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FORMAL ASPECTS OF QAJAR DEEDS OF SALE

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Exploring the formal characteristics of archival material might not initially appear as a particularly thrilling endeavour. However, there are good reasons to let the actual subject matter of documents rest for a while. For one, the analysis and description of both outward appearance and internal formulary structure of documents is an important step towards their correct understanding – and thus a precondition for any subsequent interpretation of contents. This ancillary aspect of diplomatic studies does not only facilitate the basic task of reading a document in hand – or prior to "reading," browsing through material found in an unspecified file or collection – it might also help to ascertain defective dates or to verify whether one is dealing with an original, a contemporary copy, or a much later effected transcript. In many instances, an awareness of formularies might be the only way to find out about what one is actually looking at. Thus, to give an example, what appears at first glance to be a waqf deed, might in fact turn out to be only the legal acknowledgement of a previously or separately established foundation. Equally, what starts out as a contract of sale might deviate from the standard and include additional stipulations, often constituting a mixture of sale, rental agreements, and the reciprocal settlement of divergent claims.

The proper identification of a document's external and internal characteristics should consequently also prevent an erroneous or misleading categorisation. This demand sounds much easier than it turns out to be in practice; in fact, there is little common ground among historians in Iran, as the primary editors of document collections, on basic questions of terminology and the organisation of the often extensive material in their hands. Some prefer thematic principles, such as everything dealing with landed property, endowments, or water rights, while others follow strict formal guidelines and distinguish along legal concepts and issuing authorities.[1] The absence of established categories is also a characteristic mark of many archival and manuscript catalogues, where terms such as *sanad*, *qabālah*, or *raqam* ("document," "deed," "decree") continue to be used indiscriminately, often in combinations such as *qabālah-i kharīd-u-furūsh*

("deed of purchase and sale") that have no basis in neither legal terminology, nor in the wording of the documents.

In a second step, the "technical" features of documents provide precious information on the social, administrative and legal institutions that produced them. They offer an insider's view into the workings of the state bureaucracy or the judicial system and inform us about officials involved, as well as about various procedural aspects – this is something other sources are rarely able to do. Registry remarks and endorsing attestations may reveal much about how and by whom decrees were issued, how requests were treated and how civil contracts were recorded and declared legally valid. Apart from these utilitarian considerations, it should be stressed that documents as the material output of a past administration, in their own right, deserve as much attention as other artefacts of human civilisation. To examine formal traits of archival material should therefore neither be considered arcane, nor esoteric.

Documents characterised as "private deeds" offer the unique chance to learn about the workings of the civil judicial system, commonly often referred to as the shari'a courts. In an Islamic context "private" denotes court or notary deeds, written and ascertained by Islamic jurists, as opposed to decrees and orders issued by state chancelleries. The differentiation between "private" documents, whether dealing with sale, rent, marriage, inheritance, or pious foundations, and royal or administrative decrees is however not always clear-cut and relies often more on silent consensus, than on exact definitions.[2] Diplomatic studies on private deeds – whether written in Arabic or Persian – have hitherto focused almost exclusively on the earliest available specimens, where age alone justified closer interest. The modern and early modern periods, to the contrary, have not received adequate attention, although these are the periods when archival material becomes abundant.

This chapter intends to start filling this gap with a closer examination of Iranian contracts of sale from the eighteenth and nineteenth century. The choice of deeds of sale as a model for private documents lies first in the relative simplicity of form and structure, as well as the plainness of the transactions recorded in them. This, together with the fact that the contract of sale constitutes a prototype for other contractual forms in Islamic law, for example rent or marriage, makes results derived from contracts of sale also applicable to other contracts.[3]

My objectives are twofold, revolving around the incentives outlined above; the first part aims primarily at offering practical support to those who wish to deal seriously with Persian private documents from the Qajar period through a systematic analysis of outer appearance, structure, and formulas. Such an attempt needs to explain certain phenomena with reference to earlier periods or other regions, and thus offers also comparative and diachronic perspectives. A closer look on Qajar deeds of sale discloses the final stage of a century-long development of writing legal deeds in Persian that started before the Ilkhanid period and ended without a clear demarcation only in the 1930s. Much of the

legal terminology, as well as many basic concepts of contractual law, survived the introduction of Western codified law. However, with the effective shift of authority in civil legal affairs from the ulama to a new state bureaucracy, the diplomatic and formal development of deeds came to a halt.[4] This means that what we see is not necessarily a completed, but irrevocably terminated process. We are investigating diplomatic, judicial and formal aspects not from the point of their earliest origins, but rather from the other end, in the last stage of their existence.[5]

The second part elaborates on this diachronic perspective and treats both long-term developments in the formulary composition of deeds of sale and issues beyond immediate ancillary concerns. One of them relates to the question whether the establishment of Shiʿism as state religion under the Safavids and the emergence of independent Usuli-jurists in Iran is mirrored in the formularies and appearance of private deeds. The other looks for the reasons behind the virtual disappearance of the century-old standard employed for the documentation of sale (*bayʿ*) towards the end of the Qajar period and its replacement with the legal category of settlement (*ṣulḥ*).

Characteristics of Qajar deeds of sale (*mubāyaʿah*)

The deed edited here as an exemplary model for Qajar contracts of sale (see Figure 2.1 and the accompanying step-by-step text edition with translation) actually precedes the establishment of the Qajar dynasty for at least two decades.[6] However, since private documents are much less affected by dynastic change than royal decrees, this is not crucial for our purpose. More important is the fact that this document from 1186AH, equivalent to the year 1772, serves as a perfect starting point that comprises already all the major features that characterise contractual deeds of the nineteenth century. In addition, with its plain and straightforward appearance in both style and outward execution – which is rarely achieved in deeds from the late Qajar period – this deed can be considered as a qualified archetype. This suggestion should however not pass without an introductory note of caution: since private deeds are the product of a pre-modern, neither unified, nor centralised judicial institution, every single deed is unique, shaped by the individual preferences of both the issuing jurist and the requisitioning client.

Outward appearance

Paper and script

Contracts appear to have been written on whatever kind of paper was at hand, but there is a marked change in size and quality of the writing material in the course of the nineteenth century. Prior to the European economic penetration of Iran, most of the paper would have been produced in the region, providing large sheets

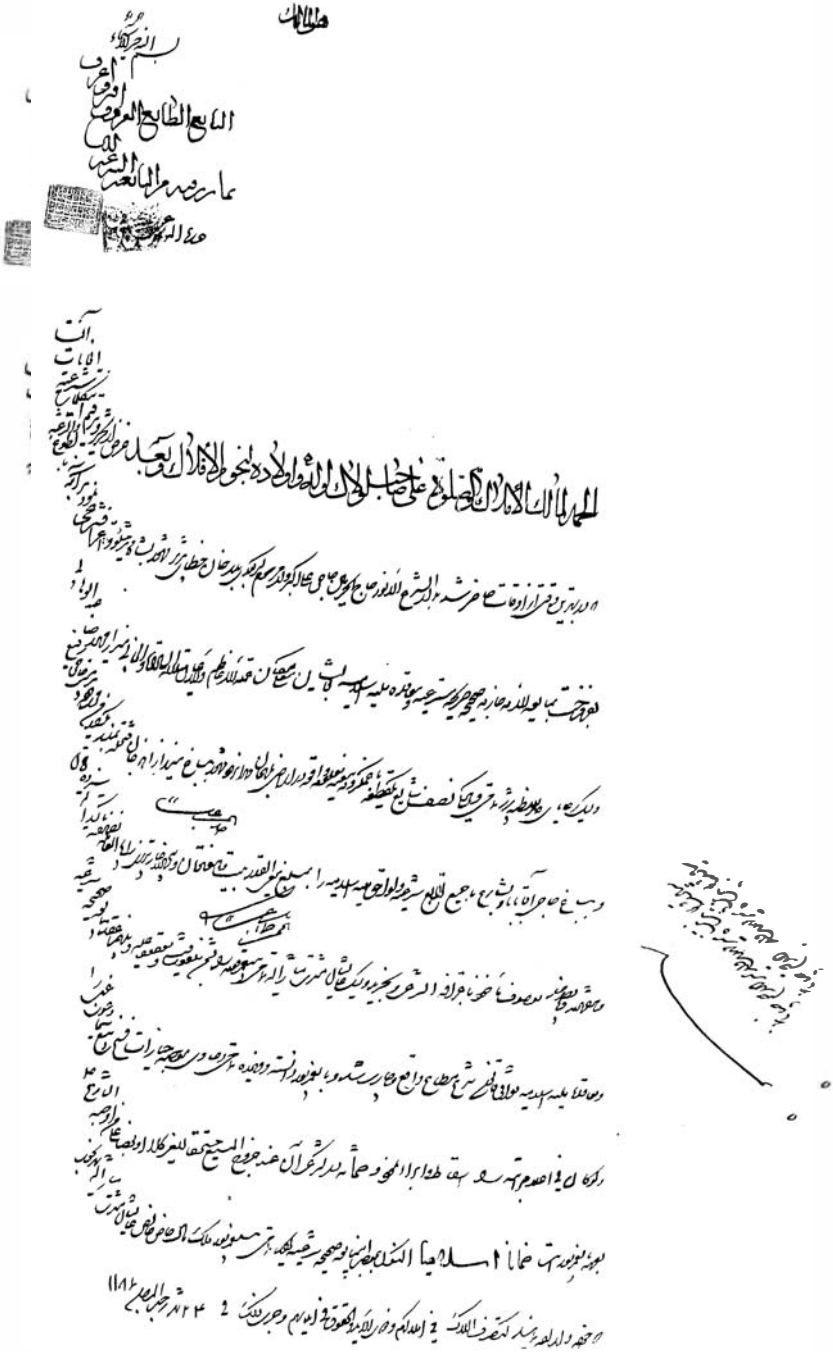

Figure 2.1 Sale of the Bagh-i Mirza Zahid – *mubāyaʿah* dated 1186/1772

of heavy and durable quality. The format of contracts before the nineteenth century is therefore often surprisingly large, at times exceeding a modern A3 size, and they are in an astonishingly good condition.[7] With the influx of cheap, imported paper, this changes considerably: sometimes only small scraps of paper are used, the quality and durability suffered, the use of coloured paper was not deemed inappropriate (a dark blue seems to have been quite popular around the 1830s and 1840s, and often one can detect the watermarks of foreign, especially Russian, producers. Without venturing further into the details of production and trade, the quality and appearance of the paper on which a deed was written should be seen as one of the most important immediate impressions one can get from a document (as long as one is allowed to touch the original). It might be of help to ascertain a given date, as well as to assess the importance of a transaction and the parties involved.

Moving from paper to script, one will immediately notice that the quality of writing also differs extremely from one document to another. Almost all documents are written in a mixture of *shikastah* and *nastaʿlīq*, sometimes more inclined to the one side, and sometimes to the other, although pure *nastaʿlīq* is extremely rare.[8] As a general rule one can rely on the close correlation between the significance of the contract and the care applied to its writing. However, exceptions are common and even deeds involving Qajar princes and high dignitaries at times feature very crude hands. Crude means scripts that appear rather square and slightly jerky, i.e. not particularly pleasant to the eye, but should be distinguished clearly from the writing of people without professional training. The difference is important, because even a crude, but traditionally trained hand is easy to read because of its inherent consistency.

Our example might be representative for a deed executed carefully, but without the attempt to write elegantly or particularly smoothly. Especially towards the end, the concentration of the scribe appears to have waned, and his writing shows traits of what I described above as crude – going hand in hand with a denser and deliberately smaller script. However, as we will see below, such a judgement on the scribe's moral is clearly erroneous, since such an alteration is part of the overall graphic design.

What catches the eye, is the use of a different script for the *ḥamdala*, the formula of praise for God, in the first line of the main text. The use of a *thulth*-like script for Arabic passages is quite frequent, and it is consequently also often used for the judge's endorsements, as in our example, and for the "invocation."

