Legal Documents as Sources for the History of Muslim Societies

Studies in Honour of Rudolph Peters

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CHAPTER 5

Identifying the ʿudūl in Fifteenth-Century Granada

Sergio Carro Martín and Amalia Zomeño

Introduction and Purpose

The archives and libraries of Granada preserve several collections of Arabic legal documents dated mostly in the second half of the fifteenth century. They were written down and signed by notaries, who were in charge of drafting the legal transactions demanded by the inhabitants of Granada and guaranteeing their validity and effectiveness in court. According to Emile Tyan: “dans beaucoup d’actes notariés, la formule religieuse est précédée d’une formule qui porte tout à la fois certification du contenu du document et indication du nom du notaire-rédacteur.” This formula is not present in Granadan documents. There is no certification of the contents nor a mention of the notaries’ names before the basmallāh. In addition, the signatures in the documents are

1 This paper is the result of several of our previous studies, but also based on endless discussions on the formalities of the Granadan documents. We would like to thank the useful comments given to a preliminary version of this paper on 11 May 2011 in Amsterdam and later on by Christian Müller and Tamer el-Leithy on different occasions. The paper was possible thanks to the amazing database Comparing Arabic Legal Documents, elaborated by Christian Müller in the IRHT (Paris), with its results available online in the Corpus of Arabic Legal Documents (http://cald.irht.cnrs.fr/php/ilm.php). We would also like to express our gratitude to Teresa Espejo and her team in Granada, for generously giving us their magnificent photographs of the documents. We would also like to thank the Biblioteca del Hospital Real for granting us permission for the reproduction of these photographs. The present contribution was elaborated within the framework of the research projects FFI2012–39567 and FFI2012–37775, financed by the Spanish Ministry of Economy.


not at all readable: as is common nowadays as well, instead of clearly spelling out their names, the notaries used to design an elaborated signature. However, we know that in Granada, the signatures were identifiable and the documents were ascribed to their writer-notaries. An example of this is a document written in Baza in 889/1484, validating a previous one dated fifty years before by identifying the handwriting of the notaries:

The witnesses who sign this document have examined the testimony (shahāda) of the two honourable jurists (al-faqīhayn al-ʿadālayn) Abū Jaʿfar Ahmad b. Muḥammad son of Abū Bakr al-Jayyānī and Abū ʿAbd Allāh Muḥammad b. ʿAlī al-Qaysī, and have carefully deciphered the forms of their letters (ishkāl ḥurūfihimā), and it seems clear to them that such testimony was written by their hand (bi-khaṭṭ yadayhimā) and that they were two of the ʿudūl of Baza –May God protect this city-. They also know that they gave their testimonies and continued their function as notaries (ʿadālatuhumā) until the moment of their death.4

Our purpose is to do something similar in this study as these medieval witnesses did in Baza: to identify and single out the notaries through the examination of the documents they wrote. We will try to decipher the “forms of their characters,” both in their style of writing and in their signatures. We will also describe some of the writing conventions used by all of them, the mise en page of the Granadan documents, which will help to discern the specificities or divergences from these general writing conventions by individual notaries. We will especially focus on some of those conventions and rules related with the legal validation of the documents. At the end of this paper, we will provide a characterisation of one of these notaries and describe some traces of his relationship with his “clients,” the inhabitants of Granada at the end of the fifteenth century.

The Collection

The most important collection of legal documents in Granada is preserved in the Biblioteca del Hospital Real (University of Granada); it will be the main

source for this work.\textsuperscript{5} It contains 167 handwriting pieces,\textsuperscript{6} although we have to exclude 16 items from our study because some are not Granadan legal documents and some others cannot be read because of their bad condition.\textsuperscript{7} Therefore, this study comprises 151 Arabic legal documents.\textsuperscript{8}

