مجلة الدراسات القانونية المقارنة
المجلد 11/ العـــدد02 (2025)، ص.ص.473-489. ISSN:2478-0022 EISSN:2600-6154

Types of Partnerships and Their Conditions in Islamic Jurisprudence

أنواع الشّركات وشروطها في الفقه الإسلامي

د.سامية شرفة

Dr. Samia Cheurfa

أستاذ محاضر قسم "أ"، تخصص الشريعة والقانون، كلية الحقوق، جامعة محمّد بوضياف بالمسيلة (الجزائر)

Lecturer "A ", specializing in Sharia and Law.
University Mohamed Boudiaf M'sila Faculty of Law
Email: drchorfa@yahoo.fr

البروفيسور أونيس قرقاح

Pr. Ounis Guergah

أستاذ في التعليم العالي، تخصص الفقه المقارن، أصول الفقه الإسلامي، وفقه الأقليات

Professor of Higher Education, specializing in Comparative Jurisprudence, Islamic Legal Theory - and Fiqh of Minorities

المعهد الأوروبي للعلوم الإنسانية في باريس (فرنسا)

European Institute of Human Sciences of Paris (IESH) (France)
Email: guergah.o@gmail.com

تاريخ إرسال المقال:2025/10/27 تاريخ القبول:2025/12/07 تاريخ النشر:2025/12/25

ملخص:

تمثّل الشّركات الإطار القانونيّ لتجميع رؤوس الأموال واستثمارها، إضافة إلى توحيد الجهود البشريّة المتاحة لتحقيق الأهداف الاقتصاديّة المشتركة، حيث يعدّ نظاما لشّركات أحد الرّكائز الأساسيّة في الحياة الاقتصاديّة عبر العصور، وقد تولت تقنينه وضبطه الشّريعة الإسلاميّة بالتّفصيل من خلال ما انتجه فقهاء الاسلام على مر الأزمنة، كما أنّ القوانين الوضعيّة وضعت تنظيمات مفصّلة لأنواع الشّركات، وأساليب الاستفادة من الأموال بأوجه الاستثمارات المختلفة وما يرتبط بها من حقوق والتزامات متقاطعة لدى الشركاء.

هذا، وتمثّل دراسة نظام الشّركات بين الفقه الإسلاميّ والقانون الوضعيّ أهمّية بالغة في فهم الأسس الشّرعية للتّعاملات الاقتصاديّة المعاصرة، وإمكانيّة التّوفيق بين متطلّبات العصر وضوابط الشّريعة الإسلاميّة السّمحاء.

كلمات مفتاحيّة:

شركة، العنان، المفاوضة، المضاربة، الوجوه، الأبدان، الأحكام، الأركان، الشّروط، الأرباح.

Abstract:

Partnership represents the legal framework for pooling capital and human efforts to achieve common economic objectives. The partnership system stands as one of the fundamental pillars of economic life throughout the ages. Islamic Sharia has addressed this subject in detail, while positive laws have established detailed regulations for various types of partnership. Studying the partnership system from both Islamic jurisprudence and positive law perspectives holds significant importance in understanding the Sharia foundations of contemporary economic transactions and the potential for reconciling modern requirements with the principles of Islamic Sharia.

Keywords:
Partnership, Sharikat al-Inan, Sharikat al-Mufawadah, Sharikat al-Mudarabah, Sharikat al-Wujuh, Sharikat al-Abdan, Legal Provisions, Contractual Pillars, Shariah Conditions, Profit Distribution

Introduction:

In the name of Allah, the Most Gracious, the Most Merciful. May peace and the most perfect blessings be upon the noblest of Messengers, our Master Muhammad son of Abdullah, and upon his family and companions.

Islamic jurisprudence is rich with abundant sources that have addressed various life issues, whether pertaining to the individual's private or social lives in all its forms, such as financial transactions. Given the potential for such transactions to cause disputes or conflicts between the parties involved, the noble Shariah has regulated them to prevent any deterioration in social relations. Among these legislative regulations are those specifically concerned with the subject of Fiqh al-Sharikatفقه الشركات Islamic partnership law.

This partnership, known by various names different from contemporary terminology, have existed since the earliest Islamic period while maintaining their core essence. Muslim jurists have continuously developed the partnership rules throughout the ages to align evolving realities. Consequently, partnerships are not limited to these historical classifications alone. Rather, contemporary Islamic jurisprudence and positive laws have introduced many types and other nomenclatures that were previously unknown, a subject of constant renewal due to the evolving needs and circumstances of life over time.

This paper examines and analyzes partnership within the Islamic juristic heritage through the following central research question:

- What are the main categories of partnerships in Islamic jurisprudence, and how have the jurists regulated them to that partners' transactions comply with Islamic rulings?

Research Structure:

This research paper is divided into two main axes, as follows:

- **Section One**: The concept of Islamic partnership (Sharikatالشركات) and its religious validity
- **Section Two**: The predominant types of partnerships in Islamic jurisprudence, along with their specific pillars, conditions, and legal rulings. The research concludes with a summary of the study's most significant findings.

Section One: The Concept of Partnership and Its Religious Validity

First: The Definition of partnership

1- **Linguistic Definition:**

derived from mixing (al-ikhtilat الاختلاط), meaning the mixing of one property with another such that the two cannot be distinguishable.

