

## Bismillah ir Rahman ir Raheem

### Ifisa Assignment Questions

Answered by Ahmed Fazel Ebrahim

Question One:

**Riba al-fadl only identifies six commodities in the hadith. What about goods that fall out of this hadith?**

From Abu Sa'id al-Khudri: The Prophet, peace be on him, said: "Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, and salt for salt - like for like, and hand-to-hand. Whoever pays more or takes more has indulged in *riba*. The taker and the giver are alike [in guilt]". (Muslim, and Musnad Ahmad).

An analysis of the above hadith which mentions six commodities indicates that specified commodities differ in terms of categorization

The first two i.e. gold and silver were used as currencies and the very metallic nature of these commodities clearly cannot allow them to be used as food. The next four commodities were the most essential forms of food but wheat and barley were crops, while the growth of dates was more like the produce of fruit trees and salt was a naturally occurring mineral which proved to provide taste to food.

When each of the above commodities was exchanged for the same type of commodity due to some differences in the design etc of the commodities then it became prohibited to give the other party a Fadl (surplus) in relation to what you received. Thus surplus was prohibited because you would be granting the other party more value than what you received. Thus, beyond the fact that there was no equality in such an exchange, this could lead to unjustified enrichment of those who gain such surpluses.

The Hanafi jurists have used the first category to infer that *riba al-fadl* was prohibited on two metals that were used as currencies. Thus, the rule should be extended to all other currencies when an exchange is made between the same currency. Thus, a hundred dollar bill can be exchanged for two fifty dollar bills on spot, but it cannot be exchanged in return for a fifty dollar bill on spot while leaving the other fifty to be paid later. However, where the currencies differ, the exchange rates can differ provided that the exchange is done hand to hand. Thus, R700-00 South African rands can be exchanged for \$100-00 US Dollars provided that the exchange is done hand to hand or at the same time at the place of transaction.

In regard to the other four commodities, the Hanafi jurists view that since all of these were food commodities, therefore any other exchange of other food commodities would fall under the same ruling. Thus, sugar beans cannot be exchanged for butter beans except in equality and hand to hand since the genus of the food commodity is the same. The same applies in the exchange of grapes to raisins since primarily the genus of raisins is the same as that of grapes immaterial of the fact that the grapes exchanged were different from the type that were used to make the raisins.

We further learn from this hadith, in terms of Hanafi fiqh, that since the hadith only mentions food commodities and metals used as currency, therefore the exchange of other commodities which differ from the genus of food and currency is allowable even if one of the commodities in the exchange is much more than the other commodity. Thus, I can exchange three of my old vehicles in return to acquire a single printing press immaterial if this be new or used. This is because both the commodities in the exchange transaction are neither currencies nor raw food commodities.

Wherever an exchange is made of any one commodity for another, the exchange would be regarded to be a barter transaction.

Question Two:

**Riba is prohibited in the Quran based on money transactions. The hadith prohibits riba in a sale or exchange.**

**If I have 2 old cell phones and wish to exchange them for one new one of the same type, do I have to sell them first? Could the buyer and seller not agree to exchange the two old ones for the one new one by mutual consent?**

You do not have to sell the two old cell phones in order to purchase one new one in return. The 2 phones can be directly exchanged in return for the new phone. This is because the exchange deals with items that are neither inherently money nor are they food items. This is deduced from the explanation of the hadith here above.

Question Three:

**Is it permissible to enter a riba transaction if the riba collected by a financial institution goes towards administrative costs and the balance to charity and developing the community?**

Immaterial what the other party does with the riba they would acquire from you if you do a riba transaction with them, you are still not allowed to transact with them since the transaction itself is prohibited. Riba is not prohibited on the basis of what the other party would do with such income, thus riba is neither sanctioned even if we know that the other party will give it to charity or build a masjid.

Question four:

## **If the Quran only speaks of Riba al-Jahliya, why did the Prophet SAW prohibit riba al-fadl?**

Firstly, The Riba of the days of Jahiliyyah entailed both types of riba. Thus, the question ought to be **“If the Quran only speaks of one form of Riba al-Jahiliyyah?”**

The teachings of the prophet compliment the Quran. An order in the Quran cannot be limited by human intervention. It is thus the choice of Allah to give some orders in the Quran, and give further elucidation to the order through the sunnah or the ahadith of Nabi SAW. This is also the case with many other rules of the Quran.

