INTRODUCTION

The present study is dedicated to an analysis of positive solutions adopted by Muslim jurists active in the first centuries of Islam regarding civil liability (Chapter One), several special types of sale, i.e. ‘trust sales’ as called by the later Hanafis and salām or salaf (Chapter Two), and the prohibition of ribā (Chapter Three). The purpose of the analysis is twofold.

First, I believe that this study will contribute to a more precise understanding of some of the positive rules which have hitherto remained unclarified. Although there are numerous studies of the Islamic law of property, fundamental rules such as the prohibition of ribā remain enigmatic. It may be helpful to consider the difficulties. Chehata is known for emphasizing the fact that law is a social phenomenon conditioned by the time and place in which it develops. He considered it imperative to go back to the early sources and trace the evolution of a given rule step-by-step across the centuries.¹ He carried this out in some of his works, in particular *Etudes de droit musulman* (1971) and *Etudes de droit musulman 2* (1973).

Chehata’s attempt to justify the positive solutions was not very successful for two reasons. First, he did not have at his disposal the *Aḥāras* of Abū Yūṣuf and al-Shaybānī, or the *Musannafs* of ‘Abd al-Razzāq al-Ṣanʿānī and Ibn Abī Shayba, which record many reports that contain important information on the earliest stage of Islamic positive law. The earliest sources that he consulted were the works of al-Shaybānī, such as the *Aṣl* and the *Jāmīʿ al-sagḥīr*, which are essentially compendia of the doctrine of the earliest Hanafis (Abū Ḥanīfa, Abū Yūṣuf and al-Shaybānī). Second, he wished to present Islamic law as a legal system comparable to Anglo-Saxon and Roman law.² It is probably for this reason that he sometimes attempted to justify positive solutions by applying concepts peculiar to the Western systems. For example, he justifies the Hanaﬁ rule prohibiting the resale of a personal property that a person has purchased before he takes

¹ See, for example, Chehata, *Etudes*, 76.
possession of it by explaining that this rule serves the same function as the maxim, “Possession is equivalent to a title with respect to a personal property (En fait de meubles, la possession vaut titre),” as prescribed by article 2279 of the French Civil Code and adopted in other Western legal systems: suppose that B resells what he bought from A to C before B takes possession of it, and that subsequently B sells it to D after B takes possession of it. The Hanafis regard the resale to D as valid, while they declare the resale to C to be null and void. According to Chehata, this solution seeks to protect D, who believes that B, who possesses the object, has the right to dispose of it, like the above-mentioned maxim.\(^3\)

But this reasoning is dubious, because whenever a person sells an object which he does not own, the Islamic rule is that the true owner can demand that the buyer restore it: that is to say, whatever the cause by which a person possesses an object belonging to another may be, a third person who purchases it from the possessor is never protected against the eviction from the true owner. In addition, we find the following example in the Jāmī’ al-kabīr of al-Shaybānī: E sells his slave to F, who then rents or lends in a loan for use the slave to E without taking possession of the slave. Subsequently the slave dies while in E’s possession. Al-Shaybānī rules that the rent or the loan for use is null and void, and adds that E is exempted from payment of rent even if the slave is alive [and subsequently delivered to F].\(^4\) This example indicates that the rule is that a person who has acquired an object cannot make a legal act with regard to it in whatever manner before he takes possession of it. We need not reason that the Hanafi rule prohibiting the resale of an object that a person has purchased before taking possession seeks to protect a third party.

Among recent important contributions to the understanding of the early Islamic law of property is Wichard’s Zwischen Markt und Moschee. As its title suggests, Wichard tries to present the Hanafi law of sale as an attempt to accommodate religious or moral norms to social and economic reality. Although he advances interesting and excellent explanations of the early Hanafi understanding of certain rules, he leaves many questions unanswered. To take again the example

