

Negotiating and Disputing Marriage and Business in Early Modern Egypt and Palestine

Amira Sonbol

One way by which archival records, particularly court records,¹ can be characterized is that they are records of negotiations and disputes between people. These negotiations and disputes extend from marriage, divorce and various contractual and settlement issues involved with them, to buying, selling, lending, registering and other forms of transactions relating to land, real estate, goods and money. They also deal with crimes inflicted upon people and demands for punishment and compensation.

While this article is about gender relations and on women living within patriarchal structures, it focuses its attention on the realities of life of women and men, living together and negotiating life in its various aspects. Rather than macro questions regarding gender roles and theoretical legal issues, it is at the level of personal and basic relations that this piece of writing will look to try and see relations between people, the nature of these relations, the points at which men and women interact as brothers and sisters, husband and wife, father and daughter. Rather than the level of politics and institutional leadership, it is at the micro-level of social relations that gender and power

¹ The court records referred to here date from the Ottoman period in both Egypt and Palestine. Courts were located in major centers and served the centers as well as the agricultural community around them. There people registered land and property transactions, inheritance records, marriages, divorces and criminal cases were kept. Judges were educated in the Islamic Shari'a of particular legal school and individuals usually went in front of the judge of the particular legal school they belonged to or wished to be judged by. This gave an ability to maneuver to people who would go in front of a judge they felt would be more favorable to them. The judges were hired by the state and they answered to the chief Mufti in Istanbul. However, the language used in Arab courts was Arabic and local judges applied the law as understood by the common traditions in the communities that they served. Therefore the centralization of law was more theorized about than it was in reality. It should also be added that with greater research we are learning that there were sub-courts serving the main courts thereby allowing greater access to the population. For more about these courts cf. Amira Sonbol, *Women in Shari'a Courts: A Historical and Methodological Discussion*, in: *Fordham International Law Journal*, 27, 1 (2004), 225–253.

relations can become evident; court records from Egypt and Jordan dating from the early modern period yield important data for understanding social relations particularly when these records are used with the right approach and methodology. Courts were open to all classes of society which make them a particularly valuable source of social history. Rich and poor alike came to court which is evidenced by the amounts they were disputing or small pieces of property they were registering or selling. Courts treated all equally and did not differentiate according to wealth or gender although case records add titles indicating the prestige – military, religious, craft, learned positions – when people of status or wealth show up. The cases presented here involve a cross-section of social groups all being urban. Obviously the dimensions of such a study are much larger than can be expected in a text of this size and this effort is therefore a first attempt in that direction taking relations dealing with money as venue.

There are various possibilities for an article like this. For example, the early modern period, 16th century to roughly 20th century, is viewed as one in which Muslim women were secluded, playing little role in the public sphere, their life being defined by a division of labor in which the home was a woman's domain from which she could not emerge except after receiving a husband or a guardian's permission. Without debating the public-private dichotomy which is being successfully challenged as a valid paradigm for studying women's history, the normative view of Muslim women's life is easily tested when the focus is taken away from the macro political or official picture presented by male-dominated discursive presentations of theologians in the past and present. Control of wealth has yet to become a vehicle for viewing actual power or freedom to act, at least in regards to Muslim women's history. By studying archival records dealing with personal issues like marriage or divorce, inheritance records, business or trade, and *waqf* (endowments), it is possible to construct a better social picture of the day-to-day life of men and women. In other words, discussing relations involving the control of wealth becomes a test of normative views and an effort toward a better understanding of actual practices rather than an acceptance of theories and images of submissiveness presented by literature produced by medieval Muslim theologians.

This does not mean that courts followed rules other than the Shari'a as interpreted according to theological schools and the *'urf* (traditions) of the particular community in which the court functioned. The problem is that the image of submissiveness is blamed on the Shari'a as interpreted by exegetes in the past and present rather than as applied in court where actual disputes between people were settled. It can be easily stated that the center of debates regarding the 'rights' or lack of 'rights' of Muslim women living under the rule of the Shari'a past and present is seen from within religious discourses rather than from the practicalities, necessities and logic involved with actual living. Various schools of religious laws and cumulative exegetic writing (*fiqh*) setting parameters and explanations to what the Qur'an or Prophetic traditions (*hadith*) – accepted as the two basic sources of Islamic law – have constructed as the life of women. No matter the laws being presented, whether they emphasized a woman's rights or

man's rights vis-à-vis his wife, sister, mother or cousin, the image is one of *qiwama* (leadership) in which the man is the dominant in any relationship while the woman is submissive to this relationship. Hence exegetic interest in issues such as obedience (*ta'a*), confining women to the marital home from which she could go out only for religiously determined reasons and only with her husband's permission, a husband's rights to his wife's bed by virtue of the marriage contract and her lack of right to refuse him, a man's *qiwama* and his right to punish her for disobedience, and so on, all essential parts of division of labor discourses. Yet the scarcity of court records giving evidence to support these discursive images should give us pause. Reading historical records like chronicles and court archives, and even a closer scrutiny of *fiqh* show clear disparities between what discourses of submission establish as the 'Islamic' way for women and the actual demeanor of women in their daily life and negotiation with other members of their families and societies whether men or women.

It should be added that discourses of submissiveness are helped by historical facts revealed by court and other records which draw the attention of scholars interested in political history and gender struggle issues. As these records illustrate, women do not seem to have had much to do with the political running of the state, armies or security apparatuses, religious leadership, judiciary, long-distance trade or large investments in agriculture or commerce, all of which are areas almost exclusive to men. This situation is by no means unique to women living in the Middle East but was the situation in Europe during that pre-modern period and only began to change during the last century globally as part of the post-World War period. This essay looks elsewhere to see where women had freedom of action and how the two genders interacted, cooperated, negotiated and disputed. Since the article is focused on money and business transactions, it will follow a particular logic to explain where women received their wealth, how they handled this wealth, and what areas they invested their wealth in. The intent throughout is to show the relations and transactions that were a normal part of daily life as understood by Egyptian and Palestinian societies from which the records used here originate.

Expectations of Wealth

There are main sources of wealth from which women expected to receive funds and which give us details about women's access and control of wealth. Here inheritance records stand as the most important source followed closely by marriage records which include details of dowries received by brides before or during the marriage as delayed dowry, at the time of divorce or a husband's death or other basis agreed upon in the marriage contract. Dowries in Islamic society were paid by husbands to their brides. The amount was agreed upon between them or was established with the wife's family. When the bride was a minor, the father or other guardian (mother, grandfather,

brother) contracted the marriage and received the dowry. While it is always described as a bride price, that gives the impression that the woman was being sold to her husband and there is emphasis being placed on the issue that paying the bride-price allows sexual access to a woman. The complexity involved with the dowry throws a wrench into these types of sensationalist conclusions, the dowry belongs to the woman and not her family, for one thing. It is true that when the girl is a minor the family acquires and keeps the money, but women could sue their guardians for their dowry if they did not hand it over to them. The wife had full control over her dowry and if the husband had not paid it in full or contracted that he would pay it on installments, she could and often did sue her husband for breach of contract and for the money he owed her. It should be added, that the dowry was only one item in the marital contract and that the contract becomes *fasid* (null and void) if various items in the contract are not met but that quite often no dowry was paid by agreement of the two parties to the contract with a simple line that dowry was already paid or no mention of the dowry was given.

