

PARTNERSHIP UNDER ISLAMIC LAW: A WINDOW FOR ECONOMIC DEVELOPMENT

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ABSTRACT

Partnership under Islamic law is a relationship between two or more persons in order to partake in a business transaction for the purpose of sharing any profit or loss that accrues from the business. There is unanimity of opinion among Muslim jurists on the validity of partnership. They however differ on the manner of its operation. Broadly, the Muslim jurists opined that partnership can be monetary, labour or credit partnership. Though most jurists accept the monetary partnership as valid, the credit partnership has always been a centre of disagreement amongst scholars. Having in mind the importance of partnership under the sharia, the paper examined the various types and requirements of a valid partnership. The paper finds that partnership can well be used to advance the cause of business transactions and development in Nigeria. The establishment of non-interest banking is a welcomed development and a great window for pushing the frontiers of partnership to greater heights. Doctrinal methodology was used in this paper.

KEY WORDS: Partnership, Economic Development, Islamic Law

1. Introduction

Partnership is a form of business transaction that is recognized and encouraged by Islamic law. The law appreciates the fact that partnership is a vital means of acquisition of property. Where people engage in partnership agreements, they help each other in the process and lawfully acquire wealth. If the partners are faithful and never cheat each other, the blessings of Allah will shower on their transaction and Allah will bless them. The effect thereof is that partnership will be a good means of earning the pleasure of Allah.

Generally Allah has sanctioned business transactions by expressly declaring that trading is lawful. The Qur'an states "O you who believe do not devour each other's wealth except through lawful means."¹ The Qur'an states further "Others travel through the land seeking of Allah's bounty yet others were fighting in Allah

¹ Qur'an, Nisa, 4:29 translation by Al-Hilal, M.T. and Khan, M.M., *Translation of the Meanings of the Noble Qur'an in the English Language* (Madina KSA: King Fahd Complex for the Printing of the Holy Qur'an, 1982)

cause.”² However buying and selling must not prevent believes from remembrance of Allah. The Qur’an state “Those that are not prevented by trading or sale from the remembrance of Allah.”³ The Qur’an says with respect to trading during the time of Friday prayer “leave trading.”⁴ Generally on trading Allah say ‘‘Allah makes trading lawful and prohibits riba.”⁵ Yusuf Ali, commenting on this verse opined that lawful transactions or industry lead to development and prosperity. That shows that Allah loves it and all persons that partake or undertake lawful business transactions will be showered with the blessings of Allah so long as they did not introduce any illegality in the transaction.⁶

2. Partnership (*Al-Sharikah*): Definition and Formation

The word *sharikah* has literally been defined as the arrangement between two or more people to engage in business transaction where both partners participate.⁷ The Dictionary of Modern Written Arabic defined *sharikah* as partnership, companionship and corporation.⁸ The word shirk (polytheism), mushrik (polytheist) are all derived from the same root word *sharikah*.⁹

Technically, partnership is defined as an agreement between two or more persons in carrying out a particular business with a view to not only sharing the profit but also loss and liability between the parties relying on the terms of the contract.¹⁰ It has equally been defined as an agreement between two or more persons to carry out an investment for the purpose of sharing any profit that comes from the partnership. The parties can contribute their wealth, labour, skill or anything that is allowed in the eyes of the shari’ah.¹¹

The glorious Qur’an has used the word *sharikah* on different occasions. Prophet Moses (A.S.) prayed unto Allah to make his brother Prophet Harun to be his partner in the deliverance of his message to the Pharoah. Almighty Allah states: “And appoint for me a minister [i.e., assistant] from my family. Aaron, my brother. Increase through him my strength. And let him share my task.”¹² With respect to inheritance, the Qur’an used the word *sharikah* with respect to group of heirs. Almighty Allah states

“And for you is half of what your wives leave if they have no child. But if they have a child, for you is one fourth of what they leave, after any bequest they [may have] made or debt. And for them [i.e., the wives] is one fourth if you leave no child. But if you leave a child, then for them is an eighth of what you leave, after any bequest you [may have] made or debt. And if a man or woman leaves neither ascendants

² Qur’an, Muzammil, 73:20

³ Qur’an, Nur, 24:37

⁴ Qur’an, Al-Jumaa, 62:9

⁵ Qur’an, Al- Baqarah, 2:275

⁶ Ali, Y., *The Holy Qur’an*, (Beirut: Dar al-Arabiyya, 1937), P111.

⁷ Hassan, I., *M’ujam al-wasit*, vol. 1, P (Cairo: NP, 1972), 506.

⁸ Wehr, H., *A Dictionary of Modern Written Arabic*, edi. (India: Wiesbaden: Otto Harrassowitz, 1974), P 468.

⁹ Hassan, I., Op. Cit. P 506.

¹⁰ Usmani, M.T., *An Introduction to Islamic Finance*, (Karachi: Qur’anic Studies Publishers, 2010), P 31; Billah, M.M., *Shari’ah standard for Business Contract*, (Kuala Lumpur: A.S. Noordeen, 2004), P77-79, cited by Bambale Y.Y., *Islamic Law of Commercial and Industrial Transactions*, (Lagos: Malthoues, 2007), P168.

