

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

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Abstract

Mudārabah 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 *Sharī'ah*. This study analyses the work of *al-Mabsūṭ* by al-Sarakhsī (d. 483 A.H./1090 C.E.), an accomplished Hanafi jurist (*fāqih*) in the fifth/eleventh century, pertaining to *mudārabah* 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 *Sharī'ah*.

Keywords

al-Šarakhsī, *al-Mabsūt*, *mudārabah*, profit-sharing, knowledge.

Introduction

Immense work on the historiography¹ 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,² have been done thus far, for instance, by Muhammad Akram Khan,³ Nejatullah Siddiqi,⁴ ‘Abdul ‘Azīm Iṣlahī,⁵ and Sabri Orman.⁶ Although not one dedicated work was published under the domain of “economics” as the term is understood

1. Ugi Suharto, *Kitāb al-Amwāl: Abū ‘Ubayd’s Concept of Public Finance*, with a foreword by Sabri Orman (Kuala Lumpur: ISTAC, 2005), xiii–xvii.
2. See Marshal G. Hodgson, *The Venture of Islam*, 3 vols. (Chicago: The Chicago University Press, 1974).
3. Muhammad Akram Khan, *Islamic Economics: Annotated Sources in English and Urdu*, 2 vols. (Leicester: The Islamic Foundation, 1983).
4. Muḥammad Nejatullah Siddiqi, *Muslim Economic Thinking: A Survey of Contemporary Literature* (Leicester: The Islamic Foundation, 1981).
5. ‘Abdul ‘Azīm Iṣlahī, *History of Economic Thought in Islam: A Bibliography* (Jeddah: Scientific Publishing Centre King Abdulaziz University, 1997).
6. Sabri Orman, “Sources of the History of Islamic Economic Thought (I)”, *Al-Shajarah: Journal of the International Institute of Islamic Thought and Civilization (ISTAC)* 2, no. 1 (1997): 21–62; and “Sources of the History of Islamic Economic Thought (II)”, *Al-Shajarah* 3, no. 2 (1998): 1–17. Earlier, Bernard Lewis has produced a similar work, but not as extensive as the former; see “Sources for the Economic History of the Middle East”, *Studies in the Economic History of the Middle East: From the Rise of Islam to the Present Day*, ed. M.A. Cook (London: SOAS, 1970; reprinted., Oxford: Oxford University Press, 1978), 88–89. Both have contributed meaningfully to the course of historiography of Islamic economic thought, but the work by Sabri Orman is more refined and contains the sense of revivalism of Islamic intellectualism.

today, it is important to study their works, which contain issues concerned with “economics”.⁷

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 architectural 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.⁸ Those studies can be divided into two inter-related and sometimes overlapping purposes; historical and pragmatism. 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”,⁹ which is legitimised by the state. Being the most

7. ‘Abdul ‘Azīm Iṣlahī, “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 evolvement 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 *mudārabah* are analysed based on the subjective experience and objective truth of knowledge. By subjective experience is meant al-Sarakhsī's own involvement and direct personal experience in *mudārabah*, either as a capital provider (*rabb al-māl*) or an entrepreneur (*mudārib*). His subjective knowledge of *mudārabah* 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*).¹⁰ The objective truth of knowledge, on the other hand, means the conceptual as well as the practical knowledge of *mudārabah* which was explained in great detail by al-Sarakhsī in his work, *al-Mabsūt*. 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

Dictionary [A Complete Law Lexicon], 12th Edition (Allahabad, India: The Law Book Company (P) Ltd, 1998), s.v. "legal person"; *A Concise Dictionary of Law*, 2nd Edition (Petaling Jaya: Penerbit Fajar Bakti & Oxford University Press, 1991), s.v. "juristic person"; *Black's Law Dictionary*, 6th Edition (St. Paul, Minn.: West Publishing Co., 1990), s.v. "artificial person".

10. See al-Taftāzānī, *Sharḥ Aqā'id al-Nasafī*, tr. E.E. Elder, *A Commentary on the Creed of al-Nasafī* (New York: 1950); also Syed Muhammad Naquib al-Attas, *The Oldest Known Malay Manuscript: A 16th Century Malay Translation of the Aqā'id of al-Nasafī* (Kuala Lumpur: University Malaya, 1988).

of one approach will preponderate on any particular method. Such is what Syed Muhammad Naquib al-Attas defines as the *Tawhīd* 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.”¹¹ Such a method constitutes a coherent epistemological approach to the Islamic economic thought.

This study is primarily based on the work by Abū Bakr Muḥammad ibn Abī Sahl al-Sarakhsī (d. 483 A.H./1090 C.E.), the sun of the leading scholars (*shams al-a’immah*)¹² and the pride of Islām (*fakhr al-Islām*)—namely the encyclopedic 30 volumes of *Kitāb al-Mabsūt* of the Ḥanafī’s legal compendium of the fifth/eleventh century. Thus far, this work has escaped scrutiny as a subject of economics research.¹³ Although this magnum opus is considered as a legal work by a notable Ḥanafite 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.¹⁴ In that capacity, this genre of literature can be regarded as his most original contribution to Muslim intellectual life.

11. Syed Muhammad Naquib al-Attas, *Prolegomena to the Metaphysics of Islām* (Kuala Lumpur: ISTAC, 1995), 3.

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-Qurḍarī (d. 642 A.H./1244 C.E.), and Mahmūd al-Awzjandī (n.d.), see details in Maryam Muḥammad Sālih al-Zafīrī, *Muṣṭalahāt al-Madhāhib al-Fiqhiyyah* (Bayrūt: Dār Ibn Hazm, 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.

