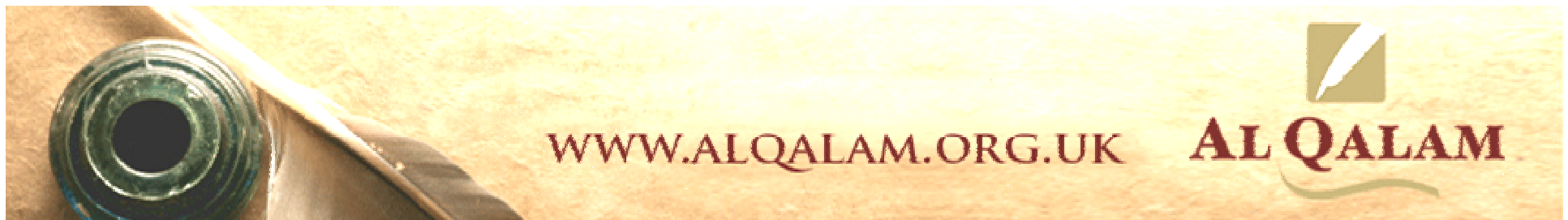


In collaboration with



CONTRACTS OF CHARITY

Qard and Hibah



Qarḍ – Definition

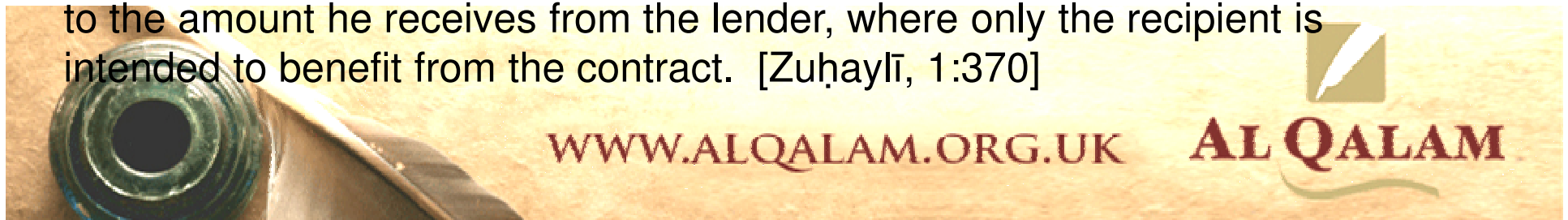
- Lexically, ‘qarḍ’ means ‘to cut’ – property is cut off from the lender’s ownership when it is given to the borrower.

القرض تمليك مال مثلي لمن يلزمه رد مثله. [AAOIFI, p. 270]

- Qarḍ is the transfer of ownership of fungible wealth to a person on whom it is binding to return wealth similar to it.
- According to the Ḥanafī School a loan contract is viewed as a sale of an item now in return for a countervalue which takes the form of the same item to be paid later. However, as the purpose is charitable and the lender cannot take any conditional benefit, the rules of qarḍ are more relaxed than those of sale.

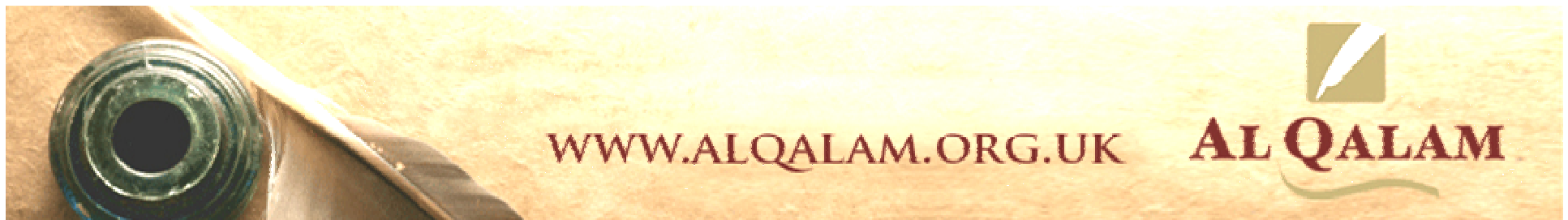
Loan (sale) of gold now for gold later is normally considered ribā al-nasī’ah

