

# Chapter I

## Introduction: The Vellum Contract Documents at the Toyo Bunko and Their Distinctive Features

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### 1. Purchase of the Arabic Vellum Documents from Fès

In September 1989, the Toyo Bunko bought eight Arabic documents written on vellum through a bookshop in Tokyo called Biblio. The *Biblio News* of May 1989 described them as a “collection of eight handwritten documents written on vellum recording the sale of immovable property in Fès (Morocco).” The documents comprise plural contract deeds recording successive transactions of immovable property in Fès by way of inheritance and sale from the tenth to the thirteenth centuries AH (sixteenth to nineteenth centuries CE). “Vellum” may be defined in the narrowest sense as parchment made from calf skin as opposed to that of other animals (sheep or goat) or a finer quality parchment. Parchment is called *raqq*, *riqq*, and *jild* in Arabic; Reinhart Dozy (1820–83) explained that *raqq ghazāl* means “la peau préparée des petits chevreaux ou agneaux mort-nés” (prepared skin of baby goats or stillborn lambs).<sup>1</sup> The collection is known simply as the “Vellum Documents” at the Toyo Bunko, though the material has not definitely been ascertained to be calf.

The seller was Brill of Leiden in the Netherlands, a famous publisher of works in Asian and African Studies since 1683 that dealt with antiquarian books under the leadership of its owner, Mr. Rijk Smitskamp.<sup>2</sup> The English explanation headed “eight Arabic documents from Fès (Morocco)” composed and sent by Brill referred to the Arabic title of each document, its size, the number of entries (deeds), date and summary of the entries. Although it was unclear at the time of the purchase in 1989 from where Brill had obtained them, we came to know that a profes-

<sup>1</sup> Muhammad Isa Waley ed., *Islamic Codicology: An Introduction to the Study of Manuscripts in Arabic Script*, London, 2005, pp. 32, 35; R. Dozy, *Supplément aux dictionnaires Arabes*, rep. Beirut, 1968, tome 1, p. 545.

<sup>2</sup> Cf. Léon Buskens, “Vanishing Orientalism in Leiden,” *ISIM Review* 18, 2006.

sor at Leiden University had bought them in Fès in around the early 1980s and read the Arabic texts in order to make the description in English that appears above.

Professor SATO Tsugitaka of the University of Tokyo, the Research Department Head at the Toyo Bunko (he was later a professor at Waseda University and died in April 2011) immediately proposed purchasing these documents. In Japan in the late 1980s there was a growing interest in, as well as a need for, Islamic and Middle Eastern studies as a result of a large-scale scientific research program entitled “Urbanism in Islam” (headed by Professor ITAGAKI Yuzo, the University of Tokyo) and other similar projects. In 1987, the Institute of Oriental Studies at the University of Tokyo (now, the Advanced Institute for Asian Studies) bought a collection of manuscripts collected and edited by Professor Hans Daiber, containing 367 manuscripts. Professor SATO expected studies using primary sources (manuscripts and archival documents) to increase in the field of Middle Eastern studies in Japan, and the same year he invited Dr. Daad al-Hakim, Director of the National Archive of Historical Documents in Damascus, to hold seminars on shari‘a court records. Soon after, the Toyo Bunko decided to buy the vellum documents in Fès.

## 2. The Vellum Documents at the Toyo Bunko

Table 1 summarizes the eight vellum documents. They had been folded into tall strips for transport to Japan. The Toyo Bunko asked Mr. OKAMOTO Koji at the Atelier de Clair, specialist in the preservation of parchment, to restore and conserve these precious documents. He unfolded and cleaned them, and then stretched them out under humid conditions. They were then dried to make each document a sheet. Each sheet has been bound in a neutral paper folder and preserved in the stacks of the Valuable Collections Room.<sup>3</sup> This restoration, by producing flat sheets, allowed us to take photographs of the vellum documents for our study, despite the existence of many surface creases.

<sup>3</sup> They are catalogued by the Arabic title, meaning “The Arabic vellum documents of Fès” under the call number MS-106: الوثائق العربية الرقمية من مدينة فاس.

