A COMPARISON OF ARABIC AND EARLIER EGYPTIAN CONTRACT FORMULARIES, PART V: FORMULAIC EVIDENCE*

GLADYS FRANTZ-MURPHY, Iona College, New Rochelle, New York

I. Introduction

While the earlier parts of this study presented evidence for the continuity of the idiomatic expression of constitutive elements, other purely formulaic elements constitute additional evidence of a relationship across linguistic borders between formularies. Two formulaic elements are discussed here.

II. Investiture: Transfer and Rights Clauses

ARABIC

Arabic documents attest two variant formulations of the investiture: (1) a clause by which the seller transfers the property to the buyer by investing him with his new property, and (2) the transfer clause together with a clause enumerating the buyer's new rights of possession. The first clause by itself is attested in 8 of 26 documents dating from the third/ninth to the fifth/eleventh centuries and originating from the Fayyūm and Middle Egypt.[1]

She had it handed over to her, and took possession of it, and took it, and it became part of her property and is in her possession.
وتسلمته منه واحتازته وقبضته وصار مالا ن من ماله وفى ملكـها
(*BAU* 11,12-13, Fayyūm 276/889).

The documentary, Arabic transfer clause is comparable to that of the fourth/tenth century Egyptian jurist Ṭaḥāwī. Ṭaḥāwī lists several formulations but not as part of the formulary for a simple sales contract.

You took that from me, and it became your possession and your holding by the purchase of your father from me and with the rights of your inheritance.
وقبضت ذلك منى وصارت فى يدك وقبضك بابتياع . . أبيك اياه منى وبحق وراثتك إياه
(Ṭaḥāwī, p. 160, 21 171a).

* Pt. I of this series of articles appeared in *JNES* 40 (1981): 203-25, 355-56; pt. II in *JNES* 44 (1985): 99-114; pt. III in *JNES* 47 (1988): 105-12; pt. IV in *JNES* 47 (1988): 269-80. For abbreviations used, see all previous articles in this series. These articles are referred to as CAF, pts. I, II, III, and IV.

[1] *BAU* 11, third/ninth century Fayyūm, Or. In. I, fourth/tenth century Buljusūq in the Fayyūm, *APEL*, nos. 64, 65, 66, 68, and 71 from fifth/eleventh century Ushmūn/Hermopolis and *APEL*, no. 72, fifth/eleventh century al-Siyūṭ/Lukopolis.

[*JNES* 48 no. 2 (1989)]

0022-2968/89/4802-0002$1.00.

You took that from me, and it became your possession and your holding by the purchase named in this writing.
وقبضته منى وصار فى يدك وقبضك بالشـرى المسمّى فى هذا الكتاب
(Ṭaḥāwī, p. 154, 3–4).

The second of these two investiture formulations, which combines the transfer clause with a clause enumerating the buyer's new rights, is normative in Egyptian Arabic documents.[2]

[1] He possessed it and he took possession of it. It became one of his possessions. He has control of it, the control of owners over their properties.
[2] If he wishes he may sell, and if he wishes, he may pledge, and if he wishes he may donate as alms, and if he wishes he may inhabit.[3]
[١] وحازها وملكها وصارت مالا من ماله وملك من ملكه يتحكم فيه حكم الأرباب فى أملاكهم .
[٢] ان شاء باع وان شـاء وهب وان شاء صدق وان شاء عمر .
(*APEL*, no. 62, 11–12, Fayyūm 429/1037–38).

Ṭaḥāwī does not state that the buyer's rights are to be enumerated.[4] However, a documentary Arabic investiture formulation, which combines the transfer and enumeration of rights, was known to him. He cites it not as a clause in sales contract formulary, but rather as a clause in an affidavit of a seller's ownership.

It is in the possession (lit. "hand") of so-and-so; he may live in it, or in any part of it he wishes, or allow anyone he wishes to live in it, or in any part of it, for rent or without, tear it down, or any part of it he wishes, build in it as he wishes. There is no obstacle between him and that, which they know of, and nothing hindering him from it.
فى يد فلان بن فـــــــــلان يسكنها وماشاء منها ويسكنها وما شاء منها
من أحب باجر وغيره ويهد منها وما شاء منها ويبنى فيها ما شاء لا حائل بينه وبـين
ذلك يعلمونه ولا مانع له منه يعرفونه .
(Ṭaḥāwī, p. 9, 3.0, 8–9).

