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THE ARABIC YĀRKAND DOCUMENTS

By MONIKA GRONKE

(PLATES I-VIII)

The five Arabic documents published here are part of a collection of Arabic and Uighur legal texts from the Yārkand oasis (modern Chinese Turkestan) where they were discovered in a garden outside the city of Yārkand in 1911. We shall briefly retrace their history here : according to Denison Ross, who is the only source of information on the origin of the documents, the original texts, after their discovery, were transmitted to the then consul-general in Kāšgar, Sir George Macartney, who forwarded them to India where they were finally kept by the Indian director-general of archaeology.¹ Recent attempts to recover the originals which are probably still in India have yielded no results. There seems little hope of finding them again at the moment.

However, Denison Ross took photographs of the documents, most of which are now kept in the S.O.A.S. Library in London. The documents, when they were discovered in Yārkand, consisted of fifteen pieces, seven in Arabic and eight in Turkish, the latter being written either in Arabic (five) or in Uighur characters (three).² It seems that Ross kept the photographs of the five Turkish documents in Arabic script and two of the Arabic documents which are not to be found now in the S.O.A.S. collection. One of the Turkish documents in Arabic script kept by Ross was translated into English by Vladimir Minorsky from a copy of the text accompanied by a Persian translation by Ross's *munši*. Minorsky, who worked only on this secondary material, reserved the edition of the text until the moment when the original or a photograph of it would be available.³

What is now left of the Yārkand collection is the five Arabic documents presented here, as well as the three Turkish texts in Uighur script. The latter, published by Ş. Tekin in 1975,⁴ have recently been re-edited with a commentary, together with Minorsky's text, by Marcel Erdal.⁵ This re-edition is based, among other things, on the notes of the late Sir Gerard Clauson who had worked on the Yārkand collection in 1968, both on the Turkish documents in Uighur script and on the Arabic ones published here (with the exception of no. I). Clauson's notes, including his interpretation of Minorsky's text, were finally transferred to Professor V. L. Ménage who suggested in 1982 that all the remaining documents from the Yārkand collection in London should be published.⁶

Two of the Arabic documents published here have been edited before, one by Barthold in 1923 (our text I),⁷ the other one by Tekin in 1979 (our text III).⁸ Barthold was mainly interested in the historical information which the text yielded on the Tamğāc Buğrā Qarā Ḥāqān, Abū 'Alī Ḥasan b. Sulaymān, to

¹ Note by Denison Ross added to Barthold's article *Bughra Khan*, 158.

² Ross, *ibid.*

³ Minorsky, 192 ff.

⁴ Tekin, Şinasi : ' Bilinen en eski İslami Türkçe metinler ', *Selçuklu Araştırmaları Dergisi*, 4, 1975, 157-86.

⁵ Erdal, ' The Turkish Yārkand documents ', see *BSOAS*, XLVII, 2, 1984, 260-301.

⁶ I should like to express my gratitude to Professor Victor L. Ménage for having entrusted me with the task of editing the five documents presented here. For details on the Turkish texts see Erdal's publication. References to Clauson's notes on the Arabic Yārkand documents will subsequently be marked Cl.

⁷ Barthold, *Bughra Khan*.

⁸ Tekin, *Qarāḥānīd Document*.

whom the Qūdātqū Bilik was dedicated, while Tekin concentrated his work on the witnesses' section which is in Turkish and partly written in Uighur script. It seemed advisable to re-edit these two documents here, together with the other three currently available Arabic Yārkand deeds, all the more so since Tekin's reading of the text has some lacunae and requires several amendments.

To complete this brief survey of the Yārkand collection, I shall also draw attention to the publication of three further Arabic deeds from Yārkand which were discovered at about the same time. They were handed over to Paul Pelliot and then published by Cl. Huart in 1914 (without facsimiles).⁹

Islamic Turkestan has always been—and still is—above all a field of Turcology, though the region has appeared in Islamic historical sources ever since its Islamization. Arabic studies are rarely concerned with those marginal regions where the Arabic language, confined to special fields and to educated, socially high-ranking people, was not of prime importance. The Yārkand texts are surely of greater interest to Turcologists than to Arabists as they are relatively early and of central importance in the field of Turcology. None the less, they should also be considered in an Islamic context, especially in view of Islamic legal practice, on aspects of which they throw some interesting light.

All the documents at present known from Yārkand, that is, the S.O.A.S. collection together with Minorsky's text and Huart's three Arabic deeds, cover the years 473–529/1080–1135. The texts thus concern the Qarākhānid period and the geographical region where the dynasty's Eastern branch was in power. The history of the Qarākhānids, the first dynasty to govern a Turkish Islamic state, is still difficult to retrace, given the relative shortage of historical sources in comparison with other periods and regions.¹⁰ Our documents are unfortunately not of a nature to fill these lacunae as they do not deal with dynastic matters at all (with the exception of the Qarākhānid rulers mentioned in no. I). The documents we have consist mostly of land sale contracts and three court orders concerning property rights, the division of an inheritance, and an appointment to guardianship. Thus they belong to the kind of deeds which are conventionally named private documents. For the time being, there is no definition of this term which is wholly satisfactory in the framework of Islamic law. Documents may be classified either according to the authority issuing them (diplomatic point of view) or to the nature of the affairs and persons involved (legal point of view). Private documents, in contrast to state decrees, would therefore, depending on the point of view adopted, either be issued by a judge or notary, or be concerned with private persons' affairs.¹¹ As for the Yārkand documents, the diplomatic definition based on the issuing authority is inadequate insofar as some of the documents have been written in the absence of any legal authority whatsoever. The legal definition would therefore be more appropriate here, as the affairs dealt with by the Yārkand texts do indeed only concern private persons and obviously have nothing to do with the ruling dynasty or government. This also explains why the documents give little or no information on the political history of the period.

⁹ Huart, *Trois actes notariés de Yārkand*.

¹⁰ The basic work for the Qarākhānid period is still Barthold, *Turkestan* (1928), to which O. Pritsak's studies should be added. The latter has furnished a synthesis of Qarākhānid history in *Islām Ansiklopedisi*, art. 'Karahanlılar'. An updated version of it is given by C. E. Bosworth in the new *Encyclopaedia of Islam*, art. 'Ilek-Khāns'.

¹¹ For the notion of private documents and their value as historical sources as well as further references, see both my *Arabische und persische Privaturkunden*, 2–3, and *Rédaction des actes privés*, 160 and 163.

External characteristics, language, grammar

The Arabic Yärkand documents ¹² are comparatively well preserved. Texts I and V have several little holes, texts II and V are damaged at the top. Only document IV is fragmentary, part of the top and the whole lower part having gone, but if we compare it with the other Arabic documents it would appear that not too much of the actual text is missing. What is left of text IV is enough in any case to make clear the matter dealt with. On the other hand, worn places and stains make the deciphering and reading of the texts difficult.

As the originals of the Arabic documents are not available, we cannot unfortunately give any precise information on their external characteristics (size, paper quality, ink, etc.). Nevertheless, the photographs clearly show the traces of horizontal folding of the paper, i.e. in the direction of the written lines, thus indicating the manner in which these deeds were kept: starting at the bottom, they were rolled and then pressed flat. In this way, the top of the document ending the roll is the part most exposed and therefore likely to be damaged, as is shown by our documents II and V. Needless to say, that damage is sometimes considerable; the beginnings of the text of numerous Islamic deeds folded in this way have tears and holes in them or are missing altogether in some cases. The habit of folding important documents into this kind of small roll is attested among the Uighurs of Central Asia ¹³ as well as in the Islamic Near East.¹⁴ The Arabic papyri from Egypt, on the other hand, are examples of other ways of folding and lacing documents for preservation.¹⁵

The Arabic Yärkand documents are all written in cursive script (*nashī*). When the document is certified by a judge, there is the '*alāma*' written above the text of the deed and a remark below it certifying the validity of the document.¹⁶ Witnesses' attestations are also placed below the text of the document or, if it is certified, below the certification. No seals were used.

Since we do not have the originals, we do not know if anything was written on the backs of our documents. Short notes specifying the contents of contracts were often written on the back of documents to make their identification easier where necessary. This practice, as far as we know from other contracts, was also followed in the Yärkand oasis.¹⁷

The language of the five documents published here is Arabic which undisputedly dominated the legal administration of the entire Islamic world during the Middle Ages. It was the religion of Islam founded on the Arabic language which gave birth to the Islamic legal system; logically, Arabic also became the legal language of Islamized countries. In the field of legal adminis-

¹² Cl. remarks in his notes on the Arabic texts: 'These texts are physically in a worse condition than the Uygur ones, with stains and worn places on some of them, and the scripts, which tend to be idiosyncratic and spidery, are difficult to read. . . . Most of the documents are completely or almost completely without dots. We are therefore confronted with the same difficulty as with the Uygur documents, if you know what a sentence is about it is probably fairly easy to read, if you don't it verges on the impossible.'

¹³ Hamilton, 26-27.

¹⁴ For example the documents found in the Šafavid sanctuary of Ardabil (Azerbaydjan), were kept in rolls, see G. Herrmann, 'Urkundenfunde in Äzärbäyğän', *Archäologische Mitteilungen aus Iran*, N.S., 4, 1971, 249.

¹⁵ Grohmann, 126-7, and *CPR*, III, 75-76.

¹⁶ Documents I and II; the certification of the fragmentary text IV has not been preserved.

¹⁷ It is attested in Huart's documents from Yärkand. Clarke, 221-2, supposes that most of the Uighur legal contracts also had such notes on the back; examples are to be found in Hamilton, 42-3, and Zieme, 297. For the Arabic papyri see Grohmann, 121. Similar short indications of the contents written on the back of documents, but a long time after their composition, are known from the Ardabil contracts where they served for the purpose of registering the existing deed; see my *Arabische und persische Privaturkunden*, 61.

tration, Arabic progressively supplanted the national languages and scripts of the regions conquered by Islam, which adopted the Arabic language together with the new religion and the legal system issuing from it. The progress of Arabic in the legal field is thus one criterion which helps us to determine the different degrees of Islamization of a country.

The Yärkand documents at present available enables us to observe more closely the process of Islamization of this region over several decades. Yärkand became Islamic by the end of the tenth century.¹⁸ The oldest deeds from Yärkand which are published date from 473–483/1080–1090,¹⁹ that is, eighty to ninety years after the Yärkand region embraced Islam. These documents, while preserving the Turkish language and Uighur script, present a great number of Islamic elements. It should be emphasized that the latter are not limited to the use of Arabic and Persian legal terms, but involve other and by far more essential features such as the adoption of the Islamic dating system and the structure of the texts of deeds, which I shall discuss in detail later. Thus the Turkish deeds were drawn up within a milieu which, if not yet wholly Islamic, was at least in process of Islamization. At any rate, they fundamentally differ from Uighur private documents drawn up in the Eastern non-Islamic regions of Central Asia which are modelled rather on Chinese types of contracts. From 489/1096²⁰ onwards, most Yärkand documents are drawn up in the Arabic language and script. The use of Turkish and Uighur script only appears in the attestations of the witnesses: some of them kept their national Turkish language and script while others wrote in Arabic.²¹ Deeds in Turkish but with Arabic script represent, to a certain extent, a transitional phase between the two types of documents just mentioned, i.e. Turkish in Uighur script and entirely Arabic. In this third kind of deed, although the Arabic script as well as the basic constituents of Islamic legal documents have been adopted, the Arabic language is still rejected in favour of Turkish. So far we have only one deed of this kind, dating from 515/1121;²² the other four which were discovered in Yärkand having disappeared from the S.O.A.S. collection, their dates are unknown. This development, of course, cannot have been a linear one. Though detailed evidence from Yärkand is still lacking, we must presuppose some overlaps, i.e. the use of more than one type of document at the same time, until the purely Islamic type in Arabic language and script finally dominated in the legal field. The evidence provided by the available Yärkand documents, however, illustrates to a certain extent, although not exhaustively, the increasing influence and final adoption of Islamic legal practice in the Yärkand oasis. At the beginning of the twelfth century the far-reaching influence of Islam appears to have penetrated the whole legal administration system. This is suggested by a few hints in the Arabic Yärkand documents concerning title and appointment of judges which were apparently well adapted to Islamic legal theory.²³

While a knowledge of Arabic was indispensable for people working in the legal field, the Turkish population of the Yärkand oasis knew little or no Arabic, except for a few stereotyped phrases occurring in the testimonies of the witnesses. The legal procedure in court or in a notary's office was therefore held in Turkish whereas the corresponding document was written in Arabic. This is

¹⁸ Huart, 609.

¹⁹ Erdal, texts I–IV.

²⁰ The oldest Arabic document from Yärkand is, for the time being, Huart's text I.

²¹ Our documents III and V and Huart's documents II and III.

²² Erdal, text VI.

²³ See commentary to document I, 1. 3.

illustrated by our document III (l. 22) and two other Yärkand contracts ²⁴ which state that the Arabic deed was afterwards read to the persons concerned in a language which they knew and understood, that is, of course, in Turkish.

In the Arabic documents published here, diacritical signs are only used sporadically which is a current phenomenon in Islamic notarial practice. Their frequency in a given document depends to a great extent on the scribe himself and on his personal preferences.²⁵ One example is document II in which diacritical signs are relatively frequent in comparison with the other four deeds, no doubt due to the scribe's personal inclinations.

Dots are extremely scarce in our documents. Other diacritical signs (*hamza*, *madda*, *tašdīd*, etc.) as well as vocalization are generally lacking. The only exceptions are to be found in the above mentioned document II: vocalic signs in *ولد* (l. 8), *ترك* (l. 15) and *كُتِبَ* (certification by the judge, l. 2), *hamza* in *ماي* (l. 18); there is also a *tašdīd* in *الساحي* (doc. I, l. 18). There are also, and again mostly in document II, some so-called differential signs. These are signs which the scribes were free to use to differentiate between two letters having the same form and only differing from one another by diacritical dots. The differential sign is normally added to that letter which has no diacritical dot. In document II, the scribe thus puts a dot below the letters *dāl* and *šād* to distinguish them from *dāl* and *dād* respectively. In the same way, he adds three dots below the *šin* to differentiate it from *šin*. Some examples are: *احد حبوده* (l. 14), *وصياه* (l. 12), *پهوبائي* (ll. 3, 18), *يويپف* (ll. 13, 15, 17), *اليابس* (l. 19), *البيطان* (l. 16); in document IV: *وصي* (l. 5). Similarly, the scribe of document III adds a *fā'*

above the same letter in the word *الف* (l. 16). Various forms of differential signs appear in the Arabic papyri ²⁶ as well as in the Ardabil contracts.²⁷

The language of the Yärkand documents does not always follow the grammatical rules of classical Arabic, if we take these as standard. Islamic private documents frequently contain 'mistakes' or rather orthographic and grammatical deviations from the classical language. It is not astonishing that similar phenomena occur in the Arabic Yärkand deeds. As for orthography, *tā' marbūta* can be replaced by *tā' taḥwila*: *طيبة* for *طيبة* (II, l. 12) and *ابنت* for *ابنة* (II, l. 13), or even by *alif mamdūda*: *ابنتا* for *ابنة* (II, l. 8). *Alif al-wiqāya* is lacking in *تفرقو* (V, l. 17). Grammatical deviations mostly concern the determination of nouns, for example *بتاريخ المورخ فيه* (I, l. 26), *حدود الاربعة* (II, l. 14; V, l. 7), *القطعة الارض* (III, ll. 7, 11), *نقد البلدة ياركنده* (III, l. 17), *ابرامه* (III, l. 21), *بعد صحة و ابرامه* (III, l. 21), *معروفه و المنسوبه* (V, l. 13), *اخوه اصغر* (V, l. 31), and *الايف الثمن* (V, witness no. 8). One scribe uses both *ان كان له ذلك* and the correct form *ان كانت له ذلك* in the same document (I, ll. 17, 22). In one case, the verb *منع* is followed by the preposition *ل* instead of *عن*, *من* or *accusative* (III, l. 25).

Even though Muslim judges, scribes, and notaries were professionally obliged to know Arabic, not all surely mastered it perfectly. It goes without saying that the frequency of such deviations from the classical language varies in the documents according to the individual scribe's knowledge. Some kinds of deviations, however, appear not only in the Islamic private deeds from non-Arab regions, but also—as a sort of 'vulgarism'—in documents from Arabic-

²⁴ Huart, 612 (doc. I) and 623 (doc. III). The same statement occurs again in a donation act (*waqfiyya*, dated 458/1066) of Ibrāhīm Tamgāč Hān which was read and explained to the donor in Turkish, see Khadr-Cahen, 320.

²⁵ Personal characteristics of scribes are well documented by the Arabic papyri, see Grohmann, 91-2, and *CPR* III, 66-7.

²⁶ *CPR* III, 72.

²⁷ See my *Arabische und persische Privaturkunden*, 8.

speaking countries.²⁸ It would thus be simplistic to attribute such particularities occurring in documents from non-Arab countries exclusively to the non-Arab scribe's poor Arabic. It seems to be more a question of a habitual use of Arabic in Islamic notarial practice which did not agree with the classical standard.

The Arabic Yärkand documents do not present abbreviations, nor sigla, nor numbers. The date of a document is always written out in letters.

As for Arabic names, I shall just indicate the use of the *kunya* ابو for the oblique case ابى (IV, l. 4),²⁹ which is the only example in the Yärkand documents, and the orthography of اسرافيل written without initial *alif* سرافيل (doc. V, l. 29). Initial *alif* is also cancelled in ابو بكر which becomes بو بكر (doc. II, witness no. 1), a current phenomenon in Arabic documents and letters. In Uighur script, the name Muḥammad appears as Muḥmat (doc. V, witnesses nos. 5 and 6). Similar examples are to be found in the Turkish Yärkand contracts.³⁰

As for Turkish words and names, the variability of their defective and non-defective writing in Arabic script is a well-known phenomenon which occurs in the Yärkand deeds as well. The following examples are characteristic though not exhaustive: اوغل (III, witnesses' section, ll. 6, 8, 9, 11, 12, 16)—اغلى (III, witnesses' section, ll. 2, 5, 14), تنوق (III, witnesses' section, l. 16)—تنق (III, witnesses' section, ll. 8, 10, 13); as for names: اينال (III, ll. 2, 15)—انال (I, l. 7).

Legal authorities and certification

The Turkish Yärkand documents in Uighur characters, all of them land sale contracts, are comparatively short and written in a rather simple style. They were concluded between only the two contracting parties in the presence of witnesses with no judge, notary or other legal authority being involved. This is also true of the one Turkish document in Arabic script. We should note that the absence of any legal authority is not incompatible with Islamic law. Private persons could draw up a contract themselves without turning to a legal authority. Theoretically, they could even content themselves with oral testimonies of witnesses given in their presence and not write anything down at all.³¹ This way of concluding a contract without a legal authority seems to account for the use of the subjective style in which the Turkish deeds are drawn up, i.e. one of the contracting parties addresses the other in the first person singular. In the Turkish Yärkand documents, it is always the seller who addresses the buyer. This might reflect Uighur principles according to which only the seller could prepare an autographed deed.³²

The Arabic Yärkand deeds, on the other hand, comply perfectly with the usual Islamic way of drafting private documents. Some of these contracts were concluded in the presence of a judge who certified them³³ or, it would seem, of a notary. The Muslim notaries³⁴ worked outside the court in special offices. They were appointed and authorized to practise their profession by the judge who kept administrative and disciplinary control over them. Nevertheless, the pro-

²⁸ See *ibid.*, p. 12 and nn. 2–6.

²⁹ For the increasing invariability of the *kunya* in more recent private deeds see *ibid.*, 13.

³⁰ See Erdal, 266.

³¹ Tyan, *Notariat*, 31.

³² Yamada, 114 and 115. A similar example, though the document is fragmentary, seems to be an early Persian contract from Khotan (501/1107), see Minorsky, 185–9.

³³ Our documents I, II, and IV; the part containing the judge's certification in document IV, which is fragmentary, has unfortunately gone.

³⁴ For details on the professional notaries see Tyan, *Notariat*, 16–45, and Veselý, *Hauptprobleme*, 322–32.

professional notaries always worked as private persons who drew up documents in their own names; they were not entitled to do it in the name of the judge or of any other legal authority. Other professions were not incompatible with the notary's work and could be exercised at the same time. As the notarial profession required special skill in writing, Arabic language and Islamic law, notaries often held other offices dealing with legal matters such as scribe or court witness, or even judge.

What is the distinguishing mark of a document written by a professional notary? In such deeds where no judge is involved we would expect the notary to mention his name somewhere on the sheet as a kind of signature. This is indeed the case in our document V and in another Yārkand contract dated 505/1114.³⁵ The former has the name of the scribe accompanied by the usual Arabic formula *katabahu* 'he has written it' whereas the latter only shows the scribe's signature. The importance that apparently was attached to the notary's signature is well illustrated by a rule given in Islamic handbooks for notaries recommending that when a deed requires more than one sheet, the notary should sign every sheet he has used with his name.³⁶ We may therefore assume that a notary generally signed every document he had written, thus taking the responsibility for the accuracy of the deed.³⁷ The notary's signature is normally placed at the end of the text of the deed, or immediately below it (as in our document V) above the witnesses' attestations.³⁸ Some Arabic papyri from Egypt show that the signature can also be placed above the text at the top of the sheet.³⁹

It should be noted that one Turkish text⁴⁰ has been signed by one of the parties who wrote the document himself in the subjective style. I would doubt that we can take this signature as real validation equivalent to that of a professional notary who, as a neutral third person, was obliged—at least in an Islamic milieu—to draw up deeds in Arabic and according to the rules of Islamic notarial practice. It seems more likely that the signature in this Turkish text has no official value and might just as well have been lacking as in the other Turkish contracts.

If then, as far as Arabic documents are concerned, we take the signature to be a general criterion for deeds drawn up by professional notaries, then there are still a few Arabic Yārkand documents left which were neither written by a notary nor in the presence of a judge.⁴¹ In short, there is no hint that a legal authority was involved. Unlike the Turkish contracts, however, these Arabic deeds are written in the objective style, i.e. in the third person, and correspond perfectly in form, style, and vocabulary to the Arabic deeds written by a notary or a scribe in the court. They must have been drawn up by a person well versed in both Arabic language and Islamic law or notarial practice. Persons concluding a contract, as has been pointed out above, did not depend on a legal authority to have it written down: they could write a contract themselves or—and this is presumably what happened here—have it written by a third private person

³⁵ Huart, 623 (doc. III).

³⁶ Tyan, *Notariat*, 59.

³⁷ The same is true for Uighur private documents in which the scribal certification of a deed is made by a public notary; see Clarke, 350. The formulae of scribal certification in Uighur documents are given *ibid.*, 352–6.

³⁸ The notary's signature should clearly be distinguished from that of the scribe, who writes a document in the presence and by order of the court judge. The scribe's signature is also placed at the end of the text of the document, but this is certified by the judge afterwards. See for example my *Arabische und persische Privaturkunden*, documents IX, XI, XIV, and XVII.

³⁹ See *APÉL*, I, documents 54, 60, 63, 64, and 67.

⁴⁰ Erdal, text VI.

⁴¹ Our document III and Huart's documents I and II.

who should be an accepted court witness.⁴² Those *'udūl* or professional witnesses were persons whom the judge—after having examined their integrity—had admitted to his court as trustworthy (*'adl*) witnesses whose testimony was then, as a matter of principle, irrefutable.⁴³ They normally had some knowledge of Islamic law and judicial administration and thus indeed seem to have been qualified enough to draw up a contract correctly. The scribes who wrote the Arabic Yārkand documents which have no notary's signature may thus have been professional witnesses of the court who drew up these deeds as private persons at the request of the two contracting parties. As the functions of professional witness, court scribe, and professional notary all required a certain knowledge of Islamic law and were thus often exercised by one and the same person, the writers of the documents in question may also have been court scribes or professional notaries, but once again, they were working here off-duty as strictly private persons. It seems only logical that people wanting to have a contract written down should call upon a person who was experienced in legal matters and capable of drawing up a deed in the proper form, that is, someone professionally employed in the legal field as witness, scribe or notary. When, for some reason however, they drew up a contract just as private persons, outside their normal professional functions, they did not need to sign the deed because they did not represent, in this case, a legal authority. This seems to have happened when the contracting parties concerned, for whatever reason, did not want either to turn to a legal authority or to draw up the deed themselves. It may be, for example, that they could not write and that a judge or notary was too expensive.

The Yārkand collection thus consists of four different kinds of documents :

1. deeds drawn up by the scribe of the court of law in the presence and by order of a judge who certified the documents afterwards (our documents I, II, and IV) ;

2. deeds drawn up by a professional notary who signed them with his name (our document V and Huart's document III) ;

3.-4. deeds written in the absence of legal authorities. Among them there are all the Turkish deeds written by one of the contracting parties (seller) and some of the Arabic deeds (our document III and Huart's documents I and II) which were drawn up by a third person apparently well versed in Islamic notarial practice. These latter persons were probably professional witnesses, scribes or notaries who acted here as private persons and therefore did not sign the documents.

