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SUBJECT: *QĀDĪ'S DĪWĀN* ACTIVITIES IN ISLAM (THE 10TH-13TH CENTURIES)

Key words: *Qadi, Hanafi Law, Sijill, Mahdar, Hukm, Faqih, Sultan, Rais, Transoxiana, Madhab*

The article is based on most recent accomplishments, conclusions and methods in World Islamic and historical sciences. The historical-comparative method was applied to study the sources including various manuscripts of "Hanafi Law" and many other sources written in Arabic that are available in the Fund of Manuscripts of the Institute of Oriental Studies under Academy of Sciences of the Republic of Uzbekistan.

It relies on recommendations, conclusions of research works and the conceptions related to the history of civilization of the Central Asia that were stated by leading scientists of our country and foreign countries such as Schacht Joseph, Monika Gronke, Ulrich Rebstock, Chehata Chafik, Emile Tyan, Chalmeta P; Carriente F, Riberta J., Asin, Jeanette A. Wakin, Michael Thung, Wael Hallaq, Carl Brockelmann (Abū Nasr al-Samarqandi, Ed. Muhammad Jasim al-Hadisi, 1987, p.46).

The aim of the article is to illuminate the role of literature on juridical documents in the development of divinity science in Transoxiana in X-XIII centuries. Moreover, to illuminate the importance of such works in regulating the social relations of the cultural life of our society. To highlight the historical-juridical forms, theoretical and practical foundation of juridical documents functioning in the world of Islam and Transoxiana in X-XIII centuries that was the important part of the social life.

Introduction: The scholars of Hanafi madhab in such big cities of Central Asia as Bukhara and Samarkand were actively involved into social-political life during 10th-13th centuries. And the introduction of Hanafi madhab into this area and the way of its development was studied by many Western scholars (Mahmud al-Sharbini, 1999, p.22).

It is known that *faqih* (Islam lawyers) were the main executors of social and political government of a society in Transoxiana during the 10th-13th centuries. The specific feature of that period was that, *Sultan* appointed both *rais* (who was occupied with religious affairs) and *amīr* (the representative of the government) in one city. *Rais* made policy to strengthen *Sunnism* in the territory of the occupied countries. Here faqih family members as *Āli Burhan* (Chafik T.Chehata, 1936, p.367) family assisted them. They also paid much attention to weaken their political enemies, especially *shi'a* groups who were near the capital of the country *Hurāsān*. In order to accomplish these tasks they used Hanafi scholars of *Hurāsān* and Transoxiana. Those scholars made a lot of afford to strengthen Hanafi madhab in Central Asian countries and decrease *shi'as* status. The ruling dynasties as *Samanids, Karahanids, Gaznavids* and *Saljukids* Sultans in order to obey the people made benefit of Islam faqihs' participation in it.

The period which the project will cover is considered as the second part of development of Islamic History in Central Asia. That is mutual impact and assimilation of Islamic cultures. The article will also deal the activities of *qādī* and *qādī* courts which were as means between Sultan and his people in social life of Transoxiana during 10th-13th centuries.

Main part

Judicial-legal problems in Islam were always connected with the level of statehood development, the complexity or simplicity of relations in society. That is why *qādī*'s activity was developed in specific level in every period.

And beginning from the 10th-13th century in the territory occupied by Arabs, *qādī* courts become an important body in state governing system.

Because of this reason, the order of courts in medieval Transoxiana was the same as *qādī* courts of Abbasids period (132-656/7501258). At that time Hanafi madhab was ruling and all *qādī*s were working based on the teachings of Hanafi madhab which was formed in Iraq (Omeljan Pritsak, 1952, p.81).

It is observed that in the 10th-13th century, contracts of various social aspects formed by *qādī* courts were registered according to Islam *shari'a*. According to various sources the rules of forming such agreements were called as *"shurūt"*.

Moreover ther were other significant documents in *qādī* court as *"mahdar"*, *"sijill"*, *"śakk"*, *"hukmī kitāb"* – "a book of sentence" (the explanation of these terms come below) which attracted all the legal proceedings and were officially registered in *qādī* court. Studying of them is important while researching the activity of *qādī* courts in medieval Islam territories (Chafik T.Chehata, 1936, p.367).

Our purpose in this article, therefore, is to attempt to unravel some important aspects of the *qādī* court formularies history, including the less consequential issue of the terminological confusion which has engulfed it in modem scholarly discourse.

Before proceeding to the substantive evidence in an attempt to shed light on the history of this institution, it would be well to question, as a convenient starting point, the arguments which purport to negate the existence of a formal institution and systematic practice prior to the Islamic administration. If serious doubt is cast upon the most elaborate arguments adduced in favor of the Islamic administration achievement, and against a prior formalization of the institution, then the first stage of the task may be said to have been successful.

The use of the term *sijill* to speak of the *qādī*s records is even more problematic, and the question of how this term came, in modern scholarly discourse, to designate the *qādī*s body of archival material perhaps deserves independent treatment. All the evidence points to the fact that the *sijill* is only one of a number of elements, or legal genres, making up the *qādī*s record, or *dīwān*. What Islamic administrations and others mean by *sijill* is in fact a *dīwān*, properly speaking. As we shall see, beginning sometime in the second/eighth century, and probably earlier, the expression *dīwān al-qādī* (or *dīwān al-qādī*) became the main nomenclature for indicating the totality of the records kept by the *qādī* (Wakin Jeanette A, 1972, p.203). This usage was also true of Islamic administration times. The early and later Islamic administration jurists Ibrahim al-Halabi (d. 956/1549), Ibn Nujaym (d. 970/1562) and Ibn ‘Abidin (d. 1252/1836) explicitly state this much. The latter, enlisting the views of earlier Hanafite jurists, adds that if the term *sijill* is employed for the *dīwān*, it is used metaphorically *(majazan)*. What, then, were the contents of *dīwān al-qādī*? The first two components were the *mahādir (sg. mahdar)* and *sijillāt*, stated in this particular order for a good reason as the next few lines will show. The *mahdar* refers to any of two different types of document: (1) a statement made by witnesses to the effect that someone has, for instance, sold, bought, pledged or acknowledged something. It consists of that upon which the judge’s decision is based; (2) a record of the two parties actions and claims taking place in the presence of the *qādī*, who must sign it before witnesses in order for it to be complete. On the other hand, the *sijill* consists of a witnessed record of what the *mahdar* contained, together with the *qādī*s decision *(hukm)* on the case. Accordingly, the *mahdar* is logically the basis *(asl)* of the *sijill,* the latter being constructed from the former. Ibn Nujaym, speaking of Ottoman-Egyptian usage, declares that in the convention prevailing nowadays *(al-’urf al-an),* the *sijill* is that which the two witnesses write down concerning the dispute (between them), and which remains with the *qādī*, but does not have on it his own handwriting. Interestingly enough, two centuries later, Ibn ‘Abidin makes the same observation about the nature of the *sijill* in his native Syria (Emile Tyan, 1945, p.9). In addition to *mahādir* and *sijillāt* the *qādī’s dīwān* usually contained the following items:

1. *Sukūk,* which include contracts of sale, pledges, acknowledgements, gifts, donations and other instruments, including *adhkar huqūq*. These are also known as *hujja* and *wathiqa*, although they also refer, as Ibn Nujaym states, to *mahādir* and *sijillāt* (Husāmuddīn al-sadr al-shahīd, Ed., Mahiy Hilāl al-Sarhān, 1977-78, v.4);

2. A register of the witnesses whose rectitude has been established, and those who have been disqualified. Included here are the names of the *qādī* ‘s agent who undertook the task of examining the character of these witnesses or former witnesses *(muzakkī)*;

3. A register of prisoners, including the date on which they were imprisoned, and the reasons for conviction;

4. A register of trustees over *waqfs*, orphans, divorcees alimonies, etc.;

5. A register of bequests *(wasāyā)*;

6. Copies of letters sent from one *qādī* to another *(kitāb hukmī or kitāb al-qādī)*, and of relevant legal documents that were attached to the letter (Abū Nasr al-Samarqandi, Ed. Muhammad Jasim al-Hadisi, 1987, p.46);

7. A register of guarantors *(kufala’; sg. kafīl)*;

8. A register of those who have been legally qualified and empowered to act as agents *(wukāla’; sg. wakīl)* (Abū Nasr al-Samarqandi, Ed. Muhammad Jasim al-Hadisi, 1987, p.46).