Inheritance could be from mother, father or another female or male relative like a father, son, sister, brother, wife or husband. Husbands, sons and brothers are also often the recipients of inheritance from female relatives, the estate being distributed being an indicator of the wealth controlled by the deceased female benefactress. As guardians of minor children, women also controlled substantial and varied types of wealth and property. Other sources of wealth the women controlled came from profits from investments and work that they performed in various fields.

Inheritance and guardianship

The honorable judge ... assigned al-Hajj Muhammad ... as guardian and spokesman on behalf of the suckling infant Fatma, orphan of al-Hajj 'Ali b. al-Hajj Muhammad ... who dealt in boxes in the Qashashin market near the Azhar mosque, who died yesterday, to guarantee her inheritance from her mentioned father and undertake buying and transactions on her behalf ... and be responsible for legal/court transactions on her behalf ... and to do what guardians legally do, until she reaches maturity in her religious knowledge and her [ability to control her] wealth ... and the named guardian accepted that for himself in accordance to the law.²

This seventeenth century inheritance deed from Cairo illustrates a basic guardianship of an orphan infant girl. In this case, the judge seems to have chosen her brother as

2 The court records from Egypt quoted in this article are located in the following archives: Cairo, National Archives. Shari'a court records, Alexandria, al-Zahed, Bab al-Sha'riyya, Dumyat, Bab al-Sha'riyya. This case is from Qisma 'Arabiyya Court, 1016 [1607], 18: 110–191.

guardian and he is required to watch after her physical good and financial interests until she reaches the age when she is mature enough to take over control of her life and her property. *Fiqh* books discuss in details the opinion of different legal schools and important theologians in regards to guardianship. They seem to all agree that guardianship goes automatically to a male member of the family, differing on whether the grandfather gets priority or a person designated by the father and other details. The case presented here seems to give support to the logic presented by the *fuqaha'*, yet one should ask the question as to where the widowed mother of the infant could be in this transaction particularly because as other cases show us it was quite usual for a mother to be given guardianship by the judge in preference to male relatives. It was also common for mothers to ask judges for guardianship of their children because, as mothers, they were more trustworthy of their children's lives and property than relatives further placed.

Here I am pointing to inter-family negotiation and the primary objective of watching out for the children's good although there was obviously struggle within families over control of property inherited by minor children. There were many possible reasons that could enter into the negotiations over guardianship, that is why fathers very often made their will known in regards to who would be guardian after them. Sometimes a mother was too young to be capable of acting as a proper guardian or she may have had hopes of being remarried. Court records do not discuss these issues, but the age and status of wives can be determined from the age of the children, the existence of other wives with older children and other details. One conclusion that can be drawn from the cumulative inheritance records is that courts and their judges seemed to be primarily concerned with the good of children when orphans were involved and very often the balance in establishing guardianship seems to have been the result of previous negotiations and the relative importance of the individuals involved.

The Qassam [judge in Qisma 'Askariyya courts that deal with inheritance], may God bless him, assigned the woman Fatma ... as guardian and spokes person for her two sons, the infant Shams al-Din son of the deceased Mahfuz, and the minor Muhammad Abul-Surur, orphan of the deceased Muhammad Abul-Surur. She is to take care of them, make decisions on their behalf and about them in regards to buying and selling, receiving and giving, cashing [funds], spending [it], [handle] all legal matters and perform all functions expected of a legal guardian according to the law and to do what is involved in guardianship legally with good will and their [the children's] welfare, until they each reach maturity to handle their religious duties and their money. This decision was rendered in the presence of the paternal grandfather of the two boys mentioned above and the *khawaja* [title given to an important merchant] the honorable al-Zini 'Abdal-Rahman ... the merchant from the Ja'lun market ... They accepted this [mother's guardianship] in the legal way and the Qassam assigned the above-mentioned boys' grandfather,

the *khawaja* 'Abdal-Rahman, as *nazir* [supervisor] and spokesman on behalf of the boys over the guardian so that she cannot undertake any transactions without his prior knowledge and discussing it with him.³

This situation is found frequently in inheritance records. The mother was seen as the most appropriate guardian (*wasi*) for her children and their assets. Judges usually had no problem in making mothers guardians; in this particular case, however, the grandfather appears to have been an important man and it was advantageous to the boys that he remained active in their concerns. As the boys grew, negotiating decisions over their future and over investing their inheritance would be on-going between the mother and the father's family with the mother making the decisions. How far the grandfather would interfere in their lives cannot be seen from the document, but it seems that his role would probably be that of an aloof or on-hands patriarch stepping in when needed or watching for every decision made by the mother.

Giving over-supervision (*nizara*) of a woman's guardianship to an older or more prestigious member of the family appears to have been a common practice; but it was more common for judges to assign mothers or older sisters full guardianship and total control of minor children's "person and money" (*nafs wa mal*). This happened both when the estate was not a rich one⁴ and when the estate was substantial and children's relatives included important personalities. In such a case dating from the mid-17th century, the widow was made guardian over the estate by the chief *qadi* with authority over the property of her minor child, her adult daughter (referred to as *al-mar'a* or woman), her unborn child and overseer for the elderly parents of her deceased husband. Present in court as witnesses to this decision were numerous major merchants associated with her husband and members of the family. The estate was presented in details and is quite substantial including "the deceased's house in Cairo in the Waraqa street [street of merchants dealing in paper], formed of his home and a building, the shop in al-Ghuriyya street" and an extensive inventory of slaves and goods. The wife was instructed to pay a debt he owed to a partner and to be responsible in front of the heirs in regards to managing her deceased husband's property.⁵

Women then controlled substantial funds and were trusted by the courts to act as guardians over their children, minor brothers and even other wives of their husbands. Court *qadis* did not seem to worry about what Islamic law had to say or whichever *madhhab* in regards to control over property although the division of inheritance went in exact details according to the most prevalent and widely accepted interpretation of

3 Qisma 'Arabiyya, 1013–1604, 16:119–214; the case gives two different names to the boys and yet mentions the name of the grandfather as being the grandfather of both boys. No explanation is given.