Graphic division and text markers

Private deeds from our period follow a basic graphic partition into two zones that are clearly separated from each other. One comprises the main text of the deed, positioned towards the left bottom corner, while the top and right side margins serve as a virtual container for invocations, endorsements, testimonies, remarks, and seals. This division is rarely violated, and the graphic means to separate the

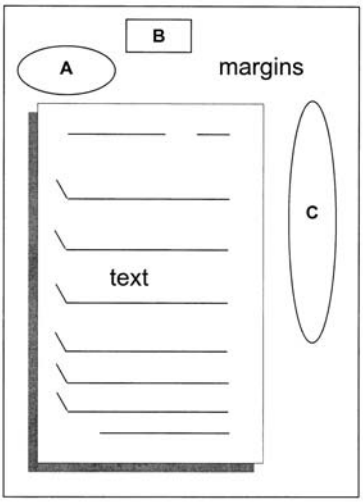

Figure 2.2 Abstract layout sketch of a private deed

"open" side of the deed, which allows marginal additions, from the "closed" side are easily recognisable.

Towards the bottom margin this is a gradually decreasing line spacing and, as we noticed already, the use of a smaller and denser script. On the left side the final words of each line are drawn upwards, one on top of each other, which gives the impression of a distinct edge that fences off the free space between the lines. Both techniques together create a darker, frame-like border area to the left and bottom side. One should be careful not to interpret them as the repeated and unsuccessful attempt of the scribe to press as much information as possible in a line or on a given piece of paper after running out of space.[9]

Further graphic markers can be found inside the main text. We mentioned already the use of a different script (*thulth*) to separate the Arabic preamble from the proper text of the deed that begins with *va baʿd,* "and then." If no enlarged *ḥamdala* exists, then a simple formula, such as *baʿd al-ḥamd va al-ṣalavāt*, is often emphasised by a different script, or just a broader pen, and combined with an approximate one-third indent of the first line (see Figure 2.3).[10] This version with right-side indent of the first line appears to have become increasingly popular in the course of the nineteenth century, particularly for simple deeds. A corresponding left-side indent often occurs at the bottom end of the text, when the date is set with a two-word-space apart from the left margin, thus creating space for an optional concluding seal by the seller.

In addition to the indentation that graphically defines the beginning and the end of a deed, the text itself often contains visual pointers that facilitate orientation by highlighting keywords through broader or enhanced writing. In very elaborate deeds, this might also be done in coloured ink. Such keywords might comprise, apart from the mentioned *va baʿd* – or *ammā baʿd*, the verb

Figure 2.3 Sale deed from 1279/1863

indicating the concrete nature of the transaction (*bifurūkht*), the agreed price (*mablagh*), the phrase introducing the sold object (*hamagī va tamāmī*), the cardinal points in border demarcations, and sometimes key expressions of the legal clauses, in our example the wording of *żamānan islāmīyan* ("liability according to Islamic conventions").[11] The insertion of financial details in accountancy script (*siyāq*) in between the lines, also serves indirectly as a marker in that it clearly denotes the place where the transactional part of the text ends and the legal clauses begin.

We will treat the contents of the margins in more detail further down, but what appears at first glance as a widely chaotic and disorganised area, follows nevertheless certain rules. We designated the upper and right side margin as a container for a wide variety of floating objects, such as endorsements by judges and notaries, invocations and other religious formulae, the separately recorded name of a high ranking seller or buyer, later affected additions (such as a change in price, separate acknowledgements, or special stipulations), witness remarks and testimonies with seals, and notes on the number of issued copies of the deed. The margins do not usually contain lists of any kind (objects, prices, borders), which tend be placed rather in-between the lines of the main text.

In order to orient oneself among this multiplicity of diverse objects, one should be aware that they are not inserted all at once. Thus invocations and religious formula would be written before endorsements, and endorsements usually separately from testimonies. A rough guideline is that objects tend to be arranged clockwise, starting at the top left corner, since the paper is turned anti-clockwise in the process of adding remarks, which results in the seemingly topsy-turvy positioning of seals and notes. The upper left area is usually reserved for endorsements (A in Figure 2.2), the upper central area for religious invocations (B), and the right side margin for the testimonies made by the witnesses (C).

Main text

Traditional diplomatics, as the ancillary science dealing with documents, would define textual segments of private deeds, similar to chancellery documents, according to categories derived from European scholarship. Consequently, we would have to define the *protocol*, or introductory part, the *text* itself with further subdivisions, and finally the concluding protocol (also called *eschatokoll*), with the date, closing formula, and final attestations.

While such a distinction can be useful, especially for a wider comparative approach, whether contrasting private and public documents, deeds from different areas of the Islamic world, or even documents from completely diverse cultural backgrounds, the application of such terms to Persian documents is not unproblematic. Their close indebtedness to European models always carries a notion of Eurocentricity, and the use of Latin terminology, although introduced very convincingly by Busse for Safavid decrees, consequently failed to catch on in Iran itself.[12] Furthermore, many textual parts that can be determined in royal decrees, such as *arenga, narratio,* or *dispositio*, rarely appear in private deeds and introductory and closing parts might often turn out to be extremely brief.[13]

Instead, I will choose an alternative, more pragmatic approach and proceed in the analysis of our example according to the above outlined graphical, twofold division (margins/text), and in the text along the internal optical and textual marker, employing four main thematic divisions: introduction, transaction, legal clauses, conclusion and date.

Introduction

The introductory part begins in our example with an extended and elaborate *ḥamdala* and *taṣliyah*, the praise of God and the Prophet with his kin. Formula employed in contracts of sale would often include allusions to the Koranic verse 2:275 of "God permitted sale and prohibited usury," often in the form of *aḥalla al-bayʿ wa al-shirā wa ḥarrama al-ghaṣb wa al-ribā*, [14] and make frequent use of *mālik,* the Owner, to relate to God.[15] In fact, both are very clear indicators for a contract of sale and serve as flags that signal from the start the type of contract concluded.

Table 2.1 Text edition, first part, of the model deed of sale from 1186/1772

Introduction	
Ḥamdala & taṣliyah	
Praise be to God, the Owner of all Properties, and Hail to the one addressed as "Who but you" [i.e. Muhammad], his kin and descendants, verily they are the heavens' stars,	الحمد لمالک الاملاک و الصلوة علی صاحب لولاک و آله و اولاده لنجوم الافلاک
Moving on	
and then:	و بعد
Declaration of purpose	
the reason for writing and composing these words of benign lawfulness is the following:	غرض از تحریر و ترقیم این کلمات شرعیة العنایات آنست

The formula of praise is immediately followed by the expression *va baʿd* or *ammā baʿd*, that is, a call to move on. In more elaborate documents, such as prolonged vaqf deeds, this is a crucial marker for the onset of the actual transaction, but most sale deeds would not include lengthy rhetorical passages at the beginning. The *va baʿd* is then simply used to separate the *ḥamdala* and the following text. In concise deeds initial formulas of praise and *va baʿd* are consequently often contracted to a mere *baʿd al-ḥamd va al-ṣalavāt,* "after praise and laudation."

Still part of the introduction is the formulaic declaration of purpose, in our document: *gharaż az taḥrīr va tarqīm-i īn kalimāt-i sharʿīyat al-ʿināyāt ān-ast*. Constructed always along the line of "the reason for writing this deed is as follows," its actual wording is left up to the discretion of the scribe. For "purpose," *gharaż*, one can also use *bāʿiṯ, murād*, *maqṣad,* or *sabab,* synonyms for *taḥrīr* include *tasṭīr*, *tarqīm*, and *nigārish,* while the deed itself might be referred to simply as *kalām, ṣuṭūr, ʿibārāt, arqām,* or more to the point as *varaqah* or *vaṯīqah*. There is no limit to possible qualifying additions, often in the form of Arabic compounds including *sharʿī* or *vāżiḥ*, however, the elegance of the phrase ultimately relies on the judicious use of rhymed prose and alliteration.

This special type of "purpose-declaration" can be found in the introductory section of Persian private documents at least since the ninth/fifteenth century, i.e. already prior to the Safavid period. Although at this early time, many deeds of sale still preferred the older introductory formula of *īn-ẕikrī ast* ("this is a record/note that . . .") that we know already from pre-Mongol deeds.[16] In our period, the use of a *gharaż . . . ān ast* type opening was considered almost obligatory for most private documents and was rarely omitted. The purpose-declaration phrase in the introduction thus constitutes one of the most obvious textual characteristics of Qajar deeds.

In very rare instances of particularly luxurious deeds, the whole introductory part including *ḥamdala*, *taṣliyah*, and declaration of purpose might be elaborated into a dense masterpiece of embellished rhetoric, incorporating quotations from the Qurʾan and Hadith, and introducing literary motives and metaphors appropriate to the object exchanged in the contract.[17]

Transaction

PLACE AND TIME OF THE *MAJLIS*

The first element of the text's main section that outlines the actual transaction, introduces the abstract time and place of the contract's conclusion. It is optional and therefore quite often omitted, especially in shorter deeds. The unity of place and time where the contracting parties meet and the sale is concluded is crucial in the legal definition of sale and referred to in jurisprudential literature as the *majlis* (session, meeting, gathering).[18] As a theoretical concept, it comprises the consequent acts of offer (*ījāb*) and acceptance (*qabūl*) that only together guarantee the validity of a contract of sale. Concrete reference to "acceptance" and "offer" is however rarely made in this context and if inserted in the deed, is rather part of the legal clauses or included in the endorsement.

In our example, the abstract reference to place and time serves primarily as a dramatic device to introduce the first protagonist of the contract and prepares the stage where the selling party makes its first appearance: *ḥāżir shud*. The precise time is of no practical importance and consequently turns into a token of good omen: "in the best of times."[19] Interesting to note from a comparative point of view is that in many Central-Asian deeds of sale and at least in one of the pre-Mongol Persian deeds from Ardabil this concept of time is real and the deeds actually begin with the mention of the date, immediately after the *ammā baʿd* formula.[20] However, with the transferral of the date to the end of the text only a symbolic reminiscence of time remains.

The reference to the place of the transaction is more difficult to analyse. Similar to many other examples of official Persian prose the question remains whether to read terms and expressions as "real" or merely as rhetorical clichés. Clearly, the reference to the "House of the Law" (*dār al-sharʿ*) in our model contract is too imprecise to allow any efficient location of the event. Neither the town or quarter of the transaction is usually named, nor is the name of the presiding judge or notary revealed. Furthermore, the idea that large cities contained only one central religious court that offered legal services is clearly erroneous.[21]

Still, emphasis is placed on the fact that the contractual agreement is located not anywhere, but at a place especially designated for legal business, and that the contract is drawn up in the presence of both parties and a judge. Even if reference to place and time are omitted, the fact that the parties were present or appeared in person is hinted at with a simple *ḥāżir gardīdand*. Alternatives for *dār al-sharʿ* can be *maḥżar*, *maḥkamah*, or even echoing the above stated legal term *majlis-i*

