Commercial Partnership in Islām:
A Brief Survey of Kitāb al-Muḍārabah of al-Mabsūṭ by al-Sarakhsī

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Abstract
Muḍārabah is a contract of profit-sharing known as partnership in capital and labour. Its concept and practices were notable in the history of Muslims specifically after its incorporation in the fiqh literatures that have spread to the entire education and economic institutions in the Muslim world. It combines two parties: those who have capital and those who are skilful in business to achieve a common economic objective underpinned by the Sharīʿah. This study analyses the work of al-Mabsūṭ by al-Sarakhsī (d. 483 A.H./1090 C.E.), an accomplished Hanafī jurist (fāqih) in the fifth/eleventh century, pertaining to muḍārabah drawn from the analysis of the first chapter of the book titled Kitāb al-Mudārabah. This study is significant as it fills the lacuna in the historiography of Islamic economic thought by focusing on al-Sarakhsī’s epistemic framework and definition of mudārabah, as well as extending in its coverage from the individual

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to the institutional. It is a testimony of how Muslims conducted their economic activities based on the intellectual framework and moral guidance underlined by the *Sharīʿah*.

**Keywords**


**Introduction**

Immense work on the historiography of economic thought of Muslim scholars during the period of which the Islamic civilisation was enjoying the status of being the main political, economic, cultural and intellectual centres of the world, have been done thus far, for instance, by Muhammad Akram Khan, Nejatullah Siddiqi, ‘Abdul ‘Azīm Iṣlahī, and Sabri Orman. Although not one dedicated work was published under the domain of “economics” as the term is understood

today, it is important to study their works, which contain issues concerned with “economics”.

The revivification of the Islamic economic thought through such works are noble, enormous, and should be aimed for a long-term project. Nonetheless, the effort requires a coherent, unifying and comprehensive framework. This is because a general scrutiny of such works only demonstrates a gap in the coherent architectonical conceptual framework, even though the historical facts are impressively and rigorously presented. Perhaps, only the work by Sabri Orman indicates the importance of comprehensive epistemic framework using various methods of approach such as chronological, biographical, thematic and bibliographical, or any combination of all these, for the purpose of writing the history of economic thought. Those studies can be divided into two inter-related and sometimes overlapping purposes; historical and pragmatically. While the first purpose is factual and not so much problematic epistemologically, the second purpose signifies an epistemological problem.

The truth and validity of the economic thought as an object of knowledge becomes prominent in the current discussion due to the existence of a new entity known as the “legal person”, which is legitimised by the state. Being the most

7. ‘Abdul ‘Azīm Iṣlaḥī, “The Genesis of Islamic Economics” Revisited”, Islamic Economic Studies 23, no. 2 (November 2015): 1–28. See also Mohamad Hashim Kamali, Islamic Commercial Law: An Analysis of Futures and Options (Cambridge: Islamic Texts Societies, 2000). Even though Kamali does not mention about Islamic economic thought, but what he said pertains to Islamic commercial law that “…has often been singled out as the most important area of contemporary research in relevant Islamic studies and has, in terms of overall priority, been given an even higher rating than research in applied sciences and medicine.”

8. See note 6.

9. It is a juridical personality, charted by the state through the issuance of certificate, which the entity has a fictive “person”, has legal standing and may thus sue and be sued, may make contracts, and may hold property in a common name. See “Corporation”, The New Encyclopedia Britannica, 15th Edition (Chicago, 1985), vol. 3, p. 646–647. It is also known as artificial person or juristic person. Refer K. J. Aiyar, Judicial
aggressive actor in Islamic banking and finance, its emergence and evolution seek its religious and legal justification from the traditional texts and practices. As a result, the thought and knowledge attached to it is treated as independent from man or natural person, and its validity is judged based on the extent of its applicability. This article concerns the absence of coherent conceptual framework in the current Islamic economic thought studies in general, driven by the existence of a legal person.

The methodology used in this study is epistemological, in which the text and issue of *muḍārabah* are analysed based on the subjective experience and objective truth of knowledge. By subjective experience is meant al-Sarakhsi’s own involvement and direct personal experience in *muḍārabah*, either as a capital provider (*rabb al-māl*) or an entrepreneur (*muḍārib*). His subjective knowledge of *muḍārabah* is important as a source of knowledge, since experience (*senses or ḥissī*) is one of the valid channels of knowledge in Islām, besides the intellect (*ʿaql*) and true report (*khabar ṣādiq*). The objective truth of knowledge, on the other hand, means the conceptual as well as the practical knowledge of *muḍārabah* which was explained in great detail by al-Sarakhsi in his work, *al-Mabsūṭ*. Knowledge, connoting truth, was notable in the history of Muslims especially after discussion on it has been incorporated in the *fiqh* literatures which spread to the entire education and economic institutions in the Muslim world. Hence, the approach this study takes is one that is unifying and comprehensive, and that no emphasis

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of one approach will preponderate on any particular method. Such is what Syed Muhammad Naquib al-Attas defines as the *Tawḥīd* method of knowledge. For him, the methodology of investigation in Islām, as alluded by most scholars of Islām, is that, “they combined in their investigations, and at the same time in their persons, the empirical and the rational, the deductive and the inductive methods and affirmed no dichotomy between the subjective and objective.”  

Such a method constitutes a coherent epistemological approach to the Islamic economic thought. This study is primarily based on the work by Abū Bakr Muhammad ibn Abī Sahl al-Sarakhsī (d. 483 A.H./1090 C.E.), the sun of the leading scholars (*shams al-a’immah*) and the pride of Islām (*fakhr al-Islām*)—namely the encyclopedic 30 volumes of *Kitāb al-Mabsūṭ* of the Hanafī’s legal compendium of the fifth/eleventh century. Thus far, this work has escaped scrutiny as a subject of economics research. Although this magnum opus is considered as a legal work by a notable Hanafite jurist, al-Sarakhsī’s overriding theme on the economic and commercial environment is repeatedly demonstrated in his discussions on various aspects of partnership and *commenda* law. In that capacity, this genre of literature can be regarded as his most original contribution to Muslim intellectual life.