Furthermore the Quranic prohibition dealt with one form of economic injustice. The ahadith dealt with another form of it. Although, practically, some of the exchange forms in the hadith may seem to violate rationality e.g. why must one kg. of green grapes be exchanged only for one kg. of raisins from green grapes. Apparently, much more than one kg. of grapes would be required to produce one kg of raisins so why should one kg of fresh dates not be allowed in an exchange against a quarter kg of raisins? The answer to this is that since the economic judgements of each of the parties may remarkably differ in regard to the value they reciprocally receive for the commodity that they offered could create conflict and disharmony. One party would never want to offer one kg. of raisins in return for one kg of fresh dates except in certain cases where he may fear the eventual decay and loss of the raisins, if he has an abundant stock that he needs to sell off or really wants to eat fresh grapes. The person selling one kg. of raisins knows that that it takes more grapes than a kg to acquire one kg of raisins, so why should he exchange one kg thereof for a similar quantity of fresh grapes. Thus, if each of the party sold their commodities i.e. the grapes or raisins to the other at a price the other was willing to buy at, they would separate with much more harmony.

Furthermore, if the person who took the grapes in return for the raisins desired to return the grapes since he found them sour, he might not be able to get his raisins back since the other party might have eaten or given it away. In this case, the two parties could argue in regard to the valuation of the raisins. However, where the person with the raisins sold the raisins and bought grapes which were subsequently known to be sour and no good, the return of the grapes would allow a justified and fixed claim in price.

Question five:

**Regarding contracts, is it permissible for one to sell an item to a person who has not seen it because it is not in the possession of the seller? Upon receiving payment, the seller purchases it and then resells it to the buyer?**

In terms of Hanafi fiqh, this is permissible if the item of sale is deliverable, owned by the seller and at location that can safely be said to be in the possession of the seller. There are different types of possession. One type is where the owner has the commodity with him and can immediately give it over, another type is where the owner has it stored at a nearby location or warehouse. However, we need to differentiate between possession and ownership. Where a seller does not have possession, he might also not own it. In the Shariah, you cannot sell that which you do not own.

See long article on this

The following is the Maliki position

### **34.03 SELLING GOODS NOT YET POSSESSED**

Whoever buys foodstuffs it will not be lawful for him to sell them off before he takes them over, if the purchase is done through weighing measuring or counting. However he is permitted to do that if he bought the foodstuff en bloc. The same rule applies to all foodstuffs, condiments and drinks, with the exception of water alone. :Now, if the commodity to be sold happens to be drugs or

legumes from which oil cannot be extracted, then it will not be unlawful to be sold before it was received after purchase. In trading such legumes one party can give more than it receives of that same commodity. There is no harm for foodstuffs bought on credit to be sold before they are taken over. There is no harm in joint purchase or resale at cost price or revocation of a sale of measured foodstuff before it is taken over.

### **34.17 SALE OF GOODS NOT YET HAD**

It is not permissible to sell something you do not have on the understanding that you will buy it and deliver it to the buyer.

Question six.

**Ahmed opens a business. After a year, it is providing a average net profit of R10,000-00 monthly. He offers it to Bilal to manage in return for a monthly salary of R2000,00. Both parties sign the contract which also states that Bilal will provide Ahmed a guaranteed return of R2000,00 monthly for the duration of a year after which the business would be returned to Ahmed? Is this allowed? Give reasons.**

The contract is not permissible because although the business presently provides a average of R10,000-00 net profit, economic circumstances could change, and the business may not continually provide this return. Thus, it is unfair to obligate Bilal to guarantee a net profit return of R2000,00 even though this figure is intended to ensure that Bilal will at least work hard enough to cover his salary, and at least provide the owner with a R2000-00 net return. In this instance, Bilal is not even a partner in the business. He is only an employee who serves for a wage and has been granted a fixed employment period.

Question seven

**Why is it disliked to make a sale after the Azaan of Jumuah?**

Firstly, the question should read “Why is it impermissible and not why is it disliked?”

