
An Arabic legal document from the Umayyad

period[★]

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The number of Arabic papyri from the first two Islamic centuries that have been preserved is relatively small. Papyri from the third century A.H. are far more numerous and constitute the bulk of most collections. In this paper I publish an Arabic legal document from A.H. 77 (A.D. 707), which is in the Michaelides collection of papyri at Cambridge University Library. It is one of the earliest extant Arabic legal papyri. The document is a quittance (*barā'a*) drawn up by a certain Sa'īd ibn Qays al-Dallālī to certify that Jamīla, the freedwoman of 'Umm Hunayda, is cleared of obligation to him after the payment of a sum of seven dīnārs. This sum was delivered as payment for a portion of a house.

Cambridge University Library, Michaelides P. 744 B. Brown papyrus

15.4 cm × 12.9 cm. There is a joint of two papyrus sheets 7 cm from the top of the document. The script runs perpendicular to the papyrus fibres (Fig. 1).¹

* Abbreviations: ABPH = W. Diem, *Arabische Briefe auf Papyrus und Papier aus der Heidelberger Papyrus-Sammlung* (Wiesbaden, 1991); ALAD = G. Khan, *Arabic Legal and Administrative Documents in the Cambridge Genizah Collections* (Cambridge, 1993); APEL = A. Grohmann, *Arabic Papyri in the Egyptian Library*, 6 vols. (Cairo, 1934-74); APK = G. Khan, *Arabic Papyri of the 7th to 10th Centuries* (Oxford, 1993); BAU = *Aegyptische Urkunden aus den koeniglichen Museen zu Berlin, herausgegeben von der Generalverwaltung, Arabische Urkunden* [ed. L. Abel] (Berlin, 1896-1900); CPA = A. Grohmann and R. G. Khoury, *Chrestomathie de papyrologie arabe, préparée par Adolf Grohmann, retravaillée et élargie par Raif Georges Khoury* (Leiden-New York-Köln) 1993; DJD II = P. Benoit, J. T. Milik and R. De Vaux, *Discoveries in the Judaean Desert II; Les Grottes de Murabba'at* (Oxford, 1961); EN III = C. J. Kraemer Jr., *Excavations at Nessana. Vol. III. Non-literary Texts* (Princeton, 1958); JESHO = *Journal of the Economic and Social History of the Orient*; Michaelides P. = Papyri formerly in the collection of G. Michaelides, now in the possession of Cambridge University Library; P. Mich. = P. J. Sijpesteijn, *The Aphrodite Papyri in the University of Michigan Papyrus Collection (P. Mich. XIII)* (Zutphen, 1977); SAPKC = G. Khan, *Arabic Papyri. Selected Material from the Khalili Collection* (Oxford, 1992); SGEA = S. Hopkins, *Studies in the Grammar of Early Arabic, Based upon Papyri Datable to before 300 A.H./912 A.D.* (Oxford, 1984).

¹ I am grateful to the syndics of Cambridge University Library for granting me permission to publish this manuscript.

7. 'Alif *maqṣūra* in اشترى is represented by an 'alif instead of a *yā'*; cf. Hopkins, SGEA § 12c. For the orthography الخمي see the note on line 6. The word برئت is split between this line and the next. Such word-splitting is attested in papyri from the first two centuries A.H.

8. The name حمير could be read as Ḥimyar, Ḥumayr or Ḥumayyir; cf. al-Ḍahabī, *al-Muṣṭabih*, p. 174, Ibn Ḥajar, *Tabṣīr*, p. 464.

10. For the orthography الخمي see note 6. For the name Miḳmar see al-Ḍahabī, *al-Muṣṭabih*, pp. 423, 471, Ibn Ḥajar, *Tabṣīr*, pp. 1255, 1270. MS: ععب. This name does not appear in the onomastica. It is probably a variant of 'Uqayba; cf. W. Caskel and G. Strenziok, *Ġamharat an-Nasab. Das genealogische Werk des Hišām ibn Muḥammad al-Kalbī* (Leiden, 1966), I, pp. 51, 224. The long *ā* after the 'ayn in the *nisba* al-Ma'āfirī is not represented by a *mater lectionis* (المعفرى).

11. The top of the initial 'alif and *lām* and the bottom of the second 'alif in the word انى [الـحـيـلـا] are visible. The conjunction *wa-* is written at the end of the line. This is another example of word-splitting (see the note of line 7).

12. The long *ā* in *tamānīn* is not represented by a *mater lectionis* (ممس).

Verso

1. The writing of the first three words is very faint. A gap is left between the words جميلة and مولت. Such gaps are found also in the addresses written on the *verso* of letters.

