WRITTEN OBLIGATIONS FROM THE 2ND/8TH TO THE 4TH/10TH CENTURY*

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Abstract

In this article, based on recent research undertaken in the collection of Arabic papyri of the Austrian National Library in Vienna (Papyrus Erzherzog Rainer), I discuss four unpublished documents discovered in Egypt, all written obligations (*adhkār huqūq*) dating from the second half of the 2nd/8th century to the first half of the 4th/10th century These documents provide important documentary evidence for early Islamic legal practice By comparing the legal content of the documents with the contract formularies used by the Hanafī jurist al-Ṭaḥāwī (d 321/933) in his *Kitāb adhkār al-ḥuqūq*, I investigate the relationship between theory and practice in Islamic Law

THE CONTRIBUTION OF Arabic papyrology to our knowledge of the early history of Islamic law has been modest, but valuable [1] Among the texts investigated within this discipline, legal documents—mostly private contracts—constitute a rare source of documentary evidence from the first three centuries of Islam whose authenticity is beyond dispute Although these texts cannot answer the question of how and when Islamic law, as a legal system based on the Qur'ān and Prophetic traditions, came into existence, they do provide some idea of the manner in which Islamic law operated during that period in daily matters such as marriage, sale, debts and payments Moreover, a comparison of papyri and literary sources, especially works on *shurūṭ*, sheds light on the relationship between legal theory and notarial practice

To this end, I focus my attention here on one specific contract the *dhikr haqq*, or written obligation [2] During a recent visit to the collection

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[1] This contribution is treated in greater detail in Gladys Frantz-Murphy, "Arabic Papyrology and Middle Eastern Studies," *MESA Bulletin* 19:1 (1985), 34-48.

[2] On the question of whether *dhikr* or *dhukr* is the correct vocalization, see Rāġib, *Marchands d'étoffes du Fayyoum au IIIe/IXe siècle I* (Le Caire, 1982), 8 In using the English term *written obligation* for this type of contract, I follow

of Arabic papyri of the Austrian National Library of Vienna (Papyrus Erzherzog Rainer) I found new material on this subject, eight hitherto unpublished *adhkār huqūq* of Egyptian origin, four of which are presented here as a basis for discussion In this essay, I concentrate on the legal content of these documents, leaving aside other interesting features [3]

The *dhikr haqq* belongs to the oldest kind of Arabic deed that has been preserved, its earliest specimen being a document of the Louvre collection from the year 42/662-663, mentioned by Rāġib [4] With the exception of one 4th/10th century document edited by Dietrich, all published examples of *adhkār huqūq* date from the 3th/9th century, the earliest one being from the year 231/845 [5] Two of the four documents discussed here are datable to the 2nd/8th century, thus representing older examples of this type of contract

The purpose of a *dhikr haqq* is to give written evidence to a legal claim (*haqq*) held by one of the contracting parties against the other Since the nature of this claim, as well as its origin, may vary (an issue to which I shall return), the *dhikr haqq* provided a convenient instrument for different legal transactions During the first three centuries of Islam its use must have been widespread in Egypt Judging from the Arabic papyri found in the Vienna collection, the *dhikr haqq* is the most frequently attested legal document from this period The Egyptian Hanafī jurist al-Ṭaḥāwī (d 321/933) devoted a lengthy chapter to *adhkār huqūq* in his major work on *shurūṭ*, *al-Jāmiʿ al-kabīr fī'l-shurūṭ* This *Kitāb adhkār al-huqūq*, edited by Joseph Schacht in the 1920s, serves here as my main reference [6]

Grohmann, *Arabic Papyri in the Egyptian Library II* (Cairo, 1936), 115-20

[3] A complete edition of the texts will appear at a later date in a volume of Arabic legal texts from the collection of Arabic Papyri of the Austrian National Library