Table 2.2 Text edition, second part, of the model deed of sale from 1186/1772

Transaction	
Place and time of the majlis	
In the best of times came to the radiant ‘House of Law’,	که در بهترین وقت از اوقات حاضر شد بدار الشرع الانور
Seller	
the pilgrim to the Haramain, Hajji ʿAli Akbar, son of the late Karbala’i Badr Khan, a preacher from Tabriz known as Shah Vermeshlu	حاج الحرمین حاجی علی اکبر ولد مرحوم کربلای بدر خان خطابی تبریز مشهور بشاه ویرمشلو
Acknowledgement of free will	
who legally acknowledged that – of his own free will and desire –	و اعتراف شرعی نمود بر آنکه بالطوع والرغبة
Selling	
he had sold	بفروخت
Type of contract	
through a legally correct and valid, binding and obliging *mubāyaʿa* and a covenant according to Islamic denomination	بمبایعه لازمه جازمه صحیحه صریحه شرعیه و معاقده ملیه اسلامیه
Buyer	
to the eminent, high-ranking, a pillar of grandees and notables and scion of sayyids and noblemen, Mirza Muhammad Riza ʿAbd al-Vahhabi, the *vakīl-i raʿāyā* of the *dār al-salṭana* Tabriz	بعالیشان معلی مکان عمدة الاعاظم والاعیان سلالة السادات والنجبائی میرزا محمد رضا عبد الوهابی وکیل رعایای دار السلطنه تبریز
Object marker	
all of	تمامی و همگی
Object	
the jointly held half of a well-known and demarcated garden, planted with vines, located in the area of Malahjan of Mihranrud, known as the Bagh-i Mirza Zahid Khan with the size of 100 man ‘seed’	نصف شایع یک قطعه باغ مکرومه معینه معلومه واقعه در اراضی ملهجان مهرانرود مشهور بباغ میرزا زاهد خان مشتمله بمبذر یکصد من
Borders	
which borders the land of Hajji Rafiʿ, the garden of Hajji Aqa Baba and the street	محدوده بزمین حاجی رفیع و بباغ حاجی آقا بابا و بشارع

Appurtenances	
with all legal appurtenances and accessories according to Islamic convention	با جمیع توابع شرعیه و لواحق ملیه اسلامیه را
Price	
for the price of a determined amount of 27 tuman and 5,000 dinar of current circulation, its affirmed half being 13 tuman and 7,500 dinar as specified,	سیاق: ۲۷ تومان ۵۰۰۰ دینار بمبلغ معین القدر بیست و هفت تومان و پنج هزار دینار تبریزی رایج المعامله نصفه تاکیداً له سیزده تومان و هفت هزار و پانصد دینار سیاق: ۱۳ تومان ۷۵۰۰ دینار

*shar*ʿ.[22] There is a certain tendency to move from a terminology that evokes the notion of a "court" (as in *dār al-shar*ʿ), mirroring a still institutionalised administration of Islamic law in the eighteenth century, to a more individualised expression of the venue that hints at the presiding jurist, as in the address *ʿālīḥażrat-i ʿālīmaḥżar-i shar*ʿ towards the end of the Qajar period.[23]

CONTRACTUAL PARTIES (SELLER AND BUYER)

The party selling, as the active part that initiates the transaction is in our period always introduced first.[24] It can consist of one or several individuals, and if not present in person, can be represented by a proxy (*vakīl*). Especially women and minors often are represented by male relatives or their guardian, but also high ranking dignitaries often preferred to do business through their agents. Depending on the status of the involved individuals their names might be preceded by an elaborate chain of honorifics, that run parallel to honorific epithets employed in contemporary decrees. In most cases the father's name is provided (in the case of women sometimes also the name of the husband or another close male relative), sometimes followed by other personal characteristics, such as residence, profession, or nicknames. The same is true for the other contractual party, which is usually introduced only after the formulas naming the actual transaction. There is no formulary distinction in the way both parties are presented, but we sometimes find the seller's seal in between the lines where his name is mentioned, in addition to placing his seal at the final end of the contract, which is never the case with the buyer.

SELLING, ACKNOWLEDGEMENT OF FREE WILL, AND TYPE OF CONTRACT

The keyword that functions as an axis around which the recorded transaction of sale revolves is plain and direct Persian: *bifurūkht* ("he/she sold"). Set in the past tense, as is the rest of the contract, the exclusive use of the prefix *bi-* at this point emphasises the action grammatically, while elevated, broadened or coloured script marks this keyword graphically.

Arranged around this keyword are elaborations on the theme of free will and a more precise designation of the mode of contract. It is a crucial stipulation for the validity of the sale that the selling party acts out of free will, is not under duress and under full physical and mental control. As a mere legal prerequisite, it is usually considered sufficient to insert Arabic fragments as in our example: *bi al-ṭawʿ wa al-raghba*, often also in the form of *ṭawʿan raghbatan*. More elaborate forms would exclude possible pressure (i.e. *dūn al-ikrāh wa al-ijbār*) and include mention of the seller's sane state (i.e. *dar ḥālat-i siḥḥat*). Note that this is only a requirement for the seller, not for the one actually purchasing, since the former is the one initiating the transaction.

One can perceive a certain inclination to balance the rather candid Persian verb of action with an Arabicised explanation. This is done through the additional reference to the exact type of contract employed in the contract which, in our case, is called a *mubāyaʿah*. If one looks for an unambiguous definition of a Qajar deed as contract of sale, then the term *mubāyaʿah* serves as a clear internal classifying sign.[25] Some document collections also arrange deeds accordingly and clearly separate contracts of this type from other contractual transactions effecting factual sale, such as settlement-contracts.[26] The systemic use of Arabic verbal nouns derived from the III. stem to denote contractual types is among the most interesting phenomena of early modern Persian legal language. Parallel to *mubāyaʿah*, we encounter *muʾājarah, muṣālaḥah*, or the generic term *muʿāqadah*.

The deliberately ambiguous style that oscillates between Persian and Arabic becomes evident in the long chain of *iżāfah*-connected attributes defining the contract as legally correct and binding. Thus, *ba-mubāyaʿah-i lāzimah-i jāzimah-i ṣaḥīḥah-i ṣarīḥah-i sharʿiyyah,* could in theory also be read *bi-mubāyaʿatin lāzimatin jāzimatin…,* especially since neither *tāʾ marbūṭa,* nor *iżāfah* are usually indicated in writing.

Despite the fact that in our example the actual transaction is introduced with a separate clause of acknowledgment (*iʿtirāf-i sharʿī namūd*), the contractual type is not that of a unilateral *iqrār*, and should also be distinguished from documents where this is a recurring and obligatory part of the deed.[27]

One should be aware that the structure outlined above is neither rigid, nor obligatory with regard to all mentioned components. Thus, the order of single elements can be changed at will and certain parts can be omitted for the sake of convenience. Another deed might start, for example, with a more simple *furūkht*, then adding an elaborate clause recording the seller's free will, while leaving out any reference to the type of contract, which is in any case repeated in the legal paragraphs of the deed.[28]

OBJECT

What is actually sold or transferred, the Arabo-Persian legal term for the sold object being *mabīʿ*, is introduced with the words of *tamāmī va hamagī*, or at

times even tripartite as *hamagī va tamāmī va jumlagī*, meaning simply "the whole and complete." That in many instances the object of sale does not constitute a complete entity, but might consist only of a fragment of a larger unit, such as, for example, half a one-sixth (*dāng*) of a village, should not be seen as a contradiction. In fact, the formula simply serves as a marker for the object to come, separating it from the previous text, or in case there are several distinct objects included in the transaction, also from a following item, for example shares of a *qanāt* in the vicinity.

How detailed the description of the sold object turns out to be varies considerably from one document to the other. To a certain decree, this depends on the object's value and size, but equally on whether it is widely known under a specific name, is located in the area, and whether the contract of sale is based on previous contracts that already define the object in a sufficient manner. In the latter case, deeds documenting the history of previous ownership would have been exchanged together with the object in the course of the transaction – thus making yet another detailed description superfluous. Included often is therefore the provenance of the sold object, or how, for example, through inheritance, it came into the possession of the present selling owner.

In most instances, the description of the object is reduced to a kind of "index card" carrying certain keyword entries that allow those who know the area and the object to recall its characteristics, without providing the kind of in-depth information that would allow an outsider, including the historian, to venture an evaluation or to pin it down on a map.

A typical "index-card" would contain the number or exact fraction of what is sold, following immediately after the neutral object marker *hamagī va tamāmī.* It would include the appropriate count-words, such as *qiṭʿah* or *bāb*, and a clear and unambiguous categorisation, such as *bāgh*, *tīmchah*, *khāna*, *zamīn,* or *qanāt*. Since often only shares of larger objects were exchanged that were commonly held and operated, expressions such as *shāyiʿ* or *mushāʿ* are inserted to indicate jointly managed property. Next comes a rough indication of location with *vāqiʿah dar* that might refer to a rural district or an urban quarter without further details, before the actual name of the object, if it carries one, is given with the words of *mashhūr bah*. If size or quantity plays a role, such as the size of a field, the amount of water from a qanat or the number of shops in a caravanserai, this might be mentioned separately with *mushtamilah bah*.

BORDERS AND APPURTENANCES

The borders and exact demarcations of the object, although of significance in theoretical legal literature, are usually part of the above "index-card" and kept to an absolute minimum. Border demarcations start with the keyword of *maḥdūdah bah* and a short enumeration of adjacent properties, in most instances without the mention of cardinal points. In rare instances, however, borders might be listed under the four points of the compass in more detail, but then rather in

tabular form in-between lines, rather than as part of the main text.[29] Tabular arrangements are also widespread if a contract of sale includes more than two separate objects.

Without the separately recorded price these standardised descriptions, even less informative than flyers from modern real-estate agents, give only a very sketchy impression of the object's value and quality. It should also be noted that we talk here only about sales of real estate, landed property and water rights, not about the sale of movable property, such as agricultural produce, manufactured objects, or animals, that would require different attributes. Sales of movable objects appear not to have been legally recorded on a regular basis, and if they were registered nevertheless, then it would not have been necessary to preserve documentation on such sales for a longer time, which might explain their absence in family archives.[30]

Reference to the legal appurtenances or accessories of the sold object, or in other words, the explicit mention that the object is sold with everything that law and common sense (*sharʿ* and *ʿurf*) would assume to be an integral part of it, is rather a juridical formality than a real practical necessity. In some deeds, these appurtenances that are mentioned as the *lavāḥiq* or *tavābiʿ* of the object can be spelled out with great love to detail, often introduced by Arabic expressions such as *maʿ jamīʿ mā yataʿalliq bihi/bihā* or *kull mā dhukira au lam yudhkar*. In the case of a village, for example, mention would be made of used and unused qanats, cultivated and uncultivated land, woods, pastures and hamlets.

PRICE AND MODES OF PAYMENT

The price (*mablagh* or *s̲aman*) is mentioned last and thus concludes the actual description of the sale. Graphically however, it is positioned in the centre of the whole deed, highlighting its importance as the most crucial statement of the whole contract – before the composition moves on to the often lengthy, obligatory legal clauses. The amount is always spelled out in words and given usually in the abstract accountancy unit as *tūmān* and *dīnār*. In order to make sure that the amount is not altered, but primarily to allow both quicker access and easier transfer into ledgers, the amount is quite often recorded in *siyāq* as well, added in-between the lines like in our deed.[31] Similarly, the amount is at times repeated as its confirmed half, a practice that stretches far back, but becomes increasingly rare towards the later half of the nineteenth century.

Since the *tūmān* was an accountancy unit that had no direct equivalent in concrete currency, and since coinage was crucial in determining the actual value of money, only few contracts in Qajar times could pass without the explicit mention of the kind of money used in the transaction. The fact that our model contract from the Zand period can do without it, might be seen as a clear indication of the monetary stability during this period. While reference to recent and circulating coinage (*rāyij* or *jadīd al-żarb*) is a standard, we encounter quite

often more detailed definitions such as "for the price of 200 *tūmān* in riyals minted under Fath-ʿAli Shah, with a weight of two *miṣqāl*, eight pieces on one *tūmān*".[32] Or in the later Qajar period with even greater emphasis on weight as "20 *tūmān* in cash of recent coinage with a weight of 24 *nukhūd*". Contracts reflect very clearly the monetary conditions at a certain period, and both parties made sure that at this point no formulaic expressions were used.

Legal clauses

Legal clauses take up the remaining half of our deed and not only in their outer appearance often resemble the cluttered "small print" of modern contracts. Their inclusion was to a certain degree obligatory, although the question to what extent was handled quite differently. Unless they included separate agreements or special conditions (*shurūṭ*), something that is rather rare in most contracts of sale, the actual contents of these standardised clauses were probably of little interest and concern to most clients. The frequently occurring lawsuits and disputes on ownership consequently never refer to the legal clauses of a contract or take up any of the issues treated in them. If contracts are discussed in court protocols, it is first the mere fact of their existence, and second their genuineness, resulting quite often in the question of the credibility of the endorsing judges and the authenticity of their seals.

