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QADI'S COURTS AS INSTITUTION IN ISLAM

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Abstract
The article is based on most recent accomplishments, conclusions and methods in World Islamic and historical sciences. The historical-comparative method was applied to study the sources including various manuscripts of "Ḥanafī Law" and many other sources written in Arabic that are available in the Fund of Manuscripts of the Institute of Oriental Studies under Academy of Sciences of the Republic of Uzbekistan. It relies on recommendations, conclusions of research works and the conceptions related to the history of civilization of the Central Asia that were stated by leading scientists of our country and foreign countries such as Joseph Schacht, Monika Gronke, Ulrich Rebstock, Chafik Chehata, Émile Tyan, Chalmeta P; Carriente F, Riberta J., Asin, Jeanette A. Wakin, Michael Thung, Wael Hallaq, Carl Brockelmann. The aim of the article is to illuminate the role of literature on juridical documents in the development of divinity science in Transoxiana in X-XIII centuries. Moreover, to illuminate the importance of such works in regulating the social relations of the cultural life of our society. To highlight the historical-juridical forms, theoretical and practical foundation of juridical documents functioning in the world of Islam and Transoxiana in X-XIII centuries that was the important part of the social life.

Key words: faqīh, Sulṭān, raʾīs, Āli Burhān, ijtihād, Furū, uṣūl, Ḥanafī law, qāḍī, qāḍī's court, Transoxiana.

INTRODUCTION

The scholars of Ḥanafī madhab in such big cities of Central Asia as Bukhara and Samarkand were actively involved into social-political life during 10th-13th centuries. And the introduction of Ḥanafī madhab into this area and the way of its development was studied by many Western scholars.

It is known that faqīh (Islam lawyers) were the main executors of social and political government of a society in Transoxiana during the 10th-13th centuries. The specific feature of that period was that, Sulṭān appointed both raʾīs (who was occupied with religious affairs) and amīr (the representative of the government) in one city. Raʾīs

made policy to strengthen Sunnīsm in the territory of the occupied countries. Here faqīh family members as Āli Burhān family assisted them. They also paid much attention to weaken their political enemies, especially shi'a groups who were near the capital of the country Khurāsān. In order to accomplish these tasks they used Ḥanafī scholars of Khurāsān and Transoxiana. Those scholars made a lot of afford to strengthen Ḥanafī madhab in Central Asian countries and decrease shi'as status. The ruling dynasties as Sāmānids, Qarakhānids, Ghaznavids and Seljukids Sultans in order to obey the people made benefit of Islam faqīhs' participation in it.

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

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

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

Because of this reason, the order of courts in medieval Transoxiana was the same as qādī courts of Abbasids period (132-656/750-1258). At that time Ḥanafī madhab was ruling and all qādīs were working based on the teachings of Ḥanafī madhab which was formed in Iraq.

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

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

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

Before proceeding to the substantive evidence in an attempt to shed light on the history of this institution, it would be well to question, as a convenient starting point, the arguments which purport to negate the existence of a formal institution and systematic practice prior to the Islamic administration. If serious doubt is cast upon

the most elaborate arguments adduced in favor of the Islamic administration achievement, and against a prior formalization of the institution, then the first stage of the task may be said to have been successful.

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

1. Sukūk, which include contracts of sale, pledges, acknowledgements, gifts, donations and other instruments, including adhkar huqūq. These are also known as hujja and wathiqa, although they also refer, as Ibn Nujaym states, to mahādir and sijillāt;

2. A register of the witnesses whose rectitude has been established, and those who have been disqualified. Included here are the names of the qādī 's agent who undertook the task of examining the character of these witnesses or former witnesses (muzakkī);
3. A register of prisoners, including the date on which they were imprisoned, and the reasons for conviction;
4. A register of trustees over waqfs, orphans, divorcees alimonies, etc.;
5. A register of bequests (wasāyā);
6. Copies of letters sent from one qādī to another (kitāb hukmī or kitāb al-qādī), and of relevant legal documents that were attached to the letter;
7. A register of guarantors (kufala'; sg. kafīl);
8. A register of those who have been legally qualified and empowered to act as agents (wukāla'; sg. wakīl).