14. See Abraham L. Udovitch, *Partnership and Profit in Medieval Islam* (Princeton: Princeton University Press, 1970).

Al-Mabsūt 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.¹⁵ 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.¹⁶ This is based on the common definition of *fiqh* that “it is the effort to derive practical *sharʿī* rulings from their detailed sources (*tafsīlī*) or proof (*adillah*).”¹⁷

Secondly, al-Sarakhsī’s *al-Mabsūt* is considered as the most extensive work on *fiqhī* literatures within the Ḥanafī’s *madhhab*.¹⁸ 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 orientalist who claim that classical Islamic law had no practical bearing whatsoever, and was detached from reality.¹⁹ 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*.²⁰ 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 Shaybāni and the *Kitāb Badāʿi al-Ṣanāʿi fī Tartīb al-Sharāʿi* by al-Kāṣānī (d. 587 A.H./1191 C.E.)

19. Refers to Goldziher and Snouck Hugronje’s cynical remarks.

20. Murat Çizakça, *A Comparative Evolution of Business Partnership* (Leiden: E.J. Brill, 1996), 3–4.

records that the *mudārabah* was even practised in international and long-distance trade.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.²²

Brief Biography of al-Sarakhsī

Abū Bakr Muḥammad ibn Abī Sahl al-Sarakhsī is the towering figure in the field of Islamic sciences (*ʿulūm*) of the fifth/eleventh century, who achieved the highest rank, among others as chief scholar (*imām ʿālim*), theologian (*mutakallim*), legal theorist (*uṣūlī*), proof (*hujjah*), debater (*munāẓir*), distinguished scholar (*ʿallāmah*), a *muhaddīth* and *mujtahid*.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).²⁴

21. Haim Gerber, “The Muslim Law of Partnerships in Ottoman Court Records”, *Studia Islamica*, no. 53–54 (1981):109–119.

22. *Ibid.*

23. All these erudition can be found in Muḥyī al-Dīn Abī Muḥammad ʿAbd al-Qādir bin Muḥammad bin Muḥammad bin Naṣr Allāh ibn Sālim bin Abī Wafāʾ (d. 775 A.H.) *al-Jawāhir al-Muḥayyāh fī Tabaqāt al-Hanafīyyah*, 5 vols., 2nd edition, ed. ʿAbd al-Fattāh Muḥammad al-Hulw, (Hijr, 1993), 3:78–81; Muḥammad ʿAbd al-Ḥayy al-Laknawī, *Kitāb al-Fawāʾid al-Bahīyyah fī Tarājīm al-Hanafīyyah* (Bayrūt: Dār al-Maʿrifah, n.d), 158; Abū al-Fidāʾ Zayn al-Dīn Qāsim bin Qutlūbughā al-Sūdūnī (d. 879H), *Tāj al-Tarājīm*, ed. Muḥammad Khīr Ramaḍān Yūsuf, (Dimashq: Dār al-Qalam, 1992), 234; ʿUmar Riḍā Kahālāh, *Muṣam al-Mūʿallifīn*, 4 vols. (Bayrūt: Muʿassasah al-Riṣālah, 1993), 3:52; Muḥammad Siddīq Hassan al-Qinnawjī, *Abjad al-ʿUlūm*, 3 vols. (Dimashq: 1889), 3:117–118; ʿAlī ʿAkbar, *Lughah Nāmih*, 50 vols. (Tehrān: 1339H), 28–29; 438; Aḥmad bin Muṣṭafā Tashkopruzadeh, *Miftāḥ al-Saʿādah wa Miṣbāh al-Siyādah fī Mawdūʿāt al-ʿUlūm*, 3 vols., (Bayrūt: Dār al-Kutub al-ʿIlmiyyah, 1985), 2:165–166. However, on being a *muhaddīth*, al-Kawthariyyī (d. 1371 A.H./1951 C.E.) in his work *Fiqh al-ʿIrāq wa Hadīthuhum*, did not include al-Sarakhsī in the list of the prominent *muhaddīth* in the Hanafite’s tradition. See al-Imām Muḥammad Zāhid al-Kawthariyyī, *Fiqh al-ʿIrāq wa Hadīthuhum*, ed. Muḥammad Sālim Abū ʿAṣī (Qāhīrah: Dār al-Baṣāʿir, 2009), 57–74.

24. *Qutlūbughā, Tāj al-Tarājīm*, 234.

