Ash-Shuf ‘ah

Ash-Shuf ‘ah (Preemption)

Its Definition

Ash-Shuf ‘ah refers to a business partner taking the share of his counterpart that he has sold to another for the same price (i.e. preemption).

Its Regulations

1. It is confirmed act in the Shari’ah. Preemption is a confirmed legal transaction as the Messenger of Allah (saw) ruled according to it. It was reported in the Sahih on the authority of Jabir bin ‘Abdullah, may Allah be pleased with him, who said, “The Messenger of Allah (saw) ruled according to Ash-Shuf ‘ah (preemption) in everything that was divisible. But if the boundaries were fixed and the roads were designated, there is no Shuf ‘ah (preemption).”
   (Al-Bukhari and Muslim)

2. Preemption is not valid except in divisible things. If it is not divisible, such as bathrooms and narrow floor (of a building), then there is no preemption. This is due to the statement of the Messenger of Allah (saw): Ash-Shuf ‘ah (preemption) is valid in things that are divisible.

3. Preemption is not valid in divisible things, whose boundaries are fixed and whose roads have been designated. The Messenger of Allah (saw) said: If the boundaries are fixed and roads are designated, then there is no Shuf ‘ah (preemption).
   This is also the case, because after the division (of boundaries and roads) the partner becomes a neighbor, and there is no preemption for the neighbor according to the correct opinion.

4. There is no right of preemption on moveable possessions, such as garments, animals, etc. Rather, preemption is allowed on immovable properties of a land and the amenities therein, like buildings and landscaping. This is because there is no conceivable harm in the cases of things other than land and what is connected to it, so the right of preemption is not applicable.

5. The right of preemption will be lost by his (the partner’s) presence at the deal, or his knowledge of the deal if he did not demand the right of preemption until expiration of such period. This is based upon the Hadith:
   “The right of preemption is only for he who claims promptly.”
   (‘Abdur-Razzaq recorded it as a statement of Shurayh only.)

   And the Hadith:
   “The right of preemption is like untying a fetter (of a camel).”
   (Ibn Majah and it contains weakness)
   Except in the case of his absence, in which case he has right to demand the preemption even if his absence took many years.

6. The right of preemption will be lost if the buyer grants what he bought as an endowment or gives it as a gift or in charity. This is because approving the right of preemption in this case means the nullification of these acts of drawing nearer to Allah. Supporting righteous deeds is
better than approving the right of preemption, since the latter is meant only to remove speculative harms.

7. The buyer has the right for yield and development of it. Therefore, if he erects a building, or plants, the preemptor may own it for its value or he can remove it by paying a fine, for its damage. This is because it is neither harmful to oneself nor others.

8. The preemption must be agreed to with the buyer. While the purchase must be agreed to by the seller. Therefore, the preemptor will make a demand to the buyer, while the buyer refers to the seller concerning every matter or dispute raised on the properties that are liable to preemption.

9. The right of preemption cannot be sold or given as a gift, because selling or giving it as a gift is contrary to the very purpose for which the right of preemption has been made legal. The main object of the right of preemption is to lift the harm that is caused to the partner.