¹¹ Qurtabi, M., *Bidayatu al-Muqtasid Wa Nihayatu al-Mujtahid*, vol. 2, (Beirut: Dar al-Fikr, 2008), P 203;

¹² Qur’an, Taha, 20:29-32.

nor descendants but has a brother or a sister, then for each one of them is a sixth. But if they are more than two, they share a third, after any bequest which was made or debt, as long as there is no detriment [caused]. [This is] an ordinance from Allah, and Allah is Knowing and Forbearing.”¹³

In yet another verse Allah says:

“Indeed this, my brother, has ninety-nine ewes, and I have one ewe; so he said, 'Entrust her to me,' and he overpowered me in speech." [David] said, "He has certainly wronged you in demanding your ewe [in addition] to his ewes. And indeed, many associates oppress one another, except for those who believe and do righteous deeds – and few are they." And David became certain that We had tried him, and he asked forgiveness of his Lord and fell down bowing [in prostration] and turned in repentance [to Allah].”¹⁴

Qur'an has equally used the shirkah in the context of prescribing partner to Allah. Severally verses of the Qur'an have pointed to the fact that prescribing partner to Allah is the worst of wrong doings. Almighty Allah states “Indeed, Allah does not forgive association with Him, but He forgives what is less than that for whom He wills. And he who associates others with Allah has certainly fabricated a tremendous sin.”¹⁵ Almighty Allah states further,

“They have certainly disbelieved who say, "Allah is the Messiah, the son of Mary" while the Messiah has said, "O Children of Israel, worship Allah, my Lord and your Lord." Indeed, he who associates others with Allah – Allah has forbidden him Paradise, and his refuge is the Fire. And there are not for the wrongdoers any helpers.”¹⁶

With respect to authorities that support partnership, both the Qur'an and the traditions of the Prophet (pbuh) approve and encourage Muslims to partake in such transaction. The Qur'an has called on Muslims to be each other's helpers in acts of piety and obedience to Allah.¹⁷ The Messenger of Allah stated “Allah assists His servant so long as he assists his (Muslim) brother”¹⁸ the above authorities are relevant and serve as authority for sharikah since it involves people coming together to do good action (business). Further, where one party provides the capital and the other party provides the labour, each party will be helping the other as both of them gain from the relationship. Further, where a rich person provides capital in order to assist a poor person to grow and make a living, he will be enjoying Allah's blessings for this good act of assisting his weak brother.

In another hadith, the Messenger of Allah mentions that when two parties come together in order to transact business, Allah's blessings and support will be with them so long as none of the partners cheat the other. But when any of the partners cheat the other, Allah will remove his blessings and support for the parties.¹⁹

¹³ Qur'an Nisa, 4:12.

¹⁴ Qur'an, Sad, 38: 23-24.

¹⁵ Qur'an, Nisa, 4:48.

¹⁶ Qur'an, Ma'idah, 5:72, see also Qur'an, Kahfi, 18:26, 110, hajj, 22:31, Ghafir, 40:12.

¹⁷ Qur'an, Ma'idah, 5:5

¹⁸ Muslim, M., *Sahih Muslim*, vol. 9, (Cairo: Al-Halabi, nd), P 23.

¹⁹ Abu Dawud, *Sunan Abu Dawud*, vol. 3, (Cairo: nd, np), P438.

3. Conditions for the Validity of Partnership

Certain conditions must be fulfilled before a partnership contract can be valid. This conditions can be classified into two broad categories. General Conditions and Specific Conditions.

3.1 General Conditions

The general conditions are those that apply to almost all forms of valid contracts

a. **Consent of the Parties:** Parties to a partnership agreement must voluntarily give their consent to the contract. Where parties are compelled into entering into the partnership agreement, that amounts to ikrah hence affecting the validity of the contract. The Prophet (pbuh) said “Liability is exempted from a duressed person.”²⁰ The Maliki and Hanafi schools of Islamic jurisprudence opined that the right to revocation rests with the person that is subjected to duress.²¹ That means if a person is forced into a partnership contract, he has the right either to remain in the contract or to revoke the contract.²²

b. **Puberty:** A partnership can only be valid where both parties to the transaction have reached the age of puberty.²³ Neither the Qur’an nor the traditions of the Prophet (pbuh) mention a particular age of maturity. However, Islamic scholars opined that with respect to males, maturity is determined by onset of wet dream, change or hoarseness of voice or growth of pubic hair. In the case of females, maturity is determined by menstruation, pregnancy, on set of wet dream or growth of pubic hair. The jurists are however of the opinion that if these signs do not appear, adulthood will be determined through age, but they differ as to the actual age.²⁴ Similarly, accordingly, the Maliki School of thought opined that maturity is presumed upon reaching the age of 15 for both sexes. Some Maliki jurists opined 18 years, some 17, while others mentioned 16 years.²⁵ Whereas the Hanafi School of jurisprudence opined that puberty for boys is on attaining 18 years and 17 years for girls.²⁶ While the Shafii and Hanbali jurists set the age of maturity for both boys and girls at 15 years.²⁷

