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“On Contracts in Islamic Law”

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To approach the topic of contracts in Islamic legal thought and practice I will begin with the two “sources” of the sharia: the sacred text, the early seventh century (CE) Quran, understood by believers to be the word of God, and also (very briefly) the words and deeds of the Prophet Muhammad, his *Sunna*, expressed in individual texts called *aḥādīth*, sing. *ḥadīth*.

I then will briefly survey the place and structure of contracts in the humanly authored jurisprudence of the sharia, known as the *fiqh*. I reference this centuries-old doctrine as it was received, taught and applied in the place and time of my research: highland (north) Yemen in the first half of the twentieth century. These were the final decades of the millennium-old, classically styled Islamic polity ruled by an *imām*, a qualified interpreter of the sharia. Yemen in the period in question had yet to experience the modern legal transformations associated with the advent of a nation state (i.e., constitution, legislation, etc.) and it had not been subjected to the many legal changes associated with a western colonial administrations.

Finally, I will treat contracts from the period both in terms of instrument models that were created for notarial writing and also through a clause-by-clause reading of actual historical documents from the town of Ibb. The focus will be on the paradigmatic contract of sale.

Anthropology, it may be noted, has a lengthy history of research on exchange relations. Witness the foundational work of Marcel Mauss, *The Gift* (1925), in which he reviews early ethnographic

studies conducted in non-literate societies. For the intensively literate Islamic tradition, however, new methods are required, notably those of the anthropologist as a reader.¹

The Quran

*O believers, when you contract a debt
one upon another for a stated term,
write it down, and let a writer
write it down between you justly,
and let not any writer refuse
to write it down, as God taught him;
so let him write, and let the debtor dictate . . .*

(Trans. Arberry 1955)

Muslim exegetes studying these lines from the Quran, Sura 2, verses 282-3, recognized that they convey a divine “order” concerning the writing of a contract document. The order is substantive and particular rather than abstract or general (e.g., “contracts, or transactions must be placed in written form,” etc.). The exegetes also identified two other orders in these opening lines. Thus, in addition to the mandate for the transacting parties to have the appropriate document prepared, a second ordered the writer to write, and a third required the debtor in the transaction to “dictate” the terms.

It is important to note, however, that the exegetes downgraded these divine orders from “required,” which was the norm, to “recommended.” This may be understood in connection with the wariness of their colleagues, the sharia jurists, about the dangers associated with role of writing in practice (*al-‘amal bi-l-khaṭṭ*). It may be noted that there also were related conflicts surrounding the writing down of the Quran and especially that of the *ḥadīths* of the Prophet.

A later passage in the same verse connects this form of writing and the role of the writer to witnessing and the role of the witness, and it includes a significant gender distinction. This further divine order states, “[A]nd call into witness two witnesses, men; or if the two be not men,

¹ Messick, Brinkley. *Sharia Scripts: A Historical Anthropology* (Columbia, 2018)

then one man and two women.” Later still, the verse provides a set of rationales for this type of archival writing. The indicated practice of having a document written and witnessed is deemed “more equitable in God’s sight.” More specifically, the existence of such a document is described as “more upright for testimony,” i.e., in the event of conflict, pursued in court, and will mean that it is “likelier that you will not be in doubt.”

While an association of writing with temporality was built into the debt contract, another later provision in these verses is held that the sole exception to the requirement to place a contract in writing was “present trade,” that is, face-to-face and immediately concluded transactions, which could be conducted by oral means alone.

Dictation (*imlā’*), a basic oral form, is at the crux of the third of the divine “orders” identified in the quoted opening lines. The transition from “dictation” to written document envisioned in these lines may be related to several other types of oral institutions that figure in the larger Islamic textual formation, as well as to further types of authoritative linkages and transitions between oral and written texts. Thus, in their sharia doctrine, the Muslim jurists adopted the kindred technique of an “oral reading” as a requirement for presenting written documents as evidence in the sharia court. The wider models for this sort of authoritative oral-written dynamic include the original form of transmission of the Quran as Revelation to the Prophet, which only later resulted in a written book, and also that of the madrasa teacher “dictating” a text to a transcribing student in a lesson circle.

