

MADDE YAYIMLANDIKTAN  
SONRA GELEN DOKÜMAN

مذكرة  
132340

### كتاب المزارعة

مسألة [1/1]: «ج»: المزارعة بالثلث أو الربع أو النصف أو أقل أو أكثر، بعد أن يكون بينهما مشاعاً، جائزة. وبه قال في الصحابة: علي، وعبدالله بن مسعود، وعمار بن ياسر، وسعد بن أبي وقاص، وخباب بن الأرت. وفي الفقهاء: ابن أبي ليلى، وأبو يوسف، ومحمد (1)، وأحمد (2)، وإسحاق (3).  
وقال أبو حنيفة (4)، ومالك (5)، والشافعي (6)، وأبو ثور: أنه لا يجوز (7).

- (1) المبسوط للسرخسي 17: 23، بدائع الصنائع 6: 175، المجموع 14: 421، عمدة القارئ 12: 167، اللباب 2: 228، المغني والشرح الكبير 5: 581-582.  
(2) المغني والشرح الكبير 5: 581، الكافي لابن قدامة 2: 388-389، الفروع في فقه أحمد 2: 493-494، الإنصاف 5: 481، زاد المستقنع: 49.  
(3) الاستذكار 7: 42.  
(4) المبسوط للسرخسي 23: 2-3، بدائع الصنائع 6: 175، شرح فتح القدير 8: 384، تبين الحقائق 6: 429، الفتاوى الهندية 5: 235، عمدة القارئ 12: 167، اللباب 2: 228، مجمع الأنهر 2: 498-499، المغني والشرح الكبير 5: 598.  
(5) المدونة الكبرى 5: 21، الاستذكار 7: 42، الكافي في فقه أهل المدينة: 379، إرشاد السالك: 106، شرح الزرقاني على موطأ مالك 3: 376، التنف: 331.  
(6) الأم 4: 12، الأم 8 (مختصر المزني): 128، الحاوي الكبير 7: 450، المهذب للشيروازي 1: 516، حلية العلماء 5: 378، العزيز شرح الوجيز 6: 53-55، المجموع 14: 420-421، روضة الطالبين 873-875، مغني المحتاج 2: 323-324، السراج الوهاج: 284.  
(7) عمدة القارئ 12: 167.

461-470

المؤلف من المصنف

بإذن من المؤلف

وهو ملتزم بالخلاف للشيخ الطوسي

تأليف

أمير الإسلام أبي علي الفضل بن الحسين الطبرسي

الترقي 548 هـ

الجزء الثالث

Türkiye Diyanet Vakfı İslam Araştırmaları Merkezi Kütüphanesi	
Dem. No:	242728
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تحقيق فسيم الفقه

في مجموع الفتاوى

سیاسی، فرهنگی (آیین‌های قومی-بومی) و جز اینها. هر مزار می‌تواند دارای بیش از یکی یا همه این وجوه و کارکردها باشد. پس آنگاه مردمان به این قصد و نیت‌ها به سوی آنها رفته و می‌روند: زیارت (به معنای خاص)، سیاحت، تفریح و تفریح، حاجت‌خواهی، مرادجویی، مشکل‌گشایی، شفایابی، پناهجویی، توسل، تبرک و تیمن، دادخواهی، ارج‌گذاری، آرامش‌یابی، نیایش، نذردهی، دادوستد، تجمع.

دایر و فعال بودن یک مزار در هر وقت، ممکن است به سبب یک یا چند کارکردی باشد که در گذشته داشته است و از این‌رو رفتار گروهی نسبت به آن به گونه رسم به جای مانده است. بر این کارکردهای مزاری و کنش‌های اجتماعی اموری مترتب است، مانند: زیارات، دخیلات، نذورات، خیرات، مبرات، موقوفات، تولیت و خدمات و باورهای مردم از قبیل کرامات و معجزات. بر این شمار، با بررسی بیشتر چه از لحاظ کمی و چه از جهت کیفی، می‌توان وجوه کارکردی دیگری نیز افزود، مثلاً: توبه‌گاهی، بخشودگاهی در برابر انابت و اعتراف به گناه و جز اینها. در مورد مزارها نیز اصل «صیورت» جاری است. چه هر یک از آنها مراحل جنینی (خوابنا شدن یا ظهور ذهنی)، زایش (گود کردن و کاوش آنها)، پیدایش (ظاهر شدن قبور آنها، ظهور عینی)، نامگذاری (در مورد اولاد امام، القاب مرحله‌ای چون: سید، معصوم‌زاده، امام‌زاده، شاهزاده، شاه، سلطان)، رویش (رشد و بالندگی مزارشاختی و پذیرفتگی آنها در جامعه)، زیست (دوره کارآمدی آنها) و حتی میرش را طی کرده و می‌کنند و بر این مراحل، شرایط و ضوابطی مترتب می‌باشد. بسیاری از مزارها که گورگاه یا شهادتگاه یا قدمگاه امام‌زاده، معصوم‌زاده، اولیاء، مرد حق، خواجه، پیر، شیخ، شهید، آقا، سید، بی‌بی برشمار آمده در پیدایی شهرها و شهرک‌ها و دهکده‌ها و بازارها و راه‌ها مدخلیت تام یا تأثیر قابل ملاحظه‌ای داشته‌اند و نیز از تأثیر متقابل آنها برخوردار بوده‌اند. هم‌چنین، مزارات عناصر فرهنگی عینی و ذهنی خاص پدید آورده یا به خود اختصاص داده است. ← عتبات عالیات؛ امامزاده‌ها.

پرویز اذکاتی  
 MADDE YAYIM VE DOKÜMAN  
 SONRA GELEN DOKÜMAN  
 پرویز اذکاتی

مزارعه، عقدی لازم که به موجب آن یکی از طرفین زمینی را برای مدت معینی به طرف دیگر می‌دهد که آن را

مزارات، هم بر زیارتگاه‌ها و بقاع متبرک اطلاق می‌گردد و هم بر کتاب‌های شناساننده و راهنمای آنها که «مزاریه» گویند و در باب آداب و ادعیه هم پیوسته با «زیارات» است. مزارنگاری در ایران و برخی از کشورهای اسلامی پیشینه‌ای طولانی دارد. قطع نظر از «کتاب مزاریه» - همچون *شذذ الأزار فی حطّ الأوزار عن زوار المزار* (مزارات شیراز)، مزارات سمرقند، هرات، بخارا، تبریز، کرمان، خراسان و جز اینها، هم‌چنین «تذکره القبور»ها، می‌توان از فصول مفصلی که در کتاب‌های تاریخ محلی و نیز اشاراتی که در کتاب‌های زیست‌انگاری یا زیست‌نامه‌های جمعی - همچون تراجم، طبقات، تذکرات، انساب، وفیات - و هم در تواریخ عمومی درباره قبول و مزارها و بقاع متبرک جای‌ها پرداخته آمده یاد کرد. قصد از مزارنگاری در «کتاب مزاریه»، اغلب راهنمایی زائران و شناساندن قبور امامان و فرزندان آنان بوده است که از سوی شیعه و علمای این مذهب استحباب زیارتی یافته‌اند. در این‌گونه آثار کمتر به نقد و انتقاد مدفون در مزار از جهت تبارشناسی یا تحقیق در مکان دفن اولاد اطهار پرداخته‌اند. بررسی مزارات یا مزارشناسی لزوماً با تبارشناسی (علم‌الانساب) و تحقیق در شجره نسب مدفونان مزارها (امام‌زادگان، معصوم‌زادگان، اولیاء و شیوخ) و با رجال‌شناسی و تذکره‌الاولیاءنویسی و حتی با تاریخ و باستان‌شناسی پیوند مستقیم می‌یابد. از دیدگاه مردم‌شناسی نیز بررسی مزارات ناظر به یافتن کارکردهای آنها در منطقه یا جامعه پیرامون آنهاست، که بسا همان کارکردها سبب پیدایی یا پایایی بسیاری از مزارات و جز اینها بوده است. وجوه عمده کارکردی که به‌گونه‌ای وابسته به ساخت اقتصادی اجتماع منطقه یا ناشی از نیازهای اقتصادی-مادی باشد از این قرار است: آب‌گاهی، سبزه‌گاهی، بازارگاهی، حریم‌گاهی، حفظ و ضمانت اجرای نظامات و رسوم اقتصادی، ملکی و مالی (اوقاف و غیره) و احياناً وسیله اجرای مقاصد یا وسیله دفاع و محافظت از املاک و متصرفات و احیاء موات و ایجاد قنات، و جز اینها. وجوه دیگر کارکردی که وابسته به دیگر ساخت‌های اجتماعی و یا ناشی از نیازهای گروه‌های انسانی مشاهده گردیده، عبارتند از: تفریح‌گاهی، نیایش‌گاهی، یادبودگاهی، درمان‌گاهی، گورگاهی، منزل‌گاهی، تجمع‌گاهی و حفظ و ضمانت اجرای نظامات و سنن و رسوم مذهبی،

