

## Theory of “Sharecropping” from an Islamic Economic Perspective: A Study of *al-Muzāra‘a* & *al-Musāqāt*

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### 1. Introduction

Nowadays, societies all over the world depend on a healthy economy to ensure their prosperity. In order to fulfil the needs of life with limited resources, every person in the society should be involved in a variety of economic activities in such industries as manufacturing, tourism, agriculture, and banking. In an Islamic society, all economic activities have to comply with the ethical values and Islamic law derived from the unequivocal teachings of al-Qur’ān and Ḥadīth.

Most of the discussions among scholars on the subject of Islamic economics at present are focused on Islamic banking and finance. Even though the agricultural sector is one of the most important economic activities in human life, relatively few Islamic economists have made studies on it. Originally, land used for agriculture was the main constituent in this area of study and it can be reviewed from the contracts which have been used between landlords and tenants. Basically, there are three main forms of contract in agriculture; fixed wage, fixed rent and sharecropping.

Alternatively, in Islamic jurisprudence, there are also terms which are related to the concept of sharecropping, namely *al-muzāra‘a* and *al-musāqāt*. Basically, these principles constitute a contract between the landlord and the tenant stipulating that the final output will be shared among both parties as a reward for the managerial labour supplied by the tenant and the land capital supplied by the landlord. Nevertheless, these concepts are only a part of the discussion in the broader context of sharecropping in economic terms. Furthermore, some arguments have arisen among leading Islamic jurists as to their validity. Hence, these principles can be considered as important concepts in Islamic jurisprudence (*fiqh*) and as having been reviewed by many Islamic jurists in classical literature.

The theory of *al-muzāra‘a* has prompted more debates among Islamic legal schools than the principle of *al-musāqāt*. This is illustrated by Imām Abū Ḥanīfa’s (699–767) acknowledgment of the principle of *al-ijāra* (leasing) in land contracts but his invalidation of the principles of *al-muzāra‘a* and *al-musāqāt*. Imām Mālik (712–796) and Imām Shāfi‘ī (767–820) only acknowledged the principle of *al-muzāra‘a* if it was a derivative from a contract of *al-musāqāt*. Abū Yūsuf (731–798) and al-Shaybānī (750–805), disciples of Imām Abū Ḥanīfa, have proposed that both of these contracts are permitted by *Sharī‘a* and admissible as a form

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of partnership between landlord and farmer. This interpretation has also been followed by Imām Aḥmad ibn Ḥanbal (780–855), Ibn Taymīya (1262–1328), Ibn Ḥazm (994–1064), and also by contemporary scholars such as Muḥammad Bāqir al-Ṣadr (1935–1980) and Seyyed Mahmood Talegani (1911–1979).

Therefore, this paper attempts to examine the contracts of *al-muzāra‘a* and *al-musāqāt* as the Islamic forms of sharecropping. It will highlight the historical development of these contracts from the perspective of Islamic jurists in Islamic legal schools (*madhhabs* = *madhāhib*) and also their contemporary significance from the viewpoint of implementing them at an institutional level. This paper is organised into five sections. The following section explains the principle of *al-muzāra‘a*, followed by the theory of *al-musāqāt*, the views of Islamic jurists towards the principles of *al-muzāra‘a* and *al-musāqāt*, and finally, the conclusion.

## 2. Theory of *al-Muzāra‘a* Formulated in Classical Islamic Jurisprudence

### 2.1 *Al-Muzāra‘a* in the Primary Sources:

The Qur’ān, the first primary source of law for all Muslims, does not mention sharecropping as such. In addition, the *Sunnah*, as the second of the primary sources of Islamic law, does not give a clear ruling on whether or not sharecropping is permissible for Muslims. The Prophet only said to the Jews of Khaybar on the day of conquest of Khaybar; “I keep you on the land on which God has kept you, on the condition that the fruit will be equally shared between you and us” [Muslim 2000: no. 3939; Abū Dāwūd 1988: no. 3408]. To deal with the problem, the jurists of the different Islamic legal schools (*madhhabs*) have imposed conditions and restrictions upon sharecropping contracts in order to make the contracts valid.

*Al-muzāra‘a* is derived from the word “*zara‘a*”, viz. crop [Majma‘ al-Lughā al-‘Arabīya 1985: 406]. *Majalla al-Aḥkām al-‘Adlīya* in section 1431 defined *al-muzāra‘a* as a contract made between two people, one a landowner and the other a farmer, whereby the landlord gives his land to the farmer to cultivate against a specified joint share of the crops [Tyser et al. 2001: 237].

Technically, it also means a contract for the cultivation of land in return for part of the produce in accordance with conditions stipulated by law, when a farmer agrees with the landowner on a specific percentage to be obtained in exchange for work on his land. Farming expenses are shared by the worker and the landowner, proportionally.

For this reason, it is defined as a joint venture in farming, whereby one or more individuals enter into a contract to invest in an agricultural enterprise or operation. Output or produce from the enterprise is shared between the partners in accordance with the agreement, stipulated in the contract. The terms and conditions of a contract of joint venture should be so designed as to avoid any possibility of dispute during the conduct of business or at the time of

sharing the profits or bearing the loss.