Secondly, the question is unclear, are you questioning about the first Azaan or the second azaan

### **After which Azaan of the Jumu'ah is business prohibited?**

Saa'ib bin Yazeed R.A. says: The first *azaan* on the day of *Jumu'ah* is when the Imam sits on the pulpit. This was in the era of *Rasulullah* S.A.W., Abu Bakr R.A. and Umar R.A.[1] In the era of Uthmaan R.A., when there were many people a third *Azaan* was given at *Zauraah* and this is where the matter remained.[2] It is obvious that this third *azaan* was classified as the third in relation to the *azaan* immediately before the *khutbah* and the *iqaamah*. However, in terms of delivery, this third *azaan* is now the first *azaan* that is delivered to notify the people of the *Jumu'ah*. The narration of *Imam Ahmed* and *Nasaai* states: *Bilal Radhiyallahu Anhu* used to give *azaan* when *Nabi* S.A.W. sat on the *mimbar* and gave the *Iqaamah* when he (*Nabi* S.A.W.) descended. Thus, the original second *azaan* referred to in the previous narration refers to the *Iqaamah*.

#### **1. Can business be done after the first Azaan outside the masjid before the azaan (2<sup>nd</sup> in terms of sequence but which was the first azaan in the time of Nabi S.A.W.) which is given before the Khateeb commences the Khutbah?**

Allah says in the Qura'an: O you who believe! When the call for *Salaah* is given on the day of *Jumu'ah*, then hasten to the *Zikr* of Allah and leave trading. This is goodness for you if you only but knew.[3] The reference to the call (*azaan*) in the Qur'an, in the time of *Nabi* S.A.W. undeniably relates to the *azaan* before the *Khateeb* when the *Khateeb* has come on to the *mimbar*. This is proved from a *hadith* in Bukhari and Muslim where *Jabir* R.A. says: "While *Nabi* S.A.W. delivered the *Khutbah* standing on the day of *Jumu'ah*, a (trading) caravan from Madina entered. The companions of *Nabi* S.A.W. hastened to it until only twelve males remained (in the masjid) among them. Among those (who remained in the masjid were) *Abu Bakr* and *Umar*." It is obvious that the *Sahabah* would not have done this if a ruling in this regard was previously ratified in the *Shari'ah*. It was at this point that Allah revealed the verse 11 of ***Surah Jumu'ah*** in which He said: "When they see trade or trivial elements they hasten to it and leave you standing. Say – that which is with Allah is better than triviality and trade and Allah is the best of those who grant sustenance." *Muhammed Ali Saaboni* states that this caravan came from *Shaam* (Syria and its surrounding areas) and was brought by *Dihyah Al-Kalbi*. The people of Madina were in hunger at that time and suffered inflation on goods. It was the custom for the caravan to enter with drum beatings and cries of joy. The people of the *masjid* thus hastened to it.[4]

Thus, whether this ruling of the Qur'anic verse is general to any *azaan* for *Jumu'ah* on the day and time of *Jumu'ah* and thus can be extended to the *azaan* which is now given prior to the *azaan* that was originally delivered in front of *Nabi* S.A.W. before the *mimbar* is an issue of *ijtihad* (juridical inference). Some scholars may say that the ruling would apply to this additional third *azaan* (which is now the first *azaan* in terms of actual delivery) that was added by *Uthman* R.A. since the Quranic ruling is general in relation to the "call of *azaan*." Others would specify the Quranic rule relating to the "call of *azaan*" to be relative and particular (*khass*) to the first *azaan* given before the pulpit as in the time of *Nabi* S.A.W. since that is what the verse referred to at the point of revelation, thus giving a restricted interpretation to the verse "noodiya lis salaah mee yaumeel *Jumu'ah* - call of *azaan*." They would thus allow business during the period of the *azaan* (1<sup>st</sup> in sequence) and the *azaan* that initially was the first *azaan* immediately prior to the *Khutbah* but is now the second *azaan* in terms of sequence.

We could relate the ruling to the *azaan* that is delivered immediately before the *Khutbah* since, although the Quranic verse relating to “the call for *salaah*” is general and has no exclusions, thus including every other *azaan* given for the *Jumu’ah*, yet it historically had *Ikhtisaas* (particular relevance to the *azaan* that was given before *Nabi S.A.W.* when he sat on the *mimbar*.” Therefore, the reference may be specific to that *azaan* and not any other *azaan* that is later adopted. This is established in *Tafseer Qurtubi* and *Ibn Katheer*.