While both structure and contents of our deed until now followed a relatively straight and logical sequence of providing factual information, from here on the choice of what clauses were included and how they are arranged appears often accidental. It is most convenient to understand this final part of a deed along certain keywords that provide at least a certain orientation. One should, in any case, be prepared for an often deliberate selection of fragments, both Persian and Arabic, that are pieced together often without any attempt to provide syntactic links. The following legal provisions are therefore to be regarded primarily as an intrinsic part of a contract's formulary – and they deserve our attention above all from this perspective.

CONFIRMATION OF EFFECTED TRANSFER AND CONTRACT PUT INTO FORCE

In our example, the transaction is summarised with reference to the price having been taken (*maʾkhūẕ*) by the seller, and the buyer as thus having bought (*bakharīd*) the mentioned object. The contract is once more explicitly defined as a legally valid *mubāyaʿah*. With the effected transfer of price and sale-object the transaction was successfully concluded between them and the contractual agreement thus put into force.

The major keywords at the end of this passage are *vāqiʿ va jārī shud* ("it took place and became effective"). Quite often, though not in our case, another keyword precedes the naming of the contractual type: the employed legal formulary, *ṣīghah*. In more elaborate deeds, the effected exchange would be

defined with further attributes such as *ījāban va qabūlan,* "as offered by the seller and accepted by the buyer," or the formulary would be characterised as having been expressed *ʿarabīyan va fārsīyan*, "in Arabic and Persian." Sometimes the extended wording of the type *ʿaqd-i mubāyaʿah … jārī shud/ gardīd*, "the contract of sale … became effective," would include mention of the general conditions (named as *sharāyiʿ, arkān* or *qavāʿid*) of the contract, that are listed separately in our model contract.

EXCLUSION OF ANNULMENT (*FASKH*) AND GUARANTEE OF LIABILITY (*DARAK*)

The two stipulations dealing with the questions of annulment and liability are not open to individual choice or modification. To be more precise, they form an integral part of the binding legal form of the contract, and most deeds include at least rudimentary allusion to these two concepts of barring annulment of the contract and of guaranteeing liability. Both of them constitute declarations of the selling party that are intended to provide increased security for the buyer, who as the accepting part in the contract, is assured a high amount of security in Islamic contractual law.

In the first declaration, the seller renounces any right to annul the contract (*isqāṭ-i khiyārāt-i faskh*) and abstains deliberately from any future legal action (*daʿvā*) in this regard. This is even valid in case of premeditated fraud – or as the deeds name it, of fraud of the highest or most abominable degree (*ghabn-i afḥash*). Once again, this is a formulary expression, meant to prevent future legal suits if the seller should later decide that he is not satisfied with the transaction. It does not intend to provide a charter for anybody to cheat, nor does it necessarily relate to actual practice.[33]

Furthermore, the seller accepts his unambiguous obligation to provide legal liability, called *żamān-i darak*, in case a third party should later on raise any claims to the sold object. In most deeds of the Qajar period, this declaration is given partly in Arabic, following the model *ʿinda al-khurūj al-mabīʿ mustaḥaqqan li-l-ghayr*, but the expressions employed are often fragmentary.[34] We can understand the underlying concept much better if we look at the rare instances where this condition is spelled out in detail: *va żamān-i darak-i sharʿī ba naḥvī ast kih hargāh … aḥadī az vurrāṯ va ghayr vurrāṯ dar khuṣūṣ-i qaryatayn ẓāhir gardad bar bāyiʿ ast kih az ʿuhdah-i gharāmat dar-āyad,* "legal liability is defined thus that whenever anybody, whether one of the other heirs or somebody else, appears with claims on the villages, it is up to the seller to fulfil his obligation to provide compensation."[35] The party selling would then be obliged to return the price paid and, if necessary, even provide further redress. This clause is meant to protect the buyer in case the object sold was originally not in the exclusive possession of the seller or in cases where ownership was contested, for example, in the case of inherited estates.

Table 2.3 Text edition, third part, of the model deed of sale from 1186/1772

Legal clauses and conclusion	
Confirmation of effected transfer	
which was taken with his legal acknowledgement, and the honourable Vakil, as the aforementioned customer bought the whole recorded object for the price agreed upon as contracted.	موصوف مأخوذ باعترافه الشرعی و بخرید وکیل عالیشان مشتری مشار الیه تمامی مبیع مرقومرا بثمن منعوت فیه و معقود علیه
Contract put into force	
Between them a sharī'a-conform, correct contract of sale and agreement of Islamic denomination according to the obligatory revealed Law took place and became effective.	و بینهما عقد مبایعه صحیحه شرعیه و معاقده ملیه اسلامیه موافق قانون شرع مطاع واقع و جاری شد
Exclusion of annulment (faskh)	
The aforementioned seller has knowingly and consciously dropped and released all legal claims with regard to options of annulment of sale, such as legal action because of fraud – and be it of the highest decree.	و بایع مزبور دانسته و فهمیده تمامی دعاوی موجبه خیارات فسخ بیع سیما دعوی غبنرا و لو کان فی اعلامراتبرا اسقاط و ابراء نمود
Guarantee of liability (darak)	
Concerning the guarantee of legal liability – in case other claimants to the sold property arise, whether whole or in parts, on whom the Lawgiver made it incumbent, liability rests with the aforementioned seller, according to Islamic liability conventions.	و ضمانه درک شرعی آن عند خروج المبیع مستحقاً للغیر کلاً او بعضاً علی من اوجبه الشارع بعهده بایع مزبور است ضماناً اسلامیاً
Affirmation of new ownership	
Now, in consequence of this legal and correct contract of sale, the whole aforementioned object became the exclusive property of the aforementioned eminent buyer. He shall use it in every way he wants, such as owners' exercise rights on their properties and those holding rightful actual control over their possessions.	اکنون بموجب این مبایعه صحیحه شرعیه گردید تمامی مبیع مزبور ملک مال خاص خالص عالیشان مشتری مشار الیه بهر نحوی که خود ... نماید کتصرف الملاک فی املاکهم و ذوی الاید و الحقوق فی ایدهم
Date	
This took effect on the 24th Rajab 1186.	و جری ذلک فی ۲۴ شهر رجب المرجب ۱۱۸۶

AFFIRMATION OF NEW OWNERSHIP

Formulas affirming the unlimited ownership rights of the buyer – the practical outcome of the successfully implemented sale – can be found at the end of the deed's legal section. The new owner's property is defined as *māl-i khāṣṣ-i khāliṣ* or *milk-i ṭalaq*, and his rights are often defined in Arabic as *ka-taṣarruf al-mullāk fī amlākihim* ("as the free disposal of owners in their property"). These passages are plain and unproblematic, but it is interesting to note that the reluctance to include such expressions as noted by Wakin, was not headed anymore in our time.[36] Among the legal clauses that are completely absent in our period are statements concerning the "inspection" (*ru'ya*) of the object.[37]

The above is a very rough sketch of the major components of legal clauses, but once again it should be borne in mind that every contract was shaped and drafted individually and while some parts could be dropped completely, others would also be executed in much more detail. Although we can discern clear preferences in the usage of one particular judge/notary or in documents written in one region at a certain time, the final draft was always decided upon by the individual who wrote the deed and who was able to chose from a wide variety of model drafts.[38]

In the legal clauses even more than in other parts of the contract, there is a clear tendency in the Qajar period towards a certain Arabicisation of the deed and an increasing avoidance of plain Persian wordings. Often, whole sentences are inserted in Arabic which, quite interestingly, contrasts clearly with early deeds from the Safavid period that attempt much more frequently to "translate" legal concepts into Persian. Thus the style of Qajar private deeds evokes much more the impression of being classical and conservative – probably a deliberate and intended effect. Although this more frequent usage of Arabic does not necessarily indicate a higher level of Arabic literacy, as can be gleaned easily from the frequent mistakes made in the process of inserting certain phrases or keywords. It might be also interpreted as a certain attempt from the side of the expanding clerical judicial system to affirm its exclusive access to legal knowledge and to differentiate itself from a "secular" Persianate society.

From the above, one could easily infer that for practical reasons, it would be most convenient to skip over the legal part of a deed completely and concentrate only on the factual contents. While this is justified in the vast majority of cases, in some cases however, we might still encounter additional stipulations or a secondary contract after the legal clauses of the first one. In practice, it is therefore most advisable to quickly scan the legal section for the mentioned major keywords – unless something unexpected pops up, one can be sure that one did not miss anything.

Conclusion and date

There is no universal expression to close a contract of sale similar to formulas such as *bar ʿuhdah shināsand,* "they shall consider it their responsibility," in

chancellery decrees. There are equally no final signatures or invocations, such as *khutima bi-l-khayr*, at the end of Qajar deeds. In most cases, the final segment of the employed legal clauses, whether affirming the new rights of ownership or simply validating the correct form of the transaction, would lead straight to the date. In deeds where the legal clauses are carefully executed, one can sometimes find an internal break (in our model contract: *aknūn*) that would start a new paragraph and thus connect a final passage with the concluding date.

The date is introduced either with the form common in decrees as *taḥrīran fī*, or with other expressions such as *kāna dhalika fī*, or a straight *ba tārīkh-i* … What distinguishes private deeds most markedly from decrees is that in almost all cases not just month and year, but also the exact day of the transaction is included – a clear necessity in case of later disputes. Note especially that in some cases secondary endorsements might display dates different from the main date, which is a clear sign that the deed was sometimes taken to other judges for a separate acknowledgement which might have taken several days or even weeks.

In deeds from roughly the late sixteenth century onwards, the year is usually given in numerals. A complete spelled out version of the year in Arabic is in our period only used for ornamental reasons, prior to the numeric date. The long, wave-like drawn *sana* functions as a "carrier" for the numeric year and closes the deed graphically.

Margins

Analysing the graphic layout of private deeds, we noted already the wide variety of "floating objects" to be encountered in the margins on the top and the right side. In most editions from Iran, endorsements and witness remarks, as the judicial means of attesting the validity of a deed, are summarised under the heading of *sijillāt.*[39] It is now time to examine these objects in more detail and add some remarks on the procedure of validating deeds of sale in our period.

Endorsements

The most prominent written element outside the main text is in most deeds the judge's or notary's endorsement. It is always positioned on top of the deed, usually oriented towards the top left corner. We will discuss further questions related to the position and nature of judicial endorsements separately in issues beyond ancillary diplomatic analysis, and therefore concentrate at this point mainly on the formulas employed, their immediate content and their significance for the validity and authenticity of the deed.

Contracts were concluded in the presence of a judge or notary who would have drawn up the formulary of the deed, supervised the proceedings and endorsed the final deed with an attesting remark that gave the contract legal validity. I use the rather vague term of judge/notary since, in the Qajar period, all independent and certified members of the ulama, i.e. those who had acquired a

Table 2.4 Text edition, fourth part, of the model deed of sale from 1186/1772

Margins	
Invocation	
He alone is the owner	هو المالک
Endorsement	
He – In the Name of God, the best of Names. The well-known seller, acting out of his own will, acknowledged and recognised what is written in it concerning the legal deed of sale, it took place before me, written by the judge: Seals by the *shaikh al-islām* ʿAta'ullah al-Husaini and the *qāżī* Muhammad Taqi al-Hasani al-Husaini	**هو هو** بسم الله خیر الاسماء البایع الطایع المعروف اقر و اعترف بما زبر فیه من المبایعة الشرعیة لدی حرره الداعی: «المتوکل علی الله الغنی عبده عطاءالله الحسینی» «عبده محمد تقی الحسنی الحسینی»
Witnesses	
Witnesses: The refuge of sayyiddom and nobility Mir Mahdi b. Mir Muhammad Rahim Khiyabani	شهـــــــــــــود: سیادت و نجابت پناه میر مهدی ولد میر محمدرحیم خیابانی

relevant *ijāza* or gained approval inside their communities, participated in the promulgation of legal deeds. This professional activity was not restricted anymore to those carrying official positions or titles, such as qadi or shaykh al-islam, nor was it necessary to have been widely acknowledged as a mujtahid.

