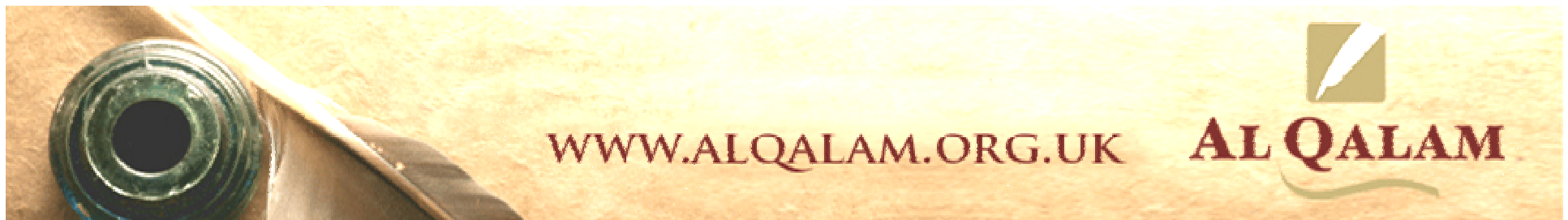


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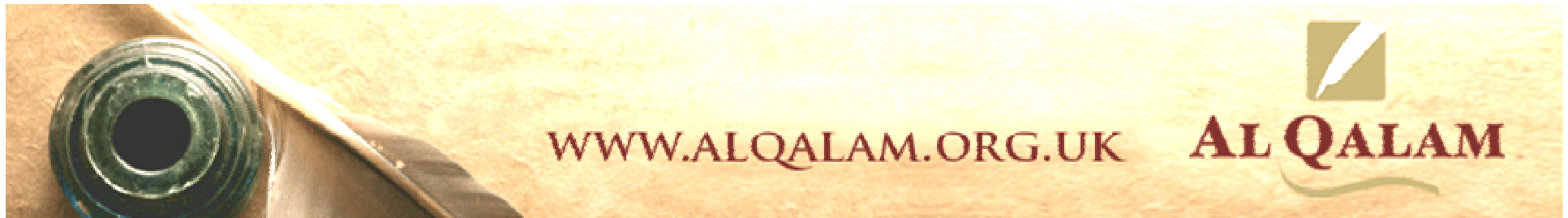


# Modern Practices from a Sharī'āh Perspective



# Overview

- Artificial Legal Personality – الشخصية القانونية الاعتبارية
- Limited Liability – المسؤولية المحدودة
- Exchange Dealing
- Stock Borrowing
- Short selling
- Inflation-linked returns and student loans



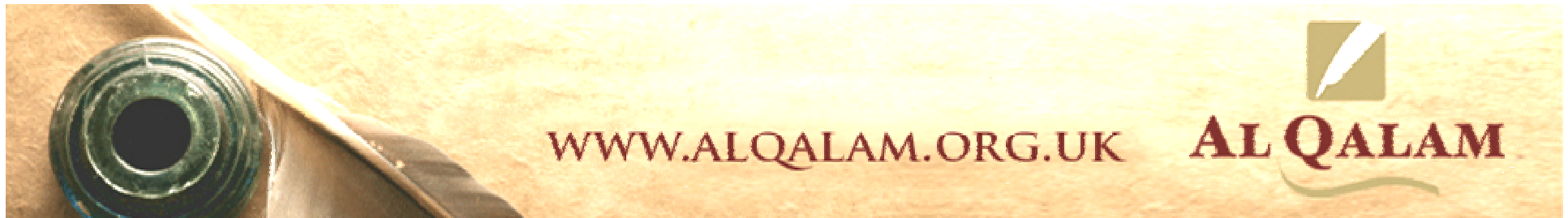
# What is artificial legal personality

Natural legal person – الشخص القانونى الطبيعى

Artificial legal person - الشخص القانونى المعنوى/الاعتبارى/الحكمى

Artificial legal personality - characteristic of a non-human entity regarded by law to have the status of a person.

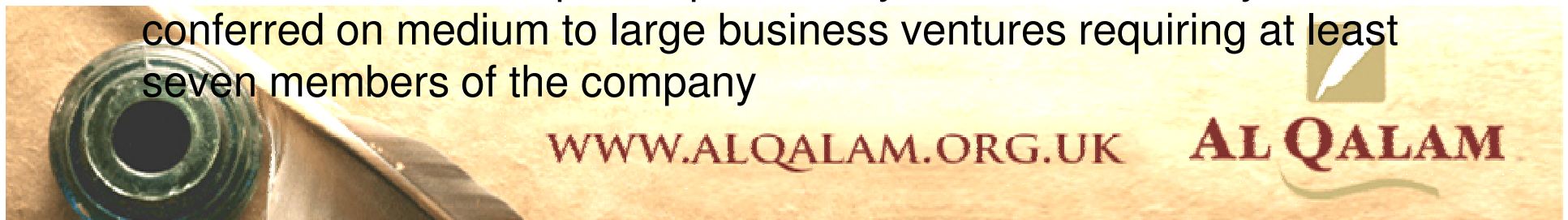
1. Right to common treasury or chest (including the right to own property)
2. Right to a corporate seal (i.e., the right to make and sign contracts)
3. Right to sue and be sued (to enforce contracts)
4. Right to hire agents (employees)
5. Right to make by-laws (self governance)



# Artificial legal personality

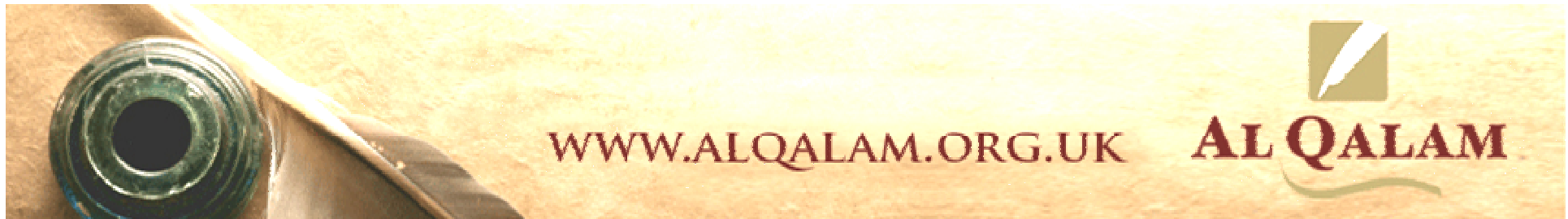
## History

- Concept arose from the activities of organisations such as religious orders and local authorities which were granted rights by the government to hold property, sue and be sued in their own right.
- Over time concept was applied to commercial ventures with a public interest element such as rail building ventures and colonial trading businesses
- Modern company law only began in the mid nineteenth century when a series of Companies Acts were passed allowing ordinary individuals to form registered companies
- Initial intention - corporate personality and limited liability be conferred on medium to large business ventures requiring at least seven members of the company



