

# FATAWA AWQAF TRUSTS2000-2017

## FATAWA AWQAF TRUSTS 2017

**From:** Aneeq

**Sent:** Friday, August 18, 2017

**Subject:** Revocable Living Trust

**Question:**

Assalaamualikum Wa ragmatullahi wabarakatu.

Dear Mr. Monzer

I hope this email reaches you in the best of conditions. Inshallah

Mr Name is Aneeq. I am kindly seeking your assistance in educating me on the concept of revocable family trust in light of the law of man vs the sharia. Attached I have placed a copy of the trust deed established by my father of which I have been made a trustee. The trust is running like a business within the prescribed laws of the country. I have been trying to ascertain whether this trust has met the requirements of the Sharia. What can the ----- Family trust been seen as in Islam. The Revocable Living Trust was form as a vehicle to house assets with regards to the Statutory Laws of the Republic of South Africa. The donor of Assets to the trust is ----- who is still alive. The terms and conditions of the trust are managed according to the Trust Deed (Annexure A). The property / wealth consist of the following:

- One Business - Lawson Tools Distributors Pty Ltd - Shareholder 100% ----- Family Trust
- Two Commercial buildings which is rented out.

The Trustees are five natural Persons as amended:

- ----- (Donor)
- ----- (son)
- ----- (son)
- ----- Aneeq (son)
- ----- (Independent Person)

The beneficiaries are as amended:

- ----- (son) 35 %
- ----- (son) 35 %
- ----- Aneeq (son) 15 %
- ----- (daughter) 15 %

Question: How should the donor classify the trust in terms of the Sharia? And or how does one classify the shares distributed in the trust to the beneficiaries in terms of the Sharia. How is the property of the ----- Family trust concluded and who would ownership vest in Sharia?

In my research the sharia Recognises the following ways to transfer ownership of a corpus:

1. Alienation of property; for exchange namely sale.
2. Without exchange, namely hiba or simple gift.
3. By way of dedication, namely waqf.

4. To create succession, Inheritance and wasiya

Inheritance - Donor is still alive (as part of his Estate) no transfer of property, only after death. Quranic Heirs and by way of Wasiya (Bequest).

2 Gift/ Hiba - Principles of Gifting (Gift not Subject to Donee control or trustees)

3 Endowments/waqf - Principles of Endowment family waqf – not compliant no one should own it must be certain and irrevocable (Cannot be owned by any human being only its fruits are to the benefit of a person or organisation).

**My Answer:**

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Aneeq

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

This is a normal secular trust intended for taxes and some other legal arrangement. It may be considered irrevocable because of irrevocability in granting the trust 100 rand and not giving the donor any authority. But again I doubt that the law considers it irrevocable in terms of protection against liability and creditors because it gives the trustees (and the donor is one of them) unlimited authority in distribution.

From Shari'ah point of view, it cannot be considered Waqf because it provides for termination and distribution of capital to beneficiaries who are actually the heirs of the donor if distribution is done after his death and him included if during his life.

Further, the trust is in gross violations of Shari'ah. Fundamentally it neither observes the law of inheritance nor the law of gift. Gifts in life time should be equal to male and female children and inheritance should be to the male twice as much as to the female and should see if there are any other potential heirs (e.g., parents of donor). Some other problems are:

Section 1.1.7 and clause 34: considers adopted and step children like natural children. This is wrong, they cannot be but they may be given from the one third.

Section 25.5: at termination, distribution as the trustees see fit

Also distribution according to S A laws not according to Islamic inheritance law.

Clause 35 deadlock reconciliation is according to SA law not Shari'ah

Suggestion: It should be amended to become in line with Shari'ah, you may see the relevant clause in the template of revocable living trust on my website.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Best Regards

Professor Dr. Monzer Kahf

Islamic Finance & Economics

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**From:** Nasir

**Sent:** Thursday, August 17, 2017

**Subject:** Need Word Copy Will and Documents - Muslims in North America

**Question:**

Salams

I need word copy of the following documents for my personal use only as I am drafting and finalizing my will:

1. Revocable Living Trust of Wife and Husband with attached schedule of Mawarith or personalized listing of distribution
  2. Last Will and Testament: one for Husband and one for Wife
  3. Power of Attorney for Health Care (sometimes called Health Care Directive, Advance Directive, Living Will): one for Husband and one for Wife
  4. Durable Power of Attorney with General Power for Financial and All Other Purposes: one for Wife and one for Husband
  5. Warrant Deed for Funding the Trust
  6. The latest edition of Last Will and Testament for Muslims in North America!
- May Almighty bless you for all you for your good work, efforts, and dedication.

**My Answer:**

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Nasir

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Number six above is a replacement of Number one, I'm sending you instead the last will that should be attached to the RT. Also the living will is designed on state/province basis (same with the Warranty deed, check your local real estate registration office) you need to check your Province you the appropriate form. I am sending you the one of California as a SAMPLE ONLY, it may not be acceptable in province.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Best Regards

Professor Dr. Monzer Kahf

Islamic Finance & Economics

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## FATAWA AWQAF TRUSTS 2016

**From:** Ashfaq

**Sent:** Thursday, September 01, 2016

**Subject:** Mosque on Waqf or on Trust laws?

Dear Brother

Assalam Alaykum,

I have a question regarding the Awqaf (Waqf) of mosque and its legitimacy.

Here in India Some of our Muslim Brothers Build a mosque in a land and register it as per Indian Trust Act

Sir As you know the subject-matter of a trust must be property transferable to the beneficiary and any such registration shall become private in nature, and shall contradict the very principle of Awqaf, i.e., the ownership of Waqf shall not become private natural or legal. Sir, so according to my opinion, so registered building for the purpose of mosque shall not become Waqf and building remain private and cannot be a Waqf or mosque. Could you please enlighten me in this regard? So as to help people know the correct Waqf and its Shari'ah rulings. Jazaqallh Qhair  
May Allah Bless You

Ashfaq

**My Answer:**

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Ashfaq

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I am not familiar with the Trust laws in India. But in America trust laws accommodate having a property remain public (I mean not privately owned now or in the future) and a Mosque can be registered as a trust property.

If you are definite that laws in India requires a trust property to turn into private (which I doubt very much!) then you are right. I think people register it as a trust because they want to avoid the control of the authorities over it since India has a law of Awqaf for Muslims and it is kind of rigid and run by corrupt organization.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

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**From:** Ashfaq

Dear Brother Monzer

Wa Alaykum Salaam Rahmatullah Wa Barakatuh,

It is so absurd and unrealistic that you expect a person should leave his country in order to pray at mosques built by Government and so on.

The subject I have discussed here is in the context of a democratic secular country.

Up course, the concept of Waqf (Endowment), Waqif (Endower) Sharia Rulings of it being endowed and validity of sharia rulings needs to be studied in depth.

The extract here is your findings on the Waqf where you make a point that I quote "*According to the Islamic Shari'ah, Mosques and mosques related Awqaf must not be private properties of any person, natural or legal. Mosques are places for prayers and other religious and community activities for all Muslims in the area. Historically Muslim jurists consider Mosques open to all Muslims that they cannot be privately owned. It is an agreed upon position of all Muslim Jurists that the moment an owner of a real estate opens her/his property as a mosque for the public to pray, it becomes a Waqf.*"

I believe having been studied the laws of Indian Trust Act, if one deduces it being legal in the light of Sharia and jurisprudence there would be a severe fallacy being the validity of Waqf and

would contradict the very report you published which are available in the net, same is attached for your reference

However, India has separate set of laws for mosques and Waqfs by way of **Indian Waqf Act 1954** a purely a body corporate to manage and control the affairs of the Waqf barring all the legal provision to enact the mosque as Private.

Jazaqallah Qhair.

Ashfaq

**My Answer:**

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Ashfaq

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

In all Muslim minority countries where the government does not establish mosques and spend on them, it is permissible to register the mosque as a trust in the name of a board of trustees. It is also permissible for this board to defend the interest of the mosque and if need arises to prevent any person whom the board believe it may hurt the property or abuse it or de-sacred it from entering the property. This means that in India, you have no point in objecting to a mosque being registered as a trust and in the name of a board of trustee. If you do not like then live in a country in which the government establishes and spends on mosques.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

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**From:** Ashfaq

**Sent:** Thursday, September 01, 2016

Dear Brother Monzer.

Your reply in this matter has generated more queries and questions when it comes to legal aspect of the Waqf.

Brother, if a person who deeply understands what Indian Trust Act is all about and for which it is applied, then he could arrive with more argument and debate.

It is a law pertaining to the private property with the nomination of Beneficiaries.

One must understand what the rights of the beneficiary are in the said Law. It is the exclusive legal right of a beneficiary to Rent and Profit of the property and right to transfer his beneficial interest.

The said trust act is being already attached for your reference.

*For example*, suppose, let us assume that in ensuing days, the Waqf run by Indian Trust Act has accumulated lot of revenues and property by way of donations and contributions, a successor of any beneficiary who happens to be his son or legal heir, subject to the provisions available in the Act/Law who challenge in the court of law saying that I quote " *my father has beneficial interest with the trust property, since his demise fetch me lot of financial burden his benefits are to be made available to me by way of Indian Succession Act.*" I un quote. or any Public Interest Litigation as the case may be.

Now Could you please enlighten me as to, what will be the probable legal standing of the judiciary under the above scenario when the parliament of particular country formulated laws precisely to protect the interest of beneficiaries under the said law?

I appreciate your answer if you could please convince me in this regard.

May Allah grant us deeper understanding and insight? Jazaqallah Qhair

Ashfaq

**My Answer:**

I do not agree with you, you are wrong in thinking that the Trust act is only for that. It can also be for an objective under trustee's authority. You need to open up.

W Assalam

Prof. Dr. Monzer Kahf

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From: Jessie

Sent: Monday, January 18, 2016

**Subject: Islamic Finance and Human Development**

Dear Dr. Kahf,

My name is Jessie. You spoke a few months ago with my colleague Yasmine. We are students at the LSE researching Islamic Finance for social development.

I had one follow up question from your conversation with her. You mentioned that there is a bond with a Waqf objective. In such a structure individual can purchase a small portion of the corpus/base of the Waqf and will receive a receipt for this purchase. The returns from this bond then go towards a social purpose and are managed by a Mutawalli.

Is there a specific name for this structure of a Waqf? How would it differ from a Sukuk financed Waqf? Is there anywhere you would suggest that I research to learn more?

I so appreciate your time. Hope you are having a lovely Sunday.

Best wishes,

Jessie

**My Answer:**

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu WA al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Jessie

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I do not ever remember that I mentioned a bond Waqf. If I did I was wrong. I may have mentioned a certificate, share or Sukuk. A bond is a term used for interest-bearing document.

Now, are there Waqf shares? The word share is used in the language meaning only not in the technical meaning as known in corporate shares.

Its dynamics are as follow: a group or organization set a target project and invite donors to donate on the basis of Waqf, usually a unit amount is defined like 100 Riyal or \$100. For payment receipts are issued. Funds are managed by Mutawalli set usually by the issuing org. donors just give the money and walk out having no touch or relation whatsoever after donating (the receipt give zero rights). Fund are used for the Projects and if the nature of it is to give return, it is then used for the pre-set objectives.

Almost every mosque built in Syria, Lebanon, Palestine, Jordan, Egypt, Morocco, Algeria and Tunis over the last 50 years is financed this way. These of course provide the utility of prayer space.

Also there are projects that give return. There is in Jeddah a group of people who created an organization to serve the Qur'an and distribute copies of it to needy Muslims anywhere in the world. They fund their activity by what they call share of Qur'an. Units of 100 Saudi Riyal are collected and invested and the return only is used for printing and distributing copies of the Qur'an. Also in Saudi the Muslim World League has a project called Sanabil al Khayr or Ashum al Khayr (shares of good deeds) based on units of 100-riyal contribution for a Waqf whose income is used for helping the poor and needy.

I am not aware of specie called "Sukuk financed Waqf" and the term seems to me contradicting because Sukuk are certificates of investment similar to shares, they represent equal units of ownership in an asset or project that gives revenue. This is the way they are defined by AAOIFI. On the other hand, Waqf is a pure benevolent property used for spending on a good idea, or the poor or descendent of a person. There is no return to the investor in Waqf other than reward from God when the donor may get only after death!

Wa Allahu A'lam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

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## FATAWA AWQAF TRUSTS 2015

From: Aminah

**Question: Waqf Investment**

Sent: Friday, February 27, 2015

Assalamualaikum Dr.

I am Aminah, PhD student in a University in Malaysia, Skudai Johor. My study is focused on Waqf investment. This is my question:

1. Tradable securities is a category of securities that includes both debt and equity securities, and where an entity intends to sell in the short term for a profit that it expects to generate from increases in the price of the securities.

My question is would investment of Waqf funds in tradable securities (which may suffer losses) be permissible?

As Waqf comes from private ownership, it is the desires and conditions of the Waqif that matter. A Waqif may set equity securities as Waqf and make the condition of either keeping them and take their dividends only for distribution or selling them and trade securities. Equity securities may also be made Waqf with the condition of trading. In this case unless the Waqif specifically makes a condition to distribute both dividends and capital gain I argue that capital gain should not be distributable, rather added to the capital invested because capital gain is not revenue from the property, it is rather its appreciation. Otherwise keeping the monetary amount fixed throughout the Waqf life would reduce it to nothing because of inflation.

If a Waqif makes a condition to trade debt securities, although he may make debt securities as Waqf, this condition is not valid and either the cash at maturity should be deposited in an Islamic bank or for buying equities with no trading. \if we have an old Waqf property, it must not be used in securities and must be kept as real estate because in the past the intention of Waqif, even if documents are lost, cannot be to invest in securities as they were not existing then.

2. Whether it is permissible to use income derived from the Waqf assets as collateral for purposes of raising financing?

Any action which deprives beneficiaries from their rights as mentioned by the Waqif is not permissible. This includes using part of the revenue for increasing its capital unless the Waqif makes such a condition. And includes your case of using it as collateral. Revenue of Waqf is the right of the beneficiaries. Nothing else.

Thank you very much Dr for your answers.