\(^3\) Chehata, “Acte,” 40–41.
\(^4\) Shaybānī, Kābir, 240.
of sale, he writes: if the object of a sale is specified and no term of delay is stipulated, the object immediately belongs to the buyer. Therefore the seller cannot sell the object to a third person, but he can continue to use it, so long as the buyer does not demand that he deliver it. In such a case, the Hanafis prescribe that the object perishes at the seller’s risk, that is to say, the buyer can take back the price he has paid in the event that the object perishes while in the possession of the seller. Such a buyer is therefore in the same situation as a pledgee whose credit is secured by an object belonging to the debtor, who reserves the right to use it. This is an acute observation, and the legal devices (hiyal) that Wichard cites indicate that the Hanafis recognized that this rule could serve the same purpose as a pledge. It is sufficient for Wichard to show the economic function that the Hanafis expected a rule to fulfill. But several rules concerning the object that remains in the possession of the seller cannot be justified by such an understanding, as will be shown (see Chapter One, Section 3, 4). One thing is to know how later jurists understood and applied a specific rule; another is to know how it was formed.

The same is true of Horii, who closely examines numerous cases of legal devices applied, among others, to transactions. In her Die Gesetzlichen Umgehungen im islamischen Recht (hiyal) and “Reconsideration of Legal Devices (Hiyal) in Islamic Jurisprudence: The Hanafis and their ‘Exits’ (Makhārij),” she successfully demonstrates that legal devices constitute an integral part of the Hanafi legal system, which did not cease to grow in the ninth and tenth centuries through the efforts of the Hanafi jurists to interpret individual rules and to demarcate their application. Her thesis suggests that the doctrine of even the early Hanafis does not necessarily retain the ancient layer of the Hanafi rules, which had been established by the Iraqi jurists prior to the Hanafis.

One of my main concerns is the formation of individual solutions regarding civil liability, several special types of sale, and the prohibition of ribā. In clarifying this process, I keep one point in mind. It concerns the authenticity of opinions attributed to the Prophet, the Companions or the Successors. The primary sources that I mainly use in this volume are works of al-Shaybānī (132–89/750–805), in

particular the *Asl*, the *Jāmiʿ al-ṣaghir* and the *Jāmiʿ al-kabīr*, for the doctrine of the earliest Hanafīs. As for the doctrine of Mālik, the *Muwaṭṭaʾ* of Mālik (d. 179/795) and the *Mudawwana* of Saḥnūn (b. 160/777–8; d. 240/855) are by far the most important sources. For the legal opinions attributed to the Prophet, the Companions and the Successors, I rely on the *Muwaṭṭaʾ*, the *Āthārs* of Abū Yūsuf (d. 182/798) and al-Shaybānī, the *Muṣannaf* of the Yemeni traditionist ʿAbd al-Razzāq al-Ṣanʿānī (126–211/744–827) and the Kufan traditionist Ibn Abī Shayba (159–235/775–849) who moved to Baghdad, and the *Mudawwana* of Saḥnūn extensively. The works of al-Ṭahāwī (d. 321/933) and the *Sunan al-kubrā* of al-Bayhaqī (d. 458/1066) contain some important materials otherwise unavailable. As the basis for reconstructing the early history of Islamic jurisprudence, a question remains as to whether these sources are authentic or not.

As is well known, this subject is a matter of controversy. For example, Motzki has concluded that the materials collected in the *Muṣannaf* of al-Ṣanʿānī “originated in the course of the first half of the second/eighth century” and that their “authenticity can be considered ensured” by analyzing their transmitters and the biographical sources. But Calder is skeptical. He writes, “I should be unwilling to concede its early date until the form, the content, and the organization of its hadith are compared systematically with similar material in early juristic texts and in the standard (apparently later) collections.” Calder regards as unconvincing the recovery of the history of Meccan *fiqh* by Motzki, who, he says, puts unrestrained trust on the *Muṣannaf.*

For this reason, I consider it to inappropriate to judge *a priori* the authenticity or otherwise of an opinion. For example, in numerous places, I quote the opinions of Ibrāhīm al-Nakhaʾī (d. 95/713–4 or

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6 I also used *Kitāb fī al-ṣaghir* possessed by Asad Library in Damascus (MS, no. 10735), but few of its materials are otherwise unavailable. Although there is no mention of its author in the catalogue of the library, it is probably the Maliki jurist Muḥammad b. Ahmad b. ‘Abd Allāh b. Naṣr al-Dhuḥlī (279–367/893–978). See Sezgin, *Geschichte*, 1:476–77.