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الدكتور الحسيني سليمان جاد

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MUZĀRAA

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بخ= صحيح البخاري، مس= صحيح مسلم، يد= سنن أبي داود، تر= سنن الترمذي، نس= سنن النسائي، مج= سنن ابن ماجه، مى= سنن  
الدارمي، ما= موطأ مالك، ز= مسند زيد بن علي، عد= طبقات ابن سعد، حم= مسند احمد بن حنبل، ط= مسند الطيالسي، هش= سيرة ابن  
هشام، قد= مغازي الواقدي

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دانشگاهها و فرهنگستانهای ما آنگاه بارور و پرروند و معنی‌دار خواهند بود که باز بیرونی‌ها و ابن سیناها پرورانند و گرنه بگفته سعدی :

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حاصل دانشگاهها و مؤسسات پژوهشی باید سخنوران دلیر ، پژوهندگان بت شکن نوآور ، متفکرانی در ردیف جهانی ، خلاصه مشکهای خود بوی باشد نه نامهای عطار گوی و وضع مقررات گسترده و گواهی‌نامه‌های پر طمطراق . تا دانشگاهها و مؤسسات فرهنگی ما به آن درجه از آفرینندگی نرسیده‌اند چاپ نامها و عنوانها و پروگرامها و طرح سازمانها بچند زبان غربی شخصیت معنوی ملی ما را بسطیح جهانی آبرومندی نخواهد رسانید :

« عشق بازی دگرو نفس پرستی دگر است » .

دانشی که ژرفا ندارد خم رنگرزی یا چراغ کوره‌ایست که برای عوام

ممکن است رهنمون باشد اما نه برای صبح خیزان آفتاب شناس .

هر هلاک امت پیشین که بود / زانکه چندرا گمان بردند عود

در شهرستان علم هیچ کالائی گرانبها تر از معرفت حقیقی نیست . اگر عوام الناس جهان بجلد کتابها و اعلانها و عنوانهای گویندگان کشورها نگاه میکنند ، چشم تاریخ علوم کور نیست . بینش خواص در طول زمان می‌خام را از می پخته جدا خواهد کرد . آیا میتوانیم بگوئیم که با همه جوش و خروش فرهنگی که در عصر ما از طبع و نشر و ترجمه کتب و مجلات و رفت و آمد کارشناسان آموزشی و رویش و گسترش دانشگاهها و انبوه تحصیل کرده‌ها داشته‌ایم يك تن همتای بیرونی در قرن ما در وطن ما بوجود آمده ؟ اگر جواب این پرسش منفی است چرا روشی پیش نگیریم که این نازائی فرهنگی پایان یابد . بنده این کنگره را در شناخت ابوریحان و همردیفان او و ارزیابی دقیق نفوذ بزرگان اسلام در دنیای امروز آغاز کار می‌شمارم نه انجام :

گمان مبر که به پایان رسید کار مغان

هزار جرعه ناخورده در رگ تالاست

### مزارعه<sup>۱</sup>

مزارعه از ویژگیهای بارز تقسیم محصول در نظامهای بهره‌برداری از زمین در تاریخ ایران بوده است ، و از دوره ساسانی تا آغاز اصلاحات ارضی (۱۳۴۱ ش) سهم‌مهی ، در نظام بهره بردن از محصول ، در جامعه روستائی ما داشته است . گرچه حوادث تاریخی ، در دوره‌های متفاوت ، به ویژه در دوران اسلام آوردن ایرانیان ، تغییراتی در آن داده ، ولی از لحاظ ماهیت تحولات اساسی در آن پدید نیامده است .

بنا بر حقوق اسلامی ، مزارعه معامله ایست بر زمین ، در مقابل حصه معین<sup>۲</sup> از حاصل آن ، و از قدیم فقه اسلامی آنرا عقدی لازم شمرده است . یعنی فسخ ناپذیر بوده مگر اینکه طرفین به اقاله آن رضا دهند و به اقتضای عقد لازم در صورت درگذشت یکی از طرفین مزارعه باطل نمیشد و وارث کار متوفی را ادامه میداد مگر اینکه مباشرت عامل شرط شده باشد و در آن صورت عقد مزارعه باطل میشد .

### شرط های مزارعه

مزارعه دارای سه خصوصیت کلی است ، نخست اینکه حاصل بین مالک و زارع مشاع است (اعم از اینکه سهم طرفین مساوی باشد یا نباشد) . یعنی یکی از دو طرف ، صاحب زمین یا زارع نمیتواند حاصل را برای خود شرط کند ، یا اینکه حاصل زراعت یکی را بر دیگری بردارد . دوم اینکه در مزارعه مدت تعیین میشود . مثلاً (یکسال یا یکسال و نیم) و سوم زمین مزارعه میبایست قابل

۱- مزارعه مصدر باب مفاعله از ماده زرع به معنی با هم کاشتن یا قرارگذاشتن یا قرار کشت بر وضع معین است . لغت مزارعه اگرچه ایجاب میکند که هر دو نفر اقدام به زراعت کنند ، لیکن در حقیقت یکی از طرفین زمین را واگذار میکند و طرف دیگر به زراعت میبرداند . (شرح اللغه ، شهید دوم (۹۱۱-۹۶۶ ه . ق) ، جلد اول ص ۴۴۹ ، (متن عربی) .

۲- شرائع الاسلام ، محقق حلی ، جلد اول ، ص ۲۷۲ ، (متن فارسی) .





# AL-HADIS

*An English Translation & Commentary with vowel-pointed Arabic Text*

OF

## MISHKAT-UL-MASABIH

( Being a collection of the most authentic sayings and doings of Prophet Muhammad ( P. H. ) selected from the most reliable collections of Hadis Literature and containing all that an average Muslim or non-Muslim requires to know for guidance in all walks of life )

with

suitable arrangements into chapters and sections

BY

AL-HAJ MAULANA FAZLUL KARIM

M. A., B. L.

BOOK II

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BOOK II	297.334
	FAZLUL

emperors and saints to take up works and live upon their wages. This injunction led the Muslims to invent machineries of works and various ways of workmanship and manufacturing articles and commodities of common and extraordinary use. There was therefore a great impetus given to homogenous and extraneous industry on the ruins of which the modern industrial enterprise is chiefly based. What we eat is corns, sugar, salt, oil, butter, etc. ; what we use is cloth, soap, paper, utensil, shoe and thousand other things of daily use, According to the instruction of the Holy Prophet, we should ourselves manufacture these articles and supply our needs therewith. This also gives a great impetus to using the indigenous articles and establishment of mills and factories. Indeed the modern mills and machineries have taken the place of individual labour of by-gone days. Hence the greater the use of these machineries, the greater the prosperity of individuals as well as of nations.

## CHAPTR XIX

### 938—Cultivation (المزاعة) and Gardening (المساقاة)

Mozara'at signifies primarily cultivation. It means a contract between two persons, one being an owner of land and the other cultivator, by which it is agreed that whatever is obtained from the land shall belong to both in such proportions as may be therein determined. It is just like *bhag leases* in our country. *Mosaqat* means watering and signifies a contract like the former on condition that the labourer shall take care of the fruitful trees or plants to be grown. The former applies to lands and the latter to trees and plants. Cultivation and gardening are most important for production of fruits and corns with which people and other animals sustain themselves. Stoppage of cultivation and gardening means famine and starvation for want of food. Hence it must be resorted to. Indeed the whole civilized world is greatly indebted to the tillers of the soil. According to Imam Abu Hanifa, such kind of leases as above described are invalid as wages are uncertain and lie buried in futurity, but according to his disciples and the three Imams, they are valid and the latter view has been accepted by *ju isconsults*. The people of Medina were mostly agriculturists and those of Mecca tradesmen. The Holy Prophet himself entered once into a contract with the people of

## المزارة

المزارة في اللغة : بمعنى مفاعلة من الزراعة ، وفي الاصطلاح : عقد على الزرع بعض الخارج .<sup>(٤٣١)</sup> ويسمى هذا العقد ايضا مخابرة على ما روي عن زيد بن ثابت - رضي الله عنه - ان النبي - صلى الله عليه وسلم - نهى عن المخابرة ، فقيل : وما المخابرة ؟ قال : المزارة بالثلث والربع .  
وسميت مخابرة من تسمية العرب الزارع خيرا ، وقيل هذا مشتق من معاملة رسول الله - صلى الله عليه وسلم - مع اهل خيبر فسميت مخابرة .  
والاكتساب بالزراعة مشروع ، واول من فعله آدم - صلوات الله وسلامه عليه - على ما روي انه لما هبط الى الأرض أتاه جبريل - عليه السلام - بحنطة وامره بالزراعة . وازدوع رسول الله - صلى الله عليه وسلم - بالجرف ، وقال عليه الصلاة والسلام : « الزارع يتاجر ربه عز وجل » وقال : « اطلبوا الرزق تحت خبايا الأرض » .<sup>(٤٣٢)</sup>

المزارة الصحيحة :

وإذا كان البذر من قبل العامل والبقر من قبل صاحب الأرض ، قال ابو يوسف : ان هذا العقد جائز للعرف ، لأنه لما جاز ان يكون البقر مع البذر مشروطا على رب الأرض في المزارة فكذلك يجوز ان يكون البقر بغير البذر مشروطا عليه ، كما في جانب العامل لما جاز ان يكون البذر مع البقر مشروطا على العامل جاز ان يكون البذر مشروطا عليه بغير البقر .<sup>(٤٣٣)</sup>  
وإذا كان البقر والبذر مشروطا على احدهما والعمل والأرض مشروطا على الآخر ، قال ابو يوسف : يجوز هذا باقتباس على المضاربة ، لأن البذر في المزارة بمنزلة رأس المال في المضاربة ويجوز في المضاربة دفع رأس المال الى العامل فكذلك يجوز في المزارة دفع البذر مزارة .