Translation

Recto

1. In the name of God, the merciful and compassionate.
2. A quittance for Jamīla, the freedwoman of 'Umm Hunayda,
3. from seven dīnārs, which she paid to Sa'īd ibn
4. Qays al-Yaḥṣībī al-Dallālī, as the price of the portion²
5. which she shared with Sa'īd
6. of the house of Dībāb ibn 'Āmir al-Laḳmī al-Mālikī,
7. (who) bought it from Hišām ibn Jābir 'al-Laḳmī,
8. Jamīla, thereby, becoming clear of obligation to Sa'īd with regard to them.³

² In later documents (from the third century A.H. onwards) the term used for a portion of a house is usually *ḥiṣṣa* or *sahm* (literally "share"); cf. al-Ṭahāwī, *Kitāb al-ṣurūṭ al-kabīr*, ed. Wakin in *The Function of Documents in Islamic Law* (Albany, 1972), text pp. 52-9, Ibn al-Sayrafī, in al-Nuwayrī, *Nihāyat al-'arab fī funūn al-'adab* ix (Cairo, 1931), p. 24. The word *qit'a* corresponds more closely to the terms used in Byzantine Greek (μέρος) and Jewish Aramaic (*hulq'*) formularies; cf. P. Mich. pp. 662:18, 665:9, S. Assaf, *The Book of Shetaroth of R. Hai Gaon* (Jerusalem, 1930), pp. 37-8. Some later Arabic formularies, however, still retain the term *qit'a*, e.g. *al-Fatāwā al-'Ālamgiriyya*, ed. Calcutta (1835), vi, p. 427.

³ I.e. the seven dīnārs.

Witnessed by Ḥimyar

9. ibn Šarāḥīl al-Kalā'ī al-Sulafī, Hišām
10. ibn Jābir al-Laḳmī, Miḳmar ibn 'Uqayb al-Ma'āfirī
11. al-Liḥyānī and Sa'īd ibn Qays al-Dallālī for himself.
12. It was written in Rajab of the year 88.⁴

Verso

1. (Contained) herein is a quittance for Jamīla, the freedwoman of 'Umm Hunayda.

Script

Independent 'alif is perpendicular and does not bend at the bottom. In Arabic documents datable to the first two centuries A.H. independent 'alif very frequently bends to the right at the bottom. Several cases of forms without the bend are, nevertheless, attested, see B. Gruendler, *The Development of Arabic Scripts* (Atlanta, 1993), p. 35, Khan, SAPKC, pp. 27–8. Final 'alif sometimes extends below the connecting stroke and sometimes does not.

Initial *bā'* and *tā'* sometimes slant to the left. This is common in medial position in the script of other early documents but not in initial position (Gruendler, pp. 39, 41).

Dāl has an upward bend at the top. This is less pronounced than in most other documents from the first two centuries A.H. (Gruendler, p. 54, Khan, SAPKC, pp. 29–31).

Šād and *ḍād* are horizontally extended with parallel horizontal strokes, as is characteristic of documentary script from the first two centuries A.H. (Gruendler, p. 71, Khan, SAPKC, p. 31).

The *hasta* of *tā'* slants to the right. This is characteristic of the early script, but is not a regular feature (Gruendler, p. 75).

In two instances the horizontal stroke of initial 'ayn is extended to the right (الكلاعی, 9, عقیب, 7). In one instance the stroke is not extended (عامر, 6). The horizontal extension of the stroke is often found in the early script (Gruendler, p. 79, Khan, SAPKC, pp. 32–3). Medial 'ayn has the form of a loop.

Initial *kāf* is horizontally extended with the upper stroke parallel with the lower stroke. The upper stroke bends upwards at the left end (Gruendler, p. 90, Khan, SAPKC, pp. 34–6). Medial *kāf* has a similar shape in الكلاعی (9) but in الملکی (6) it is more compressed and the upper tip bends downwards, as is found in documentary script from the third century A.H. (Khan, SAPKC, p. 41).

Mīm usually has an open loop (Gruendler, p. 99).

The stroke of final *nūn* extends downwards below the line of writing (Gruendler, p. 103). Medial *nūn* sometimes slants to the right.

Independent *hā'* has a stroke slanting upwards extending from the right side (Gruendler, p. 107).

The loop of *wāw* is sometimes open and sometimes closed.

⁴ June–July A.D. 707.

Final and independent *yā'* is sometimes horizontally extended to the right and sometimes bends round to the left (Gruendler, p. 115, Khan, SAPKC, pp. 37–8). In the words الی (3) and الیصی (4) the final *yā'* extends vertically downwards from the bottom of the preceding letter and gradually bends to the left towards the bottom.