[4] Rāġib, *Marchands I*, 8

[5] Text editions of *adhkār huqūq* can be found in the following: Margoliouth, *Catalogue of Arabic Papyri in the John Rylands Library Manchester* (Manchester, 1933), no X 10; Grohmann, *Arabic Papyri in the Egyptian Library I* (Cairo, 1934) no 48; ibid II (Cairo, 1936) no 101-03; Dietrich, *Arabische Papyri aus der Hamburger Staats- und Universitäts-Bibliothek* (Leipzig, 1937), no 4; Grohmann, "Einige arabische Ostraka und ein Ehevertrag aus der Oase Baḥrīya," *Studi in onore di Aristide Calderini e Roberto Paribeni* (Milano, 1957), no 2a-b; Grohmann, *Papiri della R Università di Milano I* (Milano, 1966), no 2; Levi Della Vida, *Arabic Papyri in the University Museum in Philadelphia (Pennsylvania)* (Roma, 1981), no 31; Rāġib, *Marchands I*, nos II-IX; Khoury, *Chrestomathie de papyrologie arabe* (Leiden, 1993), nos 14, 28-30, 44

[6] J Schacht, *Das kitāb aḍkār al-huqūq wa-ruhūn aus dem al-ǧāmiʿ al-kabīr fiš-šurūṭ des abū Ǧaʿfar Ahmad ibn Muhammad aṭ-Ṭahāwī* (Heidelberg, 1927), hereinafter: al-Ṭaḥāwī, *Adhkār al-huqūq*

For a more detailed treatment of the *dhikr haqq*, we turn to the individual documents, to be discussed in chronological order [7] The first document is a written obligation relating to a debt of one dinar Because the month Rabīʿ II of the year 173/789 is mentioned in the text as the term of redemption, the document is datable to either this or the previous year [8] The phrasing of the document follows the standard formula of *adhkār huqūq* After the *basmala*, the document opens with "*dhikr haqq*", followed by the name of the creditor, in the present instance probably a Turkish client (*mawlā*) of a man called Ṭulayb b Abī Ṣāʾim, with the name Tikīsh [9] Then follows, preceeded by the preposition *ʿalā* ("to the debit of"), the name of the debtor, a woman called ʿAqīla bt Yūsuf In the next sentence, the debt is specified "To her debit (*ʿalayhā*) is a dinar of standard weight (*dīnār qāʾim*) because of the price of wheat she has bought from Tikīsh " According to al-Ṭaḥāwī, it is better to begin such a phrase with *lahu ʿalayhā* instead of *ʿalayhā* He claims that the use of the shorter phrase is a practice that goes back to early legal authorities such as Abū Hanīfah, Abū Yūsuf and Muḥammad al-Shaybānī, while the addition of *lahu* ("due to him") was an improvement introduced by the 3th/9th century jurist Abū Zayd Aḥmad b Zayd [10] Indeed, in earlier *adhkār huqūq* we find only *ʿalayhi*, while *lahu ʿalayhi* is common in documents beginning from the second half of the 3th/9th century,[11] which seems to corroborate al-Ṭaḥāwī's point

As noted, the document mentions not only the claim but also its origin as a sale on credit This is not done in all *adhkār huqūq*, and al-Ṭaḥāwī apparently does not consider it a legal necessity In cases such as the one under consideration here, however, it was probably a common practice [12] The document's next phrase (*wa-qad qabaḍati l-qamha wa-raḍiyat*) confirms the buyer's taking possession of the object

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[7] The Arabic texts may be found in the Appendix

[8] This document is described in von Karabacek, *Papyrus Erzherzog Rainer, Führer durch die Ausstellung* (Wien 1894), no 617, where, however, the author has misread the text at several points

[9] From the Turkish, *tégish*; see Clauson, *An Etymological Dictionary of Pre-Thirteenth-Century Turkish* (Oxford, 1972), 487

[10] Al-Ṭaḥāwī, *Adhkār al-ḥuqūq*, 3ff On Abū Zayd Aḥmad b Zayd, known as al-Shurūṭī, see Jeanette Wakin, *The Function of Documents in Islamic Law* (Albany, 1972), 19ff

[11] The earliest example I have found is Rāġib, *Marchands I*, no V, from the year 256/870