12. The *shams al-a’immah* title (*laqab*) is a distinguished title popularly ascribed to al-Sarakhsī, but few other jurists are also known by the title, for example his own teacher, *shams al-a’immah* al-Hulwānī (d. 448 A.H./1056 C.E.), al-Zarnajrī (d. 584 A.H./1188 C.E.), al-Qurdarī (d. 642 A.H./1244 C.E.), and Mahmūd al-Awzjandī (n.d), see details in Maryam Muhammad Śāliḥ al-Zafīrī, *Muṣṭalaḥāt al-Madhāhib al-Fiqhiyyah* (Bayrūt: Dār Ibn Ḥazm, 2002), 96.
13. In the words of Nejatullah Siddiqi: “Though his legal texts are quoted very often, his works have not been explored for economic ideas and analysis so far”; see Nejatullah Siddiqi, *Recent Works on History of Economic Thought in Islam: A Survey* (Jeddah: International Centre for Research in Islamic Economics, King Abdulaziz University, 1982), 14.
Al-Mabsūṭ by al-Sarakhsī was particularly chosen because of two important reasons. Firstly, it falls under the classification of fiqhī literatures that is considered as important source materials for the Islamic economics. According to Sabri Orman, the nature of this literature tops the list of potential sources of epistemic framework of the history of Islamic economic thought; not only does it provide source material in the field of economic law, but also the instances of economic analysis. This is based on the common definition of fiqh that “it is the effort to derive practical sharʿī rulings from their detailed sources (tafṣīlī) or proof (adillah).”

Secondly, al-Sarakhsī’s al-Mabsūṭ is considered as the most extensive work on fiqhī literatures within the Ḥanafī’s madhhab. On the discussion of muḍārabah alone, it contains 27 subchapters which are unprecedented in any fiqhī works of the same madhhab, whose facts contradict some orientalists who claim that classical Islamic law had no practical bearing whatsoever, and was detached from reality. According to Murat Çizakça, the muḍārabah once incorporated and standardised in the book of fiqh has spread tremendously to the entire world which has influenced Muslims in conducting their commercial transactions based on the spirit and ethics of Sharīʿah. The significance is not only confined to a small-scale business enterprises, but also extends to a large-scale business. For instance, “The Muslim Law of Partnerships in Ottoman Court Records”, an empirical study made by Haim Gerber on the practices of muḍārabah or commenda during the 17th century by the Ottoman empire, has shown based on the court

15. Siddiqi, Thought, 14.
16. Sabri, History (I), 44.
17. Ibid.
18. This is based on a comparison made with the al-Asl by Shaybānī and the Kitāb Badāʿīʿ al-Ṣanāʾīʿ fi Tarīkh al-Sharāʿīʿ by al-Kāsānī (d. 587 A.H./1191 C.E.)
19. Refers to Goldziher and Snouck Hugronje’s cynical remarks.
records that the \textit{muḍārabah} was even practised in international and long-distance trade.\textsuperscript{21} Those practices were not centred around the concept of corporation as understood today, rather it was predominantly a trade with the direct involvement of natural persons.\textsuperscript{22}

\textbf{Brief Biography of al-Sarakhsī}

Abū Bakr Muhammad ibn Abī Sahl al-Sarakhsī is the towering figure in the field of Islamic sciences (\textit{ʿulūm}) of the fifth/eleventh century, who achieved the highest rank, among others as chief scholar (\textit{imām ʿālim}), theologian (\textit{mutakallim}), legal theorist (\textit{ʿushūlī}), proof (\textit{ḥujjah}), debater (\textit{munāẓir}), distinguished scholar (\textit{ʿallāmah}), a \textit{muḥaddith} and \textit{muḥtahid}.\textsuperscript{23} Little is known about his birth, but his moniker “al-Sarakh” refers to an old city Sarakhs which is believed to be the place where he was born, situated in the area of Khurasan, between Nishapur and Marw (now Merv).\textsuperscript{24}


\textsuperscript{22}. Ibid.


\textsuperscript{24}. Qutlūbughā, \textit{Tāj al-Tarājim}, 234.
Al-Sarakhsi’s intellectual career was not clearly delineated. His early education was scarcely mentioned in the major *Ṭabaqāt*. Instead, what is known is that he composed the voluminous *al-Mabsūṭ* while in prison without referring to any texts or books, primarily relying on his extraordinary memory. It is noted that among his major works, the *Uṣūl* and the commentary of *al-Sīyar al-Kabīr* were also dictated from prison. He was sentenced to prison due to his advice to the ruler of the City of Awzjand (أوزجند) the Khākan Hassān when the ruler married his manumitted *umm walad* without observing the *ʿiddah*. According to a story, the ruler called a group of jurists for their opinion about the marriage

25. The phrase being used: "أملي المبسوط من غير مراجعة شئ من الكتب"; see Quṭlūbughā, *Tāj al-Tarājim*, 234; Ḥājī Khalīfah, *Kashf al-Ẓunūn*, 2:1580; Abū al-Wafā al-Qarshī, *al-Jawāhir al-Muḍīyyah*, 3:78. Osman Taṣtan has pointed that Joseph Schacht’s (d. 1969 C.E.) dispute that it is implausible that al-Sarakhsi could have dictated his works over the 14 years in prison using no resources at all, except his memory. However, it is more plausible based on the fact that his students could assist al-Sarakhsi over in the prison as suggested by Schacht. See Osman Taṣtan, “al-Sarakhsi”, Islamic Legal Thought: A Compendium of Muslim Jurists, ed. Oussama Arabi, David S. Powers, and Susan A. Spector (Leiden: Brill, 2015), 242–243.


