



# How to get rid of a Contract —by Tax Evasion

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**Y**OU HAVE SIGNED—in a moment of weakness—a contract that turned out to be rather troublesome. Now you want to get rid of that burden. But your lawyer says that the contract is valid, foolproof, unequivocal and that there are no loopholes . . . So you are in a fix, to be sure. But ask your tax-adviser! He will help you. There is a clause in the contract with the help of which income tax could be evaded. This clause will enable you to find a way out.

This valuable lesson was given in a judgment of the Israel Supreme Court on October 30, 1968, in the case of Sivan vs. Reisman. It could have been the decision of any supreme court, of France, of the U.S.A., of Japan, or wherever you like, for contracts are contracts and income tax is income tax, the world over.

Sivan, an employer, and Reisman, an employee, signed an agreement whereby Sivan would employ Reisman on trial for six months at a salary of I£ 650 net, plus I£ 150 expenses. Reisman worked for only two months and was then dismissed by Sivan. He thereupon sued his employer for compensation and was awarded two months' salary, that is I£ 1300, by the Haifa District Court. Sivan contended that the agreement was null and void because its aim was to evade income tax, but the Court dismissed this on the grounds that Reisman had not been aware of its illegality.

Sivan lodged an appeal to the Supreme Court, which allowed the appeal. The Supreme Court said: "The rule is that it is completely irrelevant whether a party to an illegal agreement is aware of its illegality, the very illegality of the agreement being sufficient to make it null and void."

As to Reisman's argument that the parties had not been in *pari delicto* and that, therefore, his claim for salary should not be disqualified, the Court said that it could not be accepted for two reasons:

"First, the fault of both parties is said to be unequal when one party sins and the other is innocent, not when the fault of one party is *less* than the fault of the other. In the case under consideration, the employee had also been an offender, even if a lesser one, as he had abetted Sivan in his desire to evade paying the income tax on his salary.

"Secondly, the distinction between the 'sinning' party and the 'innocent' party is expressed in the fact that the sinning party cannot rely on the illegal contract in order to have its terms enforced, nor on the illegality of the contract in order to have it invalidated, whereas

the innocent party can rely on the illegality of the contract in order to have it invalidated. Neither of the parties, however, whether at fault or innocent, can rely on an illegal contract as a cause of action for its enforcement."

See what I mean? By his "sin" against the income tax office, Sivan got rid of the unpleasant agreement and of the unwelcome employee!

Let us look at the matter from a wider angle. The community needs money, so you have to contribute your fair share. The size of your share might be the subject matter of your dispute with the community, but you should not be entitled to use, abuse or misuse your obligation to pay taxes in order to achieve this or that business purpose. But if you do so—if you apply the fine points of the law in your favour—who is to blame, you or the income tax law?

Certainly the law is to blame; but it is not any particular poorly-worded section of the law, it is the income tax law *as such* that is to blame. A good tax law does not enable the taxpayer to play such tricks on a contracting party. The income tax law does enable him to do so, and therefore it is a bad law.

Now you might say that this applies to all and any tax law. In fact, all known taxes and rates, duties and fees lend themselves to such malpractices. (All except two taxes which we shall discuss later on.)

If Mr. Sivan were an importer and Mr. Reisman an exporter, the same thing could happen in respect of customs-duty. If they were manufacturer and wholesalers, respectively, it could happen with regard to purchase tax; and so with land transfer fees, land increment duty and so on.

If you are inclined to disregard such, allegedly, rare instances of civil cases involving tax evasion, look at tax evasion itself! You are free and entitled to avoid income tax by any lawful means, and if your act amounts to tax evasion, not simply tax avoidance, you have a more than fair chance to go scot-free because it is often exceedingly difficult to distinguish between them.

Lord Justice Green has said that everybody is free to choose the best way of running his business so as not to attract income tax, and the same applies to customs duty. There was the famous case of the chocolate bunnies. A British manufacturer produced them, put red ribbons around their necks, and sent them to the U.S.A. During a whole decade the importer was not

ordered to pay customs duty on the bunnies. But then an over-zealous official discovered that they were not chocolate pure and simple, but works of art, because of the said red ribbons, and works of art were liable to duty. But both the importer and the manufacturer outwitted him. The bunnies were returned to England. There they were stripped of their ribbons. Then the bunnies were sent stark naked to the U.S.A., and the ribbons were sent by separate mail. Both parcels passed the customs without any duty being imposed. The importer simply put the ribbons back again on the naked bunnies and made a handsome profit.