Prospective clients were free to seek legal services wherever they wanted, and they chose those members of the ulama whom they trusted or with whom cooperation had proved agreeable in the past. To a certain degree, the prominence of a leading member of the ulama would also confer some prestige on the deeds he signed. In particular, his seals would have been known and acknowledged beyond regional boundaries – a precondition for the conclusion of more wide ranging transactions. While the actual function of the endorsing clerical jurist was that of a notary, many of them would also have acted as judges in a more narrow sense, passing verdicts, arbitrating disputes, and issuing legal opinions. From the form of their attestations alone, it is impossible to deduct their professional status or to decide whether they carried any relevant official title or position.[40]

For almost all bilateral contracts, a judge's endorsement was indispensable to guarantee the validity of a transaction. Witnesses alone were not considered sufficient, and even more, their testimony could actually be dispensed with completely if necessary. This already deviates considerably from earlier practices and other regions of the Islamic world and reflects clearly the quite distinct structure and organisation of the Shiite Iranian legal system of the Qajar period.

Many contracts carry not only one endorsement, but two or even more, given by different ulama – or alternatively one central endorsement remark sealed jointly by different judges. Quite often the deeds allow us to recognise that "courts" were run as family businesses, with both father and son sealing at the same time. They also show which ulama worked together on a daily basis, and hint at existing relations of employment or apprenticeship. In our example – and we have to be aware that our deed was written in the Zand period when clerical offices still carried considerable weight – the document displays only one central endorsement remark, sealed jointly and apparently on an equal footage by the qadi and the shaykh al-islam of Tabriz.

The wording of the endorsement is invariably given in Arabic; we never find a Persian endorsement or even inserted Persian fragments. Contrary to the Arabic passages found in the main text, the endorsement is usually free of grammatical errors and syntactically correct. This might suggest that the main text was often written by an employed secretary or scribe, who would simply copy available model contracts, while the endorsement was written by the issuing judge himself and added later on.

With the endorsing remark the judge attests the seller's acknowledgement (*iqrār*) of the contents of the contract and thus validates the transaction. The basic formula employed is of the kind "the seller acknowledges what has been written down as a legal contract of sale." The actual wording might differ and instead of the unambiguous *aqarra*, we can also find expressions that simply state that the transaction has taken place, such as *qad waqaʿa al-bayʿ,* then echoing the legal clauses of the main text.

More ornate constructions, such as the one in Figure 2.4, would also mention the major legal components of the deed concerning the transfer of price and

Figure 2.4 Endorsement from a deed of sale dated 1255/1840

object, the barring of annulment and the guarantee of liability. The highly stylised endorsement reads:

> *qad aqarra wa iʿtarafa al-bāyiʿ al-ṭāyiʿ al-mājid sallamahu allāh taʿālā bimā zubira wa ruqima wa suṭira fī al-matn min al-mubāyaʿa al-lāzima al-jāzima al-ṣaḥīḥa al-sharʿīya wa al-iqbāḍ wa al-isqāṭ wa akhdh al-thaman tāmman kamalan ladaiya ḥarrarahu al-dāʿī*
>
> ("The voluntarily acting, exalted seller – God bless him – acknowledged and recognised what has been written, noted and recorded in the main text, concerning the sharia-conform, correct, legally binding and obligatory contract of sale, acceptance, waiving of claims, and the taking of the price, fully and completely, . . .").[41]

The judge himself makes his appearance only in the final preposition *ladaya* – "(the seller acknowledged . . .) in my presence," or "it took place before me," before the optional statement of authorship "this has been written by the *dāʿī*." As the standard self-appellation for ulama in the formulary context of private deeds *dāʿī* stands for expressions such as *al-dāʿī li-dawām al-dawla al-qāhira* or *al-dāʿī li-ubūd al-salṭana*, referring to those praying for the continuity of rule.[42] The actual name of the judge never appears in addition to the seal, nor is his title or function mentioned at all.

While we can encounter references to the legal acknowledgement of the seller in various places of the main text of our documents, it is clearly not a central or obligatory element of the formulary. This contrasts with earlier Central-Asian deeds of sale, where the formal declaration of the seller's acknowledgement follows immediately after the initial date of the transaction as part of the opening section of the formulary.[43] In our deeds the formal *iqrār* has been transferred from the main text into the top endorsement where it is now reiterated by the attesting notary judge.

Secondary endorsements, if they exist, are usually shorter and limit their statement often to a mere *aqarra bi-mā fīhi*. Sometimes the different stages of the transaction are taken up in separate endorsements: a second attestation sealed by the same judge as the central endorsement would i.e. only confirm the completed transfer of payment. Only in elaborate deeds, or in those that deal with contested property and are thus perhaps in need of a higher amount of judicial validation, can we find several, independently written endorsements of equal length.

Witnesses

In some cases, the borderline between what constitutes a secondary or tertiary endorsement and what should be considered as a witness remark becomes blurred. Crucial in the decision whether one should identify a remark as

testimony or as endorsement is the precise wording. As long as emphasis is placed on the seller acknowledging the contract, or on the successful completion of the transaction, it should be considered a judicial attestation.

Testimonies by witnesses, on the other hand, typically contain a form of the root *shahada.* The most common expression is *shahada bi-mā fīhi* ("he testified on the contents"), but there are many variants, such as *ana min al-shāhidīn* ("I am one of the witnesses …"), or a parallel Persian wording such as *gavāhī dādam* ("I testified"); the use of Arabic testifying remarks, though widespread, was not obligatory. Another alternative, such as employed in our model deed, is to draw a long line with the heading *shuhūd*, where witnesses would simply place their seals.

Another crucial element in the decision whether we deal with an endorsement or a testifying remark is its location on the document. In general, testimonies are recorded exclusively on the right-hand margin, while remarks made by members of the ulama rarely move below the top margin.

We already stated above that the central endorsement made by the judge is the decisive means of validating the contract, while the testimony of witnesses was considered only secondary. We therefore also look in vain for a distinct reference to witnesses in the main text, such as the obligatory closing formula of *bi-maḥḍar min al-ʿudūl wa al-thiqāt* ("in the presence of righteous and trustworthy witnesses") in Central Asian deeds.

If seen from a functional perspective, secondary or tertiary endorsements would often assume the role of independent testimonies, with the difference that they are provided by jurists, rather than laymen. Since witnesses are rarely introduced with their profession or title, it is difficult to decide in which way they were related to the transaction. In some instances they are clearly concerned by the transaction, for example as neighbours or as *kadkhudās* of a village or an urban quarter. In other instances it is probably safe to assume the witnesses to have been part of the promulgating judge's retinue, although nothing hints at the existence of "professional witnesses."

OTHER STATEMENTS MADE IN THE MARGINS

In addition to endorsements and testimonies proper, we can encounter various other objects in the margins. If a *basmala* or any other kind of invocation appropriate to a contract of sale, such as *huwa al-mālik bi-l-istiḥqāq*, was neither part of the central endorsement nor introducing the main text, it can be found in the middle of the top margin.

Since no court registers existed where all proceedings and concluded contracts were recorded, deeds were usually issued in several copies, of which one usually remained in the private registry of the issuing judge and his family. Thus a plaintiff could always claim a re-issue of a deed lost or considered not genuine. At times, the number of copies was noted explicitly in the margins, such as in Figure 2.5, with the expression *iktāb ʿalā thalatha nusakh* ("written in three copies").[44]

A characteristic that is obviously copied from the usage of royal chanceries is the use of what in Latin terminology is called an *elevatio*, the elevated mention of a royal or princely figure's name outside the main text, accompanied by a blessing. In eighteenth and nineteenth century private deeds the use of an elevatio was not restricted to the ruler or immediate members of his household, but was also considered a privilege of other high-ranking dignitaries. Thus transactions involving Hajj Mirza Aqasi, the tutor and later prime minister of Muhammad Shah, always feature his elevated name outside the main text, as do deeds involving the crown prince ʿAbbas Mirza. This is also true for many semi-autonomous tribal leaders of the eighteenth century, such as ʿAli Naqi Khan Bigdili.[45]

The growing competition between a modernising state bureaucracy that extended its reach into more and more areas of society and a Shiite judiciary that had become highly assertive towards the late nineteenth century, also made itself felt in the field of civil legal affairs. Increasingly, state authorities interfered in legal disputes over ownership; with the "law on the registration of deeds" issued by Nasir al-Din Shah in 1303q (1886) an attempt was also made to put the lucrative and important field of private legal affairs under government control. However, the idea that from now on all documents, even those issued from sharia courts, should be registered in governmental offices and should carry an official seal and stamp turned out impossible to enforce. The statement made by Qa'im-maqami that from the period of Nasir al-Din Shah onwards all private deeds after their affirmation through witnesses had to carry the seal of the "Divānkhāna-yi mubāraka-yi dawlat-i Īrān," and later on that of the "Vizārat-i ʿadliya" is not confirmed by the vast majority of deeds far into the fourteenth century *hijrī*.[46] The process of implementing government control was a very slow process, even more so in the provinces. If people actively sought an attestation of their deeds by governmental offices, they would usually have been already involved in

Figure 2.5 Remark on the number of issued copies

ongoing lawsuits and a registration would have been part of an attempt to enlist the support of state authorities through petitions.

Finally, the margins offer the place to record any kind of later additions or separate stipulations. This could include separate acknowledgements (*iqrār*) made by other heirs or relatives of the seller that they agree with the sale, recorded to avoid later claims or disputes. Or we can find special stipulations on the mode of payment that were not included in the main text. Sometimes the sale transaction was reverted or re-directed shortly after, and instead of drawing up a new deed, the new contract was just written down in the margins of the old one. In many instances we deal not with original versions of a deed, but with later effected transcripts. Then, a declaration that the copy is identical with the original (*savād muṭābiq al-aṣl*) would be placed in a prominent position.

Issues beyond ancillary diplomatic analysis

Moving beyond a descriptive analysis that serves primarily ancillary aims, we must identify representative characteristics of Qajar deeds of sale and find out how they differ from deeds composed in earlier periods or other Persian-speaking regions. Furthermore, we must see how diplomatic results thus gained can relate to wider changes in society and how the study of formal aspects can furnish specific and exclusive arguments on more general historical questions. I want to focus on two such themes, one dealing with the metamorphosis in the self-conception of religious judicial authority, the other with the possible reasons behind the gradual disappearance of the "classical" deed of sale towards the end of the thirteenth century hijri in Iran.

The metamorphosis of religious judicial authority

If we place a typical deed from the late Qajar period side by side with a randomly selected Persian deed of sale written in the early sixteenth century, their outward appearance is markedly different (see Figure 2.6).[47] Whereas the Qajar document displays the earlier analysed graphic division between text block and margins, with numerous remarks on top and a huge number of seals scattered on the right side, the early deed is much more plain; the top is empty apart from a simple invocation, seals are still a rarity, and instead, we find numerous names and signatures crouched at the bottom, below the main text of the deed. While the formularies of the main text display a striking similarity, it is much more difficult to detect the judge's attestation at the bottom. Far from the elaborate endorsement of Qajar deeds, it is limited to a mere statement of authorship, familiar to us from the standard closing expression of Qajar endorsements: *ḥarrarahu al-ʿabd al-faqīr Fakhr al-Dīn* ("this has been written by the humble Fakhr al-Dīn").

In short, in this deed from 920/1514 the judge's remark and all testimonies are located at the bottom of the document, which is considered an obvious taboo

area in a Qajar deed. The most prominent part of a nineteenth century deed, quite to the contrary, is the central endorsement made by the issuing judge, located high above the document. The question arises as to how the judge's remark and seal moved to the top, displaying such visible dominance and authority.