29. Heffening, “al-Sarakhsi”, *First Encyclopedia of Islam* (1913–1936), ed. M.Th. Houtma, A.J. Wensinck, H.A.R. Gibb., W. Heffening & E. Levi-Provencal, 9 vols. (Leiden: E.J. Brill, 1987), VII: 159. Hereafter cited as *EI1*. There was also an analysis of the reasons why he was imprisoned; among others, were his rejection of the heavy tax being imposed and his theological dispute with the ruler over the conflict of heresy and orthodoxy between the scholars and the government, although both are unsubstantiated, as such the reason for his different view over the ruler’s marriage with his manumitted *umm walad* without observing the *ʿiddah* prevails. See details in Osman Taṣtan, “al-Sarakhsi”, 242–243.
which they had supported, but was opposed by al-Sarakhsi. \(^{30}\) It was reported then that he was imprisoned for almost 14 years from 466 A.H./1074 C.E. until about 480 A.H./1088 C.E. \(^{31}\) Abi Wafa\' al-Qurshi (d. 775 A.H./1373 C.E.) in his biographical study of Hanafite jurists, \textit{al-Jawahir al-Mudiyyah}, on al-Sarakhsi, mentioned the term \textit{jubb} or the underground dungeon to describe the place in which he was imprisoned, \(^{32}\) although he himself did not say anything in his works about being imprisoned in an underground dungeon. \(^{33}\) According to Ta\v{s}tan, what he complained was his isolation from his family, son, and collection of books, \(^{34}\) and no details about the place that he was sent to jail. Therefore, it was suggested that he was in extreme difficulty during the imprisonment. At the time he started writing the Chapter of Conveyance (\textit{b\textsc{b}b al-shur"u\textsc{t}}), he was released from the prison. He moved to Fargh\textsc{\textasciitilde}nah and under the auspices of the ruler al-Amir al-Hassan, he was allowed to continue his lecture until the end on the \textit{Mabs\textsc{\textasciitilde}}t and other works. \(^{35}\)

Al-Sarakhsi studied under notable scholars, Abi Mu\v{h}ammad \textasciitildeAbd al-\textasciitildeAziz bin Ahmad al-Hulwani (d. 448 A.H./1056 C.E.)\(^{36}\) from whom he attained his title (\textit{laqab}) the \textit{shams al-a\'immah}, \(^{37}\) then under Shaykh al-Islam \textasciitildeAli bin al-Husayn bin Mu\v{h}ammad al-Sughdii (d. 461 A.H./1068 C.E.)\(^{38}\) and al-

\(^{31}\) Osman Ta\v{s}tan, “al-Sarakhsi”, 241. The period of his imprisonment is gauged based on the empirical data of the chronology of his dictation in prison began on the \textit{Kit\textsc{\textasciitilde}b al-Aqilah} as early as 466 A.H./1073 C.E. until he was freed from the prison in 480 A.H./1087 C.E. See details in Ayman, “\textit{Manhaj}”, 18.
\(^{33}\) Osman Ta\v{s}tan, “al-Sarakhsi”, 243.
\(^{34}\) Ibid.; al-Sarakhsi, \textit{al-Mabs\textsc{\textasciitilde}}t, 12: 108.
\(^{35}\) Ahmad, \textit{Mift\textsc{\textasciitilde}h}, 166.
\(^{36}\) In EI, it is expressed as “al-Hulwani”.
\(^{37}\) Al-Laknawi, \textit{al-Faw\textsc{\textasciitilde}i\textsc{\textasciitilde}d}, 159.
\(^{38}\) Ibn Qutlubugh\textsc{\textasciitilde}, \textit{T\textsc{\textasciitilde}j al-Tar\textsc{\textasciitilde}jim}, 43; al-Laknawi, \textit{al-Faw\textsc{\textasciitilde}i\textsc{\textasciitilde}d}, 121.
Ḥāfiẓ Abū Ḥafṣ ʿUmar bin Manṣūr (d. 460 A.H./1067 C.E.).

During his imprisonment, he kept in touch with and taught his students, among others, Abū Bakr Muhammad bin Ibrāhīm al-Hasrī (d. 500 A.H./1106 C.E.), Abū ʿAmrū ʿUthmān bin ʿAlī bin Muhammad al-Bīkandī (d. 552 A.H./1157 C.E.), Abū Ḥafṣ ʿUmar bin Ḥabīb (n.d.), the grandfather of the writer of al-Hidāyah, al-Marghīnānī, Burhān al-ʾAīmāh ʿAbd al-ʿAzīz bin ʿUmar bin Mazah, Maḥmūd bin ʿAbd al-ʿAzīz al-ʿAwzjandī and Rukn al-Dīn Masʿūd bin al-Hassan. From this constant meeting with his students, al-Sarakhsī was able to transmit the discussion of Islamic law (fiqh) by way of dictation (imlāʾan).

Al-Sarakhsī’s mark of scholarship can be seen in his numerous works comprising various disciplines of knowledge such as theology, legal theory, Islamic law and international law treaties, and some commentaries on the works of previous scholars pertaining to the Ḥanafite school of law. He produced a number of works, the most important being al-Mabsūṭ, the Uṣūl al-Fiqh known as the Uṣūl al-Sarakhsī, the Sharḥ al-Sīyar al-Kabīr, the Ṣifat Ishrāṭ al-Sāʿat, al-Nukat Sharḥ Zīyādat al-

40. Ibid.; See also al-Qarshī, al-Jawāhir al-Muḍiyyah, 3: 81.
42. Ibid., 2:520–521.
43. Ibid., 2:643–645.
45. Ibid.
46. Ibid.
48. See footnote 6. It is said, al-Sarakhsī’s books are popular in the east. His Siyār, for example, is in almost every library. See EI1, VII: 159.
49. See ʿUmar Ridā, Muʿjam al-Mūʾallīfīn, 3: 52. But the book is missing.
Zīyādāt,\textsuperscript{50} the Sharḥ Kitāb al-Nafaqāt of Abī Bakr al-Kaṣṣāf,\textsuperscript{51} the Sharḥ ʿAdab al-Qādir of Abī Bakr al-Kaṣṣāf,\textsuperscript{52} the Sharḥ Kitāb al-Riḍā of al-Shaybānī,\textsuperscript{53} the Sharḥ Mukhtasār al-Tahāwī,\textsuperscript{54} the Sharḥ Kitāb al-Kasb al-Shaybānī,\textsuperscript{55} al-Fawāʾid al-Fiqhīyah or al-Amālī fī al-Fiqh,\textsuperscript{56} al-Muḥīṭ,\textsuperscript{57} and the Kitāb al-Ḥaīḍ.\textsuperscript{58} Some of these were then incorporated in al-Mabsūṭ, such as Kitāb al-Kasb and Kitāb al-Ḥaīḍ.