BYZANTINE GREEK AND COPTIC

Transfer and enumeration clauses are normative in Greek and Coptic formularies. In his study of Coptic sale contracts, L. Boulard has enumerated over thirty terms enumerating the buyer's rights of possession and freedom of action, usage, and disposal.[5] A seventh-century A.D. Greek example follows:

[2] In fourteen of twenty-six documents: *APEL*, nos. 56, 57, 58, 59, 60, 62, 63, and 69; *BAU* 10/1, 10/2, 16; CAF, pts. I and II; and Or. In. I. The enumeration of rights alone is attested in only one document (*APEL*, no. 67); neither clause occurs in four documents (*APEL*, nos. 70 and 75; Or. In. II; P. Isi. 2).

[3] Translated in the edition " . . . and he has acquired and taken possession of it and it became his own property and possession, he having free disposition of it according to the free disposition of (the) proprietors over their property, (so that) if he will, he may sell it, and if he will, he may give it away, and if he will, he may give it as alms, and if he will, he may dwell in it."

[4] Wakin, p. 64, interprets Ṭaḥāwī's injunction against stating the seller's ownership as also including an injunction against stating the buyer's rights of possession.

[5] L. Boulard, "La Vente dans les actes coptes," *Etudes d'histoire juridique offertes à Paul F. Girard* (Paris, 1912), pp. 50–53.

Henceforth you the same purchaser possess and own and are master (of the property) . . . may inhabit, manage, exploit it and build it, and add to it, by building, and lease and sublease it, and transmit it to your own heirs and assigns and successors, and use it and enjoy it in whatever proprietary way you may please.

πρὸς τὸ ἐντεῦθήν σε τὸν αὐτὸν πριάμενος . . . κρατεῖν καὶ κυριεύειν καὶ δεσπόζειν . . . καὶ οἰκεῖν καὶ διοικεῖν καὶ οἰκονομεῖν καὶ οἰκοδομεῖν ἢ καὶ ἐποικοδομεῖν καὶ μισθοῦν καὶ μεταμισθοῦν καὶ παραπέμπειν ἐπὶ κληρονόμους ἰδίους καὶ διαδόχους καὶ διαδόχους καὶ κρήσασθαι καὶ νέμεσθαι κατὰ τόν δοκοῦντά σοι κυριευτικόν τρόπον ἀγορήτος.
(*P. Mich.* 662, 37–44, Aphroditō/Kūm Ishqāwh, seventh century A.D.).

As a lengthy enumeration of the buyer's rights, the investiture formulation has been traced back to Greek documents of the Roman period.[6]

. . . exercising ownership and control over the purchases, as stated above, entering and departing, demolishing and constructing on the property however they choose, and furthermore, selling the property, mortgaging it to others, transferring it and using it in whatever way they choose . . . ."

. . . κυριεύοντας καὶ δεσπόζοντας ὧν ἐώνηται καθὼς πρόκειται καὶ εἰσοδεύοντας καὶ ἐξοδεύοντας καὶ κατασπῶντας καὶ ἀνοικοδομοῦντας ἐν αὐτοῖς ὡς ἐὰν αἱρῶνται ἔπει πωλοῦντας ὑποτιθέντας ἑτέροις μεταδιοικοῦντας χρομένο αὐτῶν καθ' ὃν ἐὰν βούλωνται τρόπον . . .
(*P. Mich.* 583, 17–20, Fayyūm A.D. 78).

DEMOTIC/ARAMAIC

Muffs writes that the Aramaic and Demotic investiture formulations of all periods are so similar that they must be related.[7] The Demotic states:

I have given them to you. They belong to you.
(P. Dublin 1659 [=*RTDP*, 8], A 5., Jeme?/Madinat Habu, February–March 198 B.C.).

The Aramaic, however, unlike the Demotic, consists of both the transfer clause and the clause enumerating the buyer's new rights of possession. Muffs provides the following schema of the Aramaic investiture clauses:[8]

It (the property) is yours. You are (now in control/owner) of the property. You may give it to whomever you wish. Build (on the land) and settle thereon.