In sum, every relevant piece of evidence encountered points in one direction, namely, that the *qādī’s* complete set of records were known as his *dīwān*, and that they included the two major components of *mahādir* and *sijillāt*, in addition to such other components as were enumerated above. The *sijill,* used in a technical legal sense, simply never encompassed the vast array of documentation generated in the *qādī’*s assembly. Furthermore, our evidence of this reconstruction includes the attestation of four major Islamic administration jurists. The foregoing evidence is, We think, sufficient to allow us to abandon the designation *‘sijill’* to refer to the totality of the *qādī’*s records, be they Islamic administration or otherwise. As for the term ‘court’, it also presents us with a problem. Ideally, it should be substituted by ‘assembly’, reflecting the Arabic word *‘majlis’(majālis)*. But since the use of ‘assembly’ could prove awkward, we might well retain ‘court’ but with the full understanding that we are speaking about a different type of adjudicatory

organ. Such a concession, however, can in no way be made in the case of the *sijill,* for the use is both inaccurate and misleading. Now that the terminology has been established, We will turn to the question of judicial *dīwāns*, the purpose being to show that these *dīwāns* had existed as a formal and systematic institution prior to the Islamic administration. In support of this thesis, We advance as a prelude a set of three arguments, the first and third of which are generally circumstantial in nature, but the second has direct bearing upon the question at hand. The first argument is that the keeping of records in the classical form of *dīwān* was, as anyone will admit, a common practice of administration through-out the centuries and in, at least, all central Muslim lands, from **Transoxania** in the east to **Andalusia** in the west (Muhammad al-Zuhayli, 1995, p.590). There is no question as to the historicity of the formal and systematic nature of a variety of *dīwāns,* be it *dīwān al-kharaj, dīwān al-jawāli, dīwān al-rasā'il, dīwān al-junud, dīwān al-sirr,* or, significantly, *dīwān al-mazālim*. If all these have been attested as formal institutions involving systematic practice, then the *dīwān al- qādī* should be viewed and treated no differently, especially in light of the fact that our evidence of this *dīwān* is no less abundant than that of other *dīwāns*. A close look at the monumental work Subh al-A'sha of Qalqashandi makes it quite clear that all these *dīwāns*, including that of the *qādī,* equally partook of the administrative world of Islamic societies and of the ruling dynasties. There is nothing in this *euvre* that suggests otherwise. Furthermore, the justification of viewing *judicial dīwāns* in the same manner as other *dīwāns* are viewed-namely, as formal and systematic institutions-is bolstered by the fact that it was often the higher rank *qādī*s themselves who headed non-judicial *dīwāns* such as *dīwān al-sirr* and *dīwān al-mazālim*. The second argument is cognate with the first. All legal and quasi-legal discourse throughout Islamic history attests to the presence of the scribe *(kātib)* as a permanent fixture of the *qādī*'s entourage. This discourse makes it crystal clear that the function of the scribe was to record the minutes of the court proceedings, including the claims of the parties to the lawsuit, and the deposition of witnesses. During the trial, he read all written claims, statements of the witnesses and documents relevant to the case being adjudicated, and at times was himself called upon to act as witness. He also issued *hujjas*, based on the minutes, in favor of the parties who were judged to possess a right to one thing or another. Whatever the scribe's precise function was, it was either directly related to the *qādīs dīwān* (Mahmud al-Sharbini, 1999, p.22), or it issued from it; but without him the business of the court would come to a halt. When Ibn Qudama made the hiring of the scribe only recommended for the *qādī* – and in that he was in the minority –he was in no way suggesting that the *qādī* could dispense with the function itself, but rather with the personnel; for he argues that the *qādī* may hold his court without a scribe only if he himself is able to undertake the task which is otherwise assigned to the scribe. But since Ibn Qudama knew well that the normal tasks of the *qādī* were already demanding without his having to take on further responsibility, he made the hiring of a scribe highly recommended. That the great majority of authors not only prescribes but also takes for granted the presence of the scribe in the *qādīs* entourage, goes to show that this function remained throughout an integral part of the court structure. It appears that the scribe was equally indispensable in the *mazālim* court, and his functions there seem to have differed in no significant respect from those he had in the *Shari'a* court. The function of the scribe must here be differentiated from that of the notary, the *shurūt* or the *muwaththiq,* who did not sit in the *qādīs* court and whose function was a private, not a public one, which the *kātib's* was. In contradistinction to the *kātib* whose activity was limited to writing in, and from, the *qādī* is *dīwān,* and whose salary the *qādī* paid, the *shurūt* wrote contracts and legal documents of all types and forms, and was retained, for a fee, as a legal expert for this specific purpose by individuals transacting outside the court's jurisdictional boundaries (Emile Tyan, 1960, p.673). Manuals on *adab al-qādī*, which no doubt reflect significant aspects of the realia of judicial practice, all agree that one of the first tasks the newly appointed *qādī* must perform is to retain a *kātib* who ought to possess, along with other good personal qualities, expert knowledge in both law and the art of writing. These requirements are, significantly, also attested by the royal decrees which were issued by the caliph or the sultan for the purpose of appointing *qādī*s (Wakin Jeanette A, 1972, p.203). If no one is to be found qualified in both areas of law and writing, then knowledge of the art of writing is not to be compromised. But whether or not he is knowledgeable in law or has met the desirable-but not the absolutely necessary-requirement of *'adala* (just character), the *qādī* must subject the *kātib* to constant scrutiny, and to do so, he must have him sit in such close proximity to him as to be able to inspect what he has recorded. The legal literature is also peppered with references to individuals who functioned as *kātibs*. In the 160s/780s, al-Qadi al-Mufaddal b. Fadala's scribe was bribed with a thousand *dinars* in order to copy down in the *dīwān*, unlawfully,

