

Classical Jurists Perspective of Entitlement of Profit in Mudarabah: How and Who Really Deserves?

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The study aims to discuss the invalidity of amount of profit as percentage of capital and offers theoretical and practical implications from the Islamic perspective. Acquisition of profit is the basic goal of any business contract and it has always been a privileged sign for investor and entrepreneur to gain more profit from a venture. Profit earned by a business venture is shared among them as per the provisions of the contract. In partnership, the profit of venture cannot be stipulated only for the investor or only for the entrepreneur who runs the business. The paper aims to discuss the conditions of profit; the discussion of the classical jurists regarding the proportional division of profit and the methods of distribution. This paper intends to argue how and who should be entitled for the profit (either completely or partially) of a venture or investment from the Islamic perspective.

Key Words

profit acquisition, profit distribution, profit entitlement, classical Islamic jurists.

Introduction

The basic purpose behind the formation of any form of business organization is to earn profit and when business goes to set the struggle is made for its maximization. So profit is of key importance to run and regulate the economic activities successfully. In this regard the volume of profit determines the success and failure of business; it earns during the financial cycle. Wealth is a key factor to generate profit but it is not the only one which contributes, as wealth in itself do not possess the potential to grow until it is engaged with work; and to engage it with work needs another qualification that is ownership. The continuity of ownership must be retained with the wealth as long as it is retained or engaged with work to generate more wealth or to produce more goods. The determination of the continuity of ownership leads towards the sharia maxim of "daman al-mal". The prophetic saying "Revenue is based upon the corresponding liability for bearing loss" is a central qualification to judge the validity for the entitlement of profit. This prophetic saying is a base for the famous sharia maxim "Al-Kharaj bi-al-Daman*" or "Al

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that such inhuman indifference be considered undesirable and should be avoided.

³⁴ *A Catholic Com. on Holy Scripture*, ed. Dom Bernard Orchard (London: Thomas Nelson and Sons Ltd, 1960), p. 196.

³⁵ 'surrogate' means: 'substitute'.

³⁶ *The Nelson Study Bible*, 1997, p.43 (Gen 21:10f).

³⁷ Wasn't Ishmael the seed of Abraham (pbAh)? Was he a bastard? If not Abraham's then whose seed he was?

³⁸ For example:

(1) 'And Hagar bare Abram a son: and Abram called his son's name, which Hagar Bare, Ishmael.' (Gen. 16:15).

(2) 'And Abraham took *Ishmael his son* [stress added], (...): and circumcised the flesh of their foreskin in the selfsame day, as God had said unto him.' (Gen. 17:23).

(3) 'And *Ishmael his son* [stress added] was thirteen years old, when he was circumcised in the flesh of his foreskin.' (Gen. 17:25).

(4) 'And also of *the son of the bond-woman* will I make a nation, because he is *thy seed* [stress added]'. (Gen. 21-13).

(5) 'Ishmael was the first-born of his father' (W. Smith, *A Dic. of the Bible* 1967, p. 268).

³⁹ 'pariah' means: 'social outcast; (in India) person of no caste or of very low caste' (*Oxf. Adv. Learners Enc. Dic.* 1994).

⁴⁰ Gen. 17:20 KJV.

⁴¹ Deu 18:21-22 KJV.

On the run from her mistress. Hagar met *the angel of the LORD*, God in human form (...). Hagar was assured that her descendants would be too numerous to count, just as Abraham had been told earlier (13:16). Her child's name would be Ishmael (...). But though Sarai had hoped that the child would count as her child, vs [16:] 15-16 makes (sic) it quite clear that Ishmael was the son of Hagar and Abram and not Sarai's child. Her scheme had failed to produce a child for her. But was Ishmael Abram's promised son? We are left to wonder, but 17:18 shows that Abram at least had concluded Ishmael was the child God had promised.

A Catholic Com. On Holy Scripture, ed Dom Bernard Orchard *et al* (London: Thomas Nelson and Sons, 1960), p.195:

'The angel of Yahweh' is identified in [16:] 13 with Yahweh himself; so also 31:11 and 13. 'The Israelites did not ask himself how Yahweh can also be called the Messenger of Yahweh. It is one of the obscurities in which the OT abounds', Heimisch. Rather Yahweh is said to speak because the Angel spoke in his name.

The Jerome Biblical Com., ed. Raymond E. Brown, etc (Bangalore: TPI, 1987), p.20:

The 'angel of the Lord' is, etymologically, a 'messenger' (malak). From v.13, it is evident that the story originally depicted an appearance of God himself. The 'angel' seems a later attempt (repeated in other appearances in Gn) to soften the anthropomorphism.