The Aramaic formulation, like the Arabic and Byzantine Greek as well as Coptic, consists of two clauses: the transfer clause and the clause enumerating the buyer's rights of possession.

CONCLUSIONS

The Arabic investiture clause bears affinities to both the Demotic Egyptian transfer clause and to the Aramaic investiture formulation. The Arabic investiture formulation

[6] Ibid., p. 50.
[7] Muffs, p. 153, n. 3.
[8] For a discussion of the term "investiture/transfer," ibid., p. 24, n. 1.

superficially resembles the Byzantine Greek in its enumeration of the buyer's rights of possession. However, the formulation of the Arabic enumeration, casting the buyer's rights of possession in the subjunctive, "If you wish, you may sell," parallels the Aramaic, "You may give it to whomever you wish."

III. VOLITIONAL STATEMENT AND NON-COERCION

ARABIC

The volitional statement in twenty of twenty-eight intact Arabic documents from Egypt includes a statement of the absence of duress.[9]

He being of sound mind and body and his actions legal, being willing, without being averse, and not compelled, not being treated unjustly, his ⟨spirit⟩ is pleased with that.[10]

في صحة عقله وبدنه وجواز أمره طائعا غير مكره ولا مجبر ولا مضطهد طيّبـــــة بذلك [نفسه]

(*APEL*, no. 62, l4, Buljusūq, Fayyūm 429/1037–38).

The volitional statement listed by Ṭaḥāwī is simply, "being willing" (*ṭāʾiʿ*). Islamic jurisprudence did not prescribe a formula for the expression of free will and consent.[11]

A valid contract required that the volitional clause include "sound mind."[12] "Sound mind and body" is attested in all the intact documents from Egypt.

The three negative volitional conditions enumerated above, *mukrah, mujbar,* and *muḍṭahid,* constituted force. Force rendered a contract invalid according to Shāfiʿite and Ḥanbalite jurisprudence but not absolutely in Mālikite or Ḥanafite jurisprudence.[13] For example, a debtor could be compelled to sell property to satisfy a debt.[14] The Egyptian Arabic documents show evidence of the preponderance of Shāfiʿite jurisprudence in Egypt.

The absence of coercion is not stated in an Arabic document from Alexandria dated 205/821, in an Arabic document from fourth/tenth-century Damascus (P. Ist. 2), in Arabic documents from the sixth/twelfth century Sicily,[15] nor in two Arabic contracts for the sale of land dating from ninth/fifteenth-century Spain.[16] Non-coercion is,

[9] A volitional statement is not included in *APEL*, nos. 63, 67, and 72; Or. In. II; *BAU* 10/1 and 10/2; P. Yale (=ZAP); nor in a Damascene document, P. Ist. 2.

[10] This is translated in the edition, "he being in a state of sound mind and body and capable of transacting his business, voluntarily, without compulsion and not against his will and not under constraint, of his own good ⟨pleasure⟩." Two other documents include *ṭayyiba nafs* in their volitional clause, *APEL*, no. 60, 12 and *BAU* 11, 17.

[11] Y. Linant de Bellefonds, *Traité de droit musulman comparé: Théorie générale de l'acte juridique* (*Traité*), vol. 1 (Paris and The Hague, 1965), p. 123, art. 139.

[12] Ibid., arts. 298–307; see also John Makdisi, "An Objective Approach to Contractual Mistake in Islamic Law," *Boston University International Law Journal* 3 (1985): 335–36, for a discussion of consent as consisting of intellect and intention. Without sound mind, consent would therefore not be possible.

[13] *Traité*, art. 196.

[14] For a discussion of the latter two schools on "force," see ibid., pp. 121, 168–83, 345–70.

[15] S. Cusa, *I diplomi greci ed arabi di Sicilia pubblicati nel testo originale, tradotti ed illustrati* (Palermo, 1968–82), 2 vols, nos. I, 21; II, 16; III, 17; VII, 14. See C. A. Nallino, *Raccolta di scritti editi e inediti*, vol. 4, *Diritto musulmano e diritti orientali christiani* (Rome, 1942), pp. 408–9, for a discussion.