(٤٣١) تبين الحقائق ج ٥ ص ٢٧٨ .

(٤٣٢) ينظر : المبسوط ج ٢٣ ص ٢ .

(٤٣٣) ينظر : المبسوط ج ٢٣ ص ٢٠ ، وبدائع الصنائع ج ٦ ص ١٧٩ ، والخلافيات ص ٤٤٦ .

محمود مطلوب :

Muzāra'a

أبو يوسف

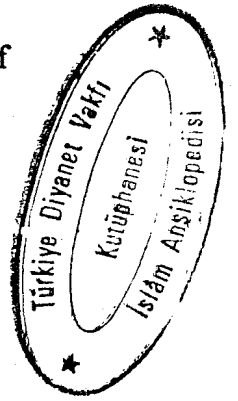
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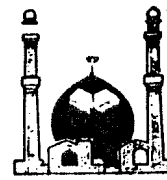
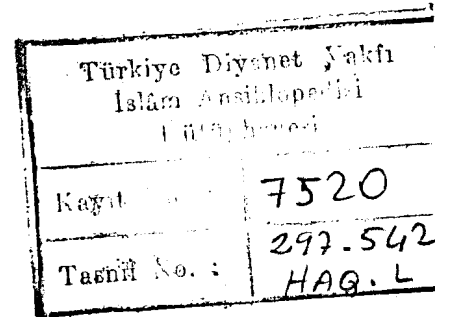
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# LANDLORD AND PEASANT IN EARLY ISLAM

A Study of the Legal Doctrine of  
Muzāra'a or Sharecropping



ZIAUL HAQUE



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In Shaybānī's *Muwatta'*, a *mursal Hadith* with its chain of narration not going further than the Medinese Successor Sa'īd ibn-Musayyib, defines *muhāqala* as buying of grain in the ear for corn, and also as lease of land for corn.<sup>46</sup> Besides, there are numerous traditions related by Ibn 'Umar and Zayd ibn Thābit, recorded in almost all the *Hadith*-compilations, which also suggest that *muhāqala* was a pre-Islamic form of landholding in which land was leased to a *mētayer* against a certain part of its produce, and more probably, against corn which consisted in paying rent in kind which was generally stipulated before start of the actual cultivation. This is tantamount to buying *zar'* (grain still in the ear) by corn. It is possible that there were numerous combinations of rents paid by a tenant according to the local custom, such as grain plus part of the produce of land. From this it would follow that *muhāqala*, like *mukhābara*, was a generic term used for several primitive types of aleatory and precarious tenure. This broad definition of *muhāqala*, as given by all these traditions we have cited above, suggests that it generally involved lease of land for food, grain, or a certain share of the crop. Nevertheless, in the other meaning of *muhāqala* (buying of grain in the ear) no land tenure is involved, as Ṭahāwī points out.<sup>47</sup> In some other traditions, which we have seen already, *muhāqala* also connotes buying of *haql* (young green crop still in growth) for a measured and known quantity of food (*ta'ām*).<sup>48</sup> However, as Rhodokanakis has shown, in actual practice transaction of grain in the ear for corn, food, or money may closely relate to the fiscal practices of assessment and collection of land taxes. The tenants, who, during this period of history generally lived at subsistence level of agriculture and in desperate need of food, were compelled by the state or the conquering community to sell the rest of their crop (after it had been already taxed) for food or money. *Muhāqala* was perhaps not a mere exchange or barter of two commodities, it was also a tenancy practice which must have many constituent elements and shades of transaction; and perhaps there were various combinations of the practice of *muhāqala* which for lack of documents

cannot be clearly identified and defined. This primitive tenure, it appears, has generally been held by the Muslim scholars as invalid in Islamic law apparently for its extreme aleatory nature.<sup>49</sup>

#### *Mukhābara-Tenancy*

*Mukhābara* or *khibr* is another name for similar forms of primitive tenure. There are again divergent interpretations of this term in our sources. For Ibn Manẓūr, it is a contract or bargain with a person to cultivate land for a certain part of its produce, or against a determinate share, like one third, one fourth etc.<sup>50</sup> He further explains that the term is either derived from *khābar* (a soft soil) or from Khaybar, the Arabian oasis town, where such a deal, as claimed by the *Fuqahā'*, took place between the Muslims and the Jewish agriculturists who, after their surrender, offered that they would pay half of their produce to the Muslims provided they were left on their lands. Therefore, *khābarahum* may literally mean *'āmalahum fī Khaybar*, i.e., the Prophet engaged them for tilling the land of Khaybar. A person well versed in matters of agriculture, says Ibn Manẓūr, is also called *khābir* or *'akkār*,<sup>51</sup> and therefore *mu'ākara*, is also synonymous with *mukhābara*.<sup>52</sup> According to Edward Lane, *khābarahu* (*mukhābara*) means "he made a contract or bargain with a person to till, sow, and cultivate land for a share of its produce, or for a third, or a quarter or for a determinate share, such as, a third, or a quarter or some other portion, or for half, or the like".<sup>53</sup> Among other meanings of the term, Ibn al-Athīr emphasizes that another coordinate of its derivation is *khubra*, which means a share.<sup>54</sup> For al-Firōzābādī, it is cultivation of soil for half of its produce, and that it is synonymous with *khibr* and *mu'ākara*.<sup>55</sup>

For Abū Ḥanīfa and Shāfi'i, *muhāqala*, *mukhābara* and *muzāra'a*-tenancies are essentially similar both in terms of their concepts and contents: they belong to the genre of aleatory transactions. Shāfi'i defines these as follows: "These forms of landholding could be defined as when a person gives to another person a bare land (in contradistinction to an orchard

# ECONOMIC DOCTRINES OF ISLAM

Vol. IV

Muhaqalah 117-119  
(BANKING AND INSURANCE)

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some persons concerned. The principle on which the objection is based is: that even if there is no fraud, you gain what you have not earned, or lose on a mere chance. Dice and wagering are rightly held to fall within the definition of gambling." (1)

The Arabic word '*azlam*' used in the *Qur'an* also refers to the practice of gambling. '*Maisir*' on the other hand, applies to all these forms by which wealth is acquired or divided by devices of chance, for example, lottery, betting, wagering or gambling., etc.

Thus gambling in general (*maisir*) and raffling in a particular way (*azlam*) and all other forms of betting, raffling or lottery which, on principle, come under gambling are prohibited in Islam. The Holy Messenger prohibited all forms of business in which the monetary gain comes from mere chance, speculation and conjecture (i.e., gambling) and not from work.

#### *Habal-al-Habla*

" it is narrated by Abdullah bin Omar that the Holy Messenger forbade the sale called '*Habal-al-Habala*' which was a kind of sale practised in the pre-Islamic days of ignorance period. In this sale one would pay the price of a she-camel which was not born yet but would be borne by the immediate offspring of an expectant she-camel." (2)

#### (b) *Muzabanah* and *Muhaqalah*

These two forms of business transaction were very common in the pre-Islamic period. *Muzabanah* was the exchange of fresh fruit for dry ones in a way that

1. *Holy Quran*, A.Yusuf Ali, p.86.
2. *Bukhari* English translation by Dr. Mohammad Muksin Khan.vol.111.p. and *Muslim* translated by Mr. Abdul Hamid Siddiqui vol.111,p.798.no.3615-3616.
3. *Bukhari*, Vol.III, op. cit.

