRACT

This paper undertakes a comparative analysis of Islamic business and investment law, aiming to unveil the fundamental criteria governing economic activities within Islamic jurisprudence. Islamic law, or Sharia, provides a comprehensive framework for conducting business and investment activities in accordance with Islamic principles and ethics. Through a meticulous examination of key principles such as prohibition of interest (riba), adherence to ethical standards (adab), and promotion of social justice (maqasid al-Sharia), this study elucidates the underlying principles that guide economic transactions in Islamic finance. Drawing upon comparative analysis, the paper contrasts Islamic business and investment law with conventional legal frameworks, highlighting areas of convergence and divergence. By providing insights into the fundamental criteria of Islamic business and investment law in comparison to conventional practices, this study contributes to a deeper understanding of the principles underpinning Islamic finance and its implications for global economic systems.

KEYWORDS

Islamic law, Sharia, business, investment, comparative analysis, riba, adab, maqasid al-Sharia, Islamic finance.

INTRODUCTION

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After shirkah al-'aqd, or joint venture, the Islamic commercial guidelines recommend mudarabah as the second method for financing ventures. In Arabic, the term "mudarabah" refers to a deal in which one party gives the capital of the other party so that they can participate in trade, with the agreement that the profit will be split between the two parties or that the latter will be entitled to a specific share of the profit. In Islamic law texts, the contract of mudarabah is also referred to as qirad, and the terms muqaradah and mu'amalah also refer to this contractual relationship. The Islamic legal concept of mudarabah refers to a contract between two parties in which one party gives up his capital to the other, making the latter the owner, in exchange for an agreed-upon undivided share of the profit subject to certain conditions. Al-Jurjani has succinctly defined mudarabah as a partnership that profits from one

partner's labor and capital. Regardless of the size of the share, which can be agreed upon as a third, a fourth, or a half, jurists agree that the fundamental nature of mudarabah is that it entails one person giving capital to another for trading against a defined share of the profit claimed by the fund manager. Hanbali jurists have expanded the definition of mudarabah to include situations in which one party invests capital while the other provides labor and shares the profit, as well as situations in which both parties provide capital while one party performs labor. Al-Nawawi defines qirad and mudarabah as giving a sum of capital to another person (the fund manager) so that the fund manager can use it in trading and share the profits. When the term "relinquishing" or "sacrifice" is used, it indicates that the contract of qirad is null and void in the context of a usufruct, such as the use of a house—for example, to require the mudarib to rent out one's house for the purpose of dividing the rental income between the two—or on the basis of a debt—regardless of whether the debt is owed by the foreman or Agency cannot be established by mentioning the fund manager's right to a portion of the profits. The essential aspects of this mode, such as its meaning, legality according to Islamic law schools, the conditions that must be met for it to be valid, and some important rules, are examined below in relation to specific areas that are relevant to Islamic financing operations in the present day.

BASIS OF MUDARABAH IN ISLAMIC TEXTS

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The prophetic companions' consensus (ijma) and analogy (qiyas) are the primary foundations of mudarabah's legality. Al-Sharbini states that the premise of the lawfulness of mudarabah is ijma„ and need (hajah). Ibn Qudamah has described in al-Mughni the assertion of Ibn Mundhir that researchers have collectively settled on the admissibility of mudarabah on a fundamental level. The comparison of mudarabah to musaqah serves as the foundation for qiyas because both are indefinite return contracts based on labor and capital. Al-Ramli has additionally expressed the likelihood that lawfulness could be upheld by the way that the Heavenly Prophet had related with endorsement his having exchanged for Khadijah based on the mudarabah that existed before Islam. Ibn Hazm says that the Quraysh were used to investing their money with traders in exchange for a set percentage of the profits, a practice that Islam later upheld. He claims that qirad is solely based on sound ijma, whereas every chapter of fiqh has a known foundation in the Qur'an or Sunnah. It is proven beyond a reasonable doubt that qirad was used by the Holy Prophet (Sal.), and he approved it and was aware of it.

Mudrabah is an exception to the general principles of Shariah that forbid ijarah majhulah, or undefined service contracts, despite being deemed acceptable by all jurists. Al-Kasani claims that the qiyas, or analogical reasoning, dictates that the mudarabah contract should not be accepted because the labor and wages are not specified. Due to the fact that the mudarib is not entitled to any guaranteed compensation for his efforts, wages in particular may even be considered absent. However, he claims that the evidence of the Qur'an, Sunnah, and ijma„ overrides qiyas in this instance. In support of mudarabah, verses from the Qur'an have been cited, such as "and others traverse the earth seeking of the bounty of Allah" and "there is no sin on you that you seek bounty or increase from your lord." These verses indicate general permission for increasing wealth by exerting effort on capital belonging to another. mudarabah is additionally held uncommon on the grounds that it has been perceived despite the association of benefit not went before by obligation in that; The mudarib has the right to a portion of the profits without being held responsible for the capital.