Table 1. Outline of the Eight Vellum Documents

Number	Subject of Document	Date	Size (cm)	Number of Deeds	Final Owner of the Property
I	A House in Ibn Ḥayyūn alley	1550–78	92×61	10	Zawwāq family
II	An Orchard in Saytūt	1539–1676	80×30	23	Qaşrī family
III	A House in al-Sab‘lūyāt	1583–1637	72×30	5	Sufyānī family
IV	An Orchard in al-Ḥabālāt	1623–1838	51×27	11	Jurundī family
V	An Oil Press Factory inside the Jisa gate	1670–1722	74×59	15	Lamṭī family
VI	Land in the Mālīḥ wadi	1712–1823	39×42	5	Jurundī family
VII	An Annex in Ibn Ḥayyūn alley	1683–1741	72×37	5	Jurundī family
VIII	An Orchard of Banū Musāfir in al-Ḥabālāt	1721–1838	69×51	15	Jurundī family

The smallest documents are 51×27 cm. and the largest 92×61 cm. Three come from the whole skin of one calf or sheep (Documents I, V, VIII), and four from a half sheet of skin cut in the middle (Documents II, III, IV, VII). The main texts are written on the ventral surface of the skin, lighter in colour than on the back.

The texts were written probably in gallic ink and the calligraphic style is Maghribi. The main texts are written up to down, leaving a margin at the top and the low, and on the right, in which additional deeds could be written later. In Document II the texts are written also on the back of the sheet. The title of each document is written on the back by a different hand from those of the deeds, and was probably a memo for filing or sorting the document.

### 3. Contract Documents and Shari‘a Courts

The regulation of contracts in Islamic law is ambiguous, even though an explicit verse in the Qur’an commands Muslims to write a contract: “When you loan for a definite time, record it in writing... You should ask two witnesses among you... It will be a certification and most appropriate lest you would entertain doubts” (2:282). This regulation to commit the loan to writing is interpreted by Muslim legal scholars as a recommendation. While a written document is supplementary certification in a trial, where testimony by witnesses or an oath by the defendant takes pride of place, the custom was to write a contract certified by two witnesses, and many legal manuals (*shurūṭ*) for making contracts were provided.

Contract documents were produced and transmitted in two kinds in the

Islamic Middle East. One was a deed (*hujja* in Arabic) issued to the party involved in the transaction and preserved by him. The other was a register (*sijill* or *daftar* in Arabic) that was recorded and preserved in the shari'a courts. Some contract deeds from Mamluk period Egypt (1250–1517) have been found, and a collection of deeds known as the Haram Document was recorded by qadis in fourteenth century Jerusalem.<sup>4</sup> During the Ottoman period (post fifteenth century), the shari'a courts in the principal cities authorized and registered the contracts concluded by residents; transaction contracts are included in a huge number of registers extant in Arab countries such as Egypt, Syria, and Algeria, as well as in Turkey and the countries of the Balkan Peninsula. The existence of sales contracts for land can be verified by referring to such deeds in the land survey registers (Tapu Tahrir Defteri, especially the *milk* survey register) compiled by the Ottoman Government.<sup>5</sup>

In Iran, Persian deeds and registers produced by the *mujtahids* of the Qajar period are preserved mainly in private collections; some however have been transferred to the libraries and archives.<sup>6</sup> In Central Asia, a joint project between the Kyoto University of Foreign Studies and the al-Biruni Institute of Oriental Studies, Academy of Sciences of the Republic of Uzbekistan, was set up in 1992 to collect shari'a court records and catalog them. Already 2,500 deeds written in Persian and Chagatai Turkish have been collected, as well as court registers recorded under Russian rule (1867–1917).<sup>7</sup> Contract deeds written in the Uygur and Chinese languages in the nineteenth and twentieth centuries in Xinjiang were collected and studied by Japanese scholars.<sup>8</sup>

<sup>4</sup> Muḥammad Muḥammad Amīn, *Catalogue des documents d'archives du Caire de 239/853 à 922/1516*, Cairo, 1981; Donald P. Little, *A Catalogue of the Islamic Documents from al-Ḥaram aš-Šarīf in Jerusalem*, Stuttgart, 1984.

<sup>5</sup> MIURA Toru, "Agricultural Properties of Waqf and Milk Ownership in Damascus Province from the Mamluk into the Ottoman Period: Preliminary Survey Using the Waqf Survey Registers and the Land Survey Registers of the Sixteenth Century," *Proceedings of the 9th International Conference on the History of Bilād al-Shām*, vol. 3, Amman, 2014.

