Abstract: This article describes how Islamic and Frankish legal devices complemented each other and were even combined to settle disagreements in the late medieval Middle East. For this purpose, it focuses on two legal institutions that provided responses to the biases of Islamic law against non-Muslims and to the prejudices of Franks against the local law. The first are the notaries sent to the Mamluk cities by the Venetian government to draw up legal documents and to support the transactions of Venetian merchants. The second are the new royal or *siyāsa* courts implemented by the sultans, where justice was dispensed by government officials instead of by traditional judges, or *qāḍīs*. Specifically, the article discusses, in a comparative manner, what constituted proof for Christians and Muslims, whether minorities could bear testimony or not, and how notaries and judges dealt with unbelievers. A common notarial culture, together with the expansion of *siyāsa* jurisdiction over the affairs of foreigners, brought about a much deeper legal interplay than has previously been understood. Ultimately, it is argued that Mediterranean medieval societies had evolving attitudes toward justice and diversity, and approached their own legal traditions in ways compatible with the conflict resolution, while constantly borrowing legal concepts about difference from each other.

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Mahzar-namas in the Mughal and British Empires: The Uses of an Indo-Islamic Legal Form

NANDINI CHATTERJEE

University of Exeter

INTRODUCTION

In the year 1684, the Mughal emperor Aurangzeb 'Alamgir[1] was reigning in Shahjahanabad (Delhi) but engaged in what turned out to be an endless war with the rebel Marathas in western India.[2] That same year, Purshottam Das, a petty landlord in central India (province Malwa, district Dhar) recorded his family's history and rights in a type of document called *mahzar-nama*. The headmanship (*chaudhurai*) and the police station (*chabutra-i kotwali*) of Dhar had been in the family, he said, since the time of his grandfather, Jayant Das. Jayant Das's son, Mohan Das was a valiant man who had protected the district and the crucial highway that passed through it from the depredations of a neighboring landlord. As a reward, Mohan Das gained the office of district *chaudhuri* for his lifetime and obtained confirmatory documents (*sanads*) to

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[1] Regarding transliteration, for Persian and Arabic words, I have used a system based on a modification of F. J. Steingass, *A Comprehensive Persian-English Dictionary* (London: Routledge & Kegan Paul, 1892). I have avoided the use of diacritics except for the *'ain*. I have therefore not indicated the length of vowels, nor used the *hamza* to indicate consecutive distinctly pronounced vowels. In case of Arabic words commonly in use in Persian and Hindi/Urdu (such as *qazi*), my transliteration reflects the South Asian pronunciation pattern. I have indicated the possessive *izafa* with *-i* and with *-yi* where it follows a vowel ending. With certain very well-known names, such as Abul Fazl, I have side-stepped accurate transcription in favor of the most widely used orthography in English. When quoting from others' works or reproducing book titles, I have reproduced the transliteration system in the quotes. I use the English plural signifier *s* to pluralize Arabic, Persian, and Hindi/Urdu words.

[2] The Mughals (a Persian mis-appellation of "Mongol") were a Turko-Mongol dynasty of Central Asian origin that established its rule in north India in 1526. Mughal power declined rapidly after the sixth emperor Aurangzeb's death in 1707, although officially they remained sovereigns of India until 1857. For an introduction, see J. F. Richards, *The Mughal Empire* (Cambridge: Cambridge University Press, 1993). For a history of the Marathas, see Stewart Gordon, *The Marathas* (Cambridge: Cambridge University Press, 1993).

من الصلاة:

١ ـ في بحث القراءة حيث يبحث عن حكم الركعة الثالثة والرابعة، وما يجب فيها من القراءة أو التسبيح.

٢ ـ في بحث الركوع والسجود، حيث يبحث فيهما عمّا يجب فيه من الذكر.

٣ ـ في مبحث التعقيب، حيث يبحث فيه عمّا يستحبّ التعقيب به في الصلاة، ومنها تسبيح فاطمة الزهراء عليها السلام ويبحث عنه في مواطن متفرّقة أُخر.

تسبيل

راجع: وقف.

تستّر

راجع: استتار.

تسجية

راجع: دفن.

تسجيل

لغـــة:

التدوين في السجِلّ، وهو الكتاب الذي يدوّن فيه مايراد حفظه من الضياع[١].

وقيل: هو الصكّ ـ معرّب چك ـ الذي يكتب للعهدة[٢].

والظاهر أنّه أكثر مايطلق علىٰ السجلّات ـ أي الدواوين ـ الرسميّة، ولذلك قيل: السِجِلّ: كتاب القاضي... وسَجّل القاضي: أثبت حكمه في السِجِلّ"[٣].

اصطلاحاً:

لم يتعدّ المعنىٰ المتقدّم، ففي الدروس[٤] وقضاء الشيخ الأنصاري[٥]: السجلّات: نُسَخ ماحكم به القاضي.

وفي الجواهر: التسجيل: «إنفاذ الأحكام»[٦].

الأحكام:

التسجيل طريقة عقلائيّة لتوثيق العقود والإيقاعات والديون، والأحكام الصادرة من القضاة. وقد أقرّه الشارع فأمر به في قوله تعالىٰ:

---

(١) أُنظر المعجم الوسيط: «سجل».

(٢) أُنظر لسان العرب: «صك».

(٣) أُنظر المصباح المنير: «سجل».

(٤) أُنظر الدروس ٢: ٧١.

(٥) أُنظر كتاب القضاء (للشيخ الأنصاري): ٨١.

(٦) الجواهر ١٤: ١١٥.

182012 DİA

ŞÜRÛT ve SİCİLLÂT

Gune, V. T.
A critical analysis of mahzars (A. D. 1400-1800) .-- 1947 : Bulletin of the Deccan College Research Institute, vol. 8 pp. 260-379, (1947)

Şûrâ ve Sicillat
182012

THE ANCIENT Sijill OF QAYRAWAN

The publication by Ibrāhīm Shabbūḥ of the ancient list of books preserved in the Qayrawān Mosque brought to light not only the titles of these books but the terminology used for their description.1 Behind this terminology is hidden an interesting picture of book production of that day. The Sijill gives us a good insight into many aspects of early practices in the making of manuscript codices.