Al-Sarakhsī's intellectual career was not clearly delineated. His early education was scarcely mentioned in the major *Ṭabaqāt*s. Instead, what is known is that he composed the voluminous *al-Mabsūt* while in prison without referring to any texts or books,²⁵ primarily relying on his extraordinary memory.²⁶ It is noted that among his major works, the *Uṣūl* and the commentary of *al-Sīyar al-Kabīr* were also dictated from prison.²⁷ He was sentenced to prison due to his advice to the ruler of the City of Awzjand (اوزجند)²⁸ the Khākan Ḥassān when the ruler married his manumitted *umm walad* without observing the *ʿiddah*.²⁹ According to a story, the ruler called a group of jurists for their opinion about the marriage

25. The phrase being used: “أعلى المسوط من غير مراجعة شيء من الكتب”; see Qutlūbughā, *Tāj al-Tarājim*, 234; Ḥājī Khālīfah, *Kashf al-Zunūn*, 2:1580; Abū al-Wafā al-Qarshī, *al-Jawāhir al-Muḍīyyah*, 3:78. Osman Taştan has pointed that Joseph Schacht's (d. 1969 C.E.) dispute that it is implausible that al-Sarakhsī 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-Sarakhsī over in the prison as suggested by Schacht. See Osman Taştan, “al-Sarakhsī”, *Islamic Legal Thought: A Compendium of Muslim Jurists*, ed. Oussama Arabi, David S. Powers, and Susan A. Spectoraky (Leiden: Brill, 2013), 242–243.
26. See details in Muḥammad Ayman ‘Abd al-Wahāb al-Zahr, “*al-Manḥaj al-Fiḥī wa al-Qawāʿid al-Fiḥīyyah ʿinda al-Imām al-Sarakhsī min Khilāl Kitābah al-Mabsūt*” (M.A. thesis, Jāmi‘ah Ali al-Bayt, 2005), 11.
27. Al-Imām ‘Abdullah Muṣṭafā al-Marāghī, *al-Fath al-Mubīn fī Ṭabaqāt al-Uṣūliyyīn*, 2 vols. (1947), 264–265.
28. It is also known as Awzkand (اوزكند). See Abū ‘Abd Allah Yāqūt bin ‘Abd Allah al-Ḥamawī, *Muḥjam al-Buldān*, 5 vols. (Bayrūt: Dār Ṣādir, 1977), 1: 280.
29. Heffening, “al-Sarakhsī”, *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. Hereinafter cited as *EII*. 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 Taştan, “al-Sarakhsī”, 242–243.

which they had supported, but was opposed by al-Sarakhsī.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 Abī Wafā' al-Qurshī (d. 775 A.H./1373 C.E.) in his biographical study of Ḥanafite jurists, *al-Jawāhir al-Mudīyyah*, on al-Sarakhsī, mentioned the term *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 Taṣṭan, 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 (*bāb al-shurūṭ*), he was released from the prison. He moved to *Farghānah* and under the auspices of the ruler al-Amīr al-Ḥassan, he was allowed to continue his lecture until the end on the *Mabsūt* and other works.³⁵

Al-Sarakhsī studied under notable scholars, Abī Muḥammad 'Abd al-'Azīz bin Aḥmad al-Ḥulwānī (d. 448 A.H./1056 C.E.)³⁶ from whom he attained his title (*laqab*) the *shams al-a'immah*,³⁷ then under *Shaykh al-Islām* 'Alī bin al-Ḥusayn bin Muḥammad al-Sughdī (d. 461 A.H./1068 C.E.)³⁸ and al-

30. Al-Qarshī, *al-Jawāhir al-Mudīyyah*, 3: 81.

31. Osman Taṣṭan, "al-Sarakhsī", 241. The period of his imprisonment is gauged based on the empirical data of the chronology of his dictation in prison began on the *Kutāb 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, "Manhaj", 18.

32. Al-Qarshī, *al-Jawāhir al-Mudīyyah*, 3: 80.

33. Osman Taṣṭan, "al-Sarakhsī", 243.

34. Ibid.; al-Sarakhsī, *al-Mabsūt*, 12: 108.

35. Aḥmad, *Miftāh*, 166.

36. In *EII*, it is expressed as "al-Ḥalwānī".

37. Al-Laknawī, *al-Fawā'id*, 159.

38. Ibn Qutlūbughā, *Tāj al-Tarājīm*, 43; al-Laknawī, *al-Fawā'id*, 121.

Ḥāfiẓ Abū Ḥaḥṣ ‘Umar bin Maṣṣūr (d. 460 A.H./1067 C.E.).³⁹ During his imprisonment, he kept in touch with and taught his students,⁴⁰ among others, Abū Bakr Muḥammad bin Ibrāhīm al-Ḥaṣīrī (d. 500 A.H./1106 C.E.),⁴¹ Abū ‘Amrū ‘Uthmān bin ‘Alī bin Muḥammad al-Bikandī (d. 552 A.H./1157 C.E.),⁴² Abū Ḥaḥṣ ‘Umar bin Ḥabīb (n.d.),⁴³ the grandfather of the writer of *al-Hidāyah*, al-Marghinānī, *Burhān al-A‘immah* ‘Abd al-‘Azīz bin ‘Umar bin Mazah,⁴⁴ Maḥmūd bin ‘Abd al-‘Azīz al-‘Awzjandī⁴⁵ and Rukn al-Dīn Mas‘ūd bin al-Ḥassan.⁴⁶ From this constant meeting with his students, al-Sarakhsī was able to transmit the discussion of Islamic law (*fiqh*) by way of dictation (*imlā’an*).

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-Mabsūt*, the *Uṣūl al-Fiqh* known as the *Uṣūl al-Sarakhsī*,⁴⁷ the *Sharḥ al-Sīyar al-Kabīr*,⁴⁸ the *Ṣīfat Ishrāt al-Sā‘at*,⁴⁹ *al-Nukat Sharḥ Ṣīyādāt al-*

39. Al-Imām Shams al-Dīn Muḥammad bin Ahmad bin ‘Uthman al-Dhababī, *Sīyar A‘lām al-Nubalā’*, ed. Shu‘ayb al-Arnā‘ūt & Muḥammad Na‘īm al-‘Arqasūsi, 29 vols. (Mu‘assasah al-Risālah, 1982), 18: 148–149.