Commentary

The *nisbas* of the men mentioned in this document are those of Arab tribes of South Arabian origin, many of whose members entered Egypt with the conquering Muslim armies and settled in the newly founded city of Fustāt. Sa'īd ibn Qays al-Yaḥṣībī *tumma* al-Dallālī (*recto* 3–4) belonged to the Ḥimyar group of tribes. The *nisba* al-Dallālī presumably refers to Dallāl ibn 'Awf, who was a descendant of Yaḥṣīb. Most of the tribe of Yaḥṣīb were dwelling in the region of Ḥimṣ in Syria at the time of the rise of Islam.⁵ Ḥimyar ibn Šarāḥīl al-Kalā'ī *tumma* al-Sulafī (*recto* 8–9) was related to the family of Dū al-Kalā', who also belonged to the Ḥimyar group. Sulaf was a subdivision of the Dū al-Kalā', named after al-Sulaf (or al-Suluf) ibn Yaqtān. Like the Yaḥṣīb tribe, the Dū al-Kalā' had moved north to Syria by the time of the rise of Islam and dwelt in the region of Ḥimṣ. They entered Egypt from Syria with the Muslim armies.⁶ Dībāb ibn 'Āmir al-Laḳmī al-Mālikī (*recto* 6) and Hišām ibn Jābir al-Lāḳmī (*recto* 7, 9–10) were of the tribe of Laḳm, which belonged to the Qaḥṭān group. Many members of the tribe of Laḳm entered Egypt from Syria with the conquering Arab armies. The second *nisba* of Dībāb, i.e. al-Mālikī, may be referring to Mālik ibn 'Adī, which was an alternative name of Laḳm ibn 'Adī, the eponymous ancestor of the tribe. The absence of the word *tumma* between the two *nisbas* supports this interpretation. At the beginning of the Islamic period the Laḳm had been practically absorbed by the sister tribe of Juḏām but the epithet al-Laḳmī remained. It is probably for this reason that it was felt necessary to add the second *nisba* al-Mālikī in the case of someone who was a direct descendant of Laḳm.⁷ Miḳmar ibn 'Uqayb al-Ma'āfirī *tumma* al-Liḥyānī (*recto* 10–11) was of the tribe of al-Ma'āfir, which also belonged to the Qaḥṭān group. Most of al-Ma'āfir settled in Egypt. Al-Liḥyānī must have been a subdivision of al-Ma'āfir, though this is not recorded in the tribal genealogies.

Districts of Fustāt were named after the tribes Yaḥṣīb, Dū al-Kalā', Laḳm and al-Ma'āfir.⁸

The structure of our document is similar to that of other quittances that are extant from the second century A.H.⁹ We may analyse this as follows:

(1) Opening rubric naming the document of quittance, the beneficiary and the sum from which the beneficiary has been released: *barā'a li-Jamīla mawlāt Hunayda min sab'at danānīr*.

⁵ Al-Sam'ānī, *Kitāb al-'ansāb* (Hyderabad, 1962ff), xiii, p. 483; al-Kalbī, *Jamharat al-nasab* i, p. 278, ii, p. 589. The vocalization Yaḥṣub is found in some sources.

⁶ Al-Sam'ānī vii, p. 169, xi, pp. 186–90; al-Kalbī i, p. 277, ii, pp. 236, 518.

⁷ Al-Kalbī, *Jamharat al-nasab*, i, p. 176, ii, p. 375; *Encyclopaedia of Islam*, second edition, article "Lakhm".

⁸ Al-Maqrīzī, *Kitāb al-mawā'iz wa-l-'i'tibār bi-dīkr al-kītaf wa-l-'āṭār* (Būlāq, 1853), i, pp. 297–8; al-Qalqaṣandī, *Kitāb ṣubḥ al-'a'šā* (Cairo, 1903–18), pp. 331–2.

⁹ SAPKC 9 (A.H. 104), David-Weill, *JESHO*, XXI, no. 24 (A.H. 123), CPA no. 49 (185). [For abbreviations see the beginning of the article.]