[16] W. Hoenerbach, *Spanisch-Islamische Urkunden aus der Zeit der Nasriden und Moriscos* (Los Angeles, 1965), nos. 27 and 28.

however, stated in nineteenth-century Arabic contract formularies from Ottoman Lebanon.[17]

BYZANTINE

A volitional statement, including a statement of the absence of duress, is regularly attested in Byzantine Greek contracts for the sale of residential property dating from the sixth century A.D. and later.

Willingly and having been persuaded without any deceit, fear, violence, fraud, compulsion, guile, ill will, maliciousness, or the least bad thought.

ἑκούντες καὶ πεπεισμένοι ἄνευ παντὸς δόλυ καὶ φόβου καὶ βίας καὶ ἀπάτης καὶ ἀνάγκης καὶ συναρπαγῆς καὶ οἱασδήποτε κακόνοιας καὶ κακοήθειας καὶ παντὸς ἐλαττώματος καὶ φαύλου διανοηματος.
(P. Lond. 1724, 12–15, Syēnē/Aswan, A.D. 578 or 582).

The Arabic *la mujbar,* "not compelled," corresponds to the Greek ἄνευ ἀνάγκνς, "without force."

COPTIC

A volitional clause stating absence of duress is also regularly attested in Coptic. Boulard notes that the Coptic clause most closely resembles one of three regional Byzantine Greek variants.[18]

I wish and I request (*peithein*) without any deceit or fear or duress or fraud or artifice or ruse or any restraint placed upon me but of my own resolution.
(CLT 7, Jeme/Madinat Habu, mid-eighth century A.D.).

The volitional clause including the absence of duress is also attested in an undated fragment from Balaizah:

We gladly acknowledge all of us together and we were persuaded and [ ] not being [ ] nor being deceived nor being compelled nor [ ] we have agreed with you, with our intention towards you with a straight-forward heart and [ ]
(*Bal.* 154).

The volitional clause is also included in an undated Coptic fragment from seventh or eighth century Ushmūn/Hermopolis but not in a Nubian contract.[19]

According to Schiller, freedom from physical force had been part of the declaration in the execution of Attic Greek wills. Greco-Roman wills in Egypt passed these phrases on, and Byzantine testaments widened the expression. Late Byzantine and Coptic documents added this formula to all types of private acts.[20]

[17] Ebied and Young, *Some Arabic Legal Documents of the Ottoman Period from the Leeds Manuscript Collection* (Leiden, 1976), nos. 3 and 4 (formularies for the sale of residential property) and nos. 5–7, 11, and 15 (other formulaires).

[18] The three variants are represented at the Thebaid (*P. Lond.,* III, 991), Edfu, (*P. Lond.,* II, 210), and Thinis, (*P. Par.,* 21 and 21 bis). The Coptic at Jeme may have been based on the Edfu variant.

[19] See *BKU,* p. 354 and *CPR* IV, p. 28.

[20] A. A. Schiller, "Coptic Law," *Juridical Review,* (September, 1931): 211–40, and esp. 221–22.

The absence of fraud, regularly included in the volitional statement of Coptic and Byzantine Greek documents, is not attested in Arabic. According to Islamic law, fraud rendered a contract invalid only if accompanied by injury.[21]

IV. ISLAMIC FORMULATIONS

While elements of Arabic contract formulary can be traced to ancient cuneiform and Mesopotamian tradition or Greek formulary of the Roman and Byzantine periods, specifically Islamic elements make their appearance in Arabic documents.

PHYSICAL SEPARATION OF BUYER AND SELLER

At the conclusion of the contract, five Arabic documents from Egypt include a clause stating the physical separation (*f-r-q*) of the buyer and seller.

And the two separated from each other bodily after the completion of the sale and its requisites in their complete mutual satisfaction with what they bought and sold by it, and by their execution of it by the two of them, and understanding of it by the two of them, and the attending to it by the two of them, and inspection of it by the two of them before the purchase and after it.[22]

وتفـرّقا بأبدانهما بعد تمام البيع ووجوبه عن تراض منهما جميعا بما تبايعا به
وانفاذ منهما له ومعرفة منهما به ووقوفهما عليه ونظر منهما له قبل الشرى وبعده .

(*APEL*, no. 61, 11–12, Buljusūq, Fayyūm 423/1032).

