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THE JUDICIAL REGISTERS OF THE BAKCHISARAY/CRIMEA LAW COURT: A STUDY OF *GHASB* (ILLEGAL POSSESSION AND OCCUPATION) AND *İTLAF* (DESTRUCTION)

Recep ÇİĞDEM*

Abstract

Although studies on the judicial records have recently been increasingly appearing, they tend to concentrate on social, economic and administrative history. Legal analysis of the court records is not as much as expected. Most of the studies employ the registers held in Turkey. This study, however, employing the judicial records of Bakchisary/Criema, an autonomous republic of our neighbour Ukraine, does legal analysis. This work mainly concentrates on cases of *ghasb* and *itlaf*. Having given the theoretical basis of Hanafi doctrines, the cases are analysed for their legal properties. The primary purpose of this work is to explore the way in which the cases were brought to the court, and to find out how they were dealt with by the court authorities. We hope that the article will shed light on the application of Hanafi law in 17th century Crimea. In particular, it will contribute to the understanding of Hanafi law by the 17th century Crimean courts.

BAKCHISARAY/KIRIM MAHKEMESİ TUTANAKLARI: GHASB VE İTLAF KONUSU ÜZERİNE BİR ÇALIŞMA

Özet

Son zamanlarda mahkeme tutanakları üzerine yapılan çalışmalar artmakla birlikte bu araştırmaların büyük bir bölümü sosyoloji, ekonomi ve siyaset tarihi üzerine olmaktadır. Hukuksal analizlere yönelen çalışmalar ise azınlıktadır. Ayrıca, mahkeme sicillerine ulaşılabilme imkanı dikkate alındığında, çalışmalar genelde Türkiye hudutları içinde kalmaktadır. Bu çalışma ise, komşumuz olan Ukrayna'nın özerk bölgesi Kırım/ Bakchisaray mahkeme sicillerini esas alarak hukuki analizler yapmaktadır. Çalışma, *ghasb* ve *itlaf* konuları üzerine yoğunlaşmaktadır. Bu iki konuda, Hanafi hukukuna ait genel pren-

* Yrd. Doç.Dr., Harran Üniversitesi, İlahiyat Fakültesi, İslam Hukuku Anabilim Dalı, recepcigdem@yahoo.co.uk

sipler verilmekte ve mahkemeye gelen davalar incelenmektedir. Tarafların, davaları mahkemeye nasıl getirdikleri, mahkemenin davaları nasıl ele aldığı ve davaları nasıl sonuçlandırdığı sorularına cevap aranmaktadır. Çalışmanın, 17. yüzyılda, Kırım'da, Hanafi hukukunun uygulanmasına ışık tutacağını, özellikle de, 17. yüzyıl Kırım mahkemeleri tarafından Hanafi hukukunun nasıl anlaşıldığına katkıda bulunacağını ümit ediyoruz.

Key words/Anahtar kelimeler: Hanafi law, *ghasb*, *itlaf*, court of law, Bakchisaray, Crimea

Introduction

This article is based on the records of the proceedings of the Bakhchisaray/Crimea law court. The original registers of the Bakhchisaray court are located in the National Library of Russia in Saint-Petersburg. The Tatarian Library in Crimea/Ukraine holds photocopies of these records, from which I extracted my photocopies. I was told and assured by the library staff that the photocopies were made from the microfilms of the original registers. The cases we have examined in this article date from 1609 to 1677.

The reader should bear in mind that the documents and the period covered by this study are very small compared to the enormous amount of court registers available and the period they cover. This small portion of the documents may give us some clues about the ways in which the cases were dealt with, and about the rules of procedure of the court, but it is unreasonable to draw general conclusions from them. It is also worth highlighting the fact that these are the cases that made their way into the court records. We know almost nothing about the cases that were never brought to the attention of the court. For this reason, it is almost impossible to estimate the number of disputes broke out in the society. Despite these shortcomings, the registers under study provide us valuable information making their close scrutiny worthwhile.

I will attempt to clarify the legal issues raised in the cases to be examined here by referring to the *Hidaya* of Burhan al-Din al-Marghinani (d. 593/1197), and the *Multaqa al-Abhur* compiled by Ibrahim al-Halabi (d. 956/1549). These two textbooks were handbooks for law students and the

*qadi*s/judges.[1] Other legal texts will be also consulted when necessity arises. Since our aim here is not to examine the juristic texts in detail, the reader should not expect to see the minute legal details discussed by the jurists.

As the close examination of the registers reveals, the court was headed by a single *qadi* who carried out notarial and judicial functions as well as certain administrative duties. He had two primary assistants, namely a clerk, and a *Muhzır*. While the former recorded the cases in the records with certain administrative duties, the latter executed the duty of summoning the defendants to the court.[2]

We see at the bottom of each case several names, technically known as *shuhud al-hal*. They were in the court to ensure its fairness, and witness the procedure and the outcome of a case. Analysis of the registers further indicates that they were familiar with the law. The documents also hint that they served as mediators between the contestants in resolving the disputes via *sulh* (compromise) and worked as lawyers telling a plaintiff how to proceed and present his/her case.[3]

Hanafi law: *ghasb* and *itlaf*

Having introduced our documents, let us now look at the legal principles surrounding *ghasb* and *itlaf*. The former literally means the forcibly taking a thing by someone which belonged to another.[4] As a legal term, it corresponds to "the annulment of legitimate possession by establishing an illegitimate possession".[5] In Hanafi view, *ghasb* constitutes a civil offence (tort), and brings about a moral responsibility (*ithm*).[6] There is

1 S. S. Has, 'The Use of Multaqa al-Abhur in the Ottoman Medreses and in Legal Scholarship', *Osmanlı Araştırmaları* VII-VIII (1988), p. 402; Ö. Özyılmaz, *Osmanlı Medreselerinin Eğitim Proğramları*, pub. Kültür Bakanlığı, Ankara, 2002.

2 R. Cigdem, *The register of the law court of Istanbul 1612-1613; A legal Analysis*, Unpublished PhD thesis, The university of Manchester, 2001.

3 R. C. Jennings, "Qadi, Court, and Legal Procedure in 17th Century Ottoman Kayseri", *Studia Islamica* IIL (1978); Cigdem, *The register of the law court of Istanbul*, pp. 84-60.

4 Burhan al-Din al-Marghinani, *Al-Hidaya*, pub. Matba'a Mustafa al-Halabi, Egypt, 1971, vol. III, p. 11; H. A. Wehr, *Dictionary of Modern Written Arabic; Arabic-English,* ed. Cowan, M. J. pub. Librairie du Liban, Wiesbaden, 1980.

5 Ibrahim al-Halabi, *Al-Multaqa al-Abhur*, pub. Güryay Matbaasi, Istanbul, 1981, p. 392.

6 Halabi, *Multaqa*, p. 392.

no punishment for the culprit. This does not however mean that he may not receive any punishment at all. If the judge sees that it is appropriate for him to get punishment, *ta'zir* (discretionary punishment) is at his disposal to do so.

Since *ghasb* is viewed as a civil offence, the wrongdoer is under an obligation to return the *maghsub* (unlawfully obtained item) to its owner in the place where s/he seized it.[7] In addition, the usurper is liable for any damage that he has caused.[8] The illegal possessor is further liable for a diminution of value. However, the usurper is not held liable to return the profits that s/he has made out of the usurped object unless the item belongs to a *waqf*,[9] or to an orphan.[10] To put it differently, Hanafi jurists condone the violence by letting the usurper take the profits out of his crime. However, the other three Sunni scholars, Malik (d. 179/785), Shafi'i (d. 204/819) and Hanbal (d.241/855) have the opposite view. They maintain that profits made out of a usurped object are to be compensated for. In other words, in their view, profits derived from a usurped object have to be paid to the owner of the *maghsub*.[11]

If the usurped object is destroyed or consumed and the item was from those known as *mithliyyat* (weighed or measured objects such as wheat and silver; articles whose value is very similar to each other such as eggs),[12] the usurper replaces it with a similar item. If the object was an irreplaceable

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7 Ibid. p. 392.