The documents range from the end of the fourteenth century to the end of the fifteenth century: the earliest in 15 Rabī‘ 11 792/2 April 1390, and the later in 24 Ṣafar 905/30 September 1499 and therefore eight years after the conquest of

\begin{footnotesize}
\begin{itemize}
\item[6] These Arabic texts are distributed in two boxes (caja in Spanish), although this arrangement seems to be the result of the modern history of the Library. In box 27 (containing 110 items), the documents are numbered from 32950 to 33041 (a little file encloses the number 33040, including 17 items) and 33096–33097. Box 69 (containing 57 items) is also numbered from 5–01 to 5–48 and from 5–53 to 5–57 (this last number contains three items). In subsequent pages we will refer to the documents as Biblioteca del Hospital Real (=BHR), the number of the box, and the number of the document in it.
\item[7] These are six parchments almost completely erased (BHR C-27 33009, BHR C-69 5–51, 5–53, 5–54, 5–55, 5–56), three Moroccan documents (BHR C-69 5–01, 5–03, 5–12), four separated folia of different manuscripts (BHR C-69 5–02, 5–57, 5–57, 5–57), a letter (BHR C-69 5–11), an amulet (BHR C-69 5–50) and a modern transcription of an unknown document (BHR C-27 33041).
\end{itemize}
\end{footnotesize}
the Nasrid Emirate by the Catholic Monarchs in 1492. However, the bulk of the writings belongs to the 80s of the fifteenth century.

The Writing of a Legal Document (*Kitāba*) in Granada

The most common type of legal document in this collection is a text written on a piece of paper with a narration of a legal fact in the past tense. Preceded by a *basmallāh*, always followed by a *tasliya*, most of the documents end, immediately after the date, with two signatures. Sometimes, the completion of the legal facts needed another visit, or visits, to the notaries, and therefore, another writing was added, on the same piece of paper, following on the recto or using the verso, now starting with a *hamdallāh* and finishing again with the signatures of two witnesses. A common version of this kind of document are sales contracts with the addition of a deferred payment or payments. Also very frequent was the copy of an appraisal of certain properties by experts (*ahl al-baṣr wa-l-maʿrifa*) followed by the distribution of those properties among the heirs in a *qisma* document (division of inheritance).

There is a consistent layout in the documents. Almost all the notaries used the same kind of paper with a similar size and very rarely utilized parchment. They also elaborated or purchased a similar ink and a similar kind of pen. They prepared their pieces of paper maintaining regular margins and distances to the edges of the writing surface, writing until the left border and starting two to two and a half centimetres from the right margin. The main text of the documents is always located on the top left part of the piece.

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9 The documents were used after the conquest and well into the 16th century, as many of them bear annotations in the margins mentioning the contents of the transaction. These annotations are in vernacular Arabic by a non-expert hand or in Romance maybe by a clerk of the Castilian administration.

10 In the collection, 105 documents contain only one writing, 24 documents contain 2 writings, 11 contain 3, and 9 documents contain 4 writings. Exceptional are those containing 5, 6 and 7 writings.

11 Only seven – out of 151 – documents were written on parchment (although we have to add here the six excluded because of their bad condition); five sale contracts and two marriage contracts.

**Signing the Documents**

As a general rule, the documents in this Granadan collection are signed by two witnesses,\(^\text{13}\) but, how did the notaries proceed in the signing of the texts? Who signed what?

As we said before, the notaries do not write their names but insert a design with a signature, and even if they are diverse, we could make the following classification: First, we find simple signatures, made by a single design with the notary’s name indicated with words disposed in several lines. Second, and more frequently, we find that a notary makes a compound signature, drawing his name by designing two segments only linked by an enlargement of the last character and thus uniting both segments horizontally (see figure 5.1).

<table>
<thead>
<tr>
<th>Simple signatures</th>
<th>Compound signatures</th>
</tr>
</thead>
<tbody>
<tr>
<td>BHR C-69 5-47</td>
<td>BHR C-27 32958</td>
</tr>
<tr>
<td>BHR C-27 32985</td>
<td>BHR C-27 32960</td>
</tr>
<tr>
<td>BHR C-27 32987</td>
<td>BHR C-27 32969</td>
</tr>
<tr>
<td></td>
<td>BHR C-27 32981</td>
</tr>
</tbody>
</table>

**FIGURE 5.1** Simple and compound signatures.

Source: Biblioteca del Hospital Real, University of Granada.

\(^{13}\) It is well known that two witnesses are required for the validity of legal documents, see Tyan, *Le notariat*, 55.
At first look, a compound signature might be mistaken as two signatures of different notaries, but every design is usually followed and wrapped up by a stroke similar to the hā,\(^{14}\) and are separated by a wāw between them.

Although we tried to read the names hidden in the designs, we did not succeed in understanding any of them. Besides some potential “Muhammads,” “Ahmads” or “ʿIsas” no surely identifiable segment of a proper name could be read. The designs are repeated in several of the documents, as we will describe later, and therefore we can see the development of the design of a notary through a period of time.