2- Technical (Legal) Definition

The jurists of the four major schools of Islamic law have defined it with several definitions. Among them are the following:

a- The Hanafi School (الحنفية): " a partnership is a contract between partners concerning the capital and the profit."

b- The Maliki School(المالكية): " partnership is a mutual authorization for both partners to act on their own behalf and that of the other." That is, each partner grants the other permission to deal with their shared property, while each retains their own right to manage it.

c- The Shafii School(الشافعية): " is the establishment of a right to a thing for two or more people on the basis of joint ownership.

d- The Hanbali School(الحنابلة): partnership is an association in entitlement or in commercial activity.

Some contemporary jurists have favored the Hanafi definition because it expresses the essence of partnership as a contract, unlike the other definitions which viewed it from the perspective of its objective, effect, and consequent result.

Second: The Religious Validity of Partnership

The religious validity of partnership is established by the Noble Qur'an, the Prophetic Sunnah, and scholarly Ijma الاجماع (consensus).

From the Quranic Evidence: we find the statement of Allah, Blessed and Exalted be He:﴿... وَإِنَّ كَثِيرًا مِّنَ الْخُلَطَاءِ لَيَبْغِي بَعْضُهُمْ عَلَىٰ بَعْضٍ ... (24)﴾(ص :24، رواية حفص) **{... Indeed, many partners wrong one another...}** (Surah Sad, verse 24).The meaning of partners(*al-khulta*الخلطاء) here refers to partners in business. ﴿... فَهُمْ شُرَكَاءُ فِي الثُّلُثِ...(12)﴾(النساء: 12، رواية حفص)**{... then they are partners in [a share of] one-third...}** (Surah An-Nisa, verse 12)**.** (https://surahquran.com/4.html)

From the Pure Prophetic Sunnah, we find what has been related in the holy *Hadith* narrated by Abu Hurayrah (may Allah be pleased with him), attributed to the Prophet

(peace and blessings of Allah be upon him), that he said:﴿إِنَّ اللَّهَ يَقُولُ أَنَا ثَالِثُ الشَّرِيكَيْنِ مَا لَمْ يَخُنْ أَحَدُهُمَا صَاحِبَهُ، فَإِذَا خَانَهُ خَرَجْتُ مِنْ بَيْنِهِمَا﴾(شرح سنن أبي داود، صفحة 167) **"Allah says: 'I am the third of the two partners, so long as one of them does not betray the other. But if he betrays him, I withdraw from between them'**. (sharh sunan Abu Daud, p. 167)

People during the pre-Islamic era of Ignorance commonly engaged in partnerships. When the Messenger (peace and blessings of Allah be upon him) was sent, he approved this practice for them, as is established in numerous narrations.

From the Ijma Consensus (الإجماع): The Muslim scholars have unanimously agreed upon the permissibility of partnership, even though they differed regarding some of its specific types. Ibn al-Mundhir recorded this consensus on the permissibility of Sharikat.(Abu Bakr Muhammad bin Ibrahim al-Naysaburi, p. 56)

Section Two: Partnership Categories

Islamic jurists have divided partnership into two main categories:

1- Sharikat al-Amlak شركة الأملاك(Co-ownership partnership):

This is where more than one person comes to own a specific asset without a formal contract between them. It is of two types:

a- **Sharikat al-Ikhtiyar شركة اختيار (Voluntary Co-ownership):** This type of partnership arises through the voluntary action of the two co-owners. For example, they may jointly purchase an asset, or an asset may be gifted or bequeathed to them collectively and they accept it. The purchased, gifted, or bequeathed asset then becomes their shared property on the basis of partnership.

b- **Sharikat al-Jabrشركة جبر(Involuntary Co-ownership):** This is established for more than one person compulsorily, without their action. For example, when individuals inherit an estate that becomes shared property (i.e., undivided joint ownership) among them.

It is known as Co-ownership partnership n positive law as "Involuntary Partnerships."

2-Legal Ruling of Co-ownership partnership :

The ruling for this type of partnership, in both its forms, is that no partner is permitted to dispose of their partner's share without their permission. This is because each partner is considered a separate entity in relation to the other's share; consequently, neither has legal authority over the other's portion.

3- Sharikat al-Uqud شركة العقود (Contractual partnership):

This is a partnership formed by a contract between two or more parties to share in capital and profit. The Hanafi jurists subdivided it into six types, which branch out from three main categories:

- Sharikat al-Amwal شركة الأموال(Partnership of Capital)
- Sharikat al-Aamal شركة الأعمال(Partnership of Work/Labour)

- Sharikat al-Wujuh شركة الوجوه(Partnership of Creditworthiness)

Each of these types can further be either: Sharikat al-Inan شركة العنان(Limited Liability Partnership) or Sharikat al-Mufawadah شركة المفاوضة(Unlimited Equal partnership).

According to the majority of jurists , it is classified into four types:

- Sharikat al-Inanشركة العنان (Limited Liability partnership)
- Unlimited Equal partnership شركة المفاوضة
- Sharikat al-Abdan شركة الأبدان(Partnership of Services/Skills)
- Partnership of Creditworthiness شركة الوجوه

This latter classification (of the majority) will be the subject of our study, with reference to the juristic differences regarding which partnerships are permissible and which are not.