This formulation approximates that recommended by Ṭaḥāwī following the quittance clause ("the seller released [*abraʾa*] the buyer from the price") and a delivery clause, "the seller delivered (*sallama*) the property to the buyer":

The two separated from each other bodily after this sale in their complete mutual satisfaction with the whole of it, and with their execution of it.

وتفرّقا جميعا بأبدانهما بعد هذا البيع عن تراض منهما بجميعه وانفاذ منهما له .

(Ṭaḥāwī, p. 20, 2.103).

A formulation, reminiscent of Ṭaḥāwī's, is attested in two related but distinct documents also from Buljusūq but dated a century earlier than *APEL*, no. 61 cited above:

And the two separated, after ratifying the sale, [in] their mutual satisfaction.[23]

وتفرقا بعد عقدة هذا البيع [عن] تراض منهم .

(Or. In. I, 13–14, Buljusūq, Fayyūm 335/946).

21 *Traité*, arts. 451 ff.

22 Translated, "And they both have separated from one another after the completion and ratification of the sale to the mutual satisfaction of both of them in respect to that which they both have sold and bought, and (after) they both had declared it effective and had taken cognizance of it and had comprehended it and looked into it before and after the purchase." Reference to understanding what is bought and sold by both parties, as well as their inspection before and after the purchase, constitute a volitional statement according to Makdisi, "An Objective Approach," pp. 339–42.

23 This is translated in the edition, "And they separated after contracting this sale with mutual satisfaction" by reconstructing "in" [*ʿan*], as "separation" [*f-r-q*].

Ṭaḥāwī's formulation is more precisely attested in two fourth/tenth-century sales contracts from the vicinity of Damascus:[24]

They separated bodily [in their mutual satisfaction] with it and approval from them for it.[25]
وافترقوا بدا بدانهم عن تراض منهم به واجازة منهم له .
(P. Ist. 2, 11–12, Damascus 310/922).

A separation formula attributed to Iraqi jurists of the second/eighth and third/ninth centuries and reported by Ṭaḥāwī is as follows:

The two separated entirely after this sale in their complete mutual satisfaction with it.
وتفرقا جميعا بعد هذا البيع عن تراض منهما جميعا به .
(Ṭaḥāwī, p. 19, 2.100).

This earlier Iraqi formulation approximates that of the document from Buljusūq (Or. In. I) cited above.

Ṭaḥāwī explains that both buyer and seller have the option to annul the sale until they separate; this is according to Ḥanbalite and Ḥanafite but not Mālikite jurisprudence.[25a] Some jurists insisted that separation had to be stated as having been "bodily." Physical separation was a visible sign, to which witnesses could attest, that the contract had been executed.

Ṭaḥāwī records yet another early separation formula, which he attributes to a jurist at Baghdad ca. A.D. 813.

Then the two separated after effecting this sale between the two of them and the choosing of each one of the two of them and his approval for the sale named in this writing until each one of them became distant[26] from his associate in their mutual satisfaction with the sale named in this writing.
ثم تفرّقا بعد انعقاد هذا البيع بينهما واختيار كل واحد منهما واجازته للبيع المسمّى فى هذا الكتاب حتى غاب كل واحد منهما عن صاحبه عن تراض منهما بالبيع المسمّى فى هذا الكتاب .
(Ṭaḥāwī, p. 20, 2.104, ll. 5–7).

Separation until they became "distant" suggests the documentary quittance formula discussed in CAF, pt. III, "to remove far from" (*bari'a*).[27] However, here the "separation" is of the buyer and the seller from each other, while in the formula referred to using *bari'a,* the seller removes himself from the property.

In two related Arabic documents, physical separation (*tafarraqa*) of the buyer and seller is followed by their physical removal (*bari'a*) from each other:

[24] As reconstructed by Grohmann; the formula is also attested in *APEL,* no. 73, 30, from fourth/tenth-century Buljusūq.

[25] This is translated in the edition "Ils se séparerent alors [physiquement après consentement mutuel] et accord (*ijāza*) des trois à ce contrat . . . ," where it is reconstructed on the parallel of *P. Ist.* 1, 16. "After" is supplied by the editors.

[25a] According to Malik, "'Here in Medina we have no such known limit and no established practice for this'. . . . For Malik a contract was binding as well as complete immediately mutual agreement had been reached"; cited by N. Coulson, *A History of Islamic Law* (Edinburgh, 1978), p. 46.