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the quantity of dry fruit was actually measured and fixed, but the quantity of fresh fruit given in exchange was guessed while still on the trees. Likewise *muhaqalah* was the sale of wheat in exchange for wheat in ear which was estimated by conjecture while still in ears. (3)

It is reported by many companions of the Holy Prophet, including Jabir, Abu Hurairah, Abu Saeed Khudri, Saeed bin Al-Musayyib and Rafey bin Khadij that God's Messenger forbade the transactions of *muzabanah* and *muhaqalah*. (4-7)

#### (c) *Saje of Fruits before Ripening (Mukhabrah)*

Zaid bin Thabit said that in the life time of Allah's Messenger people used to trade with fruit and many complaints arose. Allah's Messenger told them not to sell the fruit before their benefit was evident (i.e. they were free from all dangers of being spoiled or blighted)". (8)

It is reported by Abdullah bin Umar, Jabir and Zaid bin Thabit that God's Messenger forbade the sale of fruits till they were clearly in good condition. He forbade both the seller and the buyer to enter into such a transaction." (8)

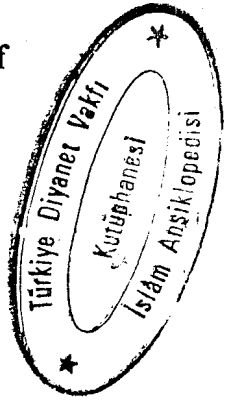
It is narrated by Anas bin Malik that God's Messenger forbade the sale of fruit till they were almost ripe. He was asked what was meant by 'are almost ripe', He replied, "Till they become red." Allah's Messenger furthermore said, "If Allah spoiled the fruits, what right would one have to take the money of one's brother (i.e. other people)." (9)

In fact *mukhabarah* refers to the sale of grain or vegetables before it is ripe. It was forbidden by the Holy Prophet in order to protect the interests of the

4. *Mishkat al Misabih*, English translation by James Robinson, Vol.II p.607 and *Muslim* Vol. III op. cit., p.809 No. 3707 and *Abu Daud* Urdu Translation by Wahiduz Zaman Vol.III p.33-34
5. *Ibn Majah* urdu translation by Wahiduz Zaman Khan, Vol.II p. 180
6. *Tirmizi* urdu translation by H. Hamidur Rahman Siddiqui, Vol. I p.566
7. *Bukhari*, Vol. III op. cit., p.215
8. *Bukhari*, Vol. III op. cit., p.218-20
9. *Bukhari*, op.cit., p.221-224

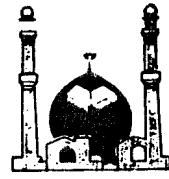
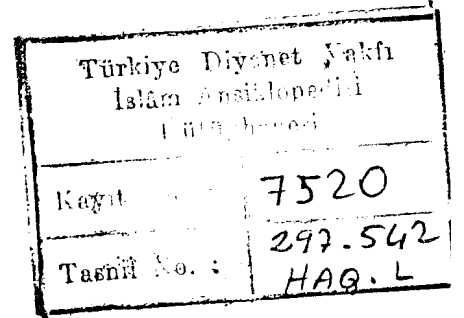
# LANDLORD AND PEASANT IN EARLY ISLAM

A Study of the Legal Doctrine of  
Muzāra'a or Sharecropping



07 AGUSTOS 1992

ZIAUL HAQUE



IDARAH-I ADABIYAT-I DELLI  
2009 QASIMJAN ST.  
DELHI (INDIA)

Muzāra'a  
-Muzāra'a  
5.288-295, 310-346.

*Mu'āmala* (of Khaybar) is like *muzāra'a*, which the people of Medina call *musāqāt*—which is simply a deal of lease for a certain part of the crop. If there is any produce, they get according to the stipulation. If there is no crop, they get nothing. We do not agree with those who say that in Sawād there was no deal of *musāqāt* which 'Umar did with the tillers but only *qabāla* (lease for a fixed and known thing, i.e., money-rent). We deny that 'Umar had done this.<sup>14</sup>

### *Qabāla and state muzāra'a*

*Qabāla* was a necessary extension of *métayage*, by which, in general, the element of third party or middle man tended to be introduced between the peasantry and the state. These middlemen often were rich landlords and influential men.<sup>14a</sup>

*Qabāla* or *ḍamān* is the equivalent of the Byzantine institution of *locatio*.<sup>15</sup> In the oriental provinces of the Byzantine Empire viz., Egypt, Palestine, Syria and Mesopotamia, agricultural estates, as we saw before,<sup>16</sup> were managed in several ways: by employing agents (*actores*) and by leasing them on short terms to contractors (*conductores*) who then either cultivated the estates themselves or sublet them to the *coloni*. The *conductores* are generally called *mutaqabbilūn* in the Muslim sources: the term implies people who undertake *qabāla* contracts.<sup>17</sup> They pay to the landlord (an individual or state) a fixed rent and make their profit in extra levies and dues from the tenants. They were also rent and tax collectors. Their duty was also to generally supervise the estates.

The imperial estates were in the main contracted for exploitation and use. Their function as middle men between the agents of the landlords (*procuratores*) and the tenants from whom they were entitled to collect fixed proportions of their produce and fixed amounts of services (*corvée*) continued on the imperial and private estates.<sup>18</sup> It may easily be surmised that the same must also be true of the Sāsānian Empire where the practice of *qabāla* was no less common.

*Qabāla* is used by the *Fuqahā'* in two sense, in one sense, it is equivalent of that form of tenancy in which landlord gets a fixed share of the crop, a fixed sum of money, in kind or both;<sup>19</sup> it is thus almost synonymous with *muzāra'a* and *kirā' al-arḍ* (lease of land).<sup>20</sup> Secondly, *qabāla* is used in the sense of tax-farming in which a tax-farmer guarantees and pays a lumpsum to the State and obtains the right to collect rents and revenues from the contracted land; he keeps the difference between the two rents. This has been termed usury by Abū 'Ubayd,<sup>21</sup> possibly because it is tantamount to an unearned increment and a *gharar* (aleatory) transaction involving fruit which according to him can be validly contracted only in a contract of *musāqāt*. Probably it is not because fruit is involved—since *qabāla* is not restricted to fruit—but because the tax-farmer oppresses the tillers. It is reported that Ibn 'Umar, Ibn 'Abbās, and Sa'īd ibn Jubayr, the famous Successor (d. 95/713-4), all declared that such *qabālat* were invalid.<sup>22</sup> A particular reason for the disapproval of *qabāla* tenancy (as attributed to Sa'īd ibn Jubayr) is that private tenancy may include tillers (*'ulūj*) on the land who generally do not get good treatment on such *qabālat*.<sup>23</sup>

It seems that *qabāla*, in the sense of tax-farming, was widely practised by the 'Abbāsids for solving financial problems of the State: they took to tax-farming to cater to the growing demands of the administration and the army. This was also a factor in the eventual social and economic ruin of the Empire.<sup>24</sup> It is almost certain that tax-farming, as the *qabāla-Hadīths* point out, was commonly practised under the early Umayyads and the 'Abbāsids. As the disapproval of this practice by Ibn 'Umar (d. 73 or 74/693-4), Ibn 'Abbās (d. 68/687-8), and Sa'īd ibn Jubayr shows, this practice had become widespread in the last decades of the first century. This was the period when the concept of the inalienable '*amwa fay*' of the Muslims had already been transformed into the *State fay*' by the Umayyads—in the sense that the *Umma* was no more owner of land; it was now controlled by the monarchy, a dynastic autocracy. The Muslims were now taking the *sulh-fay*' (formerly in the possession of *dhimmīs*) on tax-farming, and rent, which was euphemistically

DOS AND DO NOTS  
IN  
ISLAM

Muzara'a 162-164

By

Abdul Rehman Shad

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**Cultivation**

Cultivation is also lawful occupation to acquire wealth. This is one of the most important occupation for the production of food with which all animals sustain themselves. Stoppage of cultivation results into famine and starvation. All the inhabitants of the world should be highly indebted to the tillers of soil because they grow corn for them. The occupation of cultivation is highly meritorious. It is reported on the authority of Anas (Allāh be pleased with him) that the Messenger of Allāh (peace and blessings of Allāh be upon him) said : Never does a Muslim plant trees or cultivate land ; and birds or a man or a beast eat out of them but that is a charity on his behalf. (Muslim)

The land owner who is unable to work himself, may enter into contract to carry on the work of cultivation to receive a part of the produce. Abū Ja'far reported that there was not in Medina any house of the emigrants but they cultivated land on one-third or one-fourth of the produce, 'Umar (Allāh be pleased with him) employed people for cultivation on condition if he supplied the seed from his pocket, he should have one-half of the produce and if they (cultivators) supplied the seed, they should have such and such portion. (Bukhārī)

The owner of the land and the cultivator may arrive at an agreement according to which whatever is obtained from the land should be divided among

the both in such proportion as may be determined. Islam prohibits the lease of such land as does not produce rich crops because in these circumstances the cultivator suffers a loss and his labour does not bear fruit. Barren land should be brought under cultivation for wages. It should not be given on rent. *Muzara'a* (letting out of land to the cultivator on basis of definite share) is unlawful in Islam because there is doubt in it. Jābir (Allāh be pleased with him) reported that Allāh's Messenger (peace and blessings of Allāh be upon him) said : He who has land should cultivate it himself or let his brother cultivate it and he should not give it on rent.

