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A Legal Instrument in the Service of People and Institutions: Endowments in Mamluk Jerusalem as Mirrored in the Ḥaram Documents

Religious endowments formed an important part of spiritual and legal life in the pre-modern Islamic world. Much has been written on the religious foundations for al-Ḥaram al-Sharīf by the sultan Saladin (Ṣalāḥ al-Dīn) after his conquest of Jerusalem in 583/1187.¹ But his were only the first in a long tradition of endowments in her “Noble Holiness,” al-Quds al-Sharīf, as the city was called in contemporary writings. From the seventh/thirteenth century onwards, Jerusalem was the place of numerous endowments by high-ranking Mamluk officials and ladies who founded mausoleums (sing. *turbah*), colleges (sing. *madrasah*), Sufi hospices (sing. *khānqāh*), and Sufi-convents (sing. *zāwiyah*). These buildings shaped the city and some still exist today.² As private institutions with their own sources of revenue, these foundations fulfilled social and religious functions, provided teaching posts for religious scholars, and paid for worship services both within their own confines and within the holy district, al-Ḥaram al-Sharīf, with its two sanctuaries, al-Masjid al-Aqṣá and the Dome of the Rock (Qubbat al-Ṣakhrah).³ Some attention has been given to the founders of these endowments, the economic support they provided, and their history in the centuries after the Mamluk period.⁴

This article will take another angle and enquire into legal practice connected to endowments in Mamluk society. Several specimens from the so-called Ḥaram

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¹On the endowments of Ṣalāḥ al-Dīn al-Ayyūbī, see Y. Frenkel, “Political and Social Aspects of Islamic Religious Endowments (*Awqāf*): Saladin in Cairo (1169–73) and Jerusalem (1187–93),” *Bulletin of the School of Oriental and African Studies* 62 (1999): 1–20; and Johannes Pahlitzsch, “The Transformation of Latin Religious Institutions into Islamic Endowments by Saladin in Jerusalem,” in *Governing the Holy City: The Interaction of Social Groups in Jerusalem between the Fatimid and the Ottoman Period*, ed. Johannes Pahlitzsch and Lorenz Korn (Wiesbaden, 2004), 47–69, with a new edition of the *waqfiyah* and a translation in *ibid.*, 60–68.

²On this issue, see the excellent architectural overview in Michael Hamilton Burgoyne, *Mamlūk Jerusalem: An Architectural Study: With Additional Historical Research by D. S. Richards* (Jerusalem, 1987); more general is Yūsuf Darwīsh Ghawānimah, *Tārīkh Niyābat Bayt al-Maqdis fī al-‘Aṣr al-Mamlūki* (Amman, 1982), 107–11.

³See Richards in Burgoyne, *Mamlūk Jerusalem*, esp. 70b–73b.

⁴*Ibid.*, 66a–70b.



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corpus, 900 documents from eighth/fourteenth-century Jerusalem,⁵ concern various aspects of religious and private endowments. Little is known about the functioning of these foundations from the leaseholders' perspective, that is, the legal relations of shopkeepers and farmers on *waqf* land to the *waqf* administration. One of the first things we may learn from the Ḥaram documents is that the legal paperwork in Mamluk times was not restricted to the endowment deed by which a foundation had been established. In the following we will discuss a variety of documents that at various times were certified in court and attested to the existence of an endowment. These documents also demonstrate how some people used the legal instrument of "endowment" in ways quite different from Mamluk sultans and their officials.

Our first example is a deed from a citizen of Hebron from 26 Ṣafar 759/7 February 1358, which endowed a house (*dār*) in Jerusalem. The document describes the estate, and enumerates as beneficiaries the founder and his children, followed by their descendants.⁶ Less than one month later, this deed was confirmed by the procedure of *thubūt* (establishing as legal fact).⁷ For this, the judge summoned and questioned the witnesses, accepted their testimony as legally binding, and ratified the document with his *ʿalāmah* (official motto). Only then would he call upon his court witnesses to attest to the *thubūt* procedure in the form of a notarized *ishhād* on the verso of the document.⁸ In terms of layout, this endowment deed resembles any other legal document in the Ḥaram collection with the exception of the phrase "*waqafa wa-ḥabbasa . . .*" (it has endowed and alienated . . .). The deed did not follow a specific decorative format of notarization, as we may find in marriage contracts written in columns with a wide blank space between two lines.⁹

The second endowment deed in our archives was drawn up on 5 Ṣafar 768/11 October 1366 and concerned a house (*dār*) in the Bāb al-ʿAmūd quarter

⁵See Donald P. Little, *A Catalogue of the Islamic Documents from al-Ḥaram aš-Šarif in Jerusalem*, Beirut Texts and Studies 29 (Beirut/Wiesbaden, 1984).

⁶See Ḥaram document no. 617/1, lines 2ff. deal with the presence in court, lines 10ff. with the beneficiaries of the *waqf* (a part of this sentence remains undeciphered). Cf. also Little, *Catalogue*, 319. Only the registration on the verso names the city of Jerusalem as the location of the estate. As a convention, I indicate with a slash after the number of a Ḥaram document, here "617/1," one of several recordings on the same piece of paper or parchment, numbered in chronological order, which rarely corresponds with the layout given in the *Catalogue* by Little.

⁷See Ḥaram document no. 617/2 (verso) from 22 Rabīʿ I 759/4 March 1358; cf. Little, *Catalogue*, 319.

⁸On this procedure and subsequent notations on the documents see my analysis of the Ḥaram documents from a judicial and historical perspective, "Qāḍī-Gericht und Rechtsadministration in Jerusalem: Studie der mamlūkischen Dokumente des Ḥaram Sharif" (forthcoming), here chapter IV, "Gerichtliche Verfahrensarten."

⁹Cf. Little, *Catalogue*, 301.



of Jerusalem. After the founder's death, the estate would pass to the Ṣalāḥīyah Hospice.¹⁰ We note the same lack of formality in its notarization. This document does not bear any signs of a *thubūt* procedure in court, and we must assume that court confirmation was not indispensable for the validity of a foundation, unless there was a dispute. Was it the absence of any family heirs which made additional judicial procedure unnecessary for the Ṣalāḥīyah Hospice?

A third endowment deed was, once again, certified in court after some time, and in this case family members do appear as additional actors. On 25 Rabī' I 747/16 July 1346, Fāṭimah al-Mar' (?) Sa'ūd had it notarized that she had endowed from her personal property the renovated Roman vaulted gallery (*qabw*) next to her house in the Maghribī Quarter. The beneficiaries were the old Maghribī *fuqarā'* living in the rear of this gallery, probably in the Zāwīyat 'Umar, which formed the northern boundary of the *waqf*. When the *fuqarā'* had perished, the place should pass to the *waqf* of the Maghribī Quarter.¹¹ As is made clear from the description, this vaulted gallery formed a street corner to its west and south, with the founder's house at its eastern side.