(2) Report in objective style (3rd person) of the legal act that resulted in the clearance of the debtor from the debt: *ḍafa'athā 'ilā Sa'īd ibn Qays...ḥaqad bari'at minhā Jamīla 'ilā Sa'īd*. The expression *bari'a fulān min kaḍā wa-kaḍā 'ilā fulān* is found in other early quittances, e.g. David-Weill, *JESHO XXI*, no. 24 (A.H. 123),¹⁰ CPA no. 49 (A.H. 185) and in several extant Arabic quittances written in Afghanistan in the middle of the second century A.H.¹¹ It is also found in the document of sale dated A.H. 205 published by Torrey (*bari'a minhā 'Afīda 'ilayhim*, read so!).¹² A similar phrase was used by the jurists of the second and third centuries in their formularies for documents of sale, e.g. *fa-bari'a fulān 'ilā fulān min jamīr al-taman* (Yūsuf ibn Kālid, d. 189/805); *wa-bari'a ilayhi minhu* ('Abū Zayd, third century A.H.).¹³ Al-Ṭaḥāwī preferred a formula with the causative form of the verb *'abra'a*, in which the vendor is said to have cleared the purchaser after receipt of the price (*wa-'abra'ahu min jamī'ihī*)¹⁴ and this became the normal formula in documents from the Fātimid period.¹⁵

(3) List of the men who acted as witnesses: *ṣahida fulān ibn fulān* etc.

(4) Indication of the date on which it was written: *wa-kutiba fī Rajab sanat tamānin wa-tamānīn*.

The list of witnesses includes four men, the last of whom is the creditor, Sa'īd ibn Qays, who granted the release to the debtor. It is stated that Sa'īd acted as witness "for himself" (*ṣahida... Sa'īd ibn Qays al-Dallālī 'alā nafsihi*). This phrase is found also in the quittance SAPKC no. 9 (A.H. 104): *ṣahida 'Abdallāh ibn Sulaym wa-Sulaym ibn 'Aḥwar 'alā nafsihi wa-'Abd al-Malik ibn Ayyūb*. Sulaym ibn 'Aḥwar is the conceding party who grants the quittance. The sense of *ṣahida fulān 'alā nafsihi* was that so-and-so was present and that the undertaking described in the document was legally binding on him. This formula does not occur in any known Arabic legal document after SAPKC no. 9 (A.H. 104). There is an echo of it, however, in the phrase *wa-'aṣhada(hum) 'alā nafsihi* "he called upon them to be his witnesses", which is found in legal documents from the third century A.H. onwards.¹⁶ In the texts of the jurists from the second century A.H. onwards one finds the expression *fulān 'aqarra 'alā nafsihi* in the sense of "someone acknowledged something binding himself", e.g. al-Sarāḡī, citing al-Ṣaybānī (*Kitāb al-mabsūṭ fī al-furū'* [Cairo, 1906-13], xxx, p. 69): *li'anna 'iqrār al-mar'a 'alā nafsihā ḥujja wa-'alā ḡayr nafsihā laysa bi-ḥujja* "for the acknowledgement of a woman binding herself is a proof but an acknowledgement binding someone else is not a proof"; al-Ṭaḥāwī (*Kitāb al-ṣurūṭ al-kabīr*, ed. Wakin, text, p. 200):

¹⁰ The reading of David-Weill must be corrected to *ḥaqad bari'a minhā... 'ilā*.

¹¹ These documents are in the possession of a private collector.

¹² C. C. Torrey, "An Arabic papyrus dated 205 A.H.," *JAOS*, LVI (1956), pp. 288-92.

¹³ Cited by al-Ṭaḥāwī, *Kitāb al-ṣurūṭ al-kabīr*, ed. Wakin, text, p. 15. ¹⁴ Ed. Wakin, text, pp. 3, 15-6.

¹⁵ G. Frantz-Murphy, "A comparison of Arabic and earlier Egyptian contract formularies, Part IV: Quittance formulas", *JNES*, XLVII (1988), pp. 269-271, ALAD, p. 24.

¹⁶ ALAD, p. 203; al-Ṭaḥāwī, *Kitāb al-ṣurūṭ al-kabīr* ed. J. Schacht, *Sitzungsberichte der Heidelberger Akademie der Wissenschaften. Philosophisch-historische Klasse, 4. Abhandlung* (Heidelberg, 1927), p. 31:13. One of the earliest examples from extant documents is found in Michaelides P. B 386 (A.H. 260). See also below. Some documents from the Ottoman period include among the closing formulae the phrase *qābiluhu 'alā nafsihi fulān*: "so-and-so accepts it as binding" (see R. Y. Ebied and M. J. L. Young, *Some Arabic Legal Documents of the Ottoman Period* [Leiden, 1976], pp. 13, 14).

rajul law 'aqarra li-rajul bi-māl 'alā nafsihi "if a man acknowledges to another man that a debt is incumbent upon him". This formula is found in the papyrus Michaelides P. B 1410 (A.H. 272): *fa-'aqarra Teodor ibn Buṭrus 'alā nafsihi 'anna jamī mā wuṣifa... li-waladihi* "Theodor ibn Buṭrus acknowledged in a legally binding way that all that has been described belongs to his son".

