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Methods of Recovering the Muḍārib's Maintenance Expenses from the Perspective of Islamic Jurisprudential Schools and Iraqi Positive Law

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1. Round 1

1.1. Reviewer 1

Reviewer:

In the paragraph distinguishing ḥaḍar from commercial travel, the article states that the major schools "agree that, where the contract is silent, the muḍārib is not entitled to maintenance expenses." This important comparative proposition should be treated with greater doctrinal precision. The authors should distinguish between ordinary personal maintenance, transaction-specific business expenditures, and expenses directly necessary for managing the investment while resident in the same locality, because not all "expenses" are conceptually equivalent. Without this distinction, readers may incorrectly infer that all expenditures incurred during ḥaḍar are non-recoverable, including operational costs that properly belong to the venture.

The discussion of the Shāfiʿī position in the paragraph on "a stipulation for the payment of maintenance during ḥaḍar" requires a more careful account of the legal consequence of the invalid condition. The article states that the Shāfiʿī school considers the stipulation to "invalidate the very nature of the contract," but it should specify whether the defect renders the entire muḍārabah bāṭil, fāsid, or merely invalidates the condition, and whether these classifications are being used according to Shāfiʿī terminology or through a generalized comparative vocabulary. This distinction is essential because the consequences for restitution, remuneration, and profit allocation may differ significantly.

In the paragraph beginning "The pivotal point of the scholarly controversy…," the article frames the two theories as recovery "directly from the principal capital" versus deduction "first… from the profits realized." This binary needs accounting clarification. The authors should explicitly distinguish between the temporal source of cash payment and the ultimate accounting incidence of the expense. In practice, maintenance may physically be advanced from the investment capital during the venture, while legally being charged against subsequently realized profit at final settlement. This distinction appears implicit in the later discussion of Sabzawari but should be introduced at the outset because it materially affects the characterization of the competing theories.

In Section 3.2, the statement that all five schools agree that the resident muḍārib "is not… entitled to receive any maintenance expenses from the muḍārabah property" should be qualified by the contractual and customary context. The authors should investigate whether custom (ʿurf), express authorization, or expenses inseparable from the transaction modify this default rule. Since the article later relies heavily on commercial custom in determining net profit and the protective function of profit, it would be methodologically inconsistent not to examine whether custom also affects entitlement during ḥaḍar.

In the subsection "First Approach: Sequential Recovery and Set-Off Against Profit," the sentence characterizing the muḍārib's maintenance as "an overhead expense of the commercial venture" introduces a modern accounting concept that requires doctrinal justification. The authors should define what they mean by "overhead expense" and explain whether the classification is merely an analytical analogy or a legal characterization derived from fiqh. It would be particularly useful to compare this classification with contemporary Islamic banking accounting treatment, because the manuscript repeatedly moves between classical jurisprudential concepts and modern financial terminology without always explaining the translation between them.

In the paragraph on Khoei's reasoning, the article states that "until the muḍārib's maintenance expenses have been covered and deducted, no distributable profit has legally or commercially materialized." This conclusion is significant but should distinguish gross revenue, accounting profit, jurisprudential profit (ribḥ), and distributable profit. The authors should define the point at which profit is legally realized under muḍārabah and whether all categories of expense are deducted before determining the profit pool. A numerical example would materially improve the analysis—for example, capital of 100, revenue of 130, business costs of 10, agent maintenance of 5, and the resulting distributable profit under each theory.

Authors revised the manuscript and uploaded the document.

1.2. Reviewer 2

Reviewer:

The paragraph discussing Iraqi Civil Code Article 672 should reproduce or closely paraphrase the operative legal content of the provision rather than merely stating that it "recognized… that reasonable expenses could be met from the muḍārabah property." The legal analysis would be stronger if the authors identified whether Article 672 specified travel, customary limits, authorized travel, the source of the expense, or liability for excess expenditure. Since the article's principal claim concerns a post-1983 legislative lacuna, the exact normative content of the repealed provision is central and should be analyzed textually.

In the paragraph on the repeal of Articles 626–683 by Companies Law No. 36 of 1983, the assertion that the legislation created a "legal lacuna and substantial judicial gap" requires documentary support beyond doctrinal inference. The authors should demonstrate whether Iraqi courts actually encountered disputes concerning muḍārabah maintenance after the repeal, whether judgments resorted to Article 1 of the Civil Code, and whether divergent outcomes occurred. If reported case law is unavailable, the article should expressly characterize the "judicial gap" as a normative or potential gap rather than presenting inconsistency in judicial practice as an established empirical fact.

The final paragraph of the Introduction states that the study evaluates maxims including lā ḍarar, al-kharāj bi-al-ḍamān, and al-ghurm bi-al-ghunm, yet the later Findings do not systematically demonstrate how each maxim bears on the specific question of maintenance recovery. The authors should formulate a clear analytical matrix: identify the legal proposition supported by each maxim, explain its doctrinal limits, and indicate whether it concerns entitlement to expenses, their source, allocation of loss, or validity of contractual stipulations. Otherwise, these maxims risk functioning as decorative doctrinal references rather than operative analytical tools.

In the Methodology section, the sentence describing the study as "fundamental–applied research" should be reconsidered in light of conventional legal research methodology. The manuscript is predominantly doctrinal, comparative, and historical rather than "fundamental–applied" in the empirical research sense. The authors should explain the methodological framework using terminology standard in legal scholarship—e.g., doctrinal legal research, comparative jurisprudential analysis, statutory interpretation, and historical legislative analysis—and reserve "applied" for the normative recommendations derived from the doctrinal findings.

The Methodology paragraph stating that the study employs "a descriptive–analytical method with an ijtihād-based, legal, and comparative approach" is too broad unless the procedure of ijtihād-based analysis is operationalized. The authors should specify how conflicting juristic texts were selected, weighted, and reconciled; whether preference was given to explicit texts over inferred principles; how intra-school disagreement was handled; and what criteria were used to designate a position as "predominant." These details are necessary for methodological reproducibility and to prevent the comparative conclusions from appearing impressionistic.

In the methodological subsection listing primary jurisprudential works, the article mixes direct sources representing schools with later commentaries and modern compilations without explaining their hierarchical evidentiary status. For example, the sentence lists al-Fatāwā al-Hindiyyah, Radd al-Muḥtār, al-Tafrīʿ, Bidāyat al-Mujtahid, and contemporary Imāmī works together as though they perform identical functions. The authors should explain whether each source is used to establish the school's authoritative position, document internal disagreement, provide comparative synthesis, or supply reasoning. This is particularly important when the article attributes a single "school position" to traditions with substantial internal diversity.

In Section 3.1, the sentence defining the muḍārib's maintenance as including "food, personal subsistence, clothing, temporary accommodation, transportation costs for both goods and the agent himself, and packaging expenses" conflates personal maintenance with commercial operating expenses. Packaging and freight for goods are ordinarily venture expenses rather than the muḍārib's personal nafaqah. The authors should construct a taxonomy separating (a) personal maintenance of the agent, (b) travel-related personal expenses, and (c) direct business/transaction expenses. This distinction is indispensable because different fiqh rules may govern each category and because the current definition may overstate the scope of "nafaqah."

Authors revised the manuscript and uploaded the document.

2. Revised

Editor's decision: Accepted.
Editor in Chief's decision: Accepted.