Although copied in Jumādā al-ūlá 693 A.H./1294 A.D., the list is based on the exemplar going back to at least the period before 295/907 or 908, i.e., the time when the Aghlabids completed the Great Mosque.2 The Sijill is the earliest known catalogue of an Arabic book collection. It contains 125 entries, over 50 percent of which are copies of the Qur'ān. The remainder constitute titles of early books on Tafsir, Hadith, Fiqh and other disciplines. The Qur'ān is referred to as al-Kitāb al-ʿazīz and a complete copy of it is called khatmah (pl. khitam), with the honorific mubārakah. Depending on the size of the hand, manuscripts were transcribed in one or a number of volumes (tajzi'ah, French: tomaison). Thus, for example,"khamsat ajzā' min khatmat Qur'ān tajzi'at sabʿah" (no. 24) refers to five volumes of a set of seven. The word juz' is predominantly used in connection with the Qur'ān. The words sifr (pl. asfār, from the Hebrew sefer), a synonym of juz', and daftar (pl. dafātir, originally meaning a register and later a notebook or booklet) are used for manuscripts other than Qur'āns. Furthermore, sifr seems to be used in the sense of a bound volume (most probably using paste-boards, since the lawḥ, that is a wooden board, is not mentioned), as opposed to daftar, which can be of different thickness but is usually unbound. In two cases (nos. 86 and 105), the daftar is covered with parchment (ʿalayhi raqq, mughshāh bi-al-raqq). The word mujallad (bound) is not used in these two cases and, therefore, one can assume that the parchment covering acted as a limp cover, a kind of wrapper. Most of the dafātir consist of parchment leaves, though paper leaves are also reported (e.g., no. 113). Daftar, as opposed to kurrāsah (quire, gathering), has an independent existence.3

The codices described in the Sijill come in three different formats (qālib, jirm, ṭabaq): small (laṭīf), median (wasaṭ) and large (kabīr). The word ṭabaq (pl. aṭbāq, lit. tray, plate, but also basket) refers to a mold and consequently the size of the original sheet.4 Thus, niṣf al-ṭabaq (one-half of the sheet) would mean a format obtained by folding the original sheet once (giving two leaves) and rubʿ al-ṭabaq (one-quarter of the sheet) by folding it twice (giving four leaves). Al-ṭabaq, also mentioned as al-ṭabaq al-kabīrah (!) (no. 3), niṣf al-ṭabaq and rubʿ al-ṭabaq indicate large, median and small formats.5

The codices are composed of gatherings (kurrās, kurrāsah, pl. karārīs). Each quire has a number of folios (leaves) referred to as waraq, waraqah (pl. awrāq). Each folio consists of two pages

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CONTRACT STIPULATIONS (*SHURŪṬ*) IN ISLAMIC LAW

The Ottoman Majalla and Ibn Taymiyya

Oussama Arabi

Source: *International Journal of Middle East Studies*, 30:1 (1998), 29–50.

> The addition of stipulations to the sale contract is inadmissible for the Hanafis. . . . Since in our times sales do not conform to [this] ruling . . . , it is incumbent to adopt the position of the Hanbalis.
>
> (Explanatory Memorandum of Majalla Amendment of *Shurūṭ* Provisions, 1922)

With the generalization of production for exchange in modern times and the corresponding expansion of monetary and commercial transactions, the issue of contractual freedom has become a major concern for Muslim jurists and legislators, instigating a reconsideration of the classical doctrines of Islamic law on the subject. Due partly to its religious character and partly to the historical circumstances presiding over its formation in the first three centuries of the Hijra, Islamic law does not permit freedom of contract. Broadly speaking, three kinds of considerations intervene to restrict freedom of contract in classical fiqh: (a) those arising from the prohibition of usury (*ribā*); (b) those delimiting the licit object of legal obligation (*maḥall al-ʿaqd*); and (c) those concerning the stipulations attached to the contract (*shurūṭ*). In the present article, I investigate the third category of restrictions and touch on usury and the licit object of obligation insofar as the latter affect *shurūṭ* (sing., *sharṭ*), namely the conditions attached to a contract.[1]

In particular, I will examine the vicissitudes of the *shurūṭ* doctrine in the Ottoman Majalla[2] and the conceptual itinerary of that doctrine at the hands of the classical Hanafi and Hanbali legists, an itinerary that the Ottoman legislators were to re-travel by their amendment of the original Majalla

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JUAN PEDRO MONFERRER-SALA

Archives and Chanceries: Arab World

Archives and chanceries existed at various courts in the **Arab world** at various times and are documented as early as the Umayyad era. This article discusses the history of archival holdings in the Arab world, with a focus on state-related documents written in Arabic.

There is ample evidence from a wide range of sources that written documentation of not only matters of state but also business, institutional, and personal affairs, was a common practice in the Arab world, continuing pre-Islamic precedents and transforming them. There is also enough evidence from manuals for professional scribes *(inshāʾ, shurūṭ)* and historical and literary sources to leave no doubt as to the existence of court chanceries dating from at least Umayyad times, that is, mid-first/seventh century. These sources also hint at special repositories for storing papyrus rolls and other documents.

However, our knowledge of the actual practice of creating and keeping records in these early times is incomplete, as only few examples of such records have come down to the present. What has survived consists mainly of letters, business correspondence, contracts, and other court documents. The fact that these have endured is a windfall attributable to particular circumstances, as, for instance, in the case of the rich collections of Egyptian papyri; the archives of important monasteries such as St Catherine, in the Sinai, and the Franciscan Custodia Terrae Sanctae, in Jerusalem; the famous Geniza papers in Cairo; and the Ḥaram documents of Jerusalem. In recent years, other randomly transmitted troves of documents have shed new light on such disparate locations and times as ʿAbbāsid Khurāsān, Naṣrid Granada, and the small Red Sea port city of Quṣayr under the Mamlūks.

The lack of documentary evidence, in particular if compared to European or Chinese holdings, has sometimes been explained by the persistence of an oral culture, which also found expression in Islamic legal theory and its preference for oral testimony. However, it is probably more likely a question of institutionalisation rather than cultural practice that accounts for the relative paucity of documentary evidence, as what was lacking were long-lasting repositories and a bureaucracy with a vested interest in preserving their collections.

This situation changed during the early modern period. The longevity of Ottoman

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ŞÜRÛT ve SİCİLLÂT

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sicil (السجل)

953 AH. VII

El-Mufassal- VIII, 285 v.d.

Şürut ve Sicillat

sicil

FIKH

BU ŞURUT ve SICILLAT

_Siciller ve eski vakıf kayıtlarıyla

amel

İbn Abidin C. V s. 369

ÜNAL, Halit (Yrd. Doç. Dr.), "Şürut Sukûk İslam Hukukunda Belge Tanzimi", **Diyanet Dergisi**, C. XXII, Sayı : 3, (1986), 24 - 31.

30 NISAN 1993

ŞÜRUT ve sicillat

Fıkıh

- surat akdi
- surûtiley

ŞÜRUT (NOTERLIK) ve Sicillat

Fıkıh

مجلة الفقه المالكي

٢٧٠

التراتيب الادارية

الكتاني

٢٧٩ / ١١

918

1021

81 — İslâm hukukunda mahkeme sicilleri ve ispat gücü(*)

Resul TOSUN

182012 - Şürut ve Sicillat

Tez Yön. : Doç. Dr Fahrettin ATAR

Kabul tarihi : 1.7.1986

Yazının tarihçesi ve islâm hukukundaki yerine kısaca değinildikten sonra mahkemelerce düzenlenen belgeler tek tek ele alınarak belgelerin düzenlenmesi, muhafazası, devir-teslimi ve ispat gücü, yer yer bugünkü mahkemelerin düzenledikleri belgelerle karşılaştırılarak incelenmiştir.