However, some of the writings in the documents of the collection diverge from the general rule since they do not have the two signatures. In fact, ten have only one, that of the writer-notary who might not have needed to take the effort to search for the assistance of another witness to complete the two necessary testimonies,\(^{15}\) turning these texts into mere records of legal acts not constituting evidence to be presented in court.\(^{16}\) In five other documents, the writer-notary did not even sign the legal writing himself, so they do not have even one single signature. What is surprising in these documents is the fact that they are complete in the sense that they all have a complete basmallāh and taṣliya, contain all the legal requirements for the transactions to be valid, and are fully dated.\(^{17}\) Even if they are exceptional and scarce, these insufficiently validated writings might show the practice of drafting legal documents without immediately making them public through the adding of the signatures.

**Kitāba and Shahāda**

For our identification of the notaries, the position of the signatures is relevant. They placed their signatures at the end of the document, inserted most of the times immediately after the body of the text. Therefore, if there is enough space, the first signature would be added after the end of the last line. The second signature would start on a new line, on the right. If there is not enough

\(^{14}\) This sign resembles the one described by Nico van den Boogert in a Maghribi manuscript meaning intahā (finished), and it might have the same meaning in these notarial documents. See Nico van den Boogert, “Some Notes on Maghribi Script,” *Manuscripts of the Middle East* 4 (1989): 34.

\(^{15}\) Tyan, *Le notariat*, 55–6.

\(^{16}\) They are BHR C-27 32967, 32969, 32991, 33003, 33023, BHR C-69 5–04, 5–10, 5–15, 5–30 and 5–33.

\(^{17}\) They are BHR C-27 32959, 33031, 33034, BHR C-69 5–31 and 5–34.
space to add the first signature, the writer adds some formula after the date in order to finish the line.\footnote{In Granadan documents, they write ‘\(\text{arafu} \ \text{Allahu khayr dhulika} \), but not \(\text{sahh} \), as in Tyan, \textit{Le notariat}, 58 (note 2).}

The positioning of the signatures in the document might not be random, but rather intentional. Following Tyan,\footnote{Tyan, \textit{Le notariat}, 55.} our hypothesis is that also in Granada the first signer-notary, the one who draws his signature immediately after the text, is the one who writes the whole text, while the second one only testifies. In other words, the first signature informs us of which notary has exercised the two functions, \textit{kitāba} (writing) and \textit{shahāda} (testimony), while the second signer-notary only exercises his function as witness.

This hypothesis, even if it sounds only logical, needs further confirmation and proof. We have provided that by examining whether the documents that were signed by the same first witness are written in the same hand. In the following table (figure 5.2) we show three documents signed by the same two notaries. The palaeographic samples given (\textit{al-raḥīm} and \textit{Muhammad}) make it clear that the palaeography of the body of the text always corresponds with the signature placed in the first position. When the first signer-notary of documents \textit{BHR C-27 32951} and \textit{BHR C-69 5–45} signs on the second position, as in document \textit{BHR C-27 32955}, the palaeography is clearly not the same. In document \textit{BHR C-27 32951}, the first signature is placed in the margin on the left, leaving no space after the body of the text. The same signature appears in document \textit{BHR C-69 5–45} at the right, now beginning a new line since there was no space on the previous line. As he signs in the first position in both cases, he was the writer of both documents, which is corroborated by the same hand being used to write the documents as seen in the examples. However, in document \textit{BHR C-27 32955}, the notary who signed in the second position in the other documents, now signs in the first position, and the palaeography, therefore, changes. Figure 5.3 offers other examples.

In addition, an analysis of the inks used in the Arabic legal documents of Granada demonstrates that the composition of the ink used in almost all of them is usually the same, but the proportions between the different components varies a lot. These analyses show that the proportions found in the body of the texts are the same as the ones used in the first signatures, while the second signature differs from it.\footnote{The publication of the results of this ink analysis is still forthcoming. See Teresa Espejo, “La colección de manuscritos árabes del Archivo Histórico Provincial de Granada: caracterización y conservación,” forthcoming.}
This concordance between signature, palaeography and ink holds true for many other documents, and therefore we could conclude that there is a conventional order and a system established among Granadan notaries for the writing of a document and on how it should be subsequently signed.