The *azaan* introduced by Uthman R.A. which was a second *azaan* in relation to the one that was already delivered, but became the first *azaan* to be delivered in relation to the sequence of delivery. Maulana Muhammed Rif’at Sāhib Qāsimi says: This *azaan* that was introduced, subsequently became recognized, by *Ijmāh* (consensus) of the Sahabah, as the first *azaan*. Thus, all the prohibitions relating to the initial first *azaan* now also became applicable to the *azaan* introduced by Uthman R.A. because the words of the Qur’anic verse “When the call for *salaah* is delivered on the day of *Jumu’ah*” would now also validly apply to it. He says that all these details are given in the works of *fiqh* without any *Ikhtilaaf* (differences between the scholars). [5] He does not specify the *fiqh* sources, and possibly refers to the Hanafi sources because, in terms of Hanafi interpretation of the wordings in the Qur’anic verses, when a general ruling is made in the verse without any exclusion, in that very text of the Qur’an, of any other aspect related to that general ruling then the general rule will apply in all situations. In the science of Hanafi *Usul-ul-fiqh* (Theories and principles of Islamic Jurisprudence), this is referred to as *Aam lam yukhussa anhul bahdhz*. [6] This Hanafi interpretation can only be correct if we have historical evidence that this is what the Sahabah practised. Otherwise, the opinion of other Scholars like Qurtubi and Ibn Katheer would be valid. However, until we find proof of the consensus of the Sahabah in regard to the application of the trade prohibition after this introduced *azaan* which now became first in sequence, it would still remain the safest for all to follow this interpretation. Yet, I do not deny those who follow the view of their *mazhab* in this regard to apply the rule specified in their *mazhab* in this regard. Nevertheless, if the mentioned principle of the Hanafi *usul* has been applied here, it would mean that a general ruling in the Qur’an relating to a specific issue, despite its reference to a specific moment of that issue’s occurrence would also apply to that specific issue if the moment of occurrence differs. Thus, in terms of such an interpretation, the “general ruling of a Qur’anic verse without exclusions” remains to be an eternally “general ruling without exclusions.”

**Ibn Katheer (Vol.4 page 472)** further says: It must be known that it is said that this episode took place at a time when *Rasulullah S.A.W.* performed the *salaah* before the *Khutbah* –like the two *eids*. As narrated by *Abu Daud* in the *Kitaab-ul-Maraaseel*. {...} *Rasulullah S.A.W.* used to perform the *salaah* before the *Khutbah* –like the two *eids* until one day when he delivered the *Khutbah* after having made the *Jumu’ah salaah*, a person entered and said “*Dihah bin Khalifah* has arrived with trade goods. *He* meant – they thus departed and only a small group remained with him.

It is obvious that if this was the case and *Jumu’ah salaah* was over. Nor was there a ruling, till then, that prohibited trade during the *Khutbah*. The *Sahabah* thus felt it allowable to engage in trade. Although, most of the more authentic narrations do not discuss whether the *salaah* was over when *Nabi S.A.W.* delivered that *Khutbah*, the most important details however relate to the fact that *Nabi S.A.W.* was delivering the *Khutbah* standing and that Allah had revealed the verse that prohibits trading once the *azaan* is delivered before the *Khateeb*. However, if it was correct that initially the *Jumu’ah salaah* was before the *Khutbah*, then the other *ahadith*, which reflect

that the *Khutbah* was delivered first and then the *salaah* was established, would indicate to the subsequent order of Allah in relation to the sequence of the *Khutbah* and the *Salaah*.

Question eight

**Commercial interest did not exist at the time of the Prophet (SAW). What is the basis for prohibiting it now?**

A study of the ahadith will reveal that the *riba* prohibited in the Quran was *riba* on debt. Debts are created not only through direct loans but also through sales on credit. Therefore, the idea that there was no commercial interest in his time is incorrect.

It is obvious that prohibiting an interest charge at the inception of a loan would not be valid if there was no precept to prohibit it earlier.

Question nine.