19 NISAN 1993

الفقع في علم الشروط

Demirbaş nr. 31380

Marmara Üniversitesi 1982-1986 Tez Özetleri

Har. Nuvâlâ Zeren, s. 179, 1987-İstanbul

Yüksek Lisans Tezi

دراسات في

تاريخ ومؤرخي مصر والشام

إبان العصر العثماني

تأليف

دكتورة ليلى عبد اللطيف أحمد

مدرس التاريخ الحديث
بكلية الدراسات الانسانية ـ جامعة الأزهر
« فرع البنات »

١٩٨٠

الناشر
مكتبة الخانجي بمصر

سجلات الروزنامة وخط القيرمه(*)

نشأة ديوان الروزنامة ـ رؤساء الديوان ـ موظفيه أقسام هذا الديوان « الأقلام » ـ السجلات الصادرة عن ديوان الروزنامة ـ مفهوم خط القيرمة تاريخ ظهوره في مصر ـ طريقة حل رموزه نماذج من خط القيرمة في الأسماء والأرقام

امتاز الحكم العثماني في مصر وفي غيرها من البلاد العربية ، بالدقة وتسجيل كل صغيرة وكبيرة ، من شئون الحكم والادارة ، ولما كانت أهم شئون الحكم في ذلك العهد هي المتعلقة بالايرادات والمصروفات الخاصة بولاية مصر فقد أظهر العثمانيون اهتماما خاصا ، بالادارة التي تولت الاشراف على ذلك ، وهي ادارة الروزنامة أو ما عرف بديوان الروزنامة»(١) وقد عرف العثمانيون هذا الديوان كأحد أجهزة النظام المالي في مقر السلطنة نفسها فنقلوه الى مصر بعد الفتح عندما استقرت الأمور فيها على عهد السلطان سليمان المشرع (١٥٢٠ ـ ١٥٦٦ م) بعد اعلانه لقانون نامة مصر ١٥٢٥ م ، الذي نظم شئون الادارة والحكم فيها .

واختص ديوان الروزنامة ، بجمع الأموال الاميرية ايرادات مصر من ضرائب الارض والجمارك والمناصب ، والاشراف على مصروفات مصر

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* قدمت هذا البحث في الاسبوع العلمي الثاني لسمنار الدراسات العليا للتاريخ الحديث بجامعة عين شمس المنعقد في الفترة من ٧ الى ١٢ مايو سنة ١٩٧٧ ولظروف خاصة لم أستطع القاءه في الندوة فاكتفيت بنشره هنا .

(١) روزنامة : ـ كلمة فارسية من شقين « روز » وتعني النهار أو اليومية ، نامة بمعنى دفتر الحوادث ، فروزنامة تعني دفتر الحوادث اليومية أو الحساب اليومي ثم أصبح معناها المكتب أو الديوان الذي يقوم بضبط ، وتحرير الحسابات في الدفاتر اليومية .

أيضا من تلك الايرادات ، وذلك تحت اشراف الديوان الدفتري(٢) .

ويرأس « الروزنامجي » ديوان الروزنامة ، وكان الروزنامجي في بداية العهد العثماني بمصر شخصية عثمانية ، يرسل من استانبول لتلك المهمة وظل الحال كذلك حتى النصف الثاني من القرن السابع عشر ، وكان الروزنامجي في البداية يلي الدفتردار في رئاسة الادارة المالية في مصر ، ولكن بمضي الوقت زادت مسئوليات الادارة المالية في مصر ، لتغير نظام الأرض من « أمانات » بسيطة الى نظام الالتزام المعقد ، وزادت ايرادات الخزينة كما ونوعا ولم يعد الدفتردار الذي اصبح يختار من بين كبار الأمراء المماليك(٣) والذي انصرف الى التنازع على المناصب الهامة ، لم يعد يصلح للادارة الفعلية لمالية مصر لذا عملت الدولة على تنظيم شئون الادارة المالية في مصر فعهدت الى باشا مصر مقصود باشا « ١٠٥٣ هـ ـ ١٦٤٣م» (٤) باعادة تنظيم العلاقة بين ديوان الروزنامة ، والديوان الدفتري، فنقل السلطة الفعلية في ادارة خزينة مصر الى الروزنامجي ، وكان يتمتع بالخبرة الفنية العالية والمستوى المطلوب من الدراية بشئون الماليـة(٥) على العكس من الدفتردار الذي لم يعد أكثر من أمير مملوكي ذو نفوذ سياسي فقط .

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(٢) الديوان الدفتري : ـ هو الديوان الذي اسندت اليه مهمة الاشراف العام على مالية مصر ، وقد اختص بطرح مقاطعات الالتزام الخاصة بالأرض والجمارك ، في المزاد ، ويرأسه الدفتردار يعاونه وكيله « كتخداه » ومجموعة من الموظفين ، وقد كان الدفتردار في بداية العهد العثماني بمصر شخصية عثمانية يختار من بين رجال الخزينة السلطانية في استانبول ، ولكن في القرن السابع عشر سيطر الأمراء المماليك على هذا المنصب وأصبح الدفتردار يختار من بينهم لا لمقدرته الفنية في شئون المالية بل لقوته العسكرية وجاهه ونفوذه .

(٣) عبد الرحمن الجبرتي : عجائب الآثار في التراجم والأخبار طبعة بولاق ١٢٩٧ هـ ج ١ ص ٢٣ ، ٢٤ ، ٥٠

(٤) Hammer, Histoire de L'Empire Ottoman, Paris 1835, T, 6, P. 13

(٥) ليلى عبد اللطيف : الادارة في مصر في العصر العثماني القاهرة ١٩٧٨ ص ٣٠٢ ، ٣٠٣

ACTAS

IV CONGRESSO DE ESTUDOS ÁRABES E ISLÂMICOS

COIMBRA-LISBOA 1 A 8 DE SETEMBRO DE 1968

LEIDEN

E. J. BRILL

1971

WRITTEN DOCUMENTS IN ISLAMIC LAW

JEANETTE WAKIN

Columbia University — New York

It is now well established that Islamic law came into being as an idealistic system, independent of current legal practice, and sometimes even opposed to it. But often the realities of everyday life did not permit conformity to strict religious standards, and thus many institutions and practices, not recognized by legal theory, continued to flourish. This was particularly true in commercial law, where the demands of an increasingly urban and complex society placed a considerable strain on doctrine (1).

