

كتاب الشفعة



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الشفعة تجب (يثبت) بعقد البيع



Step 1:
Zaid makes an agreement/contract to
sell the property to Abu Bakr

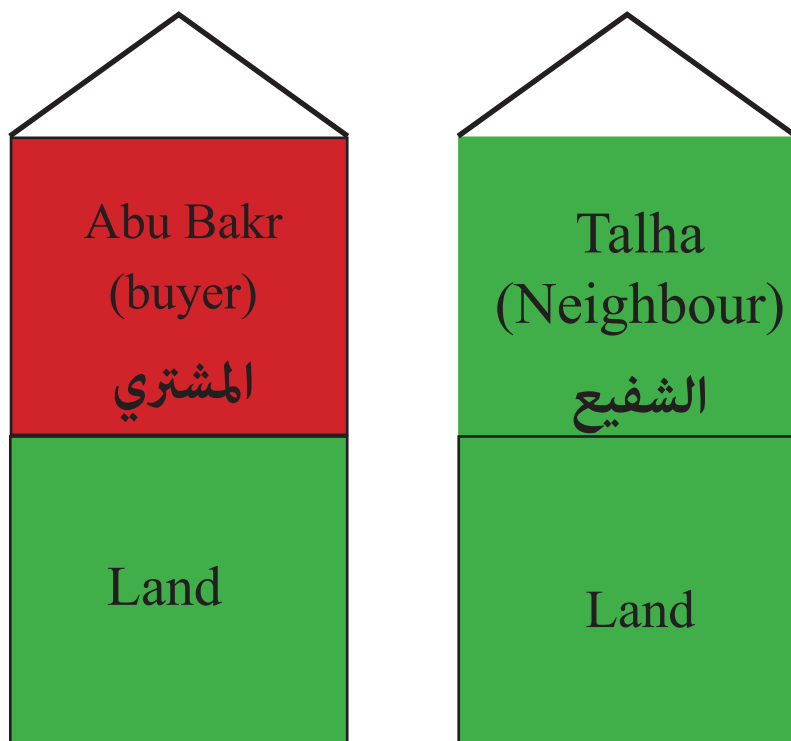
→ Abu Bakr
(buyer)
المشتري

=

حق الشفعة
now exists
for Talha

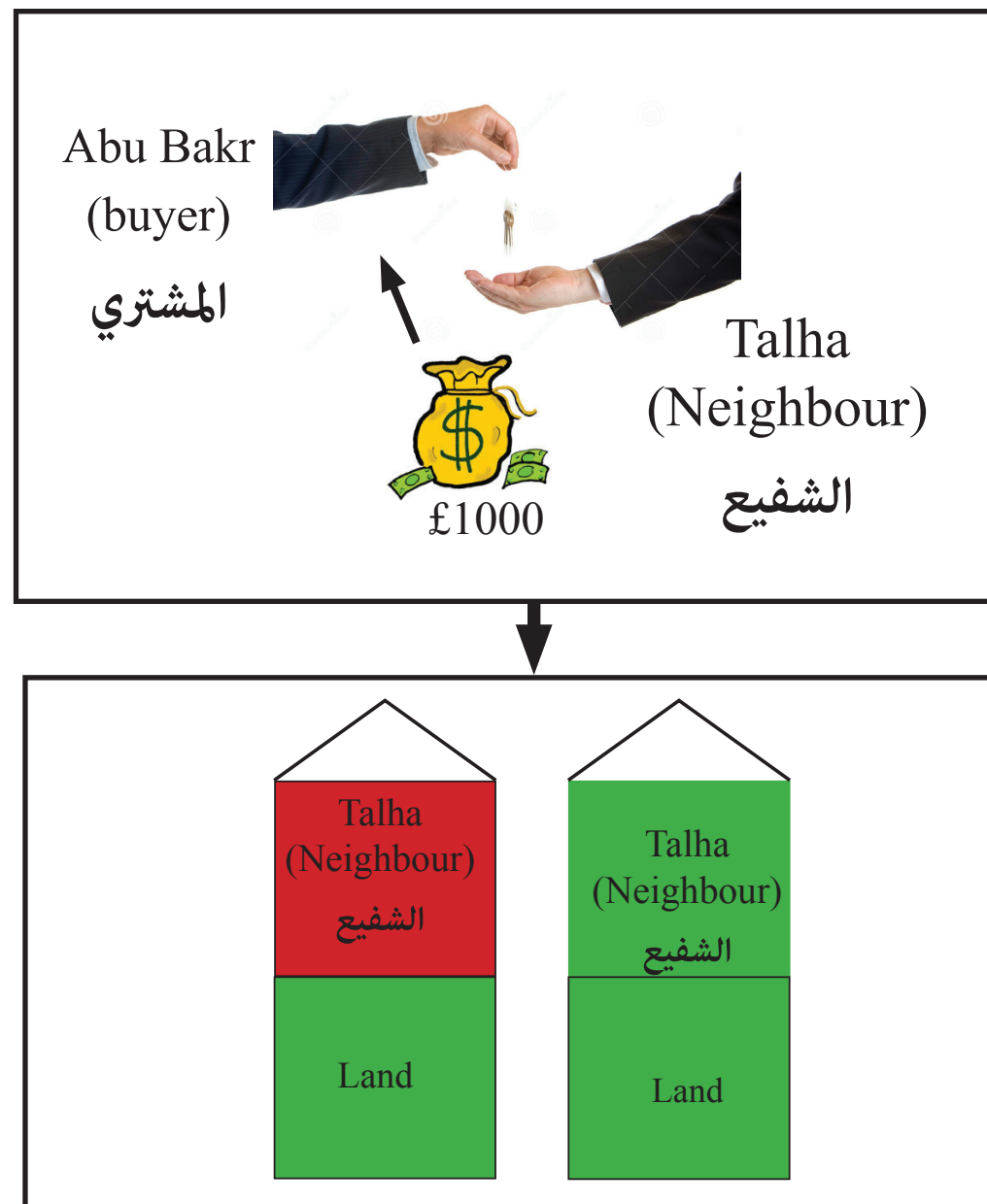
Step 2:

Talha demands his right for حق الشفعة



Step 3: (A)

Abu Bakr gives the house over to Talha for the same amount (£1000) he paid Zaid and the case is closed



Step 3:
(B)

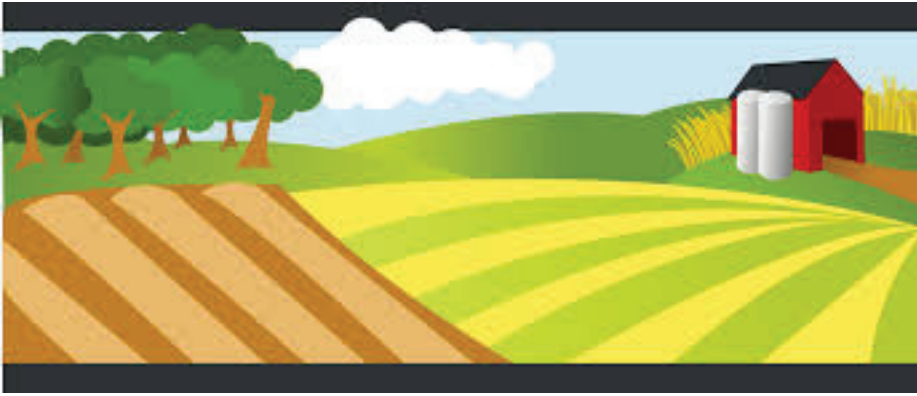
Abu Bakr refuses to hand over the property in return
for the payment or he rejects the right of الشفعة



Step 4:
Talha takes Abu Bakr to court



الشفعة واجب للخليط في نفس المبيع.....



50%
Talha

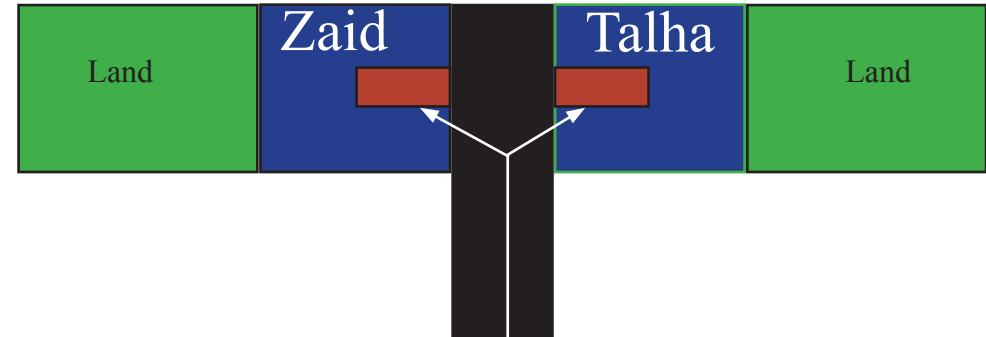
50%
Zaid

Joint ownership:

نفس المبيع
الخليط

Joint rights:

حق المبيع
الشريك



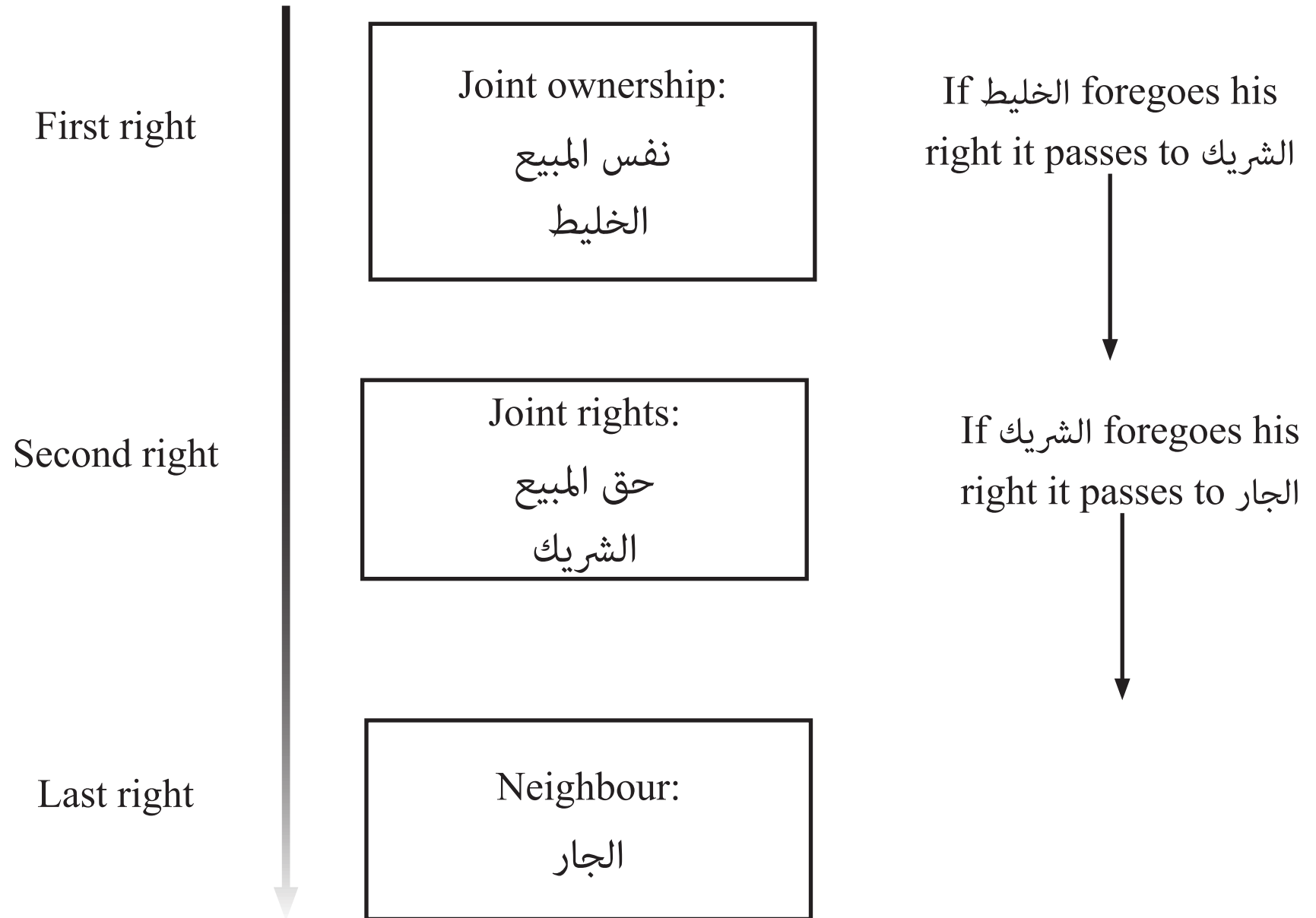
Shared access



Neighbour:

الجار

ليس للشريك و الجار شفعة مع الخليط



إذا اجتمع الشفعاء

If there are more than one claimants then the order will be upon who has the **higher** rights out of the partners not who has the **most** share or right.

Joint ownership:

نفس المبيع
الخليط

Joint rights:

حق المبيع
الشريك

Neighbour:

الجار

Khalid is
Neighbour الجار

Talha is
Joint owner الخليط
and
Neighbour الجار

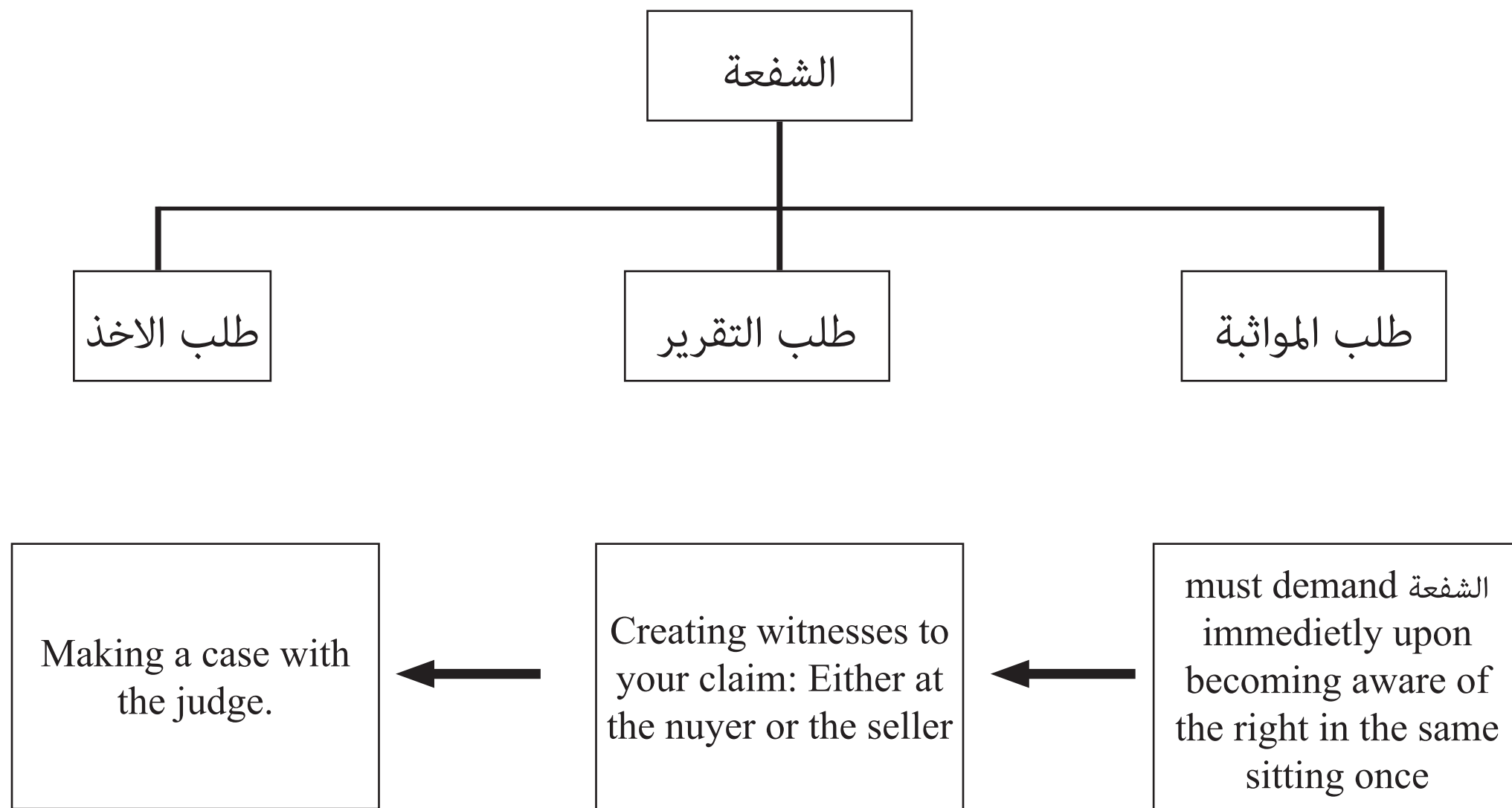
↓
Priority

Khalid is
Joint owner الخليط
1/2 Share

Talha is
Joint owner الخليط
1/3 Share

↓
Equal: No priority

الشفعة تجب بعقد البيع و تستقر بالشهاد



Zaid
(original owner)