According to reports, a number of prophetic companions, including "Umar," "Uthman," "Ali," "aishah," and "Abdullah ibn Mas'ud" (Rad.), were

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involved in the prophecy. had invested orphaned property through mudarabah without the other companions' objection. An incident involving Umar (Rad.)'s sons Justifying it as a form of qirad (i.e. mudarabah) with the approval of the companions is also cited in support, where the latter had allowed them to keep half of what they had earned by investing public funds that were loaned to them. Since the time of the Holy Prophet (Sal.), men have engaged in this form of investment. to this point, throughout all time periods, without any opposition; This level of unanimous agreement across all eras constitutes trustworthy evidence (hujjah), upon which qiyas has been overruled. A type of qiyas also indicates the mode's permissibility—the mutual need for a contract of this kind between the investor and fund manager. Al-Kasani emphasizes in this context that contracts have only been made legal due to the benefits (ma'alih) they provide to people and their requirements.

Al-Ghazali has cited ijma,, as its legal foundation. He has cited the aforementioned account of the Umar (Rad.) sons, where, at the suggestion of "Abd al-Rahman ibn Auf (Rad)," the latter consented to letting his sons keep half of the profit. that it be considered a qirad. This suggests, according to Al-Ghazali, that the Îahabah were familiar with qirad and had already decided whether or not it was permissible. It is essential to note that al-Ghazali inferred the permissibility of mudarabah from the narration's context rather than from the transaction described therein, which dispels any doubts caused by the fact that the transaction does not fully adhere to the established rules of mudarabah. Al-Mawardi explains that the "Umar (Rad.)" sons' business during this event was not valid or void because it was not of qirad. In order to purify themselves, they had only given up a portion of their profit-seeking to

"Umar, Rad. in light of the circumstances. Al-Mawardi has added two additional interpretations to the story about Umar's sons. One of them is that the sons were allowed to keep the full amount because it was fair wages (ujrah al-mithl) for the work they did in a qirad that was invalid because there was no prior contract. The arrangement was also regarded as a valid qirad due to its general meaning—capital from one party and labor from the two sons—despite the absence of a contract. This means that the parties did not violate the agreement in any way.

Areas of unanimity on mudarabah

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In Bidayah al-Mujtahid, Ibn Rushd provides a concise summary of the areas where there is consensus regarding mudarabah. As per him, there is no distinction among Muslim law specialists with respect to the reasonability of qirad (for example mudarabah), and that it has a place with the practices that existed in the time of obliviousness and were (later) supported by Islam. They are consistent that qirad implies one individual giving money to one more for exchanging against a characterized portion of the benefit guaranteed by the asset director („amil), regardless of its size, which can be settled upon as a third, a fourth or a half. There is unanimity that the passability of qirad is a special case for the preclusion of vague assistance contracts (for example ijarah majhulah), and that the concession in such manner has just been considered the motivation behind giving accommodation to individuals. Although they differ on what constitutes transgression and what does not, jurists agree that the fund manager is not liable for the capital that has been destroyed when he is not liable. Although they differ on the conditions that result in this and those that do not, they are also all in agreement that the qirad contract will not be accompanied by any condition that increases the vagueness of profit or the level of risk involved. In a similar vein, they are in agreement that it can be done with gold and silver coins, but they have disagreed about other forms of capital.

Some important aspects of the mudarabah conditions governing contractors, capital, and profit as outlined by Islamic law schools are outlined below.

CONDITIONS OF MUDARABAH

Limit of the agent (rabb al-mal) and the asset supervisor (mudarib) to give and acknowledge organization

The mudarib executing the capital with the authorization of rabb al-mal expects that they be lawfully fit for organization (wakalah). The mudarib acts as an agent, while the rabb al-mal assumes the role of a principal. As a result, a mudarabah contract is null and void between the parties if either is prohibited.