[26] *Ghāba* could also be translated "absent" or "remote" (Lane, s.v.).

[27] See CAF, pt. III.

They separated from each other bodily in their mutual satisfaction and each removed himself from the other.[28]

فافترقوا جميعا منهم بالأبدان عن تراض منهم وبرئ كل من حي

(*APEL*, no. 67, 15–16 Buljusūq, Fayyūm 450/1058).

Ṭaḥāwī explains the two formulas as having different juridical purposes. The removal formula constituted the seller's quitclaim; physical separation constituted execution of the contract.

In his discussion of variant separation formulas, Ṭaḥāwī states that "most of our Baghdadi associates" write a formulation which states that "they separated from each other bodily." He stresses that the formula should state physical separation and not just separation, since the latter might be "by words (*bi-l-ʾaqwāl*) without being by bodies (*bi-l-ʾabdān*).[29] If the formula for physical separation originated in Iraq, this might explain why it is poorly attested in the Egyptian documents. Alternatively, Shāfiʿite jurisprudence had already come to predominate in Egypt, since the option to annul until separation obtained according to Ḥanbalite and Ḥanafite but not Shāfiʿite, jurisprudence.

MUTUAL SATISFACTION[30]

A distinctly Islamic element of documentary Arabic formulary widely attested in time and space[31] is that "the sale is to the mutual satisfaction of the buyer and seller," rather than to the satisfaction of the seller alone, as was the case in earlier formularies. In documentary as well as model formularies mutual satisfaction immediately follows physical separation.[32]

TITLE

Besides introducing specifically Islamic elements, there are other elements of contract formulary which Islamic jurisprudence specifically changed. Pre-Islamic formularies regularly state the seller's title. Ṭaḥāwī states that reference should not be made in the document to the seller's title to the property, lest there be fault in ownership.[33]

However, twenty-five of the twenty-seven intact Arabic contracts from Egypt state the seller's title (for example, "which he inherited from his father")[34] until the eleventh century when a circumlocution, which Ṭaḥāwī specifies in his formulary, makes its appearance in six documents, "all that he said he has and that is his possession."[35]

[28] This is translated, "So they have all separated from one another bodily to their mutual satisfaction, and quittance for all (this) has been given by a man in the quick"; similarly, in the related document *APEL*, no. 54, 9, dated 448/1056 at Buljusūq. For corrections to the relevant lines of the published edition of that document, see CAF, pt. III, n. 14. Rather than, "The two separated from each other bodily in their mutual satisfaction, and each one removed himself from the other," the clause is translated in the edition, "And they have both jointly acknowledged the bargain to be good by their (mutual) consent. And quittance has been given by one man in the quick to another in the quick."

[29] Ṭaḥāwī, p. 21, 2.112.

[30] See also, Makdisi, "An Objective Approach," pp. 334–37.

[31] See CAF, pt. III, p. 13.

[32] See Ṭaḥāwī, pp. 19–20; for a documentary example, see sec. IV above.

[33] Ṭaḥāwī, pp. 8–9 and also the discussion in Wakin, pp. 34–35 and 64–65; see also n. 4 above.

[34] *BAU* 10/1.

[35] *APEL*, no. 54,4.

OBJECTIVE FORMULATION

Arabic contracts for the sale of immovable property are always formulated objectively in the third person. Coptic documents are stated in the first person, as are frequently Byzantine Greek documents. Demotic Egyptian documents are also stated in the first person. But while Arabic contracts for the sale of residential property are all written in the third person, contractual agreements written in Arabic for other than the sale of immovable property are formulated in the first person, in keeping with long Egyptian practice.[36]

However, while Arabic contracts are construed as the buyer's transaction, Greek and Coptic contacts are considered the seller's transaction. Grohmann cites examples reputedly emanating from the Prophet Muḥammad of the third person construction cast from the perspective of the buyer.[37]

NO PLEDGE OR FINE

A fifth systematic change is that Arabic contracts never stipulate a fine or a pledge for breach of contract, or surety. Byzantine Greek contracts frequently stipulate either a fine or a pledge of the seller's property as security in meeting third-party challenges.[38] Including a pledge or a fine was specifically excluded by Islamic jurisprudence and so stated in an exclusionary clause which stated the soundness and validity of the contract.