[12] Al-Ṭaḥāwī writes, "*wa-in kāna'l-haqqu min thamani bayʿin fa-aradta an tubayyina dhālika fī kitābika*," apparently leaving the choice to the notary (*Adhkār al-huqūq*, 7)

of sale and her satisfaction Al-Ṭaḥāwī considers the reference to taking possession (*qabḍ*) to be a legal necessity Suppose, he argues, someone says "I owe you 1000 dirhams as the price of a slave that you have sold to me," but the buyer subsequently contends not to have received the slave, while the seller says that he did In that case, according to Abū Yūsuf and Muḥammad al-Shaybānī, the buyer's contention is valid because both parties agree that a sale was concluded and thus an obligation on the part of the seller to deliver the object of sale has been established Abū Hanīfah, on the other hand, held the opposite view, based on the ground that the buyer has acknowledged his debt to the seller [13] Statements of satisfaction are often included in sale contracts [14] In sale contracts, satisfaction clauses tend to emphasize the satisfaction of the seller, thus securing the rights of the buyer, whereas in the present document the clause is obviously intended to favor the rights of the seller, i e , the creditor of the *dhikr haqq* In his treatment of *adhkār huqūq* arising from sales on credit, al-Ṭaḥāwī includes a number of additional clauses, all derived from the contract of sale [15]

Next, the document mentions the date of payment (*mahill*), implying that the debt was deferred (*māl ilā ajal*), instead of being due (*hāll*), as we find in other *adhkār huqūq* Then follows a clause for *hawāla* (cession) "Whoever presents himself with this written obligation, may demand what is mentioned therein and she [viz , the debtor] will acknowledge the right of anyone to whom he [viz , the creditor] may transfer his claim, if God is willing (*wa-man qāma bi-dhikri'l-haqqi qtaḍā bihi wa-man ahāla ʿalayhā aqarrat lahu in shā'a llāhu*) " Such clauses, stipulating the right of the creditor to act as *muhīl* and transfer the claim to another person (*al-muhtāl*) who subsequently may demand payment of the debt from the debtor (*al-muhtāl ʿalayhi*), occur frequently in *adhkār huqūq* The first part of the clause guarantees payment of the debt to every bearer of the deed, thereby enabling the creditor to transfer the claim merely by handing over the document According to Grohmann,[16] similar stipulations are found in Demotic deeds, and it may well be that we are dealing here with a continuation of a pre-Islamic practice Interestingly, al-Ṭaḥāwī omits this part of the

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[13] Al-Ṭaḥāwī, *Adhkār al-huqūq*, 8

[14] For satisfaction clauses in contracts of sale, see Wakin, *Documents*, 58 and Gladys Frantz-Murphy, "A Comparison of Arabic and Earlier Egyptian Contract Formularies, Part III," *Journal of Near Eastern Studies* 47 (1988), 106ff

[15] Al-Ṭaḥāwī, *Adhkār al-huqūq*, 7

[16] Grohmann, *Egyptian Library I*, 116

clause in his formulary, where he discusses a similar stipulation that he deems weak (*ḍa'īf*) because it would allow the deed to be utilized by someone who is not entitled to do so (*ihtamala an yaqūma bihi man lā yajibu lahu l-qiyāmu bihi*) [17] The second part of the *hawāla* clause, containing the debtor's acknowledgement (*iqrār*) of his obligation to pay to the *muhtāl*, is considered by al-Ṭaḥāwī to be necessary because of the opinion of some scholars that the debtor is not obligated to agree to the *hawāla* except in cases in which the creditor obliges him to do so by means of a stipulation in the contract (*lā yajibu li'l-muqirri qabūlu l-hawālati 'alayhi ( ) illā an yakūna'l-muqarru lahu qadi shtaraṭa dhālika 'alayhi*) [18] It is worth mentioning that, according to Islamic law, the debtor can act as *muhīl* as well if another person owes him the same amount of money as he owes his creditor, he can transfer this claim to the creditor (becoming the *muhtāl*) and be discharged of his debt Of this right, however, no mention is made in *adhkār huqūq*

The last part of the contract, containing the names of the witnesses, is lost Only the word *shahida* and a part of the name of the first witness are legible The handwriting indicates that the witnesses did not sign the contract themselves, but were merely mentioned by the notary