8 Ibid. p. 393.

9 Ibid. p. 396.

10 Ö. N. Bilmen, *Hukuku İslamiyye ve Istılahatı Fıkhıyye Kamusu*, pub. Bilmen Basımevi, Istanbul, 1969, vol. VII, p. 346; Karaman, H. *Mukayeseli İslam Hukuku,* pub. Nesil Yayınları, Istanbul, 1996, vol. II, p. 481.

11 Abu Hasan al-Quduri al-Baghdadi, *Al-Quduri*, pub. Sahaf *Hacı* Şakir *Efendi*, Istanbul, 1312, p. 98 (margin note); Muhammad al-Sharbibi al-Khatibi, *Al-Mughni al-Muhtaj ila Ma'rifat Ma'ani al-Alfaz al-Minhaj*, pub. Mustafa al-Halabi, Cairo, 1958, vol. II, p. 286; Ibn Rushd, *Al-Bidayat al-Mujtahid*, pub. Dar al-Fikr, Beirut, no date, vol. II, p. 241; Ibn Qudama, *Al-Mughni*, pub. Dar al-Fikr, Beirut, 1992, vol. V, pp. 414, 423; Bilmen, *Hukuku İslamiyye*, vol. VII, pp. 346-9.

12 Marghinani, *Hidaya*, vol. III, p. 62; Babarti, Muhammad b. Mahmud, *Sharh al-'Inaya* in the margins of *Al-Fath al-Qadir*, pub. Matba'a Mustafa al-Halabi, Egypt, 1970, vol. VII, p. 4 and vol. IX, p. 321; C. R. Tyser, et al. trans. *The Majalla*, Nicosia, 1901, articles, 133, 134, 147, 223, 224.

one, its value which it bore on the day in which the case was taken to the court is to be paid. This is according to Abu Hanifa (d.150/767). Abu Yusuf (d.182/798) holds him liable to the value that it bore on the day of usurpation. Whereas, Muhammad al-Shaibani (d.189/805) has the opinion that its value on the day in which it cannot be found any more in the markets should be paid.[13] If the thing usurped is of the class that has no equivalence in the markets (*adad al-mutafawita*) such as an animal, the two jurists join Abu Yusuf in holding the usurper responsible for the value of the article that it bore on the day of usurpation.[14]

Having given the basic rules of *ghasb* in relation with moveable objects, I would now like to discuss the principles regulating the illegal occupation of immovables. To begin with, everyone has the right to freedom of property and may do as he pleases with his property. However, he is not allowed to go beyond the limits; if he does, he will be legally and morally liable. The law entitles the person whose property is illegally occupied to ask the illegal occupier to move out of his property. If the occupier does not correspond to his request, the owner of the immovable property is entitled to seek help from a court.

If crops or trees were planted on the usurped land, or a building was erected, they must be removed before vacating the land.[15] According to a view attributed to Muhammad, if the building or plants are more valuable than the land itself, the illegal occupier is allowed to own the land by paying its value to its owner.[16] To put it another way, he endorses the illegal occupation of immovables and lets the usurper receive benefit from the crime he has committed.

Lastly, *itlaf* (destruction) of articles in all cases entails liability of the culprit. In other words, the person who destroyed or damaged a property

13 Marghinani, *Hidaya*, vol. IV, pp. 11-2.
14 Ibid. vol. IV, p. 12.
15 Halabi, *Multaqa*, pp. 394-5.
16 Babarti, *'Inaya*, vol. IX, p. 342; Halabi, *Multaqa*, p. 395 (margin note).

pays its value.[17] It is worth mentioning here that although the Hanafi *madhab* (school of law) considers *itlaf* as a tort rather than a crime, legal texts examine it under the heading '*jinaya* (crimes against the person)', giving the impression that it constitutes a crime. However, the *Majalla*, the Ottoman Court's Manual, puts it in the place where it should be.

The court cases:

The register of the Bakhchisaray law court which is under study contains 14 distinct cases. While the two of them deal with the usurpation of slaves, one case concerns the *ghasb* of golden coins. Five cases are about the illegal possession of certain animals. Whereas, four cases are related to the illegal occupation of immovables. Finally, while one is about the destruction of agricultural produce of a land, the other deals with a claim of shooting an animal by an arrow.

Let us now start examining individual cases. In order to give an idea to the reader how cases begin, develop, and end, we will give the translation of the cases as they appear on the records. And then, legal analysis follows the original cases.

Case 1:

1/?/7,[18] The case is as follows:

Habibe bt. (daughter of) Isa, the wife of Mustafa Pasha b. (son of) Abdullah, *racil* (low ranking soldier)[19] who died

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17 Qasani, Abu Bakr b. Mas'ud, *Al-Bada'i Al-Sina'i*, pub. Dar al-Kutub al-'Arab, Beirut, 1982, vol. VII, pp. 165-8; Marghinani, *Hidaya*, vol. IV, p. 196; Halabi, *Multaqa*, p. 474; Tyser, *Majalla*, article, 922.

18 This identifies the case as register 1, page ?, and entry 18. The question mark means that it is illegible.

19 R. C. Jennings, "The Society and Economy of Maçuka in the Ottoman Judicial Registers of Trabzon, 1560-1640" in *Continuity and Change in Late Byzantine and Early Ottoman Society*, ed. Bryer, A. & Lowry, H., pub. University of Birmingham Centre for Byzantine Studies, Birmingham, 1986, p. 137; M. C. Zilfi, "We do not get along; Women and Hul Divorce in the 18th Century" in *Women in the Ottoman Empire; Middle Eastern Women in the Early Modern Era*, ed. M. C. Zilfi, pub. E. J. Brill, Leiden, 1997, pp. 280, 294; M. Z. Pakalın, *Osmanlı Tarih Deyimleri ve Terimleri Sözlüğü*, pub. Maarif Basımevi, Istanbul, 1954, vol. I, p. 317; Sertoğlu, M. *Resimli Osmanlı Tarihi Ansiklopedisi*, pub. Istanbul Matbaasi, 1958, p. 62.

while on the campaign in Hungary, [originally] resident in the village of Ogrukasta, in the judicial district of Yanbol (Yambol-Bulgaria), in her own personal representation, as well as a guardian of the minor daughters of the said Mustafa Pasha, Fatima and Cennet, [Habibe] brought a lawsuit against Hasan b. Mehmet. In his presence [she stated]:

"The aforesaid Hasan usurped a slave, worth of 40 florin (gold coins of Europe),[20] from my husband's estate and sold him for 40 florin and for a *çuha* (woollen cloth) in an amount sufficient for a wedding ceremony. He should be interrogated."

After interrogation, the aforesaid Hasan replied:

"The aforementioned plaintiff, Habibe, received the said slave from the estate of Mustafa Pasha for her *mahr*.[21] Once [the slave] became her own property (*haqq-ı shar'iyyasi)*, her present husband, Ali Pasha b. Ibrahim and her son-in-law, Cafer b. Mustafa, the lady (sic), sold [the slave] to me for 32 florin. After I took possession of the said slave and they received the money, a dispute broke out between us. When we were about to cancel (*iqala*)[22] the sale transaction, receiving a refund of 32 florin from Ali Pasha and Cafer, and returning the slave to them, [she] approved of the sale transaction. However, I did not hand the said amount of money [32 florins] over to them, instead, I kept the money [for myself] and I walked away with the slave. I sold [the slave] for 40 florin. I can [now] deliver 32 florins [to her]."

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20 Bayerle, G. *Pashas, Begs, and Efendis; A Historical Dictionary of Titles and Terms in the Ottoman Empire*, pub. The Isis Press, Istanbul, 1997, p. 66.

21 *Mahr* is a fixed amount of money or property given by the groom to the bride at the wedding ceremony or in divorce or on death. Marghinani, *Hidaya*, vol. I, pp. 204-14.