I must confess, however, that the direct comparison of these two deeds is partly misleading. While it is true that a majority of deeds from the ninth and early tenth century hijri, especially those written in Persian, were of the simple type shown in Figure 2.6, quite a number of documents exist that are much more elaborate and that do actually display remarks above the main text.[48] If we go back in time, we see that this alternative is not restricted to a transitional period between the fifteenth and sixteenth centuries, but represents a valid choice that existed already for pre-Mongol deeds. At this early time, however, only a few deeds included a proper legalising remark by the issuing judge, that – as in our Qajar deeds – was located usually on the top left above the main text. Many other deeds would simply do with the testimonies of the witnesses and a concluding scribal remark (i.e. *ḥarrarahu, katabahu*) by the judge, notary, or court clerk, as in our example.[49] The conclusion that these more simple deeds were issued by "notaries" and not by proper judges, thus allowing a distinction between "notary deeds" and "judge deeds," proves however to be not generally

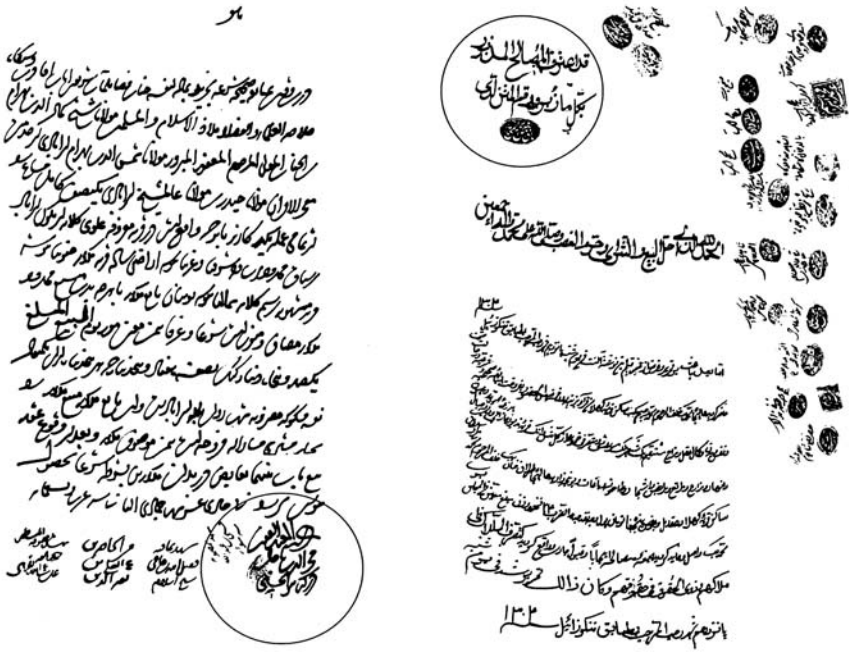

Figure 2.6 Outward appearance of an early Safavid and a late Qajar deed of sale. The remarks are highlighted

valid since many "simple deeds" were written nevertheless by a qadi, as can be gleaned from scribal remarks.[50]

Our initial question must consequently be modified. Instead of asking how the endorsement moved to the top, the point seems rather to be when and why a central top endorsement became obligatory for most private deeds. And once it became obligatory, when did it take up its present formulary wording and what other changes accompanied it?

A precise answer is difficult, because of the very meagre documentation on deeds from the fifteenth and sixteenth centuries. Few documents survived, and those that did, tend to reflect local usage and thus might not always be indicative for general trends. Furthermore, we are not dealing with a centralised chancellery, where only a handful of people were employed at the same time and where changes of style and formulary can often be pinned down to precise dates, such as the ascent of new rulers or dynasties. Since we are dealing with the promulgation of private deeds that involved many individual jurists who were not bound to observe any central ordinances, change never occurred suddenly. Innovations were accepted and implemented only over several generations, and there is always an extended period of transition, where different styles were able to coexist peacefully.

A closer look at available deeds from the sixteenth century shows that the process that made a central endorsement obligatory for almost all private documents went hand in hand with a new understanding of the judge's attesting remarks. The top legalising remarks from the pre-Mongol period up to the early sixteenth century follow the type *saḥḥa/thabata ʿindī maḍmūnuhu* ("the deed's contents were correct/established before me"), and would at times include a direct statement by the judge of having passed his judgment on the correctness of the transaction (i.e. *ḥakamtu*).[51] The new type from the late sixteenth century onwards is of the kind we described above in our detailed analysis of Qajar deeds. It drops expressions referring to a judge's verdict completely and instead testifies either to the seller's acknowledgement (*qad aqarra al-bāyiʿ*) or to the successful implementation of the transaction (*qad waqaʿa al-mubāyaʿa*).

The other aspect of this process involves a complete overhaul of the outer appearance of private deeds. This means a new spatial organisation that gives priority to the top, while eliminating the bottom area below the main text, and moving the testimonials of witnesses to the right margin. This, in connection with the graphic demarcations discussed at the beginning, such as an emphasis of the first line or the left indent after the date, would give documents a definitely "new" look.

The earliest specimens featuring the new endorsement type would still stick to single aspects of the older layout: thus the bottom part of a deed would still contain witness remarks and was not yet perceived as a no-write-area. Equally, secondary endorsements or scribal remarks might be found in the right-side margin or below the text.[52] Other deeds from the late sixteenth century might

already have adopted the new layout completely and thus look like typical Qajar deeds with the endorsement on the top left side, the witnesses' remarks neatly arranged on the right margin, and the first top line of the main text emphasised – but they would still contain older textual elements in their endorsements.[53]

This transitional period is concluded only at the beginning of the seventeenth century, when almost all deeds implement the refurbished layout and feature one or more of the new obligatory top endorsements.[54] The distinction between "simple deeds" with testimonials at the bottom and a simple scribal attestation, and "prominent deeds" featuring a judge's legalising remark on top was now a concept of the past.

The transformation in the appearance of private documents should be seen in connection with the change of the main or dominant language of private deeds from Arabic to Persian. While this shift in language was a gradual development that had began much earlier in pre-Mongol times, it was far from being generally accepted by the end of the ninth/fifteenth century.[55] The concluded language shift in private deeds can thus be regarded as a pre-condition for the other transformations described above, and as a process that in its final stage would have run parallel to the re-definition of private deeds. The same is true for the replacement of "signatures" (usually just the recorded names of witnesses) by seals – or rather the evolution of a culture in which nearly everybody of a certain standing, not just the judge and high dignitaries, would have employed a private seal.

It is tempting to locate a sudden change in the formulary of private deeds within the first years after the establishment of the Safavid dynasty and the introduction of Twelver-Shiism as the new official state religion. However, such an argument would have to be presented with care. First, as stated earlier, the judicial system was not centralised and no institution existed that could ordain new formularies or layouts within a couple of years. Second, there is nothing discernibly Shiite in the changes we observed – at least to my knowledge – and the textual elements of the main text, where we would expect considerable change after the introduction of a different legal school, remain conspicuously unaltered. In fact, the changes observed cover a time span close to a century, and they should be seen in the context of other long-term social developments occurring during the first half of Safavid rule. Still, the above development is without doubt a Safavid phenomenon that, similar to other social and religious processes of the sixteenth century, is completed during the reign of Shah ʿAbbas I.

Relying exclusively on the testimony provided by changes in the appearance and formularies of private deeds, we might draw further conclusions. While the composition of the 'ulama as a social group remained rather constant after the introduction of Shiism, a fact mirrored in the conservative treatment of the textual level of deeds that continued to be transmitted inside the clerical "estates," their self-perception as independent jurists obviously changed dramatically.

Moreover, it is exactly at this point where the identified transformations become significant. Up to the sixteenth century, clerical jurists in Iran appear to have willingly accepted the acquiescent position of officials who would simply record transactions and then place their name at the bottom, together with the other witnesses. Now, the ulama literally claim new territory: their attestations become the most prominent part of almost every deed, with their seals and endorsements positioned high above the main text. Instead of legalising only selected deeds, they now testify actively to the successful implementation of every single legal transaction. One might be hesitant to press the interpretation too far, but this change suggests that as soon as the new concept of the independent Usuli-mujtahid gained ground in the religious discourse of Safavid Iran, there must have been a growing desire among the ulama to redefine their role in the judicial system. With the new layout of private deeds that revolves around the judge's now obligatory endorsement, they signalled their new authority to the outside, in a design that at times evokes associations with a ruler's *tughrā* or seal on the top of a royal decree – a similarity that was probably not completely accidental.

The displacement of the classical **mubāyaʿah** *by the universal* **muṣālaḥah**

While we were discussing the legal type of a *mubāyaʿah* contract of sale with regard to both its function as a prototype for most Qajar private deeds and its simplicity in structure and content, a closer look into both published and archival collections quickly reveals that the further we move into the nineteenth century, the rarer our chances are to encounter a straight and self-declared *mubāyaʿah*. This does not mean of course that fewer sales took place or that transactions were not recorded anymore on a regular basis. Quite to the contrary, it seems that while more and more paper was used to record sales, this was increasingly done in a different legal form: that of a *muṣālaḥah*, a contract of settlement or composition.[56]

The documents edited in the collection by Safinezhad/Krüger under the title "Erwerb von Boden" ("purchase of land") are, for example, all contracts of sale of the *muṣalaḥah*-type. In fact, one wonders what the difference to a "normal" contract of sale is, since the only difference to our model formulary is the absence of the clear statement "*bifurūkht*" ("he/she sold"). Instead, we find a sequence such as *muṣālaḥa namūd* X *bā* Y *hamagī va tamāmī* [object] *ba māl al-muṣālaḥa* [amount], resulting in an obvious sale.[57] That towards the end of the nineteenth century the *muṣālaḥa* had become the dominant way to record a sale is also confirmed by Beck, who in his selection of model contracts presents a "Grundstücksvertrag nach muslimischem Recht," under the Persian heading "*Qabāla-nāmchah-i sharʿī*" which is a *muṣālaḥah,* and not a *mubāyaʿah.*[58]

The conclusion of contracts based on the legal concept of settlement (*ṣulḥ*) is of course not an invention of the late Qajar period, and we can find early *muṣalaḥah*-contracts already in the Safavid period. The difference between these

early deeds and the late Qajar practice is not only the frequency of their appearance – *muṣālaḥah*-contracts are quite rare before the early nineteenth century – but especially that most of the early *muṣālaḥas* provide a clear reason for the conclusion of a legal settlement which even if not stated explicitly, is easily deductible from the presented circumstances. Thus, there could have been extended inheritance disputes making litigation necessary, or acknowledged claims and rights would have been ceded for a compensation payment.[59]

In most late Qajar *muṣālaḥah* contracts this is not the case anymore, and the legal form of a settlement turns into a universal format that is able to accommodate a wide variety of legal transactions. This is not the place for a conclusive discussion on the possible variants of a *muṣālaḥah* and the resulting legal implications, but apart from a marriage contract, a *muṣālaḥa* could replace almost every other contractual agreement, such as sale, rent, loan, hire, or any combined arrangements.[60]

The collection of documents edited by Sutudeh/Zabih is the only one that distinguishes stringently between the two types of *muṣālaḥah* and *mubāyaʿah*, whereas all other editors treat them as interchangeable expressions of a sale transaction. This is not completely unfounded, since the difference between the two options increasingly lies merely in the self-appellation provided inside the deed, while the employed formulary is almost identical. In some cases even this simple means of differentiation becomes obsolete, once the main text mentions *bifurūkht* as the mode of transaction and introduces the seller as *bāyiʿ*, while the endorsements refer to the contract as *ṣulḥ*, and the participating parties as *muṣāliḥ*.[61] Such occurrences in particular hint at the increased vagueness of legal terminology.

