

The Effect of Writing on the Documentation of Rights

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Introduction

All praise belongs to Allah, the Lord of all the worlds, and peace and blessings be upon our Prophet, Muhammad, his family and companions.

Studying jurisprudence and investigating juristic issues is of great importance for the jurist in general and for the judge in particular for the mere fact that many scholars stipulate that the judge should have the capability of legal reasoning, an opinion that has much to justify it. Therefore, the judge should give much interest to the study of the aspects of jurisprudence which he needs and to use his mind on any case he may encounter in order for him to fulfil the conditions of justice and correctness provided for in the *marfoo' hadeeth* narrated by Amr bin Al-Aas (may Allah be pleased with him): "If a judge gives a verdict according to the best of his knowledge and his verdict is correct, he will receive a double reward; and if he gives a verdict according to the best of his knowledge and his verdict is wrong, he will get a single reward."² The judge, therefore, is required to use legal reasoning in order to reach the right verdict, as evidenced by the *mursal hadeeth* reported by Mu'aadh bin Jabal (may Allah be pleased with him) when the Prophet (peace and blessings be upon him) asked him what he would do if he encountered a novel case for which he had no provisions from the Qur'an or the Prophet's *Sunnah* to judge on: "I will do my best to reach the correct verdict by using my mind." Upon hearing this, , the Prophet (peace and blessings be upon him) beat him on the chest and said, 'Praise be to Allah who guided the envoy of the Messenger of Allah to what pleases the Messenger of Allah."³

One of the key issues that the judge and the student of jurisprudence generally needs to be versant in is the question of writing and its role in documenting different rights. In this paper, I have elaborated on some of the issues related to writing supported by different opinions of scholars, and I have done my best to verify the preponderant ones among them; for the achievement of which I pray to Allah to help me.

² Reported by Muslim, 12/13.

³ Reported by Abu Dawood, 2/116, At-Tirmidhee, 3/616 and Ad-Daarimee, 34. In *Al-Mustasfaa*, 2/254, Al-Ghazaalee writes, "Muslims in general have accepted this *hadeeth* and none of the scholars has objected to it even though it is a *mursal* one." See also *I'laam Al-Muwaqi'een*, 1/293.

Topic One: Writing in the Judicial System

Definition: Writing is the act of representing letters of any language in a textual medium (transcription of letters on a medium).⁴ However, I have not gone through any technical definition of the term "writing" in the judicial field by past jurists. Nevertheless, the term can be defined as the act of documenting rights in a written form. Dr. Saalih Al-Helayil defines it thus: "The literal recording of debts and other rights in writing with the aim of protecting them from loss as a result of denial or oblivion."⁵

Topic Two: Writs Issued by Official Authorities

It should be noted that writs issued by official authorities are of several types including royal decrees, correspondences between judges, judicial records and official documents. These can be outlined as follows:

1. Royal Orders: These are the written orders issued by the highest authority in the state or its representative. These writs are given full authority in the judicial system.⁶

2. Correspondences between Judges: These are generally given full authority according to the opinions of scholars from various respected schools of jurisprudence; some reported it to be the unanimous opinion of scholars. However, the *Hanafites* give correspondences between judges authority in all cases except those related to textual punishments (*hudoos*) and the right of equal retaliation for murder (*qisaas*).⁷ In his *Saheeh*, Al-Bukhaaree criticizes this latter opinion thus: "Some people claim that correspondences between judges are legitimate except in *hudoos*. They state that it is permissible for a case of murder committed by mistake relying on that the resulting blood money is a claimed right that becomes an evident right after murder has been confirmed. As a matter of fact, both deliberate murder and that committed by mistake are one and the same with regard to writing, for Umar (may Allah be pleased with him) wrote to his subordinates on matters related to *hudoos*⁸ and Umar bin Abdul Azeez (may

⁴ *Al-Qaamoos Al-Muheet*, root *k t b*.

⁵ Documentation of Debts in the Islamic Jurisprudence, p. 297.

⁶ *Al-Ashaah Wan-Nadhaa'ir*, p. 217.

⁷ *Fathul Baaree*, 13/141.