To challenge the endowment, claims would be made that Fāṭimah had not been full proprietor of the property, and that she did not have the legal capacity to make such an endowment. Unlike the first endowment cited above, here there occurred another step before court certification of the endowment was notarized: some weeks after the endowment deed was written, the founder's son, Mas'ūd, present in court, was accused of having changed the parameters (*tahyizat al-'imārah*) of the endowed building.¹² Finally, he acknowledged his mother's property rights on the gallery, and this was notarized in the same document on 9 Rabī' II 747/30 July 1346.¹³ Again some weeks later, the two documents were "established as legal facts" (*thubūt*) by the Shafi'i judge of the city.¹⁴ After this, the son had no legal opportunity to overturn his mother's endowment.

Another document, dating from 6 Dhū al-Ḥijjah 778 (?)/16 April 1377 (?), contained the acknowledgement by Sitt al-Bintayn al-Bilbaysīyah of her endowment of an orchard (*karam*) with fig trees, grapes, and olives within described boundaries on land of the Khān Banī Sa'd in Jerusalem. She designated herself as beneficiary during her lifetime, followed by her brother 'Umar and

¹⁰Ḥaram document no. 20, edited by Ghawānimah, *Tārīkh Niyābat Bayt al-Maqdis*, 194, no. 9, and Muḥammad Ṣālīḥīyah, "Min Wathā'iq al-Ḥaram al-Qudsī al-Sharīf al-Mamlūkīyah," *Ḥawliyat Kulliyat al-Ādāb* (Kuwait) 6 (1985): 49ff.

¹¹Ḥaram document no. 833/1 (recto), cf. Little, *Catalogue*, 319; edited in Kāmil Jamīl al-'Asālī, *Wathā'iq Maqdisīyah Tārīkhīyah* (Amman, 1983 and 1985), 1:235ff.

¹²Ḥaram document no. 833/2 (verso), ll. 3–4, not edited.

¹³Ibid.; cf. Little, *Catalogue*, 320.

¹⁴Ḥaram document no. 833/3 (4 Jumādā I 747/23 August 1346); Little, *Catalogue*, 320.



finally the Māristān Ṣalāḥīyah,¹⁵ which benefitted the poor orphans of Jerusalem.¹⁶ This is an example of an endowment of a plantation (*ghirās*) on *waqf* land.¹⁷ No process of court certification took place in this case, to which we will return later. There is a slight, but historically important, difference between the document concerning Fāṭimah and this last one by Sitt al-Bintayn. In the first case, the act of endowment was notarized, and the witnesses attested to Fāṭimah's declaration, by which she made the endowment.¹⁸ The second document attests to the fact that on such and such day, Sitt al-Bintayn declared having made an endowment. The act of endowment may have preceded the declaration by any period of time, whereas Fāṭimah made her endowment when the document was written.

The creation of an endowment demanded proof that the landowner held full property rights.¹⁹ A house in Jerusalem is the subject of another Ḥaram document which demonstrates this point. In the last document in this series of attestations, a man acknowledged having endowed the house (*dār*) as *waqf* for himself and his wife as initial beneficiaries, followed by the Khānqāh Ṣalāḥīyah.²⁰ The first document on the recto, however, concerned the acknowledgment by an ill woman, 'Amīrah/'Umayrah bint Muḥyī al-Dīn al-Qiramī, of the sale of her residence (*dār*) to Shaykh Aḥmad ibn Khaḍīr al-Qiramī. Just one day later, on 13 Rajab 783/3 October 1381, this acknowledgment was certified in court,²¹ followed less than three weeks later by the formal attestation of how 'Amīrah herself had acquired the property by transfer (*intiḳāl*) from the "register of the public treasury" (*dīwān bayt al-māl*) on 12 Sha'bān 768/13 April 1367.²² Taken together, these three legal documents attest to the transfer of property rights of this particular house that Shaykh Aḥmad had acknowledged he had converted into a *waqf*. The date of his acknowledgement attestation is ambiguous,²³ but as mentioned before, the date of

¹⁵The hospital founded by Ṣalāḥ al-Dīn in 584/1187 in the Dibāghah Quarter; cf. Little, *Catalogue*, 203.

¹⁶Ḥaram document no. 204; I read "*khān*" for "*ḥārah*": the orchard was situated on "land of the Khān Banī Sa'd", not in the Ḥārat Banī Sa'd; cf. Little, *Catalogue*, 203.

¹⁷For details see below.

¹⁸See al-'Asalī, *Wathā'iq*, 1:236, after line 13.

¹⁹See above the acknowledgement of Fāṭimah's son Mas'ūd.

²⁰Ḥaram document no. 58/4 verso right; cf. Little, *Catalogue*, 194.

²¹Ḥaram document no. 58/2 verso, 13 Rajab 783/3 October 1381; Little, *Catalogue*, 193.

²²Ḥaram document no. 58/3 recto bottom, 2 Sha'bān 783/22 October 1381; Little, *Catalogue*, 193.

²³Whereas "8 Shawwāl" is perfectly readable, line 18 may very well be 783—which would be six days after the attestation of *intiḳāl*—but the witness signature below on the right has a different year, possibly 784: Ḥaram document no. 58/4 verso right. Little, *Catalogue*, 194, reads "786?" which I cannot confirm.



the acknowledgement does not signify the creation of an endowment. The house might well have been endowed when Shaykh Aḥmad asked ‘Amīrah to attest to the sale, possibly in order to protect the endowment against other claims.

‘Amīrah’s written acknowledgement of her sale to Shaykh Aḥmad did not have the legal standing of a sales contract. It indicates neither the price for the house, the means of payment, nor the requirements for concluding the contract. Other sales contracts with added notarization of the property transfer to the seller have survived, however.²⁴ Therefore we may assume the original sales contract being lost, Shaykh Aḥmad turned to the sick ‘Amīrah, who could acknowledge the sale. After her death, a proof of this sale and the property rights to the endowment without the sales contract would turn out to be much more complicated. The fact that ‘Amīrah’s written acknowledgement was immediately followed by court certification and the *intiḳāl* attestation indicates the desire by one of the parties to use this attestation in current legal affairs. My point is not to establish the time when Shaykh Aḥmad in fact endowed his house, but rather to demonstrate how people made use of legal documents and court procedures to ensure their endowments. Obviously the buyer, Shaykh Aḥmad, and his wife had no children, otherwise he would have noted them as beneficiaries, before the Khānqāh Ṣalāḥīyah. Without children, the public treasury would inherit a portion of the shaykh’s estate in addition to the widow’s, which might have resulted in the public sale of the house. To avoid this risk and its adverse effect for his wife, good reasons existed for the creation of an endowment that guaranteed the use of the entire house within the couple’s lifetime. This surviving document was probably held by the Khānqāh Ṣalāḥīyah after the death of Shaykh Aḥmad and his wife, as attestation of rights to a house, which the *khānqāh* administered. In such a context, ‘Amīrah’s acknowledgement and the following attestations were even better suited than the endowment deed by Shaykh Aḥmad, which does not attest to how its founder acquired the property. As a matter of fact, this *waqf* deed was not preserved.

Another acknowledgement of an endowment was notarized for still other purposes. This document concerned the endowment by the noblewoman Sufrā Khātūn of a mausoleum (*turbah*) and college (*madrasah*), not the dwellings of a family. On 26 Dhū al-Ḥijjah 770/1 August 1369 Sufrā Khātūn, wife of the deceased ‘Imād al-Dīn al-Bāwardī,²⁵ acknowledged the endowment of various commodities, including carpets and lamps, for the *turbah* and the madrasah she

²⁴See, e.g., Ḥaram document no. 39/2 recto; Little, *Catalogue*, 278 (referred to as “B”).

