



A Study of the Legality of the UK ACN Compensation Scheme according to Islamic Principles

Introduction

The ACN compensation scheme is what can be described as a Multi-Level Marketing (MLM) scheme, however has been alledged by some to be a well-concealed 'pyramid scheme'. The purpose of this study is to determine the legal ruling of the UK scheme according to Islamic principles; in order, to reach a fair and representable understanding the ACN's own promotional literature will be utilised. There are a number of key documents; "ACN's Compensation Plan Overview" which is applicable in the UK and is effective from 2nd March 2015¹, ACN's Policies and Procedures², and the General Terms and Conditions of the UK Independent Representative Agreement³. All documents are available from the author upon request. Once these documents have been interrogated in order to extract the correct understanding, a detailed analysis will be conducted in the transaction to determine its Islamic legal ruling.

ACN's Compensation Plan Overview

The Scheme as described by ACN offers one starting position and six earned positions; a point is made and often repeated that 'all ACN Representatives **MUST** acquire and maintain customers in order to qualify for their positions.' (ACN, 2015, p.1).

The starting point for any Independent Representative (IR) is only Team Trainer (TT) which requires a starter fee of £325.00 + VAT, therefore at current charges is £390.00. It is not clear for what this fee is being levied from the documents utilised in this study, however will be discussed at a later point; an annual renewal fee is also required (ACN, no date, p. 21). The individual is not employed by ACN but is considered to be self-employed (ACN, no date, p. 14). The next step is to become a Qualified Team Trainer (QTT) which requires the TT to acquire and maintain 6 Customer Points and acquire 3 Preferred Customers; the condition being that customers be of different household, service type or Wellness account. The details of the various products and definition of Preferred Customer can be found on page 3 of this document.

In order to qualify for the six earned positions not only requires the acquiring of customers but also the recruiting of further Independent Representatives (IRs). The six earned positions in ascending order based on number of recruited IRs and their rank in the organisation is as follows; Executive Team Trainer (ETT), Executive Team Leader (ETL),

¹ ACN, 2015, ACN's Compensation Plan Overview, UK, Available at http://reps.acneuro.com/ACN-Europe_files/docs/comp_plans/UK_EN-CP.pdf Accessed on 7th March 2015

² ACN, no date, Policies and Procedures, UK, Available at http://reps.acneuro.com/ACN-Europe_files/docs/policy_procedures/EN-PP.pdf Accessed on 7th March 2015

³ ACN, (2013), United Kingdom – Independent Representative Agreement; General Terms and Conditions.



Team Coordinator (TC), Regional Director (RD), Regional Vice President (RVP) and Senior Vice President (SVP). In order to illustrate the requirement the RD level can be earned when at least two recruited IRs achieve the level of TC or above in two separate legs of the founder's organisation and a third leg has 200 Customer Points. Putting it another way, he must have 600 Customer Points through the two TCs and 200 through other means. To earn that number of points through the organisation would require a large number of recruited IRs as earning that number directly would be extremely difficult; all paying £390.00 to ACN as a start-up fee.

In terms of income the individual earns from directly acquiring customers and by recruiting IRs and is termed 'residual income'.

There seems to be three clearly mentioned means of earning residual income:

1. Customer Acquisition Bonuses (CABs) – IR sponsors a new TT who then becomes qualified in their first 30 days receives a payment – this is termed as compensation. It is of two types either Open Line CABs or Generational CABs; in both situations it is the individual's recruited IRs that are providing the training. If the founder's earned position is higher than their recruited IRs who is providing the training then it is Open Line and the bonuses are higher but descend as the founder's earned position goes higher from TC to RVP to SVP from £40 to £20 to £15 respectively; obviously as the organisation is increasing in size so less bonus is offered as the individual will have more recruited IRs. On the other hand if the founder's recruited IRs have earned equal to the founder's position then this bonus is termed Generational CABs and also descends from TC to RVP to SVP from £15 to £12 to £8. It is clear that the push is towards recruiting IRs.
2. Personal Monthly Commissions – a TT can earn from between 1% and 10% of his personal customers' monthly bills – the variable is based on the number of Customer Points the TT has earned so for example 25 Customer Points would earn the TT 1% of his personal customers' bills. If the TT has 30 Customer Points or more it would facilitate a 3% Commission but half would be distributed amongst the up-line of the TT's organisation. This re-emphasises that significant earnings are clearly made by recruiting IRs.
3. Monthly Residual Earnings Commissions (Over-Riding Commissions) – the founder earns commission on all the customers' monthly bills in his organisation at Personal Monthly Commissions as described in point 2 and the levels and generations below at various percentages (see Table Monthly Commission Structure on page 2 of CAN Compensation Plan Overview).

Page 3 of the said document discusses the Customer Points and Commissionable Revenues; various Products and Services are mentioned with their associated Customer Points and Commissionable Revenue. On the final page the various CABs for five of the six earned positions are highlighted (excluding the Senior Vice President) mentioning the different bonuses each position can earn depending upon the number of TTs qualify. As mentioned earlier the clear impetus is on recruiting IRs.



Financial Transactions Occurring within the ACN's Compensation Scheme

There are a number of transactions which are taking place and need to be analysed from an Islamic jurisprudential perspective.

1. Starter fee of £390.00

There is no information as to what the charge of this starter-fee is levied for on the available documentation. There is a suggestion that some of it is paid as a bonus to the sponsor; even if that is the case it will not be the sum of the amount. Having said that, it is clear that this is distributed up-line amongst the individuals higher up the organisation. It is fixed and an individual cannot join the scheme except if he pays it. Similarly, the annual renewal fee is also charged and a mention is made in the Policies and Procedures that it is for admin support. However, admin charges are levied against bonuses before they are paid; so as before there seems to be no clear use.

If we explore the revenue from this starter fee then for example if one individual recruits ten IRs who in turn recruits ten others, in other words down to Level 2 with ten legs, the income generated in one month will be £39,000. If we accept down to Level 5 with ten legs that would be £39 million.

However, this fee could be explained to be in exchange for the business opportunity or distributorship being offered which can only be fully realised based on the individual's efforts. Through discussions with current IRs of ACN the author has come to learn that an IR receives a personalised website, business support via conference calls, meeting opportunities and seminars. The online business management allows the IR to track their team and its progress. Therefore, it can be argued that the start-up fee is in exchange for the opportunity, business infrastructure, training and support offered by ACN. This understanding has been brought about from discussions with current and former IRs.

2. What type of financial relationship exists between the IR and ACN?

There are two main methods that can be suggested when describing the financial relationship between the IR and ACN; both will be explored in order to foresee any potential argument and determine its merits. Therefore, two possible scenarios that could be postulated are that the IR is acting as an agent for ACN; either through Mudāraba or Wakāla even though the Mudārib technically acts as a Wakīl.

The Mudāraba contract is between two parties; the capitalist (Rabb al-Māl) and the entrepreneur (Mudārib). The capitalist transfers his wealth through wakāla to the entrepreneur who invests it in order to make a profit, the ratio of distribution of the profit between the two parties is decided at the time of agreeing the contract. Both parties suffer and benefit equally, as in the capitalist loses his wealth and the entrepreneur loses his time and efforts and both share the profit when they make one as stipulated by the contractⁱ. However, firstly this can only be conducted using capital in the form of liquid assets, in other words money, not through goods or services. Secondly the profit value must be known in order to be aware a profit has



been made so that it may be split accordingly. Both these are absent in the relationship and contract between the IR and ACN, therefore it cannot be considered to be Mudāraba. As a result we must explore it from the more general Wakāla perspective to determine its possibility and validity. The mudāraba system differs compared to the wakāla with respect to profit distribution; in the former the total profit is shared between the two parties based on what was agreed when the contract was drawn and in the later an agreed profit is paid to the Muwakkil and the remainder the Wakīl takes and as a result acts as an incentive to make the business as lucrative as possible. This can also be agreed as a % rather than a fixed amount. It is clear that ACN is not the owner of all of the goods and services being sold and in conclusion is an agent for these organisations. Hence possession as required by Islamic principles is not relevant here, however the permission to sell the property of others is. The issue of an agent recruiting another agent who in turn recruits another and so on is an accepted approach according to Islamic principles as long as the owner is explicitly or implicitly content with the arrangement as his objective of sale is being metⁱⁱ.