The second document is a *dhikr haqq* from the year 178/795 relating to the delivery of wheat The date of the contract is mentioned in a sentence, part of which has been lost, located above the actual text, which probably contained a declaration of the notary confirming his writing of the deed The year is written in Greek numerals (ροη) The beginning of the contract follows the standard pattern the *basmala*, followed by *dhikr haqq*, and then, in succession, the name of the claimant, a man called Sa'īd b Zakariyā, and that of the person against whom the claim is made, 'Abdallāh b 'Abd al-Raḥmān (the two names are connected by the preposition *'alā*) The claim follows 167 *ardeb* of excellent hulled wheat (*qamh naṣīl jayyid*) to be delivered at the end of the month Rabī' II of the next year in the town of al-Fayyūm Although the origin of the claim is not specified, we surmise that it must have been a sale with advance payment for future delivery (*bay' salam*) The use of *adhkār huqūq* for this type of transaction must have been common, for it is attested in several documents, particularly in connection with the sale of agricultural products, but also in contracts between merchants and manufacturers [19] It is interesting that al-Ṭaḥāwī does not mention

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[17] Al-Ṭaḥāwī, *Adhkār al-ḥuqūq*, 4
[18] Al-Ṭaḥāwī, *Adhkār al-ḥuqūq*, 5
[19] Among the *adhkār ḥuqūq* that I found in the Vienna collection, there is a similar contract concerning the delivery of wheat (PER A P 10047), another

this practice, restricting the use of *adhkār huqūq* to monetary debts For *salam* contracts he uses a different formulary, included in his *Kitāb al-buyūʿ*, where his treatment of *salam* gives us some idea about the divergence of legal opinion on this subject [20] Indeed, the notion of *salam* in Islamic law is problematic, as it contradicts certain rules governing the contract of sale [21] We need not treat this matter here in detail to understand that it was probably the main reason why *salam* transactions are usually concluded by means of a *dhikr haqq* in which no mention is made of *salam*, thereby avoiding legal pitfalls [22]

The date of delivery is followed by a *hawāla* clause, here consisting of only the first part of the clause discussed in our first document, i e , the stipulation that any bearer of the deed can demand payment from the creditor Although the last part of the contract, containing the witnesses' declarations, is partly lost, what remains suggests that at least three witnesses signed the contract and affirmed that their testimony was written by themselves (*wa-kataba shahādatahu bi-yadihi*) This makes this papyrus the earliest extant example of an Arabic contract containing an autograph declaration of witnesses Two other examples from the end of the second century are known a deed of lease mentioned by Khan from the year 180/796 and a fragmentary papyrus dated 195/811, edited by Grohmann [23] In older deeds the names of witnesses are mentioned by the notary only in a witnessing clause at the end of contract [24] The appearance of autograph declarations in contracts during the last quarter of the 2nd century may be related to the institution of professional witnesses (*ʿudūl*) which, according to al-Kindī, was introduced in Egypt by the qāḍī Ibn Fuḍāla in 174/790 [25]

The third document is a *dhikr haqq* from the end of the 3d/beginning of the 10th century (Dhū al-Hijjah 290/October-November 903) relating to a debt of two dinars, owed by a certain Yusr b Yaḥyā to a

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concerning wheat and barley (PER A P 10046), and a third concerning flax (PER A P 1722) Rāġib, *Marchands I*, published nine *adhkār huqūq* for the delivery of linen by manufacturers to cloth-merchants (nos II-IX)

20 Al-Ṭaḥāwī, *Kitāb al-buyūʿ*, ed Jeanette Wakin (Albany, 1972), 193ff

21 For a systematic treatment of this subject, see Saleh, *Unlawful Gain and Legitimate Profit in Islamic Law* (Cambridge, 1986), 71ff

22 For a similar observation, see Rāġib, *Marchands I*, 7

23 Khan, *Bills, Letters and Deeds Arabic Papyri of the 7th to 11th Centuries* (The Nasser D Khalili Collection of Islamic Art , vol V, Oxford, 1993), 173; Grohmann, *Egyptian Library I*, no 51

24 E g , *Khan, Bills, Letters and Deeds*, no 97; David-Weill, Cahen et al , "Papyrus Arabes du Louvre III," *Journal of the Economic and Social History of the Orient*, 21 (1978), 146-64, no 24; PER A P 726v

