

opens with the endowment from the year 712/1312–13,⁷⁰ “transferred” (*untuqila*)⁷¹ from “a copy in 12 chapters,” which had been attested to by court procedure for the first time in the year 720/1320–21.⁷² Then follow the enumeration of further court attestations in the years 727/1327,⁷³ 743/1343,⁷⁴ 746/1346,⁷⁵ 747/1346,⁷⁶ and finally in the year 754/1353.⁷⁷ Each court attestation mentions the exact day and the name of the judge,⁷⁸ a way to confirm whether the judge had been in office or not. This specific document does not bear witness signatures. It probably served as an aide-mémoire, not as a legal attestation. A filing notation on the verso mentions the shares of the endowed villages, which had obviously been sold by some of the founder’s children.⁷⁹

From a general point of view, this specimen shows that even minor endowments, not just the big imperial foundations like those of Ṣalāḥ al-Dīn, cited above, were the object of renewed court validation: in our case, it was obviously the *waqf* administration of Jerusalem in the name of the “*fuqarā*’ of Jerusalem” who had taken care of the repeated court validation. This system of repeated court validation could guarantee the legal standing of an endowment deed over a long time. However, without it, the deed loses the force of proof. Certainly no such renewal of a court validation was made when private endowments ceased to function and no longer provided substantial income. Then, after one or two generations, the original documents had lost any legal standing and the unvalidated *waqf* fell into disuse.

This brings us to our last point, the economic use of endowments by those persons who rented them and thus provided an income to the *waqf*. With regard to Jerusalem, Donald Richards has already pointed to the problem of leasing contracts of long duration that might alienate endowed property and thus bring the *waqf* to an end.⁸⁰ From an economic perspective, there are, however, various aspects to consider.

We have at our disposal several contracts of sale concerning “plantations”

⁷⁰Haram document no. 333, ll. 1–13.

⁷¹The same expression is used for the *waqf* summary Haram document no. 643; see above.

⁷²Haram document no. 333, ll. 14f.

⁷³Ibid., ll. 15f.

⁷⁴Ibid., l. 16.

⁷⁵Ibid., l. 17.

⁷⁶Ibid., l. 16.

⁷⁷Ibid., l. 18.

⁷⁸Cf. Little, *Catalogue*, 320f., for the details.

⁷⁹Ibid. On this see also Richards in Burgoyne, *Mamlūk Jerusalem*, 68a.

⁸⁰Ibid.



(*ghirās*) in vineyards and orchards within the city's limits. Like any sale of a dwelling (*dār*), these contracts delimit the object of the sale by its borders, the type of trees or plantations, its sale price, the conclusion of the contract, and the transfer of property to the buyer. Only the plantations are sold, however, not the land on which they are growing. This practice conforms to Shafi'ī law, allowing the sale of objects firmly rooted into the ground—without touching upon the legal status of the ground.⁸¹

In these cases, the land, the “basis” (*aṣl*, in legal terms), belonged either to a *waqf*⁸² or was part of an *iqṭā'*.⁸³ All these sale contracts on plantations state at the end that “the buyer knows of the obligation to pay an annual ground rent (*ḥikr*) of a certain sum [between 5 and 15 dirhams per annum] to the endowment or to the *iqṭā'*.” When, however, land (*ard*)⁸⁴ or a vegetable garden (*ḥākūrah*)⁸⁵ was sold, no mention of paying *ḥikr* was made. A similar sales contract concerned an apartment (*bayt*) within a family estate (*dār*), for which *ḥikr* was due to [the endowment of] the Madrasah al-Ṣalāḥiyah.⁸⁶

This practice of selling immovable objects, but not the ground where they were rooted, was not restricted to agricultural land or to dwellings. Several shops (*ḥānūt*, pl. *ḥawānit*) were sold in Ramaḍān 747/December 1346–January 1347 for 780 1/2 dirhams, and the buyer knew of his obligation to pay one dirham *ḥikr* each month to the endowment of the Ribāṭ al-Amīr 'Alā' al-Dīn al-Ruknī, on whose

⁸¹Cf. Ṣalīḥiyah, “Min Wathā'iq al-Ḥaram al-Qudsi al-Sharīf,” 62 (in commentary on Ḥaram document no. 326).