### **2.2 Capital/Input Sharing:**

Generally, in the view of the majority of jurists, *al-muzāra‘a* is a legally acceptable legal contract for financing operations [Dusūqī n.d.: 372; Sharbīnī n.d. a: 323; Ibn Qudāma n.d.: 581; Kāsānī 1968: 3808]. It can take several forms. For instance, a contract based on this arrangement can specify that the land and other physical factors of production for the enterprise could come from one party while labor could be provided by the other party. Alternatively, only the land can originate from one party while other factors, including labor, could come from the other party in contract. Yet another alternative of *al-muzāra‘a* is that land and labor could come from one of the contracting parties, while all the other factors of production may be provided by all the other parties in the contract [Kāsānī 1968: 3816–3819].

### **2.3 Management:**

The valid *al-muzāra‘a* is a terminable contract (*‘aqd ghayr lāzim*) for the tenant, but is binding upon the owner of the land. If the tenant says to the landlord after the conclusion of the contract that he does not want to continue, he has the right to do so [Kāsānī 1968: 3822]. The work that is essential for the *al-muzāra‘a* like cultivation and sowing is for the tenant to perform, while work that is not essential to it like transportation and harvesting is a joint liability [Ibn Qudāma: 589]. If the land does not produce anything, then there is no return for either, and neither is the tenant entitled to wages for his work nor is the landlord entitled to rent for his land, irrespective of who provided the seed [Kāsānī 1968: 3822].

The landowner must pass the land to the farmer and permit him to work without any interference. The landowner should not limit the farmer’s movement in terms of cultivation of land, as the farmer is the decision maker concerning the utilization of land under *al-muzāra‘a* contract. Furthermore, the landlord is also responsible for providing the land and assets and bears any devaluation resulting from the farming. He is not liable for anything other than this in regard to the farmer if there is no yield because this is a partnership in growth and not a wage contract [‘Ajlūnī 2010: 274–275].

In addition, the farmer’s possession regarding *al-muzāra‘a* is that of a trustee’s possession of the crop, he is not liable for the damage or loss of the crop, except in the case of an excess of authority, default or a violation of the *al-muzāra‘a* conditions. If there is no crop produced by the land, the farmer will not be liable to compensate the landlord. This is because the contract is a partnership and a hiring or leasing arrangement.

### **2.4 Output Sharing:**

The output share of each partner should be a percentage of the output whether it is half, one-

third or whatever, and not a specific amount. This percentage must be agreed on clearly in the beginning of the contract [Kāsānī 1968: 3816]. According to al-Ṣadr’s economic theory work (activity) is the basis of the rights, thus it can be understood that the landowner is entitled to a share of income due to his ownership, while the farmer is entitled to a share for his work, as stipulated in agreed transaction earlier [Sadr 1983: 185].

## 2.5 Legal Rules:

To summarize, there are several legal rules mentioned in classical literature from the past Islamic scholars to ensure the validity of the contract [Dusūqī n.d.: 374–375; Ibn Qudāma n.d.: 589; Kāsānī 1968: 3816–3819; Ibn ‘Ābidīn 1966: 283; Wahba al-Zuhaylī 1989: 626–627]:

1. It is a condition in *al-muzāra‘a* that the land must be available and the owner must move out of the land so that the farmer can work without any obstacle and it is a condition that the crop to be cultivated must be specified.
2. The land should be cultivable. It should be clearly delineated.
3. It is a condition to specify the kind of seeds to be sown. The seeds may be provided by the owner of the farm according to the prevailing norm.
4. It should be clearly stated what is to be sown, that is, the seed, unless the landlord tells him to sow whatever type he likes.
5. The product sown should be something useful and amenable to cultivation.
6. It is a condition that the *al-muzāra‘a* period must be known and sufficient for the cultivation of the land and harvesting the crop.
7. It is a condition in *al-muzāra‘a* that the two parties share the produce, and the share of each partner is a known pro rata ratio in the total. It is invalid to stipulate a specific amount of the produce to either partner, because that may hinder the realisation of partnership.
8. The transaction shall be invalid if the share of either partner is something other than the produce, because *al-muzāra‘a* is not an absolute lease; it can be considered as a kind of land lease in exchange for the produce.
9. The produce is divided according to the ratios the two parties stipulate and agree upon. In the case of crop failure neither shall get anything. The farmer loses the effort and the land owner loses the utility of the land.
10. Everything that is necessary for *al-muzāra‘a* such as tending the farm shall be borne by the farmer because it is in the contract. All expenses on the crop shall be borne by the two parties in proportion to their shares in the produce, because that is not part of the *al-muzāra‘a* work so as to be the concern of the farmer.

## 2.6 Termination of Contract:

The contract of *al-muzāra‘a* comes to an end expressly or impliedly. Express termination is by *faskh* or *iqāla* (negotiated rescission). It is implied when the tenant is prevented from working on the land or when the period of *al-muzāra‘a* is over [Wahba al-Zuhaylī 1989: 626–627]. The contract of *al-muzāra‘a* is also terminated with the death of the tenant and the rights will pass to the heirs. If the landlord dies, the tenant will continue till the produce is harvested, and the new landlord cannot evict him.

## 3. Theory of *al-Musāqāt* Formulated in Classical Islamic Jurisprudence

### 3.1 *Al-Musāqāt* in the Primary Sources:

Historically, the debate on *al-musāqāt* contract is also based on the history of Khaybar as well as history of *al-muzāra‘a* contract. The theory of *al-musāqāt* is based on the transaction between the Prophet (pbuh) and the Khaybar tenants which mainly involved date palms forming the capital. Therefore, some Islamic jurists consider *al-musāqāt* as a partnership contract, wherein the capital provider advances his capital to the worker and the profit will be shared as stipulated earlier.

