Seven Fatwa Documents from Early 20th Century Samarqand

The Function of Mufti in the Judicial Proceedings Adopted at Central Asian Islamic Court

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20世紀初頭サマルカンドの7通のファトワ文書
中央アジア・イスラーム法廷の裁判におけるムフティー

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本稿は、2009年に廃止された旧国立ウズベキスタン諸民族文化・美術史博物館所蔵の7通のファトワ文書に依拠しながら、20世紀初頭にサマルカンド州の或るイスラーム法廷に持ち込まれた訴訟の顛末を詳細に跡付け、さらに、革命前の中
I. Introduction

As is well known to all, after the collapse of the Soviet Union in 1991, accessibility to the archival sources preserved at the various institutions in its territory was drastically improved, especially, for foreign researchers. Taking advantage of this situation, some specialists began to study the reform of judicial system which had been carried out by Russian administration in Central Asia on the basis of historical documents written in either Russian or other local languages(1). However, the traditional judicial proceedings in Central Asia, which originated under Islamic law, and which even survived this reform, remain to be studied more thoroughly. In this article, we will try to show the progress of a lawsuit brought into a local Islamic court in Samarqand province at the beginning of the 20th century by using seven
fatwa documents which were drawn up by several muftis. Furthermore, we will seek to concretely explain the function of muftis in the traditional judicial proceedings of Central Asia.

These seven fatwa documents were preserved at the archival section of the Samarqand Museum of History and Art of the Uzbek People (henceforth “Samarqand Museum”) located in Samarqand until 2009. These texts are written on five sheets of paper to which the inventory numbers KP–4063/29–95, 96, 101, 102, 104 are allocated. Among them, the papers numbered as KP–4063/29–95 and KP–4063/29–96 have two different, but closely related, documents on their front and back. It should be noted that they constitute a part of a set of 112 fatwa documents which were bound by a thread in the middle of each sheet of paper. Unfortunately, to date we do not have accurate information about to which institution these documents were transferred, after the Samarqand Museum had been closed.

Though Central Asian fatwa documents do not usually mention the date and place of their production, we have good grounds to attribute these 112 documents to the early 20th century Samarqand province. First, among them we can find numerous documents that have seals of the same muftis, which indicates that they were produced during the same period. Moreover, judging from paleographical data, papers used for these documents are apparently of Central Asian origin and may have been produced at the period from the second half of the 19th century to the early 20th century. Besides this, we have other arguments to narrow down the period of their production. Among the seals of muftis put down on these documents, two have in their inscription the year of their production: one of which was made in 1897–98, and the other in 1909–10, following the Gregorian calendar. Furthermore, some documents mention specific dates in their text, which unanimously imply that these documents can be attributed to the early 20th century. Finally, as we frequently encounter the place-names relating to Samarqand in these documents, we can safely assume that they came from early 20th century Samarqand province.

II. **Internal Structure of Central Asian Fatwa Documents**

As most of Central Asian fatwa documents refer to a certain lawsuit and show qadi a road map of proceedings leading to the destination favorable for one of
the disputing parties, they were, in principle, issued by muftis at various moments of judicial proceedings at the request of either of the parties involved in a lawsuit. Once a fatwa document was issued, it was submitted to the qadi who was in charge of the lawsuit by the hand of either a plaintiff or a defendant in order for one to gain an advantageous position over the other. Therefore, these fatwa documents can be considered as written advice addressed to a qadi, the content of which clearly favors one of the parties.

The text of a fatwa document is divided into the following sections: (1) opening formula, (2) introductory section, (3) fatwa section in the form of interrogative, (4) the answer of a mufti to the question given in the fatwa section, (5) a citation from authoritative Arabic works on Islamic jurisprudence.

Central Asian fatwa document always begins with the Arabic, partially Persian, formula “tayammunan bi-dhikri-hi al-a’lā mā qawlu a’immati al-islāmi rađiya allāhu ta’ālā ‘an-hum ajma’īna dar in mas’ala ki” (“Finding good omen in bearing the sublime God in mind, I ask you: what opinion do the authoritative scholars of Islam – may the sublime God be satisfied with them all – have concerning the following question?”). As scribes made it a rule to write the formula in a specific calligraphic style, the characters constituting it even look like an abstract painting. Therefore, we can easily pick out fatwa documents from others by looking at their outward appearance. The compound “a’immat al-islām” in this formula refers to the authoritative scholars of past generations belonging to the Hanafite school, which enjoyed a dominant position in pre-revolutionary Central Asia. The opening formula is followed by the main text of the document, which is divided into two sections.

