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

Introduction

Documents from the Haram al-Sharif 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 Haram al-Sharif documents are those related to the situation of dhimmis in Jerusalem during the Mamluk era. 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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There are some studies that have examined the situation of dhimmis in Jerusalem in the Mamluk era through these documents. See, e.g., Donald P. Little, “Haram Documents Related to the Jews of Late Fourteenth Century Jerusalem,” *Journal of Semitic Studies* 30, no. 2 (1985): 227–64, 368–70.
Haram al-Sharif 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. 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 ʿAbd Allāh and a bride named Saʿīdah. In the divorce agreement on the verso, Saʿīdah asks ʿAbd Allāh to divorce her in exchange for 400 dirhams, and he agrees. Islamic law refers to this kind of divorce as *khulʿ*. In a *khulʿ* divorce, the wife seeks divorce from the husband in return for monetary compensation. In other words, she pays him for the divorce. ʿAbd Allāh was already Saʿīdah’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. 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.” Nevertheless, Rapoport has written that “the majority of divorces in Mamluk society were consensual separations” and that

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3There are ten marriage contracts in the Haram al-Sharif 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-Din ʿIzā 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-Din. See Müller, “The Haram Al-Šarif collection,” 446.

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

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

“breaking up a marriage was rarely a one-sided affair.” 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.”

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.”

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.

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

With regard to the legal form of the two divorces that happened between ʿAbd Allāh and Saʿīdah, a khul’ divorce is a single irrevocable divorce (although there are differences of opinion on this). There is no waiting period (iiddah), 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 Saʿīdah a third time, it would trigger a “major” divorce (al-baynūnah al-kubra), after which the couple could not remarry unless Saʿīdah had an intervening consummated marriage to another man.

Rapoport, Marriage, Money and Divorce, 112.

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

Rapoport, Marriage, Money and Divorce, 72.


Lowry, “Marriage and Divorce,” 193.

There are ten marriage and eight divorce contracts in the Ḥaram al-Sharīf collection. Two of them are khulʿ divorce documents (nos. 44 and 302). All of the marriage contracts begin with ʿasdaqa (“he bestowed”) or hadhā mā ʿasdaqa (“this is what he bestowed”), while the divorce contracts begin with the wife’s name and that she “asked” or “requested” (saʾalat) 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.

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.”

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. 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.

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13 See Little, Catalogue, 300–6.
14 Little, Catalogue, 300; Lowry, “Marriage and Divorce,” 69, 133.
15 Rapoport, Marriage, Money and Divorce, 35.
17 Lowry, “Marriage and Divorce,” 118.
Ḫaram al-Sharīf Document No. 302

Dates: Recto: 2 Rajab 794/25 May 1392
Verso: 4 Ṣafar 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 (ʿalāmah) 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 ʿalāmah 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
صلح بن خليل بن سالم الشافعي

(Text)

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

بقرية قلنسوة مخطوبته سعيدة المراة الكامل
اصدق المنلا جمال الدين عبد الله بن منصور بن ابراهيم المغربي النساج
بنت توما بن تواكيل

النصرانية ومختلفة المصدق المذكور بطلقة متقدمة على تاريخه الخالية عن الموانع الشرعية اصدقها على بركة الله وعونه

توافقه وسنة نبيه محمد صلى الله عليه وسلم صداقا مبلغه من الدراهم الثمنة الجيدة معاملة يومئذ اربعمائة درهم

ماتنا دهم حالة في ذمته وعلىههما المعاشرة بالمعروف ان الله مع النبيين وولي تزويجه منه على ذلك بإذنا ورضاه

الحاجم

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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-ʿAbd lillāh (Servant of God) instead of al-Maghribī al-nassāj (Moroccan weaver). Little, Catalogue, 303.
Translation

(Heading)

1. Held legally by
2. Ṣāliḥ ibn Khalīl ibn Sālim al-Shāfiʿī

(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 ʿAbd Allāh ibn Manṣūr ibn Ibrāhīm al-Maghribī al-nassāj, who lives in Qalansūwah village, has assigned a marriage gift to his fiancée Saʿīdah, 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 Muhammad, may Allah 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 (Allah 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. It is called ‘alāmah because it is written in the place (bayt, mawda) on a court record where the judge writes the motto that serves as his signature.


21 See Little, "Ḥaram Documents Related to the Jews," 247.
2. Ṣāliḥ ibn Khalīl ibn Sālim al-Shāfiʿī 22 is the judge who certified this contract; the title of the judge (al-Shāfiʿī) reveals that the contract was in accordance with the Shafiʿi school, which was prevalent at the time in Egypt and Syria. 23 The office of qāḍī al-quḍāh (chief judge) was limited to the Shafiʿi 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: Shafiʿi, 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 Shafiʿi 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 Shafiʿi school.