⁸ In *Fathul Baaree*, 13/141, Ibn Hajar states that this refers to the narration by Abdur-Razaq on the authority of Abdullah bin Aamir bin Raabi'ah thus: "Umar employed Qudaamah bin Madh'oos. Al-Jarood, the Chief of Abdul-Qays tribe, came to Umar

Allah have mercy on him) wrote on a case involving a broken tooth.⁹ Ibrahim argues that correspondence between judges is permissible if his handwriting and seal are identifiable. Ash-Sha'bee is of the opinion that a sealed letter from one judge to another is permissible.¹⁰ The same opinion is reported to be Ibn Umar's. Mu'aawiyah bin Abdul Kareem Ath-Thaqafee said, "I have seen Abdul Malik bin Ya'laa, the judge of Basra, Iyaas bin Mu'aawiyah, Al-Hasan, Thumaamah bin Abdullah bin Anas, Bilaal bin Abi Burdah, Abdullah bin Buraidah Al-Aslamee, Aamir bin Abdah and Abbaad bin Mansoor accepting letters from judges without being testified to by witnesses. If the party against whom the letter is written objects to it as perjury, he must be asked to find a way out. The first rulers to request evidence to the letters from judges were Ibn Abi Layla and Siwar bin Abdullah. Abu Na'eem told us that Ubaidullah bin Muhriz told them, 'I brought a letter from Musa bin Anas, the judge of Basra, to Al-Qaasim bin Abdur-Rahmaan and I testified that I owed so-and-so who was in Kufa an amount of money and the latter accepted it.' Al-Hasan and Abu Qulaabah were of the opinion that it was unadvisable to testify to a will unless one knew what was written in it for it might have something unjust. The Prophet (peace and blessings be upon him) wrote to the people of Khaibar, 'Either you pay the blood money of your fellow or you will be warned of war.' On the question of testifying against a woman behind a cover, Al-Zuhree states, 'If you know her, you can testify. However, if you do not know her, do not do so.' He reported through his chain of narrators the *hadeeth* narrated by Anas bin Maalik thus: "When the Prophet (peace and blessings be upon him) wanted to write a letter to the Romans, he was told that they only accepted sealed letters. Therefore, he used a silver ring as if I were now observing it, with 'Muhammad, the Messenger of Allah'

and said: 'Qudaamah drank and got intoxicated.'" Umar wrote to Qudaamah requesting him to appear before him. Both Al-Jarood and Abu Hurairah testified against Qudaamah. Qudaamah argued that he was not wrong relying on a verse in *Surat Al-Maa'idah*. However, Umar refuted his argument and whipped him." This narration is reported through an authentic chain of narrators.

⁹ Abu Bakr Al-Khallaal reported it through a complete chain of narrators in the book of *Qisaas* and *Diyaat* on the authority of Abdullah bin Al-Mubaarak from Hakeem bin Zuraiq from his father thus: "He wrote a letter to Umar bin Abdul Azeez wherein he accepted the testimony of a man on a broken tooth." See *Fathul Baaree*, 13/141.

¹⁰ *Al-Musannaf*, nos. 23116-23119.

engraved on it."¹¹ In *Al-Musannaf*, Ibn Abi Shaibah cites several events to the effect that correspondences between judges were used by our rightly guided predecessors.¹²

The above is supported by several proofs including the following:

1. The *hadeeth* narrated by Al-Dhahhaak bin Sufyaan that the Prophet (peace and blessings be upon him) wrote to him a letter in which he ordered him to give the widow of Ashyam Al-Dhabbaabee her share from the blood money paid for the murder of her husband.¹³

2. The *hadeeth* stating that the Prophet (peace and blessings be upon him) wrote to the people of Khaibar, "Either you pay the blood money of your fellow or you will be warned of war." They replied, "By Allah, we did not kill him."¹⁴

3. The companions of the Prophet (peace and blessings be upon him) used it and no one of them objected to it. Hence, it can be considered as unanimously agreed to by all of them. Examples of this include:

- Al-Baihaqee reported through Thumamah bin Abdullah bin Anas that Anas (may Allah be pleased with him) told him that Abu Bakr (may Allah be pleased with him) wrote the following letter when he delegated him to Bahrain: "In the Name of Allah, Most Gracious, Most Merciful. These are the prescribed amounts of *zakat* which Allah has enjoined on Muslims and which He has ordered His Messenger to apply. Any Muslim who asks to be given the prescribed amount, he should be given from it and any one who

¹¹ *Saheeh Al-Bukhaaree*, part on testifying to sealed letters, permissible writings, restrictions to writings, letters from rulers to subordinates and correspondences between judges, # 6743.