²⁵Ḥaram document no. 76/1, l. 3.



had established in Jerusalem.²⁶ This document had been written in Jerusalem, as far as one can judge from the testifying witnesses.²⁷ Literary sources inform us that Sufrā founded the Madrasah al-Bāwardiyah in the year 768/1367,²⁸ two years before the present document. What then could be the use of this document, written two years after the initial endowment? Two things seem to be important: firstly, the items mentioned as endowment in the acknowledgement of 770/1369 concern the furnishings, not the establishing of the institution. These items should only be used by those who staffed the endowed buildings (*man lahu waḥīfah fī al-makān*) and should not be taken away.²⁹ Secondly, this written acknowledgement was obviously meant to be legally valid in a town other than Jerusalem.³⁰ This however necessitated a first court certification (*thubūt*) from the Shafi‘i judge in Jerusalem, given two and a half months after the acknowledgement, on 2 Rabī‘ I 771/4 October 1369.³¹ Attached to the four signatures attesting to this *thubūt* procedure is the *tazkiyah* attestation of 22 Rabī‘ II 773/2 November 1371 concerning the ‘*adālah* of one of these witnesses.³²

After court certification in Jerusalem, Sufrā’s acknowledgement of her endowment could finally be accepted as a legally binding document in Damascus. On 29 Jumādā II 773/7 January 1372 the Shafi‘i deputy judge of Damascus certified the various documents,³³ more than two years after the initial acknowledgement. These court procedures certainly cost money, and we may imagine a dispute over

²⁶Ḥaram document no. 76/1 (recto), not “790” as in Little, *Catalogue*, 194 (see below). The name in line 3 reads “Bāwardī” and not “Bārūdī,” as it is given in Burgoyne, *Mamlūk Jerusalem*, passim, and Little, *Catalogue*, 194, n. 13. On the *nisbah* Bāwardī see ‘Abd al-Karīm ibn Muḥammad al-Sam‘ānī, *Al-Ansāb* (Beirut, 1988), 1:274; cf. Mujir al-Dīn ‘Abd al-Raḥmān al-‘Ulaymī, *Al-Uns al-Jalīl bi-Tārīkh al-Quds wa-al-Khalīl* (Najaf, 1388/1968), 2:43: al-Madrasah al-Bāwardiyah.

²⁷We find the characteristic signature in the right position of Ḥaram document no. 76/1 (Muḥammad ibn ‘Umar al-. . .) on several other documents from Jerusalem between the years 765 to 776: Ḥaram document no. 38 (middle), no. 322 (middle), no. 352/1 (middle), no. 352/2 (first), no. 354/1 (middle right), and no. 714 (right).

²⁸Mujir al-Dīn, *Uns*, 2:43f., with her father being known as “al-Bāwardī” contrary to Ḥaram document no. 76/1. Cf. also Little, *Catalogue*, 194, n. 13.

²⁹Ḥaram document no. 76/1, ll. 11–13.

³⁰See court validation by the *nā‘ib fī al-ḥukm* of Damascus in Ḥaram document no. 76/4 (verso, right side); for details see below. On the procedure for court certification see my “Qāḍī-Gericht,” chapter IV.

³¹Ḥaram document no. 76/2 (verso left). The year cannot be “791,” as in Little, *Catalogue*, 194, since the judge and his witnesses were active around 770. This excludes dates as given in *ibid.*, 194f., in the 790s.

³²Ḥaram document no. 76/3 (below no. 76/2); this attestation is not mentioned in Little, *Catalogue*, 194. “*Adālah*” is the legal quality necessary for any legally binding testimony.

³³Ḥaram document no. 76/4 (verso, right side); cf. Little, *Catalogue*, 195. However, it is not the *ḥakīm*, but the *nā‘ib fī al-ḥukm* of Damascus.



items left by the late Sufrā in Damascus, which required legal proof that they had been endowed for her mausoleum and college in Jerusalem. Of course, this explanation remains conjectural, but fits our documentary findings. It would even explain why the document was preserved in Jerusalem, in the hands of those persons who administered the Madrasah al-Bāwardīyah.

Up to this point, we have examined documents pertaining to the creation of endowments, mostly for the benefit of family members, but also, as in the last case, for religious purposes. The next two cases concern litigation within a family over the administration and distribution of revenues. Regulating inheritance between family members was common practice in Mamluk Jerusalem and did not concern only houses or orchards. A certain Ghāliyah bint ʿUthmān addresses a petition to the judge Sharaf al-Dīn (d. 797/1395) and alleges that her brother ʿUmar arrogated revenues from their common family endowment for himself.³⁴ From her undated petition, we learn that her father, ʿUthmān ibn Thuʿaylib, had created an endowment, immediately before his death, in favor of his descendants (*waqf ʿalā al-dhurriyah*) and had ʿUmar installed as administrator (*mutawallī*).³⁵ Then Ghāliyah complained that ʿUmar sold *laban* “for 20 [possibly dirhams]” daily, which he got from the 200 sheep (*ra’s ghanam*). They also had an orchard (*karam*) in the Māmillah area with two houses, one of them inhabited by his brother-in-law (*ṣihruhu*), the other leased to him (?) for 20 years. In addition to this, her sister had made off with the *waqf* deed and sold one feddan for 800 dirhams. The petition continues on the right margin, where Ghāliyah states that her father had seen the judge before his death and explained that ʿUmar had no right to the sheep.³⁶

From estate inventories drawn up for the deceased ʿUthmān during his lifetime, we know that he had endowed a house with five apartments (*masākin*) in the Jawālidah Quarter of Jerusalem on 9 Dhū al-Qaʿdah 795/16 September 1393, the same day he called upon witnesses to draw up the inventory.³⁷ The same documents notarize that “ʿUmar is the sole proprietor of 200 black sheep and the complete half of a plantation,” with boundaries given. According to the estate

³⁴Ḥaram document no. 278; cf. Little, *Catalogue*, 43: the petitioner does not bear the *nisbah* Sharafī, this applies only to the judge. For the edition see al-ʿAsalī, *Wathāʿiq*, 1:217f., no. 25; emendations in Diem, “Philologisches zu Mamlūkischen Erlassen, Eingaben und Dienstschriften des Jerusalemer al-Ḥaram ash-Sharif,” *Zeitschrift für arabische Linguistik* 33 (1997): 51–54, but with sometimes far-fetched “explanations.”

³⁵Al-ʿAsalī, *Wathāʿiq*, 1:217, ll. 6–7.

³⁶Ibid., ll. 12–16, text on right margin without line numbers.

³⁷Of this estate inventory two copies exist, Ḥaram document no. 515 and Ḥaram document no. 626 (with clearer handwriting); cf. Little, *Catalogue*, 134 and 148.



inventories, three sisters and his wife were present and had confirmed ʿUthmān’s statement. They had also acknowledged having no rights to the sheep and the plantation.³⁸ As Ghāliyah is mentioned among ʿUthmān’s heirs together with her brother ʿUmar, two sisters, and ʿUthmān’s wife, there is no doubt about her having drawn up the petition mentioned above.