**Some Notes on Palaeography**

It might come as no surprise if we say that the Granadan legal documents were written in a Maghribi script, as it is the Arabic script traditionally assigned to
the area of our study. Beyond this general label, it would be interesting to see whether there was a standardized palaeography used in the administration of justice in Granada and, on the other hand, whether significant variations of its forms are discernible. In fact, our documents provide a new and fruitful sample that allows us to understand better this script as used in daily practice.

Nico van den Boogert already presented the main features of the Maghribi script, and, in general, our Arabic documents fit these features. It will be complicated to give a simple list of the palaeographical features found in the documents, since the different notaries developed a personal style. However, it should be mentioned from the start that the script is quick, very cursive and deprived of any intention of ornament, beauty or even care. In any case, the documents present a clear horizontal disposition on the flat baseline which guides the words. The letters’ sizes are usually the same in all lines and almost identical spaces exist between words. There are no paragraphs so the texts are presented always as a single block without spaces, nor punctuations. They wrote the words in slopes and enlarged the ending strokes of letters, inclining them over the small spaces between lines and most of the times extending over other lines.

In summary, among the characteristics of the documents of Granada we find the following:

- basmallāh and taṣliya always written together on the same line, never on two lines
- horizontal lines of writing
- standard size of right and upper margins
- diacritical punctuation of the letters fā’ and qāf is unconventional
- frequent absence of diacriticals and vowels, as well as other signs of writing
- systematic absence of diacritics in final characters, especially in tā’ marbūta

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22 These are: final alif ‘drawn from top to bottom; stems of alif, lām, lām-alif; and tā’/zā’ have club like extensions to the left of their top point; loop of sād/dād is identical with that of tā’/zā’; stem of tā’/zā’ is drawn diagonally; qāf and fā’ have unconventional diacritical points; final and separate dāl/dhāl are very similar to initial and medial kāf, see Van den Boogert, “Some Notes on Maghribi Script,” 30–43.
23 As it is the convention, see Tyan, Le notariat, 50.
frequent absence of vocalization, only present in some geographical and proper names
letters with open strokes extend their length when there are no ligatures
vertical strokes descend below the writing line and frequently adopt a slight diagonal tilt in the same writing direction
letters dāl and dhāl, in initial position, acquire the form of a 45° triangle. When ligatured to the precedent letter they adopt the shape of a rāʾ
presence of a large number of unconventional ligatures.

Although these general characteristics in the documents of Granada are common in all of them, we cannot maintain the idea that all notaries of Granada wrote their documents alike. In fact, we should keep in mind that the differences between them, as happened with their signatures, were taken into account by the judges themselves, in order to verify their legal validity.

Validating the Documents

We said that the general convention was that every legal document should start with a basmallāh, followed by a taṣliya and, if subsequent writings needed to be added, they should start only with a ḥamdallāh, indicating that the second writing depended on the previous one on the document. This general rule applies to 142 out of the 151 documents studied here, but we also find some exceptions. First, six documents with different writings use the basmallāh-taṣliya in all the different transactions of the document, rather than using the ḥamdallāh in the subsequent transactions.24 Maybe in this way the notaries preferred to give to the second legal writing a superior status not dependent on the first one.

Secondly, some documents only have a ḥamdallāh on an independent piece of paper, apparently with no connection to, or need of, other transactions.25 It is true that all the documents with this feature are dated after the conquest of Granada, so this exception to the rule might be explained by the fact that the notaries remaining in Granada lost touch with earlier conventions. However, it might also mean that the previous writing not included in the piece, as we will see later, existed as a separate document that did not survive. In any case, we found no connection between the basmallāh-taṣliya and the validating process, which seems to be always represented at the end of the writing.