¹² *Al-Musannaf*, 23116-23119.

¹³ Reported by Maalik in *Al-Muwatta'*, 1556, Abu Dawood, 2927, At-Tirmidhee, 1415 and 2110. He said that it is an authentic and good *hadeeth*. It is also reported by An-Nasaa'ee in *As-Sunan Al-Kubraa*, 4/78, # 6364 and Ibn Maajah, 2/883, # 2642.

¹⁴ Reported by Al-Bukhaaree (*Fathul Baaree*, 13/116) as quoted above, part on testifying to sealed letters, permissible writings, restrictions to writings, letters from rulers to subordinates and correspondences between judges. However, the chain of narrators of the *hadeeth* is broken. In *As-Sunan Al-Kubraa*, 3/483, # 5988, An-Nasaa'ee reported it through a complete chain of narrators. It is also reported by Al-Bukhaaree, # 6769 and Muslim, #1669 (An-Nawawee, 11/152) in the following wording: "Huwwaysah talked and then Muhaysah talked. The Prophet (peace and blessings be upon him) then said, "Either you pay the blood money of your fellow or you will be warned of war. The Prophet (peace and blessings be upon him) wrote this to them and they replied, 'We did not kill him.'"

asks to be given any amount above the prescribed one should not be given it." Then he cited the rest of the *hadeeth*.¹⁵

- Al-Baihaqee also reported through his chain of narrators that Utbah bin Farqad sent to Umar (may Allah be pleased with him) as well as a slave belonging to Utbah from Azerbaijan a dessert he liked called *khabees* [to taste it], stuffed in intestines of sheep with dressing. As soon as Umar received it, he uncovered it and asked, "Do Muslims [in Azerbaijan] have enough of this in their homes?" The messenger replied, "No." Umar then said, "I do not want it," and he wrote to Utbah, "It is not the money of your father or your mother that you are spending. Let Muslims with you have the same food that you have." He then said, "Wear *izaar*¹⁶, *ridaa*¹⁷ and shoes but do not use trousers and thin clothes. Discard pedestals and jump on the backs of horses; stick to Ma'add and Arabic styles of clothing and avoid luxury and the clothes of non-Arabs. Beware of waering clothes made of silk, for the Prophet (peace and blessings be upon him) forbade us to wear clothes made of silk except for this much," joining his middle finger and the index finger as he said this..¹⁸

- The several events cited in the books of biographies and history give clear evidence that writing letters on different legal issues was a generally accepted practice during the time of the companions of the Prophet (peace and blessings be upon him), and no one of them objected to this practice.

3. Judicial Records

These are the records of the court wherein judgments are written. A question arises here: Is it legitimate for the judge to use his own records or the records of others, as the case with judicial precedents and similar actions, as a reliable source? Scholars differ as to the authority of such records as follows:

1st Opinion: Judicial records have authority provided that the judge verifies that it is his own handwriting or has clear evidence that it is the record prepared by those who have preceded him. This is the contention of Abu Haneefah¹⁹ and the established opinion of the *Maalikes*²⁰ and the

¹⁵ Reported by Al-Baihaqee in *As-Sunan Al-Kubraa*, # 20198.

¹⁶ *Izaar* is a cloth worn by men below the waist. (Translator's Note)

¹⁷ *Ridaa* is a cloth that is worn on the upper part of the body. (Translator's Note)

¹⁸ Reported by Al-Baihaqee in *As-Sunan Al-Kubra*, # 20199.

¹⁹ *Al-Hidaayah* by Al-Marghinaanee, 3/120, *Treatise on the Application of Writings by Judges* by Ibn Muflih published in *Islamic Research Journal*, 46/307.

²⁰ *Sharh Az-Zarqaanee 'alaa Mukhtasar Khaleel*, 7/183-185; *Treatise on the Application of Writings by Judges* by Ibn Muflih published in *Islamic Research Journal*, 46/308.

Shaafi'ites. It is also a view expressed by some of the *Hanbalites*. They contend that handwritings are possible to be similar to each other and that these writings are subject to forgery.²¹

2nd Opinion: Judicial records are reliable provided that they are secured against forgery and errors. This is the opinion expressed by Abu Yusuf and Muhammad bin Al-Hasan; it is also adopted by the majority of the *Hanafites* and the *Maalkities*. It is also the contention of some of the *Shaafi'ites* and *Hanbalites*.²² In support of this opinion, they give the following evidence:

1. These records have widely been used by past and present judges.
2. Judicial records are kept in secure places and are rarely forged.

