UNSPECIFIED REWARD IN AN AGENCY CONTRACT

By Assoc. Prof Dr. Azman Mohd Noor

Scholars dispute on this issue with two different opinions:

First opinion: Narrated from Ibn ᶜAbbās (R.A), Al- Zuhrī, Qatādah, Ayyūb, Ibn Sīrīn[1], Al – Sya'bi[2], Al-Ḥasan[3], Ishāq and Aḥmad Ibn Ḥanbal, one of the isolated opinions of Ḥanbali School of law[4]: When a *muwakkil* says to the *wakīl*: Sell this shirt of mine for as such and what exceeds belong to you, the wakil has the right to the exceeding portion if he sells it higher than the stipulated price mentioned, this is strengthened by the following:

1. As narrated from Ibn ᶜAbbas, it is permissible, in the situation when a man gives another man a shirt or other merchandise, and tells him: "Sell this for as such and you shall keep what exceeds[5]", there is no argument raised against this practice during his time, therefore it can be considered as consensus among the companions (*ijmaᶜ)*[6].

2. In this case a merchandise grows because of someone's efforts like in mudharabah. With respect to this particular issue, Aḥmad said: "This is similar to *mudarabah*?"

3. It is also based on expending for someone else which is not binding, therefore it is as if returning something which is lost/ran away.

Sheikh Muḥammad Ibn ᶜUthaimīn Rahimahullah was questioned the following:

"My brother gave a trader honey and he said to him: "The price of each of it is three hundred Riyals, and if you sell them with a higher price, then what exceeds belong to you", the trader then sells each quantity for three hundred and fifty Riyals, what is the *ḥukm* of this transaction may Allah reward you with the best?"

He answered: When a person appoints another in selling something, honey, food, or others, and he says to the *wakīl*, "Sell this for as such and what exceeds belong to you," this transaction is permissible on the condition that; the seller who is appointed knows the market price of the merchandise, and in the instance that he does not know, he may claim for a profit. This is because when one has a belonging and wants to dispose it, he can appoint another person to sell the commodities on his behalf with a stated price and what exceeds belong to the *wakīl*, not even questioning the market price of the commodity, as the price may have rose tremendously. So when the *muwakkil* says; "Take this commodity and sell it for one hundred and what exceeds that price belongs to you." The *wakīl*, knowing that the *muwakkil* is unaware of the market price of the commodity therefore has the responsibility to

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[1] Abd al-Razzāq, al-Musannaf (15018).
[2] Abd al-Razzāq, al-Musannaf (15019).
[3] Abd al-Razzāq, al-Musannaf (15020).
[4] Ibn Qudāmah, Al-Kāfī, 252/2, *Al-Muqhniᶜ maᶜa al-Sharḥ wa al-inṣāf* 557/13.
[5] Abd al-Razzāq, al-Musannaf (15020).
[6] As found in al-Bahuti, *Kashaf al-Qanaᶜ Wa Maṭalib Ulī al-Nahyi*: The *isnād* are *jayyid*.

inform him (owner of commodity/*muwakkil*). Saying: "This commodity is priced around two hundred, and if the *muwakkil* says: " Even if it is so, sell it for a hundred and what exceeds will belong to you." In this situation, Sheikh Muhammad Uthaimin opines that the commodity should be sold at its price range in the market, even if it is priced at three hundred or four hundred, and the hundred which is conditioned earlier should be returned to the *muwakkil*.

Second opinion: It is not permissible. This is the opinion of Ibrahim al-Nakhaᶜi , Ḥamād.[7] Ibn Qudāmah related that this is the opinion of Abu Ḥanīfah, Al-Thaurī, Al-Shafiᶜi and Ibn al-Munẓir. The main reason for the prohibition is unknown wage/fee having a degree of uncertainty (*wujūd and ᶜadam*)[8]. The invalidity of this situation is very well known in the *Ḥanafi* school of thought. It is stated in (1202) of *Majallah al-Aḥkām al-* ᶜadliyyah, if the remuneration is unknown then *ajr mithl* (standard market price) applies. Fatwa al-Saghdī states: "(And the fifth is) the reward for brokers (*ijārah al-simsār*), it is not permissible, if he says: "Sell this shirt for ten dirham and what exceeds that price will belong to you." In this situation, he is entitled for *ajr al-mithl*".[9]

With that, it is concluded that *wakālah bi al-ujr* takes the ruling of *ijārah*, with the condition that the *ujrah* needs to be known. The Shafiᶜis stated that the contract of *wakālah* is a binding contract[10] when it is related to *ujr*. It is the like when the *wakīl* starts to represent in trials[11]. Malikis viewed that if the *wakīl* turns against the *muwakkil* in trial, the *muwakkil* is not able to dismiss[12] the *wakalah* contract between them as it is not binding(*jāiz*)[13].

The Malikis differentiate between *wakalah* having the ruling of *ijārah* and *wakālah* having the ruling of *jualah*. In *Ḥashiyah al-Dusūqī ᶜalā al-Sharḥ al-Kabīr*: " The appointment in collecting debt may at times involve *ijārah* or *juᶜālah*, in the case of *ijārah* it is a must to know the *muwakkil*'s actual amount for debt collection and also to identify who owes the muwakkil the debt, whether the debtor is one who is rich, poor, delays or not. For example: " I appoint you to act on my behalf to collect this much amount from this person and you will get this amount of fee." In *juᶜālah*, one of the two needs to be known, either the amount or who the debtor is"[14].