In sum, every relevant piece of evidence encountered points in one direction, namely, that the qādī's complete set of records were known as his dīwān, and that they included the two major components of mahādir and sijillāt, in addition to such other components as were enumerated above. The sijill, used in a technical legal sense, simply never encompassed the vast array of documentation generated in the qādī's assembly. Furthermore, our evidence of this reconstruction includes the attestation of four major Islamic administration jurists. The foregoing evidence is, We think, sufficient to allow us to abandon the designation 'sijill' to refer to the totality of the qādī's records, be they Islamic administration or otherwise. As for the term 'court', it also presents us with a problem. Ideally, it should be substituted by 'assembly', reflecting the Arabic word 'majlis'(majālis). But since the use of 'assembly' could prove awkward, we might well retain 'court' but with the full understanding that we are speaking about a different type of adjudicatory organ. Such a concession, however, can in no way be made in the case of the sijill, for the use is both inaccurate and misleading. Now that the terminology has been established, We will turn to the question of judicial dīwāns, the purpose being to show that these dīwāns had existed as a formal and systematic institution prior to the Islamic administration. In support of this thesis, We advance as a prelude a set of three arguments, the first and third of which are generally circumstantial in nature, but the second has direct bearing upon the question at hand. The first argument is that the keeping of records in the classical form of dīwān was, as anyone will admit, a common practice of administration through-out the centuries and in, at least, all central Muslim lands, from **Transoxania** in the east to **Andalusia** in the west. There is no question as to the historicity of the formal and systematic nature of a variety of dīwāns, be it dīwān al-

kharaj, dīwān al-jawāli, dīwān al-rasā'il, dīwān al-junud, dīwān al-sirr, or, significantly, dīwān al-mazālim. If all these have been attested as formal institutions involving systematic practice, then the dīwān al- qādī should be viewed and treated no differently, especially in light of the fact that our evidence of this dīwān is no less abundant than that of other dīwāns. A close look at the monumental work Subh al-A'sha of Qalqashandi makes it quite clear that all these dīwāns, including that of the qādī, equally partook of the administrative world of Islamic societies and of the ruling dynasties. There is nothing in this euvre that suggests otherwise. Furthermore, the justification of viewing judicial dīwāns in the same manner as other dīwāns are viewed-namely, as formal and systematic institutions-is bolstered by the fact that it was often the higher rank qādīs themselves who headed non-judicial dīwāns such as dīwān al-sirr and dīwān al-mazālim. The second argument is cognate with the first. All legal and quasi-legal discourse throughout Islamic history attests to the presence of the scribe (kātib) as a permanent fixture of the qādī's entourage. This discourse makes it crystal clear that the function of the scribe was to record the minutes of the court proceedings, including the claims of the parties to the lawsuit, and the deposition of witnesses. During the trial, he read all written claims, statements of the witnesses and documents relevant to the case being adjudicated, and at times was himself called upon to act as witness. He also issued hujjas, based on the minutes, in favor of the parties who were judged to possess a right to one thing or another. Whatever the scribe's precise function was, it was either directly related to the qādīs dīwān, or it issued from it; but without him the business of the court would come to a halt. When Ibn Qudama made the hiring of the scribe only recommended for the qādī – and in that he was in the minority –he was in no way suggesting that the qādī could dispense with the function itself, but rather with the personnel; for he argues that the qādī may hold his court without a scribe only if he himself is able to undertake the task which is otherwise assigned to the scribe. But since Ibn Qudama knew well that the normal tasks of the qādī were already demanding without his having to take on further responsibility, he made the hiring of a scribe highly recommended. That the great majority of authors not only prescribes but also takes for granted the presence of the scribe in the qādīs entourage, goes to show that this function remained throughout an integral part of the court structure. It appears that the scribe was equally indispensable in the mazālim court, and his functions there seem to have differed in no significant respect from those he had in the Shari'a court. The function of the scribe must here be differentiated from that of the notary, the shurūt or the muwaththiq, who did not sit in the qādīs court and whose function was a private, not a public one, which the kātib's was. In contradistinction to the kātib whose activity