Each kind of document was legally valid insofar as it served as proof for the transaction which had taken place, whether or not a legal authority had been involved. Yet we may assume that a higher value was attached to documents issued from the judge's court or a professional notary's office, i.e. from a public legal authority.

In contrast to the Turkish Yārkand documents which are, as has been stated above, exclusively written in a subjective style—i.e. one of the parties addresses the other—the Arabic deeds use the objective style, i.e. the facts are presented in the form of an impersonal report in the third person.⁴⁴ The objective report was the general form of documents in the Islamic world and already occurs in

⁴² Tyan, *Notariat*, 31.

⁴³ For the professional witnesses see for details Tyan, *Organisation judiciaire*, 236–52.

⁴⁴ This difference in style between the Uighur and the Arabic documents has already been noted by Cl.

the deeds of land donation of the Prophet.⁴⁵ In two Arabic Yārkand deeds drawn up by order of a judge, the text changes from the objective style into a personal report given by the judge in the first person (our documents II and IV),⁴⁶ whereas in the third deed of this kind (our document I) the objective style is maintained.

The documents written by order of a judge were afterwards certified by his hand. In the two Yārkand deeds where the judge's certification has been preserved (our documents I and II), it consists of two parts: a religious formula, 'alāma, written above the text of the document and a remark below the text referring to the judge's decision (*ḥukm*).⁴⁷ Both the 'alāma and the judge's concluding remark serve as signatures (*tawqī*).⁴⁸ The 'alāma is a current means of certification in medieval Islam although it was not always used everywhere. A judge—or other dignitary—chose as 'alāma a doxology which sometimes alluded to his name and which he kept all his life.⁴⁹ The 'alāma thus conceived as a personal motto of the undersigned, had the same value as the signature; ⁵⁰ the judge in our document II hints at this fact in his concluding remark. The judge's 'alāma contrasts sharply with the text of the deed by its big letters, but this is not true for his concluding remark: the documents show that the handwriting was different, but not the style of the script. The concluding remark is not even placed at a distance from the text of the deed, but it is written just under the text and has lines the same length. It is thus not at all clear. In Islamic contracts, the judge's certification is often much more conspicuous, being written, unlike the text of the contract, in indented lines, sometimes with bigger letters, and at a certain distance from the text itself.⁵¹

On the other hand, no seal has been used in the Yārkand documents to certify them. Though seals were known in Islamic legal practice and already used for certification among the Arabs in pre-Islamic times,⁵² they were obviously not used in the Yārkand area. Though judges undoubtedly possessed seals,⁵³ they apparently did not always use them as a means of certification.⁵⁴ However, the use of seals (*tamgā*) was common in private documents from non-Islamic Central Asia where the seal could be placed on various parts of the sheet ⁵⁵ and be accompanied, though not necessarily always, by a signature.⁵⁶

In notaries' documents, the notary's signature must be taken as means of certification. All the other documents drawn up in the absence of legal authorities could not, of course, have been officially certified. The proof of the facts

⁴⁵ Grohmann, 115.

⁴⁶ Two further examples may be found in my *Arabische und persische Privaturkunden*, documents XVI and XX.

⁴⁷ See witness no. 5 in document II, who is referring explicitly to the judge's 'alāma as well as to his *ḥukm*.

⁴⁸ See the judge's remark in document II, referring to both the 'alāma and the concluding remark as signature.

⁴⁹ See the list given in Veselý, *Beglaubigungsmittel*, 12–18. For the sovereign's 'alāma see art. 'Alāma', *EI* (2nd ed.) I, 352a.

⁵⁰ Veselý, *ibid.*, 11.

⁵¹ See, for example, the facsimile of document VIII in my *Arabische und persische Privaturkunden* and Papazyan, documents 1, 4, 7, 9, 11, 13–15, 17, 19, 21–3, and 27.

⁵² Grohmann, 129, and *CPR*, III, 82–3.

⁵³ An act of appointment from the Seljukid epoch explicitly states that the judge had a seal, see Horst, 155.

⁵⁴ This is true, for example, for the Ardabil documents of the pre-Mongolian period which were not sealed at the moment of their composition. However, deeds from the Caucasus region, the oldest one dated 704/1305, are sealed; see the documents published by Papazyan.

⁵⁵ In sale contracts, at least three positions of the seal impressions are indispensable: the beginning, the middle, and the close of the text; see Clarke, 344–5, and Yamada, 112; also Zieme, 299–300.

⁵⁶ Yamada, *loc. cit.*

recorded in them was only the witnesses' testimonies. As has been mentioned above, even oral testimonies would have been sufficient according to Islamic law; the written deed does not in theory increase the value of this oral proof.

Structure of the land sale contracts

The basic pattern of the Arabic land sale contracts from Yārkand—that is our documents III and V and the three texts published by Huart—and, on the other hand, of the Turkish Yārkand contracts is as follows:

<i>Arabic contracts</i>	<i>Turkish contracts</i>
1. invocation	1. invocation (only one example)
2. opening formula	2. reference to witnesses
3. identification of the parties	3. seller's declaration referring to his own legal capacity and to the transaction between himself and the named buyer
4. definition of property: location, boundaries, accessory clause	4(a) definition of property: location
5. price and definition of coins	5. price (except for text IV)
6. transfer clauses	6. transfer clauses
7. separation of the parties	7. guarantees: denial of future claims only
8. guarantees: <i>darak</i> , one example of denial of future claims	4(b) definition of property: boundaries (with the exception of text VI)
	(Items 5–7 may have a different order.)
9. reading of the document to the parties	
10. legal capacity of the parties	
11. reference to witnesses	
(Items 7–11 may have a different order.)	
12. date	8. date

It is obvious at first sight that the Arabic documents contain more items and specifically Islamic legal elements than the Turkish texts. The formula of the Arabic deeds is, as we shall see, more elaborate and more comprehensive than that of the rather simple Turkish contracts. Nevertheless, the basic constituents of Islamic contracts have already been adopted and formulated in legal terms of Arabic or Persian origin, such as *bay'*, *milk*, *da'wa qıl-*, *ıqrar qıl-*, *tandurust*, *usparla-* etc.,⁵⁷ while typical elements of non-Islamic Uighur documents⁵⁸ have been left out. These are especially the statement of the seller's motives for selling his property (i.e. need of money), a penalty clause stating the fines for breach of contract and the seals (*tamgā*) or personal signs (*nişān*) of parties, scribe, and witnesses. The order of the items is also different from that of Islamic contracts. Uighur deeds always start with the date which in Islamic deeds preferably is marked at the end of the text. After having described the parties and the location of the property, Uighur texts continue with the confirmation of payment and the handing over of the property and only then

⁵⁷ For details see Erdal, 265. In Uighur documents, on the other hand, nearly all the clauses are stated in formulae adopted from Chinese originals, see Clarke, 381.

⁵⁸ The data for the pattern of Uighur contracts are taken from Yamada, 87–114.

define the boundaries of the property. This order—transfer clauses, boundaries of property—appears to have been retained by the Turkish Yārkaṇd documents (with the exception of text VI) while the definition of boundaries in purely Islamic contracts is always part of the description of the property immediately following its location, thus preceding the transfer clauses. This different order, however, appears to be the only distinct element of Uighur practice incorporated by the Turkish Yārkaṇd texts.⁵⁹ Apart from that they tend to be modelled on Islamic documents from which they adopt their basic elements, style, and vocabulary.

Invocation

All the Yārkaṇd documents start with the *basmala*, the invocation of God. Thus they keep the simplest and most common form of opening of an Islamic deed. In practice, the *basmala* frequently was extended by other religious formulae or even completely abandoned and replaced by a different invocation.⁶⁰ The Turkish Yārkaṇd documents—with the exception of text VI which also starts with the *basmala*—have no religious invocation at all.

Opening formula

The most common introductory formula in objective-style deeds is *hādā mā* ‘this is what . . .’ followed by a verb in the past tense which indicates the nature of the document,⁶¹ namely—in land sale contracts—*istarā* ‘he has bought’. Four Arabic Yārkaṇd deeds start alike, except for one which has *ġamī mā istarā*.⁶² The *istarā* formula, sometimes slightly modified, was widely used in Islamic contracts.⁶³ As for other affairs requiring a judge’s decision such as property disputes, succession affairs, etc., the deeds preferably start with *yaqūlu* ‘he announces’, (i.e. the judge) followed by the judge’s name, thus emphasizing his decisive role in these cases. Our documents II and IV, as well as a piece from Ardabil,⁶⁴ provide examples for this introductory formula. The judge’s importance in such matters is also stressed by the introductory formula *hādā mā aṣḥada ‘alayhi* ‘this is what he, i.e. the judge, has called witnesses for’ also followed by his name in our document I and in a similar example from Ardabil.⁶⁵ In these instances where a judge’s decision is required, the objective style may change into a report of the facts given by the judge himself in the first person, e.g. in documents II and IV, but not necessarily, as is shown in document I.

The Turkish land sale contracts from Yārkaṇd, on the other hand, refer immediately to the witnesses to the document whose names later appear at its end.⁶⁶ This is hardly common either in Islamic practice⁶⁷ or in Uighur tradition where contracts start with the date.⁶⁸

⁵⁹ The structure of the Turkish Yārkaṇd documents is paralleled by an early Persian contract from Khotan (501/1107); see Minorsky, 185–9.

⁶⁰ More details and further references are given in my *Arabische und persische Privaturkunden*, 18–19.

⁶¹ Wakīn, 50.

⁶² Huart, 611 (doc. I).

⁶³ For the Arabic papyri see for example *APEL*, I, documents 54–7; for Syria, Sourdel-Thomine–Sourdel, documents 2 and 3; for Sicily, e.g. Cusa, 101 (doc. 102), 496 (doc. 169) and 499 (doc. 172); for the Ardabil collection, see my *Arabische und persische Privaturkunden*, 19–20.

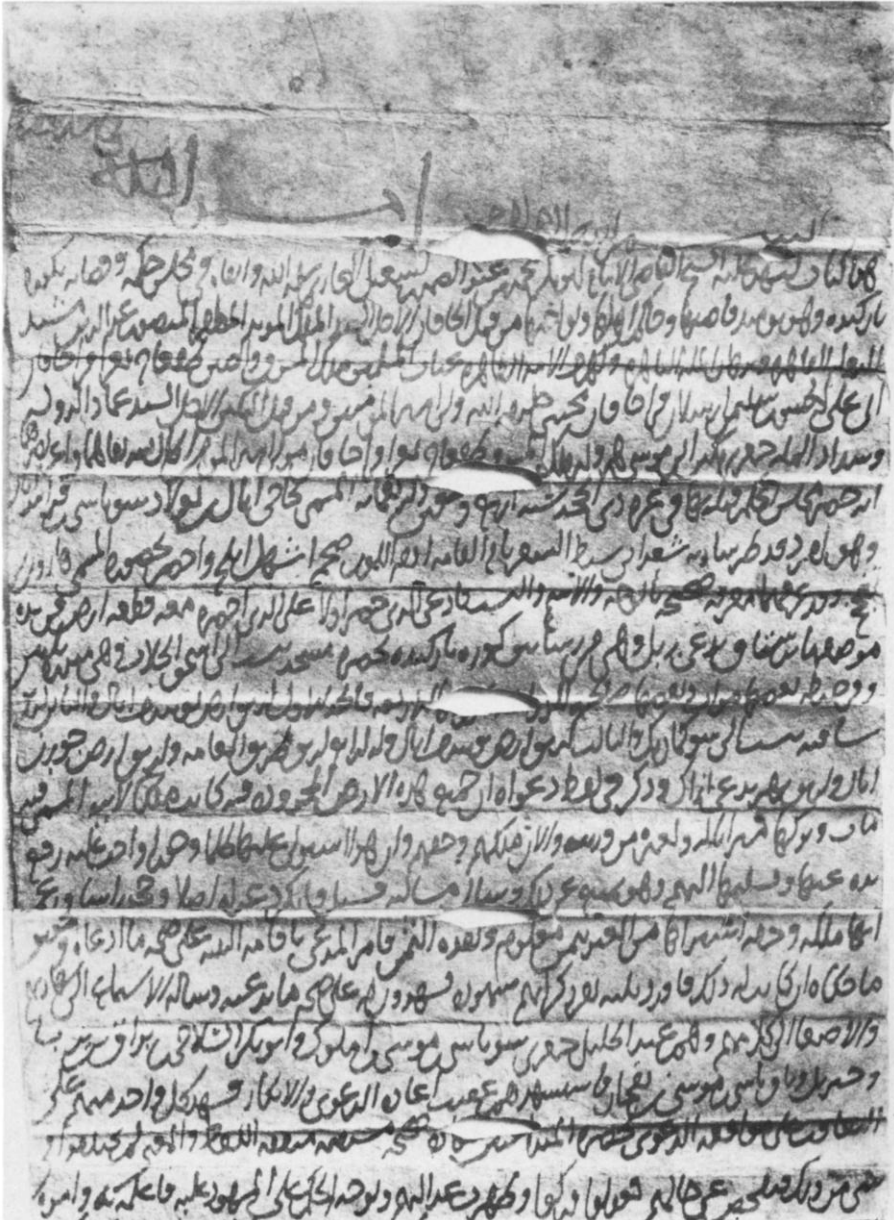
⁶⁴ See my *Arabische und persische Privaturkunden*, 414 (doc. XX); the opening of the Ardabil document XVI may have been similar, see *ibid.*, 369.

⁶⁵ See *ibid.*, 322 (doc. XIV).

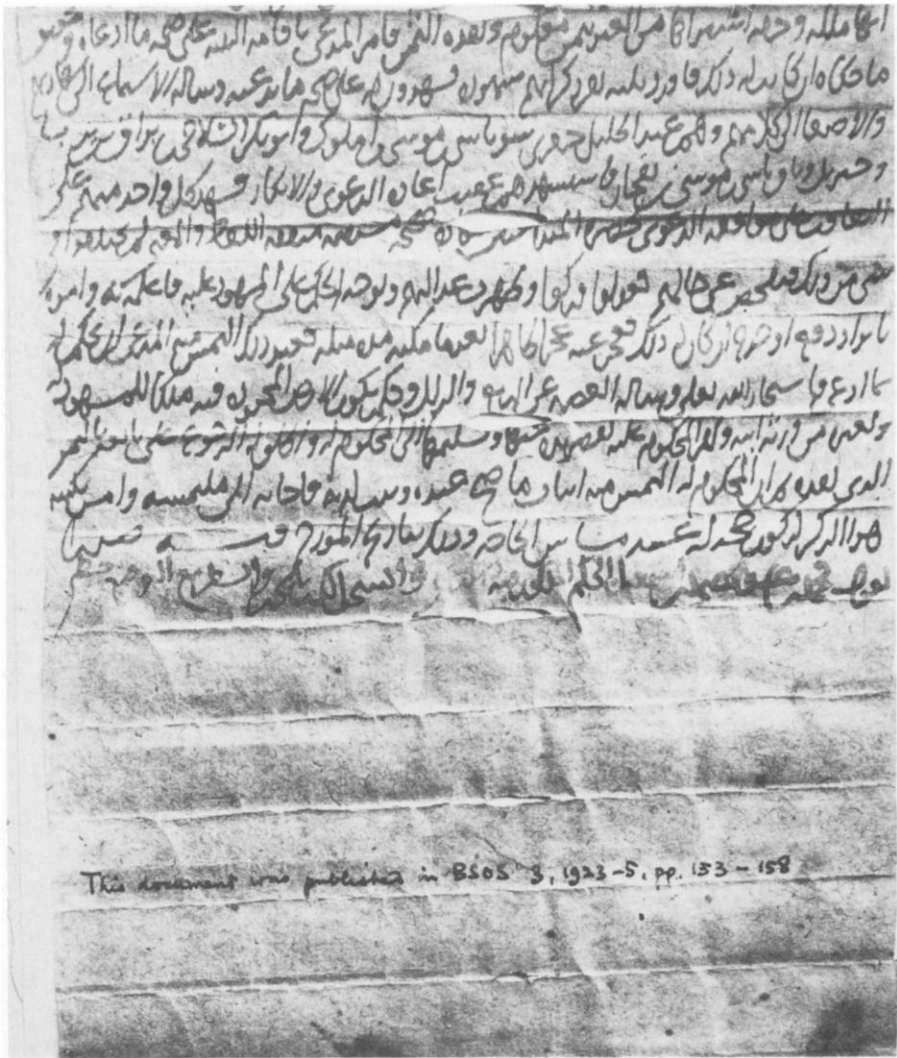
⁶⁶ Erdal, texts I, II, IV, and VI.

⁶⁷ Two examples in *APEL*, II, documents 86 and 87, however, are similar to the opening of the Turkish contracts.

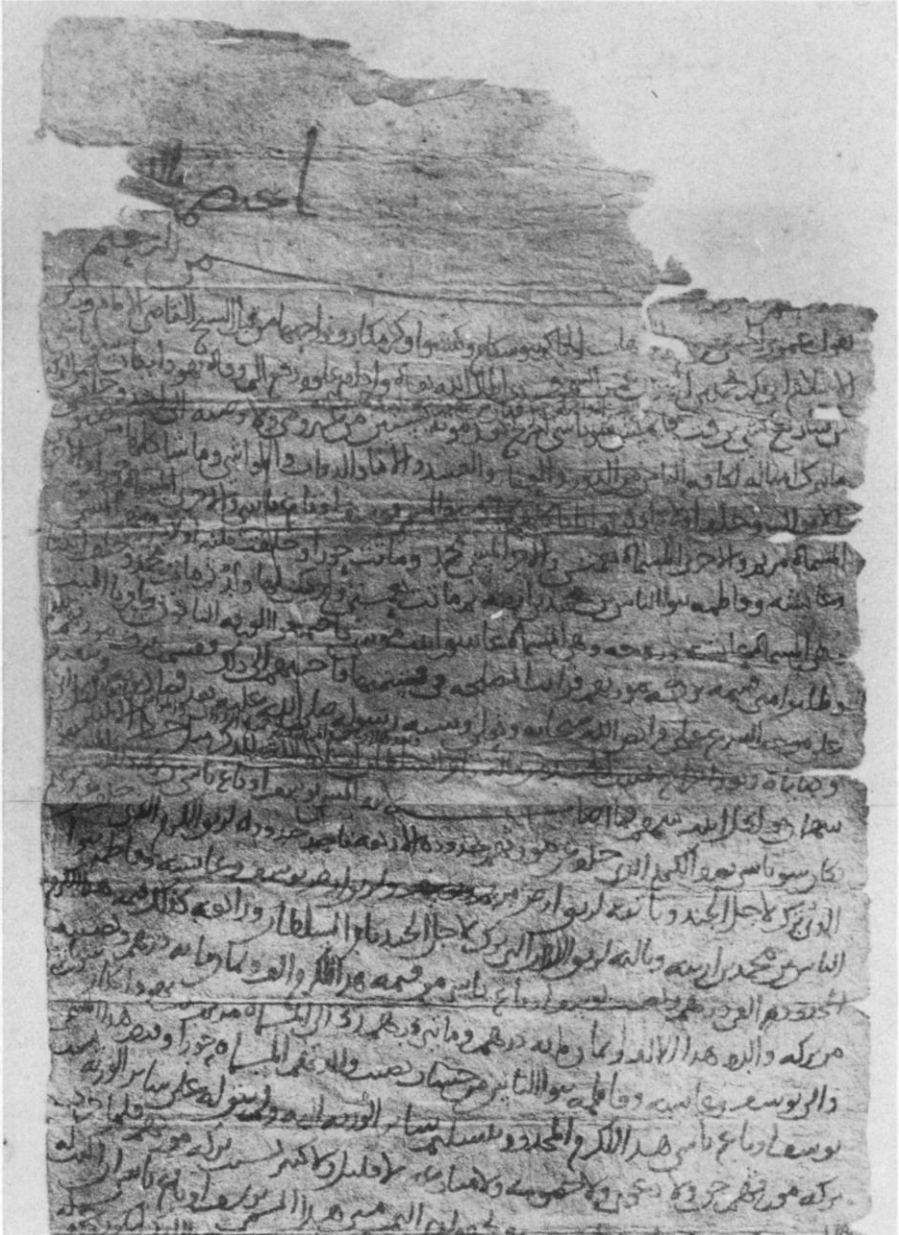
⁶⁸ See Hamilton, 33; Yamada, 73 (doc. 1), 77 (doc. 2) and 87; Zieme, 297.



Doc. I (ARABIC NO. 2)

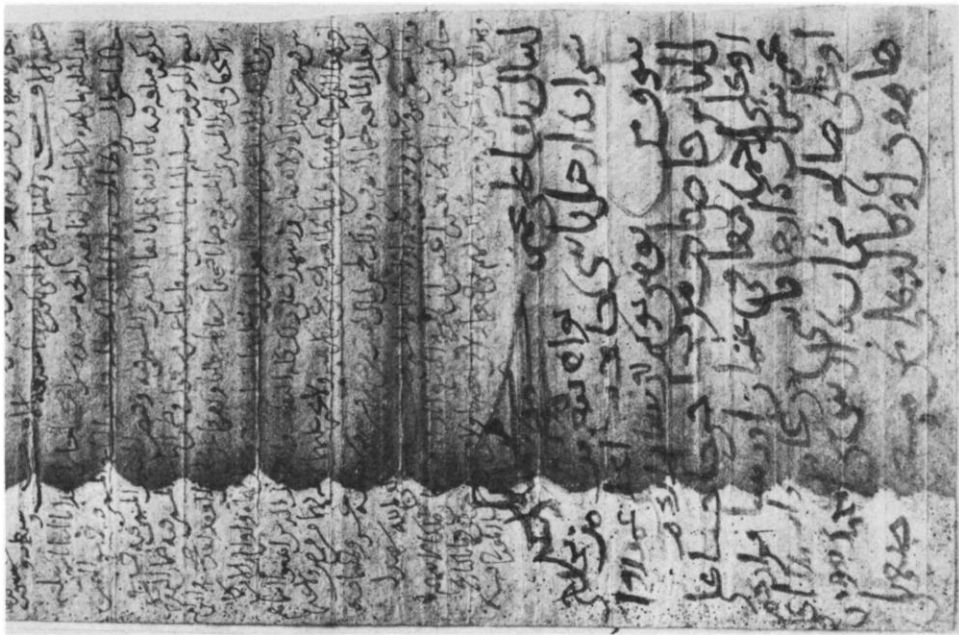


Doc. I CONTD.