The first section can be called an “introductory section,” and explains the circumstances that caused a party to have recourse to the mufti who would issue the fatwa. While some documents even give a detailed account of the things leading to lawsuit, we frequently encounter some fatwa documents which lack the introductory section itself. Since the introductory section describes the conditions prerequisite for the following section, which consists of questions to the muftis, the sentences placed here are written in the subjunctive mood.

The second section, i.e. the “fatwa section,” is begun with the formula “ba-shari’at dar in šūrat” (“according to the Islamic law, in the case described above”) and consists of the interrogative sentences which are to be answered by muftis. The questions located in this section are given in a simple form which requires muftis to
select one of two answers, either “yes” or “no.” The section ends up with the closing formula “\textit{bi-sharāʾīti-hī yā nī bayynū tūjarū}” (“… in view of the conditions relating to this case, or not? Explain, then you will be rewarded.”).

Then usually, beneath the main text, the brief answer of mufti is recorded with his seal put down under it. Though questions to mufti adopt the form which makes him answer either “yes” or “no,” the answer issued by mufti always confirms the content of the given question. For example, if a mufti is questioned by the interrogative “Is that right?” he never fails to answer it by saying “Yes, that is right.” The answer of mufti is given by duplicating the last word of the corresponding interrogative sentence. So, if the last words of interrogative are “lā 
\textit{tasīḥḥu būda}” (“is it legally invalid?”), the answer is expressed by duplicating the last word “būda,” which means, in this context, “Yes, it is legally invalid.” As Persian sentences usually end with a verb, the answer, which is made by duplicating the last word of the corresponding interrogative, is always given by one verb.

The reason why a mufti could answer the question posed to him with only one word is, of course, that the corresponding interrogative was provided with sufficient concreteness. Formally, the one who put questions to a mufti must be regarded as either a plaintiff or a defendant. However, in most cases, in pre-revolutionary Central Asia, those who were involved in lawsuits do not appear to have been well enough versed in Islamic jurisprudence to draw up concrete interrogatives with various technical terms. Therefore, we have to assume that each interrogative located in the fatwa section was produced by mufti. In short, mufti produced a fatwa in the form of interrogative and gave himself a positive answer to it, putting his seal to the document to assure the authenticity of the fatwa.

In the right margin of fatwa documents we can find Arabic text cited directly from authentic Hanafite works, which are to be considered as the source of the fatwa issued by mufti. If these citations get so prolonged that the complete text cannot be put together in the right margin, they also occupy the lower margin, spreading beneath the seals of muftis.

### III. Seven Fatwa Documents concerning Single Lawsuit

All seven of the fatwa documents dealt with in this article relate to the same
lawsuit, which was brought about by several heirs of a deceased person named Ustā Mawlām Bīrdī who were seeking their legal portion of inheritance against one of their coheirs, Ustā Rahmān Bīrdī. Among these documents, three of them were issued on behalf of the plaintiffs, while the others were produced for the defendant. It should be noted that almost all of the Central Asian fatwa documents have been handed down to us separately from other related documents produced during the same lawsuit. Therefore, it is very lucky for us to have this set of fatwa documents that were issued for both parties involved in a single lawsuit. Judging from the text, inventory numbers allocated to these documents do not appear to reflect their chronological order. Among them, one which seems to have been issued earlier than others is KP–4063/29–104, which was submitted to qadi by the defendant. Here, we will show its original text with an English translation.

«SM KP–4063/29–104»

[original text]

1. (1) يتما بذکره الاعلی ما قول ائمة الإسلام رضى الله تعالى عنهم اجمعين دریممسته که بر تقدیر آنکه استاد رحمت بر دی

2. (2) فاضل اسلام بنفسه حاضر گرددی از برای جواب دعوی کذا و ایضا از برای خصوصا کذا عهد الواحدی را وکیل نموده

3. (3) باشد که جواب مشار الیه قبول وکالة مذکوره را نموده خط وکالة را مزین به بمر خود نموده باشد و نیز مولک وکیل مذکور مع کیل خود بدار القضا حاضر مگرگردیده باشد بشریعت دریصورت توکیل بر وجه مذکور

4. (4) برایت راجحه قویه بالافتااق از رحمت بر دی مذکور درست باشد شریآهه یا تی

[translation]

Finding good omen in bearing the sublime God in mind, I ask you: what opinion do the authoritative scholars of Islam — may the sublime God be satisfied with them all — have concerning the following question? On the
assumption that follows: Ustād Raḥmān Birdī came to the qadi of Islam and appointed ‘Abd al-Wāḥid as his deputy so that the latter gives an answer to such and such claim and, likewise, enters a lawsuit for such and such a matter. Then the qadi admitted this deputyship and put his seal to the certificate of deputyship. Moreover, the constituent—i.e. Ustād Raḥmān Birdī—was present at court with his deputy.