In the case of *Yadoma v Fulata*²⁸ the appellant bought a house from one Baba Shehu in the presence of their Ward-Head at the cost of £240. The respondent (child’s mother) contended that her son was too small to sell the house and the sale that took place was done without her consent hence the sale was void. The appellant argued that the vendor was not a boy that was why he bought the house from him. The Sharia Court held that the sale was void because the vendor was a child in the eyes of the shari’ah and under the Maliki School of Islamic law, maturity for a girl is determined by monthly courses and in the case of a boy by experiencing wet dream. Where

²⁰ Ibn Majah.

²¹ Ahmad, A.W., *The Doctrine of Duress in Sharia, Sudan an English Law*, (1986),

²² In fact under Islamic law, duress is not tolerated in all respects. Even in matters of religion the Qur’an categorically mentions that there is no compulsion in religion and truth is clear from falsehood. See Qur’an 2:253. The Qur’an states further in 16:106 thus: “Anyone who, after accepting faith in Islam utters unbelief, except under compulsion, his heart remaining firm in faith.” In yet another verse Allah says in 24:33 thus “...But force not your maids to prostitution when they desire chastity, in order that you may make a gain in the goods of this life...”

²³ See Badamasiuy, J., *Obligations and Rights of the Parents Under the Child’s Right Act: A Sharia Perspective*, (Kaduna: Zakara Communications Limited, 2009), at 8.

²⁴ Ibid

²⁵ Al-Dasuqi, M.A. *Hashiyatu al-Dasuqi ‘Ala Sharhu al-Kabir*, vol. 3, (Beirut: Dar al-Fikr, nd), at 293.

²⁶ Jamhud, M.S., *Himayatu Huquq al-tiflu*, (Iskandariyyah: Dar al-Fikr al-Jami’I, 2010), at 24

²⁷ Al-Hafi, B.M., *Fiqh al-Tufalah*, (Syria: Dar al-Nawadir, 2008), at 423.

²⁸ [1970] NSNLR at 10, also cited in [1961-1989] SLRN Vol. 1 at 24.

neither situation happens, maturity will be presumed by attaining the age of 15 years for both sexes.

Going by this condition, a child cannot on his own enter into a partnership agreement, however, his guardian can approve his participation in such an agreement or the guardian himself enter into the agreement on behalf of the child.²⁹

c. Sanity: Sanity is a condition precedent for the validity of a contract of partnership, this is due to the fact that under the sharia, an insane person is presumed not to be responsible and as such will not be accountable for his acts and omissions. In a hadith, the Prophet said “the pen of writing right and wrong is lifted on three persons, the sleeping person until he wakes up, the child until he attains puberty and the insane until he gains his senses.”³⁰

d. Freedom: A slave is presumed to lack capacity to enter into contract on his own. Slaves are presumed to belong to their masters as such all their actions are subject to the approval of their masters.³¹ In fact, the Qur’an categorically states that even in a crime, the punishment of the slave is half of that of a free person.³²

e. Lawfulness of the object or subject matter: A condition precedent for the validity of any partnership agreement is that the object or subject matter of the partnership must be lawful in the eyes of the sharia.³³ Where the object of the partnership is to commit a crime for example theft, armed robbery or murder such a contract is void. Further, the subject matter must be lawful in the eyes of the sharia. In a partnership involving buying and selling, if the subject matter is a pig, alcohol or dog (for consumption) the contract is void *ab initio* and cannot enjoy the recognition of the sharia.³⁴

e. Existence of the subject matter: A fundamental requirement for the validity of a contract is that the subject matter of the contract must be in existence at the time of the formation of contract. A property is not qualified to be described as *mal*³⁵ when it is not in existence. That means fish in the river or birds in the sky cannot be the products of sale in a partnership. However, the parties can enter into partnership with respect to hunting, fishing etc. since the essence of the whole contract is to get those things.³⁶

3.2 Specific Conditions

i. Offer and Acceptance: A partnership contract will be valid only when the parties have in clear terms through *ijab* (offer) and *qabul* (acceptance) started the partnership agreement. The offer and acceptance can be by words or action. That means deaf and dumb persons can be partners in a partnership agreement so long as they appreciate the agreement and agree to be part of the partnership.³⁷

²⁹ Hafi, M. Op. Cit. P 48.

³⁰ Badi. J., *Commentary of forty hadiths of Al-Nawawi*. (Malaysia: IIUM, 2002), P34.

³¹ Qayrawani A., *Thamaruddani*. (Beirut: Dar al-fikr, 2003), P56.

³² Qur’an Nisa 4:

³³ Qurtuby, Y, *Akkafi fii Fiqh ahlu Madinah al-Maliki*, vol. 2, (KSA: Maktab Riyadh, 1980), P783; Bambale, YY, P 170.