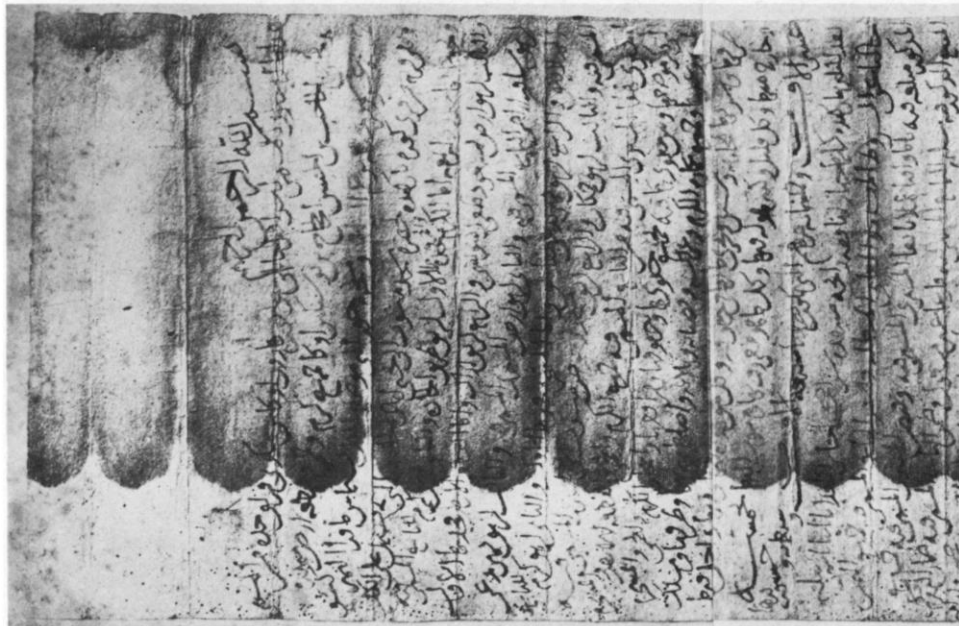


DOC. II (ARABIC NO. 6)



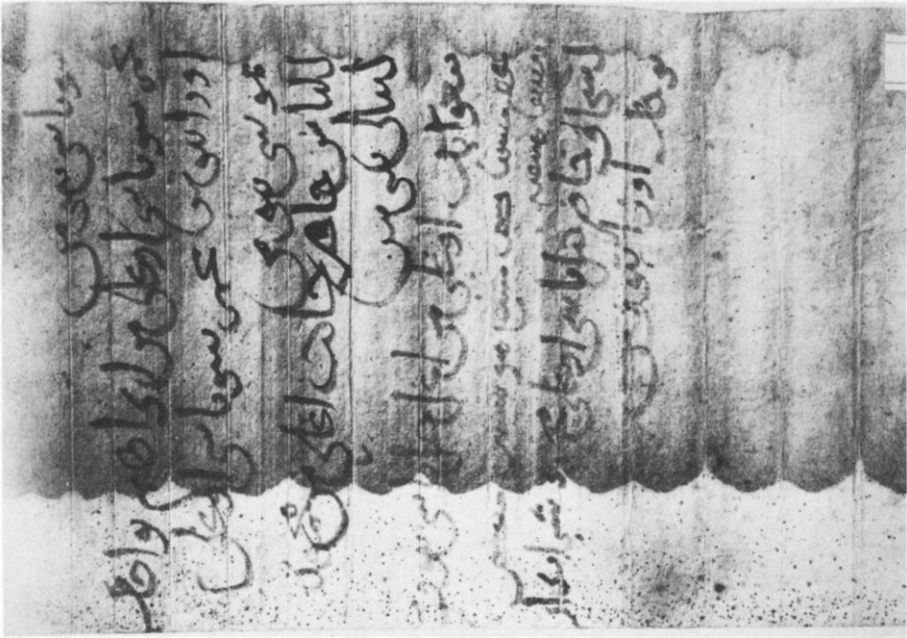


(b)

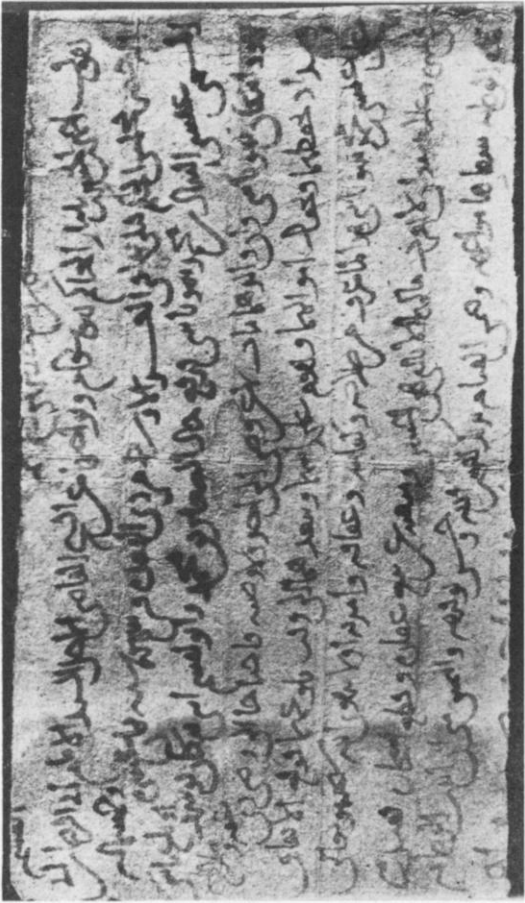


(a)

Doc. III (ARABIC NO. 5)



(a) Doc. III CONTD.



(b) Doc. IV (ARABIC NO. 7)



Doc. V (ARABIC NO. 1)



Doc. V CONTD.

Identification of the parties

In the Yārkand deeds, the individuals concluding a contract or concerned by the affair in question are named with their own name and the name of their father or even grandfather and, in some instances, their title. There is only one example in our document I (l. 8) where the name of a person is followed by a detailed description of his physical characteristics. According to the notaries' handbooks, however, the individuals involved in a legal affair ought to be described as fully as possible to prevent their being confused with someone else of the same name or of similar appearance, because it is highly important for safeguarding the rights of individuals to be able to identify them (*ta'rif*) even a long time after the affair has been settled. Therefore Islamic jurists suggested various elements to be included in a person's description beside his genealogy, such as profession, residence, tribal affiliation, physical characteristics, nickname, etc.⁶⁹ On the other hand, these elements very rarely occur in the Islamic documents themselves.⁷⁰ This is one instance among others in which legal practice fell short of the requirements of the notaries' handbooks.⁷¹ The detailed physical description in our document I is thus the exception rather than the rule in Islamic notarial practice, whereas the other Yārkand deeds, including the Turkish ones, fully comply with Islamic custom in not giving detailed descriptions of the persons involved. It follows from this that such descriptions were apparently unnecessary in the circumstances in which the documents were drawn up. The persons involved appear to have been sufficiently well known in the area, a fact which is confirmed by a certain number of individuals reappearing in several Yārkand deeds and by the fact that only two villages are concerned by the contracts they concluded, Rabul and Sinmās. Similar observations can be made in other Islamic regions from which a certain number of private deeds are known.

Definition of property

In the Yārkand documents, the property sold is always land. Its definition starts with its location which is sometimes followed by a statement of its extension,⁷² then its four boundaries are enumerated. The Arabic contracts continue the description of the property by adding the rights and material appurtenances sold with it, while this latter passage is completely lacking in the Turkish deeds.

It is striking that the Yārkand documents never mention the boundaries of land with its four cardinal points even though reference to the cardinal points appears to have been taken almost for granted by Islamic jurists. Their main question seems to have been the order in which they should be enumerated⁷³ rather than whether they should be referred to at all. It seems that the omission of the cardinal points was a peculiarity of the Iranian and Turkish regions, while documents from Arab lands take them into account. At any rate, as far as we can see, contracts from Iranian regions generally mention no cardinal

⁶⁹ Wakin, 50–51; see also Tyan, *Notariat*, 54.

⁷⁰ For short physical characteristics see for example *APEL* I, document 59 (l. 5), and the description of a slave in a *tadbir* document in Grohmann, 'Arabische Papyri aus den Staatlichen Museen zu Berlin', *Der Islam*, 22, 1935, document 7 (ll. 2–3). In the Turkish documents hints at physical characteristics are an integral part of a person's name which is a different phenomenon, see Erdal, 266.

⁷¹ A preliminary study of this subject is given in my *Rédaction des actes privés*, 164–70.

⁷² Our documents I (l. 3) and III (l. 4) as well as Erdal's Turkish text VI (l. 3). For the method of estimation of land see commentary to document I, l. 11 (*wiqr*).

⁷³ Wakin, 51; for the different order in which the cardinal points are given see commentary and further references *ibid.*, 80.

points for boundaries of property.⁷⁴ Uighur deeds from the non-Islamic East, on the other hand, do refer to the cardinal points.⁷⁵ In the case of Yärkand, we may perhaps infer Persian influence in this respect. Admittedly, we do not know yet why the cardinal points were not mentioned in documents from Iranian lands. In the Ardabil region, some documents indicate that the boundaries were well known to the persons involved in a legal affair so that it was not necessary to mention them at all.⁷⁶ These conditions could explain the omission of the cardinal points in this region, but other influences cannot safely be excluded.

It may be that, although the cardinal points are not mentioned, a fixed order was nevertheless respected when giving boundaries. Clauson tried to draw plans by schematically sketching out the descriptions of boundaries given in both the Arabic and Turkish contracts; his results may be quoted here: 'There is a certain amount of consistency about these plans. Assuming, probably incorrectly, the north is consistently at the top:

1. the main road is on the west of the area three times . . . and on the north once,
2. Çimkat is on the south in both AH 515 documents [i.e. our document III and Erdal's text VI],
3. the Ezek canal is on the west on both occasions,
4. Yūsuf Inal's land is on the north twice, and once, in the same document, on the south.'⁷⁷

The abstract rights (*huqūq*) and material appurtenances (*marāfiq*) connected with the property and sold with it, a common feature in Islamic contracts of sale, occur only in the Arabic Yärkand deeds. The rights explicitly mentioned are restricted to the right to use water for irrigation (*širb*),⁷⁸ whereas the material appurtenances are more exactly specified, e.g. the irrigation canals themselves, paths, buildings, courtyards, trees, etc., which are part of the property. Although both the rights and appurtenances were already defined by custom and by law, different opinions on various details still existed among Islamic jurists. Therefore references to these two categories in the document lessened the likelihood of future conflicts between the parties and also helped to establish the validity of the sale under Islamic law, as the intentions of the parties were thus clearly expressed and the legal rules defining which things could be the objects of ownership and transfer observed.⁷⁹ In the Yärkand documents, this description always ends with some general formulae stating that everything, 'be it little or much, within and without', etc., connected with the property had been sold.⁸⁰ General expressions like these which end the definition of the property are characteristic of Islamic contracts of sale. They are destined to cover the whole of the property including every detail which may not have been mentioned before, thus underlining the comprehensive character of the sale.⁸¹ This fact is well expressed by the rare, but significant formula

⁷⁴ This is already true for the earliest Islamic contracts that we have in Persian, see Scarcia, 293–4, and Minorsky, 185. The Ardabil documents which I have published as well as the Persian deeds edited by Papazyan (14th–16th centuries) and Mokri (1503) have no cardinal points either, except for three of Papazyan's documents: nos. 9 (p. 451), 15 (p. 471) and 21 (p. 488). Dānešpazūh's texts from the 15th and 16th centuries present only one exception, see p. 533.

⁷⁵ See Hamilton, 33–4 and 45–6; Yamada, 74 (doc. 1), 76 and 100–1; and Zieme, 298.

⁷⁶ See my *Arabische und persische Privaturkunden*, p. 25 and n. 6; a document in Papazyan, 473, hints at the same fact.

⁷⁷ Quotes from Cl.'s notes to the Arabic Yärkand documents.

⁷⁸ This term is discussed in my *Arabische und persische Privaturkunden*, 27.

⁷⁹ For details see Wakin, 51–3.

⁸⁰ See our documents III (ll. 14–15) and V (l. 12) as well as Huart, 611 (doc. I), 616 (doc. II) and 622 (doc. III).

⁸¹ See Wakin, 84, and further references in my *Arabische und persische Privaturkunden*, 28.

wa- ġayr dālīkā dukira aw lam yudkar fīhi ‘and other things be they mentioned or not in the document’ in a Persian deed from 1526.⁸² This passage has no counterpart in the Uighur contracts from non-Islamic Central Asia.

Among the material appurtenances enumerated by the Arabic Yārkand deeds, irrigation canals (*nahr, sāqiya*) are always mentioned. As the greater part of Eastern Turkestan is desert steppe, crops, and dwellings can only exist where there are rivers from which canals can be cut. The Yārkand oasis also depended on irrigation: there is evidence of an elaborate system of canals cut from the nearby Yārkand River which made the region extremely fertile.⁸³ The whole plain around the city of Yārkand irrigated in this way was covered with cultivated land, fields, gardens, and orchards, interspersed with numerous villages,⁸⁴ especially to the south of the city where the Yārkand River passes: ⁸⁵ cultivated land extended without interruption to the town of Posgām.⁸⁶ An enclosure of orchards (*himā*) is among other things mentioned in our document III (l. 3). The same deed mentions a vineyard (*karm*, l. 3); the vines of the Yārkand region, trellised in frames or attached to sticks, are reported to give excellent grapes.⁸⁷ Finally, the contracts distinguish between fruit-trees and other trees without specifying them; only once (doc. III, l. 4) white poplars (*huwar*) are mentioned. There is ample evidence for the latter in the Yārkand area where they grew abundantly on the banks of irrigation canals and lanes ⁸⁸ together with willows; ⁸⁹ the great number of trees served among other things as protection from the dust coming from the desert.⁹⁰ As for fruit growing in the Yārkand area, there is mention of apples, pears, plums, quinces, figs, and jujubes, but not of cherries, oranges or lemons, which appear to have been unknown in the area. Olives, nuts, and almonds are also attested.⁹¹

Price and coins

In the Arabic land-sale contracts from Yārkand, the statement of the price is always followed by the specification of its half.⁹² This so-called *tanṣīf al-taman* occurs in one Turkish text as well.⁹³ In Islamic notarial practice, this formula was frequently included to prevent falsification of the amount in the document,⁹⁴ as is often stated in the contracts themselves by the expression *ta’kīdan li’l-aṣl* or similar formulae, but it was not compulsory, for there are also various deeds where this element is lacking, e.g. in another Turkish Yārkand contract.⁹⁵ This practice was apparently limited to Islamic deeds and deeds modelled on

⁸² M. Mokri, ‘Étude d’un titre de propriété du début du XVI^e siècle provenant du Kurdistan’, *Journal Asiatique*, 251, 1963, 246.

⁸³ This is attested in the *Tārīḥ-e Rašīdī*, 297–8, and later by European travellers, see Dutreuil de Rhins, II, 172; Forsyth, 15, 17, and especially 22; and Montgomerie, 182.

⁸⁴ Forsyth, 22; Hayward, 83; Montgomerie, 182.

⁸⁵ Forsyth, 22; Montgomerie, 183.

⁸⁶ Dutreuil de Rhins, III, 216.

⁸⁷ Dutreuil de Rhins, II, 176.

⁸⁸ See *Tārīḥ-e Rašīdī*, 297, and Forsyth, 15, 17, 22.

⁸⁹ Forsyth, *ibid.*

⁹⁰ Dutreuil de Rhins, II, 108.

⁹¹ Dutreuil de Rhins, II, 177; Forsyth, 22, speaks of walnut-trees.

⁹² Our documents III (ll. 15–16) and V (ll. 13–15) and Huart’s three texts, 611, 616 and 622.

⁹³ Erdal, text I (ll. 11–12).

⁹⁴ Many examples are to be found in the Arabic papyri for which it seems certain that this formula was borrowed from the Greek and Demotic papyri in Egypt, see *APEL*, I, 152–3. Most of the Ardabil contracts in which a sum is mentioned also have this formula (except for documents III, XVII, and XXI), see my *Arabische und persische Privaturkunden*.

⁹⁵ Erdal, text IV. As for Arabic deeds, the formula occurs in neither the contracts from Sicily published by Cusa nor in the three deeds from Damascus edited by Sourdél-Thomine-Sourdél. In the Geniza documents the practice becomes common only in later deeds; see Wakín, p. 54, n. 1. It is also lacking in the three contracts from Ardabil cited in the preceding note.

them and does not seem to have a counterpart in non-Islamic Uighur documents. The fact that one Turkish Yärkand contract does not specify the price at all, but simply states that the buyer has received the worth of the land,⁹⁶ suggests that the circumstances in which this contract was concluded did not require the price to be specified. This fits in well with the imprecise nature of property boundaries where the cardinal points are never specified, thus resembling the generally close relations which, as has been pointed out above, appear to have existed in the pre-Mongolian Ardabil region. Another example similar to this Turkish contract seems to be a very fragmentary Persian deed from Khotan dated 501/1107.⁹⁷

According to the recommendations of jurists, the coins in which the price has to be paid are frequently specified in detail in Islamic contracts.⁹⁸ In the Yärkand documents the coins are termed *dirham* in the Arabic contracts, *yarmaq* in the Turkish ones. The terms are apparently equivalent. The *yarmaq* was generally silver, but could also be gold.⁹⁹ The *dirham*, on the other hand, was the silver unit of the Islamic monetary system in contrast to the *dīnār* (gold unit) and the *fals* (copper unit), and even though the Arabic Yärkand contracts do not explicitly mention that the *dirhams* were silver, we can safely assume that they were. This is confirmed by legends on Qarākhānid coins which name the silver coin *dirham* and the copper coin *fals*.¹⁰⁰ Qarākhānid copper coins which were minted from the eleventh century onwards have left no trace in our documents; the *dirham* appears to have remained current in Qarākhānid territories, being the most common monetary unit for transactions. In three Arabic contracts the coins are said to circulate in Yärkand and/or Kāšgar¹⁰¹ where there is evidence of mints as early as 404/1013–14¹⁰² and 396/1005–6¹⁰³ respectively.

In one of Huart's Arabic documents,¹⁰⁴ the price was specified in weight-*dirhams* in gold, if Huart's reading is correct, but obviously paid in silver coins (*warag*¹⁰⁵). It is doubtful if we can in this case take *dirham* as the generic term for 'money'¹⁰⁶ as they are further described as red (*aḥmar*), which is always connected with gold coins, while silver coins are generally described as white.¹⁰⁷ The question cannot be solved as long as no photograph of Huart's document is available to verify his reading of the text.

Transfer clauses

After the descriptive part of the contract, in the Arabic Yärkand documents ending with the price, the validity of the transaction is explicitly stressed and then underlined by the following references to the steps that have been taken for the transfer of the money and the property to the seller and the buyer respectively. The purpose of these clauses is not merely to state the reciprocal actions of the parties, but to prove that the contract which they concluded was

⁹⁶ Erdal, text VI (l. 6).

⁹⁷ Minorsky, 185 and 189.

⁹⁸ Wakin, 53 and 86–8.

⁹⁹ Erdal, 285

¹⁰⁰ See, for example, Lane-Poole, *Catalogue*, 120–4 (coins nos. 432, 434, 440, 442).

¹⁰¹ Our document V (l. 4) mentions both cities, our document III (l. 17) Yärkand only, Huart's document I, 611, Kāšgar only.

¹⁰² See Zambaur, 272, and Barthold, *Turkestan*, 281.,

¹⁰³ Zambaur, 202.

¹⁰⁴ Huart, 616 (doc. II).

¹⁰⁵ For *warag* signifying 'silver coins' see Dozy, II, 805a.

¹⁰⁶ Tekin, 876, gives this interpretation.

¹⁰⁷ See my *Arabische und persische Privaturkunden*, 36–7.

complete and valid and thus not open to challenge. The detailed formulae given in the notaries' handbooks for this section of the document,¹⁰⁸ however, appear in a highly simplified form in the two contracts published here: Document III (ll. 18–20) just states that the seller has received the money and that afterwards the buyer has taken possession of the property, whereas document V (ll. 16–17), in an even shorter manner, declares that the reciprocal action of taking possession of the money and the property respectively (*taqābud*) was legally correct. The transfer clauses in Huart's three documents are a little more elaborate, including also a quittance clause which is lacking in our two contracts. This latter clause (*barā'a*)¹⁰⁹ consists of a statement by the seller that he has cleared the buyer of obligations having received payment in full,¹¹⁰ an element which is frequent in Islamic private deeds,¹¹¹ but apparently was not compulsory. One statement lacking in all the Arabic Yārkand documents is the inspection of the property by the two parties before concluding the contract (*ru'ya, naẓar*) which, however, is discussed at length in notaries' handbooks¹¹² and often,¹¹³ although far from always,¹¹⁴ appears in Islamic private deeds.

The transfer stated in terms of a reciprocal exchange of money and property is also explicitly mentioned in two Turkish Yārkand contracts in a very simple manner: the seller's statement that he has received the price is immediately followed by his statement that he has handed over the property.¹¹⁵ Furthermore, the two Turkish documents respect the strict order of the two clauses referring to the delivery of the price first and only secondly of the property, as is required by the Islamic notaries' handbooks;¹¹⁶ this order is also followed by the Arabic Yārkand contracts. Unlike Uighur deeds which express the handing over by the Turkish verb *ber-/bir-*, the Turkish contracts have the verb *usparla-* borrowed from Persian *sepārdan*.¹¹⁷

Separation of the parties

Next the Arabic Yārkand documents formally express the separation of the parties (*tafarruq, ʿiftirāq*) after the contract has been concluded; only in document III does this statement follow the guarantees section. The separation of the parties is again a clause recommended by Islamic notaries' handbooks so as to do away with the option of cancelling the sale (*hiyār*)¹¹⁸ which is valid as long as the parties remain in the place where they have concluded the contract. In the Arabic Yārkand deeds, this clause is always referred to as physical and verbal separation (*tafarruq bi'l-abdān wa'l-aqwāl*, or something similar) required by the jurists to avoid the ambiguity of the expression *tafarruq* which comprehends both kinds of separation: namely, the actual physical separation (*bi'l-abdān*) as well as, in a less literal sense, the separation defined in terms of the completion of offer and acceptance (*bi'l-aqwāl*).

¹⁰⁸ The formulae are discussed at length in Wakin, 53–60.

¹⁰⁹ Huart, 611 (doc. I), 616 (doc. II) and 622 (doc. III).

¹¹⁰ See the detailed discussion of quittance clauses in Wakin, 57–60 and 86.

¹¹¹ See for example *APEL*, I, documents 54, 60–66, 68, 69, and 72; and my *Arabische und persische Privaturkunden*, p. 42 and nn. 1–2.

¹¹² See the formulae discussed in Wakin, 54–6; see also Tyan, *Notariat*, 67.

¹¹³ See the documents published by Cusa and Sourdél-Thomine-Sourdél as well as my *Arabische und persische Privaturkunden*, 42–3.

¹¹⁴ The inspection is completely missing from the Arabic papyri edited in *APEL*, I and II as well as in the Persian documents published by Dānešpažūh, Mokri, Papazyan, and Scarcia.

¹¹⁵ Erdal, texts IV (ll. 7–8) and VI (ll. 6–7).

¹¹⁶ Wakin, 54.

¹¹⁷ Minorsky, 193–4.

¹¹⁸ For details see Wakin, 56; see also Tyan, *Notariat*, 67.

In general, Islamic private documents do not comply with the requirements of the jurists in this respect as exactly as the Yärkand contracts do. One ¹¹⁹ or both of the two elements of separation ¹²⁰ may be lacking, or the fact of separation may not be included at all in such contracts.¹²¹ Neither the Turkish Yärkand deeds nor the non-Islamic Uighur documents have this clause.

Guarantees

At the end of the Arabic Yärkand documents, several statements are made concerning above all guarantees for the buyer, then the reading of the document to the persons who are present, and the legal capacity of the parties. The order of these items, however, is not strictly fixed in our contracts.

As for the guarantees, by far the most important clause of this kind is the guarantee against fault in ownership or *darak*. It is a guarantee given by the seller to make good the loss if the buyer's title should be contested by a third party. If such a claim is proven valid, the buyer's ownership of the newly acquired property is thus defective; in this case, the seller becomes liable for the fault in ownership (*darak*) to the amount of the price paid.¹²² Our documents III (ll. 20–21) and V (ll. 18–19) simply state the fact that the guarantee has been given by the seller. The passage is more detailed in Huart's three documents which, furthermore, mention the seller's liability for the value of the property in case of a valid claim, an element which often occurs in Islamic contracts.¹²³ The seller is then bound to return to the buyer either the property itself if this is possible, its price, its equivalent or its value.

While the *darak* guarantee is essential in Islamic deeds, other types of guarantees denying future rights and claims are incidental. The only example in the Arabic Yärkand documents is to be found in document III (ll. 26–9) in which the seller's three sons declare that they have no claim to the property just sold. This kind of guarantee may thus not necessarily concern the seller or the seller alone, but other persons connected with him or having rights in the property.¹²⁴ The Turkish Yärkand documents have no specific *darak* guarantee, but only a rather general denial of future rights and claims which, however, seems to have been modelled on Islamic rather than Uighur deeds; ¹²⁵ furthermore, a legal terminology of Arabic origin (*da'wa qul-, batl*) has been adopted. On the other hand, the guarantees section in non-Islamic Uighur contracts is rather long, containing, after a statement of the buyer's rights in the property, the seller's guarantee against interference from his relatives and others, and a penalty for breach of contract, to be effected either between the parties con-

¹¹⁹ See for example *APEL*, I (docs. 61 and 67), Sourdél-Thomine–Sourdél (docs. 1 and 2) and Cusa (docs. 31, 54, 102, 136, 141, 160, 169, and 172); in Cusa's publication the reading 'r-f' should be corrected to f-r-q in docs. 31, 54, 102, 136, and 160 for reasons of context. For the Ardabil collection see docs. IV, XI, and XVIII in my *Arabische und persische Privaturkunden*.

¹²⁰ See, for example, my *Arabische und persische Privaturkunden*, 298 (doc. XII) and 363 (doc. XVa).

¹²¹ This clause is generally lacking in *APEL*, I and II, except for the two examples quoted in note 119 above, in Cusa's documents 43 and 101 as well as in the deeds published by Dānešpazūh, Mokri, Papazyan, and Scarcia.

¹²² See Schacht, 139, and Wakin, 60–61.

¹²³ Huart, 611 (doc. I), 616 (doc. II) and 623 (doc. III); see also the references given in my *Arabische und persische Privaturkunden*, p. 45 and nn. 1–6.

¹²⁴ For the notaries' handbooks see Wakin, 63–5. The form of this type of clause, starting from the Ardabil contracts, has been dealt with in my *Arabische und persische Privaturkunden*, 45–7.