أفضل 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 (ʿAbd 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 (Saʿīdah), her father (Tūmā), and her grandfather (Tawākīl). This detailed information is necessary in order to complete the contract in accordance with Islamic law. 29

22 There is not much information about this judge in the books of biography, except that Ibn Ḥajar al-ʿAsqalānī 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 tarjamat Shaykh al-Islām Ibn Ḥajar, ed. Ibrāhīm ʿAbd al-Majīd (Beirut, 1999), 205.
25 Cf. 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.
26 Al-Māwardī (d. 450/1058), Al-ḥāwī al-kabīr fī fiqh madhhab al-Imām al-Shāfiʿī (Beirut, 1999), 9:152.
28 This village is north of Jerusalem, close to the Ramla area in Palestine. See Yāqūt al-Ḥamawī (d. 626/1229), Kitāb muʿjam al-buldān (Beirut, 1977), 4:392.
29 Al-Asyūṭī, Jawāhir al-ʿuqūd, 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 city\(^{31}\) 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.

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 Haram documents brides were described as either al-bikr al-bāligh\(^ {34}\) (“the adult virgin,” bāligh meaning that she had reached puberty) or al-marʾah al-kāmil (“the mature woman,” which usually meant that she had been previously married and was no longer a virgin).\(^ {35}\)

3. The word المصرانية indicates that Saʿīdah was a Christian while ʿAbd 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-Māʾidah (Q 5:5). Moreover, the Christian women have the same rights as the Muslim women.\(^ {37}\)

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.\(^ {39}\)

\(^{30}\) Little, “Ḥaram Documents Related to the Jews,” 250.

\(^{31}\) There were many Moroccans, male and female, mentioned in the Haram al-Sharīf collection. Cf., e.g., documents nos. 126, 242, 364, 407, 833.


\(^{33}\) Little, “Ḥaram Documents Related to the Jews,” 250–51.

\(^{34}\) Cf., e.g., documents nos. 44, 317.

\(^{35}\) See Lowry, “Marriage and Divorce,” 96.

\(^{36}\) See al-Shāfiʿī (d. 204/820), Al-umm (Cairo, 1990), 5:7.


\(^{39}\) Islamic 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 Haram 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 pay 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 (*maqbūḍ, muʾajjal*), in installments (*munajjam, muqassaṭ*), or upon demand (*ḥāll*).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 Shafi‘i school: “Every marriage without a guardian is void,” and it

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⁴¹See Anastās al-Karmalī, *Al-nuqūd al-ʿArabīyah wa ʿilm al-numīyāt* (Cairo, 1939), 47.
⁴⁴The dinar was equal 26.5 dirhams in that period; see Aḥmad ʿAbd al-Rāziq, *La Femme au temps des Mamlouks en Égypte* (Cairo, 1973), 130.
⁴⁶The majority of the documents found in the Haram collection that mention a marriage gift amount seem to have totals of less than 30 dinars. See Lowry, “Marriage and Divorce,” 146.
is not permissible for a woman (Muslim or dhimmī) 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 wali for the purposes of the marriage contract.⁵⁰ The phrase بِإذنها ورضاها is an important condition for the completion of the contract in accordance with the Shafiʿi school.⁵¹

6. In this line, the judge had completed the marriage proceedings in accordance with the Shafiʿi rules. Al-Shāfiʿī 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 الوالي 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 Shafiʿi school, is not complete without two male witnesses.⁵³ The year is often written in a kind of shorthand. Here, tisʿīn wa-sabʿ miʿah is abbreviated by tʿsmah.⁵⁴

8–10. The signatures of three witnesses, although only two were required to ensure marriage contract validity.⁵⁵ The testimony of shāhid al-ʿadl (the witness of justice)⁵⁶ is a condition for the validity of the marriage contract in three schools (Shafiʿi,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 Shafiʿi school; if any witness is a dhimmī the contract