Capital in the form of monetary currency

The capital in mudarabah is required to be in the form of monetary currency (naqd) by the Shafi„i, Maliki, and Hanafi schools. This means that there must be legal-issued gold and silver money in circulation. Ijma has been cited by Al-Rafi as

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evidence of this requirement. In this manner, these schools don't permit wares („urud) or mithliyyat as capital in mudarabah, while in the agreement of shirkah al-'aqd, Shafi„i and Hanafi schools had permitted mithliyyat as capital, and the Maliki school had even permitted products. Usufructs, like a house's tenancy, are not eligible to become mudarabah capital, just like commodities. Hanbali jurists have adopted the same position regarding capital in mudarabah as they did in shirkah al-'aqd, where they permitted monetary currency as capital and, according to a second report from Imam Ahmad, commodities as well. Therefore, Hanbali jurists assert that what is permitted in shirkah al-'aqd as capital is also permitted in mudarabah. This might actually be because of their ordering mudarabah, as well, as an assortment of shirkah al-'aqd.

The fact that permission for mudarabah has been granted on an exceptional basis is primarily the reason why schools other than the Hanbali have placed restrictions on mudarabah capital. As a result, it can only be done in the way that was originally approved. Based on the ijma„ of the prophetic companions, the mudarabah capital must be pure gold or silver for it to be valid. "Qirad is a concession (rukhÎah), and consensus has emerged on its permissibility on the basis of gold and silver coins, leaving what is other than that to remain under the original prohibition," the Maliki jurist al-Khurashi stated. Due to the unquantifiability of the labor component, mudarabah is also a contract of uncertainty (aqd gharar), where profit assurance has been allowed out of necessity; As a result, it is only permissible with regard to gold and silver coins that have been minted.

As a result, these schools have decided that Mudaraba's capital may not be in kind. Commodity capital might not be easy to trade, which would put too much pressure on the mudarib. Al-Ghazali explains that converting assets into capital is also necessary for calculating profit, which may decrease if the capital commodity's price rises even though the venture did not actually lose money. Hanafi jurists have upheld the prohibition against using commodities as capital, arguing that doing so results in profit without risk (ribh ma lam yadman), which is what the hadith forbids. Because capital valuation could only be done through estimation, mudarabah based on commodities raises the possibility of dispute and results in an uncertain profit at distribution.

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When metal coins (fulus) are the only prevalent medium of exchange, some Maliki jurists have tended to recognize them as capital in mudarabah. However, they have also considered the general prohibition to apply when gold and silver money are also in currency. Based on his position that metallic coins in circulation are absolute mediums of value (i.e. athman mutlaqah, such as gold and silver currency), where a unit is equal to every other unit and has no distinct characteristics, the Hanafi jurist Imam Muhammad has permitted shirkah and mudarabah on the basis of these coins when they are in circulation (nafiqah). According to reports, Imam Abu Yusuf permitted shirkah on metal coins, with the exception of mudarabah, because determining the capital required for profit distribution in mudarabah is necessary. In the event that the coins were to cease to be in circulation, this could only be estimated, rendering the profit inaccurate. In shirkah, this is not the case because the partners can count on claiming the capital.

Capital being existent (‘ayn) and not debt (dayn)

The schools of Islamic law agree that a contract is invalid if the capital in mudarabah is in the form of debt. As a result, jurists unanimously ruled that a contract is invalid if a creditor forces a debtor to trade using his debt in exchange for a half share of the profit. Scholars agree that it is against the law for a creditor to make his debt to another person a mudarabah, according to Ibn Mundhir. The reason for this is that the debtor owns the money in his possession, and the money can only become the property of the creditor when the debt is paid off and the creditor receives it. Additionally, due to the possibility of the transaction giving rise to riba and the fact that a liability may not be converted into an amanah, this conversion is not permitted.

The debtor is entitled to the entire profit if he initiates trading, while he bears the entire loss and the debt until it is settled. Because it is against the law to gain without risk (ribh ma lam yadman), the creditor is not entitled to any portion of the profit. There are a lot of different ways this transaction could have gone. Due to the existence of a valid contract of agency, some Shafi„i and Hanafi jurists assert that in some variations of this transaction, the purchased item initially becomes the creditor's possession. However, the mudarabah contract is invalid because it cannot be started on the basis of commodities; Shafi'i lawyers also say that the

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mudarabah contract can't be made conditional on anything else. However, with the exception of the Maliki school, funds deposited with another party as wadi'ah may be converted into mudarabah capital. In this instance, the funds in question belong to the depositor. However, because the deposit has become a debt in this instance, mudarabah on it is not permissible if the trustee had become liable for the deposit for a reason such as the deposit losing money due to his misconduct.