However, the issue still remains, as was observed in the mudāraba process that the profits are not agreed beforehand. As a result ACN know which price they wish to sell the products/services at, the products/services cannot be sold at a cheaper price, there must be a profit for ACN within the final price and once that profit is made the IR can get a small percentage of earnings. In conclusion the arrangement cannot be considered to be Wakāla. The percentage is known however the earnings are not, as the value of customers' monthly bills is unknown at the time of agreement; the issue then remains is that does this unawareness lead to a dispute, a principle to determine the legality of transactions with no precedent,

أهذه الجهالة تفضي الي المنازعة أم لا؟

The legal means by which this arrangement can be resolved is if one utilises Brokerage (Samsara) rather than the above two processes; this is recognised by the scholars of fiqh as a 'middle-man' or a go-between the seller and buyerⁱⁱⁱ. Furthermore, due to the needs of the people, the fuqaha have permitted the agreement of earnings for the simsār on an unknown amount as well as a % of the sales and may be utilised in this scheme as well^{iv}. Hence, the process can be facilitated through this brokerage.

Another issue which requires an understanding is the fact that commission earned by an individual is shared on the up-line and as a result others will receive a % share from the sales and efforts of another individual. This is fixed but not known in terms of its actual value and can be claimed as discussed when highlighting the process. There does not seem to be a precedent of this type of transaction in the books of fiqh to the knowledge of the author; does this uncertainty lead to dispute and as a result be considered impermissible?

Whenever an individual joins ACN they are provided with the Policies and Procedures document as well as the Compensation Plan Overview. In addition Terms and Conditions are provided with the online application form in which it is made clear that clicking on the button constitutes a signature. Taking all this into consideration makes it apparent that the individual is made well aware of the terms and conditions of the contract between ACN and the individual and as a result even if the actual amounts are not known, the % is and, one would not expect that to lead



to dispute, especially since each IR benefits. In addition, the author is not aware of any legal challenge by IRs at present time, current or former, against ACN for lack of information or misinformation before signing up. Furthermore, ACN state that there would be no legal remedy against the organisation once the individual agreed to join on these terms; hence he is waiving his rights to dispute against the agreed terms and conditions.

Having said that there are two clauses which are seriously problematic due to الشرط الفاسد (invalid condition) and, even if agreed between the IR and ACN, are not permissible by Sharī'a.

First Clause

“VIII. Commissions and Bonuses, D. Commissions, 3. Commissionable revenue is billed revenue less taxes, non-revenue surcharges and allowance for bad debt. ACN reserves the right to reduce commissionable revenue by a percentage factor for promotional plans, products, negotiated pricing or certain services⁴.” (emphasis added)

This clause is problematic in two ways; one the IR is being charged twice for the same services and secondly this makes the earnings undertermined and as a result make the whole agreement invalid.

“IX. Compliance and Dispute Resolution, C. Effectiveness and Termination, 2. The rights of an Independent Representative to receive compensation from ACN ceases immediately upon the date of termination, except if ACN elects to terminate the distributorship and the related Independent Representative Agreement due to a breach by the Independent Representative, in which case, that Independent Representative will cease to be entitled to all commissions, bonuses and payments of any kind that it would otherwise have received, including payments that were due but not paid at the date of termination⁵.” (emphasis added)

This clause clearly gives an advantage to ACN as they are now withholding payment which actually has been earned and owed to the IR.

م: (والكتابة والإجارة والرهن بمنزلة البيع) ش: ذكر هذه المسألة تفريعا لمسألة القدوري - رَجَمَهُ اللَّهُ - وذلك نحو ما إذا كاتب عبده على جارية إلا حملها أو أجر داره على جارية إلا حملها أو رهن جارية إلا حملها، ففي الكل يفسد العقد كما يفسد البيع م: (لأنها) ش: أي لأن الكتابة والإجارة والرهن. م: (تبطل بالشروط الفاسدة، غير أن المفسد في الكتابة) ش: استثناء من قوله: تبطل بالشروط الفاسدة، يعني هذه الأشياء الثلاثة تبطل بالشروط الفاسدة إلا أن المفسد أي الشرط المفسد في الكتابة

البنية في شرح الهداية لابي محمد محمود بن احمد العيني، ج ٧ ، ص ٢٤٧ ، دار الفكر، بيروت، ١٩٩٠

فلأن الشرط الفاسد وهو ما يكون فيه منفعة لأحد المتعاقدين أو للمعقود عليه حتى يكون في معنى الربا

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⁴ ACN, no date, Policies and Procedures, UK, Available at http://reps.acneuro.com/ACN-Europe_files/docs/policy_procedures/EN-PP.pdf Accessed on 7th March 2015, p. 23

⁵ ACN, no date, Policies and Procedures, UK, Available at http://reps.acneuro.com/ACN-Europe_files/docs/policy_procedures/EN-PP.pdf Accessed on 7th March 2015, p. 26



م: (لأن الإقالة لا تبطل بالشروط الفاسدة بخلاف البيع) ش: حيث يبطل بالشروط الفاسدة م: (لأن الزيادة يمكن إثباتها في العقد فيتحقق الربا) ش: لأن في الشرط شبهة الربا.

لأن فيه منفعة لأحد المتعاقدين وهو مستحق بعقد المعاوضة خال عن العوض.

البنية في شرح الهداية لابي محمد محمود بن احمد العيني، ج ٨ ، ص ٢٩٥ ، دار الفكر، بيروت، ١٩٩٠

م: (بخلاف البيع) ش: فإنه يبطل بالشروط الفاسدة م: (لأنه - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «نهى عن بيع وشرط» ش: هذا الحديث أخرجه الحارث في مسند أبي حنيفة عن عمرو بن شعيب عن أبيه عن جده «أن النبي - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نهى عن بيع وشرط» وقد طعنوا في هذا الحديث وقد مر الكلام فيه مستوفى في كتاب البيوع م: (ولأن الشرط الفاسد في معنى الربا) ش: لأنه لما قبل المبيع بالثمن خلاف الشرط عن العوض، وفيه منفعة لأحدهما أو للمعتود عليه وهو من أهل الاستحقاق. وليس الربا إلا بما يملك بالعقد من غير عوض، والشرط الذي قلنا له حكم المال لأنه يجوز أخذ العوض عليه م: (وهو يعمل في المعاوضات دون التبرعات)

البنية في شرح الهداية لابي محمد محمود بن احمد العيني، ج ١٠ ، ص ٨-٢٥٧ ، دار الفكر، بيروت، ١٩٩٠

It is abundantly clear from these references that an invalid condition, that which gives benefit to one of the transacting party and has no benefit in exchange is considered as ribā. Not only is this impermissible but this actually brings about an invalidity to the complete transaction.

3. **Does this venture have a high likelihood of the Independent Representative not making significant earnings from customer sales and has to rely significantly, if not absolutely, on recruiting new IRs in order to generate significant income?**

The final area to explore is the validity of the claims and the likelihood that an individual will earn significant money or at least recoup the initial investment of £390.00.