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⁴⁹Rules that apply in the marriage of a Muslim woman also apply in the marriage of a dhimmī woman. See al-Shāfiʿī, Al-umm, 5:7.
⁵⁰Al-Māwardi, Al-ḥāwī al-kabīr, 9:90.
⁵¹Al-Shāfiʿī, Al-umm, 7:165.
⁵³Ibn Qudāmah (d. 620/1223), Al-mughnī (Cairo, 1985), 7:7.
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-Māwardi, Al-abbād al-suṭānīyāh wa-al-wilāyāt al-dīniyāh (Cairo, 1969), 66; Muhammad M. Amin, “Shāhid al-ʿadl fī al-qaḍāʾ al-islāmī: dirāsah tārīkhīyah maʿa nashr wa-taḥqīq isjāl min ʿaṣr salāṭīn al-Mamālīk, Annales Islamologiques 18 (1982): 5.
⁵⁷Al-Māwardi, Al-ḥāwī al-kabīr, 9:27.
⁵⁸Ibn Qudāmah, Al-mughnī, 9:347.
⁵⁹Al-Sarkhasī (d. 483/1090), Kitāb al-mabsūṭ (Beirut, 1993), 6:19.
⁶⁰Al-Qarāfī (d. 684/1285), Al-dhakhīrah, ed. Muḥammad Ḥajjī (Beirut, 1994), 4:398.
⁶¹Ibn Farḥūn, Tabṣirat al-ḥukkām, 1:222.
is illegal. The Hanbali and Maliki schools agree with the Shafi‘i on this point, but the Hanafi school allows dhimmī witnesses if the bride is a dhimmī.

Arabic Transcription

Verso
(Heading)

اعترف بذلك عندي

(히)

الحمد لله

(히)

سالت الحرمة سعيدة الزوجة المذكورة باطنه زوجها عبد الله الحاضر معها ان يطلقها طلقة واحدة مسبوقة

باولى على مبلغ اربعمئة درهم بن صداقها عليه المعين باطنه فاجاب سؤالها وطلقة المطلقه المذكورة

على العوض المذكور باتل بذلك منه ولا تحل له الا بعقد جديد بشرط الشرع ولا تحله ولا فضة ولا ذهب ولا صداقا

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

(히)

شهد عليهما بذلك

كتبه محمد بن عبد المطلب

(b)

شهد عليهاما

كتبه علي بن إبراهيم

Translation
(Heading)

Translation

(히)

1. He acknowledged that in my presence

1. Praise be to Allāh!

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

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 ʿAbd al-Muṭallab
   (b) He gave witness to them in that matter
   Written by ʿAlī ibn Ibrāhīm

Commentary
(Heading)
1. اعترف بذلئك عندي This type of heading, which appears on several Ḥaram documents, is an ʿalāmah 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 في حضوري (that took place in my presence), جرى ذلك كذلك (that took place in that manner), جرى العقد بينهما بذلك (the contract took place between them to that end), etc. 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).

(Text)
1. اللهم This is a conventional pious formula called hamdalah. There were many formulas for hamdalah in the Haram 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, Saʿīdah asked her husband ʿAbd 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., Haram documents nos. 609, 623, 646.
riage.\textsuperscript{67} This was a second divorce for them. It should be noted that this was \textit{khulʿ}, although the word \textit{khulʿ} is not expressly mentioned in the contract (the word used is \textit{ṭalaq}). In the Shafiʿi school, a divorce is \textit{khulʿ} as long as there was compensation, regardless of the word used.\textsuperscript{68}

3. أربعمائة درهم To obtain the \textit{khulʿ} 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 \textit{khulʿ}.\textsuperscript{69} It was possible for the husband to get an amount higher than the value of the marriage gift paid by him.\textsuperscript{70}

4. The word العوض indicates that this was \textit{khulʿ}, 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 بعد جديد confirms that this was a \textit{khulʿ} contract, because \textit{ṭalaq} is considered \textit{ṭalaq} بائن (final divorce). The woman cannot legally go back to the bed of her former husband without a new marriage contract.\textsuperscript{71} The \textit{tāʾ marbūṭah} in \textit{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,\textsuperscript{72} because a \textit{khulʿ} contract in accordance with the Shafiʿi school is considered a compensation contract, like a sales contract, since the husband has rights and the wife has a marriage gift.\textsuperscript{73} Therefore, the wife repaid the marriage gift to her husband in order to attain \textit{al-khulʿ}.

7–8. Signatures of two witnesses. They were the same witnesses who testified on the marriage contract.\textsuperscript{74}

\textsuperscript{67}Ibn al-ʿArabī (d. 543/1148), \textit{Aḥkām al-Qurʾān}, ed. Muḥammad ʿAbd al-Qādir ʿAṭā (Beirut, 1408), 1:541.

\textsuperscript{68}Al-Māwardī, \textit{Al-ḥāwī}, 10:9.

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

\textsuperscript{70}Ibn Qudāmah, \textit{Al-mughnī}, 7:247.

\textsuperscript{71}Al-Ramlī, \textit{Nihāyat al-muḥtāj}, 6:397.

\textsuperscript{72}Al-Asyūṭī, \textit{Jawāhir}, 2:369–77.

\textsuperscript{73}Al-Māwardī, \textit{Al-ḥāwī}, 10:30.

\textsuperscript{74}Ibn Farḥūn, \textit{Tabṣirat al-ḥukkām}, 1:185.
Figure 1.
Figure 2.