a document in favour of a certain Qaratishi. Simnani's fascinating accounts of his shaykh, al-Qadi al-Damghani al-Kabir, tell not only of the manner in which he conducted his *majlis al-qādī*, but also what his scribe did. In 925/1519, less than three years after Sultan Selim conquered Egypt, the Cairene court scribe Abu 'l-Fadl al-Sunbati al-A'raj, who was notable for his skills as scribe, died. This rather brief biographical note of Ibn Iyas is quite revealing in that it constitutes not only an attestation to a lifelong career spent in the scribal profession, but also to a career the greatest part of which was spent in the service of Mamluk (Donald. B. Little, 1987, p.337). Similarly, Ibn al-Husayn devotes biographical notices for *qādīs* and other personalities who played one role or another in the religious, cultural and political arenas, including persons who belonged to the more modest profession of scribes. So we hear of such figures as Jamal al-Din al-Ghazzi who lived in Damascus and had a senior position in *qādīs* assemblies *(majālis al-qudāt)*, and who wrote down their decisions. In the same vein, Taj al-Din al-Halabi, Husayn Ibn Qasim, Shihab al-Din al-Adhru'i, and Shihab al-Din al-Halabi, are described as having functioned as *kātibs* in the Mamluk period in the courts of the city of Halab. 'Abd al-Rahman al-Mahalli and 'Abd al-Rahman al-Iskandarani are among many who were described by 'Asqalani as having been highly skilled in recording *sijillāt* and as having worked in this capacity for *qādīs (sajjala 'ala al-qudāt)*. So was 'Abd al-Hamid Ibn 'Abd al-'Aziz, the best among his peers in drawing *mahādir* and *sijillāt*. A number of judges and jurists began their career as scribes, which may explain why some law manuals prefer a scribe who is a *faqih*. Our third argument stems from the nature of adjudicatory organs in all complex societies, including of course those that are urban and quasi-urban. Since we are fairly certain that aside from the *mazālim* courts, pre-modern Muslim societies never had recourse to any other court system but to that of the *Shari'a*, we are justified in maintaining that the latter type of court was the chief adjudicatory organ of Muslim societies. If this premise is granted, then I should proceed to assert that no Muslim society, urban or quasi-urban, could properly function-judicially or otherwise-with a court system which maintains no proper registry of its daily business. Failing to maintain such a registry would have constituted cause for social disorder, and would have had as adverse an effect on state and society as the failure of the sultan to maintain a proper *dīwān al-junūd* or *dīwān al-kharaj*. All jurists and judges in pre-modern Islamic societies were acutely aware of the need to record in the *dīwān* each and every matter that had any consequence or that had the potential of arising at any point in the future. In fact, the raison *d'etre* of the entire system of the *dīwān* was precisely this anticipation of consequences (Chalmeta P., 1983, p.675).

The Andalusian judge Ibn al-Munasif (d. 620/1223) speaks of the crucial importance of recording all cases that may recur in the future. In describing Andalusian and Maghrebi judicial practice, he says that judges up to his time were in the habit of recording all such cases in full, including the parties claims and testimonies pertaining to the case itself; then, the record was dated, sealed and attested by witnesses. However, he complains (and this he does often throughout the book) that his contemporaries have abridged this practice, apparently recording the cases in a succinct manner. Here, he again warns that it is important to record the cases in sufficient detail so as to anticipate fully any ensuing litigation.With a different emphasis, the fifth/eleventh century Hanafite jurist and judge Simnani puts the matter as follows: You ought to know that *dīwān al-hukm* is the backbone of legal transactions. In it are preserved testimonies, *waqfs* and debts. By means of it the judge recalls his decisions concerning contracts as well as the testimonies of witnesses who attested before him. [He also recalls] the dates he adjudicated cases and the dates of *sijillāt* and *mahādir* (Chalmeta P., 1983, p.6). Also recorded in the *dīwān* are:

– the proofs for the rectitude of witnesses *(ta'dīl al-shuhūd)* and the names of those who undertook the task of proving their just character;

– a record of those witnesses who were impeached, and the reasons for their impeachment. Thus, the *dīwān* is the *qādīs* trustee and his successor *(khalīfa)*.

He should spare no effort to preserve it and keep it in good order, for it is the first thing he looks at and the first thing he receives [from his predecessor] who is in charge of it. Observe the use of the significant term *khalīfa* which clearly expresses the notion that the *dīwān* is as much the successor of the *qādī's* in terms of the local socio-legal continuity as the next appointed *qādī* is the representative of institutional continuity. If the whole institution of *qadā* is seen as a dichotomy of legal professionals, on the one hand, and social conflicts, social relations and economic arrangements negotiated in court before these professionals, on the other, then the authoritative structure of continuity and social and economic order ought to be seen as being mediated through the continuity of the *qādīs* office and that of his *dīwān* reflecting, respectively, this dichotomy. We shall now see that the practice of copying down the outgoing *qādīs dīwān* was the method by which documents, minutes, records of debt and all important matters, were preserved for any

future exigency (Ahmad al-Tulaytuli, 1994, p.405).

All the abundantly available legal and quasi-legal sources unanimously consider the transference of the *dīwān* from the outgoing to the incoming *qādī* (an act known as *tasallum or taslīm*) as one of the first matters to which the latter must attend. (In light of our thesis, it is quite telling that the literature abounds with references to such phrases as the *dīwān* of the *qādīs* predecessor. The process of the *dīwān's* transfer is often described in minute detail, clearly reflecting its crucial importance. The royal decrees of judicial appointment make of *tasallum* a distinct duty incumbent upon the new *qādī*. A typical decree, issued on behalf of the Caliph al-Mustarshid (reigned 512-29/1118-34) in favour of the Chief Qādī 'Ali b. Husayn al-Zaynabi, commands this *qādī* to receive *(yatasallam)* the *dīwān al- qādī* and all that which it contains of *hujjas, sijillāt,* documents, guarantees, *mahādir,* and agencies, 'in the presence of just witnesses so they would see and attest to their receipt. The sultanic decree of al-Malik al-Nasir appointing the Chief Qadi Ibn Fadlan around 600/1203 specifically orders him to seal the *dīwān* upon receipt, and to ensure that it, together with the fiscal documents, does not leave his hands or those of his trustee. Once the *qādī* has appointed a scribe, he sends him in the company of at least one witness to the outgoing *qādī* or, more often, to the latter's trustee in order to receive the *dīwān*. Though it does not seem to have been a common practice, the *qādī* himself, again accompanied by one witness or more, at times undertook this task. The process by which the *dīwān* was obtained differed in some respects from one region or time to another. As a rule, the *dīwān* itself remained in the hands of the *qādī* under whom it was written, and only a copy was made thereof (Ismail Hakki Uzungarshili, 1984, p.51). Probably much less frequently, the *dīwān* was delivered, lock stock and barrel, to the new *qādī*, in which case the delivery was attested by witnesses. However, until the middle of the second/eighth century, the outgoing *qādīs* seem, as a rule, to have transferred the *dīwān* itself to the incoming *qādīs* or their representatives. In later periods, this practice occurred but far less frequently. Khalid b. Husayn al-Harithi, who served as a *qādī* under the Caliph al-Mahdi (reg. 158-69/774-85), was reportedly one of the first, if not the first, to have insisted on retaining the original copy of the *dīwān*, and on having the incoming *qādī* make two copies of it, both attested by witnesses. Sometime in the 160s/770s, the *qādī* 'Afiya submitted his resignation to the Caliph al-Mahdi, and to finalize the matter of his resignation he gave up his *qimatr*[1], the bookcase in which the *dīwān* was kept. In 140/757, a certain *qādī* named Ghawth took over the post of Yazid b. Bilal who had just died, and when the *dīwān* failed to be delivered to him, he went to Yazid's residence and received it there. It is also reported that when Ibn Zabr resigned from his post in Cairo sometime in the 320s/930s, he surrendered his *dīwān* to Abu Hashim al-Maqdisi who agreed to replace him. Under special circumstances, when the *qādī* was brusquely dismissed or when he was indicted for misconduct, a confiscation of his books was to be expected. In 200/815, upon deciding to dismiss Muhammad al-Ansari from the office of judgeship, the Caliph demanded that he be fetched together with his *qimatr*. This was done with the understanding that confiscating the *qimatr* represented his dismissal. Similarly, when al-Ma'mun defeated his brother al-Amin in 198/813, he immediately dismissed the *qādī* 'Abd Allah b. Sawwar, sealed his books, and transferred them elsewhere, and this he did, according to Waki', because Sawwar both severely criticized him and had been an ardent supporter of al-Amin. When the *dīwān* was copied down, the duplicates were required to be attested by witnesses in order to ensure their veracity. Simnani speaks of three copies: the first would be deposited with the new *qādīs* scribe or custodian; the second would remain in the hands of the person who received the *dīwān*; and the third would be given to the witness or witnesses who attested the process of transfer. The general picture that emerges, however, is that two copies, one for the incoming *qādī* and one for the witnesses, were considered sufficient. Since the purpose of this important exercise is to provide the incoming *qādī* with a register of earlier cases so that they can be retrieved in the future if the need arises, the process of copying the *dīwān* must be organized in a particular manner. The *mahādir*, *sijillāt*, *sukūk*, record of witnesses, documentation related to trustees over *waqfs* and orphans, etc., must each be lumped together, and no category of these, except for the *mahādir, sijillāt and sukūk,* must be allowed to mix with another. While copying, the *kātib* must ask the outgoing *qādī* or his representative about any case which may not be clear to him. The entire process must unfold gradually *(shay'an fa-shay'an)*, slowly and carefully *(tathabbut)*. One of the most revealing accounts of copying the *dīwān* is given by Abu Nasr al-Samarqandi, a jurist, *shurut* and judge who seems to have lived during the fifth/eleventh century. The work no doubt reflects to a large measure the judicial practice prevalent during the author's lifetime in Samarkand and Bukhara, and this is evidenced in the subtle uniqueness of his work and in allusions to the realia of regional judicial and documentary practice,