40. Ibid.; See also al-Qarshī, *al-Jawāhir al-Mudīyyah*, 3: 81.

41. Al-Qarshī, *al-Jawāhir*, 3: 8.

42. Ibid., 2:520–521.

43. Ibid., 2:643–645.

44. Al-Shaykh al-Khalīl al-Mīsi, *Fahāris al-Mabsūt* (Bayrūt: Dār al-Ma‘rifah, 1993), 7.

45. Ibid.

46. Ibid.

47. See al-Sarakhsī, *Uṣūl al-Sarakhsī*, ed. Abū al-Wafa’ al-‘Afhānī, 2 vols. (Bayrūt: Dār al-Kutb al-‘Ilmiyah, 1993).

48. See footnote 6. It is said, al-Sarakhsī’s books are popular in the east. His *Sīyar*, for example, is in almost every library. See *EII*, VII: 159.

49. See ‘Umar Ridā, *Muḥjam al-Mū‘allifīn*, 3: 52. But the book is missing.

Ẓīyādāt,⁵⁰ the *Sharḥ Kitāb al-Nafaqāt* of Abī Bakr al-Kaṣṣāf,⁵¹ the *Sharḥ ‘Adab al-Qāḍī* of Abī Bakr al-Kaṣṣāf,⁵² the *Sharḥ Kitāb al-Ridā’* of al-Shaybānī,⁵³ the *Sharḥ Mukhtasar al-Tahāwī*,⁵⁴ the *Sharḥ Kitāb al-Kasb al-Shaybānī*,⁵⁵ *al-Fawā’id al-Fiqhīyah* or *al-Amālī fī al-Fiqh*,⁵⁶ *al-Muḥīt*,⁵⁷ and the *Kitāb al-Ḥaīd*.⁵⁸ Some of these were then incorporated in *al-Mabsūt*, such as *Kitāb al-Kasb* and *Kitāb al-Ḥaīd*.

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.⁵⁹

The Background of *al-Mabsūt*

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

50. See al-Sarakhsī, *al-Nukat Sharḥ lī Ẓīyādāt al-Ẓīyādāt*, commentary also by al-Imām al-‘Aṭābī, ed. Abū al-Wafā al-‘Alghāmī (Bayrūt: ‘Alim al-Kutb, 1986).

51. The book is missing.

52. Khalīl al-Mīṣ, *Fahris*, 8.

53. *Ibid.*

54. Qutlūbughā, *Tāj al-Tarājīm*, 234.

55. *Ibid.*

56. This book is about the manual of dictation (Ar. *Imlā’*, pl. *al-Amālī*) in learning tradition in Islām. The details are elucidated in the beginning of Muḥammad Amīn ibn ‘Abidīn, *Radd al-Mukhtār ‘ala al-Darr al-Mukhtār*, ed. Sheikh ‘Adil Aḥmad ‘Abd al-Mawjād & Sheikh ‘Alī Muḥammad Mu‘awwad, 12 vols. (Riyāḍ: Dār ‘Alim al-Kutb, 2003), 1:169.

57. Thomas William Beale, *An Oriental Biographical Dictionary*, ed. Henry George Keene (London: 1894; New Delhi: Kitab Bhavan, 1996), 18.

58. See in the introduction of al-Sarakhsī, *al-Muḥarrar fī Uṣūl al-Fiqh*, ed. Abū ‘Abd al-Rahman Salāh bin Muḥammad bin ‘Uwaydah, 2 vols. (Bayrūt: Dār al-Kutub al-‘Ilmiyyah, 1996), 1: 3.

59. *EI2*, X: 36.

to enlarge, expand, to stretch out or to unfold.”⁶⁰ Al-Sarakhsī’s *Kitāb al-Mabsūt* (Vol. 1–30)⁶¹ is one of the comprehensive earlier *Fiqh* works due to the remarkable way in which the author works out general legal principles.⁶² It is considered as the encyclopaedia of the Hanafite school of laws.⁶³ It laid down the problem of principles (*uṣūl*) 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.⁶⁴ This compendium is a commentary on *Kitāb al-Kāfī fī al-Fiqh* (unpublished)⁶⁵ of al-Ḥākim al-Shahīd Muḥammad bin Muḥammad al-Hanafī al-Mawarī (d. 334 A.H./945 C.E.),⁶⁶ which is based on the legal writings of al-Shaybānī’s *al-Aṣl*.⁶⁷ *Al-Mabsūt* contains a good deal of earlier material