In the “dictation” envisioned in the Quranic verse a single speaker communicates with two types of listeners. As a consequence, a unitary oral statement leads to differing outcomes. On the one hand, uttered by the dictating party to the contract, here the debtor, the spoken terms are heard—that is, perceived and then retained in the memories of the listening witnesses. On the other, the writer, to whom the dictation is primarily directed, also is listening, but he converts the same oral text into the requisite stipulations, the formally expressed legal language of a proper sharia instrument. “Dictation” in the contract session thus leads both to the (more or less complete) retention of the heard text in memory and to a transformed version set down in writing. The former is taken to be a form of “knowledge” and therefore is suitable as evidence and may be reproduced as testimony in court. The latter, the written document, the evidential status of which

may be suspect, nevertheless also could find its way into court.

According to the famous early Muslim exegete al-Zamakhsharī, the “trustworthy writer” may be described as follows: “In what he writes he writes with equality and circumspection; he does not exceed what it is required that he write, nor fall short. In it, the writer is a jurist knowledgeable about the stipulations (*shurūṭ*) such that his writing accords with the sharī‘a.” Al-Shawkani, the noted early 19th century exegete from Yemen adds that this writer “should not favor either of the parties.... There should not be in his heart or in his pen an indulgence for one of them to the disadvantage of the other.”

The Quran stresses the moral basis of contractual relations, as part of a religious ethics that is foundational to the sharia as a whole. Thus Sura 5, verse 1 states, using the Arabic term for “contracts” (‘*uqūd*, sing. ‘*aqd*), “O you who believe fulfill your contracts.” This is echoed in the *Sunna* of the Prophet Muhammad. (The Prophet, it should be noted, had a prior career as a merchant and long-distance trader.) A well-known and oft cited *ḥadīth* employs the term for contract “stipulations” (*shurūṭ*) or “obligations:” “The Believers [or “the Muslims”] uphold their obligations” (*al-mu’minūn ‘inda shurūṭihim* or *al-muslimūn ‘inda shurūṭihim*). It may be added that, specifically concerning property relations, the main substantive sphere of contractual application, the Quran, Sura 4, verse 29 states, “Do not usurp unjustly the wealth of each other” (*la ta’kulū amwālakum baynakum bi-l-bāṭil*).

Fiqh doctrine

The highly elaborated, madrasa-taught Islamic thought on contracts and unilateral dispositions may be summarized in terms of its basic types and related concepts. As opposed to the chapters on the ritual life (prayer, fasting, etc.), which open the books of *fiqh* and which occupy less than a quarter of the total coverage, those on the “transactions” (*mu’āmalāt*) constitute the bulk of the presentations. The sale contract, the largest chapter, is presented in great detail, as it is paradigm for other bilateral forms, starting with its characteristic conceptual language of “an offer and an acceptance.”

In comparative terms, sale is a centerpiece of a pre-modern form of ‘capitalism,’ comprising both agrarian-age landed property relations conceived as individually owned (*milk*) and alienable, and

also the closely related sphere of commercial trade based on a mercantile-era notion of capital (*ra's al-mal*).

Among the other *fiqh* chapters are the bilateral contracts modeled directly on sale, notably lease and marriage, although sale itself has many sub-varieties. There also are closely related chapters, such as that on the pre-emption of a sale transaction. There is a type of future sale contract, as well as forms for pawn, deposit, loan and unilateral gift. Also on the basis of individual ownership (*milk*), there is the venerable form of the pious endowment (*waqf*), and also the individual will and several forms associated with inheritance and estate division. There is a contract as well for the manumission of a slave. Although there is no contract form equivalent to the corporation, partnership is highly developed, including the commercial form known in the West as the “commenda.” In addition, there are contracts for agency, or representation, and for guarantee.