It is sufficient evidence to prove the theme.

²⁷ Gen 17:16.

²⁸ *Harper's BD*, ed. Paul J. Achtemeier, et al, TPI Bangalore, 1990, p. 199.

²⁹ The original Heb word for this 'fruitful' is: 'הרפ' (f+r+h). According to *Strong's Dic* it is used both literally and figuratively (p.96; entry 6509). According to *The Heb. OT Lexicon* (Leiden: Brill, 2001) it is also used metaphorically, meaning: very good; impressive; beneficial, etc. Besides being literally fruitful, i.e. being fertile and the progenitor of twelve princes and so many nations and tribes, Ishmael is fruitful for humanity in so many figurative ways as well, for example: (1) Offering of sacrifice; (2) Pilgrimage; (3) The Ka'bah; (4) Single orientation in prayers for the whole of Ummah the world over; (5) Universal approach towards religion, etc.

³⁰ 'Bilhah' was a slave given to 'Rachel' by 'Laban' (the father of 'Leah' and 'Rachel').

³¹ 'Zelpha' was the slave of Jacob's wife Leah to whom she was given by Laban. As a substitute for the wife she bore 'Gad' and 'Asher' (Gen 30:9-12; 35:26; 46:18).

³² 'Rachel' was the younger daughter of Laban and wife of Jacob. Jacob worked for Laban for 7 years as the purchase price of Rachel: but Laban substituted Leah for Rachel in the wedding ceremony and Jacob had to work another 7 years (Gen 29:6-31). Rachel was barren so she designated her slave Bilhah as a surrogate mother to provide a child for her (Gen 30:1-25), and finally herself bore Joseph. Later on Rachel also bore Benjamin (Gen 35:16-20; 48:7).

³³ It is an irrelevant argument because this document is a later legislation and does not hold good in the present episode. The canons of natural justice require

in these verses; but at both these times the promise relates to some future time which had not been materialized by that time.

¹⁶ 'And I will bless her, and give thee a son also of her' shows that the 'gift of a son' is a blessing. And Hagar had already been given this blessing.

¹⁷ 'I will bless her [Sarai] and she shall be a mother of nations; kings of people shall be of her' shows that Sarah too was blessed in this manner. And it is to be noted that Hagar had already been granted this 'blessing'.

¹⁸ Gen 17:15-16, 19, 20.

¹⁹ 'God heard the boy crying,' implies that God was not unheeding and unconcerned about the boy Ishmael and that He came to console, comfort, and rescue him. Secondly He directs Hagar to extend proper care and rearing to the boy. Thirdly, He declares and promises that He 'will make a great nation out of his descendants', Fourthly, God provided this new and small family with water in some miraculous manner whereas it was invisible on the surface. Fifthly that God was with the boy throughout his growth to provide him every protection, guidance, and necessities of livelihood and life.

²⁰ Gen 21:17-20 GNB.

²¹ What a care, concern, sympathy, and affection is oozing out of these words of the Lord: *what aileth thee, Hagar?!*

²² Gen. 16:7,8,9,10,11,13; Gen. 21:17,18.

²³ J. L. McKenzie's *Dic. of the B.*, (London: Geoffrey Chapman, 1984), p.98, explains 'Blessing' as:

²⁴ *Harper's BD*, ed. Paul J. Achtemeier, et al. TPI Bangalore, 1990, p. 199.

²⁵ Ludwig Coehler and Walter Baumgartner. *The Heb and Aramaic Lexicon of the OT* (Leiden: Brill, 2001), p. 159f.

²⁶ Some excerpts from a few of the authorities have been afforded below to establish the theme:

The Oxf. BC, ed. John Barton. John Muddiman, 2001, 51:

The words of the angel (malak) of YHWH who speaks to Hagar in 16:7 are identified with the words of YHWH himself in 16:13.

The New Oxf Annotated B, 3rd Edn, p.33:

Here the angel of the Lord is not a heavenly being subordinate to God but the Lord (Yahweh) in earthly manifestation, as is clear from v.13 (cf. 21;17,19; Ex 14:19).

The New Jerusalem B, 1993, p.35, FN on 16:7:

In the most ancient texts the angel of Yahweh or the angel of God is not a created being distinct from God, but God Himself in visible form. V.13 identifies the angel with Yahweh.

The Jerusalem B: Popular Edn., 1974, p. 19:

In the most ancient texts, 'the angel of Yahweh' is not a created being, but is God himself in a form visible to man.