EXCLUSIONARY CLAUSE

The sale is qualified as having been "ratified in one contract" as part of the statement of the transaction in ten documents. The orthography of the phrase is varied: "*ṣafqatan wāḥidatan* (*APEL*, no. 66; *BAU* 10/1 and 16); *ṣafqatan wāḥidan* (*APEL*, nos. 54, 60, 61, 63, and 67); *waʿaqdan wāḥidan* (*APEL*, nos. 54, 60, 61, and 67, Or. In. I); or *ʿuqdatan wāḥidatan* (*APEL*, nos. 62 and 67; *BAU* nos. 10/1 and 16). *Sin* is written for *ṣad* in four examples (*APEL*, nos. 54, 61, 62, and 67). In five, the feminine noun *ṣafqa* is followed by a masculine numeral.

However written, the phrase has been translated "one striking of hands and one contract" (*APEL*); "one agreement and one contract" (Or. In.). While *ʿaqd* is "contract" or "agreement" *ʿuqda* is more specifically "ratification" or "obligation"; and while *ṣafq* and *ṣafqa* are both "striking of hands," they are both, more specifically, "striking of hands in ratification of a sale or agreement." Therefore, the phrase might well be understood as "he bought that by the striking of hands in ratification of a sale made in one contract." In two documentary instances the phrase is written as follows:[39] *ṣafqatin wāḥidin wa ʿaqdin*, "striking of hands in one ratification and contract" (*APEL*, no. 63), and *ṣafqatan wāḥidatan*, "striking of hands in one ratification"

[36] *BAU* 12, Fayyūm 382/922.

[37] Grohmann, "Die Papyrologie in ihrer Beziehung zur arabischen Urkundenlehre," *Münchener Beiträge zur Papyrusforschung* 19 (1934): 331–32, discusses the use of the third-person construction by the Prophet's chancellery (ibid., pp. 334–35).

[38] See, for example, *P. Mich.* 662; *P. Wisc.* 58; and *SB* 5174.

[39] This also occurs in Ṭaḥāwī, pp. 48–49.

(*APEL*, no. 66). Further evidence that this phrase should be so understood is the following example of the lengthier statement of the singular nature of the contract.

[He bought . . .] in a striking of hands in one ratification . . . by sound purchase and legally valid effective sale. There is no condition in it, no option, no exclusion, no agreement to abrogate, no giving back, and no returning, no exception, not for its return or its annulment, not for an appointed term and not forever, and it is not by way of a pledge or a fictitious sale.[40]

صفقة واحدة . . . شرى صحيحا وبيعا نافذا ماضيا لا شرط فيه ولا خيار ولا استثناء ولا اقالة ولا اعادة ولا رجعة ولا مثنوية ولا لرده ولا لفسخه ولا لاجل ولا لأبد ولا هو على سبيل رهن ولا تلجئة .

(*APEL*, no. 66, 10–12, Ushmūnayn/Hermopolis 442/1050).

The clause is specifically stated to be Islamic in three documents (*APEL*, nos. 54, 62, and 67).

. . . as a sound valid purchase, there is no condition in it, and no promise, no loss, no option, no deposit, no pledge, and it is not compensation for a loan, which would nullify the purchase [according to the condition of the s]ale of Islam. He executed their ordinances to the utmost of their conditions.[41]

شرى ثابتا صحيحا لا شرط فيه ولا وعد ولا إتواء ولا خيار ولا وديعة ولا رهينة ولا مقاصة بدين ولا شرط يفسد شرا على شرط بيع الاسلام وانفذ احكامهم من أقصاء شروطهم .

(*APEL*, no. 54, 6–8, Buljusūq/Fayyūm 448/1056).