Among the key concepts is that of the sharia subject, the *mukallaf*, the individual (male or female) who has the capacity to transact, to engage in contracts; another, again, is *milk*, individual ownership. Ownership itself is distinguished from possession (*yad*), and certain things, such as wine or pork, cannot be licitly sold. *Māl*, the basic term for property, or *res in commercio*, also has sub-forms, including the fungible and non-fungible. The jurists analyze the different contracts and dispositions in terms of their exchanges and other transfers of *māl*, sometimes, as in the sale contract, using a separate term for the second *māl* that plays the role of a “counter-value” (*iwaḍ*). A significant moral principle of transacting is expressed in these same terms. This is the prohibition of “unjustified enrichment,” expressed as “an increase in the *māl* without a counter-value” (*faḍl al-mal bilā iwaḍ*).

Other important principles in transacting include the requirement to avoid taking “interest” (*ribā*), a Quran-mandated topic treated in its detailed ramifications by the sharia jurists. Another is to avoid “risk” (*gharar*), which mainly involves establishing that a contract’s particulars and stipulations are “known” (*ma lūm*). In the sale contract, this entails the careful specification of the “sale object.”

Opinions

As trained juridical interpreters of the sharia, the ruling imams of 20th century Yemen delivered authoritative opinions. These were issued in response to problems encountered by their appointed judges at the trial level. Once issued, these imamic opinions served as a form of precedent for later application in other rulings by judges hearing similar cases.

Three examples related to contracts follow:

1. Formalism. There were opposed views among the jurists about contract language. One side required specific wording, utilizing identified “expressions.” For the “offer and acceptance” in bilateral contracts, the parties should use correct “past-tense expressions,” examples of which were provided in the *fiqh* books. The opposing view held that, rather than such unnecessary standardized wording, what mattered was the underlying intent, which, in sale and other bilateral contracts, was determined by the contracting parties’ “mutual consent.” The model sale contract presented below does not take sides, and instead accommodates both views.

Imam Yahya, the ruler, agreed with the second position in an opinion that states:

Expressions are not conditions in sale, that is, in the offer and acceptance, or in lease [another bilateral contract], since the crux of authority is mutual consent regarding all that is indicated.

All jurists agreed, however, on the authoritative role of intent in all types of contracts and dispositions, as well as in other matters, such as homicidal intent in murder.

2. Evidence-value. As was noted earlier, the doctrinal jurists, who were wary of the dangers posed by writings, from forgery to inaccuracies and mistakes, required an “oral reading” of a legal instrument in order for it to be entered as evidence in court. The *fiqh* chapter on “Testimonies” envisioned the summoning of the notarial writer and the document witnesses, who, following the “completion” of its evidence-value by this reading in court,

would attest to the document's substance. The doctrinal jurists additionally gave primacy to memory over the written text, such that a judge was theoretically forbidden to base his judgment on a document in his archive if he did not "remember" the matter in question.

In court practice in Yemen, only contested documents were subjected to the summoning of writers and witnesses to give testimony, and we have no record of "oral readings" in court.

Imam Yahya delivered a circa 1920 opinion on the use of documents as evidence, in which he invokes the language of the old doctrinal concern as he states:

Basing action on [or practice with] writing (*al-'amal bi-l-khatt*) is acceptable (*mu'tabar*) if the writing is known and its writer is known for justness.

As a commentator on this opinion notes, the Imam left the related responsibility for assessing handwriting and the reputations of writers to the local judge.

3. Gender. Concerning the status of women, the situation in witnessing (two women can replace one man) was mentioned earlier. In Islamic conceptions of property relations, however, "the woman is the equal of the man" (Schacht 1964: 126-7). This historical situation, going back many centuries, was decidedly unlike the circumstances of western women, who typically lost control of their property at marriage. This is not to say that there were no threats to women's property.