¹²⁵ Erdal, texts I (ll. 14–18), IV (l. 10) and VI (ll. 7–8); this clause seems to have been included as well in a Persian deed from Khotan, see Minorsky, 185 (ll. 9–11). A more elaborate, yet similar, Arabic formula is to be found in my *Arabische und persische Privaturkunden*, 347 (doc. XV, ll. 38–40).

cerned or officially,¹²⁶ all this being apparently modelled on Chinese documents and including terms of Chinese origin.¹²⁷

Reading of the document

The Arabic Yärkand documents (with the exception of Huart's document II) explicitly mention that the document was afterwards read to the parties 'in a language which they knew and understood', that is, in Turkish, as has been pointed out above. In one deed¹²⁸ the parties then confirm that the affair was correctly dealt with in the document read to them. The reading of the contract to the parties followed by their confirmation of its contents is indeed recommended by Islamic jurists as a means to verify the legal capacity of the persons involved in a transaction,¹²⁹ but actual documents—with few exceptions¹³⁰—do not comply with this rule. Thus the Arabic Yärkand documents appear to stick more to the jurists' rules in this respect than do the great majority of Islamic deeds. The final reading of a contract to the parties, on the other hand, is mentioned neither in the Turkish Yärkand documents nor in Uighur deeds.

Legal capacity of the parties

All the Arabic Yärkand documents finally state explicitly that the parties concluding the contract acted voluntarily and without compulsion and that they were legally competent. A statement of legal capacity is again deemed advisable by Islamic jurists,¹³¹ as only persons who are legally competent—that is, free Muslims who are sane and of age—can be fully responsible and therefore able to contract and to dispose.¹³² In practice formulae verifying capacity do not show much variety, but generally include the statement of soundness of body and mind. This is indeed the case in two Yärkand deeds,¹³³ while the three others, in a more general way, refer to an absence of illness¹³⁴ or to the soundness of body alone.¹³⁵ Just like the final reading of the contract mentioned above which is connected with the verification of legal capacity, the explicit statement of this legal capacity is also lacking in numerous private documents.¹³⁶ On the other hand, a reference to the legal capacity is included in two Turkish Yärkand contracts, yet restricted to the party who writes down the deed and who already states at the beginning of the contract that he is in bodily and mental health.¹³⁷ Non-Islamic Uighur private deeds do not contain a statement of this type.

¹²⁶ See Hamilton, 34 and 46–9; Yamada, 74 (doc. 1) and the lengthy discussion of the formulae 102–8; and Zieme, 298.

¹²⁷ Hamilton, *ibid.*

¹²⁸ Huart, 623 (doc. III).

¹²⁹ Tyan, *Notariat*, 63.

¹³⁰ They concern both some Arabic papyri and deeds from Sicily; see *APEL*, I, docs. 54, 57–59, 61, 65, 66 and 68, and *APEL*, II, docs. 86 and 138, as well as Čusa, docs. 43, 141, 169 and 172.

¹³¹ Tyan, *Notariat*, 63, and Wakin, 93.

¹³² Schacht, 124.

¹³³ Huart, 616 (doc. II) and 623 (doc. III).

¹³⁴ Our document III (ll. 24–5) and Huart, 612 (doc. I).

¹³⁵ Our document V (l. 19).

¹³⁶ This seems to be especially true for documents from Iranian lands: the element is lacking in the greater part of the Ardabil collection as has been pointed out in my *Arabische und persische Privaturkunden*, 47, as well as in Scarcia's document and in the deeds from the 14th–16th centuries edited by Dānešpažūh, Mokri, and Papazyan, with the exception of docs. pp. 497, 501, 503, 505, 509, 517, 531, 559, 571, and 573 in Dānešpažūh and docs. nos. 9, 20, 22, and 25 in Papazyan. It is also absent from both the Arabic papyri 55, 58, 63, and 64 in *APEL*, I and in Čusa's document 169 from Sicily.

¹³⁷ Erdal, texts I (ll. 6–8) and IV (ll. 3–4).

Finally, reference to the witnesses is given in only three Arabic Yārkand contracts,¹³⁸ an element frequently occurring in Islamic private documents. In the Turkish Yārkand contracts it serves as an introductory formula to the text as has been mentioned above.

Date

The date of both the Arabic and Turkish Yārkand documents is marked at the end of the text of the contract. In all the documents the Islamic dating system has already been adopted, but this is sometimes, though not systematically, correlated with the traditional Turkish dating by the twelve-year animal cycle; it seems that the animal cycle had increasingly given way to the Islamic dating.¹³⁹ The twelve-year animal cycle which the Turks borrowed from the Chinese¹⁴⁰ remains, however, the only dating method in non-Islamic Uighur deeds where the date normally precedes the text of the document.¹⁴¹ In the two Yārkand documents where the double dating is fully legible, it is remarkable that the given year of the animal cycle which refers to solar years does not coincide with the Islamic dating according to lunar years. The discrepancies in both cases when converted to Christian dates cannot yet be explained by the sparse material which is currently available.¹⁴²

In one Turkish Yārkand contract the month of *raġab* is termed *quluġ* ('blessed')¹⁴³ which probably gives the Arabic *mubārak* frequently used in this function in Islamic documents. The custom of adding such adjectives to those Islamic months of the year which are considered as holy is widespread in Islamic notarial practice, but does not occur in the Arabic Yārkand documents.

Documents on property rights and intestacies

Three of the Arabic documents published here are not land sale contracts, but deal with questions of property rights and intestacies which require the decision of a judge. They are indeed the only Yārkand deeds written by a judge's order in court. Apart from the introductory and descriptive formulae (e.g. identification of the parties, description of property) discussed above in connexion with land sale contracts, these three documents contain a description of the judicial procedure in court and of the judge's decision, thus clearly proving the adoption of Islamic law and legal procedure in the Yārkand area at the beginning of the twelfth century.

Document I concerns a land ownership dispute which is settled by a judge. A certain Ḥāġġī Ināl, who is still rather young (l. 8), claims a piece of land from another man, Hārūn b. Taġčaġ (ll. 8–9). He accuses him of having illegitimately taken possession of this land which had been bequeathed to him and some other persons by his late father, and asks Hārūn to give it back (ll. 13–15). As Hārūn refuses, he is questioned by the judge, but continues to assert his right to the

¹³⁸ Our documents II (ll. 24–5) and III (ll. 23–4) and Huart, 612 (doc. I).

¹³⁹ For a double dating see Erdal's text I (ll. 23–4) and, as a rather late example, our document V (ll. 20–1). Erdal's text II where the date is not fully legible was probably similar. All the other Yārkand documents have an Islamic dating only.

¹⁴⁰ For details see the study on the Turkish calendars by L. Bazin, *Les calendriers turcs anciens et médiévaux*; for the twelve-year animal cycle especially chs. iv and v.

¹⁴¹ See the discussion by Clarke, 266 ff., and Yamada, 88–90, as well as the documents published by Yamada, 73 (doc. 1) and 77 (doc. 2) and by Zieme, 297. The date of Hamilton's document, 33, is not fully preserved. The position of the date in Uighur documents can also be traced to Chinese influence, see Clarke, 270.

¹⁴² See further details in our commentary on document V, l. 20.

¹⁴³ Erdal, text IV (l. 12).

land which he claims to have bought from Ḥāḡḡī Ināl and to have paid for (ll. 15–16). Confronted with these two claims, the judge is now obliged to ask Ḥāḡḡī Ināl to produce evidence (ll. 16–17), because he is the claimant (*muddaʿī*, l. 16) and therefore, according to Islamic law, has to prove the validity of his claim; if he is not able to do so, i.e. if there is no proof, the presumption operates in favour of the defendant.¹⁴⁴ Ḥāḡḡī Ināl's evidence consists of the testimony of witnesses which is the most important kind of evidence in Islamic law.¹⁴⁵ Three of them are named in the document (ll. 17–19) who testify unanimously in favour of the claimant after the two statements have been repeated to them. Not only the concordance of the witnesses' testimony is explicitly stated (ll. 20–21), but also the fact that the judge's inquiry had shown them to be 'adl, i.e. irreproachable and of good reputation (l. 21). In a lawsuit, Islamic law always requires witnesses possessing this quality; whether they are in fact irreproachable must be established by inquiry.¹⁴⁶ Thus our document contains all the elements of a testimony of witnesses necessary in Islamic law. It is only then that the affair can be settled in the claimant's favour as the defendant turns out to be unable to refute his evidence (ll. 21–2).

Documents II and IV deal with intestacies, i.e. with affairs of inheritance for which the deceased has not left either testament, executor or guardian. In document II, a certain Yahūd Īkān Sübaşı dies (l. 3) leaving several children and grandchildren who turn to a judge to have the inheritance divided among them (ll. 9–10). The judge accomplishes this task according to the Islamic rules of inheritance applicable to this case. Nevertheless, the affair is not wholly clear; the details we can gather from our document are the following:

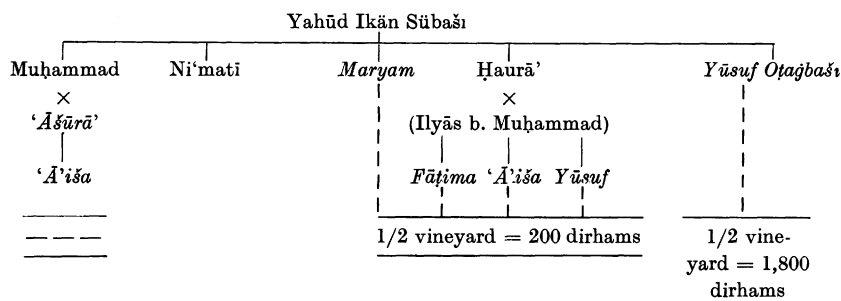
First, a certain amount (*tība* or *ṭayyiba*, lit. 'the best part') of the inheritance is taken for the army, according to the ruler's order (l. 12), namely, a vineyard (ll. 14–15) and a piece of land (l. 16). This seems to be some kind of estate duty, that is, a contribution to be paid from a dead person's property for the benefit of the Qarākhānid army, on which our document, unfortunately, does not yield any further details. Other costs to be paid out by the estate (funeral costs, debts)¹⁴⁷ are not mentioned in the document. The remaining assets of Yahūd Īkān Sübaşı which consist only of another vineyard with a value of 2,000 *dirhams* (ll. 14–17) are divided up between the heirs of the deceased. The deceased in our document had five children, two sons and three daughters. One son, Muḥammad (l. 7), as well as two daughters, Ḥaurā' and Ni'matī (ll. 7–8), had already died before their father so that only one son and one daughter are left: they are Yūsuf Oṭaḡbaşı and Maryam (ll. 6–7). While these two apparently have no children, Ḥaurā' has three children: a son, Yūsuf, and two daughters, 'Ā'īša and Fāṭima (ll. 7–8); in addition there are Muḥammad's widow 'Āšurā' and his daughter 'Ā'īša (ll. 8–9). Our document is explicit neither on the way shares are to be allotted nor on the reasons behind it. It only states that Yūsuf Oṭaḡbaşı receives one-half of the vineyard (ll. 13–14), that is, 1,800 *dirhams* of its worth (ll. 17–18), while Maryam and Ḥaurā's three children together receive the remaining 200 *dirhams* (ll. 18–19). Muḥammad's daughter 'Ā'īša, however, is completely excluded.

¹⁴⁴ Schacht, 190–91.

¹⁴⁵ Schacht, 192.

¹⁴⁶ Schacht, 193.

¹⁴⁷ Schacht, 169.



Note. Italicised names = persons alive, others = persons deceased.

It is difficult to explain this settlement of the affair in terms of Islamic law. The basis of Islamic law of succession is an agnatic system, i.e. under which only men can inherit, essentially modified by provisions in favour mainly of the nearest female relatives; these fixed shares are in all essentials laid down in the Qur’ān. The shares of these female relatives, however, are in some cases reduced when there are male relatives of the same degree.¹⁴⁸ Thus Maryam’s share of the heritage would have been bigger if she had had no living brothers, but as Yūsuf Oṭağbaşı is still alive, her share is—in compliance with the law—reduced to one half of her brother’s share: this is clearly expressed in our document by the Qur’ānic verse quoted and explained in lines 12–13. It is astonishing, however, that the son’s daughter—in our case Muḥammad’s daughter ‘Ā’iṣā—is not taken into account at all, as she is one of the most important female heirs under Islamic law. In terms of the law, Maryam and Muḥammad’s daughter ‘Ā’iṣā together would have been entitled to two-thirds of the inheritance.¹⁴⁹ Admittedly, things are different because Maryam’s brother is still alive, but ‘Ā’iṣā’s share should still be at least one-sixth.¹⁵⁰ On the other hand, the daughter’s daughter is generally excluded from succession.¹⁵¹ Thus Ḥaurā’s daughters would not have had any share at all according to the law, but in our document they have. It appears that the judge in this case got around the complexities of the legal rules by assigning to Yūsuf Oṭağbaşı as main heir half of the vineyard—which must have had a much greater value than the other half!—then a smaller portion to his sister Maryam (according to the Qur’ānic verse it should have been a quarter of the vineyard), and finally the rest, perhaps the remaining quarter of the vineyard, to Ḥaurā’s three children; he explicitly states in the document (ll. 18–19) that the share of the three children was calculated according to the share their dead mother would have received. Thus nothing remains for Muḥammad’s daughter.

The information in the document offers no satisfactory solution to the affair in legal terms, as far as I can see. Perhaps the judge involved here was not sufficiently versed in Islamic law to be aware of its difficulties in succession matters. His guiding principles seem to have been reduced to the one Qur’ānic verse quoted in the deed, but even then the different value of the shares (1,800 *dirhams*—200 *dirhams*) remains striking. It is, however, quite possible that such legal simplifications occurred in marginal regions of the Islamic world which had embraced Islam not very long ago and where Islamic education may still have

¹⁴⁸ For details see Schacht, 170–3.

¹⁴⁹ Schacht, 170–71 (a).

¹⁵⁰ Schacht, 171 (e).

¹⁵¹ Schacht, p. 171 n. 5.

been kept within narrow bounds, despite the external flourishing of Islamic customs within the population.

The fragmentary document IV is again an intestacy. This time Yūsuf Oṭağbaşı, main heir in document II, died—fifteen years after the death of his father—leaving neither testament nor guardian for his two sons who were not yet of age. Arabic *waṣī* has a double meaning: literally signifying ‘executor’, a second meaning ‘guardian’ has been derived from this¹⁵² which is more appropriate in the context of this document. When someone’s heirs are minors or absent and no guardian or executor has been appointed by the legator’s last will, this appointment often fell to the judge in court. According to Islamic law, the judge is also entitled to supervise a guardian and to remove him if he turns out to be incapable or dishonest.¹⁵³ It is clearly stated in our document that the guardian should be a righteous, honest person (ll. 5–7) as he is the agent of the heirs who administers the inheritance on their behalf and keeps it for them until they are of age.

One final statement common to all three documents is that the parties concerned, after the legal decision has been taken, always ask the judge to order the writing down of a document expressing his decision so that it might be a proof (*huḡḡa*) in their favour in case of any later infringement of their rights (*misās al-hāḡa*).¹⁵⁴ A similar formula occurs in one of the Arabic land sale contracts from Yärkand stating that the document was written in the presence of witnesses to serve as proof in case of necessity.¹⁵⁵ This shows the importance that was attached to the written document as a means of proving one’s rights. Reliance on written deeds, though officially denied by Islamic legal theory, has always turned out to be indispensable in practice. In theory, notwithstanding an explicit ruling of the Qur’ān (II: 282) recommending documentary evidence of transactions, legal proof was restricted to the oral evidence of witnesses, but in practice people continued to act as if the written document were essential and the evidence of witnesses only a formality. Finally, even strict theory had to admit the validity of written documents once they contained statements by qualified witnesses.¹⁵⁶ The Yärkand deeds thus reflect the Islamic legal practice of the time in emphasizing the value of documentary evidence which was apparently undisputed.¹⁵⁷

Witnesses

Islamic law generally requires two male witnesses of good reputation (*‘adl*), or one male and two female witnesses in a lawsuit. Outside a lawsuit, the requirements are less stringent; in some cases one person is enough. A greater number of witnesses theoretically does not lend additional value to the testimonies,¹⁵⁸ even though the law does not specify a maximum. In the Yärkand documents, despite the fragmentary character of some of them, the number of witnesses mostly exceeds the minimum required by legal theory (with the only

¹⁵² Dozy, II, 822b.

¹⁵³ Schacht, 173.

¹⁵⁴ Our documents I (ll. 25–6) and II (ll. 22–4); in document IV (l. 9) only the beginning of that same formula has been preserved.

¹⁵⁵ Huart, 623 (doc. III). This is also hinted at in two Turkish Yärkand contracts, see Erdal, texts II (ll. c 1–2) and VI (ll. 8–10).

¹⁵⁶ For details see Schacht, 82–3 and 192–3; Tyan, *Notariat*, 5–12, and *Organisation judiciaire*, 237.

¹⁵⁷ This is also illustrated by document XX in my *Arabische und persische Privaturkunden*, 414 ff., stating that a document of a contract was presented to the judge and recognized as proof for the plaintiff’s claims.

¹⁵⁸ Schacht, 193; see also Tyan, *Notariat*, 55.

exception of one Turkish contract¹⁵⁹ where just one witness appears to have been present).¹⁶⁰ The average number of witnesses in the Yārkan deeds ranges between three and seven, but may amount to even higher numbers, e.g. to twenty (our document V) or sixteen.¹⁶¹ This phenomenon is not unusual in Islamic notarial practice; the maximum number seems to be 77 in an Arabic papyrus.¹⁶² Uighur sale contracts generally required three or four witnesses.¹⁶³

In general the witnesses themselves write their attestations down under the actual text of the document (e.g. in our documents II and V). Exceptionally, they may also be written on the back of a document, probably because not enough room was left beneath the text.¹⁶⁴ In some cases the scribe of the deed may list certain witnesses himself in a separate passage, e.g. in our document V, where this is written in indented lines and can clearly be distinguished at first sight from the text of the contract. Both types of attestation may occasionally be combined in one and the same document, as is indeed the case in our document V just mentioned. Parallels to this are frequent in Islamic private deeds.¹⁶⁵ The witnesses' section of document III is entirely in Turkish and obviously written with a different pen in bigger and thicker letters. It is impossible to tell for certain by comparing the handwritings of the text of the document and of the witnesses' section whether it was the same scribe, but this may have been the case. Only in our document I, is no witnesses' section annexed to the text as the witnesses have already been named within the actual text of the deed (ll. 17–19).

The Arabic formulae introducing a witness's attestation are in general *šahida bi-dālika/bi-ḡamī' mā fīhi* 'he is witness to this/to everything contained in this document' or *ašhadu 'alayhi* 'I am witness to this'. Some witnesses, however, refer to the judge, if one is involved, who has called them as witnesses by starting their attestations with the formula *ašhadanī . . . al-qāḍī* 'the judge has called me as witness', in our document II, witnesses nos. 2–5.¹⁶⁶ Two witnesses refer in their attestations to the *igār* 'acknowledgment' of the seller concerning the sale. In general the *igār* which frequently occurs in Islamic private documents, consists of an acknowledgment by one contracting party that he has ceded his rights in an affair to the other one. Thus the term *igār* often is part of the guarantees section, but can also take the form of a personal deposition or even of a separate document.¹⁶⁷ In the Yārkan documents, the term occurs in two witnesses' attestations,¹⁶⁸ and in a Turkish document¹⁶⁹ in which the two sellers acknowledge the sale. This case illustrates again the adoption of Islamic legal terminology in Turkish contracts. Generally, the witnesses who write in Arabic also mention that they have written the attestation themselves by the formula (*kataba*) *bi-ḥaṭṭihi* 'he has written in his own handwriting'. Illiterate witnesses, on the other hand, were free to ask someone else to write down the attestation for them, a current phenomenon in Islamic

¹⁵⁹ Erdal, text II.

¹⁶⁰ The witnesses' section of our document IV has not been preserved.

¹⁶¹ Huart, 623–4 (doc. III).

¹⁶² Grohmann, 119.

¹⁶³ Clarke, 310, and Yamada, 111; for the number of witnesses required in other types of Uighur contracts see Clarke, 306–11.

¹⁶⁴ See Huart, 617 (doc. II).

¹⁶⁵ See my *Arabische und persische Privaturkunden*, 56 and 59.

¹⁶⁶ For this latter formula see *ibid.*, 57–8.

¹⁶⁷ For details see my *Arabische und persische Privaturkunden*, 21, 47, and 50–52.

¹⁶⁸ Our document V (witness no. 8) and Huart, 617 (doc. II) have the synonymous *i'tiraf* for *igār*.

¹⁶⁹ Erdal, text I (l. 8).

notarial practice.¹⁷⁰ In this case, the third person writing on behalf of the illiterate witness had to indicate that he had been authorized by him to do so; the general formula for this is *kutiba bi-amrihi* 'it has been written upon his (i.e. the witness's) order'.¹⁷¹ We do not know exactly who this third person was as he normally does not mention his own name,¹⁷² but it seems reasonable to suppose that other witnesses or even the scribe/notary were charged with such tasks.

While the form of the Arabic attestations is well in keeping with Islamic notarial practice, it should be stressed again that attestations in Turkish¹⁷³ or in Turkish language and Uighur script¹⁷⁴ still occur in some Arabic Yärkand deeds. This fact proves that the Yärkand oasis was in the process of being Islamized as is shown by the considerable number of witnesses writing in Arabic, although Arabic had not yet become a matter of course; still there are other persons who cling to their national language and even use their national script alongside the language. As the Arabic documents containing attestations in the Turkish and Uighur script are later than others in which the witnesses all write in Arabic,¹⁷⁵ the adoption of Arabic for legal purposes was not a linear development; both types of attestations must have existed side by side so that the witness's choice of form probably only depended on his individual knowledge of the Arabic language and script.

The Turkish witnesses' section in our document III, as well as the witnesses who write in Turkish,¹⁷⁶ use a rather simple Turkish formula which comes close to those formulae occurring in non-Islamic Uighur documents. The common type of Turkish witness formula in the Yärkand deeds takes the form *tanuq män* 'I am witness' followed by the name of the witness, or vice versa. This is also true of the Turkish Yärkand contracts. In non-Islamic Uighur documents, the most common type of witness formula is quite similar: *tanuq* followed by the name of the witness.¹⁷⁷ The expression *tanuq män* in the Yärkand documents can be completed by short indications as to what the testimony is about, e.g.—in a very general manner—*bu haṭṭ üzä* 'to this document' (doc. III, l. 20, witnesses' section), *bu işkä* 'to this affair' (doc. III, l. 17, witnesses' section), *bu haṭṭ içindäki işkä* 'to the affair contained in this document' (doc. V, witness no. 5) and similarly *bu haṭṭ içindäki-kä* 'to the contents of this document'¹⁷⁸ or, more precisely, *bu bay' üzä* 'to this sale'.¹⁷⁹ This is also the case in Uighur documents: the witness's name can be preceded by the statement *bu bitigkä* 'to this document' or *bu sözdä/bu sawda* 'to this statement'.¹⁸⁰ However, the vocabulary here is strictly Turkish whereas the witnesses in the Yärkand documents are more inclined to use terms adopted from Arabic (such as *haṭṭ* for *bitig*, *bay'*).

¹⁷⁰ Grohmann, 119; see also Tyan, *Notariat*, 57.

¹⁷¹ Our document V (witness no. 3) and Huart, 612 (doc. I); Huart's reading *وکیل بامره* which he has left untranslated should always be corrected to *وکتب بامره*.

¹⁷² Exceptions to this are extremely rare; see one example in Dietrich, 8 (doc. I, ll. 24–5).

¹⁷³ Our document V (witness no. 3) and some witnesses in Huart, 617 (doc. II) and 623–4 (doc. III).

¹⁷⁴ Our documents III (ll. 17–18 witnesses' section) and V (witnesses nos. 5 and 6) as well as Huart, *ibid.*

¹⁷⁵ For example our document II and Huart, 612 (doc. I); these two documents are earlier than those quoted in the two preceding notes 173 and 174.

¹⁷⁶ See the nn. 173, 174 above.

¹⁷⁷ Clarke, 302, and Yamada, 111; examples are to be found in Hamilton, 34, and Zieme, 298.

¹⁷⁸ Erdal, text I (l. 25).

¹⁷⁹ Erdal, text VI (l. 11).

¹⁸⁰ Yamada, 111.

In document III, the expression *nišan ur-* occurs twice in the witnesses' section (l. 6 and separate deposition). This verb seems to be calqued on the Persian *nišan zadan*, *nišan* being 'sign, stamp, mark'.¹⁸¹ In Uighur private documents, the term *nišan* always means a personal handwritten or stamped sign drawn upon a given document by the witnesses.¹⁸² As no such sign occurs in the Yärkand deeds, *nišan* should rather, in these cases, be taken as meaning 'signature'.

