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An Arabic Marriage Contract and Subsequent Divorce from Mamluk Jerusalem: The Ḥaram al-Sharīf No. 302

Introduction

Documents from the Ḥaram al-Sharīf¹ are considered to be among the most important historical sources from Mamluk Jerusalem because there are so few narrative or documentary sources that chronicle the city in this period. In addition, they are the oldest extant documents concerning the affairs of the city's Muslims in particular, and its Jews and Christians in general. Among the most important of the Ḥaram al-Sharīf documents are those related to the situation of *dhimmi*s in Jerusalem during the Mamluk era.² As is well known, the Jews and Christians shared their lives in Jerusalem with Muslims, and the mingling of customs and traditions was a defining characteristic of the society of medieval Jerusalem.

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¹The Ḥaram documents consist of approximately nine hundred documents discovered in 1974–76 in Jerusalem at the Islamic Museum located at al-Ḥaram al-Sharīf. The vast majority of these documents are linked to the Jerusalem judge Sharaf al-Dīn ʿĪsā ibn Ghānim and to his period in office between the years 793/1391 and 797/1395. The sample of surviving documents—primarily estate inventories but also a few documents from other areas of the law within the qadi's competence—contradicts the assumption that the Ḥaram corpus is a systematically compiled archive of qadi records. It has been catalogued by Donald Little, and was the subject of a monograph by Huda Lutfi. See Linda S. Northrup and Amal A. Abul-Hajj, "A Collection of Medieval Arabic Documents in the Islamic Museum at the Ḥaram al-Sharīf," *Arabica* 25 (1979): 282–91; Huda Lutfi, "A Study of Six Fourteenth-Century Iqrārs from al-Quds Relating to Muslim Woman," *Journal of the Economic and Social History of the Orient* 26 (1983): 246–94; idem, *Al-Quds al-Mamlūkiyya: A History of Mamlūk Jerusalem Based on the Ḥaram Documents* (Berlin, 1985); Donald P. Little, *A Catalogue of the Islamic Documents from al-Ḥaram aš-Šarīf in Jerusalem* (Beirut and Wiesbaden, 1984); Muḥammad ʿĪsā Šāliḥīyah, "Min wathāʿiq al-Ḥaram al-Qudsī al-Sharīf al-Mamlūkiyyah," *Ḥawliyat Kulliyat al-Adāb*, vol. 6., Monographs, vol. 26 (Kuwait, 1985); *Wathāʿiq Maqdisīyah Tārīkhīyah*, ed. Kāmil J. al-ʿAsalī (Amman, 1983–89); Christian Müller, "The Ḥaram Al-Šarīf Collection of Arabic Documents in Jerusalem: A Mamluk Court Archive?" *Al-Qantara* 32, no. 2 (2011): 435–59.

²There are some studies that have examined the situation of *dhimmi*s in Jerusalem in the Mamluk era through these documents. See, e.g., Donald P. Little, "Ḥaram Documents Related to the Jews of Late Fourteenth Century Jerusalem," *Journal of Semitic Studies* 30, no. 2 (1985): 227–64, 368–70.



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Ḥaram al-Sharīf document no. 302 contains an Arabic marriage contract and subsequent divorce agreement. What makes this document especially significant is that it records a marriage between a Muslim groom and a Christian bride and then records their divorce. (It was not the first time this couple had married and divorced each other.) Marriage and divorce documents between Muslims and Christians seem to be rare.³ Therefore, these two contracts are very important to developing our knowledge of the nature of the relationship between Muslims and Christians in Jerusalem during the Mamluk era, on the one hand, and society's attitude toward such relationships on the other.

Document no. 302 contains a marriage contract on the recto and a succeeding divorce agreement on the verso. Both contracts are drawn up in accordance with usual Muslim law and procedure, both are dated in the Muslim era, and both are witnessed entirely by Muslims. The marriage contract mentions a groom named 'Abd Allāh and a bride named Sa'īdah. In the divorce agreement on the verso, Sa'īdah asks 'Abd Allāh to divorce her in exchange for 400 dirhams, and he agrees. Islamic law refers to this kind of divorce as *khul'*.⁴ In a *khul'* divorce, the wife seeks divorce from the husband in return for monetary compensation. In other words, she pays him for the divorce. 'Abd Allāh was already Sa'īdah's ex-husband, so this had been their second marriage. This union did not last long: only nineteen months passed between the second marriage and the second divorce. Thus, from several points of view these documents are different enough from other known marriage contracts to deserve our special attention.

In fact, the incidence of divorce in Mamluk society was remarkably high. The frequency of divorce may have been—as Rapoport mentions—a simple result of the easy repudiation allowed by Islamic law.⁵ Leila Ahmed reports that “the divorce nearly always occurred at the instigation of the husband. Occasionally references indicate that women in rare instances sought and obtained divorce, though generally at the price of relinquishing the right to see their children or after paying their husband a sum of money.”⁶ Nevertheless, Rapoport has written that “the majority of divorces in Mamluk society were consensual separations” and that

³There are ten marriage contracts in the Ḥaram al-Sharīf collection, but this document is the only one between a Muslim and a Christian. Although the vast majority of these documents are linked to the Jerusalem judge Sharaf al-Dīn 'Īsā ibn Ghānim, it is difficult to link this document to this judge. Document no. 302 is signed by witnesses not working under the judge Sharaf al-Dīn. See Müller, “The Ḥaram Al-Šarīf collection,” 446.

⁴See Ibn Manẓūr (d. 711/1311), *Lisān al-ʿArab* (Cairo, 1960), 8:77; al-Ramli (d. 1004/1595), *Nihāyat al-muḥtāj ilā sharḥ al-minhāj* (Cairo, 1413), 6:393.