was limited to writing in, and from, the qādī is dīwān, and whose salary the qādī paid, the shurūt wrote contracts and legal documents of all types and forms, and was retained, for a fee, as a legal expert for this specific purpose by individuals transacting outside the court's jurisdictional boundaries. Manuals on adab al-qādī, which no doubt reflect significant aspects of the realia of judicial practice, all agree that one of the first tasks the newly appointed qādī must perform is to retain a kātib who ought to possess, along with other good personal qualities, expert knowledge in both law and the art of writing. These requirements are, significantly, also attested by the royal decrees which were issued by the caliph or the Sulṭān for the purpose of appointing qādīs. If no one is to be found qualified in both areas of law and writing, then knowledge of the art of writing is not to be compromised. But whether or not he is knowledgeable in law or has met the desirable-but not the absolutely necessary-requirement of 'adala (just character), the qādī must subject the kātib to constant scrutiny, and to do so, he must have him sit in such close proximity to him as to be able to inspect what he has recorded. The legal literature is also peppered with references to individuals who functioned as kātibs. In the 160s/780s, al-Qāḍī al-Mufaddal b. Fadala's scribe was bribed with a thousand dinars in order to copy down in the dīwān, unlawfully, a document in favour of a certain Qaratishi. Simnani's fascinating accounts of his shaykh, al-Qāḍī al-Damghani al-Kabir, tell not only of the manner in which he conducted his majlis al-qādī, but also what his scribe did. In 925/1519, less than three years after Sulṭān Selim conquered Egypt, the Cairene court scribe Abu-l-Fadl al-Sunbati al-A'raj, who was notable for his skills as scribe, died. This rather brief biographical note of Ibn Iyad is quite revealing in that it constitutes not only an attestation to a lifelong career spent in the scribal profession, but also to a career the greatest part of which was spent in the service of Mamluk. Similarly, Ibn al-Husayn devotes biographical notices for qādīs and other personalities who played one role or another in the religious, cultural and political arenas, including persons who belonged to the more modest profession of scribes. So we hear of such figures as Jamal al-Din al-Ghazzi who lived in Damascus and had a senior position in qādīs assemblies (majālis al-qudāt), and who wrote down their decisions. In the same vein, Taj al-Din al-Halabi, Husayn Ibn Qasim, Shihab al-Din al-Adhru'i, and Shihab al-Din al-Halabi, are described as having functioned as kātibs in the Mamluk period in the courts of the city of Halab. 'Abd al-Rahman al-Mahalli and 'Abd al-Rahman al-Iskandarani are among many who were described by 'Asqalani as having been highly skilled in recording sijillāt and as having worked in this capacity for qādīs (sajjala 'ala al-qudāt). So was 'Abd al-Hamid Ibn 'Abd al-'Aziz, the best among his peers in drawing mahādir and sijillāt. A number of judges and jurists began their career as

scribes, which may explain why some law manuals prefer a scribe who is a faqīh. Our third argument stems from the nature of adjudicatory organs in all complex societies, including of course those that are urban and quasi-urban. Since we are fairly certain that aside from the mazālim courts, pre-modern Muslim societies never had recourse to any other court system but to that of the Shari'a, we are justified in maintaining that the latter type of court was the chief adjudicatory organ of Muslim societies. If this premise is granted, then I should proceed to assert that no Muslim society, urban or quasi-urban, could properly function-judicially or otherwise-with a court system which maintains no proper registry of its daily business. Failing to maintain such a registry would have constituted cause for social disorder, and would have had as adverse an effect on state and society as the failure of the Sulṭān to maintain a proper dīwān al-junūd or dīwān al-kharaj. All jurists and judges in pre-modern Islamic societies were acutely aware of the need to record in the dīwān each and every matter that had any consequence or that had the potential of arising at any point in the future. In fact, the raison d'etre of the entire system of the dīwān was precisely this anticipation of consequences.