(Muslim)

Some of the Traditions indicate that leasing out of land is not strictly prohibited. The Messenger of Allāh (peace and blessings of Allāh be upon him) has expressed his disapproval against a certain form of renting in appreciation for the spirit of sacrifice for a brother-in-faith. If a man lends his land to his brother and a calamity overtakes him, it is not desirable to take a share in the produce. It will be an act of magnanimity and large-heartedness. It is desirable to grant remission in the payment of yield stricken by calamity. It is reported on the authority of Jābir (Allāh be pleased with him) that the Messenger of Allāh (peace and blessings of Allāh be upon him) commanded to make deduction in the payment of that stricken with calamity. (Muslim)

Anas (Allāh be pleased with him) reported Allāh's Messenger (peace and blessings of Allāh be

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promises of unknown quantities of food and clothing is lawful (*Qur'an*: 2:233):  
“The mothers (in case of divorce) shall suckle their children for two whole years, if the father desires to complete the term. In the case, he shall bear the cost of their food and clothing on equitable terms. But none shall be burdened with more than he or she can bear; neither the mother should be pressed unjustly (to accept unfair terms just because she is the mother, not should the father be burdened just he is the father. And the same responsibility for the maintenance of the mother devolves upon the father of the child and his heir—there is no harm if they wean the child by mutual consent and consultation. Moreover, there is no harm if you choose to give your children to be suckled by nurse, provided that you pay her fairly. Fear Allah and know it well that whatever you do is in the sight of *Allah*.”

The issue referred to in this verse of the Holy *Qur'an* is simple and straightforward. The purpose is to engage the divorced mother to feed the baby on reasonable and fair terms to both. The word used is *ma'ruf* which means well-known, universally accepted, or generally recognised; that which is good, beneficial and equitable. Thus, the Holy *Qur'an* commands the parties in the contract of weaning to settle the cost in a well-known, equitable and generally acceptable and recognised manner to both the mother and father so that neither of them is harmed or over-burdened.

The wording of the principle stated applies equally to the father and the mother in order to safeguard their interest. Each must fulfil his or her part in the fostering of the child. And the child shall not be used as an excuse for driving a hard bargain on either side. And if they do desire, by mutual consent, they can agree to some course that is reasonable and equitable both as regards the period before weaning and the engagement of a wet nurse.

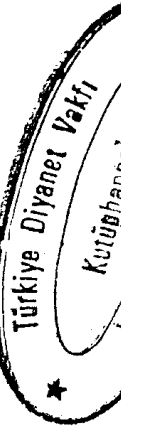
There is no such thing as an element of probability or risk liability in this case as in insurance. Both the parties in the contract of weaning are advised to settle the cost on reasonable and equitable terms, without placing undue burden on either of them. Therefore, there is absolutely no resemblance between this contract and the insurance contract.

#### 4. Case of *Muzarea* or *Musakat*

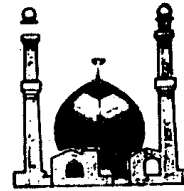
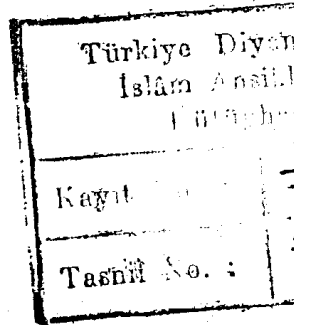
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## Landlord and Peasant in Early Islam

Ibn Ḥazm, therefore, without appreciating the role of reasonable custom and without making use of the method of analogy, seeks to modify the theory of *muzāra'a*, and considers *kirā' al-arḍ* for money or anything else invalid, since rent is stipulated as a special recompense for landlord. For him contract of *muzāra'a* is not permissible for a fixed period of time, as according to him, the Prophet and the Companions never fixed any period of time for such contracts. Both the tenant and the landlord are free to terminate the contract.<sup>76</sup>

### Ibn Ḥazm's Theory of *Mughārāsa*

According to Ibn Ḥazm, *mughārāsa* (from *ghars*, to plant a tree) is a contract in which a landlord gives his bare land to a worker to plant fruit trees. It may be done in two lawful ways: first, the landlord bears all expenses of transplantations of twigs, fixtures, of date stones and pruning of branches and twigs; he hires a worker/tenant to plant the tree and to work and irrigate it for a certain fixed period till the plant yields fruit—in exchange for this work, he gets a fixed, definitively known wages, or a certain piece of that land, i.e., he becomes co-owner of the tree. Second, the tenant is made responsible for all these expenses including plantation of the fruit tree, its mending, irrigation etc, and, in exchange, he obtains a certain stipulated share—one half, one third, one fourth, or more or less of the fruit crop. In that case the worker can have no right over the land. The period for this tenancy is not fixed, and all other terms and conditions of the contract of *muzāra'a* apply in this tenure.

Ibn Ḥazm derives this theory of *mughārāsa* also from the Prophet's *Mu'āmala* of Khaybar.<sup>77</sup> He objects to Mālik's definition of *mughārāsa* as a contract in which the owner of a bare land gives his land to a tenant who undertakes to invest his own money and implements, and thus plants trees. When the trees have reached a certain age of full growth (*shabāban mā*) the tenant gets, as stipulated, ownership of certain part of the land (*raqabat al-arḍ*) and partial ownership of the trees.<sup>78</sup> Ibn Ḥazm says that this type of *mughārāsa* is not lawful at all

## Development of the Substantive Law of *Muzāra'a* 341

because it becomes an indefinite and unknown *ijāra*. It is difficult to define "full growth" of the tree, for it is not precisely known in what period of time the trees will achieve this full growth. The tenant does not know whether the plant will ever grow and remain intact. Ibn Ḥazm also takes strong exception to the words "certain growth". He calls it "very strange", because plants vary extremely in the modes and patterns of their growth: some grow while others wither away; some grow tardily. There is thus no general and definitive principle of the growth, and it often happens that only one or two plants among many grow into trees. To entitle the tenant to ownership of half of the land would be an enormity and an aleatory transaction. Furthermore, this definition of *mughārāsa* is not based on the Qur'ān, *Sunna*, or any tradition of any Companion or Successor.<sup>79</sup>

### *Mu'āmala fī al-thimār*

*Mu'āmala fī al-thimār* is a tenure in which the orchard owner gives his fruit trees to a worker who irrigates the soil either by buckets or water-wheel or otherwise, fecundates the trees and fulfils all the requirements of the tillage till the time when the fruit becomes sound enough to be sold. According to this contract, the worker gets one half, one third or one fourth of the fruit. It is similar to the contract of *muzāra'a*. Work is usually stipulated for one year.<sup>80</sup> Ibn Ḥazm bases this form of fruit-*métayage* also on the model of Khaybar. It seems that this *mu'āmala fī al-thimār* is similar to *musāqāt* of Mālik and Shāfi'ī. Ibn Ḥazm, however, explains that *muzāra'a* and *mu'āmala fī al-thimār* do not belong to the category of *ijāra*, i.e., lease of land for a pre-guaranteed rent for the landlord. He rejects Abū Ḥanīfa's theory to the effect that *muzāra'a* and fruit-*métayage* are not valid because they are aleatory transactions in which wages of the tenant are kept precarious: they are not determined precisely and guaranteed beforehand. Ibn Ḥazm remarks that this viewpoint is arbitrary; he argues that if both of these tenancies (grain-*métayage* and fruit-*métayage*) are invalid in law, so is *muḍāraba* in which wages of the worker



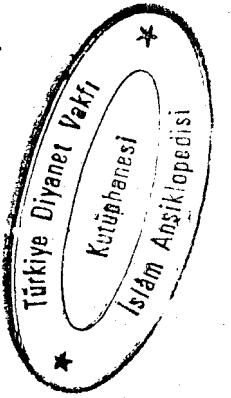
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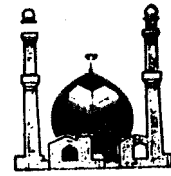
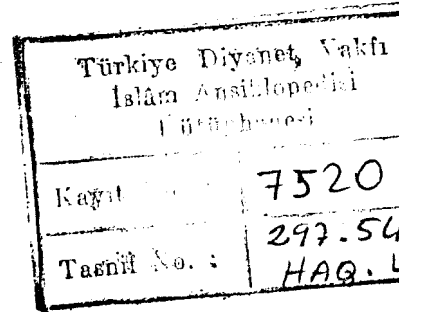
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ZIAUL HAQUE



IDARAH-I ADABIYAT-I DELLI  
2009 QASIMJAN ST.  
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( x )

Arabic Letter	Name and Transcription
ط	ṭā' : ṭ
ظ	ẓā' : ẓ
ع	'ayn: '
غ	ghayn : gh
ف	fā' : f
ق	qāf : q
ك	kāf : k
ل	lām : l
م	mīm : m
ن	nūn : n
هـ	hā' : h
و	waw : w, v, ū, ō, ou.
ی	yā' : y, ī, ē.