# Artificial legal personality

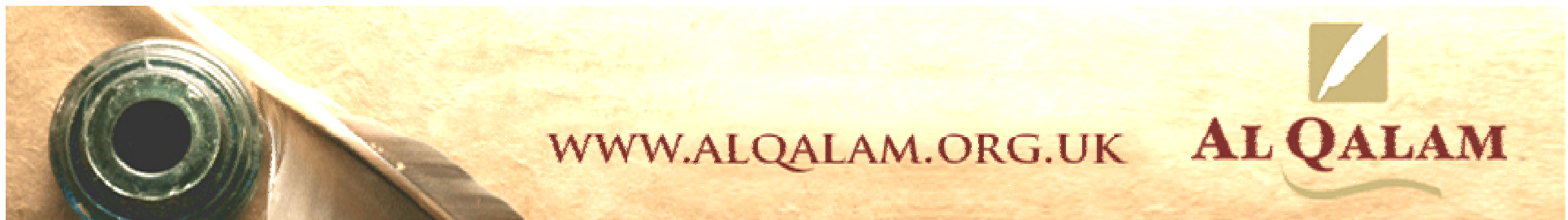
- Limited liability - necessary consequence of incorporation?
- Not necessarily!
- Limited liability entity
  - The entity cannot forfeit its contractual obligations as all contracts are binding
  - In the event of insolvency, assets will be liquidated to meet creditor's demands and if insufficient the company will call upon the unpaid share capital of its members
  - Limited by shares
  - Limited by guarantee
- Unlimited liability entity
  - In the event of insolvency, every member of an unlimited company is jointly and severally liable for all the obligations of the company.
  - Considered appropriate where purpose is merely to hold land or other investments and not to trade or where incorporation is necessary or desirable and:
    - It is proposed that the company will operate in a field where limited liability is frowned upon;
    - it is important to maintain secrecy in relation to the company's financial affairs;
    - the risk of insolvency is minimal; etc



# Artificial legal personality

## Piercing the corporate veil

- a legal decision to treat the rights or duties of a corporation as the rights or liabilities of its shareholders or directors in exceptional circumstances
- Normally arises - corporation is believed to have inadequate assets to cover its liabilities, and the plaintiff alleges that the corporation is actually a sham – i.e., not really a distinct individual, but merely an extension or "alter ego" of its shareholders, being used to advance their private interests or to perpetrate a fraud.
- Factors that are considered include:
  - **Corporate formalities** - proper procedure in formation, appointment of directors, issuance of stock, holding of annual meetings, filing of annual reports with the state, maintenance of its own property and financial books and accounts? Were corporate finances commingled with those of its shareholders? etc
  - **Individual control** - What amount of financial interest, ownership and control did the principals maintain over the corporation?
  - **Personal Use** - Did the principals use the corporation to advance personal purposes?
  - **Fraud** - corporation found to be a "sham" meant to facilitate fraud against third parties.

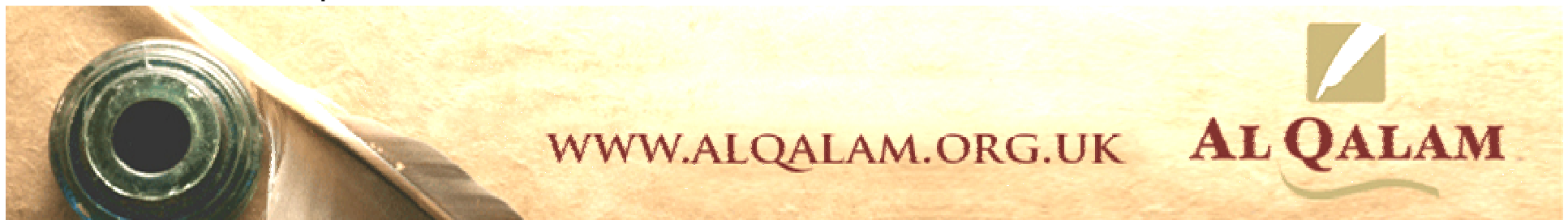


# Artificial legal personality

## Piercing the corporate veil

E.g., if a businessman has left his job as a director having signed a contract to not compete with the company he has just left for a period of time and then sets up a company which competed with his former company, technically it would be the company and not the person competing. But it is likely a court would say that the new company was just a "sham", a "fraud" or some other phrase, and would still allow the old company to sue the man for breach of contract.

E.g., If the corporation was set up to shield its owners from liability over a fraudulent real estate deal, and the owners siphon out the corporate assets such that the corporation is unable to compensate the victims of the fraud, a court is likely to set aside the corporation and allow the victims to recover from the personal assets of the owners.

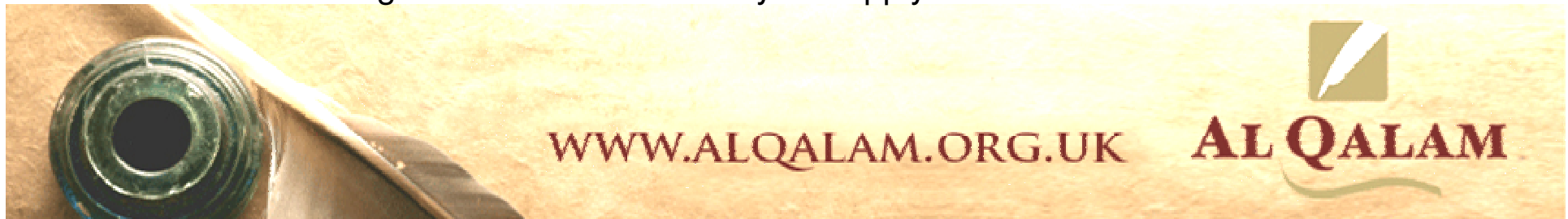


# Artificial legal personality

## Key case 1

### ***Salomon v Salomon & Co* [1897] AC 22**

- Aron Salomon – leather boot and shoe manufacturer (sole trader) in Whitechapel High Street with 30 years history
- In 1892 – Salomon & Co was formed with his wife and five eldest children holding one share each (7 shareholders)
- Salomon & Co purchased the sole trading business [over] valued at £39,000
  - £10,000 paid in debentures (i.e., Mr Salomon gave the company a loan secured by a charge over the assets of the company)
  - £20,000 in £1 shares
  - £9,000 in cash
- All creditors of the sole trading business were paid off
- Shares owned – Mr Salomon = 20,001, family = 6 remaining
- Due to a series of strikes in the industry his main customer (government) split the contracts amongst more firms to diversify its supply base

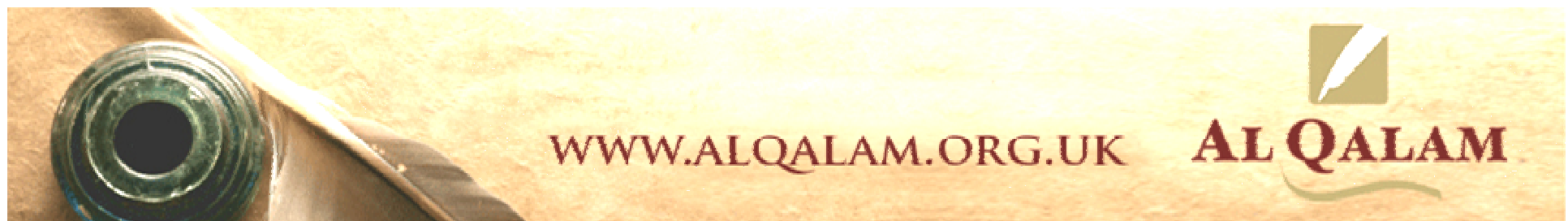


# Artificial legal personality

## Key case 1

### ***Salomon v Salomon & Co* [1897] AC 22**

- Within a year he had to sell his debentures to save the business but eventually was put in to liquidation
- Liquidator alleged that the company was a sham and Mr Salomon was personally liable for the debts of the company
- The Court of Appeal agreed, finding that the shareholders had to be a *bona fide* association who intended to go into business and not just hold shares to comply with the Companies Acts.
- The House of Lords disagreed and found that:
  - the fact that some of the shareholders were only holding shares as a technicality was irrelevant; the registration procedure could be used by an individual to carry on what was in effect a one-man business
  - a company formed in compliance with the regulations of the Companies Acts is a separate person and not the agent or trustee of its controller. As a result, the debts of the company were its own and not those of the members. The members' liability was limited to the amount prescribed in the Companies Act (i.e. the amount they invested).