The Prophet Muhammad (pbuh) said to the Jews in Khaybar, “I keep you on the land on which God has kept you, on the condition that the fruit will be equally shared between you and us” [Muslim 2000: no. 3939; Abdullah Alwi 1997: 100]. The majority of the *fuqahā’* (scholars of Islamic jurisprudence) agree that *al-musāqāt* is an agreement between two individuals wherein one provides the orchards or trees owned and the other the labor and enterprise for irrigation services and upkeep [Dusūqī n.d.: 539; Sharbīnī n.d. a: 322; Ibn ‘Ābidīn 1966: 285; Ibn Qudāma n.d.: 554].

The word *al-musāqāt* is derived from *saqā*, to water, or irrigate the land [Rūhī al-Ba‘labakkī 1995: 636]. *Majalla al-Aḥkām al-‘Adliya* defines it as a contract between the owner of some trees and the farmer who treats, services, irrigates and cares for the said trees, and stipulates that the fruit produced is to be shared between them [Tyser et al. 2001: 238].

In other words, the contract of *al-musāqāt* means that a person agrees with someone that for a specified time, the fruit-bearing trees owned by him, or those which are under his discretion, will be assigned to that person so that he cares, tends and waters them. In return, that person will have the right to take an agreed quantity of the fruits harvested [Sharbīnī n.d. b: 136; Bosworth et al. 1993: 658].

### 3.2 Capital/Input Sharing:

The forms which were applied in the *al-muzāra‘a* contract will be applicable to the *al-musāqāt* contract. The farmer must provide all the labor, and the landowner must give the farmer full access to the trees or orchards.

### **3.3 Management:**

The farmer must be given full right to do his work and be obliged to provide all the effort. He will be responsible for all major elements of the total method of agricultural production including all the maintenance, watering, and protection of the trees. On the other hand, the landowner will leave all the maintenance of the trees to the farmer but at same time he has the right to force the farmer to perform the work if he has no convincing reason for not doing so [Kāsānī 1968: 3832].

### **3.4 Output Sharing:**

A specific or predetermined share of the expertise output, a third or a half, will go to the provider of labor and expertise. This will be clearly posited in the contract. Even though this is the consensus of the majority of the *fuqahā'*, the position of the Maliki school is that *al-musāqāt* could also involve crop enterprises besides orchards/trees [Ibn Rushd 2002: 640].

### **3.5 Legal Rules:**

Basically, the terms of conditions in *al-muzāra'a* contract can be applied to *al-musāqāt* contract. The main difference between *al-muzāra'a* and *al-musāqāt* is that *al-muzāra'a* is the cultivation of land, while *al-musāqāt* is to take care of trees until they bear fruit [Wahba al-Zuhaylī 1989: 634].

The most important conditions of *al-musāqāt* contract as listed by the classical Islamic jurist are:

1. Object of the contract; the trees for *al-musāqāt* contract must be fruit-bearing.
2. The output must be jointly owned by the two parties. The contract would be flawed if all output is given to a party or one party is guaranteed a fixed amount.

### **3.6 Termination of Contract:**

Termination of *al-musāqāt* contract is a little similar to *al-muzāra'a*. However, if the owner dies, the contract of *al-musāqāt* is not terminated, and his heirs take his place [Ibn 'Ābidīn 1966: 290–291].

## **4. Legality of *al-Muzāra'a* and *al-Musāqāt* from Islamic Jurists' Perspectives**

According to Johansen, the contract of *al-muzāra'a* was strongly criticised on religious grounds in the eighth and early ninth centuries. This is because the scholars put forward different arguments on this contract based on an understanding in Islamic ethics and the Prophet's example which implied that a Muslim could enjoy economic benefits only from a piece of land he tilled, and not from one he could not till [Johansen 1988: 52–53].

Therefore, from the perspective of Islamic jurisprudence, Imām Abū Ḥanīfa rejected *al-muzāra‘a* and *al-musāqāt* contracts, and only considered a contract of *al-ijāra* to be admissible. He also elaborated that the transaction between the Prophet (pbuh) and the Jews in Khaybar was not a partnership contract, but a kind of tax (*kharāj*) paid to a ruler. Imām Mālik also avoided using the term *al-muzāra‘a* in his discourse and mentioned the example of bare land to argue the inadmissibility of this form of contract, while he considered *al-musāqāt* as the only legally valid form of contract. Imām Shāfi‘ī still used the term *al-muzāra‘a* in his discourse but only deemed *al-muzāra‘a* permissible as a derivative of *al-musāqāt*. Abū Yūsuf, Muḥammad al-Shaybānī, Aḥmad ibn Ḥanbal, Ibn Taymīya, and Ibn Ḥazm all used the term *al-muzāra‘a* and validated this form of contract as a partnership between a landlord and a tenant which is similar to *al-muḍāraba*.

In summary, the jurists who attribute these principles to *al-muḍāraba* view it as profit and loss sharing (PLS) contract. Abū Yūsuf and al-Shaybānī considered it as a partnership between the landlord owning the property and the farmer doing the work. The land and seeds belonging to the owner are viewed as capital and these also can be considered as a factor that enables production.

In a partnership contract, the profit or the loss is shared by both parties. If there is no crop, the loss is borne equally; the landlord will lose his seeds and the farmer will lose his work. Thus, neither will be in a position to appropriate profit exclusively.