**A seller of an item does not know its current selling price and promises it to a buyer at a very low price. The buyer accepted the offer. The seller finds out later what the actual market price is before the actual delivery of the item takes place so he revokes his offer and extends a new price. Is he permitted to do so?**

The basic rule of the Shariah is that *Ijaab* (an offer) and *Qabool* (an acceptance of the offer) concludes a contract immaterial if the buyer had taken immediately delivery or not, and immaterial if the payment has been given or was deferred. Thus, although this was done, and apparently the contract was concluded. Another important principle of the Shariah is that there should be no *dharar* and *diraar* (harm to either of the parties), thus in the spirit of justice, and to prevent a conniving buyer from abusing the ignorance of a seller, it is important to sanction the seller's objection. Sometimes, both parties are ignorant of the real value. In other cases, the seller unjustly demands more because he subsequently becomes aware of the possibility of gaining greater profits. However, depending on the nature of the commodity, and respecting the virtue of the ahadith relating to *Iqaalah* (cancelling sale contracts), it would be best for the buyer to accept the annulment of their contract.

Question ten

**Shirkah is mentioned in the terminology of fiqh. Briefly explain the various forms of Musharakah?**

1. *Shirkat-ul-mufaawadhah*

This form of partnership was not known to Imam Malik. It was practised in Iraq.[\[7\]](#)

Conditions required: a. equal capital from each partner b. equality in profit sharing

Conditions a and b require that condition c be existing, and this is that there should be equality in the amount of work that is done.

## 2. Shirkat-ul-abdaan

People of the same trade e.g. tailors, mechanics or some other craft would share premises, tools, machinery etc. They would accept diverse clients and do diverse types of work relating to their industry and skills. They would share their earnings and profits.

The Hanafi and Maliki scholars allow it but the Shafis do not accept it.

## 3. Shirkat-ul-wujuh

Each of the partners have no capital but have access to capital through their friendships and personal integrity or credit status. They thus traded and share profits.

This is accepted by the Hambali school.

## 4. Shirkat-ul-Anaan

In this case the partners contribute diverse levels of capital. They are thus allowed to share profit in diverse levels.

The following is the Maliki Position from The Risalah.

### **34.24 PARTNERSHIP (SHIRAKA) OF LABOUR AND CAPITAL**

There is no harm in hiring out labour jointly; that shall be when the partners work in one place and undertake the same kind of work or a similar kind. Further it is lawful for two people to form a company through pooling capital, on condition that the profit is shared in proportion to the size of shares held by the partners. The work also shall be shared according to what the partners stipulated in sharing the profit. It is not lawful for the capital contributed by the two partners to be unequal while they share the profit they gain equally.

### **34.25 TRADE LOANS (QARD)**

Qirad is lawful. It means an arrangement of a partnership where one person furnishes the capital and another works with it, and the profit is shared. It is lawful when gold or silver pieces are advanced. It is also lawful even when irregular pieces of gold and silver are advanced. But it is not lawful when the capital provided consists of commodities; and if it should take place, the status of the seller will be that of a person hired for the sale. And the wage he should be paid

should be equal to that realised in a qirad whose capital is the same as the value of the commodity.

A person hired in a qirad shall be given clothing and food if he travels and if the capital is considerable. Usually he should be provided with clothes if the journey is a long one. Partners in a qirad do not divide the profit until the whole capital is reduced to cash.

### 34.27 FARMING PARTNERSHIP

It is permissible for two people to form a partnership for the purpose of farming where the crops jointly belong to them, whether the land comes from one of them and the labour from the other, or the labour comes from both of them, and whether they hire land or it belongs to them. It is not lawful for the seeds to come from one of them and the land from the other and the labour from one of them or from two of them and yet the two divide the yield equally. But they can divide the yield equally when they both hire the land and the seed is from one of them while the other supplies labour, and when the value of the undertakings is not much different. Payment for the hire of a piece of land which is not secure must not be made before the land is watered.

Question eleven

**If two people enter into a Musharakah contract, A investing 10, 000 and B investing R5000-00 what is the ratio of profit/loss? Why?**

Their capital input is 2:1 (two to one). This would not imply that their profit sharing ratio is the same or that it cannot be 50/50 or that the partner who invests less cannot have a higher level of profit. The determination of profit is not dependent only on the extent of their capital inputs.

Other factors like:

What amount of work is done by each of the partners?

What is the nature of the assets and commodities that they trade with?

How quick would it take to sell the commodities?