[1] The word *qimatr* seems to have acquired a variety of meanings, depending on time and place.

including the organization of the *dīwān's* materials which the scribe copies. According to Samarqandi, the incoming *qādīs* first task *(wa-awwalu ma yabtali bi-hi al-hākim)* is to obtain the outgoing *qādīs dīwān,* which consists of *qimatra (sg. qimatr),* a register of male and female prisoners, and whatever objects of value that belong to Muslims *(wadā'i' al-muslimīn).* First, the *mahādir, sijillāt, and sukūk* are recorded-in the sequence they appear in the *dīwān*-in a *jarida,* which appears to have been a sheet or sheets of paper. Since, as we shall see, the *qādīs dīwān* is a yearly record, the scribe writes: The following are the *hujaj (sg. hujja)* of year such and such; the number of *mahādir* is such and such; the number of *sukūk* is such and such, etc (Abū Nasr al-Samarqandi, Ed. Muhammad al-Hadisi, 1987, p.46). The individual items do not seem to have been recorded in full, but only in summary, since the formulary of each type of record was well-known. Thus, the *mahdar* is copied thus: a *mahdar* in the name of so and so, concerning a right that had been established in such and such a matter on the first day of the month such and such. No year is specified since the entire *jarīda* is devoted to a single year, mentioned at the outset. Similarly, the *sijill* is summarized as follows: 'a *sijill* concerning such and such right belonging to so and so against so and so, and attested by the witnesses so and so, on [for example] the fourth day of such and such month. Bequests, guarantees, trusteeships over *waqfs* and orphans, and all other items are recorded in this fashion until the year's record, and all subsequent annual records, are completed. The scribe then turns to the register of prisoners, recording them as follows: So and so is jailed for an unpaid debt he owes to so and so, a debt attested by the testimony of the witnesses so and so. The time of imprisonment began on the day such and such of the month such and such. Aside from the *mahādir, sijillāt, and sukūk* – all of which are copied in one *qimatr*-Samarqandi divides the remaining material of the *dīwān* into ten categories, each of which should be copied, for a particular year, on a separate *jarīda*. These categories are as follows:

1. A list of witnesses which appeared in the *mahādir.* If a witness appeared in a *mahdar* on a very early date, and never attested since, he is called upon in order for the scribe and the witnesses attesting the copying of the *dīwān* to reconfirm his just character;

2. A list of witnesses whose just character was confirmed, along with the date of confirmation. As long as six months have not lapsed since his last testimony, the witness's rectitude need not be reconfirmed;

3. A list of male prisoners (see preceding paragraph);

4. A list of female prisoners (see preceding paragraph);

5.*Waqfiyyat*, the *waqf* estates and their locations;

6. Appointment and dismissal of trustees over *waqfs,* and various financial accounts related to them;

7. A list of trustees over estate distribution and over orphans; financial accounts related to them, as well as the terms of their appointment;

8. A list of the names of *qādīs*, *sultans, emirs, viziers,* military commanders and other state officials, whose assistance might be needed;

9. A list of the names of guarantors, of those who have been guaranteed, and the objects of guarantee;

10. A list of agents *(wukāla')*, and of those who have given them powers of representation. The terms of representation, the lawsuits and dates are also recorded (Abū Nasr al-Samarqandi, Ed. Muhammad al-Hadisi, 1987, p.620).

Samarqandi's classification is by no means identical to other classifications that originated in different times and places. For example, Ibn Nujaym does not see the need to copy down the *waqf* estates and their locations, because, he argues, the *waqfiyyāt* and related documents already contain such information. Ibn Abi al-Damm, describing Andalusian and Maghrebi judicial practice around 600/1200, observes that if the incoming *qādī* finds that most of the witnesses attesting in the outgoing *qādīs dīwān* have died, then he calls upon those who are still alive in order to reconfirm their attestations, thereby renewing the testimonial basis of these cases (Ahmad al-Tulaytuli, 1994, p.405). Regional and temporal variations no doubt existed, but the general principles governing the transfer of the *dīwān* remained the same in all periods and places attested in our sources. At this point, We must note in passing that the *dīwān* was organized in a systematic manner, a fact which facilitated copying when a new *qādī* came into office. All records of a certain type (e.g., *mahādir, sijillāt*) appear to have been compiled separately and filed in a weekly or monthly dossier *(idāra)*, depending, apparently, on the number and size of the records that accumulated in the court.

The second *qādī's* court formular Shurūt[2] are the clauses of a contract; their appropriate formulation is an essential part of juridical practice. In this domain even the Arabs had to forget about the primacy of

[2] The term *shurūt* is used by the hanafi scholars as al-Shaybani, al-Tahawi, al-Samarqandi, Burhān ad-dīn al-Bukhari to apply equally to the literature as a whole, the model document as *shart* or *shara'it* (in this plural form, he is perhaps thinking of a collection of formulas), while *shara'it* can also be a plural of either *shart* or *shurūt*. *Shurūt* is the usual Hanafi term, although occasionally a written document is called *wathiqa, sakk, aqd (pl. uqud), hujja, mahdar (pl. Mahadir), sijill (pl. Sijillat)*. In the eastern part of the Islamic World and in the Ottoman period, documents and forms for documents are more often called *Sakk* (pl. *Sukuk*). In Transoxiana (Mawarannahr), *wathiqa (pl. Watha'iq)*.

stylistic elegance; what mattered was merely precision and completeness. Such prerequisites could not be improvised; models were needed, exemplary texts which were collected in formularies. The kutub al-shurūt are such formularies; they are written not to explain the law but to furnish patterns on how to apply iot. The oldest text of this genre known to us is most popular student of Abu Hanifa Muhammad al-Shaybani (d. 189/805) al-shurūt, fragments of which are preserved in Sarakhsi's Mabsut. Al-Shaybani and al-Sarakhsi were Hanafis; their madhab seems to have shown a special interest in this field.