**My Answer:**

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu 'ala Sayyidina Muhammad, wa 'ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Aminah

Assalam Alaykum wa Rahmatu Allah wa Barakatuh

Please see my answers below the questions:

Wa Allah A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

## FATAWA AWQAF TRUSTS 2014

**From:** Bashar

**Sent:** Friday, December 19, 2014

**Question:** سؤال عن زكاة الوقف المؤقت

أخي الدكتور منذر قحف حفظه الله ،  
السلام عليكم ورحمة الله وبركاته، أدعو الله أن تكون والعائلة بخير .  
هل يزكى مال الوقف المؤقت الذي أوقف لعشر من السنين على أن يعود إلى واقفه بعد نهاية المدة؟  
وإذا أوقف الوقف على مصرف من مصارف الزكاة كالإنفاق على الفقراء فهل تحسب هذه النفقة كل عام كجزء من زكاة  
الوقف وتجزئ في زكاة أمواله الأخرى؟  
وجزاك الله خيرا  
بشار

**My Answer:**

الأخ المكرم الأستاذ بشار  
السلام عليكم ورحمة الله وبركاته  
الوقف الخاص (الأهلي) دائما أم مؤقتا أرى فيه رأي المالكية بخضوعه للزكاة عبي رأسمال الوقف نفسه (أنا أرى الزكاة على  
الأصل قياسا على الأتعام وليس الإيراد فقط، أما الإيراد فيدخل ضمن زكاة المنقولات من نقود وغيرها)



الوقف الديني أو الخيري إذا كان دائما ليس فيه زكاة في رأيي فخيريته أو دينيته هي زكاته  
الوقف الخيري أو الديني الموقت أميل فيه للرأي القائل بزكاته خوف إساءة الاستعمال ولكنني أحسب الانتفاع الديني أو  
الخيري كجزء من الزكاة الواجبة فإذا زاد هذا الانتفاع عن مقدار الزكاة ارتفعت الزكاة. ومثل ذلك الوقف المشترك بين  
الخاص والخيري.  
مع أسامي التقدير وأعز التحية  
أ. د. منذر قحف

From: Syahnaz

Sent: Thursday, December 11, 2014

**Question: Waqf of unit trust and company shares**

Assalam Alaykum Prof Kahf,

My name is Syahnaz. I am an officer attached with the Department of Islamic Development of Malaysia. I am currently on my final semester as a PhD candidate at the University of Malaya in Kuala Lumpur.

My research is related to contemporary instruments that can be proposed in order to enhance the Waqf development in Malaysia.

I am looking for an expert opinion regarding the implementation of contemporary Waqf as follows:

1. What is your opinion with regards to the Waqf of unit trust? Whether this model is viable or not since the nature of unit trust is subject to buy and selling process.

Can a person Waqf the unit trust that he bought? Will it violate the salient feature of Waqf which can't be sold?

**My answers to all these is yes, except the last it is no it does not violate.**

2. What is your opinion if somebody Waqf the company shares that are traded in the exchange/bursa? Will it violate the nature of Waqf?

**If the Waqf is shares, there should not be traded. But if the Waqf is cash to trade shares this is permissible and they can be traded.**

**There is a Qatar by Mama AL Fiqh in 2009 that allows the Waqf of shares and unit trust.**

But the question arises when it mentions that the shares cannot be traded in suq maliyah or bursa.

I explained the difference above.

This decision is quite contradicted with the practice of Johor Corporation in Malaysia that they had made Waqf over their shares traded in bursa. And the shares perform quite well in generating return/dividend to the beneficiaries.

**I need details to give opinion.**

3. Btw, what is your opinion regarding buying and selling unit trusts that are created or derived from Waqf properties? The units are then offered to the public at certain price the money collected then channeled to the fund or buying other properties.

**It depends on how it is structured; it can be structured to have people buy units in Waqf for trading shares or any other properties.**

This model has been applied in Malaysia with the normal properties/real estates but have yet to be tested with Waqf properties.

**I need more details**

The question is whether the units created from the Waqf properties are considered as Waqf as

well or considered as normal units that can be sold to the public with the purpose of generating more income to the Waqf for further development.

**You need to describe in details a structure before I can give an opinion.**

Really hope to get your expert opinion regarding these issues to be quoted in my thesis.

Jazakumullah. Regards,

SYAHNAZ

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu 'ala Sayyidina Muhammad, wa 'ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Syahnaz

Assalam Alaykum wa Rahmatu Allah wa Barakatuh

Please see my answers below the questions:

Wa Allah A'lam

Wa Alhamdu Lillah Rabb al 'Alamin

Wassalam

Prof. Dr. Monzer Kahf

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Assalam Alaykum,

Dear Prof Monzer Kahf,

Basically, my question is whether REIT structure can be used to develop Waqf property.

REIT is a unit trust that mainly invests in real estate that generates income for examples commercial or office buildings, mall, service apartment and hospitals. So the question arises whether Waqf property can enter into REIT structure for the purpose of raising funds for example for refurbishment or acquiring more new assets.

The REIT mechanism involves the sale of the Waqf property from the Mutawalli (as the owner or sponsor of the Waqf asset in this case is the State religious councils of Malaysia or SRCs) to the SPV/REIT company with condition that the asset would be sold back to the SRC after certain period of time for example 30 years. The REIT company can be a subsidiary of SRC as long it is registered with the Securities Commission of Malaysia (SC) in order to manage and run the investment portfolio. During the tenure, the ownership over the property is transferred to the trustee. Under the REIT guidelines of SC of Malaysia, all the assets must be sold to REIT company in the process of establishing investment portfolio. So in this case, does the asset in the REIT structure for the period of 15 year remain as Waqf asset or not?

The REIT company then will issue units which can subscribe by the investors. The investors will buy the units that represent the beneficial ownership over the rent (receivables) of the Waqf properties. Correct me if I'm wrong that the investors they don't buy the Waqf properties but the rentals generated from Waqf properties in the form of dividend. Does this mean the units issued out of the Waqf properties are not Waqf too?

The investors are also given options to Waqf all or part of the dividend they received to Waqf.

For the REIT company, all the cash received from the investors will then be channeled to project A and B.

Project A can be a project of acquiring new building that later on can be Waqf asset too.

Project B can be investing in joint capital project or unlisted company.

For your information, the nature of REIT is actually perpetual. It can be forever depends on the performance of the company. Most of REIT companies in Malaysia are listed REIT meaning the units are traded in the stock market. REIT can also be unlisted but it is not popular. Usually, the sponsor or the owner of the asset will become the majority shareholders of the REIT company in order to have control over the investment portfolio.

Based on a real case in Malaysia, al-Hadharah Boustead REIT has just recently privatized their company. After they acquire all the shares from all the investors at a certain price, al-Hadharah as the owner or sponsor of the assets are now in the process of transferring or acquiring back the asset that they had injected into the REIT. In this scenario we can see that, even though during establishment of REIT, the owner or sponsor of the property sell it to REIT company, end of the day they have right to get the property back no matter what happen with a special clause stipulated in the deed. This means that, the owner won't simply loose the asset. The asset will then be transferred back to the original owner.

With regards to the practice of Waqf of company shares, Johor Corporation has Waqf certain portion of listed and unlisted shares. Can a company, Waqf their shares that are listed in the market? A prominent Turkey based multinational company, i.e., KOC had also Waqf their listed shares since 1969 and they perform well.

However, JCorp has faced some difficulties in managing their shares that in 2009 they have exercised Istibdal of the shares due to bad performance of the Waqf shares during the 2008 financial crisis.

Recently, they did ask me, what are the precautionary measures they should take in order to curb this issue. For example, are there certain benchmark from Shari'ah perspective that they need to follow, how much of the loss of the Waqf properties are considered as lost? is it 1/3 or 1/4 that needs them to do Istibdal of the Waqf properties asap.

Should there be any lost in this case, would the stock manager be liable to bear the loss or the Waqif that is Jcorp has to top up the losses. The loss is definitely is not predictable as it is subject to the market condition.

Really appreciate if you can shed some light on this as well.

Thanks. May Allah bless you.

Regards,

Syahnaz

**My Answer:**

Bismillah al Rahman al Rahim

Alhamdu Lillah Rabb al Alamin, wa al Salatu wa al Salamu ‘‘ala Sayyidina Muhammad, wa ‘‘ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Syahnaz

Assalam Alaykum wa Rahmatu Allah wa Barakatuh

There are a few important points I believe in their importance and I do not accept compromising them.

1. Al 'Inah (example the highlighted sentence below as repeated more than once) is in complete contradiction with the fundamental principles of Islamic finance and with Shari'ah. any opinion otherwise is a misreading and misunderstanding of the Shafi'i school.
2. Earning in Islam can only be by owning a property or offering labor. There is no other way of earning. Talking about finance earning is by real full complete ownership of an asset.

Beneficial ownership of a flow of future income is not Shari'ah compliant. One must own the asset which creates the income in order to deserve this income.

3. As private ownership is sanctioned in Shari'ah, a result of it is: conditions of Waqf founders are treated as text of law Giver. This is because Waqf comes from private property and with owner's will. Accordingly a Waqf property cannot be diverted to any other use as long as its original use is still available.

4. Same also means that founder's conditions, explicit or implicit, must be respected completely. This is why when a person makes a Waqf out of shares (with no provision in the document of Waqf to give authority to trade them) these shares cannot be sold regardless of the market price. After all shares represent part ownership of the company, market price is irrelevant as you very well know.

5. Cash Waqf is permissible and has been practiced since as long as the first one hundred year of Islam. It is recognized by the Fiqh Academies. It may take one of two forms: 1) cash to be lent to people who needed and returning the same, this is unchangeable as decreed by the Waqif; and 2) cash to be invested and made to grow by what Fuqaha call Taqlib (transformation into goods/assets then into cash again). Here if the Waqif restricts the space of investment we must abide by his/her restrictions, if he/she did not impose restrictions, investment is open as per the discretion of the Nazir. This also means that Istibdal of Waqf is extremely limited unless made easy by the Waqf document itself.

For Waqf to contribute to REIT: it is a violation of Shari'ah and the will of founder to sell the Waqf land to REIT and buy it back. Alternatively the Nazir rents the land (with fare variable-intervals rent) to REIT with an agreement explicitly separating ownership of land from ownership of construction over it (this is permissible in Shari'ah and under all laws. It is also permissible to REIT to ret the land as it remains owner of all its property which is construction only). REIT issues units whereby investors will own the building (not including the land). A condition may be added to assign part of the rent of the land to buy units of REIT from the investors at the market price (i.e., from the listing Exchange). This is only if the conditions of the Waqif permits increasing the Waqf capital (otherwise such increase in the asset of the Waqf asset represent deprivation of beneficiaries from their right to the total revenue of the Waqf property).

Units if REIT can be made Waqf, if they are without a permit to trade, Mawquf units themselves remain Waqf ad only their revenue (no to include capital appreciation) is to be distributed to the beneficiaries (who may be different from the beneficiaries of the land).

I hope I helped, if you have any other comment please write again.

Wa Allah A'lam

Wa Alhamdu Lillahi Rabb al 'Alamin

Wassalam

Prof. Dr. Monzer Kahf

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From: feda

Sent: Sunday, October 26, 2014

**Question: Waqf and temporary Waqf**

Assalam Alaykum professor Monzer,

Reading some of your articles, I had some questions regarding the Waqf as an economic Islamic

concept;

-Why should not we consider the temporal Waqf as a 'Sadaqah Jariyah'? what is the difference?

-In your paper 'Role of Waqf in the Welfare of the Ummah', what do you mean by making the property perpetual by accounting procedure?

-Is Lebanon the only country to limit the family Waqf into two generations? what about Egypt?

Is Zakah required on Waqf? Does the nation state tax the Waqf property in Islamic countries?

Thank you prof. for your cooperation, and forgive my lack of economic information!

**My Answer:**

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu 'ala Sayyidina Muhammad, wa 'ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Fedaa

Assalam Alaykum wa Rahmatu Allah wa Barakatuh

Perpetuity means making the Waqf property permanent for its cause. It is a great idea which was not known before the Islamic Waqf. Think of it as similar to shareholding companies/corporations. They are permanent for their objectives.

At the same time temporal Waqf is permissible but less frequent than permanent. This depends on three factors: 1) nature of the property, a horse doesn't live more than a given number of years, 2) the will of the founder such as making a house Waqf for a mosque for 5 years, .3) There are certain ideas for which a Waqf can be created which are temporary such as sustaining an orphan until she graduates from university and have a job. In such a case the Waqf may use up its principal and revenue together like what is known in finance market as annuities.

Waqf Dhurri was cancelled and prohibited in Egypt during Abd al Nasir and in Syria during Husni al Za'im in 1949 it is not regulated in Saudi Arabia (left to classical Fiqh). Only Lebanon has it regulated for two generations.

Accounting perpetuity: means setting aside every year part of the revenue so that when the property is worn completely there is sufficient fund to replace it with a new one. This is called capital replacement provision and more often called capital amortization.

In many countries, including most Western countries Waqf (trusts, endowments and foundations) is given tax privileges. In most Muslim countries it is tax free and in many country it is also given water and electricity privileges.

In Shari'ah it is not subject to Zakah because it is not owned by a natural person. In Maliki school Waqf Dhurri is subject to Zakah as it is considered still owned by the Waqif and his heirs after him.

Wa Allah A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

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From: Syed

Sent: Saturday, April 19, 2014

**Question: Retirement and estate planning, Trusts and Waqf**

Dear Dr. Kahf

Assalamoalaikum

I hope you have been well. Your advice and opinion has guided me considerably in the past and I pray to Allah that you are rewarded for this kindness. I have a few questions pertaining to some important financial decisions. I would highly appreciate your input and advice

1) I want to be Shari'ah compliant when discussing and deciding about trust/estate planning. Is there any such service in the US

A living trust for the purpose of estate planning is based, in Shari'ah, on the concept of Wakalah which is agency. If you intend to have a living trust so that estate goes to your heirs after death, you have to comply with the Shari'ah rules regarding inheritance, properties, and Wakalah. Please see the suggested format for it on my website [www.kahf.net](http://www.kahf.net) please read it CAREFULLY, AND HAVE YOUR LAWYER AND FINANCIAL ADVISOR READ IT CAREFULLY. If they suggest any change please be sure to test any such suggestion on the Shari'ah aspects. I will be glad to review any such change they may want to make.

Alternatively if you intend a trust to be for charity it must be founded then on the concept of Waqf. This requires changing property ownership effectively at the time of setting the trust and put in it all conditions you desire for distribution (the Wakalah trust also requires, according to American laws to make the ownership in name of trustee, the basic difference is the assignment of properties after death, if family, it means returning of property to heirs. If it is Waqf there is no distribution of principal to heirs).

2) I am interested in a 529 saving planning for college fund. Is this permissible?

It is permissible to establish it. you need to select funds that have least Haram and every year make purification by estimating, to best of your educated guess and according to best info you can obtain, by giving to charity the Haram amount of income. This makes the fund then permissible and Halal for your children beneficiaries.

3) I am considering a life insurance policy by amfam, which is not whole life nor term It is somewhat in the middle. It does not give me dividend, but accumulates tax deferred cash value, and retirement option. It is a permanent policy. I understand it is difficult for you to say whether such a coverage is Shari'ah compliant but in your opinion, any such policy, which is permanent, halal at all

This I don't understand well, please explain to me what do you mean by permanent policy. From the description you mentioned it is regular life insurance which is interest-based. If it is necessary for your objective, you are only entitled to your principal (total of premium you paid only) not to any increment above it.

If this insurance is any different, please give me detailed explanation to study and give opinion.

JAK for all your help

Syed

**My Answer:**

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu 'ala Sayyidina Muhammad, wa 'ala Aalihi wa Sahbihi Ajma'in

Dear Br. Syed

Assalam Alaykum wa Rahmatu Allah wa Barakatuh

Please see my answers below the questions:

Wa Allah A'lam

Wa Alhamdu Lillahi Rabb al Alamin  
Wassalam  
Prof. Dr. Monzer Kahf

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Dr. Kahf.

Does the same principle apply to retirement funds that a) I will be entitled to the value paid over time and nothing over it b) try to calculate whatever 'haram' is there and pay it to charity. Also for a more personalized strategy are there Shari'ah compliant financial advisers in the US. I really need one.