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60. Ibn Manzūr, *Lisān al-‘Arab*, 282, s.v. “*ba-sa-ta*.” The translation of it is based on Hans Wehr, *A Dictionary of Modern Written Arabic* (Arabic-English), ed. J. Milton Cowan, 4th edition (Spoken Language Services, 1993), 71, s.v. “*ba-sa-ta*.”
61. Al-Sarakhsī, *Kitāb al-Mabsūt*, 30 vols. (Kuwayt: Dār al-Nawādir, 2013) which is considered as the most recent publication, while the following are the old ones; al-Sarakhsī, *Kitāb al-Mabsūt*, 30 vols., (Bayrūt: Dār al-Ma‘rifah, 1993); al-Sarakhsī, *Kitāb al-Mabsūt*, 30 Vols., (Istanbul: Dār al-Da‘wah, 1983). In addition, there is one work that has been edited, al-Sarakhsī, *Kitāb al-Mabsūt*, ed. Muḥammad Ḥassan Ismā‘īl al-Shāfi‘ī, 16 vols. (Bayrūt: Dār al-Kutub al-‘Ilmiyyah, 1993). It is also said initially the *al-Mabsūt* was printed in 15 volumes but in the modern publication it has reached to 30 volumes; See Kātib Celebī, *Kāshf al-Zumūn*, 2: 1580.
62. *EII*, VII: 159.
63. *Hāshiah Ibn ‘Abidin*, 1: 64.
64. Al-Khālil, *Fahāris*, 10.
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-Aṣl* of al-Shaybānī and the two *Jāmi’* through the elimination of lengthy narrations and some repetitions. It is also confirmed by Mallat that the work by al-Mawarī has not been published yet, see Chibli Mallat, *Introduction to Middle Eastern Law* (Oxford: Oxford University Press, 2007), 45.
66. C. Brockelmann, *Geschichte der arabischen Litteratur* (GAL), 2 vols. (Leiden: Brockelmann 1937), 1: 182 (174); *Supp.*, 1: 294.
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-Sarakhsī is mixed with the original text. See the

unavailable in other sources, and it is acknowledged that his “Book of Partnership (*mushārahah*)” and “Book of Commenda (*mudārahah*)” 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-Mabsūt*. 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-Mabsūt* as a Source for Islamic Economic Thought**

The study on *al-Mabsūt* 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

original discussion of *mudārahah* in *Kitāb al-Mudārahah* in Muhammad ibn Hasan al-Shaybānī, *al-Asl*, ed. Muhammad Būynūkālīn, 13 vols., (Bayrūt: Dār Ibn Ḥazm, 2012), 4: 119–131.

68. Udovitch, Partnership, 15.

69. Al-Sarakhsī, *al-Mabsūt*, 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 Iṣlahī, *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 Iṣlahī, *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 İlähiyât, 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. *Düüm yıldönümü münasebetiyle büyük İslam hukukçusu, Şemşü’l-Eimme es-Serahsi armağanı* (Ankara: A.Ü. İlahiyat

erudite scholars and jurists, for example, Abū Yūsuf (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-Kasb)*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

Faculty, 1965) and the recent event in commemoration of al-Sarakhsī was the International Symposium on al-Sarakhsī, 15-17 Ekim/October 2010, Sakarya/ Türkiye.

71. Works on him, for example: *Kitāb al-Kharāj: Taxation in Islām*, trans. by Ben Shemesh (Leiden: Brill, n.d.; London: Luzac, 1969); Nejatullah Siddiqi, “Abū Yūsuf ma‘ashī fikr” (The Economic Thought of Abū Yūsuf), *Fikr-o-Nazar (Aligarh)* 5, no.1 (Jan 1964): 66–95. (U) trans. Arabic: ‘al-Fikr al-Iqtisādī li Abī Yūsuf’. *Majallah Abhath al-Iqtisad al-Islami* (Jeddah II: 2), Season 85, Winter 85, 67–87.
72. For example: Noor Mohammad Ghifari, *The Book of Finance by Abu Ubayd al-Qasim b. Salam*, (Islamabad: Pakistan Hijra Council, 1991); Ugi Suharto, *Early Discourse On Islamic Finance: A Study Based On Kitāb al-Amwal of Abu Ubayd al-Qasim bin Sallam* (d. 224/836) (Kuala Lumpur: ISTAC, 2000).
73. For example: S.M. Ghazanfar & Abdul Azim Islahi, *Economic Thought of al-Ghazali* (Jeddah: Scientific Publishing Centre, KAAU, 1998); Sabri Orman, “Abū Hamīd al-Ghazālī on the formation and development of economic, social and political life.” *Al-Shajarah* 10, no. 1 (2005).
74. For example: Ilyas Ahmad, “Ibn Taymiyyah on Islamic Economics”, *Voices of Islām* 9, no. 11 (Karachi, August 1961); Monzer Kahf, *The Economic Views of Taqiuddin Taimeyah (1263–1328): The Great Radical Reformist of the Islamic Middle Ages* (1973); Abdul Azim Islahi, *Economic Concepts of Ibn Taymiah* (Leicester: The Islamic Foundation, 1988).
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 Mubarez 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-Qadir, *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).
76. See Muhammad ibn al-Hasan al-Shaybānī, *Kitāb al-Kasb*, trans. Adi Setia, *The Book of Earning a Livelihood* (Kuala Lumpur: IBFIM, 2011).
77. Abū ‘Abdillāh Muḥammad ibn Samī‘ah ibn ‘Ubaydillah al-Tamīmī al-Kūfī (d. 233 A.H./848 C.E.)

and transmission formed the basis of al-Sarakhsī's commentary (*sharḥ*) on it which was then embedded by him in *al-Mabsūt*.⁷⁸ 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*).⁷⁹

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-Mabsūt*.