According to Islamic law and in view of the conditions relating to this case, [what answer will be given to the following question]? In this case, is the appointment of a deputy done by Raḥmān Birdī in the described manner, which is based upon a preponderant and strong opinion held by all the authorities, legally valid or not? Explain, then you will be rewarded.

Yes, the appointment is legally valid. He, the sublime God, knows best [seal: Mullā Sayf al-Dīn b. Mullā ‘Abd al-Sattār Muftī].

i. The lawfulness of appointing a deputy is proved by the Koran and the Sunna of the prophet (cited from the first half of Durr al-Mukhtār). 

ii. Question: If Khālid, the plaintiff, appoints a mediator from his side without the approval of the disputing party, is this appointment valid or not in accordance with law? Answer: This appointment is valid and the God knows best. Fatāwā Qāḍīkhān says as follows: According to Abū Ḥanīfa – may the God have mercy upon him –, it is not permitted for the person who has no lawful excuse to appoint a deputy without the approval of the disputing party, if it is the case that only his deputy be present at court without him. On the other hand, all of the authorities hold unanimously that it is permitted to appoint a deputy without the approval of disputing party, if the constituent be present at court with his deputy, since, in this case, the latter is regarded to be mediator and interpreter (cited from Fatāwā Shaybānī).

iii. The document written by a qadi is to be regarded as an argument in any case (cited from Qāḍīkhān).

iv. According to all of the authorities, with regard to every kind of lawsuit, the appointment of a deputy is valid, even if the disputing party does not approve, and it is an authentic opinion (Barjandī).

According to the document above, the defendant appointed the person named
Finding good omen in bearing the sublime God in mind, I ask you: what opinion do the authoritative scholars of Islam—may the sublime God be satisfied with them all—have concerning the following question? On the assumption that follows: On the occasion of the lawsuit entered, through a legitimate complaint, by several well-known heirs of Ustā Mawlām Birdī for their legal portions of inheritance from a certain property against one of their coheirs, Ustā Raḥmān Birdī, the legitimate deputy of the defendant demanded a copy of the complaint in order to show it to a mufti, and also asked for a respite
for three days to take counsel with jurists.

According to Islamic law and in view of the conditions relating to this case, [what answer will be given to following question]? In this case, if His Excellency, the qadi of Islam who runs the holy law, meets the demand of the defendant, will His Excellency be requited beside the God or not? Explain, then you will be rewarded.

Yes, he will be requited beside the God [seal: Mullā Abū al-Fayḍ Makhdūm b. Qāḍī Mullā Muḥammad b. Ya’qūb Muftī].

Yes, he will be requited beside the God [seal: (illegible)].

i. When either plaintiff or defendant demands a copy of written judgment, or the draft of claim or testimony, from a qadi in order to show it to a mufti, the qadi has to meet his demand (cited directly from *Fatāwā Bazzāziyya*8).

ii. If he demands a grant of respite to produce evidence, take counsel with jurists, or look into an account book, [a qadi] has to grant respite for three days. It is said in *Jāmiʻ al-Madhāhib* (cited directly from *Bahr al-Manāfiʻ*9).

Having gained this fatwa, the defendant might have aimed at getting a copy of the complaint submitted by the plaintiffs to show it to mufti and also to halt the judicial proceedings for three days to take counsel with “jurists.” The term “jurists” which appears in this document must be regarded as a synonym for muftis, and the defendant might have intended to obtain a new fatwa document by “taking counsel with them.”

On the other hand, the plaintiffs also submitted two fatwa documents recorded on a single sheet of paper in rivalry with the defendant, which are registered as KP–4063/29–95.

«SM KP–4063/29–95 (front)>>

[original text]
Finding good omen in bearing the sublime God in mind, I ask you: what opinion do the authoritative scholars of Islam—may the sublime God be satisfied with them all—have concerning the following question? On the assumption that follows: On the occasion of the lawsuit entered, through a legitimate complaint, by the several well-known heirs of Ustā Mawlām Bīrdī for their legal portions of inheritance from the undivided property left by the deceased person against Ustā Raḥmān Bīrdī, the defendant by himself gave a certain answer to the claim of the plaintiffs. Then, although the lawsuit entered by the plaintiffs is not yet settled, the defendant, without the approval of these heirs—i.e. the plaintiffs—and without the lawful excuse from his side, appointed a deputy with regard to lawsuit and entered claims for such and such matters against these heirs.

According to Islamic law and in view of the conditions relating to this case, [what answer will be given to following question]? In this case, in accordance with the opinion which is authentic, this appointment of a deputy is not legally valid, and the lawsuit entered by the defendant against the plaintiffs before the completion of the preceding lawsuit entered by them is to be dismissed or not? Explain, then you will be rewarded.