Thank you again for your guidance.

Syed

**My Answer:**

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu 'ala Sayyidina Muhammad, wa 'ala Aalihi wa Sahbihi Ajma'in

Dear Br. Syed

Assalam Alaykum wa Rahmatu Allah wa Barakatuh

Yes, of course. How can a Muslim be entitled to earn interest or from share of companies overwhelmed with Haram activities, interest and otherwise. The same rule applies to all investment funds in America, even those that are described as Islamic. The Islamic funds minimize the amount of Haram and usually tell you each year of the percentage they estimate of the Haram. In saving IRS funds, 401K and Retirement funds you have little choice to minimize Haram because. This is why you need to always estimate the Haram and exclude it from your property by giving it to Muslim charity.

I don't know of any personalized Shari'ah financial advisement in America, I know there are several funds who are run on the basis of Shari'ah tolerance levels (always with the principle of purification), like Amana fund, NAIT Iman fund, Azzad fund, check with them they may offer personalized advisement.

Wa Allah A'lam

Wa Alhamdu Lillah Rabb al 'Alamin

Wassalam

Prof. Dr. Monzer Kahf

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From: Ann

Sent: Friday, April 04, 2014

**Question: Waqf regulations**

Assalam Alaykum, Dr. Kahf,

I don't think that I have met you, but I am the mother-in-law of ..... I was a founder of the Islamic School of ..... which has now closed. We are left with a relatively large property near downtown Seattle. We have tried to lease it for more than a year unsuccessfully. We have been advised to set up a trust, to sell the building and to invest the money. We are also considering asking the Islamic Development bank to develop it. I am contacting you because we are not certain about the regulations for a Waqf. We have been told that we cannot sell the property at all. Others have said we can only sell it if we purchase another property. We want to make the

best financial decision for the Muslim community, but we also want to be certain that we are following the requirements for a Waqf. We would very much appreciate hearing your advice on how we should proceed.

Ann

**My Answer:**

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu 'ala Sayyidina Muhammad, wa 'ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Ann

Assalam Alaykum wa Rahmatu Allah wa Barakatuh

I think we have met in the Quraishi camp between 72 and 75. At least I may have met your husband and definitely know his brother who was in New Jersey, is he still there?

It is unfortunate that the school is no more there, but I think this was for a long time ago!

I personally believe that all community properties in America, schools, Islamic centers, mosques, cemeteries and their likes must be treated as Awqaf.

A Waqf must remain Waqf until the Day of Judgment. If the existing property is no more used for the school, is there a nearby school especially serving the same community to which this property may be transferred on the condition that they use it for school use. A Waqf real estate property may be sold provided the money is used for buying another real estate property which will be used for similar objective. I do not advise to use the fund of Waqf for buying share unless the founder made it as a condition and I don't advise a founder to do that unless for long term investment in income shares such as utilities only.

Please if you have any other question don't hesitate to send it, you and your family and Dr. Fuad are very dear to me and Mayssun.

Wa Allah A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

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## FATAWA AWQAF TRUSTS 2013

From: Sylvia

Sent: Wednesday, December 11, 2013

**Question: Good cash Waqf management**

Dear Sir,

Before, bear with me please if I take up too much of your time.

I am an undergraduate student in Institute of Islamic Studies Darussalam, Gondor. Indonesia. I am the student of Mr. Lahuri bin Nadim, ISID Gontor Indonesia.

Now, I am writing a thesis about Cash Waqf management. I want to know, how the good cash Waqf management is. As far as I know, the management of cash Waqf is not an easy thing because, we have to keep its perpetuity. So, I would be very grateful if you could supervise me in this matter. I wonder if you could also explain me about a good cash Waqf management.



I am looking forward to hearing from you. Thank you very much.

**My Answer:**

Dear Sylvia.

Assalam Alaykum Wa Rahmatu Allah wa Barakatuh

Cash Waqf is understood in two meanings: Waqf of an investment deposit in an Islamic bank which generate return that is spent on the objective of the Waqf. Similar to this is a Waqf of a sum of money to be entrusted to a person in order to invest it and generate income whereby the income is spent on the objective of the Waqf. Its management is simply by selecting a good and highly trusted investor like a big Islamic bank.

The second kind of cash Waqf is where the principal of Waqf is in cash form and itself to be used for giving interest free loans to persons who need loans. This was practiced in the Ottoman state for a long time and apparently was also known in Andalus (Spain when it was Muslim). This form of Waqf requires two main guidelines in its management: 1) need to charge beneficiaries all the cost of operation which usually consists of: risk of inflation, risk of default and cost of administering the fund and its account. And 2) prudent management which reduces default and admin. expenses. The latter is no more than rules of good governance and known in management science.

Best Regards,

Wassalam

Prof. Dr. Monzer Kahf

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## FATAWA AWQAF 2012

From: Zeinoul

Sent: Friday, November 16, 2012

**Question: Sukuk for partnership with \Awqaf projects**

**Location: Africa**

SLM. What If we have the shares held by a Trustee on behalf of Sukuk holders rather than the underlying asset? So that the shareholders cannot vote on getting more loans or endangering the underlying asset, if it is that we want to maximize the protection of Sukuk holders.

Btw: where are you based now? Pls send me also your contact details mobile/tel no land no.

Wslm.

Zeinoul

**My Answer**

Dear Br. Zeinoul

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Sukuk, like shares from this angle, must represent real absolute unrestricted full ownership of the assets. Sukuk keep the owners at distance because they are always represented by the Trustee.

In the model you are suggesting, Sukuk are not the best solution. One of the most important Sukuk features is their tradability in the market and you intend to block it. Also usually Sukuk

represent a property which has already a lined-up lessee so that return is pre-fixed and you are making the return variable.

Alternatively, why don't you create a shareholding closed company and assign its management to the xyz company. You may decide to restrict the authority of shareholders by creating a trustee who will act on their behalf.

Maybe a better alternative is a limited liability company with xyz as a general partner and the five entities as limited partners. In LLCs no partner can sell to outsiders without other partner's approvals and authorities of partners can be limited to a large extent as almost all action is made exclusively in the hand of the general partner.

I've been in Qatar for over four years, the surface mail address is P O Box 34110 Doha Qatar. Presently I am on a personal Eid visit to Dubai and will be back in Qatar on Wednesday InShaAllah.

Best Regards,

Wassalam

Prof. Dr. Monzer Kahf

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Aa

Shukran

Dear Br Prof Dr Monzer

The one you are suggesting is fine. That's the original way I was thinking of structuring.

1. We will issue "linked Shares" to variable rate debentures. The reason why its variable is because we know that there will be fluctuations, mainly escalations. When the leases expire, the buildings may remain vacant for a while. Our plan is to perhaps sell the buildings halfway through the lease.

2. So each shareholder will get 20 shares linked to R 200,000 debentures.

3. For tax purposes we will pay a debenture benefit (which is deemed "interest" and this tax deductible. In the hands of tax exempt NGO's like AWQAF SA, no tax will be payable on its debenture benefit income.

4. This is a simple way. The LLC does cover issues of preferential treatment etc. and we could have a separate shareholders agreement.

5. The company will be managed by Awqaf Sa or its appointed agent (by agreement with all parties).

6. We don't want to make the decision making cumbersome so we will have only two directors in the XYZ P L who will carry out the mandate of the shareholders. In this case AWQAF SA is the prime mover/ lead investor. The others will follow unless there is a major disagreement. But these issues will be sorted out beforehand, e.g., Sale of shares; sale of property.

If the above is Shari'ah compliant then we don't have to go the Sukuk route. I was exploring the possibility of an innovative Sukuk although a mini one.

Will keep u posted InShaAllah.

Jazakallhukhairan and enjoy your holiday.

Wslm

Zeinoul

**My Answer**

Dear Br. Zeinoul

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I am not comfortable with the idea of linked shares to variable debentures.

Rather let us issue Sukuk and call them variable rate debentures. The will be issued by A trustee who will declare that it is using the funds on behalf of debenture holder to buy the assets. The trustee enters into a management agreement with xyz which will include appropriate clauses on maintenance, taxes and insurance as well as clauses on distribution of net profits to debentures/Sukuk holders. Sukuk holders will not interfere in the work of the trustee, which is actually one thing only (to enter into an agreement with the) and of course not with the work of the XYZ. Notice that in this arrangement Sukuk holders own the assets through the trustee but do not have rights to take action on them. Calling the Sukuk debenture does not really matter if the law of SA can swallow this structure. Awqaf SA can be the incorporator in declaring the trust and its functions (to issue Sukuk, own assets and enter in agreement with XYZ).

Best Regards,

Wassalam

Prof. Dr. Monzer Kahf

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AA

1. The Company is WAREES SA (PTY) LTD (WSA)
2. A wholly owned subsidiary of Awqaf SA
3. 100 ord shares of R1 each issued to Awqaf SA.

WSA purchased the property for around R21million

The funding is coming from about 5 NGOS

1. AWQAF SA (Trust) 49%
2. Islamic Propagation Centre International (Trust) 49%
3. Jamiatul Ulama Mpumalanga (Trust) 1%
4. Voice of Medina (Trust) 1%

The funds will be paid into WSA which will make the payment to the seller.

“Variable rate debentures” certificates will be issued by WSA to all the debenture holders (Sukuk holders?)

The following terms and conditions will apply:

1. The property will be bonded in favour of a TRUSTEE on behalf of all the Sukuk holders.
2. The TRUSTEE will enter into a management agreement on behalf of all the Sukuk holders with WSA.
3. Maintenance, taxes, insurance, administration will be borne by WSA from the rentals received.
4. WSA will pay to Sukuk holders on a quarterly, half yearly or annual basis, the net rental received (gross rental less expenses) as Sukuk holders benefit.
5. WSA will disclose the lease agreements entered into between WSA and the tenants.
6. Sukuk holders will not interfere in the work of the TRUSTEE.
7. The title of the property will be registered in the name of WSA in terms of the law of the Republic of South Africa. They will “Own” the asset through the Bond registered in favour of the Trustee.
8. AWQAF SA will effectively manage WSA or appoint a manager to manage WSA on its behalf.

9. Should any Sukuk holder wish to sell, they may do so by first offering to the existing Sukuk holders at fair market value within a specific time frame to exercise their right.

So in this structure:

- a) Shares are not linked to debentures. This
- b) Sukuk holders are secure with their asset through a TRUSTEE.
- c) Sukuk holders will receive a distribution of the net rentals
- d) Sukuk holders will be fully aware of the underlying asset and the income generated through the transparent lease agreements with tenants.
- e) Allows the Trustee to continue with his work without hindrance from the Sukuk holders.
- f) Sukuk holders will be able to exit (perhaps after a fixed period by agreement) at fair market value.

Optional clauses:

Awqaf SA can by agreement guarantee the purchase of any members Sukuk should they wish to sell, thus making the Sukuk tradable easily (within a time frame)

I think this can work in the South African sense and can comply with Shari'ah requirements.

Pls advise further.

Wslm.

Zeinoul

**My Answer**

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Zeinoul

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

We don't want to go back to the idea of debenture. It is not ownership. We need the trust to own the property, issue the Sukuk and delegate management. Debentures without these pre-requisites are mere debts and do not deserve return as interest is prohibited whether variable or fixed.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

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Slm.

It seems that the one critical element is missing: OWNERSHIP.

Should ownership vest in a trustee on behalf of the Sukuk holders?

At this stage we can only have WAREES SA as the registered title holder. But can overcome this with a bond in favour of trustees which has the same effect at least for the time being until we do another transaction of this nature.

Basically I was following your email below.

Wslm.

Zeinoul

**My Answer**

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Zeinoul

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Yes Brother, ownership is the crucial point. No ownership of real assets and it should be with a trustee on behalf of Sukuk holders.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

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Slm. Ok. In substance then, best case scenario for now is to pass a bond over the property in favour of the TRUSTEE. Nobody will have authority to transact on the property without the consent of the "OWNERS" who are the Sukuk holders.

By passing a 1st bond in favour of TRUSTEE obo Sukuk holders, you are effectively removing control of the asset from the directors of WAREES. The asset is in control of the TRUSTEE.

Wslm.

Zeinoul

#### **My Answer**

That does not qualify the Sukuk holders to earn because this is exactly what any lender on interest does. It is well known and clear enough that a person under debt with lien cannot take action on the property without first satisfying the lender. A 1st bond represents a loan not ownership. The title must be in the hand of the trustee as a rep of Sukuk holders.

MK

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AA

Dear Br Prof Monzer

Trust you are well with the Grace and Mercy of Allah. Trust that you had a joyous Eid. May Allah accept all your prayers and sacrifices.

We have a very simple proposition regarding the acquisition of fixed property for a consortium of Muslim NGO's including AWQAF SA. And require your advice.

1. Awqaf SA owns a company XYZ (PTY) LTD: 100 shares of R1 each. (100% Owned by Awqaf SA)
2. Awqaf SA facilitates the acquisition of a property through XYZ (PTY) LTD for R1million
3. AWQAF SA arranges 5 consortium members to fund the R1million @R200K each. (a, b, c. d & e) (Awqaf SA is one of them, sa)
4. The consortium members (CM) are not issued any shares in the company.
5. The CMs are issued with Secured Variable rate debenture certificates (Sukuk?)
6. The Sukuk is subject to the following terms and conditions:
  - a. XYZ will pay a dividend yield at end of each year equivalent to +- 87.5% of rental income. (The other +- 12.5% being expenses) (10 year leases are in place, with options to renew.)

- b. The dividend yield this may equate to 10% pa, 11% pa, 12%pa, 13%pa, 14%pa, 15% pa, 16% pa etc. ...over the 10 year period. (There are built in escalations in the lease agreements)
- c. Sukuk holders will have to stay fixed and not sell to any third party ... Awqaf SA shall have the right of first refusal.
- d. Should Awqaf SA purchase the Sukuk of one or more members, it may at its sole discretion onward sell the Sukuk to another person/s, (may offer to existing members of the consortium). Similarly if Awqaf SA would want to exit, it may provide right of first refusal to the other members on a pro rata basis.
- e. The asset is registered in the name of XYZ Pty Ltd. XYZ (Pty) Ltd is the registered title holder.
- f. The Sukuk holders (except for Awqaf SA) do not own any shares in the company. Awqaf SA will manage the property and the company at a fee payable by XYZ (PTY) LTD. (out of the +- 12.5% allowed for expenditure)
- g. For the security of Sukuk holders, a 1st bond can be passed over the property to give the Sukuk holders the protection against any third party.

Kindly provide your advice on the above.

What are the critical requirements for a Sukuk?

We may want to extend this as a public offering as well for future projects.

Wslm.

Zeinoul

Slm and Shukran.

Jazaakallahukhairan Dear Br Prof Monzer. Thank you for always being at our service and always keen to offer your advice. It is really very highly appreciated and May Allah swta reward you well.

I think most of the conditions you are referring to can be met.

1. Regarding ownership of the underlying asset: registering a 1st bond on the property in favour of Sukuk holders giving them equity in the assets rather than the company.