## CHAPTER I

### TWO VERSIONS OF THE MUZĀRA'A-HADITHS

#### The Problem Stated

The Islamic Law, *Fiqh*, in its wider sense, theoretically concerns all aspects of religious, social and economic life. Besides religious observances, 'ibādāt (singular, 'ibāda, worship), this ethico-legal system seeks to regulate the institutions of family, marriage, inheritance, property relations, economic contracts and obligations—that is, the over-all socio-economic relations, called *mu'āmalāt* (singular, *mu'āmala*, transaction). This ethico-legal system can be understood properly in the light of its objective function in relating and integrating various social, ethical, legal and economic concepts, ideas, and roles, including the relationship of man to land and the relationship of natural resources and society in general. The nature of this important complex of problems is fully expressed by the substantive Islamic laws of land tenure, which were among the first to develop in the total conceptual framework of Islamic legal theory.

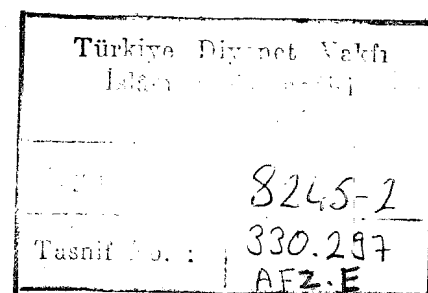
The problem of land tenure in its ethico-legal and historical manifestations has been discussed copiously in the early literary sources. This reflects the importance of this problem in the early history of Islam. The *Umma* (Muslim Community) began as a religious community and evolved as a complex politico-economic organization, which, in the process of its development, came to include various heterogeneous elements of different systems of tenure. With the growth of the *Umma*, the principles and laws of tenure also evolved gradually and spontaneously. These laws, which represent and embody the relations, rights and duties of tenants, landlords and the Islamic state, form part of the general law of obligations—the core of Islamic legal theory.

# ECONOMIC DOCTRINES OF ISLAM

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ECONOMIC DOCTRINES OF ISLAM

of wealth should become personal property of any one person as explained by *Abu Ubaid* : The Holy Prophet did not like this thing that only one person should benefit from it and the rest of the community be deprived of its use.<sup>1</sup>

*Allama Aini* lays down a fundamental principle regarding the use of such things in these words : It is not permissible for any one to give grants (قطائع) of spring water and visible minerals, e.g., salt, rail, kerosene oil and other similar things (to any person or a group of persons) because the people are equal partners in them.<sup>2</sup> And *Abu-al-Hassan Mawardi*, after describing all these things, says : Just as it is not permissible for any one to give grants of land containing water to any individual (or group of individuals), similarly it is unlawful to give grants of these things because all the people equally share in them.<sup>3</sup>

To sum up, grazing fields, forests, salt lakes, kerosene oil and other similar things, which were commonly shared by people and were pure natural gifts, were kept under the direct management of the Caliphate. The form of their benefit and use were determined by the State according to the needs and requirements of the people.

## Chapter 10

### FORMS OF CULTIVATION

Cultivation of land can be done in two ways : Firstly, the owner of land may cultivate his own land and be the master of his own fate as well as of the fruit of his land. Secondly, he may give his land for cultivation to another person, i.e., the tenant and share either the produce of land with him or take cash from him for the use of his land. The owner of land may either be a state or an individual who gives land to a tenant for cultivation. The tenant cultivator pays either a share of the produce or cash for the use of land to the Government or to the individual landlord. If the owner of land is an individual, this payment by the tenant is called rent ; it is called *Kharaj* or *Ushr*, if the landowner is the State. Generally speaking, *Kharaj* is paid by the non-Muslim cultivators, while *Ushr* is paid by the Muslim cultivators to the Government. *Kharaj* is an annual land tax levied upon the non-Muslim cultivators and is collected only once, irrespective of the number of crops raised during the year. Whereas *Ushr* is a compulsory levy (i.e., *Zakat*) on lands cultivated by the Muslims and is collected at the rate of one-tenth of the total produce of land from all crops. Thus it may be collected two or three times a year depending upon the number of crops raised during the year. Besides, *Kharaj* can be reduced or remitted, whereas *Zakat*, like daily prayer, is permanently fixed by God and can neither be reduced nor remitted by any authority.

1. *Al-Amwal*, P. 282, quoted by M. Taqi, op. cit., P. 158.  
2. *Umda-tul-Qadri*, Vol. VI, P. 638, quoted by M. Taqi, op. cit., P. 158.  
3. *Ahkam-al-Sultania*, P. 190, quoted by M. Taqi, op. cit., P. 159.

179, 180, see also vol. 2, pp. 279, 280.

70. Khaṣṣāf, *Kitāb Ahkām al-Awqāf*, pp. 240, 241-2; Qudūri, *al-Kitāb*, vol. 2, pp. 192-3; Sarakhsī, *Mabsūf*, vol. 11, pp. 49-50, 68-9; Samarqandī, *Tuhfat al-Fuqahā*, vol. 3, p. 111; Qāḍizādeh, *Natā'ij al-Afkār*, vol. 7, p. 368; Kāsānī, *Badā'ī' aṣ-Ṣanā'ī'*, vol. 4, pp. 213, 216; Marghinānī, *al-Hidāya*, vol. 7, pp. 369-70, 383-4, 388; Bābartī, *Sharḥ al-<sup>c</sup>Ināya*, vol. 7, pp. 369-70, 383-4, 388.

71. Kāsānī, *Badā'ī' aṣ-Ṣanā'ī'*, vol. 4, p. 213.

72. Ṭahāwī, *Mukhtaṣar*, p. 118; Sarakhsī, *Mabsūf*, vol. 11, p. 79; Samarqandī, *Tuhfat al-Fuqahā*, vol. 2, p. 112: '*inna l-manāfi'a lā tuḍmanu bil-ghaṣbi wa-l-itlāf*'; Kāsānī, *Badā'ī' aṣ-Ṣanā'ī'*, vol. 4, pp. 184, 213; Marghinānī, *al-Hidāya*, vol. 7, pp. 173, 396; Bābartī, *Sharḥ al-<sup>c</sup>Ināya*, vol. 7, p. 173: '*wa-yajibu 'alaihi ḍamānu mā naqaṣa wa-saqāta l-ajru li-anna l-ajra wa-ḍ-ḍamān lā yajtamī'ān idh al-ajru yastalzimu 'adma t-ta'addī wa-n-nuqṣānu yastalzimuhu. wa-tanāfi l-lawāzimi yadullu 'alā tanāfi l-malzūmāt*'. See also note 56.

73. Sarakhsī, *Mabsūf*, vol. 15, pp. 109, 110; Kāsānī, *Badā'ī' aṣ-Ṣanā'ī'*, vol. 4, pp. 173, 201, 218; Bābartī, *Sharḥ al-<sup>c</sup>Ināya*, vol. 7, pp. 147, 394; Marghinānī, *al-Hidāya*, vol. 7, p. 394; Qāḍizādeh, *Natā'ij al-Afkār*, vol. 7, p. 394.

74. Kāsānī, *Badā'ī' aṣ-Ṣanā'ī'*, vol. 4, p. 206. See also Sarakhsī, *Mabsūf*, vol. 15, pp. 78-9.

75. Kāsānī, *Badā'ī' aṣ-Ṣanā'ī'*, vol. 4, p. 206.

76. Sarakhsī, *Mabsūf*, vol. 15, pp. 78-9.

77. *Ibid.*, vol. 23, p. 100.

78. This method of calculation is ascribed by Bābartī, *Sharḥ al-<sup>c</sup>Ināya*, vol. 7, p. 370 to Naṣir b. Yaḥyā, a ninth-century jurist from Balkh.

79. Sarakhsī, *Mabsūf*, vol. 23, p. 100.

80. For the importance of the *zāhir ar-riwāya* for the Hanafite legal tradition and the six books of Shaibānī as the incorporation of this *zāhir ar-riwāya*, see Ibn 'Ābidīn, *Radd al-Muhtār*, vol. 1, pp. 51-2.

81. Qāḍikhān, *Kitāb al-Fatāwā*, vol. 2, p. 281, see also vol. 3, pp. 331, 336. Other instances of legal reasoning that ascribe identical effects to an *ijāra fāsida* and to *ghaṣb* are ascribed to Ismā'īl az-Zāhid, see *ibid.*, vol. 3, pp. 160, 168.

82. *Ibid.*, vol. 2, pp. 267, 294: '*la ajra lahu 'alā l-ghāṣib*'.

83. *Ibid.*, p. 281.

84. *Ibid.*, pp. 270, 280, 281, 283, 296, 300, 302, 306.

Barber Johansen, *The Islamic Law on Land Tax*

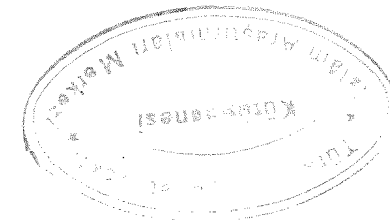
and Rent, London-1988, s. 51-79.