Yes, the lawsuit entered by the defendant is to be dismissed [seal: Mullā Abū al-Fayḍ Makhdūm b. Qāḍī Mullā Muḥammad b. Ya’qūb Muftī].

Yes, the lawsuit entered by the defendant is to be dismissed [seal: (illegible)].

Yes, the lawsuit entered by the defendant is to be dismissed [seal: Mullā Abū al-Khayr Muftī b. Mullā ʻĀrifjān].
i. If an answer or a counterclaim was done by either plaintiff or defendant, it is not permitted for either of them to appoint deputy, and it is authentic opinion (cited directly from Fatāwā Bazzāziyya).

ii. According to Abū Ḥanīfa—may the God have mercy upon him—, it is not permitted for the person who has no lawful excuse to appoint a deputy without the approval of the disputing party (cited directly from Fatāwā Qāḍīkhān).

iii. If a defendant brings in a lawsuit against a plaintiff before the lawsuit entered by the latter is not yet settled, a qadi has to prevent him from doing so until the lawsuit entered by the plaintiff is settled (cited directly from Niṣāb al-Riwayāt).

iv. The lawsuit entered before the completion of preceding lawsuit is to be dismissed (cited directly from Niṣāb al-Riwayāt).

«SM KP–4063/29–95 (back)»
[original text]

[translation]

Finding good omen in bearing the sublime God in mind, I ask you: what opinion do the authoritative scholars of Islam—may the sublime God be satisfied with them all—have concerning the following question? According to noble Islamic law and in view of the conditions relating to this case, [what answer will be given to following question]? As far as the lawsuit entered by the plaintiffs is not yet settled, in accordance with the reliable opinion of the jurists belonging to earlier generations, the lawsuit entered by the defendant is to be dismissed or not? Explain, then you will be rewarded.
Yes, the lawsuit entered by the defendant is to be dismissed [seal: Mullā Imām Nazar · Mudarris Muftī b. Mullā · Muḥammad].

i. The jurists of earlier generations before al-Khaṣṣāf—may the God have mercy upon him—employ the concept of antecedence. So, as for the person who antecedes, a qadi has to devote himself to the acceptance of and giving judgment to the lawsuit entered by him (cited directly from Ādāb al-Qāḍī).

ii. The opinion of the jurists belonging to earlier generations is more authentic (cited directly from Fatāwā Qāḍīkhān).

The fatwa issued on behalf of the plaintiffs can be summed up as follows. (1) As far as the lawsuit brought about by the plaintiffs is not yet settled, the other lawsuit entered by the defendant against the plaintiffs is to be dismissed. (2) The appointment of the deputy done by the defendant without consent of the plaintiffs is not legally valid.

The document placed on the front side states that the defendant appointed a deputy without approval from the plaintiffs’ side after he had already given a certain answer to their claim by himself. Thus, the plaintiffs must have considered that the defendant’s answer preceded his appointment of the deputy. This assumption held by the plaintiffs apparently contradicts the content of KP–4063/29–104 submitted by the defendant in advance, according to which he appointed the deputy so that the latter would make an answer to the claim of the plaintiffs. Unfortunately, we have no grounds to decide which of the parties spoke the truth.

It should also be noted that the document tells nothing about what category of answer the defendant gave. Islamic law permits defendants to make an answer to the claim of a plaintiff in only one of the three ways—i.e. acknowledgment (iqrār), denial (inkār) or counterclaim (dafʿ)—and fatwa documents never fail to mention by which of these ways he made an answer, in the case that an answer was made. Thus, the silence about the category of the answer given by the defendant might imply his deviation from the officially permitted course of action. However, on the contrary, there also remains a possibility that the plaintiffs made a false assertion that the defendant had already given an answer to their claim. For, according to the opinion found in Fatāwā Bazzāziya, once an answer was made by a defendant, entrustment of
deputyship is prohibited categorically for both the parties.

Apart from this, we have to pay attention to the statement cited from Fatāwā Qāḍīkhān which prohibits the appointment of a deputy without getting consent of the disputing party on the condition that an appointer has no lawful excuse to legitimatize his action. As described above, KP–4063/29–104 also cited this statement with its continuation, according to which the prohibition can be circumvented by the appointer’s attendance at court, in order to justify the entrustment of deputyship by the defendant who was present at court with his deputy. We have to assume that the muftis who drew up KP–4063/29–95 on behalf of the plaintiffs deliberately kept silent about the attendance of both the appointer and his deputy at court and cut off the part of the statement found in Fatāwā Qāḍīkhān which was inconvenient to the plaintiffs.