⁵Yossef Rapoport, *Marriage, Money and Divorce in Medieval Islamic Society* (Cambridge, 2005), 5.

⁶Leila Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate* (New Haven, 1992), 106.



“breaking up a marriage was rarely a one-sided affair.”⁷ However, according to Lowry, “the legal manuals often dwell upon the many forms of the male-initiated divorce (*talaq*) at the expense of hiding the reality that female-initiated divorce (*khul'*) has been a frequent occurrence in the history of Muslim women as well.”⁸

In his analysis of the issue of marriage and divorce in Jerusalem in the Mamluk era, Rapoport has reported—and I agree with him—that “the legal form of the majority of divorces in Mamluk society was consensual separation (*khul'*), although the formalities of divorce deeds concealed an interplay of various legal and extralegal pressures. In consensual separations, the wife gave up her financial rights—in particular her claim to the late marriage gift—in return for a divorce, and according to the legal phrasing women were always the initiators of consensual divorces; they would ask for the divorce and give up their financial rights in return.”⁹

According to Tucker, we must distinguished between upper-class and lower-class marriage practices; she noted that lower-class women were much more likely to marry more than once and that there was an “impermanence” in lower-class marriages.¹⁰

Lowry has shown that *khul'* was more common than previously thought. There was also an instance of a dissolution of marriage (*faskh*) found in the Ḥaram documents based upon abandonment and the groom not paying the promised marriage gift.¹¹

With regard to the legal form of the two divorces that happened between ʿAbd Allāh and Saʿidah, a *khul'* divorce is a single irrevocable divorce (although there are differences of opinion on this). There is no waiting period (*'iddah*), and any remarriage with the ex-wife must take place with a new marriage contract and a new marriage gift. However, because this was the second divorce, if ʿAbd Allāh were to repudiate Saʿidah a third time, it would trigger a “major” divorce (*al-baynūnah al-kubrā*), after which the couple could not remarry unless Saʿidah had an intervening consummated marriage to another man.¹²

⁷Rapoport, *Marriage, Money and Divorce*, 112.

⁸Colleen Lowry, “Marriage and Divorce in Late Fourteenth-Century Jerusalem” (M.A. thesis, Portland State University, 2007), 162.

⁹Rapoport, *Marriage, Money and Divorce*, 72.

¹⁰Judith E. Tucker, “The Arab Family in History: ‘Otherness’ and the Study of the Family,” in *Arab Women: Old Boundaries, New Frontiers*, ed. Judith E. Tucker. (Bloomington, 1993), 203.

¹¹Lowry, “Marriage and Divorce,” 193.

¹²Abed Awad, and Hany Mawla, “Divorce: Legal Foundations,” *Oxford Encyclopedia of Islam and Women* (Oxford, 2013), 219–20.



There are ten marriage and eight divorce contracts in the Ḥaram al-Sharīf collection.¹³ Two of them are *khulʿ* divorce documents (nos. 44 and 302). All of the marriage contracts begin with *aṣḍaqa* (“he bestowed”) or *hadhā mā aṣḍaqa* (“this is what he bestowed”), while the divorce contracts begin with the wife’s name and that she “asked” or “requested” (*saʿalat*) that her husband divorce her by *khulʿ*. In the Ḥaram documents, the divorce decrees were written on the bottom or on the back of the marriage contracts. Eight of the ten marriage contracts mention a divorce either in the margin or on the verso.¹⁴

Rapoport mentions that “the main function of the marriage contract, apart from testifying to the validity of a marriage, was to record the marriage gift pledged by the groom at the time of the marriage. The groom’s marriage gifts were specified in cash. They were divided into advance and deferred portions, with the advance payment almost always smaller than the deferred portion. Before the Mamluk period, the late payment was usually postponed for a set number of years. For example, a husband would pledge to pay the remainder of the marriage gift after five, eight or ten years. However, by the thirteenth century it had become common to divide the late portion into yearly installments. Alternatively, in some Mamluk marriage contracts the deferred portion was designated as a due debt, which was payable upon demand.”¹⁵

Some scholars have studied the amounts of the marriage gifts mentioned in the Ḥaram al-Sharīf collection; Huda Lutfi studied eight documents that mentioned deferred marriage gifts owed by the husbands’ estates to the wives and noted that the deferred marriage gifts were “modest,” between 5 and 36 dinars.¹⁶ When Lowry studied the ten marriage contracts in the Ḥaram al-Sharīf collection, she noticed that two documents mentioned a marriage gift in dinars and the rest used dirhams. She suggests that according to the approximate rate of exchange the dirham amounts would have been equal to between 6 and 25 dinars.¹⁷

¹³See Little, *Catalogue*, 300–6.

¹⁴Little, *Catalogue*, 300; Lowry, “Marriage and Divorce,” 69, 133.

¹⁵Rapoport, *Marriage, Money and Divorce*, 35.

¹⁶Lutfi, *Al-Quds al-Mamlukiyya*, 285.

¹⁷Lowry, “Marriage and Divorce,” 118.



Haram al-Sharīf Document No. 302¹⁸**Dates:** Recto: 2 Rajab 794/25 May 1392**Verso:** 4 Šafar 795/20 December 1392

General Description: The document is paper (28.5 cm × 28.9 cm), in good condition. There are some small holes in the middle of the upper part, and some traces of moisture. The recto contains a text of seven lines and three subsequent witnessing clauses. The judge's signature in the form of a motto (*‘alāmah*) is written on the upper left side of the document. The verso has six lines and two witnessing clauses, as well as the judge's *‘alāmah* above in the middle. The text on the verso is written in the upper left and upper right of the leaf, while the lower half is left blank.