- According to the other schools it is the exchange of property [whether fungible, animals or tradable goods] for a liability on the recipient equivalent to the amount he receives from the lender, where only the recipient is intended to benefit from the contract. [Zuḥaylī, 1:370]



Qard – some basic rules

- According to the Ḥanafī School the loaned object must be fungible (مثلى) i.e., measureable by weight, volume, size, and numbers of homogenous items. Non-fungibles (القيميات) such as animals, wood, real estate, and non-homogenous countables may not be lent since it is difficult to find an equivalent good to repay the loan. [Zuḥaylī, 1:373] - AAOIFI has adopted the Ḥanafī position.
- Ownership of the loaned item is transferred to the borrower upon possession and the borrower becomes liable for repayment of a **similar** subject matter (عند الطرفين and AAOIFI).
- Stipulation of excess, whether in terms of quality or quantity or whether tangible or a benefit, whether at the time of the contract or subsequently, whether in writing or according to custom is prohibited. [AAOIFI, p336]

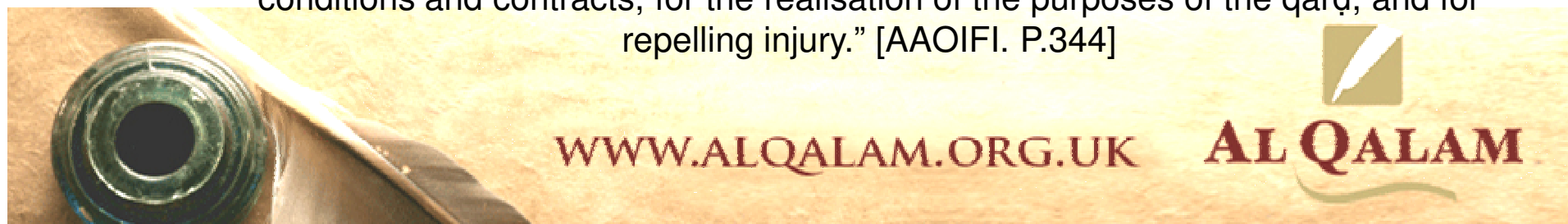


Qarḍ – some basic rules

- Deferment of loan (تأجيل القرض):
 - According to the majority deferment is ignored and liability remains current as it is a gratuitous contract (عقد تبرع). Construct of the contract is that of sale and deferment would amount to ribā al-nasī'ah.
 - Ḥanafī School also does not accept deferment except in four specific cases.
 - Imām Mālik considered deferment to be binding based on the ḥadīth: المسلمون على شروطهم. [Zuḥaylī, 1:371]
 - AAOIFI has adopted the position of permissibility:

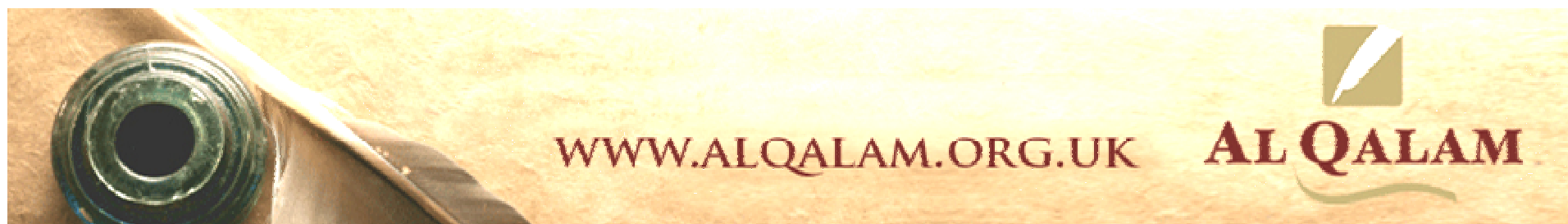
“It is permissible to stipulate a period in qarḍ. The borrower is, therefore, under no obligation to return it prior to termination of the period nor can the lender demand it back prior to the end of the period. If however, no period is stipulated, it is binding upon the borrower to return its substitute (badal) on demand.” [AAOIFI. P.337]
- Based on the following:

“... evidences about the legal validity of a period of delay, the obligation of abiding by conditions and contracts, for the realisation of the purposes of the qarḍ, and for repelling injury.” [AAOIFI. P.344]