One of the institutions that legal theory ignored or discouraged was the practice of using written contracts for private legal transactions. As early as the first century, the rule came into being that the evidence of a written document was not acceptable as proof (2). In the Sharī'a, therefore, proof was limited to the testimony of witnesses, the personal word of Muslims whose upright character was guaranteed by the court itself. This rule against the validity of the written act not only ignored a practice that had an unbroken tradition since cuneiform times; it also contradicted an explicit ruling of the Qur'ān (Sūra 2:282) that called upon the believers to record certain obligations in writing. Nevertheless, the jurists persisted in their adherence to doctrine, and never really modified their attitude toward written documents. Some limited

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(1) For a comprehensive statement on the relationship between theory and practice, and a summary of his many previous discussions, see J. Schacht, *An Introduction to Islamic Law* (Oxford, 1964), pp. 76-85; bibliography of various aspects of this conflict, pp. 239-244.

(2) The rule is mentioned as early as the first century by John of Damascus; see J. Schacht, *Origins of Muhammadan Jurisprudence* (Oxford, 1950), p. 188. The reasons for the rule have never been satisfactorily explained by the Muslim jurists.

THE ENCYCLOPAEDIA OF ISLAM, (New Edition), Vol. IX, (Fasc. 155-156), LEIDEN 1996, pp.

London 1977; A. Azza, *Mestfa ben Brahim, barde de l'Oranais et chantre des Beni 'Amer*, Algiers 1979. See also AL-SABTĪ.

(H. BENCHENEB, shortened by the Editors)

SIDJDJĪL (A.), one of the mysterious words of the Ḳur'ān, appearing in XI, 84/82; XV, 74; and CV, 4. The derivation in the Arabic sources from Persian *sang* "stone" and *gil* "mud" did not satisfy Horovitz. It seems to designate stones resembling lumps of clay, fired or sun-dried, since this is corroborated by LI, 33-4, "... That we may loose on them stones of clay, marked by your Lord for the prodigal". Some commentators add that these stones had been baked in the fire of Hell, and the expression "marked by your Lord" (XI, 84/82; LI, 34) would mean, so they assert, that the stones were marked with the names of those at whom they were destined.

There exist other interpretations, not unanimously admitted: what has been written or decreed (clearly derived from the term's likeness to *siḏjill* [*q.v.*]; Hell or the lowest Heaven (the word being considered in this case as another form of *siḏjjīn* [*q.v.*]). It has also been associated with adjectives derived from the root *s-ḏj-l*. But a convincing account of the term and its background has now been given by F. Leemhuis in his *Qur'anic* siğğīl *and Aramaic* sgyl, in *JSS*, xxvii (1982), 47-56: that it is in origin a non-Semitic, apparently Sumerian word, appearing in Akkadian as *sikillu* or *shigillu*, denoting a smooth kind of stone, now attested in the Aramaic of Hatra [see AL-ḤAḌR] as *sgyl* or *sgl* (probably for **sigil*) with a specialised meaning of "altar stone" > "altar, sacrarium". From Mesopotamia, it must early have entered the Arabic dialects of adjacent parts of the Syrian Desert, becoming known in Central Arabia by the time of the Prophet with the meaning of "hard, flint-like stone".

Bibliography: See also Lane, *Lexicon*, s.v.; Ṭabarī, *Tafsīr*, Cairo 1328, xii, 57; Suyūṭī, *Itḳān*, Cairo 1318, i, 139; A. Siddiqi, *Studien über die persischen Fremdwörter im klassischen Arabisch*, Göttingen 1919, 73; J. Horovitz, *Koranische Untersuchungen*, Berlin-Leipzig 1926, 11. For the hypothesis according to which the stones mentioned in sūra CV, 4, refer to a smallpox epidemic, see Caetani, *Annali*, i, introd., 147, and Fernandez y Gonzalez, *La aparición de la viruela en Arabia*, in *Revista de ciencias históricas*, v (1887), 201-16. See also A. Jeffery, *The foreign vocabulary of the Qur'ān*, Baroda 1938, 164-5; R. Blachère (tr.), *Le Coran*, Paris 1956, 254; R. Paret, *Der Koran. Kommentar und Konkordanz*, Stuttgart, etc. 1971, 240. (V. VACCA-[ED.])

SIDJDJĪN (A.), one of the mysterious words of the Ḳur'ān, appearing in LXXXIII, 7-9: "Nay, but the book of the libertines is in *siḏjjīn*! And what shall teach you what is *siḏjjīn*? [It is] a book inscribed." The majority of commentators take this as a proper name. The word has attracted a dozen interpretations, which are grouped around two central concepts: (1) *Siḏjjīn* is the seventh and lowest earth, or a rock or well in Hell, or even the home of Iblīs; (2) It is the name of the record in which all human acts are set down. Without the definite article, *siḏjjīn* designates Hell Fire, or again, something painful, violent, hard, durable or eternal. These interpretations are influenced by the term's resemblance to *siḏjjīl* [*q.v.*], associated erroneously with the root *s-ḏj-l*.

Although al-Suyūṭī's *Itḳān* classes it amongst the non-Arabic words, no generally-accepted etymology has been put forward. R. Dvořák, *contra* Jeffery, did not consider it as one of the *Fremdwörter*. The lexicographers, on the other hand, make it a synonym of *siǧn* "prison", which has influenced the most widespread interpretation of the commentators, who see it as the place where the record of the evildoers is kept rather than the record itself. The Ḳur'ān's text admits of both interpretations.

Bibliography: Lane, *Lexicon*, s.v.; Ṭabarī, *Tafsīr*, Cairo 1328, xxx, 60; Suyūṭī, *Itḳān*, Cairo 1318, i, 139; Marracci, *Refutatio Alcorani*, Padua 1698, 787; Nöldeke, *Orientalische Skizzen*, Berlin 1892, 41, Eng. tr. *Sketches from eastern history*, London and Edinburgh 1892, 38; A. Jeffery, *The foreign vocabulary of the Qur'ān*, Baroda 1938, 165; idem, *The Qur'ān as scripture*, New York 1952 (originally in *MW*), 11-12; R. Blachère (tr.), *Le Coran*, Paris 1956, 641-2; R. Paret, *Der Koran. Kommentar und Konkordanz*, Stuttgart, etc. 1971, 504. (V. VACCA-[ED.])

SIDJILL (A.).

1. Ḳur'ānic and early Arabic usage.