Al-Sarakhsī incorporates the subject matter on knowledge in the beginning of the work, albeit briefly, known as the "Principles of Knowledge" (*mabādi' 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.⁸⁰ That position of his on the superiority

78. See *al-Mabsūt*, vol. 30.

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 *ahādīth* 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-Mabsūt*, 1: 2. On the following chapter (*bāb*), the Chapter of Prayers (*bāb al-salāt*), he mentioned that the most important principle (*aqwā al-arkān*) after belief (*Imān*) is prayer (*salāt*). From here it can be seen that he distinguished between the *farḍ* and *rukʿn* 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.⁸¹ 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-sharāʿī*). This means that there is theoretical knowledge (*al-ʿilm al-naẓarī*) and practical knowledge (*al-ʿilm al-ʿamalī*), and the former is the foundation and conceptual departure which determines right actions (*ʿamal*) of a Believer (*Mustīm*).

Al-Sarakhsī begins the discussions of *mudārabah* by giving its definition. Ayman has noticed that al-Sarakhsī 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.⁸² In contrast, *al-Asl*,⁸³ a work by al-Shaybānī, which served as the basis of al-Sarakhsī’s commentary in *al-Mabsūt*, does not offer any definition of *mudārabah*. This shows that among the Ḥanafite scholars, al-Sarakhsī is the one who had pioneered a systematic arrangement of the *mudārabah* discussion which begins with a definition.

Al-Sarakhsī identifies *mudārabah* as the verbal form of “*muḥāʿalah*” (مفاعلة) of *da-ra-ba* (ضرب) based on an expression in the Qurʾān, “to travel in the land” (*al-dārb fi al-ard*),⁸⁴ which means travelling on the earth of Allāh to seek profits and hence sharing it.⁸⁵ Ibn Manzūr 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, *Muṣṭalahāt*, 30.

81. Most scholars among the theologians (*mutakallimūn*), philosophers (*ḥukamāʾ*), jurists (*fuqahāʾ*), and *ṣūfīs* in the past began their works with discussions on knowledge and system of knowledge.

82. Ayman, “*Manhaj*”, 57.

83. See in *Kitāb al-Mudārabah* in Muḥammad al-Ḥasan al-Shaybānī, *al-Asl*, ed. Muḥammad Büynükālīn, 13 vols. (Beirut: Dār Ibn Ḥazm, 2012), 4: 119–131.

84. See *Sūrah al-Muzammil*: 20. (وَأخْرُونَ يَصْرُونَ فِي الْأَرْضِ يَسْتَوْنَ مِنْ فَضْلِ اللَّهِ), and its translation “...and others traveling throughout the land seeking [something] of the bounty of Allah...”.

85. Al-Sarakhsī, *al-Mabsūt*, 21: 17–18.

the term *da-ra-ba* contains various meanings, including among others “to go out for commerce” or “to seek livelihood”.⁸⁶ Al-Sarakhsī also uses another term, *muqāradah* as synonymous to *mudārabah*. He mentions in *al-Mabsūt* regarding a report (*athār*) from ‘Uthmān, that he gave some capital in the form of *muqāradah* to a man. The word “*muqāradah*” is derived from the word *al-qard* which means “putting aside” in the sense that the owner of the capital (*ṣāhib al-māl*) sets aside a certain portion of his capital for investment or transaction.⁸⁷ However, the Malikites, Shāfi‘ites and Hanbalites unanimously use a different term i.e. *qirād* to denote such an activity.⁸⁸

In general, be it *mudārabah*, or *muqāradah* or *qirād*, 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 manager⁸⁹ (*mudārib*) 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 *ijmā‘*, 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, *da-ra-ba*, in *Sūrah al-Muzammil*, verse 20.

86. Ibn Manzūr, *Lisān al-‘Arab*, 2566, s.v. “*da-ra-ba*.”

87. Al-Sarakhsī, *al-Mabsūt*, 22: 18.

88. See the difference between *mudārabah* and *qirād* from different *madhāhib* in Najm al-Dīn Abī Ḥafṣ ‘Umar bin Muḥammad al-Nasafī, *Tūbah al-Talabāh fī al-Istīlāhāt al-Fiqhīyah*, ed. Khālid ‘Abdul Raḥman al-‘Ank (Beirut: Dār al-Nafṣ, 2010), 301.

89. See the term in Yahia Abdul-Rahman, *The Art of Islamic Banking and Finance* (New Jersey: John Wiley & Sons, 2010), 59.

90. See Muḥammad Rawwās Qal‘ajī, *Mawsū‘ah Fiqh ‘Abdullah bin Mas‘ūd* (Mekkah: Dār al-Nafā‘is, 1984), 287; *Al-Mawsū‘at al-Fiqhīyah: Al-Sharikah* (Beirut: Dār Turāth, 1990), 53–104. See also al-Sarakhsī, *al-Mabsūt*, 22: 18.

As regards the *Sunnah*, he reported a narration by ‘Abbās bin ‘Abd al-Muṭalib,⁹¹ who said that when some capital was given for the purpose of *mudārabah* 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 (*istahsanahu*). The *hadīth* is also favoured by many jurists in proving the permissibility of *mudārabah* due to its strong narration (*sanad qawī*).⁹² However, closer examination of the expression used in the *hadīth* reveals that the Shafī‘ites used another report regarding the Prophet’s approval of the practice in which the Prophet’s approval was couched in the term, *fa’ajāzahu*⁹³ (He allows it), instead of *istahsanahu* (He recommends it) as quoted by al-Sarakhsī.

In relation to the *ijmā’*, al-Sarakhsī presented the story of two sons of the Rightly-Guided Caliph ‘Umar 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, ‘Umar 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 ‘Umar regard them as persons involved in *mudārabah* (اجعلهما بمنزلة المضاربين) on the basis of which they deserved the profit due to the risks taken during the travelling. ‘Umar eventually agreed with the suggestion.