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## The Share-cropping Contract (al-Muzāra<sup>c</sup>a): Combining Dependent Labour with the Means of Production

### 1. A CONTRACT FOR SOWING, NOT FOR PLANTING

The *muzāra<sup>c</sup>a* is a share-cropping contract that legally entitles proprietors to collect rent from the cultivators of their fields. It serves as a legal basis for the productive use of lands whose proprietors are not willing or able to till their land through their own work or through salaried labour or slaves. As the name suggests and as Kāsānī puts it: '... under this contract one may sow but not plant' (*li-anna d-dākhila taḥta l-<sup>c</sup>aqdī z-zar<sup>c</sup>u lā al-ghars*).<sup>1</sup> The planting of trees is regulated under a different contract, called *al-mu'āmala* or *al-musāqāt*, which differs in many respects from the share-cropping contract (*al-muzāra<sup>c</sup>a*) and which will not detain us here because we are concerned with the legal ordinances concerning the rent that proprietors collect from the cultivators of their fields. The *muzāra<sup>c</sup>a* contract serves mainly as a legal basis for the cultivation of cereal-producing lands, although some jurists recognise its use as the contractual basis for the collection of rent on lands producing various kinds of summer crops.<sup>2</sup> The share-cropping contract (*muzāra<sup>c</sup>a*) is valid only if the lands leased are suitable to be used for the growing of crops and if no trees and plantations are already being grown on them.<sup>3</sup> The sprouting seed of crops (*baql*), however, is no obstacle to a valid *muzāra<sup>c</sup>a* contract because the work of growing the crop has still to be performed.<sup>4</sup>



## المزارعة فى الفقه الاسلامى

بقلم : عبد الهادى أبو الغيط

المدرس بالمعهد

لما كان الناس يحتاجون فى معاملاتهم الى المزارعة وعليها يتوقف معاشهم وحفظ كياناتهم وقد اختلف أئمة المسلمين فى جواز المزارعة بسبب ورود احاديث كثيرة فى هذا الباب، وبعضها ظاهره يفيد المنع مطلقاً، وبعضها ظاهره يفيد جوازها مطلقاً وبعضها ظاهره يفيد جوازها بشروط - اُحييت أن أوضح الصور التى يمكن أن يتحقق فى المزارعة وأبين الاحكام التى نصت عليها الأئمة اتفاقاً واختلافاً ليكون الناس على بينة من أمرهم، ومن أراد منهم أن يسير على الصراط السوى فى معاملاته ويستنير بهدى الرسول الكريم وما أبانه لنا المجتهدون الاعلام يجد ما ينير له الطريق ويوضح له السبيل القويم فيأخذ من هذه الصور ما اتفق الأئمة على حله، وعند الضرورة الملحة ما أجازته بعضهم ولو منعه البعض الآخر، ويمتنع عما اتفقوا على عدم جوازه لتجرى معاملتهم على قانون الشرع ومنهاج خير المرسلين .

### حقيقة المزارعة :

عند المالكية : الشركة فى الزرع سواء كانت الارض مملوكة لهما أو لاحدهما أو مستأجرة أو مباحة .

وعند الحنفية والشافعية - زرع أرض غيره ببعض ما يخرج منها سواء كان البذر من قبله أو من قبل صاحب الأرض . فلا تشمل عندهما ما إذا اشتركا فى الأرض أو كانت مباحة .

### احكامها :

حكما العام : عند الشافعى وأبي حنيفة البطلان وعدم الجواز لجهل أجر الأرض وأجر العامل والشرط فى الإجارة العلم بالاجرة فى كليهما .

Mügarra'a

MADDI... SONRA GELEN DOKÜMAN  
17 KISM 2006

## المزارعة

عن الناس، وتحقيق مصالحهم، وتنمية روح التعاون والترابط بينهم، فقد يملك بعض الناس أرضاً زراعية، لكنهم لا يحسنون زراعتها، أو ليس لديهم وقت لذلك، بينما يوجد آخرون لديهم الخبرة والوقت، ولكنهم لا يملكون شيئاً من الأرض، فاقتضت المصلحة تعاونهما على زراعة الأرض في مقابل حصول كل منهما على قدر من محصولها، وبذلك تتحقق منفعتهما ومنفعة المجتمع، وهى فى هذا تشبه المضاربة فى المال، بل إن المزارعة أهم لعدم الانتفاع بالأرض (فى الغالب) إلا فى الزراعة، بينما المال يمكن استثماره عن طريق المضاربة وعن غير طريقها.

ولما كان التكييف الفقهي الدقيق للمزارعة أنها نوع من أنواع الشركة، فإنه ينتج عن هذا أنها من العقود الجائزة، فلكل من طرفيها فسخ العقد، ما لم يبدأ العمل فى الأرض، حتى لا يترتب على ذلك ضرر بطرفى العقد. وعلى العامل القيام بكل ما من شأنه إفادة الزرع، كبذره وسقايته وتنقيته من الحشائش والآفات الضارة، وحفر القنوات الداخلية لرى

المزارعة هى المعاملة على الأرض، وعرفتها مجلة الأحكام العدلية مادة (١٤٣١) بأنها «نوع شركة على كون الأرض من طرف، والعمل من طرف آخر» يعنى أن الأراضى تزرع، والخاصات تقسم بين الزارع، وصاحب الأرض.

وقد ذهب جمهور الفقهاء من المالكية والحنابلة، وأبو يوسف ومحمد بن الحسن من الحنفية - وعليه الفتوى عند الحنفية - إلى مشروعية المزارعة، وأجازها الشافعية فى الأرض التى تكون بين أشجار الفاكهة، ورفض أبو حنيفة مشروعيتها. والصحيح جوازها.

ودليل مشروعيتها السنة والعرف:

( أ ) أما السنة فقد ثبت أن النبى ﷺ عامل أهل خيبر بشطر ما يخرج منها من ثمر أو زرع.

( ب ) وأما العرف فإن عمل السلف والخلف بها دون نكير، فالمزارعة شريعة متوارثة لتعامل السلف والخلف بذلك.

والهدف من مشروعية المزارعة رفع الحرج

# نُصُوصُ الْأَفْتِصَادِ الْإِسْلَامِيِّ

كِتَابُ سِنَنِ وَفَيْهَا

الفصل الأول

المزراعة والمساقاة في الأحاديث والأخبار

وفيه ثلاثة عشر باباً

١ - باب استحباب الزرع والغرس، وشراء العقار وكراهة بيعه

١ - الشيخ الكليني بإسناده عن سيابة، عن أبي عبد الله - عليه السلام - قال: سأله رجل فقال له: جعلت فداك، أسمع قوماً يقولون: إنَّ الزَّراعةَ مكروهة؟ فقال له: (ازرعوا وأغرسوا، فلا والله ما عمل الناس عملاً أحلّ ولا أطيّب منه، والله ليزرعنَّ الزَّرع، وليغرسنَّ الغرس بعد خروج الدَّجال) (١)

٢ - وبإسناده عن محمد بن عطية قال: سمعت أبا عبد الله - عليه السلام - يقول: (إنَّ الله، عزَّ وجلَّ اختار لأنبيائه الحرث والزرع كيلا يكرهوا شيئاً من قطر السماء) (٢).

٣ - وبإسناده عن مسمع، عن أبي عبد الله - عليه السلام - قال: (لما أهبط آدم إلى الأرض احتاج إلى الطعام والشراب، فشكا ذلك إلى جبرئيل - عليه السلام - فقال له جبرئيل: يا آدم كن حرثاً... (٣).

٤ - وبإسناده عن أحمد بن أبي عبد الله، عن بعض أصحابنا قال: قال أبو جعفر - عليه السلام -: (كان أبي يقول: خير الأعمال الحرث، يزرعه فيأكل منه البرّ والفاجر، فأما البرّ فما أكل من شيء استغفر لك، وأما الفاجر فما

إعداد

قسّم الأفتصاد في مجمّع البحوث الإسلاميّة

للجزء الثامن

(المزراعة والمساقاة وإنباء الرات وأطعام الأراضى)

Türkiye Diyanet Vakfı İslam Araştırmaları Merkezi Kütüphanesi	
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إسراف

الأستاذ محمد واعظ زاده الخراساني

1417 Tehran

(١ - ٣) الوسائل ١٣: ١٩٣ الباب ٣ من أبواب أحكام الزراعة والمساقاة، ح ١، ٣، ٥.

# THE AGRARIAN SYSTEM OF ISLAM

*Ma'nazara*

*Ma'ni*

*San'at  
Muzarar*

*Ösür*

*Karar*

*Fey*

by

Prof. MAULANA MOHD. TAQI AMINI

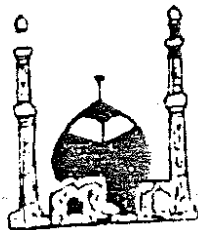
(Ex-Dean, Faculty of Theology, A.M.U., Aligarh)

*translation*

SYED AHMAD ALI



Türkiye Diyanet Vakfı İslâm Araştırmaları Merkezi Kütüphanesi	
Demirbaş No:	26506
Tasnif No:	297.543 AMI. A



IDARAH-I ADABIYAT-I DELLI,  
2009, QASIMJAN STREET,  
DELHI (INDIA).

347.22

JOH. I

Muzāra'a

THE CONTRACT OF TENANCY (IJĀRA)

179, 180, see also vol. 2, pp. 279, 280.