As discussed earlier the IR can earn through three clear routes; CABs, Personal Monthly Commissions and Over-Riding Commissions.

If an IR was to gain their own customers, which would bring about Customer Points, then would earn 1% commission on the customers' monthly bills.

For example, an average £40.00 monthly bill will earn an individual as follows;

40 Customer Points = £40 monthly personal commission

20 Customers (totalling 40 Customer Points) x £40 monthly bill x 5% = £40 monthly personal commission

For example for an average £40.00 monthly bill will earn an individual as follows

60 Customer Points = £40 monthly personal commission

30 Customers (totalling 60 Customer Points) x £40 monthly bill x 10% = £120 monthly personal commission

ACN only permits 'warm marketing' sales techniques which it defines as "marketing in a face to face manner to those persons or businesses with whom an Independent Representative has some kind of pre-existing relationship with at the time of marketing and promotion of ACN's products and services" (ACN, no date pp. 10). ACN states it will "rigorously enforce its 'no cold marketing' policy. Should a



representative violate this policy the Independent Representative may be suspended or terminated at ACN's discretion" (ACN, no date pp. 11). Cold marketing is described as "any uninvited promotional activity that is geared towards random individuals who have no personal, business, social or acquaintance relationship(s) with the Independent Representative or any referrals to that Independent Representative. Examples of cold marketing include, but are not limited to, mass advertising, purchased leads, trade show participation, door-to-door selling, telemarketing, pamphlet distribution, auto dialler, etc. ACN also strictly prohibits the purchase or sale of prospective customers at any time" (ACN, no date pp. 11). One has to understand the rationale of strictly prohibiting cold marketing and only permitting warm marketing. Within any locality there has to be a finite number of individuals who are potential customers of ACN; ACN does no marketing or advertising, hence the brand name will be little known in an area and has to solely rely on the IR making the sale. If we take a city the size of Bradford then a small number of IRs would be able to work and sell products within that sized locality if it was a free market; in other words if cold marketing was permitted. By restricting the individual to warm marketing allows the organisation to recruit an extraordinarily large number of individuals as sales can only be made to one's own family, friends and acquaintances. This clearly will restrict the IR's income tremendously. In essence, the IR is selling to family and friends who feel somewhat obliged to buy, in many situations as a personal favour.

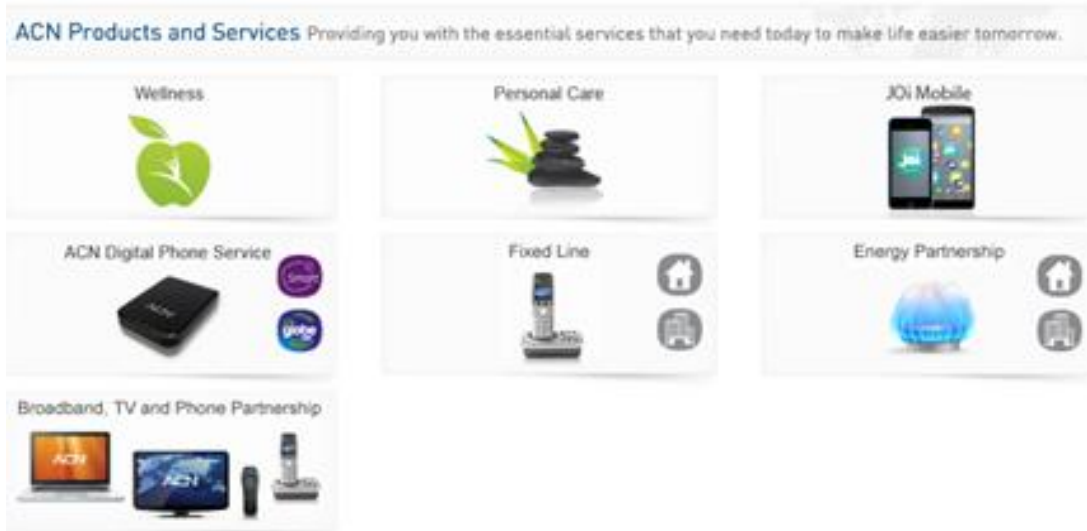
For instance, John's Broadband, TV and Phone sets up in Bradford and the CEO is aware that there are several large organisations with a strong marketing and advertising reach within the city. If he estimates that there are approximately 80,000 homes in Bradford then he will divide the market between himself and his competitors. He feels his organisation can take 20% of the market so as a result feels he can approach 16,000 homes; he will now recruit sales representatives to approach and sell to what he believes to be his share of the market. He may feel 16 sales representatives will suffice and will give them responsibilities of areas, knowing that approximately 20% will sign up to his offer. The manner in which the ACN scheme is set-up is to maximise revenue for the organisation through new recruits rather than product/service sales. This becomes the obvious route to increase earnings rather than through customer sales as they are limited.

A Canadian University study⁶ carried out on a sample of twelve new IRs showed that based on a normal distribution performed on the study data the "potential profitability of ACN is less than 0.5%...that is to suggest that fewer than 1 in 200 people who register with ACN will recover their initial \$500 investment." Two points to take into consideration is the sample size and that the findings cannot be independently verified as no reference was made to the stated university; however the results are not refuted by contrary evidence to the author's knowledge.

⁶ BinDone, 2010, ACN Income Study, Available at <http://web.archive.org/web/20150209025746/http://bindone.org/acn-income-study>, Accessed on 17th March 2015



It is relevant at this juncture to discuss the products and services which are available to the IR for selling. Each IR has a personalised website as follows. Details of this website have been removed in order to maintain anonymity of the IR.



Some of the products/services belong to ACN and are not available on the free market, as a result there is only one price fixed on that product which is available from ACN only as there is no alternative. However some products are available either, directly from the providers or sold by the IR to his customers. A number of those products' prices have been compared to the equivalent product prices from the providers directly. As a case study, a service and a product have been selected for this comparison, Broadband, TV and Phone and Wellness Personal Care Products' Range. The author is led to believe the utility services are offered more competitively, however no data was available.



Broadband, TV and Phone

Available from ACN via the IR

Big Easy	Big Bang	Big Kahuna	Big Daddy
+ £49.95 installation fee	+ Free installation usually £49.95	+ Free installation usually £49.95	+ Free installation usually £49.95
£16.00 per month	£20.00 per month	£39.00 per month	£85.00 per month
Save £6 a month for 12 months + Virgin phone line required for £16.99 per month	Save £12 a month for 12 months + Virgin phone line required for £16.99 per month	Save £10 a month for 12 months + Virgin phone line required for £16.99 per month	Save £14 a month for 12 months! + Virgin phone line required for £16.99 per month
<ul style="list-style-type: none"> ✓ Up to 50Mb broadband ✓ Unlimited downloads ✓ 60+ channels ✓ 10 HD channels ✓ TiVo@ 500GB ✓ Virgin TV Anywhere ✓ Catch Up TV including BBC iPlayer ✓ Unlimited weekend calls 	<ul style="list-style-type: none"> ✓ Up to 100Mb broadband ✓ Unlimited downloads ✓ 130+ channels ✓ 11 HD channels ✓ 10 Sky channels ✓ Virgin TV Anywhere ✓ Catch Up TV including BBC iPlayer ✓ Sky On Demand catch up & box sets ✓ TiVo@ 500GB ✓ Unlimited weekend calls 	<ul style="list-style-type: none"> ✓ Up to 152Mb broadband ✓ Unlimited downloads ✓ 230+ channels ✓ 43 HD channels ✓ 14 Sky channels ✓ TiVo@ 500GB ✓ BT Sport & ESPN HD ✓ Virgin TV Anywhere ✓ Catch Up TV including BBC iPlayer ✓ Sky On Demand catch up & box sets ✓ Unlimited weekend calls 	<ul style="list-style-type: none"> ✓ Up to 152Mb broadband ✓ Unlimited downloads ✓ 260+ channels ✓ Sky Sports & Sky Movies - 15 in HD ✓ 59 HD channels ✓ 44 Sky channels ✓ BT Sport & ESPN HD ✓ Virgin TV Anywhere ✓ Catch Up TV including BBC iPlayer ✓ Sky On Demand catch up & box sets + over 800 Sky Movies On Demand ✓ TiVo@ 1TB ✓ Unlimited anytime calls
View channel listings Dave, E!+, GORILLA	View channel listings CN, sky, Syfy	View channel listings STANISLAW, BT Sport HD, News24, FOX HD	View channel listings BT Sport HD, ESPN HD, SKY SPORTS, LIFE SCIENCES