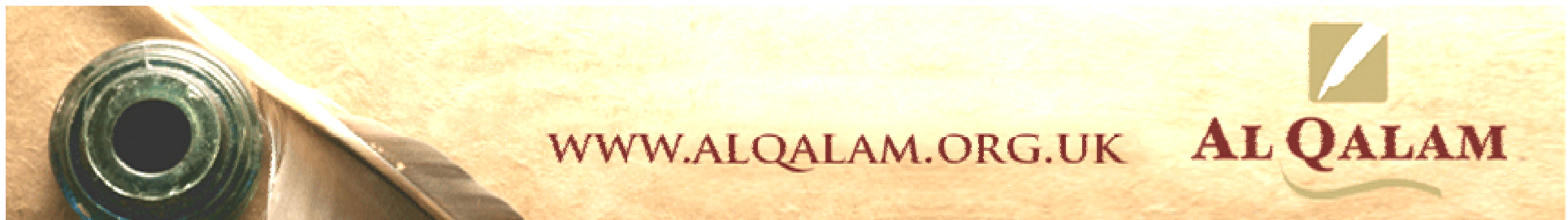


# Artificial legal personality

## Key case 2

### ***Macaura v Northern Assurance Co [1925] AC 619***

- Mr Macaura owned an estate and some timber and agreed to sell the timber on the estate for the entire issued share capital of Irish Canadian Saw Mills Ltd.
- The timber, which amounted to almost the entire assets of the company, was then stored on the estate. On 6 February 1922 Mr Macaura insured the timber in his own name. Two weeks later a fire destroyed all the timber on the estate. Mr Macaura tried to claim under the insurance policy. The insurance company refused to pay out arguing that he had no insurable interest in the timber as the timber belonged to the company. Allegations of fraud were also made against Mr Macaura but never proven.
- Eventually in 1925 the issue arrived before the House of Lords who found that:
  - the timber belonged to the company and not Mr Macaura
  - Mr Macaura, even though he owned all the shares in the company, had no insurable interest in the property of the company
  - just as corporate personality facilitates limited liability by having the debts belong to the corporation and not the members, it also means that the company's assets belong to it and not to the shareholders.

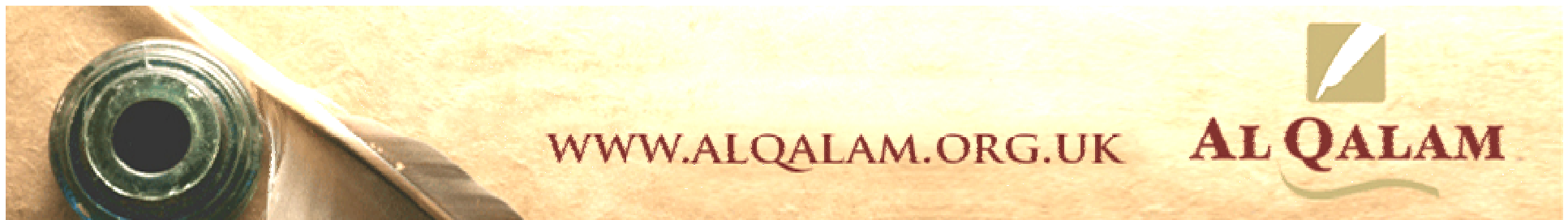


# Artificial legal personality

## Key case 3

### ***Lee v Lee's Air Farming* [1961] AC 12**

- Mr Lee incorporated a company, Lee's Air Farming Ltd, in August 1954 in which he owned all the shares. Mr Lee was also the sole 'Governing Director' for life. Thus, as with Mr Salomon, he was in essence a sole trader who now operated through a corporation.
- Mr Lee was also employed as chief pilot of the company. In March, 1956, while Mr Lee was working, the company plane he was flying stalled and crashed. Mr Lee was killed in the crash leaving a widow and four infant children.
- The company, as part of its statutory obligations, had been paying an insurance policy to cover claims brought under the Workers' Compensation Act. The widow claimed she was entitled to compensation under the Act as the widow of a 'worker'.
- The issue went first to the New Zealand Court of Appeal who found that he was not a 'worker' within the meaning of the Act and so no compensation was payable.



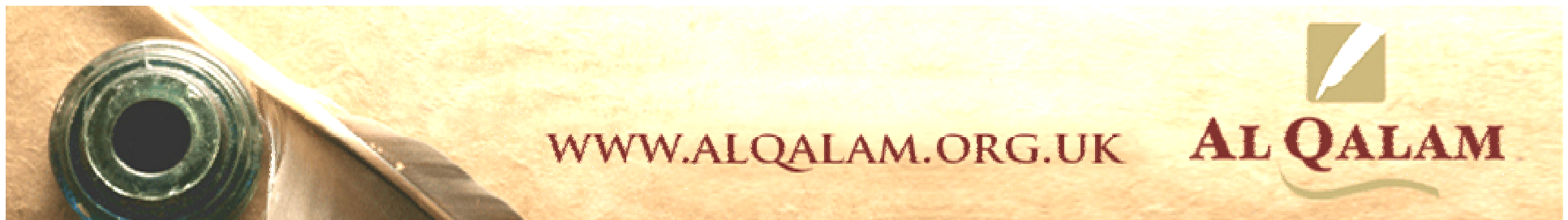
# Artificial legal personality

## Key case 3

### ***Lee v Lee's Air Farming* [1961] AC 12**

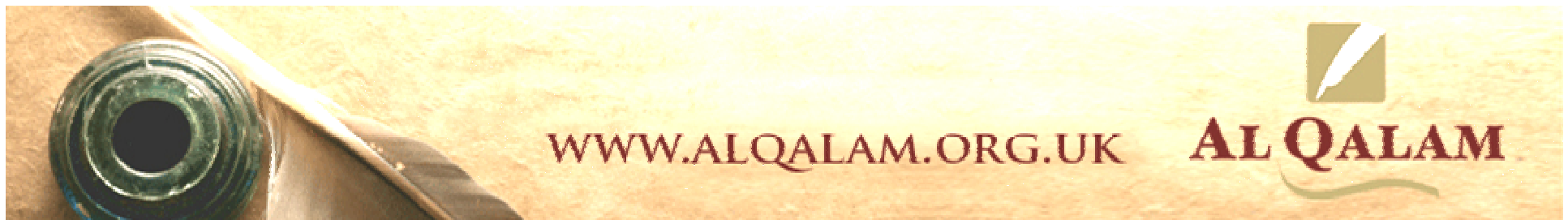
The case was appealed to the Privy Council in London. They found that:

- the company and Mr Lee were distinct legal entities and therefore capable of entering into legal relations with one another
- as such they had entered into a contractual relationship for him to be employed as the chief pilot of the company
- he could in his role of Governing Director give himself orders as chief pilot. It was therefore a master and servant relationship and as such he fitted the definition



# Islam & Artificial legal personality

- Does Islam recognise the basic concept of an artificial personality (الشخصية الاعتبارية) distinct from its members in which it is treated as a natural person in relation to the legal consequences of the transactions made in its name?
- If so, is 'limited liability' a logical consequence?