70. Khaṣṣāf, *Kitāb Ahkām al-Awqāf*, pp. 240, 241-2; Qudūrī, *al-Kitāb*, vol. 2, pp. 192-3; Sarakhsī, *Mabsūṭ*, vol. 11, pp. 49-50, 68-9; Samarqandī, *Tuhfat al-Fuqahā*, vol. 3, p. 111; Qāḍizādeh, *Natā'ij al-Afkār*, vol. 7, p. 368; Kāsānī, *Badā'i' aṣ-Ṣanā'i'*, vol. 4, pp. 213, 216; Marghinānī, *al-Hidāya*, vol. 7, pp. 369-70, 383-4, 388; Bābartī, *Sharḥ al-ʿInāya*, vol. 7, pp. 369-70, 383-4, 388.

71. Kāsānī, *Badā'i' aṣ-Ṣanā'i'*, vol. 4, p. 213.

72. Ṭahāwī, *Mukhtaṣar*, p. 118; Sarakhsī, *Mabsūṭ*, vol. 11, p. 79; Samarqandī, *Tuhfat al-Fuqahā*, vol. 2, p. 112: 'inna l-manāfi'a lā tuḍmanu bil-ghaṣbi wa-l-itlāf'; Kāsānī, *Badā'i' aṣ-Ṣanā'i'*, vol. 4, pp. 184, 213; Marghinānī, *al-Hidāya*, vol. 7, pp. 173, 396; Bābartī, *Sharḥ al-ʿInāya*, vol. 7, p. 173: 'wa-yajibu ʿalaihi ḍamānu mā naqaṣa wa-saqāta l-ajru li-anna l-ajra wa-d-damān lā yajtamiʿān idh al-ajru yastalzimu ʿadma t-taʿaddī wa-n-nuqṣānu yastalzimuhu. wa-tanāfi l-lawāzimi yadullu ʿalā tanāfi l-malzūmāt'. See also note 56.

73. Sarakhsī, *Mabsūṭ*, vol. 15, pp. 109, 110; Kāsānī, *Badā'i' aṣ-Ṣanā'i'*, vol. 4, pp. 173, 201, 218; Bābartī, *Sharḥ al-ʿInāya*, vol. 7, pp. 147, 394; Marghinānī, *al-Hidāya*, vol. 7, p. 394; Qāḍizādeh, *Natā'ij al-Afkār*, vol. 7, p. 394.

74. Kāsānī, *Badā'i' aṣ-Ṣanā'i'*, vol. 4, p. 206. See also Sarakhsī, *Mabsūṭ*, vol. 15, pp. 78-9.

75. Kāsānī, *Badā'i' aṣ-Ṣanā'i'*, vol. 4, p. 206.

76. Sarakhsī, *Mabsūṭ*, vol. 15, pp. 78-9.

77. *Ibid.*, vol. 23, p. 100.

78. This method of calculation is ascribed by Bābartī, *Sharḥ al-ʿInāya*, vol. 7, p. 370 to Naṣīr b. Yaḥyā, a ninth-century jurist from Balkh.

79. Sarakhsī, *Mabsūṭ*, vol. 23, p. 100.

80. For the importance of the *zāhir ar-riwāya* for the Hanafite legal tradition and the six books of Shaibānī as the incorporation of this *zāhir ar-riwāya*, see Ibn ʿĀbidīn, *Radd al-Muḥtār*, vol. 1, pp. 51-2.

81. Qāḍikhān, *Kitāb al-Fatāwā*, vol. 2, p. 281, see also vol. 3, pp. 331, 336. Other instances of legal reasoning that ascribe identical effects to an *ijāra fāsida* and to *ghaṣb* are ascribed to Ismāʿīl az-Zāhid, see *ibid.*, vol. 3, pp. 160, 168.

82. *Ibid.*, vol. 2, pp. 267, 294: 'la ajra lahu ʿalā l-ghāṣib'.

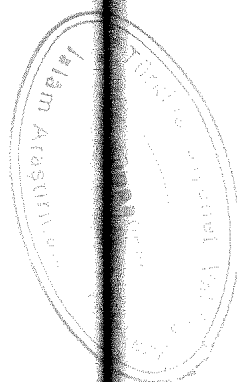
83. *Ibid.*, p. 281.

84. *Ibid.*, pp. 270, 280, 281, 283, 296, 300, 302, 306.

## The Share-cropping Contract (al-Muzāra'a): Combining Dependent Labour with the Means of Production

### 1. A CONTRACT FOR SOWING, NOT FOR PLANTING

The *muzāra'a* is a share-cropping contract that legally entitles proprietors to collect rent from the cultivators of their fields. It serves as a legal basis for the productive use of lands whose proprietors are not willing or able to till their land through their own work or through salaried labour or slaves. As the name suggests and as Kāsānī puts it: '... under this contract one may sow but not plant' (*li-anna d-dākhila taḥta l-ʿaqdi z-zarʿu lā al-ghars*).<sup>1</sup> The planting of trees is regulated under a different contract, called *al-muʿāmala* or *al-musāqāt*, which differs in many respects from the share-cropping contract (*al-muzāra'a*) and which will not detain us here because we are concerned with the legal ordinances concerning the rent that proprietors collect from the cultivators of their fields. The *muzāra'a* contract serves mainly as a legal basis for the cultivation of cereal-producing lands, although some jurists recognise its use as the contractual basis for the collection of rent on lands producing various kinds of summer crops.<sup>2</sup> The share-cropping contract (*muzāra'a*) is valid only if the lands leased are suitable to be used for the growing of crops and if no trees and plantations are already being grown on them.<sup>3</sup> The sprouting seed of crops (*baql*), however, is no obstacle to a valid *muzāra'a* contract because the work of growing the crop has still to be performed.<sup>4</sup>



12. AUGUSTUS 1996



- 132340 MURARAH  
- 132159 MUSAKAT

11820 80

خليفة (مناح و مرار) .  
- الزراعة والمساقاة في الشريعة الاسلامية / تأليف مناح  
مرار خليفة . - بغداد : [ د . ن . ] ، 1975 / 1395 (بغداد :  
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Bibliogr. pp.605-626. - Ech.int.77-8049. - Br.

Labourage. Association.  
Droit musulman.

--Irrigation. Association.  
Droit musulman.

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637p. [ARA III 5512]  
(al-Muzāra'a wa al-musāqāt fī al-sarī'a al-  
islamiya.)

216.7. Droit à int. musulm

A. 146647

21 ARALIK 2000

Müzəərə

عقد المزارعة  
أنظر:  
المزارعة  
العقوبات المالية

لل قضاء، ١٩٨٦م، (رسالة دكتوراه،  
باشراف: د. أحمد محمد العال).

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"الاقتصاد الاسلامي"، قم ١٤١٧. ISAM KTP 070921

18 EKİM 1984

MUZARAA  
المزارة  
انظر: الأرض

WENSINCK AREN JEAN, MIFTAHU KÜNUZÜ'S-SÜNNE.

Trc: ABDÜLBAKİ MUHAMMED FUAD, BEYRUT 1983. ss . 466 DİA DM NO: 04160.

KISALTMALAR:

بخ = صحيح البخاري، مس = صحيح مسلم، بد = سنن أبي داود، تر = سنن الترمذي، نس = سنن النسائي، مج = سنن ابن ماجه، می = سنن الدارمي، ما = موطأ مالك، ز = مسند زيد بن علي، عد = طبقات ابن سعد، حم = مسند احمد بن حنبل، ط = مسند الطيالسي، هش = سيرة ابن هشام، قد = مغازي الواقدي

Al-Kigara'a

المذهب الاقتصادي في الاسلام

أنظر:

الاقتصاد الاسلامي - مذهب

المرابحة

أنظر:

بيع المرابحة

المزارعة

١٨٩٤هـ كتاب المزارعة الصغيرة.

أنظر: فهرست التديم ٢٥٧.

٢٩٤٨- بابلي، د. محمود محمد. «المزارعة

المشروعة». التضامن الاسلامي.

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أنظر: فهرست التديم ٢٥٧.

٢٩٤٧- أبو عبد الله الشيباني، محمد بن الحسن

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عبد الجبار الرفاعي، موسوعة مصادر النظام الاسلامي، ج. الاول،

"الاقتصاد الاسلامي"، رقم ١٤١٧. ISAM KTP 070921

مزارعة

### مُزارعة:

١ - تعريفها: المزارعة هي دفع الأرض لمن يزرعها على أن يكون له جزء من إنتاجها.

٢ - مشروعيتها: المزارعة مشروعة، لأن رسول الله ﷺ (عامل أهل خيبر بشرط ما يخرج منها من ثمر أو زرع)<sup>(٢)</sup> ولأن كثيراً من الصحابة تعاملوا بها.

(٢) البخاري في الحث والمزارعة باب المزارعة بالشرط، ومسلم في المساقاة باب المساقاة والمعاملة بجزء من الثمر والزرع.