Available from <https://www.virginmediapartners.com/compare> Accessed on 18th March 2015

Available directly from Virgin Media

	Save £72 in 12 months Plus choose a £75 reward	Save £144 in 12 months Plus choose a £75 reward	Save £192 in 12 months Plus choose £100 reward	Save £168 in 12 months Plus choose £100 reward
	Big Easy	Big Bang	Big Kahuna	Big Daddy
	£16	£20	£33	£85
	a month for 12 months then £22 a month + Virgin Phone line for £16.99 a month Free QuickStart self-install	a month for 12 months then £32 a month + Virgin Phone line for £16.99 a month Free QuickStart self-install	a month for 12 months then £49 a month + Virgin Phone line for £16.99 a month Free QuickStart self-install	a month for 12 months then £99 a month + Virgin Phone line for £16.99 a month Free QuickStart self-install
	Find out more	Find out more	Find out more	Find out more
	Buy now	Buy now	Buy now	Buy now
Fibre optic broadband	Up to 50Mb On average 5x faster than regular broadband* Unlimited downloads Free online security for 12 months	Up to 100Mb On average 5x faster than regular broadband* Unlimited downloads Free online security for 12 months	Up to 152Mb On average 12x faster than regular broadband* Unlimited downloads Free online security for 12 months	Up to 152Mb On average 12x faster than regular broadband* Unlimited downloads Free online security for 12 months
	60+ channels 10 HD channels TiVo 500GB Watch online, on PC, tablet & mobile* Catch up TV including BBC iPlayer	130+ channels 11 HD channels 10 Sky channels TiVo 500GB Watch online, on PC, tablet & mobile*	230+ channels 43 HD channels 14 Sky channels TiVo 500GB BT Sport & ESPN HD	260+ channels 53 HD channels Sky Sports & Sky Movies - 15 in HD 51 Sky channels TiVo 1TB


Available from <http://store.virginmedia.com/big-bundles.html> Accessed on 18th March 2015






There is no price difference in the same products either direct from the provider or via the IR for three of the four bundles; one of the four is more expensive to buy from the IR than it is to buy directly from Virgin Media.

Wellness Almunié Personal Products

Available from ACN via the IR



 <p>EXFOLIATING PUMPKIN FACIAL SCRUB</p> <p>An exfoliating facial scrub which cleanses and purifies the skin using a powerful combination of natural ingredients. A delicious blend of Pumpkin Oil, Aloe Vera and Vitamin E help to protect and hydrate your skin to make it glow.</p> <p>Skin Type</p> <ul style="list-style-type: none">- Normal or sensitive- Dry or oily- Mature <p>Net Content 118 ml</p> <p>€25.00</p> <p><small>Price excludes VAT and shipping. Click HERE for VAT-inclusive prices.</small></p>	 <p>DETOXIFYING CITRUS C FACIAL CLEANSER</p> <p>This facial cleanser cleans, tones and detoxifies your skin. A purifying blend of Camomile, Coconut and Altea Bark combine to create a rich lather that helps to keep moisture in, while Vitamin C and Beta Carotene protect and energise the skin.</p> <p>Skin Type</p> <ul style="list-style-type: none">- Normal or sensitive- Dry or oily- Mature <p>Net Content 118 ml</p> <p>€23.00</p> <p><small>Price excludes VAT and shipping. Click HERE for VAT-inclusive prices.</small></p>	 <p>BRIGHTENING EMBLICA EYE CREAM</p> <p>A brightening eye cream formulated to help to restore firmness and reduce dark circles. Emblica Extract illuminates your eyes and encourages collagen production in your skin to firm and protect the delicate eye area.</p> <p>Skin Type</p> <ul style="list-style-type: none">- Normal or sensitive- Dry or oily- Mature <p>Net Content 13.3 ml</p> <p>€27.00</p> <p><small>Price excludes VAT and shipping. Click HERE for VAT-inclusive prices.</small></p>
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Available from <https://www.benevita.eu/en/naturals-skin-care/> Accessed on 18th March 2015

These are prices before VAT; final prices are available on https://www.benevita.eu/files/benevita_prices_incl_vat.pdf for:

Exfoliating Pumpkin Facial Scrub – £22.80

Detoxifying Citrus C Facial Cleanser – £20.40

Brightening Embelica Eye Cream - £24.00



Available directly from Experience Wellness



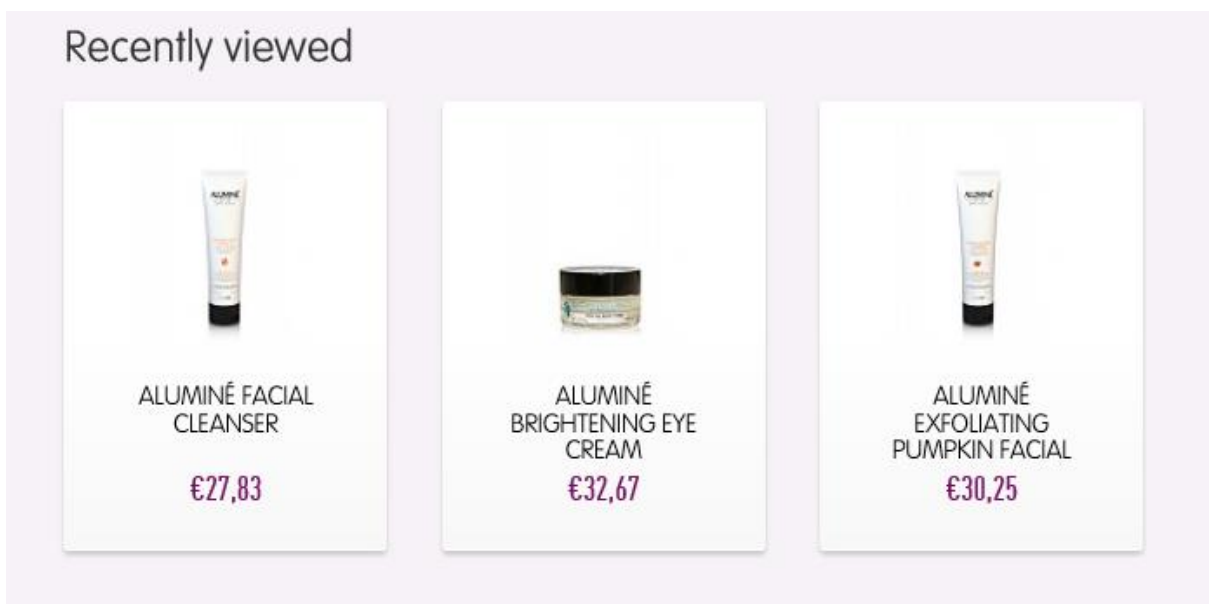
ALUMINÉ
Phyto-Lipoma

Exfoliating pumpkin facial scrub

€30,25 Incl. Tax

Quantity: [Add to cart](#)

