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Promissory Notes

As transaction relating to pronotes and key money are prevalent among the people and have become the cause of confusion among the common man and questions are often asked about their admissibility, we have considered it necessary to write on this subject in detail and to place orders in this behalf at the disposal of the people at the end of this book.

2840. It has been said by well-known scholars that in all the transactions which are in the shape of business (purchase and sale) it is necessary that the things on both the sides should have value, because if one of the two things does not carry any value the transaction will be futile and void. For example, if a person sells one grain of barley, which has no value for \$ 50, the transaction will be void. However, what is apparent is this that if a personal motive is involved in a transaction it does not become futile. For example, a person may be desirous of getting his father's letter and that letter is with some other person and has no value. In case, therefore, that person purchases his father's letter on payment of a price the transaction will not be futile. Moreover, there is no proof of the fact that a futile transaction is void. On the other hand what is void is the transaction made by a prodigal (a person who spends his wealth on absurd things) as has already been explained at its place.

2841. The value of property is of two kinds: (i) That the property intrinsically possesses benefits and qualities on account of which people are inclined to it and it acquires value for this reason, such as things which are eaten and drunk, and carpets, utensils, different kinds of gems etc.

(ii) That the property has no intrinsic value and merit, but its value is nominal; for example postage stamps and similar other stamps the price of which has been fixed by government as \$ 1 or more or less than that and they are used for being affixed on letters and on applications submitted to customs and courts and are accepted by the registrar's office for the registration of transactions and it is for this reason that they acquire value. And whenever government wishes to deprive them of their value it affixes the stamp of cancellation on them and deprives them of their value.

2842. The commodities which concern a business transaction or debt are of two kinds:

(i) Those which are measured and weighed.

(ii) Those which are not measured and weighed.

The first kind belongs to those things, whose price and value is determined by means of measurement or weight e.g. rice, wheat, barley, gold, silver etc.

The second kind is of those articles whose price and value is determined either by counting (e.g. eggs of a hen) or by measuring (i.e. through feet, yards, meters etc) e.g. cloth and carpet etc. Now the position is that in the case of debt if a commodity is given to another person as debt and a condition is imposed that something extra will be given at the time of repayment, it is usury; and the debt becomes unlawful whether the commodity is weighed and measured or not.

And in the case of business transaction also if a thing which can be weighed and measured is bought and sold with a commodity of the same genus with the condition of excess payment the transaction will be void. But if a transaction is made of a thing which is not weighed and measured with a thing of the same genus even on the condition of excess payment, it will not be usury. Hence we come to the conclusion that if a person gives 100 eggs of a hen as debt to another person on the condition that he will repay 110 eggs after two months it becomes usury, but if he sells 100 eggs for 110 eggs payable after two months, and if there is difference between the eggs sold and the eggs purchased, it is not usury and the transaction is in order.

Hence, the difference is of name only and the result is the same. If the name is 'debt' it is usury and if the name is 'purchase and sale' it is not usury. It should be noted here that the reality of debt is different from the reality of sale in the sense that debt means that a person gives his property to another person with the intention that the debtor will be responsible for it, whereas sale means that he gives his property to another person in exchange for the property which that other person is to give. Hence, it is necessary in the case of sale that the property sold should be different from the property which is to be given in exchange for it.

It thus becomes known that if a person, for example, sells 100 eggs of a hen to another person making him responsible for 110 eggs and tells him that he is responsible for 110 eggs it is necessary that there should be difference between the eggs to be given by each side for example one may sell 100 big eggs making the other person responsible for giving 110 eggs of medium size because if there is absolutely no difference between them the sale is not proved. On the other hand it will, in fact, be debt in the shape of sale, and for this reason the transaction will become unlawful.

2843. All banknotes like Iraqi dinars and British pounds and American dollars and Iranian rials and other similar currencies carry value, because the value of banknotes, which has been fixed by every government is accepted and is current through out the country, and for this reason they have value, and can be demoralized and deprived of their value and credit any time the government wishes to do so. And it is also known that these banknotes cannot be weighed or measured.

For this reason if more is charged for these banknotes as compared with other things belonging to the same genus, it is not usury. And similarly if a person is responsible to pay these banknotes by way of debt it is not usury to make their transaction for cash whether it is more or less.

For example, if a person has to take \$ 10,000 from another person and he makes a transaction with regard to it for \$ 9,000 in cash, it is not usury as has been explained by the late Ayatullah Yazdi in 'Article 56' of 'Mulhaqatul Urwah.' He says: "The banknotes are computed (i.e. they are counted and are not weighed or measured) and they do not belong to the genus of 'haqdain' (i.e. gold and silver) and have a fixed value and the orders pertaining to gold and silver do not apply to them.

Hence it is permissible to sell them for other banknotes at a higher or lower price. And similarly the order of "Surf" does not apply to them in accordance with which it is obligatory that possession be taken in the assembly.