The preponderant opinion is the second one because these records are necessary for judges and because the means of saving and filing such records have developed to a great extent.²³

4. Official Documents: Examples of official documents used in the present time include the deeds issued by courts and notaries, birth certificates, marriage contracts and academic certificates. Modern judicial researchers unanimously agree that these documents are reliable and have authority.²⁴

Topic Three: Types of Writs Issued by Individuals

Writs made by individuals are of different types, as follows:

1st Type: Testimonies Written but Forgotten. The question that arises here is: Is it permissible for a person who has written a testimony and then forgotten its contents to testify to what is written in it?

Scholars have expressed different opinions as to this issue:

1st Opinion: He may not testify to the content of such a testimony because knowledge is a condition for bearing testimony. This is in accordance with the verse: "Except those who testify to the truth knowingly."²⁵ Moreover, handwritings might resemble one another or might be forged. This is the opinion expressed by Abu Haneefa, Ash-Shaafi'ee and Maalik according to some narrations and is a view expressed by some of the *Hanbalites*.

²¹ *Treatise on the Application of Writings by Judges* by Ibn Muflih published in *Islamic Research Journal*, 46/307.

²² *Al-Hidaayah* by Al-Marghinaanee, 3/120, *Treatise on the Application of Writings by Judges* by Ibn Muflih published in *Islamic Research Journal*, 46/307.

²³ *Means of Substantiation*, p. 463.

²⁴ *Documentation of Debts in Islamic Jurisprudence*, pp. 246 and 348.

²⁵ *Surat Az-Zukhruf*: 86.

2nd Opinion: The authority of a testimony based on a written statement depends on the actual verbal testimony. This is the opinion held by Abu Yusuf and Muhammad bin Al-Hasan and is the reliable *fatwaa* adopted by the *Hanafites*. It is also the view reported from Maalik, some of the *Shaafi'ites* and the *Hanbalites* which Ibn Taymiyah considers to be the preponderant one in his book *Al-Muharrar*.²⁶ In support of this view, they argue that if the writer of the testimony knows his handwriting and is certain that no forgery has been made, then he is sure about his testimony, and hence he is testifying knowingly. This is supported by the verse: "Do not disdain to reduce to writing [your contract] for a future period, whether it be small or big: it is more just in the sight of Allah, more suitable as evidence, and more convenient to prevent doubts among yourselves."²⁷

The second opinion seems to be the preponderant one, for it cites stronger evidence and argumentation and for the arguments furnished in support of the first opinion are based on fear, which is rather unjustifiable as long as we stipulate security against forgery and verification of the handwriting. Moreover, these concerns are beyond reasonable requirements. Preserving rights of people should always be given preference and priority over unconceivable fears, and Allah knows best.

2nd Type: Testimony Based on a Testimony Written by a Person who is Absent. The *Maalikites*, according to their well established opinion, and Ahmad, as reported by some *Hanbalites*, accept this testimony. However, the majority of jurists reject it based on the condition that a testimony should be known to the one who testifies.²⁸ It should be said that the opinion of the majority of jurists is evidently the preponderant one as revocation of the testimony by the one who has written it is probable and because testimonies must be based on actual perception like seeing and hearing. Moreover, the presence of a testimony ascribed to an absent person is something that does not reach the degree of certainty. Therefore, rejecting such a testimony is a more sound opinion, and Allah knows best.

3rd Type: Written Declarations. Jurists differ as to judging based on written declarations, as follows:

1st Opinion: Written declarations should not be given any consideration because of the similitude between handwriting and the possibility of being subject to forgery, according to the majority of past *Hanafite* jurists.

²⁶ *Al-Muharrar* by Ibn Taymiyah, 2/211 and *Treatise on the Application of Writings by Judges* by Ibn Muflih published in *Islamic Research Journal*, 46/305.

²⁷ *Surat Al-Baqarah*: 282.

²⁸ *Tabsirat Al-Hukkaam*, 1/358.

Moreover, such writing might be the product of amusement or even trying one's hand at handwriting.²⁹ Therefore, probability of any degree nullifies substantiation. They quote the case of the two men from Hadhramout and Kindah in this respect. This is when the Prophet (peace and blessings be upon him) said to the claimant: Bring your witnesses or let him take an oath; you have nothing from him other than that."³⁰ However, this argumentation is refuted by the fact that the Prophet (peace and blessings be upon him) meant "your evidence" as some other versions of the *hadeeth* state.³¹ He used the word "witnesses" because it is the most often used form of testimony by Arabs who were mostly illiterate.