Therefore, according to Nyazee, *al-muzāra‘a* and *al-musāqāt* can be considered as a partnership in modern times and even the earlier jurists were inclined to consider it as a form of *al-ijāra* (hire) [Nyazee 2002: 277]. Nevertheless, it was a form of partnership that should be given due importance for determining the nature of modern enterprises engaged in farming and agriculture.

In other words, it is a partnership between an owner of a fixed asset, along with which assets such as seeds, fertilizer, and machines may also be provided, and a worker. The landowner risks the enjoyment of his land which he could have leased out for a determined rent guaranteed by a lessee, but he preferred to take a risk in the hope of making a profit. At the same time, the farm worker risks his work, as he could cultivate the crop but it might not yield any produce or only give a little output. He could have hired out his services for a determined and fixed wage to be paid by the landlord, but he preferred to put the benefit of his work at risk in the hope that he would make more profit.

According to Farooq Aziz & Jamali, the legality of *al-muzāra‘a* cannot be proved because al-Qur’ān does not acknowledge the concept of private ownership of land and this concept automatically demolishes the basis of *al-muzāra‘a*. Furthermore, according to these authors, there is no concept of landlord and therefore, the concept of *al-muzāra‘a* is void [Farooq Aziz & Jamali 2008: 50–54].

Consequently, much of the controversy about sharecropping originates from the interpretation of the previously mentioned contract between the Prophet and the Jews concerning the Khaybar lands, which had been conquered by the Muslims. This can be traced back to 7 Hijra (628 A.D, when Muhammad (pbuh) delivered to Khaybar Jews the palm trees in Khaybar as *al-musāqāt* (tend the trees and have a share in the yield) and the land of Khaybar as *al-muzāra‘a*. They were to cultivate the land provided they agreed to submit a portion of what was harvested from the land to the Prophet (pbuh). Muslims had made some *al-muzāra‘a* transactions during the era of companions and the years that followed.) [Abū ‘Ubayd 1966: 55–56].

Generally, the main feature of the discussion on *al-muzāra‘a* and *al-musāqāt* is over the disagreements among Islamic scholars on its basic validity. Only Abū Yūsuf and al-Shaybānī (disciples of Abū Ḥanīfa) and the Ḥanbali school have validated these agricultural contracts but the other schools, including Abū Ḥanīfa himself have refused to validate them simply because land is not liable to any loss, whereas a business partnership is founded on the notion of profit and loss sharing [Nyazee 2002: 278–282].

Basically, there are three main discussions by Islamic scholars regarding the basic validity of the principles of *al-muzāra‘a* and *al-musāqāt*. The views of Islamic jurists towards the principles of sharecropping as follows.

#### **4.1 *Al-Muzāra‘a* and *al-Musāqāt* are Invalid Principles.**

##### **4.1.1 Imām Abū Ḥanīfa, Zufar, and Awzā‘ī**

Abū Ḥanīfa al-Nu‘mān ibn Thābit commonly known as Imām Abū Ḥanīfa who was born in the city of Kufa, Iraq, considered that the principles of *al-muzāra‘a* and *al-musāqāt* were invalid. With regard to arable land, he considered only the contract of tenancy (*al-ijāra*) to be admissible [Kāsānī 1968: 3808; Ibn Humām n.d.: 32]. Moreover, according to Abū Ḥanīfa, *al-muzāra‘a* is not valid because owning the land is not a basis for entitlement to profit. Consequently, they conclude that bare land must be leased against a fixed sum of money or another commodity, unless the landlord wishes to manage it or cultivate it himself. In other words, Abū Ḥanīfa said that land is not liable to any loss, whereas partnership is founded on the notion of profit and loss sharing [Nyazee 2002: 280–281].

Imām Zufar ibn Hudhayl (728–774), one of the prominent pupils of Imām Abū Ḥanīfa also shared the same views with his teacher on the principles of *al-muzāra‘a* and *al-musāqāt*. This opinion was also shared by Imām Abū ‘Amr ‘Abd al-Raḥmān ibn ‘Amr al-Awzā‘ī (707–774) or Imām Awzā‘ī, the Syrian scholar and founder of the Awzā‘ī school of Islamic jurisprudence.

They also argued that if landlord gives bare land to a farmer for one-third or one-fourth of the output, it is a case of vulnerability, chance or high risk, as the crop might fail or be



abundant [Tabrīzī 1961: 235].

Additionally, the sharecropping contract implies taking a risk for an unknown profit because the labor is hired for a price that is not specified at the time of making the contract. Furthermore, in accordance with the strict principles of Islamic law and ethics, no one may be made to work on the basis that his remuneration will consist of only part of the fruits of his labor (exploitative of the cultivator) [Johansen 1988: 53].

Abū Ḥanīfa also claimed that the transaction between the Prophet (pbuh) and the people of Khaybar was for a fixed portion of the produce, such as half of its output as a tax (*kharāj*) based on a mutual agreement between both parties [Johansen 1988: 56].

## **4.2 Invalid for *al-Muzāra'a*, Valid for *al-Musāqāt*.**

### **4.2.1 Mālik ibn Anas and Shāfi'ī**

Imām Mālik ibn Anas was a great scholar living in Madina and he was looked up to as the highest authority in *ḥadīth*. He was also teacher to Imām Shāfi'ī and Imām Muḥammad al-Shaybānī and it was reported that Imām Abū Ḥanīfa also met him and learnt from him [Dutton 2007: 34–35]. Imām Mālik was also known as the *Sheikh* of the *Sheikhs*, and the people travelled to him from the East and the West to learn *ḥadīth* from him [Dutton 2007: 41].