⁸²Cf. Ḥaram document no. 318 (17 Jumādā I 789/5 June 1387) with Little, *Catalogue*, 283; several sales of the same piece of land in Ḥaram document no. 326/1 (recto) (30 Dhū al-Qa'dah 758/14 November 1357), no. 326/2 (verso left) (10 Shawwāl 759/15 September 1358), and no. 326/3 (verso right) (23 Muḥarram 762/3 December 1360), all in Little, *Catalogue*, 284; several sales concerning the same land: Ḥaram document no. 354/1 (1 Shawwāl 771/28 April 1370) and no. 354/2 (5 Dhū al-Qa'dah 772/21 May 1371), no. 354/6 (14 Muḥarram 781/2 May 1379), all cf. Little, *Catalogue*, 287; Ḥaram document no. 366 (22 Jumādā II 789/10 July 1387), Little, *Catalogue*, 288; Ḥaram document no. 614 (25 Sha'ḥbān 765/28 May 1364), Little, *Catalogue*, 292; Ḥaram document no. 658/1 (24 Dhū al-Hijjah 784/28 February 1383) and Ḥaram document no. 658/2 (12 Muḥarram 785/17 March 1383), Little, *Catalogue*, 294; Ḥaram document no. 834/1 (9 Muḥarram 756/24 January 1355), Little, *Catalogue*, 294; Ḥaram document no. 328 (3 Shawwāl 755/21 October 1354), Little, *Catalogue*, 285 (here *ḥikr* is not mentioned, only the amount to pay and that the land belongs to the Ṣalāḥiyah endowment).

⁸³Only Ḥaram document no. 323/1 (12 Shawwāl 763/4 August 1362), Little, *Catalogue*, 283; resold within the same month, Ḥaram document no. 323/2 (16 Shawwāl 763/8 August 1362).

⁸⁴Ḥaram document no. 370, from 1 Jumādā I 712/4 September 1312, cf. Little, *Catalogue*, 290.

⁸⁵Cf. the various sales of parts (*sahm*, pl. *ashām*) from the same *ḥākūrah*, Ḥaram document no. 372/1, from 29 Ramaḍān 771/26 April 1370, and following contracts, Little, *Catalogue*, 290f.

⁸⁶Ḥaram document no. 43, with line 4 on the payment of the *ḥikr*.



land the shops were situated.⁸⁷ These shops were the object of several attestations and court procedures,⁸⁸ and two of them were resold in the year 752/1351 for 300 dirhams, the *ḥikr* being one and a half dirhams per month.⁸⁹ Without going into the details of this complicated case,⁹⁰ we realize that these shops were subject to free commercial transaction, separate from the ground on which they stood. The only constraint was the payment of the *ḥikr* to the endowment that owned the land.⁹¹ Unfortunately, sold objects varied from one contract to another, but the impression is that the *ḥikr* increased; from one dirham per month in the year 747/1347 for several shops to one and a half dirhams in the year 752/1351 for only two shops.

It is important to note that the obligation to pay *ḥikr* did not end with the death of a person. The duty “to pay *ḥikr* is transferred,” as jurists would say, “to heirs and buyers.”⁹² The sale of two shops, mentioned above, was done “*waṣīyatan*,” that is, after the death of their proprietor.⁹³ Among the Ḥaram documents figures also the receipt of 75 dirhams annual *ḥikr* for the shop of a rich textile merchant, paid by the guardian of his minor heirs to the foundation of the Madrasah Ṣalāḥīyah in 790/1388.⁹⁴ From this, we may conclude that any investment made by the shop owner, or in any plantation, was for the benefit of his proprietor, who could sell freely his property, under the sole condition that the *ḥikr* be paid.⁹⁵

⁸⁷Ḥaram document no. 42/1, recto (6 Ramaḍān 747/21 December 1346), Little, *Catalogue*, 279. On the Ribāṭ see Burgoyne, *Mamlūk Jerusalem*, 117–26.

⁸⁸Ḥaram document no. 42/2, recto (14 Ramaḍān 747/29 December 1346): acknowledgement of “no rights;” Ḥaram document no. 42/3, verso (27 Ramaḍān 747/11 January 1347): court validation; and Ḥaram document no. 42/4 recto (5 Rabīʿ II 750/23 June 1349): court validation; Little, *Catalogue*, 279–80.

