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EXCHANGE OF LAND AND PROHIBITION OF INTEREST (1954)

Introduction

This is a sale by way of exchange of properties. Each of the two parties—both of Thulth al-Ḥajāḥija belonging to al-Taʿāmira tribes—owns and disposes of a parcel of land in full ownership. Since each of the two parcels has a border in common with the other parcel it may well be that the transaction is inspired by considerations pertaining to the right of pre-emption.

Exchange of properties corresponds to the basic definition of sale under the šarʿīa.¹ The technical terminology used in the transaction is purely šarʿī with no concession to customary law. Although no legal treatise is referred to, it is very easy to identify technical terms such as bātt, qaṭʿī, nukūl, taṣarruf, istighlāl, taslim and tasallum in the Mejelle.

Moreover, it seems that the parties (or rather the scribe?) are fully aware of the prohibition of interest (ribā). Thus it is explicitly mentioned that the two exchanged parcels are of the same measure, quality and value, and that the exchange is being performed at the same meeting. It is further indicated in the contract that no deception (ghabn) or risk (gharar) are involved, implying thereby that no unlawful gain or interest transpires.

At the same time, it seems that the Bedouin are inspired also by the civil legal system. Thus the withdrawal from the contract of sale by either party provides grounds for a claim of damages (ʿatal wa-dārar) within the jurisdiction of the civil court. The fact that no tribal sureties have been enlisted to ensure the realization of the contract implies that the parties expect, in the event of withdrawal, to resort to a civil, rather than šarʿī or tribal, judge in order to obtain damages.²

¹ See Glossary, s.v. bayʿ.
² For full references to legal and scholarly literature on the subject matter of this document, see doc. 44 below.
CONTRACT OF AGREEMENT (‘AQD ITTIFĀQ)

Concluded between the parties named hereunder:


1. The First Party, Muḥammad b. Sālim al-Dhuwayb has a parcel of desert land in a place known as al-Shaqrā, in the Taʿāmirā land [territory], bounded by the land of Muḥammad ‘Awdāt Allāh al-ʿUmūr in the north, the land of the Second Party in the south, the land of Muḥammad al-Ḥamd al-Badan in the east and the land of Abū ʿĀmiriyā in the west. [The parcel’s] area is approximately three dunams and it is owned (tamalluk) by, disposed of (tasarruf) and occupied (wadāʿ at yad) by him absolutely, without any opposition or challenge whatsoever.

2. The Second Party, Ḥājj Sālim al-Šabbāḥ, also has a parcel of desert land in a place known as Khirbat Tuqū, in the Taʿāmirā land [territory], bounded by the land of the First Party in the north, the land of al-Šayāʿira in the south (with a road separating the two properties), the land of the First Party in the west and the land of Muḥammad al-Ḥamd al-Badan in the east. [The parcel’s] area is approximately three dunams and it is owned by, disposed of by and occupied by him absolutely, without any opposition or challenge whatsoever.

3. Hence the First Party hereby renounces (qad tanāzāla), and grants (manāha) to the Second Party, his land situated in al-Shaqrā and described in paragraph 1 above in exchange (muqaqibil) for the land he has taken possession of (istalama) from the Second Party in Khirbat Tuqū. The renunciation is final and constitutes nothing but an absolute (bātt), final (qāṭiʿ) sale (bayʿ) by way of exchange (tabdīl), not subject to revocation (rujūʿ) or withdrawal (nukūl) under any circumstances whatsoever. At the same time, the First Party hereby permits the Second Party to take possession (yastalim) of his land and empowers (fawwada) him to occupy (wadāʿ at yad) thereof, dispose (tasarruf) thereof and acquire the proceeds (istighlāl) thereof in accordance with the inferable (taʿwil) [rights in property in which the individual possesses] full ownership (milk).

4. The Second Party hereby renounces and grants to the First Party, his land situated in Khirbat Tuqū and described in paragraph 2 above in exchange for the land he took possession of from the First Party in al-Shaqrā. The renunciation is final and constitutes nothing but an absolute, final sale by way of exchange, not subject to revocation or withdrawal under any circumstances whatsoever. At the same time, [the Second Party] hereby permits the First Party to take possession of his land and empowers him to occupy thereof, dispose thereof and acquire the proceeds thereof in accordance with the inferable [rights in property in which the individual possesses] full ownership.

5. Each of the parties regards the exchange as definite (jāzim) and absolute (bātt), based on an absolute, final (qāṭiʿ) sale by one to the other and vice versa. The price (thaman) of each parcel is equal to the price of the parcel exchanged for it. Each party’s renunciation and grant of permission to the other party regarding their respective parcels of land are to be regarded as sharʿī taking possession (tasallum) and transfer of possession (taslim), which must be respected; they involve no deception (ghabn fāh) or risk (gharar). Each party estimates (yuqawwim) the price of his land at

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5 See Glossary, s.v. malsā.
6 The sale by exchange seems to have been prompted by the right of pre-emption on both sides; see paragraph 2 below. Cf. doc. 45
5 In other words, the First Party has full ownership and possession of the parcel of land with no restriction whatsoever.
6 The simultaneous exchange of the two parcels of the same quantity, quality (malsā land) and value indicates that the parties (or rather the scribe?) were prompted by the desire to avoid interest (ribā) (see Schacht, “Ribā,” 492). Fore more indications to this effect, see below. It is noteworthy that the First Party, Muḥammad Sālim al-Dhuwayb, himself a well-known arbitrator, had a good orientation in Islamic law.
7 Deception and risk imply unlawful gain that is tantamount to interest in its broad sense (see Glossary, s.v. ghabn fāhish, gharar). These terms are another indication that the parties were anxious to avoid interest.