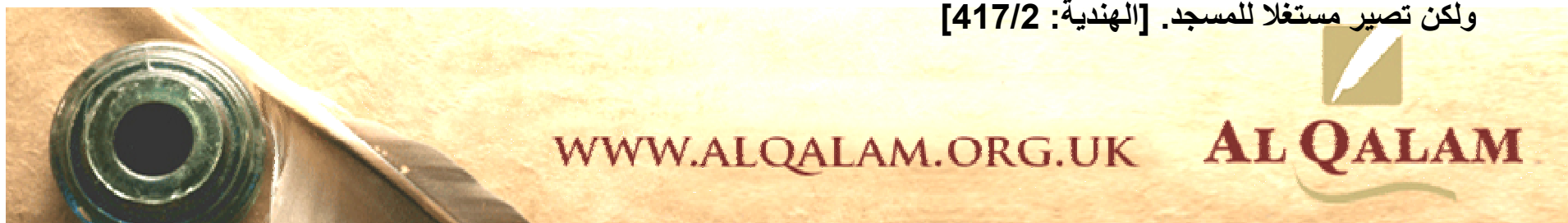


# Artificial legal personality - waqf

- ✓ Waqf - legal institution wherein a dedicator dedicates property for a religious or charitable purpose.
- ✓ Property does not remain that of dedicator.
- ✓ Beneficiaries may benefit but are not owners. Owner is Allāh
- ✓ Separate legal entity with some characteristics of a natural person?
- ✓ Property purchased from the income of the waqf cannot become part of the waqf automatically – it is owned by the waqf [Hindiyyah]

- ✗ It does not become waqf because there is no dedicator of the income
- ✗ Income is for distribution, or else object of waqf would be defeated.
- ✗ Reference to Hindiyyah on which ownership by the waqf is premised makes no mention of ownership. It simply mentions that it does not become waqf but rather forms part of the income.

متولي المسجد إذا اشترى من غلة المسجد دارا أو حانوتا  
فهذه الدار وهذا الحانوت هل تلتحق بالحوانيت الموقوفة  
على المسجد؟ ومعناه أنه هل تصير وفقا؟ اختلف المشايخ  
رحمهم الله تعالى قال الصدر الشهيد : المختار أنه لا تلتحق  
ولكن تصير مستغلا للمسجد. [الهندية: 417/2]



## Artificial legal personality - waqf

✓ Donation to a masjid does not become part of the waqf – it is owned by the masjid.

- Mālikī Jurists have described a Masjid as having constructive capacity of proprietorship - أهلا للتملك حكما أن يكون whilst humans are considered to have tangible capacity of proprietorship.

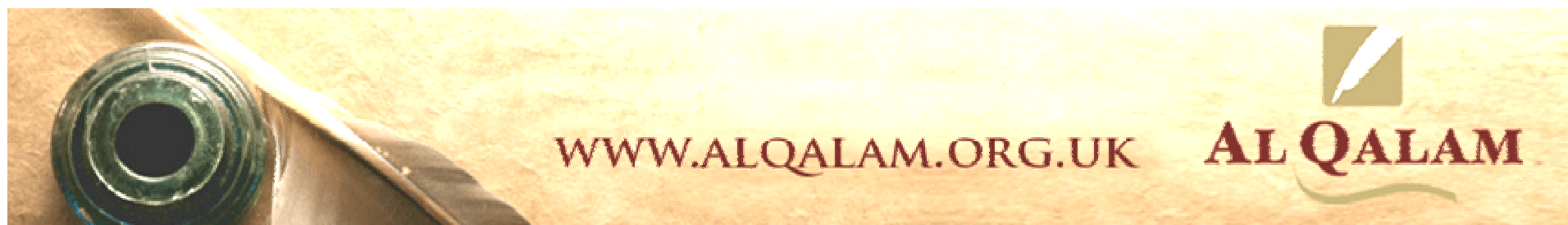
- Bridges are presented as another example of having constructive capacity of proprietorship.

- ✗ Any reference to التملك للمسجد refers to ownership of the Owner of the masjid.

- ✗ The owner of the waqf/masjid and its income is Allāh thus effectively negating the concept of artificial personality.

- ✗ A curator – المتولى holds all donations to the waqf in trust on behalf of the True Owner – Allāh.

- ✗ In any case waqf is a tangible asset whilst an artificial legal person is a document!



# Artificial legal personality - Beyt al-Māl

✓ All citizens have a beneficial right but non can claim ownership.

✓ Beyt al-Māl has rights and obligations:

وبيت المال يثبت له وعليه حقوق مجهولة. [المبسوط]

“The state treasury has rights that accrue for and against it.”

إِذَا احتَاجَ الإمامُ إِلَى إعْطَاءِ الْمُقَاتِلَةِ ، وَلَا مَالٍ فِي بَيْتِ مَالِ الْخَرَاجِ صَرَفَ ذَلِكَ مِنْ بَيْتِ مَالِ الصَّدَقَةِ وَكَانَ دَيْنًا عَلَى بَيْتِ مَالِ الْخَرَاجِ. [المبسوط]

“If the head of state requires to pay the army and there is no wealth in the Kharāj department of the state treasury, he shall give that from the ṣadaqah [zakāt] department , and it will be a debt upon the Kharāj department.”

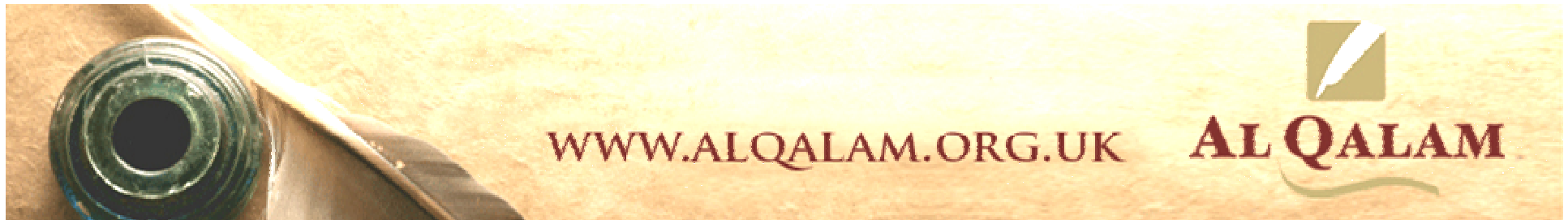
✗ The head of state is a guardian of the state treasury charged with its proper expenditure.

✗ Some funds of the state treasury have to be utilised in specific avenues.

✗ The head of state is empowered to use his discretion should the need arise and simply return the amount borrowed to ensure proper distribution.

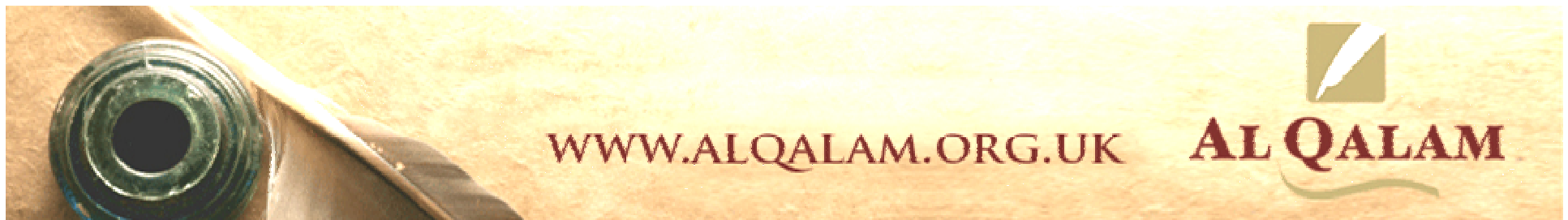
✗ The inanimate vaults do not lend.

✗ ‘Deyn’ here does not mean ‘debt’ in the Shar‘ī sense.



# Artificial legal personality - Beyt al-Māl

- ✓ Not only can the public treasury incur debt, but different departments can borrow and lend to one another.
- ✓ Liability does not devolve to the head of state.
- ✓ Each department is a separate entity and can advance/borrow money, be treated as creditor/debtor, can sue and be sued.
- ✗ If the money to the head of state does not return the borrowed funds the Beyt al-Māl cannot sue him nor will he be held to account in the Hereafter.
- ✗ How will one department sue another?
- ✗ The head of state represents Allah and acts in terms of the mandate assigned to him. He does not represent the state treasury.