Capital being surrendered to the mudarib

In general, jurists agree that the capital must be given to the fund manager (mudarib) for the mudarabah to be valid. The mudarib is expected to have the capital under his influence only, allowed to execute it as he picks. This is because, like in wadi'ah, the capital is amanah at first and requires the mudarib to have complete control over it (takhliyah). It's possible that the financier (rabb al-mal) will lose control of the capital. The mudarabah contract is null and void if a condition is added that requires the financier to maintain control over the capital. As a result, the financier might not reserve the right to pay for what the mudarib had bought or say that the mudarib should talk to him about his deals.

Al-Kasani says that this condition is necessary in mudarabah because it is formed on the basis of capital from one side and labor from the other, while labor may not fully materialize until the capital leaves the financier's control. Al-Kasani explains the difference between shirkah and mudarabah in this regard. Given that shirkah is formed through labor from both parties, it would be against the contract's intent to exclude the financier (i.e. partner) from labor. In a similar vein, the mudarabah contract becomes null and void if the financier is required to work, regardless of whether he actually does so. This is because the financier's continued control over the capital is implied by such a condition. In this regard, it appears that all Islamic law schools are in agreement.

Ibn Qudamah reported an alternative position from Imam Ahmad that recognizes mudarabah as a partnership based on labor from both parties and capital from one. This has been legitimate considering the way that the party that gives just work is qualified for the specified portion of benefit against his work on the capital of the other, which is the real feeling of mudarabah. However, other Hanbali jurists have interpreted Imam Ahmad's aforementioned opinion to be

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relevant to a situation in which the financier works alongside the mudarib without stipulating it in the contract, supporting the majority position that a condition stipulating the financier's labor alongside the mudarib is invalid.

Declaring the proportion of profit

Information on the extent of benefit building to every project worker is an important condition for the legitimacy of mudarabah, in all schools of Islamic regulation. The venture's profits are referred to as the subject matter of mudarabah, and failure to disclose one's share of them renders the contract void. However, since this is understood to mean equal sharing, jurists from all schools generally hold the contract to be valid if the contract makes general reference to profits being shared by the parties without specifying the percentage of each contractor's share. In this instance, the financier and the fund manager share equally in the profits. Due to the unspecified profit share of the mudarib, the contract of mudarabah is deemed invalid (majhul) if it refers to the funds being invested on the basis of mudarabah but does not specify the mudarib's share. In this case, the financier is entitled to the entire profit and is also responsible for the entire loss, while the mudarib is only compensated (ajr al-mithl) for his efforts, regardless of the project's outcome. Due to the fact that the financier's entitlement to profit is based on his capital, while the mudarib's claim results from stipulation, the balance inevitably becomes the mudarib's share when the share of the mudarib is agreed upon in the contract. Since profit is an outgrowth of capital, the financier is entitled to the remainder of the profit after the mudarib has claimed his stipulated share.

Profit share being fixed as a ratio of the total profit

Benefit building to every project worker ought to essentially be fixed as a unified offer, for example a proportion, like a portion of, a third, or a fourth. Therefore, the contract becomes null and void if it is agreed that one of them is entitled to a specific amount of profit, such as a lump sum, while the balance goes to the other. The consensus among jurists, according to Ibn Mundhir, is that the mudarabah is invalidated if one or both contractors agree to receive a lump sum of profit. This is because mutual profit sharing, a goal of mudarabah, could only be accomplished under this condition. Otherwise, if the venture produces only the stated amount of profit, one party would claim it to the exclusion of the other, defeating the purpose of mutual sharing and rendering the

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contract null and void. The mudarib's indolence in seeking profit could also be caused by the requirement of a one-time payment, as the benefit would go to the other party. Likewise, in the event that a singular amount sum is held for one party notwithstanding his benefit proportion, the agreement becomes invalid because of a similar explanation.

Hanafi jurists have allowed the mudarabah to take place based on two different profit ratios for two different commodities or two different types of duties. For example, if the mudarib trades flour and the financier trades wheat, they could agree on a ratio of 1:1, and if the financier trades wheat, they could agree on a ratio of 2:1. If the mudarib travels, they could agree on a ratio of 2:1. This is supported by the comparison (qiyas) with ijarah, which allows for different rates to be set for various duties.

Even after the mudarib had begun operations, some Maliki jurists have permitted the contractors to revise the stipulated ratio by agreeing on a new ratio that is different from the ratio that was initially agreed upon. They consider this to be permissible because the realization of profit remains uncertain. After operations have begun, other Maliki jurists have prohibited an increase in the mudarib's share.