**This is not equity; this is a right on equity which is a lien or charge. It does not do it. The title has to be in the name of the trustee who must be the representative of the Sukuk holders**

2. The rate will be a floating rate.

3. The selling price will be fair market value of the underlying asset.

4. The appointment of a trustee. This should not be a problem.

5. The title of the property is held in the Company

**It rather should be in the name of the trustee, a charge is not sufficient**

6. The Directors of the Company may be appointed as its Trustees? Or do we want a third party trustee?

**This may make the Sukuk fake not real. You cannot have a potential conflict of interest and call it ok**

7. The property/ies will be rented out to third parties and not the issuer.

**Then the Sukuk are Wakalah basis. The Wakil takes 12.5% or the gross rent. How about maintenance, taxes and insurance which are the liability of lessor (Sukuk holders) how are they going to be paid.**

8. Awqaf SA wants first option to purchase at fair market value if any sukuk holder wishes to sell.

It is permissible and every partner has this right

9. If Awqaf Sa wishes to sell, it will give the other members first option to buy.

Every partner has this right, No partner can be deprived of this right.

Do you have a draft of a Sukuk Mudarabah contract?

I don't have forms. But draft them according to SA laws and I can review them

What type of Sukuk will this be? If not Sukuk Mudarabah..

As mentioned above, there seems to be no concept of net profit to be shared between a Mudarib and Rabb al Mal.

Are we getting closer?

Wslm.

Zeinoul

**My Answer:**

Please see my answers in red

Monzer

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The 1st Bond is a way of protecting Sukuk holders. They are the bondholders, not any other bank or financial institution. Their earnings are directly based on the earnings of the underlying properties less management/ taxes/ etc. costs.

Then the best option would be to make them shareholders in the Company linked to the Sukuk.

But you said you are not in favour of this linked arrangement.

Slm

Zeinoul

**My Answer**

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Zeinoul

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

We don't want to go back to the idea of debenture. It is not ownership. We need the trust to own the property, issue the Sukuk and delegate management. Debentures without these pre-requisites are mere debts and do not deserve return as interest is prohibited whether variable or fixed.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

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**Subject: Waqf Business issues**

From: Fawzi

Sent: Saturday, March 13, 2010

Location: Ghana

**Question: can a Waqf go in partnership with other persons?**

AS-SALAAMU ALAIKUM WARAH'MATUL-LAAHI WABARAKAATUHUU

Dr. Kahf,

May ALLAH bless you, your family, and loved ones abundantly. I have recently been informed of the release of a certain piece of land to be used to generate wealth that would help the community.

The concept of Waqf came to mind as my recent visit to Jeddah educated me on the readiness of the Islamic Development Bank to support Waqf based projects in non-Member countries.

Here are my questions:

1. Can a Waqf project be done using a partnership structure with other interested parties?  
I.e. the Waqf would own a percentage of the project?
2. Can a management company manage the Waqf for a fee?

The reason for my first question is that I intend to look into maximizing the value of the land in question, and thus the amount needed for the project may be more that would be given to establish the Waqf project. In this case we may need other investors to pitch in to complete the project.

Your clarification of these issues would be much appreciated.

Ma'a Salaam

Fawzi

**My Answer:**

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Fawzi

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

A Waqf land can only remain in the ownership of Waqf for its purpose forever. It cannot be share with w new comer partner. This means: you cannot make any other person a partner in owning the Waqf land. Of course you can take investors (who always like to have an exit from the deal in the future) as owners of the construction on the land (either partner in owning the construction with the Waqf or full owner of construction). You can arrange a declining partnership in which part of the Waqf share of the rent or revenue can be used to guy the partner out so that the Waqf will have full ownership of the construction too. (In principle, construction follows land in ownership but they are separable by agreement for a number of years not permanently).

Awqaf property can be managed for fees by a management company.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

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**FATAWA AWQAF 2011**



From: Habib

Sent: Tuesday, February 15, 2011

Location: United Kingdom

**Question: Using trust for inheritance in Muslim communities**

Dear Dr. Monzer,

Assalamu Alaykum.

I hope you are well. I am writing to ask a question regarding using of will and trusts for inheritance purposes. I am aware that you propose use of these instruments in non-Muslim countries. The question I have is can similar instruments be used in other circumstances. I am writing a paper on Islamic Finance and Offshore Financial Centers (OFCs). One key product of OFCs is estate planning where wills and trusts are used for inheritance purposes. My question is two-fold:

1. Can Muslims living in Islamic countries use these centers for estate planning (if done according to Fara'id).
2. By putting the assets/property in a trust appears to prevent actual ownership of these assets by the heirs as they only have beneficial ownership (e.g., cannot sell the assets if they want to). Does this violate the laws of Fara'id?

I will be grateful if you can kindly provide some insight on these issues. We are planning to organize a Roundtable of Islamic economists and Shari'ah Scholars here in Durham with the ISRA and IRTI in April. Once the program is finalized, we will send you invitation, InShaAllah.

Best regards,

Habib

**My Answer:**

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Dr. Habib

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Muslim in any country, Muslim majority or Muslim minority countries can use the last will and the living trust forms. This is of course if laws in their countries allow it and I don't know any Muslim country that does not allow creating a trust.

I believe however that any Muslim must put appropriate clauses/articles in these documents to assure that the Islamic inheritance system is implemented correctly and in full. Accordingly from Shari'ah point of view, a trust can only take the form of Wakalah or Waqf. When it is a Waqf ownership is transferred to the Trust permanently and the heirs, family or any other beneficiary will have only the right of deriving benefits/revenues as dictated in the document. Ownership of assets does not go to heirs at any time unless the founder dictates it been liquidated and distributed (see my reservation later)

If the intention of the trust is long term investment and preservation, then distribution to heirs, the basis of the trust becomes Wakalah. Wakalah comes to an end by death of the principal. This means that it must be either distributed at that moment or continue with CONSENT of new owners. This distribution must be in accordance with Fara'id, keeping in mind that some

children of the founder may die during the life of founder, I take the position taken by most Arab laws of inheritance that the children of a deceased child take his/her share (as it is only website)

My reservation is: any attempt to use the Waqf basis of a trust in order to modify the share of inheritance is Haram and is void. This means that creating a Waqf with liquidation and distribution to children at any different rates is not permissible, While creating a Waqf with distribution to living descendants after a long period say 100 years is permissible because it is most likely that own children would not be then there and distribution can be at any rate, e.g., equating males and females. In other words, I argue that since Abu Hanifa does not allow creating Waqf because he considers it a violation of inheritance likewise Waqf creation should not be a vehicle to avoid the Shari'ah distribution.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

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**From:** Habib

Dear Br. Dr. Monzer,

Walaikum assalam warahmatullahi wa Barakatuh.

Thank you for your detail response--it is very helpful.

1-What I understand from your response is that while under Waqf property is transferred to trust permanently and cannot go to the heirs at any time, under Wakalah of Waqf, the trust is temporary and dissolves with the death of the Waqif or trustor. In the former case, how is the violation of inheritance law (as the heirs do not have legal ownership of their inheritance which lies with the trustee, which probably is the point of Abu Hanifa) resolved?

This highlighted statement is inaccurate. The trust is either Waqf or Wakalah (meaning Amanah). Western laws makes the Trust under all cases owns the property and have the trustee acts according to instructions. In Wakalah trust owner remains the trustor/founder and end by his death. So if you make a trust with no reference to being Waqf or Wakalah it needs to be interpreted on either way. It shows that the intention is to distribute to heirs then it is Wakalah. In other words, when a man comes to me I first tell him all the above and the difference between them and ask him about his desires which route he wants to take. Then make the trust with distribution or without it so that we set it the right way. Notice where does the problem lie?! It is in the fact that trust actually owns the property in Western laws and yet it allows distribution to heirs. The underlying philosophy is that in Shari'ah ownership right is given from Allah for lifetime only and at death it goes back to Allah who distributes it as He likes (as He gave it in the Qur'an). In Western laws ownership is absolute therefore you can do anything you want with it even after death.

2- When it is a Waqf ownership is transferred to the Trust permanently and the heirs, family or any other beneficiary will have only the right of deriving benefits/revenues as dictated in the document. Ownership of assets does not go to heirs at any time unless the founder dictates it been liquidated and distributed

In the above case, I was saying that heirs do not get full ownership of the property, but only beneficial rights.

While searching for sources for this paper, I found an interesting related issue that may interest. In Labuan offshore financial center one can also establish a foundation for asset protection and management. Foundation is a European concept which appears to be a mixture of a trust and company. By creating a foundation, the ownership of property moves to the foundation itself and there is a council (like a board of directors) that governs it. Like a trust the revenues of the assets of the foundation can be distributed to specified beneficiaries. Unlike a trust, the founder can have control (as a founder or through the council) on how the foundation is managed and run. The law in Labuan says that Islamic foundations can be established.

I was wondering what would be the Shari'ah perspective on this type to entity.

Thanking you again and best regards,

Habib

**My Answer:**

Dear Br. Dr. Habib

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

You see a Waqf can be permanent or temporary. There are many laws that do not allow permanent trust (in America family Waqf cannot exceed 3 generations) or permanent family Waqf (in Lebanon family Waqf must not exceed 120 years). This liquidation is permissible to be not according to inheritance because the heirs are distant when it happens. Shari'ah does not put such a limit on family Waqf but some form of restrictions or liquidation is in my opinion necessary to avoid fragmentation and meaningless share. In my personal Waqf I suggested elimination of any share that becomes be low US 100 and transforming the whole Waqf to charity after 5 generations. But otherwise heirs have only right to share of revenue in investment Waqf and beneficiary ownership in case of direct Waqf. Labuan matter is meant to be Waqf. But the word (and institution of) Waqf should take it to the authority of state religious board according to their laws. This is why they avoid the word Waqf and use instead the word foundation. Even Islamic university has established a foundation not a Waqf for this reason.

Foundation in America can be private but must be charitable to enjoy privileges of foundations.

Best Regards,

Wassalam

Monzer Kahf

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From: Khalfan

Sent: Thursday, January 27, 2011

Location: Zanzibar

**Question: Can the Waqif be the Nazir?**

Dear Prof. Monzer,

I would like to ask your favor to clarify what Shari'ah (or different schools of Islamic laws) says about the nomination of a Mutawalli and what is your stand on the issue. I saw some of the Waqf deeds in Zanzibar that Waqif have dedicated themselves as Mutawalli during their life time and thereafter death others in lineage take over. Is it allowed to nominate yourself as Waqif to be Mutawalli? What is the motivation behind such a scenario?

Thank you.

Best regards,

Khalfan

**My Answer:**

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Khalfan

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Of course the best Mutawalli of a Waqf is the Waqif. Isn't she/he the once who created the Waqf from own money? Waqf is absolutely a private action for the sake of Allah and the founder is the one who cares more about it. This is the position of Shari'ah. It is based on the principle of respect of private ownership, freedom and integrity of human beings. The founder creates the Waqf seeking pleasure from Allah and it is he who decides how to do that. He has full right to appoint himself or any other person as Nazir and government must not interfere in Waqf except in protecting it and giving it privileges given to similar charities. This is why a basic rule of Waqf is: the condition of founder should be treated as a text of the Law Giver. Of course any condition that clearly contradicts the basic objective of the Waqf is not valid such as a mosque with a condition to be closed at times of prayers. But if a Waqif makes a condition that persons not wearing socks should not be allowed in the mosque such a condition is to be honored, no doubt about that.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

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From: Faheem

Sent: Thursday, January 13, 2011

Location: United States

**Question: is the Waqf a contract?**

Assalaamu Alaikum Dr Kahf;

It is with great interest I read your website and the advices you offer. Thank you. I wonder if you can assist me with the following issue.

I have a home I purchased long ago that I paid off for. A relative of mine is interested in purchasing it but is unable to qualify for financing at any of the Islamic Institutions here in the US due to his credit not being good. I would like to help him out but I'd like to protect myself and property as best as I could.

He wants me to rent to him for 3 years with an option to buy until he fixes his credit (could take a couple of years) at which point he will obtain financing from an Islamic institution and purchase the property. I was speaking to a few investor friends of mine and they offer the following solution. Please comment.

Thank you.

1. I create a beneficiary directed living trust and transfer the property to it (I am the trustor, my lawyer as trustee, I am the 100% beneficiary).
2. I assign 90% beneficial interest to buyer and retain 10% beneficial interest myself (co-beneficiaries).

3. The trust leases the property to buyer for market rent for a lease period of 3 years with an option to purchase my 10% beneficial interest during or at the end of the lease period for a pre-agreed price.
4. Buyer would pay the trust a non-refundable option fee for the right to purchase my 10% beneficial interest.
5. Buyer agrees to be obligated for ALL maintenance of the property (as he is a beneficiary occupying the property).
6. The trust will pay the property taxes and insurance of the property.
7. During or at the end of the lease period, buyer has the right to exercise his option to purchase my 10% beneficial interest.
8. If buyer defaults on his lease payments, the trust will revert his 90% beneficial interest to me (as other beneficiary) and he will be evicted (with adequate warning). The option fee is non-refundable and all monthly payments are regarded as lease payments for usage of the property.
9. At the end of the lease period, if buyer chooses not to exercise his option there is no penalty on him. Another lease can be renegotiated or I can choose to sell to someone else.
10. If buyer exercises his option to purchase, I am obligated to sell to him my 10% beneficial interest for the pre-agreed price.
11. I will credit the option fee towards the purchase price.

According to Shari'ah, can I structure the above transaction?

Thank you so much (I apologize for the length, but I wanted to cover as much detail as possible)  
faheem

PS: I realize that I can accomplish the above without the involvement of a trust, but (without getting into details), my state laws puts a heavy burden on option to purchase Real Property. However, as you know, this is a case of an option to purchase beneficial interest which is Personal Property and the statutes are different.

**My Answer:**

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Faheem

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

There are certain principles that guide any such structure in Shari'ah. Here are those that relates to this case

1. Although many laws in America and in other countries give a trust a different legal personality (and this is recognized in Shari'ah) ownership of the trust remains in the hand of the Trustor except in Waqf where the property goes out of the ownership of founder with no return at all. In other words we still deal with you and him from Shari'ah point of view and the existence of the trust does not eliminates a basic fact that the Trustee acts on behalf of owner on Amanah basis.
2. Shari'ah does not accept any differentiation between beneficiary interest and ownership. If he owns 90% beneficiary interest he may only rent the remaining 10%. I

question why transfer 90% beneficiary interest? If you do so as a grant, then he owns 90% of the property and is required to pay 10% of the fair rental value.

3. If the monthly payment he makes is actually more than the fair market value (i.e., inflated to include partial payments for the property itself) then this additional payment MUST be credited towards ownership and can't be considered simply rent.
4. A financial penalty for default or delinquency must not exceed the actual financial damaged cause by them. It cannot be by a condition in the contract. By condition in a contract is Riba not compensation of damage. Of course actual financial damage is essentially the out of pocket expenses and any difference between the contracted price and the sale price if you were forced to sell to another person. The condition of penalty is not recognized in Shari'ah in matters of payments at certain maturities except within the compensation of actual damage.
5. Payments and division of ownership must always reflect the actual reality not any assumed or presumed virtual image of it. This means that payments must always be credited for what they really are: rent (consensual within the boundaries of fair market rent) or payment toward ownership. It also means that if you own you are responsible for major maintenance, minor maintenance can be charged to lessee, a known insurance payment and any definite known expenses can be charged to lessee as a part of the rent.
6. Suspension of a sale on a future date is not permissible. Rather making an undertaking, subject to make a contract in the future is permissible.

