

Medieval Usury and the Commercialization of Feudal Bonds

By

Shael Herman



Duncker & Humblot · Berlin

Table of Contents

I. Introduction	13
II. The Church, Contrary to Its Roman Law Heritage, Condemns Lending at Interest	19
a) Roman Law as <i>Damnosa Hereditas</i>	19
b) The Church Rejects the Roman Practice of Lending at Interest	19
III. Theological Foundations of the Usury Ban and Its Evasions	23
IV. Commercialization of Feudal Bonds	25
a) Overview	25
b) Norman Financing Practices During the Tenth through Thirteenth Centuries	26
c) Landed Revenues as Natural Camouflage for Interest	28
d) Rents: A Natural Outgrowth of the Personal Bond of Lord and Vassal	29
e) Two Forms of Tenement Transfers: Subinfeudation and Substitution	30
aa) Substitution	30
bb) Subinfeudation	30
f) Commutation of Services: A Sign of Commercialization of Feudal Bonds	32
g) More Evidence of Commercialization of Feudal Bonds: Subinfeudation <i>ut de vadio</i>	33
h) The Nontenurial Rent: Both Euphemism and Convenient Disguise for Usury	34
i) Blurring Lease and Loan	34
j) Distraint: Compulsory Rendition of Rent Payments and Services	36
k) The “Thinglikeness” of Rents	38
V. French Experience with Gages, Subinfeudations, and Rents	40
a) Commercialization of Feudal Bonds in Medieval France	40
b) French Financing Practices	42
c) Waning Obstacles to Liquidating a Fee on Default	43
d) Jewish Lenders in France	45

VI. Recapitulation	47
VII. English Experience with Usurious Lending and Its Evasions	48
a) Jewish Lenders in England	48
b) Subinfeudations and the Locus of Creditor Leverage	50
c) Subinfeudations <i>ut de feodo</i>	50
d) Subinfeudations <i>ut de feodo</i> and <i>ut de vadio</i> Contrasted	51
e) Subinfeudations <i>ut de vadio</i> as Investment	53
f) Jewish Holdings by Subinfeudation	53
g) Christian Holdings by Subinfeudation	54
h) Royal Statutes Aimed at Investors in Encumbered Estates	54
i) Statutes of 1269 and 1271 Divest Jews of Encumbered Estates	55
j) Quia Emptores (1290)	56
k) Milsom's Observations on Quia Emptores	57
l) Mortmain Statute [<i>De Viris Religiosis</i>] (1279)	59
m) Specific Instances of Subinfeudations <i>ut de vadio</i>	63
n) Westminster II: Elegit	65
VIII. Assize of the Jews (<i>Assisam Judaismi</i>)	68
IX. Conclusion	76
Appendix A: Charters of William de Valence made in Favour of Nicholas Fitzmartin Touching 50 Marks of Yearly Fee-Rent	78
Appendix B: Analysis of Charters	82
Endnotes	86
Bibliography	123
Index	131