<sup>6</sup> Christoph Werner, "Formal Aspects of Qajar Deeds of Sale," *Persian Documents: Social History of Iran and Turan in the Fifteenth–Nineteenth Centuries*, ed. Nobuaki Kondo, London, 2003; KONDO Nobuaki, "Shari'a Court Registers from Tehran in the Second Half of the Nineteenth Century," *Toyoshi Kenkyu* 70:2, 2011, pp. 389–420 (in Japanese).

<sup>7</sup> HORIKAWA Toru, "Islamic Court Documents as Historical Sources in Central Asia," *History and Culture of Central Asia*, ed. MORITA Yoshikazu et al., Tokyo, 2012, pp. 73–84.

<sup>8</sup> SUGAWARA Jun, "Tradition and Adoption: Elements and Composition of Land-related Contractual Documents in Provincial Xinjiang (1884–1955)," *Studies on Xinjiang Historical Sources in 17–20th Centuries*, ed. James A. Millward, Shinmen Yasushi, and Sugawara Jun (Toyo Bunko Research Library 12), Tokyo, 2010, pp. 120–139. SUGAWARA examines 153 documents related to real property sales among the 629 items of the "Kashghar Documents Collection" which he collected in Kashghar in 2003.

Studies of shari‘a court registers have so far clarified that most of the documents recorded there related to transactions such as the sale and lease of immovable property, inheritance and guardianship, and debt, with far fewer being related to lawsuits.<sup>9</sup> We can say that by the sixteenth century it had become the custom to make a written contract at the time an immovable property was inherited or transacted; it was certified by the testimony of two witnesses (*shāhid*) and registered by authorization of a qadi at the shari‘a court.

#### 4. Contract Documents in Morocco

Shari‘a court registers were unknown in Morocco before the nineteenth century, though manuals for contracts are known from the thirteenth century.<sup>10</sup> The Vellum Documents at the Toyo Bunko occupy a unique position among contract documents in the Islamic world for two reasons. First, most of the contract documents known until now in the Middle East and Central Asia are written on paper, either in the deed or in the register. Those in Morocco are an exception. As is well known, both paper and parchment had been used for writing in the Middle East since the eighth century. Whereas writing on parchment can be easily scraped away or washed off, that on paper cannot be easily erased.<sup>11</sup> Therefore paper was used by preference for the writing of contracts and other administrative documents. In fact, in nineteenth century Damascus, when corrections had to be made to the shari‘a court registers, either the whole text was cancelled or a correction was written in the margin of the document and signed by a scribe for authorization.<sup>12</sup>

Parchment documents other than those in the Toyo Bunko collection are known to exist in Morocco. The National Library of Morocco (BNRM) has micro-

<sup>9</sup> MIURA Toru, “Court Contracts and Agreements among Parties in the Islamic Middle East,” *Annals of Japan Association for Middle East Studies* 19:1, 2003, pp. 45–74; Boğaç Ergene, *Local Court, Provincial Society and Justice in the Ottoman Empire: Legal Practice and Dispute Resolution in Çankırı and Kastamonu (1652–1744)*, Leiden, 2003.

<sup>10</sup> The oldest known Maliki book of legal manual for contracts is by Ibn ‘Abdūs from Tunis (d. ca. 873) and this scholarship in Morocco was flourishing in the thirteenth century. Cf. Léon Buskens, *Islamitisch recht en familiebetrekkingen in Marokko*, Amsterdam, 1999, pp. 206, 211–216; id., “Mālikī Formularies and Legal Documents: Changes in the Manuscript Culture of the ‘*Udūl* (Professional Witnesses) in Morocco,” *The Codicology of Islamic Manuscripts*, ed. Yasin Dutton, London, 1993, pp. 137–145.

<sup>11</sup> Waley ed., *Islamic Codicology*, pp. 43–44. The average usable surface of sheepskin is estimated at 60×48 cm in the medieval period, growing to 76×59 cm in modern times (*id.*, p. 38).