البائع



£1000

Abu Bakr
(buyer)

المشتري / المدعي عليه

Land

Talha
(Neighbour)

الشفيع / المدعي

Land

مما يشفع به

إذا تقدم الشفيع الى القاضي

Talha
(Neighbour)
الشفيع / المدعي

Makes a claim to الشفعة
at the courts



The judge has to
determine two things

STAGE 1

Does Talha have the right of الشفعة.

Does he fill the criteria

- الخليط
- الشريك
- الجار

STAGE 2

Does the right of الشفعة exist in this
scenario

- عقد البيع Contract ??

STAGE 1:

سئل القاضي المدعي عليه

Court procedure



Determine if Talha is a الشفيع

Does he fill the criteria

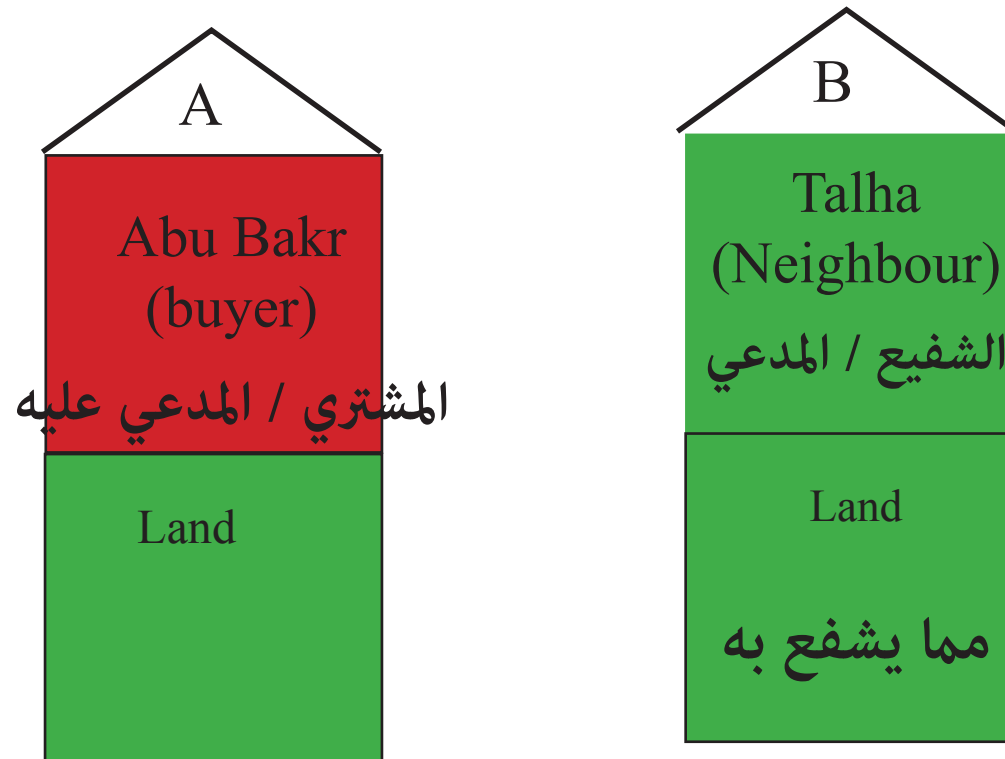
- الخليط
- الشريك
- الجار

Step 1:

Ask Abu Bakr (المشتري) if he is aware of Talha (الشفيع)
being the neighbour (الجار) thus making him a الشفيع

Step 1:

Ask Abu Bakr (المشتري) if he is aware of Talha (الشفيع) being the neighbour (الجار) thus making him a الشفيع



Judge

“Abu Bakr; Are you aware that Talha owns house B?”

Scenarios:

فان اعترف بملكه الذي يشفع به

(1)

Abu Bakr (المشتري) affirms that Talha owns house B thus making him the الشفيع



Case moves on and now the judge needs to determine a sale took place (STAGE 2)

(If the house was gifted to Abu Bakr then there would be no right for Talha)

كلفه باقامة البينة على ملكه

(2)

Abu Bakr (المشتري) denies that Talha owns house B thus rejecting the right for Talha



Proceeding of the below usool take place:

البينة علي المدعي و اليمين علي من اكر عليه

البينة علي المدعي و اليمين علي من انكر عليه (المدعي عليه)

The **plaintiff (initiator)** is required to bring prove his accusation otherwise the **(defendant) accused** will have to take an oath and the verdict will be given in his favour

(1)

Talha is accusing Abu Bakr of buying the house to which he has the right of الشفعة



المدعي
evidence required

(2)

Abu Bakr (المشتري) denies that Talha owns house thus rejecting the right for Talha



انكر عليه (المدعي عليه)
Oath required

Scenarios:

قامت للشفيع بينة

(1)

Talha proves he owns house B thus making him the الشفيع



(2)

Abu Bakr (المشتري) admits that Talha owns house B thus making him the الشفيع



Case moves on and now the judge needs to determine a sale took place (STAGE 2)

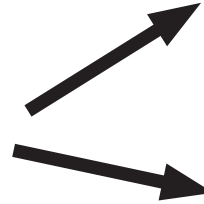
فان اعترف بملكه الذي يشفع به

استحلف المشتري بالله ما يعلم انه مالك للذي ذكره مما يشفع به

عجز عن البينة

(3)

Talha is unable to prove he owns house B thus not proving he is the الشفيع



اليمين علي من اكر عليه

Abu Bakr takes an oath that he is not aware of Talha being the owner of the house through which الشفعة is granted and the verdict is given in Abu Bakrs favour (he keeps the house)

اليمين علي من اكر عليه

Abu Bakr refuses to take an oath. This is treated as guilt and proceedings move on to STAGE 2.