KP–4063/29–95 was followed by KP–4063/29–96, which was issued for the defendant. It also consists of two documents placed on the front and back of a single sheet of paper respectively.

«SM KP–4063/29–96 (front)»

[original text]

[translation]

Finding good omen in bearing the sublime God in mind, I ask you: what opinion do the authoritative scholars of Islam—may the sublime God be

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satisfied with them—have concerning the following question? On the assumption that follows: On the occasion of the lawsuit entered by the several well-known heirs of Ustā Mawlām Bīrdī for a certain property against Ustā Rahmān Bīrdī, the defendant also entered a lawsuit for such and such matter against these heirs.

According to Islamic law, and in view of the conditions relating to this case, [what answer will be given to following question]? In this case, if His Excellency, the qadi of Islam who runs the holy law, accepts the lawsuit entered by the defendant, i.e. Ustā Rahmān Bīrdī, in the way of the Koran and settles it, will His Excellency be requited beside the God or not? Explain, then you will be rewarded.

Yes, he will be requited beside the God. He, the sublime God, knows best [seal: Mullā Muqaddas Muftī b. Qāḍī Mullā Sayyid ‘Ayni Muftī].

Yes, he will be requited beside the God. He, the sublime God, knows best [seal: Mullā Abū al-Fayḍ Makhdūm b. Qāḍī Mullā Muḥammad b. Ya’qūb Muftī].

Yes, he will be requited beside the God. He, the sublime God, knows best [seal: Mullā Abū al-Khayr Muftī b. Mullā ‘Ārifjān].

i. Al-Zaylaʻī says: Taking an oath by the Koran is permitted today (cited directly from Niṣāb al-Riwāyāt).

ii. Every qadi is appointed to his office for giving judgments in lawsuits (cited directly from the commentary of Zaylaʻī to Kanz(13)).

iii. The way of settling a lawsuit for a qadi is the evidence demanded from the plaintiff or the oath demanded from the one who is denying [the claim of a disputing party] (cited directly from Sharḥ Wiqāya(14)).
Finding good omen in bearing the sublime God in mind, I ask you: what opinion do the authoritative scholars of Islam—may the sublime God be satisfied with them all—have concerning the following question? According to Islamic law and in view of the conditions relating to this case, [what answer will be given to following questions]? Is the behavior of the person who appointed ʿAbd al-Wāḥid as his deputy and is present at court with his deputy legally valid? On the occasion of the demand for the copy of complaint, does His Excellency, the qadi of Islam who is appointed to his office for settling lawsuits, have to give an order to deliver a copy of the complaint submitted by the heirs of Ustā Mawlān (sic)? Also, in accordance with the opinion held by all the authorities, does His Excellency have to admit the deputyship of the above mentioned deputy? Also, if His Excellency accepts the lawsuit entered by ʿAbd al-Wāḥid as well as that entered by plaintiff in the same court and settles it, will His Excellency be requited or not? Explain, then you will be rewarded.

Yes, he will be requited [seal: Mullā ʿĀdil Muftī b. Dāmüllā Manṣūr].

Yes, he will be requited [seal: (illegible)].

i. According to them all, it is permitted [to appoint deputy without the approval of disputing party], if a constituent be present at court [with his deputy] (Ḥammādiyya¹⁵).

ii. When either a plaintiff or defendant demands a written judgment, or the draft of claim or testimony, from a qadi in order to show it to a mufti, the qadi has to meet his demand (Bazzāziyya).

iii. Al-Zaylaʿī says: Taking an oath by the Koran is permitted today (Niṣāb al-Riwaʿāyāt).

iv. Every qadi is appointed to his office for settling lawsuits between disputing parties (Bazzāziyya).
The content of the fatwa recorded in KP–4063/29–96 can be summarized as follows. (1) The lawsuit entered by the defendant in the described manner is to be accepted by the qadi. (2) The deputyship of ‘Abd al-Wāḥid entrusted by the defendant is to be regarded as legally valid. (3) The copy of the complaint submitted by the plaintiffs has to be delivered to the defendant.

It should be noted that here the assertions made by the defendant in KP–4063/29–104 and 101 are given again. In short, the crucial points of the controversy between the parties involved in this lawsuit lay in the acceptability of the lawsuit brought about by the defendant and the validity of the deputyship entrusted by him. However, these documents say nothing about the assertion of which party was favorably accepted by the qadi being in charge of the lawsuit.

Chronologically speaking, KP–4063/29–102 is the final document and it was submitted by the plaintiffs.