On the other hand, Imām Muḥammad ibn Idrīs al-Shāfi'ī also known as Imām Shāfi'ī attained a great eminence as an Islamic jurist and also a master to Imām Aḥmad ibn Ḥanbal. He is also stands at the turning point in the history of Islamic jurisprudence (*usūl al-fiqh*) and his book *al-Risāla* became the major resource of Islamic jurisprudence until now [Hasan 1988:178]. Imām Shāfi'ī strongly follows the views of Imām Mālik and both of them referred to the incidence of Khaybar.

Imām Mālik and Imām Shāfi'ī validated the contract of *al-musāqāt*, but rejected *al-muzāra'a* because it was an unpredictable and improper transaction involving uncertainty and a sale at yet unknown future values [Imam Malik 1982: 322]. They infer their theory of *al-musāqāt* based on the transaction between the Prophet (pbuh) and the Khaybar tenants which mainly involved date palms forming the capital. Therefore, they consider *al-musāqāt* as a partnership contract, wherein the capital provider advances his capital to the worker and the profit will be shared as stipulated earlier.

In addition, Imām Shāfi'ī opposed the opinion of Abū Yūsuf who considered bare land in *al-muzāra'a* to be equal to capital in *al-muḍāraba* contract. He argues that in *al-muzāra'a*, there is nothing on bare land which could be used or be shared between landowner and farmer and this would involve *gharar* (risk/uncertainty), which is prohibited in Islamic law. There is no fruit or output which may be apportioned to both parties like profit distribution in *al-muḍāraba* [Shīrāzī 1959: 400–401].

On the other hand, Imām Mālik and Imām Shāfi'ī had permitted the renting of land

(*al-ijāra*) and considered the sharecropping contract as a form of *al-ijāra*. By renting the land for a part of its produce, or hiring labor for a fraction of the produce of the land, the rent or wage will be defined as a share of what is produced from the land at the time when the contract is drawn up and therefore avoid *gharar*.

Imām Mālik also exemplifies the contract of *al-muzāra‘a* stating the case of a person who hires a servant to accompany and serve him on a journey for certain wage, but later he tells the servant that he will pay him only a tenth part of the total profit of any trade during the journey as his wages. This is all illegal and unwarranted because the amount of the profit is not known.

Imām Shāfi‘ī however, recognized the legitimacy of *al-muzāra‘a*, but only when it was subordinate to *al-musāqāt*. For example there must be some fruit bearing trees on the land or the land should be between two groves that are part of the contract of *al-musāqāt* [Shāfi‘ī 1993: 13–14; ‘Abd Allāh Faṭānī n.d.: 106].

According to Imām Shāfi‘ī, on the one hand, sharecropping which involves the irrigation of date palms and grape vines (*al-musāqāt*) is valid on the grounds of the Prophet’s (pbuh) action at Khaybar. On the other hand, sharecropping on arable land (white land) with no perennial crops is what the Prophet (pbuh) prohibited as *al-muzāra‘a* [Donaldson 2000: 77–78].

### 4.3 *Al-Muzāra‘a* and *al-Musāqāt* Principles are Valid.

#### 4.3.1 Abū Yūsuf and Muḥammad al-Shaybānī

Imām Abū Yūsuf and Muḥammad al-Shaybānī were the most important disciples of Imām Abū Ḥanīfa. During the administration of the Abbasid caliphate in Iraq, under caliph Hārūn al-Rashīd (766–809), Imām Abū Yūsuf was appointed as the first chief judge in the Muslim empire [Tsafrir 2004: 20–21]. However, their views on legality of *al-muzāra‘a* and *al-musāqāt* were opposed to Imām Abū Ḥanīfa.

According to these scholars, both *al-muzāra‘a* and *al-musāqāt* are valid and permissible in Islamic law. They considered these contracts to be a partnership between property and work, which is thus deemed permissible in analogy to *al-muḍāraba* [Shawkānī 1978: 15–16]. In this regard, Abū Yūsuf compares the bare land in *al-muzāra‘a*, to the capital in the *al-muḍāraba* contract based on *qiyās*.

Abū Yūsuf and al-Shaybānī also stated that the seed contributed by the landowner should be considered as his capital, and his land should be assigned the status of real estate, because of which additional profits have been permitted in regular partnerships based upon labor (*sharika al-‘amal*), whether *‘inān* or *mufāwāḍa* [Nyazee 2002: 280–281].

The Hanafite jurists accept the opinions of Abū Yūsuf and al-Shaybānī and declare *al-muzāra‘a* to be valid on the basis of *istiḥsān*. The basis of their *istiḥsān* is that the *al-muzāra‘a* contract is sanctioned by the ‘recognised custom of people in all countries’ (*‘urf*

*ẓāhir fī jamī‘ al-buldān*) and that accepted business practise is a valid reason for abandoning analogical reasoning [Johansen 1988: 54].

Moreover, Abū Yūsuf and al-Shaybānī also listed the types of *al-muzāra‘a* contract which were valid. First, the land, implements (machines), seeds and animals are provided by the landowner and the work (effort) is undertaken by the tenant. Second, the land is provided by the landowner and the rest is provided by the tenant. Third, the land and seed is from landlord and the rest from the tenant. However, if the land and implements (machines) are provided by the landowner and tenant provides the seeds and the work, this type of contract is considered invalid [Kāsānī 1968: 3816–3819].

