PART FIVE

LAND AND WATER
a. Private Property

(1) Hire and Lease

DOCUMENT THIRTY-TWO

TENANCY CONTRACT (MUZĀRÁ’A) (1973)

Introduction

The Mejelle defines a contract of tenancy (muzāra’a) as a kind of partnership in which one party provides the land and the other party provides the agricultural labor with a view to dividing the crop between them (art. 1431). The contract comprises an offer and acceptance (ījāb wa-qabūl) (art. 1432). The parties to the contract must be sane in mind (āqil) though not necessarily of age (bāligh) (art. 1433). The species of the seeds must be specified unless otherwise agreed upon between the parties (art. 1434). It is necessary to apportion, at the time of concluding the contract, the tenant’s share of the crop; this share should ordinarily be a fixed ratio, such as one-half or one-third of the crop, failing which, or in case it is agreed upon to allocate him something other than the crop—the tenancy is not valid (art. 1435). The land must be appropriate for sowing and its possession transferred to the tenant (art. 1436); if any of these two conditions is not met, the tenancy is deemed irregular (fāsid) (art. 1437), in which case the party who provides the seeds takes the entire crop and the other party takes the rent if he is the landowner, or a fair wage if he is the tenant (art. 1439).1

In the case under review, the parties—both belonging to ‘Arab al-‘Ubaydiyya in the Qadā of Bethlehem—conclude a tenancy contract (muzāra’a) that seems to be inspired by the Mejelle; most of the above-mentioned conditions for the contract to be valid have been met: The creation of a partnership between the owner of the land and the tenant, division of the crop between the parties on the basis of a fixed ratio, transfer of and taking possession of the land, specification of the species of the seeds, and the presence of two witnesses. Offer and acceptance are missing from the contract, probably due to the clerk’s negligence. Other conditions pertaining to the prohibition to transfer the land to a third party without the owner’s permission, the division of expenses of cultivation in respect of seeds, repairs and labor, failure to cultivate the land or withdrawal from the contract backed up by fines, and the option of renewing the contract, seem to have been introduced in accordance with local custom or practice.2 No sureties to ensure the execution of the provisions of the contract appear in this document. This seems to imply that in the event of infringement of the contract by any of the parties, the second party will resort to the civil court to ensure payment for losses incurred. Sharecropping on the basis of one-quarter to the landowner and three-quarters to the tenant was common practice among the Bedouin of the Judean Desert.3

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1 See Glossary, s.v. muzāra’a.
3 See above, 29. On sharecropping among the Bedouin of the Negev, see Marx, 75, 197, fn. 1; Bar-Zvi, 146.