«SM KP–4063/29–102»

[original text]
Finding good omen in bearing the sublime God in mind, I ask you: what opinion do the authoritative scholars of Islam—may the sublime God be satisfied with them all—have concerning the following question? All the well-known heirs of the deceased Ustā Mawlām Birdī, except the defendant described below, entered the lawsuit, through a legitimate complaint, against their coheir, Ustā Raḥmān Birdī, for their legal portions of inheritance. After that, reconciliation by mutual consent took place between both the parties by virtue of the advice given by the band of Muslims on the condition that the defendant delivers a certain amount of money measured by tanga coins, a certain part of the house which measures one bāb and a certain store building to the plaintiffs, which was recorded on the back side of the legitimate complaint with the seal of the qadi of Islam applied to it. Accordingly, the person who was commissioned by the above mentioned qadi divided the house and store building [and distributed the appropriate portions] among both parties. Notwithstanding that, the defendant intends to revoke the reconciliation done by himself without lawful argument and, moreover, to nullify the division of property as well as the reconciliation itself.

According to Islamic law and in view of the conditions relating to this case, [what answer will be given to the following questions]? In this case, are the
reconciliation and the division of property done in described manner legally valid? Also, as the reconciliation took place [between both parties], does the compensation for it become the private property of the plaintiffs? Also, for the defendant does not have the right to revoke the reconciliation after its completion by mutual consent of both parties, if His Excellency, the qadi of Islam who runs the holy law, paying no attention to the statement of the defendant that has no argument, ratifies the reconciliation and the division of property described above, will His Excellency be requited or not? Here, it must be noted that the above mentioned qadi made the memorandum about the case dealt within this document, according to which the decision to settle the case by reconciliation was legally valid.

Yes, the reconciliation and the division of property are legally valid, the compensation for reconciliation becomes the private property of the plaintiffs, the qadi will be requited and his decision was legally valid. He, the God, knows best [seal: Mullā Abū al-Fayḍ Makhdūm b. Qāḍī Mullā Muḥammad b. Ya‘qūb Muftī].

Yes, the reconciliation and the division of property are legally valid, the compensation for reconciliation becomes the private property of the plaintiffs, the qadi will be requited and his decision was legally valid. He, the God, knows best [seal: Mullā Abū Sa‘īd Muftī b. Qāḍī Mullā Muḥammad Ya‘qūb].

Yes, the reconciliation and the division of property are legally valid, the compensation for reconciliation becomes the private property of the plaintiffs, the qadi will be requited and his decision was legally valid. He, the God, knows best [seal: Mullā ʻĀdil Muftī b. Dāmullā Maṣūr].

i. Reconciliation is the contract that removes dispute (cited directly from *Nuqāya*).

ii. The legal effect [of reconciliation] is the emergence of the right of ownership [for plaintiff] to the things which are given to him for compensation (cited directly from *Fatāwā ʻĀlamgīrī*).

iii. After the completion of reconciliation by mutual consent between both parties, it is not permitted for any one of them to revoke it (cited directly from *Fatāwā Bazzāziyya*).

iv. As for the thing found in the archives of the qadi, only if it mentions that incident, then it is necessary to act in accordance with it. However, two [of the three authorities of Hanafite school] hold the opinion that it is
necessary to act in accordance with it under any circumstances (cited directly from the chapter on judicature of Jāmi‘ al-Rumūz\(^{(19)}\)).

v. Any one of the heirs does not have the right to revoke the partition of the estate left by deceased person after the assignment of each share on the grounds that the partition is like sales contract. As the revocation of a sales contract after its completion is not permissible, the revocation of partition after its completion is also not permissible (cited directly from Fatāwā Kabīrī\(^{(20)}\)).

vi. Let us talk about the person other than him, i.e. the person other than the one to whom judicature is entrusted. If either the assistant [of the qadi] acts by and in the presence of him, or if the assistant acts in the absence of him, however, on the condition that the information reaches the assistant and [the qadi] permits him—i.e. the person who is not entrusted judicature—to act as second qadi, the action done by the assistant is valid. As for the former case, if the assistant acts in the presence of [the qadi], the action done by him is to be attributed to [the qadi] himself. Likewise, the same decision can be applied to the latter case when the assistant acts in the absence of [the qadi], however, on the condition that the information reaches him and [the qadi] permits him [to act as second qadi]. It is because the action done by him is to be regarded as that done by [the qadi] himself, on the grounds that the opinion of [the qadi] is shared by him (cited directly from Mawlawī Fakhr al-Dīn\(^{(21)}\)).

vii. Likewise, the same decision can be applied to the case when the assistant acts in the absence of [the qadi] on the condition that the information reaches him and [the qadi] permits him [to act as second qadi]. It is because the action done by him is to be regarded as that done by [the qadi] himself, on the grounds that the opinion of [the qadi] is reflected in the action done by the assistant (cited directly from the chapter on judicature in Sharḥ Wiqāya).