In 1950, Imam Ahmad delivered an opinion that instructed court judges regarding the potential familial threats to, and the principle for upholding women's property rights:

All transactions by women with their close relatives and their children regarding what is in their possession among their properties, or under their influence, have no enforceability, whether the disposition was in the form of a gift, pledge, transfer of ownership, or endowment, inasmuch as this [transaction] would not have occurred except due to fear, shyness, or desperation connected with the greedy taking advantage of them [the women] and seizing their property, except if it is a transaction by sale to

their relatives without alteration or deceit against them [the women] from them [their relatives], or from others, and with no fear or fraud against them, in which case it is legal.

Contract Models

Models for contract writing were provided in a specialized literature, known as the *shurūṭ* (“stipulations”). As model documents, they utilize the Arabic word *fulān* and its variations, that is, the equivalent of “So and so” or “John Doe,” and “Such and such,” as opposed to the proper names of individuals and places which appear in actual documents (discussed in the next section). The model instruments do not give the invocation of the divinity, name no witnesses, and have no dates, and they do not recognize the customary stipulations found in historical documents. The chapter coverage of a *shurūṭ* work is similar to that of the “transactions” section of the much more expansive *fiqh* books. But the very brief chapters are focused on application, on specific model instruments, rather than the backdrop of opinions, debate and explanation characteristic of the *fiqh*. Each individual model takes the form of a branching text, a form meant to present a range of options in the given contract’s stipulations. The quotation marks below show the model language itself, as opposed to the interspersed directions and comments by the writer, al-Iryānī (d. 1905).

Model sale contract:²

If an individual (*shakhs*) buys from another individual a house or land, or such like, he [the notarial writer] writes: “*Fulān bin Fulān al-Fulānī* bought, from the seller to him, *Fulān bin Fulān al-Fulānī*, selling for himself, that which is his property (*milk*) and in his possession,” or “came to him as inheritance,” if inherited, “and it is all of the house,” or “the land *al-Fulāniyya*,” and he [viz., the document writer] names it and describes it by that which distinguishes it from other than it, and he gives its boundaries in the four directions. Then he writes, “and this with all of its rights, and that which pertains to it, contiguous and detached, flourishing and in ruins, rocks and earth, and irrigation apparatus and canal, and all of that which pertains to it,” if a right was attached to the sale

² Cf. Messick, *Sharia Scripts*, 356-7.

object, and, if not, he would write, “and the sale object has no right associated with it,” and if the seller excluded something there would be written, in the document, “except the place” or “the land al-*Fulāniyya*,” and such like, “which is outside the contract, and the buyer has knowledge of this.” Then he writes, “a sale, valid and shar‘i, with the offer and acceptance, in two past-tense expressions (*lafẓayn māḍiyayn*), for a price known in its units and amount, such and such,” and then he gives half of it in the currency in use. Then he writes “and when the sale was completed with the stipulations of its legality, the seller surrendered it to the buyer, and the aforementioned sale object became the possession of the buyer, a property (*māl*) among his properties, which he may dispose of as in the disposal of an owner with respect to his property (*milk*), and as those to whom rights pertain with respect to their rights, free and clear, [with] no impediment to him and no challenge to his possession, and this after knowledge of what the two of them had contracted for, and they parted in mutual consent (*tarādīn*).”

And if the price [money] was paid under observation, he would write, “and the seller received the price in the contract session under observation in the presence of the witnesses.” And if it remained the financial obligation of the buyer, he would write, “and the equivalent of the price became a debt as the financial obligation of the buyer postponed until such and such time,” or “indefinitely.”

And he also writes in the *baṣīra*, “a valid sale, with the validity of disposal by the seller and the buyer, and the permissibility of their acts in word and deed.” Then he writes the [names of the] just witnesses and dates [the document].