2nd Opinion: Written declarations are acceptable on condition that they are testified to, This is the view of the *Shaafi'ites*, the *Hanbalites* and some *Hanafites*.³² They argue that a testimony added to the declaration eliminates any probability of similitude of handwriting and forgery.

3rd Opinion: Written declarations have binding authority whatever the case may be, according to the *Maalikites*. This opinion is considered preponderant by Ibn Taymiyah.³³ In support of this opinion, the following proofs are given:

1. Allah says, "It is in the Name of Allah, Most Gracious, Most Merciful"³⁴ This was the letter upon which Balqees acted, which means that it is of acceptable authority.

2. Allah says, "It is prescribed, when death approaches any of you, if he leaves any goods that he makes a bequest to parents..."³⁵ A bequest is documented by both verbal and writing means, as evidenced by the *marfoo' hadeeth* narrated by Ibn Umar (may Allah be pleased with him): "It is the duty of a Muslim who has something which is to be given as a bequest not to have it for two nights without having his will written down regarding it."³⁶

3. Allah says, "O you who believe! When you deal with each other in transactions involving future obligations in a fixed period of time, reduce

²⁹ *Al-Ashaab Wan-Nadhaa'ir* by Ibn Nujaim, 641.

³⁰ Reported by Muslim (*An-Nawawee*, 2/154).

³¹ *Fathul Baaree*, 5/283.

³² *Al-Ashaab Wan-Nadhaa'ir* by Ibn Nujaim, 341.

³³ *Documentation of Debts in Islamic Jurisprudence*, 331 and *Majmoo' Al-Fataawaa*, 31/326.

³⁴ *Surat An-Naml*: 30.

³⁵ *Surat Al-Baqarah*: 180.

³⁶ Reported by Al-Bukhaaree, # 2738, Muslim, # 1627 and other *hadeeth* collectors.

them to writing."³⁷ He then says, "Let him who incurs the liability dictate."³⁸ This is a clear statement that dictation is an acknowledgment of the debt.

4. On the reason for legislating writing and witnesses, there is a story that confirms that writing is considered an established proof. Abu Hurairah (may Allah be pleased with him) narrated that the Prophet (peace and blessings be upon him) said, "Allah showed Adam his progeny. He said, 'This is your progeny. Each one of them has his age written between his eyes.' One of them was a man with a radiant face. Adam said, 'O Lord! Who is this?' Allah replied, 'This is your son Dawood. The age written for him is forty years.' Adam said, 'O Lord! Increase his age.' Allah said, 'This is what I have written for him.'" Adam said, "O Lord! I give him sixty years from my age." Allah said 'It is up to you.' Adam was then made to dwell in Paradise for as long as Allah willed and then was caused to descend from it. He was counting his years of age. When the angel of death came to him, Adam said, 'You have come too early, for I have been given one thousand years to live.' The angel replied, "Yes, but you have given your son Dawood sixty years of your age." Adam denied this and so did his progeny. He also forgot and so did his progeny. From that time onward, Allah enjoined writing and [the testimony of] witnesses."³⁹

5. The Prophet (peace and blessings be upon him) used writing on several occasions including the following:

a. The *hadeeth*, "Write for the following to Abu Shaat."⁴⁰

b. In the story of the *Hijrah*, it is stated that Suraaqah asked the Prophet (peace and blessings be upon him) to write for him a letter pledging his safety, The Prophet (peace and blessings be upon him) instructed Aamir bin Fuhairah to do so, and Aamir wrote it on piece of tanned skin."⁴¹

c. It is authentically reported that the Prophet (peace and blessings be upon him) sold a male or a female slave to one of his companions and wrote a declaration to this effect. Al-Addaa' bin Khaalid (may Allah be pleased with him) reported the story of the transaction between him and the Prophet (peace and blessings be upon him) for which the Prophet (peace and blessings be upon him) wrote the following: "In the Name of Allah,

³⁷ *Surat Al-Baqarah*: 282.

³⁸ *Ibid*: 282.