4 Qisma 'Arabiyya, 1061 [1651], 41:490–652.

5 Qisma 'Arabiyya, 1061 [1651], 41:523–706.

Qur'anic text on inheritance. This is interesting and shows something about the dynamics of law in Islamic societies. The Qur'an defines ratios of inheritance to be received by all members of a family depending on closeness to the deceased and gender, but it does not indicate how guardianship over orphans is to be set up even though dealing with guardians is a main theme of the Qur'an which constantly reminds Muslims to deal justly with the orphans and their property. The latter point seemed to be the basis according to which courts were guided in determining who becomes guardian and how said guardianship is to be executed. This is made obvious in cases when the father chose a guardian before he died and after his death the courts' preference was almost always to fulfill the father's wish. But it was sometimes the case that a mother came to court to indicate her fear for the good of her children and asked that the court assign her as the actual supervisor over her children's person and wealth and the court accepted against the will of the deceased father. The court's decision in these instances was usually based on the fact that the person chosen by the father may not be a blood-relation such as his boss at work or head of his military unit. It was more difficult for the mother to make her case when the chosen guardian was an uncle or older brother of her children unless he was not in good social standing. Reading beyond the text, one can imagine that the family was probably already aware of the father's choice for guardian to replace him in case of his death and that there was already some general acceptance of the role played by this future guardian as a partner to the husband in his business, as his brother and already involved in family decisions, or as his prince for soldiers who was best placed to watch out for the minors' future possibilities. Mothers would normally accept this choice but came to court to dispute the choice when it did not fit with what they found acceptable for the children and possibly the wider family.

As guardian, the mother was expected not only to protect her ward but also to make sure that his or her property was invested in the most profitable and safest way. Litigating in court was one resource to which guardians resorted probably when other methods did not work. Women-guardians came to court for many reasons on behalf of their wards. Interesting examples include a mother who was assigned as *wasi* over her minor children by a 16th century Nablus court in Palestine who sued a man who did business with her deceased husband for her deceased husband's share in the oil traded between them.⁶

Another case illustrates the keenness of the mother in regards to achieving the best profits from their children's inheritance. In this case from Jerusalem, a mother came to court to complain to the judge that the man who had been chosen by her husband as guardian over her children and their property was not doing enough to invest and increase her minor children's inheritance from their father. Noting that said inheritance

⁶ University of Jordan Library, Amman Archival records. Shari'a court records, Nablus, Jerusalem, Al-Salt, 1276–1277 [1860–1861], 2–13:27.

was quite extensive and substantial, the judge found for her even though the chosen guardian was of prestigious standing in the community, being a respected sheikh. The judge's decision in this case emphasizes further the earlier conclusion that the good of the children was the primary objective of the courts.

His honor ... the sheikh Ahmad ... the legal *wasi* over the named orphans, children of ... and the guardian [*nazir*] over them ... is to take no general or specific action regarding the property of the orphans named above except with the knowledge of the named *nazira* [female supervisor/guardian], and the judge [*mawlana al-hakim*] gave her his permission in regards to this matter.⁷

Women were also assigned as guardians over orphans from other wives of their husbands and appeared to have responsibilities for the inherited property of second wives perhaps because she was the eldest in age, the first wife in chronology, or the most capable. The records do not tell us how one wife ended controlling the property of other members of the household, but it is probably because she is recognized by the court as the spokesman of the rest who may have delegated her such power in court. Women also appear to have been guardians to minors unrelated to them. In the following case, a woman guardian is suing another woman asking for the return of her share of a building that she had simply seized for herself. She also asks that the woman return the share of her ward, Mu'mina, which she seized.

Since Fatma al-Shamiyya, the named defendant has seized the named building without any legal rights, I ask that she take her hand off my share of the building and the share of Mu'mina, the minor who is under my *wisaya* and to deliver the share of Mu'mina to me since I am her legal *wasi* as established by the legal document in my hand.⁸

The case does not indicate that Mu'mina is her daughter as is usual but simply mentions that she is a *wasi* over her in accordance with a legal document presumably issued by a court of law. One wonders at this case and wishes for more details regarding the relationship between the two women and between the litigant and Mu'mina. Could the first two have been step-wives one taking over control of part of the inheritance after the husband's death? The only indication we have is that Fatma is designated as *al-Shamiyya* (the Syrian) and the court of al-Salt where this case is registered is in Palestine. But the case does tell us about the diversity of Palestinian society and about relations between women and practicalities of everyday life.

⁷ Jerusalem, 1058 [1648], 28–140:317–2.

⁸ Al-Salt, 1328[1910], 16:180–105.

Dowries and Alimonies

Every part of the marital relationship involves financial settlements as is evidenced by court records. The marriage begins with the payment of a dowry by the husband, a right guaranteed to women by Islam and constitutes a major source of funds for her. She or her family negotiate the best deal she can receive and sometimes they relinquish a dowry altogether by mentioning no amount in the contract and indicating that the amount agreed between them was already received. This could reflect what has actually taken place but it is most likely no dowry was paid yet the contract must show that a dowry was paid for a marriage to be valid. For example, sometimes the two parties negotiated a wedding in which the dowry was to be paid on installments over a few months and sometimes over long years of matrimony. All the agreed upon details are included in the contract and are later debated in divorce settlements. Because divorce was a normal part of Muslim life and was widely practiced among Arab Christians as well, divorce settlements were also detailed in courts and constitute an excellent resource for studying the life of women as they interact with their husbands. Child custody and the payment of alimony also constitute important sources for the study of social life and male-female interactions. Recorded cases are diverse, each presenting a particular situation giving clues to ongoing negotiations and maneuverability as normal to people's lives.

The honorable al-Badri Muhammad son of the deceased Sheikh Hussain ... informed the court that he was previously married to the woman Sitt al-Kull ... and divorced her previously in this court [at which time] he decided to pay her two copper nisfs per day to support Muhammad, his minor son from her. Now he has found a volunteer for the *hadana* [custody] of his son who will undertake it without pay.

The father then produced *fatwas* (juridical opinions) from the *'ulama* (clergy) indicating his right to withdraw the support since the child's paternal grandmother was willing to undertake the job without compensation. When the judge appeared to lean toward the father, leaders of the community brought their opinion to bear on the case. Their witness was that the mentioned minor Muhammad would remain "in his mother's *hadana* without [financial] support [from his father] ... [but the court also] decided that the father had to pay two copper nisfs for the support of his suckling daughter for each day".⁹

The divorce that had taken place between this couple seems to have been far from amicable. The man had divorced his wife in court and even though the divorce deed required that he pay support for his minor son and his yet unborn daughter after her

9 Alexandria, 1074 [1664], 51:34–80.

birth, he had not paid for the daughter and after her birth tried to get out of paying for the son by having the children's paternal grandmother volunteer to undertake custody of the son. The social elite referred to as *a'yan* in the case record must have had some relationship to the couple or were *'udul* and stepped in to negotiate and exert their pressure on the husband and the court to keep the son with his mother thereby thwarting what was probably a malicious or vengeful act on behalf of the ex-husband. The fact that the ex-wife did not appear in court to face him even though his mother did appear, gives credence to the unfriendly divorce and the support of the *a'yan* for the ex-wife adds to this conclusion. There could be other readings to the case, but what is obvious is the social pressure and support system that play basic roles in disputes and negotiations between men and women.