As is clear, reports about the Companions (*athār*) have also been used as a basis for the permissibility of *mudārabah*, or *qirād* by the Shafī‘ites, for example, Abū Ishāq 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, *Siyar A‘lām al-Nubalā’*, 25 vols. eds. Shu‘ayb al-‘Arna‘ūt & Ḥusayn al-‘Asad (Beirut: Mu‘assasah al-Risālah, 1996), 2: 78–103.

92. See the status of the *hadīth* in Abū al-Faḍl Shihāb al-Dīn Ahmad bin ‘Alī Ibn Muḥammad bin Hajr al-‘Asqalānī, *Talkhīs al-Ḥabīb fī Takhrīj Ahādīth al-Rāfi‘ al-Kabīr*, ed. Abū ‘Aāsīm Hasn bin ‘Abbās bin Quṭb, 4 Vols., (Mū‘assasah Qurṭubah, 1995), 3: 129.

93. Muḥammad al-Zuhaylī, *al-Mu‘tamad fī al-Fiqhī al-Shāfi‘ī*, 5 vols., (Damascus: Dār al-Qalam, 2011), 3: 280.

(d. 476 A.H./1083 C.E.) in his work *Muhadhdhab*,⁹⁴ 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 ja’altahu qirādān*” (if you make it as *qirād*) was used to refer to one of the Companions who suggested to ‘Umar to opt for *mudārabah*. ‘Umar thus responded with a silent acknowledgement (*iqrār*). The two principals have been proof of the validity of *mudārabah* according to Shafīites.⁹⁵ Ibn Ḥajr al-‘Asqalānī (d. 852 A.H./1449 C.E.), who was also a *Shāfi’ī* jurist, identified the Companion who made the suggestion to ‘Umar as ‘Abdul Raḥman bin ‘Awf, and the amount of wealth was 1,000 *dirham*.⁹⁶

The legitimacy of *mudārabah* as indicated in many sources had also been alluded by the Prophet himself who was a *mudārib* for Khādījah, 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.⁹⁷

Al-Sarakhsī is of the view that if *Mudārabah* is based on analogical reasoning (*qiyās*), it is prohibited because it is identical with leasing (*ujr*). In the same vein, al-Kāsānī views *mudārabah* 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.⁹⁸ Despite this, Ibn Ḥazm al-Zāhiri (d. 456 A.H./1064 C.E.) confirmed that the instrument was the favoured one among Muslims in the medieval period.⁹⁹

Besides the above primary sources on the legitimacy

94. Abū Ishāq al-Shīrāzī, *al-Muhadhdhab fī al-Fiqh al-Shāfi’ī*, ed. Muhammad al-Zuhaylī, 6 vols. (Damascus: Dār al-Qalam, 1996), 3: 473–474.

95. Al-Zuhaylī, *al-Mu’ītamad*, 3: 281

96. Ibn Ḥajr al-‘Asqalānī, *Talkhīṣ al-Ḥabūr*, 3: 127.

97. Udovitch, *Partnership*, 250.

98. Al-Kāsānī, *Badā’ī*, 6: 79.

99. Ibn Ḥazm, *al-Muḥallā*, 11 vols. (Cairo, 1347–52 AH), 8: 247.

of *mudārabah*, one cannot but acknowledge the fact that *mudārabah* 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 family¹⁰⁰ 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 Islām 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 *mudārabah* by al-Sarakhsī in the 27 chapters in one tome of his voluminous *al-Mabsūt*—the first chapter of which is the basis of this current study—is sufficient evidence of his mastery and experience of *mudārabah*. 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

100. Osman Taştan, "al-Sarakhsī", 239–259.

101. See details in Hayyim J. Cohen, "The Economic Background and The Secular Occupations of Muslim Jurisprudents and Traditionists in the Classical Period of Islām (Until the Middle of the Eleventh Century)", *Journal of the Economic and Social History of the Orient*, vol. XIII (1970), 16–45.

as al-Ghazālī, Ibn Taymiyyah, and Ibn Khaldūn;¹⁰² 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;¹⁰³ 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.¹⁰⁴ 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 *mudārabah* 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 *mudārib* 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 *mudārabah* in the modern practice. For instance, Siddiqi has produced a thorough analysis on the general economic

102. Abdul Azim Islahi, "Thirty Years of Research on History of Islamic Economic Thought: Assessment and Future Directions", Seventh International Conference on Islamic Economics, Islamic Economics Research Center, King Abdulaziz University, Jeddah, Kingdom of Saudi Arabia, April 1-3, 2008, 13.

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.¹⁰⁵ 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.¹⁰⁶

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).¹⁰⁷ The analysis assumes, perhaps, that individuals have understood the *mudārabah*, 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.¹⁰⁸

105. Muḥammad Nejatullah Siddiqī, “Some Economic Aspects of Muḍārabah”, *Review of Islamic Economics, Journal of the International Association for Islamic Economics* 1, no. 2 (1991): 21–33.

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 *Mudārabah*

Mudārabah 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 *mudārabah* 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, *mudārabah* 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-muwaddī*), 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*)¹⁰⁹ 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 (*dāminan*) of the money.