How should one understand these different documents? The problem is to know whether the sheep and the plantation mentioned in Ghāliyah’s petition to the judge are the same as those that are designated in the inventory of her father. Unfortunately, the description of the plantation only mentions the neighbors, not the area, and we cannot be sure that these were situated in the Māmillah region, as explained in the petition. The same number of 200 sheep in the inventory and in the petition is certainly significant, but no proof they constitute the same flock. Therefore two possibilities remain: The father had only endowed the house in the city, which would give ʿUmar every right to the houses within the plantation. In addition, if the 200 sheep mentioned in the inventory did not correspond to those mentioned in the petition, then Ghāliyah’s complaint would have been unfounded. How then do we explain Ghāliyah’s statement that her father had declared in front of the judge that ʿUmar had no right to the sheep?³⁹ Could it be that the inventory did not correspond to the father’s expectation?

Or, as a second possibility, Ghāliyah was right to complain about an embezzlement of her father’s endowment. One cannot exclude the possibility that the written inventory did not correspond to what had been explained to her. This could explain why she insisted that her father had seen the judge before his death. We will probably never resolve this case of family quarrels between brothers and sisters. Ghāliyah mentioned also that one sister had availed herself of the “*kitāb*,” the written form of her father’s endowment,⁴⁰ and that her brother ʿUmar was found drunk the day of her father’s death and could not assist at his funeral.⁴¹ In any case, the qadi obviously did not respond to Ghāliyah’s petition with an order (*marsūm*) to investigate the affair.⁴² The accounting on the back of the petition dates from the year 797/1395 (line 1) and concerns “al-Ḥājj ʿUthmān,” which may well be the father of the petitioner Ghāliyah on the recto.⁴³

³⁸Inventories: Ḥaram documents no. 515 and no. 626.

³⁹See above, with text on the right margin of Ḥaram document no. 278.

⁴⁰Ibid., ll. 15–16.

⁴¹Ḥaram document no. 278, ll. 18f.

⁴²Compare Ḥaram document no. 25/2 and below, for the qadi’s order on the back of a similar petition; cf. also Ḥaram document no. 215/2, both edited by Donald Little in “Five Petitions and Consequential Decrees from Late Fourteenth-Century Jerusalem,” *Al-Majallah al-ʿArabīyah lil-ʿUlūm al-Insānīyah* 14, no. 54 (1996): 348–94.

⁴³Cf. Little, *Catalogue*, 43. The accounting is not edited.



In the next litigation the manner in which revenues from a *waqf* were distributed among family members became the subject of a court case. Apparently, this endowment had already functioned for a long period of time before the document in our hands was drawn up.⁴⁴ The petitioners⁴⁵ claim that the stipulation of an endowment made by one of their ancestors benefited only his male descendants and that they have been receiving income in accordance with this stipulation for an extended period of time. According to these petitioners, they possessed successive grants of approval⁴⁶ and a *maḥḍar* certified by judges, attesting to the validity of this regulation.⁴⁷ It seems, however, that this distribution of revenues had always been contested; otherwise neither legal permission (*ijāzah*), nor court documentation (*maḥḍar*)⁴⁸ would have existed. The petitioners explain that a person subsequently disputed this usage and claimed the endowment was intended for both male and female descendants, but that he had nothing to substantiate (*yadillu*) the validity of his claim (*daʿwāhu*). Rather, he circulated this among persons, “by whose word nothing can be corroborated [legally].”⁴⁹ It seems from this, that a claim in court for equal distribution of the *waqf* revenues among both male and female descendants was ongoing. The petitioners ask their “Lord and Master, Judge of the Judges”⁵⁰ for a written decree (*marsūm*) to the judge in the district to consider their case in their favor.⁵¹ The judge of Nablus, in an answer to this petition, wrote that he would “clarify the aforementioned case and settle the matter in accordance with the dictates of the stipulation of the endower.”⁵²

⁴⁴Ḥaram document no. 25/1, edited by Little, “Five Petitions,” 351–57.

⁴⁵The translation “slaves” for “*mamlūk*,” *ibid.*, 353f., is misleading, since this was the expression used in any respectful correspondence or petition.

⁴⁶Ḥaram document no. 25/1, l. 5, not “*ajāʿir mutawāfirah*” (*ibid.*, 353), but “*ajāʿiz mutawātirah*.”

⁴⁷*Ibid.*

⁴⁸A *maḥḍar* at that time was a *shahādah* document, written only on a judge’s order. On this technical definition see my “Qāḍī-Gericht,” chapter I.2.a.

⁴⁹Little, “Five Petitions and Consequential Decrees,” 354, ll. 7–10, here 10: “*lā yathbutu bi-qawlihi shayʿun*,” which means that his word is not valid for *thubūt*, i.e., he does not have the quality of a witness, which is more precise than “who cannot corroborate his word in any way” (*ibid.*).

⁵⁰This should be read as a very respectful salutation, not as an exact title like “Chief Judge,” cf. *ibid.*

⁵¹*Ibid.*, ll. 12–13.

⁵²Contrary to Little’s translation (*ibid.*, 357, ll. 2–3), I do not think this is an order to the “Magistrate of Nablus” by the judge of Jerusalem (*ibid.*, 356f.). Rather, Ḥaram document no. 25/2 consists of the statement by the qadi of Nablus “that the affair should be settled according to the founder’s stipulations.” Sharaf al-Dīn Abū al-Rūḥ, the judge in whose court the Ḥaram documents originate, later judge in Jerusalem between 793 and 797, was in 783 judge (and not deputy judge) of Nablus; cf. his court attestations: Ḥaram document no. 55/3 from 19 Shawwāl 782/16 January 1381 (cf. Little, *Catalogue*, 313, who reads for the year “781” instead of my “782”) and Ḥaram document



With this we move to the administration of bigger foundations that were not endowed for the benefit of a single family. As we have seen, legal proof of an endowment could be achieved by means other than the original endowment deed. Bigger foundations were not always created by one act, but successively according to the will (and the means) of their founder. Then, there would exist various deeds, issued at different times and concerning different aspects of the same *waqf*. The administration of a big foundation on the basis of divergent endowment deeds may not have been easy. There were ways to reduce the complexity of various documents and to organize the major aspects of a *waqf* in a legally binding way.

One Ḥaram document is such a “synopsis of *waqf* purposes” (*talkhiṣ maqāsid al-waqf*) that summarizes various documents concerning the same endowment of a mausoleum and a college. This *waqf* summary was issued on 21 Shawwāl 793/21 September 1391 and bears the signatures of three witnesses as well as a note in the right margin as follows: “I allowed this [document] to be transcribed and collated” (*adhantu naql dhālika wa-muqābalatahu*).⁵³

This *waqf* summary concerned the endowment of Muḥammad Beg, made between the years 748 and 751, in favor of a college that was known after him as al-Madrasah al-Muḥammadiyah.⁵⁴ Donald Richards has already given a summary of its content and analyzed it from various points of view.⁵⁵ The question to ask here is why was this document written when it was (42 years after the initial endowment), and for what purpose? The answers may tell us more about the functioning of such a religious foundation years after its establishment.