³⁹ Reported by At-Tirmidhee, 4/337 (# 5072) as an authentic and good *hadeeth*, Al-Haakim, 1/64 and 2/325 as an authentic *hadeeth* to which Ad-Dhahabee agreed. According to Al-Albaanee, it is an authentic *hadeeth* as stated in his book *Saheeh Al-Jaami'*, 5209 and his book *Al-Mishkaat*, 4662.

⁴⁰ Reported by Al-Bukhaaree, # 2302 and # 6486 and Muslim, # 1355.

⁴¹ Reported by Al-Bukhaaree (*Fathul Baaree*, 7/117).

Most Gracious, Most Merciful. This is what Al-Addaa' bin Khaalid bin Hawdha bought from Muhammad, the Messenger of Allah; he bought a male or a female slave on condition that he or she is free from any diseases or defects. This sale transaction is conducted between a Muslim and another Muslim."⁴²

d. The Prophet (peace and blessings be upon him) also wrote the Hudaibiyah Truce Treaty and several other documents. All the above narrations are clear proofs that writing is one of the generally accepted proofs.

6. Written declarations are the same as verbal ones⁴³, for both of them express the will of the writer.

It seems that the third opinion is the preponderant one because the proofs given by its advocates are stronger and their argumentation is justifiable. Jurists have laid down a rule stating that written statements are the same as verbal ones. Some of them expressed it as "acknowledgment by writing is the same as that by the tongue".⁴⁴ Dr. Saalih Al-Helayil also considers this opinion to have more in its favour.⁴⁵

Ibn Taymiyah writes, "The opinion that writing is a means of substantiation is a strong one and is the opinion of the majority of the early leading scholars."⁴⁶

A question arises here: Do the books of sellers, exchangers, brokers and traders generally are accepted as acknowledgments if they contain rights due to others?

The present *Hanafite* jurists accept them as acknowledgments based on *istihsaan*⁴⁷ and public practice or custom (*'urf*), and the *Maalikes* hold the same opinion.⁴⁸ This also applies to letters, invoices, receipts, cheques and

⁴² Reported by At-Tirmidhee, 2/344, Ibn Maajah, 2/756; Al-Bukhaaree considered it as having interruption in its chain of narrators, 3/10 and reported it in different wording (*Fathul Baaree*, 4/310) but Al-Albaanee considered it a good *hadeeth* in his book *Saheeh Al-Jaami'*, 2821.

⁴³ *Judicial Policy at the Time of Umar*, p. 646.

⁴⁴ Means of Substantiation, pp. 312 and 431.

⁴⁵ Documentation of Debts in Islamic Jurisprudence, p. 251.

⁴⁶ Summary of the Egyptian *Fataawaas*, 601.

⁴⁷ *Istihsaan* is a doctrine of Islamic law that allows exception to strict legal reasoning, or guiding choice among possible legal outcomes, when considerations of human welfare so demand. (Translator's Note)

⁴⁸ *Al-Fataawaa Al-Hindiyah*, 4/167; *Al-Ashbaah Wan-Nadhaa'ir*, 341; *Fathul Alliy Al-Maalik*, 2/311 and *Means of Substantiation* (in Arabic), p. 474.

the like which are exchanged by traders and their clients.⁴⁹ This opinion is correct and agrees with the general provisions of the Islamic *Sharee'ah* and the objective of the judicial system, namely to preserve the rights of people and to prevent injustices.

One more question arises here: Is a will containing an acknowledgment of a certain right acceptable?

The majority of jurists⁵⁰ accept written wills but the *Maalikites* are of the opinion that they should be testified to in order for them to be accepted as a binding authority.⁵¹ The majority of jurists rely on a *marfoo' hadeeth* narrated by Ibn Umar (may Allah be pleased with him): "It is the duty of a Muslim who has something which is to be given as a bequest not to have it for two nights without having his will written down regarding it."⁵²

A third question also arises here: Can a deed be considered an acknowledgment or not?

A deed usually comes in one of two forms, as follows:

1. It is testified to by two witnesses, in which case it is considered a type of testimony;⁵³

2. It only contains the contract form and the signatures of the contracting party, in which case it is considered a type of acknowledgment.