Script: The text proper of both documents is written in a fair naskhi, that of the recto being larger and clearer. Diacritical points are lacking, except for a very few instances. The signatures of witnesses are written by several hands, all of which are more or less extremely cursive and contain peculiar ligatures as well as some typical abbreviations.

Arabic Transcription

Recto
(Heading)

عقده بطريق الشرعي 1

صالح بن خليل بن سالم الشافعي 2

(Text)

بسم الله الرحمن الرحيم وصلي الله على سيدنا محمد واله وصحبه وسلم 1

اصدق الملا جمال الدين عبد الله بن منصور بن ابراهيم المغربي النساج¹⁹ بقرية قلنسوة مخطوبته سعيدة المرأة الكامل بنت توما بن توكايل 2

النصرانية ومختلعة المصدق المذكور بطلقة متقدمة على تاريخه الحالية عن الموانع الشرعية اصدقها على بركة الله وعونه وحسن 3

توفيقه وسنة نبيه محمد صلى الله عليه وسلم صداقا مبلغه من الدراهم النقرة الجيدة الوازنة معاملة يومئذ اربعمائة درهم نصفها 4

مائتا درهم حالة في ذمته وعليهما المعاشرة بالمعروف ان الله مع المتقين وولى تزويجها منه على ذلك بإذنها ورضاها الحاكم 5

¹⁸“The Islamic Documents from The Haram al-Sharīf Collection in Jerusalem,” microfilm held by Institut de Recherche et d’Histoire des Textes, Collège de France, Paris (France). Plates 1–2.

¹⁹In the short description in Little’s *Catalogue*, the groom’s name is misread as al-‘Abd lillāh (Servant of God) instead of al-Maghribī al-nassāj (Moroccan weaver). Little, *Catalogue*, 303.



- 6 الواضع خطه الكريم اعلاه بولاية الشرع الشريف بعد ان وضع امره فقبل الزوج ذلك لنفسه قبولاً شرعياً مخاطباً عليه شفاهها
- 7 بلفظ الشرعي بحضور من تم العقد بحضورهم شرعاً وبه تم الاشهاد عليهما في ثاني شهر رجب الفرد سنة اربع وتعسمه
- (أ)
- 8 حضرت العقد المبارك فشهدت بـ(جميع)
- 9 ما فيه وما نص في تاريخه
- 10 كتبه محمد بن عبد المطلب
- (ب)
- 8 حضرت
- 9 العقد المبارك
- 10 كتبه على بن ابراهيم
- (ج)
- 8 حضرت العقد المبارك
- 9 وشهدت بجميع ما فيه
- 10 كتبه حسن بن عبد الله

Translation

(Heading)

1. Held legally by
2. Ṣālīḥ ibn Khalīl ibn Sālīm al-Shāfi‘ī

(Text)

1. In the name of Allāh, the Beneficent, the Merciful. May Allāh praise our prophet Muḥammad and his household and companions and give peace to them!
2. Shaykh Jamāl al-Dīn ‘Abd Allāh ibn Maṣṣūr ibn Ibrāhīm al-Maghribī al-nassāj, who lives in Qalansūwah village, has assigned a marriage gift to his fiancée Sa‘īdah, the mature woman daughter of Tūmā ibn Tawākīl
3. the Christian who was separated by mutual consent from the bestower previously mentioned by means of a single divorce before this date, and free of legal impediment; he has assigned as a marriage gift to her with God Almighty’s blessing and with his help



4. in its success in accordance with the Sunnah of the Prophet Muḥammad, may Allāh honor him and grant him peace, a total marriage gift of silver dirhams, good and full, which at this time equal 400 dirhams, half of which is
5. 200 dirhams. It will be paid later, and they both must live together well (Allāh is with the righteous), and he who gave her in marriage to him accordingly accepted willingly that her representative in this contract be the magistrate,
6. who put his honorable signature above in accordance with the mandate of the Shari‘ah law after he explained it. The husband accepted this (contract) in a legal manner and affirmed that orally
7. in accordance with the legal word, and in the presence of those in whose legal attendance the contract was completed, and has been certified on 2 Rajab of the year 794.
 - (a)
 8. I attended the blessed contract and I have witnessed all that is in it
 9. And what is written in it on this date.
 10. Written by Muḥammad ibn ‘Abd al-Muṭallab
 - (b)
 8. I attended
 9. The blessed contract
 10. Written by ‘Alī ibn Ibrāhīm
 - (c)
 8. I attended the blessed contract
 9. And I have witnessed all that is in it
 10. Written by Ḥasan ibn Muḥammad

Commentary

(Heading)

1. عقده بطريق الشرعي This phrase confirms the legitimacy of the contract and that the procedures were in accordance with Islamic law. It is an ‘alāmah notation containing a judge’s recognition that a process took place in his court. Judges often wrote their mottos to the left of the *basmalah*.²⁰ It is called ‘alāmah because it is written in the place (*bayt*, *mawḍa‘*) on a court record where the judge writes the motto that serves as his signature.²¹

²⁰See al-Asyūṭī (d. 880/1475), *Jawāhir al-‘uqūd wa-mu‘īn al-quḍāh wa-al-muwaqqi‘īn wa-al-shuhūd*, ed. Muḥammad Surūr al-Ṣabbāh (Cairo, 1955), 2:369. For the use of the ‘alāmah by judges of late Mamluk and early Ottoman Egypt, see Rudolf Vesely, “Die richterlichen Beglaubigungsmittel: Ein Beitrag zur Diplomatie arabischer Gerichtsurkunden,” *Orientalia Pragensia* 8 (1971): 12–18.