Siḏjill is an Arabic word for various types of documents, especially of an official or juridical nature. It has long been recognised (first, it seems, by Fraenkel) that it goes back ultimately to Latin *sigillum*, which in the classical language means "seal" (i.e. both "seal-matrix" and "seal-impression"), but which in Mediaeval Latin is used also for the document to which a seal has been affixed; it was borrowed into Byzantine Greek as σιγίλλ(ι)ον, "seal, treaty, imperial edict", and then, via Aramaic (e.g. Syriac *sygylywn*) into Arabic. It should, however, be noted that in Arabic *siḏjill* never means "seal" (*kẖātam*), but always refers either to a document (*kitāb*) or to a scroll (*ṭūmār*, also a loanword from Greek) on which documents are written. The latter provides the most plausible explanation for the much-debated Ḳur'ānic verse XXI, 104, where God is represented as saying "We shall roll up the sky like the rolling-up of the scroll for the documents" (*ka-ṭayyi 'l-siḏjilli li 'l-kutub*); the other explanations offered by the commentators (*siḏjill* means "man" in Ethiopian, or it is the name of the Prophet's scribe, etc.) have nothing to recommend themselves. There is also a *ḥadīth* according to which, on the Day of Judgement, God will show the Muslim 99 scrolls (*siḏjill*), each one extending as far as the eye can see, on which his sins are registered (see Wensinck's *Concordance*, ii, 431, where *al-ṣabr* is a misprint for *al-baṣar*).

In classical Arabic, *siḏjill* is frequently used for a document containing the judgments of a *ḳāḍī*, and in various other technical senses. Al-Kẖ^{w}ārazmī (*Mafātīḥ al-'ulūm*, 57) says that it designates a credit-note given to official messengers exempting them from the costs of their journey. From the Fāṭimid empire we have the *siḏjillāt Mustanṣiriyya*, the official correspondence of the court of the caliph al-Mustanṣir with the Ṣulayḥids [*q.v.*], vassal rulers of the Yemen.

Bibliography: S. Fraenkel, *Die aramäischen Fremdwörter im Arabischen*, Leiden 1886, 251-2; Th. Nöldeke, *Neue Beiträge zur semitischen Sprachwissenschaft*, Strassburg 1910, 27-8; A. Jeffery, *The foreign vocabulary of the Qur'ān*, Baroda 1938, 163-4; R. Paret, *Der Koran. Kommentar und Konkordanz*, Stuttgart etc. 1971, 346-7. (F.C. DE BLOIS)

2. In Mamlūk usage.

It is evident from Ibn Khaldūn's *Muḳaddima* that during the Mamlūk period the term *siḏjill* (pl. *siḏjillāt*) must have been used for the judicial court registers kept by official witnesses (*'adala*) "which record the rights, possessions, and debts of people and other (legal) transactions." But the term is infrequently encountered with this general meaning in Mamlūk chancery (*inshā'*) and notarial (*shurūṭ*) manuals, which, after all, were designed for the use of professionals.

Masālik al-abṣār sowie al-Muḥibbīs *Taṭqīf at-taʿrīf*[73]. Für die Zeit der Beendigung des Werkes spricht der Umstand, daß in den dem schriftlichen Protokoll gewidmeten Kapiteln Abweichungen verzeichnet werden, zu welchen es erst nach dem Abschluß des *Ṣubḥ* gekommen war. Der Verfasser scheint der Kategorisation eine besondere Aufmerksamkeit geschenkt zu haben[74].

Die osmanische Botmäßigkeit über die arabischen Länder seit dem 10./16. Jh. bedeutete ein Ende der weiteren Entwicklung dieses Zweiges der arabischen Kanzleiliteratur. Das Arabische war nunmehr keine Sprache der zwischenstaatlichen Diplomatie in der Region, es wurde durch das Türkische und das Persische für mehrere Jahrhunderte ausgeschaltet[75].

2.4 Die *šurūṭ*-Handbücher

Neben den Staatskanzleien waren die Gerichtshöfe die zweite Stelle, wo Urkunden und offizielle Briefe verfaßt wurden. Die Personen, die für die Form und den Inhalt dieser Schreiben persönlich verantwortlich zeichneten, waren die Richter oder die öffentlichen Schreiber, die als Notare wirkten.

Es ist gut bekannt, daß, obwohl das islamische Recht gewisse Vorbehalte gegenüber schriftlichen Notierungen von Rechtsgeschäften erhob, die Niederschrift von Rechtsgeschäften in der alltäglichen Praxis unvermeidlich war und unter bestimmten Bedingungen allgemein akzeptiert wurde. Ein Zeugnis – sei es ein mündliches oder ein schriftliches – mußte stets so formuliert werden, daß es jede mögliche Anfechtung des abgeschlossenen Geschäftes oder gefällten Urteils ausschloß. Diesem Zwecke dienten den dafür verantwortlichen Personen spezielle Handbücher, welche sich aus mehr oder weniger vollkommenen Formularen für die Verbriefung von Rechtsfällen in allen möglichen Rechtsbereichen und oft mit Ratschlägen für bestimmte Einzelfälle zusammensetzten. Daneben enthielten solche Bücher oft auch Anweisungen über die guten Sitten der Richter *(adab al-qāḍī)*.

Diese Handbücher stammen oft von hervorragenden Juristen, die das sog. *ʿilm aš-šurūṭ* – die Wissenschaft [von der Abfassung] der Urkunden – beherrschen mußten[76]. Diese Wissenschaft war auf die Unanfechtbarkeit der gerichtlichen Schriftstücke und Akten gerichtet, wozu ihre Vertreter die Prinzipien der Rechtswissenschaft, der Kunst des *inšā'* und der all-

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[73] Erhalten davon ist eine Handschrift in Paris (Bibl. Nat. No. 4439; Anc. f. 1573); eine Kopie davon ist in Kairo. Das Werk wurde oft als *dīwān al-inšā'* zitiert (Gaudefroy-Demombynes: *La Syrie à l'époque des Mamelouks* 5–6; Max van Berchem: *Matériaux pour un Corpus Inscriptionum Arabicarum* (Kairo 1903) I 441–442).

[74] Nach van Berchem (wie Anm. 73) enthalten die fünf Kapitel, die dieser Frage gewidmet sind, folgendes: 1. Kapitel: die mit *daula, dīn, malik* zusammengesetzten Namen. 2. Kapitel: Anredetitel wie: *dīwān, ǧānib, maqarr, maǧlis, ḥaḍra*. 3. Kapitel: Rangstufen der Ehrenepitheten wie: *ʿazīz, ašraf, karīm, ʿālī, sāmī* und „Klientel"-nisben. 4. Kapitel: Gewöhnliche Reihenfolgen der Ehrentitel *(alqāb)*. 5. Kapitel: Eröffnungswendungen in Schreiben an Kalifen, Sultane, Emire und andere Würdenträger mit Regeln für ihre Anwendung.

[75] Das Werk des syrischen Historikers Muḥammad ibn ʿĪsā ibn Maḥmūd ibn Kannān ad-Dimišqī al-Ḥalwatī: *Ḥadā'iq al-yāsamīn fī ḏikr qawānīn al-ḫulafā' wa-s-salāṭīn* (beendet 1122/1710; Berlin Nr. Or. 5631; eine kürzere Fassung davon *al-Iktifā' fī ḏikr muṣṭalaḥ al-mulūk wa-l-ḫulafā'* (Berlin Nr. Or. 5632/) bespricht die Hofetikette (Ṣalāḥaddīn al-Munaǧǧid: *al-Mu'arriḫūn ad-dimašqīyūn fī-l-ʿahd al-ʿuṯmānī* [Beirut 1964] 27).