22 In legal terminology, *iqala* means the dissolution of a transaction of sale in consideration of an equivalent of the original price. Additionally, the *mabi'* (the article which has been sold) should be in existence. In doctrine, there is a discussion as to whether the *iqala* is a *faskh* (cancellation of the contract as if it has never existed) in respect of the purchaser and the vendor. However, there is a unanimous opinion that it is a new sale in respect of third persons. Marghinani, *Hidaya*, vol. III, pp. 54-5; Halabi, *Multaqa*, p. 256; Tyser, *Majalla*, articles, 163, 190-6; Schacht, J. *An Introduction to Islamic Law*, pub. The Clarendon Press, Oxford, 1964, p. 148.

> When the case was asked from the said plaintiff, Habibe, she stated that she had not taken the slave for her *mahr*, and that without her consent, the said Hasan had taken the said slave away before the division of the estate among the heirs.
>
> When evidence confirming his claim was sought from Hasan, he was not able to produce evidence.
>
> When the said Habibe was called upon taking an oath that after the said slave became her own property, she had not had the said slave sold by Ali Pasha and Cafer as being her agent, she swore by God Almighty.
>
> A judgement was passed that since Hasan admitted that the value of the slave had been 40 florins, and the slave was not available (*mawjud olmayub*), Hasan was ordered to hand a total of 40 florins over to Habibe as the value of the slave.
>
> What happened was written upon request.
>
> Written on 6 *Jumad al-Akhira* 1018 [6.9.1609].
>
> Shuhud al-hal (witnesses to the proceedings of the court): Vasli *Çelebi*[23] b. Abdulgaffar *Efendi*,[24] *Shaykh* (the head of a spiritual path) Islam *Efendi* b. Sabir, Halit *Efendi* b. Hacbi, *Mudarris* (Professor), Mustafa b. Hüseyin, *Racil*, Bayram b. Abdullah, and others.

Here, we see a woman named Habibe filing a complaint against a man called Hasan, accusing him of usurping a slave from her diseased husband's estate. The defendant, however, refuted her claim and her version of the case. According to him, the case was developed as follows: The slave belonged to her late husband. When he died, the slave was given to her as her deferred *mahr*. When she took possession of the slave, her relatives sold the slave to him for 32 florins. He denied illegally taking the slave into his possession. Rather, he tried to establish the case as a normal sale transaction. However, he admitted that he had not handed the money over to the plaintiff.

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[23] *Çelebi* was designated from 15th century onwards to the literate people as a title of respect. However, according to Zilfi, it "probably denotes association with a trade". Sertoğlu, *Osmanlı Tarihi*, *p.* 65; Bayerle, *Pashas*, p. 30; Zilfi, "We do not get along", pp. 280, 294.

[24] Title for people who were educated in a *madrasa*. Bayerle, *Pashas,* p. 44.

He offered her the payment of the original price, that is 32 florins. He was not able sustain his version of the case with an evidence. Furthermore, he did not ask the court to summon her relatives who had sold the slave. This implies that he was in fact lying, and making up the case in order to free himself from the accusation.

The plaintiff did not corroborate the defendant's statement. Rather, she reiterated her own statement and underlined that illegal possession had been before the division of the estate. She rejected the defendant's claim that the slave had been given to her in exchange for her *mahr*.

The case resulted in her favour upon her oath that she had not had the said slave sold to the defendant after he became her own property. This suggests that the slave was not given to her as her *mahr*. Rather, she took him as a part of her inheritance.

The defendant was ordered to pay 40 florins, as he admitted that it had been his value. He was not ordered to return the slave, because the slave was not available as he was sold to a third person. Yet, the court could have ordered the return of the slave, cancelling the sale transaction, as a third person without authority (*fudhulî-ghâsıb*) did the transaction. The court did not opt for this, because although it is not entered into the record, it is likely that when her decision was asked about what she wanted, she preferred money but not the slave. Once the usurper made the payment, his transaction becomes valid. To quote Marghinani: "If a person usurps a slave and then sells it, the sale becomes effective, once the usurper pays his value to its original owner".[25]

It is to be noted that in a normal procedure, the plaintiff is the person who brings evidence, here, however, the opposite occurred. The defendant is asked to produce his evidence, and not the plaintiff. This is due to the fact that the defendant became plaintiff when he produced a counter claim. As in this instance, a person may begin the case as a defendant but end up as a plaintiff or vice versa. In Islamic law, there is no distinction between the

[25] Marghinani, *Hidaya*, vol. IV, pp. 19, 69; Halabi, *Multaqa*, p. 396.

defendant and the plaintiff. They become distinct according to the development of the case.

We see a number of dignitaries from military and religious classes among *shuhud al-hal*; this is because the plaintiff's husband was a soldier died in a military campaign. Dignitaries did not leave his wife alone, on the contrary, by coming to the court they showed their sympathy to her and gave the impression that they were on her side. This probably shows that Crimean society was caring for and supporting vulnerable people. This along with many other documents may indicate that society was made up of class based communities. For instance, we see dignitaries present in the court when a case involved a dignitary. The same applies to farmers or other groups of the society. Each group interested in the cases that involved someone from their own group. Otherwise, they do not come to the court.

Case 2:

> 22/70/6, The case is as follows:
>
> From the village of Tayke, Mevlüt *Gazi* (veteran) b. Murat *Sufi* (follower of a spiritual path), in the presence of Asir Ali b. Murtaza, an agent of his step mother, Kerime, his agency being verified according to the requirement of the law, [Mevlüt] stated:
>
> "My father owed one hundred and fifty gold [coins] as deferred debt to Kerime, the principal of the said Asir Ali. She donated it to my father and absolved him of his debts. Now, the principal of the said Asir Ali, took away (*akhdh*) [my] twenty two gold [coins] without any legal reason. He should be interrogated."
>
> After interrogation, the said agent replied:
>
> "It is a fact that twenty two gold [coins] were usurped, but it is wrong that there was a donation [by my step mother to his father].
>
> Cemaher *Sufi* b. Süleyman and Akbolan b. Hasan testified as witnesses in accordance with the [statement of the plaintiff].
>
> It is recorded that the testimony of the witnesses was accepted.

> [The case was probably recorded sometime in *Rabi' al-Akhir* 1088 (6.1677), since one of the entries in this register mentions this date. R.C.]

In this case, contrary to the case above, it was a man who brought a charge against a woman. She was accused of usurping twenty-two gold coins from the plaintiff. She did not come to the court. Rather, she sent her stepson to represent her in the court. The case suggests that she did not want to face the plaintiff, as she was guilty of usurping certain amount of gold coins. Her agent confirmed her guilt, as he admitted that she had usurped the plaintiff's money. However, the agent did not touch the statement of the plaintiff that his father had been one hundred and fifty gold coins in debt to her. The agent, rather, stuck to the question of usurpation. His statement, however, implies that there was a debt.

The corroboration of the statement of the plaintiff by the witnesses confirms as a fact that his father was in debt to her, and that she freed him from his debts. This suggests that although she gave up what is owed to her while he was alive, she changed her mind when he died, and wanted to get at least some of her money back. When she could not do it peacefully, she did it forcefully.

Although it was recorded that the court accepted the testimony of the witnesses in favour of the plaintiff, the court's judgement was not entered into the record. However, it is highly likely that following the rules of *ghasb*, the defendant's principal was ordered to return the usurped twenty-two gold coins to the plaintiff.

The entry does not make it clear whether the diseased had children other than the plaintiff and why the dispute broke out. Furthermore, there is no clue on the question of what the reason behind debt was and why she gave it up. It is, however, evident that there was some sort of relation between the diseased and the plaintiff.

Case 3:

> 22/70/8, The case is as follows:
>
> From Tayir, when the priest of Top in Karasu (Nijniygorsk) named Istemehan demanded that *Hacı* Pir Ali, an agent of Benci bt. Bolan, his agency being established, should [return] twenty five gold [coins] which were illegally taken away

> [from him], the said agent [Pir Ali] denied the accusation but was not able to establish [his denial].
>
> A judgement was passed ordering [Pir Ali] to hand the said money over to the said priest.
>
> [The case was probably recorded sometime in *Rabi' al-Akhir* 1088 (6.1677), since one of the entries in this register mentions this date. R.C.]
>
> *Shuhud al-hal*: Fahruddin [b.] Salih, Birmirza Hamza Tok, Çoray *Kethüda* (chief of a craft guild), *al-Ma'ruf* (known), Mustafa b. Karasu, Abvas [b.] Hartok?, and others.