viii. The statement that has no argument cannot be legally established (cited directly from Niṣāb al-Riwāyāt).

ix. The statement or action that is not based on lawful argument is not to be taken into account or paid any attention (cited directly from Nawādir al-Fatāwā\(^{(22)}\)).
KP–4063/29–102 says that “the band of Muslims” stepped in the very complicated conflict between both the parties with the advice by which the onerous reconciliation took place on the condition that the defendant delivers a certain amount of property to the plaintiffs. In pre-revolutionary Central Asia when a lawsuit was settled by reconciliation, the particular document which stipulated the condition with regard to it would be made. According to this kind of document, an onerous reconciliation always took place with the condition that the plaintiff received a certain amount of property as compensation for his relinquishment of the right of claim against the defendant.

Further, KP–4063/29–102 continues that the details of the reconciliation were recorded on the back side of the complaint with the seal of the qadi. Among Islamic court documents coming down from pre-revolutionary Samarqand, we can find several examples of the complaint which has its judgment record on reverse side. If a lawsuit ended up with a reconciliation, this judgment record was replaced by the document which declared that the lawsuit had been settled by reconciliation. So, the complaint mentioned in KP–4063/29–102 must have had such a document on its back.

In short, the lawsuit must have been officially settled by the onerous reconciliation agreed upon by both the parties and sanctioned by the qadi who was in charge of the lawsuit. Notwithstanding that, the defendant attempted to revoke the reconciliation and nullify the division of property. Judging from the fact that the author of this document cited the opinion which confirmed the validity of the action made by the qadi’s assistant to protect the right of the plaintiffs, the defendant might have asserted its invalidity to nullify the division of property.

With regard to the lawsuit in question we do not have other materials to be relied upon other than these seven fatwa documents. As the judgment record on this lawsuit did not come down to us, it is, unfortunately, not possible for us to know accurately how the dispute between these two parties was settled.

IV. The Function of Muftis in Judicial System

Finally, we will make a brief explanation on the function of muftis in judicial proceedings adopted by pre-revolutionary Central Asian Islamic courts. The table below is the list of the muftis who placed their seals on these documents.
Table 1: The List of Muftis WhoStamped the Documents in Question

<table>
<thead>
<tr>
<th>Document</th>
<th>Submitter</th>
<th>Muftis</th>
</tr>
</thead>
<tbody>
<tr>
<td>KP–4063/29–104</td>
<td>defendant</td>
<td>Mullā Muqaddas Muftī b. Qāḍī Mullā Sayyid ʻAynī Muftī</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Mullā Abū al-Fayḍ Makhdūm b. Qāḍī Mullā Muḥammad b. Yaʿqūb Muftī</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Mullā Abū al-Khayr Muftī b. Mullā ʻĀrifjān</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Mullā Abū al-Khayr Muftī b. Mullā ʻĀrifjān</td>
</tr>
<tr>
<td>KP–4063/29–95(back)</td>
<td>plaintiffs</td>
<td>Mullā ʻAdil Muftī b. Dāmullā Maṣnūr</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Mullā Abū al-Khayr Muftī b. Mullā ʻĀrifjān</td>
</tr>
<tr>
<td>KP–4063/29–96(back)</td>
<td>defendant</td>
<td>Mullā ʻAdil Muftī b. Dāmullā Maṣnūr</td>
</tr>
</tbody>
</table>

(Source) SM KP-4063/29–95, 96, 101, 102, 104.

As can be seen from this table, these seven fatwa documents have sixteen seals in total, while four of them cannot be read due to the inadequate manner of stamping. Twelve legible seals were applied by seven muftis, among whom, three stamped for both the plaintiffs and the defendant – i.e. Mullā Abū al-Fayḍ Makhdūm b. Qāḍī Mullā Muḥammad b. Yaʿqūb Muftī (KP–4063/29–101), Mullā Abū al-Khayr Muftī b. Mullā ʻĀrifjān (KP–4063/29–95(front), 96(front)) and Mullā ʻAdil Muftī b. Dāmullā Maṣnūr (KP–4063/29–96(back), 102).

It is noteworthy that these three muftis stamped for both the parties, apparently knowing the fundamental contradiction lying in their assertions. Thus, it can be said that, at least in pre-revolutionary Central Asia, muftis would not always issue fatwa to the party whose assertion they considered to be right. In other words, they would make every effort to fit their fatwa to the demand made by their client – i.e. a plaintiff or a defendant – by choosing legal opinions, which were suitable for the assertion of the client, from authoritative juristic works. By doing so, they offered both parties involved in lawsuit the chance to win a favorable judgment. Of course, lawsuits could get into more complicated situations when muftis who were indifferent to the result of lawsuit, and who were trying to take good care of their customers, issued contradicting
fatwas to both plaintiff and defendant, as we saw above(24).