²¹See Little, “Ḥaram Documents Related to the Jews,” 247.



2. Ṣāliḥ ibn Khalīl ibn Sālim al-Shāfi‘ī²² is the judge who certified this contract; the title of the judge (*al-Shāfi‘ī*) reveals that the contract was in accordance with the Shafi‘i school, which was prevalent at the time in Egypt and Syria.²³ The office of *qāḍī al-quḍāh* (chief judge) was limited to the Shafi‘i school in the era of the Ayyubid state and the first years of the reign of the Mamluks until 663/1265, when Sultan Baybars (658–76/1260–77) appointed four chief judges, each representing one of the four Sunni schools: Shafi‘i, Hanafi, Maliki, and Hanbali. Each judge was ordered to rule in accordance with his school.²⁴ Marriage and divorce contracts often followed the groom’s school.²⁵

(Text)

2. **أصدق** This word is not enough for the validity of the contract in accordance with the Shafi‘i school,²⁶ because this school requires the existence of an explicit word for marriage in the contract. The Hanbali view is similar, while the Hanafi school accepts a marriage contract with either an explicit or implicit reference to marriage. For the Malikis, it suffices to mention only the marriage gift.²⁷ However, there is an explicit reference to marriage in the fourth line in the document: **وولى تزويجها منه**. Therefore, the contract is perfectly in accordance with the Shafi‘i school.

الملا This is an Arabic name with a Turkish pronunciation. Derived from “*mullā*,” meaning Mr., teacher, shaykh, it is here pronounced *Manlā*. We should note the names in this line: the name of the groom (‘Abd Allāh), his father (Manṣūr), and his grandfather (Ibrāhīm); his last name (al-Maghribī) and his *laqab* (Jamāl al-Dīn); and his place of residence (Qalansūwah).²⁸ Next come the names of the bride (Sa‘īdah), her father (Tūmā), and her grandfather (Tawākīl). This detailed information is necessary in order to complete the contract in accordance with Islamic law.²⁹

²²There is not much information about this judge in the books of biography, except that Ibn Ḥajar al-‘Asqalānī was one of his students. He might have been a Qalansūwah village judge working under the supervision of the Jerusalem judge Sharaf al-Dīn. See al-Sakhāwī (d. 902/1496), *Al-jawāhir wa-al-durar fī tarjamāt Shaykh al-Islām Ibn Ḥajar*, ed. Ibrāhīm ‘Abd al-Majīd (Beirut, 1999), 205.

²³Alī al-Sa‘īd ‘Alī, *Al-Quds fī al-‘aṣr al-Mamlūkī* (Cairo, 1986), 122.

²⁴Ibn Kathīr (d. 774/1372), *Al-bidāyah wa-al-nihāyah*, ed. Aḥmad Abū Mulḥim (Beirut, 1994), 13:284.

²⁵Cf. documents nos. 321 and 610, where the judge was of the Hanbali school, as well as contract no. 646, where the judge was of the Hanafi school.

²⁶Al-Māwardī (d. 450/1058), *Al-ḥāwī al-kabīr fī fiqh madhhab al-Imām al-Shāfi‘ī* (Beirut, 1999), 9:152.

²⁷See al-Asyūṭī, *Jawāhir al-‘uqūd*, 2:19.

²⁸This village lies north of Jerusalem, close to the Ramla area in Palestine. See Yāqūt al-Ḥamawī (d. 626/1229), *Kitāb mu‘jam al-buldān* (Beirut, 1977), 4:392.

²⁹Al-Asyūṭī, *Jawāhir al-‘uqūd*, 2:52.



We notice that the groom is a Moroccan, and we know that there had been a community of Maghribis resident in Jerusalem since at least the late twelfth century.³⁰ There were many Moroccans in the city³¹ and they had a quarter called *Ḥārat al-Maghāribah*,³² in which were two *zāwiyahs*: *Zāwiyat al-Maghāribah* and a second, unnamed *zāwiyah* that was a hostel established as a residence for newly arrived male Moroccans.³³ The name of the bride's father, Tūmā, is the transcription of Thomas, but it is difficult to determine the origin of her grandfather's name (Tawākīl); it could be Georgian or Ethiopian.

المراة الكامل This expression means that this woman is sane, adult, and free. These are essential conditions to validate the marriage contract. Marriage contracts do not state the exact age of a bride; rather this was identified in other ways. In the Ḥaram documents brides were described as either *al-bikr al-bāligh*³⁴ ("the adult virgin," *bāligh* meaning that she had reached puberty) or *al-mar'ah al-kāmil* ("the mature woman," which usually meant that she had been previously married and was no longer a virgin).³⁵

3. The word النصرانية indicates that Sa'īdah was a Christian while 'Abd Allāh was a Muslim. This is not odd. It was commonplace in the Muslim community because Islamic law did not prevent Muslim men from marrying non-Muslim women from among the *ahl al-kitāb* (i.e., Jews and Christians).³⁶ This is echoed in a verse from the *Sūrat al-Mā'idah* (Q 5:5). Moreover, the Christian women have the same rights as the Muslim women.³⁷

مختلعة This word indicates that she had divorced him by *al-khul'*. Since *khul'* is considered a final divorce, when they wanted to remarry they had to craft a new contract and marriage gift in accordance with Islamic law.³⁸ The phrase خالية من الموانع الشرعية means that there is nothing that makes this woman ineligible for marriage, such as currently being married to another man.³⁹

³⁰Little, "Ḥaram Documents Related to the Jews," 250.

³¹There were many Moroccans, male and female, mentioned in the Ḥaram al-Sharīf collection. Cf., e.g., documents nos. 126, 242, 364, 407, 833.