24 These are BHR C-27 32952, 32965, 32981, 33001, 33040-xii and BHR C-69 5–10.
25 These are BHR C-27 32967, 33012, 33040-vii and BHR C-69 5–06, 5–18 and 5–37.
Another group of 21 documents show the lack of signatures of the witnesses but they are validated by the judge. All these start in the present tense – instead of the past as in the others – and provide the testimony of qualified witnesses. All of them are documents of the same nature: they are either experts’ testimonies or eye-witnesses, but never what Claude Cahen calls “témoins instrumentaires.” Ten of them start – after the basmallāh and taṣliya –, with the sentence “the witnesses of this document, those from the people of science and knowledge, testify…” (waqafa shuhūduhu min ahl al-baṣr wa-l-maʿrifa bi-mā yushahidūn bi-hi fi-hi …). Five others start by “the witnesses of this document know … and inform that…” (yuʿrafu shuhūduhu … wa-yaʾlamūna anna …) and two others “the witnesses know the ownership of … and inform that…” (yaḥūzu shuhūduhu … wa-yaʾlamūna). These show that the practice in Granada was that the experts did not sign the documents, but that their names were annotated in a clear and readable manner, aligned after the text. Most of these documents bring the testimony of at least two experts, but it is possible to find writings with three or even more; two of them give the names of eleven qualified witnesses.

These legal writings have another peculiarity not found in most of the documents signed by “professionals”: over their names someone wrote the word shahida (he testified), with a different ink and between the lines. In addition, outside the bloc of the text, all of them include a formula with the validation by the judge; this formula is “sufficient” (iktafū) (figure 5.4).

This layout shows a procedure. Our hypothesis is that their testimony had to be validated by the judge and so, after the recording of their testimony, they went to court and repeated their testimony orally in front of the judge. Once they did so, the judge himself, or the court secretary (kātib), confirmed their individual testimony by writing shahida over their names and, in the end, adding the validation, thus meaning “sufficient” to establish a legal proof.28

27 Of a similar nature, but using different wording, are those starting with “the witnesses who placed their names after the date, testify about their knowledge of…” or “those who write their names after the date, testify about their knowledge of…”
28 Although we might need a further study on these kinds of documents, the procedure seems to be the same as the one described by Christian Müller, “Écrire pour établir la preuve oral en Islam. La pratique d’un tribunal à Jérusalem au XIVè siècle,” in Les outils de la pensée. Études historique et comparatives des “textes,” ed. Akira Saito and Yusuke Nakamura (Paris: Les editions de la Maison des sciences de l’homme, 2010), 63–97, esp. 72 and 85.
Three other documents do not only show the *iktafā*, but include a mention that the judge deemed the legal facts or rights mentioned in the documents to be valid: “[the judge] informs of the sufficiency of the document, may God give him success” (*a’lama bi-ktifāʾihi* [unreadable signature] *wafaqahu Allāh*). This signed information might have been needed when the document was not used in this judge court, but maybe when the information should be sent to another judge in another court or city.

Therefore, most of the documents in the collection under study bear two signatures of professional witnesses and, when the witnesses are not directly those in charge of the redaction-testimony, but experts or eye-witnesses, the document should be presented in court and the judge intervenes in order to validate the proof.

Finally, only six documents signed by professional witnesses are also validated by the judge. Now, the formula changes and we do not find the word *iktafā* but *thabata* (stands firm) or *thubita* (it was made firm). Again, in these six documents, “he testified” is written over the signatures and, when necessary, “he informs of its confirmation (*a’lama bi-thubūtihi*)

All in all, only 27 of the documents preserved in the Biblioteca del Hospital Real – the total was 151 – were presented in court. In our opinion, this is very relevant when we try to study the relationship between the notaries and their “clients,” the subjects of the application of Justice in fifteenth-century Granada. Does this mean that the population of Granada did not need fully validated documents? Rather, we would like to suggest that the documents, while not constituting full evidence according to Islamic law, certainly had – because
they bear these signatures – a potential legal effectiveness, exactly in case they might need to be used at court. In the meantime, the documents will have had only a “latent” validity in the hands of the parties.29

To sum up: even if each of the notaries of Granada was free to write the text of a legal document in his own way, we have shown that they were following certain conventions that were necessary to provide the validity and effectiveness of the documents. The existence of these conventions also shows that the notaries belonged to a specialized group of professionals that received a similar formation on Islamic legal procedures, as well as a similar education on chancery, within the legal system of Granada.30

The Notary and His Clients

The design of the signatures in the documents, as well as the palaeography and mise en page, helped us to identify the witnesses in the documents. Now, in addition, we would like to know what their relationship was with their clients, the inhabitants of Granada. In order to understand this relationship, we will follow the activity of one of these identified notaries, whose name we only guess, but whose documents we will be able to analyse.