The condition to know the *juᶜl*:

Al-Mausuᶜah al-Fiqhiyyah al-Kuwaitiyyah, volume fifteen of the *juᶜālah* article states the following:

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[7] Abd al-Razzāq, Al-Musannaf (15022).

[8] Ibn Qudamah, Al-Muqhniᶜ maᶜa al-Sharḥ wa al-Inṣāf 13/557.

[9] Al-Nuṭf fi al-Fatāwā (2/575), Author: Abu Al-Ḥassan ᶜAlī Ibn Al-Ḥusīn Ibn Muḥammad Al-Sughdī, Publisher: Dar al-Furqān/ Muassasah al-Risālah- Oman Urdun/ Beirut Lebanon- 140401984, Edition: Second, Editor: Lawyer Dr Ṣalaḥuddīn al-Nahī.

[10] They view that when a *wakālah* is pronounced with *ijārah* it is binding, if it is pronounced with *wakālah* then it is not not binding. Ibn Qudamah, al-Mughnī, 2/217.

[11] al-Sharbīnī, Mughnī al-Muḥtāj 3/257.

[12] Sharḥ al-Kharshī ᶜalā Mukhtaṣar Khalīl 6/96.

[13] al-Dusūqī, Ḥāshiyah al-Dusūqī ᶜalā al-Sharḥ al-Kabīr 3/396.

[14] al-Dusūqī, Ḥāshiyah al-Dusūqī ᶜAlā Al-Sharḥ Al-Kabīr 3/397.

Mālikis defined *juᶜālah* as: Compensation of a person to another person with a known amount and is not differentiated between a known or unknown time, benefitting the offeror, the worker deserves the reward and if he does not complete the work,he is not entitled to anything,which does not benefit the offeror up to until the work completion.

Shafiᶜis defined it as: An obligation to pay a determined compensation against a specific work or unknown work for the determination of which is difficult.

Ḥanbalīs defined it as:The entitlement of a known amount to whom have worked for the offeror a permissible work (mubah) even though it is unknown or who have worked for a specified period even though it is unknown.

It can be concluded that Mālikis, Shafiᶜis and Ḥanbalīs all agree on the permissibility of *juᶜālah*[15]. This is with the condition that the *juᶜl* (reward/compensation) is known. They directly stated this saying that it is a condition to make the *juᶜālah* contract valid that the reward be known in terms of classification and evaluation (*jins wa qadr*), because the unknown state of an exchange shall abrogate the meaning of the *juᶜālah* contract, as no one would want to work when not knowing the compensation/reward. The unknown state of the the work and the worker is however excluded due to the need of both.

The recognition of *juᶜl* is through witnessing or describing it if it is tangible(*ᶜain)*, and by describing it if it is a debt.

JUᶜL WHICH DOES NOT NEED TO BE KNOWN:

Shafiᶜis state: There are two conditions in which the known state of *juᶜl* is excluded:

Firstly: In the event that the imam or leader of the army reward one who shows the opening fortress of *Kuffār* during wartimes, by rewarding a horse from them for example or others. In this situation it is permissible for the exchange to be unknown in accordance to the condition of war.

Secondly: When a person says to another: " Perform hajj for me as expenses are on me." The expenses being unknown is permissible. Al-Mawardī views that it is a fāsid juᶜālah, and is later explained by al-Shafiᶜī in al-Um.

Ḥanbalīs state: It is permissible for the *juᶜl* to be unknown if the unknown state does not lead to failure in delivery, for example, the jāᶜil (offeror) says: "Who is able to bring me back what I lost will get one third of it," or when the leader of the army says in the battle, " Who comes with ten leaders,he shall be one of them," or to reward one who shows a fortress or an easier path for example, and the reward is from the property of the enemies, therefore it is allowed for the *juᶜl* to be unknown, for example a horse determined by the worker.

Malikis on the other hand, excludes three other situations:

[15] Hanafis forbid the *juᶜāalah* contract except in returning something which is lost/ran away.

Firstly: Rewarding someone to plant for him until it grows to a certain stage, therefore what exceeds the stage of growth shall be rewarded.

Secondly: Rewarding portion of a debt after obtaining the debt- meaning it is known, for example one third or one fourth of what he had obtained. This is permissible according to Malikis, and not permissible from another report of Maliki.

Thirdly: Rewarding someone a portion after the gathering of cultivation or plucking dates on the portion which is mentioned. There is no dispute in the permissibility of giving rewards using these as both are not predictable.

Conclusion

This particular issue falls under the realm of *juᶜālah* and not based on *ijārah*. The unknown state is permissible in *jualah* whilst not in *ijarah*. However, it is proven by Ibn ᶜAbbās (r.a) that he allows as such. Some contemporary scholars argue that the concept can also be applied the other way around for instance in case of determining a reward for an agency to purchase. A customer who wants to buy gold bars for example can say: "Purchase for me certain amount of gold with the announced price, whatever reduction/discount you get, the difference is yours."

This concept can provide alternatives for purchasing gold without immediate delivery, where the qabad is done by the wakil. In case of sukuk liquidation through auction, the selling price can be capped at a particular nominal price, where the excess is foregone. The same with wakalah saving investment account, the excess of the predicted profit can be waived upfront by the investors for the benefit of the wakil.