⁸⁹Ḥaram document no. 42/5, verso (20 Rabīʿ II 752/16 June 1351), ll. 28 and 31. Cf. Little, *Catalogue*, 280. In the right margin of recto and verso two more sales of some of the same objects are mentioned, without any details however; see Ḥaram document no. 42/7 (verso) from 6 Shawwāl 754/4 November 1353, and no. 42/8 (recto) from 27 Ramaḍān 756/5 October 1355.

⁹⁰See additionally the buyer’s acknowledgement of having acted on behalf of a third person: Ḥaram document no. 42/9, recto (27 Ramaḍān 756/5 October 1355).

⁹¹Compare also Shams al-Dīn Muḥammad al-Asyūṭī, *Jawāhir al-ʿUqūd wa-Muʿīn al-Qudāh wa-al-Muwaqqiʿin wa-al-Shuhūd*, ed. Musʿad ʿAbd al-Ḥamīd Muḥammad al-Saʿdanī (Beirut, 1996), 1:69, with corresponding contractual clauses.

⁹²For this phrase see the Hanbali jurist Muḥammad al-Maqdisī Ibn Mufliḥ (d. 763/1362) in his *Kitāb al-Furūʿ*, ed. Abū al-Zuhrā Ḥāzīm al-Qāḍī (Beirut, 1418), 4:321. This corresponds exactly to the findings in the Ḥaram documents. Until now however, I have not found a similar Shafiʿī quotation.,

⁹³Ḥaram document no. 42/5, l. 24.

⁹⁴Ḥaram document no. 662 (16 Muḥarram 790/26 January 1388), Little, *Catalogue*, 329 (see above).

⁹⁵I did not find any reference to a limitation of such a *ḥikr* contract to, for instance, 99 years.



These contracts of sale reflect an economic reality very different from that of the village headmen (*ru'asā' al-qariyah*) who guaranteed the payment or delivery of harvested crops to the Ḥaram *waqf*.⁹⁶ In some cases, the obligation of the villagers to cultivate their land was enforced by a formal *qasāmah* oath, whose breach was considered perjury (*ḥinth*) and subject to high fines.⁹⁷ These villages were part of the Ḥaram endowment created by Ṣalāḥ al-Dīn al-Ayyūbī in the sixth/twelfth century. For the villagers, the obligation to deliver a part of their harvest to the *waqf* may have resembled a tax, which they paid for the previous year.⁹⁸ Apparently, farmers also paid individually to the *waqf* administration. One account of revenues from the village al-Quṣūr, which was part of the Ḥaram *waqf*, distinguished between revenues from the farmers (*fallāḥīn*) and revenues guaranteed by the village head (*ḍamān*).⁹⁹

We can also identify cases in which individuals had rented land for agriculture from a *waqf* in an *ijārah* (rental) contract. The leaseholder paid *ujrah* (rent), not *ḥikr*, but the difference went beyond denominations. Unlike *ḥikr* land, which stayed in the possession of the heirs, the death of a leaseholder might have caused problems for his heirs, even with a long-term *ijārah* contract.

On 25 Shawwāl 794/14 September 1392 the Shafī'i judge of Jerusalem, Taqī al-Dīn, gave his verdict to the claim of the Khānqāh Ṣalāḥīyah Foundation, represented by the Shaykh Jamāl al-Dīn 'Abd Allāh Ibn Ḥāmid, to terminate a lease of land in the Buq'ah area outside Jerusalem, because the leaseholder had died prior to its termination. The contract had been concluded in Sha'bān 791/August 1389 for thirty years at an annual rent of 76 dirhams. The defendant, one of the leaseholder's heirs, insisted that the contract be continued, since its term had been set for 30 years and was not linked to the life of the original leaseholder. According to the defendant, there was no reason to terminate the contract

⁹⁶See Ḥaram documents nos. 19, 48, 110, 194, 202, 280, 348, and 459, all from the years 706/1306 to 708/1308, some of them mentioned by Richards in Burgoyne, *Mamlūk Jerusalem*, 67.

⁹⁷See Ḥaram documents nos. 293 and 697; cf. D. S. Richards, "The Qasāma in Mamlūk Society: Some Documents from the Ḥaram Collection in Jerusalem," *Annales Islamologiques* 25 (1991): 245–84.

⁹⁸Cf. Ḥaram document no. 348, cf. Richards in Burgoyne, *Mamlūk Jerusalem*, 67b. For the complexity of this phenomenon from a juridical point of view, see Baber Johansen, *The Islamic Law on Land Tax and Rent: The Peasants' Loss of Property Rights as Interpreted in the Hanafite Legal Literature of the Mamluk and Ottoman Periods* (London, 1988).