This Madrasah Muḥammadiyah was headed by a shaykh, whose function as administrator of the *waqf* and spiritual head was well defined in the *waqf* summary. He was supposed to be a person versed in the “ways of the Sufis,” and it is clear from this and from other documents⁵⁶ that this foundation was not administered by a member of the founder’s family, but by a religious scholar and Sufi. To answer the first question, why the summary was written in Shawwāl

no. 609/5 (6 Rajab 785/4 September 1383) (cf. Little, *Catalogue*, 257). In the Ḥaram documents, judges (*quḍāh*) are referred to as the “*hākim*” of a city. The distinction between qadi and *hākim*, as pointed out by Little, “Five Petitions,” 356, is not valid for the Ḥaram documents in general, nor for the ways in which a judge was named in attestations of his own court procedures in particular; see my “Qāḍi-Gericht,” chapter IV. Therefore we must assume that this document, Ḥaram document no. 25/1, was addressed to Sharaf al-Dīn, then qadi of Nablus, and stayed among his papers, not with “*al-hākim bi-al-nāhiyah*” (contrary to Little, “Five Petitions,” 356). As a result, it is impossible to conclude “that the Jerusalem judge had jurisdiction over the judge in Nablus” (ibid.).

⁵³Ḥaram document no. 643; Little, *Catalogue*, 321.

⁵⁴Cf. Mujīr al-Dīn, *Uns*, 2:44.

⁵⁵See Richards in Burgoyne, *Mamlūk Jerusalem*, 66a, 66b, 68a, 69b, 72b.

⁵⁶See the acknowledgment of the shaykh of this *waqf* in Ḥaram document no. 210/1 (2 Rabi‘ II 791/31 March 1389), Little, *Catalogue*, 206.



793/September 1391, it is probably not a coincidence that the former shaykh, Muḥyī al-Dīn Yaḥyá ibn Ḥusayn had recently died and his effects were sold in the following month, on 12 Dhū al-Qa‘dah 793/11 October 1391.⁵⁷ Obviously his wife had already died before him, and he had no heir.⁵⁸ We also know that the proceeds from the public auction went directly to Egypt, by order of the *ustādār* Maḥmūd, then a very influential Mamluk official.⁵⁹

The *waqf* summary, Ḥaram document 643, was not meant to safeguard the validity of the act of endowment: no mention is made of the founder’s will, the conversion of his own private property into a *waqf*, etc. On the contrary, this “*waqf* summary” gives detailed instructions on the quality of the shaykh as Sufi and his duties as a spiritual guide, as well as how to provide for the daily needs of the community living in the college and occasional passers-by. Also, explanations are given for the lease period for the *waqf* land (usually one year, only exceptionally up to three years),⁶⁰ those persons deciding on the next inspector,⁶¹ and the property belonging to the foundation.⁶² From this, the major interest of this document seems to be in describing the administration of the *waqf* in general—with special focus on the inspector’s tasks and function. Any inspector would need this information in order to fulfill the founder’s wishes, and I am inclined to think that this was a copy furnished to the newly nominated shaykh, or to those reviewing his nomination.

This summary however, was not just a simple copy of other documents. It was signed by three court witnesses,⁶³ and contained an official notarization that the summary had been meticulously compared to the documents on which it was based. The document therefore had legal significance, since its witnesses would attest to its content in court. We can go one step further by supposing that it was the judge himself who gave this permission: the writing of this notation in

⁵⁷Ḥaram documents nos. 768a and 768b; Little, *Catalogue*, 343.

⁵⁸On Muḥyī al-Dīn Yaḥyá ibn Ḥusayn and his wife see their mutual acknowledgements from 2 Rabī‘ II 791/31 March 1389 (Ḥaram documents nos. 210/1 and 315/1), certified in court the following day (Ḥaram documents nos. 210/2 and 315/2) (Little, *Catalogue*, 206 and 209). The wife is not mentioned as heir in Ḥaram document no. 768a. See the edition of Ḥaram document no. 315/1 in Huda Lutfi, “A Study of Six Fourteenth Century Iqrārs from al-Quds Relating to Muslim Women,” *Journal of the Economic and Social History of the Orient* 26 (1983): 278, and in al-‘Asalī, *Wathā‘iq*, 2:118.

⁵⁹Ḥaram document no. 768a. Other documents in this case are Ḥaram document no. 719/1 and following, as well as inventory no. 178. See my “Qāḍī-Gericht” on the context.

⁶⁰Cf. Ḥaram document no. 643, and Richards in Burgoyne, *Mamlūk Jerusalem*, 68a.

⁶¹Cf. Richards in Burgoyne, *Mamlūk Jerusalem*, 72b.

⁶²Ibid., 66a.

⁶³We find their signatures on court documents of this period.



the right margin⁶⁴ corresponds exactly to other notations by the Shafi'i judge of the time, Sharaf al-Dīn Abū al-Rūḥ 'Īsá ibn Ghānim (d. 797/1395). In contrast to this legal document, the two *daftar* sheets of an endowment established by the sultan al-Malik al-Nāṣir Muḥammad (beginning of eighth/fourteenth century) do not bear witness signatures or the annotation of a court official.⁶⁵ As Donald Little supposes, these pages formed part of the copy (of a copy) of a large *waqf* document.⁶⁶

If the *waqf* summary of the Madrasah Muḥammadiyah did not serve to guarantee the legal status of the endowment, how was the existence of *waqf* institutions in perpetuity insured in a legal system which did not grant to written documents the status of a proof? In order to guarantee the validity of oral witness testimony on the authenticity of a document, the judge summoned the witnesses of the original deed and had them testify orally in court. This *thubūt* procedure allowed the judge to consider the text of the document as a legally “established fact” and subject to his ratification by his *‘alāmah*. As will be shown elsewhere in detail,⁶⁷ a ratified attestation of the *thubūt* procedure in the form of an *ishhād* on judicial procedure on the back of a legal document made a document valid over time and space even without oral testimony. These *ishhād* attestations of a qadi's court were legally binding on other judges, be they in another city or in a later time. In order to guarantee the judicial value of a document, like an endowment deed, over long time periods, we cite the renewing of court attestations at periodic intervals from several up to thirty years.⁶⁸

One specimen of this kind figures among the Ḥaram documents: the endowment of seven shares of the village Bayt al-‘Aṭṭāb al-Fawqá and six shares of Bayt al-‘Aṭṭāb al-Suflá for the benefit of the *fuqarā'* (lit. “poor”) of Jerusalem.⁶⁹ The document

⁶⁴Although called “*‘alāmah* notation” by Little in his *Catalogue*, 321, it is in the place where the judge would place his *tawqī'* orders to his court witnesses, although here it is not such an order.

⁶⁵Ḥaram documents nos. 77 and 306 (which contains a text beginning with the *basmalah*); see also Little, *Catalogue*, 374f.

⁶⁶Ibid.

⁶⁷See my “Qāḍi-Gericht,” chapter VI.2.

⁶⁸See, e.g., the *waqfiyah* of Ṣalāḥ al-Dīn (references in note 1), and court certifications edited by al-‘Asalī, *Wathā'iq*, 1:73–90 (from the year 590 to 791) and 98–100 (in the tenth/sixteenth century); however, there are many examples. A study on this long-term use of written documents is lacking.