فان نكل عن اليمين

STAGE 2:

Court procedure



STAGE 2

Does the right of الشفعة exist in this

•Contract عقد البيع ??

Step 2:

Determine if there was a contract/agreement or anything which establishes the right of الشفعة

Step 1:

Ask Abu Bakr (المشتري) if he brought the house

هل ابتاع ام لا



Judge

“Abu Bakr; did you purchase the house”

(it may have been gifted or inherited which would not result in the right of الشفعة)

Scenarios:

(1)

Abu Bakr (المشتري) affirms that a sale took place thus making the الشفيع valid for Talha



Case concludes. Talha will be required to pay Abu Bakr the value and Abu Bakr will have to hand over the property.

(2)

Abu Bakr (المشتري) denies that a sale took place thus rejecting the الشفيع for Talha



Proceeding of the below usool take place:

البينة علي المدعي و اليمين علي من اكر عليه

البينة علي المدعي و اليمين علي من انكر عليه (المدعي عليه)

The **plaintiff (initiator)** is required to bring prove his accusation otherwise the **(defendant) accused** will have to take an oath and the verdict will be given in his favour

(1)

Talha is accusing Abu Bakr of buying the house to which he has the right of taking due to الشفعة



المدعي
evidence required

(2)

Abu Bakr (المشتري) denies that he purchased the house thus rejecting the right of الشفعة



انكر عليه (المدعي عليه)
Oath required

Scenarios:

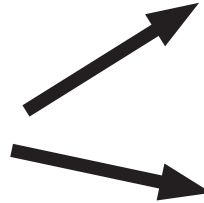
(1)

Talha proves Abu Bakr purchased the house



Case concludes. Talha will be required to pay Abu Bakr the value and Abu Bakr will have to hand over the property.

(2)
Talha is unable to prove Abu Bakr
purchased the house



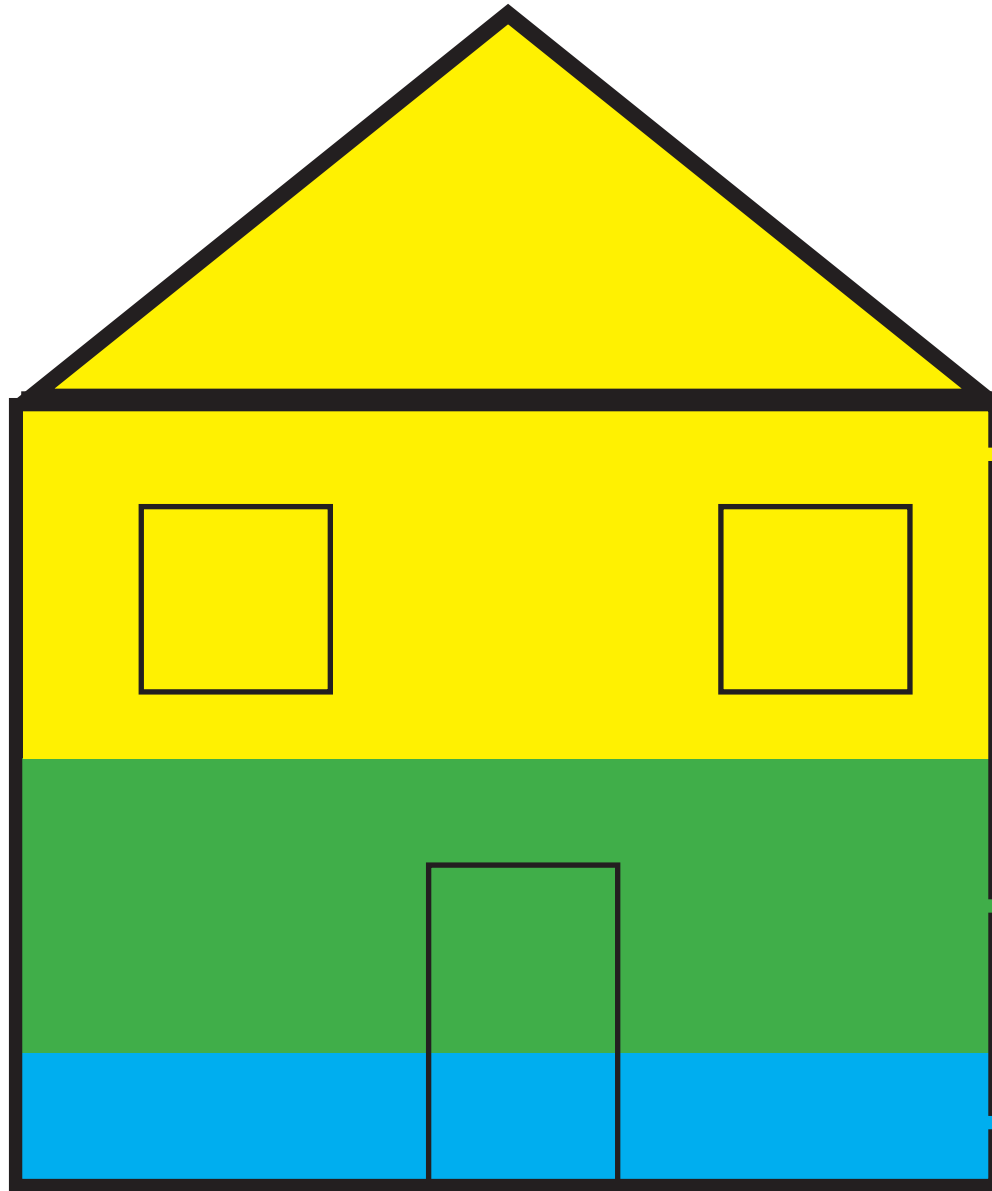
اليمين علي من اكر عليه

Abu Bakr takes an oath that he did not purchase the house or that Talha does not have the rights over this house through الشفعة in the way he is describing. **The verdict is given in Abu Bakr's favour (he keeps the house)**