The Annotated Paragraph B (London: The Religious tract Society. 1866), p.16:

This word is of frequent occurrence in the Bible; and signifies any Divine agent or messenger, (...), or, as here, when called the angel [of] Jehovah, God himself appearing in human form (Exod xxiii.20, 21).

New BC 21st Century Edn. (Leicester: Inter-Versity Press, 2005), 72f:

C) The Bible says:

And if thou say in thine heart, How shall we know the word which the LORD hath not spoken? When a prophet speaketh in the name of the LORD, if the thing follow not, nor come to pass, that is the thing which the LORD hath not spoken, but the prophet hath spoken it presumptuously: thou shalt not be afraid of him.⁴¹

What does the non-fulfillment of some of the promises in favour of Sarah mean in the light of the above verses? It shows that the interpolation of the word 'blessing' in favour of Sarah and its deletion and omission in the case of Hagar is a false alteration of some prejudiced redactor of the Bible.

Thus the above study makes it quite clear that God had blessed Hagar and Ishmael in true sense of the word and it is a futile effort of the Jewish redactors of the Bible based on prejudice to refuse the blessings of God towards Hagar and Ishmael (pbAh) and confirm it in favour of Sarah and Isaac. God blessed both these families of Abraham (pbAh) without any reservations.

NOTES & REFERENCES

¹ The Bible, Deu 7:6-8 KJV.

² The Bible, Deu 14:2 KJV.

³ The Qur`ān states it in a different manner. It says:

وَأَنَا عَرَضْنَا الْأَمَانَةَ عَلَى السَّمَاوَاتِ وَالْأَرْضِ وَالْجِبَالِ فَأَبَيْنَ أَنْ يَحْمِلْنَهَا وَأَشْفَقْنَ مِنْهَا وَحَمَلَهَا الْإِنْسَانُ إِنَّهُ كَانَ ظَلُومًا جَهُولًا

We offered the trust to the heavens and the earth and the mountains, but they refused to carry it and were afraid of doing so; but man carried it (Al-Ah zāb 33:72, tr. Mawdūdī).

⁴ *The Jewish Enc* 4:45.

⁵ The Bible, Amos 3:2 KJV.

⁶ The Bible, Amos 9:8 KJV.

⁷ The Bible, Psa 135:4 KJV.

⁸ The Bible, Gen 22:17-18 KJV.

⁹ What a pity for those unfortunate people who fall prey to these God's 'Chosen People!'

¹⁰ The Bible, Deu 7:2, 16 KJV.

¹¹ A. S. Ghauri, *The Only Son Offered for Sacrifice: Isaac or Ishmael?* (Lahore: al-Mawrid, 2nd Rvd Edn, 2007), p.12.

¹² The Bible, Gen 13:14-15 KJV.

¹³ Obviously, it can be only God himself Who could have said, 'I will multiply thy seed exceedingly, that it shall not be numbered for multitude.' It is not an angel's job.

¹⁴ The Bible, Gen 16:7-11 KJV.

¹⁵ It is important to note here that Sarah has been promised of the blessings twice

the proposition that the Jews claim all blessings and bounties of the Lord for themselves and strip Hagar, Ishmael, and their descendants off all blessings on the plea that only Isaac (pbAh) was the genuine seed of Abraham (pbAh) and not Ishmael (pbAh). The proposition has been discussed and addressed in a fair detail in the above pages. To sum up, recapitulate and confirm the theme a brief follow up is afforded hereunder:

A) The key word of the present study is 'blessings'. It has been established on the basis of ample evidence that the word has the following meanings, implications, and connotations:

- (1) Health and strength;
- (2) Fertility and procreation of esp. male descendants;
- (3) Abundant and innumerable progeny, i.e., in the words of the Bible, 'multiply the seed exceedingly';
- (4) Fruitfulness and benevolence for humanity;
- (5) Direct address of the Lord towards an individual;
- (6) Being parent of kings and princes;
- (7) Being mother of nations;
- (8) Being a great nation;
- (9) God's listening of prayers and cries;
- (10) Being the mother of a promised son.

Now all these ingredients of 'blessing' are physically present in Hagar. Although Sarah also has got most of these bounties but at the same time she lacked some of them, e.g. direct address of God; natural fertility; health and strength. Although she gave birth to a son, Isaac, yet it became possible only with the help of some miraculous intervention by the Lord.

In the light of all this, superiority cannot be claimed in favour of Sarah over Hagar. The actual position is rather otherwise.