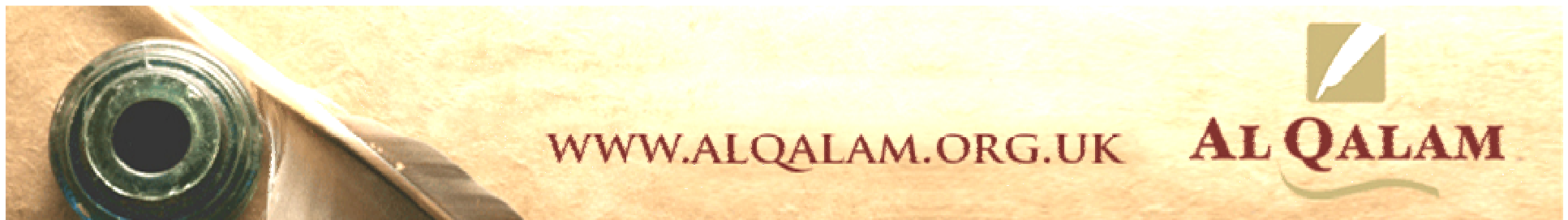
Qarḍ – some basic rules

- Letter of Credit (السفجه) – one party extends a loan to another whose agent repays the loan to the first party or his agent in a different country
 - If transportation is stipulated then it is considered prohibitively reprehensible (مكروه تحريما) according to the Ḥanafī School on account of being a loan that results in benefit to the lender
 - Shāfi‘ī and Mālikī schools also prohibit it for the same reason.
 - Most accepted opinion of the Ḥanbalī School is permission if no fee is charged. [Zuḥaylī, 1:371]
 - AAOIFI has adopted the position of permissibility:
“It is permitted to stipulate the satisfaction (repayment) of qarḍ at a place other than that where the loan was made.” [AAOIFI, p.336]



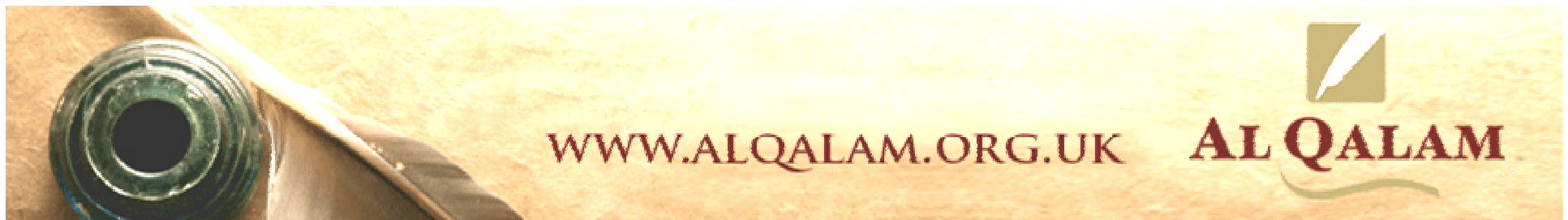
Qard – some basic rules

- Service charges:
 - It is permitted to a lending institution to charge for services rendered in loans equivalent to the actual amount directly spent on such services.
 - Indirect expenses incurred in rendering services for loans are not included in actual expenses, like the salaries of the employees, the rentals of space, assets and means of transport as well as other management and general expenses of the institution.
- The charges imposed on cards for cash withdrawals from ATMs are a charge for services and are independent of the loan.