Unfortunately, Islamic private documents rarely give any details about the persons who serve as witnesses. This is also the case in the Yärkand documents. Above all, a number of military and administrative titles are mentioned, but it is not at all evident that these titles really corresponded to a specific function. They were possibly only used as *laqabs* without being linked to an actual military or administrative rank. It is a well-known phenomenon that titles were very often used as proper names as well. Some names suggest that this was also the case in the Yärkand area, e.g. the witness *Rasul-tar* (doc. III, l. 17, witnesses' section) who has no other name: although *rasüldār* is an administrative title, this appears in this case to have been his proper name. The same seems to be true of the following witness *Imga* (doc. III, *ibid.*) and for the witnesses' fathers *Yabgu Bäk* (doc. III, l. 16 witnesses' section) and *Inal Bäk* (doc. III, l. 2, witnesses' section). In the five Arabic documents presented here, the following military and administrative titles are attested: *sübaşı*, *witaqbaşı*, *haylbaşı*, *hāğib*, *tamğaçı*, *ıval*, *ögä*, *ımgä*, *rasüldār*, *şarābdār* and possibly *al-silāhī*, *yabgu bāk*, *čavlı* and *čajrı*; there are also *hāşş hāğib* and *hāşş haylbaşı* which may have been titles as well. The contracting parties also bear such titles, e.g. *ıval* (doc. I, l. 7), *otağbaşı* (doc. II, l. 6) *sübaşı* and *hāğib* (doc. III, ll. 2–3). These titles, though not all of them, also occur in the three other Arabic documents¹⁸³ and in the Turkish Yärkand contracts.¹⁸⁴

Apart from these titles, information on witnesses is very scarce in the Yärkand documents. In the five deeds presented here, there is the son of the judge among the witnesses (doc. II, witness no. 3), a merchant (*tāğır*; doc. V, witness no. 7), a cutler (*sakkāk*; doc. II, witness no. 4), and a *mutafaqqih*, i.e. someone versed in Islamic law (doc. II, witness no. 2). In the Turkish Yärkand contracts, a cotton-carder (*hallāğ*),¹⁸⁵ a ferry-man (*täknäči*)¹⁸⁶ and a scribe (*hattıçı*)¹⁸⁷ also serve as witnesses. One Turkish Yärkand contract mentions a Persian (*täzik*)¹⁸⁸ as witness. Similarly, an Arab is attested as the father of two brothers who are sellers in an Arabic contract (doc. V, l. 4). Finally, relationships between the witnesses to a document can be established, e.g. between father and son (doc. III, ll. 5 and 14–15 witnesses' section) or between two brothers (doc. V, witnesses nos. 1 and 2; doc. V, ll. 24 and 25). In one instance, a person who is mentioned as a neighbour of the contracting parties serves as witness to a document, namely, Mas'ūd Toğril Sübaşı, owner of a plot of land

¹⁸¹ Steingass, 1402b.

¹⁸² Clarke, 325–37, discusses the various meanings and witnesses' formulae connected with personal signs (*nišan*) and seals (*tamğa*). He finally states that it is not yet possible to determine whether the use of *tamğa* as opposed to *nišan* by the witnesses of a given document is significant.

¹⁸³ Huart has not completely read the witnesses' section, but in his documents we nevertheless find the titles *hāğib*, *hāğib bāk*, *ımgä*, *ıval* (all of them p. 617, doc. II) and *sübaşı* (p. 623, doc. III). The first witness on the right in doc. III (p. 623), is a *haylbaşı*: Huart has not put any dots as he does not seem to have been sure of the reading.

¹⁸⁴ Erdal, 266.

¹⁸⁵ Erdal, texts III (l. 5) and V (l. 5).

¹⁸⁶ Erdal, text III (l. 14); the same person is attested as land owner in text II (l. 8).

¹⁸⁷ Erdal, text V (l. 3).

¹⁸⁸ Erdal, text I (l. 32).

in *Sinmās* which is contiguous to the property sold, is among the witnesses to the contract (doc. III, l. 7 and witnesses' section ll. 9–10).

Edition of the documents

Symbols used for the edition are as follows :

- [] encloses letters supplied to fill a lacuna
- [...] signifies letters wanting; their number is indicated by dots (one for each letter or, if this is not possible, their approximate number)
- < > encloses letters supplied as a correction by the editor
- { } encloses letters that are to be omitted
- ⌈ ⌋ encloses letters cancelled in the original
- // // encloses interlinear words or passages inserted into the text by the editor

Document I

An order of the court concerning a land ownership dispute ¹⁸⁹ (pl. I and II).

Well-preserved document with only a few small holes. Traces of horizontal folding are clearly visible. 26 lines of text in cursive script with very scarce diacritical dots. Above the text, '*alāma* of the judge; below, one further line of text also written by the judge.

'alāma of the judge

أحمد الله وحده ¹⁹⁰

Text

١. بسم الله الرحمن الرحيم
٢. هذا كتاب أشهد ¹⁹¹ عليه الشيخ القاضي الإمام أبو بكر محمد بن عبد الصمد بن اسمعيل البخاري سلمه الله و أبقاه في مجلس حكمه و قضايه بكورة
٣. ياركنده وهو يومئذ قاضيها وحاكم أهلها و نواحيها من قبل الخاقان الاجل السيد الملك المويبد المظفر المنصور عز الدين مشيد
٤. الدولة القاهرة و برهان الملة الباهرة و كهف الامة الطاهرة غياث المسلمين ملك المشرق و الصين طغناج بغرا قراخاقان
٥. ابي علي الحسن بن سليمان ارسلان قراخاقان مجتبي خليفة الله ولي امير المومنين و من قبل التكين الاجل السيد عماد الدولة
٦. و ¹⁹² سداد الملة جفري تكين ابي موسى هرون بن ملك المشرق طغناج بغرا قراخاقان مولى امير المومنين اطل الله بقاها و اعز نصرهما
٧. انه حضر مجلس الحكم قبله بها في غرة ذي الحجة سنة اربع و [تس]عين ¹⁹³ و اربعماية المسمى بجاجي انال بن پولاد سوباشي بن ¹⁹⁴ قرايند انال
٨. وهو امرد قد طر شاربه شعراي سبط الشعر تام القامة اثقم ¹⁹⁵ اللون ضم اشهل ابلج واحضر بحضوره المسمى هارون بن
٩. تفجخ وقد عرفها معرفة صحيحة بالوجه و الاسم و النسب فادعى الذي حضر اولاً على الذي احضره معه قطعة أرض في يده ¹⁹⁶

¹⁸⁹ In the S.O.A.S. collection Arabic no. 2. References to Barthold's edition of the document are marked B.

¹⁹⁰ B. استغفره. Not having recognized the '*alāma*', he placed this formula immediately after the *basmala*.

¹⁹¹ B. يشهد.

¹⁹² B. leaves out و.

¹⁹³ The document being damaged just at this place, it cannot be ascertained whether the year is 474 or 494.

¹⁹⁴ B. leaves out بن.

¹⁹⁵ B. ادهم.

¹⁹⁶ B. فريدة.

١٠. موضعها برستاق يدعى بريل وهي من رساتيق كورة ياركنده بحضرة مسجد ينسب الى اسحق الجلاب وهي مبذرة ثلثين
١١. وقر حنطة بعضها موات وبعضها صالحة للزرا[عة بحد] و[د]ه الاربعة فالحد الاول لزريق ارض يوسف انال والثاني لزريق
١٢. ساقية تنسب الى سوكان بكك و الثالث لزريق ارض يوسف انال و الرابع 197 لزريق طريق العامة و لزريق ارض جوبرز
١٣. انال و لزريق نهريدي ازاكك و ذكر في لفظ دعواه ان جميع هذه الارض المحدودة فيه كانت ملكا لاييه المسعى فيه
١٤. مات و تركها ميراثا 198 له و لغيره من ورثته و الان ملكهم وحقهم و ان هذا استولى عليها ظلما و جورا واجب عليه رفع
١٥. يده عنها و تسليمها اليهم وهو يمتنع عن ذلك و سأل فسئل فانكر دعواه اصلا و جحد راسا وزعم
١٦. انها ملكه وحقه اشتراها من الغير بشئ معلوم و نقده الثمن فامر المدعى باقامة البينة على صحة ما ادعاه و بتحقيق
١٧. ما حكاها ان كانت 199 له ذلك فاورد ثلاثة نفر ذكر انهم شهرده 200 فشهدوا له على صحة ما يدعيه و ساله 201 الاستماع الى شهادتهم
١٨. و الاصفا الى كلامهم و هم عبد الجليل جفري سوباشي بن موسى بن املوك و ابو بكر السلاحي 202 بن براق بن يربا
١٩. و جبريل وثاق باشي بن موسى بن بقچار فاستشهدهم عقيب اعادة الدعوى و الانكار فشهد كل واحد منهم على
٢٠. التعاقب على موافقة الدعوى بحضرة المتنا<ز>عين [ش]هادة صحيحة مستقيمة متفقة اللفظ و المعنى لم يختلفوا في
٢١. شئ من ذلك فتفحص عن حالهم فعدلوا فزكوا و ظهرت عدالتهم و توجه الحكم على المشهود عليه فاعلمه به و امره
٢٢. بابرار 203 دفع اوخرج ان كان له ذلك فعجز عنه عجزا ظاهرا بعدما مكنه مدة مثله فعند ذلك التمس منه المدعى ان يحكم له
٢٣. بما ادعى فاستجار الله <ا>لى و ساله العصمة عن الزيف و الزلل و حكم بكون الارض المحدودة فيه ملكا للمشهد له
٢٤. و لغيره من ورثة ابيه و امر المحكوم عليه بقصر يده عنها و تسليمها الى المحكوم له و اطلق له الرجوع على بايعه بالثمن
٢٥. الذي نقده ثم ان المحكوم له التمس منه اثبات ما صح عنده و ثبت لديه فاجابه الى ملتسمه و امر بكتبة
٢٦. هذا الذكر ليكون 204 حجة له عند مساس الحاجة و ذلك بتاريخ 205 المورخ فيه صدرا 206

Certification by the judge

يقول محمد بن عبد الصمد بن اسمعيل الحكم المذكور فيه صدرا 207 عنى و السجل كتب بايدي 208 و السطر مع التوقيع خطي

197 The document reads و له لرابع , perhaps a slip of the scribe ?

198 B. ميراث.

199 Correct كان , cf. line 22.

200 B. شهودة.

201 B. سال.

202 B. الشلاحي. The sign above the *sin* must be taken as a *tašdid* when we compare it to the two *šins* in line 8.

203 B. اراد, same meaning in this context.

204 B. لذكور.

205 Correct بالتاريخ.

206 B. صدره.

207 B. صدر.

208 B. بامرى.

Translation

(‘*alāma* of the judge)

I praise God alone.

Text

1. In the name of God, the Compassionate, the Merciful.
2. This is a document to which the *šaiḥ*, the *qāḍī* and *imām* Abū Bakr Muḥammad, son of ‘Abd al-Šamad, son of Isma‘īl al-Buḥārī—may God keep him alive and spare him—has called witnesses in his court of law and justice in the province
3. of Yārkanda of which he was then the *qāḍī* and *ḥākim* of its inhabitants and of its districts, (appointed) by the most sublime *ḥāqān*, the chief, the king aided (by God), victorious and triumphant, the glory of the faith, the fortifier
4. of the powerful dynasty,²⁰⁹ the proof of the resplendent congregation, the asylum of refuge of the pure community, the help of Muslims, the king of the East and China, Taḡāč Buḡrā Qārā Ḥāqān
5. Abū ‘Alī al-Ḥasan, son of Sulaymān Arslān Qārā Ḥāqān, the favourite of the representative of God, the friend of the commander of the faithful,²¹⁰ and (appointed) by the most sublime prince, the chief, the pillar of the dynasty,
6. the righteous way of the congregation, Čaḡrı Tāḡin Abū Mūsā Ḥārūn, the son of the king of the East Taḡāč Buḡrā Qārā Ḥāqān, client of the commander of the faithful—may God give them both a long life and honour them with his help—
7. (to testify) that on the first day of Du‘l-Ḥiġġa of the year 474 (or 494) the so called Ḥāġġī Inal, son of Pūlād Šūbaši, son of Qārā-band²¹¹ Inal, had appeared before him in his local court of law ;
8. he was yet beardless, his moustache was just sprouting, very hairy (about the body), with lank hair, of perfect stature, fair colour, bulky frame, very dark blue eyes with the eyebrows wide apart. He brought with him to his (i.e. the judge’s) presence the so-called Ḥārūn, son
9. of Taġčaḥ. (The judge) knew them both well by face, name and parentage. The (man) who first appeared claimed against the one whom he had brought with him a plot of land which was in his possession
10. situated in the district called Rabul, one of the districts of the Yārkanda province, facing the mosque named after Ishaq al-Ġallāb (and representing) a sowing area of thirty
11. donkey-loads of wheat, consisting partially of barren soil and partially of soil fit for agriculture, with its four boundaries: the first boundary is contiguous to the land of Yūsuf Inal, the second one is contiguous
12. to the irrigation canal named after Sökmān Bāk, the third one is (again) contiguous to the land of Yūsuf Inal, and the fourth one is contiguous to the public road, the land of Ġūbarz
13. Inal and the canal called Āzāk. He mentioned in his claim that the whole of that land with its boundaries indicated in this (deed) had been the property of his father named in this (deed)

²⁰⁹ i.e. the dynasty of the ‘Abbāsid caliphs.

²¹⁰ The two latter honorary titles refer to the ‘Abbāsid caliph.

²¹¹ The name can also be read as Qārā-yund.

14. who had died and had bequeathed to him and other heirs, (which) was now their lawful property, (but) that this man (i.e. the defendant) had taken possession of it by injustice and violence and that it was obligatory for him to take
15. his hand from it and to deliver it to them (i.e. the heirs), but he refused to do so. (The plaintiff) asked (that the defendant should be questioned). He was questioned, (but) he wholly denied the charge, totally repudiated (it) and claimed
16. that it was his lawful property which he had bought from another (person) at a known sum and had paid this price in cash. The plaintiff was ordered to produce evidence proving the validity of his claim and the correctness
17. of his story, if he were able to do so. He produced three persons saying that they were his witnesses, and they testified on his behalf to the validity of his claim, and he asked (the judge) to hear their evidence
18. and to listen to their words; they were 'Abd al-Ġalil Čaġrı Sübaşı, son of Mūsā, son of Amlūk, and Abū Bakr al-Silāhī, son of Burāq, son of Yarbā,
19. and Ġibril Wiṭāqbaşı, son of Mūsā, son of Baqčār. (The judge) called them as witnesses after the claim and the denial had been repeated. Every-one of them,
20. one after the other, gave evidence confirming the claim, in presence of the two parties, being valid and correct evidence, agreeing in word and meaning with no difference concerning
21. any point of that (claim). (The judge) made inquiries concerning their characters; they proved to be irreproachable and righteous (persons), and their integrity was demonstrated. The judgement was (then) directed against the defendant; ²¹² (the judge) made it known to him and ordered him
22. to produce a refutation or a proof against the evidence if he were able to do so, but he was obviously incapable of doing so, after (the judge) had conceded him the same amount of time (as to the plaintiff). At this stage the plaintiff begged him (i.e. the judge) to deliver a judgement in his favour
23. concerning his claim. (The judge) implored the aid of God, the most High, and asked Him for protection from deviation and stumbling, and delivered judgement that the land with its boundaries indicated in (this) document was the property of the person in whose favour evidence had been given
24. and of the heirs of his father. He ordered the man against whom judgement had been delivered to take his hand from it (i.e. the land) and to deliver it to the man in whose favour judgement had been delivered, and he (further-more) delivered judgement ²¹³ in his (i.e. the defendant's) favour to claim from the seller of it (i.e. the land) the return of the money
25. which he had paid him. Afterwards the man in whose favour judgement had been delivered (i.e. the plaintiff) begged him (i.e. the judge) to make a record of what he had considered as valid and what had been demonstrated before him. (The judge) assented to his request and herewith orders that
26. this document be drawn up so that it might be a proof in his favour in case there should be infringement, and this on the date mentioned at the beginning of (this) document.

²¹² *mašhūd 'alayhi*, literally the person against whom evidence has been given.

²¹³ *aṭlaqa*, see Dozy, II, 56b.

(Certification by the judge)

Muḥammad, son of ‘Abd al-Šamad, son of Isma‘īl, says : The judgement noted above in the document has been delivered by me, the certification was written with my hand, and the line with the signature is in my handwriting.

Commentary

3. Yārkand stands in our Arabic material mostly for a province (*kūra*),²¹⁴ but can also denote the city itself (*balda*).²¹⁵ The name in the Arabic documents is always rendered Yārkanda (ياركند), written with final *h*,²¹⁶ whereas early Qarākhānid coins have the name written Yārḡand (يارغند).²¹⁷ Similarly, Arab geographers give the name of Khojand as Khojanda.²¹⁸

The two official titles applied to a judge in our documents I, II and IV are *qādī* and *ḥākim*. Judging from this material, a *qādī* in Turkestan might have been superior to a *ḥākim* in rank and area of competence. In documents II and IV (l. 2) the judge heading the court is called *ḥākim* whereas the judge who appointed him is in both cases termed *qādī*. In the present document I, on the other hand, the judge has both the title of *qādī* and *ḥākim*. Thus it would seem that the function and competence of a *qādī* implied that of a *ḥākim*, that is a *qādī* could well be a *ḥākim* at the same time, but not the other way round. The distinction in rank between the two titles is also suggested by the fact that the two judges called *ḥākim* in documents II and IV are mere district judges of Posgām and some other places while the jurisdiction of the judge in document I who bears both titles comprises the whole province of Yārkand. The two *qādīs* mentioned in documents II and IV may also have been judges of the Yārkand province; though no evidence is available at the moment, this does not seem unlikely in view of the lapses of time between the three Yārkand deeds (no. I : 1101; no. II : 1110; no. IV : 1125). On the other hand, the *ḥākim* heading the court in document II is referred to as *qādī* by witnesses nos. 2, 4 and 5, whereas witness no. 3 (who is the judge's son) speaks of him as *ḥākim*, which is his official title according to the document (l. 2). May we conclude that *qādī* did not just designate a superior judge in the Yārkand area, but was also the current general term for 'judge' without referring to a specific rank? The question must remain open. At any rate, the different value of the two titles *qādī* and *ḥākim* concerning rank and area of competence would be similar to the official terminology of Islamic law which reserved the title *qādī* to the judges of the capital whereas the judges in the provinces were called *ḥākim*.²¹⁹ Besides the distinction according to rank, other criteria to distinguish between these two functions existed in medieval Islam,²²⁰ but no trace of these can be found in the Yārkand material.

In Islamic lands the judge, like all other state officials, is part of the system of delegation of competence elaborated by Islamic legal theory in which every delegate (*nā'ib*) is considered as the representative of the delegator. Thus a judge could be directly appointed by the ruler of the country or even the caliph

²¹⁴ Besides the present document see our documents III (l. 5) and V (l. 5) as well as Huart, 622 (doc. III).

²¹⁵ Our document III (l. 7).

²¹⁶ See our documents I, III and V and the three contracts published by Huart.

²¹⁷ Zambaur, 272

²¹⁸ Barthold, *Turkestan*, 164.

²¹⁹ See Tyan, *Organisation judiciaire*, 110.

²²⁰ For further material see Tyan, *ibid.*, 110–11, and my *Arabische und persische Privaturkunden*, p. 77 and nn. 1–6.

or by various representatives of government as their delegate; ²²¹ this is the case in the present document I in which it is the Qarākhānid ruler and his son who appoint the judge (ll. 3–6). On the other hand, a judge could also for his part appoint other judges as his representatives to whom he delegated part of his own powers ²²² as is the case in documents II and IV.

4–5. The title *malik al-Mašriq wa'l-Šīn* (King of the East and China) was first adopted by the Qarākhānid ruler Yūsuf Qādir Ḥān after he had conquered and Islamized Khotan in the Tarim basin shortly after 1000. Muslim geographers often allocate this region to China (*al-Šīn*) in which it has indeed often been included. Several other Qarākhānid rulers afterwards adopted the same title.²²³ We find it again, for example, in a donation act (*waqfiyya*) of a hospital of Ibrāhīm Tamgāč Ḥān, distantly related to Yūsuf Qādir Ḥān, dated 458/1066.²²⁴ As some Qarākhānids ruling only in Transoxania also bore this title, Barthold interprets its adoption rather as being an imitation of the Chinese emperors.²²⁵

The identity of Abū 'Alī al-Ḥasan as the ruler to whom the *Qūdātqū Bīlik* was dedicated has already been stated by Barthold in his edition of the present document.²²⁶ Abū 'Alī al-Ḥasan's title Buğrā Ḥān and his father's title Arslān Ḥān refer to the two joint rulers of the Qarākhānid dynasty. The system of double leadership which the Qarākhānids, like other Altaic peoples, had adopted, was kept up after the division of their empire into a Western and an Eastern part in 433/1041–42: in each there was a supreme ruler who had the title Arslān Ḥān and a joint ruler with the title Buğrā Ḥān.²²⁷

The title Tafgāč is here, according to the facsimile, written with *f*; other spellings with *b* (as in the Orkhon inscriptions), *p*, *m* and *n* instead of *f* are known of which Tamgāč appears to be the correct form. The first Qarākhānid ruler to adopt this title was Ogulčaq Qādir Ḥān, a contemporary of the Sāmānid Ismā'il b. Aḥmad, at the end of the ninth century. The first appearance of this title at such an early date in Qarākhānid history leads Pritsak to believe that the Qarākhānid rulers might always have had it ever since the foundation of their empire.²²⁸ There is much evidence of the use of the title in Qarākhānid titulature (coins, *Qūdātqū Bīlik*, etc.). Tamgāč being the normal Turkish designation of the Chinese,²²⁹ Barthold takes it to be an emulation of the Chinese emperors, just like the title *malik al-Mašriq wa'l-Šīn*.²³⁰

7. The first of Du'l-Ḥiğga 474 corresponds to the 2nd May, 1082, the same date of the year 494 to the 27th September, 1101.

Īnāl/īnāl ²³¹ was originally a title signifying 'representative (of a high dignitary)', but it could also serve as element in proper names.²³² It also occurs in two other Arabic documents, apart from this one, as well as in a Turkish deed

²²¹ Art. 'Kādi' in *EI* (2nd ed.), iv, 373b.

²²² For details see Tyan, *Organisation judiciaire*, 101–4.

²²³ See art. 'Īlek-Khāns' in *EI* (2nd ed.), iii, 1143a, and Pritsak, *Karluks*, p. 295, n. 3.

²²⁴ Khadr-Cahen, 320.

²²⁵ Barthold, *Turkestan*, 304, and *Vorlesungen*, 98.

²²⁶ Barthold, *Bughra Khan*, 151–3.

²²⁷ Pritsak, *Streitfragen* 4, 228.

²²⁸ Pritsak, *Karluks*, 287–9.

²²⁹ Barthold, *Vorlesungen*, 97; Samolin, p. 79, n. 33.

²³⁰ Barthold, *Turkestan*, 304.

²³¹ For the phonetic reading see *TMEN*, iv, 196–8, no. 1900.

²³² For details see *ibid.*, 196–9, as well as *EDPT*, 184–5.

from Yärkand²³³; however, it is not clear whether it functions in these documents as a title or as a proper name.