Although al-Sarakhsī’s date of death is debatable, the finding by Ḥājī Khalīfah concluded that 483 A.H./1090 C.E. is the most possible date which is also corroborated by Brockelmann, Heffening and Sezgin.\textsuperscript{59}

The Background of al-Mabsūṭ

The term “mabsūṭ”, in the discussion of Islamic law particularly in the Ḥanafīte school of laws, contains various significations. Literally, the term “mabsūṭ” is a maṣdar derived from the root word of ba-sa-ṭa, translated in English as “to spread, spread out,

\textsuperscript{51} The book is missing.
\textsuperscript{52} Khalīl al-Mīs, Fahris, 8.
\textsuperscript{53} Ibid.
\textsuperscript{54} Quṭlūbughā, Tāj al-Tarājim, 234.
\textsuperscript{55} Ibid.
\textsuperscript{59} EI2, X: 36.
to enlarge, expand, to stretch out or to unfold.”

Al-Sarakhsi’s *Kitāb al-Mabsūṭ* (Vol. 1–30) is one of the comprehensive earlier *Fiqh* works due to the remarkable way in which the author works out general legal principles. It is considered as the encyclopaedia of the Hanafite school of laws. It laid down the problem of principles (ʿuṣūl) that became the major reference for the later jurists because it was composed in a way that it can easily be comprehended even by the beginners. This compendium is a commentary on *Kitāb al-Kāfī fī al-Fiqh* (unpublished) of al-Ḥākim al-Shahīd Muhammad bin Muhammad al-Hanafi al-Mawarzī (d. 334 A.H./945 C.E.), which is based on the legal writings of al-Shaybānī’s *al-Āṣl*. Al-Mabsūṭ contains a good deal of earlier material.

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61. Al-Sarakhsi, *Kitāb al-Mabsūṭ*, 30 vols. (Kuwayt: Dār al-Nawādir, 2013) which is considered as the most recent publication, while the following are the old ones; al-Sarakhsi, *Kitāb al-Mabsūṭ*, 30 vols., (Bayrūt: Dār al-Maʿrifah, 1993); al-Sarakhsi, *Kitāb al-Mabsūṭ*, 30 Vols., (İstanbul: Dār al-Daʿwah, 1983). In addition, there is one work that has been edited, al-Sarakhsi, *Kitāb al-Mabsūṭ*, ed. Muḥammad Hassan Ismāʿīl al-Shāfiʿī, 16 vols. (Bayrūt: Dār al-Kutub al-ʿIlmiyyah, 1993). It is also said initially the *al-Mabsūṭ* was printed in 15 volumes but in the modern publication it has reached to 30 volumes; See Kātib Celebī, *Kashf al-Ẓunūn*, 2: 1580.


63. *Ḥāshiah Ibn ʿĀbidīn*, 1: 64.


65. The manuscript is available in King Saudi University. See http://makhtota.ksu.edu.sa/makhtota/5229/. It is said al-Marwazī produced *al-Kāfī* by summarising the *Kitāb al-Āṣl* of al-Shaybānī and the two Jāmiʿ through the elimination of lengthy narrations and some repetitions. It is also confirmed by Mallat that the work by al-Mawarzī has not been published yet, see Chibli Mallat, *Introduction to Middle Eastern Law* (Oxford: Oxford University Press, 2007), 45.


67. Nicolas P. Aghnides, *Mohammedan Theories of Finance*, 2nd impression (Lahore: 1961), 177. It is also said on the same page that the commentary by al-Sarakhsi is mixed with the original text. See the
unavailable in other sources, and it is acknowledged that his “Book of Partnership (mushāryakah)” and “Book of Commenda (muḍārabah)” represent the most extensive treatment on the subjects in Hanafite school of laws.68

Al-Sarakhsī realised during his time that the students were not keen on studying fiqh. As a result, he saw the importance and necessity of reviving the way fiqh should be reformulated through the composition of al-Mabsūṭ. According to him, there were three reasons that contribute to this: firstly, the lack of enthusiasm among students; secondly, the lack of proper teaching pedagogy among the teachers who tend to bring out issues irrelevant to fiqh; thirdly, the role of theologians (mutakallimīn) who overwhelmed fiqhī discussions with philosophical terms and mixed them unnecessarily.69

Al-Mabsūṭ as a Source for Islamic Economic Thought

The study on al-Mabsūṭ and al-Sarakhsī’s thought on economic matters have yet to be seen as important in modern Islamic economic discourse.70 There are studies and works on other

68. Udovitch, Partnership, 15.

69. Al-Sarakhsī, al-Mabsūṭ, 1:4. According to ‘Azīm, al-Sarakhsī was critical with the influence of Greek and maintained that Islamic heritage of knowledge was sufficient for safe and comfortable life. See ‘Abdul ‘Azīm Iṣlaḥī, Contributions of Muslim Scholars to Economic Thought and Analysis (Jeddah: King Abdulaziz University, 2005), 14.