⁶⁹Ḥaram document no. 333; cf. Little, *Catalogue*, 320f. The term “*fuqarā'*” usually refers to persons that are “*faqīr ilá Allāh*” (needy of God), that is, religious scholars, not necessarily materially poor people.



opens with the endowment from the year 712/1312–13,⁷⁰ “transferred” (*untuqila*)⁷¹ from “a copy in 12 chapters,” which had been attested to by court procedure for the first time in the year 720/1320–21.⁷² Then follow the enumeration of further court attestations in the years 727/1327,⁷³ 743/1343,⁷⁴ 746/1346,⁷⁵ 747/1346,⁷⁶ and finally in the year 754/1353.⁷⁷ Each court attestation mentions the exact day and the name of the judge,⁷⁸ a way to confirm whether the judge had been in office or not. This specific document does not bear witness signatures. It probably served as an aide-mémoire, not as a legal attestation. A filing notation on the verso mentions the shares of the endowed villages, which had obviously been sold by some of the founder’s children.⁷⁹

From a general point of view, this specimen shows that even minor endowments, not just the big imperial foundations like those of Ṣalāḥ al-Dīn, cited above, were the object of renewed court validation: in our case, it was obviously the *waqf* administration of Jerusalem in the name of the “*fuqarā*’ of Jerusalem” who had taken care of the repeated court validation. This system of repeated court validation could guarantee the legal standing of an endowment deed over a long time. However, without it, the deed loses the force of proof. Certainly no such renewal of a court validation was made when private endowments ceased to function and no longer provided substantial income. Then, after one or two generations, the original documents had lost any legal standing and the unvalidated *waqf* fell into disuse.

This brings us to our last point, the economic use of endowments by those persons who rented them and thus provided an income to the *waqf*. With regard to Jerusalem, Donald Richards has already pointed to the problem of leasing contracts of long duration that might alienate endowed property and thus bring the *waqf* to an end.⁸⁰ From an economic perspective, there are, however, various aspects to consider.

We have at our disposal several contracts of sale concerning “plantations”

⁷⁰Haram document no. 333, ll. 1–13.

⁷¹The same expression is used for the *waqf* summary Haram document no. 643; see above.

⁷²Haram document no. 333, ll. 14f.

⁷³Ibid., ll. 15f.

⁷⁴Ibid., l. 16.

⁷⁵Ibid., l. 17.

⁷⁶Ibid., l. 16.

⁷⁷Ibid., l. 18.

⁷⁸Cf. Little, *Catalogue*, 320f., for the details.

⁷⁹Ibid. On this see also Richards in Burgoyne, *Mamlūk Jerusalem*, 68a.

⁸⁰Ibid.



(*ghirās*) in vineyards and orchards within the city's limits. Like any sale of a dwelling (*dār*), these contracts delimit the object of the sale by its borders, the type of trees or plantations, its sale price, the conclusion of the contract, and the transfer of property to the buyer. Only the plantations are sold, however, not the land on which they are growing. This practice conforms to Shafī'ī law, allowing the sale of objects firmly rooted into the ground—without touching upon the legal status of the ground.⁸¹

In these cases, the land, the “basis” (*aṣl*, in legal terms), belonged either to a *waqf*⁸² or was part of an *iqṭā'*.⁸³ All these sale contracts on plantations state at the end that “the buyer knows of the obligation to pay an annual ground rent (*ḥikr*) of a certain sum [between 5 and 15 dirhams per annum] to the endowment or to the *iqṭā'*.” When, however, land (*ard*)⁸⁴ or a vegetable garden (*ḥākūrah*)⁸⁵ was sold, no mention of paying *ḥikr* was made. A similar sales contract concerned an apartment (*bayt*) within a family estate (*dār*), for which *ḥikr* was due to [the endowment of] the Madrasah al-Ṣalāḥiyah.⁸⁶

This practice of selling immovable objects, but not the ground where they were rooted, was not restricted to agricultural land or to dwellings. Several shops (*ḥānūt*, pl. *ḥawānit*) were sold in Ramaḍān 747/December 1346–January 1347 for 780 1/2 dirhams, and the buyer knew of his obligation to pay one dirham *ḥikr* each month to the endowment of the Ribāṭ al-Amīr 'Alā' al-Dīn al-Ruknī, on whose

⁸¹Cf. Ṣalīḥiyah, “Min Wathā'iq al-Ḥaram al-Qudsi al-Sharīf,” 62 (in commentary on Ḥaram document no. 326).

⁸²Cf. Ḥaram document no. 318 (17 Jumādā I 789/5 June 1387) with Little, *Catalogue*, 283; several sales of the same piece of land in Ḥaram document no. 326/1 (recto) (30 Dhū al-Qa'dah 758/14 November 1357), no. 326/2 (verso left) (10 Shawwāl 759/15 September 1358), and no. 326/3 (verso right) (23 Muḥarram 762/3 December 1360), all in Little, *Catalogue*, 284; several sales concerning the same land: Ḥaram document no. 354/1 (1 Shawwāl 771/28 April 1370) and no. 354/2 (5 Dhū al-Qa'dah 772/21 May 1371), no. 354/6 (14 Muḥarram 781/2 May 1379), all cf. Little, *Catalogue*, 287; Ḥaram document no. 366 (22 Jumādā II 789/10 July 1387), Little, *Catalogue*, 288; Ḥaram document no. 614 (25 Sha'ḥbān 765/28 May 1364), Little, *Catalogue*, 292; Ḥaram document no. 658/1 (24 Dhū al-Hijjah 784/28 February 1383) and Ḥaram document no. 658/2 (12 Muḥarram 785/17 March 1383), Little, *Catalogue*, 294; Ḥaram document no. 834/1 (9 Muḥarram 756/24 January 1355), Little, *Catalogue*, 294; Ḥaram document no. 328 (3 Shawwāl 755/21 October 1354), Little, *Catalogue*, 285 (here *ḥikr* is not mentioned, only the amount to pay and that the land belongs to the Ṣalāḥiyah endowment).

⁸³Only Ḥaram document no. 323/1 (12 Shawwāl 763/4 August 1362), Little, *Catalogue*, 283; resold within the same month, Ḥaram document no. 323/2 (16 Shawwāl 763/8 August 1362).

⁸⁴Ḥaram document no. 370, from 1 Jumādā I 712/4 September 1312, cf. Little, *Catalogue*, 290.

⁸⁵Cf. the various sales of parts (*sahm*, pl. *ashām*) from the same *ḥākūrah*, Ḥaram document no. 372/1, from 29 Ramaḍān 771/26 April 1370, and following contracts, Little, *Catalogue*, 290f.

⁸⁶Ḥaram document no. 43, with line 4 on the payment of the *ḥikr*.



land the shops were situated.⁸⁷ These shops were the object of several attestations and court procedures,⁸⁸ and two of them were resold in the year 752/1351 for 300 dirhams, the *ḥikr* being one and a half dirhams per month.⁸⁹ Without going into the details of this complicated case,⁹⁰ we realize that these shops were subject to free commercial transaction, separate from the ground on which they stood. The only constraint was the payment of the *ḥikr* to the endowment that owned the land.⁹¹ Unfortunately, sold objects varied from one contract to another, but the impression is that the *ḥikr* increased; from one dirham per month in the year 747/1347 for several shops to one and a half dirhams in the year 752/1351 for only two shops.