2844. The pronote of currencies of which dealings take place among the people do not themselves carry any value and are not the basis of transaction. The basis of transaction is those currencies of which these pronotes are a means of proof. For example, a person sells a cart load of wheat for \$ 2000 and obtains a two months' pronote for it. Then he sells his claim for \$ 100 less i.e. for \$ 1000 in cash and the pronote is in proof of the claim of \$ 2000.

And the proof of the fact that a pronote does not carry any value is that if you sell a cart load of wheat for \$ 2000 and if the buyer gives you that amount his responsibility ends, but if he gives you a pronote his responsibility does not come to an end and he remains indebted to you until he pays the amount of \$ 2000. And if the pronote is lost or burnt even then the buyer remains responsible and must pay the price of wheat. However, if he pays \$ 2000 to the seller in cash and the amount is lost or burnt, it is the seller who sustains the loss and the buyer has nothing to do with it.

2845. When a person sells a pronote to a bank or to someone else and the pronote has reality (i.e. it is in order) and there is no blank in it for example if a person sells a commodity to another person for \$ 10,000 and takes a pronote for that claim and sells that claim of \$ 10,000 to a bank or someone else by way of transaction and transfer of ownership and reduces its price in proportion to the time when it is to fall due, there is no harm in it.

2846. If a person wishes to have a dealing with a foreign bank in respect of a pronote which has no value and has been given as a matter of courtesy, he can accept for himself the less amount, which the bank gives him, on the ground of its being of unknown ownership or with the permission of the religious Head. And when the bank realizes in lieu of it the entire amount from the person who has given the pronote on the request of the person taking the pronote or as usual, because its return is on his request, he (the person taking the pronote) becomes responsible for paying the amount to the person giving the pronote and this does not become the cause of assuming the form of usury for those two. And if that person wishes to deal with a national bank there are certain ways of escaping usury two of which will be

mentioned in Article **2849**.

2847. The promissory notes which are sold to banks and to some one else are usually sold on cash payment and they should be sold on cash payment because if they are sold on credit on promise it will amount to transaction of debt against debt and it is difficult that such a transaction should be in order.

2848. Government has enacted a law regarding the pronotes which are sold. According to that law if a person giving a pronote does not make payment at the end of the fixed period the bank or any other person who has bought the pronote is entitled to approach the seller (i.e. the person who has obtained the pronote from one person and sold it to another) or the person who has signed the pronote and demand the full amount of the pronote from them and to return the pronote in lieu of the amount entered in it (without making any reduction in it).

And the seller of the pronote or those who have signed it are also under obligation that in case of demand by the bank or by any other buyer they should pay the amount. And all or most of the persons who give pronotes or sign them are aware of this obligation and purchase and sale of pronotes and action thereon takes place according to this very condition (which is called the 'implicit' condition).

Hence, in the case of those person who are aware of this condition being necessary, it is implicit in the pronotes on which action is taken in accordance with it, and it is necessary to observe it. And this condition is like the registration of transactions of immovable property effective if it is not registered with the registrar. All persons are therefore, bound to get it registered and none can decline to secure registration, because this condition is the very basis of the transaction being effective. And as has been mentioned already such conditions on the basis of which action is taken are called 'implicit' conditions.

2849. It is customary with the banks that they do not purchase a pronote bearing one signature. However, (here are certain persons who also deal in pronotes bearing one signature. And as these persons usually give the price and purchase the pronotes and mostly it is by way of debt and in the case of debt charging more is usury; hence the said transactions are unlawful and whatever is taken in excess is interest. However, if they wish that their transactions should be valid and whatever they take in excess should not be interest there are certain ways of it and two of such ways which are easier than others are mentioned below:

(i) Whatever price the person concerned pays should not be paid by the name of giving or taking 'debt' but should be transferred by the name of business 'transaction'. For example. he may sell 100,000 Iranian rials for 500 Iraqi dinars on the promise for a fixed period.

(ii) A person may sell a match box or a handkerchief or something else for 10,000 rials on the condition that he may give the buyer 100,000 rials as loan for a specified period say for one year, without interest. Or that a person may have taken loan and the due date of its repayment may have expired and he may be desirous of an extension of time and the creditor may sell a match box to the debtor for 1000 rials on the condition that he will defer repayment of his loan for one month without charging any interest.

And the adoption of these methods for renewal and extension of time is for the reason that it is not permissible that the creditor may demand from the debtor something at the very outset for the renewal or extension of the period of repayment. And if it is thought that this is only a sham device, because none will purchase for 1000 rials a match box which costs only one rial it may be said that this thinking is unjustified because none enters into such a transaction without cause.

However, when a loan of 100,000 rials without interest for a period of one year is attached to it everybody will be prepared to buy (a match box for 1000 rials). A number of narrations on this subject have been quoted in the chapters of the book 'Wassail-us-Shi'ah' containing orders on Contracts' and in order to dispel any doubt we quote one of them hereunder:

The late Sheikh Tusi has quoted with authentic authority from Muhammad bin Ishaq bin Ammar, a reliable narrator, who has been reported to have said: "I said to Imam Musa Kazim son of Imam Jafar Sadiq (P): A person owes me some dirhams. He has requested me to allow him extension of time and is prepared to give me a profit. I intend selling to him for 10,000 dirhams my cloak which is worth 1000 dirhams and also allow him to defer repayment of my dues. The Holy Imam said: "There is no harm in it.