How much of effort is required in the process and nature of the partnership?

What type of skills do the particular partners place in the business?

Etc – are all factors that should determine their negotiations towards determining their profit sharing ratio.

However, in a partnership, the Shariah species that the ratio of losses be related to the extent of their capital input. In this sense, the partner with a lower capital input will not be required to pay in more than his ratio of capital unless it is proven that the particular and defined losses are resultant because of his negligence. Where the negligence is from the partner with the greater capital, then even such a partner will have to suffer such defined losses.

This type of partnership would be referred to as Shirkat-ul-anaan in Hanafi fiqh.

#### Question twelve

**Is it permissible for one investor who is working more than the other (both partners work in the partnership) to take a greater percentage of the profit. The extra percentage would go towards expenses, travel, telephone, etc.**

Yes, this is allowed for the same reasons given in the answer to the previous question. This is also allowable if their capital contributions are equal. The partner with the lower capital contribution may have more skills. He could thus also have a higher share of profits if he did much more work that justified a higher return.

#### Question thirteen

**An investor in a Musharakah contract dies and leaves his share to his only surviving heir, his wife, who cannot run the business. Can the other investors just give the spouse the amount that was invested by her deceased husband and dissolve her shares?**

No. The wife of the deceased will own her husband's investment + share of profits or (-) less deduction of losses. For as long as she had not sold the same her share in the partnership will continue to grow with the business profits and she would also suffer any losses. However, the actual evaluation of her share can be done at any feasible accounting period, but its finalization would only be concluded when she has concluded the transfer or sale of her shares or extent of partnership.

Also, her share of profits in the business may require a re-negotiation since her husband might have been a working partner and, as per the question, she does not have any skills to provide to the business.

#### Question fourteen

**Imraan and Moosa begin a partnership. Imran has invested cattle – 20 sheep, equivalent to R5000-00 and Moosa has invested a cash sum of R5000-00 to buy a piece of land. At this stage, the profit ratio is 50/50 (fifty/fifty). After six months into the partnership, the value of the cattle increases by 25% while the land value remains the same. Does Imraan's share go up since he brought the cattle into the partnership?**

In the case of a partnership where the diverse partners have placed diverse assets into the partnership but where the assets of each partner are equivalent in value to the other, then once the partnership is formed and created, the partners lose their private ownerships in to the specific assets that they brought and the total assets of the partnership becomes the joint assets of all the partners in the ratio of their share in the partnership. Likewise, these assets also become the joint claims of creditors. Thus, the appreciation of the cattle value would lead to an appreciation of both of their shares and Imraan would not be entitled to claim that 25% appreciation as an appreciation in his share of the partnership. Also, where the cattle die, this loss will have to be jointly shared between the partners, Moosa cannot claim that he did not lose since he did not bring the cattle into

the business.

Question fifteen

**When a loss occurs and A invested 70% and B invested 30%, what ratios of losses must each partner suffer? What is the reason for this?**

Losses in a partnership must be shared in the ratio of capital input. This is because

1. If this were not the case, partners having lower capitals would then be prone, to a greater degree, towards insolvency.
2. Those with lower capitals would generally be providing a greater active participation in the running of the business and would have thus lost all their labour and efforts, besides sacrificing their time and other economic opportunity costs. They cannot be made to further suffer more than their share of capital since the ratio of profits have likewise been determined through a combination of capital and labour. Those with higher capital inputs would have not lost as much labour and effort, they thus have to share the loss in terms of their share of capital input.
3. This is the ruling of the Fuqahaa on the matter, it thus cannot be violated.

Question sixteen

**Shoayb and Salim enter into a contract. It is agreed that Salim will work for Shoayb as an agent and invest Shoayb's funds in order to earn a profit. Shoayb has agreed not to interfere with Salim's investment decisions. What sort of contract is this? What would happen if Salim lost Shoayb's money in a bad deal?**

Firstly, "lost" in the original question must be "lost".

Now for the answer

This is a Mudharabah contract since one investor is not taking any active part in the business. The other is not providing any capital but is providing all his labour.