It is important to note that the obligation to pay *ḥikr* did not end with the death of a person. The duty “to pay *ḥikr* is transferred,” as jurists would say, “to heirs and buyers.”⁹² The sale of two shops, mentioned above, was done “*waṣīyatan*,” that is, after the death of their proprietor.⁹³ Among the Ḥaram documents figures also the receipt of 75 dirhams annual *ḥikr* for the shop of a rich textile merchant, paid by the guardian of his minor heirs to the foundation of the Madrasah Ṣalāḥīyah in 790/1388.⁹⁴ From this, we may conclude that any investment made by the shop owner, or in any plantation, was for the benefit of his proprietor, who could sell freely his property, under the sole condition that the *ḥikr* be paid.⁹⁵

⁸⁷Ḥaram document no. 42/1, recto (6 Ramaḍān 747/21 December 1346), Little, *Catalogue*, 279. On the Ribāṭ see Burgoyne, *Mamlūk Jerusalem*, 117–26.

⁸⁸Ḥaram document no. 42/2, recto (14 Ramaḍān 747/29 December 1346): acknowledgement of “no rights;” Ḥaram document no. 42/3, verso (27 Ramaḍān 747/11 January 1347): court validation; and Ḥaram document no. 42/4 recto (5 Rabīʿ II 750/23 June 1349): court validation; Little, *Catalogue*, 279–80.

⁸⁹Ḥaram document no. 42/5, verso (20 Rabīʿ II 752/16 June 1351), ll. 28 and 31. Cf. Little, *Catalogue*, 280. In the right margin of recto and verso two more sales of some of the same objects are mentioned, without any details however; see Ḥaram document no. 42/7 (verso) from 6 Shawwāl 754/4 November 1353, and no. 42/8 (recto) from 27 Ramaḍān 756/5 October 1355.

⁹⁰See additionally the buyer’s acknowledgement of having acted on behalf of a third person: Ḥaram document no. 42/9, recto (27 Ramaḍān 756/5 October 1355).

⁹¹Compare also Shams al-Dīn Muḥammad al-Asyūṭī, *Jawāhir al-ʿUqūd wa-Muʿīn al-Qudāh wa-al-Muwaqqiʿin wa-al-Shuhūd*, ed. Musʿad ʿAbd al-Ḥamīd Muḥammad al-Saʿdanī (Beirut, 1996), 1:69, with corresponding contractual clauses.

⁹²For this phrase see the Hanbali jurist Muḥammad al-Maqdisī Ibn Mufliḥ (d. 763/1362) in his *Kitāb al-Furūʿ*, ed. Abū al-Zuhrā Ḥāzīm al-Qāḍī (Beirut, 1418), 4:321. This corresponds exactly to the findings in the Ḥaram documents. Until now however, I have not found a similar Shafiʿī quotation.,

⁹³Ḥaram document no. 42/5, l. 24.

⁹⁴Ḥaram document no. 662 (16 Muḥarram 790/26 January 1388), Little, *Catalogue*, 329 (see above).

⁹⁵I did not find any reference to a limitation of such a *ḥikr* contract to, for instance, 99 years.



These contracts of sale reflect an economic reality very different from that of the village headmen (*ru'asā' al-qariyah*) who guaranteed the payment or delivery of harvested crops to the Ḥaram *waqf*.⁹⁶ In some cases, the obligation of the villagers to cultivate their land was enforced by a formal *qasāmah* oath, whose breach was considered perjury (*ḥinth*) and subject to high fines.⁹⁷ These villages were part of the Ḥaram endowment created by Ṣalāḥ al-Dīn al-Ayyūbī in the sixth/twelfth century. For the villagers, the obligation to deliver a part of their harvest to the *waqf* may have resembled a tax, which they paid for the previous year.⁹⁸ Apparently, farmers also paid individually to the *waqf* administration. One account of revenues from the village al-Quṣūr, which was part of the Ḥaram *waqf*, distinguished between revenues from the farmers (*fallāḥīn*) and revenues guaranteed by the village head (*ḍamān*).⁹⁹

We can also identify cases in which individuals had rented land for agriculture from a *waqf* in an *ijārah* (rental) contract. The leaseholder paid *ujrah* (rent), not *ḥikr*, but the difference went beyond denominations. Unlike *ḥikr* land, which stayed in the possession of the heirs, the death of a leaseholder might have caused problems for his heirs, even with a long-term *ijārah* contract.

On 25 Shawwāl 794/14 September 1392 the Shafi'i judge of Jerusalem, Taqī al-Dīn, gave his verdict to the claim of the Khānqāh Ṣalāḥīyah Foundation, represented by the Shaykh Jamāl al-Dīn 'Abd Allāh Ibn Ḥāmid, to terminate a lease of land in the Buq'ah area outside Jerusalem, because the leaseholder had died prior to its termination. The contract had been concluded in Sha'bān 791/August 1389 for thirty years at an annual rent of 76 dirhams. The defendant, one of the leaseholder's heirs, insisted that the contract be continued, since its term had been set for 30 years and was not linked to the life of the original leaseholder. According to the defendant, there was no reason to terminate the contract

⁹⁶See Ḥaram documents nos. 19, 48, 110, 194, 202, 280, 348, and 459, all from the years 706/1306 to 708/1308, some of them mentioned by Richards in Burgoyne, *Mamlūk Jerusalem*, 67.

⁹⁷See Ḥaram documents nos. 293 and 697; cf. D. S. Richards, "The Qasāma in Mamlūk Society: Some Documents from the Ḥaram Collection in Jerusalem," *Annales Islamologiques* 25 (1991): 245–84.

⁹⁸Cf. Ḥaram document no. 348, cf. Richards in Burgoyne, *Mamlūk Jerusalem*, 67b. For the complexity of this phenomenon from a juridical point of view, see Baber Johansen, *The Islamic Law on Land Tax and Rent: The Peasants' Loss of Property Rights as Interpreted in the Hanafite Legal Literature of the Mamluk and Ottoman Periods* (London, 1988).

⁹⁹See Ḥaram document no. 769a (for the years 792 and 793), recto, column A, first item: *faḍl al-ghallāt bi-ism al-fallāḥīn 2000 dirham*; second item: *ḍamān al-mu'allaq bi-ism al-ru'asā' wa-al-fallāḥīn 9000 dirham*. Another document from the year 795, Ḥaram document no. 847, ed. Richards, "Qasāma," 267, has the elders of the village al-Quṣūr attest to having paid only *zakāt*, and not their taxes (*ḍarā'ib dīwānīyah*), for the last four years. I am not sure how to resolve this contradiction, if there is one.



since the claimants would receive all outstanding payments from the estate of the deceased. The qadi Taqī al-Dīn gave a judgement (*ḥukm*) in favour of the leaseholder's heirs and allowed the rent to be paid from the estate.¹⁰⁰ In this case, the heirs' interest in continuing the contract is obvious. The existing conditions suited them better than what they could have hoped to obtain in a new contract, whether another lease or a *ḥikr*.¹⁰¹ The lease of arable land to farmers seemed to have been a common practice.¹⁰² From Ḥaram document no. 629, we learn that endowments sometimes leased the plantations (*ghirās*) in their possession for a specified period; here it was for 10 years.¹⁰³