# Artificial legal personality – Joint Stock

✓ Shāfi‘ī School – in a partnership where the assets are comingled zakāt will be levied on each partner individually but paid on the joint stock as a whole if it reaches the niṣāb including on the share of one who does not own the niṣāb.

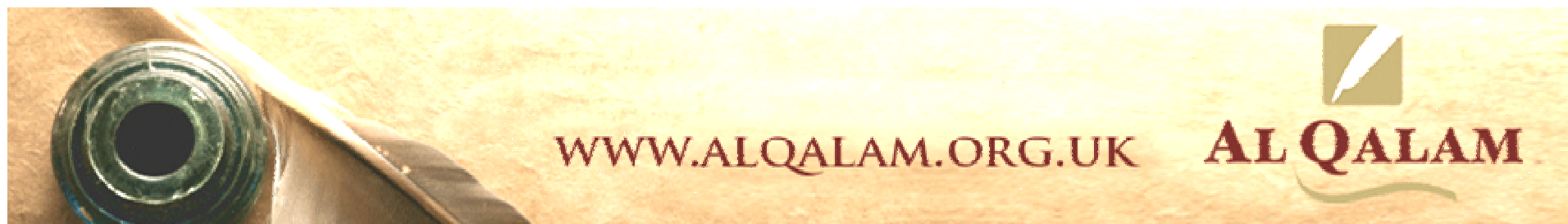
✓ This principle of *khulṭah al-shuyū‘* is applied more forcefully to livestock requiring payment of more or less zakāt than in an individual capacity.

ولا يجمع بين متفرق ولا يفرق بين  
مجتمع خشية الصدقة (البخارى)

✗ Obligation of zakāt devolves on human Muslims – not on non-Muslims or inanimate objects.

✗ Zakāt on the combined stock will be obligatory only if the owners are free Muslims. It will not be payable on the share of a non-Muslim.

ومنها أن يكون المختلطان من أهل وجوب  
الزكاة. فلو كان أحدهما ذميا أو مكاتباً  
فلا أثر للخلطة ، بل إن كان نصيب الحر  
المسلم نصيباً زكاه زكاة الانفراد وإلا فلا  
شيء عليه. [روضة الطالبين]



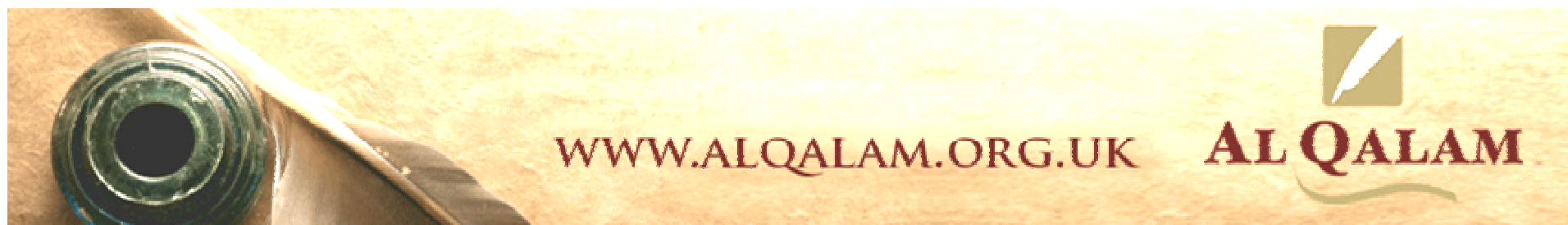
## Artificial legal personality – Joint Stock

- ✓ According to this principle the joint stock is liable to zakāt as a separate entity to which the obligation of zakāt has been diverted; the individual is not liable.
- ✓ Although not identical, this is close to the concept of artificial legal personality.

- ✗ The amalgamated stock is treated as a homologous whole only for the production of niṣāb and not for any other purpose whatsoever.
- ✗ Liability devolves to the partners and not the joint stock.

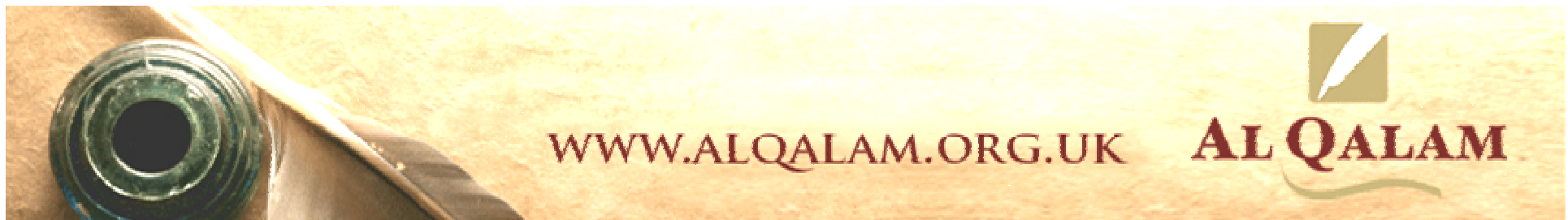
وقد يقللها كرجلين خلطا أربعين بأربعين يجب عليهما شاة ولو انفردا وجب على كل واحد شاة ...

- ✗ Just as zakāt is obligated upon one owner of varied zakātable stock when it reaches niṣāb, according to the Shāfi‘ī School, this also applies to two or more owners when they combine their stock.



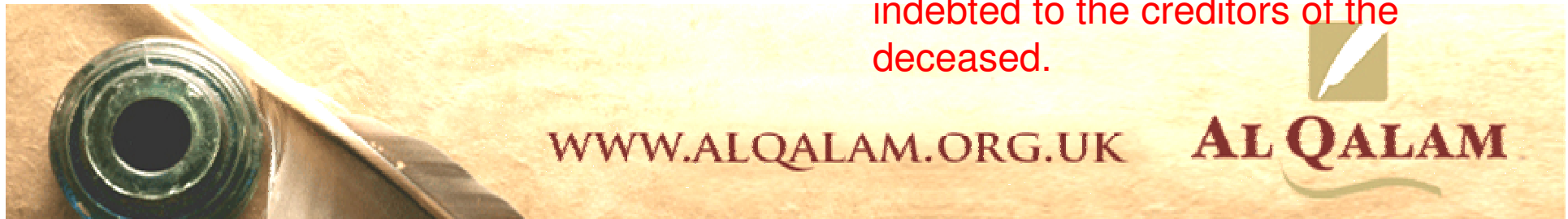
# Artificial legal personality – inheritance under debt

- ✓ Liabilities of the estate exceed the value of the estate.
- ✓ Estate is neither owned by the deceased [as he is dead] nor the heirs [as the debts have priority rights].
- ✓ It is not even owned by the creditors prior to settlement.
- ✓ Having no owner, it can be deemed a legal entity.
- ✓ A nominated executor or the heirs will operate as managers only – not owners.
- ✗ It is incorrect to assert that the estate is the property of nobody.
- ✗ Rather, there are two views:
  1. Prior to division it is legally the property of the deceased.
  2. It is the property of the heirs.
- ✗ Ownership passes to the heirs during the last sickness - مرض الموت whilst the claims of the creditors is established at the time of the debt and remains after his death.
- ✗ No limited liability or absolution of debt!