Going beyond the text, one can question the role of the *a'yan* in this case. Were they related to the wife or were they present in court as *'udul* (elders, advisors) of the court and expected to render an opinion. We know that *'udul* were present in Ottoman courts and acted as advisors, we do not have enough information about them and how they functioned. Here it appears that they acted to determine "justice" or at least apply what is expected from social mores of their community. However, why refer to this group as *a'yan* rather than as court *'uduls* if that was what they were? At any rate, these communities served by courts were rather smaller communities and people seemed to know each other and the affairs of the larger population. That may have gone into court-decisions. It also appears that the judge must have not rendered his decision in this case immediately, but that it took at least more than one session; this contradicts what we normally know about pre-modern Shari'a courts.

This case also illustrates issues of money and its importance in women's lives as part of marriage settlements. While marriage and the household are looked at by scholars as private domains outside of the public moneyed world, that paradigm meant little for Islamic societies. Not only did women run their businesses from the home and manufactured goods for sale from the home, but the very marital relations involved financial dealings between husband and wife in the form of borrowing, investing together and exchanging financial rights in transactions involving marriage, divorce, reconciliation or simply day-to-day dealings. In the above case, the father promised to pay support for the unborn child carried by his wife if she gave birth. She did give birth to his daughter but he did not pay what he promised. This often happened as was a man's commitment to pay support in case the wife he is divorcing proves to be pregnant and gives birth to his child.¹⁰

The following cases from 17th century Alexandria illustrate the nature of gender relations described above. In this first case a wife comes to court with her husband who is referred to as "the notable Hajj" and took an oath stating that

she was paid and received from her husband the notable Hajj the amount of one hundred and seventy qurush, each of the qurush being equivalent to thirty silver halves representing the amount that he owed her according to a legal document issued by the Bulaq court dated ... 1126 and that he did not withhold anything due her at all and that from today [date of the deed] she has nothing due her from her honorable husband ...¹¹

The court record tells of financial transactions between husband and wife. There are similar cases between mother and son, son and mother, mother and daughter and so on. Registering loans between couples should be expected in families where divorce is a reality and property was individually held rather than held in the husband's, couple's or family name. Recording the transactions when the loan was given and when it was paid up should also be expected and in fact is to be found in Egyptian courts all the way back to Ancient Egyptian times. In other words, these are long-lasting traditions that continue in usage until today. The next case presented here illustrates the financial negotiations involved in marriage and divorce settlements and the understanding that contractual obligations determined at the time of marriage or established by Islamic law and the traditions of the particular community have legal realities of their own.

The Hajja 'Aisha ... claimed that her husband ... based on their marriage and marriage contract of twenty-one years previous to this date, owes her an accumulated forty-two seasons' clothing-allowances [*kiswa*] ... winter and summer ... and she asked that he pay her what is due her for this as well as her *mu'akkhar* [delayed dowry paid at the time of divorce or the husband's death] which amounted to twenty-five qurush.¹²

When asked, the husband said that he had never promised her a clothing-allowance and that he had married her for a dowry of 15 qurush and only the *mu'akkhar* of 13 qurush remained. Since the woman could not present a marriage contract proving his commitment to pay her *kiswa*, the judge asked the husband to take the oath, which he did and the case against him was dismissed because of the length of the marriage which made her belated demand for a clothing-allowance of little validity in front of the court. One wonders at what happened here, 21 years of marriage in which the wife did not complain of being denied a *kiswa* which she would have probably received from the court

¹¹ Alexandria, 1130 [1717], 65:69–130.

¹² Alexandria, 1074 [1664], 51:138–326.

as other cases brought to court show.¹³ One can imagine new problems breaking up the marriage which distressed the wife enough to sue her husband and be divorced irrevocably. This could have been their third divorce, hence irrevocable except after her marrying another man and consummating that marriage. But it was also probable that he may have taken a younger wife and was giving her luxuries denied the first wife which brought about problems between them. At any rate this case shows the importance of registering in court all transactions as the earlier case of the wife lending money to her husband illustrated and as often appeared in court, sometimes with little details while other times with extensive and specific details regarding value and quality of the clothing or clothing-allowance expected.¹⁴ Had the promise made by the husband at the time the marriage was transacted been noted down and registered, he would have had to fulfill his commitment notwithstanding the length of the marriage and accumulation of the debt.

It may be of use here to expand the discussion to include various types of disputes and negotiations that were brought by wives and husbands against each other which give a glimpse of the life people lived beyond financial matters. Cases are extensive here and include probably every aspect of life. Perhaps the most predominant issue negotiated in contracts involved a wife's wish to control her husband's ability to take a second wife by including a condition giving her the right to divorce him in case he took another wife or acquired a slave-concubine. Some novel take-offs of this type of condition illustrate the wife's particular concerns and the diversity of negotiations that take place between men and women. "The husband pledged that if he were to take another wife then this newer wife would be divorced irrevocably."¹⁵

A very curious condition that while not denying the husband the right to take another wife, a right that men were strongly attached to and their giving it up would made them seem weak. Still the condition ensures that the wife's wishes that she would remain the only wife within the marriage and as long as the marriage lasted, was guaranteed.

Another type of case that appeared often in court involved the wife's complaint of bad treatment by the husband. In one particular case the wife complained of being beaten and hit on her head by her husband and that he did not have marital relations with her – probably reference to a lack of intimacy between them, and that he had

¹³ Al-Zahed, 1010 [1602], 667:109–327; in this case from al-Zahed almost the reverse takes place. Here the wife demands eighteen months of *kiswa* in arrears as part of her divorce settlement. Her husband contradicts her declaring that she had given up her right to *kiswa* in return for support for her small daughter from another earlier husband. The wife denied this assertions and the man was asked to go and bring some evidence for his allegation. He was not able to and the court found for the wife.

¹⁴ Alexandria, 956 [1546], 1:14–66.