I see in the proposed structure many variations from these principles, many changes need to be done.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

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## FATAWA AWQAF 2010

**From:** Khalfan

**Sent:** Friday, October 29, 2010

**Location:** Zanzibar

**Question:** Is Waqf legally recognized in America

Aslam Alaykum.

Dear Dr. Monzer,

I am doing research on Islamic Waqf on the East African Island of Zanzibar.

Zanzibar was ruled by Arabs and later become a British Protectorate in 1890. Consequently, the British transformed the traditional Waqf practice in the Island. According to the correspondence of British Waqf Commission, investing Waqf funds in stock exchange is accepted by Islamic laws.

Kindly, as I am not familiar with the law, I would like to ask your favor to clarify this matter. I will appreciate if you could varnish some Qur'anic and or Hadith evidence.

Many thanks.

Salaam,

Khalfan Amour

**My Answer:**

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Khalfan

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

There is nothing about Awqaf in the Qur'an except the issue of Sadaqah Jariah. The only Hadith is the famous one of Omar when the Prophet, pbuh, advised him: make it Waqf and make its fruits for charity. The full text is in Bukhari. Awqaf is assignment of private property for a cause of righteousness. Therefore the general rules apply to it. This is why the major rule is respecting the conditions of Waqif because it is his property and he decides on it. The rule is "conditions of Waqif should be treated as if it is a text of Qur'an or Sunnah." Permissibility of investment in stock is there provided it does not violate Shari'ah or conditions of Waqif and it is to the best interest of beneficiaries/ objective of the Waqf. Therefore it cannot be in shares of banks, if the Waqif left agricultural land and now it became metropolitan, most likely the Waqif did not mean to plant it under these conditions. If he did not prevent replacing it in his document (the Hujjah) or his document is lost and not known, it can be sold and invested in Shari'ah compliant share if this is better to the beneficiaries. This is a matter that should be decided by the Nazir under supervision of appropriate supervisory authority.

If you have any other question please do not hesitate to contact me.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

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From: Yusuf

Sent: Friday, April 09, 2010

Location: South Africa

**Question: Waqf for making regular business**

As-salam 'alaykum

Dear Shaykh

My name is Yusuf. I met you when you visited us in South Africa a few years ago. I am now involved with a private company. We are interested in establishing a business for Waqf purposes. We intend to have the entire business and all resultant profits made Waqf li-Allah.

We need your assistance in that this type of venture does not exist in South Africa; we were wondering if you know of the existence of such types of business Waqfs in any part of the world. Also do you have business models for this kind of venture on hand that can assist us in establishing our Waqf. Also any kind of advice and assistance you can offer will be most welcome.

Thanking you in advance and in anticipation of your cooperation.

Yours

Yusuf

**My Answer:**

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Yusuf

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I don't have any business model for a Waqf business. There are several Awqaf in many countries in which the principal of the Waqf is a share in a private partnership, especially these Awqaf that are based on Wassiyah of the one third. Awqaf of shares in common stock companies is also common. What I suggest is: register the business as a Waqf with its balance sheet on the day of creating the Waqf, authorize the Nazir to take all action of buy and sell, put some form of a limit to the Nazir authority in order to preserve a minimum principal in case of loss (e.g., do not borrow on behalf of the Waqf), and proceed from there.

If I can be of any further help please do not spare me.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

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## **FATAWA AWQAF 2008**

**From:** Asad

**Location:** USA

**Sent:** Monday, January 07, 2008

**Question: Waqf compared to trust**

Assalamu Alaykum

I came across your website while doing research on how a WAQF concept can be applied in the US. I was found your site to be very informative and useful. Here in Minnesota, our donors want to protect our school through a WAQF, but want that to be a local arrangement and clearly do not want to deal with any national organization. I am trying to make sense of how to make these competing needs work. Can I ask for your advice?

What is the difference between a Waqf in the Islamic setting & a trust in the modern western setting? Am I correct in thinking that in the old days, the masjid or the school was not a Waqf; rather agricultural land that produced revenue was placed in a Waqf to help support the masjid or school? If that is correct, why do people nowadays still want to put the masjid or school in a Waqf?



As the foremost expert in this field, your advice would be appreciated.

Sincerely, Asad

**My Answer:**

Bismillah al Rahman al Rahim

Al Hamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Asad,

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Waqf is of two major kinds and each kind has also branches. We have Waqf whereby the property itself is used to achieve its objectives. This I call service Waqf such as a mosque building, a hospital building, or a Schools building. Similar to these are copies of the Qur'an in a mosque, mosque carpets, hospital beds and equipment's or school desks and chairs. All these can be Waqf. This kind of Waqf is branched according to the nature of the service, generally as religious (a mosque or also a church) charitable (a school, orphanage or hospital) or family such as a building kept for family and descendants for future generations to use for celebrations and other gathering or could be as a residence but with no right to sell.

The second kind I call investmental. These are properties that are meant for investment whereby the net revenues, after replenishment of the property itself, are used for the poor and needy, scientific research, a mosque, a school an orphanage or a hospital or the like. This can also take three branches depending on the objective for which these revenues are spent: religious, philanthropic or family. Of course of the above can also be sub-branched on the basis of the nature of the property. For instance, shares and common stocks, investment deposits in Islamic banks, agricultural land, commercial buildings, etc. Waqf, as defined in Shari'ah is a bit stronger than trusts.

Trusts, depending on the conditions of the founder, can be sold, disposed of, etc. Waqf cannot. And if there is a pressing need for sale, its proceeds must be kept in escrow until another property can be bought and devoted for the same objectives. Waqf founder's conditions cannot be altered by any authority after the founder's death (only by the founder during his live time according to a minority among Shari'ah scholars while the majority does not give the founder any right to alter or modify).

Dear Br. Khalid

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I don't have other than what you find on the internet, just keep searching.

But I want to mention one thing. Your Teacher, Kuran, only sees the negative thing in anything that is Middle Eastern or Islamic and he invent terms for them. Perpetuity is one of the major beautiful aspects of Waqf so he wants to call it static. Is it not true that over the last 500 years all our Muslim societies were static, is it a sin of Waqf or a sin of the whole society? How about the achievement of Waqf in financing the struggle against colonialism in North Africa during the last 200 years? He does not want to see that. The whole Ummah was asleep, is it not a great job

that instead of what he sees, we work on awakening it by using its own institutions which did great things throughout history. Let me give you an example: there is a beautiful old invention, a water clock on the wall in front of Al Qarawieen Mosque in Fes, Morocco. This great thing does not work, and it is been out of functions for a few hundred years. There are several orchards in Fes as Waqf for its maintenance, God knows what happened to these orchards, must have been stolen by the Trustees themselves and became private properties long time ago. Where is the problem? Is it in society and government, I.e., in backwardness and static society or is it in the principle of perpetuity of Waqf? A hospital in Damascus, half of it is taken to a private house and the other half is just semi ruined. Is the problem in the perpetuity or in the static society? Why we were colonized? Is it because we have perpetual Awqaf? How about the perpetuity of Rockefeller foundation? Honestly, I am tiered of this mentality!

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

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## FATAWA AWQAF TRUSTS 2007

**SUBJECT: Selling Waqf House**

**From: Br. Mansoor through Islam on line**

**Sent: Sunday, December 02, 2007**

**QUESTION**

Assalamu Alaikum. We kindly request you to provide us a fatwa on the following issue. We have got one house and a property connected to this house which was done Waqf by our great grand father. As per the Waqf deed it states that this house is only meant for stay for his wife , all his three children, their children, and then daughters of his grand daughters ( Sons from the second generation are excluded.) and daughters of their daughters and so on . And the earnings of the attached property has to be used for the expenses for this house such as lighting, taxes, donations, etc. This house and property has to be managed by the eldest in the female descend and if that chain ends then the eldest male in the family. And if the entire family became any more then it has to be given for charity or some religious schools. This house should not be sold or transferred but they can use it as their home. As per the tradition in that area husband has to stay in his wife's house. Similarly all the male children will go out of home to their wives home upon their marriage. As time went the family became big and could not able to stay together and his three children including my grand mother decided to sell this house and buy three houses in order to avoid any inconvenience. Thus my grand mother bought a house for her share and invested approximately similar amount of that house by her own for renovation for the convenience of her entire family. My grand mother got 5 children 2 daughters and 3 sons. Now my grand mother died and all her children left home to their own houses and this house became vacant. Kindly let's know what we have to do with this house, whether we can sell it and divide among the children of my grand mother in 1:2 basis as per Shari'ah or has to be maintained by the original Waqf deed? Can someone do such Waqf which will deprive one's

dependants their share according to Islamic rule? Is our first decision to sell the original Waqf house was forbidden? If so is there any religious remedy? If it cannot be divided, can we withdraw the amount invested as mentioned above? If so how? Awaiting your kind advice.

Jazakum Allahu Khairan for your constant help

Yours,

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Mansoor

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

It is really difficult to give a specific Fatwa without actually reading every line of the Waqf document. However here are some points that are important:

1. The Waqf of the great grand father "for female only....." is permissible because apparently under the circumstances it was done it is not discriminatory. Usually discrimination is done against females and he was favoring them....
2. The action of grand mother in selling that Waqf for the purpose of replacing it for another that suits the different families after family growth was also correct and it seems that (at least this is more precautionary) she intended to make it Waqf even with the additional investment she added to it. But if we have clear and undisputed evidence that she intended to have the addition normal property (no Waqf) this additional amount can be treated as normal estate of the grand mother (I doubt that this is appropriate).
3. Waqf is an action a person makes on one's property. Of course an owner can do it because an owner is fully authorized over his/her property and potential heirs have no minute right to interfere. If I own a property I can do whatever pleases me with it... This is the law and this is the Shari'ah too.
4. Under the circumstances, it seems that the existing property, all of it, is a Waqf for that specific purpose that was established by the original founder. IT CANNOT BE SOLD OR DISTRIBUTED. It must only be used for the purpose it is assigned to and if that purpose is no more in existence, it must be used for charity as specified in the Waqf document. It can be replaced (sold and money put in escrow and then another property be purchased for the whole amount or more with someone paying the additional amount like what grand mother did) provided the purchased property should be made Waqf and used for the same purpose as in the document.
5. If there is no more users in accordance with document, the property can then be disposed of as mentioned in the documents to Islamic charities or schools. IT CANNOT BE DISTRIBUTED AS INHERITANCE TO HEIRS BY ALL MEANS.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

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SUBJECT: Creating a Waqf for Qurbani

From: lubna

Sent: Thursday, July 12, 2007

QUESTION:

Dear brother Monzer,

Assalamu alaykum,

I pray this message reaches you in good health and in a high state of iman. You may recall I have contacted you in the past with questions relating to Waqf and legacies and you have kindly provided detailed responses to these enquires. I pray you will be able to assist me further.

From our previous communications, you will be familiar with Islamic Relief's Waqf programme. Donors are asked to make a one-off donation which is then invested. The annual profits derived from this capital are then used towards project implementation. This ensures the continuity of the Waqf investment year on year.

The price of each Waqf share is calculated with 'Qurbani' Waqf in mind i.e., the annual profits derived from each share should at least be equal or exceed the amount required to perform a Qurbani.

I wonder if you can advise what the majority ruling is regarding Qurbani Waqf. i.e., if a person is to invest in a Qurbani Waqf share does this absolve them of the responsibility of performing a Qurbani in the month of Dhul Hajj each year.

We know already that the majority opinion is that Zakat funds cannot be used to make payment for Waqf so does this also apply to Qurbani?

Obviously there may be times where Islamic Relief may not be able to fulfill its obligation in performing a 'Waqf' Qurbani in the months of Dhul Hajj. Such as the case in 2006 where two months of Dhul Hajj fell in one Gregorian calendar year. Waqf profits were not sufficient to cover two Qurbani's.

In such cases Islamic Relief would inform the donor of its inability to perform a 'Waqf' Qurbani and give them the option instead on performing a regular Qurbani for that particular year.

Your feedback would be much appreciated and I look forward in anticipation to your response.

Jazakallah Khair

With warmest wishes

Wassalam

Lubna

**My Answer:**

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Lubna

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

While the ideas of Qurbani and Waqf are both noble and generous I think combining them together may not be the best idea!

I argue that although the Qurbani is only Wajib according to Hanafi and Sunnah according to others, it requires an intention each time you perform it and it therefore does not work in combination with Awqaf that is done in one intention to give the principal of which the objective is derived. In other words, each time a Ibadah of qurbani is done it requires its own intention while the Waqf is permanent and its objective is fulfilled in absentia of the founder, the Waqif. This means that the Qurbani slaughtered on behalf of the Waqif requires a personal

intention from the offerer even if it were to be done by proxy through an agent, a thing that can't be done by a Waqf approach that has only one intention when the Waqf is founded. An extension of this matter: if you accept Waqf for the Wajib/Sunnah of Qurbani, you will end up doing it on behalf of the deceased (should the Waqif die before next Qurbani) who are not called on to make this Sunnah/Wajib!

On the other hand, it is certainly a very noble idea to make a Waqf special to give food and may be new cloth on the Day of Eid to the poor that borrows from the idea of Qurbani and takes it as a Qurbani-like Waqf

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

---

**Subject: Charter School Designation/Use of a Waqf Islamic School Building**

**From: Mujeeb**

**Sent: Tuesday, May 15, 2007**

**QUESTION**

Charter Schools are being increasingly considered by "Islamic" schools across the country. There does not seem to be much concern about the Charter School concept itself or its operation. However, when an "Islamic" school is to be converted into a Charter School, a question of Fiqh arises:

Can a Waqf property built by Muslim donors specifically for imparting Islamic education and promoting Islam be used for the explicit purpose of non-religious education with a binding commitment to not promote any religion?

Would it be proper for the Fiqh Council to address this and related questions!

First, let me briefly describe what a Charter School is?

A charter school is a public school of choice which operates independently of local school districts. Charter schools are non-sectarian and must follow rules and regulations governing civil rights and health and safety issues. Charter schools are allotted per-student tax dollars for operating revenue and generate additional funding through private and corporate donations as well as state and federal grants. No tuition is charged. Answers to frequently-asked questions about charter schools in Texas can be found at <http://www.tea.state.tx.us/charter/faqs/faq>.

Additionally, a Charter school is a non-profit 501(c)(3) organization, and has the same status as NAIT and ISAT for that matter. Also, as you are probably already aware of, ISAT has already built and operating an Islamic School on its premises.

Based on Charter Schools Rules and Requirements, the current status of NAIT and ISAT, the inquiries with the Tarrant County Appraisal District, and the recommendation of our legal advisor, there is no risk of any complications with the property tax exemption or other exemptions for that matter.