# Artificial legal personality – inheritance under debt

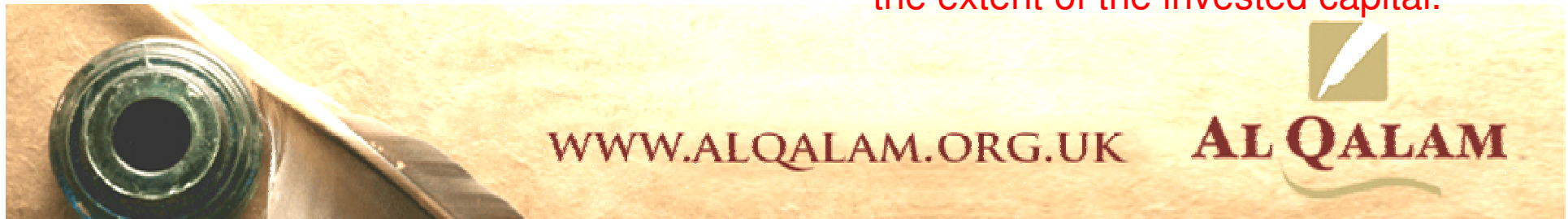
- ✓ Testamentary expenses will be met by the estate.
- ✓ The estate may sell and purchase, become a debtor and creditor, and the liabilities will be limited to the extent of the estate.
- ✓ If insufficient, there is no legal remedy for the creditors and the heirs cannot be pursued.
- ✗ If the heirs distribute the estate despite the debt it will be valid, but the creditors can pursue the heirs or waive their claim.
- ✗ Even if it is assumed that there is no owner there is no compelling reason to imagine an artificial legal personality. The division and fulfilment of rights can proceed without ownership passing to anyone.
- ✗ Claims of the creditors extend in to the Hereafter and heirs cannot be pursued because they are not indebted to the creditors of the deceased.



# Artificial legal personality – slave authorised to trade

- ✓ القن – not authorised to trade
- ✓ العبد المأذون – authorised to trade
- ✓ Capital provided by master with a free hand to trade
- ✓ Capital and profit was property of the master
- ✓ Debts would be set off by the assets held by the slave and any surplus could be recovered from the sale of the slave. Any surplus still could not be recovered from the master.
- ✓ Liability of the master was limited to the extent of his invested capital.

- ✗ The slave authorised to trade cannot be used as a premiss as he is not an artificial person, nor is his master.
- ✗ Actual trader is the slave who will be pursued in the Hereafter, not the master.
- ✗ Non-recourse to the master is not because of a 'limited liability principle' but on the principle of agency in which liability and rights devolve on the transactor [slave] and not the principal [master].
- ✗ The master is guarantor only to the extent of the invested capital.



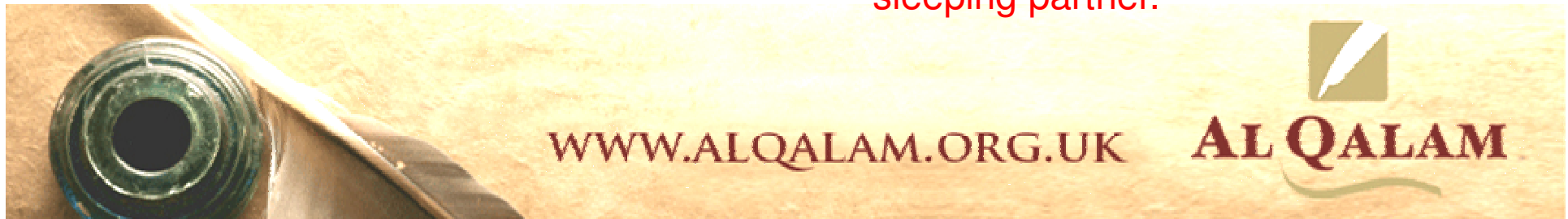
# Artificial legal personality - conclusion

✓ Concept of artificial legal personality and limited liability has precedent and does not contravene any Islamic injunction.

✓ Concept should be restricted to public companies that offer their shares to the public with shareholder numbers so large that each cannot be held liable for the day to day affairs of the company.

✓ Concept should not extend to private companies and partnerships as knowledge of the day to day affairs is easily accessible. A sleeping partner can be an exception.

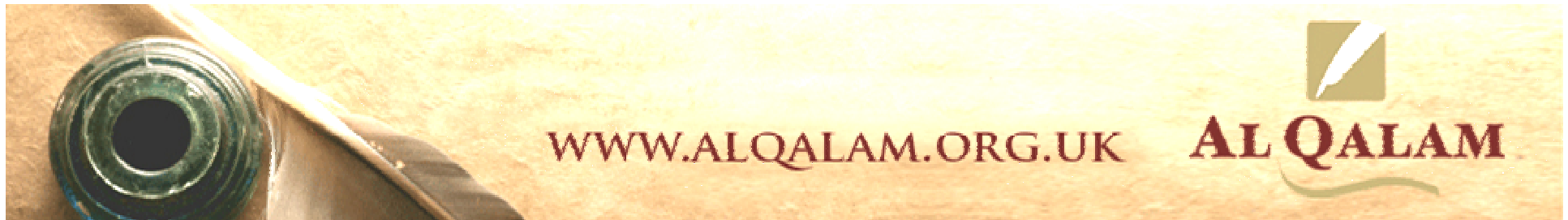
- ✗ Transactions are only valid if the parties are human beings.
- ✗ Debtors cannot escape their liabilities and will be pursued in to the Hereafter.
- ✗ Whilst creditors cannot demand payment from a sleeping partner, they can demand it from the active partner who will demand it from the sleeping partner as a consequence of the agency principle.
- ✗ However, the liability of malpractice does not extend to the sleeping partner.



## Exchange dealing

- Spot trading - purchase or sale of a foreign currency or commodity for immediate delivery.
- Spot trades are settled "on the spot", as opposed to at a set date in the future
- Account settlement period is typically 2-3 days for both countervalues
- Double deferment – بيع الكالى بالكالى
- Sale of shares is sale of property in common (بيع المشاع) in which possession is effected by non-interference (التخلية)

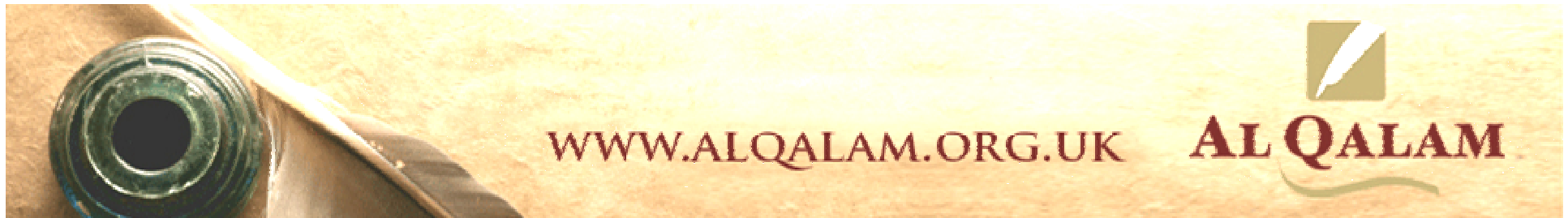
[Gharar Kī Soortin, p.407]



## Exchange dealing

Rights and responsibilities accrue at time of sale so ربح ما لم  
يضمن does not occur . However, prior to delivery, valid  
possession is not effected:

- Whilst “قبض كل شيء بحسبه” according to custom, possession is not effected by automated recording of transfer evidenced by ‘delivery’ after 2-3 days which is exactly what possession is.
- In short sales where the short seller does not own the asset rights and responsibilities also accrue to the short seller! Thus, it cannot be an indication of possession.
- Accrual of rights and responsibilities here merely means that the parties are merely obligated to complete the contract irrespective of price fluctuation and in the event of default the defaulting party has to compensate for loss suffered by the counter party.