B) Whether the promise of 'blessings' was materially fulfilled and in whose person, Hagar or Sarah; both of them had been promised various ingredients and connotations of 'blessing'. All the connotations of 'blessing' were fulfilled in toto with regard to Hagar whereas they were not fulfilled in toto in favour of Sarah. The redactors of the Bible have tried to conceal these flaws with the help of interpolation in the 'book'. But the fact is that 'Nothing succeeds like Success'. The facts speak for themselves. Obviously, all the connotations of 'blessing' have been fulfilled in favour of Hagar, but as far as Sarah is concerned, some of them are missing with regard to her. Now if the redactors of the Bible have deleted the word of 'blessing' with regard to Hagar, the reality does not change. This alteration on behalf of the redactors rather reveals their malafide.

find no adequate reason to entertain the so-called malevolent and unjustified desire and demand of Sarah to cast out Hagar and Ishmael (pbAh) in the manner the Genesis describes. *A Catholic Com. on Holy Scripture* says:

The sons of slave wives could be given the same rights as those of the first, chief wife as in the case of the sons of Jacob. No distinction was made between the sons of Bala [Bilha³⁰] and Zelpha³¹ and those of Rachel³² and Lia [Lea]. Hence Sara feared that Isaac's interests might suffer. (...). But this is hard to accept in view of an adoption contract among the Nuzu tablets (15-14 cent. BC)³³, which stipulates that the son of a slave wife shall not be sent away.³⁴

The Nelson Study Bible explains:

When a surrogate³⁵ wife had born a son to one's husband, that mother and child could not be dismissed even if the first wife subsequently gave birth to a son. This partly explains Abraham's reluctance to do what Sarah demanded (v.11).³⁶

As such Abraham's act of casting away is not credible; and that too at God's behest. Such partiality and injustice is unconceivable of God. According to all canons of justice and equity Sarah stood liable to be extended some befitting admonition and advice for such cruel-mindedness. Instead of it, she has been rewarded through the words: *'in all that Sarah hath said unto thee (Abraham), hearken unto her voice; for in Isaac shall thy seed be called'*³⁷ (Gen 21:12), which is obviously futile and based on some blatant interpolation incorporated by some prejudiced redactor.

As to Ishmael (pbAh) God repeatedly affirmed him as the seed and son of Abraham (pbAh)³⁸; and by no means a 'pariah'³⁹. Similarly regarding Hagar the OT testified *that God appeared to Hagar twice*: firstly in Gen 16:8-11; and secondly in 21:17-20, as recorded earlier in this chapter.

God heard the cry of the lad and his mother and through a miracle of the well of water saved the life of Hagar and Ishmael (Gen. 21:19). God was with the boy (Ishmael) as he grew up (Gen.21-20). God also promised to Abram (pbAh) as under:

And as for Ishmael, I have heard thee: Behold, I have blessed him, and will make him fruitful, and will multiply him exceedingly; twelve princes shall he beget, and I will make him a great nation.⁴⁰

In the present article an analytical study has been undertaken on

words '*what aileth thee, Hagar? Don't be afraid.*' is noteworthy.

9) 'And Abraham said unto God, *O that Ishmael might live before Thee!*' shows Abraham's deep concern for Ishmael.

10) Regarding Ishmael God categorically asserted: 'And as for Ishmael, I have heard thee: Behold, I have blessed him, and will make him fruitful, and will multiply him exceedingly; twelve princes shall he beget, and I will make him a great nation (Gen 17:20).'

Gen 17:20 quoted above confirms that God heard and accepted the prayer of Abraham (pbAh) in favour of Ishmael bestowing *five blessings on him*. God says:

- a) I have blessed him (Ishmael).
- b) I will make him (Ishmael) fruitful²⁹.
- c) I will multiply him (Ishmael) exceedingly.
- d) Twelve princes shall he (Ishmael) beget.
- e) And I will make him (Ishmael) a great nation.

It shows that the Lord heard Ishmael's cry and from heaven he addressed Hagar and assured her to make a great nation out of the descendants of Ishmael (pbAh). This affirms that both Hagar and Ishmael (pbAh) were bounteously blessed by the Lord. This blessing rejects the pretension of the Israelites that Hagar and Ishmael were cast-out or discarded by the Lord. On the other hand, Ishmael was the lad whose voice had been heard by God in the heaven and He assured Hagar to make a great nation out of his descendants. The other assurance, that God was with the boy as he grew up, reveals God's deep concern towards the boy and is a clear-cut warning that nobody should dare to despise, denounce, or harm him.