25 See Khan, *Bills, Letters and Deeds*, 173

woman with an unfamiliar Arabic name, perhaps ʿAdīn (?) bt ʿAbdallāh The first part of the contract, containing the *basmala* and the name of the creditor, is lost (the creditor's name is repeated subsequently in contract) After mentioning the name of the debtor, the text continues "He owes her (*lahā ʿalayhi*) two dinars [ ] to be paid immediately at any time she wishes to take them from him (*dīnār*[*ayni*] *muʿajjalayni ayya waqtin shāʾat akhadhathum minhu*) " The use of the term *muʿajjal* to indicate immediate payment is unusual in *adhkār huqūq*, whereas it is frequently attested in marriage contracts, where it is used to denote the part of the nuptial gift paid before the marriage (*muʿajjal al-ṣadāq*) In cases of debts that are outstanding, the term *hāll* is usually used, as by al-Ṭaḥāwī [26] Statements confirming the right of the creditor to demand payment at any time he wishes are often connected with this [27] In the present document, such a phrase occurs three times After a clause stipulating the right of every bearer of the deed to demand payment (*wa-man qāma bi-hādhaʾl-haqqi ʿalā Yusr akhadhahu*) the document reiterates that "whenever ʿAdīn (?) bt ʿAbdallāh wishes, she can take these two dinars from Yusr b Yaḥyā " Here, the phrase seems to be a needless repetition, the creditor apparently being at pains to assert her rights In order to cash the debt, she has appointed the son of her maternal aunt (*ibn khālatihā*), Hudayd b al-Hasan, as her proxy (*wakīl*) The contract continues "Whenever Hudayd b al-Hasan wishes, he may take these two dinars from Yusr b Yaḥyā without delay or respite (*bi-lā mudāfaʿatin wa-lā ṣabrin*), if not, he may increase the sum (*hattā yazīda Hudayd b al-Hasan dhālika*) " Although clauses against delay of payment are not unusual in *adhkār huqūq*, this clause goes a step further, since the threat of increasing the amount owed obviously is intended as a means of exerting pressure on the debtor Moreover, if the creditor actually executed such a stipulation, he would be violating the Qurʾānic prohibition against usury (*ribā*) If my reading of the document is correct,[28] such a stipulation is remarkable because it clearly contradicts a Qurʾānic verse, which should have been sufficient grounds to invalidate the entire contract The contract ends with a witnessing clause, followed by the declarations of four witnesses, three written in the same hand, which suggests that at least two of the witnesses were illiterate

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26 Al-Ṭaḥāwī, *Adhkār al-huqūq*, 3

27 See Khoury, *Chrestomathie*, no 29; PER A P 5211; a similar phrase is mentioned in al-Ṭaḥāwī, *Adhkār al-ḥuqūq*, 16

28 The only other possibility is to read *yuʿīda* instead of *yazīda*, which, in the present context, does not make much sense

The fourth and last document is a *dhikr haqq* written on paper from the first half of the 4th/10th century (Sha'bān 331/April-May 943) relating to a debt of eight dinars [29] To the best of my knowledge, only one other *dhikr haqq* from this period has been published to date,[30] and these two documents constitute the latest examples of this type of contract During the 4th/10th century, *adhkār huqūq* became obsolete and were replaced by *iqrār* documents, that is, a formal acknowledgement by the debtor at the beginning of the contract As Khan has observed, the same development took place with regard to deeds of quittance (*barā'a*), probably because in both the *dhikr haqq* and the *barā'a,* the formulation of the deed refers to the document itself rather than to the legal act connected with it This implies that the written document was a constitutive element, whereas in an *iqrār* the document functions as a declarative instrument, recording the fact that the acknowledgement has taken place, which is legally more secure [31]

The present document, which is much longer than the preceeding ones, conforms to the rules of *shurūṭ* and uses a sophisticated juridical language (many of its phrases are found in al-Ṭaḥāwī's treatise) Some of these characteristics appear at the beginning of the document, where the contracting parties are mentioned not only by name and patronymic, but also by profession (the profession of the father of the female creditor is specified), place of residence and, in the case of the debtor, *nisba* [32] We learn that the creditor was a woman bearing a Coptic name (either Tūsāfah or Tūsāqah),[33] that she was the daughter of a tailor by the name of Papostolos,[34] and that she lived in the town of Ushmūn, and that the debtor was a man of Nubian origin by the name of Abū Hudayd al-Aṣfar b Abī'l-Aswad, that he too was a tailor, and that, although from al-Fusṭāt, he was living in Ushmūn at the time that the deed was formulated