¹⁵ Alexandria, 957 [1549–1550], 1:6–29.

withheld part of her dowry due her and her clothing-allowance. When confronted in court, the husband agreed that he owed her the money but denied any wife-beating. Interestingly, the judge found against the husband and ordered him to pay the sixty silver nisfs he owed her and he was sent to jail.¹⁶ The wife seemed to be believed in these cases of wife-beating even without presenting evidence as another case from Alexandria showed where the wife complained that her husband was holding a silver *tawq* (leash/belt) worth five gold dinars and another three gold dinars as a legal loan from her to him. When she asked him for them, he had beaten her severely. The husband denied the allegations and took the oath in front of the judge. The wife then took the oath and the judge found for her; when the husband refused to turn over the *tawq*, he was sent to jail.¹⁷

Perhaps I should digress here to refer to religious discourses on wife-beating that point to the Qur'an as permitting wife-beating as a form of obedience for the wife. If this is an acceptable explanation of Al-Nisa' 4:34: "As to those women on whose part ye fear disloyalty and ill-conduct, admonish them (first), (next) refuse to share their beds, (and last) beat them (lightly)."¹⁸ It seems that it did not work in courts in front of court judges who were themselves members of the clergy. The disparity between religious discourses and court realities are confirmed by cases of wife-beating or abuse brought to court and the handling of such cases by the legal system.

Other family disputes in court involved the situation in the household and the type of usual problems between men and women. Women expected to live alone or at least expected to live alone with their husbands if they did not get along with the husband's family. Quite often a wife would sue for divorce or for better living conditions demanding that her husband house her alone and not with his mother, mothers-in-law being the usual problem.

¹⁶ Alexandria, 957 [1549–1550], 1:82–388.

¹⁷ Alexandria, 957 [1549–1550], 1:4–20.

¹⁸ Yusuf 'Ali, *The Meaning of the Holy Qur'an*, Brentwood 1993. This is a translation of the Qur'anic lines made by Yusuf 'Ali sometime in the 1930's. Considered a 'liberal' translation of the Qur'an, this translation is very widely used perhaps because of its apologetic nature and efforts to bring modern legal concepts into understanding the Qur'an. His addition of words within brackets meant to give rational understanding actually make his translation an interpretation rather than giving a real meaning of what the Qur'an may have intended if these lines are read within their context, i. e. language of the Prophetic age, gender relations at that time and particular idiomatic constructs from which the Qur'an speaks. For example the word beat did not mean to strike or hit someone during that age, but had many meaning attached to the sentence construct such as "beating" coins, performing sex, hitting the leg on the ground in a form of a beat and so on. Certainly "lightly" fits with court determinations regarding what English courts found acceptable wife-beating during the early twentieth century as laws were being changed to reflect the on-going gains made by the English women's movement for greater rights. If modern courts in Muslim countries accept the right of a husband to beat his wife "lightly", pre-modern Shari'a courts did not contemplate such actions as court records illustrate over and over again.

Divorce records are living testimony of negotiations within the communities dealt with in this article. The diversity of issues involved in divorce and the handling of the courts tell us about relations, disputes involving social customs, law as well as personal feelings and caprices. Normally the husband paid his wife what is financially due her – what is left of her advance dowry, delayed dowry, financial support for a few months after the divorce, and *mut'a* compensation (a form of payment for loss or work completed). Even though the following case does not deal directly with issues of property it is very telling of the negotiations involving men and women on a human level. In this case Mustafa, a member of the Janissaries with the title of prince, divorced his wife, daughter of another member of the Janissary corps, a triple divorce with a half silver nisf per day support for each of their two minor daughters who remained in her custody. When he heard that his ex-wife had remarried, Mustafa asked the court to return custody to him because the daughters should not be raised in a home with a strange man who has no relationship to them and because the maternal grandmother had originally refused to take custody of the girls expect for pay. The Shaf'i judge overseeing this case concluded:

Since the children's mother married a stranger [to the girls] who would have no right of custody to them, her custody [of the children] is ended ... and it cannot be transferred to their grandmother because she is married to their grandfather even if he were to agree, the grandfather having nothing to do with custody [*hadana*] ... even if the children were given the choice and they chose their mother, their wish cannot be fulfilled because of the legal [*shar'i*] reason that she has married a strange man. Hence the custody goes to the father according to the law ...¹⁹

The judge then ordered the mother and grandparents to turn over the two girls to their father which they refused to do and the father had to ask the court to enforce its order. The court revisited the case, looked through the legalities and enforced the transfer of the girls to their father.

Here the judge was enforcing Islamic law regarding the custody of children. *Hadana* always went to the mother and after that her mother and then the father's mother and so on down the female line. It was considered a woman's custody because of the need of young children for a woman in their early years. If a mother remarried, then her right to custody is brought into question usually because the child or children she has custody over is a girl. The fear of incest rather than abuse of the children was at the heart of this matter since the new man the mother married was not a relation such as an uncle. Had the father not taken the matter to court, however, custody would have gone

on in the hands of the mother and the fact that these cases do not too frequently appear in court while divorces and women's second marriages fill court records tells us that life goes on if fathers don't dispute ex-wives' right to custody. This should have been so in this case particularly because the grandparents came to court with their daughter and fought for the right to hold onto the two girls. The details of this story point to more issues involved, the triple divorce probably meant an unfriendly divorce, or previous trouble between the couple particularly since the husband and the wife's father are both from the Janissary corps, the husband the superior of the father in rank. The wife's remarriage was not welcome to the ex-husband who may have regretted the triple divorce, usually pronounced in anger, and had a dog-in-the-manger attitude toward his wife.

It is in considering the children's wishes that gives this case particular significance. Negotiations regarding what is best for children according to the law and social norms were very much part of the social fabric. Causes and circumstances of a divorce play a role in the court's decisions, as do financial matters. In the above case, the maternal mother had originally refused to take custody of the children without being paid wages and support by the father; this fact must have worked against the mother's family in the end. This conclusion in regards to court actions is given support by a similar case in which the father demanded custody having found another woman to undertake custody without any demand for support from the father, which is his responsibility. Because of the quarrels between the couple which seemed to be well-known to the community, the father demanded that the child be taken each day from the mother at his time of feeding to be fed by this other woman and returned to her. The mother refused and asked the court to give her full custody without the father's financial support declaring that she can afford supporting her son herself. The elders of the community interfered between them and took the mother's side in the court "because a mother's compassion over her child is greater than that of a stranger".²⁰

Making a Living

Handling money was a normal part of women's life. Women inherited money, received dowries and alimonies, were entrusted with their orphan children's inheritance, earned money from investments, bought property and worked in various fields. That it was understood that women owning and handling money was normative is supported by the fact that they sometimes came to court to declare that they owed no one money; sometimes this was a general statement and other times it was a specific statement including names of perhaps those she had owed money to previously or were making claims on her. A somewhat frequent declaration could be recorded in which a woman

²⁰ Alexandria, 1129 [1716], 65:22-49.