There are parallels to the witness formula *šahida fulan 'alā nafsihi* in Aramaic and Hebrew legal documents dating from the first half of the first millennium A.D. from the Judaean desert and Dura Europos. These documents are mostly written in subjective style (1st person). In many of the documents from the Judaean Desert datable to the first two centuries A.D. the party who draws up the document (referred to in the 1st person in documents in subjective style) signs his or her name followed by the phrase *'l nššh*. If this person has written the document himself, the signature is either *X 'l nššh* (DJD ii, 24c [A.D. 133]) or *X 'l nššh ktbyh* "X has written it for himself" (Y. Yadin, *Israel Exploration Journal*, XII (1962), p. 237). If someone else has written the document, the person for whom the document is drawn up signs *X 'l nššh*; cf. DJD ii, 18 (A.D. 55-56), 19 (A.D. 111?), 21 (second century A.D.), 24d (A.D. 133),¹⁷ 30 (A.D. 134). If the signatory was unable to write he instructed someone else to write his signature for him. This was sometimes indicated by the formula *X 'l nššh/nššw ktb Y m'mrh* "X for himself, Y wrote (the signature) at his instruction" (Yadin, *Israel Oriental Journal* XII, pp. 252-4).

Some Hebrew documents from the Judaean Desert from the second century A.D. have signatures stating that so-and-so requested the document: *X 'l nššh š'lh ktb* "X requested the document for himself" (DJD ii, p. 143), *X 'l nššh hktbyn š[']lh* "X requested this double document" (DJD ii, 29 [A.D. 133]).

The Syriac deed of sale from Dura Europos (P. Dura 28) written in A.D. 243 has the format of an acknowledgement in the 1st person by the vendor. The vendor, however, was illiterate and the document was written for her by a scribe. The vendor attaches the signature: *'wrl'y' mtr't' brt šmny mzbnnyt' 'l nššh šhd'* "Aurelia Mat-Tar'atha, daughter of Shamnai, the seller, testifies for herself."¹⁸ This is closest to the formula *šahida X 'alā nafsihi*, which is found in the early Arabic documents.

Cognates also of the Arabic legal terms *barā'a* and *bari'a* are found in the Aramaic and Nabatean documents from the Judaean desert datable to the first two centuries A.D.: *w'bryt ytky* "and I have cleared you", *mn kl' ktbt mbr' ytky* "I have written clearing you from anything", *khlyqt zbn'y wbr'wn<y>* "according to the norm of sales and quittances", *khlyqt mtnt' wbr'wny* "according to the norm of gifts and quittances".¹⁹

Some of the elements in our document clearly have pre-Islamic roots. It should be noted, however, that there are considerable differences between the general format of our document and that of the earlier documents discussed above. Most of the earlier documents which concern a legal obligation are in subjective style and are presented as an acknowledgement by the party drawing up the document. The format of legal

¹⁷ According to the reading of Yadin, *Israel Oriental Journal*, XII, p. 254.

¹⁸ J. A. Goldstein, "The Syriac bill of sale from Dura-Europos", *Journal of Near Eastern Studies*, XXV (1966), pp. 3, 7. ¹⁹ Cited by J. Greenfield in *Jerusalem Studies in Arabic and Islam*, XV (1992), pp. 11-12, 17.

acknowledgements does not appear in the Arabic legal papyri from Egypt before the third century A.H. It was in use, however, by Muslim legal scholars in Iraq by the second half of the second century A.H.²⁰ Moreover, unlike the aforementioned pre-Islamic documents, the Arabic documents from the early Islamic period contain only a list of witnesses and not autograph signatures written by the witnesses themselves. Autograph witness clauses are absent also from other documents datable to the first two centuries A.H., e.g. the Arabic version of the bilingual document from Nessana EN III, no. 56 (A.H. 67),²¹ the quittances SAPKC 9 (A.H. 104), David-Weill, *JESHO XXI*, no. 24 (A.H. 123), CPA no. 49 (A.H. 185). A document attributed to 'Alī ibn 'Abī Ṭālib (A.H. 39), which is recorded by al-Ṭahāwī, also closes with a simple list of witnesses: *šahida 'alā ḍālika 'Ubaydallāh ibn 'Abī Rāfi' wa-Hayyāj ibn 'Abī Hayyāj wa-kataba 'Alī ibn 'Abī Ṭālib 'umm al-kitāb bi-yadihi li-'ašr layālī kalawn min Jumādā al-'ūlā min sanat tis' wa-ṭalāṭin*: "'Ubaydallāh ibn 'Abī Rāfi' and Hayyāj ibn 'Abī Hayyāj witnessed that. 'Alī ibn 'Abī Ṭālib wrote the original document with his hand on 10th Jumādā I of the year 39".²² According to *al-Fatāwā al-'Ālamgīriyya*²³ the earliest Iraqi legal scholars such as 'Abū Ḥanīfa (d. 150/767), 'Abū Yūsuf (d. 182/798) and al-Šaybānī (d. 189/805) at the end of their formularies simply wrote *šahida* followed by a list of witnesses.