#### 4.3.2 Aḥmad ibn Ḥanbal

Imām Aḥmad ibn Ḥanbal was born in Iraq. He spent most of his life in search of knowledge and travelled to Basra, Kufa, Yemen, Mecca and Madina where he met a number of great scholars and jurists. During his teens, he joined the circle of Abū Yūsuf and he also studied under Imām Shāfi‘ī on Islamic law [Rahim 1907: 255–271].

Aḥmad ibn Ḥanbal concludes that *al-muzāra‘a* for one third or one fourth of the crops is valid in law. This view is akin to the Imām Abū Yūsuf and al-Shaybānī opinion on this principle. He also suggests that if the seeds are supplied by the landlord, and the sharecropper contributes his labor and draught animals, he is like the worker who works and expends his labor using the capital supplied by the owner [Ibn Qudāma n.d.: 589–590].

Aḥmad ibn Ḥanbal also applies the analogy of the principle of *al-muḍāraba* to *al-muzāra‘a*, viewing land as the capital of the owner. He also thinks that the land of Khaybar mostly contained date palms; hence *al-musāqāt* is lawful as the Prophet (pbuh) had provided this land under a contract of *al-musāqāt* or *al-muzāra‘a* [Ziaul Haque 1984: 336]. Furthermore, Imām Aḥmad had clearly rationalized *al-musāqāt* on the land of Khaybar because, according to him, this land contained more date-palms than bare land.

#### 4.3.3 Ibn Taymīya

Ibn Taymīya was born in Harran, located in what is now Turkey and died in Damascus. He was educated in the Hanbali school of thought but later, he reached a level of scholarship beyond the framework of that school [Pavlin 1998]. Abdella has listed him as probably being one of the best elaborators of Islamic political economy during the medieval era [Abdella 1995: 120].

Ibn Taymīya considers *al-muzāra‘a* as a partnership in land cultivation and not a case of hire (*al-ijāra*) [Abdul Azim Islahi 1988: 160–161]. He also likens it to a kind of *al-muḍāraba* or profit sharing. Ibn Taymīya regards land as a factor that enables production, so it can be employed for production, in the same way as money (capital). He also says that the resulting

crop is a product of land that consists of soil, water and air, of the physical use of labor (labor and organization) and of bullocks, and means (capital).

Moreover, Ibn Taymīya argues that sharecropping is not a ‘speculative’ hire where one party secures benefit while the other is exposed to chance. According to him, if there is no crop, the land owner cannot take anything from the cultivator, since the contract does not entitle him to it. While one party loses the fruits of his labor, the other loses the yield from his land, so both parties receive nothing. Ibn Taymīya saying that the risk involved in *al-muzāra‘a* and *al-musāqāt* is unlike the risk in gambling because in these contracts both gain and loss are shared by both parties.

Ibn Taymīya also analyses *al-muzāra‘a* in the light of *ḥadīth*. He says that the Prophet (pbuh) himself entered into a contract of *al-muzāra‘a*. He proves that the prohibition reported by some groups who said this contract is invalid is not absolute. Only those kinds of sharecropping are prohibited where one party makes it a condition that he will get a specific quantity of the product; or that the product of some particular part of the land (fertile area) will go to him. Therefore, Ibn Taymīya establishes that sharecropping is permitted and economically enviable.

#### 4.3.4 Ibn Ḥazm

Abū Muḥammad ‘Alī ibn Aḥmad ibn Sa‘īd ibn Ḥazm was born in Cordoba, Spain. He was originally a Shāfi‘ī jurist and he joined the Zahiri school or literalists, and the founder of this school is Imām Dāwūd al-Zāhirī (815–884). At the end, he became a leading proponent of the Zahiri school of Islamic thought, and he brought to it a systematic structure of logic and interpretation based on literal meaning [Arnaldez 2007; Bearman et al. 2005: xi].

He explains that *al-muzāra‘a* does not belong to the category of *al-ijāra*. He rejects Abū Ḥanīfa’s theory to the effect that *al-muzāra‘a* is not valid because the wages of the tenant are unpredictable. He argues that if this contract is invalid in law, so is *al-muḍāraba* in which the wages of the worker are not determined specifically. But it is a fact that Islamic jurists agree that *al-muḍāraba* is permissible [Ziaul Haque 1984: 341–342].

He allows *al-muzāra‘a* only when the rights of the tenant are protected and he is not left at mercy of the landlord. The tenant must get his due share from the crop whether the crop is plentiful or inadequate [Ziaul Haque 1984: 338]. For Ibn Ḥazm, the contract of *al-muzāra‘a* is not valid for a fixed period of time, as according to him, the Prophet (pbuh) and the Companions never fixed any period of time for this contract. Both the tenant and the landlord are free to terminate the contract [Ziaul Haque 1984: 340].

#### 4.3.5 Muḥammad Bāqir al-Ṣadr

Muḥammad Bāqir al-Ṣadr was a Shi‘i scholar and prominent Iraqi scholar. He can be

considered as one of the early Muslim thinkers in developing Islamic economics and Islamic banking and finance literature through his two well-known books on Islamic economics and finance, *Iqtisādunā* (Our Economics) and *al-Bank al-Lāribawī fī al-Islām* (Usury-free Banking in Islam).