³²Mujir al-Dīn al-'Ulaymī (d. 928/1522), *Al-uns al-jalīl bi-tārīkh al-Quds wa-al-Khalīl* (Najaf, 1966), 2:402.

³³Little, "Ḥaram Documents Related to the Jews," 250–51.

³⁴Cf., e.g., documents nos. 44, 317.

³⁵See Lowry, "Marriage and Divorce," 96.

³⁶See al-Shāfi'ī (d. 204/820), *Al-umm* (Cairo, 1990), 5:7.

³⁷Al-Māwardī, *Al-ḥāwī al-kabīr*, 9:220.

³⁸Al-Ramlī, *Nihāyat al-muhtāj*, 6:397; 'Āmir al-Zaybārī, *Ahkām al-khul' fī al-sharī'ah al-islāmīyah* (Beirut, 1997), 135.

³⁹Islamic law has determined fourteen reasons that prevent the marriage of a woman. See al-Māwardī, *Al-ḥāwī al-kabīr*, 9:196–97.



4. النقرة is a mixture of silver and copper, but silver is the predominant metal.⁴⁰ الوازنة means that these dirhams were full weight and neither blemished nor counterfeit.⁴¹

معاملة means that the dirhams in question are approved for exchange by order of the sultan (sultans sometimes issued orders to prevent the use of certain currency).⁴² The fact that these words indicate careful emphasis on the quality of these dirhams reflects *ipso facto* that there had been cases of fraudulent currency.⁴³ They set the amount of the marriage gift at 400 dirhams (about 15 dinars).⁴⁴ According to other Ḥaram al-Sharīf documents (e.g., nos. 291, 321, 610, 646, and 653)⁴⁵ dowries ranged from 150 to 600 dirhams, so the amount mentioned here suggests that the couple belonged to the middle or even upper middle class.⁴⁶

4–5. The phrase نصفها مائتا درهم is an example of the practice of “halving the amount,” which is common in Mamluk-era documents. “Halving the amount” was a cautionary measure designed to eliminate ambiguity in the numbers. This precaution was one of the conditions necessary in the creation of a legally valid contract document.⁴⁷ The term حالة means the groom would paid the *ṣadāq* upon demand. The authors of legal manuals allow the contracting parties to choose to pay the *ṣadāq* three ways: at the time of marriage (*maqḥūd, mu’ajjal*), in installments (*munajjam, muqassat*), or upon demand (*ḥāl*).⁴⁸ The phrase وولي تزويجها refers to the fact that the woman’s guardian (*walī*) in this contract was the judge, which indicates that she did not have living paternal relatives, the people who would normally have filled that role. In accordance with the Shafī’i school: “Every marriage without a guardian is void,” and it

⁴⁰Ibn Manẓūr, *Lisān al-‘Arab*, 2:1369; al-Qalqashandī (d. 821/1418), *Ṣubḥ al-a-‘shā fī ṣinā‘at al-inshā’* (Cairo, 1913), 4:180.

⁴¹See Anastās al-Karmalī, *Al-nuqūd al-‘Arabīyah wa ‘ilm al-numīyāt* (Cairo, 1939), 47.

⁴²Al-Munāwī (d. 1031/1621), *Al-nuqūd wa-al-makāyil wa-al-mawāzīn*, ed. Rajā’ al-Sāmra’ī (Baghdad, 1981), 122.

⁴³Ibn Yūsuf al-Ḥakīm, *Al-dawḥah al-mushtabikah fī dawābiṭ dār al-sikkah*, ed. Ḥusayn Mu’nis (Madrid, 1985), 181.

⁴⁴The dinar was equal 26.5 dirhams in that period; see Aḥmad ‘Abd al-Rāziq, *La Femme au temps des Mamlouks en Égypte* (Cairo, 1973), 130.

⁴⁵See some information about these documents in Little, *Catalogue*, 301–6. Cf. the chart for some marriage gifts mentioned in documents of the Ḥaram al-Sharīf in Lowry, “Marriage and Divorce,” 146.

⁴⁶The majority of the documents found in the Ḥaram collection that mention a marriage gift amount seem to have totals of less than 30 dinars. See Lowry, “Marriage and Divorce,” 146.

⁴⁷Ibn Farḥūn (d. 799/1396), *Tabṣirat al-ḥukkām fī uṣūl al-aqḍīyah wa-manāḥij al-aḥkām*, ed. Jamāl Mar’ashlī (Riyadh, 1423), 1:201.

⁴⁸See al-Asyūṭī, *Jawāhir al-‘uqūd*, 2:62; Rapoport, *Marriage*, 52, n. 10.



is not permissible for a woman (Muslim or *dhimmi*) to get married by herself without a guardian, regardless of whether or not she is a virgin.⁴⁹ In the absence of a guardian such as a father or grandfather, a judge could assume the role of *walī* for the purposes of the marriage contract.⁵⁰ The phrase *يأذنها ورضاها* is an important condition for the completion of the contract in accordance with the Shafi'i school.⁵¹