I also just wanted to add that in Arlington, and many other cities in the US, most of the Charter Schools (above 90%) are sponsored by Religious Organizations with a non-profit 501(c)(3) status. All of these Religious Organizations are sectarian in nature propagating their religious believes.

JazakaAllahu Khairan,

Mujeeb

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Mujeeb

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

Yes, it is permissible to use the building of an Islamic school for a charter school provided the decision making of the new school is kept in the hand of the Islamic organization, including appointment of teachers and staff and the management continue to use the building, after program, for additional classes on Islamic education and teaching. In this way it becomes a part of Da'wah to the non-Muslim students.

Islamic education, for which the school was established and the building is devoted, covers the program of the American schools plus Da'wah and teaching Islamic tenets, therefore there is no violation of the covenants of Waqf in converting to a charter school with the above mentioned conditions (these conditions are normally fulfilled).

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

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## FATAWA AWQAF TRUSTS 2004

**Subject: Waqf of Ususfruct**

From: AwqafSA

Sent March 29.2004

**The Question**

Assalamulaykum

Dear Dr Kahf

Looking for advice on the following matter:

I am considering another ""product"" linked to Waqf and that is ""Al maniha"". Is it possible that I could be advised on the meaning, terms and conditions of Al minha or al maniha.

I understand that the property would be subject to a usufruct for the benefit of a third party or a family member for a specific period or subject to the an event occurring e.g., death. The property then reverts to the owner or an onward beneficial owner. I am looking at the both the usufruct beneficiary as well as the onward owner to be Awqaf SA. In other words, at some point the property could become a Waqf. This in a sense is a temporary Waqf, as a usufruct.

Please advise. Jazakallah.

Wassalaam.

Zeinoul

**My Answer:**

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Zeinoul

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

Maniha is simply of gift of usufruct. You know except for the Hanafi school usufructs (al Manafi') are considered properties (amwal); they can be subjected to all the contracts to which properties may be subject.

The Malikites for example approves of the Waqf of usufructs. For instance, if you rent a property for ten years, you can make this Mal (the usufruct) a Waqf, hence you have a temporary Waqf of the Manafi'.

The concept of Maniha does not help much because in a maniha you give the usufruct as a gift for a period of time and then the property goes back to the owner at the end of the period.

What helps more is the concept of 'Umra ( العمرى ). Al 'Umra is to give some one the usufruct of a property for life. It may be the life of the giver, the life of the recipient, or even the life of the recipient and the lives of the recipient's children as long as the give is still alive. Al 'umra is contrversial and there are conflicting views about it between the Shafi'ites and the Malikites.

In Awqaf, it is much easier to manipulate the conditions of the founder provided that we do not limit ourselves to one Mathhab. Whatever conditions one may find in a Mathhab are very often arbitrary and semantic only. The late Shaikh Zarqa argued that in Awqaf there is nothing agreed upon except that the objective must be a matter of goodness.

I suggest that you read my book on Awqaf (unfortunately in Arabic). It is all on my website and there is a paper on the web about different new formats of Waqf in our contemporary life.

I an also enclosing a contractual form for a special kind of Waqf that I called "Donation in Trust" that may give you a good idea about what kind of conditions one may put in a Waqf deed.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

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**Subject: Writing a Will for an Heir or creating a Waqf for her/him**

**From: Islam on Line**

**Sent: Tuesday, May 18, 2004**

**Name: Abdul Bari**

**The question**

Country of Residence India

Assalaam alay kume dearest scholars. May Allah bless you all for your kind efforts towards pouring islamic knowledge to the poor muslims. My Question is as follows:- A Muslim Individual has some property for which he has drawn up certain option to deal with. This individual has three sons and a daughter, The eldest son is very caring and takes good care of him, the other children are not that much attached to him. He wants to know what does Shariah say about the various options he has. The various options are as follows : Q. 1 : To transfer the whole property to his eldest son during his life time, leaving aside all the other children? Q. 2 : To keep

the whole property in his possession till his life time and after death let it be distributed amongst the heir, as per the Quaranic proposed ratio. Q. 3 : To donate the whole property to a madarsa during his life time. Q. 4 : To write a will to pass on the whole property to the Eldest son after his death. Q. 5 : To write a will to pass on the whole property to one of his closest friend after his death. Q. 6 : To write a will to pass on 1/3 of the property to a Madarsa after his death. and the balance be distributed as per Quaranic proposed ratio. Q. 7 : To write a will to pass on 1/3 of the property to his eldest son and the balance be distributed as per Quaranic proposed ratio. Please elaborate on the rights of this muslim individual as per Shariah seperately and the moral code of conduct seperately.

Notes: Please give me the answer at the earliest, since I am in big jeopardy. Jazaka Allah Khayran Bari

**My Answer:**

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Abdul Bari

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

Please allow me first to make two notes:

1) You mentioned the phrase "Qur'anic proposed ratios" more than once in your question. This is wrong!. It is rather the "Qur'anic mandatory ratios" as it is clear from the last part of 4: 11 that reads: "Faridatan mina Allah [an ordinance from God]." 2) The Islamic definition of ownership is limited to the life time of a person. A person ceases to become an owner the moment she/he dies. Humans are vicegerent of God on earth and they are given properties by God until they die; once a person dies the property she/he owned goes back to its true Owner Who has already decided its distribution. Abu Bakr al Siddiq, may Allah be pleased with him, is reported to express this meaning in a good way: "God had given a charity to you, one third of your estate that you can dispose of in order to gain more reward."

Now let us come to your question!

1- All options that violate the Qur'anic distribution, give more than one third of the estate, or give, by a will, to an heir any amount that end up disturbing the Qur'anic distribution are not permissible and sinful.

2- A person is completely free to dispose of a person's own property, while alive and with full legal competence, any way a person likes including giving it to a school, a child or any other person or noble cause. This is giving, gifts, grants and charity and no potential heir has any right to limit the authority of a person of person's properties. Of course when a person gives to own children, one must be fair among them as the Prophet, pbuh, prohibited giving some and not giving others equivalent amounts as this is in violation of the principle of justice. It is apparent that financially rewarding a kind and good doer child is permissible and just (for other children, we tell them; be equally kind and good doers and the parent will equally reward you). Giving to children (because they are potential heirs) is an act in the life time, i.e., it cannot be through a last will. Being a gift, giving to children must also equate the females with male, i.e., the rule of Verse 4: 11 does not apply to giving during the life time of a parent/giver.



3- A person, by means of a last will, may give up to a maximum of one third of the net estate, i.e., after debts and expenses, to any person or any cause provided potential heirs are not included in such giving.

4- A person may create a Waqf to the benefit of a noble cause such as an Islamic school, the poor and needy or to the benefit of one or more of her/his children (say, the good doers) and their descendents. A Waqf may also be established by virtue of a last will within the limit of one third.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

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**Subject: Awqaf and, al Manihah**

From: AwqafSA

Sent March 31, 2004

From: AwqafSA

**The Question**

Shukran and Salaams Dr Kahf

Thank you for your prompt and enlightening responses.

The usufruct may be given as Waqf. In other words, the revenues derived from the properties may be deicated as Waqf. In that way charities/sadaqah will not be spent but capitalised as the "Waqf as nuqud" for further investment. Would that not then fit into the awqaf structures as a permamnent Waqf and not as "temporary".

Shall we call them "Waqf al Maniha" and "Waqf al Umra" in addition to the ones that I mentioned previously. In both cases property income is made into a Waqf or "waqfised" for limited periods. In the case of Al Umra, the property may or may not be made into a Waqf, depending on the wishes of the waqif. In the case of al maniha, the property is simply returned, or depending omn the wishes of the waqif, may at that expiry time, decide on what he/she would like to do.

Wassalaam.

Zeinoul

**My Answer:**

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Zeinoul

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

Yes, you can use these names. Please notice two things. 1) A temporary Waqf of income does not have to be capitalized into a permanent one. This means it is still a temporary Waqf if for instance the giver wants it to be spent on teaching Islamic studies to kids in the weekend school. If you capitalize it (invite donors to give such temporary stream of donation to establish a stock fund of one million asset to spend its revenue for certain objective) you will be building for the future, the same way our for-fathers left for us such huge Awqaf properties. And 2) it is

very small please notice that the pronunciation of the word is Manihah, with long ya' after the nun and short a after the ha' and ta' marbutah at the end ( you may remove the last h to make it simpler).

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

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### **The Question**

From: AwqafSA

Assalaamualyikum

Desar Br Dr Kahf

If Al Maniha is a concept whereby one can give the proceeds of a property for a limited time, then it can be useful because not everyone wishes to dispose or give their property as Waqf. Herein lies an opportunity where property income may be ceded for a while. This leaves the donor with another option of donating.

We have adopted the following forms of making a Waqf:

1. "1% per month": This is a cash contribution out of a persons monthly income. This done by bank debit order
2. "Lump Sum" - Regular or occasional, large or small direct cash deposits
3. "Al Maal" - property, gold coins, share investments, jewelry, etc, tangible assets
4. "Al Tijarah" - a percentage or portion of ones business profits or turnover.
5. "Al Wasiyyah" - up to 1/3 of a persons estate via his/her will.

So we are constantly looking at other ways also. Al Maniha and Al Umra seem to be two other options of ceding the income of a property for different periods.

Your comments?

Wassalaam.

Zeinoul

### **My Answer:**

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Zeinoul

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

That is fine but unless you make a Waqf plan, every charity has similar donation schemes. We need something specific about Awqaf, all these and others should be tied to an Awqaf structure.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

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# FATAWA AWQAF TRUSTS 2003

**Subject: Buying a House on Conventional Mortgage and Making it into a Waqf**

From: Ashraf

Sent: Thursday, November 06, 2003

**Question:**

Assalamu Alaikum Dr Kahf,

I am a graduate from the institute of preacher, Ministry of Awqaf, Egypt.

I have read Dr. al Qaradawi's fatwa regarding buying houses on mortgage and attended your sessions at IMO conference 2003.

As I understand from Dr. Qaradawi's fatwa, buying a house on mortgage is consider to be permissible in order to give the community the opportunity to own houses and strength the community financially.

As you mention in your lectures, we have to have an Awqaf to support the community in North America, since I do not feel comfortable with buying house on mortgage, if it is only in order to own the house.

So that I am thinking to buy a house on mortgage and live in it, till InShaAllah I pay it completely off and then put in it as Waqf when me and my family do not need to live in it. (With that I will be at ease that I have fulfilled Dr. Qaradawi's reasoning in his fatwa; strength the community financially)

I would like to hear your advice and some information regarding how to put the house as a Waqf without any conflict with the Islamic Law of inheritance.

Jazaka Allah Khayran We Ramadan Mubarak, May Allah bless you and your family for your effort.

I pray to Allah accept from us all and guide us to the straight path.

Ashraf

**My Answer:**

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

Wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Ashraf

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

You are, MaShaAllah, a very kind and considerate person. This is the true ethics of righteous persons, you may disagree with a Fatwa or not feel comfortable with it but you still respect it and find it useful as long as it comes from a trustworthy 'Alem.

Your intention is very commended, to enrich the community. And your question is very relevant.

In fact some people, even in the past such as al Qadi Shurayh of the First Century of Hijrah thought that Awqaf contradicts inheritance. But this is a result of a fine confusion and it is incorrect. There is almost unanimity that Awqaf does not violate inheritance.

The fine point here is that creating a Waqf is one of the actions taken by persons who are alive and fully incapacitated to take financial actions and to enter into transactions. The principle in

this regard is very expressed by Fuqaha' that "people have absolute authority over what they own." Inheritance if only after death, it is a distribution decreed by God, Ta'ala.

In Application, creating a Waqf through a last will is only valid with the limit of the one third that is permitted within the Wasiyyah. On the other hand creating a Waqf and actually transferring the title of ownership to the, say Islamic center and including a condition that you keep the right to use the property for a given period of time or until death is disposition by persons who are authorized over what they own, it is permissible.

When you want to cross that bridge, you may ask me for a suggested form that I prepared for this kind of Waqf: Waqf with a condition to benefit from the house until death and even by children after death.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

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**Subject: Can an Adopted Child Get a Share in Inheritance?**

From: Islam on line

Sent: Saturday, May 17, 2003

**Question:**

Name of Questioner

A couple who does not have any children, they adopted a child who is the husbands sister's son. The husband does not have any brothers alive but got three sisters who are married. After his death how his property will be divided. I think he can give 1/3 of his will to any one so if he wants to give that to his adopted son he can give , but what about rest of the property and money, and also what about the money he gives to his adopted son and to his( adopted son's family) will it count or he can give as much money or property while he is alive ( as a gift or any other shape or form) ALSO COULD YOU ALSO PLEASE TELL what will happen to the money or property the wife will receive if she wants to give any of her money to her adopted son can she. she has one brother one sister alive. Jazakallah

**My Answer:**

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br./ Sr.

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

While a person is alive he/she can do any thing with owned property; give to the adopted child, local or national Muslim organization, create a Waqf (Trust) and make himself/herself as a beneficiary while alive, etc. As long as all such actions are not wasteful to an extent that invokes measures of restrictions because of "irrational behavior". The adopted child and any natural or legal person can be given any amount, there is no limit from Shari'ah point of view, but be watchful for the tax limit in the USA if you live in it.

In a last will Such a person can assign up to one third of net estate (after expenses, taxes, funeral, etc.) to any person. the rest goes to the heirs. In the case of the man 2/3 of it the

remainder goes to the three sisters and if there are no other heirs, even distant like second or third cousins, the rest goes to the state if this man lives in North America. If this man has a properly prepared last will he must give the rest to a local or national Islamic organization. It is obligatory to prepare a last will or a living trust You may consult my website for ideas on it [www.kahf.net](http://www.kahf.net) . If this man lives in a Muslim country the rest goes to the state too but it is not obligatory to make a last will. For the woman the same principles applies. she has a brother and sister who may take all the remainder after the one third.

I am sure you know that legal adoption is prohibited in the Shari'ah and unless you make arrangement through Nursing [Radha'ah] while the child was still breast-fed, he remains a stranger to this woman and if he is now after the age of puberty she is required to cover in his presence. Fostering is very much encouraged in our Shari'ah. If this adoption is made legal for immigration purposes both adopting husband (the child's uncle) and wife must observe the Shari'ah requirements in inheritance and cover. This child does not inherit any thing unless through the maximum of the one third in a Valid last will [Wasiyyah].

My personal advice to this family is as follows if it is in North America: create a living trust. you will be the founder, trustee and beneficiary at the same time. you can add this child as a beneficiary too. assign in the living trust for this child one third of the net estate of the share of the first to die between you after the demise of the first to die and also one third of the share of the second to die[ normally community property is considered owned half/ half]. In the Islamic form of living trust we attached a schedule of Mawarith that indicate how the remainder of the estate should be distributed if the husband dies first or the wife dies first depending on who are the survivors. assign the remainder of the estate to a local or national Islamic organization. If you live in a Muslim country there may be restriction of such trusts that are called in Shari'ah Waqf Ahli or dhurri. In either case I suggest consulting a local lawyer who is specialized in estate planning. After reading the form of the living trust from my website you may ask me any question or for any details.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

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**Subject: How to Protect the Properties of Mosques in North America?**

From: Seshan

Sent: Thursday, May 01, 2003

**Question:**

Assalamu Alaikum,

Dear Dr. Monzer Kahf,

I came across your article titled "IDENTIFYING

ECONOMIC PROBLEMS OF THE MUSLIM COMMUNITY IN NORTH

AMERICA AND PRELIMINARY THOUGHTS ON THEIR SOLUTION" when attempting to search the

web on mosques in American which have entrusted their property to the North American

Islamic Trust (NAIT). I'm on the board of directors for the Islamic Society of Central Virginia, a

non-profit religious organization based in Charlottesville, Virginia, U.S.A. We have an ongoing

project of building a new Mashed of which we had purchased property for, Alhamdulillah. The previous board supported by over 2/3rd of its voting membership transferred the property to NAIT based on the intention of protecting and preserving the property and the future Mashed that is to be built, inSha'Allah.