70. See the details of the discussion on Muhammad Nejatullah Siddiqi, Muslim Economic Thinking: A Survey of Contemporary Literature (Leicestershire: The Islamic Foundation, 1981); ‘Abdul ‘Azīm Iṣlaḥī, History of Economic Thought in Islam: A Bibliography (Jeddah: Scientific Publishing Centre King Abdulaziz University, 1997). The early International Seminar on al-Sarakhsī’s ideas and thought, was done in 1965 by the University of İlahiyat, Turkey, in commemoration of 900 years of his death and the recent one was in 2010 by the same organiser. Due to my limited access to Turkish language, I was not able to trace the numerous literatures that might contain discussions about his economic thought. See 900. Dİlm yıldönümü müünasebehîyle büyük İslam hukukçusu, Şemşü’l-Eimme es-Serahşi armagani (Ankara: A.U. İlahiyat
erudite scholars and jurists, for example, Abū Yusuf (d. 181 A.H./798 C.E.),\(^{71}\) Abū 'Ubayd (d. 223 A.H./838 C.E.),\(^{72}\) al-Imām al-Ghazālī (d. 505 A.H./1111 C.E.),\(^{73}\) Ibn Taymiyyah (d. 728 A.H./1328 C.E.),\(^{74}\) and Ibn Khaldūn (d. 808 A.H./1406 C.E.),\(^{75}\) but not al-Sarakhsī. Perhaps, the only work by him that has been widely studied in the realm of economics is the *Book of Earnings (Kitāb al-Kāšb)\(^{76}\)* which was originally a lecture by al-Shaybānī later narrated and transmitted by al-Shaybānī’s student, Muḥammad ibn Samī‘ah al-Tamīmī.\(^{77}\) This narration

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75. According to Abdul Azim Islahi, Ibn Khaldūn is the top most of the list to be studied and the works are numerous. For example, among the earliest are Syed Mubaraq al-Din Rif‘at, “Ma‘ashiyat par Ibn Khaldun ke Khayalat” (Ibn Khaldunyat par Ibn Khaldun ke Ma‘arif) 40, no. 1 (July 1937); Muhammad Abdul-Qadic, *Economic Thought of Ibn Khaldun*, Indian *Journal of Economics* 22 (1942); Charles Issawi, *An Arab Philosophy of History: Selection from the Prolegomena of Ibn Khaldun of Tunis* (1332–1406) (translation and arrangement) (London: John Murray, 1950).


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and transmission formed the basis of al-Sarakhsī’s commentary (sharḥ) on it which was then embedded by him in al-Mabsūṭ. Although many readers would deem Kitāb al-Kasb under the purview of a formal discipline now known as economics, al-Sarakhsī actually informs us that al-Shaybānī wrote it to expound on the meaning of ascetism or detachment from the world (al-zuhd).

Two Key Aspects in Kitāb al-Muḍārabah:

A. Al-Sarakhsī’s Epistemic Framework

It is important to understand that what is being operated at the level of action is a reflection of what is being thought and understood in the realm of the intellect. From this, al-Sarakhsī demonstrates that his thoughts and actions are intact and it can be seen in the way he composed al-Mabsūṭ.

Al-Sarakhsī incorporates the subject matter on knowledge in the beginning of the work, albeit briefly, known as the “Principles of Knowledge” (mabādiʾ al-ʿilm). The purpose of the introductory stage is to remind readers that true knowledge is and will be the foundation for right action; and vice versa—good action is reflective of sound knowledge of the doer.

Al-Sarakhsī asserts in the discussion of knowledge that the highest obligation (aqwā al-farāʿid) after belief (Imān) is to seek knowledge. That position of his on the superiority

79. See in the introduction of the translation of al-Shaybānī, in his Kitāb al-Kasb, by Adi Setia.
80. He based on a few ahādith of the Prophet that “Seeking Knowledge is obligatory upon the Muslim and Muslimat”, “Knowledge is the legacy of the Prophets”, and “The Prophets did not leave dinār and dirham, but they leave knowledge”, see Al-Sarakhsī, al-Mabsūṭ, 1: 2. On the following chapter (bāb), the Chapter of Prayers (bāb al-ṣalāt), he mentioned that the most important principle (aqwā al-arkān) after belief (Imān) is prayer (ṣalāṭ). From here it can be seen that he distinguished between the farḍ and rukn even to the knowledge and prayer. In Ḥanafite’s classification,
of knowledge after belief (Imān), as a matter of fact, was a common stand maintained by Muslims in the past. To him, knowledge has two categories: firstly, the knowledge of God and His Attributes (ʿilm al-tawḥīd wa al-ṣifāt) and secondly, the knowledge of law and jurisprudence (ʿilm al-fiqh wa al-sharāʾī). This means that there is theoretical knowledge (al-ʿilm al-nazarī) and practical knowledge (al-ʿilm al-ʿamalī), and the former is the foundation and conceptual departure which determines right actions (ʿamal) of a Believer (Muslim).

Al-Sarakhsi begins the discussions of mudārabah by giving its definition. Ayman has noticed that al-Sarakhsi always begins with definitions in many of his works so as to clarify and establish the meanings of terms and concepts before venturing into the details of the discussion. In contrast, al-Asl, a work by al-Shaybānī, which served as the basis of al-Sarakhsi’s commentary in al-Mabsūṭ, does not offer any definition of mudārabah. This shows that among the Ḥanafite scholars, al-Sarakhsi is the one who had pioneered a systematic arrangement of the mudārabah discussion which begins with a definition.

Al-Sarakhsi identifies mudārabah as the verbal form of “mufāʿalah” (مفاعلة) of da-ra-ba (ضرب) based on an expression in the Qurʾān, “to travel in the land” (al-ḍārb fī al-arḍ), which means travelling on the earth of Allāh to seek profits and hence sharing it. Ibn Manẓūr in Lisān al-ʿArab explains that the fard means something that is based on definite evidence and free from any speculation (dalīl qatʿī). See Maryām, Muṣṭalāḥāt, 30.