would come freely to court to state “[so and so] voluntarily stated in a legal statement that she is poor and of the Muslim poor, that she owns nothing in this whole wide world and that no one owes her anything from the past and until today...”²¹ Why make such a statement, which amounts to a declaration of bankruptcy in modern terms? Besides a specific reason for going to court to issue such a legal document, it is probably resorted to perhaps to ascertain that no one question a division of her wealth she had undertaken between members of her family, or because she had had a bad turn in business. What these declarations tell us is that it was normal for women to own property and handle funds, otherwise why make such a statement? The very nature of marriage and divorce, the transactions, financial details and legalities involved in them illustrate how wealth was individually held within the marriage and that even though the husband may be legally responsible for the support of his wife and children, even that was negotiable as the case about *kiswa* mentioned above shows. Here wives negotiated a clothing allowance and the quality and quantity they expected even before their marriage. If they did not, they did not simply get it because a husband was responsible for their support. In fact there are marriages in which the husband indicated that the wife will be responsible for housing and that he would live in her home without paying her rent and other cases in which the husband undertakes in writing that he would support her children from a previous marriage and feed them of the same quality food that he himself consumes. We also do not see cases in which the husband asks the court to forbid his wife from doing a job or running a business. There are cases in which the husband complains of his wife’s constant leaving the home and his demand that she does not leave the house without permission. Very often these cases involve divorce or remarriage and negotiations of how to handle issues of going out for the purpose of shopping, something husbands seemed to complain particularly about.

It is therefore not surprising that court records do not differentiate between men and women when they come before the courts to sue for financial rights or to register newly acquired property or other transactions. If anything what is obvious is an active community, its men and women interested in bettering their ability to make an income and bettering their lives and that of their children. It is also not surprising that women, as well as men, found real estate as one favorite way to invest their funds thereby providing them with a home and at the same time with rental income. Women invested in houses to live in, to rent out, and often expanded the house in which they lived outward or by adding other floors to allow for rental income. We see women coming to court to register the sale of property they bought, the detailed transactions giving us a glimpse of these types of activities including who they bought the property from, amount paid and the exact location of the property.²² Some deceased women left substantial proper-

21 Alexandria, 1074 [1773], 51:46–105.

22 Jerusalem, 1071 [1661], MF 44, 241:72–1.

ty showing that investment in rental and business property like shops or workshops was one direction that women chose to make an income and expand their wealth. Records usually inform if the workshops or shops were inherited by the deceased from a father or a husband and of additions she may have made to them, and may also show the extent of her involvement in the business. We find women going into partnerships with men outside her family to own, expand and rent out property.²³ As guardians over their children's property, mothers have recorded sales and rental deeds bringing in income in the name of their children.²⁴ We find sisters buying shares of houses from each other,²⁵ mothers willing or selling outright part of their home to their daughters probably in a fake sale to ensure that the daughter would have secure hold on the property and it would not be subject to inheritance-disputes. This type of transaction was often disputed by siblings particularly brothers who saw this as a way of denying what they would have received through inheritance. As landlady, women sued in court when rent was not paid;²⁶ and as partners owning a common piece of property, women came to court suing each other over how to dispose of the property or what changes to make to it. In one case, one partner was denying the rest the right to expand the size and usage of the property including the common area and to adding floors to the property thereby making it more profitable.²⁷ Sometimes, women assigned *wakils* (deputies) to represent them in buying and registering land in court, often their brothers.²⁸ But women in turn also acted as *wakils* buying and then going to court to register property on behalf of men: "Husn bint al-Misri bought on behalf [*bil-wikala*] of Ibrahim b. Muslih ... and Khalil bin Damur ... sons of Khalaf whose agency to her has been legally established".²⁹

The frequency of women's agency in court is a sign that trust and personal interest were of value in relations between men and women. It also puts into question strict definitions of gender lines and the grids of separation and discrimination that continue to form the picture of the life of Muslim societies in the past. This conclusion is supported by the aggressiveness of women in pursuing their property interests, how they were sued in courts for breaking the law and how they in turn pursued their financial rights in court against men and women alike whether related or strange to them. A good example here is their aggressiveness in pushing their limit as property holders often taken to court for breaking the law and extending their property lines. A typical

23 Bab al-Sha'riyya, 1005 [1596], 596:624–2211.

24 Bab al-Sha'riyya, 1002 [1593], 595:175–694; in this case the rental involved an orchard and wooden watermill rented out for two years at the price of 22 dinars per year.

25 Jerusalem, 1104 [1692], MF 38, 193:394–2.

26 Jerusalem, MF 31, 156–123–5.

27 Jerusalem, 1103 [1691], MF 38, 193:313, 314, 315–2.

28 Nablus, 1101–2 [1689–1691], MF 1, 3:9–34, 35.

29 Jerusalem, 1106 [1691], MF 44, 240:88–2.

case informs us that two men sued their neighbor, a woman by the name of Mahjuba, because she extended the second floor she was adding “over the wall separating their two houses without their permission.” In court she explained that the two buildings had constituted one building previously and were then divided into two houses and that the wall is part of her house and not theirs; they disagreed.³⁰ The court then sent experts out to see the situation on-the-ground and the building experts concluded that Mahjuba had in fact taken grievous advantage of the wall by extending her house beyond its parameters although it was clear that the wall was actually built by the two men based on the building and placement of the stones making up the wall.

Lending money was another activity in which women were involved. Very often these loans are made to family members like brothers, fathers, or husbands and, as court records illustrate, husbands often owed their wives for various types of loans.³¹ Borrowing from a wife did not seem to be a problem with men since the records show that this was quite normal and very often one comes across cases in which husbands are repaying a debt to a wife and a wife indicating that she in fact has been repaid. Sometimes such cases look artificial and are more in the form of assuring that her property would remain with her husband and children and not disputed by any of her family members, but most transactions appear to be genuine especially since a lot of the repayment takes place at the time of divorce when all financial matters between the couple or between a woman and another member of her family have to be settled.

Wadha ... pointing to her adversary, her brother Tafish ... who is present with her in court, both of whom are ... residents of al-Salt, claimed that her brother Tafish here present with her, owed her the amount of 11 majidi riyals representing a loan she extended to him according to this matured *sanad* [credit bill] ...

Loans were also made as commercial transactions between women and non-family members whom they often sued for fulfillment of the agreement between them. We do not see this as a form of profit through interest making, but there were clearly agreements made by which women would lend money sometimes outright, other times guaranteed by a deed in court and still more usually as a form of pawn (*rahn*) against property.

The woman Fatma ... from the village of Bayt Forik, claimed that 'Ali 'Abdal-Karim ... from the same village and present with her in court [al-Majlis al-shari'i] ... claimed addressing her words to him, that he pawned all of the piece of land located in said village known as the Mantara land [*ard*] in return for six hundred

³⁰ Alexandria, 1130 [1717], 75:104–198.