Sübaşı, 'leader of an army',²³⁴ is a common military title which occurs in nearly all Yärkand documents and thus appears to have been rather frequent in that area. Minorsky prefers to translate the title as 'captain'.²³⁵ We find it again for example in a donation act (*waqfiyya*, 458/1066) of Ibrāhīm Tamgāč Hān.²³⁶

10. Rabul²³⁷ is the name of a village (*qarya*)²³⁸ and at the same time of a district (*rustāq*, *nāhiya*)²³⁹ dependent on Yärkand. The exact position of Rabul in the surroundings of the city has not yet been identified. As several Yärkand documents, dated 473–494/1080–1101 (among them the present document), refer to Rabul,²⁴⁰ they yield some information on several persons living in that village. There is, for example, Ishaq al-Ğallāb to whom a mosque is assigned in the present document. He had already acquired several pieces of land in Rabul during the years 473–483/1080–1090.²⁴¹ His landed property certainly was not far either from the mosque which bears his name or from Hāġġi Inal's land which is the subject of the present document, as both Ishaq al-Ğallāb and Hāġġi Inal have the same neighbour, namely, Yūsuf Inal whose land has two boundaries in common with Hāġġi Inal's land (ll. 11, 12) and another boundary with that of Ishaq al-Ğallāb.²⁴² The public road (*tariq al-‘amma*, *uluġ yol*) of Rabul also borders on Hāġġi Inal's (l. 12) and Ishaq al-Ğallāb's land.²⁴³ Finally, there is Sökmān Bāk after whom a canal bordering on Hāġġi Inal's land is named (l. 12). Sökmān Bāk is attested as an owner of land (*dai'a*) in Rabul in the year 489/1096.²⁴⁴ We already find him six years earlier, in 483/1090, in connexion with a sale of land to Ishaq al-Ğallāb; the latter acquires part of a plot of land called *botıq* in Turkish and which bears Sökmān Bāk's name. This may be a rounded variant of Turkish *batıq* and would suggest a low place or swamp or suchlike.²⁴⁵ It is, however, not quite clear from the Yärkand material whether this land is identical to or part of the *dai'a* which is later attributed to Sökmān Bāk. Besides the persons just mentioned, owners of neighbouring estates in Rabul appear in several other documents from Yärkand.²⁴⁶

It seems that the whole region of Rabul was thus split up into fairly small plots of land so that a person probably had to be quite persevering in order to acquire a larger piece of land. He would have to buy plots of land, one after the other, from several persons by various contracts, and this could take a long time. In the case of Ishaq al-Ğallāb, who appears as a buyer of land in three Turkish Yärkand documents, it took ten years (473–483/1080–1090)²⁴⁷ and probably

²³³ Our documents III (l. 2, witnesses' section) and V (l. 26) and Erdal's text IV; Erdal, 281, translates the title as 'counsellor'.

²³⁴ *TMEN*, III, 282–5, no. 1279.

²³⁵ Minorsky, 188.

²³⁶ Khadr-Čahen, 317; the title is left untranslated.

²³⁷ The vocalization of the name is indicated by the orthography رابول in Huart, 611 (doc. I).

²³⁸ Huart, *ibid*.

²³⁹ See our document and Huart, *ibid*.

²⁴⁰ These are, besides our document, Erdal's texts I, II and IV and Huart's document I.

²⁴¹ See Erdal's texts I, II and IV.

²⁴² Erdal, text IV (l. 9).

²⁴³ Erdal, text II (l. c. 1).

²⁴⁴ Huart, 611 (doc. I).

²⁴⁵ Erdal, text IV (l. 4); Erdal gives a tentative translation of the word by 'depression', see also p. 284.

²⁴⁶ e.g. Buġrā Ögā and B... tuşun; see Erdal's text IV (ll. 21–2) and Huart, 611 (doc. I).

²⁴⁷ Erdal's texts I, II and IV.

made him a rather powerful man in his village. A similar example is Isrāfil Čavlı Sübaşı of Sınmas.²⁴⁸

11. *Wiqr* 'donkey-load', is the Arabic counterpart of Turkish *yük* and Persian *harwār*.²⁴⁹ *Harwār* which literally means the load one donkey can carry, was also used for loads carried by horses, mules, and oxen, at least in medieval Persia,²⁵⁰ and this may also have been the case in Turkestan. The weight of a donkey-load in Turkestan was usually, according to Barthold, 80–90 kg.²⁵¹ This is close to the İlkhānid *harwār* of 83.3 kg. fixed by Ġāzān Hān in about 1300. The *harwār* of 83.3 kg. seems to have been still in use in Turkestan during the Timurid epoch, whereas in other regions the *harwār* exceeded this figure.²⁵²

The estimation of land according to the amount of grain which can be sown on it is apparently a custom limited to Central Asia which, to my knowledge, has no counterpart in medieval Islamic land-sale contracts from other regions. Examples of this practice are to be found in two other documents from Yārkand²⁵³ and in a Persian contract from Khotan dated 501/1107.²⁵⁴ Non-Islamic Uighur deeds also give examples of this custom²⁵⁵ which has extended into modern times in Central Asia.²⁵⁶ In Uighur deeds, however, the amount of seed is always given in *šiq* and *kōri*, modelled on two Chinese terms, which were used as measures of volume and not of weight;²⁵⁷ they are thus different from the Yārkand material which had adopted measures of weight for this purpose.

In Islamic land sale contracts, on the other hand, the extent of an area is usually expressed in fractional numbers referring to a well determined whole which can be the totality of the land belonging to a village or a certain area with a given name and fixed boundaries. Various fractions up to very small ones are attested in Islamic contracts. In Persian regions, the whole of an area is often expressed as 'six sixths' (*šeš dāng*), and subdivisions frequently start with one-sixth, which can be further and further subdivided according to a fixed system. In theory an area can ultimately be broken up into about a billion plots. Such extremely tiny subdivisions never had, of course, any practical value. Only the larger units were actually adopted.²⁵⁸ The Yārkand documents, at any rate, have not used these kinds of fractions, but retained the Central Asian custom of estimating an area by a certain amount of seed. In the framework of Islamic notarial practice as a whole, of which at least the Arabic Yārkand documents are fully representative, this has to be taken as a regional peculiarity.

12. Sökmān Bāk occurs in several other Yārkand documents (cf. commentary to l. 10 above). Sökmān, according to Kāšġarī's *Diwān luġat at-Turk*, is a military title²⁵⁹ which seems to be used as a proper name in this case.

13. Äzāk is the name of an irrigation canal (*nahr*) in Rabul. In another Yārkand document, the name occurs again as a boundary of a vineyard (doc. III, l. 7), but is not further specified. Yet we may assume, on the basis of

²⁴⁸ See our document III (l. 2).

²⁴⁹ Hinz, 36.

²⁵⁰ Hinz, 14.

²⁵¹ Barthold, *Turkestan*, 161.

²⁵² Hinz, 14–15.

²⁵³ Document III (l. 4), as well as a Turkish contract, see Erdal, text VI (l. 3). The donkey-load is termed *wiqr* and *yük* respectively.

²⁵⁴ Minorsky, 185, the donkey-load being termed here *harwār*.

²⁵⁵ Hamilton, 33 and 37; Yamada, 73 and 75 (doc. 1); and Zieme, 297 and 301–2.

²⁵⁶ Minorsky, p. 192, n. 3.

²⁵⁷ Clarke, 377; Yamada, 77, 79, and 97.

²⁵⁸ The detailed list of subdivisions is to be found in Mokri, 175. He states that in Kurdistan the smallest fraction actually used is the *hardal* which in fact makes up a 576th of an area. The smallest unit in medieval Islamic contracts I have come across up to now is a 96th (*ša'ira* or *faw*).

²⁵⁹ Erdal, 283.

Clauson's plans quoted above,²⁶⁰ that it is the same irrigation canal which passed both Rabul and Sinmas.

14. *Čağrı* 'falcon', is attested in Kāšgari's *Dīwān luğat at-Turk* as well as in the *Qūdātqū Bīlik* as a proper name in the same way as *čavlı* which has the same meaning.²⁶¹ Names of animals were frequently used as proper names among the Turks.²⁶²

The *nisba* al-Silāhī, written in this document with a *tašdīd* above the *sīn*, is explained by Sam'ānī as being a 'bearer of arms'²⁶³ and is attested as the title of the military officer who bore the sultan's arms which he presented to him in case of need; it is equivalent to the title *silāhdār*.²⁶⁴ It may also have been a military title of this kind under the Qarākhānids: a *silihdar* occurs in one of the Turkish Yārkand contracts.²⁶⁵

19. The title *wiṭāqbaşı* is attested, at about the same time as in our document, in Nizām al-Mulk's *Siyāsāt-nāme*. According to this Persian source, the military rank of a *wiṭāqbaşı* or 'commander of the tent' was just below that of the *haylbaşı* and two ranks below the *hāğīb*; it could be attained by a slave in his seventh year of military service. The insignia of a *wiṭāqbaşı* were a black felt hat embroidered with silver and Gangī dress.²⁶⁶ It seems not unlikely that this rank is the same one as that of the *otağbaşı* which occurs in our document II (l. 6). *Wiṭāq* is the Arabic, *otağ* the Turkish word for 'tent'. *Otağ* occurs in Kāšgari's *Dīwān luğat at-Turk* and in the *Qūdātqū Bīlik*; in the latter, the military unit of ten tents (*on otağ*) is also mentioned. It is probable that the commander of ten tents was one rank higher than the *otağbaşı* who commanded only one tent. If the correlation *wiṭāqbaşı*-*otağbaşı* is correct, the *haylbaşı* would be a commander of ten tents.²⁶⁷ However, the question requires further elucidation.

Document II

An order of the court concerning an intestacy²⁶⁸ (pls. III and IV).

Well-preserved document with its upper part slightly damaged, but without mutilations of the text. Traces of horizontal folding are clearly visible. 25 lines of text, followed by a short line on the left-hand side of the page. Cursive script with few diacritical dots, but sometimes additional signs, and two long interlinear insertions in ll. 4 and 12. Above the text, 'alāma of the judge, below, three lines of certification also written by the judge. 5 attestations of witnesses.

'alāma of the judge

اعتصمت بالله

Text

١. بسم الله الرحمن الرحيم
٢. يقول عمر بن الحسين بن [عبد] الوهاب الحاكم ببوسكام و كمشوا و كرمكار و نواحيها من قبل الشيخ القاضي الامام وركن

²⁶⁰ See p. 466 above.

²⁶¹ See *EDPT*, 410a as well as 397a (sub *čavlı*).

²⁶² See, for example, Kakuk, Suzanne: 'Quelques catégories de noms de personne turcs', *Acta Orientalia Academiae Scientiarum Hungaricae*, 28, 1974, 1-35; for names of animals pp. 3-10; among the names of falcons are mentioned *sunqur* and *šahin*, pp. 8-9.

²⁶³ Sam'ānī, 'Abd al-Karīm b. Muḥammad: *Al-ansāb* (facsimile), Gibb Memorial Series, 20, (Leyden 1912), fol. 320a.

²⁶⁴ Dozy I, 672a.

²⁶⁵ Erdal, text V (l. a. 5).

²⁶⁶ Quoted in Barthold, *Turkestan*, 227.

²⁶⁷ Some details and further references are given in Erdal, 287-8, and Tekin, 877. The terms *wiṭāq* and *otağ* are discussed in *TMEN*, IV, 42, no. 1762, and *ibid.*, III, 66-9, no. 489, respectively.

²⁶⁸ In the S.O.A.S. collection, Arabic no. 6.

٣. الاسلام ابى بكر محمد بن [ا. . .] بن عمر السمرقندى اطل الله بقاءه و ادام علوه رفع الى وفاة يهود ايكان يهوباشى
٤. بن سادبع كثنى بن قت قايمش سوباشى الخريج// [فى] العشر الاواخر من شعبان من شهور سنة ثلث و خمسية// بعد موته ببينين من غير وصى ولا وصية الى احد و خلف من التركة
٥. ما يترك امثاله لكافة الناس من الدور و العقار و العبيد و الاما و الدواب و المواشي و ما شاكلها من صنوف
٦. الاموال و خلف اولادا ذكرا و اناثا كلهم كبار و منهم المسمى يوسف اوتاغ باشى و الاخرى المسماة حورا و الاخرى
٧. المسماة مريم و الاخرى المسماة نعمتى و الاخر المسمى محمد وماتت حورا و خلفت ثلثة اولاد و منهم المسمى يوسف
٨. و عايشة و فاطمة بنوا الياس بن محمد بن ازينه ثم ماتت نعمتى و لم يكن لها ولد ثم مات محمد و خلف ابنتا²⁶⁹
٩. و هى المسماة عايشة و زوجة و هى المسماة عاشورا بنت موسى فاجتمعوا الورثة الباقون واقربا الميت و طلبوا منى قسمة تركة مورثهم فرايت المصلحة فى قسمتها فاجبتهم الى ذلك فقسمت تركة مورثهم بينهم
١١. على موجب الشرع على فرايض الله سبحانه و تع^ا لي و سنة رسوله صلى الله عليه بعد فصال موته و تنقيب
١٢. و صاياه و بعد اخراج طيبات²⁷⁰ الجند من ماله بامر السلطان اعلاه الله// و بعد خلاف فى جميع ماليك و جميع الدواب و المواشي و العقار// للذكر مثل حظ الانثيين²⁷¹ لكل ابن
١٣. سهان و لكل ابنت²⁷² سهم فا اصاب لابنه المسمى يوسف اوتاغ باشى من تركة والده المسمى يهود
١٤. ايكان سوباشى نصف الكرم الذى خلف عن مورثهم حدوده الاربعة²⁷³ فاحد حدوده لزيق الكرم الذى خلف عن مورثهم
١٥. الذى ترك لاجل الجند و ثانيه لزيق ارض مريم و يوبيف و لزيق ارض يوسف و عايشة و فاطمة بنوا
١٦. الياس بن محمد بن ازينه و ثالثه لزيق الارض التى ترك لاجل الجند بامر السلطان و رابعه كذلك قيمة هذا الكرم
١٧. المحدود هى التى درهم و يصيب ليوبيف اوتاغ باشى من قيمة هذا الكرم الف وثمان مائة درهم و يصيبه
١٨. من تركة والده هذا الالف و ثمان مائة درهم و مايتى درهم ترك الى المسماة مريم بنت يهود ايكان يهوباشى
١٩. و الى يوسف و عايشة و فاطمة بنوا الياس من حساب نصيب والدتهم المبيهاة حورا و قبض هذا المسمى يوسف اوتاغ باشى هذا الكرم المحدود بتسليم ساير الورثة اليه و لم يبق له على ساير الورثة بسبب
٢١. تركة مورثهم حق و لا دعوى و لا خصومة و لا منازعة لا قليل و لا كثير بسبب تركة مورثهم²⁷⁴ فلهاجرت
٢٢. القسمة عندى هذا و ثبت بمشهدى و تحقق لدى التمس منى هذا المسمى يوسف اوتاغ باشى ان اكتب له
٢٣. ذكرا و اقصر ايدى ساير الورثة عن هذا الكرم المحدود اجبت الى كلمته و كتبت هذا الذكر ليكون حجة له
٢٤. عند مساس حاجته اليه و قصرت// ايدى// ساير الورثة عن هذا الكرم واشهدت على هذا الذكر
٢٥. جميع من اثبت اسمه فى اخره و ذلك بالتاريخ المورخ فى صدر الكتاب وهو فى العشر الاواخر من شعبان من
٢٦. شهور سنة ثلث و خمسية²⁷⁵

²⁶⁹ Sic for "ابنة".

²⁷⁰ Sic for "طيبة".

²⁷¹ Qur'ān 4: 11, 176.

²⁷² Sic for "ابنة".

²⁷³ Correct in this context: 'حدوده أربعة', it has four boundaries'.

²⁷⁴ The passage seems superfluous here being a simple repetition of the same expression in the preceding line.

²⁷⁵ The date was subsequently added by the scribe for reasons of accuracy.

Certification by the judge

١. يقول عمر بن الحسين بن عبد الوهاب القسمة المذكورة جرت بمشهدى و الكتاب
٢. كُتِبَ بامرئ و الشهود على هذا الكتاب صاروا شهداء بأشهادى و وقعت
٣. فى صدره و سياقه توقيعى و كتبت هذا الاسطر الثلاثة مع التوقيع الذى فى
٤. صدره بيدى

Witnesses' depositions

Witness no. 1

شهد بذلك بو بكر ابن محمد الفقار و كتب بخطه

Witness no. 2

اشهدنى الشيخ القاضى على سجله هذا و كتب جمال محمد المتفقه بيده صح

Witness no. 3

اشهدنى ابى على كتابه هذا نوكر بن عمر بن ا<ل>حسين {عمر} الحاكم بيده

Witness no. 4

اشهدنى الشيخ القاضى على كتابه و حكمه هذا و كتب على بن تاجر السكاك بخطه

Witness no. 5

اشهدنى الشيخ القاضى على علامته و حكمه هذا و كتب احمد بن غازى

Translation

('alāma of the judge)

I take refuge with God.

Text

1. In the name of God, the Compassionate, the Merciful.
2. 'Umar, son of al-Ḥusayn, son of ['Abd] al-Wa[hhāb], *hākīm* of Posgām, K.šwā (?), Karmkār (?) and its districts, (appointed) by the *šayḥ*, the *qāḍī*, the *imām*, the pillar
3. of Islam, Abū Bakr Muḥammad, son of [...], son of 'Umar al-Samarqandī—may God prolong his life and make his grandeur last—says: 'The death of Yahūd Ikān Sübaşı,
4. son of Sādiğ-kaşı (?), son of Qut Qaymıš Sübaşı al-Ḥirriğ,²⁷⁶ was reported to me//[in] the last third of Ša'bān which belongs to the months of the year 503, //after he had died in Sinīn (?) without executor or testament for anybody. He left behind as inheritance
5. what his equals leave behind to all people (?), that is houses, land, male and female slaves, beasts of saddle and burden, cattle and the like as kinds
6. of property. He left behind children of male and female sex, all of them of age, namely, the so called Yūsuf Otağbaşı, then the so called Ḥaurā', then
7. the so called Maryam, then the so called Ni'matī, then the so called Muḥammad. Ḥaurā' died and left behind three children, namely, the so called Yūsuf,
8. 'Ā'īša and Fāṭima, children of Ilyās, son of Muḥammad, son of Azīna. Then Ni'matī died who had no children. Then Muḥammad died and left behind a daughter,
9. namely, the so called 'Ā'īša, and a wife, namely, the so called 'Āšurā', daughter of Mūsā. The remaining heirs and the relatives of the deceased assembled

²⁷⁶ Also possible: al-Ğariḥ.

10. and requested from me the division of the inheritance of the deceased. Deeming proper this division, I assented to their (request) and divided the inheritance of the deceased among them
11. in compliance with the sacred Law according to the precepts of God—may he be praised and extolled—and the *sunna* of his envoy—may God bless him—after having . . . his death and examined
12. his orders ²⁷⁷ and after having excepted ²⁷⁸ from his property the share ²⁷⁹ for the army according to the order of the sultan—may God elevate him—//and after having . . . all of the slaves and all of the beasts of saddle and burden and the cattle and the land//(according to the precept that) ‘a man’s share equals that of two women’,²⁸⁰ that is, for each son
13. two shares and for each daughter one share. What falls to the share of the son, the so called Yūsuf Otağbaşı, of the inheritance of his father, the so called Yahūd
14. İ>kān Sübaşı, (is) one half of the vineyard which was left behind by the deceased. It has four boundaries: the first of its boundaries is contiguous to the vineyard which was left behind by the deceased
15. and which was left for the use of the army; the second one is contiguous to the land of Maryam and Yūsuf and (also) contiguous to the land of Yūsuf and ‘Ā’īsa and Fāṭima, the children
16. of Ilyās, son of Muḥammad, son of Azīna; the third one is contiguous to the land which was left for the use of the army according to the order of the sultan, and so is the fourth one. The value of this vineyard
17. thus delimited amounts to two thousand *dirhams*. The share of Yūsuf Otağbaşı in the value of the vineyard is one thousand and eight hundred *dirhams*. (Thus) his share
18. in the inheritance of his father is these one thousand and eight hundred *dirhams* while two hundred *dirhams* were left to the so called Maryam, daughter of Yahūd İ>kān Sübaşı,
19. and to Yūsuf and ‘Ā’īsa and Fāṭima, the children of Ilyās, in proportion to the calculation made for the share of their mother, the so called Ḥaurā’. The so called
20. Yūsuf Otağbaşı took possession of this vineyard thus delimited which the other heirs delivered over to him so that, to the disadvantage of the other heirs,
21. there remained no right for him to the inheritance of the deceased, no claim nor quarrel nor dispute, be it for little or much, concerning the inheritance of the deceased. When
22. the division had been accomplished before me in that way and established in my presence ²⁸¹ and (when) the price had been confirmed under my eyes, the so called Yūsuf Otağbaşı asked me to write
23. a document for him and to take the hands of the other heirs from this vineyard thus delimited. I assented to his request (*kalima*) and herewith write this document so that it might be a proof in his favour
24. in case his concern should be infringed upon, and I (thus) took //the hands// of the other heirs from this vineyard. I called as witnesses to this document

²⁷⁷ *Waṣūyā*, see Dozy, II, 823a.

²⁷⁸ *İhrāğ*, see Dozy, I, 359a.

²⁷⁹ *Tiba*, *ṭayyiba* may mean ‘legal share’, see Wahrmond II, 173a (‘Gesetzliches’). *Tib*, in the literal sense of the word, means ‘the best part of s.th.’.

²⁸⁰ Qur’ān 4: 11, 176.

²⁸¹ *Bi-maṣḥadi*, see Dozy, I, 794b.

(Witnesses’ attestations)

25. all those who wrote down their names at the end (of it), and this on the date mentioned at the beginning of the document, namely, the last third of Ša'bān which belongs
26. to the months of the year 503.

(Certification by the judge)

1. 'Umar, son of al-Ḥusayn, son of 'Abd al-Wahhāb, says: 'The division mentioned (herein) was accomplished in my presence, the document
2. was written by my order, and the witnesses to this document testified to it by virtue of my summons. I placed
3. my signature at the beginning (of the document) and at its end (*siyāq*). I wrote these three lines as well as (*ma'*) the signature which is
4. at the beginning (of the document) in my own handwriting.'

(Witnesses' attestations)

Witness no. 1

Bū Bakr, son of Muḥammad al-Faqqār, is witness. He has written in his own handwriting.

Witness no. 2

The *šayḥ* and *qādī* has called me as witness to his judgement. Ğamāl Muḥammad al-Mutafaqqih has written in his own handwriting. It is correct.

Witness no. 3

My father has called me as witness to his document: Nöker, son of 'Umar, son of al-Ḥusayn, the *ḥākim*; with his own hand.

Witness no. 4

The *šayḥ* and *qādī* has called me as witness to his document and judgement. 'Alī, son of Tāğīr, the cutler, has written in his own handwriting.

Witness no. 5

The *šayḥ* and *qādī* has called me as witness to his '*alāma* and his judgement. Aḥmad, son of Ğāzī, has written (this).

Commentary

2. Posgām (in Arabic letters written Būskām) is a large town to the south-east of Yārkand, situated on the trade route coming from Karğalik (today: Yeh-ch'eng) at a distance of 21 miles from Karğalik. Posgām is the modern Tse-p'u. A short description of Posgām in a traveller's account from 1869 gives the number of some 16,000 houses including the immediate suburbs of the town. At that time, Posgām had a long, busy market (*bāzār*) and a large caravanserai. The town was watered by the Beškun canal cut from the nearby Yārkand River and flowing along the main street through the centre of Posgām.²⁸² Gardens with vines are also attested.²⁸³

The two other places mentioned in this document cannot exactly be determined. Belonging like Posgām to the jurisdiction of the same judge, we may suppose that they were not too far from it and probably also south of Yārkand.

3. The name Yahūd Īkān shows that the person who bears it is a Jew.

²⁸² Hayward, 81–2.

²⁸³ Forsyth, 18; he gives the name as Pushgam.

Similarly, in a Turkish Yārkaṇd contract,²⁸⁴ a person named Yahūdī Yalu is mentioned. It is still difficult to determine the influence of the Jews in the Qarākhānid empire, but they were probably not unimportant, especially in the West, as a whole town in Transoxania was called Yahūdiyya.²⁸⁵

4. The month of Ša'bān, 503, corresponds to the period of time between 23 February and 23 March, 1110.

6. Yūsuf Otağbaşı, main heir in this document, is mentioned again in our document IV, dated 518/1124–25, that is about fifteen years later.²⁸⁶ Yūsuf Otağbaşı appears to have died in this year because the latter document deals with his two young sons, Muḥammad and Abū 'l-Qāsim, who need a guardian until they come of age. Yūsuf Otağbaşı may also have been one of the witnesses in a Turkish Yārkaṇd contract.²⁸⁷

Otağbaşı is a military title which might be equivalent to *witāqbaşı*.²⁸⁸ In document IV just mentioned, if the reading is correct, Yūsuf Otağbaşı also bears the title *tārkaṇ* which is attested for both men and women in Qarākhānid times; it generally designates a sovereign or a sovereign's wife, but can also be used as an honorary title²⁸⁹ which is probably the case here.

Document III

A Land sale contract ²⁹⁰ (pls. V and VIa).

Well-preserved document, although the paper is partially blackened. Traces of horizontal folding are clearly visible. Cursive script with very scarce diacritical dots. Pale ink. 29 lines of text, followed by 20 lines listing witnesses in Turkish, 2 lines of these being written in Uighur script. The Arabic characters of this witnesses' passage in Turkish are of greater size than those in the text of the document and written with thick ink, maybe by a different person. A separate attestation of a witness inserted between the text of the document, and the Turkish passage presents the same peculiarities of writing.