Recently viewed



ALUMINÉ FACIAL CLEANSER
€27,83

ALUMINÉ BRIGHTENING EYE CREAM
€32,67

ALUMINÉ EXFOLIATING PUMPKIN FACIAL
€30,25

Available from <http://www.experience-wellness.nl/en/alumine-exfoliating-pumpkin-facial-scrub.html> Accessed on 18th March 2015

Based on the current rate⁷ of Euro to Pounds - 1 Euro = 0.72 British Sterling Pound

Therefore these prices are converted directly as they include Tax as stated on the website:

Exfoliating Pumpkin Facial Scrub – £21.78

Detoxifying Citrus C Facial Cleanser – £20.04

Brightening Embelica Eye Cream - £23.52

⁷ 18th March 2015 at 17:00 GMT



Price Comparison

Product	ACN via IR	Direct from Wellmans
Exfoliating Pumpkin Facial Scrub	£22.80	£21.78
Detoxifying Citrus C Facial Cleanser	£20.40	£20.04
Brightening Embelica Eye Cream	£24.00	£23.52

These three products were selected at random and found to be more expensive based on data provided from the websites when buying from the IR than buying directly from the providers.

As stated earlier, it was brought to the attention of the author during the study that utilities, particularly Gas and Electric maybe cheaper than their competitors; however no data was provided nor found in order to assess this claim.

Conclusions

There are a number of points which are clearly problematic and need to be drawn together before we can explore the ruling of this scheme;

1. There is a serious contractual problem from an Islamic perspective due to at least the two clauses mentioned in this study. They give an advantage to ACN and as a result are considered as invalid conditions and are equated to ribā; not only is that in itself impermissible, the consequence of these clauses is the impermissibility of the transaction between ACN and the Muslim IR in totality.
2. There is no disclosure on an expected income from this opportunity on a stipulated amount of hours per week – this is probably intentional because if the earnings were high then it would be employed to promote to more individuals. This would lead one to the obvious conclusion that earnings are not high and most likely significantly lower than the original payment as supported by the Canadian study.
3. The IR is limited to selling non-competitively priced products/services – from the sample of services and products investigated it was found that the IR in no cases had a cheaper product/service than what was available to the public from the Internet. With the advertising and marketing power available to competitor organisations in comparison to no advertising or marketing of products ACN does, there is little to no chance that the IR will actually sell any products/services based on competitive pricing. In fact of the seven products/services in the case study, four were actually found to be cheaper if the company was approached directly rather than through the IR.
4. The IR is limited to a warm market of only family, friends and acquaintances - as a result this limits one's potential and real customer market; this coupled with non-competitiveness of products/services he is offering, compounds the situation. Furthermore, his potential customers are his family and friends hence the element of trust already exists through a historical relationship. He has to use this relationship in order to sell these products; hence taking advantage of individuals



who are buying under some level of emotional duress and pressure so as not to offend or upset someone.

This summary then leads to the major issue and two supporting concerns:

Firstly, the two clauses are invalid conditions from an Islamic perspective and as a result invalidates the transaction as a whole. This in itself would make the transaction impermissible, however for the sake of completion the two supporting concerns are mentioned.

Secondly, it is absolutely necessary for the validity of any transaction that all matters are clearly detailed so each individual involved is fully aware of what is required and obtained. Nothing should be left unclear and any possibility of confusion should be eradicated and explained before the two parties commit to the transaction. One can clearly see that if the above analysis was disclosed to an individual he would most likely not enter into the transaction. The fact that information which would allow a new recruit to make an informed decision is absent and is deceptive in nature, whether intentional or not is not the remit of this discussion. Deception of any type is absolutely forbidden in Islam. Reference is being made here to a Muslim IR recruiting further IRs not ACN recruiting IRs, as ACN provide all the necessary information even if it is in a very complicated and convoluted way.

Imām Ibn Ābidīn⁸ whilst discussing خيار العيب mentions the obvious illegality of deception,

(قوله؛ لأن الغش حرام) ذكر في البحر أو الباب بعد ذلك عن البرازية عن الفتاوى: إذا باع سلعة معيبة، عليه البيان وإن لم يبين قال بعض مشايخنا يفسق وترد شهادته، قال الصدر لا تأخذ به. اهـ. قال في النهج: أي لا تأخذ بكونه يفسق بمجرد هذا؛ لأنه صغيرة. اهـ.

قلت: وفيه نظر؛ لأن الغش من أكل أموال الناس بالباطل فكيف يكون صغيرة، بل الظاهر في تعليل كلام الصدر أن فعل ذلك مرة بلا إعلان لا يصير به مردود الشهادة، وإن كان كبيرة كما في شرب المسكر

In fact the Imām mentions, in refuting the position the author of al-Nahr adopts, that, 'Indeed deception is defined by the consumption of people's wealth through false means so how can that he considered to be a small matter.'

⁸ Ibn Abidin, M. A., (1983), Radd al-Muhtar 'ala'l Durr al-Mukhtar, Maktaba Rashidiya, Quetta, Vol. 4, p. 110



The hadith in ṣaḥīḥ Muslim⁹ exemplifies this situation well,

عن أبي هريرة : (أن رسول الله صلى الله عليه وسلم مر على صبرة طعام فأدخل يده فيها فنالت أصابعه بللا فقال ما هذا يا صاحب الطعام قال أصابته السماء يا رسول الله قال أفلا جعلته فوق الطعام كي يراه الناس من غش فليس مني).

رواه مسلم

The hadith is very interesting as the food seller did not intentionally place the dry food on top of the wet food but it had rained earlier and was now drying. However the impression it gave to the buyer was that all the food would be dry hence he would be deceived by the weight of the product he was buying. Clearly 1kg of food from the top of the pile would be of more value than lower down as that would be diluted with water. The Prophet's, may Allah's salutations and peace be upon him, instructions were to make the food at the bottom of the pile apparent so potential buyers knew what they were getting. Hence, the sale itself could go ahead once all the facts were known with certainty by the potential buyer. This is again in reference to the Muslim IR recruiting further IRs not the ACN recruiting IRs, as ACN provide all the necessary information even if it is in a very complicated and convoluted way.

Therefore, it is absolutely essential that the full details of the arrangement is disclosed and its ramifications and most probable scenarios, without this required detailed explanation then one cannot say this is free from deceptive behaviour.

Thirdly, it is absolutely necessary for a Muslim to safeguard himself, his property and wealth from damage or loss. This can be found in the following legal maxim -الضرر يزال - 'Harm should be removed'. This is discussed by Imām Ibn Nujaym in al-Ashbā wa'l-Nazā'ir¹⁰ and is based on the hadith - لا ضرر ولا ضرار - 'Harm should not be done nor reciprocated', transmitted by Imām Malik in al-Muwatta from 'Amr ibn Yahya from his father as a mursal hadith¹¹. It is clear from the above findings that the likelihood for an individual to recoup his original investment is highly unlikely based on the unfavourable customer base and product/service pricing. The only study available on earnings of IRs shows only a 0.5% success rate of recouping the original investment. If this data is assumed to be correct, as there is no way of independently verifying it, then this shows a clear, obvious and almost guaranteed loss. Also, the IR's role is to recruit others to the scheme in order to have any chance of significant earnings; as a result he reciprocates this harm to others.