Historical documents³

As opposed to the *fulān* of the models mid-twentieth century documents from the town of Ibb emphasize proper names for people and things. Likewise, they explicitly invoke the name of God, name witnesses, and bear dates. In a terminological usage particular to highland Yemen, this land sale document is customarily known as a *baṣīra*. There were no public or licensed notarial writers in period Yemen, and the resultant documents were archived in holdings kept in

³ Cf. Messick, *Sharia Scripts*, 361-69.

private residences. The following reading moves line-by-line, identifying the clauses and the stipulations of the local contract of sale for landed property:

1. *Invocation of God*. The *Basmala*, or the *Ḥamdala*, is written first and appears, usually centered, above the document text. This is the ubiquitous and characteristic “opening” of Muslim writing, shared across and thus uniting the doctrinal and the archive.

2. *Signature, by the writer*. A half-line note, with a personal signature and sometimes with the date, is written last, after the main text of the document is completed. It is located, usually indented to the left, above the main document’s first line and below the level of the invocation of God. Its tail end may begin to ascend the page edge. It typically states something like: “What is mentioned [below] occurred under my auspices as written, on its date.” The signature itself usually is placed above the note, interlaced in the old style and ascending nearly vertically. These signatures can be hard to decipher, often intentionally so, though they tended to be known in their place and time. Much less frequently, the writer’s note and signature may be placed at the bottom of the document. During the Ottoman period, and up to about 1930, the signature note at the top was accompanied by the inked impression of the writer’s small seal, bearing his name, descending from the top and, sometimes, the seal date. When such a document later was read, or when it was inventoried as court evidence, the interrelated set of personal calligraphic features that could be remarked on were, “script, signature, and seal” (*khaṭṭ wa ‘alāma wa khatm*). Some writers’ notes mention the fee paid for the writing, as I discuss below.

It should be noted that neither the parties to the contract nor the witnesses signed, except in the case of a “subjective” document written by a party.

3. *“Bought” (ishtarā)*. Following the standard word order of Arabic and using the same terminology as the model, this verb appears as the initial word of the main text, often without the distinguishing points on the Arabic letters. It announces the document as an instrument of sale and purchase, and also as a text in the third person, past-tense “objective” style. Most *baṣīras* begin this way, with a few variants.

4. *Buyer*. Still on the first line of the text proper, immediately following the verb “bought,” for which it is the subject, the buyer’s name usually consists of a three-part identification, including the individual’s name (*ism*), the father’s name, and either the grandfather’s name or an old-style family name of one of several types. In addition, there may be prefacing formalities, such as “the honorable” (*al-ṣadr al-muḥtaram*), or specific titles, such as “Shaykh,” “Faḳīh,” or “Hājj,” often with the appropriate nickname (e.g., al-‘Izzī, with Muhammad), and there may be adjectives affirming majority and full capacity. The names of female buyers are commonly preceded with “the free woman” (*al-ḥurra*).

An individual thus is linked to a *sharī‘a* role. In the remainder of the instrument this archival individual is referred to either as “the buyer” (*al-mushtarī*) or using the appropriate pronoun. It is this individual, the buyer, who compensates the notarial writer and who retains the original written instrument. Further along in the buyer clause any necessary indications of multiple parties or agency appear.

5. *Property* (generic term: *māl*). Following the buyer’s name is the specification of the property (*māl*) involved on the buyer’s side of the transaction. In the case of a man buying for himself, his name is followed by the phrase “with his *māl*, for himself” (*bi-mālihi li-nafsihi*), sometimes adding “without others.” Later in the contract text, this first *māl* will be referred to more specifically as the “price” (*thaman*). As noted earlier, the jurists give a basic definition of sale as a transaction involving “two *māls*” (*mālayn*), which they also conceptualized as a *māl* and a “counter-value” (*‘iwaḍ*).

6. *Seller*. Following the preposition “from,” the role of “the seller” (*al-bāi‘*) appears before the naming of this individual. This “seller to him,” with the preposition and pronoun linking this second party to the first (in the case of a male buyer), and who also may be identified, as in a 1957 *baṣīra*, as “present at the session (*al-mawqif*),” similarly is identified by a tripartite name and potentially also with honorifics. The simple type of text reads that the seller is acting “for himself” (*‘an nafsihi*).