[76] Der Ausdruck *šarṭ*, pl. *šurūṭ* bezeichnet nicht nur einzelne Bestimmungen der Urkunden, sondern auch jene spezielle Gruppe von Schriften, die den Richtern und Notaren die Ausarbeitung der Urkunden erleichterten. Diesem Terminus begegnet man oft in den Titeln jener Handbücher, nicht aber ausschließlich; man benutzte in den Titeln auch andere Bezeichnungen für Urkunden wie *waṯā'iq, ṣukūk, ʿuqūd, aḥkām* u. ä.

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MODEL *SHURŪṬ* WORKS AND THE DIALECTIC OF DOCTRINE AND PRACTICE *

WAEL B. HALLAQ

McGill University

Abstract

The relationship between documents emanating from the world of judicial practice and model formulae recorded in juristic manuals has been viewed differentially by modern scholars. Whereas Joseph Schacht posited the existence of a close relationship between the the *realia* of judicial practice and juristic manuals, others did not. Going one step beyond Schacht, I argue that the relationship between model *shurūṭ* and documents originating in practice was dialectical, involving complex processes of editing, interpolation and selection, processes that functioned—almost imperceptibly—within the conventional legal dynamics of the *madhhab*. If this view is accepted, it follows that the conventional wisdom regarding a gap between Islamic legal doctrine and judicial practice is untenable, at least in the areas of the law covered by *shurūṭ* manuals.

Introduction

AFTER MORE THAN a century of scholarly attention to Islamic law the relationship between legal doctrine and judicial practice remains one of the most nagging and difficult problems with which modern legal scholars have had to contend, whether directly or obliquely. Joseph Schacht faced the problem squarely time and again, and his comments on it exhibit a degree of inconsistency. He appears to have acknowledged, at least theoretically, the ineluctability of change and development in all legal systems, including that of Islam. But he could not free himself from the influence of his predecessors, notably Ignaz Goldziher and Snouck Hurgronje, who insisted that there is a major gap between Islamic law as recorded in the juristic manuals and compendia and the law as practiced in the mundane world.[1] For instance,

* An earlier version of this paper was presented at the "Joseph Schacht Conference on Theory and Practice in Islamic Law," sponsored by the Universities of Leiden and Amsterdam, 6–10 October 1994.

[1] For a brief but useful account of the views of Goldziher, Hurgronje and Schacht on the problem of theory and practice, see Abraham L. Udovitch, *Partnership and Profit in Medieval Islam* (Princeton: Princeton University Press, 1970), 5 ff. Also see I. Goldziher, "Muhammedanisches Recht in Theorie und Wirklichkeit," in *Gesammelte Schriften* (Hildesheim: Georg Olms Verlagsbuchhandlung, 1967),

community in West Berlin, gender segregation takes on a new meaning and a new importance. In Germany where there are few legitimate activities for Palestinian women outside the household (the ideal Muslim woman being everything the German woman is not), men are able to escape from gender segregation by having relations with German women. Also polygamy has developed new significance. Usually involving an Arab man and a German woman, polygamy no longer implies an economic burden, but rather a new way to gain access to work and residence permits.

These observations raise the question of whether gender should not have occupied a more central place in the debate on state policy, minority rights and Islamic family law. The introduction refers only to some legislation introduced before the 1980s to improve the position of women. However, since then, gender issues have been central to debates on Islamic family law, certainly, for example, in Algeria and Egypt. It is true that a number of contributors make some references to "the position of women," but this area of investigation remains seriously undertheorized. As Abdulrahim observes in her essay, discourses on women are central in community and state identity formation.

Annelies Moors
Universities of Amsterdam and Leiden

AL-ṬULAYṬULĪ, Aḥmad b. Mughīth (d. 459/1067). *Al-Muqniʿ fī ʿilm al-shurūṭ (formulario notarial)*, Introducción y edición crítica por Francisco Javier Aguirre Sádaba. Fuentes arábico-hispanas, vol. 5. Madrid: Consejo Superior de Investigaciones Científicas, Instituto de Cooperación con el Mundo Árabe, 1994. Pp. 57+ 421. ISBN 84-00-07433-5; 3,884 Ptas.

The documents preserved in the notaries' registers of European archives provide a great wealth of information for the study of the social and economic history of pre-modern Europe. Notaries' registers and written documents have played an equally important role in the life of Muslim societies, but the lack of full-scale archives and documentation similar to the European material has crippled and delayed the study of several aspects of medieval Islam, since topics such as the history of the family, trade, demography, property, and the household have been studied only through the chronicles. The closest Islamic equivalent to the European notarial documents can be found in the *shurūṭ* or *wathāʾiq* models' books prepared by notaries for current usage. Several historians of Muslim Spain, including E. Lévi-Provençal, have drawn attention to the importance and abundance of the Andalusian notarial manuals for the study of economic and social life, but, as the editor of the present work points out in his introduction, only recently has there been a renewed interest in this legal genre, with more editions and dissertations devoted to it than ever before. The work under review, an edition of the eleventh-century notarial formulary by Ibn Mughīth, was initially written and submitted as a Ph.D. dissertation to the university of Granada in 1988.

Professor Aguirre Sádaba devotes his introduction to explaining the effort involved in editing the various components of this legal text. He describes the two manuscripts on which the edition is based, noting that his task was made

somewhat lighter by previous authors such as F. Codera, S. Vila and M. Asín, who translated fragments of the text although they did not edit them. He speaks knowledgeably about the importance of the notarial manual, lists the Andalusian formularies and describes the current editorial work being undertaken on them.

The author of the present formulary, Ibn Mughīth, was born in Toledo in 406/1015-16, practiced there as a notary, and died in 1066-67, shortly before the city was conquered by Alfonso VI in 1085. The variety, scope and precision of the contracts in his collection demonstrate why the Christian administration opted to continue using the Arabic formulae for property and labor transactions. The manual contains 262 model documents dealing with such matters as family law, marriage, divorce, matrimonial rights, guardianship, sales, rent and hire, agencies, partnerships, endowments, gifts, indemnities, manumission, legal statements of every kind, and a variety of other models for different issues which the practicing notary might find useful. As such, it is an important contribution to both the legal and the socio-economic history of Muslim Spain. But the distinction of this particular formulary, notes the editor, lies in the fact that Ibn Mughīth used all the sources and contemporary notarial manuals available to him at that point in time, and therefore his work is both inclusive and comprehensive. In addition, through the *fiqh* sections which he affixed to the model deeds, Ibn Mughīth provided the theory side-by-side with the practice. At times his discussion may not be the most sophisticated, nor provide a comprehensive study of all the legal issues involved, but these segments are a good guide both to the jurists' legal thinking and to what they judged important to point out to the users.