Hanafi scholars works, who lived after 13th century C.E., such as Abū Nasr al-Samarqandī's (d. 550/1155) (Abū Nasr al-Samarqandi, Ed. Muhammad al-Hadisi, 1987, p.620) Burhān ad-dīn Mahmūd al-Bukharī's *"al-Muhīţ"* (Tyan Emile, 1945, p.1241), and *"al-Zahīra al-burhāniyya"* (Tyan Emile, 1945, p.99), Muhammad Hasan al-Ustrushanī's *"Kitāb al-fusul" (*Tyan Emile, 1945, p.29*)* were dedicated to *shurūt* sciences. And it can be observed that while creating these works they used Abū Hanifa's, Muhammad al-Shaybanī, Abū Yusūf, Ibn Sama'a and Hassaf, Abū Ja'far al-Tahawī's manuals as the initial source and al-Sarakhsi.

The study of the literature of Shurūt and of individual forms for documents is rewarding from many points of view.

In The *kutub al-shurūt* much space was given to the contracts on sale and property rights *(bay'. pl. buyu')* and marital rights (*nikah. Pl. ankiha*) besides has another third category of contracts which are about slavery issues. This issue can also be referred to both categories as well. From one side, slavery issues could be considered as a part of because slaves were regarded as close people to the family. From another side, slavery was a type of commerce in Medieval East. Slaves were sold and bought. From this point of view, it can be referred to both categories.

The first *"shurūt"* work which reached us are *"al-Jami' al-kabīr fi-l-shurūt"* and *"al-Jami' al-saġ'īr fi-l-shurūt"* written by Abū Ja'far at-Tahawī (d. 321/933).

There are a lot of manuscript copies of *"Al- Jami' al-kabīr fi-l- shurūt"*. They were studied by many Western scholars. German scientist Joseph Schacht for the 1st time studied *"Adkar al-huqūq va-l-ruhūn"* (comments on guarantees and rights) (Schacht Joseph, 1927, p.38) and *"al-Shuf'a"* (the right of privileged purchasing) (Schacht Joseph, 1930, p.58) chapters of *"al-Jami' al-kabīr fi-l- shurūt"*. The *"Bay'"* (trade) chapter of the work *"Al- Jomi' al-kabīr fi-l- shurūt"* was translated into English in 1972 by J.Wakin and published with original text (Wakin Jeanette, 1972, p.203). In 1996 Michael Tung (Michael. H. Thung, 1998, v.61., p.415) published a paper about the chapter *"Adkar al-huqūq va-l-ruhūn"* of the given work[3]. Abū Ja'far at-Tahawī's another work on this theme *"al-Jomi' al-saġīr fī-l- shurūt"* was published in Bagdad as complete two volumes *(Al-Tahawī. Al-Shurūt al-saġīr. Vol.II. Bagdad: 1974. 823p.)*[4].

Ispanian researchers P. Chalmeta, F. Carriente (Chalmeta P.,Carriente F., 1983, p.6), J. Riberta (Riberta J., Asin M., 1991, p.256), F. Sadaba (Ahmad al-Tulaytuli, 1994, p.405) studied *"shurūt"* works of Maliki madhab. According to their opinion, Maliki madhab *shurūt* science were written by *qādī*s of Kordova and Granada cities of Andalusia mainly from 399/1009 to 767/1365. The first *"shurūt"* work of Maliki madhab is *"al-Wasa'iq va-l-sijillāt"* by Muhammad al-Attar (d. 399/1009). After him Ahmad al-Tulaytuli (d. 459/1067) also wrote *"al-Muqnī' fī 'ilm al- shurūt"*. The last work concerning *shurūt* was *"al-'Iqd al-munazzam li-l-hukkām"* written by Abū Muhammad al-Kin'oni (d. 767/1365) lived in Granada, Andalusiya.

The initial researshes showed that, *shurūt* is a complex of rules which teach the conditions of drawing up the contracts and is of valuable importance. The *shurūt* chapters met in fiqh sources studied the following social problems: trade *"ashriyya"* (اشرية), marriage *"ankiha"* (انكحة), divorce *"talāq"* (طلاق), to liberate the slave *"'itāq"* (عتاق), to bound up the liberation with death *"tadbīr"* (تدبير), maidservant gave birth to a child of her master *"ummahātu-l-awlād"* (امهات الأولاد), to be free according to the contract *"kitāba"* (كتابة), to stay under the liberator's guardianship *"muwālāt"* (موالات), safe keeping *"wadī'a"* (وديعة), temporarily using *"'awārī"* (عواري), give an evidence of smone's being free of dept obligation *"ishhād 'ala-l-isqāţ"* (إشهاد على الإسقاط), gift and charity *"hiba wa śadaqa"* (هبة و صدقة), *waqf*-property at the disposal of religious organization *"awqāf"* (اوقاف), testaments *"wasāyā"* (وصايا), the right of privileged purchasing *"shuf'a"* (شفعة), division of property *"qisma"* (قسمة), renting *"ijārāt"* (إجارات), confessions *"aqārīr"* (اقارير), authority *"wakāla"* (وكالة), guarantee *"kafāla"* (كفالة), to shift the responsibility to another person *"hawāla"* (حوالة), to solve the conflictbasing on reconcile *"sulh"* (صلح), get rid of responsibility *"barā'a"* (براءة), deposit *"rohn"* (رهن), *muzora'a and mu'omala* partnership *"muzāra'a and mu'āmala"* (مزارعة و معاملة), *mudāraba* partnership *"mużāraba"* (مضاربة), partnership *"sharikāt"* (شركات),

[3] Joseph Schacht based on the manuscript of the work which is kept under # 140, at the department of Hanafi fiqh of "Maktaba al-hidiwiyya al-misriyya" library in Cairo. Nowadays the library al-hidiwiyya al-misriyya is united with the library of al-Azhar.

[4] Michael Tung based on the manuscript of the work which is kept in Public library in Vienna, Austriya.

conditions of cancellation of relations *"muqāṭ'āt"* (مقاطعات), the norms of international contracts and safeness (to seek asylum) *"muwāda'āt wa kutub al-āmān"* (موادعات و كتب الأمان), decorations *"huliy"* (حلي).

The work *"al-Muhīṭ al-burhānī"* of the 13th century consisted of sample contracts concerning marriage issues in *shurūt* chapter. The following is father's agreement about the marriage of his full age daughter:

هذا ما تزوج فلان فلانة بتزويج وليها فلان إياه بإذنها ورضاها وأمرها إياه بمهرها كذا نكاحا صحيحا جائزا نافذا حضره جماعة من العدول

وزوجها هذا كفؤ لها في الحسب وغيره قادر على إيفاء مهرها ونفقتها

ليس بينهما سبب يؤدي إلى نقض النكاح أو فساده

والمهر المسمى فيه مهر مثلها

وهي امرأته بهذا النكاح الموصوف فيه

وهذا الصداق لها عليه حق واجب ودين لازم, وذلك كله في تاريخ كذا.