Notes

(1) Examples of such works cf. Morrison [2008], Sartori [2008], Sartori [2009], Sartori and Pianiola [2007].

(2) The photographs of Central Asian fatwa documents were published at different times. Urunbaev [2001] includes the photographs of five fatwa documents produced in the territory of the former khanate of Khiva (Nos. 16b, 498, 929, 1076, 1077), while Karimov [2007] reproduced six fatwa documents of the same origin (Nos. Q65, 69–73).


(4) The original text of Fatāwā Qāḍīkhān goes as follows [Qāḍīkhān 1980 v.3: 7–8]:

Thus, the sentence which begins with “On the other hand” and ends up by “to be mediator and interpreter” was added by the author of Fatāwā Shaybānī.


(6) Fakhr al-Dīn al-Ḥasan b. Manṣūr al-Ūzjandī al-Farghānī Qāḍīkhān (d. 1196), Fatāwā Qāḍīkhān [Brockelmann v.1: 376].


(8) Ḥāfiẓ al-Dīn Muḥammad b. Muḥammad b. al-Bazzāzī al-Kerderī (ca.1424), al-Fatāwā al-Bazzāzīya [Brockelmann v.2: 225; Brockelmann s.2: 316].

(9) Niyāz Muḥammad Muftī al-Bukhārī, Baḥr al-Manāfiʻ [SVR v.11: 310].

(10) Not identified.


(12) For example, we can find a statement cited from Khizānat al-Muftīn (al-Ḥusayn b. Muḥammad al-Samʿānī al-Ḥanafī (14c.), Khizānat al-Muftīn [Brockelmann v.2:163]) in the right margin of the fatwa document preserved at the Samarqand Museum under the inventory number KP–4063/29–14, which says: When a claim is posed to a defendant, the latter is obligated to answer either by “no” or “yes.” Further, in 2002 the group of Uzbek and Japanese specialists, including the author of this paper and headed by Toru Horikawa, investigated the documents which were preserved at that time at the Samarqand Museum and took photo of 255 documents there. Among these documents we find 39 complaints, of which 11 are complaints for
counterclaim. As these complaints for counterclaim were also produced to be submitted to the hand of qadi, we can safely assume that entering counterclaim was regarded by Islamic law as one of the ways by which defendant could answer to the claim of plaintiff.


(17) Shaykh Niẓām et al. (17c.), Fatāwī ‘Ālangūrī [Brockelmann v.2: 417; SVR v.4: 293–294].

(18) i.e. Abū Ḥanīfa, Abū Yūsuf, Muḥammad al-Shaybānī.


(21) Not identified.

(22) Not identified.

(23) [SM KP–3176/78] and [SM KP–3967/11] are examples of the complaint which was kept with the document on reconciliation placed on its back side.

(24) In this context we also have to be conscious of the role played by deputies (wakīl, pl. wukalā‘) in judicial proceedings of Islamic court in pre-revolutionary Central Asia. In Islamic court documents produced at pre-revolutionary Central Asia, we frequently encounter deputies, who appeared in the court to help their client apparently being not well versed in Islamic jurisprudence. Such deputies, together with muftis, also seem to have given a chance to both plaintiff and defendant for winning lawsuit.

References


ABSTRACT

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Seven Fatwa Documents from Early 20th Century Samarqand: The Function of Mufti in the Judicial Proceedings Adopted at Central Asian Islamic Court

This article aims to show in detail the progress of a lawsuit brought into a local Islamic court in Samarqand province at the beginning of the 20th century by examining seven fatwa documents which were drawn up at that time by more than seven muftis, and by doing so, also attempts to explain the function assumed by muftis in the traditional judicial proceedings of Central Asia. Through the analysis of these documents, we came to the conclusion that, at least in pre-revolutionary Central Asia, muftis would not always issue fatwa to the party whose assertion they considered to be right. In other words, they would make every effort to fit their fatwa to the demand made by their client—i.e. plaintiff or defendant—by choosing legal opinions, which were suitable for the assertion of the client, from authoritative Hanafite juristic works. Thus, they offered both of the parties involved in lawsuit the chance to win a favorable judgment. This shows how lawsuits could get into more complicated situations when muftis who were indifferent to the result of lawsuit, and who were taking good care of their customers, could issue contradicting fatwas to parties on both sides of a legal argument.

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Abbreviation

SM. The Samarqand Museum of History and Art of the Uzbek People.