⁹⁹See Ḥaram document no. 769a (for the years 792 and 793), recto, column A, first item: *faḍl al-ghallāt bi-ism al-fallāḥīn 2000 dirham*; second item: *ḍamān al-mu'allaq bi-ism al-ru'asā' wa-al-fallāḥīn 9000 dirham*. Another document from the year 795, Ḥaram document no. 847, ed. Richards, "Qasāma," 267, has the elders of the village al-Quṣūr attest to having paid only *zakāt*, and not their taxes (*ḍarā'ib dīwānīyah*), for the last four years. I am not sure how to resolve this contradiction, if there is one.



since the claimants would receive all outstanding payments from the estate of the deceased. The qadi Taqī al-Dīn gave a judgement (*ḥukm*) in favour of the leaseholder's heirs and allowed the rent to be paid from the estate.¹⁰⁰ In this case, the heirs' interest in continuing the contract is obvious. The existing conditions suited them better than what they could have hoped to obtain in a new contract, whether another lease or a *ḥikr*.¹⁰¹ The lease of arable land to farmers seemed to have been a common practice.¹⁰² From Ḥaram document no. 629, we learn that endowments sometimes leased the plantations (*ghirās*) in their possession for a specified period; here it was for 10 years.¹⁰³

As a result, we conclude that at least two types of contracts regulated the use of *waqf* property for commercial and agricultural activities: the lease of an object (*ujrah*) and the ground rent (*ḥikr*). Since most of the surviving documents concern the estates of deceased persons, we have at our disposal two acquittals for payments vis-à-vis the Ḥaram endowment, made from the qadi's depository in the name of the heirs or from their *waṣīy*. One concerns the annual rent (*ujrah*) for a shop in the Sūq al-Wuṣṭānī amounting to 15 1/2 dirhams per month.¹⁰⁴ The other is the previously mentioned receipt of 75 dirhams annual *ḥikr* for the shop of a rich textile merchant, paid by the guardian of his minor heirs to the foundation of the Madrasah Ṣalāḥīyah in 790/1388.¹⁰⁵ Although any comparison without knowing the exact circumstances in each case is always problematic, the amount of the annual rent (*ujrah*) of 186 dirhams (15 1/2 x 12) being more than double that of the *ḥikr* may well be explained by the fact that the rented shop belonged to the endowment, contrary to the shop on *ḥikr* land.¹⁰⁶

The interest of a *waqf* administration in transforming their assets into *ḥikr* was

¹⁰⁰Ḥaram document no. 334, edited by al-ʿAsalī, *Wathāʿiq*, 2:22f. On a discussion of the *ḥukm* in this case see Christian Müller, "Settling Litigations without Judgment: The Importance of a *Ḥukm* in Qadi-Cases of Mamlūk Jerusalem," in *Dispensing Justice in Islam: Qadis and their Judgments*, ed. Muhammad Khalid Masud, Rudolph Peters, and David S. Powers (Leiden, 2006), 51–55.

¹⁰¹The qadi Sharaf al-Dīn was known for having transformed land in the Buqʿah area into *ḥikr* in the year 793/1391 (see below), one year before the verdict of Taqī al-Dīn. This "coincidence" may illustrate an ongoing pressure on farmers to change contracts.

¹⁰²See Ḥaram document no. 640 from 7 Dhū al-Qaʿdah 796/3 September 1394, edited by al-ʿAsalī, *Wathāʿiq*, 2:62; cf. Little, *Catalogue*, 236. The land was leased by the Mamluk viceroy.

¹⁰³Ḥaram document no. 629/1 (1 Shaʿbān 796/1 June 1394), Little, *Catalogue*, 299; cf. Richards in Burgoyne, *Mamlūk Jerusalem*, 67.

¹⁰⁴Ḥaram document no. 325 (12 Rabīʿ I 797/5 January 1395), Little, *Catalogue*, 210, rent to the "waqf mabrūr."

¹⁰⁵Ḥaram document no. 662 (16 Muḥarram 790/26 January 1388), Little, *Catalogue*, 329 (see above).