Abraham (pbAh), in fact, had a strong feeling of deep affection for Hagar and Ishmael (pbAh). The filial attachment is greater everywhere for the first-born son. It was more so in case of Ishmael (pbAh) who was granted to Abraham (pbAh) by the Lord in response to his prayers in the old age. Hagar was young as well as a faithful wife of Abraham (pbAh). She also had the privilege of being the mother of Ishmael (pbAh), the first-born of Abraham (pbAh). It was not, therefore, conceivable that Abraham (pbAh) could even have thought of throwing them away without any concern for these gifts of God, i.e. Hagar and Ishmael (pbAh), only to satisfy the alleged whimsical jealousy of Sarah. As such, we

other hand there is no mention of God's addressing Sarah directly. Even at the time of breaking the news of the birth of Isaac, the angels did not address Sarah directly; they rather delivered the good news to Abraham (pbAh) and not to Sarah, although she was very much present there in person (Gen 18:9,10,13,14).

2) Hagar was promised by the grace of the Almighty God: '*I will multiply thy seed exceedingly, that it shall not be numbered for multitude* (Gen 16:10)', which is obviously a blessing and has been entirely fulfilled.

3) Hagar had been given the Good News and was promised by the Almighty Allah that: '*Behold, thou art with child, and shalt bear a son* (it is also a blessing), *and shalt call his name Ishmael* (Gen 16:11)'. It has also been entirely fulfilled.

4) It reveals that the name 'Ishmael' was given to the boy by God himself '*because the LORD hath heard thy [Hagar's] affliction.*' The meanings of the word Ishmael show that Hagar was blessed with the acceptance of her prayers.

5) God told about Sarah: '*I will bless her [Sarai]*'²⁷.

6) Gen 17:16 explains the 'blessing' of Sarah as: (a) God will give her a son; (b) She shall be a mother of nations; (c) kings of people shall be of her.

7) Both Sarah and Hagar are: (a) 'mothers of sons'; (b) 'Similarly both of them are the 'mothers of nations''. (c) They are also progenitors of kings and princes alike.

According to *McKenzie*'s the effects of the 'blessings' are:

(a) fertility, i.e. to be fruitful and multiply; and

(b) innumerable progeny;

These favours have been promised and eventually afforded both to Sarah and Hagar alike. So, virtually, both of them had been blessed by God. The omission of the word 'blessing' in favour of Hagar, here in the pertinent context, shows an obvious prejudice of the redactors of the Bible.

As already noted, *Harper* has also defined 'blessing' in similar terms:

The content of 'Blessing' includes such goods as vitality, health, longevity, fertility, and numerous progeny; 'curse' on the other hand, results in death, illness, childlessness and such disasters.²⁸

8) The care and concern of the Lord and His affection in His

Now, first of all, it would be pertinent to define and understand the word 'bless'. The original Hebrew primitive root word for 'bless' is 'ברך' (b+r+k=barak). Arabic language has the same word with almost the same meanings. J. L. McKenzie explains 'Blessing' in the context of the Bible as:

The effect of the blessing most frequently mentioned is fertility, whether in men, animals, or crops. (...). In each of these blessings there is a command to be fruitful and multiply. (...), the formula is otherwise the same: the result of the blessing will be an innumerable progeny.²³

To confirm the theme, the definition of the term 'blessing' is afforded here from another authority:

The content of 'Blessing' includes such goods as vitality, health, longevity, fertility, and numerous progeny; 'curse' on the other hand, results in death, illness, childlessness and such disasters.²⁴

Ludwig Coehler and Walter Baumgartner have assigned it the following meanings as well:

To endue (furnish) someone with special power.²⁵

It shows that the original Hebrew word used for 'blessings' in the Bible connotes:

(a) Fertility (to have children); (b) to multiply; (c) the result of the blessing will be an innumerable progeny

It is pertinent to observe here that the Lord has showered all His bounties on Hagar which clearly imply 'blessings'. She was the mother of a son, Ishmael; and consequently the mother of nations; and God multiplied her seed exceedingly, so much so that it became innumerable; and her son was the father of twelve princes. In addition to it she was the lady who had been afforded the great honour of being directly addressed by God Himself. But, surprisingly, the word 'blessings' has nowhere been used about Hagar in these verses. It is not by chance or merely out of some carelessness or ignorance. It is an intentional and purposeful omission by some biased redactor.

The above excerpts from the book of 'Genesis' of the Bible (16:7-11; 17:15-20; 21:17-20) contain the following points:

1) Hagar was afforded the great honour to be directly addressed by the LORD Himself. Ample evidence from a number of authorities has been afforded in the footnote below that '*the angel of God*' here means '*God himself*'.²⁶ On the