As a result, we conclude that at least two types of contracts regulated the use of *waqf* property for commercial and agricultural activities: the lease of an object (*ujrah*) and the ground rent (*ḥikr*). Since most of the surviving documents concern the estates of deceased persons, we have at our disposal two acquittals for payments vis-à-vis the Ḥaram endowment, made from the qadi's depository in the name of the heirs or from their *waṣīy*. One concerns the annual rent (*ujrah*) for a shop in the Sūq al-Wuṣṭānī amounting to 15 1/2 dirhams per month.¹⁰⁴ The other is the previously mentioned receipt of 75 dirhams annual *ḥikr* for the shop of a rich textile merchant, paid by the guardian of his minor heirs to the foundation of the Madrasah Ṣalāḥīyah in 790/1388.¹⁰⁵ Although any comparison without knowing the exact circumstances in each case is always problematic, the amount of the annual rent (*ujrah*) of 186 dirhams (15 1/2 x 12) being more than double that of the *ḥikr* may well be explained by the fact that the rented shop belonged to the endowment, contrary to the shop on *ḥikr* land.¹⁰⁶

The interest of a *waqf* administration in transforming their assets into *ḥikr* was

¹⁰⁰Ḥaram document no. 334, edited by al-ʿAsalī, *Wathāʿiq*, 2:22f. On a discussion of the *ḥukm* in this case see Christian Müller, "Settling Litigations without Judgment: The Importance of a *Ḥukm* in Qadi-Cases of Mamlūk Jerusalem," in *Dispensing Justice in Islam: Qadis and their Judgments*, ed. Muhammad Khalid Masud, Rudolph Peters, and David S. Powers (Leiden, 2006), 51–55.

¹⁰¹The qadi Sharaf al-Dīn was known for having transformed land in the Buqʿah area into *ḥikr* in the year 793/1391 (see below), one year before the verdict of Taqī al-Dīn. This "coincidence" may illustrate an ongoing pressure on farmers to change contracts.

¹⁰²See Ḥaram document no. 640 from 7 Dhū al-Qaʿdah 796/3 September 1394, edited by al-ʿAsalī, *Wathāʿiq*, 2:62; cf. Little, *Catalogue*, 236. The land was leased by the Mamluk viceroy.

¹⁰³Ḥaram document no. 629/1 (1 Shaʿbān 796/1 June 1394), Little, *Catalogue*, 299; cf. Richards in Burgoyne, *Mamlūk Jerusalem*, 67.

¹⁰⁴Ḥaram document no. 325 (12 Rabīʿ I 797/5 January 1395), Little, *Catalogue*, 210, rent to the "waqf mabrūr."

¹⁰⁵Ḥaram document no. 662 (16 Muḥarram 790/26 January 1388), Little, *Catalogue*, 329 (see above).

¹⁰⁶Compare also the sale of such shops and the *ḥikr* due in former years, above.



primarily to allow the development of land by private investors. They planted trees or built shops and houses, which became their private property. A citation by Mujir al-Din in his chronicle of Jerusalem, *Al-Uns al-Jalil*, mentions a case of the transfer of land to *hikr* in the period of the Ḥaram documents. The qadi of the city, and shaykh of al-Khānqāh al-Ṣalāḥīyah, Sharaf al-Din ʿĪsā ibn Ghānim (d. 797/1395)

made the land of al-Biqʿah outside Jerusalem, which is included in the *waqf* of the aforementioned *khānqāh*, into *hikr* in the year 793. It was given over to vineyards (*kurūm*) whereby the revenue for the *waqf* grew, the people having developed a liking for this land and its utilization having increased since the time when it was sown land.¹⁰⁷

Even before this date, the Khānqāh Ṣalāḥīyah possessed olive trees cultivated by wage laborers. See for this an account of the sale of olives including the payment of wages from the year 789/1387.¹⁰⁸ Already cited is the litigation between the Khānqāh Ṣalāḥīyah and the heirs of a leaseholder over the continuation of the *ijārah* contract.¹⁰⁹ The other documents concerning economic activity of this endowment, like the renting of shops or a bath, certainly merit a detailed study¹¹⁰ that is beyond the scope of this article.

The Ḥaram documents provide insights into *waqf* as a legal institution on various levels of Mamluk society. The city of Jerusalem as a center of veneration and pilgrimage profited greatly from the influx of “foreign” capital that established endowments within the city for religious reasons. One should not underestimate its material help for religious scholars living in the city or on pilgrimage (*mujāwir*), in matters of food and housing. Endowments provided the material basis for religious services not only in the Holy Sanctuaries, but also in private Sufi convents. They paid the professors in colleges and gave shelter to their students.

Outside the world of learning and religion, the local economy was certainly stimulated by building and repair activities that were supported by the *waqfs*’

¹⁰⁷Mujir al-Din, *Uns*, 2:127, trans. D. Little, “Two Fourteenth-Century Court Records from Jerusalem Concerning the Disposition of Slaves by Minors,” *Arabica* 29 (1982): 24.

¹⁰⁸Ḥaram document no. 573 (20 Ramaḍān 789/4 October 1387), Little, *Catalogue*, 291.

¹⁰⁹Ḥaram document no. 334.

¹¹⁰See Richards in Burgoyne, *Mamlūk Jerusalem*, 67a. To the documents cited by him, one may add other accounts of this endowment, such as Ḥaram documents nos. 775a, 775b, 775t, 775th and 775j.



founders and their administrators.¹¹¹ Certain endowments provided elementary teaching for children and material help for orphans. *Waqf* administrations were the landlords of numerous shops and buildings in the city, as well as the owners of orchards and arable land. Craftsmen and farmers were directly affected by the policy of *waqf* administrations, by the type of lease contract they had obtained, and by investment opportunities given through the *ḥikr* system. We should be cautious of generalities, such as the suggestion that too long a contract or the *ḥikr* alienated *waqf* property and led to its cessation. Long contracts were sometimes necessary to attract capital for investment to the benefit of both sides. Unfortunately, our documents do not furnish information about the duration of the *ḥikr* status. The documents at hand show perfectly how legal rights could be preserved over a long period of time. However, the legal status of documents in Islamic law made their court confirmation necessary within certain intervals. Only fairly reasonably managed *waqf* institutions would take the necessary steps and preserve their rights. This leads us to the various types of *waqf* foundations which in the case of Jerusalem went from the big administration of the Ḥaram *waqf* with its revenues from all over Palestine, to middle-sized religious foundations by individuals, to the endowing of property for the benefit of a family. At all levels of Mamluk society, the legal instrument “*waqf*” served men and women as a means to realize economic projects and to stabilize social situations. Prestigious religious and humanitarian institutions in the city, like the Ṣalāḥīyah Hospital¹¹² or the Ḥaram foundation, profited from the necessity in each endowment deed to name a final beneficiary in perpetuity. Over the centuries, they received the endowed property of families that had ceased to exist. In this way, the will of individuals finally merged into a communal project that helped to maintain traditional society.

¹¹¹ Compare also Ḥaram documents nos. 773a and 773b, Little, *Catalogue*, 352.

¹¹² Cf. Ḥaram documents nos. 20 and 204.