The real structural flaw in all these tax laws is the fact that the tax is raised on a certain "occasion." In the case of income tax, the "occasion" is your making a profit, your getting paid for work, your receiving dividends or interest. In the case of customs duty the occasion is your bringing certain articles into the country. With other taxes, the occasion is your selling or buying a thing, your building a house, your letting a flat, etc.

Now it is the very nature of an occasion that you are free to avoid it. Bunnies with ribbons represent the occasion? Very well, you will send bunnies without ribbons, and ribbons without bunnies. The sale of land is the occasion to pay land increment duty? Then you avoid it by giving the land on lease for 999 years. And if letting land is declared to be an "occasion," you will simply permit use of the land in consideration of the lessee's handing over to you 500 cows, etc. There is no need to mention the countless ways of avoiding the "occasion" of income tax such as by using expense accounts and the like. Everybody knows them.

Taxes built on "occasions" have no "announcement value" or, at best, a rather low one. This means that you are free to give the occasion or not to give it. Consequently, nobody, neither the official nor the taxpayer, obtains from the law a clear announcement in advance as to how much ought to be paid, and whether it should be paid at all.

A responsible statesman ought to discover taxes the incidence of which cannot be altered by the taxpayer's acts or omissions, i.e., taxes not built on "occasions." Such taxes have a high announcement value.

Land-value taxation has the highest possible announcement value. Its distribution value is exceedingly high because it is proportionate to "benefit received." Land value rises precisely in the same manner as the level of production, the execution of useful public works, the improvement of communications, the concentrations of working people in a given area. Whoever enjoys this land value (or its equivalent in money), ought to pay a corresponding portion of the public burden. This is the only just and fair distribution of that burden. "Ability to pay" is not the answer because a tax on ability reduces the effective ability and

energy of the taxpayer, which a good statesman does not want to do.

The announcement value of the land-value tax is one hundred per cent. Nobody can alter the value of the land he owns by any means whatever. There is no "occasion" at all. If the annual value of your land is £X you have to pay, under this system, a predetermined percentage of this value, and it makes no difference whether or not you build on the land, mortgage it, or do nothing at all with it, the law says that you have to pay x per cent of the value, so there is a *clear and unequivocal announcement*. And even a poet could not imagine Mr. Sivan using a tax on land values as a way of getting rid of Mr. Reisman!



## Feudalism Ancient and Modern

NICHOLAS BILITCH

THROUGHOUT Asia and Latin America, revolt, rebellion and revolution are commonplace, and in some of the countries of these two continents a landless peasantry is in virtual political control. Contrary to Marxist prophecy, it is the rural areas where Marxist ideas have taken root, Russia and China being the classic cases. The distinction between agricultural and industrial lands is, in economic and social terms, invalid, and the pursuit of bogus arguments which embody such a distinction leads to the promulgation of policies which never get to the root of the problem.

Land reformers have no need of recourse to theory in pressing their case. The voluminous evidence from visitors to Latin America and Asia confirming the existence of large-scale land ownership with crushing poverty of the landless is in itself sufficient argument for restoring the land back to the people. The same basic situation occurs also in the U.S.A., where we may observe the growing poverty and despair of the urban poor, who have to contend with the effects of rising land values, increasing prices, low wages and inflation, much of the latter often due to the enormous government expenditure involved in "poverty programmes" ostensibly designed to alleviate the plight of the negro and America's other poor.

The latest (and one of the best) contributions to the land question is a book of some 457 pages by Doreen Warriner\*. The author has been studying land reform for at least twenty-five years and knows her subject, having visited Iraq, Iran, India, Brazil, Chile, Venezuela, Egypt and other countries, to study land tenure systems

\**Land Reform in Principle and Practice* by Doreen Warriner, Oxford University Press, 63s.