6. In this line, the judge had completed the marriage proceedings in accordance with the Shafi'i rules. Al-Shāfi'i says: "The marriage is never completed unless the guardian says that the groom has become a husband to his bride, and the groom declares his acceptance of marriage"
(لا يحل أبداً إلا بأن يقول الولي قد زوجتكها أو أنكحتها، ويقول الخاطب قد قبلت تزويجها أو نكاحها).⁵²
7. This phrase refers to the witnesses, since the marriage contract, according to the Shafi'i school, is not complete without two male witnesses.⁵³ *تسميه*, the year is often written in a kind of shorthand. Here, *tis'in wa-sab' mi'ah* is abbreviated by *t'smah*.⁵⁴
- 8–10. The signatures of three witnesses, although only two were required to ensure marriage contract validity.⁵⁵ The testimony of *shāhid al-'adl* (the witness of justice)⁵⁶ is a condition for the validity of the marriage contract in three schools (Shafi'i,⁵⁷ Hanbali,⁵⁸ and Hanafi⁵⁹) while in the Maliki school⁶⁰ the testimony is not required. Witnesses signed a contract with the word "I attended" *حضرت* in the past tense; this was a requirement for certification in contracts.⁶¹ Although the bride was a Christian, all witnesses were Muslims. This is required for the contract's validity in the Shafi'i school; if any witness is a *dhimmi* the contract

⁴⁹Rules that apply in the marriage of a Muslim woman also apply in the marriage of a *dhimmi* woman. See al-Shāfi'i, *Al-umm*, 5:7.

⁵⁰Al-Māwardī, *Al-hāwī al-kabīr*, 9:90.

⁵¹Al-Shāfi'i, *Al-umm*, 7:165.

⁵²Al-Māwardī, *Al-hāwī al-kabīr*, 9:153.

⁵³Ibn Qudāmah (d. 620/1223), *Al-mughnī* (Cairo, 1985), 7:7.

⁵⁴Cf. Ḥaram document no. 554; Little, "Ḥaram Documents Related to the Jews," 236.

⁵⁵Ibn Qudāmah, *Al-mughnī*, 7:7.

⁵⁶This is a judicial function handled by a group of witnesses who are known for justice, carried out with the permission of the judge. See al-Māwardī, *Al-aḥkām al-sulṭānīyah wa-al-wilāyāt al-dīnīyah* (Cairo, 1969), 66; Muḥammad M. Amīn, "Shāhid al-'adl fī al-qaḍā' al-islāmī: dirāsah tārikhiyah ma'a nashr wa-taḥqīq isjāl min 'aṣr salāṭīn al-Mamālīk, *Annales Islamologiques* 18 (1982): 5.

⁵⁷Al-Māwardī, *Al-hāwī al-kabīr*, 9:27.

⁵⁸Ibn Qudāmah, *Al-mughnī*, 9:347.

⁵⁹Al-Sarkhasī (d. 483/1090), *Kitāb al-mabsūt* (Beirut, 1993), 6:19.

⁶⁰Al-Qarāfi (d. 684/1285), *Al-dhakhīrah*, ed. Muḥammad Ḥajjī (Beirut, 1994), 4:398.

⁶¹Ibn Farḥūn, *Tabṣirat al-ḥukkām*, 1:222.



is illegal.⁶² The Hanbali and Maliki schools agree with the Shafi'i on this point, but the Hanafi school allows *dhimmi* witnesses if the bride is a *dhimmi*.⁶³

Arabic Transcription

Verso
(Heading)

اعترف بذلك عندي 1

(Text)

الحمد لله 1

2 سألت الحرمة سعيدة الزوجة المذكورة باطنه زوجها عبد الله الحاضر معها ان يطلقها طليقة واحدة مسبقة

3 باولى على مبلغ اربعمائة درهم بطن صداقها عليه المعين باطنه فاجاب سؤلها وطلقها الطليقة المذكورة

4 على العوض المذكور بانك بذلك منه ولا تحل له الا بعقد جديد بشرط الشرعي واقرت المطلق (هـ)

5 المذكورة انه لم يبق له بحق قبل مطلقها المذكور حقاً ولا طلباً ولا فضة ولا ذهباً ولا صداقاً

6 ولا كسوة ولا حق من حقوق الزوجية وبه شهد عليهما وذلك في رابع شهر صفر من سنة خمس وتعسمه

(أ)

7 شهد عليهما بذلك

8 كتبه محمد بن عبد المطلب

(ب)

7 شهد عليهما

8 كتبه على بن إبراهيم

Translation

(Heading)

1. He acknowledged that in my presence

(Text)

1. Praise be to Allāh!

2. The lady Sa'īdah, the wife mentioned on the opposite side, has asked her husband 'Abd Allāh, who attended with her, to divorce her with a single divorce preceded

⁶²Ibn Qudāmah, *Al-mughnī*, 7:8.

⁶³See al-Sarkhasī, *Al-mabsūt*, 5:35; al-Kāsānī (d. 587/1191), *Badā'i' al-sanā'i' fī tartīb al-sharā'i'* (Beirut, 1986), 253.



3. by repayment of her marriage gift in the amount of 400 dirhams (specified on the opposite side). He agreed and divorced her accordingly
4. in consideration of the mentioned compensation. This is a final divorce, after which she is not permissible to him except with a new contract with legal conditions. She has acknowledged
5. that there is nothing remaining from the one divorcing her, neither right nor claim, neither silver nor gold, neither marriage gift
6. nor cloth nor any legal matrimonial claim. Witness to that on the 4th of the month of Ṣafar, of the year 795:
 - (a)
He gave witness to them in that matter
Written by Muḥammad ibn ‘Abd al-Muṭallab
 - (b)
He gave witness to them in that matter
Written by ‘Alī ibn Ibrāhīm

Commentary

(Heading)

1. اعترف بذلك عندي This type of heading, which appears on several Ḥaram documents, is an *‘alāmah* notation. Al-Asyūṭī gives several examples of such notations containing a judge’s recognition that a process took place in his court, e.g., جرى ذلك كذلك (that took place in that manner), جرى ذلك في حضوري (that took place in my presence), جرى العقد بينهما بذلك (the contract took place between them to that end), etc.⁶⁴ This phrase refers to the husband, and this formula suggests that the judge knew the husband very well. If the judge had not known the husband he would have written the phrase اعترف عندي بذلك (he acknowledged that in my presence).⁶⁵

(Text)

1. الحمد لله This is a conventional pious formula called *ḥamdalah*.⁶⁶ There were many formulas for *ḥamdalah* in the Ḥaram documents, such as الحمد لله رب العالمين (All praise is due to God, the Lord of the Worlds) in nos. 44 and 461; or الحمد لله وحده (All praise is due to God alone) in nos. 211 and 467.
2. In this line, Sa‘īdah asked her husband ‘Abd Allāh to divorce her. This is her right in accordance with Islamic law if there is no compatibility in a mar-

⁶⁴Cf. al-Asyūṭī, *Jawāhir*, 2:369–77.