Note: These testaments and deeds were usually written by jurists. Currently, they are prepared by lawyers. Al-Bahootee writes, "Judges may not prevent jurists from preparing contracts, writing certificates of marriage, sale and lease and writing acknowledgments."⁵⁴

4th Type: Acknowledgments Written on Ordinary Papers: Examples include:

1. Personal Letters. These represent a binding authority if they are written by the sender and the handwriting is proved to be his. Lawyers stipulate that they should be signed. However, Dr. Saalih Al-Hilayil contends that they have no binding authority whatsoever because they are not originally prepared for documentation purposes and may contain promises spurred by tact. The preponderant opinion is that they have authority based on the rule: "Enforcing statements is given preference to neglecting them" and the rule: "Written statements are tantamount to verbal ones".

⁴⁹ *Documentation of Debts in Islamic Jurisprudence* (in Arabic), p. 349.

⁵⁰ *Masaa'il by Imaam Ahmad to Ibn Haani'*, 2/44 and 50 and *Treatise on the Application of Writings by Judges* by Ibn Muflih published in *Islamic Research Journal*, 46/309.

⁵¹ *Means of Substantiation*, p. 476.

⁵² Reported by Al-Bukhaaree, # 2738, Muslim, # 1627 and other hadeeth collectors.

⁵³ *Means of Substantiation*, p. 479.

⁵⁴ *Kash-shaaf Al-Qinaa'*, 4/188.

2. Telegrams: These also have a binding authority provided that they are verified to be transmitted by the one who has written them and that they are not manipulated by another person.

3. Telex Messages: These have the same ruling on telegrams.⁵⁵

4. Mobile Messages: It appears to me that these cannot be considered as a means of substantiation because they may be manipulated by others. No other researchers have considered them as a means of substantiation.

5. Electronic Mail Messages: none of the legal researchers has discussed them. However, they seem to take either of the two following forms:

a. If the system from which they are transmitted has a password, the message can then be considered authentic and reliable; and

b. If the system from which they are transmitted has no password, the message is unreliable, as it is likely for the system to be used by another person.

Topic Four: How to Substantiate Written Documents if they are Denied by the Defendant or his Heirs

Substantiation can be made in a number of ways, as follows:⁵⁶

1. Adding testimonies to them;

2. Having handwriting verified and matched by calligraphy experts;

3. If the document is printed and signed by the person who denies it to be his own, both verification and matching can be used to have the signature verified by experts;

4. If the document is printed and the fingerprint of the person denying it is fixed to it, it is easy to verify it, for fingerprints are undeniable proofs and are impossible to forge;

5. If the document is printed and the seal of the person denying it is fixed to it, experts may match the physical seal with the seal impression on the document. However, if the defendant admits that it is his own seal but is used by others without his knowledge, his statement is accepted because forging seals is very easier than forging signatures and handwriting. Therefore, utmost caution should be taken in this respect.

⁵⁵ *Documentation of Debts in Islamic Jurisprudence*, p. 349.

⁵⁶ *Ibid*, pp. 353-362.

Conclusions

In conclusion, I would like to highlight some of the important findings of the present paper, as follows:

1. All documents issued by concerned authorities including governmental resolutions, circulars and the like and correspondences among judges, court records and other official documents are accepted as having a binding authority in courts.

2. One may give a testimony based on a written statement when he is certain that such a statement is issued by him.

3. It is not legitimate for any one to bear testimony based on a written testimony of a person who is absent if his return is likely for the mere reason that testimonies should be based on certainty.

4. The written declaration represents a binding authority in its own right and should be taken as evidence in courts.

5. Documents prepared for the purpose of documentation in public practice like commercial papers, invoices and the like should act as evidence in courts. This is also true of deeds and vouchers, among other things.

6. A written will may be accepted as evidence even if not testified to if the judge is certain that it is the handwriting of the person who has issued it.

7. Ordinary papers not used for the purpose of documentation in public practice may be taken as evidence if they contain a financial declaration or a right for any person.

8. Documents transmitted through modern communication means like the telex, the telegraph and the facsimile are considered as evidence in courts if the judge is certain that they are issued by the defendant and that they are not forged.

9. Mobile phone messages may not be considered as evidence, for they are most likely to be sent by other than the defendant since mobile phones are in wide use.

10. The electronic mail may not be considered as evidence unless the judge is certain that the message is sent by the person having the e-mail account supported by a password that cannot be accessed by others.

11. Verification of written documents is made by legal means including testimonies on a specific handwriting; failing so, and if the defendant denies the handwriting to be his own, verification is made by matching the handwriting, fingerprints, signatures or seals.

All Praise belongs to Allah first and foremost, and may Allah's peace and blessings be upon our Prophet Muhammad, his family and companions.