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[29] This deed is also mentioned in von Karabacek, *Führer* (no 962), although his description is incorrect on several points

[30] Dietrich, *Arabische Papyri*, no 4

[31] See Khan, *Bills, Letters and Deeds*, 174; Schacht, *An Introduction to Islamic Law* (Oxford, 1964), 151

[32] This was done in order to prevent confusion between people carrying the same names; see Tyan, *Le notariat et le régime de la preuve par écrit dans la pratique du droit musulman* (Lyon, 1945), 54; al-Ṭaḥāwī, *Kitāb al-buyū'*, 7ff

[33] Abbott, *The Monasteries of the Fayyūm* (Chicago, 1937), 12 read a name with similar *rasm* as Tūsānah If, as seems likely, we are dealing with the same name, her interpretation is wrong, for here the second last letter must be either *qāf* or *fā'*

[34] Derived from the Greek name, Απόστολος, to which the Coptic article has been added

The debt—eight gold dinars of *mithqāl*-weight—is specified as *qiṭaʿ*, that is, the sum was to be paid in fractions of coins Although the use of clippings in financial transactions was not admitted by legal doctrine, it must have been a common practice, for we find it mentioned in several other papyri [35] The debt is said to be "a binding, valid obligation (*daynan thābitan lāziman lahu*), in his debt, from his money, during his life or after his death (*fī dhimmatihi wa-mālihi wa-mahyāhu wa-mamātihi*) " Similar phrases frequently are found in works on *shurūṭ,* and documentary evidence [36] It is stipulated that the debt will be paid in monthly installments (*munajjama*) of a quarter dinar, a stipulation that resembles one used by al-Ṭaḥāwī [37] Next there occurs a clause that often is used in both *adhkār huqūq* and *iqrār* documents, forbidding the debtor to delay payment or to raise any objections (*lā yudāfiʿu bi-dhālika wa-lā yahtajju bi-hujjatin min jamīʿi l-wujūhi waʾl-asbābi kullihā*) [38] The contract then states that this (*wa-dhālika*, meaning the obligation to pay the debt) is based on a binding obligatory legal claim (*bi-amri haqqin wājibin lāzimin*), known to the debtor (*ʿarafahu*) and incumbent upon him because of his *iqrār* made to the creditor (*wa-lazimahu ʾl-iqrāru lahā*), thus insuring formal acknowledgement of the claim [39] Another *iqrār* is made by the debtor confirming his solvency (*wa-aqarra annahu malīʾun walīyun bi-hādhihiʾl-danānīri* ( ) *wa-aḍʿāfihā*) Although this clause is not mentioned by al-Ṭaḥāwī, we find it in later Shāfiʿī works on *shurūṭ* [40] A final clause in the contract confirms that the debtor made his *iqrār* while sound of body and mind (*fī ṣihhati ʿaqlihi wa-badanihi*), being legally competent (*jawāzi amrihi*), acting of his own volition (*ṭāʾiʿun ghayru mukrahin*) and being known personally (*ʿalā maʿrifatihi bi-ʿaynihi*, meaning that he was physicially recognizable), by name and by descent (*ismihi wa-nasabihi*) [41] At the end of the contract, the date is specified, followed by the witnesses' declarations

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[35] See Grohmann, *Egyptian Library IV*, 226; David-Weill, "Papyrus Arabes du Louvre I," *Journal of the Economic and Social History of the Orient,* 8(1965), 281; Wakin, *Documents*, 87

[36] E g , al-Ṭaḥāwī, *Adhkār al-ḥuqūq*, 3; Grohmann, *Egyptian Libı ary I*, nos 65, 66, 68; *ibid II*, nos 98, 105-111; Dietrich, *Arabische Papyı i*, no 4