A collection of Arabic legal documents written in Afghanistan in the middle of the second century A.H. has recently come to light.²⁴ Those which refer to witnesses simply list their names at the end of the text, as in Egyptian documents from the same period. Attached to the documents from Afghanistan there are clay seals bearing the stamp or fingernail print of the witnesses. One document states explicitly that the witnesses and the man drawing up the documents set their seal to it: *wa-'aktama Muslim wa-l-šuhūd*.

The earliest document known to me that mentions autograph signatures is the lease Michaelides P. B 59, which is dated A.H. 180. At the end of this document it is stated that one of the two witnesses wrote a testimony with his own hand (*wa-kataba shahdahu bi-yadihi*), though no autograph signature appears at the bottom of the document. This document was witnessed by a second person, with regard to whom it is stated as follows: *šahida 'alā ḍālika Jābir ibn 'Abd al-Ḥamīd... wa-kutiba kitāb šahādatihi bi-'amrihi*: "Jābir ibn 'Abd al-Ḥamīd witnessed that. His document of testimony was written (for him) at his instruction". The reference to "his document of testimony" implies that the witnesses wrote their testimonies in the form of separate documents. Other documents from the end of the second and the beginning of the third centuries A.H. do not bear autograph witness clauses but nevertheless contain references to testimonies being written by the hand of the witness or by a scribe on behalf of the witness, e.g. Michaelides P. B III (*wa-šahida 'alā ḍālika fulān wa-kataba šahādahu bi-kaṭṭ yadihi wa-fulān wa-katab fulān bi-'amrihi wa-*

²⁰ See G. Khan, "The pre-Islamic background of Muslim legal formularies", forthcoming in *Aram*.

²¹ The Greek version of this bilingual document, by contrast, does have an autograph witness clause. This is clear evidence that the Arabic legal formularies had a considerable independence from the Greek formulary traditions at this early period; cf. G. Khan, "The pre-Islamic background of Muslim legal formularies".

²² Al-Ṭahāwī, *Kitāb al-šurūḥ al-kabīr*, in J. Wakin, *The Function of Documents in Islamic Law* (Albany, 1972), text, p. 7.

²³ Ed. Calcutta (1835) vi, p. 422.

²⁴ This is now in the possession of a private collector in London.

maḥḍarihi), Michaelides P. B 754 (*wa-kataba bi-ḥaṭṭihi*), Michaelides P. B 599 (dated A.H. 225: *wa-šahida fulān 'alā 'iqrār fulān... wa-kataba fulān šahādatahu bi-'amrihi wa-fulān wa-kataba bi-yadihi*). The witness formulae at the end of the document of sale dated A.H. 205 published by Torrey (*JAOS*, LVI) are of a similar nature.

Legal documents containing autograph witness clauses written at the bottom of the text are attested in Egypt from the beginning of the third century A.H. onwards.²⁵

It would appear that in the first one and a half centuries of Islam witnesses only gave oral testimony. This was sometimes confirmed by seals. It was only from the end of the second century A.H. onwards that autograph witness clauses were written. At first these were not attached to the legal document itself. The autograph signatures were written at the bottom of the text of the documents from the third century onwards.

Arabic quittances written in Afghanistan in the middle of the second century A.H., which have recently come to light, have a slightly different format from the Egyptian quittances. The opening formula of some of them corresponds to that of early Arabic letters: *hādā kitāb min fulān ibn fulān*: "This is a writing from so-and-so son of so-and-so." The main body of the document is in subjective style (1st person) in contrast to the objective style (3rd person) of the Egyptian documents. This epistolary format has parallels in Byzantine Greek legal documents of the type known as *χειρόγραφον*.²⁶ Three basic formularies can be distinguished:

(1) *hādā kitāb min fulān ibn fulān. barā'a li-fulān ibn fulān. 'innī qabaḍtu minka/'innak 'addayta 'ilayya kaḍā wa-kaḍā. qabaḍtu ḍālika minka wa-bari'ta 'ilayya minhā. wa-kutiba fī...* "This is a document from so-and-so son of so-and-so. A quittance for so-and-so son of so-and-so. I have received from you/You have paid to me such-and-such. I have received that and you have become free of obligation to me with regard to it. It was written on..."