The statements enumerate conditions which would render the sale invalid. Those are if the sale is part of a second contract or if the sale is not executed. The juridical importance of these exclusionary clauses is that the sale is both executed and singular and therefore legally valid and sound. Either the short form (in ten documents) or a version of the longer formulation (in seven) is attested in seventeen of twenty-nine intact documentary Arabic contracts from Egypt.[42]

Shāfiᶜite jurists considered a sale involving more than one transaction invalid.[43] As a Ḥanifite, Ṭaḥāwī considered formulas expressing the validity of the transaction superfluous.[44]

WITNESSING

A seventh change is that the parties to the Arabic contract did not sign the document as had been the case with Byzantine and Coptic contracts. Professional Muslim witnesses registered with the Court signed the contract on their behalf.[45]

[40] This is translated in the edition ". . . in one striking (of hands), . . . a valid purchase and an effectual (and fully) completed sale in which is no condition and no option (or return) and no reservation and no rescission (by mutual consent) and no possibility of recurrence and no proviso of the right of reversal and no reserving (of the right) either to return it or to annul it, either temporarily or for good, and it is not in the way of a pledge nor an exclusive bequest."

[41] This is translated in the edition ". . . in form of a right, valid purchase, in which is no condition and no promise and nothing that can bring about a loss and no option (or return) and no deposit and no pledge and no mutual balancing of debts and no stipulation that renders a purchase ineffective [according to Is]lamic law of sale. And he has carried out their (the Muslims') prescriptions to their extremist conditions . . . ."

[42] *APEL*, nos. 54, 60, 62, 63, 64, 65, 66, 67 68, 69, 70, 71, and 72; *P. Ist.* 2.

[43] See *Monasteries*, p. 12, n. 8.

[44] Ṭaḥawi, pp. 15 and 48–49; and Wakin, pp. 56–57 and 84–85, for a discussion.

[45] See CAF, pt. I.

V. SUMMARY AND CONCLUSION

Arabic, Coptic, and Byzantine Greek linguistic traditions indicate a close parallel between the lexical formulation of their volitional clauses. The documentary Arabic investiture clause, however, is structurally more closely related to the Aramaic than to either the Coptic or Byzantine Greek; and while Islamic sale formulary apparently did not include the investiture clause, the Arabic documents, following earlier Egyptian linguistic traditions, regularly did.

The Arabic indicates strong and regular Islamic influence in the volitional statement and in the statement of mutual satisfaction. Strong but not regular Islamic influence is also indicated in the statement of execution and in the circumlocution of the seller's title. The Arabic, Coptic, and Byzantine Greek include similar statements of volition, including a statement of the absence of coercion. However, the Arabic does not include a statement of the absence of fraud. According to Islamic law, fraud rendered a contract invalid only if accompanied by injury.

Islamic jurisprudence introduced new formulations including a statement of the buyer's and seller's physical separation. Ṭaḥāwī informs us that, juridically, this clause constituted execution of the sale. The statement of the buyer's and seller's physical separation, i.e., execution, reputedly a Baghdadi formulary, is poorly attested in Egypt.

Documentary Arabic formulary includes a statement of the mutual satisfaction of the buyer and seller with the transaction, whereas earlier Egyptian formularies state only the seller's satisfaction with the sale or mutual satisfaction with the price. Mutual satisfaction with the transaction is recommended by Mālikite jurisprudence and has Qurʾānic credentials.

Ṭaḥāwī states that the seller's title to the property should not be mentioned, but, as in earlier Egyptian formularies, the Arabic documents regularly do so. A circumlocution recommended by Ṭaḥāwī appears in fifth/eleventh-century documents.

In keeping with examples reputedly emanating from Muḥammad, the Arabic contracts are cast from the perspective of the buyer and stated in the third person, both in contrast to preceding Egyptian documentary practice.

Parties to the contract did not sign the Arabic documents as had been the case in earlier Egyptian legal traditions; professional witnesses registered with the Islamic courts signed for them.

In addition, the documentary Arabic formularies indicate the early preponderance of Shāfiʿite jurisprudence in Egypt, for example, in the volitional formulary stating the absence of force. According to Shāfiʿite jurisprudence force rendered a contract invalid, but force did not necessarily invalidate a contract according to the Ḥanafite school. And whereas the Ḥanafite Ṭaḥāwī considered any statement of validity unnecessary, the Egyptian Arabic contracts regularly include such a clause expressly stating the singularity of the transaction. As part of their statement of validity, the Arabic documents, in contrast to Byzantine and Roman, do not stipulate a fine or pledge for breach of contract. Juridically, Shāfiʿite law considered a sale involving more than one transaction, for example, a sale and a pledge, invalid. This would explain the regular inclusion of this clause in the Arabic documents from Egypt.