¹⁰⁶Compare also the sale of such shops and the *ḥikr* due in former years, above.



primarily to allow the development of land by private investors. They planted trees or built shops and houses, which became their private property. A citation by Mujir al-Din in his chronicle of Jerusalem, *Al-Uns al-Jalil*, mentions a case of the transfer of land to *hikr* in the period of the Ḥaram documents. The qadi of the city, and shaykh of al-Khānqāh al-Ṣalāḥīyah, Sharaf al-Din ʿĪsā ibn Ghānim (d. 797/1395)

made the land of al-Biqʿah outside Jerusalem, which is included in the *waqf* of the aforementioned *khānqāh*, into *hikr* in the year 793. It was given over to vineyards (*kurūm*) whereby the revenue for the *waqf* grew, the people having developed a liking for this land and its utilization having increased since the time when it was sown land.¹⁰⁷

Even before this date, the Khānqāh Ṣalāḥīyah possessed olive trees cultivated by wage laborers. See for this an account of the sale of olives including the payment of wages from the year 789/1387.¹⁰⁸ Already cited is the litigation between the Khānqāh Ṣalāḥīyah and the heirs of a leaseholder over the continuation of the *ijārah* contract.¹⁰⁹ The other documents concerning economic activity of this endowment, like the renting of shops or a bath, certainly merit a detailed study¹¹⁰ that is beyond the scope of this article.

The Ḥaram documents provide insights into *waqf* as a legal institution on various levels of Mamluk society. The city of Jerusalem as a center of veneration and pilgrimage profited greatly from the influx of “foreign” capital that established endowments within the city for religious reasons. One should not underestimate its material help for religious scholars living in the city or on pilgrimage (*mujāwir*), in matters of food and housing. Endowments provided the material basis for religious services not only in the Holy Sanctuaries, but also in private Sufi convents. They paid the professors in colleges and gave shelter to their students.

Outside the world of learning and religion, the local economy was certainly stimulated by building and repair activities that were supported by the *waqfs*’

¹⁰⁷Mujir al-Din, *Uns*, 2:127, trans. D. Little, “Two Fourteenth-Century Court Records from Jerusalem Concerning the Disposition of Slaves by Minors,” *Arabica* 29 (1982): 24.

¹⁰⁸Ḥaram document no. 573 (20 Ramaḍān 789/4 October 1387), Little, *Catalogue*, 291.

¹⁰⁹Ḥaram document no. 334.

¹¹⁰See Richards in Burgoyne, *Mamlūk Jerusalem*, 67a. To the documents cited by him, one may add other accounts of this endowment, such as Ḥaram documents nos. 775a, 775b, 775t, 775th and 775j.



founders and their administrators.¹¹¹ Certain endowments provided elementary teaching for children and material help for orphans. *Waqf* administrations were the landlords of numerous shops and buildings in the city, as well as the owners of orchards and arable land. Craftsmen and farmers were directly affected by the policy of *waqf* administrations, by the type of lease contract they had obtained, and by investment opportunities given through the *ḥikr* system. We should be cautious of generalities, such as the suggestion that too long a contract or the *ḥikr* alienated *waqf* property and led to its cessation. Long contracts were sometimes necessary to attract capital for investment to the benefit of both sides. Unfortunately, our documents do not furnish information about the duration of the *ḥikr* status. The documents at hand show perfectly how legal rights could be preserved over a long period of time. However, the legal status of documents in Islamic law made their court confirmation necessary within certain intervals. Only fairly reasonably managed *waqf* institutions would take the necessary steps and preserve their rights. This leads us to the various types of *waqf* foundations which in the case of Jerusalem went from the big administration of the Ḥaram *waqf* with its revenues from all over Palestine, to middle-sized religious foundations by individuals, to the endowing of property for the benefit of a family. At all levels of Mamluk society, the legal instrument “*waqf*” served men and women as a means to realize economic projects and to stabilize social situations. Prestigious religious and humanitarian institutions in the city, like the Ṣalāḥīyah Hospital¹¹² or the Ḥaram foundation, profited from the necessity in each endowment deed to name a final beneficiary in perpetuity. Over the centuries, they received the endowed property of families that had ceased to exist. In this way, the will of individuals finally merged into a communal project that helped to maintain traditional society.

¹¹¹ Compare also Ḥaram documents nos. 773a and 773b, Little, *Catalogue*, 352.

¹¹² Cf. Ḥaram documents nos. 20 and 204.