³¹ Nablus, 1284–1285 [1866–1867], 2–15:183. One husband owed his wife 18 plus riyals, 14 goats and 4 sheep, according to a deed between them registered in Amman Shari'a court.

qurush that he received from her and he handed over the land to her. After receiving the land they agreed that he would plant it and sow it that she would receive one third of the produce of *hianta* [wheat] and that the land produced eighty tons of *hianta* and she wants to receive one third of that which is worth five hundred and thirty qurush, and that the defendant confesses that he did plant the land but denies the lawn. The judge asked the two to prove their case, but the woman Fatma did not have a legal deed backing up her claim.³²

This case illustrates that pawning land and sharing in the product of the soil as part of the agreement and until repayment of the loan was usual. The problem here is that the women had an oral agreement and had not been careful enough to register it in court. Other cases make the transaction even clearer like the following one from Haifa: "Because I owe the woman ... the sum of 800 qurush ... I have given her for one year as security against the loan a room in a house I own ... she may live in it or let it out for the interest [*fayiz*]" . Court records also give examples of loans to family members or loans on a commercial basis to non-relatives.³³

But women were not only involved in the market-place as property owners, they formed an important sector of daily labor which can be garnered from the few records detailing the appearance of women demanding their wages for work performed or other issues. There are cases in which women sue for back pay for hard labor they performed as agricultural labor or for working in quarries. The following case was brought to the attention of the court by a couple who performed agricultural labor in an olive orchard in Nablus and was suing the owners.

Mas'ud al-Jidd is suing Muhammad Sa'id al-'Aqqad and Salih ... and Hassan ... for his wages and his wife's wages for 120 days labor ... the defendants in turn claimed that said Mas'ud was their partner in the *zaitun* [olives] business and when the *zaitun* business lost money he still wanted to take the fourteen pots that would have been due him through the legal system ...³⁴

Running a business or being involved in a craft were also forms by which women made a living. Court records illustrate that women controlled *awqaf*, bid for and controlled *iltizam*s,³⁵ owned olive orchards and were involved in the production and trade in olive

³² Nablus, 1282 [1866], MF 2-14:236-78.

³³ Cf. Amira Sonbol, *Women of the Jordan: Islam, Labor, and the Law*, Syracuse 2003, chapter 3: "Women's History and Work" for a discussion of these issues including various case records of loans made between various people.

³⁴ Nablus, 1280-1282 [1864-1866], MF 2, 13 repeat p. 60.

³⁵ *Iltizam* is a system of tax-farming by which a person received the right to tax a particular piece of land – sometimes a whole village or area – in return for a sum of money paid to the state in advance.

oil.³⁶ They invested in mulberry orchards and other fruit producing trees and were elected heads of women's craft-guilds, worked in large numbers in particular crafts like weaving and the production of food for sale in the market like ghee, cheese or olive oil, and that they dominated certain professions like *dalalas* (door-to-door saleswomen), beauticians and entertainers. Women owned grinding mills³⁷ or owned such mills in partnership with a husband³⁸ or another person,³⁹ and were also involved in traditionally male crafts like manufacturing soap, pottery, goldsmith, bakeries and as *mu'allimas* (boss) of coffeehouses. *Waqf* records show us that property held by women included village real estate, orchards, rental houses, shops, olive oil juicers, commercial baths, bakeries, and market-shops or sale-spots in marketplaces. They undertook tiring jobs like water-carriers, an essential service for cities of the Middle East, as bath attendants, masseuses, as well as being in the beauty business as make-up artists, hair-dressers and *kahalas* (pseudo-oculist who uses *kubl* as cure). Some were even involved in pawning businesses.⁴⁰ They had jobs in the entertainment business, danced and sang at weddings and acted as heads of guilds of those groups. Guilds existed for crafts and trades (*hiraf* and *sana'i*) including most of the activities from a merchant guild to a carpenter guild, to doctors, to midwives, and so on. The head of the guild was elected by recognition of his membership and in particularly larger guilds. He was also recognized as guild-head in court. We often see references to women as head of guilds of spinners, dancers, or doctors. Guild membership seemed to be open to those practicing the trade were not exclusivist except in regards to gender since when there is a reference to a woman's head of a guild, it is usually mentioned that it is women spinners or dancers although there are exceptions as for example in the thirteenth century example of head of the guild of doctors at Egypt's biggest medieval hospital, the Maristan al-Mansuri.⁴¹

Spinning, weaving, embroidery and sewing were important areas for women's employment, and women sometimes owned textile shops. Traditionally, particularly among tribesmen and villagers, it was the women who were involved in wool production. Families could already own their stock and use its wool or milk to produce goods to be sold in the market. Traditionally, it was the women who washed the wool, spun it and wove it. In medieval Muslim societies spinning was primarily a female profession, the

36 Nablus, 1266–1276 [1850–1860], 2–12:199.

37 Muhammad 'Isa Salahiya, *Sijil aradi alwiya* (Safad, Nablus, Ghaza, and qada' al-Ramlah: 974H–1556) [Land-property of the Districts of (Safad, Nablus, Ghaza and Judicial District of al-Ramlah)], Amman 1999, 15.

38 Al-Salt, 1320 [1902], 7:97–206.

39 Salahiya, *Sijil*, see note 37, 58.

40 Jerusalem, 1058 [1648], 28–140:332–5.

41 Cf. Omayma Abu Bakr and Huda al-Sa'di, *al-Nisa' wa mihnath al-tibb fi'l-mujtama'at al-islamiyya* [Women and the Practice of Medicine in Islamic Societies], Cairo 1999 for names of women medical practitioners in Islamic history from the early Islamic until the modern period.

spindle being part of household furniture. They also sewed and embroidered tablecloths, sheets and saddles for horses and donkeys, as well as sacks for storing food and clothing. Women also owned workshops for sewing clothes and shops for selling them although most of the textile retail businesses were owned and run by men. In short, *Shari'a* court records illustrate that women participated widely in almost all aspects of the marketplace, and that *qadis* did not question their rights to work in particular jobs. This fits well with other *Shari'a* sources like the Qur'an and *hadith* where there is no indication that women were forbidden from working.

The following tells of a highly placed member of the Janissary who was taken ill and feared dying. He came to court to make his final will and testament in which he was clearly most interested in ensuring his wife's financial welfare.

Testified that his wife Khadija Khatun ... is his sole heir ... that he owed her a delayed dowry of three thousand silver nisfs, and that half of the coffee-house in Cairo's Hussayniyya quarter belonged to his wife, that he owned no part of that coffee-house except for copper wear and a tent ... and that his mother-in-law owed him nothing, neither under her control or in her keep ...⁴²

From this case we understand that it is the mother-in-law who ran the coffeehouse in partnership with his wife although it is probable that it was he who bought the half-share for his wife or was acting on her behalf when it was purchased. But women were not only involved in the market-place as property owners, they formed an important sector of daily labor which can be garnered from the few records detailing the appearance of women demanding their wages for work performed or other issues. Ownership and the operation of coffee-shops seemed to be something women invested their money and time in. They must have been lucrative enterprises based on their establishment of *waqfs* whose income was to be spent on upkeeping the property and on services for the communities in which they were located. A *waqf* in these terms was the subject of litigation between

coffee-shop bosses [*qahwajiyya*] who were renting the premises and the qadi of the Qisma al-'Askariyya court at the Kamiliyya school who was the assigned nazir of the waqf of the deceased Sa'd al-Muluk, in regards to the coffee-shop known as al-Maqtaf Coffeeshop, located in Ghalla square overlooking the Hakimi Khalij [waterway], in regards to the expenses involved in building and restoration and constructing *masatib* [stone seats], a wall and a ceiling and so on ...⁴³

⁴² Alexandria, 1130 [1717], 75:141-247.