اليمين علي من اكر عليه

Abu Bakr refuses to take an oath. This is treated as guilt and **Case concludes in Talha's favour**. Talha will be required to pay Abu Bakr the value and Abu Bakr will have to hand over the property.

الشفعة علي عدد رؤسهم



Zaid owns $\frac{1}{2}$ the house
which he sells

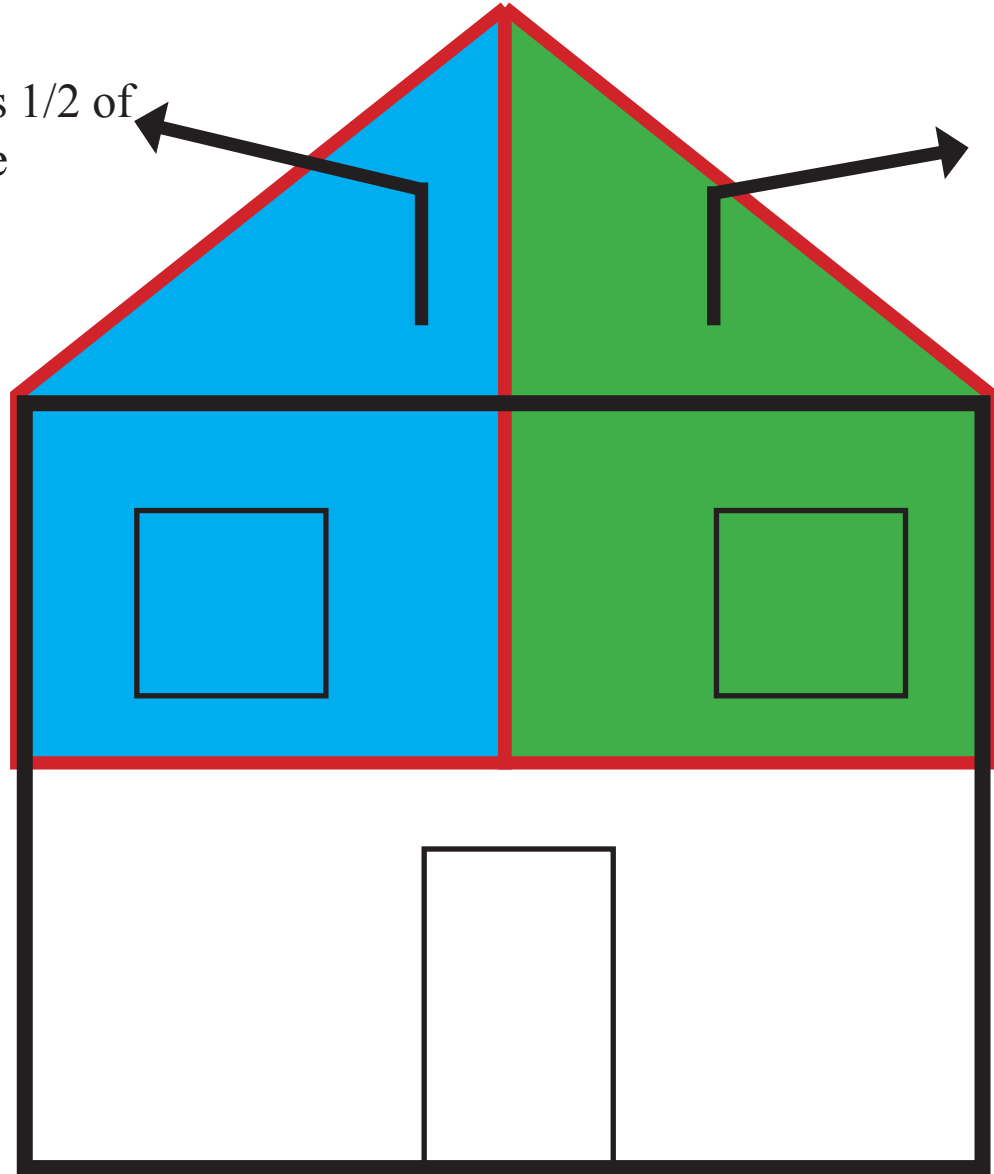