Orders Regarding Key Money

Out of the common transactions one is that of 'Key money', which creates confusion and needs to be explained. Basically key money which is connected with places of business is taken because the rent of the place of business increases day after day, but the lessor cannot eject the lessee from that place, nor can he increase the rent. And sometimes it so happens that a shop or a place of business remains in the possession of a tenant for years on the same initial rent and not even a dollar is added to it because the lessor can neither eject the tenant nor can he increase the rent, although similar places are leased out on rent which is many times as much as paid for that place.

2850. Such places of business are of three kinds. In one kind of these places it is unlawful to do business or to take key money without the permission and agreement of the owner. As regards the other two kinds it is permissible to take key money for the same and the criterion of its being permissible or otherwise is that when the lessor has the right to get the premises vacated and to increase the rent, but the tenant, relying on force, neither increases the rent nor vacates the premises, it is not permissible to take key money for those premises and it is unlawful to work in them without the permission of the owner.

And in all those cases in which the owner of the property does not enjoy the right of increasing the rent or getting the premises vacated and the tenant is entitled to vacate the premises for some one else it is lawful to take key money and to work in those premises without the agreement of the owner. In the succeeding articles distinct examples of the three kinds will be given to make the matter clear.

2851. If a property was leased out at a time when there was no question of key money, and the owner

was entitled to get the premises vacated on the expiry of the period of lease, or to increase the rent, and it was also necessary for the tenant to vacate the premises or to pay higher rent, and there was no condition of increase in the period of lease, and later the government enacted a law in accordance with which the owner lost the right of increasing the rent or ejecting the tenant, and in case the tenant, relying on that law, does not vacate the premises and does not also increase the rent, when similar places have been leased out after the promulgation of that law on rent many times more than that paid for the building in question, which may have occasioned the taking of key money, it is not permissible for the tenant to take key money and it is also unlawful for him to remain in occupation of the premises without the sanction of the owner.

2852. Suppose some persons are constructing a shop and are spending money on it, and the rent of the shop is, for example. \$ 10,000 per month, but being in need of money they lease it out voluntarily for one year on a monthly rent of \$ 1000 and besides this on \$ 500.000 in cash, and stipulate in this behalf that so long as the tenant remains at that place the lease will be renewed every year for a monthly rent of \$ 1000, and the owners will not be entitled to increase the rent, and in case the tenant so desires he will transfer the premises taken on lease to another person, and the owners will charge the same rent from that person as they have been charging from the first tenant i.e. they will not increase the rent and the lease deed stipulating rent of \$ 1000 will be renewed year to year.

In this condition the tenant is entitled to transfer that place to someone else and he may charge from the person to whom he hands it over, key money equal to or more or less than that which he has paid himself. The owners have no right to object to it because according to the conditions settled by them he is entitled to take key money and to transfer the premises to another person, and the key money taken by him is lawful.

2853. Suppose some persons construct a shop and spend money on it and lease it out at the usual rate and do not also take key money, but stipulate in the lease deed that so long as the tenant stays there they (i.e. the owners of the shop) will not have the right to get the shop vacated and they will renew the agreement from year to year, and if the rent of the premises increases with the passage of time, the tenant will not be entitled to transfer it to some other person, and the lessor will not be obliged to agree to its transfer to someone else.

Now, a third person appears in the capacity of a buyer and allures the lessee and says to him: "If you vacate these premises I shall pay you \$ 100,000." He then goes to the owner and makes him agree to lease out the premises to him on payment of some money. He then pays \$ 100.000 to the first lessee and gets the premises vacated and then pays to the owner the promised amount and obtains the lease from him.

In these circumstances it is lawful for the first lessee to take \$ 100.000, because he has not taken anything for the transfer of the premises to which he was not entitled. On the other hand he has taken money for vacating the premises which he was entitled not to vacate, and the buyer has taken

possession of the premises by means of a lease granted by the owner of the premises.

In this case it should be noted that key money has been taken for vacating the premises and its lease has been granted by the owner, (and so it is lawful).

2854. If a person takes certain premises on lease and stipulates with the owner that he (the owner) will not be entitled to eject him, and to get the premises vacated, but will realize rent from the tenant at the usual rate every month or every year, and also stipulates that the tenant will be entitled to transfer the right of his stay at that place to some other person, the tenant can sell the key money to someone else i.e. he can take money from some person and transfer his own right to him.

2855. Insurance means that a person may give to another person or company a fixed amount every year, without claiming any return for it, but it may be stipulated that if, for example, his person, shop, motor car or house sustains any harm, the other person or company would compensate him for the loss incurred, or remove the harm, or arrange for his medical treatment, such a transaction amounts to a compensatory gift for which compensation has been paid and, if the body or property of that person meets harm, it is necessary for the other party to meet his obligations in accordance with the agreement and there is no harm in receiving money by him on this account.

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