"This (document) is about someone's marriage to some woman. The women's ***valī*** *(a person responsible for her) basing on her permission, agree and order for some quantity of* ***mahr*** *(the property given to the bride by the bridegroom) married her with* ***sahih*** *(true) and* ***jai'z*** *(as* ***shari'at*** *orders)* ***nikāh*** *(marriage) to him.*

There were a group of honest witnesses during the process of ***nikāh****. Her the very husband is* ***kufu'*** *(equal) in* ***hasab*** *(social status) and others and capable to give her mahr and compensation.*

There is no reason to dissolve or cancel a marriage between them. The confirmed mahr ***(mahri musamma)*** *in the contract is* ***mahri misliy***

She is his wife because of this narrated ***nikāh****.*

This ***mahr*** *is her husband's responsibility* ***wājib haq*** *(obligatory fee) and compulsory debt.*

All of this happened on ____ day (Confirmed by qadi's stamp)" (Ulrich Rebstock, 2003, p.110)

There are widely spread contracts concerning buying and selling in Islam. That's why *"shurūt"* works dealt with this problem widely. For instance, the work *"al-Muhīṭ al-burhānī"* deals with the rules of making the contract *"śakk"* (كصّ) which was used in central cities of Transoxiana. The following are the main features of it:

1. The sides;
2. Property and its components;
3. The right of property ownership;
4. The address and the form of property;
5. The amount of money given for property;
6. The evidence of the fact of the absence of another people's right for property;
7. The fact of acceptance the property by purchaser;
8. The fact of willingly signed contract by sides, without any interference by other people;
9. The date (Ulrich Rebstock, 2003, p.122).

All of the mentioned features should be given in the all kind of buying-selling contracts as the major rules. Some of the features changed depending on the type of contract, property and money.

The other documents of *qādī* court are *mahdar* and *sijill*. These documents differ from contracts, were signed by *qādī* or his assistants during *mahkama* (court) process, and were of practical value.

The point to be stressed here is that both of these works clearly show:

1. That the *mahādir* and *sijillāt,* which represented the entire range of legal subject matter dealt with in the courts of law, originally existed as an integral part of actual *qādīs dīwāns*;

2. The fact that these legal treatises appropriated the *mahādir and sijillāt* as a model discourse to be reproduced by court scribes and *qādīs* meant that these records existed within a constant dialectical cycle of judicial praxis and juristic control and refinement; and most importantly;

3. These works reflect the formal nature of *mahādir and sijillāt*, and their permanence in the *qādīs dīwān*. At this point, it would be well to consider the history of the *dīwān,* at least insofar as the fragmented pieces of evidence allow us to glean a general picture of its beginnings. On several occasions throughout this article, We cited historical reports concerning a variety of practices related to the judicial *dīwān* in the early centuries of Islam. The evidence of these reports makes it clear that the institution has deep roots in both history and legal practice. We shall now integrate the available material in an attempt to show that the early origins of this institution suggest that it had become formalized and practiced systematically long before the Islamic administration themselves appeared in the Islamic World. It is not entirely unlikely that keeping a record of the judge's decisions and perhaps of other important judicial matters was a pre-Islamic practice, and that when the Arabs conquered the Fertile Crescent, Andalusia, North Africa, Central Asia and Iran, they adopted the fundamentals of this practice from one or other of these areas. Be that as it may, we have no reason to reject Kindi's report that Sulaym b. 'Itr was the first Muslim *qādī* in Egypt to make a written record of his decisions sometime between 40/660 and 60/679,

when he held the office there. The context of Kindi's report had to do with the need to keep track of court decisions for future reference, a matter which I have already discussed. When Sulaym decided in a matter of inheritance, the parties to the lawsuit seem to have appealed his decision or, simply, a dispute had arisen amongst them subsequent to his verdict. In the wake of this appeal or dispute, Sulaym decided to record this and other cases in *sijills.* Kindi's report of Sulaym, especially if we assign the initiative to write records a later date in Sulaym's legal career, seems to tally with a significant remark made by Ibn Hajar al-'Asqalani in one of his hadith works. There, he declares that the Prophet and his immediate successors never maintained a record of their judicial decisions (Olivia Remie, 1971, p.85). Being compatible, 'Asqalani's and Kindi's reports acquire further credibility in light of the generally accepted notion that certain *dīwāns* (viz., *dīwān al-junūd, dīwān al-kharaj*) had already been established by the first few years of the Umayyads. If our two authors admit that judicial *dīwāns* did not exist when non-judicial *dīwāns* did, then the evidence of the origins of this institution as suggested by Kindi seems sufficiently persuasive. To what extent judicial *dīwāns* were kept systematically between the sixth decade of the first century and the first quarter of the second (c. 675-740 A.D.) is a question our sources cannot answer. Sometime immediately thereafter, however, the institution becomes pervasive, as evidenced in the multiple references to it in legal, quasi-legal, biographical and non-legal works. Be that as it may, the nature of the *sijill* in the period between 60-125/680-742 is not clear, and is likely to remain so. But we can at least infer that the *sijill* is the first or one of the very first elements to have emerged as part of what was to become later the *qādīs dīwān,* Furthermore, in its early history the *sijill* appears to have consisted of a brief statement of the case and of the decision rendered. The brevity of the *sijill* throughout the first century of Islam is suggested by at least two reports about Sawwar b. 'Abd Allah and al-Mufaddal Ibn Fadala. The former, a Basran *qādī* who served during-and probably before-the reign of al-Mansur (136-58/754-775), became widely known for enlarging his entourage as well as for being the first *qādī* to have written long and elaborate *sijillāt.* The same novelty was attributed to Ibn Fadala, who served in the same capacity in Egypt until 169/785. That the *sijill* was the first or one of the first elements to have entered what was to become the *qādīs dīwān* is inferred from the fact-which we thus far have no reason to dispute-that it was not until the middle of the second/ eighth century that such matters as inheritance, bequests, debts and custody of orphans were recorded in the *dīwān.* We do not have early information about the record of prisoners, but it is clear that by the beginning of the third/ninth century it had long become part of the *dīwān* (al-'Asqalani, ed. 'Abd Allah al-Madani, 1964, v.4, p.189).

Moreover there was a condition of running the documents in *qādī* courts in Islam. There was obligatory six rules which shoulbe entered the document:

1. Qādī's sentence. The sentence was passed by *qādī* using the following word combinations: charged "*alzamtu*" (الزمت), delivered a judgement "*hakamtu*" (حكمت), passed a sentence "*qadaytu*" (قضيت), accused you "*anfaztu* '*alayka alqadā'* "(انفذت عليك القضاء), sentenced "*amdaytu alqadā'*" (امضيت القضاء), executed the sentence "*aqamtu alqadā'*" (اقمت القضاء), it is right according to me *"sahha* '*indi*" (صح عندي), it is correct according to me *"sabata* '*indi"* (ثبت عندي), I've found that the truth is on his side "*'alimtu anna alhaqqo lihaza alfulān*" (علمت ان الحق لهذا الفلان), I've seen that the truth is on his side "*aro alhaqqo lahu*" (ارى الحق له);

2. Qādī and his deputy should be defined to their position by authorized person. The person who gave the case to deputy and the date should be entered as obligatory;

3. The evidence in Islamic Law, mainly consisted of documents, confession or refuse to swear an oath *(nukūl)*;

4. Plaintiff;

5. Defendant;

6. Action (Burhānuddīn Mahmūd, Manuscript, p.2a).

Medieval *qādī* courts used mostly *mahdar and sijill* documents, and they were drawn up as following:

1. "*Basmala*" was written.