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

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

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

He should spare no effort to preserve it and keep it in good order, for it is the first thing he looks at and the first thing he receives [from his predecessor] who is in charge

of it. Observe the use of the significant term khalīfa which clearly expresses the notion that the dīwān is as much the successor of the qādī's in terms of the local socio-legal continuity as the next appointed qādī is the representative of institutional continuity. If the whole institution of qadā is seen as a dichotomy of legal professionals, on the one hand, and social conflicts, social relations and economic arrangements negotiated in court before these professionals, on the other, then the authoritative structure of continuity and social and economic order ought to be seen as being mediated through the continuity of the qādīs office and that of his dīwān reflecting, respectively, this dichotomy. We shall now see that the practice of copying down the outgoing qādīs dīwān was the method by which documents, minutes, records of debt and all important matters, were preserved for any future exigency.

All the abundantly available legal and quasi-legal sources unanimously consider the transference of the dīwān from the outgoing to the incoming qādī (an act known as tasallum or taslīm) as one of the first matters to which the latter must attend. (In light of our thesis, it is quite telling that the literature abounds with references to such phrases as the dīwān of the qādīs predecessor. The process of the dīwān's transfer is often described in minute detail, clearly reflecting its crucial importance. The royal decrees of judicial appointment make of tasallum a distinct duty incumbent upon the new qādī. A typical decree, issued on behalf of the Caliph al-Mustarshid (reigned 512-29/1118-34) in favour of the Chief Qādī 'Ali b. Husayn al-Zaynabi, commands this qādī to receive (yatasallam) the dīwān al- qādī and all that which it contains of hujjas, sijillāt, documents, guarantees, mahādir, and agencies, 'in the presence of just witnesses so they would see and attest to their receipt. The sultanic decree of al-Malik al-Nasir appointing the Chief Qāḍī Ibn Fadlan around 600/1203 specifically orders him to seal the dīwān upon receipt, and to ensure that it, together with the fiscal documents, does not leave his hands or those of his trustee. Once the qādī has appointed a scribe, he sends him in the company of at least one witness to the outgoing qādī or, more often, to the latter's trustee in order to receive the dīwān. Though it does not seem to have been a common practice, the qādī himself, again accompanied by one witness or more, at times undertook this task. The process by which the dīwān was obtained differed in some respects from one region or time to another. As a rule, the dīwān itself remained in the hands of the qādī under whom it was written, and only a copy was made thereof. Probably much less frequently, the dīwān was delivered, lock stock and barrel, to the new qādī, in which case the delivery was attested by witnesses. However, until the middle of the second/eighth century, the outgoing qādīs seem, as a rule, to have transferred the dīwān itself to the incoming qādīs or their representatives. In later periods, this practice occurred but far less

frequently. Khalid b. Husayn al-Harithi, who served as a qādī under the Caliph al-Mahdi (reg. 158-69/774-85), was reportedly one of the first, if not the first, to have insisted on retaining the original copy of the dīwān, and on having the incoming qādī make two copies of it, both attested by witnesses. Sometime in the 160s/770s, the qādī 'Afiya submitted his resignation to the Caliph al-Mahdi, and to finalize the matter of his resignation he gave up his qimatr, the bookcase in which the dīwān was kept. In 140/757, a certain qādī named Ghawth took over the post of Yazid b. Bilal who had just died, and when the dīwān failed to be delivered to him, he went to Yazid's residence and received it there. It is also reported that when Ibn Zabr resigned from his post in Cairo sometime in the 320s/930s, he surrendered his dīwān to Abu Hashim al-Maqdisi who agreed to replace him. Under special circumstances, when the qādī was brusquely dismissed or when he was indicted for misconduct, a confiscation of his books was to be expected. In 200/815, upon deciding to dismiss Muhammad al-Ansari from the office of judgeship, the Caliph demanded that he be fetched together with his qimatr. This was done with the understanding that confiscating the qimatr represented his dismissal. Similarly, when al-Ma'mun defeated his brother al-Amin in 198/813, he immediately dismissed the qādī 'Abd Allah b. Sawwar, sealed his books, and transferred them elsewhere, and this he did, according to Waki', because Sawwar both severely criticized him and had been an ardent supporter of al-Amin. When the dīwān was copied down, the duplicates were required to be attested by witnesses in order to ensure their veracity. Simnani speaks of three copies: the first would be deposited with the new qādīs scribe or custodian; the second would remain in the hands of the person who received the dīwān; and the third would be given to the witness or witnesses who attested the process of transfer. The general picture that emerges, however, is that two copies, one for the incoming qādī and one for the witnesses, were considered sufficient. Since the purpose of this important exercise is to provide the incoming qādī with a register of earlier cases so that they can be retrieved in the future if the need arises, the process of copying the dīwān must be organized in a particular manner. The mahādir, sijillāt, sukūk, record of witnesses, documentation related to trustees over waqfs and orphans, etc., must each be lumped together, and no category of these, except for the mahādir, sijillāt and sukūk, must be allowed to mix with another. While copying, the kātib must ask the outgoing qādī or his representative about any case which may not be clear to him. The entire process must unfold gradually (shay'an fa-shay'an), slowly and carefully (tathabbut). One of the most revealing accounts of copying the dīwān is given by Abu Nasr al-Samarqandi, a jurist, shurut and judge who seems to have lived during the fifth/eleventh century. The work no doubt reflects to a large measure the judicial