Loss in mudarabah

The capital is the sole source of loss in Mudrabah. As a result, only the financier is responsible for it. The mudarib is not responsible for any of the loss. This is on the grounds that misfortune is understood as diminishing of capital, which is exclusively claimed by the lender, where the mudarib has no possession. As a result, loss is only reflected in the financier's contribution to the capital. Only the expansion of capital, or profits, is the sole purpose for which they participate. This is similar to musaqah and muzara'ah, where the worker is only involved in the produce and is not responsible for any damage to the plantation or land.

According to Maliki and Shafi„i jurists, the contract becomes invalid due to an increase in the level of uncertainty (gharar) in the mudarabah as a result of such a condition if the mudarib is charged with liability (daman) for the venture. Nonetheless, as indicated by Hanafi and Hanbali law specialists, when the mudarib is accused of any piece of the misfortune, the condition becomes void while the agreement stays

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legitimate, as such a condition doesn't prompt vulnerability of the benefit. They argue that mudarabah is invalidated by conditions that result in profit uncertainty, whereas conditions that do not result in profit uncertainty render the contract valid, such as a condition requiring irrevocability (luzum).

Conditions pertaining to labour

According to Shafi„i jurists, mudarabah labor should only be used for trading. Mudarabah has been treated similarly by other schools. Thus, Shafi„i and Maliki jurists assert that the contract of mudarabah is null and void if it stipulates an additional duty on the mudarib, such as manufacturing or adding value, such as weaving cloth with yarn, milling wheat and baking bread, dying material, etc. If the mudarib attempts such action willingly, the agreement stays legitimate; However, as ruled by Shafi'i jurists, he is liable for any loss caused by his actions. Additionally, he will be responsible for paying for any outside help that is required during the process. They also declare invalid a mudarabah venture that requires the purchase of animals, trees, or other assets that yield an increase because the proceeds are not trading profits. The Hanbali school, which considers mudarabah to follow the same rules as shirkah al-'inan, has allowed the mudarib to do everything that a partner in shirkah al-'inan is allowed to do.

According to Shafi„i and Maliki jurists, the financier is not permitted to specify a particular line of trade or impose operational restrictions that interfere with the mudarib's freedom to transact, as this raises the level of gharar in mudarabah. The mudarib is required to abide by a condition that specifies a line of trade that is always available and where the mudarib will not face undue restrictions. According to Maliki jurists, specifying a location invalidates the mudarabah as well. Hanafi and Hanbali schools permit inconvenience of conditions in any event, when the case is in any case, insofar as such circumstances don't absolutely wipe out the chance of benefit. However, the majority of jurists have approved stipulating a condition that prevents the mudarib from dealing in a particular commodity.

According to Shafi„i and Maliki jurists, the contract of mudarabah should not be limited to a specific time period because doing so could hinder the goal of mudarabah and increase gharar. The contract is null and void if the term is

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restricted and subsequent transactions are prohibited.

This is allowed by the Hanafi and Hanbali schools, who view it as equivalent to a condition specifying a specific commodity and compare it to mudarabah and ijarah in this regard.

RULES OF MUDARABAH

The jurists talked about a lot of rules of mudarabah, which cover everything from the beginning of the contract to how the profits are divided and when it ends. Among these, the outlines of a few fundamental rules are examined below.

Revocability

Jurists agree that the mudarabah's contract does not have to be legally binding (luzum) and that either contractor can cancel it before the mudarib starts working. Imam Malik decides that the mudarabah becomes binding (lazim) after the mudarib has started working because extending non-bindingness could hurt the parties. Additionally, he maintains that mudarabah can be inherited. They might succeed their father in the business if the mudarib leaves behind trustworthy sons. The other schools hold that, like non-binding contracts ("uqud ja'izah), the contract of mudarabah can be canceled by either party even after operations begin, and that it ends when either contractor dies. A new contract must be signed in order to continue the mudarabah with the deceased person's successor.

Profits divided only after capital is realized in full

Jurists agree that the mudarib cannot claim his portion of the profits until all of the venture's assets have been liquidated and the capital recovered. Prior to the final summation of the venture's profit, the profits are diverted for compensating losses if the venture had resulted in a series of profits and losses, alternatively or in other transactions. This is due to the fact that profit indicates a capital surplus. As a result, there is no such thing as profit that is not a surplus, as all jurists concur. A hadith that says, "The parable of a believer is that of a trader—his profit is not given to him until he is given his capital (fully)" has been mentioned in this regard by both al-Sarkhasi and al-Kasani. so is the situation of a devotee — (the compensation of) his discretionary dedications are not given to him until his obligatory commitments are finished for him." As per al-Kasani, this hadith demonstrates

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that division of benefit preceding capital is forbidden.