As a general rule, al-Sarakhsī established his opinion (*ra'y*) pertaining to *mudārabah* capital on his school of law's (*madhhab*) founders, Abū Ḥanīfah and Abū Yūsuf, who maintained that the *mudārabah* cannot be executed except by using *dirhams* (*darāhim*) and *dīnārs* (*danānīr*). Most jurists are also of the view that *mudārabah* cannot use other commodities (*urūd*)

institutions are not favourable in applying *mudārabah* because of the equity concept vis-a-vis the debt concept. The banks are not ready to absorb the real risks being a *rabb al-māl* or *mudārib*.

109. The Hanafī jurists (*fuqahā*) distinguish *fasad* (vitiated or faulty) as something that is in between *ṣiḥḥah* (valid) and *bāṭil* (invalid). *Fasad* means something that is originally derived or related from the *Sharī'ah* but the attributes are not from *Sharī'ah*. It is mainly applied in commercial exchanges (*mu'āmalāt*). However, there is no distinction between *fasad* and *bāṭil* in the matter of ritual (*ibādāt*).

as the underlying capital unless they are valued in *dīnār* and *dirham*.¹¹⁰ According to Abū Ḥanīfah, Abū Yūsuf and Mālik, any commodities other than *dīnār* and *dirham* such as native gold (*tibr*) and copper coins (*fulūs*) are not permissible.¹¹¹ Yet, on some peculiar aspects of the currency, al-Sarakhsī 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,¹¹² whereas “*dirham*” is from the Greek term “*Drachm*,” which means “coin that is made from silver.”¹¹³ According to Ismail Marcinkowski in his work, *Measures and Weights in the Islamic World*, the basis for all Islamic weights is the *dirham*.¹¹⁴ A type of *dirham* mentioned by al-Sarakhsī 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.¹¹⁵ It had already been in the market practice during the time of Abū Yūsuf. According to al-Sarakhsī, Abū Yūsuf was earlier asked about its usage but he was not in favour of using it as the capital for *mudārabah* because if he were to allow it, it would be tantamount to allowing barter in *mudārabah*. For, to him, the capital that are permissible are only *dīnār* and *dirham*. As reported in *al-Mabsūt*, Abū Yūsuf was asked about *mudārabah* with it, and he answered:

110. Wahbah al-Zuhaylī, *al-Fiqh al-Islāmī wa Adillatuhu*, 4: 843.

111. *Ibid.*, 4: 844.

112. Akram, *Glossary*, 49.

113. See Muhammad ‘Alī Tahānawī, *Kashshāf Istilāhāt al-Funūn wa al-‘Ulūm*, eds. Rafiq al-‘Ajām, ‘Alī Dahrūj, ‘Abdullah al-Khālidi & George Zaynātī, 3 vols., (Beirut: Maktabah Lubnān, 1996), 1: 783.

114. M. Ismail Marcinkowski, *Measures and Weights in the Islamic World* (Kuala Lumpur: ISTAC, 2003), which is an English translation of Walther Hinz’s Handbook *Islamische Masse Und Gewichte*.

115. Udovitch himself questioned it in his *Partnership*, 178–179.

If I were to allow this, then I will have to allow *mudārabah* 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 *dīnārs* (*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 *dīnār* and *dirham*, *fulūs* has never been mentioned in the Qur'ān and Ḥadīth of the Prophet.¹²⁰ Therefore, by *mudārabah* 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 *mudārabah* is permissible. His view is in agreement with al-Shaybānī's opinion; indeed, he quotes al-Shaybānī's statement in *al-Mabsūt* so as to support his opinion. Many jurists (*fuqahā'*) do not allow the usage of copper-coins (*fulūs*) as *mudārabah* capital because the intrinsic

116. Al-Sarakhsī, *al-Mabsūt*, 22: 21.

117. Ibid.

118. Lane, *Lexicon*, 2495.

119. Nazīh, *Mustalāhāt*, 355.

120. Ahmad Hassan, *al-Awrāq al-Nuqūdiyyah fī al-Iqtisādī al-Islāmī* (Bayrūt: Dār al-Fikr, 1999), 30. The term *dīnār* is mentioned in *Sūrah Alī-Imrān* (3): 75, and the term *dirham* is mentioned in *Sūrah Yūsuf* (12): 20.

value of copper-coins is not stable unlike *dīnār* and *dirham*,¹²¹ thus exposing the *rabb al-māl* to capital risks and creating financial volatility in the market. Al-Sarakhsī 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 (*uṣūlī*) principle, following a single narration (*riwāyah wāḥidah* or *khābar al-wāḥid*) on the matter of commercial exchange (*mu'āmalāt*) such as the one given by al-Shaybānī is acceptable as proof (*dalīl*).¹²²

c. *Native Gold (al-Tibr)*

Al-Sarakhsī also mentions other odd currencies like native gold (*tibr*).¹²³ *Tibr* is a gold substance in the form of dust or nugget before it is made into proper *dīnār* 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 (*manzūlah al-sila'*), native gold (*al-tibr*) is not permissible to be used in *mudārabah* just as things measured and weighted.¹²⁴

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

121. Wahbah, *Adillatuhu*, 4: 484.

122. See his discussion on the category of *khābar al-wāḥid* that can be accepted as proof, al-Sarakhsī, *Uṣūl*, 1: 251.

123. Nazīh, *Mustalāḥāt*, 126.

124. Al-Sarakhsī, *al-Mabsūṭ*, 22: 21.

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 *dirham*, 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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