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

1. A list of witnesses which appeared in the mahādir. If a witness appeared in a mahdar on a very early date, and never attested since, he is called upon in order for the scribe and the witnesses attesting the copying of the dīwān to reconfirm his just character;
2. A list of witnesses whose just character was confirmed, along with the date of confirmation. As long as six months have not lapsed since his last testimony, the witness's rectitude need not be reconfirmed;
3. A list of male prisoners (see preceding paragraph);
4. A list of female prisoners (see preceding paragraph);
5. Waqfiyyat, the waqf estates and their locations;

6. Appointment and dismissal of trustees over waqfs, and various financial accounts related to them;
7. A list of trustees over estate distribution and over orphans; financial accounts related to them, as well as the terms of their appointment;
8. A list of the names of qādīs, sultans, emirs, viziers, military commanders and other state officials, whose assistance might be needed;
9. A list of the names of guarantors, of those who have been guaranteed, and the objects of guarantee;
10. A list of agents (wukāla'), and of those who have given them powers of representation. The terms of representation, the lawsuits and dates are also recorded.
Samarqandi's classification is by no means identical to other classifications that originated in different times and places. For example, Ibn Nujaym does not see the need to copy down the waqf estates and their locations, because, he argues, the waqfiyyāt and related documents already contain such information. Ibn Abi al-Damm, describing Andalusian and Maghrebi judicial practice around 600/1200, observes that if the incoming qādī finds that most of the witnesses attesting in the outgoing qādīs dīwān have died, then he calls upon those who are still alive in order to reconfirm their attestations, thereby renewing the testimonial basis of these cases. Regional and temporal variations no doubt existed, but the general principles governing the transfer of the dīwān remained the same in all periods and places attested in our sources. At this point, We must note in passing that the dīwān was organized in a systematic manner, a fact which facilitated copying when a new qādī came into office. All records of a certain type (e.g., mahādir, sijillāt) appear to have been compiled separately and filed in a weekly or monthly dossier (idāra), depending, apparently, on the number and size of the records that accumulated in the court.
The second qādī's court formular Shurūt are the clauses of a contract; their appropriate formulation is an essential part of juridical practice. In this domain even the Arabs had to forget about the primacy of stylistic elegance; what mattered was merely precision and completeness. Such prerequisites could not be improvised; models were needed, exemplary texts which were collected in formularies. The kutub al-shurūt are such formularies; they are written not to explain the law but to furnish patterns on how to apply iot. The oldest text of this genre known to us is most popular student of Abu Hanifa Muhammad al-Shaybani (d. 189/805) al-shurūt, fragments of which are preserved in Sarakhsi's Mabsut. Al-Shaybani and al-Sarakhsi were Hanafis; their madhab seems to have shown a special interest in this field.
Since every dīwān was copied, it follows that all dīwān, except (in theory) the very last, ultimately became both legally irrelevant and private property, to be disposed of in

any way their owners saw fit. By all indications, this private ownership continued until such time when the state dictated that the dīwāns should be deposited in a public domain, which Islamic administration seem to have done. In all of our Islamic administration sources, there is no hint whatsoever that the qādīs, upon dismissal or death, were required to deposit their dīwāns, in any form or manner, in a state-owned building or other public space.

CONCLUSION

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

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