First : Sharikat al-Inan (Limited Liability Partnership)

Inan(عِنان): It is said to be derived from the phrase "the 'inan of two horses," meaning their equality in a race. It is also said that anan (with a fatḥah) refers to what is visible of the sky when one looks at it, while ʿinan (with a kasrah) means reins.

Definition of Sharikat al-Inan: It is a partnership where two or more individuals contribute capital that they own, for the purpose of conducting trade, and the profit is shared between them.

- **Ruling:** This partnership is generally permissible according to all jurists, although they differ regarding some of its conditions.

According to the Hanafis , this partnership entails each partner authorizing the other to act, which gives each the right to independently manage the capital. However, according to the Malikis , it does not entail this; for them, neither party has the right to manage the capital individually without the permission of the other partner. This latter is considered by the Hanafis to fall under Co-ownership Partnership .

Furthermore, the Malikis and Shafiis , hold that it is not permissible for the capital contributions of the two partners to differ while their share of the profit is equal. Their evidence is based on equating profit with loss; just as it is invalid for one partner to stipulate bearing a portion of the loss(without capital contribution), it is likewise invalid to stipulate a share of the profit disproportionate to their capital.

The Hanafis, on the other hand, permit this in which their evidence is based on analogizing the partnership to a Qirad (قراض-) contract. Since in a Qirad, the agent may receive a pre-agreed portion of the profit in return for his labor only, it is more appropriate to assign a portion of the profit to labor when the partnership involves capital from both partners and labor. This portion of the profit is thus in compensation for the superior effort of one partner over the other, as people vary in

their work just as they vary in other matters. However, if the capital of both partners is equal, all jurists agree that the profit is shared equally between them.

Third : Sharikat Al Mufawadah (Unlimited Equal Partnership)

- **Mufawadah**: This concept is derived from equality. It is named as such because the fundamental principle in this partnership is equality in capital, profit, and the right of disposition. It is also said that it is so named because each partner fully authorizes) the other to act on their behalf. Ibn Juzay al-Maliki defined it, as: "It is where each partner authorizes the other to act, whether present or absent, and is bound by everything their partner does."(Muhammad bin Ahmad bin Juzay al-Gharnati,, 1434 AH - 2013 AD, p. 475)
- **Conditions of Sharikat Al Mufawadah**: Those jurists who permit it have stipulated four conditions, which are (Sayid Sabiq, p. 296):

1- Equality in Capital: If one partner has more capital than the other, the partnership is invalid.

2- Equality in Legal Capacity for Disposition: Both partners must be legally competent for such financial disposition. Therefore, a partnership between an adult and a minor or an insane person is invalid.

3- Equality in Religion: A partnership between a Muslim and a non-Muslim is invalid. However, Abu Yusuf from the Hanafi school permitted this with disapproval.

4- Mutual Surety and Agency: Each partner acts as an agent and guarantor for the other, allowing them to buy and sell as if they were the legal representative of the other.(Sayid Sabiq, p. 296).

- **Ruling:**
- **View of the Hanafis and Malikis:**The Hanafis and Malikis permit this type of partnership, although they differ regarding some of its conditions. The Hanafis cite as evidence the saying of the Prophet (peace and blessings of Allah be upon him): “Fawidu (engage in Mufawadah), for it is a source of greater blessing.” Al-Zayla'i noted thatthis is a rare hadith. They also cited the hadith reported by Ibn Majah in his Sunan under "Transactions," from Salih bin Suhayb, from his father Suhayb, that the Messenger of Allah (peace and blessings of Allah be upon him) said: "There are three things in which there is blessing: a deferred sale , al-muqaradah (and in some copies of Ibn Majah it is recorded as al-mufawadah' instead of al-muqaradahالمقارضة), and mixing wheat with barley for domestic consumption, not for sale. (Nasb al-Rayah li Ahadith al-Hidayah, p. 475) Furthermore, they argued based on customary practice (al-urf العرف), stating that people have engaged in this type of partnership throughout the ages without being censured by any scholar.

  Regarding the element of uncertainty inherent in it - specifically, that this partnership involves an agency to purchase goods ofunspecified type and a guarantee for an unknown liability - the Hanafis argued that this is tolerable because it is established incidentally. A transaction may be valid incidentally

even if it would not be valid if intended primarily, as is the case in a Mudarabah, which also involves an agency to purchase goods of an unspecified type. (al-Zuhayli, 1405 AH - 1985 AD, p. 800)

Thus, Imam Malik permitted it for a different reason, arguing that each partner has effectively sold a portion of his property for a portion of his partner's property. Subsequently, each partner authorizes the other to manage the remaining share currently held in their possession.(Ibn Rushd, p. 251)

- **View of the Shafiis and Hanbalis:**

Proponents of this view argue that a partnership is neither a sale nor an agency contract but rather a commingling of assets. Since profits are derivatives, it is impermissible for derivatives to be shared unless their principal assets are also shared. If each partner stipulates a right to profit from the other's owned capital, this involves excessive uncertainty, which is impermissible.

They further said that a contract with these specifications has no basis in the Lawgiver's texts and that achieving the required level of equality is practically difficult. Therefore, Imam Al-Shafii stated in his book Ikhtilaf Abi Hanifah wa Ibn Abi Layla: "I do not know of anything in worldly matters that would be invalid if al-Mufawadah is not invalid." (islam web, n.d.)