The great question facing those who would use the *shurūṭ* literature for the study of legal history has always been how applicable the material in the law books was to "real life." In an article recently published in this journal, Wael Hallaq allayed those concerns by calling the *shurūṭ* the "most practice-related" branch of legal literature. His study confirms what this reviewer has observed when using the formularies to reconstruct social and economic history: not only was the practical side of the documents reflected in the very tangible world of the activities of daily life they described, but also their authors exercised discretion about whether or not to include certain models, and actually chose the issues which they judged to be of greater relevance than others. If we compare the models in the present manual with those composed by a close contemporary of Ibn Mughīth's, Ibn al-ʿAṭṭār (whose book of notarial models was published in 1983 by Chalmeta and Corriente), we can see clearly that both authors exercised discretion over what deeds to include and how diversified their books should be. The legal essence of the models, of course, remains constant: the legal principles upon which the different documents are based are not subject to manipulation. A further comparison, with notarized documents written in Granada in the fifteenth century, once again reveals a different selection of documents, whose choice was dictated by a different economic reality, monetary situation, property distribution and social stratification. In addition, the Andalusian notarial formularies

المصادر الأندلسية ٥٠

أحمد بن مُغيث الطليطلي
(ت ٤٥٩/١٠٦٧)

المُقنع في علم الشروط

تقديم وتحقيق

فرانثيسكو خابيير أغيري سادابا

المجلس الأعلى للأبحاث العلمية
معهد التعاون مع العالم العربي

مدريد ١٩٩٤

ŞURÛT - SUKÛK

İSLÂM HUKUKUNDA BELGE TANZİMİ

Yrd. Doç. Dr. Halit ÜNAL
Erciyes Üniversitesi
İlahiyat Fakültesi İslâm
Hukuku Öğretim Üyesi

GİRİŞ

İnsanlar cemiyet halinde yaşamaya mecbur, bu cemiyete nizam verecek bir devlete de muhtaçtırlar.

Yasama, yürütme ve yargı organlarıyla devlet, insan haklarını korumak, düzeni sağlamak için zaruri olarak kurulur. Hukukun amacı genel olarak, insanların cemiyet halinde düzen içinde yaşamalarını temindir. "Düzen", genel ve kapsamlı bir kelimedir; Hakların ve görevlerin belli olması, hakların meşru şekilde kullanılıp görevlerin yerine getirilmesini ifade eder. Hakların ihlâli, görevlerin yapılmaması da toplum düzenini bozar.

İnsanlar eski çağlardanberi birbirleriyle münasebette bulunmuşlar, sözleşmeler yapmışlardır. Akid dediğimiz bu sözleşmelerin hukukî bir dayanağı olması için yazılı veya sözlü herhangibir delille tesbit ve tevsik edilmesi lazımdır. Çünkü insan yaratılışı itibariyle kötülük yapmağa, başkası için sabit olmuş bir hakkı inkâra, menfaat elde etmek için gerçeği tahrife müsaittir. Şahitlerle ve yazı ile tesbit edilmeyen sözleşmeler, herhangi bir anlaşmazlık ortaya çıktığında geçersiz olur, haklar zayi olur. Hak sahibi, belgesi olmadığı için, hakkını savunamaz.

Hukuk Devletinin amacı, kanun adına devlet organlarıyla vatandaşlarının haklarını korumak, ihlali halinde de devlet gücüyle mütecavizden bu hakkı alıp sahibine vermektir. Bu bir Hukuk Devletinde bazgeçilmesi mümkün olmayan temel prensiptir. Eğer fertlerin hakkı meşru devlet güçleriyle korunmazsa kişiler haklarını birbirlerinden zor yoluyla almağa kalkarlar. Bu da toplum düzeninin bozulmasına yol açar.

İslâm Hukuku da diğer hukuk sistemleri gigi hakların kaybolmasını önlemek için sözlezmelerde belge tanzimine önem vermiş ve bunu adliye teşkilâtının bir parçası olarak mütalaa etmiştir. Günümüzde Noterlik görevi ve yetki alanına giren konular "İlmu'ş-Şurût" adı altında İslâm Hukukunda detaylı olarak incelenmiştir.

Oldukça geniş bir literatüre sahip olan bu konuyu, bir makale çerçevesinde incelemeğe çalıştık.

I. ŞURUT VE DİĞER İLGİLİ TERİMLER

1) Anlamları

a) **Şurut :** Şart, sözlükte; "Bir şeyin varlığı kendisine bağlı bulunan nesne" demektir. Meselâ alış-veriş gibi akidlerde öngörülen (iltizam) şey şarttır.(1) Çoğulu **"şurût"** tur.

İsim Tamlaması olarak İlmu'ş-Şurût şöyle tanımlanmaktadır: "Mahkeme esnasında, belgelerde ve sicillerde sabit hükümlerin, şahidlerin yokluğunda, mahkemede sahih delil olarak kullanılabidecek bir tarzda tesbiti keyfiyetinden bahseden bir ilimdir."(2).

Şurût, İslâm Hukukunun bir bölümü olmasına rağmen müstakil bir ilim dalı halinde (İlmu'ş-Şurût) gelişme göstermiştir. Bunun sebebi; İslâm Hukukunun, "Mal"a korunması gereken beş maslahattan birisi olarak önem vermesidir. Bu noktayı açıklamak üzere "Hacibzâde Sukuku"(3) nda şöyle deniliyor: **"Bil ki ilmu'ş-şurût derece ve sıra bakımından ilimlerin en büyüğü ve en üstünüdür.** Çünkü onda, kutsallığı can kutsallığı gibi olan malı korumak vardır."(4) İlmu'ş-Şurût'un önemini ve gerekliliğini vurgulamak üzere aynı eserde, sağladığı şu faydalar sayılıyor: Anlaşmazlıkları kaldırması, şüpheleri gidermesi, asid akidlerden koruması(5)

Akidleri yazıyla tesbit etmek, "Müdâyene âyeti" adıyla bilinen Bakara 282. âyette tavsiye edilmiştir. Fakat bu yazının formu nasıl olacaktır? Belge mahiyetini kazanabilmesi için hangi nitelikleri taşıması gerekir, veya akidlerde öngörülen "şart"ların hangi düzen içinde belgede yer alması lazımdır?

Anlaşmazlık vukuunda mahkemede geçerli bir delil olabilmesi için, belgeler hazırlanırken dikkat edilmesi gereken hususlar ayrıntılı bir şekilde tesbit edilmiştir. Örnekler kısmında bunları ele alacağız.