⁶⁵Ibid., 372, 375.

⁶⁶See, e.g., Ḥaram documents nos. 609, 623, 646.



riage.⁶⁷ This was a second divorce for them. It should be noted that this was *khul'*, although the word *khul'* is not expressly mentioned in the contract (the word used is *ṭalaq*). In the Shafi'i school, a divorce is *khul'* as long as there was compensation, regardless of the word used.⁶⁸

3. **أربعمئة درهم** To obtain the *khul'* the wife has to repay the husband the amount of the marriage gift. Therefore, it was necessary to mention the amount of compensation or the dissolution of the marriage would have been considered divorce and not *khul'*.⁶⁹ It was possible for the husband to get an amount higher than the value of the marriage gift paid by him.⁷⁰
4. The word **العوض** indicates that this was *khul'*, not divorce, as mentioned previously. The word **بانت** means that this was a final divorce, and that it would not be permissible for the husband to get her back without a new contract and marriage gift. **ولا تحل له إلا بعقد جديد** confirms that this was a *khul'* contract, because *al-khul'* is considered **طلاق بانن** (final divorce). The woman cannot legally go back to the bed of her former husband without a new marriage contract.⁷¹ The *tā' marbūṭah* in *al-muṭalaqah* is lacking.
- 5–6. The wife acknowledged that she got everything due to her from her husband, which is necessary to complete the contract,⁷² because a *khul'* contract in accordance with the Shafi'i school is considered a compensation contract, like a sales contract, since the husband has rights and the wife has a marriage gift.⁷³ Therefore, the wife repaid the marriage gift to her husband in order to attain *al-khul'*.
- 7–8. Signatures of two witnesses. They were the same witnesses who testified on the marriage contract.⁷⁴

⁶⁷Ibn al-ʿArabī (d. 543/1148), *Aḥkām al-Qurʿān*, ed. Muḥammad ʿAbd al-Qādir ʿAṭā (Beirut, 1408), 1:541.

⁶⁸Al-Māwardī, *Al-ḥāwī*, 10:9.

⁶⁹Abū al-Ḥasan al-Tusūlī (d. 1258/1842), *Al-bahjah fī sharḥ al-tuḥfah* (Beirut, 1412), 1:644.

⁷⁰Ibn Qudāmah, *Al-mughnī*, 7:247.

⁷¹Al-Ramlī, *Nihāyat al-muḥtāj*, 6:397.

⁷²Al-Asyūṭī, *Jawāhir*, 2:369–77.

⁷³Al-Māwardī, *Al-ḥāwī*, 10:30.

⁷⁴Ibn Farḥūn, *Tabṣirat al-ḥukkām*, 1:185.