As in the case above, it was a woman who was accused of illegally taking possession of certain amount of money. Although, the entry writes that it was the money of a priest, it is possible that it was not his own money, but the money of his church. The entry does not reveal how the money was taken away. Did she pick it up while it was being collected from the church attendants or did she receive it as a debt but did not return it on time? None of these were clarified, so it is not known why she did this. Was she in need of money and could not get it in any other way? Whatever the reason may have been, her agent was ordered by the court to return the money, since the court was firmly convinced of her being guilty.

It is worth highlighting that in a normal procedure it is the plaintiff who brings his evidence when his case is denied. In the case of failure, the defendant takes the oath. Here, the court clearly did not follow this procedure. The reason for this might have been that the judge relied on his personal knowledge that the incident had certainly taken place. In law, the *qadi* can pass his judgment in favour of the plaintiff, without any evidence, if he personally knew that the incident had happened and the case was related to *haqq al-'ibad* (rights of humans) such as *ghasb*. This is however limited to events occurred in his district.[26]

As in the previous case, here an agent represented the defendant. She did not attend the court. On the question of why she preferred an agent, it is perhaps because she did not want to face him, as she was guilty. These two

[26] Halabi, *Multaqa*, p. 291.

entries along with many other documents show that women preferred not to attend the court when they were defendants. Whereas, they did not show any hesitation to come to the court when they were plaintiffs.

As the case involved a leader of the community, we see a dignitary (*Kethüda*) among *shuhud al-hal* who witnessed the proceeding of the court. Since it was a case involving *dhimmis* (non-Muslims residing in a Muslim territory), people from the *dhimmi* community also attended the court. This clearly indicates that a case involving *dhimmi* community was taken to a Muslim court. It is particularly interesting, as it was a priest, a leader of the community, but not an ordinary person, who brought his case to the Muslim court. This in turn shows that they were not able to resolve their issues within their own community.

Case 4:

> 22/1/7, The case is as follows:
>
> From the residents of Bakhchisaray, a *dhimmi* called Sefer stated in the court in the presence of Abdi, from the residents of Gül:
>
> "The said [Abdi] forcibly took a sheep, worth of 100 *akçe*, away from my possession and consumed it. He should be interrogated."
>
> After interrogation and admission of guilt, he [Abdi] was ordered to pay 100 *akçe*.
>
> [The case was probably recorded in the last decade of *Muharram* 1088 (3.1677), since one of the entries on this sheet mentions this date. R.C.]
>
> *Shuhud al-hal*: Abdurrahman, *Tımar* (a fief of less than 20.000 *akçe*)[27] holder, Mevlüt, *Mullah* (teacher or a scholar)[28] [and] Sefer, *Sufi*.

This is a case of *ghasb* of an animal. As appears in the entry, a certain Abdi illegally seized a sheep and consumed it. A certain Sefer filed a complaint against him. When the accused admitted that he had committed

[27] Bayerle, *Pashas,* pp. 147-8.
[28] Ibid. p. 111.

the offence, the court accordingly issued his judgement. The ruling of the court was in accordance with the requirement of the law, which says if a usurped object such as an animal is consumed, or destroyed, it's value is to be paid.

Although the case was brought to the court by a certain Sefer, it is highly unlikely that he was the owner of the beast. The presence of a certain Abdurrahman with the title of *Tımar* holder among *shuhud al-hal* suggests that he was the owner of the animal and that Sefer was his shepherd. Since the animal was taken from his possession while it was under his control, it is highly likely that it was his master who asked him to take the case to the court. They might have tried to resolve the matter outside the court but failed to arrive at any satisfactory conclusion. So, the court became their last resort.

Case 5:

> 22/?/3, The case is as follows:
>
> A person called Mevlüt *Gazi* b. Dösir stated in the court in the presence of a man named Recep b. Hacemet:
>
> "Nine months prior to this document, the aforementioned man called Recep along with a number of men came at night, [and] at the corner of the city wall of *mir'u* [they] beat me and usurped my own *cin*? horse, worth of two gold coins, accusing me of stealing and slaughtering his [Recep's] ox. I request that he should be interrogated and that justice should be fully established."
>
> After interrogation, the said Recep replied:
>
> "It is correct that I took away his *cin*? horse. He wanted to give me seven lion coins (*esedî guruş*).[29] I requested them, but he did not give [them to me]. Owing to this, I seized [his horse]. I sold it for eight lion coins, I kept seven [coins] for myself and gave one [coin to him]."
>
> [Recep's] confession was recorded in 1088 [1677] from the migration of the Prophet.

[29] These are the coins of Holland. As we have seen above, one horse equals two gold coins. Here, the value of the horse is given as eight lion coins. This means one lion coins equals approximately to 1/4 gold coins. Sertoğlu, *Osmanlı Tarihi*, p. 118.

Shuhud al-hal: Adakar *Efendi*, Ahmet *Atalik* (I could not find what this title stands for), Abdulaziz *Çelebi*, Murat *Gazi*, *Muhzır*.

In this dispute, a person called Mevlüt filed a complaint against a man named Recep. According to the statement of the plaintiff, Recep along with his men seized the plaintiff's horse and beat him at night accusing him of stealing his ox. The defendant admitted to dragging his horse away but brought a counter claim that he did it as the plaintiff had not kept his promise of giving seven lion coins to him. Although the court recorded his confession, it did not record the outcome of the case.

On the question of why the plaintiff promised to give seven Holland coins to the defendant, it is possible that it was for the ox which he was accused of stealing. Although in his statement, the plaintiff suggested that he had not been the thief, he might have been so as the defendant statement implies. Although the defendant did not refer to physical attack as alleged by the plaintiff, it is highly likely that he did it. It is to be underlined that in the attack, he was not alone and it was at night. This clearly indicates that the attack was premeditated. They made a plan and executed it quite smoothly. He did not prefer going alone at night, because this might have reversed his plan as it is easy to fight against a man but not that easy against several. It is very likely that these men were his friends or from his own community.

As for the question of why the plaintiff delayed the case for a nine month, it is possible that he was intimidated by the men of the defendant not to bring it to the court or else he waited expecting a mutual solution. When there was no compromise, and the intimidation got out of control, he turned to the court for help. The presence of a *Muhzır* among *shuhud al-hal* suggests this possibility as the defendant did not voluntarily come to the court but he was brought by the executive authorities.

Since the outcome of the case is missing, we do not know how the dispute was resolved. However, according to the requirement of the law, the plaintiff should get his horse back and face the charges against theft. If the *sariqa* were to be proved as such, he would be asked to pay the value of the

ox.[30] He cannot receive a *sariqa* punishment, simply because the case was not brought to the court within six months, which is the upper limit to bring such a case.[31] For the physical attack, in the view of Abu Yusuf, the victim is entitled to demand compensation for the pain, which he suffered.[32] It is unlikely that the plaintiff demanded compensation for the attack.

Case 6:

> 22/70/11, The case is as follows:
>
> From the village of Cebbar, in the judicial district of Karasu, Ömer b. Hüseyin stated in the court in the presence of Ibrahim b. Halil, from Şahkerman:
>
> "Six months ago, I lost my motley horse which is standing here. [It is] marked with a stamp of *boğdan?* on one side of his right ear. Now, I found it [in the possession of] Ibrahim. I request [that it should be returned] to me."
>
> After interrogation, the aforementioned Ibrahim replied:
>
> "I went to Botkali along with other ten men. We forcibly took it into our possession and drove it and released it from its holders (*sawkan sultayını daf' eyledük*). I don not know whether it belonged to the aforesaid Ömer."
>
> After his denial, he [Ibrahim] was not able to produce his evidence.
>
> When evidence confirming the statement of the person who re-claimed [the horse (*mustahaqq*)] was sought [from Ömer], from upright persons, Abdulgani *Sufi* b. Hüseyin, Ali velice *Sufi* b. Apak, and Ramazan b. Hüseyin testified in sense and word (*lafzan ve ma'nan*) in accordance with the statement [of Ömer].
>
> Their disposition was found acceptable.
>
> When the said Ömer was asked to take an oath that he had not ended his ownership of the said horse [by any transaction], he took the oath.