They also dismissed the hadith cited by the Hanafis as unsubstantiated and not suitable as evidence. (al-Zuhayli, 1405 AH - 1985 AD, p. 3885)

- **The Difference Between the two Imams Abu Hanifah and Malik :** The points of difference between Imams Abu Hanifah and Malik regarding Sharikat al-Mufawadah are as follows:

- Equality in Capital: Abu Hanifah held that equality in capital is a condition for Mufawadah, whereas Imam Malik did not, drawing an analogy to Sharikat al-Inan.
- Scope of Included Assets: Imam Abu Hanifah viewed the partnership as encompassing all assets owned by a partner that are suitable for partnership; neither partner could exclude any eligible asset. In contrast, Imam Malik held that the partnership includesonly the assets specified in the contract, which form the partnership's capital, rather than all of a person's wealth. (Ibn Rushd, p. 252)

Consequently, the concept of Sharikat al-Mufawadah according to the Malikis differs from its concept according to the Hanafis. Therefore, the Maliki position does not conflict with the other jurists in their definition of Mufawadah.

In summary, the structure of this partnership according to the Malikis is that each partner authorizes the other to act on his behalf, whether present or absent, with the actions of one being binding as the actions of the other. The partnership exists only in the capital stipulated in the contract, which forms the partnership's capital base, and equality in the amount of capital contributed is not a condition.

Third: **Sharikat al-Abdan شركة الأبدان (Partnership of Services/Skills)**

Concept of al- Abdan: It is also called Partnership of Work, Sharikat al-Sanai شركة الصنائع(Partnership of Crafts), or Sharikat al-Taqabbul شركة التقبل(Partnership of Undertaking).

- **Form**: Two or more persons agree to jointly undertake a specific job or project, sharing the total remuneration between them according to a pre-agreed ratio- whether equal or unequal. Any loss (e.g., from poor work requiring redoing) falls upon their collective effort. This type ofpartnership is common among craftspeople and professionals, such as carpenters, blacksmiths, construction workers, tailors, and others.
- **Features of Sharikat al-Abdan**:

1- It does not require equality in capital contribution or in the right of financial disposition.

2- It is permissible for one partner to be the managing partner responsible for the partnership's dealings, while the other is not.

These features have made this partnership one of the most widespread. In this regard, Ibn 'Asim stated:

وَالمال خَلطُة ووضعه بيد *** واحِدٍ أوفي الاشتراك معتمد

"We mixed our property and entrusted it to the hand of one, or relied on partnership. (Muhammad bin Muhammad Abu Baker ibn Asim Algharna, p. 84)

- **Ruling:**
- **View of the Hanafis, Malikis, and Hanbalis:**

Proponents of this view agree on the permissibility of Sharikat al-Abdan, despite differing on some of its conditions. They cite as evidence the statement of Abdullah ibn Mas'ud (may Allah be pleased with him): "Ammar, Saad, and I partnered (اشتركت) [our efforts] on the Day of Badr. Sa'd captured two prisoners, while Ammar and I captured nothing."

Majd al-Din Ibn Taymiyah stated that this narration is proof for the validity of Sharikat al-Abdan and the ownership of permissible things acquired through such partnership. (Al-Muntaqa, Book of Partnership and Mudarabah, p. 524)

The Malikis interpret Ibn Massud's report as indicating the partners' sharing in the war booty, which they deserved based on their effort. Thus, according to them, partnership can be based on work just as it can be based on capital, similar to Mudarabah (مضاربة), which is a contract based on work; therefore, a partnership based on work is also permissible.

- **Conditions of the Malikis for the Validity Sharikat al-abdan** : The Malikis agreed with the Hanafis on its permissibility but differed on specific conditions they deemed necessary for its validity:
- Identity of Profession: both partners must practice the same craft. It is not permissible between different professions, unless their work is interdependent, where the work of one relies on the existence of the other's work, like a weaver and a spinner.

- Identity of Workplace: They must work in the same location. A partnership is invalid if they are in two different places.

Ibn 'Asim summarized this, stating:

" فشرطه اتّحاد شغل ومحل ***وحيثما يشتركان في العمل"

"Whenever they partner in work, its condition is the unity of occupation and place."

However, the condition of a unified workplace is considered less relevant in our modern era due to technological advancements and global connectivity. Today, multiple specialized firms can collaborate on a single product (like cars, airplanes, trains), with each contributing its specific expertise to complete the final product.

- **View of the Shafiis and Zufar from the Hanafis:**

Proponents of this view hold that this partnership is invalid. They argue that partnership fundamentally pertains to capital, not labor, in their view. Furthermore, they contend that labor is inherently unquantifiable, leading to excessive uncertainty (gharar - غرر), and that each party's specific work contribution remains unknown to the other. Since each individual's physical effort is distinct and separate, its benefits should remain exclusive to that individual.

Fourth: Sharikat al-Wujuh شركة الوجوه(Partnership of Creditworthiness)

- **Concept**:It is named as such because merchants typically sell on credit only to those of high social standing and creditworthiness, It is also called Sharikat ala al-Dhimam شركة على الذمم(Partnership on Liabilities/Credit).
- **Form**: Two or more persons, without any capital, partner to purchase goods on credit based on their collective creditworthiness with merchants, and then sell those goods for cash. The partnership between them is in the profit. It is essentially a partnership based on liabilities/credit, without capital or a specific craft.
- **Ruling :**
- **View of the Hanafis and Hanbalis:**

Proponents of this view hold its permissibility because it is a form of commercial activity. Since the partners agree on this activity, a partnership can be formed upon it. They also argue that people have customarily practiced this since ancient times without censure. Consequently, the partners' shares in the ownership of the purchased item can differ, leading to profits being distributed proportionally to their respective ownership shares.