Belge düzenleme esaslarının "İlmu'ş-Şurût = Şartlar Bilimi" diye adlandırılması, belgelerin formel yönüyle yani belgeler düzenlenirken belli şartlara uyulması zaruretiyle mi ilgilidir, yoksa akidlerin ihtiba ettiği şartlarla mı ilgilidir. Bu konuda açıklık yoktur. Ancak tariften anlaşıldığına göre akidler hangi şartları taşırlarsa taşısınlar belgeler mahkemede geçerli delil olarak kullanılabilecek bir tarzda yazılmamışsa geçerli olmamaktadır

b) **Sukûk :** Sakk kelimesinin çoğuludur. Kelime olarak "geniş bir şeyle şiddetli vuruş" demektir. Farsça "Çek" kelimesinden muarreb olarak "borç" için yazılan senettir.(6) Bugün banka muamelelerinde kullanılan sakk (Bank cheque), mudinin, harcamada bulunmak üzere bir şahsa verdiği özel matbu

(1) İbn Manzur, Lisânü'l-Arab, "Şart" maddesi.
(2) Hassaf, Şerhu Edebi'l-Kâdî, Tahkik: Hilâl es-Serhân, Bağdad, 1978, I, 259.
(3) 1100/1688 de İstanbul'da vefat eden Hacibzâde Mehmed b. Mustafa b. Mahmud el-İstanbulî'nin Bidâatü'l-Hükkâm fi ahkâmi'l-ahkâm adlı eseri.
(4) Hacibzâde, Bidâatü'l-Hükkâm fi ahkâmi'l-ahkâm, V. 2a.
(5) A.g.e., V, 2a-b.
(6) İbn Manzur, a.g.e, "Sakk" maddesi.

رسالة[1] في العمل بالخطوط عند الحكام على مذهب الإمام أحمد رحمه الله

دراسة وتحقيق د. عبدالرحمن بن إبراهيم المطرودي[2]

المقدمـة :

الحمد لله رب العالمين، والصلاة والسلام على أشرف الأنبياء وسيد المرسلين، وبعد:

إن العمل بالخطوط في الفقه الإسلامي من الموضوعات الهامة في عصرنا الحاضر، خاصة وأن وسائل التعامل الحديثة قد تعددت، بين المؤسسات والشركات، أو بين الأجهزة الحكومية، أو بينها وبين بعضها، أو بينها وبين الأفراد. . .

وإن هذه الرسالة: (**العمل بالخطوط**) للشيخ علاء الدين ابن مفلح، وإن كانت تتحدث عن العمل بالخطوط في بعض المسائل كالشهادة، وحكم القاضي، والوصية، والطلاق. . . فإن

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(١) للإمام علاء الدين علي بن أبي بكر بن إبراهيم بن محمد بن مفلح ٨١٥هـ ـ ٨٨٢هـ

(٢) تخرج من كلية أصول الدين فحصل على درجة الماجستير فيها في القرآن وعلومه عام ١٤٠٢هـ، ثم التحق بجامعة الزيتونة بتونس فحصل على درجة الدكتوراة في نفس التخصص عام ١٤٠٥هـ، وله عدد من الكتب والبحوث طبع منها: تفسير سورة فاطر، الإنسان وجوده وخلافته في ضوء القرآن الكريم، الأحرف السبعة، القراءات القرآنية، وغيرها. وهو يعمل الآن استاذاً مشاركاً في جامعة الملك سعود، كلية التربية، قسم الدراسات الإسلامية.

T. C.
MARMARA ÜNİVERSİTESİ
SOSYAL BİLİMLER ENSTİTÜSÜ
İLAHİYAT ANABİLİM DALI
İSLAM HUKUKU BİLİM DALI

Şürût ve Sicilât

ENDÜLÜS'TE ŞURÛT (BELGELEME) İLMİ

Yüksek Lisans Tezi

Hacer KONTBAY

Danışman: Prof. Dr. Fahrettin ATAR

İstanbul, 2009

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الوثائق

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Devlet ve Siyaset

سجِلٌّ:

١ ـ **تعريف:** السجل هو الدفتر ونحوه الذي تسجل فيه الأمور الهامة.

٢ ـ **حكم اتخاذه:** يجب على المرء أن يتخذ سجلاً يكتب فيه القضايا الهامة، مما له وما عليه، وعلى القاضي أن يتخذ سجلاً يكتب فيه الدعاوى ووسائل الإثبات والأحكام، وعلى كل مسؤول في مصلحة حكومية أو شركة أن يتخذ سجلاً أو أكثر من سجل يكتب فيه القضايا الهامة، كل ذلك حفاظاً على الحقوق

٣ ـ **تعدد السجلات وكيفية الكتابة فيها:** يجب أن تتعدد السجلات بتعدد الموضوعات، فهناك سجلات لضبط ما يردُ إلى القاضي من الدعاوى، وسجل آخر لما يصدره القاضي إلى الجهات الأخرى من الكتب وغيرها، وإذا كان القاضي عاماً، فيجب أن يكون عنده سجل خاص بقضايا الأحوال الشخصية، وسجل آخر بقضايا الأوقاف، وسجل ثالث بالقضايا المتعلقة بالعقارات، وغير ذلك.

ويجب أن تكون الكتابة في السجل في غاية التفصيل والوضوح والبيان، ففي تسجيل العقار الفلاني في السجل العقاري مثلاً، يجب ذكر موقع العقار، وحدوده، ومساحته، وصفته.

وكل من سجَّل شيئاً في السجل لابد من أن يذكر اسمه ولقبه ووظيفته، وتوقيعه، ويختم ذلك بالخاتم الرسمي للقاضي أو الدائرة التي يتبع لها السجلُّ.

٤ ـ **حفظ السجل:** يجب حفظ السجلات في مكان أمين، لا تصل إليها الأيدي العابثة، ولا يجوز أن يتناولها غير المختصين بها من الموظفين، ويجب أن يكون من كل سجل نسختان، تحفظان في مكانين مختلفين، حتى إذا ما طرأ التلف أو التزوير على واحد من السجلات أمكن الرجوع إلى السجل الآخر، ويزود صاحب الحق بنسخة من صفحة السجل الذي يحفظ له حقه لإبرازها لمن يلزم إبرازها له..

٥ ـ **تعديل ما كتب في السجل:** لا يجوز تعديل شيء مما كتب في السجلِّ بزيادة ولا إنقاص ولا تعديل إلا بحكم من المحكمة.

٦ ـ **الاحتجاج بما في السجل:** ما هو مدون في السجل حجة لدى القاضي يقضي به دون أن يطلب بينة عليه، وما يوجد في سجل القاضي يعمل به سواء هو الذي كتبه أم قاض قبله، وإن كان هو الذي كتبه يَعْمَلُ به سواء تذكره أم لم يتذكره؛ وما سجِّل في سجلِّ التاجر يكون بمثابة الإقرار منه، ولكنه لا يصلح أن يكون حجة على غير صاحب السجل.