³⁴ The glorious Qur’an has urged the believers to eat from what is lawful. See Qur’an, Nisa, 4:29. See Bambale, Y.Y., *Acquisition and Transfer of Property Under Islamic Law*, (Lagos: Malthouse, 2007), P12.

³⁵ It has been defined by scholars to mean anything that can be hoarded or secured for use or enjoyment at a time of need, or that which man is in the habit of giving away to others and excluding others there forms. See Abdul Rahim, M.A., *The Principles of Muhammadan Jurisprudence*, (Lahore: All Pakistan Legal Decisions, nd), P275

³⁶ Ibid

³⁷ Bambale, Y.Y., Op. Cit. P170

ii. Division of Profit: Where parties enter into a partnership, the aim is to share the profit based on terms agreed by the parties. Hence in every partnership agreement, the rule that the profit is to be shared by the parties must be expressly or impliedly agreed by the parties. Where there is loss, it must be burdened by both parties in accordance with the agreement or arrangement of the parties. Where one party contributes his labour and the other contributes his wealth and there is loss, the provider of labour loses his labour while the provider of capital loses his money.³⁸

iii. The Subject Matter or Object of the Partnership: In a partnership, the capital provided by the parties is supposed to be the object or subject matter of the contract. That means if the partnership does not have an object or a subject matter it will not qualify to be a partnership.³⁹

iv. Muwakkil (Appointer) and Wakil (Agent or Appointee): Since both parties work for themselves and on behalf of the other partner, they are expected to satisfy the requirements expected of a principal and an agent. Meaning each partner must be qualified to act both as a principal and as an agent.⁴⁰

v. Each Partner is Entitled to the Fullest Information: Each partner in a partnership agreement is entitled to the fullest information with respect to the nature of the business, life span of the business and the entrepreneur to whom he is entrusting his money.⁴¹ By this requirement, each and every partner must have a full picture of how the partnership is operated. This is in order to avoid distrust and misunderstanding. If partners are fully aware of the nature of their business, they will not be in a hard complaining that it was not how they thought the business will look like. And they must be ready to accept anything that comes from the business.⁴²

4. Partnership Under Classical Jurisprudence

There is consensus opinion among jurists that partnership is lawful in the eyes of the sharia. This is predicated on the fact that the Prophet (pbuh) had himself participated in a partnership contract before he became a Prophet and had expressly approved it after becoming a Prophet. In a narration, on the day of *fathu* Macca (conquest of Macca), Saib Musimi who was a partner of the prophet before Islam came to the prophet (pbuh) and the Prophet (pbuh) said “welcome my brother and my partner.”⁴³ This hadith has clearly shown that even before Islam partnership was a practice that was recognized by the Jahilliyah Arabs and the Prophet (pbuh) himself has participated in it. After Islam, Islam recognized this form of business and continued to uphold it.⁴⁴ In yet another narration, the grandfather of Zahrata Ibn M’abad used to take him and when they buy some items and meet Ibn Umar and Jubair they will tell him that we will partner with you in this because the Prophet (pbuh) has prayed for Allah’s blessings for you.⁴⁵

Ibn Qadama the great Muslim scholar opined that “Muslim scholars are unanimous on the validity of *sharikah* but varied on some areas relating to the manner

³⁸ Al-Shaybany, M., *Mabsut*, vol. 4, (Karachi: Idarah al-Qur’an wa Ma’alum al-Islamiy, nd), P138.

³⁹ Bambale, Y.Y., P. 170.

⁴⁰ Khorafa, A.E., *Transactions in Islamic Law*, (Kuala Lumpur: A.S. Noordeen, 2004), P173.

⁴¹ Abudu, A.O., *Islamic Economics for the Lay Person*, (Ghana: Dyno-Media Ltd, 1996), Pp92-93

⁴² Ibid

⁴³ Abu Dawud, hadith 4836, Ahmad Hadith vol. 3, hadith 425, Ibn Majah hadith 2287.

⁴⁴ Tasawwily, M., *Bahjatu fii Sharhu Tuhfatu*, vol. 2, (Beirut: Dar kutun al-Ilmiyya, 1998), at 344.

⁴⁵ Abi Azhary, A., *Thamruddani Sharhu Risalah ibn Abi Zaid Al-Qayrawani*, (Beirut: Dar al-Fikr, 2003), 347.

of its operation.”⁴⁶ Imam Ahmad also opined that even the Jews and the Christians recognize and practice partnership but they do not operate in a manner that avoids *riba* (usury) and that was why Imam Shafii disliked unguided partnership with them.⁴⁷ All the four major classical jurists of Islamic jurisprudence have agreed on the validity of partnership under Islamic law.⁴⁸ They however differ on the types and conditions that applies to the validity of some of the partnership.⁴⁹ Most of the scholars agree that before a partnership becomes valid the partners must have a share in the profit and loss that is incurred in the partnership.⁵⁰ Similarly, partnership can only hold between two or more persons. That means a single person cannot form a partnership. It is necessary for more than one individual to be involved before a partnership can satisfy the basic requirement of being recognized as a partnership arrangement.⁵¹

