

# Islam Question & Answer

General Supervisor:  
Shaykh Muhammad Saalih al-Munajjid

**287395 - They formed a partnership for trade, one of them supplying the capital and the other supplying a space and equipment, and his labour, then they incurred loss; who should bear the loss?**

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## **the question**

I formed a partnership with a friend of mine to trade in sheep. The conditions were that he would supply the capital, and I would supply the space and equipment, and labour, and profits and losses were to be shared, fifty-fifty. In the end, because the price of sheep dropped, the project ended in loss. After reading your fatwas, I realize that it is not permissible to share the loss and that the loss is only to be borne by the one who supplied the capital. What should we do? Can I give him half of what he lost, so that he will not be harmed? If we want to carry on with the project and buy more sheep, can we work out the profit after subtracting it from the previous capital, as if the project is still ongoing?

## **Detailed answer**

Praise be to Allah.

Firstly:

The basic principle with regard to partnerships is that losses are to be borne commensurate with the share of money invested. As for profits, they are to be shared according to what the partners have agreed upon.

If two people contribute capital to the project, then losses are to be borne commensurate with the share that each of them put into it.

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If two people form a partnership, one of them contributing capital and the other contributing labour, then the financial loss is to be borne by the one who put money into it, and the worker loses his labour, unless there was some transgression or negligence on the worker's part, in which case he also incurs financial loss.

Ibn Qudaamah (may Allah have mercy on him) said in *al-Mughni* (5/22): Loss in partnerships is born by both partners commensurate with the capital that they invested. If they each invested an equal amount of capital, then the loss is shared between them, fifty-fifty. If there were three people in the partnership, then each of them bears one third of the loss. We do not know of any difference of opinion concerning that among the scholars. This was the view of Abu Haneefah, ash-Shaafa'i and others.

In the case of a profit-sharing venture (*mudaarabah*), the loss affects the capital only, and the worker does not bear any of it, because the loss is a decrease in capital, so it affects only the owner of the capital and has nothing to do with the worker. Thus any loss should be from the wealth of the investor and no one else. Rather they only share whatever profit is made. End quote.

If your friend had invested capital, and you supplied the space, equipment and labour, and you did not receive any rent for the space and equipment,

then you effectively donated the space and the equipment; there is nothing wrong with that, and you do not have to do anything.

If you both took that into account when establishing the partnership, and you regarded the rent of the space and equipment as being like capital that you put into the business, then you should work out the rent for that, which you would have contributed to the capital; thus you would have contributed both capital and labour, and you would bear financial loss commensurate with your financial share that we have mentioned.

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For example, if your friend contributed ten thousand, and the rent for the space and equipment was two thousand, that means that you invested two thousand plus your labour, and in the event of loss you will bear one fifth of it, because your share of the capital in comparison to that of your friend is one fifth.

He must also return to you anything that he took beyond that.

If you want to bear half of the loss, by your own choice, there is nothing wrong with that, because it is by way of helping and being kind.

But it is not permissible for you to stipulate that in any partnership contract in the future.

See also the answer to question no. [100103](#).

Secondly:

If you want to continue the project and buy more sheep, you should finish the first contract first. Let your friend bring his capital, figure out exactly what your capital is, and both come to an agreement that losses are to be borne commensurate with the amount of capital contributed.

We are only telling you to finish the first contract first because if you owe your friend something – which is a certain amount of the loss, if you decide that you want to bear some of it, as discussed above – then it is not permissible to regard this debt as capital in a new partnership, because it is stipulated that for any partnership the capital should be cash and not something owed.

It says in *Kashshaaf al-Qinaa'* (3/497): One of the conditions of partnership is that the capital of both parties should be available in cash, as in the case of a profit-sharing (mudaarabah) venture, so that it can be used in the business and the partnership can be achieved. The partnership is not valid on the basis of capital that is not available, or on the basis of wealth that is owed, because it is not possible to use it immediately, and that is the aim of the partnership. End quote.

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In *al-Mawsoo'ah al-Fiqhiyyah* (26/48) it says: The first condition is that the capital should be cash, not something owed, because the trading by means of which the purpose of the partnership – namely making a profit – is achieved cannot be done by means of money that is owed (and is not available). So to regard as capital for a partnership money that is owed (and is not available) is contrary to the aim and purpose of the partnership. End quote.

And Allah knows best.