١. بسم الله الرحمن الرحيم
٢. هذا ما اشترى المسمى ²⁹¹ اسرافيل چافلى سوباشى بن هارون اوکا بن شکری ²⁹² قرلق جده من المسمى
٣. [ب]مغاچى الحاجب بن الحسن الحجاج بن نوشتگين ²⁹³ اوکا جميع کرم وحى وقطعة ارض مبذرة
٤. [ح]م[س]ة عشر وقر حنطة [...] لل[زر]اع[ة] ²⁹⁴ و مشجرة حور التى موضع الكل بسناس ماورا النهر کسو ²⁹⁵
٥. وهى قرية من قرى کورة يارکنده بحضرة مسجد منسوب الى يحيى انال الحاجب التى تشتمل على الكل
٦. و تحيط بها ²⁹⁶ حدود اربعة اما الکرم فحده الاول لزيق طريق الجادة والثانى لزيق کرم للبايع ²⁹⁷ المسمى فيه

²⁸⁴ Erdal, text I (l. 29).

²⁸⁵ Barthold, *Turkestan*, 79–80; the city seems to be identical with Maymana/Maymand.

²⁸⁶ See commentary to this deed, pp. 473–5.

²⁸⁷ Erdal, text V (l. 11).

²⁸⁸ See commentary to document I (l. 19).

²⁸⁹ For details see *TMEN*, II, 495–8, no. 889.

²⁹⁰ In the S.O.A.S. collection, Arabic no. 5. References to Tekin's edition of the document are marked T.

²⁹¹ T. الماسمى.

²⁹² T. بکر بن.

²⁹³ T. يوسف بن.

²⁹⁴ T. has not read the passage مبذرة... للزراعة (l. 4); see the equivalent passage in document I (ll. 10–11).

²⁹⁵ T. سواد و.

²⁹⁶ T. بالکل.

²⁹⁷ T. البايع.

٧. و الثالث لزيق ارض المسعود²⁹⁸ طغرل سوباشي²⁹⁹ و الرابع لزيق ازاك³⁰⁰ و اما القطعة الارض³⁰¹ فحدها الاول
 ٨. لزيق ساقية اراضى³⁰² البايع المسمى فيه و الثانى لزيق ارض المشتري المسمى فيه و الثالث لزيق
 نهر يدعى
 ٩. الملا بتق³⁰³ و الرابع لزيق نهريدى يقالق و اما المشجرة فحدها الاول والثاني لزيق كرم للبايع³⁰⁴
 ١٠. المسمى فيه و الثالث لزيق چمكات³⁰⁵ و الرابع لزيق مسجد [لار]ص منسوب الى المشتري³⁰⁶
 المسمى فيه
 ١١. اشترى هذا المشتري المسمى فيه من البايع المسمى فيه جميع الكرم و الحمى و القطعة الارض³⁰⁷
 و المشجرة
 ١٢. التى ذكر موضعها و بين حدودها فيه بجميع حدودها و حقوقها و مرافقها و اشجار الكرم و الحمى
 و المشجرة
 ١٣. المثمرة و غيرها و جميع عمارة³⁰⁸ الكرم و غراسه³⁰⁹ و فضايه و نالاته³¹⁰ و اصلها و مربها³¹¹
 و طرقها و مسلك
 ١٤. طرقها و شرها بمجاره و مسيل و مجرى ماها³¹² فى حقوقه و كل حق هو له فيها و منها داخل
 فيها
 ١٥. و خارج منها و كل قليل و كثير هو له فيها و كل ما هو معروف بها و منسوب اليها بخمسة
 عشر الف و خمماية درهم التى يكون نصفها سبعة الاف³¹³ و سبعماية و نحسون درهما
 ١٧. نقد البلدة ياركنده³¹⁴ كلها جيادا³¹⁵ نافعة رايحة متقدمة³¹⁶ شرا³¹⁷ صحيحا جازا نافذا باتا
 بتاتا³¹⁸ بته بتلة
 ١٨. خاليا عن الشروط المفسدة و المعانى المبطللة و [بض] البايع المسمى فيه جميع الثمن
 ١٩. المذكور مبلغه فيه تاما واقيا عملا بايضا المشتري المسمى فيه و قبض المشتري المسمى فيه جميع

²⁹⁸ T. المسعود.

²⁹⁹ T. يينغو بن موسى.

³⁰⁰ T. الراكب; see the canal in Rabul bearing the same name in document II (l. 13).

³⁰¹ Correct قطعة الارض.

³⁰² T. الارض.

³⁰³ T. بتقى.

³⁰⁴ T. البايع.

³⁰⁵ T. چمكان.

³⁰⁶ T. يحى <أنا>ل by adding three letters.

³⁰⁷ Correct قطعة الارض.

³⁰⁸ T. مكارم, without translation.

³⁰⁹ T. has not read the word.

³¹⁰ T. has not read the word.

³¹¹ Reading uncertain, perhaps *marabb* 'vegetation'? T. has not read the word.

³¹² T. سويل و يجرى حالها, without translation. In ll. 14 and 15 the scribe arbitrarily uses the masculine and feminine suffix to denote the sold objects; the correct suffix referring to all of them would be the feminine one.

³¹³ T. ألف, in both cases.

³¹⁴ Correct بلدة ياركنده.

³¹⁵ T. جيادا.

³¹⁶ T. has not read the word.

³¹⁷ T. سرا, thus following Huart's translation of the equivalent passages in the three documents which he published. Huart and Tekin both refer to coins mentioned before in the documents in translating the word by 'de circulation facile' / 'd'origine' / 'en espèces' (Huart, 613, 620, and 625) or 'standard' (Tekin, 872) respectively. However, this word is to be connected with the verb اشترى (l. 2 of the document) which it takes up again. The orthography with *alif mamdūda* instead of *alif maqṣūra* occurs frequently in Islamic private documents; see for example my *Arabishe und persische Privaturkunden*, 11.

³¹⁸ T. has left out بتاتا.

٢٠. المبيع المذكور فيه بتسليم البايع المسمى فيه فارغا غير مشغول³¹⁹ و ضمن البايع المسمى فيه ضمان الدرك
٢١. و الاستحقاق لهذا³²⁰ المشتري المسمى فيه ضمانا صحيحا شفاها خطابا³²¹ و تفرقا عن مجلس العقد بعد صحة³²² و ابرامه³²³
٢٢. تفرق الابدان و الاقوال عن تراض منها بعد ان قرى عليها بلسان [...] عر[ف]ا]ه و فهما و اقرا ان الامر كما
٢٣. بين فيه من غير زيادة و لا نقصان و اشهدا على ذلك كله الثقات و العدول الذين اثبتوا اساهم³²⁴
٢٤. آخر³²⁵ هذا الذكر حال كونهم من³²⁶ اهل طايعين راغبين³²⁷ غير مكهين و لامجبر عليها لا علة بها من مرض و لا غيرها
٢٥. من العلل المانعة لجواز³²⁸ التصرف و ذلك لخس ليال بقين من³²⁹ صفر من شهور سنة خمسة عشر و خمسية
٢٦. و اقر المسمى عمر و عثمان و نوراسي كلهم اولاد البايع المسمى فيه و كفى بالله شهيدا
٢٧. حال كونهم من اهل طايعين راغبين ان جميع المبيع المذكور³³⁰ كان ملكا لابيهم
٢٨. و هو البايع المسمى فيه و معه لا ملكك لهم في جميعها و لا في بعضها و لا في حق من حقوقها بالتاريخ
٢٩. هذا المورخ فيه³³⁰

Witnesses' section

١. شهد بذلك³³¹
٢. اينال بك اعلی محمد³³²
٣. شرايدار خيل باشی
٤. تنوق من <ت>نق من
٥. الياس خاص حاجب من نخاجی³³³ حاجب اعلی
٦. {اوغلی} احمد تمغاچی عثمان اوز نشانم اردم
٧. محمد³³⁴ شرايدار خيل باشی بوغا من دانشمند اعلی³³⁵
٨. {اوغلی} صالح شرايدار تنق من محمد تنق من
٩. هارون اوکا اوغلی من³³⁶ مسعود طغريل³³⁷
١٠. سوباشی تنق من
١١. محمد³³⁸ سوباشی اوغلی من ابراهيم بو{خط

³¹⁹ T. مشغولة.

³²⁰ T. هذا.

³²¹ T. has not read the last two words.

³²² T. صحة which would be more correct in Arabic, but the facsimile undoubtedly reads صحة.

³²³ T. ابراهيه.

³²⁴ T. has not read the passage after كله.

³²⁵ T. has not read the word.

³²⁶ T. has not read the last two words.

³²⁷ T. عليها كالعيون اعتبر, without translation.

³²⁸ In Classical Arabic, the verb منع would be expected to be followed by an accusative or by either preposition عن or من, but not by ل.

³²⁹ T. وذلك خمس ليال, without translating the preceding passage كتب في شهر.

³³⁰ T. has not read ll. 26-9.

³³¹ Written in the middle of the page. It seems as if this formula was added after the list of the witnesses which follows.

³³² T. عمر.

³³³ T. تمغاچی which is impossible in view of the writing of the same word in l. 6.

³³⁴ T. عمر.

³³⁵ T. كلری.

³³⁶ T. محمد.

³³⁷ T. has not read the name.

³³⁸ T. عمر.

۱۲. اوزا تنق من محمد ³³⁹ سوباشی اوغل
 ۱۳. موسی تنق من
 ۱۴. الیاس خاص حاجب اغلی من محمود
 ۱۵. اینال تنق من
 ۱۶. بیغوابک اوغل من اغل خیل باشی تنوق من
 PW 'YŠK' ³⁴¹ M'N R'SWL T'R T'NWX 'YMXA ۱۷ ³⁴⁰
 bu iškā mǎn Rasul-tar tanuq Imga
 X'NYP (or S'RYP) ³⁴² T'NWX ۱۸
 tanuq
 ۱۹. اسحاق خاص خیل باشی اوغلی محمود شرابدر
 ۲۰. بوخط اوزا تنوق من

Witness's attestation ³⁴³

۱. بو{ }خط تنق من من نخاجی
 ۲. حاجب اغلی عمر اوا
 ۳. بوخط اوز نشاتم اردم

Translation

1. In the name of God, the Compassionate, the Merciful.
2. This is what the so called Isrāfīl Čaflı Sübaşı, son of Hārūn Ögä, son of Šukrī Qarluq, his ancestor, has bought from the so called
3. Ta]mgači (?) al-Ḥāgib, son of al-Ḥusayn al-Ḥağğāğ, son of Nūstegīn Ögä, namely, the whole of a vineyard and an enclosure of orchards ³⁴⁴ and a plot of land (representing) a sowing area
4. for fifteen donkey-loads of [. . .] wheat to be grown, and a wood of poplars, which are all located at Sınmas beyond the river . . . ,
5. one of the villages of the Yārkanda province, facing the mosque named after Yaḥyā Inal al-Ḥāgib, (with) four boundaries encompassing
6. and surrounding all of these: as to the vineyard, its first boundary is contiguous to the main road, the second one is contiguous to a vineyard of the seller named herein,
7. the third one is contiguous to a (plot of) land of Mas'ūd Toğrıl Sübaşı, and the fourth one is contiguous to Āzāk; as to the plot of land, its first boundary
8. is contiguous to the irrigation canal of the land of the seller named herein, the second one is contiguous to the land of the buyer named herein, the third one is contiguous to an irrigation canal called
9. Almıla Batıq, and the fourth one is contiguous to an irrigation canal called Yaqaqlıq; and as to the wood, its first and second boundaries are contiguous to a vineyard of the seller

³³⁹ T. عمر.³⁴⁰ Ll. 17 and 18 in Uighur script. I am indebted to Professor James Hamilton (Paris) who suggested the reading of these two lines as given here.³⁴¹ T. خطکا.³⁴² T. حاجب.³⁴³ These three lines on the left-hand side of the page below the text of the document seem to form a separate witness's attestation. The handwriting of these lines seems to be different from that of the Turkish passage listing the other witnesses. T., who has not taken these three lines as a separate passage, groups the witnesses in another manner, see his edition, pp. 871–3.³⁴⁴ *Ḥimā*, see Dozy, I, 329b, the general meaning of the word being a place of herbage or pasture prohibited to the public.

10. named herein, the third one is contiguous to Čimkät, and the fourth one is contiguous to the mosque on the plot named after the buyer named herein.
11. This buyer named herein has bought from the seller named herein the whole of the vineyard, the enclosure of orchards, the plot of land and the wood
12. whose location has been mentioned and whose boundaries have been stated herein, with all their boundaries, rights and appurtenances, the trees of the vineyard, the enclosure of orchards and the wood,
13. be it fruit trees or others, (with) the whole of the cultivated land³⁴⁵ of the vineyard, its cuttings, its space and its courtyards,³⁴⁶ (with) their (i.e. of all the sold objects) land³⁴⁷ and . . .³⁴⁸, their paths and the track
14. of their paths and the right to use water for irrigation from their canals and the water conduits and ducts (included) in their rights, and every right connected with them, therein and therefrom, within
15. and without, and everything connected with them therein, be it little or much, and everything which is recognized and attributed to them; for
16. 15,500 *dirhams* whose half is 7,750 *dirhams*,
17. of the currency of the city of Yärkanda, all of them excellent, useful, current, (to be paid) in cash; ³⁴⁹ in form of a valid, licit, effective, absolutely definitive purchase
18. without conditions to vitiate and to annul it. The seller named herein has received the whole of the price
19. whose amount has been mentioned herein, fully and entirely according to the (legal) practice,³⁵⁰ pursuant to the payment of the buyer named herein. The buyer named herein has taken possession of the whole
20. of the sold objects mentioned herein which the seller named herein has delivered over to him, freely and without compulsion. The seller named herein has assumed the guarantee against any claim (*darak*)
21. and complaint of the buyer named herein, (his) guarantee being valid and (given) orally and directly. Both (buyer and seller) have left the place (*mağlis*) of the (execution of) contract after it was valid and firm,
22. by separating from one another physically and verbally to their mutual satisfaction after (the document) had been read to both of them in a language which [. . .] they knew and understood. They have both acknowledged that the transaction (*amr*) complied with
23. what has been stated herein, without addition or omission. They have both called as witnesses to all this the persons of confidence and integrity who have written down their names
24. at the end of this document, both (buyer and seller) being persons acting voluntarily and according to their wishes, without compulsion and not against their will, being free from any handicap coming from illness and from other
25. handicaps which might prevent them from ownership. This (was written) when five nights were left of Šafar which belongs to the months of the year 515.

³⁴⁵ *Imāra*, see Dozy, II, 171b.

³⁴⁶ *Nāla*, see Bustānī, 2263.

³⁴⁷ *Aṣl*, see Fagnan, 4b, and Lane, 64c.

³⁴⁸ Reading uncertain as there is a black spot on the document at this place; it seems to be something like *مر بها*.

³⁴⁹ *Mutanagqad*, see Lane, 2836b.

³⁵⁰ *Amal*, see Dozy, II, 175a.

26. The so called 'Umar, 'Utmān and Nūrāsī, all sons of the seller named herein, have acknowledged—God is sufficient as witness—,
27. being persons acting of their own free will and according to their wishes, that the whole of the sold objects mentioned (in the document) had been in the possession of their father,
28. that is, of the seller named herein, and that they, like him, are (no longer) in possession of the whole (of the sold objects) or of parts of them or of one of their rights ; on the date
29. mentioned above in the document.

(Witnesses' section)

1. Serving as witnesses :
2. (I), the son of Inal Bāk, Muḥammad
3. Šarābdār Ḥaylbaşı,
4. am witness.—I am witness :
5. Ilyās Ḥāṣṣ Ḥāğib.—I, son of Naḥāğī Ḥāğib,
6. Aḥmad Tamğači 'Utmān, write down my own signature (on this document).—
7. Muḥammad Šarābdār Ḥaylbaşı Boğa.—I, son of Dānešmand,
8. Šāliḥ Šarābdār, I am witness.—(I), Muḥammad, I am witness.—
9. I am the son of Hārūn Ūğā, Mas'ūd Toğrıl
10. Sübaşı, I am witness.—
11. I am the son of Muḥammad Sübaşı, Ibrāhīm,
12. I am witness to this document.—(I), son of Muḥammad Sübaşı,
13. Mūsā, I am witness.—
14. I am the son of Ilyās Ḥāṣṣ Ḥāğib, Maḥmūd
15. Inal, I am witness.—
16. I am the son of Yabğu Bāk, Ūğul (?) Ḥaylbaşı, I am witness.—
17. (in Uighur script) I, Rasultar, am witness to this matter.—Imga
18. (in Uighur script) . . . is witness.—
19. (I), son of Ishāq Ḥāṣṣ Ḥaylbaşı, Maḥmūd Šarābdār,
20. I am witness to this document.

(Witness's attestation)

- (1) I am witness to this document (?). I, son of Naḥāğī (2) Ḥāğib, 'Umar . . .
- (3) have written my signature on this document.

Commentary

2. Isrāfil Čavlı Sübaşı, the buyer in this document, is also known from other land sale contracts from Yārkand. In 505/1112 he already owned a vineyard (*karm*) and another plot of land (*arḍ*) in Sınmas.³⁵¹ Later in 508/1114, he acquired a further piece of land (*arḍ*) in the village.³⁵² In our document, Isrāfil Čavlı buys a second vineyard (*karm*), an enclosure of orchards (*ḥimā*) as well as a plot of land (*arḍ*) and a wood of poplars (*mašğarat ḥuwar*), all this in the month of Šafar 515/1121. In the month of Rabī' II of the same year, he will buy another piece of land (*yer*),³⁵³ apparently contiguous to the vineyard which he buys in this document, for his neighbour in both cases is Mas'ūd Toğrıl Sübaşı. The latter is also one of the witnesses in this contract. Isrāfil Čavlı eventually

³⁵¹ Huart, 615 (doc. II).

³⁵² Huart, 622 (doc. III) ; Huart's reading of the name should be completed according to our facsimile.

³⁵³ Erdal, text VI.

succeeded in bringing together a large estate in Sinmas by several purchases of land over nearly ten years, just as Ishaq al-Ġallāb did in the village of Rabul (doc. I). Once more, this series of acquisitions suggests the difficulties a person might have met with in trying to extend his landed property: he had to acquire several small plots of land one by one, which was a very time-consuming task.

Čavlı 'falcon', is attested as proper name in the *Qūdātqū Bīlīk* in the same way as *čagrı* which has the same meaning. It seems that the *čagrı bāg* and the *čavlı bāg* of the *Qūdātqū Bīlīk* were both keepers of the king's falcons. Generally the word is rendered in Arabic script with *wāw* (چاول), but can also be written with *fā* (جافلی) ³⁵⁴ as is the case in the present document. The orthography of the name with *wāw* occurs for example in a donation act (*waqfiyya*, 5th/11th century) of Ibrāhīm Tamgāč Hān. ³⁵⁵

Ögä/ügä is a high Turkish title equivalent to 'counsellor' given, according to Kāšgarī, to a commoner who is intelligent, elderly and experienced in affairs who is next in rank to the *tāgin* ('prince'). There are also many names containing *ögä*. ³⁵⁶ Apart from this document, we also have a Turkish and an Arabic Yärkand contract dated 473/1080 and 489/1096 respectively, which mention the owner of a plot of land in Rabul called Buğrā Ögä. ³⁵⁷

3. *Hāğīb* is another of the military titles which are so frequent in the Yärkand documents. The term *hāğīb* 'chamberlain', originally used in Islamic countries for the person responsible for guarding the door of access to the ruler, soon developed into a military title; the *hāğīb* was no longer a domestic official of the palace, but a high military commander or general in the Būyid, Sāmānid, and Ghaznavid armies. ³⁵⁸ According to Nizām al-Mulk's *Siyāsat-nāme*, the *hāğīb* was one rank above the *haylbaşı* and two ranks above the *wiṭāqbaşı/otağbaşı*. ³⁵⁹ In the Qarākhānid dynasty, the title of *hāğīb* might refer to a similar position.

In the Turkish witnesses' section of the present document, a *hāšš hāğīb* is mentioned (l. 5) whose rank is not clear. Barthold points out that the term *hāğīb-i hāšš*, certainly the same title, possibly means the ruler's favourite *hāğīb*. ³⁶⁰ Or is it rather a rank above the *hāğīb* corresponding to the *hāğīb al-ḥuğğāb* or *hāğīb-i buzurg* of the Ghaznavid army who was the commander in chief? ³⁶¹

4. For *wiqr* see commentary on doc. I, l. 11.

Sinmas, a village (*qarya*, l. 5) not yet identified in the surroundings of Yärkand, is also mentioned in other contracts from Yärkand dated 505–529/1112–1135; ³⁶² two of them give its name as Altınqı-Sinmas. ³⁶³ Huart suggests that the first part of the name might refer to the Altın Dubza (golden gate), one of the gates of the city of Yärkand. ³⁶⁴ In one instance, Sinmas is called *maḥalla* which must be taken here as a synonym of *qarya*, 'village', ³⁶⁵ by which Sinmas is described in the present document. Just as in the village of

³⁵⁴ For details see *EDPT*, 397a; also *TMEN*, III, 38, no. 1056.

³⁵⁵ Khadr-Cahen, 325.

³⁵⁶ For details see *EDPT*, 101a, and *TMEN*, II, 157–9, no. 614.

³⁵⁷ Erdal, text I (l. 22), and Huart, 611 (doc. I).

³⁵⁸ For details see art. 'Hādjib' in *EI* (2nd ed.), III, 45a–49a.

³⁵⁹ Quoted in Barthold, *Turkestan*, 227.

³⁶⁰ Barthold, *Turkestan*, p. 243, n. 7.

³⁶¹ Art. 'Hādjib' in *EI* (2nd ed.), III, 47a.

³⁶² Erdal's text VI, Huart's documents I and III and our documents III and V.

³⁶³ Huart, 615 (doc. II) and 622 (doc. III).

³⁶⁴ Huart, p. 618, n. 1.

³⁶⁵ Huart, 622 (doc. III), translates *maḥalla* as 'quartier'. For the meaning 'village' see Dozy, I, 313b.

Rabul (doc. I), some persons living in Sinmas appear in several Yārkand contracts. Isrāfil Čaflı and his neighbour Mas'ūd Toğrıl Sübaşı have already been mentioned (commentary, l. 2 above). Yahyā Inal al-Ḥāğib after whom a mosque in Sinmas is named (l. 5) turns out to be a landowner of the village and another neighbour of Isrāfil Čaflı; his father's name is given as 'Utmān Qutluğ Ögä.³⁶⁶ Finally, a certain Muḥammad al-Ḥāğib b. al-Ḥasan, owner of a vineyard in Sinmas and buyer of a plot of land next to it in 505/1112, seems to be the same person who sold land to Isrāfil Čaflı in 508/1114.³⁶⁷

7. Mas'ūd Toğrıl Sübaşı who owns a plot of land in Sinmas is also among the witnesses to this document (witnesses' section ll. 9–10). He is mentioned again as a land-owner in a Turkish Yārkand contract of the same year as the present document.³⁶⁸

For Äzāk see commentary on doc. I, l. 13.

8–9. Almıla Batıq, an irrigation canal (*nahr*, l. 7) in Sinmas, also occurs in another Yārkand document where it is termed *sāqiya*.³⁶⁹ In the Yārkand region, *sāqiya* was therefore synonymous with *nahr*, that is an irrigation canal and not, as could be supposed, a water-wheel.³⁷⁰ Another example of the same kind is the Yaqaḥq canal termed *nahr* in the present document (l. 9), but *sāqiya* in another Yārkand contract.³⁷¹ These Arabic expressions reproduce the Turkish *su arığı*.³⁷²

The name of the canal which Huart and Tekin read as al-Mullā Batıq³⁷³ might rather be read as Almıla Batıq, *almıla* meaning 'apple'.³⁷⁴

Yaqaḥq, an irrigation canal (*nahr*, *sāqiya*) in Sinmas has been mentioned above. *Yaqā* 'bank, coast', is well known,³⁷⁵ but *yaqaḥq* is not attested to my knowledge.

10. Čimkät, mentioned here as the boundary of a wood of poplars, is not further defined in our document. The same name occurs in two other Yārkand contracts as a boundary of a vineyard and a plot of land in Sinmas³⁷⁶ and, in a Turkish document, as the boundary of another plot of land (*yer*).³⁷⁷ In the latter document, the name is given as Čimkät qaşı, *qaş* being a mountain ridge;³⁷⁸ in the other contract, however, Čimkät is said to be a *nazh*, i.e. a salubrious place distant from bad waters and the like.³⁷⁹ The two explanations are not really contradictory though we cannot exactly define what Čimkät was like from the sparse information in the documents. According to our facsimile, the reading Čimkät seems preferable to Čimgän, though the letter in question is undotted. Čimgän being derived from Turkish *çim* 'grass', means 'meadow, lawn'.³⁸⁰ The meaning of Čimkät may be similar. Notice that in Turkestan *-kat* frequently occurs as second element in town names.³⁸¹

³⁶⁶ Huart, *ibid.*

³⁶⁷ Huart, 615 (doc. II) and 622 (doc. III).