*Iqtisādunā* is the most important work by al-Ṣadr on economics and it was written between 1960 and 1961. This book attempts to show that Islam has alternatives to problems of modern economic practices by presenting an Islamic solution to both capitalism and socialism. Meanwhile, *al-Bank al-Lāribawī fī al-Islām* written in 1969 was more concerned with Islamic banking, and emphasizes the principle of *al-muḍāraba* as an alternative to *ribā* by proposing two-tier *al-muḍāraba*, which distinguishes between the relationship of depositors with the bank, and the bank with the business being financed.

According to al-Ṣadr in his book, *Iqtisādunā* (Our Economics), he holds the usual view permitting transactions of *al-muzāra‘a* and *al-musāqāt*. Al-Ṣadr argues that rent on land is permitted only to the extent that the landowner has put in his labor initially and the laborer is given a choice of fixed return (wage) or variable return (share of profit) [Sadr 1983: 180–181].

This is because, al-Ṣadr differentiated between commercial capital (referring to capital) and the tools of production (referring to physical capital like machinery). The worker uses his tools of production to earn wages, but he may also be innovative in how the tools are used and developed. Therefore, al-Ṣadr saw the workers as the potential entrepreneurs, not the financier. Hence, he also stressed that there could be no reward without work or effort as reflect by interest which is an unjustifiable reward or remuneration [Wilson 1998: 46–59].

In addition, as mentioned before, al-Ṣadr stated that legitimate returns are based on work or effort. Therefore, according to him, in Islamic economics a financier can only be rewarded for direct participation in a business venture. What is unlawful is ‘to buy cheap and sell dear’ without any contribution/work to a product, or to take out a lease on some land and then rent it to someone else for a higher rent.

#### **4.3.6 Seyyed Mahmood Talegani**

Seyyed Mahmood Talegani is an outstanding Iranian scholar who was born in the rural community of Golyard, in the Taliqan district of Northern Iran [Haneef 1995: 93]. Throughout his whole life, he attempted to provide a factual understanding of Islam through his ‘refreshing’ understanding of al-Qur’ān, while at the same time, addressing social, political and economic issues from the Islamic perspective.

Talegani, through his well known book, ‘Islam and Ownership’ also acknowledges the principles of *al-muzāra‘a* and *al-musāqāt* [Taleqani 1983: 144–145]. He defines *al-muzāra‘a* as a contract between the owner of a piece land and the agent/workers. The landlord should

provide irrigation, fertilizer, and other means as well as the seeds.

According to him, under Islamic jurisprudence, financial contracts and resulting profits and returns are based on the initial activity. Capital is the product of the initial activity that went into the exploitation of the natural resources. Profits are generated as a result of combining the primary and secondary activities while paying attention to the differences in talents and abilities which give rise to differences in the value of the activity. Since the original source of value and, therefore, ownership emerges as the result of the initial activity and subsequent activities, later workers at subsequent stages cannot necessarily be the sole owners. Moreover, the suppliers of the means and tools of production do not receive a share in the profits.

Talegani also affirmed in his book that the owner of capital is the one who owns the resource or that which is derived from it. Hence, the cultivator is not an agent of any person. Also, the owner of the seeds owns the fruit of the trees, and if he does not have a contract with the landlord or the owner of the tools, he is only obliged to pay them for the right of their use; the farmers do not share in his profits. The wage earner is the one who transforms this capital into other forms without being the owner. In the final analysis, everyone should receive the benefits of his own labor and deserves to keep whatever he has earned.

#### 4.3.7 Wahba al-Zuhaylī

Wahba al-Zuhaylī (1932–) born in 1932 at Dar Atiah is a Syrian professor and he was an imperative Islamic scholar in this era and also a well known religious preacher in the Islamic world. He is also extensively regarded as one of the leading specialists on Islamic law and Sharī‘a theory in the world.

According to him, *al-muzāra‘a* can be defined as an investment contract involving agricultural land. The two parties to the contract are the landlord and the worker/farmer. The contract specifies that the crop is to be shared between the parties according to mutually agreed portions [Wahba al-Zuhaylī 1989: 626–627].

Since the contract of *al-muzāra‘a* is similar both to partnership and to leasing, (similarity to partnerships arises from sharing the produce according to agreed-upon ratios, while similarity to leasing arises from jointly using the land, and compensating the worker with a share of the crop), al-Zuhaylī concludes that those jurists who had validated *al-muzāra‘a*, reasoned that the contract is a partnership between property and work, which is thus deemed permissible in analogy to *al-mudāraba*, to meet people’s needs. Incidentally, the landowner may not be practiced in agriculture, and thus cooperating with a farmer could be mutually beneficial. However, he also highlighted that the contract differs from a partnership in that the landlord’s share is a percentage of the land’s produce rather than a percentage of the net profits [Wahba al-Zuhaylī 1989: 626–627].

#### 4.3.8 Contemporary Islamic Scholars

According to interviews with Islamic scholars from Azhar University, Cairo University and Alexandria University in Egypt done during fieldwork from December 2009 until February 2010, these principles are very important nowadays in developing agricultural land especially in most of the developing countries. This is because there is *hāja* (need) from the societies in many places for these principles. A landowner can afford to develop his land; meanwhile a landless farmer has a managerial capability. Therefore, these principles have a high potential for building a partnership framework between landlord and farmer.

From the point of view of the Islamic Research Academy, al-Azhar al-Sharif [al-Azhar al-Sharif 2010], the principles of *al-muzāra'a* and *al-musāqāt* are valid to apply in agricultural land development after referring to the *ḥadīth*, *ijmā'* and also *maṣlaḥa* (public interest) and they also pointed out that these principles can be interpreted as a partnership contract in current condition. This institution also suggesting that these principles can be used either among individuals, companies, banking institutions or the state for developing agricultural land with fulfillment of the conditions as agreed among contract parties.