All the schools are unanimous that the partners can use money as capital but are not unanimous as to the use of foodstuff and other goods.⁵² Similarly, the scholars are not unanimous on the manner of sharing the profit that accrues from the partnership. While some scholars accept the distribution of profit based on contribution only, some scholars maintain that the manner of distribution of the profit can vary based on mutual understanding by the partners.⁵³

With respect to the type of partnership, all the scholars are unanimous on the validity of *sharikat al-amwal* (monetary partnership) especially the *Inan* (limited partnership). The Hanafi School does not recognize the *Mufawadah* (equal partnership) under the monetary partnership. In summary the scholars view on partnership are as follows:

- a. Sharikat al-Inan- Valid by consensus opinion
- b. Sharikat al-Abdan- Valid according to the three schools (Malik, Hanafi and Hanbal) but void according to the Shafi'i and Ibn Hazam.
- c. Sharikat al-Wujuh- Valid according to Ahmad and Abu Hanifa but invalid according to Maliki, Shafi'i, Hanbali and Zahiri.
- d. Sharikat Mufawadah- Valid according to Malik and Hanifa but invalid according to Shafi'i and Hanbali.⁵⁴

5. Types of Partnership

Muslim jurists have classified *sharikat* into different types based on the nature and circumstances surrounding the type of partnership. The following are the major divisions of *sharikat* agreed by most Islamic jurists thus *sharikat al-amwali* (monetary partnership), *sharikat abdan* (labour partnership) and *sharikat al-wujuh* (credit partnership).⁵⁵ This approach is basically taken by the classical jurists for the purpose of convenience and better understand of how it operates.

⁴⁶ Al-Azzazi, A., *Tamamu al-Minnah*, Vol.4, (Damascus: Muassis al-Qirtabaj li Tabi wa al-Tawzi, 2005), P5.

⁴⁷ Ibid P 6.

⁴⁸ Ibn Juzaiy, *Qawanina al-Fiqhiyyah*, (Beirut: Dar al-Fikr, 2009), P244; Qurtabi, Op. Cit. P171.

⁴⁹ Ibid

⁵⁰ Qayrawani, A., *Risalah*, (Kano: Maktab Qady Sharif Bala, nd), P105.

⁵¹ Ibid

⁵² Ibn Juzaiy Op. Cit. P245.

⁵³ Ibid

⁵⁴ Al-Azzazi, A., Op. Cit. P7.

⁵⁵ Some texts take a different approach to the division of partnership based on the intention of the parties in its creation. However, most scholars take the approach presented in this paper.

5.1 *Sharikat al-Amwali* (Monetary Partnership):

Monetary partnership is a form of partnership that involves the use of cash by partners in the partnership business.⁵⁶ The scholars are not unanimous on the use of food stuff and other valuable instruments in the partnership business.⁵⁷ This type of partnership is further divided into two thus

i. *Sharikat al-Inan* (Limited Partnership)

This is the type of partnership where there is restriction in terms of the administration of the partnership in such a way that one of the partner cannot do anything without the approval of the other partner.⁵⁸ This type of partnership is unanimously agreed by the scholars as lawful. It is built on trust by the parties. Both parties serve as representative to the other partner and the manner in which the partnership is operated largely depends on the pre-agreed arrangement between the parties.⁵⁹

Imam Qurtuby stated that there are three requirements for the validity of al-Inan, which are that the parties must contribute a similar capital. Meaning the kind of capital are expected to be the same, thus one party is not expected to give cash and the other to give grain. Ibn Qasim of the Maliki School agrees that even if the capital is the same, difference in the nature or quality of the product contributed will not affect the validity of the contract.⁶⁰ Secondly, it is compulsory for the partners to share any profit that comes from the partnership based on the contribution of the parties. The profit is also attached to the amount contributed by the parties.

There is no consensus opinion between the scholars as to whether the parties can share the profit equally despite difference in the amount contributed by the parties. Malik and Shafii Schools opined that it is not allowed. They based their argument on the basis that the position of profit in partnership is the same with loss. Since loss is shared based on contribution, profit should also be on the same basis. Scholars from Iraq, took a contrary opinion from that of the Maliki and Shafii, according to them parties can share the profit on equal basis despite the difference in the amount contributed by the parties.⁶¹ Thirdly, when the parties contribute, the contribution is mixed in such a form that there will be no difference between the amount contributed by each party. The implication of this is that even if the amount contributed or item contributed can be identified, in case of damage to that identified item, the loss will still be for both partners.⁶²

ii. *Sharikat al-Mufawadah* (Equal Partnership):

The root word of *mufawadah* is *tafawud*. The word *tafawud* literally means equality.⁶³ The word *tafwid* equally represents *mufawadah* which also means power of attorney.⁶⁴ Under the category, each and every partner represents and stands for the other partner hence the name *sharikah al-mufawadah*.⁶⁵

⁵⁶ Usmani, M.T., Op. Cit. P35.