Reasons for this development have to remain speculative, prior to a more systematic attempt to analyse this phenomenon, but can be found probably in the fact that a *muṣālaḥa* allowed more flexibility than other, "stricter" contracts. In some cases, its binding force might have been less rigorous and allowed more options for later cancellations or annulments, although this is not reflected in the formulary itself that usually contains legal clauses identical with those of a standard contract of sale.[62]

In practice, a *muṣālaḥah* requires more attention with regard to details, since the first task is to find out what kind of contract is actually emulated (*bayʿ*, *ijārah*, or a combination of both,) or whether one deals with a "real" settlement. Furthermore, *muṣālaḥa* contracts are less predictable than ordinary contracts of sale or rent, and may contain changes in formulary, as well as additional stipulations and clauses.

Beyond practical concerns, however, it is of high significance that private deeds underwent yet another major transformation in the last decades of their existence under *sharʿī* legal control. It appears as if the opening of formulary constraints, at a point when the ulama had to protect one of their most vital domains against infringement by state authorities, was a deliberate move – or at least a clear response to changing social conditions.

Conclusion

If we are to name the most prominent characteristic of Qajar private deeds, it would be the ongoing Arabo-Persian bilingualism that is not restricted to an opposition between Arabic endorsements versus Persian main text, but can be found in almost all sections of the deed. A trend displayed in some documents from the fifteenth century that tried to replace as much Arabic with Persian as possible did not turn out victorious. To the contrary, Qajar deeds show a much more legalistic and formulary approach than some deeds written some centuries earlier. It is consequently also not astonishing that formularies are highly developed and sophisticated, and the separation from developments in Central Asian private deeds remains valid. In some details, such as the introduction of individuals and their names, we can identify a clear parallelism with developments in royal and princely chanceries – a field that deserves separate attention, as do formal aspects of other documents that we were unable to incorporate adequately at this point, such as waqf-deeds, marriage contracts, testaments, and judicial verdicts (*aḥkām*).

Despite the fundamental transformations outlined in Issues beyond ancillary diplomatic analysis, Qajar private documents display an astonishing continuity in many aspects of their textual formulary, especially if compared directly with the earliest available specimens from the pre-Mongol period. It is particularly remarkable that this noticeable continuity must not just simply be seen with regard to Persian as the deeds' dominating, though never exclusive, language, but rather as a specific inner-Iranian phenomenon. As such, it actually transcends the long-term shift of the main language of private documents from Arabic to Persian that occurred between the twelfth and the fifteenth centuries. This continuity is clearly an expression of the transfer of traditions through local schools of Iranian ulama that deviates from an early stage on from developments in other Persianate cultures of Central Asia.

Consequently, the conversion from Sunni, mainly Shafii and Hanafi legal usage, to Twelver-Shiʿism and Jaʿfarite legal concepts ordained by the Safavids, which one might assume to have been a major impact on all aspects of applied Islamic Law, is not perceivable as a sudden turn in the textual composition of private deeds. If one looks for an independent proof for the premise that Sunni clerical estates managed to maintain their influence and to contribute their professional expertise alongside their conversion to Shiʿism, the close examination of private deeds furnishes a strong argument in this respect.

Continuity should however not be confused with the idea of stagnation or a static concept of private legal deeds. Certainly, this is a conservative field, and contrary to dynastic change that prompted chancelleries to devise new concepts, iconographies and linguistic innovation to emphasise a different understanding of legitimacy or ideological representation, ulama were neither in need, nor capable to implement hurried changes. Transformations occurred slower and over a longer period, which makes them so much more difficult to spot and locate.

Thus the Safavid turn did not cause a sudden change in how deeds were written, but initiated a radical new definition of the outer appearance and the layout of private deeds that highlighted successfully the new role and re-defined self-perception of the ulama in Iranian society. This new role is particularly expressed in the new judicial practice that made a central endorsement on top of every deed obligatory and therefore enhanced their independent authority in civil legal affairs considerably. Completed roughly during the reign of ʿAbbas I, this transformation corresponds to other social and religious developments that occurred at the beginning of the seventeenth century.

The other major turn in the legal practice and composition of private deeds we identified is the increasing preference for the universal contractual model of *ṣulḥ/muṣālaḥah* during the later decades of Qajar rule that began to replace distinct contracts and blurred hitherto strictly separate legal categories. As a preliminary hypothesis I would suggest to regard this trend both as an indirect response to the growing claims of the state to interfere in the sphere of civil legal affairs and as the result of the multiplication and wide spread of ulama authority that destroyed the rigid control of local schools and traditions and thus furthered the dissolution of uniform formularies.

Notes

1 Among the collections used in the present contribution, Masīḥ Ẕabīḥī and Manūchihr Sutūdah, *Az Āstārā tā Istārbād: Asnād-i Tārīkhī-yi Gurgān*, vols. 6–7, (Tehran: Anjuman-i Asar-i Milli, 1354/1975), are the most strict in their distinction on legal and formal grounds (i.e. separate listings of *hibah-nāmah* and *istishhādnāmchah*). Ghulām Ḥusayn Bīgdilī, *Tārīkh-i Bīgdilī: Madārik va Asnād* (Tehran: Bu ʿAli, 1367/1988), exemplifies best a middle ground between thematic organisation (i.e. *asnād-i amlāk*) and differentiation between document types (i.e. *vaqfnāmah* and *ʿahdnāmah*).

2 This differentiation becomes problematic as soon as the "state" (i.e. the ruler, members of the aristocracy, governors, or high officials) takes an active part in a contractual agreement: for example in the case of a ruler establishing a pious foundation using the outward form of a royal decree. Equally, the borderline between "state-administrative" institutions and civic judicial entities is drawn differently in various epochs and might sometimes be blurred. A third problematical area concerns all forms of correspondence – whether issued by chancelleries or individuals from the administration or the judiciary – which do not necessarily follow strict formularies, but nevertheless have very concrete legal effects. Compare also Monika Gronke, "La rédaction des actes privés dans le monde musulman médiéval: théorie et pratique," *Studia Islamica* 59 (1984): 160, and Rudolf Veselý, "Die Hauptprobleme der Diplomatik arabischer Privaturkunden aus dem spätmittelalterlichen Ägypten," *Archiv Orientální* 40 (1972): 318–20.

3 Josef Schacht, *An Introduction to Islamic Law*, 2nd edn (Oxford: Oxford University Press, 1964), 151–52.

4 The establishment of the Islamic Republic in Iran has not reversed this process. The new government has put clerics at the head of existing bureaucratic institutions, but never intended to pass the control over civil legal affairs back into the hands of individual ulama.

5 The origins of Iranian private deeds are treated in an exemplary manner in the introduction to Monika Gronke, *Arabische und persische Privaturkunden des 12. und 13. Jahrhunderts aus Ardabil (Aserbaidschan*) (Berlin: Klaus Schwarz, 1982), summarised as Monika Gronke, "Zur Diplomatik von Kaufverträgen des 12. und 13. Jahrhunderts aus Ardabīl," *Der Islam* 59 (1982): 64–79 – needless to say that the present chapter is heavily indebted to these studies.

6 The document is stored in the "Iranian National Archives" (*Sāzmān-i Asnād-i Millī-yi Īrān*), under no. "29600056 Alif Aza" in the electronic catalogue. With reference to the existing microfilm formats, access to the originals is usually not granted; therefore, no concrete measurements and details of paper quality, ink, or remarks on the reverse can be provided. On the context of the deed, see Christoph Werner, *An Iranian Town in Transition: A Social and Economic History of the Elites of Tabriz* (Wiesbaden: Harrassowitz, 2000), 177–79. I avoided the use of further unpublished archival material, since wording and appearance are not easily verifiable, and relied for comparative references mainly on published collections of documents.

7 Once more, a note of care: one should be aware that important deeds probably stood out in paper quality, size, calligraphic design from the beginning, in turn resulting in a higher survival rate.

8 For a good introduction to various hands and typical ligatures, see William L. Hanaway, *Reading Nastaliq: Persian and Urdu hands from 1500 to the present* (Costa Mesa: Mazda, 1995); helpful for the novice are also the tables in Sebastian Beck, *Neupersische Konversationsgrammatik* (Heidelberg: Julius Groos, 1914), 438–39.

9 In fact, it would be highly naive to assume that a professional scribe was unable to estimate the space still required for the intended text. The sometimes suggested reason for pulling final words up as a means to prevent falsification is also not very convincing, since the irregular positioning of words at the end of lines makes it much easier to insert a word or two later on.

10 See for example Bīgdilī, *Madārik va Asnād*, 342, facsimile of document 96, dated 1279/1863.

11 This practice becomes increasingly rare in deeds from the second half of the nineteenth century.

12 Heribert Busse, *Untersuchungen zum islamischen Kanzleiwesen an Hand turkmenischer und sawidischer Urkunden* (Kairo: Sirovic, 1959). See the different approach by Jahāngīr Qāʾim-maqāmī, *Muqaddamaʾī bar ShināKht-i Asnād-i Tārīkhī*, (Tehran: Anjuman-i Asar-i Milli, 1350/1971).

13 Very elaborate private deeds might contain an ornate introduction alluding to the purpose of the document (*arenga*), and the distinction between *narratio* and *dispositio* is valid for court verdicts (*ḥukm/aḥkām*), which do however not follow strict formularies, as well as for more complicated settlement contracts. For a discussion of private deeds based on this tripartite division, see Gronke, *Privaturkunden*, 17f.

14 Document 12 (1174/1760) in Ẕabīḥī and Sutūdah, *Āstārā tā Istārbād*, 7:31–33, or document 91 (1317/1900) in Bīgdilī, *Madārik va asnād*, 222–23, facsimile 337.

15 One can draw a direct line from the invocation *huwa al-mālik* to the final concluding phrase that confirms the new owner with *ka-taṣarruf al-mullāk fī amlākihim* – the two occurrences of *mālik/mullāk* serve as brackets to hold the deed together.

16 For early specimens see the *iqrār-nāmah*s from 842/1438 and 844/1440 in Muḥammad Taqī Dānishpazhūh, "Asnād-i Āstānah-i Darvīsh Tāj al-Dīn Ḥasan Valī dar Niyāk-i Lārījān," *Nuskhahʾhā-yi Khaṭṭī* 4 (1344/1966): 481–648: 504f and 508f., both with *sabab-i taḥrīr-i īn kalimāt*, and the deed of sale from the same year 842 that still sets out with *īn ẕikrī ast*. See Urkunde 7 (603/1207) in Gronke, *Privaturkunden*, 192 for the earliest example of the Persian introduction with *īn ẕikrī ast*, which actually follows Arabic formularies.