He signed nine documents of the collection (see figure 5.5) and is, without doubt, the most illustrative case since eight of them refer to transactions made by the same person, Umm al-Fath bint Muhammad al-Shalyani.31 From this we might conclude that to Umm al-Fath he is not just another clerk of the administration of justice who stays as the other notaries do in their offices around the city mosque,32 but someone she especially trusts for guaranteeing the validity of her documents and her rights.

29 For a comparison with other collections, see Müller, “Écrire pour établir la prevue oral en Islam,” 85.
30 Sergio Carro, “Kātib or Muwaththiq?: Toward a Paleography of Private Arabic Documents” (forthcoming).
31 There are a total of 20 documents related to this Umm al-Fath and her husband Muhammad in the collection. On both of them, see Amalia Zomeño, “Documentos árabes y biografías mudéjares: Umm al-Fatḥ al-Šalyānī y Muḥammad Baḥṭān (1448–1496),” in Biografías mudéjares o la experiencia de ser minoría: Biografías islámicas en la España cristiana, ed. Ana Echevarría (Madrid: CSIC, 2008), 291–325.
His signature is a compound one that ends with a stroke closing the second segment of his design. Although he signs the nine documents, he is the writer of only two of them, showing a characteristic hand that extends the strokes above and below the lines and typically includes unconventional ligatures all over the text, with an absolute absence of diacritics, vowels and hamza.

He stayed in Granada after the conquest in his function as notary-witness, in fact, from 1481 to 1496. After the conquest he always signed with the same partner-notary and he appears only in his role of witness, never more as notary-writer.

The relationship between him and Umm al-Fath could be traced then through eight episodes:

First: on 885/1481, together with her father-in-law, Abu al-Hasan ‘Ali b. al-Ahsan al-Husayni, she asked for his testimony (ashhada) in order to make public the duty of Abu al-Hasan to pay the maintenance (nafaqa) of his daughter ‘A’isha, while Umm al-Fath will be in charge of her full custody (haḍānatuhā
wa-kafālatuhā). From previous documents we know that after the death of her husband, Umm al-Fath’s mother remarried and had another daughter, ‘A’isha.

Second: on 885/1481 Umm al-Fath buys some properties from her father-in-law, Abu al-Hasan, in order to establish a shop in the centre of Granada.

Third, on 888/1483 Umm al-Fath, perhaps with the advice of our notary, dictated a first will and now he writes the text himself. The legacy resembles those written in Granada by other notaries: the testator gives some money to the poor of the city and the rest of the one third that she is allowed to dispense of freely according to Islamic law she donates the largest part to her father-in-law, Abu al-Hasan. She might thereby have thought to benefit indirectly her

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34 See note 34.

35 BHR C-69 5–33, see Seco de Lucena, Documentos arábigo-granadinos, no. 39.

36 BHR C-27 32955.

own sister who is now under her custody but who is dependent of his economic means. In fact, according to the law, she cannot give it to her sister directly.38

Fourth, two years later, Umm al-Fath’s husband, Muhammad Bahtan, makes his own legacy, witnessed by our notary 1.39 Her husband also gave the freely disposable third of his properties entirely to charity.

On 893/1487, our notary signs another document, although this one is not related to Umm al-Fath. Now he testified that a certain Fatima bt. Muhammad al-Munturi was the owner of a half of a house in the al-Bayazin quarter in the city of Granada.40

After the conquest of Granada in 1492, when the Capitulaciones were still observed and the properties and documents written by the Muslim community respected,41 the relationship between our notary and Umm al-Fath clearly strengthened, now including her husband and, therefore, the interests of both of them. The notary helps them both when they develop a strategy for the transmission of their patrimony.

Five and six, on 19 Ṣafar 899/29 November 1493, Muhammad Bahtan, Umm al-Fath’s husband, asked for two notaries to write up and witness two documents. The first is his will and the second a document by which he acknowledges that he has no rights against his wife – a document unique in the Granadan collections.42 In the legacy, Muhammad changes his first will, and now, instead of giving the complete third to charity, he reduces the charitable part to 30 silver dirhams and gives most of it to his pupils (rabīb/rabība) ‘A’isha and ‘Isa, the offspring of the late Muhammad b. Muhammad Mahdi and his widow Umm al-Fath bt. Yusuf b. Abi Hadid (related to Bahtan by his mother).

Therefore, this is a significant change in his will, since instead of the charity given to the poor (masākīn) in Nasrid Granada and in times of war, he now prefers to benefit the members of his family in need and under Christian rule. This change might have been the result of the recommendation of the notaries in the now Mudejar community of Granada.