2. *Qādī* who takes the chair in certain *qādī* meeting "*majlis al-qadā'*"(مجلس القضاء) was introduced and his name, nickname and his origin was entered to document.

3. The place wherein *qādī* meeting had been held was also indicated. Here, there was compulsory condition to indicate the region *"kura"* (كرة), the partial of region – district *"nāhiya"* (ناحية).

4. There also was a section in the documents, indicating who gave the *qādī* authority. If it is temporary authority or the power of authority was given to his deputy, his condition and position should be also entered.

5. There was recorded the territory where *qādī* sentence was valid.

6. There was also indicated the date of the case proceeding and the date when sentence was passed.

In addition to those early reports just cited, there are many others speaking of *dīwāns* changing hands,

bribing scribes to write one thing or another in the *dīwān,* refusing to act in accord with a predecessor's *dīwān, caliphs* confiscating *dīwāns, qādīs* who were dismis-sed for failing to take proper care of their *dīwāns,* recording one particular or another in the *dīwān,* ways of keeping *dīwāns,* how certain *qādīs* treated their own *dīwāns,* etc.

Three prominent conditions are:

1. The *dīwān,* especially in larger towns and cities, consisted of a great number of loose leaves which failed to be bound even in the later periods. The early form of the *qimatr* (a word that is of high frequency in the early and late medieval period) was some sort of a case or bag[5] in which the loose leaves were parcelled. The *qimatr* as a bound ledger does not appear on the scene until very late, probably in late Mamluk times. Even the Ottoman *qādīs* also did not always bind these loose leaves, a fact evidenced, for instance, in the court of Damascus, where Jon Mandaville found more than 2,000 leaves that remained unbound (Bedir M., 2005, pp.27-84). In the late eighteenth and early nineteenth-century court of Tripoli, a similar situation exists, which may account for the bad condition of the documents[6]. This must suggest to us that documents in the form of loose leaves, which must have made up the bulk of Islamic *dīwān* records, were less likely to survive. They were more difficult to maintain, and were at times used for other purposes (e.g., fuel). At times, documents of such nature were simply thrown on rubbish dumps, as is attested by Rabie who based his important study partly on such documents which were salvaged by accident.

2. The reason why such type of documents received little care from those who value books and written material is that they were of highly limited interest to literate individuals. They represented none of the literary forms that interested Muslims. They were neither poetry, nor hadith, nor historical narrative; and, with one exception, they even failed to constitute legal subject-matter that could be put to a meaningful use. Once the *dīwān* was copied down, the original which remained in the outgoing *qādīs* hands had no practical, theoretical or literary use. In the entirety of the Islamic cultural environment which produced colossal mountains of writing, it is hard to imagine who would benefit from such *dīwāns*. One might think, with a distinct twentieth-century bias, that Muslim historians would have shown some interest in such valuable material. But for obvious reasons, a serious twentieth-century historian should not be tempted by such a thought. The exception to all this are the *shurūt* authors who had good reason to be, and as we have seen were, interested in this body of writing, but by the very nature of their interest, they subjected the material to their own editorial and redaction purposes. Hence, the great majority of the surviving *sijillāt* and *mahādir* represent juridical formularies that have been stripped of their highly individualized social context.

3. The lack of literary or other interest of these documents, and the poor protection afforded what seem to have been bundles of loose leaves, would have probably been compensated for by proper storage, which most certainly was not the case. The *dīwāns* were in the possession of private individuals, not institutions, a central and crucial fact in our enquiry. The Islamic legal system never acknowledged a well-defined, legally instituted, physical space for courts of law. As we have seen, the *qādī* held his *majlis* in any of a number of places, and the *dīwān* was carried from one place to another, by the scribe, the *khāzin*, or by the *qādī* himself (Emile Tyan, 1945, p.9)[7]. Now, once the *dīwān* was copied by the incoming *qādī* the original would cease to be public property, and become the private possession of the outgoing *qādī* who became a private person after leaving office. Furthermore, having been copied, the *dīwān* became at once obsolete, losing its legal-and in fact any other-relevance[8]. Since every *dīwān* was copied, it follows that all *dīwān,* except (in theory) the very last, ultimately became both legally irrelevant and private property, to be disposed of in any way their owners saw fit. By all indications, this private ownership continued until such time when the state dictated that the *dīwāns* should be deposited in a public domain, which Islamic administration seem to have done. In all of our Islamic administration sources, there is no hint whatsoever that the *qādīs*, upon dismissal or death, were required to deposit their *dīwāns*, in any

5 That the qimatr may also be a sort of bag (kis) is attested by Ibn Nujaym, al-Bahr al-ra'iq, vi, 299.

6 In this court, many records consisted of loose leaves, especially those belonging to the periods of 1098-1127/1686-1715 and 1215-25/1800-10. See Khalid Ziyada, 'Wathā'iq mahkamat Tarablus al-shar'iyya ka-masdar li'l-dirāsat al-Islamiyya', in 'Abd al-Jalil Tamīmi (Temimi), ed., al-Wilāyat al-'arabiyya wa-masādir wathā'iqa fi 'l-'ahd al-'uthmani (Les provinces arabes et leurs source documentaires a l'epoque ottomane) (Tunis: Matba'at al-Ittihād al-'Amm, 1984), 228-9.

7 Tyan perhaps thought that Ibn Abi al-'Awwam transferred a collection of *dīwāns* belonging to him and to other *qādīs,* but this interpretation is not borne out by the text. The same text also announces that other *qādīs,* kept their *dīwāns* in their residences. Furthermore, this attestation to the centralization of the *dīwān*-maintenance remains solitary and unique in our sources.

8 We should recall here that not all cases were copied down in the incoming *qādīs dīwān*. Those which have become inconsequential because they are considered, for example, old (where all the concerned parties have died), would expectedly be left out. This practice has the important implication that the bulk of the *dīwān's* material did not grow cumulatively but was constantly subjected, at the stage of copying, to a measure of trimming.

form or manner, in a state-owned building or other public space.

Conclusion

General information is given about the principles of writing *shurūt, mahdar* and *sijill*, and samples of documents where had been recorded marital, economic and criminal court cases are provided. Besides, guidelines and examples of claiming against some claims are presented in this chapter. Moreover, samples of official letters, and *qādī's* appeal *hukmī kitab (*حكم كتاب*)* to another city's *qādī* where the defendant is living/traveling (such instances take place in case if the plaintiff is present, but the defendant is absent in court case as he lives/travels in another city, and consequently, the *qādī*, whom the plaintiff had addressed with requirement of bringing an action, requests another city's *qādī* where the defendant lives) are given. Furthermore, *Qādī's* decisions on appointing a trustee and granting an allowance are presented. Then, samples of letters addressed to the officials *muzakkī* who were responsible for examining the witnesses are given. Finally, conclusions about rejected official documents are provided.

