DOCUMENT THIRTY-SIX

SHARĪ ABSOLUTE SALE PRIOR TO THE MEJELLE (1831)

Introduction

This document, the oldest in my possession (dated 1247, i.e., 1831), was probably copied from an older original when the latter had deteriorated. Two “Ottoman subjects” of ʿArab (Bedouin) al-Rashāyida confirm that they have sold to three brothers of ʿArab al-Nabāhīn of al-Taʿāmira tribes parcels of land situated in the territory of al-Rashāyida. The transaction bears the nature of a sale of private land between individuals, rather than of a transaction between tribes relating to territory. The object of sale includes all the rights (ḥuqūq) attached to the land, “the roads that pass over it and whatever is situated on it and belongs to it.” Since the land, the object of the sale, borders upon a parcel of land owned by the purchaser, the possibility that the transaction took place by virtue of the right of pre-emption cannot be ruled out. The document was required to provide legal security for the transaction in the absence of a land register (ṭābū).

The contract of sale is phrased in essentially sharī terminology: it is concluded by way of “offer and acceptance” (ijāb wa-qabūl), and defined as a sharī, absolute (bāṭt), completed (nājiz) and valid (ṣaḥīḥ) sale, with due regard to the “option of inspection” (khiyār al-ruʿya) and civil liability (damān) for damage (darar), risk (gharar) and “grave deception” (ghabn fāḥish). The document provides a notion of land as private property in the full sense of the term, including the right of disposition (tāṣarruf) “as an owner will dispose of his property and a holder of rights of his rights.” It should be noted that the document was written prior to the codification of the Mejelle. No reference to a legal treatise is given in the document, but it is very easy to identify the legal terms in the Mejelle.

1 Cf. Hasanayn.150, 152.
On the date stated below, we, the undersigned, Mughnim Basş and Suwaylim Abû al-Ruwayl of Ŵârûq; Ghabn Fâh, or committing grave deception (aghār), Wârâd al-Nimr and his aforementioned two brothers, of the charge of causing damage (below, voluntarily and by their own choice, attest, that we, the sellers, have cleared the purchasers, fluctuation [of prices] (ʾru), and taking cognizance (yaḵhiyār al-ru), and valid (ṣaḥih), the sale's specified (bayān) price was three hundred and thirty majīdī in coin current in the market of Bethlehem, payable (cash down, We, the aforesaid sellers, [hereby] receive the price from the purchasers, Wârâd al-Nimr and his two brothers Mughnim Basş and Ali, the aforesaid sons of Nimr{?}. We acknowledge receipt (tirāfī) [of receipt] are. Receipt and acknowledgment (tirāfī) [of receipt] are sharī, absolute (bâtt) sale, completed (nājīz) and valid (ṣaḥih), the sale's specified (bayān) price was three hundred and thirty majīdī in coin current in the market of Bethlehem, payable (cash down, We, the aforesaid sellers, [hereby] receive the price from the purchasers, Wârâd al-Nimr and his two brothers Mughnim Basş and Ali, the aforesaid sons of Nimr{?}. We acknowledge receipt (qabd) [of the sum] from them in cash ('addān wa-naqdan). Receipt and acknowledgment (iṭirāf) [of receipt] are sharī. By virtue of all this, I [hereby] release the said purchasers from all liability (barītu [barītu] dhīmma) for the specified price and from all amends (jazā[quva]), release (barā'a), receipt and acquisition (istifādā) [being sharī]. This absolute and valid contract of sale between us is made by way of sharī offer (ijāb) and acceptance (qabūl), as one that must be respected (mu'tabar) and honored (marī) after inspection (ruyā) and taking cognizance (marīfā) of the object of the sale and the sharī fluctuation [of prices] (taqallub), the cognizance being based on knowledge and experience (iṭīlān wa-khibratan). Whatever damage (darar) or exertion (ta'ab) may appear in the object of sale, the liability (damān) for it shall be on us {15} as required under the sharī. The witnesses mentioned below, voluntarily and by their own choice, attest, that we, the sellers, have cleared the purchasers, Wârâd al-Nimr and his aforementioned two brothers, of the charge of causing damage (darar) or risk (aghâr) or committing grave deception (ghābn fâhish) in connection with this absolute and valid sale transacted between us. We therefore hereby transfer (qad sallāmānā) into the possession of the purchasers, Wârâd al-Nimr and his aforementioned two brothers, the whole of the object of sale, the boundaries of which

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2 This may be a case of pre-emption (shuf'a). See, doc. 45 below.
3 Cf. Mejelle, art. 117.
4 For the legal terms, see Glossary.
5 See Glossary, s.v. riyaḍ majīdī.
6 In other words, the purchasers are immune against potential claims of non-payment of the price of the land and compensation resulting therefrom.
7 The contract is concluded by offer and acceptance at the same session. Cf. Mejelle, arts. 101–4.
8 In other words, since the purchasers have already inspected the object of sale, they have no "option of inspection" (khiyār al-ruyā), i.e., the option to rescind upon sight and inspection of the object of sale; cf. Mejelle, art. 320; Coulson, Commercial Law, 65.
9 The purchasers should be acquainted with the object of sale; cf. Mejelle, arts. 200ff.
10 Cf. Mejelle, arts. 254ff.
11 Cf. Mejelle, arts. 416; Hasanayn, 131; doc. 43 below (it was agreed between the parties that "If a defect [darar or tabi'a] as to ownership is found in this sale, the liability, damān, for the damage shall be on the seller); Schacht, Introduction, 139 (darāk), idem, "Bay."); 111.
12 Cf. Mejelle, art. 165; Schacht, Introduction, 117.