39 BHR C-27 33015.
40 BHR C-27 32969.
41 See Manuel Garrido Atienza, Las capitulaciones para la entrega de Granada (Granada: Universidad, 1992); José Enrique López de Coca Castañer, “Las capitulaciones y la Granada mudéjar,” in La incorporación de Granada a la Corona de Castilla, ed. Miguel Ángel Ladero Quesada (Granada: Diputación, 1993), 263–305.
42 Both are BHR C-69 5–45 and BHR C-27 32952. This second document does only start with the hamdallah, thus indicating its relation with the first, written the very same day.
Seven, a year later, in 899/1494, both husband and wife are again asking for the testimony of the same two witnesses when they declare that they will economically maintain both 'A'isha and 'Isa – the two beneficiaries in Muhammad's will.43

Finally, in 902/1496, Umm al-Fath also makes a second will, with the same two notaries, now giving the third of her properties to their pupils, instead of the charitable legacies.

From this narration of several legal events in the lives of Umm al-Fath and her husband, what is most surprising is the continuous presence of the same notary through 15 years. He might be familiar with the social and economic situation of the married couple – I did not find a mention of them having children – and, therefore, of their legal needs and possibilities within the framework of Islamic law. In fact, they both changed their legacies when the political situation changed. Although, it is true that we will never know whether they changed them because of a recommendation of the notaries, because of the events of 1492 or just because they knew their rights and options, we certainly know that their relationship was close and continuous throughout time.

This example also shows how the notaries might have been working with a preferred partner in the two roles as writers of legal documents and witnesses of the facts contained in them. However, this is only represented here after the conquest of Granada.

Conclusions

The end of the fifteenth century in Granada provides a very exceptional case in Islamic medieval history since for a quite limited period of time – the last quarter of the century – it provides an important corpus of Arabic legal documents. These texts shed light on the legal procedures in pre-modern Islamic courts, especially on the use of writing in the practice of the law.

The documents were drafted by a group of professionals who shared formal conventions in order to know how to write the legal documents. In fact, some of them seem to master a very specialized knowledge on chancery and apply this knowledge to write legal documents.

The majority of the documents in the University Library collection in Granada were never used in court. Even if the notaries gave them a public nature and they might be used to establish the veracity of facts and the rights of the individuals involved in each transaction, their effective validity in case

43 BHR C-69 5–46, see Seco de Lucena, Documentos arábigo-granadinos, no. 90. This document was wrongly understood as an adoption by Seco de Lucena.
of litigation would directly depend on the procedure of adāʾ al-shahāda (the deposition of the witnesses orally in front of the judge). Only a very small number of documents show traces of this procedure.

The notaries of Granada did not write their names in the documents; rather they signed them in a complicated manner. Therefore, we cannot see their names and we will not be able to follow them in the biographical dictionaries. However, their signatures can be identified and subsequently their documents could be analysed through time, so that we can see how they did not specialize in specific subjects of the law. On the other hand, the notary we studied here preferred his function as witness, second witness in a document, while he was pairing his job with a colleague who proceeded as a scribe, but relied on him for the testimony.

Writing a potentially valid document, public by the presence of the two witnesses, was frequent and maybe necessary in fifteenth century Granada. Family duties and rights, economic transactions, and all kinds of legal obligations were written down. The inhabitants of Granada kept these writings for some time and they certainly were in use for social and economic purpose, although they were only prepared in case litigations occurred, or maybe to prevent them.

Umm al-Fath al-Shalyani is one of the most mentioned people in the University Library of Granada. But what is also striking is that she almost always visited the same notary, the same as her husband Muhammad Bahtan. We might think of many reasons why she chose him to supervise her wills, or to advice her on how to distribute her legacy. Especially after the Conquest of Granada by the Catholic Monarchs in 1492, the Mudejar community was in need of brokers and intermediaries, not only to negotiate with the new political power, but also to maintain the application of Islamic law as before. The notaries fulfilled this duty and role, as they did before the conquest.

Bibliography


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44 Müller, “Écrire pour établir la prevue orale en Islam,” 85.
45 For a case of a family archive, see Amalia Zomeño, “Un archive, una familia y una pequeña historia de Baza a finales del siglo XV,” Revista del Centro de Estudios Históricos de Granada y su Reino 27 (2015), 63–77.