Shafi'i jurists have ruled that the division of profits (after liquidation) is the only event that establishes the mudarib's ownership of the profit share. If the parties distribute the profits in accordance with their mutual consent prior to the mudarabah's cancellation, the profits remain provisional, and the mudarib is obligated to return the amount he had taken to offset the loss. The portion of mudarib is additionally settled upon liquidation of resources at the end of mudarabah, even before the division of benefits. Hanbali jurists also believe that the mudarabah is over when assets are liquidated in front of the financier. It is considered the beginning of a new contract if the financier demands that the mudarib continue the mudarabah without reclaiming the capital—similar to his having retrieved the capital and returned it to the mudarib once more. The contract remains unbroken if the profits are distributed prior to this or if one of them takes a portion of the mudarabah funds for himself with the permission of the other. If a loss occurs later, the mudarib is obligated to return what he had taken because it may not be considered a profit until losses are compensated for. According to Al-Qurtubi, the majority of jurists agree that the financier must be present for the mudarib to receive his share of profits and that the mudarib cannot receive his share unless the financier is present.

Duties of the mudarib

Jurists from Shafi„i, Maliki, and Hanbali hold that the mudarib is expected to perform tasks that typically belong to the relevant trade, like displaying goods and making sure they are safe, and receiving payment. He can use the capital to hire other people to do other things, like move heavy objects, but he is not required to. However, the mudarib is not entitled to any compensation if he chooses to perform tasks that are not part of his duty. The mudarib is obligated to reimburse those who are hired to carry out duties that are part of his responsibility with his own funds. Law specialists have explained on different errands where the mudarib is allowed to utilize others utilizing mudarabah capital. The duties of the mudarib have been discussed by Hanafi jurists under four headings.

Shafi„i and Hanbali legal advisers hold that assuming the resources are as obligations when the agreement is ended, the mudarib is expected

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to request them, whether or not the endeavor had acknowledged benefits or not, as mudarabah requires restoring the funding to its unique structure. Hanafi jurists maintain that the mudarib is analogous to an agent in this instance, and as such, he is not obligated to demand debts if the venture did not yield profits.

Mudarib's transactions

Shafi„i legal advisers have expressed the overall rule concerning the dealings of the mudarib that his conditional powers are administered by maîlahah, for example the wellbeing of the endeavor, like the conditional powers considered a specialist. The mudarib, like the agent, cannot sell or buy when there is a significant price disparity (ghabn). With a few exceptions, Hanbali jurists also consider the mudarib to have the same rules as an agent. Shafi'i and Hanbali jurists say that the mudarib cannot donate mudarabah capital to charity, but Maliki jurists have let him give away small gifts.

In the Shafi'i and Maliki schools, credit-based sales are not permitted unless the financier grants permission; Because such sales are common among traders, the Hanafi school and the predominant opinion in the Hanbali school agree that it is permissible. According to the Maliki school, if the mudarib sells on credit without the financier's permission, he becomes liable. The mudarib is held liable for any default if he fails to ensure that witnesses are present in such sales, according to Shafi'i jurists. Contrary to the agent, the mudarib allows barter, or the exchange of goods, because it could benefit the business; additionally the acquisition of inadequate products is allowed, in the event that benefit is normal in that, as per the Shafi„i and Hanbali schools. In a similar vein, Shafi'i lawyers permit the mudarib to lease out the venture's assets whenever he deems it advantageous.

The Shafi'i, Hanafi, and Hanbali schools prohibit the mudarib from purchasing more than the capital value—i.e., from overtrading. Because the debt results in an additional liability on the financier that exceeds the capital outlay, the financier is not liable for such purchases if the mudarib does so. The Shafi'i school, on the other hand, says that the mudarib could buy them out if the venture made a profit. On the basis of shirkah al-wujuh, Hanafi jurists rule that if the mudarib incurs debts with the permission of the financier, the assets obtained against those debts become jointly owned by both parties. This is due to the

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fact that a credit-purchased asset may not become a mudarabah because mudarabahs are only permitted in existing capital Jurists in Maliki have given the financier the option of paying for the asset or sharing it with the mudarib, making the whole thing mudarabah.