<sup>12</sup> MIURA Toru, “Personal Networks surrounding the Šālihiyya Court in 19th-Century Damascus,” *Etudes sur les villes arabes du Proche-Orient, XVIe–XIXe siècle*, Damas, 2001, pp. 116–117.

films of about ten parchment documents that were collected and photographed at the instigation of Hasan II in 1970. Some are mentioned by Professor Muḥammad Mazzīn in his book on Fès in the Saʿdīd dynasty.<sup>13</sup> Another Leiden University professor collected parchment documents from the seventeenth to the nineteenth centuries in Fès and Meknès. These were collected at the same period as those in the Toyo Bunko collection and were written in a similar writing style. At present, thirty parchment documents are known to be extant in Morocco. It seems likely therefore that it was the custom in Morocco between the sixteenth and nineteenth centuries to record contracts on parchment for the retention of the owner.

The second feature of the vellum documents is that they are recorded according to a strict procedure and format, as shown in Chapters II and III. Each document is composed of plural deeds relating to the transfer of ownership of immovable property in Fès and its suburbs. There are three kinds of deed: the original deed, a transcription of the original deed, and a copy in which several deeds are summarized or copied by authorization of the qadi/deputy qadi. In each case, the deed was authorized/certified by two witnesses or the qadi with their written signatures at the end of the deed. In the case of transcription and copying, the names of the witnesses to the original deeds were written down and their signatures certified by the notaries or the qadi at the time of the transcription/copy. If a mistake was found in the main text, the amendment was written at the end of the deed. In all eight of the vellum documents this format and rule were strictly observed. The vellum documents show the high quality of notaries and certification system in Morocco, and were kept according to legal manuals (*shurūṭ*) and scrap books of contract deeds and witnesses' signatures.<sup>14</sup>

The vellum documents from Morocco are not deeds recording just one single contract, but a scroll recording the transfers of ownership of an immovable property over a long term. There are paper documents of a larger size in nineteenth century Morocco, where plural deeds are written down, similar to the Vellum Documents of the Toyo Bunko. Such documents must have certified the present ownership of a property clearly and easily by showing the history of transfers in the past. The contract either in the form of a deed or in a shariʿa court register principally certified the transfer of ownership at one time, though some referred to former owners as well. By contrast, there may have been in Morocco a legal custom to record contract deeds successively either on parchment or a large sheet of paper, instead of recording them in a shariʿa court register. In pre-modern China and Japan, when

<sup>13</sup> Muḥammad Mazzīn, *Fās wa-bādiyat-hā: Musāhama fī taʾrīkh al-Maghrib al-Saʿdī 1549–1637*, 2 vols., Rabat, 1986, vol. 2, p. 426, note 20 and p. 431, note 24. Microfilm no. 3, “wathāʾiq Iqlīm Fās maʾraḍ Jāʾizat al-Ḥasan al-Thānī sana 1970.” The latter includes photos of a few sales documents written on parchment in the eleventh/eighteenth century. They are called “parchment document” (*raqq*, or *raqq al-ghazāl*).

<sup>14</sup> I thank Professor Léon Buskens for his suggestion of these materials.

selling or donating an immovable property, it was the custom to give old deeds to the new owner together with the contract deed of the present transaction. There are paper documents which are pasted one by one in a chain dating from the beginning of the twentieth century in Morocco.<sup>15</sup> The vellum contract documents have the unique feature that they certify the ownership in a different way to existing shari'a court records.

As discussed above, it is clear that the vellum contract documents are intended to certify the ownership of an immovable property by writing, transcribing and copying related deeds in one document, which could be preserved in the hands of the present owner. Why did they write on parchment? The first reason is its durability over paper. Second, parchment is more suitable for recording many deeds over a long period, larger than a paper which rarely exceeds a size of 65×45 cm.<sup>16</sup> The eight vellum documents were folded in tall strips when they arrived at the Toyo Bunko. They were supposed to be preserved in a tube-shape or pressed later as a strip. They might have been opened to show the contents, but some parchment documents in the hands of a Leiden professor cannot be opened because of they have dried hard. In this regard, the parchment documents might not only be of practical use to show the right of ownership, but also to demonstrate the dignity of the owner's family. In fact the final owner of the property in four vellum documents (Documents IV, VI, VII, VIII) is the Jurundī family of Fès. It is hoped that further studies of parchment documents in Morocco and other places will answer the questions raised in this book.

<sup>15</sup> According to Professor KONDO, in Iran older documents concerning a piece of real estate have been sometimes transmitted to the current owner. In Qajar Iran, a new deed was occasionally written on the margin or the back of the former deed.

<sup>16</sup> Waley ed., *Islamic Codicology*, p. 53.