This was met with fierce resistance by a few community members stating that in the post 9/11 climate, the authorities might target NAIT for closure and therefore endanger the status of properties entrusted to NAIT. They also claim that NAIT might attempt to seek to control or manage our community. This cumulated in two community members bringing a lawsuit against the president of the former board for transferring the property to NAIT. The case has yet to be brought before the court and lawyers on both sides have been attempting to work out a solution – one option being a new vote by the current voting membership on the issue. It is a tragedy that resources are being wasted in this manner.

Given this context, I would like to ask you how best we can preserve our Mashed property and to protect it from dissent within and without. If NAIT is a viable solution, your reasons for supporting it would be most appreciated and would help build a case for it. Perhaps you can also comment if the fear of NAIT being dissolved is justified. Alternatively, if there is another way of protecting the property, your advice is much needed. Some people have spoken about amending the society's constitution to provide more protection but your article also states that this is insufficient.

Please forgive me for this lengthy email. InShaAllah

I hope I may be able to hear from you.

Jazakullah kheir.

Seshan

**My Answer:**

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Seshan

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

This is a real tragedy that is typical to Muslims in North America. I don't know when we are going to mature and be able to distinguish between the trivial differences and important issues. Let me give you my bias first. A few months ago I was selected to the Board of NAIT, I am now a NAIT board member.

My sincere opinion is that Although all National Islamic organizations and many local ones are potential targets of the hate-motivated conservative right's manipulation of the US government present administration, NAIT and ISNA are most likely to be the least exposed to the kinds of aggression some charitable organizations were subjected to.

Besides, if the property is in Trust with NAIT will not be exposed to whatever NAIT properties may be exposed to. Although the existing trust agreement is sound as it was formulated by lawyers, NAIT is presently in the process of improving on the Trust contractual relationship with local organization to provide more safeguards, especially in the area of liability of both NAIT and the local organization toward any third party.

Having the property with NAIT as a Trustee provides excellent safeguard towards internal differences of the kind you mentioned in your letter. This has been the main drive to have

public Muslim community properties Entrusted to NAIT. It also reduces the liability exposure a little bit because the property is not in the name of the local organization and cannot be used as a tool of pressure or internal political maneuvers.

Fragmentation of Awqaf is not to the benefit of Muslims in North America both under the present administration and in the long run. We need to strengthen the legal status of the National Waqf and give it more viable ability to protect these properties. One of the things that can be done is to separate the public community properties completely from NAIT's other activities and have them in a completely independent national organization (this is now under study in NAIT's Board). The main disadvantage will be financing as all our local organizations are reluctant to contribute to such an organization because it will not have any revenues of its own (presently NAIT spends not less than 300,000 on the management of Islamic properties department).

Another way that I suggested several times is when you buy a property do not buy it in the name of the "operational" Islamic organization, buy it in the name of an organization that you will dissolve or let die shortly after you entrusted the property to NAIT or a Waqf org. This way there will be no owner and no body to sue, even in a case of dispute like yours (except of course the directors of the deceased org. and they can easily show that they were not personally responsible. This can still perhaps be done by forming a new organization, with different name and let it take over the operation of the present one and let the present organization die out by drying its donations and depleting its funds in current expenses. Surely you must not transfer any thing from the old org to the new one nor allow it to inherit the other.

Please if I can be of any other service to you or the community there just call on me and I will be glad to volunteer any help I can make.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

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**SUBJECT: Earned Interest can't be made a Waqf**

**From: islam-online.net**

**Sent: March 25, 2003**

**Name of Questioner basheer** Country of Origin India

**Question**

About banking interest (Riba). Shall I pay the interest to the poor as help. What can I do the same in a better way if it occurs on our life?

**My Answer:**

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Basheer

Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

Interest obtained from conventional banks is not money you own because it came to your hands by invalid contract. Therefore you should rid yourself of it as soon as you can by giving it to the poor and needy, better through Islamic charitable Organizations. It is not "clean or pure" money to give to the local mosque for instance. You cannot make Waqf out of it because Waqf, according to Shari'ah, can only be created out of one's owned money or assets. This is not considered Sadaqah for the same reason but you will be rewarded for your intention and action of keeping your money untainted by, or pure off interest.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

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## FATAWA AWQAF TRUSTS 2002

**SUBJECT: Creating a family Trust (Waqf) for an ill child**

From: islamonline.net

Sent: August 13, 2002

**Name of Questioner** shamim                      **Country of Origin** Bangladesh

### **Question**

Assalamu Alaikum, I have a vast problem and I hope you will look into the matter with scrutiny. My father purchased plot and registered on my mother's name. After that my father built multi-story buildings including market places there and exposed my mother as the owner of the building and market which fetches huge income tax as owned by a single person. So, my mother wants .to bequeath those property among our brothers and sisters with a view to diminishing tax-value.. I have one brother and four sisters. My parents intend to bequeath with a certain variation. My second sister is mentally abnormal. In her early life she was normal and ambitious and was firmly determined to get herself admitted into medical studies but in vain. She was extremely shocked and gradually developed mental problem. Parents left no stone unturned for treatment but she did not improve. At last parents got her married so that marriage might alter the situation. In her short time of conjugal life she gave birth to a daughter but the problem was not eliminated rather intensified. After the child birth my sister has been living with us away from her husband for about four to five years. Her husband after waiting for several years married another one. Is my sister still under wedlock or automatically got divorced as she have been living away from her husband for several years? My sister is still under treatment which costs thousand taka (currency of Bangladesh) per month. Now regarding the bequeathing will my parents want to deposit about five lakhs taka in my account so as to facilitate my bearing expenses for her treatment when I will be in charge. In this regard I must add that my parents want to do this without the knowledge of my elder brother. Parents lack in faith upon him for his being irresponsible and luxurious. Will this step that is going to be taken by my parents be valid or not? If invalid I may inhibit my parents but if it is valid then I have another ask. If five lakhs taka is deposited in my account it will make profit (in stead of



usury I mentioned profit because I opened account in Islamic bank).Can I take the profit or it will be added with the capital and remain restricted for sisters benefit only. Pray for me, for my sisters and also for my elder brother so that he succeeds in attaining faith of parents.

**My Answer:**

(the part relevant to Waqf)

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Shamim

Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

I understand your question and this kind of dilemma. You need to untangle such matters very carefully so that you achieve the objective of serving future needs of the unfortunate person without violating the laws of Shari'ah nor upsetting the laws of the land.

- 1) It is permissible, in Shari'ah and in the Anglo Saxon laws to establish a Waqf (trust) for the treatment and living expenses of your sister. Parents are required to spend on their needy children, even when they are adult. Your father/mother can establish a waqf to take care of such expenses. It can be set in such an amount so that its income in an Islamic bank can satisfy her annual needs. This Waqf is temporary and must terminate when she is cured or when she dies. Upon termination the waqf principal can either be given to charity or distributed to all four brothers and sisters according to the rules of inheritance (it can also be distributed in any other way but I think it is inappropriate to distribute to brothers and sisters in any way that is not consistent with the inheritance rules, 2 shares to a male and 1 share to a female because parents are required to make complete justice between their children). You can be the trustee (Nazir or Wasi or Qayyim) of this waqf by appointment from the waqf founder.
- 2) Inheritance in Islam is regulated by mandatory rules as specified in the Qur'an, mainly in Sura 4. therefore bequest must follow these rules without the slight violation. If you have grand parent, each of them inherits 1/6 of the net estate of their child (i.e., after expenses, debts and any last will to non heirs within a maximum of one third). If your mother dies before her husband, he inherits 1/4, and if I assume she is survived by her two parents too, the remainder, 5/12 should be divided between the four of you on the basis that a son takes twice as much as a daughter. Should your father die before his wife, she takes 1/8 and with two parents surviving the remainder, 13/24 will be divided between the four of you the same way.
- 3) It is extremely important to notice that bequesting can only be done after death, giving while alive is gift and cannot be treated as inheritance. Gift to children must be equal between them and bequesting to children follows the rule of 2 to 1 male/female.
- 4) The income from the trust made for the treatment of your sister must be used for her treatment and any left over must be added to principal. The founder of the trust may add other objectives, if she/he so chose, and whatever stipulations mentioned in the waqf deed must be honored unless they are discriminatory against female beneficiaries.

Finally, may Allah. Ta'ala, guide you, your brother and your family, me and all of us to the right path and to always do what pleases Him.

Wa Allahu A'lam

Wa Alhamdu li Allahi Rabbi al 'Alamin  
Wassalam  
Sincerely,  
Dr. Monzer Kahf

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**SUBJECT: Waqf and Estate Planning**

From: dialogue@islam-online.net

Date: 1/23/2002

Name of Questioner Rebhi Country of Origin Palestine

**Question**

Has anyone done work on estate planning in the USA. This would include preparing legal documents on inheritance and use of money. I am aware of the Islamic Will prepared by ISNA which does not get into legal advices or guidelines. Are there guidelines and advices? Any websites or references? Thank you

**My Answer:**

Dear Br. Rebhi

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

Al Hamdu li Allah wa al Salatu wa al Salam ala Rasuli Allah.

You have touched on a very serious and sensitive question. The plain answer is an unfortunate: NO. BUT.

Estate and financial planning for Muslims in the United States poses three major points: 1) it has a strong bearing on the implementation of property and inheritance laws of Shari'ah, especially distribution in accordance with Shari'ah, wife/husband inheritance and the Shari'ah given rights of heirs including immediate ownership. The very foundation of the Islamic definition of the right of ownership is at stake here because Shari'ah does not extend this right beyond death. When I go I cannot impose my views on what I used to own when I was alive! Am I not only a 'Vicegerent" and God is the True owner. Even the last will within one-third is a mere exception, a special grace from God, as Abu Bakr al Siddiq put it! 2) It has a strong bearing on the future of the economic base of the Muslim communities, mosques and Islamic centers. Unless we apply the ideas of Waqf and Wasiyyah as major sources to finance the community activities they will remain weak and lacking long term planning. 3) it has the huge advantage of benefiting from the opportunities and protection of individual Muslims vis-à-vis avoidable taxes, smooth and fast transfer of ownership to their heirs, reduced cost of estate and preservation of privacy. LAST WILL as we made it in ISNA helps only in the distribution in accordance with Shari'ah, which is itself a great contribution. It does not take advantage of the economic opportunities and protection provided by available forms of estate and family financial planning.

The "BUT": Although there are several Muslim estate planning specialists, analysts, and consultants, unfortunately I did not come across ANY SINGLE ONE OF THEM WHO UNDERSTANDS AND INCORPORATES THE RELEVANT ISLAMIC RULES in estate and family financial planning.

I have a personal interest in the matter because I live in a State where owning a mere 20,000 dollars in real estate equity takes the estate to the probate court. I did one for my own in consultation with lawyers and estate planners. WE NEED TO COOPERATE IN THIS MATTER,

MUSLIM LAWYERS, SHARI'AH EXPERTS AND FINANCIAL ANALYSTS TO PRODUCE BASIC FORM, AS WE DID IN LAST WILL, THAT HELPS PROVIDING THE CORE OF ESTATE AND FAMILY FINANCIAL PLANNING. That gives all the Shari'ah requirements within an acceptable legal framework. It still has to be adjusted to accommodate specifics of the state of the individual Muslim who is going to use it.

If you want to pursue this matter further, help in this regards, know more about my personal attempt and see if you can benefit from it, please contact me on my email published in my website [www.kahf.net](http://www.kahf.net).

Thank you,  
Wa Allahu A'lam.  
Wassalam  
Sincerely,  
Dr. Monzer Kahf

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## FATAWA AWQAF TRUSTS 2001

**SUBJECT:** Selling a Mosque

From: dialogue@islam-online.net

Date: 4/12/2001

Name of Questioner Arshad Country of Origin Pakistan

**Question:**

Can we sell a Mosque in the United Kingdom to any person to be converted into Flats or anything else? The reason being we have purchased a large building but we need funds to convert it. The current Mosque used to be a corner shop and was converted into a Mosque over thirty years ago. About twenty years ago we doubled the size of the existing Mosque by building a new extension from the foundations. It was the first Jamie Mosque in our town. I would greatly appreciate your help. WA Salam

**My Answer:**

Dear Br. Arshad

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

Al Hamdu li Allah wa al Salatu wa al Salam ala Rasuli Allah.

A mosque is a religious Waqf. In principle it cannot be sold, given as a gift, inherited, etc.

That is in principle. But in a case like you described a mosque that has become too small, or inconvenient for the local Muslim community or any similar reason, we have in Shari'ah what is called replacement or substitution of a Waqf property. Substitution means that if a Waqf property, Mosque or otherwise, becomes unable to fulfill its objective and it can be substituted for another property which does that better, you can sell that property provided that you get another property that fulfills the objective of the Waqf to a better extent. The substitution must be done immediate if possible and any money taken from the old mosque must be all put in the new mosque.

The case you described involves a fact that you already bought a new building for the mosque and you need the money you get from the sale to complete payment for the new one or to

make necessary renovation to make it usable as a mosque, at the same time the community does not need anymore the old structure, UNDER SUCH CIRCUMSTANCES IT IS PERMISSIBLE TO SELL THE OLD MOSQUE AND PUT THE PROCEEDS, ALL, IN THE NEW MOSQUE.

BUT if there is now a need for both of them and there are people who still use the old location, being in a residential or work area, so that for a part of the community the old mosque is still fulfilling its objective, in such case what you need in fact is a second mosque not to exchange the old one for a new one. IN SUCH A CASE IT IS NOT PERMISSIBLE TO SELL THE MOSQUE and the Muslim community is required in Shari'ah to contribute to establish a new mosque.

Wa Allahu A'lam

Wassalam

Sincerely,

Dr. Monzer Kahf

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**SUBJECT:** The difference between a Waqf and a trust

From: dialogue@islam-online.net

Date: 3/26/2001

Name of Questioner Muneer country of Origin Pakistan

**Question:**

What is the difference between a Waqf and a trust, is it Islamic for a Muslim to transfer his property to a trust for the benefit of his daughter but putting a condition that if she marries a non-Muslim, she will no longer remain a beneficiary and the trust shall terminate and the property shall go to the closest Muslim relative of the person creating the trust. Can a Muslim make a trust during his lifetime over some of his property like non-Muslims for the benefit of an Art museum

**My Answer:**

Dear Br. Muneer,

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

Al Hamdu li Allah wa al Salatu wa al Salam ala Rasuli Allah.