Because traveling involves risk, the mudarib cannot travel with the mudarabah assets unless the financier grants permission. According to Shafi„i jurists, the mudarib becomes liable for any loss if he travels without this permission. The contract must expressly authorize the sea voyage. The mudarib is permitted to travel by the other schools if the journey does not involve danger. However, it is important to keep in mind any restrictions imposed in this regard by the financier.

After the venture has made a profit, Shafi'i jurists allow the mudarib to try to secure his share through liquidation (tandid) and abstain from further transactions.

According to all legal schools, the mudarib becomes liable (damin) if he transacts with another person's assets without their permission and does what he was required to avoid or purchases what was prohibited by the contract.

Mudarib investing with another

Through a second contract of mudarabah, the mudarib is not permitted to invest the funds without the financier's permission. This has been defended on the grounds that mudarabah is only applicable when one party finances without being required to provide labor and the other is entrusted with labor, in contrast to the dictates of qiyas. Jurists in Maliki say that in this case, the mudarib is responsible for the capital, and the second mudarabah is found to be valid, leaving the first mudarib with no share of the profit. Since the first mudarib would merely be acting on behalf of the financier in this instance, the second mudarabah is considered valid in all schools if it is performed by the mudarib with the financier's permission. The financier and the second mudarib split the profits. The second contract would be void because the first mudarib could not keep a portion of the profit for himself. Shafi'i jurists cited the mudarabah's prohibition against allocating a portion of profits to a third party as the reason for this. But Shafi'i jurists have let the financier sign a mudarabah contract with two mudaribs at the same time as long as they can do business on their own. Similar to partners in shirkah al-abdan in this instance, Hanafi and

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Hanbali jurists have recognized the contract's validity, whereas the Maliki school only permits it when the profit shares of the two mudaribs are equal.

Expenses of the mudarib

The mudarib isn't qualified for guarantee individual costs caused in movement etc., as per Shafi„i law specialists, as he is qualified for a portion of the benefit. The Hanbali school also doesn't permit the mudarib to guarantee costs during movement. A subsequent position embraced by Shafi„i law specialists perceives the right of the mudarib to guarantee costs during movement, notwithstanding, restricts it to the sum spent in overabundance over the typical cost during home. Any thing obtained for the excursion on this premise that remains subsequently ought to be changed over completely to capital. As per the Maliki and Hanafi schools, the mudarib may involve mudarabah assets with balance for his costs after he leaves the region, as his movement is with the end goal of the mudarabah, while Hanbali law specialists permit the mudarib to maintain all authority to guarantee his costs both in movement and in home, as both are various periods of mudarabah. A report from Imam Ahmad permits costs in movement when it is specified in the agreement.

Increase and decrease of mudarabah assets

According to the preferred position of Shafi'i jurists, the material increase in mudarabah assets such as the harvest of trees and the litter of animals is claimed solely by the financier, as such an increase is not consequential to trading operations. The alternative position is that it is counted as profit. Profits make up for losses caused by depreciation and damage to mudarabah assets. Additionally, when material misfortune happens in the resources through catastrophic events, for example, fire or through burglary and seizure after the mudarib has started tasks, it is balanced by benefits. According to the Shafi'i school, however, any such loss that occurs before the mudarib began operating is deducted from the capital because the contract had not yet been substantiated through action. Unless the financier physically withdraws the capital and returns it to the mudarib, Maliki jurists have ruled that profits compensate for any loss, including losses caused by natural disasters. In the last option occasion, a new mudarabah is considered to have started.

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According to Shafi'i jurists, the financier is liable for the mudarib's share of the profit if he destroyed mudarabah assets, and the destruction is interpreted as the financier taking possession of what is due to him.

If the assets did not contain profits, Shafi„i jurists have ruled that the financier becomes the litigant when mudarabah property is destroyed or confiscated by another. Litigation focuses on both sides when profits are involved. The Hanbali school says that the mudarib are expected to go to court because mudarabah requires protecting the assets.

Financier withdrawing capital

The financier loses access to the remaining capital if he or she withdraws a portion of the mudarabah assets prior to the venture's profit or loss. If the assets had a profit at the time of withdrawal, the amount withdrawn is held to have a proportionate profit, and the share of the mudarib becomes established in accordance with the contract and is protected from any subsequent loss. If the withdrawal was made after there was a loss, the loss is split between the amount that was withdrawn and the rest. This way, the loss that was included in the amount that was withdrawn doesn't have to be covered by a profit later. The capital in a business is the remaining balance plus any losses that are proportional to it. The Hanbali position on the matter is similar to the Shafi'i school's position that the mudarabah becomes invalid. Experts agree that the mudarabah becomes invalid when it ceases to have any effect. If this occurs before the mudarib began operating, the financier receives the capital back. At the point when the agreement of mudarabah becomes invalid a short time later, as per Hanafi, Shafi„i and Hanbali schools, the lender is qualified for the entire benefit, as benefit is the branch-off of his capital. Due to the fact that the mudarib's right was based on stipulation, which became invalid with the contract's invalidity, he is not entitled to any portion of the profit. As a result, he acquires the right to just compensation (ujrah al-mithl) for his labor.