⁵⁷ Ismael, M.B, *Fiqh al-Wadiah Min Kitab wa Sunnah alaa Mahabib al-Arba'*, vol. 2, (Cairo: Dar al Manaar, 1998), at 53

⁵⁸ Doi, A., *Shari'ah: The Islamic Law*, (Kano: Al-Yassar Publishers, 1984), P368.

⁵⁹ Qurtubi, Op. Cit. P203; Ismael, M.B, Op. Cit. P 54.

⁶⁰ Ibid

⁶¹ Ibid P204

⁶² Ibid P205.

⁶³ Manzur, M., *Lisanu al-Arab*, (Beirut: Dar al-Sadir, nd) P 304.

⁶⁴ Ibid

⁶⁵ Bambale, Y.Y., Op. Cit. P 173.

Under *sharikah al-Mufawadah* each partner has equal right, powers and shares in the partnership and the act of the other partner binds the other whether in his presence or his absence.⁶⁶ The Shafi'i School disapproves this type of partnership and the Hanafi school conditions that the contribution of the partners must be equal.⁶⁷ Unlike the Hanafi School, the Maliki School sees no harm even if the contribution of the partners differ.⁶⁸ The Hanafi school insist that the essence of the equality as suggested by the name *mufawadah* is defeated if the partners contribute different about of money as capital.⁶⁹

5.2 *Sharikah al-Abdan* (Labour partnership)

This type of partnership involves a situation where partners come together and give their skill or labour for the purpose of earning something. For example a situation where two or more persons come together and open a carpentry shop. Al-Fawzan, defined it as a type of partnership in which two or more partners share whatever whatever they earn by their own work.⁷⁰ All the Muslim scholars are unanimous that this type of partnership is lawful with the exception of Imam Shafii.⁷¹ The Shafii School insist that partnership is restricted to money and does not extend to labour.⁷² The Maliki School based their position on the validity of this partnership on a narration of the Prophet. Where the companions agreed on partnership of whatever they get from booty of the battle of badr and that constitute work. In the hadith, Ibn Mas'ud and Sa'ad agreed that whatever they get as booty will be shared equally between them. Sa'ad got two horses and Ibn Mas'ud got nothing. As agreed they shared it equally between them and the Prophet (pbuh) did not object to that.⁷³

The scholars agree that two important conditions must be satisfied before the partnership can be considered valid. Firstly, the type of labour must be the same for example carpenters can come together and for a partnership but carpenters and mechanics cannot form partnership because of the difference in the type of profession.⁷⁴ Secondly, the place of work must be the same. That means even if the type of skill is the same, the partner must remain in the same vicinity for the purpose of doing the partnership. Abu Hanifa varied with the other scholars with respect to both conditions.⁷⁵

5.4 *Sharikah al-Wujuh* (Partnership Upon Credit)

Money and labor is not involved in this kind of partnership. The Partners use their good name or status in the community and take goods on credit. Upon sell of the subject matter, the profit that is derived from the partnership will be shared equally among the partners. This type of partnership requires trust and utmost sincerity on the part of the partners.⁷⁶

⁶⁶ Ibn Juzaiy, Op. Cit. P 244.

⁶⁷ Ibid

⁶⁸ Qurtubi, Op. Cit. P205.

⁶⁹ Ibid.

⁷⁰ Al-Fawzan, S., *A Summary of Islamic Jurisprudence*, Vol. 2, (Riyadh: Al-Maiman Publishing House, 2012), P 136.

⁷¹ Juzaiy, Op. Cit. P 244.

⁷² Qurtubi, Op Cit. P206.

⁷³ Al-Fawzan, S., Op. Cit. P. 136.

⁷⁴ Juzaiy, Op. Cit. P 244.

⁷⁵ Ibid

⁷⁶ Juzaiy, Op. Cit. P 244, Bambale, Y.Y. Op. Cit. P174 and Qurtubi, Op. Cit. P206.

A good example of the way this kind of partnership operates is a situation where good that are believed to be people of integrity decide to use their status in the society to get some goods which they think can result in profit for them decide to get those products in credit and sell them, any profit that comes from the sell is for both of them without regards to any advantage enjoyed by the other over his co-partner or partners.⁷⁷ The parties will stand by their promise because Islam commands believers to always fulfil their promises. The Qur'an states "O you who believe, fulfill all obligations"⁷⁸ In yet another verse Allah says "O you who believe, why do you say what you cannot do. It is a grave sin in the sight of Allah for you to say what you cannot do."⁷⁹ The Prophet (pbuh) has equally stated "Muslims stand by their promise."⁸⁰