- **View of the Malikis and Shafiis:**

The jurists of the Maliki and Shafi'i schools view Sharikat al-Wujuh as invalid. They argue that partnership must relate to capital or labor, both of which are absent in this case. Furthermore, they contend it involves excessive uncertainty, as each partner compensates the other with an unspecified and unlimited potential gain from a non-specific activity. (Ibn Rushd, p. 252)

Therefore, Ibn Asim stated:

وَفَسْخُهَا إِنْ وَقَعَتْ عَلَى الذِّمَم *** وَيَقْسِمَانِ الرِّبْحَ حُكْمٌ مُلْتَزَم

"It’s annulment if it occurs on credit, and dividing the profit is a binding ruling."(bn 'Asim, Muhammad ibn Muhammad Abu Bakr, 1432 AH/2011, p. 84).

Fifth: Sharikat al-Mudarabah شركة المضاربة (Limited Investment Partnership)

- **Concept:** Mudarabah is the term used in Iraq, while in the Hijaz it is called Qirad. Linguistically, Mudarabah is derived from "traveling the land for trade," as in the Allah said: ﴿... وَآخَرُونَ يَضْرِبُونَ فِي الْأَرْضِ يَبْتَغُونَ مِن فَضْلِ اللَّهِ ... (20)﴾(المزمل: الآية 20، رواية حفص) **{... and others traveling throughout the land seeking of Allah's bounty...}**(Surat Al muzamil verse, 20)**.** is also said because both parties get a "strike" (darb) from the profit. Qirad is derived from qard (cutting), as the owner cuts off a piece of his capital for the agent to manage in return for a piece of the profit. It is also said to be derived from (equality), due to their equal entitlement to the profit principle.

It can be defined as: a contract between two parties where one provides the capital and the other manages the trade, with the profit shared between them according to a pre-agreed ratio.

- **Ruling** :

The Imams of the four schools agree on its permissibility, citing the Qur'an, Sunnah, consensus, and analogical reasoning as evidence.

From the Qur'an: **{... and others traveling throughout the land seeking of Allah's bounty...}**(Surat Al muzamil verse, 20)and ﴿لَيْسَ عَلَيْكُمْ جُنَاحٌ أَن تَبْتَغُوا فَضْلاً مِّن رَّبِّكُمْ... (198)﴾(البقرة: الآية 198، رواية حفص)**{There is no blame upon you for seeking bounty from your Lord...}** (Surah Al-Baqarah, verse 198.)

- **From the Sunnah:** The Prophet (peace and blessings be upon him) engaged in Mudarabah with the capital of Khadijah (may Allah be pleased with her) before his prophethood, traveling to Syria for trade - a practice from the pre-Islamic era that Islam endorsed. The hadith: ﴿ثلاثٌ فيهن البركة: البيعُ إلى أجَل، والمقارضةُ، وخلطُ البُرِّ بالشّعير للبيت لا للبيع﴾ (مُحَمَّد الزيلعي، صفحة 475). "**There are three things in which there is blessing: a deferred sale, al-muqaradah (Mudarabah), and mixing wheat with barley for domestic consumption, not for sale."** (Ibn Majah. , p. 768)

- **Consensus**: It is reported that a group of the Companions (may Allah be pleased with them) invested orphans' property using Mudarabah, and this was not censured. The sons of Umar ibn al-Khattab, Abdullah and Oubaidullah (may Allah be pleased with them), did this with money sent by Abu Musa al-Ashaari to the Commander of the Faithful. They traded with it, made a profit, and Umar (may Allah be pleased with him) divided the profit: half for them and half for the public treasury. It is certain that it existed and was approved in the Prophet's time.

- **Qiyas** القياس **(Analogy):** Jurists analogized Mudarabah to al-Musaqat (sharecropping for irrigated trees) due to public need. People include the poor and the rich; a poor person is not necessarily unskilled in trade, nor is a rich person necessarily skilled. Legislating this contract fulfills people's needs and allows mutual benefit, as contracts are legislated for the welfare of people and to meet their needs.

- **Pillars of Mudarabah**: Jurists differed in specifying its pillars:
- Hanafi View: One pillar: Offer and Acceptance using words indicating Mudarabah, Qirad, or their meanings.
- Maliki and Hanbali View: Three pillars:
- The Contracting Parties (capital owner and agent).
- The Subject Matter (capital, work, profit.
- The Formulation (offer and acceptance).

- **Shafii View:** Five pillars: Capital, Work, Profit, Formulation, and Contracting Parties.

4-1- Types of Mudarabah :

- **Mudarabah Motlaka** مضاربة مطلقة**(Unrestricted)**: The capital owner gives his capital to the Mudarib without restricting him to a specific commodity, merchant, or location, specifying only the profit share. This is unanimously accepted by all jurists.
- **Mudarabah Mqayada** مضاربة مقيّدة**(Restricted)**: The capital owner restricts the Mudarib to trade in a specific commodity, location, or with a specific merchant. This is permitted by the Hanafis and Hanbalis but prohibited by the Malikis and Shafiis.