# Stock borrowing and short selling

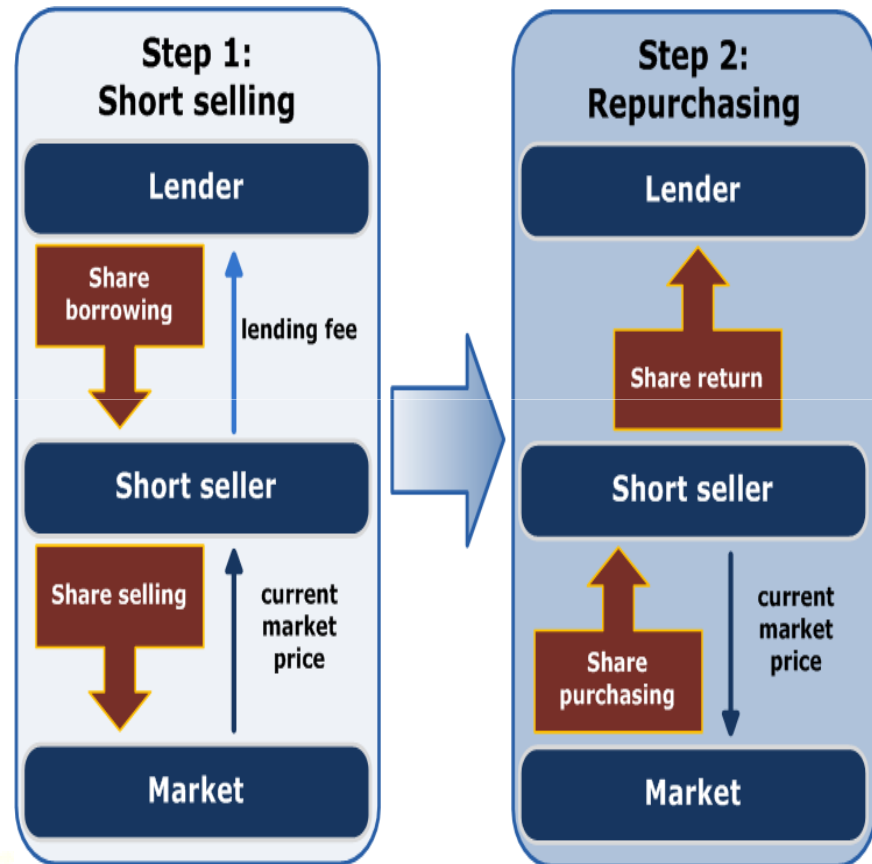
Why? Speculator views an asset or security as overpriced in the market.

a) Speculator can borrow the asset for a fee from a 'prime broker' for a specified period, sell it for the perceived overpriced value, buy it back at a lower price and return to 'prime broker'.

b) Speculator agrees to buy the asset for price X with immediate delivery and to sell it back at price Y at a future date.

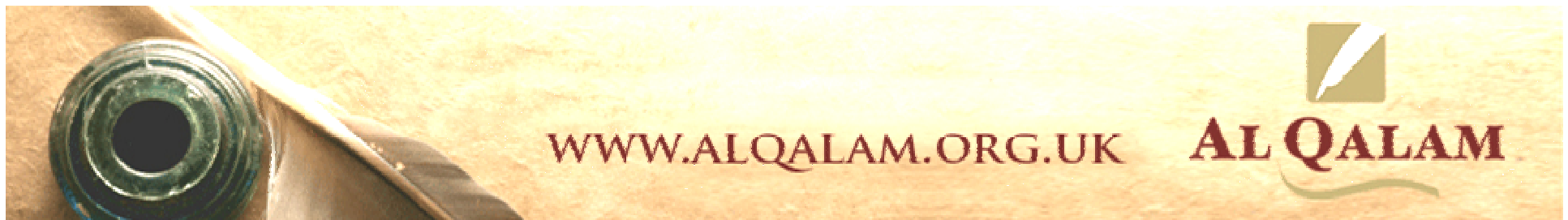
Meanwhile he sells it in the market at the perceived overpriced value in the hope of buying it back at a later date for a lower price.

## Share Borrowing



## Stock borrowing and short selling

- Lending (الإعارة) of an asset effects proprietary transfer (التمليك) of usufruct (المنفعة) only and not of corpus of the asset
- Asset remains property of lender and so the borrower cannot sell it
- If the asset does not have usufruct it cannot be loaned
- If a fee is charged for usufruct it is an Ijārah contract

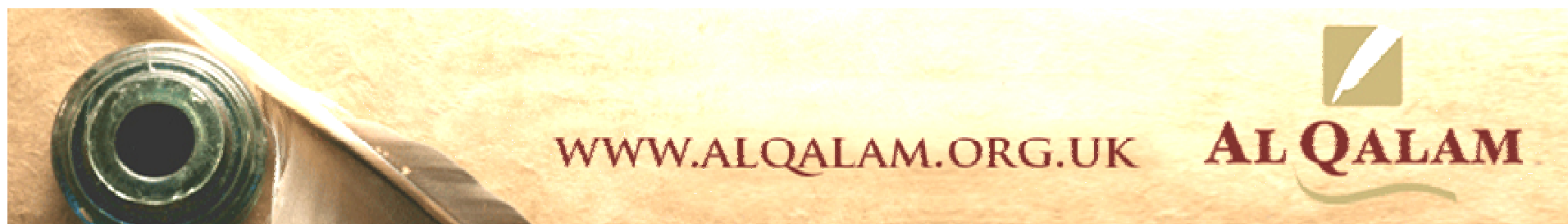


# Inflation linked returns

- Can loan repayments be linked to the rate of inflation:
- Some have argued that justice requires that the lender receives the same **value** of his loan.
- Others argue that a loan must be repaid in accordance with number of **units** borrowed regardless of value as an exchange between the same genus of a homogenous commodity requires that the exchange is equal and hand-to-hand.

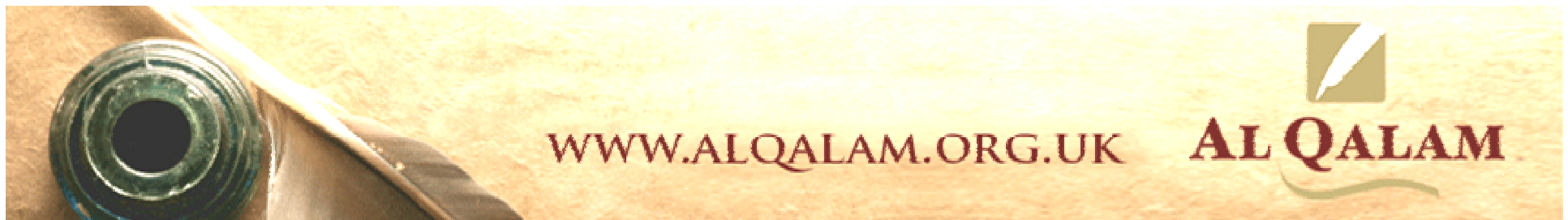
عَنْ عُبَادَةَ بْنِ الصَّامِتِ قَالَ: قَالَ رَسُولُ اللَّهِ -صلى الله عليه وسلم-: «الذَّهَبُ بِالذَّهَبِ وَالْفِضَّةُ بِالْفِضَّةِ وَالْبُرُّ بِالْبُرِّ وَالشَّعِيرُ بِالشَّعِيرِ وَالتَّمْرُ بِالتَّمْرِ وَالْمِلْحُ بِالْمِلْحِ مِثْلًا بِمِثْلِ سَوَاءٍ بِسَوَاءٍ يَدًا بِيَدٍ فَإِذَا اخْتَلَفَتْ هَذِهِ الْأَصْنَافُ فَبِيعُوا كَيْفَ شِئْتُمْ إِذَا كَانَ يَدًا بِيَدٍ». رواه مسلم. (كتاب المساقاة، باب الصرف وبيع الذهب بالورق نقدا)