There is no unanimity of opinion amongst the jurists concerning the validity of this form of contract. The Shafi'i and Maliki jurists are of the view that this form of contract is not valid in the eyes of the sharia.⁸¹ The Hanafi School opined that it is valid, it is simply a form of contract that is based on good name without money or labour.⁸² The Hanbali and Zaidi have equally agreed with the Hanafi with respect to the validity of this type of partnership. They maintained that this type of partnership is practiced for long and Islam has not prohibited it.⁸³ They relied on the hadith of the Prophet (pbuh) where he stated "My Ummah will never agree on error."⁸⁴

6. Partnership as Instrument for Development

Since partnership under Islamic law allows the pooling of resources by different individuals to come together and undertake a business, the present day Muslims will have much to benefit from this unity. It is not news that the world's resources is owned by few individuals and if this few individuals share their wealth and partake in partnership with the majority poor, there will be distribution of wealth and that will lead to growth and development. Poverty is a factor that has strongly contributed in the raise of conflict and animosity between the rich and the poor in our society. It is not in doubt that the boko haram conflict have strongly been pushed by poverty.⁸⁵ Due to lack of job some youths get frustrated and think of doing anything even if that is evil. This is further compounded by the fact that they feel the rich are enjoying and as such by indulging in violence and by attacking the rich, they will all get frustrated.⁸⁶

⁷⁷ Ibid

⁷⁸ Qur'an, Ma'idah 5:1

⁷⁹ Qur'an, Saff: 2-3.

⁸⁰ Abu Dawud, Sunanu Abi Dawud, vol. 4, hadith 3594.

⁸¹ Malik Ibn Anas, *Mudawwana al-Kubra*, vol. 3, (Beirut: Dar Kutub Al-Ilmiyyah, nd), P605; Qurtubi, Op. Cit. P206, Juzaiy, Op. Cit. P 244

⁸² Ibid

⁸³ Bambale, Y.Y., Op. Cit. P175.

⁸⁴ Tirmithi and Ibn Majah cited in Ibid.

⁸⁵ Most areas affected by the *Boko Haram* conflict or has more conscripts are those areas that are mostly inhabited by the less privileged. For example places like Gwange and Bulum Kutu in Maiduguri are mostly inhabited by the poor or less privileged and as such many youth in these areas joined the group. While areas like GRA has a completely different story as their kids are not part of the extremist group.

⁸⁶ To avoid this kind of scenario, Islam obliges the rich to give from their wealth annually a certain percentage to some 8 category of people which included the poor. If that is done, it will serve as a purification of the wealth of the rich and a fulfilment of one of the five pillars of Islam. That means if a person who has the wealth as required by sharia for the purpose of giving zakat deliberately refuses to do that, his religion will be incomplete and Allah's wrath will be on him. see Badi, J., Op. Cit. P15.

In the contemporary settling, sharikah can well stand in the midst of riba dominated financial market settling, according to Sani, corporate Stock can only be classified as sharia compliant if their business activities are not related to prohibited activities.⁸⁷ As a general rule, the following category of business are considered unlawful and prohibited by Muslim scholars thus alcohol;⁸⁸ gambling;⁸⁹ pock related products;⁹⁰ pornography;⁹¹ conventional insurance.⁹² Depending on the jurisdiction and the nature it is operated, some scholars disapprove hotel related business.⁹³ With respect to tobacco related business, must scholars consider it haram (prohibited) hence business related to them is also prohibited.⁹⁴

The introduction of non-interest banking has further added flavor to the position that the frontiers of partnership can further be advanced for the good of all. Since Islamic banking as operated by Jaiz Bank today is in compliance with Islamic principles and as such the need for Muslims to further come together to advance the frontier of Islamic banking. The operation of Islamic banking as it operates today is indeed a form of partnership that allows people to deposit money with the bank and for the bank to partake in less risk business transactions. Though the depositors do not participate in the running of the business or in the control of the resources deposited with the bank, the bank is representing the depositors and does business on behalf of them. This is a very good venture as such the Muslims should participate fully in the banking system.⁹⁵

There is no doubt that non-Muslims have shares in Jaiz bank, however that does not in any way stop or prevent Muslims from feeling comfortable or encouraging them from participating. In the Qur'an Allah states:

“Allah does not forbid you from those who do not fight you because of religion and do not expel you from your homes from being righteous toward them and acting justly toward them. Indeed, Allah loves those who act justly.”⁹⁶

Going by the provision of this verse, Islam permits relationship between Muslims and non-Muslims so long as the non-Muslims do not intend to harm the Muslims in the process.⁹⁷ Imam Bagwi added that based on this verse, Allah has not prohibited the Muslims from interacting and accepting or making gifts from non-Muslims that do not mean to harm Islam or Muslims. Muslims are allowed to participate in all lawful social activities including trading with people from other religions.⁹⁸

⁸⁷ Sani, A.L., Introduction of Islamic Capital Market Products and Services in Nigeria, in *Islamic Law and Contemporary Issues in Nigeria*, edi. By Daud, K.A., et al, (Lagos: Global ComputeRay Publishing Co., 2015), P37.

⁸⁸ Alcohol is prohibited under Islamic by virtue of Qur'an, Maaidah, 5:90-91.