Multiple parties and agency on this side of the transaction, if any, also are specified at this point. An agency may be based on a document explicitly consulted by the notarial writer

7. *Sale object (mabī)*. The more specific term for the second of the two *māls* exchanged.

(a) Maximally correct documents specify how what is being sold came to be the property of the seller. Such a specification phrase either follows the seller's name or appears after the identification of the property as the sale object. As with some agencies, when such a specification occurs it may be accompanied by a reference to the notarial writer having carried out a preparatory examination or reading (*iṭṭilā'*) of another, earlier *baṣīra* or an individual's inheritance document (*farz*, *qur'a*, or *faṣl*). Such preceding texts also may be described in terms of their script, signature, date, and, especially in late Ottoman usage, seal. Unlike agency documents, however, which were only read, the notarial writer also may indicate that he has canceled the prior instrument by means of the appropriate annotation (*tanbīh*), a brief statement that would have been written in that document's vacant upper space or in its margin.

Canceling notes of this type figured among the distinctive conventions of erasure. Instruments of sale anticipated such canceling notes in the sense that the possibility of repeated alienation was in the nature of the exchange. Necessitated by the new acts, such annotations also created material links in document chains. Such notes placed on old documents often explicitly mention the existence of the new. Despite their deactivation, annotated old documents were still kept, although they switched archives. Delivered at the new contract session, such old documents passed from the archive of the seller to that of the new owner. If a property was repeatedly sold, a series could emerge.

(b) Most sale objects are identified by their proper names, measurements, regional or village locations, and boundaries in the four directions. Each of the myriad terraces that surrounded the town, crossed the valley floor, or rose up the mountainsides had a name. Documents from the Ibb region are distinguished by their use of a specific term of the land surface measurement, the *qaṣaba*, a unit of approximately sixteen square cubits.

The boundary directions, which could include the mention of other named properties, or physical features such as a footpath, a prominent rock, or a saint's tomb, begin with "on the north" (*qibliyyan*)—that is, the direction of prayer (*qibla*), toward Mecca, which, in contrast, is "south" in the early documents from Egypt. The Yemeni documents continue with east, south ('*adaniyyan*, the direction of the port-city, Aden) and, finally, west.

(c) Agricultural terraces or buildings may be further identified in terms of the standard rights (*huqūq*, sing. *ḥaqq*), including physical parts and other rights, which typically pertain to such types of properties. An agricultural terrace thus includes, in formulaic terms, "its earth and its stones and its trees and its . . ." A building comprises, "its earth and its stones and its wooden boards and its windows and its passages, and all that is related to it and for it in the sharia and in custom (*sharʿan wa ʿurfān*)." This last formulation, explicitly referencing custom, appears also in descriptions of other landed properties. Phrases such as, "with its vital parts and its ruined parts" (*āmirha wa dāmirha*) recall the parallel and rhymed constructions in early Islamic sale documents from Egypt and in al-Iryānī's model. However, the model, as we saw, goes on to other the possibilities of there being "no [further] right associated with it," and also of something being specifically excluded by the seller.

8. *Offer and acceptance.* In several variations, this key clause employs language close to that in al-Iryānī's treatise for notarial writers, which is also that of the *fiqh* itself. Thus, one contract states, "a sale and purchase, valid in the sharia, complete and definitive, with the expression of the offer and the acceptance, with past form." This last phrase, "past form (*ṣīgha māḍiyya*)," represents a direct reflection of approach also found in al-Iryānī's model and in one of the two mentioned views in the *fiqh* doctrine. Another document reads, "a valid sharia sale, definitive and complete, with the expression of the offer and acceptance, with the statement of the seller, 'I sold,' and the buyer, 'I bought.'"

Provision of the parties' purported words is unusual. In general, the binding "offer and acceptance" phrase is in itself a prime example of how the discourse of the jurists overwrites any actual contract utterances. The 1957 contract gives "a sale and purchase, both valid in the sharia, implemented and complete; with an offer and an acceptance, both [of them] unambiguous

(*ṣarīḥ*); immediate and comprehensive of sharia considerations, including stipulations and principles, [and] devoid of what might be judged corrupt or invalid.” This lengthy formulation is notable for employing the technical term “unambiguous.” Another instrument states, simply, “with the offer and acceptance, and a proper sharia form.”