[37] Al-Ṭaḥāwī, *Adhkār al-ḥuqūq*, 13

[38] See Grohmann, *Egyptian Libarary II*, nos 99-103, 105-11; Khoury, *Chrestomathie*, nos 27, 33, 34; Dietrich, *Arabische Papyri*, no 4

[39] See al-Ṭaḥāwī, *Adhkār al-ḥuqūq*, 6

[40] Al-Asyūṭī, *Jawāhir al-ʿuqūd wa-muʿīn al-quḍāt waʾl-muwaqqiʿīn waʾl-shuhūd*, 2 vols (Cairo, 1955), vol I, 27; al-Nuwayrī, *Nihāyat al-ʿarab fī funūn al-adab*, 9 vols (Cairo 1933), vol IX, 11

[41] See al-Ṭaḥāwī, *Kitāb al-buyūʿ*, 29; Wakin, *Documents*, 93ff

Some general observations can be made by way of conclusion As is well-known, Islamic law does not regard written documents as legal evidence For practical reasons, however, written documents were widely used in many legal transactions already in the first century of Islam This practice gave rise to a special branch of legal science, the *'ilm al-shurūṭ*, which, by the end of the 3th/9th century, was fully developed as indicated by the works of al-Ṭaḥāwī But already in documents emanating from the 2nd/8th century, we find formulae typical of *shurūṭ*, as in *adhkār huqūq* It remains to be determined whether or not these early examples of *shurūṭ* should be considered as genuinely Islamic, or, rather, as a continuation of earlier practices, as may be the case with *hawāla* clauses Some initial attempts to explore this question have been made by Hoenerbach and, more recently, by Frantz-Murphy, whose findings suggest that Arabic contract formulae are heavily influenced by Greco-Egyptian legal practice [42] Thus, Islamic jurists, such as al-Ṭaḥāwī and his predecessors, contributed to the process of adapting established legal conventions to the precepts of Islamic law, an ongoing process that is reflected in early legal documents Conversely, some documents seem to have been written in a deliberate attempt to circumvent certain Islamic prescriptions, as in the case of *bay' salam* The *dhikr haqq* proved to be a convenient instrument in this regard, because it specifies the claim without necessarily referring to its origin, and because its stipulations tend to be unilaterally in favor of the claimant, sometimes in violation of the letter of Islamic law

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[42] Hoenerbach, "Some Notes on the Legal Language of Christian and Arabic Deeds," *Journal of the American Oriental Society*, 81 (1961), 34-38; Gladys Frantz-Murphy, "A Comparison of Arabic and Earlier Egyptian Contract Formularies, Part I-IV," *Journal of Near Eastern Studies*, 40:3 (1981), 203-25; 44:2 (1985), 99-114; 47:2 (1988), 105-12; 47:4 (1988), 269-80

APPENDIX

Texts

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PER A P 893
173 A H /789 A D

(١) بسم الله الرحمن الرحيم (٢) ذكرحق تكيش (؟) مولى طليب بن ابى صايم على عقيـ[ـلة] (٣) ابنت يوسف عليها دينر قايم من ثمن قمح [اشـ]ـترته من تكيش (٤) وقد قبضت القمح ورضيت ومحل الدينر [ل]ـيال تمضى (٥) من شهر ربيع الاخر من سنة ثلث وسبعين ومايـ[ـة ومن قام بـ]ـذكر (٦) الحق اقتضا به ومن احال عليها اقر/ت/له ان شـ[ـا الله شـ]ـهد عبد الرحمن (٧)

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PER A P 1682r
Dhū l-Qa'da 178 A H /January-February 795 A D

(١) [ ] فى ذى القعدة سنة (٢) [بسم الله] الرحمن الرحيم (٣) [ذكر حق] سعيد بن زكريا على عبد الله بن عبد الرحمن (٤) عـ[ـليه ما]ية اردب وستة وسبعين اردب (٥) [قمـ]ـح نصيل جيد يوفيه ذلك بمدينة الفيوم في سلخ (٦) [ربيـ]ـع الاخر سنة تسع وسبعين وماية ومن قام (٧) [بذكر الحق اقتضابه] ان شا الله وقد قبض الثمن (٨) [ ] وكتب شهادته بيده (٩) [وكتب شهـ]ـادته بيده (١٠) [ ] وكتب شهادته بيده