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30 Marghinani, *Hidaya*, vol. II, p. 105.
31 Ibid. vol. II, pp. 105-6.
32 Halabi, *Multaqa*, p. 471.

> According to the requirement of the oath, a judgment was passed.
>
> [The case was probably recorded sometime in *Rabi' al-Akhir* 1088 (6.1677), since one of the entries in this register mentions this date. R.C.]
>
> *Shuhud al-hal*: Ahmet *Çelebi*, son of *Mufti*, Karabaş, *Muhzır*, Bekrullah *Efendi*, Abdulbaki, *Atalik*, Murat *Gazi*, *Muhzır*, and others.

This is an interesting case, as the trial was taken in the presence of the horse as the plaintiff's statement 'it (horse) is standing here' indicates. We see here a man named Ömer reclaiming his lost animal from its present holder. Although the plaintiff did not mention how the beast got lost, the defendant's statement indicates that it was usurped. Moreover, his remark that they released it from its holders implies that it was taken away while being under the control of the shepherds. His statement further included that he had accomplices.

The defendant listened to the plaintiff, but brought a claim that he usurped the animal from a third person. By producing such a claim, he attempted to cease the litigation, because in law, "if the holder (*dhu'l-yad*) of [an item, animal and so on] claims that he usurped it from someone [other than the plaintiff], and brings evidence, the litigation ceases".[33] This means that the plaintiff should be the person from whom the animal was usurped, but not the person who originally brought the case. However, he failed in his attempt, as he was not able to substantiate his allegation with evidence. This is why the court recorded his statement as denial without evidence.

In the third step, the court demanded evidence from the plaintiff. Three persons testified in his favour.[34] Lastly, the plaintiff was called upon taking an oath that he had not ended his ownership of the horse by any transaction and he answered to it. On the question of why he was asked to take such an oath, it is because there was a possibility that the horse had been sold or donated and so on. In order to verify that there was no such transaction he was called upon taking an oath. The outcome of case was positive for him.

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33 Halabi, *Multaqa*, p. 324.

34 Two of the witnesses probably were his brothers as they had the same father, Hüseyin.

Although the precise judgment is lacking, it is likely that the horse was handed over to the plaintiff, as he established his case.

The incident took place six months earlier than the date of the record. On the question of why the plaintiff did not take the case to the court immediately, it is perhaps because they were not able to identify the usurpers. Once they found out who he was, they took the case to the court. When the court was informed of the incident, it issued a warrant for the defendant to be brought to the court. As appears in *shuhud al-hal*, two *Muhzırs*, namely Ahmet and Murat were authorised to bring the defendant to the court.

Case 7:

> 1/36/1, The case is as follows:
> From the residents of Salacik (a district in Bakchisaray), Abdullah b. Ibrahim, a butcher, summoned, from the residents of Olakli, Mehmet b. Abdullah to the court and in his presence, he stated:
> "The aforesaid Mehmet and I had sale transactions and purchase. I owed [him] a total of 72 florins. [Initially,] I paid off my debt, except 30 florins. Later on, I paid 28 florins [out of remaining 30]. Now, the said Mehmet usurped my horse. I request [that the horse should be returned to me]."
> When the case was asked from the said Mehmet, he admitted that he had received more than 30 florins. [He then claimed] that he had received 18 out of 28 florin as interest (*faida*) but denied his receiving it [18 florin] as a [part of the] debt.
> He [the plaintiff] admitted that they had made a *mu'âmala-i shar'iyya* agreement.
> According to *shari'a*, it [the debt of *mu'âmala-i shar'iyya*] is considered as a principal debt.
> When evidence confirming the said plaintiff's statement that he had paid 28 florins was sought from him, he was not able to produce [evidence].
> When the defendant was offered to take an oath, he abstained.
> A judgement was passed that [the plaintiff] had paid his debt of 28 florins.
> When [the defendant] was questioned about the horse, he replied: "I took it into my possession for my right."
> A judgement was passed that the said Abdullah has to give 2 florins to Mehmet, and [in return], the said Mehmet has to hand the horse back to the said Abdullah.

What happened was recorded.
It was written on 12 *Ramadan* 1018 [9.12.1609].
Shuhud al-hal: Hasan *Efendi* b. Mehmet *Efendi*, pride of the judges, judge in Kerşin, Kayd? b. Hızır, Memi b. Abdullah, Memiş b. Abdullah, Perviz b. Abdullah, and others.

Before examining the case, it is worth giving the definition of *mu'âmala-i shar'iyya*, as the main argument of the case surrounds this term. As a legal term, it refers to a special transaction that bypasses the prohibition on interest. It works at either of the following:

1-A wants to take a loan from B. B sells a thing to A for 1000 *dirham* on credit. Then A sells it to C in advance for 900 *dirham* and C sells it to B for the price at which he purchased it. The difference between two prices, 100 *dirham*, or 10%, is the profit.

2-A takes 1000 *dirham* as a loan from B and also purchases something else for 100 *dirham* from B. Then A donates it to C. Afterwards, C donates it to B. Consequently B gains 100 *dirham*, or 10%.[35]

In this case, a person named Abdullah filed a complaint against a certain Mehmet, charging him with usurping his horse. In his statement, the plaintiff said that he had owed the defendant 72 florins, but he had paid off his debt in two instalments (42+28), except 2 florins. The defendant partly corroborated the plaintiff's statement. He, however, alleged that he had received 18 out of 28 florin as interest for *mu'âmala-i shar'iyya*. When asked whether there had been such an agreement, the plaintiff verified that they had made such a deal. The plaintiff was then asked to establish with evidence the fact that he had paid 28 florins. He failed to do so. Following the standard procedure of judgement, the defendant was called upon taking an oath that he had not received 28 florins, he abstained. This indirectly established that the plaintiff had paid 28 florins. This was the first judgement of the court.

The defendant was then questioned about the horse to which he replied that he had taken it away in exchange for the debt. Upon his confession, the court ordered the defendant to return the horse to its original owner and the plaintiff to pay his remaining debt of 2 florins.

As has been seen, the main argument of the case was not the payment itself but for which it had been made. While the plaintiff argued that it was the payment

[35] A. Akgündüz, *İslam Hukukunda ve Osmanlı Tatbikatinda Vakıf Müessesesi*, pub. Türk Tarih Kurumu Basımevi, Ankara, 1988, pp. 160-2. For a discussion on this subject in the context of *waqf*, see E. J. Mandaville, "Usurious Piety; The Cash Waqf Controversy in the Ottoman Empire", *International Journal of Middle East Studies*, X (1979), pp. 289-308.

for the debt, the defendant alleged that it was the payment for the interest. Although it is confirmed by the plaintiff that there had been a *mu'âmala-i shar'iyya* agreement and the court noted that its debt is considered as principal debt, it did not take it into account. This is perhaps because the rate of interest was very high, being %25 - 18 florins for 72 florins. The court did not view it as a valid interest agreement as it went beyond the permitted limit, which is 15%.[36]

As has been stated in the entry, it was the plaintiff who summoned the defendant to the court, but not the executive authorities. It is likely that when he informed the court of the incident, he received a warrant from the court, and showed it to the defendant who then voluntarily attended the court.

Case 8:

> 1/26/5, The case is as follows:
>
> Kalaburdi b. Botürk as an agent of his mother, Fatima, his agency being established, [stated] in the presence of Can *Mullah* b. Temoburdi:
>
> "Since, I was in debt to [Can], because of washing; he [Can] usurped a red ox which was the share of my principal, Fatima. I request as an agent [that the ox should be returned]."
>
> When the case was asked from Temoburdi (sic) face to face, he said:
>
> "The said ox was [taken away] for the debt of washing".
>
> When evidence was sought from Kalaburdi, he established [his case] with the testimony of Mehmet preacher b. Bağsandan and Başbolat b. Bokan *Hoca* (teacher).
>
> Accordingly, a judgement was passed.
>
> It was recorded in the first decade of *Jumad al-Akhira* 1018 [9.1609].
>
> *Shuhud al-hal*: Mehmet *Efendi* b. *Hacı* Hüsameddin [and] Abdurrahman *Efendi* b. Mansur Bali.