Ibn Rushd said : they differed if the capital owner restricts the agent to a specific type of good. Imams Malik and Al-Shafi'i said it is not permissible unless the goods are non-perishable and stable in value across seasons. Abu Hanifah said the agent is bound by the condition; if he violates it, he is liable. Malik and Al-Shafi'i viewed the restriction as imposing hardship and increasing uncertainty , while Abu Hanifah considered the uncertainly minor .(Ibn Rushd, p. 236)

3- **Conditions of Mudarabah** : Jurists stipulated conditions related to the parties, capital, and profit as follows:

-Conditions for the Contracting Parties :Both the capital owner and the agent (mudarib) must possess legal capacity to act and to be represented (i.e., they must be sane, adult, and not legally restricted). It is not required that both be Muslim, although the Maliki school disfavored this. The partnership is prohibited if the

business involves inherently unlawful goods or activities (e.g., pork, wine, or usury)."

-Conditions for the Capital :

1-It must be in the form of cash (e.g., gold, silver, currency). Capital in the form of goods (arud) is invalid according to the four Imams, but Ibn Abi Layla and Al-Awza'i permitted it if the goods are fungible (mithli). The majority argue that using goods as capital involves gharar and uncertainty in valuing the profit. If someone gives goods saying, "Sell these and use the price for Mudarabah," the majority permit it, as the contract is on the price, not the goods. The Shafi'is invalidate it, considering it a contract on unknown capital.

2- The capital must be known in amount to avoid uncertainty in profit.

3- The capital must be present and deliverable. It cannot be a debt or absent property, as the agent must receive it to trade. There is consensus on this, though physical presence at the contract session is not required if delivered later.

4- The capital must be delivered to the agent (mudarib). It cannot remain with the owner. If the owner stipulates keeping control, the Mudarabah is invalid according to the majority, though Hanbalis permitted this condition.

5- Conditions for Profit in Mudarabah :

1- The profit shares for the capital owner and the agent (muqarid/mudarib) must be specified as a proportion (e.g., one-quarter, one-third, or one-half). The Prophet (peace be upon him) entered into a contract with the people of Khaybar for half of the land's produce. Uncertainty regarding the contracted object invalidates the contract."

2- A fixed, lump-sum amount cannot be stipulated for either party (e.g., one gets 1000 dinars, the rest to the other). This invalidates the Mudarabah because it negates the principle of profit-sharing. If the profit is less or more than the fixed sum, one party gets everything and the other nothing.

3- Neither party may stipulate a specific, exclusive portion of the profit for themselves.

If the agent stipulates all the profit, the Malikis permit it, considering it a benevolent grant from the capital owner. The Hanafis say this becomes an interest-free loan (qard), not Mudarabah. The Shafi'is prohibit it due to uncertainly; the owner bears any loss but gets no profit. (Ibn Rushd, pp. 235-236)

4- The agent cannot divide the capital and take his profit share except in the presence of the capital owner, a condition agreed upon by all four schools.

5- The Binding Nature of the Mudarabah Contract:

Jurists agree thatthe contract is non-binding (ghayr lazim) for either party before work commences. They differ after the agent begins work:

Abu Hanifah, Al-Shafi'i, and Ahmad: The contract remains non-binding and can be revoked by either party. It is not inheritable. They analogize it to agency (wakalah) and custodianship.

However, Imam Malik held that the contract becomes binding once the agent commences work and that it is inheritable. Revocation after this point is considered harmful."

- **Guidelines for the Agent's Actions and Impermissible Acts**:

Guidelines for the Agent's Actions: The permissibility of the agent's actions depends on whether the Mudarabah is unrestricted or restricted. In an Unrestricted Mudarabah, the agent can generally engage in all common commercial practices: buying/selling, hiring workers, renting storage/transport, and delegating tasks. He may travel with the capital according to the Malikis, the prominent Hanafi view, and one Hanbali view, as travel is inherent in trade. The Shafi'is and the other Hanbali view require the owner's permission for travel.

- **Impermissible Acts for the Agent (unless explicitly authorized):**

In an unrestricted Mudarabah, the agent is not permitted to perform certain actions unless they are explicitly stipulated in the contract.

Incurring Debt: The agent cannot take loans against the capital without explicit permission, as it imposes an unconsented liability on the owner.

Buying on Credit (Maliki View): The Malikis prohibit the agent from buying goods on credit even if authorized to buy. If he does, he is liable for the goods, and any profit is his alone, based on the principle: "Profit belongs to the one who bears liability."

Exceeding the Capital: Jurists agree the agent cannot purchase goods worth more than the capital (cash or credit), as he becomes liable for the excess. If he does, the purchase becomes a partnership between him and the owner for the excess amount, unless the owner ratifies the act, incorporating it into the original Mudarabah.

6- General Legal Rulings of Mudarabah :

- **Rulings for a Valid Mudarabah:**

The legal rulings governing a valid Mudarabah are numerous. Some pertain to the legal status of the agent, some to the work of the agent, and others to what the agent earns through his work and what the capital owner earns through his capital.

- **Status of the Agent:**

- Jurists agree that the Mudarib (agent) is a trustee of the capital in his possession, and its status is like a deposit with him. This is because he received it with the permission of its owner, not as an exchange (like money taken for a purchase) nor as a trust (like collateral).
- The Mudarib has the right to engage in buying and selling because he holds the position of an agent. Agency is the act of dealing with another's property with their permission.