*It is reported from ‘Ubādah b. al-Şāmit, he said: The Messenger of Allāh sws said: “Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, and salt for salt – like for like, equal for equal, and hand-to-hand; if these commodities differ then you may sell as you wish, provided that the exchange is hand-to-hand.” [Muslim]*



# Inflation linked returns

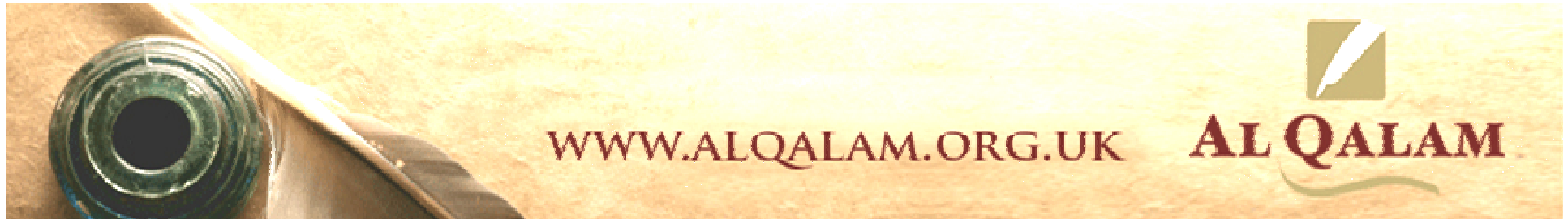
- An exchange between the same genus of a homogenous commodity requires that it is equal and hand-to-hand.
- An unequal sale or deferred sale of these commodities constitutes *ribā*.
- If one genus is exchanged for another, then while an unequal exchange is permitted it must be hand -to-hand.
- The six commodities enumerated in the above *ḥadīth* are referred to as *al-amwāl al-ribawiyyah* - usurious commodities and their ruling is extended to include other commodities based on the '*illah* - causative factor common between the two.
- An exchange of homogenous commodities in equal amounts and hand-to-hand should only arise if they differ in quality and/or characteristic, otherwise the exchange would be pointless.
- Therefore, in usurious commodities the units of exchange must be equal even if they differ in value.



## Inflation linked returns

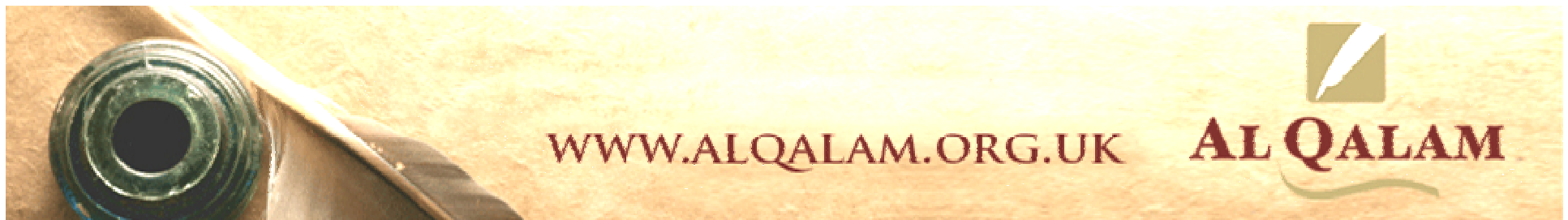
عَنْ عَبْدِ الْمَجِيدِ بْنِ سُهَيْلِ بْنِ عَبْدِ الرَّحْمَنِ أَنَّهُ سَمِعَ سَعِيدَ بْنَ الْمُسَيَّبِ يُحَدِّثُ أَنَّ أَبَا هُرَيْرَةَ وَأَبَا سَعِيدٍ حَدَّثَاهُ أَنَّ رَسُولَ اللَّهِ -صلى الله عليه وسلم- بَعَثَ أَخَا بَنِي عَدِيٍّ الْأَنْصَارِيَّ فَاسْتَعْمَلَهُ عَلَى خَيْبَرَ فَقَدِمَ بِتَمْرٍ جَنِيبٍ فَقَالَ لَهُ رَسُولُ اللَّهِ -صلى الله عليه وسلم- : « أَكُلْتُ تَمْرَ خَيْبَرَ هَكَذَا ». قَالَ: لَا وَاللَّهِ يَا رَسُولَ اللَّهِ إِنَّا لَنَشْتَرِي الصَّاعَ بِالصَّاعَيْنِ مِنَ الْجَمْعِ. فَقَالَ رَسُولُ اللَّهِ -صلى الله عليه وسلم- : « لَا تَفْعَلُوا وَلَكِنْ مِثْلًا بِمِثْلٍ أَوْ بِيَعُوا هَذَا وَاشْتَرُوا بِثَمَنِهِ مِنْ هَذَا وَكَذَلِكَ الْمِيزَانُ ». (رواه مسلم (باب بيع الطعام مثلا بمثل)

*It is reported from ‘Abd al-Majīd b. Suhail b. ‘Abdurrahmān that he heard Sa‘īd b. al-Musayyab report that Abū Hurairah and Abū Sa‘īd al-Khudī related to him that the Messenger of Allāhsws sent an Anṣārī member of the Banū ‘Adī clan [Sawād b. Ghaziyyah] and appointed him as the Governor of Kheybar [with the responsibility of collecting zakāt and other revenues]. He returned with Janeeb dates [a superior quality of dates]. The Messenger of Allāh sws inquired: “Are all the dates of Kheybar like so?” He replied: “No, by Allah, O Messenger of Allāh! Indeed, we barter a ṣā’ - a unit of measure of volume – [of Janeeb dates] with two ṣā’ of a mixture [of inferior dates]. The Messenger of Alāh sws said: “Do not do so. Rather, [sell] equal for equal or sell these and then purchase with its price the other. And similar [to what is measured by volume] is that which is measured by weight [i.e., they should be transacted equally]. [Muslim]*



# Inflation linked returns

- Usurious commodities must be exchanged in equal units of measure or weight and hand-to-hand irrespective of the difference in value.
- Exchange of a superior quality of date for an inferior quality was disallowed except in equal amounts of volume.
- One who wished to give consideration to the superior quality of one of the counter-values should first sell it for a price and then use the price to purchase a greater volume of the inferior quality.
- While the *ḥadīth* is concerned with the spot sales of usurious commodities, in the issue of loans, wherein *ribā* features most in its original sense, it is even more important that an unequal exchange is avoided.
- By consensus, if one loans a fungible product such as a measure of wheat at a specific price and then returns the loan at a later date when the price of wheat has fallen, the same measure of wheat must be returned and the lender is not allowed to demand an increment on account of the depreciation in value.



# Inflation linked returns

- Contemporary jurists have ruled that fiat money, which has no intrinsic value, follows the same rules as commodity money.
- Whilst conventional finance treats money as a commodity that is able to earn profit in its own right; Islamic finance considers money only a measure of value and a medium of exchange with no intrinsic utility.
- Conventional finance considers the advance of a loan as purely a commercial transaction designed to yield a fixed rate of return, whilst in Islam, a loan is not a return-generating commercial transaction; but rather, it is purely an act of altruism aimed at reaping reward only in the Hereafter.
- If one desires to avoid the risk of depreciation in value or to earn a return on one's funds, the mechanism for that is to enter in to a partnership with the borrower wherein profit is shared at a pre-agreed ratio and losses are borne according to the rate of investment.

<http://www.alqalam.org.uk/UserFiles/File/StudentLoans.pdf>