[36] U. Heyd, *Studies in old Ottoman Criminal Law*, pub. The Clarendon Press, Oxford, 1973, p. 122; N. Çağatay, "Riba and Interest Concept and Banking in the Ottoman Empire", *Studia Islamica*, XXXII (1970), p. 65.

This is also a *ghasb* related dispute. On this occasion, we see a man accused of usurping a beast of a woman because of her son's debt to him. A certain Kalaburdi who was in debt to a certain Can accused him of illegally seizing an ox of his mother in return for his debt. He demanded that the animal be returned to his mother, as she has nothing to do with his debt. Upon interrogation, the defendant confessed to the *ghasb* of the animal. In a normal procedure, a confession brings about conviction and no further evidence is needed. In this case, however, we see evidence being asked by the court from the plaintiff. On the question of why the court demanded evidence, we are, of course, not in a position to answer this question with absolute certainty, but the most probable answer in our opinion is that the court wanted to ensure that the case was as presented by the plaintiff, as there remained the possibility that the ox belonged to the plaintiff himself, but presented his mother as its owner. In other words, the court might have had a suspicion on the question of who the owner of the animal was. Once the plaintiff presented his evidence convincing the court that the case was as he presented, the court issued his judgment. Although the precise judgement is lacking, it is highly likely that the defendant was ordered to return the animal to its owner, because, in Islamic law, a person cannot be held responsible for other person's debt unless there is a special agreement such as *kafala* (bail) or *hawala* (transfer of debt).[37] In other words, it is illegal to get someone to pay for the fault of another. The law does not allow someone to recover his debt via the *ghasb* of an animal of another. Recovering a debt has its own procedure to follow.

It is to be noted that since the defendant was a *Mullah*, the plaintiff employed two witnesses from the religious class. Since the case involved a *Mullah*, we see two dignitaries among *shuhud al hal*.

Case 9:

[37] For the rules of *kafala* and *hawala*, see Marghinani, *Hidaya*, vol. III, pp. 87-101; Halabi, *Multaqa*, pp. 275-85.

22/69?/9, The case is as follows:

A woman called Ayşe bt. Ibrahim *bölük*[38] *başı* (the head of a *bölük*), resident in the quarter of Kostlu in Bakhchisaray, in the presence of *Hacı* Abdulgani, *Müezzin*, resident in the village of Gülen bengi, in the town of Kacibda, [Ayşe] stated:

"A vineyard [which is] located in the aforesaid village [and] bound on one side by the property of Şaban, and the boundaries of the other sides are known by the people was the property of my father, Ibrahim, *bölük başı*. After his death, I inherited it. The said Abdulgani illegally occupied it, while I am alive?. He should be interrogated."

After interrogation, the said Abdulgani replied:

"In fact, the aforesaid vineyard was the property of the said Ibrahim, *bölük başı*. It is [also] a fact that after his death, [the vineyard] was inherited by the aforementioned Ayşe. However, the guardian of the said Ayşe, Mustafa *Sufi*, from Gönlüz, sold it in front of a *qadi* to my son, Abdullah, for twenty four *guruş*,[39] because [the vineyard] was on the verge of ruin. After his death, I inherited it."

The aforesaid Ayşe admitted that Mustafa *Sufi* had been her guardian but denied that the said vineyard had been on the verge of ruin at the time of the sale transaction.

When evidence confirming his statement was sought from Abdulgani, from the upright persons, *Hacı* Ahmet b. *Hacı* Murtaza and Necip *Müezzin* b. Recep *Efendi* testified that the said vineyard had been on the verge of ruin at the time of the sale transaction.

After their testimony was found acceptable, a judgement was passed that the aforesaid vineyard had been Abdulgani's personal property.

[The case was probably recorded in the first decade of *Rabi' al-Akhir* 1088 (6.1677), since the second preceding document mentions this date. R.C.]

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38 A military unit of 20-200 men. Bayerle, *Pashas*, p. 23.

39 Silver coins of Europe. Ibid. p. 71.

Shuhud al-hal: Çoray *Kethüda*, known as Şah *Gazi*, shoe maker, Abdulbaki, *Atalik*, *Muhzır*, Kurt, *Muhzır*, Karabaş, *Muhzır*, [and] Murat *Gazi*, *Muhzır*.

This is a case of illegal occupation of an immovable, a vineyard. It was a woman, daughter of a high ranking military personal, who filed a complaint against a man holding the title of *Müezzin*. In her statement, she alleged that a certain Abdulgani had illegally occupied her vineyard that she had inherited from his late father Ibrahim. When asked, the defendant did not deny that the vineyard had been Ibrahim's personal property and that the plaintiff had inherited it. He, however, brought a counter claim that her guardian called Mustafa had sold it to his son, Abdullah, for the reason of its being on the brink of ruin. "After his [Abdullah's] death, I inherited it," he added.

When it was her turn, she partly accepted the statement of the defence. She however vehemently refuted the claim that the vineyard had been on the edge of destruction at the time of sale. By this, her plan was to cancel the transaction retrospectively since in Hanafi law, a guardian is not allowed to sell immovable properties, unless they are on the verge of ruin.[40] The defendant, however, reversed her plan by producing evidence in contradiction with her allegation. The court ratified that the vineyard had been the defendant's personal property.

It is to be underscored that as we mentioned above, sometimes a person may begin the *da'wa* (suit) as the plaintiff and finish it as the defendant or vice versa depending on the nature of the claim. Here, *Hacı* Abdulgani was the defendant at the beginning, but later he became the plaintiff. The rules of the *mudda'i* (the prosecution) such as presenting evidence were applied to him.

As appears, she tried to get her vineyard back, but she failed, as she was not able to establish her version of the case. On the question of why she applied to the court to get her vineyard back, it is perhaps because she was in

[40] Marghinani, *Hidaya*, vol. IV, pp. 260-1; Halabi, *Multaqa*, pp. 494-6; Bilmen, *Hukuku İslamiyye*, vol. V, p. 185.

need of money and wanted to sell it again, or else, she wished to enjoy her vineyard.

The presence of several *Muhzırs* in the case suggests that the defendant was brought to the court by a warrant. This in turn indicates that the woman had come to the court and had reported her case before the defendant was taken to the court by the executive authorities.

It is to be underlined that it was a woman who filed the complaint, but not her agent. As we have mentioned above, usually, but not always, women personally attended the court when they were plaintiffs. However, they employed an agent when they were defendants. They did not want to face accusations, as it could be damaging. It is easy to file a complaint but it is not that easy to sit in the defendant's dock, answering the questions.

Lastly, the defendant was a *Müezzin* and so was one of the witnesses he employed. This along with many other entries indicates that colleagues, friends, and relatives played a significant role in the cases as they were frequently employed as witnesses. This also shows that people did not do any legal contract or transaction without the presence of the witnesses. They were aware of the fact that without evidence there is no way of winning a case except the confession of the defendant.

Case 10:

> 22/?/5, The case is as follows:
>
> Ali *Efendi* b. *Hacı* Canbek, in the case to be related hereafter, an agent of Güneş Khan, full sister of the diseased Şah Merdan Emlos, his agency being verified by the testimony of Ahmet b. Musli and *Mullah* Mevlüt, in the presence of Ibrahim *Çelebi*, an agent of the widow of the said diseased, Huri Khan bt. Timur, his agency being verified by the testimony of Tahir bey b. Hasan *Ağa*,[41] and Mehmet Mirza b. Ramazan, [Ali] stated:
>
> "The field (*çayır*) [which is] located in the town of Bestirak, [and] bound on the direction of Mecca by the property of *Gazi Mullah*, and [on the direction] of the east and the west

[41] Title borne by officials or officers. Bayerle, Pashas, p. 2.

attached to the pasture, and [on the direction] of the south attached to the public road, with fruit bearing and fruitless trees and with two stone mills are the property of my principal, Güneş Khan. The aforesaid Şah Merdan, while he was alive, declared a number of times that he had no connection with the aforesaid field and mills. The aforesaid Huri Khan is keeping it without any reason. She should be interrogated."