⁹ Al-Hajjaj, I M, (1956), al-Sahih al-Muslim, Qadimi Kutub Khana, Vol. 1, p. 70

¹⁰ Nujaym, I. Z., (1985), Ghamz 'uyun al-Basā'ir sharh Kitāb al-Ashbā wa'l-Nazā'ir, Dār al-Kutub al-Ilmiyya, Beirut, Vol. 1, pp. 273-4

¹¹ Also transmitted, by al-Hākim in his Mustadrak; Imāms al-Bayhaqi and al-Daraqūṭni from the Hadith of Abu Sa'id al-Khudri; and Ibn Maja from the Hadith of Ibn Abbas and Ubada ibn Samit, may Allah be pleased with them all.



In conclusion, a scheme as described above, in its present form cannot be deemed permissible according to Islamic principles based on the main issue of the said clauses invalidating the transaction and as a result is harām. Furthermore, the two supporting concerns; firstly, the lack of clarity in explaining fully the marketing strategy and product pricing by the Muslim IR to potential IRs, which leads to the individual not being able to make an informed decision which is described according to Islamic principles as a form of deception. Secondly, due to the high improbability, based on the only study available to the author, of regaining the original investment of £390.00, the Muslim IR has harmed himself by the loss of his wealth and in order to have any chance of regaining it has to try to get other individuals in as trainees, so as a consequence he reciprocates this harm onto others. As it is multi-level and arguably can continue indefinitely then the harm is reciprocated indefinitely. This is a clear violation of what is permitted in Islam.

If the Muslim IR clarifies and explains in detail the process then that could deal with the first concern; however the marketing model and product portfolio would still not facilitate significant earnings, hence the second concern would remain unresolved. However, this is academic with respect to the major issue which invalidates the agreement at the contractual stage and renders it impermissible.

Exploring it from an ethical and moral basis it is not the type of transaction which is promoted by the Shari'a. Wealth should be earned due to one's efforts in a fair and open way without relying on the efforts of others indirectly unless otherwise stipulated. This is clearly evident from the bonuses paid based on one's down-line customers' bills.

Based on the data and information available and detailed in this paper, joining a scheme of this nature is impermissible due to the Islamic illegality of the clauses first and foremost with additional issues from the harm of loss of wealth, and further by reciprocating this harm onto others without divulging the obvious consequences to potential IRs.

Amjad Mohammed

22nd March 2015/1st Jumada al-Thani 1436

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^١ م: (قال) ش: أي القُدوري م: (المضاربة، عقد يقع على الشركة بمال من أحد الجانبين) ش: هذا تفسير للمضاربة على الاصطلاح، ولكن لما كان فيه نوع حقدار لأنه قال عقد على الشركة ولم يبين أن الشركة فيما إذا فسر المصنف بقوله م: (ومراده) ش: أي مراد القُدوري - رَحْمَةُ اللَّهِ - من قوله عقد على م: (الشركة في الربح) ش: لا في رأس مال مع الربح، لأن رأس المال لرب المال.

م: (وهو) ش: أي الربح م: (يستحق بالمال من أحد الجانبين، والعمل من الجانب الآخر) ش: وهو المضارب وقوله: يستحق على صيغة المجهول م: (ولا مضاربة بدونها) ش: أي بدون الشركة وأشار به إلى أن العقد ينتهي بانتفائها.

م: (ألا ترى) ش: إيضاح لقوله: عقد على الشركة وقوله: لا مضاربة بدونها م: (أن الربح لو شرط كله لرب المال كان بضاعة، ولو شرط جميعه للمضارب كان قرصًا) ش: وقال مالك: يكون مضاربة صحيحة في الوهمين. وقال الشافعي وأحمد - رحمهما الله -: إذا قال: خذه مضاربة والربح لي أو لك يفسد عقد المضاربة ولا ينصرف إلى شيء.

م: (قال: ولا تصح إلا بالمال الذي تصح به الشركة) ش: أي قال القُدوري: وهو أن يكون رأس المال دراهم أو دنانير عندهما أو فلوسًا رائجة عند محمد وبما سواها لا يجوز، وبه قالت الأئمة الثلاثة، ونص في "الذخيرة" أنه إجماع. وقال السغناقي: العروض لا تصلح لرأس المال عندنا خلافاً للإمام مالك.

وكذا الكيلي والوزني خلافا لابن أبي ليلى، وقد نظر فيه الكاكي بقوله: وما كتب في بعض كتب أصحابنا أن عند الإمام مالك تصح المضاربة بالعروض لم نجد في كتبهم، بل ذكر فيها لا يصح بالعروض.

قلت: قد ذكر في "جواهر المالكية" ما هو أبلغ منها وهو أنه لا يجوز بالنقرة التي ليست مضروبة إذا كان التعامل بالمسكوك ولا يجوز بالفلوس عند ابن القاسم، وأجازه أشهب، ولا بالدرهم المشوشة م: (وقد تقدم بيانه من قبل) ش: أراد به باب الشركة.

م: (ولو دفع إليه عرضا وقال بعه واعمل مضاربة في ثمنه جاز) ش: وجه ذكره تفريعا على مسألة القُدوري ويعني بهذا، وجه الحيلة في جواز المضاربة بالعرض وأخرى ذكرها الحطاف في الحيل، وقال:

قلت: رأيت رجلاً أراد أن يدفع إلى رجل مضاربة وليس عنده إلا متاع كيف يصنع، قال: يبيع المتاع من رجل يثق به ويقبض المال فيه ويدفعه إلى المضارب مضاربة ثم يشتري المضارب هذا المتاع من الرجل الذي ابتاعه من صاحبه، وفي مسألة الكتاب خلافاً للثلاثة فعندهم لا يجوز لجهالته.

م: (لأنه) ش: عند المضاربة م: (يقبل الإضافة من حيث إنه توكيل وإجارة فلا مانع من الصحة) ش: يعني أنه مشتمل على التوكيل، والإجارة بالرأء المهمة أو بالزاي، وكل منهما يقبل الإضافة إلى زمان المستقبل فيجب أن يكون عقد المضاربة كذلك لئلا يخالف الكل الجزء، وصورة إضافة التوكيل إلى المستعمل بأن يقول وكنك بأن تتبع عبدي هنا غداً فإنه يصير وكيلاً غداً وبعده، ولا يصير وكيلاً قبل الغد، وصورة إضافة الإجارة أن يقول آجرتك داري غداً فإن الإجارة تتعقد عند مجيء الغد لا قبله.

البنابة في شرح الهداية لابي محمد محمود بن احمد العيني، ج ٩ ، ص ٥٧-٨ ، دار الفكر، بيروت، ١٩٩٠

^{١١} (قوله الوكيل لا يوكل) المراد أنه لا يوكل فيما وُكِّلَ فيه فيخرج التوكيل بحقوق العقد فيما ترجع الحقوق فيه إلى الوكيل فله التوكيل بلا إذن لكونه أصيلاً فيما ولداً لا يملك هبته عنها وصح توكيل الموكِّل كما قدَّمناه بحج.

وفيه: وخرج عنه ما لو وُكِّلَ الوكيل بقبض الدين من في عياله فدفع المديون إليه فإنه يبرأ؛ لأنَّ يده كیده ذكره الشارح في السَّرْفَةِ اهـ وذكر الثاني المُصْتَفِ (قوله بخلاف شراء الأُصْحِيَّة) فلو وُكِّلَ غيره بشرايتها فوكل الوكيل غيره ثم وثم فاشترى الأخير يكون مؤقوفاً على إجارة الأول، إن أجاز جاز وألا فلا بحج عن الخائنة (قوله تقدير الثمن) أي لو عيّن ثمنه لوكيله س (قوله من الموكِّل الأول) مخالفاً لما في البحر وللتعليل كما يظهر ممَّا كتبتنا على البحر، والموافق لما في البحر أن يقول من الوكيل الأول له: أي للوكيل الثاني.