(2) *hādā kitāb barā'a min fulān ibn fulān li-fulān ibn fulān. 'innī qabaḍtu minka/'innak 'addayta 'ilayya kaḍā wa-kaḍā. qabaḍtu ḍālika minka wa-bari'ta 'ilayya minhā. wa-kutiba fī...* "This is a document of quittance from so-and-so son of so-and-so for so-and-so son of so-and-so..."

(3) *hādīhi barā'a min fulān ibn fulān li-fulān ibn fulān. 'innī qabaḍtu minka/'innak 'addayta 'ilayya kaḍā wa-kaḍā. qabaḍtu ḍālika minka wa-bari'ta 'ilayya minhā. wa-kutiba fī...* "This is a quittance from so-and-so son of so-and-so..."

At a later period, records of a quittance granted by a private individual on the repayment of a debt were embedded in documents with the format of acknowledgements (*'iqrārāt*). These had been introduced into Egypt by the third century A.H. Separate *barā'āt* documents were still used for a time after the introduction of *'iqrārāt*, e.g. Michaelides P.

²⁵ E.g. APEL 89 (A.H. 209), APK 187 (A.H. 210), APEL 126 (A.H. 225), APEL 98 (A.H. 236), APEL 56 (A.H. 239), APEL 114 (A.H. 241), APEL 127 (A.H. 247), APEL 93 (A.H. 251), Michaelides P. B 601 (A.H. 262), APEL 39 (A.H. 264), Michaelides P. B 287 (A.H. 264), APEL 128 (A.H. 270), APEL 124 (A.H. 271), APEL 129 (A.H. 272), Michaelides P. B 1410 (A.H. 272), APEL 52 (A.H. 274), APEL 41 (A.H. 279), Michaelides P. B 134 (A.H. 280), Michaelides P. B 152 (A.H. 283), APEL 100 (A.H. 284), APEL 121 (A.H. 284), APEL 142 (A.H. 298), APEL 143 (A.H. 298).

²⁶ See P. Meyer, *Juristische Papyri: Erklärung von Urkunden zur Einführung in die juristische Papyruskunde* (Berlin, 1920), pp. 108, 112-13.

B 430 (A.H. 238), BAU 7 (A.H. 260).²⁷ It is significant that the Iraqi jurist Yūsuf ibn Kālīd (d. 189/805) and his pupil Hilāl ibn Yaḥyā are reported to have written a work known as *Kitāb al-'iqrār wa-l-barā'āt*, implying that the *barā'a* existed independently of the *'iqrār* at that period.²⁸ By the Fāṭimid period in Egypt, however, quittances usually had the form of acknowledgements. Such documents record the formal acknowledgement by the creditor of the debtor's release from obligation. It was far more elaborate and legally secure than the simple quittances of the early period. Their structure was as follows:

(1) Opening formula referring in objective style to the legal act of acknowledging: *'aqarra fulān ibn fulān*.

(2) This is immediately followed by a clause indicating that the acknowledger called people to act as his witnesses: *wa-'ašhada 'alā nafsīhi*.²⁹

(3) Then the legal capacity of the acknowledger is confirmed by the following phrase, or variants of it: *fī ṣiḥḥat 'aqlihi wa-badanihi wa-jawāz 'amrihi tā'i'an ḡayr mukrah wa-lā mujbar wa-lā muḏṭahad wa-lā jāhil bi-mā 'aqarra bihi fīhi*: "in sound mind and body, his acts being legal, willing, not coerced, forced or constrained, nor ignorant of what he has acknowledged in it."

(4) The object of acknowledgement consisting of:

(i) A statement that the acknowledger (*al-muqirr*) had received money from the one for whose benefit the acknowledgement was made (*al-muqarr lahu*), i.e. the debtor. This is usually expressed by a series of three verbs of related meaning: *'annahu qabaḏa wa-tasallama wa-stawfā min fulān ibn fulān kaḏā wa-kaḏā*: "that he had taken and received in full from so-and-so such-and-such". Sometimes quittances from obligation do not refer directly to the receipt of money or goods but rather confirm that the *muqirr* has no claim of any nature on the *muqarr lahu*, e.g. ALAD no. 47: *'annahu lā ḥaqq lahu qibal fulān ibn fulān wa-fulān ibn fulān ... [lā] ḏahab wa-lā fiḏḏa wa-lā dayn wa-lā qurḏa wa-lā wadī'a wa-lā 'ujra ...* "that he has no claim against so-and-so son of so-and-so and so-and-so son of so-and-so ... no gold, no silver, no debt, no loan, no deposit, no rent ..."