7 For the survey of these controversies, see Berg, *Development*, 6–64.

8 Motzki, *Origins*, 58–72. Citation from p. 72.


10 Calder, *Studies*, 194–95. His critique is directed to *Anfänge*, the original German version of Motzki’s *Origins*. For Motzki’s refutation against Calder, see Motzki, *Origins*, xvi.
from the Āthārs of Abū Yūsuf and al-Shaybānī, and the Musannafs of ‘Abd al-Razzāq al-Ṣan‘ānī and Ibn Abī Shayba. These opinions are transmitted by Ḥammād b. Abī Sulaymān (d. 120/737–38), Abū Ḥanīfā (d. 150/767) and Sufyān al-Thawrī (d. 161/778), among others. In principle, I withhold judgment as to whether or not the historical Ibrāhīm al-Nakha‘ī advanced an opinion attributed to him in these compilations. I assume only that such an opinion existed during or before the lifetimes of these transmitters. But I do assume that a dissident opinion preceded an authoritative opinion, particularly when the latter is embodied in a Prophetic hadith. For example, the Prophet is reported to have prohibited the sale of an object that a person does not own. But the Medinan jurist al-Qāsim b. Muḥammad (d. 101/719–20, 102/720–1, 106/724–5, 107/725–6 or 112/730–1) is reported to have seen no harm in such a sale. We can safely say that this opinion existed before the Prophetic hadith was put into circulation, since it is improbable, if not impossible, that a learned jurist would advance an opinion that diametrically contradicts a Prophetic hadith. In this way, I will demonstrate that the doctrines expressed in the statements and reports attributed to the Successors reflect the formative stage of doctrines cited “in early juristic texts and in the standard (apparently later) collections,” and remove the doubt of Calder.

The second purpose of the present study is to determine, through the analysis of the individual rules, why and how the doctrine of Abū Hanīfā in Iraq and that of Mālik b. Anas in Medina were transformed into the Hanafī and Maliki schools, respectively.

Referring to ‘ancient schools of law,’ Schacht writes: “This term implies neither any definite organization nor a strict uniformity of doctrine within each school, nor any formal teaching, nor again any official status, nor even the existence of a body of law in the Western meaning of the term.” But on the next page he writes that the central idea to the ancient schools of law was “‘living tradition of the school’ as represented by the constant doctrine of its authoritative representatives.” According to Schacht, the ‘living tradition’
has a retrospective aspect and a synchronous aspect. Retrospectively, it is reflected in ‘practice’ (‘amal) or ‘well-established precedent’ (sunna māḍīyya), which was found in the teaching of “those whom the people of each region recognized as their leading specialists in religious law, whose opinions they accepted, and to whose decisions they submitted.”\(^{15}\) The synchronous aspect of the living tradition is represented by the consensus of the scholars in a region. Such consensus was originally “anonymous, that is to say, it was the average opinion of the representatives of a school that counted.”\(^{16}\) But later on, living tradition was projected backwards to some great figures of the past, and “[t]he Kufians were the first in attributing the doctrine of their school to Ibrāhīm al-Nakha’ī.”\(^{17}\) The doctrine attributed to him had little to do with that of the historical Ibrāhīm. “It rather represents the stage of legal teaching achieved in the time of Ḥammād ibn Abī Sulaymān (d. 120/738), the first Kufian lawyer whose doctrine we can regard as fully authentic.”\(^{18}\)

Schacht writes also:

The religious specialists of each geographical unit in the central parts of the Islamic world had developed a certain minimum agreement on their doctrines, and by the middle of the second century of the hijra many individuals, instead of working out independent doctrines of their own, began to follow the teaching of a recognized authority in its broad outlines, while reserving to themselves the right to differ from their master on any point of detail.\(^{19}\)

This allegiance to a master such as Abū Ḥanīfa, Abū Yūsuf, al-Shaybānī and Mālik brought about the transformation of the ancient schools of law into the Hanafi and Maliki schools. Schacht attributes the cause of this transformation to “the extensive literary activity of the followers of Abū Ḥanīfa, particularly of al-Shaybānī, in Iraq, and of the followers of Mālik in North Africa, together with other factors, some of them accidental . . .”\(^{20}\) Melchert, who accepts


\(^{19}\) Schacht, *Introduction*, 57.