81. Most scholars among the theologians (mutakallīmūn), philosophers (ḥukamā’), jurists (fuqahā’), and ṣūfis in the past began their works with discussions on knowledge and system of knowledge.
82. Ayman, “Manhaj”, 57.
84. See Sūrah al-Muzammil: 20. (وءاخرون يضربون في الأرض يبتغون من فضل الله...), and its translation “...and others traveling throughout the land seeking [something] of the bounty of Allah...”.
the term *ḍa-ra-ba* contains various meanings, including among others “to go out for commerce” or “to seek livelihood.” ⁸⁶ Al-Sarakhsī also uses another term, *muqāraḍah* as synonymous to *mudārabah*. He mentions in *al-Mabsūṭ* regarding a report *(athār)* from ‘Uthmān, that he gave some capital in the form of *muqāraḍah* to a man. The word “*muqāraḍah*” is derived from the word *al-qarḍ* which means “putting aside” in the sense that the owner of the capital (*ṣāḥib al-māl*) sets aside a certain portion of his capital for investment or transaction. ⁸⁷ However, the Malikites, Shafīʿites and Hanbalites unanimously use a different term i.e. *qirāḍ* to denote such an activity. ⁸⁸

In general, be it *mudārabah*, or *muqāraḍah* or *qirāḍ*, it is by definition a commercial association whereby an investor or capital provider (*rabb al-māl*) entrusts some amount of capital to an agent or money manager *⁹⁹* (*muḍārib*) who trades with it and shares with the investor a pre-determined proportion of the profits. ⁹⁰ Losses incurred in the venture are the responsibility of the investor. Meanwhile, the agent loses his time and efforts for which he will neither be given any remuneration nor would he be penalised monetarily.

Al-Sarakhsī clearly outlines the proofs of the legitimacy of *mudārabah* as being, in the order of priority, the Qur’ān, the sunnah and the *ijmāʾ*, an outline not explicitly discussed in the work of *al-Aṣl* by al-Shaybānī. This is proof of al-Sarakhsī’s contribution to the scholarly discourse on *mudārabah*. From the Qur’ān, he derives the importance of *mudārabah* based on the verb, *ḍa-ra-ba*, in Sūrah al-Muzammil, verse 20.

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⁸⁸. See the difference between *mudarabah* and *qirāḍ* from different madhāhib in Najm al-Dīn Abī Ḥaṭṭī Abū Muhammad al-Nasafī, *Ṭilbah al-Talabah fī al-Iṣṭilāḥāt al-Fiqhīyyah*, ed. Khālid ʿAbdul Raḥman al-ʾAnk (Beirūt: Dār al-Nafāʾis, 2010), 301.


As regards the Sunnah, he reported a narration by ʿAbbās bin ‘Abd al-Muṭalib,91 who said that when some capital was given for the purpose of mudāribah on the condition that mudārib go neither on sea, nor down the oasis, nor buy a live animal (kabid raṭb), then if the mudārib did so, he had to guarantee the capital due to the risks involved. The Prophet, the report said, was well aware of such a condition and he recommended it (istaḥsanahu). The ḥadīth is also favoured by many jurists in proving the permissibility of mudāribah due to its strong narration (sanad qawī).92 However, closer examination of the expression used in the ḥadīth reveals that the Shafiʿites used another report regarding the Prophet’s approval of the practice in which the Prophet’s approval was couched in the term, faʿajāzahu93 (He allows it), instead of istahsanahu (He recommends it) as quoted by al-Sarakhsi.

In relation to the ījmāʿ, al-Sarakhsī presented the story of two sons of the Rightly-Guided Caliph ʿUmar when they came back from Iraq and brought together the wealth of Bayt al-Māl out of which they had gained some profit. Upon knowing that, ʿUmar told them to return the profit portion to Bayt al-Māl as it totally belonged to the Muslims (i.e Bayt al-Māl). However, one of the Companions suggested that ʿUmar to regard them as persons involved in mudāribah (إجعلهما بمنزلة المضاربين) on the basis of which they deserved the profit due to the risks taken during the travelling. ʿUmar eventually agreed with the suggestion.

As is clear, reports about the Companions (athār) have also been used as a basis for the permissibility of mudāribah, or qirāḍ by the Shafiʿites, for example, Abū Isḥāq al-Shirāzī 91. He is the Prophet’s uncle (d. 32 A.H./653 C.E.). He converted to Islām before Hijrah and was involved in the war of Badr. See al-Dhahabī, Siyār Aʿlām al-Nubalā’, 25 vols., eds. Shuʿayb al-Arnaʿūṭ & Ḥusayn al-Asad (Beirut: Muʿassasah al-Risālah, 1996), 2: 78–103.


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(d. 476 A.H./1083 C.E.) in his work *Muhadhdhab*, but the narration provides more details and has a slight variance of expression than the one dictated by al-Sarakhsī in *al-Mabsūt*. The expression "law jāʿaltahu qirāḍān" (if you make it as qirād) was used to refer to one of the Companions who suggested to ʿUmar to opt for *muḍārabah*. ʿUmar thus responded with a silent acknowledgement (iqrār). The two principals have been proof of the validity of *muḍārabah* according to Shafiʿites.

ʿAbdul Raḥman bin ʿAwf, and the amount of wealth was 1,000 dirham.

The legitimacy of *muḍārabah* as indicated in many sources had also been alluded by the Prophet himself who was a *muḍārib* for Khādijah, as the *rabb al-māl* who later became his wife. In this matter, Udovitch has observed that al-Sarakhsī has cited a number of traditions attributing to the Prophet and his Companions on the use of such a contract in trade and justifying it on the practical grounds of its economic function in commerce.

Al-Sarakhsī is of the view that if *Muḍārabah* is based on analogical reasoning (*qīyās*), it is prohibited because it is identical with leasing (*ujr*). In the same vein, al-Kāsānī views *muḍārabah* as akin to leasing or renting somebody to work on behalf of the capital provider without specific indication of the fees. In such a leasing, the labour fee is unknown. Despite this, Ibn Ḥazm al-Ẓāhirī (d. 456 A.H./1064 C.E.) confirmed that the instrument was the favoured one among Muslims in the medieval period.

Besides the above primary sources on the legitimacy

of *muḍārabah*, one cannot but acknowledge the fact that *muḍārabah* was integral in al-Sarakhsī’s thought and action. Osman Taştan’s latest biographical research of al-Sarakhsī has discovered that al-Sarakhsī came from a merchant family\(^{100}\) which indicates that business was a usual profession for the people of his time. This finding is corroborated with an empirical and statistical study made on the numerous biographers of Muslim scholars who mentioned that the first 470 years of Islam were when a substantial proportion of scholars derived their livelihood from commerce, especially in textiles and food.\(^{101}\) Even though no record of al-Sarakhsī’s transactions or involvement in commercial activities had survived, the thorough and comprehensive discussion on *muḍārabah* by al-Sarakhsī in the 27 chapters in one tome of his voluminous *al-Mabsūṭ*—the first chapter of which is the basis of this current study—is sufficient evidence of his mastery and experience of *muḍārabah*. One possibly cannot give thorough responses and minute details of the operationalisation of such a contract as *Mudārabah* without being involved directly in it.