Talha owns $\frac{1}{3}$

Abu Bakr owns $\frac{1}{6}$

الشفعة علي عدد رؤسهم

Abu Bakr recieves $\frac{1}{2}$ of
Zaid's share

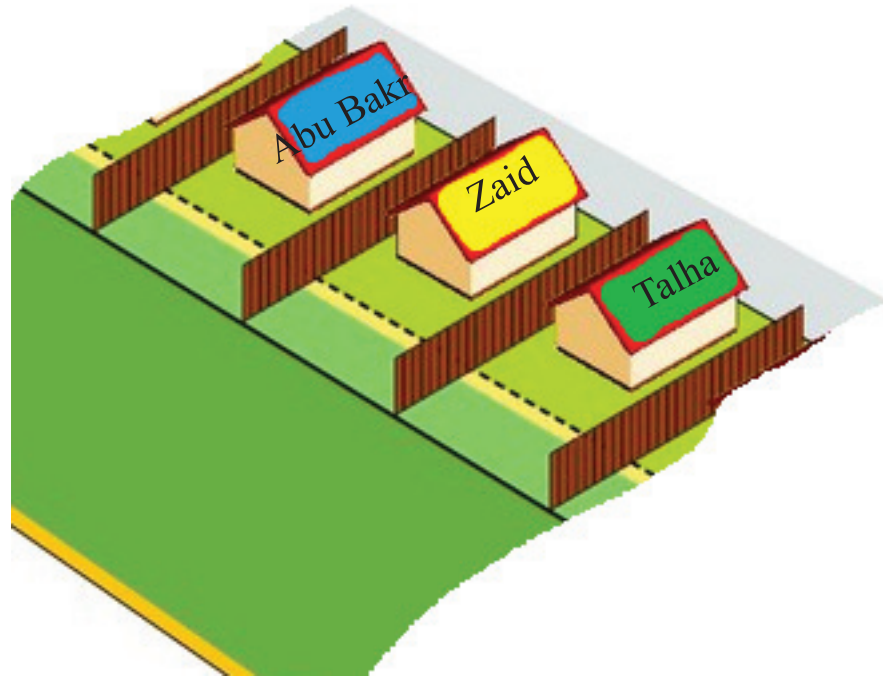
Talha recieves $\frac{1}{2}$ of
Zaid's share

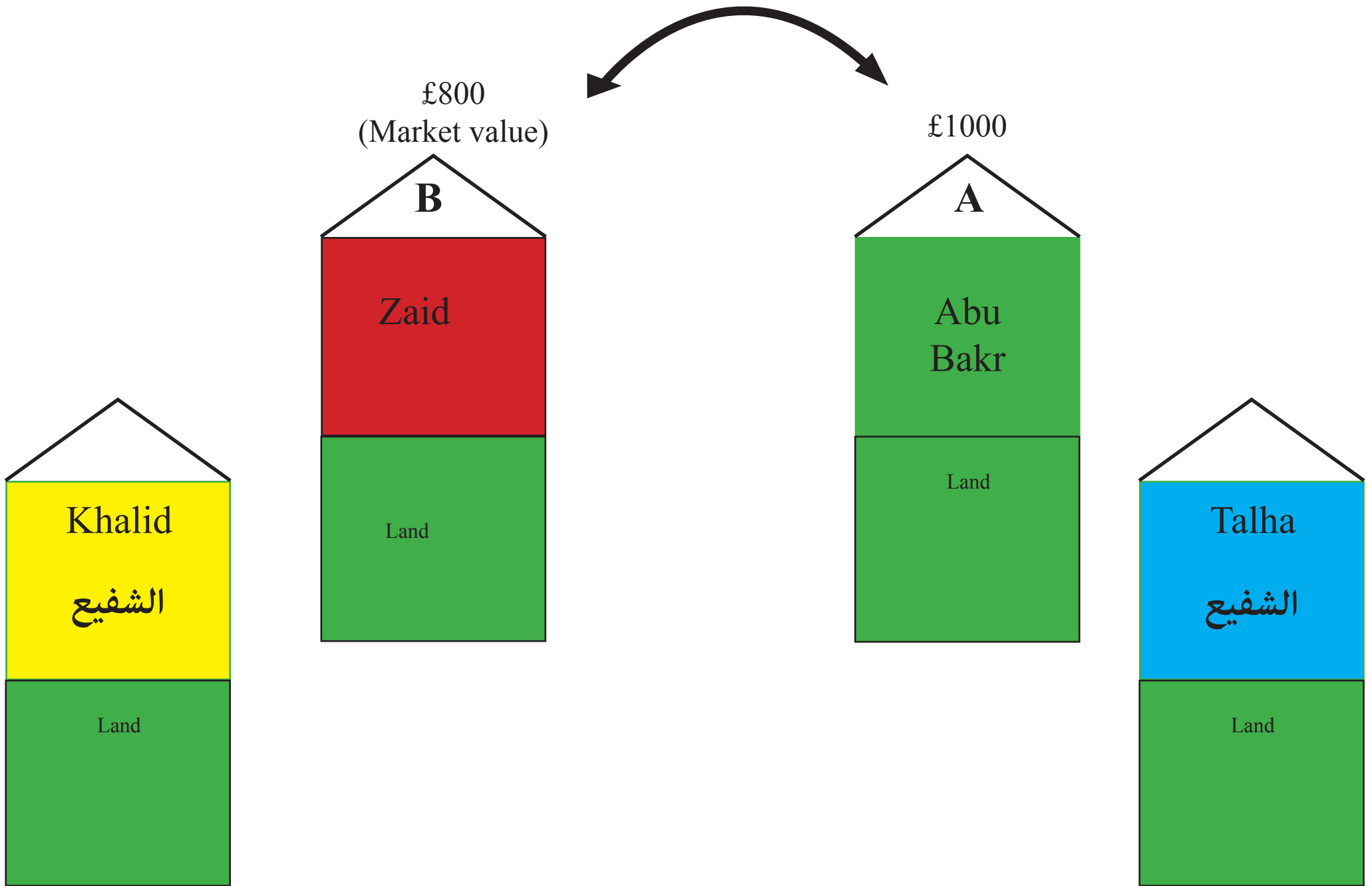


Talha does not recieved a larger share even though he owns a larger share in the partnership