17 A prime example is the sale of a garden that elaborates on the motif of paradise and celestial gardens, document edited as "Sale Varia 2" in Werner, *Iranian Town*, 346–54.
18 Susan E. Rayner, *The Theory of Contracts in Islamic Law: A Comparative Analysis with Particular Reference to the Modern Legislation in Kuwait, Bahrain and the United Arab Emirates* (London: Graham & Trotman, 1991), 107–8. Johannes Christian Wichard, *Zwischen Markt und Moschee: Wirtschaftliche Bedürfnisse und religiöse Anforderungen im frühen islamischen Vertragsrecht* (Paderborn: Schöningh, 1995), 110–15. Parviz Owsia, *Formation of Contract. A Comparative Study under English, French, Islamic and Iranian Law* (London: Graham & Trotman, 1994), 474–77.
19 Sometimes even more ornate as *maqrūn bah khayr va barakāt*, "blessed and favourable," as in Beck, *Konversationsgrammatik*, 461.
20 Gronke, *Privaturkunden*, 192, Urkunde 7 (603/1207) combines the date with the purpose declaration of *īn ẕikrī ast*. Examples for Central Asian sale-deeds Al'fred K. Arends (ed.), *Dokumenty k istorii agrarnykh otnoshenij v Bukharskom khanstve*, *1. Akty feodal'noj sobstvennosti na zemlyu XVII–XIXv.* (Tashkent: Akadamiya Nauk, 1954).
21 There are exceptions: some deeds mention the town, such as an early deed from 1123/1712 in Ẕabīḥī and Sutūdah, *Āstārā tā Istārbād*, 7:18 that mentions the venue as *maḥkamah-ʾi muḥakkamah-i qalʿah-i mubārakah-i dār al-muʾminīn-i Astarābād.* Also two late nineteenth century documents in Javad Safi-Nezhad and Eberhard Krüger, *Traditionelle iranische Landwirtschaft in Dokumenten, mit diplomatischen Untersuchungen von Christl Catanzaro*, (München: Two-step, 1995; also Tehran: Sahab 1376/1996), 6–7, 94–95, introduce it as *maḥżar-i masʿūd-i muḥtaram-i sharʿ-i muṭāʿ-i dār al-khilāfah-yi Ṭihrān*.
22 Examples from Bigdilī, *Madārik va Asnād*, 38, 45 *maḥżar-i anvar-i sharʿ-i muṭāʿ*, *majlis-i sharʿ-i muṭāʿ*
23 Beck, *Konversationsgrammatik*, 461, dated 1325/1907.
24 This is congruent with traditional legal ordinances, but contrary to earlier deeds where the active transaction is one of "buying" rather than one of "selling," Gronke, "Diplomatik," 70. Pre-Safavid deeds of the above-mentioned "*īn ẕikrī ast"*-type also start out with *bikharīd* as the central transaction, Dānishpazhūh, "Asnād-i Āstānah-i Darvīsh Tāj al-Dīn," 510f, dated 845/1441.
25 Other derivatives of the root BAʿ can also be found in this context, i.e. *ba-baiʿ-i bāt.*
26 More on this below in Issues beyond ancillary diplomatic analysis.
27 See Gronke, *Privaturkunden*, 50–52. As an integral part of the introduction in fifteenth-century deeds from Samarkand that begin with *dar* [date] *iqrār kard* [seller] *kih furūkhtah-am*, Olga D. Chekhovich, *Samarkandskie dokumenty XV–XVI vv., o vladenijakh khodji Aḥrāra v Srednej Azii i Afganistane*, (Moskva: Nauk, 1974), 51. Endorsements regularly contain clauses of acknowledgement, and sometimes additional *iqrārs* of third parties are noted in the margins, see below.
28 A deed contemporary to our model contract, dated 1194/1780, Bīgdilī, *Madārik va Asnād,* 32f.
29 Tabular arrangement of borders (although numbered, not with cardinal points) in document 13, Bīgdilī, *Madārik va Asnād*, 259.
30 Neither in archival material, nor in published collections of Qajar documents did I ever encounter a contract of sale on movable property as defined above.
31 Siyāq is a special system of writing numbers used in accountancy. The best introduction to the Qajar variant which is quite different from that used in the Ottoman Empire, India or Central Asia is Muḥammad Shīrvānī, "ʿIlm-i Siyāq," *Mīrāṯ-i Jāvīdān* 2–1 (1375/1996): 40–45.
32 Ẕabīḥī and Sutūdah, *Āstārā tā Istārbād*, 7:36, contract dated 1235/1820. Bīgdilī, *Madārik va Asnād*, 214, contract dated 1304/1887.

33 A special variant that appears to have been quite common in contracts of sale of the eighteenth century, is the inclusion of a fictive lawsuit because of fraud that resulted in a settlement (*ṣulḥ*) between the two parties. In exchange for an additional payment that amounted to a certain percentage (about 5 per cent) of the original price, the selling party revoked once and for all any further claims, see for example Ẓabīḥī and Sutūdah *Āstārā tā Istārbād*, 7:19, dated 1123/1712.

34 The Arabic formula is often shortened to a mere *ʿinda al-khurūj al-mabīʿ* or *mustaḥaqqan li-l-ghayr bar āmada*, expressions that do not make sense on their own. The wording used is almost identical to that of pre-Mongol Arabic deeds from Iran, where it appears as *iltazama ʿuhdat al-darak lau kharaja al-mabīʿ yauman min al-ayyām mustaḥaqqan li-wāḥid min al-anām*, Gronke, *Privaturkunden*, 465 (Urkunde 22, dated 647/1249). Another deed from 894/1489 has it as *ḍamān al-darak ladā khurūj al-mabīʿ mustaḥaqqan yauman min al-ayyām li-aḥadin min al-anām iltizāman sharʿīyan*, Hakob D. Papazyan, *Matenadarani parskeren vaveragrere. 2: Kalvacogre,* (Erevan: Nauk, 1968), 452. This is also an opportunity for the author to confess a previous blunder made in the translations of sale documents in Werner, *Iranian town,* where the relevant passages of *darak*-clauses have been partly mistranslated and should be amended according to what is said above.

35 Bīgdilī, *Madārik va Asnād*, 63, contract dated 1253/1837.

36 Jeanette A. Wakin, *The Function of Documents in Islamic Law. The Chapters on Sales from Ṣaḥāwī's* "*Kitāb al-shurūṭ al-kabīr*," ed. with introduction and notes (Albany: SUNY Press, 1972), 64.

37 Gronke, *Privaturkunden*, 42f.

38 A rare example for such a collection of model drafts that includes private deeds is the St Petersburg manuscript edited in Ẓabīḥī and Sutūdah, *Āstārā tā Istārbād*, 6:453–509 – a model contract of sale (*Dastūr-i taḥrīr-i baiʿ-i bāt*), 499.

39 Which should absolutely not be confused with *sijill*s, as court-registers, in an Ottoman context.

40 For a more detailed discussion, see Werner, *Iranian Town*, 229–39.

41 Unpublished deed of sale from the private collection Turabi-Tabatabaʾi in Tabriz, recording a sale between Mirza ʿAli Asghar shaykh al-islam (which explains the blessing invoked on the seller) acting as an agent for Shaykh Hasan b. Shaykh Muhammad Jaʿfar Mujtahid and the mother of Jaʿfar Quli Khan Dunbuli over the village Jamalabad near Urumiya, dated 10 Zi-qaʿda 1255 (15.01.1840).

42 See Werner, *Iranian Town*, 346, and Ẓabīḥī and Sutūdah, *Āstārā tā Istārbād*, 6:518, contract dated 992/1584. The appellation is not a Safavid phenomenon, see Dānishpazhūh, "Asnād-i Āstānah-i Darvīsh Tāj al-Dīn," 514f, with an early occurrence of *ḥarrarahū … al-dāʿī … al-qāżī …* in a deed dated 845/1441.

43 See above, Note 27.

44 Figure 2.8 from Werner, *Iranian Town*, 320, another example in Bīgdilī, *Madārik va asnād*, 268. This is also the reason why the best collections of private deeds outside of governmental institutions and shrines are in private collections held by clerical families in Iran; see for example the list of private collections that formed the basis of Ẓabīḥī and Sutūdah, *Āstārā tā Istārbād*, 6:27.

45 Bīgdilī, *Madārik va Asnād*, document 3 (1169/1755), 29, facsimile 249: the text of the elevatio is *khānī-yi ʿaẓīm al-shaʾnī ʿAlī Naqī Khān Bīgdilī dāma iqbāluhu al-ʿālī.* Examples for deeds involving ʿAbbas Mirza and Hajji Mirza Aqasi in the collections of the *Mūzah-i Kākh-i Gulistān.*

46 Qāʾim-maqāmī, *Muqaddamahʾī,* 315, 317, illustrations 318–19. For a wide selection of deeds written after 1303q not carrying these seals, see Bīgdilī, *Madārik va Asnād*, section on *Asnād-i amlāk* (an example for an officially registered deed is document 86, facsimile with seal on p. 332).

47 The two deeds placed side by side are document 2 dated 920/1514 in Ẕabīḥī and Sutūdah, *Āstārā tā Istārbād*, 7:3–4 (plates not paginated), and document 87, dated 1304/1887 in Bīgdilī, *Madārik va Asnād*, 333.

48 Deeds from the ninth century included in Dānishpazhūh, "Asnād-i Āstānah-i Darvīsh Tāj al-Dīn," 499 (dated 837/1433–34), 511 (dated 845/1441), or 549 (dated 928/1522) follow almost completely this type. For deeds from the same period carrying central endorsements on top of the deed, see Papazyan, *Matenadarani parskeren vaveragrere*, document 9, a *mubāyaʿah* written in Arabic from 1489/894, 450–54, facsimile 552–59, or document 15 from 931/1525 written in Persian, 471–72, facsimile 572–73.

49 Gronke, *Privaturkunden*, 50, 62–65. Of the four Persian deeds only one carries a proper endorsement, located at the bottom left side (Urkunde IV), and of the ten Arabic sale-deeds, four feature an endorsement above the main text (Urkunden VIII, IX, XI, XXII). Note the distinction made by Gronke between "Legalisierungsvermerk," "Schreibervermerk" and "Bestätigungsvermerk."

50 For example Dānishpazhūh, "Asnād-i Āstānah-i Darvīsh Tāj al-Dīn," 541, document dated 860/1456, written (*ḥarrarahu*) by ʿAbd al-Haqq b. Zayn al-Din b. Karim al-Din al-Qazi.

51 See for example Ẕabīḥī and Sutūdah, *Āstārā tā Istārbād*, 4–7, deed of sale 2 dated 938/1532 (note that the facsimile is not complete), variants include *waḍaḥa* etc.

52 Ḥusayn Mudarrisī-Ṭabāṭabāʾī, *Bargī az Tārīkh-i Qazvīn. Tārīkhchaʾī az Āstānah-i Shāhzādah-i Ḥusayn va Dūdmān-i Sādāt-i Marʿashī-yi Qazvīn*, (Qum: Marʿashi Najafi, 1361/1982), 429–34, plates not paginated, document 153 from 999/1591 features an *iʿtarafa*-endorsement on the top, but witness remarks and secondary attestations are still to be found at the bottom.

53 Papazyan, *Matenadarani parskeren vaveragrere*, 500-1, facsimile 594, document 25 is the first deed that looks like a "modern" deed, with a single endorsement on the top left side, witnesses on the right margin, written on one single sheet of paper, but its endorsement is not yet typical.

54 For example document 4 in Ẕabīḥī and Sutūda, *Āstārā tā Istārbād*, 9–12, dated 1042/1633, with typical layout and a top left endorsement of the *waqaʿa al-bayʿ* type.

55 See the ninth-century deeds in Dānishpazhūh, "Asnād-i Āstānah-i Darvīsh Tāj al-Dīn," which are all written in Persian. Late deeds written completely in Arabic can be found in Papazyan, *Matenadarani parskeren vaveragrere*, 450–54, deed from 894/1489.

56 Composition: "a legal agreement to pay a sum in lieu of a larger debt or other obligation" (COD), is the translation preferred by Owsia, *Formation of Contract*.

57 Safi-Nezhad and Krüger, *Traditionelle Landwirtschaft*, 93, document 1, dated 1332/1913. This collection of documents should be treated with care, since it contains numerous mistakes both in the edition of the texts and the translations.

58 Beck, *Konversationsgrammatik*, 461. He translates *muṣālaḥah-i ṣaḥīḥah-i sharʿiyyah namūd* as "verbriefte er rechtsgültig in vollem Umfange" and in a note gives the literal meaning as "schloß er einen korrekten rechtlichen Vergleich," and thus avoids the term sale.

59 Ẕabīḥī and Sutūdah, *Āstārā tā Istārbād*, 7:74f., document 6, dated 1255/1839, deals with a settlement of inheritance claims, 7:65f, document 2, dated 954/1547, is a very early example that refers explicitly to rights (*ḥaqq*) being ceded.

60 Owsia, *Formation of Contract*, 238, offers no reason for the popularity of *ṣulḥ* as a legal category, but is the only author to mention the special status of *ṣulḥ* in Iranian law.

61 Bīgdilī, *Madārik va Asnād*, 222–3, document 91, dated 1317/1900.

62 Owsia, *Formation of Contract*, 259 on the question whether a *ṣulḥ*-contract should be considered binding (*lāzim*) or facultative (*jāʾiz*), or in other words, dissolvable.