³⁶⁸ Erdal, text VI (l. 4).

³⁶⁹ Huart, 615 (doc. II).

³⁷⁰ Huart, 619, thus translates *sāqiya* as 'roue hydraulique'. For the numerous meanings of *sāqiya* referring to irrigation see Dozy, I, 665.

³⁷¹ Huart, 615 (doc. II).

³⁷² Huart, 615 (doc. II) and p. 619, n. 2.

³⁷³ Huart, 619 (doc. II), and Tekin, 872.

³⁷⁴ This was suggested to me by Marcel Erdal.

³⁷⁵ Huart, p. 619, n. 1, therefore translates *yaqaḥq* by 'celle de la côte'.

³⁷⁶ Huart, 615–16 (doc. II); he reads Tehemkan (تھمکان) which is surely the same locality as Čimkät, *nün* being easily confused with *tā* in undotted Arabic script.

³⁷⁷ Erdal, text VI (l. 5).

³⁷⁸ Erdal, 292, therefore translates 'Čimkät ridge'; see also his commentary, pp. 294–5.

³⁷⁹ Bustāni, 2159; Huart, 619, translates 'terrain sec'.

³⁸⁰ *EDPT*, 423a, and *TMEN*, III, 99–100, no. 1124 (sub *čaman*).

³⁸¹ See examples in Barthold, *Turkestan*, 173 ff.

25. 24 Şafar, 515, corresponds to 14 May, 1121.

(Witnesses' section)

3. Persian *šarābdār* means an officer who takes care of the royal cup of drinking water or other beverages. The special function of this person under the Qarākhānids is not indicated in our document.

Haylbaşı 'section commander', is again a military title. According to Nizām al-Mulk's *Siyāsat-nāme*, the *haylbaşı* was one rank below the *hāğib* and at the same time one rank above the *wiṭāqbaşı/otağbaşı*.³⁸² If it is true that the ranks of the *wiṭāqbaşı* and the *otağbaşı* are identical, a *haylbaşı*, judging from the *Qūdātqū Bīlik*, was an officer who commanded ten tents (*on otağ*).³⁸³

In this witnesses' section, a *hāşş haylbaşı* whose rank is not clear is also mentioned (l. 19). The correlation *haylbaşı-hāşş haylbaşı* appears to correspond to the correlation *hāğib-hāşş hāğib* mentioned before which was not clear either, as our document does not yield any further information on this question.

6. *Tamjaçı*, originally 'keeper of the seal', is already attested in the old Turkish inscriptions. Later on the word meant a toll or tax collector, although the original meaning also occurs in Qarākhānid times.³⁸⁴ We cannot decide which function the title corresponds to in our document as it gives no further details. It might just be a *laqab* without corresponding to any specific function at all, which may also apply to the other titles mentioned in our material.

16. *Yabğu* is a very ancient Turkish title which goes back to the pre-Christian era.³⁸⁵ According to Tekin,³⁸⁶ the orthography of the word in our document with final *alif* which occurs again in l. 11 of the witnesses' section and in the separate witness' deposition for the word *bu* (بۇ), is a specific feature of early Anatolian Turkish texts based on the *alif al-wiqāya* of the Arabic verb (third person plural). Tekin also proposes a second reading, *bayğu* 'totemic bird', for the word as it is written without dots in the document.

17. Persian *rasūldār* (رسولدار), in our document *rasul-tar* written in Uighur characters, is the title of an official at the court attending ambassadors.³⁸⁷

Imga, according to Kāşğari, is a Turkish title signifying 'treasurer in charge of (public) money and the superintendent over their collection'.³⁸⁸ It is probably an equivalent of the title *amga* which is borrowed from Chinese *ya-ya*. The latter designates an officer guarding the administrative headquarters and is attested in China since the middle of the eighth century.³⁸⁹

Document IV

An appointment to guardianship³⁹⁰ (pl. VIb).

Fragment of a document of which the lower part has gone. 9 lines of text in cursive script without diacritical dots.

³⁸² Quoted *ibid.*, 227.

³⁸³ References are given in Tekin, 877.

³⁸⁴ For details see *EDPT*, 505, and *TMEN*, II, 565–8, no. 934.

³⁸⁵ For details see *EDPT*, 873b, and *TMEN*, IV, 124–36, no. 1825.

³⁸⁶ Tekin, 876.

³⁸⁷ Steingass, 576b.

³⁸⁸ For details see *EDPT*, 158b.

³⁸⁹ I am indebted to Professor James Hamilton for this information.

³⁹⁰ In the S.O.A.S. collection, Arabic no. 7. I am indebted to Professor Albert Dietrich (Göttingen) for his suggestions concerning the reading of some parts of this document.

١. بسم الله الرحمن الرحيم [الرحم]
٢. يقول احمد بن الحسين بن يلماز الحاكم ببوسكام و نواحيها عن الشيخ القاضي الاجل السيد الامام ابي الرضا بن ابي القسم
٣. انه حضر مجلس الحكم قبل بها في العشر الاوسط من ذي القعدة في ٣٩١ شهر سنة ثمان عشرة و خمسمية
٤. المسمى عيسى البقال بن محمد سوباشي فرغ حال الصغيرين محمد و ابو ٣٩٢ <١> لقسم ابني ترکان يوسف اوتاغ باشي بن
٥. يهود ايكان سوباشي و ان والدهما مات لا عن وصي الى احد و لا وصية و احتاجا وصي ذي ثقة و صلاح
٦. و سداد يحفظهما و يحفظ اموالهما و يقوم على راسهما و ينفذهما الى وقت بلوغهما فوقع الاتفاق
٧. على عيسى بن محمد سوباشي هذا لما عرف من صلاحه و كفايته و عفافه و امر به اولا بتقوى الله سيد <١> نه و تعالى
٨. في قدره و علاه سعد ان لا يقرب مالهما الا بالبر هي حسي و منعه عن بيع عقاره و قطع اشجاره فقبل مني
٩. هذه الوصاية شفاهما مواجهة وضمن القيام بذلك بعون الله و حسن توفيقه و التمس مني ان اثبت الوصاية
١٠.

Translation

1. In the name of God, the Compassionate, the Merciful.
2. Aḥmad, son of al-Ḥusayn, son of Yılmaz, *hākim* of Posgām and its districts, (appointed) by the *ṣayḥ*, the sublime *qādī*, the *sayyid*, the *imām*, Abū 'l-Riḍā', son of Abū 'l-Qāsim, says:
3. 'In the local court of law has appeared before me, in the middle of Du 'l-Qa'da in the months of the years 518,
4. the so called 'Isā al-Baqqāl, son of Muḥammad Sübaşı. He referred (to me) the situation of the two minors Muḥammad and Abū 'l-Qāsim, the two sons of Tärkän (?) Yūsuf Otağbaşı, son of
5. Yahūd İkan Sübaşı: their father had died without a guardian for anybody or testament, and they both (now) needed a guardian who was trustworthy, upright
6. and honest to protect them and their property, to care for them and to guide them (lit. make them attain) to (the moment of) their coming of age. Unanimously
7. this 'Isā, son of Muḥammad Sübaşı, was chosen because he was renowned for his uprightness, ability and integrity, and was charged before all, to fear God—may he be praised and extolled—
8. in his almightiness and sublimity, . . .³⁹³ not to touch their (i.e. the children's) property except with piety . . .³⁹⁴ and to refuse to sell its land and to cut its trees. He accepted
9. this guardianship orally and directly from me, and vouched for its undertaking with the help of God and His good assistance. He (then) asked me to write down the guardianship
10. for him in the form of a document . . .]'

Commentary

3. The month of Du 'l-Qa'da, 518, corresponds to the period of time between 10 December, 1124, and 8 January, 1125.

10. For this formula and the contents of this document see p. 475, for Yūsuf Otağbaşı see p. 492.

³⁹¹ Correct من.

³⁹² Correct ابي.

³⁹³ The verb سعد of the Arabic text is difficult to decipher.

³⁹⁴ Two words هي حسي in the text whose sense is not clear.

Document V

A land sale contract ³⁹⁵ (pls. VII and VIII).

Document of which upper part is damaged, half of the third line has gone. Tears in lines 8, 13, and 18. The lower part of the document is partially blackened. Traces of horizontal folding are clearly visible. 20 lines of text, followed by another short line. Two words inserted above lines 13 and 16. Below the text, 13 lines of text listing witnesses, written by the scribe of the document. Eight separate witnesses' attestations set below and to the right of this passage. One of the attestations is in Turkish, two others in Turkish and Uighur script.

١. بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ
٢. هَذِهِ مَا اشْتَرَى هُوَ الْمُسَمَّى مُحَمَّدٌ وَ أَخُوهُ مُوسَى وَ أَخُوهُ الْآخِرُ
٣. يَحْيَى بْنُ هَمٍّ [.....] مِنْ [.....] قَسِي يُونُسَ وَ عَمْرَ ابْنِ
٤. رُبَيْعِ الْعَرَبِيِّ ضَمِيعَةً لَهَا وَ فِي مَلَكَهَا وَ تَحْتَ تَصْرِفِهَا يَوْمَ الْبَيْعِ الَّتِي
٥. بِسَوَادِ كُورَةَ يَارُكْنَدَهَ يُسَمَّى سَنَاسَ بِمَحَلَّةِ أَرْوَبَكِ يَوْمَ عَلَى نَهْرِ مَنْسُوبٍ إِلَى
٦. عَلَى الْحَاجِبِ وَ تَسْمَى مِنْ ذَلِكَ النَّهْرِ فِي حَضْرَةِ مَسْجِدِ مَنْسُوبٍ إِلَى مُحَمَّدٍ.
٧. حَاسِبَكِ كَرَبِجِ كُوبِ الَّتِي تَشْمَلُ عَلَى حُدُودِ الْارْبَعَةِ ³⁹⁶ الْحُدُودِ الْأُولَى لَزَيْقِ ³⁹⁷
٨. أَجَامٍ يُسَمَّى بِالْأَرْكَبِيِّ بَسَانِ وَالْثَانِي [لِزَيْقِ نَهْرِ كَبِيرٍ وَ الثَّالِثُ لَزَيْقِ أَرْضِ
٩. لَعُوقِ وَ الرَّابِعُ لَزَيْقِ طَرِيقِ الْجَادِ] أَتَتْهُمَا هَذِهِ الْمَحْدُودَةُ بِجَمِيعِ
١٠. حُدُودِهَا وَ حَقُوقِهَا وَ مَرَافِقِهَا وَ طَرَقِهَا وَ مَسْلَكَ طَرَقِهَا وَ مَسِيلَ مَا هِيَ
١١. وَ بَرِيهَا وَ أَنْهَارِهَا وَ أَشْجَارِهَا الْمَشْمُورَةِ وَ غَيْرِ الْمَشْمُورَةِ وَ الْبَيْتَانِ وَ الْعِبَارَاتِ
١٢. الْقَائِمَةِ فِيهَا مِنَ الْقَلِيلِ وَ الْكَثِيرِ مِنْ حَقُوقِهَا مِنَ الْأَرْضِ الْحَسَنَةِ وَ الْمُسَيَّتَةِ
١٣. وَ مَعْرُوفَةِ وَ الْمَنْسُوبَةِ ³⁹⁸ وَ الدَّخْلِ // فِيهَا // وَ الْخَارِجِ مِنْهَا بَعَثَرِينَ وَ سَبْعَةَ
١٤. أَلْفٍ مِنَ الدَّرَاهِمِ الْجَيَادِ الصَّحَاحِ مِنْ نَقْدِ بِلْدِ كَاشْغَرٍ وَ يَارُكْنَدَهَ الَّتِي يَكُونُ
١٥. نَصْفُهَا ثَلَاثَةُ عَشْرَةِ أَلْفٍ وَ خَمْسِيَّةٍ شَرَا صَحِيحًا جَائِزًا نَافِذًا بِتَابَةِ بَتْلَةٍ
١٦. خَالِيَا عَمَّا يَفْسُدُهُ [بِطْلِهِ] يَطْلُهُ مِنَ الشَّرْطِ فَوْقَ // التَّقَابُضِ // فِي الْبَدَلِ وَ الْمَبْدَلِ
١٧. تَقَابُضًا صَحِيحًا وَ تَفَرُّقًا ³⁹⁹ مِنْ مَجْلِسِ الْعَقْدِ تَفَرُّقِ الْإِبْدَانِ وَ الْإِقْوَالِ بَعْدَ أَنْ
١٨. قَرِى عَلَى [بِهِمْ] [بِلسَانِ] عَرَفُوهُ وَ فَهَمُوهُ وَ ضَمَانِ الدَّرَكِ وَ الْإِسْتِحْقَاقِ عَلَى
١٩. الْبَايَعِينَ وَ ذَلِكَ فِي حَالِ كُونِهِمْ مِنْ أَهْلِ طَايَعِينَ فِي صَحَّةِ أَيْدَانِهِمْ وَ ذَلِكَ
٢٠. فِي خَمْسِ لَيَالٍ بَقِيْنَ مِنْ ذِي الْقَعْدَةِ مِنْ شَهْرِ سَنَةِ تِسْعٍ وَ عَشْرِينَ وَ خَمْسِيَّةٍ
٢١. بِالْأَرْكَبِيِّ يَنْدِ بِلَى
٢٢. كَتَبَهُ أَبُو الْقَسَمِ بْنِ سَلَارٍ أَرَابَ بَاشَى
٢٣. شَهِدَ عَلَيْهِ عَلَى أَسْكَانِ خَيْلِ بَاشَى بْنِ مِيكَائِيلِ الْحَاجِبِ
٢٤. أَيْضًا عَيْسَى بْنُ أَبِي بَكْرٍ أَرْدَامِ خَيْلِ بَاشَى
٢٥. أَيْضًا إِبْرَاهِيمَ تَمْغَاجِيَّ بْنَ أَبِي بَكْرٍ أَرْدَمَ
٢٦. أَيْضًا [م] حَمْدُ أُنَالِ بْنِ مُحَمَّدٍ أُنَالِ أَيْضًا
٢٧. يُونُسَ تَمْغَاجِيَّ بْنَ هَارُونَ أَرْدَمَ خَيْلِ بَاشَى
٢٨. أَيْضًا يُونُسَ تَمْغَاجِيَّ بْنَ أَحْمَدَ خَيْلِ بَاشَى
٢٩. أَيْضًا عَلَى چَاغَلِي بَكْكَ بْنِ سَرَاغَلِ أَوْكََا
٣٠. أَيْضًا عَمْرَ چَاغَلِي خَيْلِ بَاشَى بْنِ يُونُسَ خَوِيمَشَ
٣١. أَخُوهُ أَصْغَرُ ⁴⁰⁰ عَلَى سَرِغَ أَيْضًا يُونُسَ بْنِ عَمْرٍ چَاغَلِي
٣٢. بُو بَكْرٍ أُنَانِچَ خَيْلِ بَاشَى أُنَيْسَى حَسِينِ تَمْغَاجِيَّ
٣٣. بَغْرَابَكِ أَغْلَى بَغْرَا خَيْلِ بَاشَى تَنْقَ
٣٤. إِبْرَاهِيمَ تَمْغَاجِيَّ تَنْقَ

³⁹⁵ In the S.O.A.S. collection, Arabic no. 1.

³⁹⁶ Correct حدود أربعة.

³⁹⁷ The facsimile shows that the scribe first wrote the word with 'ain and then corrected this by a qāf.

³⁹⁸ Correct منسوبه.

³⁹⁹ Alif al-wiqāya is missing.

⁴⁰⁰ Correct أخوه الأصغر.

Witnesses' attestations

Witness no. 1

١. شهد بذلك عبد السلام
٢. بن ابي بكر البياع بخطه

Witness no. 2

١. شهد بذلك جـ<ل>ل<ل>لدين
٢. بن ابي بكر البياع بخطه

Witness no. 3

١. من خليل ابا عباسي اغلى
٢. على امهرابدل تنق من و كتب بامره

Witness no. 4

شهد بجميع ما فيه و كتب محمد بن الحسين بخطه صح

Witness no. 5 ⁴⁰¹

PW X'T 'YCYNTKY 'YŠK' ⁴⁰² M'N MWXMT β . . TWR ⁴⁰³ T'NWX
bu ḥaṭṭ ičindäki iškä män Muḥmat Vagatur (?) tanuq

Witness no. 6

MN . . . T MWXMT P'ZYKX (or P'LYRX) ⁴⁰⁴ T'NWX MN
män . . . Muḥmat . . . tanuq män

Witness no. 7

شهد بجميع ما فيه محمد بن الحسين التاجر و كتب بخطه

Witness no. 8

١. اشهد على اعتراف البايين بالبيع و الايغا الثمن ⁴⁰⁵ بتنامه
٢. عمر بن محمد اللمبادى و كتب بخطه

Translation

1. In the] name of God, the Compassionate, the Merciful.
2. This is what the so called Muḥammad, his brother Mūsā and his other brother
3. Yaḥjyā have bought: they [have bought from . . .] ⁴⁰⁶ Yūsuf and 'Umar, the two sons
4. of Rabi' the Arab, a domain ⁴⁰⁷ owned by both of them and being their property and in their possession on the day of the sale, which
5. is located in the rural district ⁴⁰⁸ of the Yārkanda province (in a village) called Sınmas in the quarter of Arubāk Yam (?), ⁴⁰⁹ near an irrigation canal named after
6. 'Alī al-Ḥāḡib, running from this irrigation canal facing the mosque named after Muḥammad

⁴⁰¹ Witnesses nos. 5 and 6 write in Uighur script. I am indebted to Professor James Hamilton who suggested the reading of these two lines as given here.

⁴⁰² The letters *k* and *ä* are written in Arabic script (كا).

⁴⁰³ Cl. proposes the reading *camatur*.

⁴⁰⁴ Cl. *baḡṣi* (?), with questionmark.

⁴⁰⁵ Correct أیغا الثمن.

⁴⁰⁶ Supplied according to the context.

⁴⁰⁷ *Dai'a*, that is land or an estate yielding a revenue, see Lane, 1812c.

⁴⁰⁸ *Sawād*, properly the cultivated lands surrounding the towns and villages of a province, see Lane, 1462b.

⁴⁰⁹ Reading uncertain; for *yam* 'post station' see *TMEN*, IV, 110–18, no. 1812.

7. Ḥāsimbāk . . . -kūb, and which comprises four boundaries: the first boundary is contiguous
8. to thickets of brushwood⁴¹⁰ called in Turkish Saman (?), the second one is contiguous to the great irrigation canal, the third one is contiguous to the land
9. of Luḡuluq,⁴¹¹ and the fourth one is contiguous to the main road. They have bought this (domain) thus delimited with all
10. its boundaries, rights and appurtenances, its paths and the track of its paths, its water conduit,
11. its two wells and its irrigation canals, its fruit trees and other trees, its two houses and the (other) buildings
12. standing in (the domain), be it little or much of its rights, its good and bad land,
13. and of what is recognized and attributed to it, within and without; for 27,000
14. excellent, valid *dirhams* of the currency of the cities of Kāšḡar and Yārkaṇḡa, whose half is
15. 13,500; in form of a valid, licit, effective, absolutely definitive purchase,
16. without conditions to vitiate and annul it. The mutual handing over of the price and the sold object has taken place⁴¹²
17. in form of a valid exchange. They have left the place (*maḡlis*) of (execution of) the contract by separating from one another physically and verbally after
18. (the document) had been read to them in a language which they knew and understood, the guarantee against any claim (*darak*) and complaint being incumbent upon
19. the two sellers, and this as persons acting voluntarily and being in a state of soundness of body. This (was written)
20. when five nights were left of Du 'l-Qa'da which belongs to the months of the year 529,
21. in Turkish: a horse year.
22. Abū 'l-Qāsim, son of Salār . . . baši, has written this.
23. Witnesses to this are 'Alī Iskmān (?) Ḥaylbaši, son of Mikā'il al-Ḥāḡib,
24. then 'Isā, son of Abū Bakr Irdām (?) Ḥaylbaši,
25. then Ibrāhīm Tamḡači, son of Abū Bakr Irdām(?),
26. then [Mu]ḡammad Inal, son of Muḡammad Inal, then
27. Yūsuf Tamḡači, son of Hārūn Irdām (?) Ḥaylbaši,
28. then Yūsuf Tamḡači, son of Aḡmad Ḥaylbaši,
29. then 'Alī Čaflı Bāk, son of Isrāfil Öḡä,
30. then 'Umar Čaflı Ḥaylbaši, son of Yūsuf Ḥuyymis,
31. his younger brother 'Alī . . . , then Yūsuf, son of 'Umar Čaflı;
32. (then) the younger brother of Bū Bakr Inanč Ḥaylbaši, Ḥusayn Tamḡači;
33. the son of Buḡrā Bāk, Buḡrā Ḥaylbaši, is witness;
34. Ibrāhīm Tamḡači is witness.⁴¹³

⁴¹⁰ *Aḡām*, see Lane, 266.

⁴¹¹ Cl. 'the storks' land (?)', with questionmark.

⁴¹² *Badal* and *mubdal*, i.e. things given or received in exchange for another thing, see Lane, 167–8. The two terms are meant here to indicate the price and the sold object respectively. They are habitually named *taman* 'price' and *muṭman*, 'sold object' (i.e. the thing for which a price has been paid) in Islamic private documents.

⁴¹³ Ll. 32–4 are in Turkish.

(Witnesses' attestations)

Witness no. 1

‘Abd al-Salām, son of Abū Bakr al-Bayyā’, is witness; (written) in his own handwriting.

Witness no. 2

Gam[ā]l [a]l-Dīn, son of Abū Bakr al-Bayyā’, is witness; (written) in his own handwriting.

Witness no. 3 (in Turkish)

I, the son of Ḥalīl Abā ‘Abbāsī, ‘Alī Amhar Abdal, I am witness. It was written upon his order.

Witness no. 4

Everything contained in this document is (hereby) testified. Muḥammad, son of al-Ḥusayn, has written (this) in his own handwriting. It is correct.

Witness no. 5 (in Turkish and Uighur script)

I, Muḥmat . . . , I am witness to the affair contained in this document.

Witness no. 6 (in Turkish and Uighur script)

I, . . . Muḥmat . . . , I am witness.

Witness no. 7

Muḥammad, son of al-Ḥusayn, the merchant, is witness to everything contained in this document. He has written (this) in his own handwriting.

Witness no. 8

I am witness to the acknowledgment of the two sellers concerning the sale and the payment of the whole price: ‘Umar, son of Muḥammad al . . . bādī; he has written (this) in his own handwriting.

Commentary

20–21. In this document we have a double dating which is clearly legible: first the dating according to the Islamic era based on lunar years, afterwards the dating according to the twelve-year animal cycle based on solar years. The Islamic *hiġra* dating, 25 Du ‘l-Qa‘da, 529, corresponds to 6 September 1135 of the Christian era. The animal-cycle dating gives a horse year (*yund yıl* ⁴¹⁴). According to the animal cycle, however, 1135 is not a horse year but a hare year, whereas a horse year would coincide with the Christian year 1138. In other words, the cyclical dating is three years too early or nine years too late. Oddly enough, a Turkish Yārkand contract also shows a discrepancy between the *hiġra* and the cyclical dating when converted to Christian dates: ⁴¹⁵ here the *hiġra* dating, Rabi‘ II, 473, coinciding with September–October, 1080, is said to lie in a mouse year, but in reality 1080 is a monkey year. In this case, the cyclical dating is eight years too early or four years too late. ⁴¹⁶ All this remains confusing because the discrepancies between the *hiġra* and the cyclical dating are in no way uniform in these two cases. If only our Arabic document V were concerned, we could possibly assume that the Turkish population in the Yārkand area, having adopted Islam, applied the animal cycle not to solar years anymore, but to lunar years, which are at the basis of the Islamic calendar. Starting from

⁴¹⁴ For *yunt* in the Uighur civil documents see Clarke, 279.

⁴¹⁵ Erdal, text I (ll. 23–4); in Erdal’s text II, the double dating is not complete so that it does not provide a safe basis for discussion.

⁴¹⁶ See Erdal, 275.

the two dates in the document, they would have begun to count the years of the animal cycle in lunar years from 1030, that is, not much more than three decades after the Yärkand region embraced Islam.⁴¹⁷ Although the existence of such a custom cannot be proved by other sources, it would at least have provided a plausible answer to the question; the above-mentioned Turkish Yärkand contract, however, in which the discrepancies are of a different kind, rules out this explanation. The question must be left open until further information is available.

32. *Inanç* is a Turkish title for a 'confidential minister' or the like, not necessarily of very high rank. The title with this meaning lasted a long time and was common for example in the Seljükid empire.⁴¹⁸

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⁴¹⁷ Huart, 609.

⁴¹⁸ For details see EDPT, 187, and TMEN, II, 219–20, no. 669.

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