وأفاد أفضارُهُ على هذه المسائل أَنَّ الوكيلَ في النكاح ليس له التوكيلُ، وبه صرَّح في الخلاصة والبرازية والبحر من كتاب النكاح، وقدَّمناه في باب الوليِّ فرَاجعُه خلافًا لما قاله ط هناك بحثًا من أَنَّ له التوكيلَ قياسًا على هذه المسألة الثالثة فافهم (قوله لحصول المصود)؛ لأنَّ الاحتياج فيه إلى الرَّأي لتقدير الثمن ظاهرٌ وقدَّ حصل.

بخلاف ما إذا وكلَّ وكيلين وقدَّ الثمن؛ لأنه لما فوّض إليهما مع تقدير الثمن ظهر أنَّ عرَّضه اجتماع رأيهما في الزيادة واختيار المشتري كما مرَّ دُرر.

(قوله خلافًا للخاتبة) راجع إلى الخصومة كما قيده في المنح والبحر (قوله ينفذ عليه) أي على الأجنبي بحر عن السراج.

(قوله وإن وكلَّ) أي الوكيل (قوله أي بالأمر) أي: وكالة مُتَّبِسة بالأمر بالتوكيل أي الإذن به (قوله وينزلان) أي الوكيل الأول والثاني (قوله بموت الأول) أي الموكَّل وكان الأولي التعبير به ح (قوله وفي البحر) الذي في البحر نسبة أنَّ الثاني صار وكيل الموكَّل فلا يملك عزله فيما إذا قال: اعْمَلْ بِرَأْيِكَ إلى الهداية، ونسبته أنَّ له عزله في قوله اصنع ما شئت إلى الخلاصة.

ثم قال: وهو مخالف للهداية إلا أن يُقرَّق بين اصنع ما شئت وبين اعْمَلْ بِرَأْيِكَ، والفرق ظاهرٌ.

وعَلَّ في الخاتبة بأنَّه لما فوّضه إلى صنعه فقد رضي بصنعه، وعزله من صنعه اه فليس في كلام الخلاصة والخاتبة التصريح بمخالفة أحدهما لآخر فيحتمل أنَّ في المسألة قولين، ودغوى صاحب البحر ظهور الفرق غير ظاهرة لما في الحواشي البغوية والحواشي السعدية أنه ينبغي أن يملكه في صورة اعْمَلْ بِرَأْيِكَ لتناول العمل بالرأي العزل كما لا يخفى اه (قوله بخلاف اعْمَلْ بِرَأْيِكَ) بحث فيه في الحواشي البغوية والسعدية (قوله واعلم) تكرر مع ما تقدَّم أوَّل الكتاب مستوفى ح (قوله زواهر الجواهر وتووير البصائر) هما حاشيتان على الأشباه الأولى للشيخ صالح والثانية لأخيه الشيخ عبد القادر وأبي الشيخ محمد بن عبد الله العزبي صاحب المنح.

(قوله لعدم الولاية) وكذا لا ولاية لمسلم على كافر في نكاح ولا مال كما في البحر في كتاب النكاح من باب الولي، وتقدَّم هناك أيضًا منَّا وشرحا فليحفظ، قال تعالى (والذين كفروا بغضهم أولياء بعض) [الأنفال: ٧٣].

(قوله إلى الأب) حيث لم يكن سفيها، أما الأب السفيه لا ولاية له في مال ولديه أشباه في القوائد من الجمع والفرق، وفي جامع الفصولين: ليس للأب تحريم قته بمالٍ وغيره ولا أن يهب ماله ولو بعوض ولا إفراضة في الأصح، وللقاضي أن يرض مال اليتيم والوقف والغائب، وليس لوصي القاضي إفراضة، ولو أقرضه ضمن، وقيل يصح للأب إفراضة إذ له الإيداع فهذا أولى اه عدة كذا في الهامش (قوله يملك الإيضاء) سواء كان وصي الميت أو وصي القاضي منخ (قوله ثم وصي وصيته) قال في جامع الفصولين في ٢٧ ولهم الولاية في الإجازة في النفس والمال والمنقول والعقار، فلو كان عقدهم بعث القيمة أو يسير العبن صح لا بإفاحشه، ولا يتوقف على إجازته بعد بلوغه؛ لأنه عقد لا مجيز له حال العقد وكذا شراؤهم لليتيم يصح ببسير العبن ولو فاحشا تقد عليهم لا عليه، ولو بلغ في مدة الإجازة، فلو كانت على النفس تحير أبطل أو أمضى، ولو على أملاكه فلا خيار له، وليس له فسح البيع الذي تقد في صغره فسط، قيل إنَّما يجوز إجازتهم اليتيم إذا كانت بأجر المثل لا بأقل منه، الصحيح جوازهُ ولو بأقل اه كذا في الهامش، وقوله فسط هو رمز لقوائد صاحب المحيط (قوله لا العقار) فيه كلام ذكره أبو السعود في حاشيته مسكين فرَاجعُه

(قوله فله أن يشتري الخ) أي والتفُّع ظاهرٌ أشباه والفرق أنه إذا اشتري لغيره فحقوق العقد من جانب اليتيم راجعة إليه ومن جانب الأمر كذلك فيؤدِّي إلى المضارة بخلاف نفسه حموي س (قوله بالتوكيل) بيانه في الأشباه من الوكالة.

رد المحتار علي الدر المختار حاشية ابن عابدين، ج ٤، ص ٤٥٦-٨، مكتبة رشيدية، كوت، ١٩٨٣

م: (قال) ش: أي القدوري: م: (وليس للوكيل أن يوكل فيما وكل به لأنه فوض إليه التصرف دون التوكيل به، وهذا) ش: أي عدم جواز توكيل الوكيل م: (لأنه رضي برأيه والناس متفاوتون في الآراء) ش: فلا يكون راضيا بغيره م: (قال) ش: أي القدوري - رحمه الله -: م: (إلا أن يأذن له الموكل لوجود الرضا) ش: المسألة على ثلاثة أوجه.

أحدهما: أن يوكله ولم يأذن له، ولم ينه عن التوكيل، فليس له أن يوكل غيره عندنا وعند أحمد - رحمه الله - وقال مالك والشافعي - رحمهما الله -: إن كان الوكيل من يلي ذلك بنفسه عادة فليس له أن يوكل غيره، وإن كان يعجز عنه، أو ممن لم يباشر ذلك الفعل بنفسه لوجهته له أن يوكل، وبه قال أحمد في رواية.



الوجه الثاني: أن يأذن له في التوكيل يوكل غيره بلا خلاف، الوجه الثالث: أن ينهه عن توكيل غيره لا يوكل بلا خلاف م: (أو يقول له) ش: أي للوكيل م: (اعمل برأيك) ش: فله التوكيل عندنا وعند أحمد - رحمه الله - . وقال أصحاب الشافعي: ليس له التوكيل في أحد الوجهين م: (لإطلاق التفويض إلى رأيه) ش: وذلك يدل على تساويه مع غيره.

م: (وإذا جاز في هذا الوجه) ش: يعني في قوله " اعمل برأيك " م: (يكون الثاني) ش: يعين وكيل الوكيل م: (وكيلا عن الموكل حتى لا يملك الأول) ش: أي الوكيل الأول م: (عزله) ش: أي عزل الوكيل الذي وكله م: (ولا يعزل بموته) ش: أي ولا يعزل الوكيل الثاني بموت الوكيل الأول وبه قال الشافعي - رحمه الله - في قول، وأحمد - رحمه الله - ، وقال في الأصح: يعزل بعزله وموته وله بموت الأول قولان.