- If the Mudarib generates a profit, he becomes a partner in that profit according to his agreed share because he acquired this portion through his labor. The remaining profit belongs to the capital owner because it is the growth of his capital.
- If the Mudarabah becomes invalid for any reason, it is converted into a hiring contract, and the Mudarib becomes like a hired worker for the capital owner, entitled then to a standard wage for his work.
- If the Mudarib violates the conditions agreed upon with the capital owner-such as buying something they agreed not to buy-he becomes equivalent to a usurper and is financially liable for the capital because he is considered to have transgressed.
- If the capital is lost while in his possession without any negligence on his part, he is not liable because he is considered a trustee and is acting as a representative of the capital owner.
- If there is a loss in the Mudarabah, it is first deducted from the profit if any profit exists. If there is no profit, the capital owner bears the loss alone.

If the capital owner stipulates that the Mudarib guarantees the capital against loss:

a- The Hanafis and Hanbalis hold that the stipulation is void but the contract remains valid. Consequently, operating the capital for profit under this condition of guaranteeing the principal is permissible.

b- The Malikis and Shafi'is hold that the Mudarabah contract becomes invalid because this stipulation introduces excessive uncertainty (gharar), which contradicts the fundamental nature of the contract.

Rulings for a Defective Mudarabah :

All jurists agree a defective contract must be dissolved, and the capital returned if not utilized. They differed in opinion if the capital was utilized, regarding what the agent is entitled to for his work:

- The Hanafis, Shafiis, Hanbalis, and some Malikis are of the view that the Mudarib receives a standard wage for the work he has performed.
- The Maliki school has several narrations from Ibn al-Qasim regarding this issue. One opinion is that he receives a standard wage, which is the view of the majority. Another opinion is that he is given a profit share as per a standard Mudarabah (qirad al-mithl).

It is reported from Abdul Wahhab, quoting Ibn al-Qasim, that he detailed this further, stating: If the invalidity is due to a defect in the contract itself, it reverts to a standard Mudarabah (qirad al-mithl). If the invalidity is due to an extra condition imposed by one party on the other, it reverts to a standard wage (ujrat al-mithl), though it is more likely that the correct stance is the opposite of this.

The difference between a standard wage and a standard Mudarabah is that the wage is an obligation upon the capital owner, payable whether the capital generates a profit or not. The standard Mudarabah follows the rules of a conventional Mudarabah; if there is a profit, the agent receives a share from it, otherwise he gets nothing. (Ibn Rushd, pp. 240-241)

The majority who advocate for the standard wage do so regardless of whether the Mudarabah generate a profit or not. Their reasoning is that a invalid Mudarabah is

akin to an invalid employment contract. A worker in an invalid contract is not entitled to the agreed-upon fee but only to a standard wage for his labor. By this analogy, the Mudarib deserves a standard wage even if no profit was made, because the capital owner utilized his services and thus owes him compensation for his work.

If a profit was generated in the invalid Mudarabah, it all belongs to the capital owner, because the profit is considered growth of the capital he owns. The Mudarib has no right to any share of it due to the contract's invalidity. Similarly, if the venture resulted in a loss, the entire loss is borne by the capital owner.

7- Key Cases for Rectifying a Defective Mudarabah into a Standard Mudarabah or a Standard Wage

A later jurist held that the most important cases are as follows:

The primary instances where an invalid Mudarabah contract is converted into a standard Qirad arrangement include: partnerships formed with commodities instead of monetary capital; those with ambiguous profit distribution terms lacking customary reference; time-bound agreements such as "operate this capital for one year"; future-dated contracts like "start operations when a specified period arrives"; clauses requiring the working partner to guarantee the principal even without negligence; scenarios where the capital owner instructs credit purchases but the agent buys in cash - making the agent solely entitled to profits and liable for losses since the price becomes their debt; conditions involving rare or intermittent occurrences; and disputes over profit shares where both parties claim unreasonable portions, such as the agent demanding two-thirds while the capital owner claims one-third.

As for the standard wage, it applies when the capital owner imposes conditions on the agent regarding buying, selling, and all financial transactions; or requires consultation for every sale or purchase, prohibiting any action with the capital without explicit permission; or stipulates the appointment of a supervisor to monitor the agent; or requires the agent to partner with others in the Qirad capital; or mandates mixing the capital with the agent's own funds or with other Qirad capital under their management; or involves sending the Qirad capital (or part of it) with a third party to purchase goods for the agent to trade. In all these cases, the agent is entitled to a standard wage for their labor. (al-Zuhayli, 1405 AH - 1985 AD, p. 853)

Conclusion

This research demonstrated that Sharikat (Islamic Partnership system) is a contract based on an agreement between two or more parties to collaborate in investing capital and labor for the purpose of achieving lawful profit. This juristic institution embodies the spirit of cooperation and shared responsibility upon which the Islamic economic system is founded, ensuring the equitable distribution of wealth and fulfilling the objectives of social development and safeguarding the interests of all parties.