Now, whatever the reasons for the seeming failure of the Islamic administration *dīwāns* to survive, we should in no way use this failure to argue that such an institution was not maintained in a formal and systematic manner. Nor is there any justification for the claim that the keeping of the *dīwān* was less than systematic, and that it was kept up in a haphazard manner until the ascension of the Islamic administration. Not only does the evidence show the contrary, but the claim itself makes no sense: the Muslim *qādīs* either kept a *dīwān* or they did not. If there was good reason to keep a *dīwān* for, say, a few years or even a few months, then the reason must stand for all time. And since, as we have seen, there was, indeed, a convincing reason to keep a *dīwān,* we are compelled to conclude that in reality the institution was maintained systematically.

BIBLIOGRAPHY

1. Abū Nasr al-Samarqandi. Kitāb al-Shurūt va-'ulūm al-sukūk / Ed. Muhammad Jasim al-Hadisi. – Bagdad: Vizārat al-saqāfa va-l-'ilām, Dār al-shu'ūn al-saqāfiyya al-'amma, āfāq 'arabiyya, 1407/1987.
2. Ahmad B.Mugit al-Tulaytuli (m.459/1067). Al-Muqni'fī 'ilm al-shurūt (formulario natarial).ed. Francisco Javier Aguirre Sadaba Madrid,1994. – 405 p;
3. Bedir M. Osmanlı Öncesi Türk Hukuk Tarihi Yazıcılığı // Türkiye Araştırmaları Literatür Dergisi. − Анқара, 2005. − Т. 3. − № 5. − В. 27-84.
4. Burhānuddīn Mahmūd. Al-Muhīţ. Tashkent: Fund of Manuscripts. Manuscript. № 8781. P.2a.
5. Brockelmann C. Geschichte des arabischen Litteratur. − Supplementband 1. − Лейден: Brill, 1937. − 17+1+973 s.
6. Chafik T.Chehata.Theorie Generale de l'obligation en Droit Musulman, les sujets de l'obligation avec une bibliographie,une methodologie et un tableau general de la theorie de l'obligation en droit Hanefite. – Le Caire: Imp.F.E. Noury & Fils, 1936. – 367 p.,
7. Chalmeta P.,Carriente F.Formularo notarial Hispano-Arabe por elalfaqui y notario cordobes Ibn al-Attar (sX). Madrid: Academia Matritense del Notariado Instituto Hispano-Arabe De Cultura, 1983. – pp. 6.
8. Chalmeta P., Carriente F. Formularo notarial Hispano. Madrid: 1983. − 675 p.
9. Donald. B. Little. The Haram Documents as Sources for the Arts and Architecture of the Mamluk Period. International Journal of Middle East Studies Vol.19.N.,3(Aug..,1987) pp. 337-365.
10. Emile Tyan. Le Notariat et le regime de la prevue par ecrit dans la pratique du Droit Musulman. – Lyon: Universite de Lyon, 1945. – pp. 9.
11. Emile Tyan. Histoire de L'organisation Judiciaire en Pays D'Islam. Leiden: E.J.Brill, 1960. − Б. 673;
12. Ismail Hakki Uzungarshili. Osmanli devleti teshkilatina medhal. − Ankara: Turk tarih kurumu basimevi, pp. 1984.–51.
13. Husāmuddīn al-sadr al-shahīd. Sharh adab al- qādī li-l-Hassāf. 4 Vol. / Ed., Mahiy Hilāl al-Sarhān. − Bagdad: Dār al-'arab, 1397-1398/1977-78.
14. Jeanette A. Wakin. The Function of Documents in Islamic Law: The Chapters on Sales from Tahawi´s Kitab al-Shurut al-Kabir. Albany State University of New York Press, 1972. − Б. 203;
15. Madelung W. The Early Murji'a and the Spread of Hanafism/Der Islam, 43 (1982), pp. 32-39.
16. Mahmud al-Sharbini. Al-Qadā fi-l-Islam. – Cairo: Al-Hay'a al-misriyya al-'amma li-l-kitāb, 1420/1999. pp. 22.
17. Michael. H. Thung. Written obligations from the 2nd/8th to the 4th/10th century. Amsterdam. Amsterdam University press.1997. 135б;
18. Michael. H. Thung. The qadi's diwan(sijill) before the Ottomans. Bulletin of the School of Oriental and African Studies, University of London, Vol.61, No 3. (1998). − Б. 415-436;
19. Monika Gronke. Arabische und persische Privaturkunden des 12. und 13. Jahrhunderts aus Ardabil (Aserbeidschan). Berlin: Klaus schwarz verlag.1982. − Б. 449;
20. Muhammad al-Zuhayli. Tārih al-qadā fi-l Islam. – Damascus: Dār al-fikr, 1416/1995. – pp. 590.
21. Olivia Remie Constable. Cross-Cultural Contracts: Sales of Land between Christian and Muslims in 12th – Century Palermo. The Journal Studia Islamica, 1971\1(Febuar) pp/85.
22. Omeljan Pritsak. Al-i Burhan. Der Islam (zeitschrift für geschichte und kultur des Islamischen orients) Band 30. Berlin: Walter de gruyter & co. 1952. – pp. 81-133.
23. Riberta J., Asin M. Este formulario ha sido objeto de

la tesis doctoral de dona Asuncion Ferreras Sanchez. − Paris: Universidad Complutense, 1991. − Б. 256;
24. Schacht Joseph. Das kitāb adkar al-huqūq wal-ruhūn aus dem al-gami‘ al-Kabīr fī-l- shurūt des Abū Ga’far al-Tahawī. Heidelberg: 1927. – 38.
25. Schacht Joseph. Das kitāb al-Shuf’a aus dem al-gami‘ al-Kabīr fil-Shurūt des Abū Ga’far al-Tahawī. Heidelberg: 1930. 58 p.
26. Schacht Joseph. Das kitab aš-Šuf’a aus dem al-gami‘ al-Kabir fiš-Šurut des Abu Ga’far Ahmad ibn Muhammad al-Tahawi. Heidelberg: Carl Winter´s Universitätsbuchhandlung, 1930. − Б. 58;
27. Shihab al-Din Muhammad b. Hajar al-’Asqalani, Talhīs al-habīr fī takhrīj ahādīth al-rafi’i al-kabīr, ed. ‘Abd Allah al-Madani, 4 vols. (Madina: n.p., 1964), iv, 189;
28. Tyan Emile. Le Notariat et le regime de la prevue par ecrit dans la pratique du Droit Musulman. Lyon: Universite de Lyon, 1945. – Б. 99;
29. Ulrich Rebstock. A Qodi’s Errors // Islamic law and society. – Leiden, 1999. – № 6. – Б. 1-38.,
30. Ulrich Rebstock. Abwägen als Entscheidungshilfe in den usûl al-fiqh: Die anfänge der targîh-Methode bei al-Gassos // Der Islam (zeitschrift für geschichte und kultur des Islamischen orients) // 2003. – № 80. – Walter de Gruyter. Berlin. Б. 110-122;
31. Wael B. Hallaq, the Qādī’s dīwān (sijill) before the Ottomans // Bulletin of the School of Oriental and African Studies. – London, 1998. – № 61. – pp. 415-436.
32. Wael.B.H. Model Shurut Works and the Dialectic of Doctirine and Practice. Jurnal, Islamic Law and Society,Vol. II. (Leiden, E.J.Brill,1995). − Б.109-134;
33. Wakin Jeanette A. The Function of Documents in Islamic Law. New York: 1972. − 203 p.