9. *Price (thaman)*. The more specific term for the first of the two values or *māls* exchanged. With respect to its “amount, number, type, and description,” and possibly also “form” and “kind,” the price, which may also be generally characterized as “known” (*ma‘lūm*), is written out in words. As a further precaution, one also mentioned in the model treatise, half of this sum then is written out. Prices are given in named currencies. Indexing both the long-standing connections of the highlands with broader spheres of circulation and also the limited institutional development of the indigenous polities, the principal coin of the highlands was the Maria Theresa *thaler*, the international but unofficial currency minted in Vienna (and elsewhere) from the late eighteenth century onward. The twentieth-century highland contract currency, the *riyal*, is characterized in early instruments as “stone, silver, French,” indicating the Maria Theresa *thaler*. Later, the currency simply is described as “stone,” indicating the imamic period silver *riyal* minted in Yemen from 1906 to 1963. After the Revolution of 1962, contracts began to speak of the *riyal* as “republican, paper.”

10. *Receipt of the price*. Using the third-person, past tense verb *qabaḍa*, the typical instrument then reports that “the seller received” (or “took possession of”) the price money. Possible additional phrases may indicate that this occurred with the “permission” of the buyer, “from the hand of the buyer,” or “in the contract session” (*majlis*); that it was “complete”; that the seller “acknowledged” this receipt; and that, as a consequence, “the buyer’s obligation was satisfied regarding all of the price.”

11. *Transfer of the sale object to the buyer*. The reciprocal act is the receipt of the sale object, using the same verb, *qabaḍa*, sometimes with the reported “permission” of the seller. This transfer may begin, however, with a report of the legal vacating (*al-takhliyya al-shar‘iyya*) of the sale object and the statement that the seller guarantees against any default in ownership (*al-darak*). Then, usually by means of the pivotal verb of alienation, *ṣār*, “became,” the verb also of

the model, the sale object becomes the buyer's individual property, or *milk*, in ownership and sometimes explicitly also in "possession" (*yad*). The newly established property right also may be characterized in terms similar to the model, as in a *baṣīra* that states: "And he [the seller] gave permission to the buyer to take possession of the aforementioned sale object among the group of his *milk* [properties], which he may dispose of how he wishes, when he wishes, and where he wishes, as in the disposal by [other] owners of property with respect to their properties, and those with rights with respect to their rights."

12. *Witnessing*. A reflexive bridge phrase, such as "concerning all that has been mentioned, there occurred the writing (*tahrīr*) and the witnessing (*ishhād*)" or "built upon what has been mentioned, and for it, there occurred the writing and the witnessing," usually marks the transition from the record of the legal act proper to the concluding meta-clauses. The witnessing clause itself typically names the names of at least two male witnesses, sometimes specifying their villages of residence if they are not from Ibb town. A bit of Ottoman usage is found in some late nineteenth- and early twentieth-century instruments that refer to the witnesses as the *shuhūd al-ḥāl*. Witnessing clauses always conclude with "and God is sufficient witness," a Quranic phrase not found in al-Iryānī's models. Although he is not categorized as a witness unless he later appeared in court in the event of litigation, the notarial writer was the linchpin of the human support for the written instrument.

13. *Writing and dating*. In the passive and thus reflexive voice of the verb "to write" (*ḥurrira*) usually with a pronoun referring, at once, to the finished and being-finished text, the next and final standard clause is "written on its date," after which the date is given. This might include the day but always includes the month and the year, usually written both in numbers and then in words. The date given is that of the writing. (A few decades later, with the transition to the intensifying international relations of the post-revolutionary republican era, the dual recording of the *Hijrī* and *Milādī*, or Christian, date became common, together with a new linking phrase, "corresponding to," between the two dates.)