The study has shown that Islamic jurists have classified partnerships into several main types, differing according to the nature of the activity and the type of contribution in capital or work. These can be concluded as follows:

1- **Limited Liability Partnership**: A partnership where two or more contribute capital and work, sharing profit according to a pre-agreed ratio. It is the most common form of partnership.
2- **Partnership of Creditworthiness**: Established between individuals of high social standing and good commercial reputation, who buy goods on credit based on their status, sell them for cash, and share the profit as agreed, despite starting with no initial capital.
3- **Unlimited Equal Partnership**: The most comprehensive type, where each partner grants the other full authorization to manage all partnership affairs. It encompasses sharing capital, work, profit, and liability.
4- **Partnership of Services/Skills**: Also known as a partnership of work or crafts, it is formed among professionals and artisans who contribute their labor, effort, and expertise without monetary capital, sharing the fee or profit generated from that work.
5- **Limited Investment Partnership**: A contract based on partnership between a capital provider and a working agent. One provides the capital, and the other manages and trades with it. Profit is shared according to the agreed ratio, while financial loss is borne by the capital provider unless there is proven misconduct or negligence by the agent.

This type of partnership has received special attention from jurists due to its economic importance, serving as a foundation for the circulation and utilization of capital through lawful means. In the modern era, it represents a primary model in contemporary Islamic finance, particularly in investment structures and Islamic banking.

Through a comparative analysis of the opinions of different Islamic schools of law, it is evident that the regulatory principles governing partnership contracts in Islamic jurisprudence aim to strike a balance between contractual freedom, ensuring justice, and preventing uncertainty and exploitation. This aligns harmoniously with the objectives of Islamic Shariah, particularly the preservation of wealth and the establishment of justice in economic transactions.

Ultimately, it can be said that the concept of partnership in Islamic jurisprudence embodies a comprehensive economic philosophy that blends material gain with ethical responsibility. It establishes commercial relationships based on cooperation, risk-sharing, and mutual trust. These are enduring human values that render the Islamic economic system a viable model for achieving stability, justice, and social responsibility across different eras.

List of Sources and References:

– القرآن الكريم برواية حفص.

-https://surahquran.com/4.html.

- Al-Fiqh al-Islami wa Adillatuh (Comprehensive of the Sharia Evidences, Juristic Opinions, Major Jurisprudential Theories, and Authentication of Prophetic

Hadiths): Wahbah ibn Mustafa al-Zuhayli, Dar al-Fikr, Damascus, Syria, 4th Edition.

- Al-Fiqh al-Islami wa Adillatuh (Islamic Jurisprudence and Its Proofs): Wahbah al-Zuhayli, Dar al-Fikr for Printing and Publishing, Damascus, Syria, 2nd Edition, 1405 AH / 1985 CE.
- Al-Ijma‘ (Consensus): Abu Bakr Muhammad ibn Ibrahim al-Nisaburi, 1st Edition, 1405 AH / 1985 CE, Dar al-Kutub al-‘Ilmiyyah, Beirut, Lebanon.
- Al-Muntaqa fi al-Ahkam al-Shar‘iyyah min Kalam Khayr al-Bariyyah (Selections of Legal Rulings from the Sayings of the Best of Creation, Peace Be Upon Him): Majd al-Din Abd al-Salam ibn Taymiyyah al-Harrani, Book of Partnership and Mudarabah, edited and annotated by Tariq ibn ‘Awd Allah ibn Muhammad, Dar Ibn al-Jawzi for Publishing and Distribution, Kingdom of Saudi Arabia, 1st Edition, Safar 1429 AH.
- Al-Qawanin al-Fiqhiyyah (The Juridical Codes)-: Muhammad ibn Ahmad ibn Juzayy al-Gharnati, edited by Majid al-Hamawi, Dar Ibn Hazm, Beirut, Lebanon, 1st Edition, 1434 AH / 2013 CE.
- Bidayat al-Mujtahid (The Distinguished Jurist’s Primer): Ibn Rushd, n.p., n.d.
- Fiqh al-Sunnah (Jurisprudence of the Sunnah)-: Sayyid Sabiq, Maktabat Dar al-Turath, Cairo, n.d.
- https://www.islamweb.net/ar/library/contentA7-
- Nasb al-Rayah li-Ahadith al-Hidayah, with its commentary Bughyat al-Alma‘i fi Takhrij al-Zayla‘i: Jamal al-Din Abu Muhammad Abd Allah ibn Yusuf ibn Muhammad al-Zayla‘i, edited by Muhammad Awwamah, al-Rayan Foundation for Printing and Publishing, Beirut, Lebanon, and Dar al-Qiblah for Islamic Culture, Jeddah, Saudi Arabia, 1st Edition, 1418 AH / 1997 CE.
- Sharh Sunan Abi Dawud: Ahmad ibn Husayn ibn ‘Ali ibn Raslan, Book of Sales, Chapter on Partnership, edited by Mahmoud Abd al-Halim Rahmah et al., Dar al-Falah for Scientific Research, Fayoum, Egypt, 1st Edition, 1437 AH / 2016 CE.
- Sunan Ibn Majah, edited by Muhammad Fu’ad Abd al-Baqi, Book of Trade, Chapter on Partnership and Mudarabah, Dar Ihya’ al-Kutub al-‘Arabiyyah Press, n.p., n.d.
- Tuhfat al-Hukkam fi Nukat al-‘Uqud wa al-Ahkam: Muhammad ibn Muhammad Abu Bakr ibn ‘Asim al-Gharnati, edited by Muhammad Abd al-Salam Muhammad, Dar al-Afaq al-‘Arabiyyah, Cairo, 1st Edition, 1432 AH / 2011 CE.