Emphasis has thus far not been placed by contemporary scholars on the study of the personality of such scholars as al-Sarakhsī, so as to derive their subjective experience which we herein term the epistemic framework and as to be regarded as a valid source of knowledge. ‘Abdul ‘Azim Islahi, a prolific scholar who has made a thorough assessment on the development of research of the history of Islamic economic thought for the past 30 years (1970s–2000s), for instance, has suggested future direction of such research as follows; firstly, to expand the research and translation of the works of other scholars other than the commonly and repeatedly studied such

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\(^{100}\) Osman Taştan, “al-Sarakhsī”, 239–259.

as al-Ghazālī, Ibn Taymiyyah, and Ibn Khaldūn; secondly, to investigate further the development and refinement of the economic ideas and institutions in the history of Muslims that has yet to be explored; thirdly, to discover the economic thought of the erstwhile Andalus, West Africa, Turkey, Persia and the South East as well as the Far East Asia beyond the predominantly confined region of the Middle East. This also means the study should be extended to other literatures written in Islamic languages such as Turkish, Persian, Urdu, Malay and other Muslim spoken languages. However, there seems to be no indication by him that such a study be conducted on the epistemic framework of the aforementioned scholars.

The contemporary study of *muḍārabah* has overwhelmingly stressed on its application which imposes the legal judgement and decision of past jurists on the current object of knowledge. The imposition sometimes is made in toto, without any insightful revisits and explanations of how the scholars arrive at the judgement and the textual aspects that are compatible with modern requirements. One would imagine that if al-Sarakhsī’s economic thought were to be studied in the current prevalent way, his significance on knowledge and epistemic framework would not have been presented. In other words, the approach will likely be legalistic (fiqhī) in nature. By ‘legalistic’ means that the framework of discussions will only be restricted to the principles, types, commodities, and functions of *rabb al-māl* and *muḍārib* and its application. This can be gauged from the works of many contemporary authors whose concerns are on the application of classical concept such as *muḍārabah* in the modern practice. For instance, Siddiqi has produced a thorough analysis on the general economic

103. Ibid., 14.
104. Ibid.
aspects of mudārabah. He argues that mudārabah is a way of cooperation among the different factors of production firmly rooted in the Qur’ān and Sunnah. Indeed, mudārabah is the most feasible concept and instrument to all modern sectors of the economy—trade, industry, services and agriculture—in the event interest is abolished. He says:

Replacement of interest by profit-sharing [mudārabah] has far reaching implications for allocation of investible resources, distribution of the value added and the cash flow in the system. On the international scene, this change would link influx of foreign capital in a country to real productive possibilities in that country.

Without denying the genuine efforts by him in reviving the classical concept for its application at the fore of the modern institution, Siddiqi’s analysis does not address the vitality and urgency of mudārabah to be practised by individuals (normal human beings), but mainly addresses the application of mudārabah which is applicable to the legal person (corporations or financial institutions). The analysis assumes, perhaps, that individuals have understood the mudarabah, but the legal persons have not. Despite attempts by him and many to apply mudārabah at the level of institutions, their efforts received cold response from the conventional system.

106. Ibid., 31.
107. Ibid.
108. See, for example, the classic case of the Mit Ghar Bank which was pioneered by El-Neggar. Built in a small city of 48,000 inhabitants on the Nile delta, it is the very first Islamic bank which was very successful in the accumulation of the funds based on mudārabah. Unfortunately, the bank was closed by the Nasser regime because of political reasons. See The Politics of Islamic Finance, eds. Clement M. Henry, Rodney Wilson (Edinburgh: Edinburgh University Press Ltd, 2004), 192. On the same note, based on my personal experience, engagement and observation as well as comments from notable scholars, most Islamic banks and
B. Al-Sarakhsī’s *Ijtihād* on Currency as a Form of Capital as *Muḍārabah*

*Muḍārabah* is a form of partnership between those with capital but without knowledge of how to utilise it, and those without capital but with knowledge about how to utilise it. The capital in such a partnership is known as *ra’s al-māl*. Based on the verse on the permissibility of *muḍārabah* referred to by al-Sarakhsī, the capital or the *ra’s al-māl* is used for travelling on land and commercial exchanges. According to al-Sarakhsī, *muḍārabah* has many rulings because of its different ramifications. When the *ra’s al-māl* is submitted to a *mudārib*, he is deemed as a trustee, just like a depositor (*al-muwaddi’*), whereas when the *mudārib* transacts the money, he is considered to be an authorised representative (*wakīl*) in the undertaking. As a representative (*wakīl*), he is required to return whatever amount that has been agreed upon to the capital owner when he gains profit since it is a partnership in profit. In the event that the contract is invalid (*faṣad*), it turns into faulty leasing (*ijārah fāsidah*) until the *mudārib* is capable of making gains to commensurate his work. When the *mudārib* goes against the decision, he is *ipso facto* the guarantor (*ḍāminan*) of the money.

As a general rule, al-Sarakhsī established his opinion (*ra’y*) pertaining to *muḍārabah* capital on his school of law’s (*madhhab*) founders, Abū Ḥanīfah and Abū Yūsuf, who maintained that the *muḍārabah* cannot be executed except by using *dirham* (*darāhim*) and *dīnār* (*danānīr*). Most jurists are also of the view that *muḍārabah* cannot use other commodities (*ʿurūḍ*) institutions are not favourable in applying *muḍārabah* because of the equity concept vis-à-vis the debt concept. The banks are not ready to absorb the real risks being a *rabb al-māl* or *mudārib*.