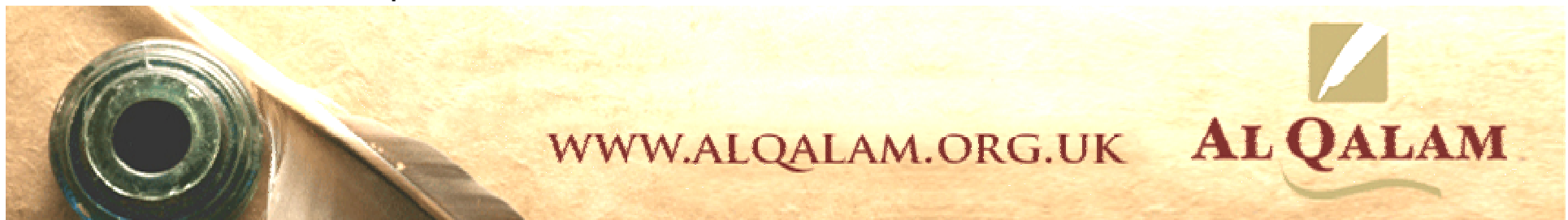
Hibah – Definition

- “A voluntary contract that results in uncompensated ownership transfer between living individuals.” [Zuḥaylī, 1:539]
- For Ḥanafīs, a valid gift contract requires only offer and acceptance by analogy with sale. Al-Sarakhsī ruled receipt to be a third cornerstone (ركن) by juristic approbation (استحسانا) since it is a necessary condition to establish ownership in a gift contract but not in sales.
- For Ḥanafīs if a person gifts the usufruct (منفعة) of an object to another then the object (e.g. house) is considered to be loaned to the usufruct donee.
- If the object from which the usufruct is to be derived can only be used by consumption (e.g. food) then a gift of usufruct is tantamount to a full gift. [Zuḥaylī, 1:544]



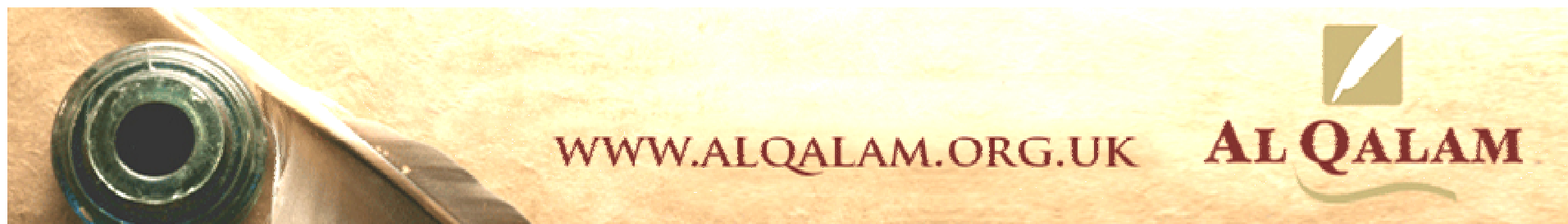
Hibah – some basic rules

- The object of gift must exist at the time of the gift.
 - What can be sold can be given as a gift according to the Ḥanafī, Shāfi‘ī, and Ḥanbalī schools
 - Mālikīs allowed the gift of certain non-sellable items including runaway animals, unknown items, un-ripened fruits, and usurped objects.
- The object of gift must be property of value.
- The object of gift must be private property and not public property.
- The object of gift must be separate:
 - According to Ḥanafīs it is not permissible to gift a share in a divisible common property (e.g. a house) in analogy with rahn which requires delivery. Unidentified shares in common property cannot be delivered as the share cannot be utilised without utilising the whole. However, if the common property is first divided between the owners, a gift can then be made to the donee of a specified share.



Hibah – some basic rules

- However, gift of non-divisible common property (هبة المشاع فى ما لا يقسم) is permissible due to the potential need of gifting such a share and access to the property is considered to be delivery of the gift.
- In contrast, Mālikīs, Shāfi'īs, and Ḥanbalīs allow the gift of an unidentified share in common property (هبة المشاع) in analogy with sale wherein delivery of the share is effected through delivery of the entire property. [Zuḥaylī, 1:547]
- Defective conditions do not affect the validity of the gift contract but are themselves whilst the contract is valid.
- Is a gift contract binding?
 - According to Ḥanafīs a gift contract is non-binding (except for certain situations) thus permitting recall of the gift and voiding the contract despite reprehensibility.
 - In contrast, Mālikīs, Shāfi'īs, and Ḥanbalīs consider it to be binding except in the case of a father gifting to his child. In the latter case, Mālikīs permit rescinding the gift before receipt only whilst Shāfi'īs, and Ḥanbalīs permit it before and after receipt. [Zuḥaylī, 1:561]



Hibah – some basic rules

Gifts to offspring

- According to Imām Abū Yūsuf, Mālikīs and Shāfi'īs equality is recommended between male and female.
- Ḥanbalīs consider equality to be mandatory but interpret equality to mean following the rules of inheritance.
- Whilst Imām Muḥammad interpreted equality to mean following the rules of inheritance he regarded it to be recommended. [Zuḥaylī, 1:569-571]