If Salim lost money in a bad deal without negligence, then Shoayb will have to suffer what ever extent of losses Salim had incurred. Since Mudharabah contracts in a contemporary times may involve many complexities, it is essential that the contract be tightened with an inclusion of as many essential elements as possible. Thus, for example, who would be responsible if Salim's personal motor vehicle was damaged in an accident due to no fault of Salim while doing work for the Mudharabah between himself and the capital provider? Also, if Salim had taken drawings that must be written off against expected profits, what would happen if the expected profits did not materialize?

In a Mudharabah contract it also, the working partner would not be absolved for negligence.

Depending on the nature of the Mudharabah, it is also important to detail the term thereof and how it would be dissolved in cases where business are established or large projects are developed.

Question seventeen

**Muhammad requires finance for a building that he wishes to purchase. He approaches Dawud to help him finance the building. Dawud agrees to finance the building, but in return wants a 50% share in the business that Dawud will begin in the building. Is this permissible? How can the financing be constructed to ensure permissibility?**

Firstly, the comma before the “but” should be after it – I mean it should be after the “but” – I mean this word not any other but - and another one more should be placed after “return”.

The above contract is haraam since

- a. The finance Dawud gives to make the building is not specified as a fixed amount.
- b. The business Muhammad will run in the building is not specified in terms of the capital that Muhammad will invest therein.
- c. Muhammad did not specify his repayment terms to Dawud, so the capital Dawud put into the building cannot be regarded to be immediately injected by Muhammad into the intended business.
- d. There is no clarity about whether, after construction, Dawud has sold the building to Muhammad or whether he leases it to him.

The permissible forms of the contract.

Form one:

- a. Dawud puts up the building
- b. Dawud leases it to Muhammad for a period of a year or more so that Muhammad can build capital and would only have rental to pay.
- c. If Muhammad then has intentions to own the building, he buys – in the next year or so 10 or 20

% share in the building. He would thus lower his rental proportionately although it would not limit his rental costs in relation to annual rental costs. Dawud as 80 % shareholder gets a 80% of rental specified for such a premises.

d. In the interim, all payments that are made in favour of Dawud can be accumulated and regularly invested in Muhammad's business if Muhammad is agreeable to allowing a partnership.

e. Muhammad continues to at regular intervals buy out more and more of Dawud's share of the building as the years follow.

f. Again, all payments that are made in favour of Dawud can be accumulated and regularly invested in Muhammad's business if Muhammad is agreeable to allowing a partnership.

Form two:

- a. Once building is done and evaluated, Dawud and Muhammad create a partnership.
- b. Dawud's input will be the building value at the inception of the partnership, and Muhammad's would be capital plus labour.
- c. Depending on Muhammad's capital input, it is possible that Dawud gains a 50 percent or more partnership.

This format binds Muhammad to a partnership.

Question eighteen

**Aslum and Burhan are in partnership and both have equal responsibilities. They are also sharing the profit equally. However, through a reckless decision, Burhan incurs heavy losses on the business. Are both equally responsible? Why**

In this case, Aslum would not be liable for the losses caused by Burhan through reckless decisions. However, this recklessness would have to be proven. Also, it is possible that Burhan is not absolutely liable if it is proven that Aslum had entrusted Burhan with decisions that he was not adequately capable to make.

The normal Shariah position is that losses are shared according to their capital contributions in partnerships. (Not in the case of a Mudharabah contract). However, proven negligence makes the negligent partner liable for the losses incurred.

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[1] *Fiqh-us-Sunnah* Vol. 1 page 260 by Sayid Saabiq, an Egyptian Aalim.

[2] Refer to Bukhari, Muslim and Abu Daud.

[3] Holy Quran - Surah *Jumu'ah* verse 9.

[4] Page 381, vol 3 – *Tafseer of Surah Jumu'ah* in *Safwat-ut-Tafaaseer* by Muhammed Ali Saabooni.

[5] *Mukammal wa Mudallal – Masaa'il Namaaz Jumu'ah* in Urdu. This work has been compiled by Maulana Muhammed Rif'at Sāhib Qāsimi, teacher at Dar-ul-Uloom Deoband. Pages 288. Publisher: Maktabah Ridha, Deoband U.P. 3<sup>rd</sup> Edition June 1994.

[6] Refer to the Hanafī work on usul-ul-fiqh titled “Usul-ush-Shashi”

[7] See *Ihlaa – us – Sunan – Zafar Ahmed Uthnmaani*.