⁸⁹ Gambling is equally prohibited under Islamic law. See Qur'an, Maaidah, 5:90-91.

⁹⁰ Pock is prohibited for consumption and all trading related to it is equally prohibited. See Qur'an Maaidah, 5:3.

⁹¹ Pornography is prohibited under Islamic law, in fact all acts that lead to adultery or fornication is prohibited under Islamic law. See Qur'an Isra, 17:32.

⁹² Gharar (uncertainty) is involved in the convention Insurance and Islamic law does not allow all forms of transactions that have elements of uncertainty, Sani, A.L., Op. Cit. P 37.

⁹³ Ibid

⁹⁴ Ibid

⁹⁵ Umar, M.S., “The Constitutionality of Islamic Banking in Nigeria”, in *The Law at a Glance*, K.A. Daud edi. (Lagos: Global ComputeRay Publishing Co., 2014), P328.

⁹⁶ Qur'an, al-Mumtahana 60:8

⁹⁷ Ibn Kathir, I., *Tafsir al-Qur'an al-Azim*, vol. 9, (KSA: Dar al-Tayyibah, 1999), P550.

⁹⁸ Bagwi, M., *Mualim al-Tanzil*, vol. 9, (NP: Dar al-Tayyibah li Nashri wa Tauzi, 1997), P550.

Similarly, in the cause of the transaction, the Muslims must be careful not to partake in transactions that are not allowed in the eyes of the sharia. For example, it is not permitted for a Muslim to partake in transactions involving usury. The Qur'an mentioned *riba* and prohibited it in three places: Qur'an *Al-Nisa* 4: 160-161, Qur'an, *ali-Imran* 3:130, Qur'an, *al-Baqarah* 2:275-281. The Prophet has equally mentioned the prohibition of *riba* in several traditions. Based on this position, Muslims must be careful in engaging in any business transaction with non-Muslim so that they can avoid *riba*. This fear is cured with respect to the non-interest banking as operated by *jaiz* bank as Muslims are in charge of affairs and the bank itself was registered with the sole aim of partaking in non-interest transactions in order to satisfy clamour of the Muslims for a banking system that is interest free.⁹⁹ According to Dogarawa, the introduction of Islamic banking in Nigeria is indeed tamely and apt. this is owing to the fact that it has proven to be a viable financial intermediation channel in supporting economic growth. This is in addition to the fact that it has a significant untapped business potential in the country.¹⁰⁰

It is therefore clear that partnership as enshrined by the sharia will go a long way in promoting and helping in the distribution of resources amongst people and the reduction of poverty. The partnership transaction under the sharia is devoid of exploitation, *riba*, uncertainty and all forms of illegality. If well implemented the poor will enjoy and the rich will celebrate.

7. Conclusion

Sharia looks at partnership as an agreement between two or more persons to engage in business for the purpose of sharing any profit or loss that arise as a result of the business transaction. Partnership under Islamic law is highly encouraged and rewarding. The Glorious Qur'an has encouraged believers to partake in lawful business transactions such as partnership. The Prophet (pbuh) has equally mentioned that people engaging in partnership or any other business transaction will be rewarded by Allah so long as none of the partners cheat or defrauds the other. The Prophet (pbuh) himself is believed to have participated in partnership business even before he became a Prophet. His companions that came after him equally participated in partnership business.

The scholars are not unanimous as to the different types of partnership. Some scholars categorize partnership based on the type and arrangement between the parties. Most scholars agree that partnership is categorized into three major subheadings. *Sharikah abdan*, *sharikah amwal* and *sharikah wujuh* are the major types of partnership. While most scholars are agreed that *sharikah abdan* and *amwal* are lawful and in accordance with the principles of the sharia, most scholars consider the *wujuh* type of partnership as invalid due to certain elements of uncertainty that is involved in it. There is equally variation of opinion amongst the scholars concerning the manner in which the business is supposed to be operated. While some scholars insist that the sharing of the profit and loss must strictly be based on the contribution of the partners, some see no harm in variation of the share in case of profit or loss based on the agreement between the parties.

The adoption of the Islamic principles of partnership by Muslims and non-Muslims alike will greatly help in the economic development of not just the

⁹⁹ Alkali, A.U., "Islamic Banking through the Lenses of the Qur'an: Fact or Fantasy", in *The Law at a Glance*, K.A. Daud edi. (Lagos: Global ComputeRay Publishing Co., 2014), P322.

¹⁰⁰ Dogarawa, A.B., *The Historical Development of Islamic Banking and the Nigerian Experience*, In *Islamic Economics: A Book of Readings*, ed. Karwai, S.A., (Kano: IIIT, 2012), P132.

individuals but also the whole country. This is because all the partners will fully participate and knowing fully well that in case of loss it will be burdened by all the partners, it is expected that they will put in their best. Sincerity on the side of all the partners will greatly help in the growth and development of the partnership. Enlightenment on the side of the scholars that partnership is a good thing to do, will further advance the growth of business transactions.

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