After interrogation, the said agent [Ibrahim] replied:

"The mills and the field were the aforesaid Şah Merdan's property. When his estate was divided after his death, they were given to her [Huri] as her deferred *mahr* of 500 *dirham*. We do not know whether it belonged to the aforementioned Güneş Khan."

Buris *Mullah* b. Es *Gazi* and Mustafa b. Elagöz testified as witnesses in accordance with the statement of the plaintiff.

When they bore witness, their testimony, after observing the conditions required for the acceptance [of a disposition], was found acceptable.

A judgement was passed that the said field and mills had been Güneş Khan's own property.

[The case was probably recorded in the first decade of *Rabi' al-Akhir* 1088 (6.1677), since the succeeding document mentions this date. R.C.]

Shuhud al-hal: Abdurrahman *Mullah*, from Kırmacı, the said Ahmet, the said Tahir, the said Mehmet Mirza, Murat *Gazi Muhzır*, Karabaş, *Muhzır*, [and] Abdulbaki, *Muhzır*.

This is a case involving two women. They were very close relatives being sisters-in-law. As recorded in the entry, their dispute involved a particular field and two stone mills. Each claimed that they had been hers. Each had her own reason. The defendant, who is the present holder of the field and the stone mills, claimed that they had been her husband's property, and that when he died, they had been given to her as her deferred *mahr*. Whereas the plaintiff's reason was that they had been her own property even before her brother's death. Once the plaintiff established her case with the testimony of the witnesses, the court accordingly issued his judgment. It confirmed that they had been the plaintiff's own property. This in turn

established as a fact that the defendant had been keeping them without any legal reason. She was a usurper, and so has to strip off her hands from them.

It is worth underscoring that the defendant's statement that they had no knowledge of their being belonged to the plaintiff suggests that she was aware of the fact that they did not belong to her and that she was illegally holding them. This indicates that her reason presented in the court was a total fabrication. She made the reason up in order to free herself from the accusation of *ghasb*. She knew the fact that she was going to loose the case, but she did not care about it.

Neither the plaintiff nor the defendant attended the court. Their respective agents represented them. This is perhaps because they did not want to face each other. They might have had disputes and fights over this issue.

The presence of several *Muhzırs* in the court indicates that the defendant's agent was taken to the court by the executive authorities. It is very likely that the warrant was issued on her name but she did not come, rather, sent her agent. Her agent's title *'Çelebi'* suggests that he was someone from the military unit of the diseased Ibrahim. He might have been a close friend or relative of her family.

Case 11:

> 22/?/7, The case is as follows:
>
> From the residents of the village of Açka, *Gazi* Balat *Sufi* b. Arslan stated in the court in the presence of Can? Timur b. Mahmut, from the aforesaid village:
>
> "In the west of the said village, within the territory known as three *oba*, I own eight plots of land whose boundaries are known. The said Timur prevents me from having the use of [these lands]. He should be interrogated."
>
> After interrogation, the said Timur replied:
>
> "My father had the disposal of the said land for twenty years. The said *Gazi Sufi* kept his silence without any legal reason, and did not bring any lawsuit [against my father]."
>
> When Azamet b. Sefer *Gazi* and Abdi [illegible] b. Ömer *Mullah*, from the upright persons, testified in word and sense

> in accordance with [the statement of the plaintiff], their testimony, after observing the conditions required for the acceptance [of a disposition], was found acceptable.
>
> The hearing and the acceptance of a lawsuit that is brought after fifteen years has elapsed are prohibited. For this reason, the aforesaid case was not heard.
>
> [It was recorded in] *Rabi' al-Akhir* 1088 [6.1677].
>
> *Shuhud al-hal*: Abdurrahim *Mullah*, the aforesaid, Hüseyin bey [b.] Yakup bey, illegible, *Kethüda*, Mahmut Mirza, Osman Mirza from Tahir, illegible, the doorkeeper, illegible, scholar, Sefer *Gazi* b. Açka, Abdulhalim b. Kurban, *Gazi, Sufi*, and others.

Here, a person called Balat tried to bring a case against a man named Timur. He was accused of preventing the plaintiff from having the disposal of his own lands. However, the plaintiff failed as the court did not accept the hearing of the case on the basis of prescription. At the beginning, the court let the plaintiff to proceed with his case. He filed his complaint and supported his version of the case with the testimony of two witnesses. When the defendant said that the plaintiff had not brought any case against his father who had the disposal of the disputed land for twenty years, it became clear that the case was not brought to the court within the time-limit. For this reason, the court did not accept the case.

It is worth underlining that hearing a case of 15 years old was prohibited by royal decrees but not by legal texts. We see this prohibition reflected in the fatwas of the *Muftis* or *Shaykh al-Islams*. For instance, Abu's-suud, who held the post of *Shaykh al-Islam* between 952-82/1545-74, reflects this prohibition in his fatwas: 'except *waqf* lands, land related disputes should not be heard after 15 years'.[42]

It is to be noted that such a prohibition does not alter the fact that prescription does not produce a new right or a title to a land. The person who

[42] E. M. Düzdağ, *Şeyhulislam Ebussud Efendi Fetvaları Işığında 16. Asır Türk Hayatı*, pub. Enderun Kitabevi, Istanbul, 1972, p. 168. For more discussion on this issue, see Ibn Abidin, *Hashiya 'alâ al-Radd al-Mukhtar*, pub. Dar al-Fikr, Beirut, 1979, vol. V, pp. 419-22; S. R. Baz, *Sharh Al-Majalla*, pub. Matba'a al-Adabiyya, Beirut, 1923, pp. 985-90; Bilmen, *Hukuku İslamiyye*, vol. VIII, pp. 109-118; Karaman, *Mukayeseli*, vol. III, p. 196.

does not let someone get his right because of presription will be ethically responsible. He is deemed as a sinner. However, such a case cannot be followed in a court of law.[43]

On the question of why he delayed the suit for so long and then suddenly decided to reclaim his lands, it is possible that since he was a *Sufi*, expecting to acquire merit in God's sight, he let the defendant's father use the land. When he died, he did not want to let his son have its disposal. He might have been a sinner or else. It is also possible that he did not need the land when the defendant's father was alive, but needed it after his death. Whatever the reason may have been, it cost him his lands.

Case 12:

> 16/?/4, The case is as follows:
>
> From the residents of the village of Teberti?, a dependency of Bakhchisaray, Tevkiyam v. (child of) Teradayul stated in the presence of Temrinib v. Kalyor, from the aforesaid village:
>
> "The said Temrinib has been having the use of the field (*çayir*) which I inherited from my late father, worth of 15 gold [coins]. [It is] located in the said village, [and its] boundaries are known [to us]. I request [that the field should be returned to me] according to *shari'a*."
>
> After interrogation, the said Temrinib stated:
>
> "[Tevkiyam's] father was my brother. When I got married, his father gave the said field to my wife as her deferred *mahr*. [It is the] property of my wife, and we have been having the disposal of [the said field] for twenty-six years. Teradayul, the father of the said plaintiff Tevkiyam, has been death for twenty three years."
>
> The aforesaid plaintiff, Tevkiyam acknowledged the statement of the aforementioned defendant, Temrinib.
>
> The dispute has been for three years. He dropped the suit because of prescription.

[43] For a discussion on this issue, see F. Demir, *İslam Hukukunda Mülkiyet ve Servet Dağılımı*, pub. Diyanet Yayınları, Ankara, 1998, p. 227.

It was recorded that his suit was not valid.

[The case was probably recorded in the second decade of *Shawwal* 1082 (2.1672), since the second preceding entry mentions this date. R.C.]

Shuhud al-hal: Kerim *Efendi* [b.] Arslan, Abduş [b.] Abdulgaffar, Hüseyin [b.] Abdullah, [and] Ali *Çelebi* [b.] Selim? *Efendi*.