⁴³ al-Zaheid, 1010 [1601], 667:11-38.

This is a long deed indicating the terms of the *wagf* and the rents. It shows that it involves more than one coffeehouse set up by two different women and administered by two different *nazirs* but containing the same conditions which makes one wonder if the coffeehouses were co-owned or that the two women formed some sort of network or alliance for their profession or for those of their gender within this profession.

Part of doing business involved committing crimes, and court records give details of the various crimes women committed in stealing, defrauding or dealing in illegal items. Perhaps one case may tell this story:

A number of men and women of the port whose names are listed in the case record complained to the court about Safiyya sister of the Sheikh Yeken claiming that she took goods for her own use and goods to sell on their behalf after consulting with them and that she went ahead and sold the goods without consulting them. They asked her for the money she received for the goods she took for herself and for those she sold. She confessed to all this but claimed that the goods that she had for the purpose of selling were forcibly stolen from her ... she also claimed total poverty and they demanded that she be placed in prison to investigate further... so she was put in the court prison where she remained for five months during which she was put under severe pressure but nothing was forthcoming from her and she became weaker and there was fear for her health ... she appealed to the court that she is poor and penniless and if she remained in prison any longer she would die ...⁴⁴

After producing three sheikhs who gave witness to her poverty and she took the oath that she is penniless, the court let her go free. Women were therefore expected to follow the law which they were known to break and were sent to prison. There did not seem to be discrimination by the courts in regards to gender. *Dalalas* in particular must have had some problems with the law given court decisions to forbid them from practicing their trade as an early eighteenth century Jerusalem court concluded: "they take things and buy them from their owners with one price then sell them for a higher price".⁴⁵ This appeared to be a form of theft, perhaps they charged too high a commission or made a profit over what they were expected to make. Clearly this involved selling goods that belonged to other people, whether they were first hand goods they sold on commission for other merchants or second hand goods sold by their owners, it is not clear in this case although both practices existed.

I would like to end this article by raising the question what did women do with the money they accumulated? From what inheritance records indicate, they enlarged their

44 Alexandria, mubaya'at, 1223 [1808], 116:31-57.

45 Jerusalem, 1071 [1661], 151:603-1.

houses, lived in better conditions, invested in property and bought slaves. Quite often they divided their money and property among their children while they were still alive thereby not leaving the division to inheritance laws which fragment estates. If they had slave-women or servants who lived within their household, they often granted freedom to the slave women and ensured their future by leaving them some money or property, sometime through the courts and sometimes as a grant in a will to be handed over after her death. Perhaps the most popular way was through establishing a religious endowment (*waqf*), a method used by men and women alike to fund services to their communities like mosques, schools, water-fountains, food for the poor and so on. *Waqfs* were also one way of defeating the fragmentary impact of Islamic inheritance laws that distributes estates among all direct living members of a person's family. A *waqf* remained under the control of the family member instituted by the benefactor, its income to be collected and spent according to the terms set by the benefactor. Only when there are no more relatives or executors established by the *waqf* still alive, does the *waqf* revert to the state and the courts chose who would be the *nazir* of the *waqf*.

The woman Mariam testified ... her body wracked in pains ... sitting in her home, conscious of what she is saying and what is being told to her legally ... without any coercion ... that she locked and established as *waqf* (*habasat wa waqafat*) ... and gave in charity from her property and what belongings she holds in her hand ... which she bought as per a legal deed ... twelve qirats [half, the total being 24 qirats], of the total of the property located at ... consisting of land and two buildings ... for her to enjoy while still alive ... after which its proceeds are to go to the mosque known as the al-Arba'i [mosque] to be spent in the legal way on the good of the mosque and if that is not possible then the income is to be spent on the poor and needy ... she declared herself the *nazira* and after her the control would go to the *nazir* of the mosque ...⁴⁶

This is a good example of the *waqf* deeds registered in court, similar in some ways but quite unique in others. The uniqueness of this case is in the fact that it details the conditions under which the donor made the *waqf*, obviously sick and unable to go to the court so the court had to come to her house to establish the *waqf* deed. Notwithstanding her sickness, she still insisted on controlling the property and its income while she lived. The deed is also interesting because the donor bought the property with her own funds, money she either inherited or made in other ways but she chose to invest in income-producing real estate. When a *waqf* came to the courts because there were no longer beneficiaries in accordance to the *waqf* deed registered by the benefactor at the time the *waqf* was set up, the judge chose a *nazir* to watch over it. While *fiqh* insists that

⁴⁶ Alexandria, 1130 [1717], 65:92–175.

a woman cannot be a *nazir* with final control over a *waqf* but can only be an overseer with final *nizara* given to a male, court records tell us otherwise and that in fact women were *naziras* and they understood all functions in regards to their position including meeting tenants, workers, benefactors from the *waqf* and so on. “The woman Sayyidat al-Ahl daughter of ... was given the job of looking into [*al-nazar*] and legal representation over the *waqf* of the sheikh ... so that the *nazira* would undertake the affairs of the *waqf* and all matters related to it from renting it, receiving wages, building and upkeep ... and all other legal matters.”⁴⁷ To sum up, women created *waqfs*, they were beneficiaries of *waqf*, received income from them and acted as the *nazira* collecting rent, distributing the money, keeping *waqf* property functioning in the best way and even selling and reinvesting *waqf* investments after receiving the court’s permission to do so.⁴⁸

Conclusion

As this paper has shown, women inherited money, received it as dowry in cash or kind, earned it through work, trade, profit from investments, or as income from established *waqfs*. Court records do not tell us directly the source of the money that women were lending out, but the records give a good indication of the amounts of money women controlled and death records give lists of the property women left behind for their heirs. Inheritance records, marriage, divorce and other records dealing with personal matters, show them to be important sources of money and property for women. Disputes over transactions in the marketplace or over goods illustrate the trade activities of women and that buying and selling were important areas of occupation for women. Owning shops, workshops and involvement in various trades, therefore come as no surprise in regards to women’s involvement.

47 Dumyat, 1171 [1757], 250:49–72.

48 Jerusalem, 1106 [1694], ME, 44, 239:23–1.