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PER A P 1102
Dhu l-Hijja 290 A H /October-November 903 A D

(١) [بسم الله الرحمن الرحيم] (٢) [ذكر حق عديس (؟) ابنت] عبد [الله] على يسر بن يحيى له عليه دينار (٣) [ين] [ ]ـال معجلين اى وقت شات اخذتهم منه ومن قام بهذا الحق (٤) [على] يسـ[ـر ا]خذه متاشات عديس (؟) ا[بنـ]ـت عبد الله اخذت هاذين الدينارين (٥) من يسر بن يحيى وقد وكلت بن خالتها حديد متا شا حديد بن الحسن (٦) اخذ هاذين الدينارين من يسر بن يحيى بلا مدافعة ولا صبر حتا يزيد (٧) حديد بن الحسن ذلك وذلك فى شهر ذى الحجة من سنة تسعين ومايتين (٨) شهد عليهم بجميع ما فى هذا الكتاب من اوله الى اخره وذلك فى ذى الحجة (٩) وشهد على ﴿على﴾ اقرار يسر بهـ﴿ـذ﴾اذين الدينارين شهد احمد بن محمد القعدى (١٠) [بمـ]ـا فى هذا الكتاب وكتب بخطه شهد سعيد بن ميمون الحبال بجميع (١١) ما فى هذا الكتاب وذلك فى ذى الحجة من سنة تسعين ومايتين (١٢) شهد غليس بن *vacat* الحبال بجميع ما فى هذا الكتاب (١٣) شهد حسن بن ابى (؟) بجميع ما فى هذا الكتاب وذلك فى (١٤) شهر ذى الحجة من سنة تسعين ومايتين

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PER A Ch 3577r
Sa'ban 331 A H /April-May 943 A D

(١) بسم الله الرحمن الرحيم (٢) ذكر حق توساقة (؟) ابنت ببسطلس الخياط الساكنة مدينة اسمون على المعروف بابى الحديد (٣) الاصفر النوبى بن ابى الاسود الخياط الفسطاطى ومسكنه يوميذ مدينة اشمون لها عليه (٤) ثمانية دنانير مثاقيل ذهبا قطع جياد دينا ثابتا لازما له فى ذمته وماله ومحياه وممّاته منجمة لها (٥) عليه اثنين وثلثين شهرا متو الية لكل شهر منها ربع دينار واول شهر يحل عليه فيه دفع اول ربع دينار (٦) سلخ الشهر المعروف ببشنس من شهور القبط من سنة احدى وثلثين وثلثماية وفى سلخ كل شهر (٧) يلى هذا الشهر يدفع اليها ربع دينار حتى يوفيها هذه الثمانية الدنانير المذكورة فى هذا الكتاب لايدافع بذلك (٨) ولا يحتج عليها بحجة من جميع الوجوه والاسباب كلها وذلك بامر حق واجب لازم عرفه المعروف بابى الحديد (٩) [ا]لاصفر النوبى بن ابى الاسودفاقر به لتوساقة (؟) ابنت ببسطلس ولزمه الاقرار لها واقر انه ملى (١٠) [و]لى بهذه الثمانية الدنانير المذكور امرها ونجومها فى هذا الكتاب واضعافها بمخاطبة منه اياها (١١) [على ذ]لك وكان اقراره بكل ما سمى ووصف فى هذا الكتاب فى صحة عقله وبدنه وجواز امره طايع غير (١٢) [مكره] على معرفته بعينه واسمه ونسبه وذلك فى برموده وهو من شعبان من سنة احدى وثلثين وثلثماية (١٣) [شهد] عبد الله بن محمد بن عبد العزيز على اقرار المعروف بابى الحديد الاصفر بن ابى الاسود الخياط الفسطاطى (١٤ – right) [ ] فى شعبان من سنة احدى وثلثين وثلثماية (١٤ – left) شهد ابرهيم بن خدر (؟) بن احمد بن رجا على اقرار المعروف (١٥ – left) بابى الحديد الاصـ[ـفر] (١٥ – right) [شهد] بن محمد بن بشر البصرى على اقرار (١٦) [ ] [ ]