Jurists in Maliki believe that the mudarib is entitled to qirad al-mithl, or a fair share of the profits if the venture was successful, if the invalidity was caused by specific conditions outlined in Malki law, such as restricting the duration of the mudarabah's tenure. The mudaribis are not entitled to anything in the

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absence of profits. The venture is not dissolved and the mudaribis are allowed to continue operating when the invalidity is of this type. The mudarib is entitled to just compensation (ujrah al-mithl) from the financier regardless of whether the venture yielded profits or not in the event that the mudarabah became invalid for any other reason, such as the financier mandating his supervision. The mudarib is entitled to the stipulated share of profit or just compensation, whichever is less, if the venture resulted in profits, as the mudarib had already expressed his satisfaction with it when the lower of the two was the profit share, according to another position taken by Maliki jurists. Assuming that no benefits have been understood, the mudarib isn't qualified for any wages.

According to Shafi„i and Hanbali jurists, mudaribis are required to demand assets that are in the form of debts when the contract is terminated, regardless of whether the venture had made profits because mudarabah requires the return of capital to its original form. As per the Hanafi school, he isn't expected to request obligations on the off chance that the endeavor had not brought about benefits, as there is no advantage for him in this work. In this instance, the mudarib is similar to an agent.

CONCLUSION

Mudarabah, the second method of financing that Islam advocates, refers to an arrangement between two parties in which the capital of one party is given to the other for investment in exchange for sharing the profit, while the owner of the capital bears the loss entirely. The principle of mudarabah's permissibility has been agreed upon by scholars in unison. The ijma„ of prophetic companions and analogy are the primary foundations of its legitimacy. An exception to the general rule against undefined service contracts is the permissibility of mudarabah, despite the fact that labor and wages are not specified.

The contractors must be legally able to act as agents in order for the mudarabah to be valid. Hanbali jurists permit what is permitted as capital in shirkah al-‘aqd to serve as the capital of mudarabah, whereas other jurists limit mudarabah capital to monetary currency. This limitation is essentially because of remarkable passability conceded to mudarabah, which directs that it be permitted exclusively in the way initially supported. If the capital is a debt, the

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Mudarabah is null and void. The manager of the fund ought to receive the capital (mudarib). Each contractor's share of the profit must be fixed as an undivided share and should be known from the beginning. Since losses are only related to capital, the financier is solely responsible for them. Hanbali jurists, on the other hand, treat mudarabah as a trading venture and restrict labor in mudarabah to trading operations. While Hanbali jurists consider mudarabah to be similar to shirkah al-'inan in terms of its rules, they allow the mudarib to undertake everything that is permitted for a partner in shirkah al-'inan.

Both parties can cancel the mudarabah contract. Because an extension of revocability could be detrimental to the parties, Maliki jurists rule that it becomes irrevocable once the mudarib starts working. After the venture's assets have been liquidated and the capital fully recovered, the mudarib cannot claim his share of the profits. He is supposed to perform assignments that usually structure part of the endeavor. His value-based powers are represented by the wellbeing of the endeavor. The mudarib is responsible for the capital if he breaks the terms of the contract or does something that was forbidden to him. The financier is entitled to any profits made in the event of mudarabah's incapacity, while the mudarib is compensated for his labor. Maliki jurists give the mudarib a rightful share of the profit in some cases of invalidity.

The vast amount of information that is available regarding the implementation of Islamic modes of equity finance is amply demonstrated by studying the texts of Islamic law in addition to other sources like compilations of rulings or fatawa. The significant guidelines and guidelines, carefully created in light of sound standards and tweaked over hundreds of years through experience acquired by their application in different social orders and societies, present a rich hotspot for energetic exploration. In order to avoid creating contradictions in theory, any effort to update equity models for modern practice should be accompanied by a thorough analysis of the available materials and an understanding of their logical and theoretical foundations. Its theoretical foundation and consistency may be compromised by remedies that are hurriedly arrived at on the basis of insufficient research and do not comprehend the foundations underlying Islamic rulings.

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