(ii) A statement that the *muqirr* granted a quittance (*barā'a*) to the *muqarr lahu*. This generally consists of:

(a) The statement of the release, which is elaborated to include not only the *muqarr lahu* himself but also his descendants and heirs. The *muqarr lahu* is cleared not only from the obligation of repayment but also from any obligations attached to the money received. A typical formula is: *wa-'abra'ahu min jamī'ihi wa-man ba'dahu wa-waraṭatahu wa-min al-yamīn 'alayhi 'aw 'alā ṣay' minhu*: "he released him, and his descendants and heirs, from all of it and from an oath upon it or upon any part of it."

(b) Confirmation that the release was performed in a legally valid manner: *barā'atan ṣaḥīḥan barā'ata qabḏ wa-stifā'*: "with a valid release, a release of receipt in full".

²⁷ *'Iqrārāt* are first referred to in the witness formulae of documents from Egypt at the beginning of the third century A.H.: Torrey, *JAOs*, LVI (a.h. 205, *šahida 'alā 'iqrār(r) fulān*, read so!), Michaelides P. B 599 (A.H. 225, *šahida fulān 'alā 'iqrār fulān*). The first *'iqrār* documents date from the middle of the third century, e.g. APEL 114 (A.H. 241).

²⁸ *Kitāb al-šurūṭ al-kabīr*, ed. Wakīn, text, p. 7.

²⁹ Some documents have: *'inda šuhūd ḥādā al-kitāb*, see ALAD, 203.

(5) Confirmation that witnesses testified to the acknowledgement. The usual formula for this is *wa-šuhida 'alā 'iqrārihi bi-mā fīhi*: "his acknowledgement of what is contained herein was witnessed".

(6) Date.

(7) Witness clauses. These are always autograph testimonies by accredited witnesses (*'udūl*), each consisting of a declaration that the witness has testified to the acknowledgement of the content of the document by the *muqirr* and the *muqarr lahu*. The usual formula is: *šahida fulān ibn fulān 'alā 'iqrār al-muqirr wa-l-muqarr lahu bi-mā fīhi*: "so-and-so son of so-and-so bore witness to the acknowledgement by the acknowledger and the beneficiary of all that is contained herein".

In a few surviving quittance documents from the Fāṭimid period the early opening formula is attached to the beginning of the *'iqrār*, e.g. T-S Ar. 41.99: *hādā kitāb barā'a li-fulān ibn fulān ... katabathu lahu fulāna ibnat fulān wa-'aqarrat lahu bi-mā fīhi wa-'ašhadat lahu 'alā dālika šuhūd hādā al-kitāb ... 'annahū lā ḥaqq lahā qibal fulān ibn fulān ...* "This is a document of quittance for so-and-so son of so-and-so ... which so-and-so daughter of so-and-so wrote for him and she acknowledged to him what is contained herein and called the witnesses of this document to bear testimony to it for him ... that she has no claim on so-and-so son of so-and-so ...". The witnesses of the document attached autograph witness clauses with the formula: *šahida fulān ibn fulān 'alā 'iqrār al-mubri'a bi-mā fīhi fī tārikihi*: "So-and-so son of so-and-so bore witness to the acknowledged of what is contained herein by the woman granting the quittance on its date."

In the Fāṭimid period quittances for receipt of money or goods were occasionally presented in the form of a declaration. These documents, unlike the acknowledgements, were written in subjective style: *yaqūl fulān 'annī qabaḍtu ... wa-'abra'tu*; cf. BAU 12 (A.H. 382) [= CPA 47], ALAD 54 (A.H. 422) and ALAD 55 (A.H. 438).

From as early as the beginning of the third century A.H. quittances for the receipt of the price of an object sold were embedded in the formularies for documents of sale. The quittance formula *bari'a fulān min kaḍā wa-kaḍā 'ilā fulān* is found in the earliest known Arabic document of sale dated A.H. 205. In the Fāṭimid period the formula of al-Ṭahāwī was adopted, which contained the causative form of the verb: *wa-'abra'ahu min jami'ihi* (see above for more details).

Barā'a documents were issued by government offices on receipt of taxes in the second and third centuries A.H.: APEL 197 (A.H. 148), SAPKC 10 (A.H. 194), APEL 191 (third century A.H.). By the Fāṭimid period the government offices in Egypt issued documents of a different format, which opened *šuhḥa li-fulān min kaḍā wa-kaḍā* "so-and-so has been certified clear from such-and-such".³⁰

³⁰ ALAD nos. 140-159.