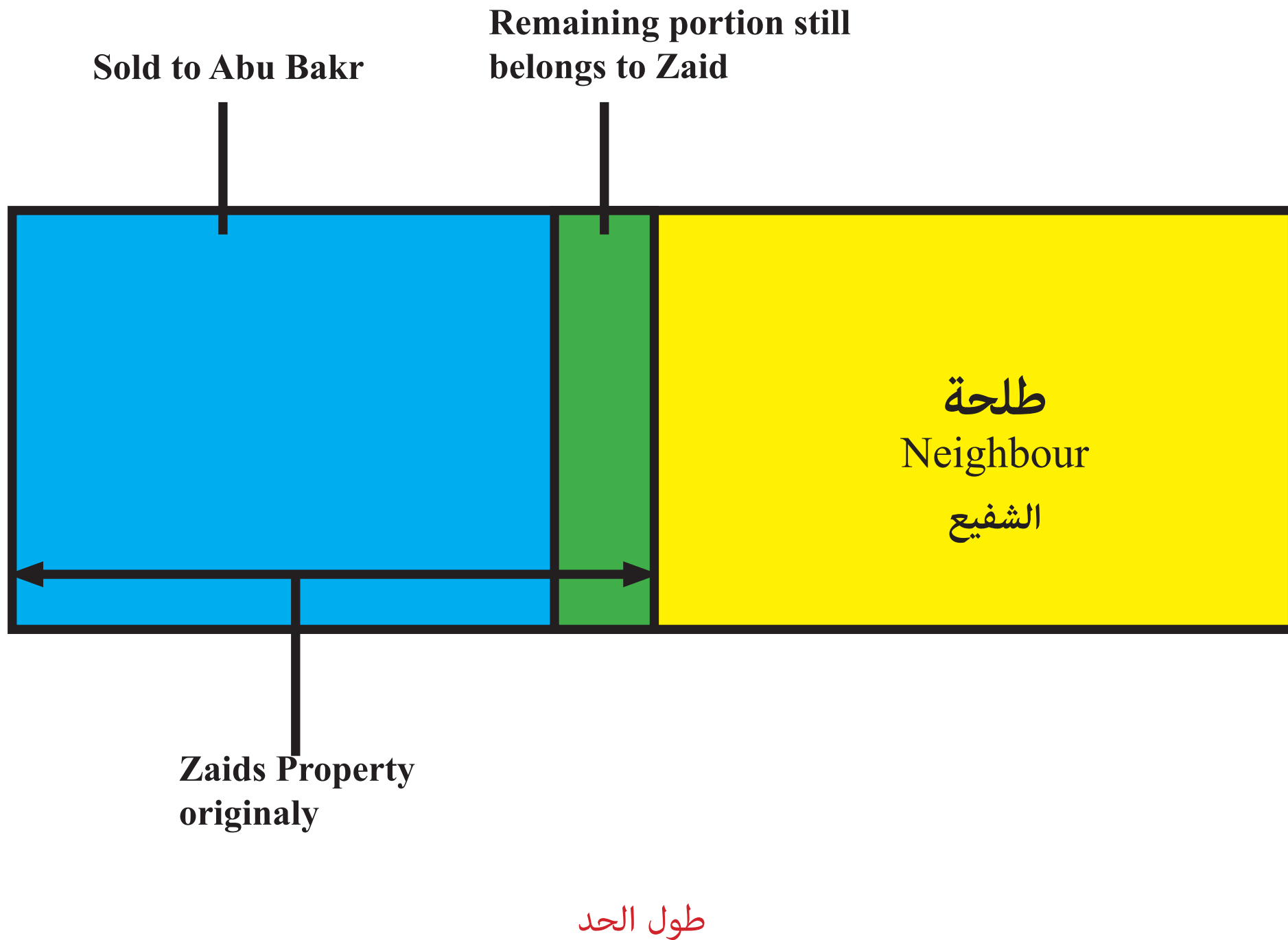
الشفعة علي عدد رؤسهم

If Zaid sells. and both claim. The property will be divide between the Abu Bakr and Talha equally. So they will recieved $\frac{1}{2}$ the property and so a 50% ownership.





إذا اشترى دارا بعرض



ابو بكر
المشتري



Portion One

Portion two

Portion three

Portion four

طلحة
Neighbour
الشفيع

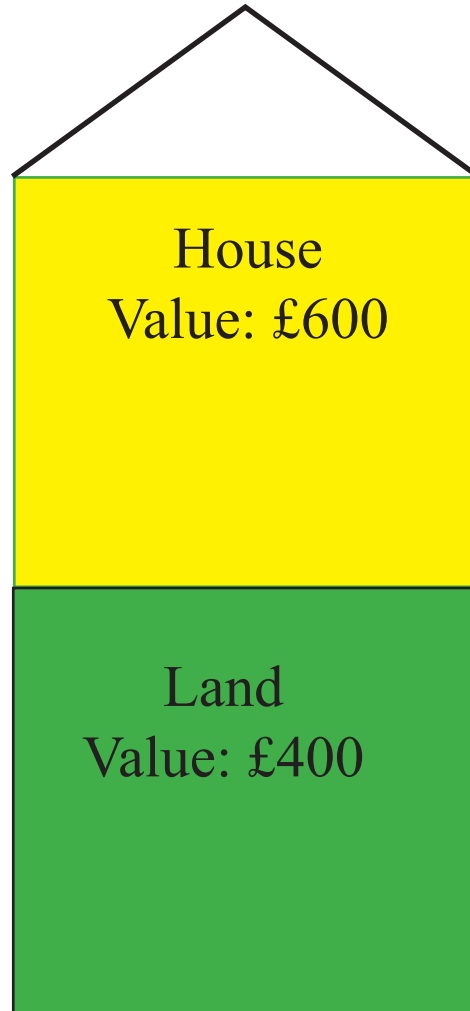


زيد

Zaid's property originally

البائع

انهدمت الدار



Total Value: £1000

Property

Khalid

Zaid

Abu Bakr

Talha

Khalid

Zaid

Abu Bakr

Talha