Introduction

This case relates to an absolute, irrevocable sale involving parties both belonging to ’Arab al-Sawāhira. Most of the legal terminology used throughout the document conforms to the conventional nomenclature of the Mejelle. Thus it is stipulated in the contract that if a defect as to ownership is found, the liability for the damage (damān) shall rest with the seller. It seems, however, that the drafters of the document were mostly inspired by the judicial practice of the civil court (which applied the Mejelle). The document was drafted with a view to bringing the case to the civil court in the event that some dispute between the parties emerged. Thus it is stipulated that if the seller infringes any provision of the contract, or if he cancels the contract altogether, he shall have to pay damages (‘atāl wa-‘darar) to the purchaser as will be decided—by implication—by the civil court.

There is some indication in the document to the effect that the Bedouin resort to the sharī‘a court. Thus the seller undertakes to meet any claim to the object of sale on the grounds of right of inheritance by a third party; it stands to reason that the reference here is to legal heirs in accordance with the sharī‘ rules of inheritance as applied by the sharī‘a court. Otherwise, there is no indication that the sharī‘a court plays any role in this document.

Neither is there any indication in the document that custom plays any significant role in this transaction. Thus no tribal sureties were nominated by the parties to back up the implementation of the agreement in the event of its infringement. It may well be, however, that the sale of rights to drawing water from the well, which is generally prohibited outside the tribe, is sanctioned in this particular case by tribal customary law because the parties to the agreement belong to the same blood group.
First Party: Mūsā Ḥusayn [Muḥammad] Shāhīn
Second Party: Muḥammad Salāma al-Ḥasan Shāhīn,
both of ʿArab al-Sawāhiṣ, who belong to the Liwāʿ of Jerusalem the Noble.

The Second Party, the said Muḥammad Salāma, hereby buys (qad ishtarāʾ) with his own, not somebody else's, money from the seller present here with him, the First Party, the said Mūsā Ḥusayn Muḥammad Shāhīn, and the latter sells to the former by means of absolute (bāṭt), final (qaṭāʾ) and irrevocable (lā ruqūʿa fīhi) sale (bayʿ), one and a half out of the twenty-four qirāts of the well called Jubb al-Rūmī at the price of fifteen Palestine pounds, received (maqābudan) on the spot, in hard cash, by the said seller from the said purchaser, the purchaser paying the price to the seller at the meeting for the conclusion (mājisʿ uqda) of this absolute, effective (nāfīdīḥ) sale, before the parties separate. The purchaser's financial obligation (dhimma) in respect of the whole of the stated price is hereby discharged (qad barīʿat) in accordance with the sharīʿa. The sale (bayʿ) and purchase (shirāʾ) are being effected by way of a valid (saḥīḥ) sharʿi purchase (ishtarāʾ) and absolute, final and irrevocable sale, by consent and without duress (ikrāh) or coercion (ṣalām), without corruption (fāsād), discard (mushājara) or resistance (inād), by way of acceptance (qabūl) and acknowledgment (iʿtirāf) by the two parties, delivery (tasālim) and taking delivery (tasallum), and while the parties are in good health (ṣiḥḥa).

Should a defect (darāk) or some consequence which entails legal responsibility (tabīʿa) as to ownership be found in this sale, the liability [for damage] (damān) shall be on the seller as required by the sharīʿa. The seller hereby undertakes (qad taʿahhada) not to infringe (naqd) this absolute sale or any part thereof. He also undertakes to meet any claim for succession (iṭrāh) [by a third party] or for any full or partial right [by a third party in respect of the thing sold]11 If he [the seller] infringes any stipulation whatsoever [of the sale agreement], he shall have to pay the aforesaid amount in addition to the amount that the purchaser has already [paid]. If the seller cancels the contract (tabātala), he shall have to pay damages (ʿatal wa-darar).13

Made in the presence of witnesses, but Allāh is the best of witnesses (khayr al-shāhidīn).

Written on the 22nd Shaʿbān, 1366, of the Hijra, which corresponds to the 11th July 1947.

[Palestine Mandate revenue stamps]
The seller, the First Party [Mūsā Ḥusayn Shāhīn]
Witness: Mukhtār testifying to it and certifying (muṣādiq) [the contents of the document] as true (saḥīḥ)

{5}Witnesses: ʿAbd al-Ḥasan al-Ḥasan, Muḥammad Ḥamdān Abū ʿSubayḥ, Muḥammad Ḥusayn Abū Shukr Allāh

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1 The reference seems to be to sale with right of redemption; see Glossary, s.v. bayʿ al-wafūʿ.
2 The reference is to water rights for consumption (drinking, irrigation) of a private well the use of which is shared by a few partners (shurb khās); this is not a public well; see Mejelle, arts. 954–55, 1008.
3 The reference is probably to cisterns dug in the Byzantine period. Cf. Layish, Sharīʿa and Custom in Libya, 24, fn. 6 (Roman wells are considered tribal property and hence it is prohibited to sell water rights thereof). However, in this particular case the two parties belong to the same blood group and hence there is no prohibition under customary law on such a transaction.
4 According to the sharīʿa, in order for the sale to be binding, offer and acceptance must take place at the same meeting (mājisʿ uqda); Mejelle, art. 182.
5 The payment of the price precedes the delivery of the property to the purchaser; cf. Mejelle, art. 262.
6 Offer (iṭāb) is missing in this context.
7 Cf. Mejelle, art. 264.
8 See Glossary, s.v. darak.
9 Liability for damage entails giving something similar in kind or, in its absence, its equivalent in money; see Mejelle, art. 416. The reference is to legal heirs that have been deprived of their shares in the estate; they may come up with a claim to regain their shares.
10 The reference is to cisterns which are not filled with water, and hence it is prohibited to sell water rights thereof. However, in this particular case the two parties belong to the same blood group and hence there is no prohibition under customary law on such a transaction.
11 A neighbor or a blood relative sharing water rights in the same well may claim priority on the grounds of right of pre-emption. See Glossary, s.v. shufa; docs. 45–46 below.
12 That is, reimburse the buyer with the price of the sale.
13 Unilateral cancellation of an absolute irrevocable sale by one of the parties entails liability for damage (see Glossary, s.v. damān). The sanction of damages (ʿatal wa-darar) in addition to reimbursement of the price seems to be inspired by the judicial practice of the civil court applying the Mejelle.