Your question is a composite of long issues that need more time than I can now devote for this answer. Let me be very brief and to the point and forgive me if I don't give full arguments and reasons for substantiating these points.

- 1- During one's life time a person is completely free to do what she/he pleases with one's properties, all of part, as long as the person has the legal capacity, not during death illness, and not under debts. This is a basic and general rule.
- 2- Waqf in Shari'ah is a very important issue. It has always been widespread in our Muslim societies. Education, health, social services, environmental services, public utilities, and many others were always finance by Waqf.
- 3- Waqf can be done during the lifetime, it can be done after death through a last will, but then it is restricted, along with all other donations to non-heirs, to one third of the estate only.
- 4- Waqf has to be for a purpose that is good and righteous. You cannot make a Waqf for any bad purpose, such as spending on a dog more that a dog normally handles.

- 5- If one makes a Waqf for the purpose of preventing one's heir from taking their shares after one's death, the Waqf is valid and correct and the person is sinful and only Allah Ta'ala hold the person accountable for one's intention.
- 6- In principle Waqf is permanent and there must be a clause in it that perpetuate its objective, such as income of the Waqf must be given to my daughter and after her death to the poor and needy in a given area or town. The Malikites allows a temporary Waqf, and this is very wise of them.
- 7- Waqf can be on persons, like one's descendants, to charity like poor and needy, to general welfare like utilities, and to mosques and religious activities.
- 8- You see that some forms of Waqf are very similar to some forms of trusts as known in Western countries.
- 9- Yes, you can make any condition in a Waqf except discriminatory conditions such as giving male descendants and preventing females. Also a condition that violates the purpose of righteousness is not permissible.
- 10- The condition you mentioned is permissible, and a temporary Waqf is also permissible. That is a Waqf for the lifetime of your daughter and after her to some other relatives or to be liquidated and distributed in a given way that you specify.
- 11- You can make a Waqf, during your lifetime to an art museum, but please keep an eye on the priority of the Ummah and make a wise decision that will give you the best reward, InShaAllah.

Finally if you prepare a Waqf document in the form of a trust, and you want to show it to me for further opinion, I think I can help, my Email is: [Monzer@kahf.com](mailto:Monzer@kahf.com)

Wa Allahu A'lam

Wassalam

Sincerely,

Dr. Monzer Kahf

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## **A BRIEFING ON WAQF**

**DATE: March 12, 2001**

This Briefing is prepared on request of The North American Islamic Trust.

### **1. BACKGROUND:**

The idea of Waqf (p: Awqaf) existed in ancient cultures and civilizations; it took an expanded dimension in the Islamic society.

### **2. THE PRINCIPLE OF WAQF IN QUR'AN AND SUNNAH:**

The first Waqf ever built for the worship of Allah was the Grand Mosque in Makkah. The Qur'an [2:127] tells that the pillars of this Grand Mosque (Ka'bah) were first raised by the Prophets Ibrahim and his son Ismail.

One of the first things made by the Prophet Muhammad in Madinah was to build the Mosque as a Waqf for all Muslim. This came to be known as the Mosque of the Prophet, pbuh, which is the second most sacred mosque in Islam.

The Qur'an refers to establishing mosques [9:18] and the Prophet, pbuh, mentioned that in several of his glorious Sayings (Hadiths).

Mosques make up the first and most dominant kind of Waqf in Islam. Next comes the Waqf whose revenues are designated to be spent on mosques' running expenditures, for social,

charitable, and educational purposes and last comes the family or posterity Waqf whose revenues are devoted for future generations of the Waqf founder. Hence, there are three kinds of Awqaf in Islam: Religious Awqaf, Philanthropic Awqaf, and Family Awqaf.

### **3. OWNERSHIP OF WAQF:**

One of the most important issues discussed in the Islamic Shari'ah (law) is who owns the Waqf properties in general and who owns Mosques and properties whose revenues are designated for mosques' maintenance and other expenses, in specific.

The Islamic Shari'ah considers Waqf as sacred and does not allow for disposition of the Waqf property in any way except one: to maintain it and improve its benefit to better fulfill the objective for which it is designated. A Waqf property cannot be sold, leased, given as a gift, bequest, mortgaged, or subjected to any transaction that changes its ownership or its availability for the fulfilling the objective for which it is devoted by the founder.

The majority of Muslim Jurists consider a Waqf, mosques and others, similar to being owned by Allah (because they cannot say "owned by Allah" since every thing in the whole world is owned by Allah, so by this statement they mean to draw a similarity with private ownership as if they say: privately owned by Allah).

According to the Islamic Shari'ah, Mosques and mosques related Awqaf must not be private properties of any person, natural or legal. Mosques are places for prayers and other religious and community activities for all Muslims in the area. Historically Muslim jurists consider Mosques open to all Muslims that they cannot be privately owned. It is an agreed upon position of all Muslim Jurists that the moment an owner of a real estate opens her/his property as a mosque for the public to pray, it becomes a Waqf. They express strong reservation and doubt about a mosque that is closed to the public to an extent that the majority considers Friday sermon invalid in a mosque that is closed to the public.

### **4. PERPETUITY:**

A mosque is a perpetual Waqf. A real estate designated as a mosque cannot be sold or disposed of in any manner what so ever, except for replacing it with another real estate that is better, more useful for a mosque. The only difference between Islamic Jurists in this regards is that while the majority allows substitution for better usefulness, some jurists, the Malikites do not permit any replacement, even if the area where the mosque is located becomes completely deserted by Muslims.

In the Islamic Shari'ah, Waqf's Trustee/manager has no power to liquidate it. The rules and conditions of substitution of a Waqf property for another make it almost impossible to eliminate a Waqf or affect its perpetuity. Further, a Waqf property, such as a mosque or a philanthropy, may not fall under any liabilities that may require its liquidation, while its Trustee/manager may become liable for any negligence.

### **5. STATUS OF MOSUQES IN THE UNITED STATES:**

The U.S. and State Constitutions provide for respect and equal treatment of all religions. However, protecting the Islamic characteristic of Awqaf (Mosques and others) goes beyond the existing limits provided by the laws on non-profit organizations. In fact, the protection of these characteristics calls for a special Federal Act of Awqaf for Muslims in the United States.

In almost all the Muslim countries there are laws of Awqaf that provide necessary protection. Special departments of the governments, very often at ministerial level, are created to take charge of maintenance and other expenditures of mosques and to keep the records of Mosques

properties as being trustees. Similar Acts and Departments also exist in a few Muslim minority countries such as India and Kenya.

Since there is no such department in the United States, many local Muslim organizations and communities resorted to conveying titles of their mosques, schools and other Awqaf properties to the North American Islamic Trust (NAIT) to serve this purpose of holding titles to mosques and other Muslim communities' public properties as a trustee, for the purpose of providing a minimum amount of protection for these Awqaf, while the use of the property remains in the hands of local Muslim organizations.

In response to a request of The North American Islamic Trust, I have prepared this brief memorandum. I have good expertise in the Economic, financial and Institutional areas of Islamic law. I will make myself available if needed.

Respectfully,  
March 12, 2001  
Monzer Kahf

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**SUBJECT: Registering a new local mosque**

Date: Feb. 18, 2001

Dear Br. Dr. Shakil

Assalamu Alaikum,

On your request, please receive a little write up on the Waqf of Mosques and Islamic centers (3 pages). Please feel free to contact me any time if I can be of any help in this area.

Sincerely

Monzer Kahf

THE ISLAMIC WAQF:

**1 BACKGROUND:**

The idea of Waqf existed in ancient cultures and civilizations; it took an expanded dimension in the Islamic society.

**2 THE PRINCIPLE OF WAQF IN QUR'AN AND SUNNAH:**

The first Waqf ever built for the worship of Allah was the Grand Mosque in Makkah. The Qur'an tells that the pillars of Ka'bah were raised by the Prophets Ibrahim and his son Ismail.

One of the first things made by the Prophet Muhammad in Madinah was to build the Mosque as a Waqf for all Muslim. This came to be known as the Mosque of the Prophet, pbuh.

The Qur'an refers to establishing mosques (9:18) and the Prophet, pbuh, mentioned that in several Hadiths.

Hence, Mosques make up the first and most dominant kind of Waqf in Islam. Next comes the Waqf for social and charitable purposes and later the family or posterity Waqf.

**3 OWNERSHIP OF WAQF:**

One of the biggest issues discussed in the Islamic Fiqh is who owns the Waqf in general and specifically Mosques.

The Islamic Shari'ah considers Waqf as sacred and does not allow for disposition of the Waqf property in any way except one: to maintain it and improve its benefit to the objective for which it is designated.

The majority of Muslim Jurists consider a Waqf, mosques and others, similar to being owned by Allah (because they cannot say owned by Allah since every thing is owned by Allah, so they mean to draw a similarity with private ownership as if they say privately owned by Allah). A few argue that Waqf is owned by the beneficiaries or users and some say it is owned by the founders, yet all minority jurists believe that ownership by users/founders is a sort of limited ownership because, unlike private owners, they have no right of disposition and they cannot sell the Waqf, lease it, nor mortgage it.

Mosques, in specifics, are not private properties. They are places for prayers and other religious and community activities for all Muslims in the area. Historically Muslim jurists consider Mosques open to all Muslims that they cannot be privately owned. In all four schools of Fiqh the moment an owner of a real estate opens her/his property as a mosque for the public to pray, it becomes a Waqf. They express strong reservation and doubt about a mosque that is closed to the public to an extent that the majority considers Friday sermon invalid in a mosque closed to the public.

#### **4 PERPETUITY:**

A mosque is a perpetual Waqf. A real estate designated as a mosque cannot be sold or disposed of in any manner what so ever, except for replacing it with another real estate that is better, more useful as a mosque. The only difference between Islamic Jurists in this regards is that while the majority allows substitution for better usefulness, some jurists, the Malikites do not permit any replacement, even if the area where the mosque is located becomes completely deserted by Muslims.

#### **LEGAL STATUS OF MOSQUES IN NORTH AMERICA:**

The present legal status of mosques, and other Muslim community's real estates, is that they are owned by their respective organizations. While it is true that US Constitution provides for respect and equal treatment of all religions, the Islamic characteristic of such real estates as Waqf falls beyond the existing limits provided by the law for non-profit organizations.

Without any single exception, all Islamic centers, mosques, etc. are owned by incorporated organizations, normally as non-profit religious corporations. The system is likely to slightly vary from one State to another, but their common feature is to grant the incorporated organizations a corporate status which allows them to own properties and be treated as legal entities, which are similar, in most legal respects, to natural persons. Consequently, all public properties of the Muslim community are registered as properties of these Islamic non-profit corporations.

Accordingly, non-profit corporations have full and unequivocal rights to dispose of their properties, whether they are in the form of real estates or in the form mobile assets. This is a principle inherited from the system of corporation in the Western legal traditions. Keeping in mind that some Islamic organizations may have made it more difficult, in their own articles of incorporation or by-laws, to sell a mosque or an Islamic center or to engage such a property as collateral in a mortgage contract, yet the problem remains. After fulfilling certain conditions, the decision-making body of the Islamic non-profit corporation has a legal power to eliminate a mosque or any other public property of the Muslim community. This is in one hand.

On the other hand, outsiders and any third party, Muslim or otherwise, can sue the Islamic organization for any possible or potential liability and force it to liquidate its assets, especially, its real estates to discharge of its liability.



*Waqf*, in the Islamic *Shari'ah*, is not like that. Its Nazer (manager) has no power to liquidate it. The rules and conditions of substitution of a *Waqf* property make it rather impossible to eliminate a perpetual *Waqf*. Further, perpetual *Waqf* does not fall under liabilities that may necessitate its liquidation, while its manager may be liable for any negligence.

The conclusion is that if we want to provide protection and preservation of the public properties of the Muslim communities, Islamic centers, mosques, schools and the like, it is not sufficient to amend the articles of incorporation by limiting the power of the decision-making bodies of our Islamic non-profit organizations. What is needed is a lot more than that. WE NEED A SYSTEM THAT INSPIRES THE ISLAMIC PRINCIPLE OF WAQF WITH THE CHARACTERISTICS OF PERPETUITY, NOT BEING SUBJECT TO LIABILITY AND LIMITED AUTHORITY OF THE MANAGER.

The fact is that the Islamic system of *Awqaf* does not only protect the real estate properties of the Muslim communities but it also protects the mobile assets, personal property of the Muslim Organization and income-generating real estates.

#### **SUGGESTED SOLUTION:**

The first best and the ultimate solution of this problem are to seek new laws that protect the public properties of the Muslim community. Such laws should be designed in accordance with the principles of *Waqf* as known in the Islamic *Shari'ah*. We need to work towards this goal. We can co-opt other charitable organizations that have similar concerns. We can cooperate with all other non-profit organizations, religious and otherwise, to achieve this kind of improvement in the American legal system of non-profit properties for the common objective of protecting them from their own decision-making bodies as well as from outside liabilities.

In the meanwhile, we need to design suitable legal documents on the basis of permanent irrevocable trusts in which any liability is charged to the Manager rather than to the trust property. A rough example of such principles is sketched in the following:

The organization that owns the property gives it in trust to a managing organization with strong conditions that perpetuate the property for the benefit of the local Muslim community. These conditions include limitation on the authority to dispose of the property except in accordance with the principle of substitution as defined in *Shari'ah* (details can be given later), they also include the responsibility of the managing organization in all ways that result in relieving the property itself from any liability.

The document shall emphasize that this religious Trust (*Waqf*) is permanent and irrevocable. It must be preserved until the Day when God resurrects all men and women. Usage of the Trust's assets is restricted to the religious Islamic purposes and within the limits ordained by the Islamic *Shari'ah*. No part of these assets can be used for any activity, what so ever, that may violate the Islamic moral, social religious and spiritual norms, regulations and guidance.

All capital gains, appreciation and revaluation accruing to the trust's assets shall be added to the principal of the trust and become inseparable part thereof, whether such gains accrue to the properties named in this document or to any other properties for which any part of existing properties is substituted. All and any additions to the assets of this trust shall constitute an intrinsic and inseparable part of this trust and shall be covered by this document as if it were named in the document itself.

The beneficiary organization/trustee shall have full, unequivocal and unchallenged rights to use any and all the assets of the trust for any and all of its activities and at the discretion of its appropriate decision making body in accordance to its own articles of incorporation. All this should be within the limits and conditions of this document and the Islamic *Shari'ah*.

The founders, trustees, managers, and beneficiaries have neither power nor authority of disposing of the assets of this trust or any and all of its capital gains under any and all circumstances. The properties of this trust cannot be mortgaged, put as collateral, forsaken, or disposed of in any manner by any of its founder, managers, trustees, beneficiaries or other persons. These properties do not enter under the ownership of the founders, trustees, managers, or beneficiaries. Any contract, commitment or obligation made to the contrary of this clause is null, void and invalid.

Since this trust and its document are of public benefit and interest to all members of the Muslim community in ...(county or city)..., any member of this community is in a position to supervise and control the faithful and proper implementation of the texts and spirit of this document.

Monzer Kahf

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