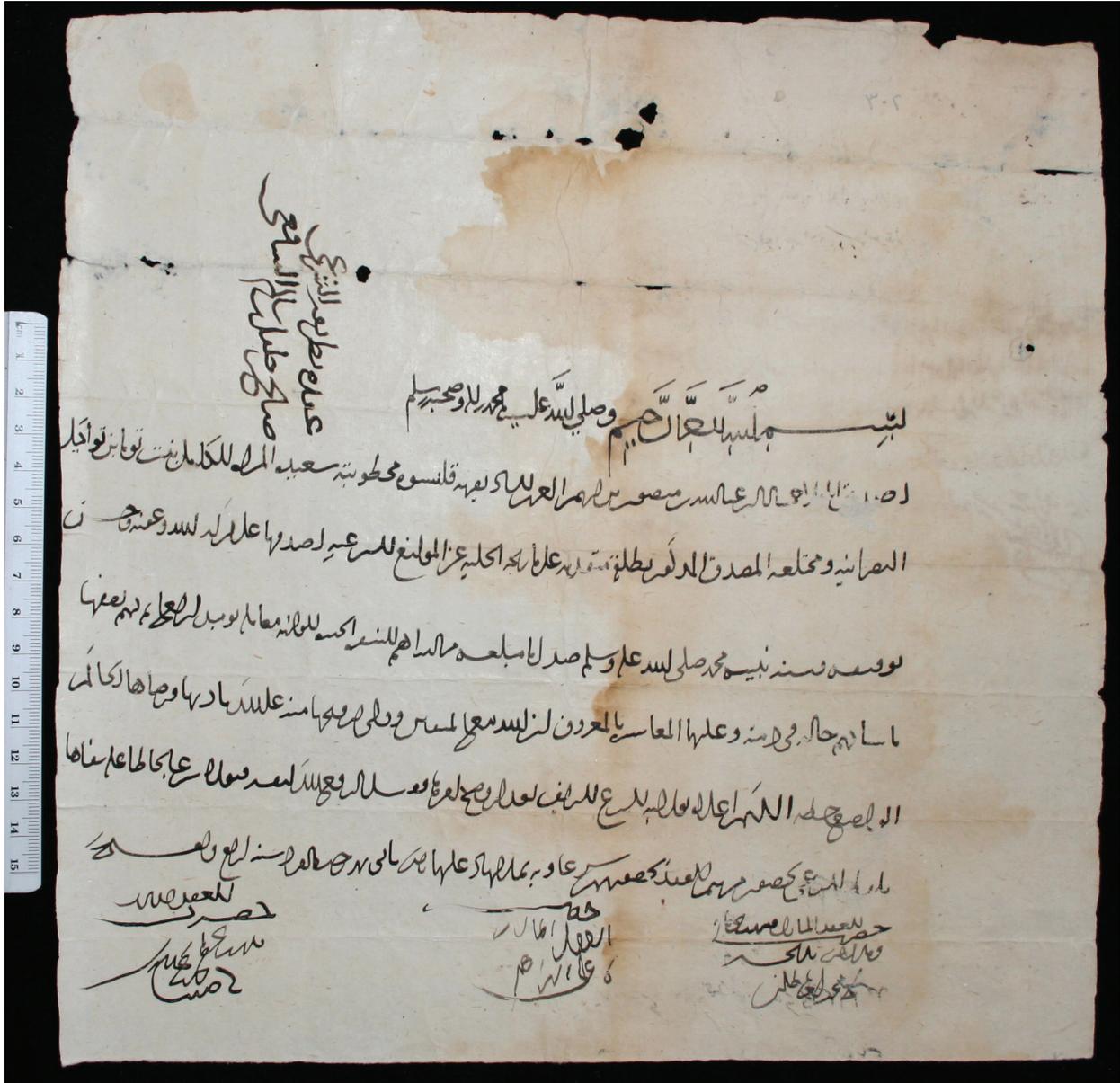


Figure 1.



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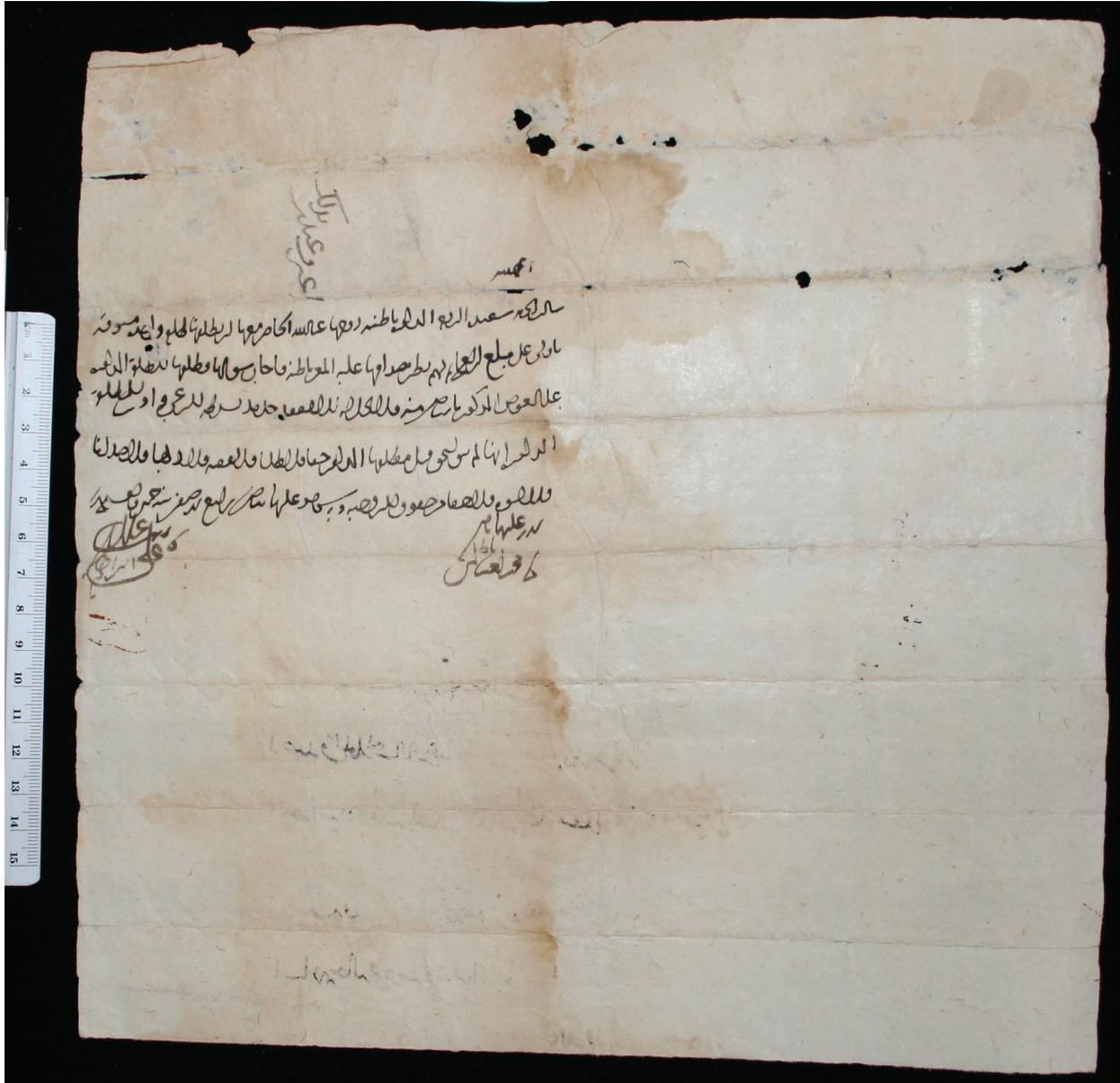


Figure 2.



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