م: (وينعزلان) ش: أي الوكيل الأول والوكيل الثاني م: (بموت الأول) ش: أي الموكل الأول م: (وقد مر نظيره في " أدب القاضي ") ش: وهو ما ذكره في أول فصل قبل باب التحكم بقوله " وليس للقاضي أن يستخلف على القضاء، إلا أن يفوض إليه ذلك " إلى أن قال: - جاز كما في " الوكالة " . م: (قال) ش: أي القدوري - رحمه الله - : م: (فإن وكل) ش: أي الوكيل م: (بغير إذن موكله فعقد وكيله بحضرة جاز) ش: أي بحضرة الوكيل الأول جاز التوكيل م: (لأن المقصود حضور رأي الأول وقد حضر) ش: فيجوز استحسانا، وقال زفر - رحمه الله - : لا يجوز، وبه قال الشافعي وأحمد - رحمهما الله - كما في غيبته.

وقال ابن أبي ليلى: يجوز مع الوكيل الثاني بحضور الأول بغير حضرته.

م: (وتكلموا) ش: أي تكلم المشايخ م: (في حقوقه) ش: أي في حقوق عقد الثاني بحضرة الأول يعني إذا عقد الوكيل الثاني بحضرة الوكيل الأول جاز، لكن في حقوق العقد كلام، قال بعضهم يرجع إلى الأول، لأن الموكل رضي بلزوم العهدة على الأول دون الثاني، كذا في " الفتاوى الصغرى " ، عن " فتاوى البقالي " ، وقال بعضهم: يرجع إلى الثاني لأن العقد وهو السبب وجد من الثاني، وإليه ذهب أبو الليث - رحمه الله - في " جبل العيون " .

م: (وإن عقد في حال غيبته) ش: أي في حال غيبة الوكيل الأول م: (لم يجوز لأنه فات رأيه إلا أن يبلغه فيجيزه) ش: جاز م: (وكذا لو باع غير الوكيل) يعني إذا باع الأجنبي م: (فبلغه) ش: أي فبلغ الوكيل م: (فأجازه) ش: بعد بلوغ الخبر جاز؛ م: (لأنه حضر رأيه) ش: بإجازه.

م: (ولو قدر الأول) ش: أي الوكيل الأول م: (الغن الثاني) ش: أي للوكيل الثاني الذي وكله بغير موكله بأن قال له: بعه بكذا، فباعه الثاني بالغن الأول الذي قدره الوكيل الأول، وهو معنى قوله م: (فقد غيبته) ش: أي بغيبته الأول م: (يجوز) ش: في رواية كتاب الرهن، اختارها المصنف - رحمه الله - .

وفي رواية كتاب الوكالة: لا يجوز لأن تقدير الثمن يمنع النقصان ولا يمنع الزيادة، فرما يزيد الأول على هذا الثمن لو كان هو المباشر للبيع لذكائه وهدايته، وجه رواية كتاب الرهن: أن المقصود حصل بحضور رأيه م: (لأن الرأي فيه يحتاج إليه) ش: أي في العقد م: (لتقدير الثمن ظاهرا وقد حصل) ش: أي تقدير الثمن، وإنما قال: ظاهرا احترازا عن المسألة التي يذكرها الآن عقيب المسألة التي ذكرها وهو قوله م: (وهذا بخلاف ما إذا وكل وكيلين وقدر الثمن) ش: فإنه لا يجوز بيع أحدهما بذلك المقدار.

م: (لأنه لما فوض إليهما مع تقدير الثمن ظهر أنه غرضه اجتماع رأيهما في الزيادة واختيار المشتري) ش: أي الذي لا يماطل في تسليم الثمن م: (على ما بيناه) ش: إشارة إلى قوله في المسألة المتقدمة والبدل، وإن كان مقدرا، ولكن التقدير لا يمنع استعمال الرأي في الزيادة، م: (أما إذا لم يقدر الثمن وفوض إلى الأول) ش: أي فوض الموكل الأول إلى الوكيل الأول م: (كان غرضه) ش: أي غرض الموكل الأول م: (رأيه) ش: أي رأي الوكيل الأول م: (في معظم الأمر، وهو التقدير في الثمن) ش: وهذا لأن المقصود من البياعات الاسترباح، وذلك إنما يكون بالبيع بتقدير ثمن كان يحصله في تحصيل زيادة الربح وقد حصل ذلك بتقدير الوكيل الأول ثمن المبيع ورأيه إنما يطلب لهذا.

البنية في شرح الهداية لابي محمد محمود بن احمد العيني، ج ٩ ، ص ٣٤٨-٥١ ، دار الفكر، بيروت، ١٩٩٠

iii قوله: هو الدال على مكان السلعة (صاحبها) لا فرق لغة بين السمسار والدال، وقد فسرها في القاموس بالمتوسط بين البائع والمشتري، وفرق بينها الفقهاء، فالسمسار هو ما ذكره المؤلف، والدال هو المصاحب للسلعة غالبا أفاده سري الدين عن بعض المتأخرين ط وكأنه أراد ببعض المتأخرين صاحب النهر، فإنه قال وفي عرفنا الفرق بينها هو أن السمسار إلخ.



(قوله: ورجح في البحر الإطلاق) حيث قال: وأما أجره السمسار والدلال فقال الشارح الزيلعي: إن كانت مشروطة في العقد تضم، وإلا فأكثرهم على عدم الضم في الأول، ولا تضم أجره الدلال بالإجماع اهـ. وهو تسامح فإن أجره الأول تضم في ظاهر الرواية والتفصيل المذكور قويلة، وفي الدلال قيل لا تضم والمرجع العرف كذا في فتح القدير اهـ. (قوله: وضابطه إلخ) فإن الصبغ وأخواته يزيد في عين المبيع، والحمل والسوق يزيد في قيمته؛ لأنها تختلف باختلاف المكان فتلحق أجرتها برأس المال درر، لكن أورد أن السمسار لا يزيد في عين المبيع ولا في قيمته، وأجيب بأن له دخلا في الأخذ بالأقل، فيكون في معنى الزيادة في القيمة: وقال في الفتح بعد ذكره الضابط المذكور قال في الإيضاح: هذا المعنى ظاهر ولكن لا يتمشى في بعض المواضع والمعنى المعتمد عليه عادة التجار حتى يعم المواضع كلها.

رد المحتار علي الدر المختار حاشية ابن عابدين، ج ٤، ص ١٧٣، مكتبة رشيدية، كؤننه، ١٩٨٣

^{iv} من البيع إذ هي بيع المنافع. (قوله أو مدة) إلا فيما استثني: قال في البرازية: إجارة السمسار والمناادي والحماهي والصكك وما لا يقدر فيه الوقت ولا العمل تجوز لما كان للناس به حاجة وبطيب الأجر المأخوذ لو قدر أجر المثل وذكر أصلا يستخرج منه كثير من المسائل فراجع في نوع المتفرقات والأجرة على المعاصي.

رد المحتار علي الدر المختار حاشية ابن عابدين، ج ٥، ص ٣٢، مكتبة رشيدية، كؤننه، ١٩٨٣

^v قال في التتارخانية: وفي الدلال والسمسار يجب أجر المثل، وما تواضعوا عليه أن في كل عشرة دنانير كذا فذاك حرام عليهم. وفي الحاوي: سئل محمد بن سلمة عن أجره السمسار، فقال: أرجو أنه لا بأس به وإن كان في الأصل فاسدا لكثرة التعامل وكثير من هذا غير جائز، فحوزوه لحاجة الناس إليه كدخول الحمام وعنه قال: رأيت ابن شجاع يقاطع ناسجا ينسج له ثيابا في كل سنة.

رد المحتار علي الدر المختار حاشية ابن عابدين، ج ٥، ص ٤٤، مكتبة رشيدية، كؤننه، ١٩٨٣