109. The Hanafi jurists (*fuqahā’*) distinguish *faṣad* (vitiated or faulty) as something that is in between *ṣiḥḥah* (valid) and *bāṭil* (invalid). *Faṣad* means something that is originally derived or related from the *Shari’ah* but the attributes are not from *Shari’ah*. It is mainly applied in commercial exchanges (*mu’āmalāt*). However, there is no distinction between *faṣad* and *bāṭil* in the matter of ritual (*‘ibādāt*).
as the underlying capital unless they are valued in dīnār and dirham. According to Abū Ḥanīfah, Abū Yūṣuf and Mālik, any commodities other than dīnār and dirham such as native gold (tibr) and copper coins (fulūs) are not permissible. Yet, on some peculiar aspects of the currency, al-Sarakhsi departed from his imāms and established his own ijtihād, as follows:

a. Commercial Dirham (al-Darāhim al-Tijārīyah)

The term “dīnār” comes from the Roman term “Denarius,” which means “gold coin weighing one mithqāl” and equivalent to 4.25g, whereas “dirham” is from the Greek term “Drachm”, which means “coin that is made from silver.” According to Ismail Marcinkowski in his work, Measures and Weights in the Islamic World, the basis for all Islamic weights is the dirham. A type of dirham mentioned by al-Sarakhsi known as “commercial dirham” (al-darāhim al-tijārīyah) is perhaps common during his time but is uncommon presently as its exact nature, physical outlook and use could not be ascertained. It had already been in the market practice during the time of Abū Yūṣuf. According to al-Sarakhsi, Abū Yūṣuf was earlier asked about its usage but he was not in favour of using it as the capital for muḍārabah because if he were to allow it, it would be tantamount to allowing barter in muḍārabah. For, to him, the capital that are permissible are only dīnār and dirham. As reported in al-Mabsūṭ, Abū Yūṣuf was asked about muḍārabah with it, and he answered:

111. Ibid., 4: 844.
112. Akram, Glossary, 49.
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If I were to allow this, then I will have to allow mudārakah with food items in Mecca; which means the People of Mecca will be transacting their business with foods, in the same way the People of Bukharā are exchanging wheat (al-burr) with its kind.116

Al-Sarakhsī, on the other hand, exercises his ijtihād to allow such dirham because it was the most valued currency among his people just like the dinārs (danā’ir) in other parts of the land.117

b. Copper-Coins (Fulūs)

Fulūs is a plural of fals, which means a small copper coin, an underlying currency that is well known, used in buying and selling and is the 48th part of the dirham.118 Among the jurists (fuqahā’), fulūs is understood as something that is made from metals, other than gold and silver.119 Therefore, its value as currency is lower than the most common currency such as gold and silver. Furthermore, compared to dinār and dirham, fulūs has never been mentioned in the Qur’ān and Ḥadīth of the Prophet.120 Therefore, by mudārakah ruling, fulūs is not up to the standard to be used as capital.

However, al-Sarakhsī views that the usage of copper-coins (fulūs) as the underlying capital for mudārakah is permissible. His view is in agreement with al-Shaybānī’s opinion; indeed, he quotes al-Shaybānī’s statement in al-Mabsūṭ so as to support his opinion. Many jurists (fuqahā’) do not allow the usage of copper-coins (fulūs) as mudārakah capital because the intrinsic

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117. Ibid.
118. Lane, Lexicon, 2495.
value of copper-coins is not stable unlike dinār and dirham, thus exposing the rabb al-māl to capital risks and creating financial volatility in the market. Al-Šarahši does not give a clear reason why he allows fulūs, unlike the grounds he gives for allowing al-darāhim al-tijāriyah. However, he does state that he follows the same view as held by al-Shaybānī. Based on al-Sarakhsī’s jurisprudential (usūlī) principle, following a single narration (rīwāyah wāḥidah or khabar al-wāḥid) on the matter of commercial exchange (muʿāmalāt) such as the one given by al-Shaybānī is acceptable as proof (dalīl).

c. Native Gold (al-Tibr)

Al-Sarakhsī also mentions other odd currencies like native gold (tibr). Tibr is a gold substance in the form of dust or nugget before it is made into proper dinār or dirham. The usage of native gold (tibr) in mudārabah is not permitted by Ḥanafite jurists. Yet, al-Sarakhsī allows its usage with a condition that it must be based on real demand in society. He says:

This practice differs from one place to another depending on its market acceptability. In every place where there is an increased demand of native gold (al-tibr), the value [of it] increases. Because of this, mudārabah with native gold (al-tibr) is permissible. [However] in every place where it is regarded as commodities (manzilah al-sila’), native gold (al-tibr) is not permissible to be used in mudārabah just as things measured and weighted.

Al-Sarakhsī’s discussion on such peculiar types of currencies, as commercial dirham (al-darāhim al-tijāriyah),

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121. Wahbah, Adillatuḥu, 4: 484.
122. See his discussion on the category of khabar al-wāḥid that can be accepted as proof, al-Sarakhsī, Uṣūl, 1: 251.
123. Nazīh, Muṣṭalāḥāt, 126.
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copper-coins (fulūs), and native gold (tibr) sheds some light on the way he conceives changes of circumstances which require changes in rulings. He is able to depart from his Imāms and arrive at his own intellectual judgement because not only is he master of principles of jurisprudence, but he is at the same time cognisant of the community’s needs. He is very much aware of his Imāms’ arguments as to why the said currencies are unacceptable i.e. lower quality, no intrinsic value, and very limited acceptance as the currency of exchange except in some extreme circumstances—unlike dīnār and dīrham, which are widely acceptable due to their intrinsic value, as well as acceptability as the storage of value, and currency of exchange.

Conclusion

Based on al-Sarakhsī’s own intellectual biography, and his brief expositions on the importance of knowledge—which serves as his epistemic framework—as well as his ijtihād pertaining to his use of currency in mudārabah, we could conclude that knowledge of mudārabah and its capability was very much part of the life of the Muslims of the past. Most individuals then were practitioners of mudārabah, as was al-Sarakhsī who came from a family of merchants.
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