Prof. Hussein Shehata [Hussein Shehata 2009] noted that these principles can be translated as a partnership in agricultural land between landlord and farmer. The landlord and farmer will be sharing either profit or loss from the cooperation during the development of the land.

Meanwhile, Dr. Ahmad Jaber Badran mentioned that the principle of *al-muzāra'a* is an investment between two contracted parties into agricultural land and the output will be shared between them as agreed earlier. This principle also resembles the principle of *al-muḍāraba* which is needed by many people in their daily lives [Badrān 2002: 46–54].

In addition, Prof. Ahmad Yusof Ibrahim clarified these principles as a part of a partnership contract which is a partnership between landlord and farmer in agriculture. These principles are very important nowadays due to the *maṣlaḥa* (public interest) and can be applied as long as they are free from elements of *gharar* or harmful to the contracted parties.

In the meantime Dr. Hussein Samara [Hussein Samara 2009] also pointed out that *al-muzāra'a* and *al-musāqāt* are similar to *al-mushāraka* and *al-muḍāraba* contracts. In addition, he also comments that if appropriately applied with modern modifications, these contracts can be formulated as a partnership contract among Islamic banks or agricultural institutions and the landlord. This can be realized with concern or monitoring from the government.

#### 5. Conclusion

In general, *al-muzāra'a* and *al-musāqāt* are contracts between the landlord and the farmer in which payment/profit is paid not as a fixed amount, but as a proportion of the yield.



The crop is not yet harvested when the contract is made between both parties. Therefore, a sharecropping contract can implicitly involve *gharar* (risk/uncertainty) and the possibility of unjustified profit for only one party.

Basically, the central issue regarding these contracts is whether the jurists considered them as a leasing principle or a partnership contract. Another vital point is to what extent land is deemed to be capital which is exposed to profit and loss in the way that other capital like money is. Other issues are how the seeds and the means of production or input can be shared between the landowner and the farmer.

From an Islamic perspective, al-Qur’ān as the primary source of Islamic law, does not give a clear ruling about sharecropping. All Islamic jurists’ conclusions are based on the transaction made between the Prophet (pbuh) and the Jewish community in Khaybar. This transaction has been the main reference and has given rise to debates among Islamic jurists about the validity of the sharecropping contract.

Hence, the Islamic scholars have added obligatory conditions and restrictions to sharecropping contracts in order to ensure that the contracts are valid, such as conditions for the contracting parties, the crop, the equipment, the land, the contracted objective, the method of planting and the period of *al-muzāra‘a* and *al-musāqāt*. This can also be traced back to the permissible forms of *al-muzāra‘a* contract which were proposed by Abū Yūsuf and al-Shaybānī. It was also concluded by Wahba al-Zuhaylī in his book regarding the conditions and restrictions which were stipulated by all scholars/disciples of the four major Islamic legal schools (Ḥanafī, Mālikī, Shāfi‘ī and Ḥanbalī) for ensuring that this principle could be implemented without any dubious elements such as *gharar* (risk/uncertainty), injustice, and *ribā* (interest).

In other words, *al-muzāra‘a* has been modified from the earlier concept of leasing (suggested by Abū Ḥanīfa) to the partnership contract which was proposed by later scholars such as Abū Yūsuf, al-Shaybānī, Aḥmad ibn Ḥanbal, Ibn Ḥazm and contemporary scholars like al-Ṣadr, Taleqani and al-Zuhaylī. Therefore, the principles of *al-muzāra‘a* and *al-musāqāt* have split into two main ideas; leasing and sharecropping (partnership). However, it can be said here that these principles are closely related to the partnership contract.

The scholars who validate these principles have made the analogy that both contracts resemble an *al-muḍāraba* contract. This resemblance is based on the arguments that the contracts of *al-muzāra‘a* and *al-musāqāt* are partnerships between property and work. Abū Yūsuf and al-Shaybānī considered the seeds which are provided by the landlord as capital and the land as having the status of real estate. Aḥmad ibn Ḥanbal also viewed the land and seeds as the capital supplied by the landlord, with the tenant contributing his labor and equipment like the *muḍārīb* who works with the capital provided by the landlord (in a contract of *al-muḍāraba*). This view was also followed by Ibn Taymīya and Ibn Ḥazm and most of the



contemporary Islamic scholars in Egypt especially in Azhar University who considered these contracts similar to *al-muqārabā*.

On the other hand, in agricultural land contracts between farmers and landlords, the cost of input usually requires a huge initial investment of money or funds to implement it. If the matter of utilizing idle land is not managed properly, and an inefficient agricultural contract is drawn up, this can be a cause of poverty among farmers. Islamic jurists who validated *al-muzāra'a* and *al-musāqāt* contracts as partnership agreements were also concerned about sharing input costs between landlords and tenants. Hence, it would make the contract between both parties more efficient if they were to include joint responsibility for the loan from the financial institution in their partnership agreement.

To sum up, it is necessary to make further empirical studies to further clarify the above mentioned issues and eventually build a framework for a partnership between the landlord and the farmer from the perspective of Islamic economics. It is also essential to compare all the opinions and views of Islamic jurists with the theory of sharecropping in conventional economics, and if all of these elements could be combined effectively, the tribulations of the sharecropping contract which is commonly practiced in most of the developing countries would be considerably reduced or even eradicated.

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