Here, we see a *dhimmi* giving up his suit because of prescription. At first, he tried to bring a lawsuit against his paternal uncle who had been having the use of his father's fields. When the defendant stated that they had been holding it for 26 years, the plaintiff gave up his claim to the field. The plaintiff's statement that the dispute is going on for the last three years implies that he did not make any claim to the field for 20 years after his father's death.

His statement 'according to *shari'a*' indicates that he wanted his case to be heard according to *shari'a* (classic *fiqh*) but not according to royal decrees. Once he was convinced that the court was not going to review his case as he expected, he dropped his lawsuit.

It is to be noted that according to the statement of the defendant, his brother, the father of the plaintiff, gave the disputed land to his wife as *mahr*. This evidently indicates that although they were *dhimmis*, they were married according to Islamic tradition that entitles a wife to a *mahr*. It is very likely that they registered their marriage in a Muslim court. Our examination of the registers clearly indicates that although *dhimmis* had autonomy over religious and family matters, they frequently registered their marriages in a Muslim court of law. This is because Islamic law provided several advantages to both genders. A wife is entitled to *mahr* and *nafaqa* (maintenance-adequate support)[44] and a husband had the right to unilaterally divorce his wife.

[44] *Nafaqa* of a wife consists of food, clothing and a house or at least a separate room that can be locked. Marghinani, *Hidaya*, vol. II, pp. 39, 43.

The presence of several Muslim dignitaries in the court implies that the contestants were holding a good position in the society.

Case 13:

> 1/44/6 The case is as follows:
>
> Boyoka v. Biağa summoned Boğdan v. Biağa to the court [and stated]:
>
> "The said Boğdan burnt my ten cart harvest and all of *mahra*? (a wooden case for carrying grapes). When previously we took the case to the judge Mehmet *Efendi*, he passed his judgement."
>
> He showed a document [which establishes that Mehmet *Efendi* passed his judgement].
>
> The said Boğdan accepted the content of the *hujjat* (legal document issued by a judge).
>
> Judgement [ordering] reparation was passed.
>
> [It was written] on the date aforementioned. [3 *Muharram* 1021 (6.3.1612), was the date of the third preceding entry. R.C.]
>
> *Shuhud al-hal* aforementioned. [They were: Mevlüt, the undersigned, Mahmut b. Abdullah, *Muhzır*, Perviz b. Abdullah, *Muhzır*, and others. R.C.]

This is a case of *itlaf* involving two *dhimmi* brothers. One charged the other with burning his harvest and baskets used for carrying grapes. The plaintiff sustained his case with a legal document of a *qadi* called Mehmet *Efendi*. Once the defendant accepted the authenticity of this legal document, he was ordered to pay compensation. This means he needs to pay the value of the produce and the instruments that he destroyed. This ruling follows the principle of Hanafi law that burning (*ihraq*) brings about compensation.[45]

The presentation of a *hujjat* by the plaintiff indicates that the case was previously recorded by a *qadi*. A *hujjat* is a notary document recording the

[45] Qasani, *Bada'i*, vol. VII, pp. 165-8; Marghinani, *Hidaya*, vol. IV, p. 192; Halabi, *Multaqa*, p. 474; Tyser, *Majalla*, article, 922.

statements and the facts of a case. However, it does not have the judgment of a *qadi*. The documents containing the decision of a *qadi* are called *ilams*.[46] The structure and wording of the document gives a clue how the case developed. When his brother burnt his harvest along with its instruments, Boyoka brought his brother to the court to have their statements about the facts of the case recorded. They received a *hujjat* from the court. The dispute however went on. He could not get his brother to compensate for what he did. Once more, Boyoka turned to the *qadi* to resolve the matter. Upon his application, the defendant was summoned to the court where he was ordered to pay compensation. This was the end of the road for the defendant.

On the question of why the defendant did the vicious act of burning, it is possible that it was the result of a dispute over a serious matter. They might have had quarrels over the vineyard itself or some other issues but could not reach a reasonable conclusion. It is very likely that he did not expect that the case would end up in a court of law as it was a family matter, but it did.

Case 14:

> 1/?/17 The case is as follows:
> From the village of Detbar, Recep b. Behram summoned Halef Mirza b. Memiş Mirza [to the court] and stated:
> "[Halef] had his son named Şahvar shoot my grey horse's head with an arrow".
> After denial, Recep was unable to produce evidence.
> Mirza took an oath [that he had not had his son shoot the horse.]
> Recep admitted that he had beaten [Mirza's] son.
> What happened was written on 5 *Jumad al-Ula* 1018 [6.8.1609].
> *Shuhud al-hal*: Abdulaziz *Efendi*, judge in Gözleve (Hivpatorya), Islam *Efendi*, *Shaykh*, Hızır *Çelebi*, Mansur, *Muhzır*, and others.

Lastly, this is a case where a man named Halef was charged with having his son shoot the plaintiff's horse with an arrow. He denied the accusation. When asked to produce evidence, the plaintiff, Recep was not

[46] Cigdem, *The register of the law court of Istanbul*, pp. 45-50.

able to do so. In order to free himself from the accusation, the defendant took an oath.

The defendant denied his involvement in the case. He, however, did not deny his child's involvement in the case. This along with the fact of beating indicates that it was the child who shot the horse. We see no judgment regarding this outcome. In law, a child is responsible for his misdeeds. He needs to pay compensation out of his own property if he has any. If it were to be established that it was his father who gave the order, he would have been held liable, as in law a minor is entitled to have recourse to the person who gave the order.[47]

Bringing the case against the father of the child, but not against the child himself suggests that the main suspect was the father of the child. The plaintiff might have had reasons to have suspicion on the defendant. It is possible that there was an argument over the horse or over some other issues, and the defendant was taking his vengeance for this by getting his son to shoot the horse of the defendant.

Although no question mentioned in the record, we see the plaintiff admitting to the beating of the defendant's son. It might have been the answer to a question regarding the beating directed to the plaintiff. Since the document was written in a short form, the question was not entered into the record.

Conclusion

Analysis of the entries reveals that the court followed Hanafi law in resolving disputes. However, some deviations from the strict legal texts can be observed when it comes to the procedure.

As has been seen, the main remedies in *ghasb* and tort related disputes were repossession and reparation respectively. There was no punishment for the wrongdoers, as *ghasb* and *itlaf* cases were not viewed as criminal offences. Rather, they were seen as civil wrongs. Furthermore, we see the

[47] Qasani, *Bada'i*, vol. VII, pp. 164-6; Marghinani, *Hidaya*, vol. IV, pp. 197-203; Halabi, *Multaqa*, pp. 476-8; Ibn Bazzaz, *Al-Fatawa al-Bazzaziyya*, in the margins of *Al-Fatawa al-Hindiyya*, pub. Imperial Press, Bulaq, 1912, vol. VI, p. 387; Nizam al-Din et al. *Al-Fatawa al-Hindiyya*, pub. Imperial Press, Bulaq, 1912, vol. VI, p. 30.

royal decrees prohibiting the hearing of land disputes over 15 years old at work in the court.

The documents clearly show that women were active in the society. They were not segregated or confined into their homes as popularly assumed. They freely came to the court and did not hesitate to initiate a case against even their close relatives. However, they turned to the system of agency (*wakala*), when they were defendants. In other words, they could not bear sitting in the dock of defendants. It seems that women in Crimea felt uneasy about facing questions as defendants.

We have also seen that *dhimmis* took their cases to the Muslim court. It was not just an ordinary *dhimmi* but also a priest, a leader of the community who took his case to the Muslim court. They even registered their marriages in the Muslim court. It seems that they were aware of the law and the procedure of the court. They also knew the advantages provided by Islamic law.

Examination of the documents further reveals that communities and groups formed the society. Each cared about and watched over its members. For instance, when a case involved a person from a religious class, we see several men from that group coming to the court. Similarly, it was a member of his community who stood as witness when one is required.

It can be deduced from all these that the court was open to anyone whether it be a Muslim or a *dhimmi*, or the poor or the rich. One last point that should be made here is that the court executed his judgments according to the procedure of the law regardless of the social status of the contestants.