Schacht’s thesis about the ‘ancient schools of law,’ writes, “In the ninth century, the old regional schools were largely redefined as personal schools; that is, collections of jurisprudents who upheld the teaching of one man.”21

Hurvitz criticizes Schacht’s thesis. First, he observes that the definition of the term ‘region’ is ambiguous: “This obfuscation of the schools’ geographical boundaries makes it difficult to treat the ‘ancient schools’ as concrete historic entities.”22 Second, he asks, what is “the nature of the bond that united members of the ‘ancient schools.’” . . . “Was it a shared legal doctrine? A common jurisprudential approach? A widely accepted intellectual and spiritual leadership?”23 As for a shared legal doctrine, he quotes Schacht’s argument and concludes that “we can eliminate the possibility that common positive doctrine (furū‘) in a given locality united the members of ‘the ancient schools’.24 After rejecting the two remaining candidates, Hurvitz writes:

Thus, the notion of transformation of madhāhib from regional to personal is problematic because there is little that substantiates the existence of regional madhāhib in the first place. The second problem with this notion of shift is that groups of masters and disciples already existed, even during 2nd/8th century.25

Hallaq expands upon Hurvitz’s argument. He maintains that a closer examination of the sources that Schacht relied on to formulate his thesis, especially the works of al-Shāfi‘ī and al-Shaybānī, reveals that when these authors refer to the Iraqis (al-’Irāqīyūn) or the Medinans (ahl al-Madīnā), they in fact refers to the doctrine of a handful of particular jurists, such as Abū Ḥanīfa, Ibn Abī Laylā and Mālik.26 Then he demonstrates that in each region, and even in each later school there was no doctrinal uniformity; individual jurists had distinct doctrines.27 “Such distinctly individual doctrines as we have

21 Melchert, *Formation*, 32.
22 Hurvitz, “School,” 43.
26 Hallaq, “From Regional,” 6–7.
enumerated pervaded the jurisprudence and law of Kufa, regarded by Schacht as the locus of a regional school.” Hallaq adds, “[N]ot one of our sources, either of the early or the later period, even hints at the presence in this city of a collective, anonymous doctrine. This is because no such doctrine ever existed.”28 He repeats, “Our evidence has shown that it is false to speak of regional, geographical schools. They simply did not exist.”29 “All that existed were individual jurists each of whom espoused a legal doctrine that had no binding authority over those who chose to adhere to, or apply, them.”30

To the extent that we rely on the biographical sources, the arguments of Hurvitz and Hallaq regarding ‘ancient schools of law’ or ‘regional schools’ are more persuasive than those of Schacht and Melchert. But the fact that different jurists in a city held different opinions does not necessarily preclude the existence of a regional school of law. To illustrate this point of view, let us take two examples.

The first example is the order of priority according to which a person may serve as guardian in marriage. The Hanafis divide the ‘asaba (the agnates, i.e. the male relatives whose relation to a person is traced without intervention of a female) of a ward into classes, which, in order of priority, are: 1. the ascendants and descendants of the ward; 2. the agnate descendants of the ward’s father; 3. the agnate descendants of the ward’s grandfather, and so on. The rule is that a higher class excludes a lower class, so that the father, who is included in the first class, excludes the brothers, who are included in the second class. The rule that determines the order of priority within each of the classes below the first class is that a descendant closer to one of the ward’s ascendants (the father, the grandfather etc.) excludes a more remote descendant. As for the first class, the earliest Hanafis are divided. Abū Ḥanīfa and Abū Yūṣuf in one version hold that a descendant excludes an ascendant, so that the son (on the condition that he is adult and sane) becomes the guardian to the exclusion of the father. Al-Shaybānī holds that an ascendant is given priority over a descendant. Abū Yūṣuf in another version

29 Hallaq, “From Regional,” 19.
maintains that the father and the son can independently conclude a marriage for the ward.\textsuperscript{31} This is therefore a case of disagreements within the Hanafi school. Nevertheless, they all give the priority to the ascendants and descendants of a ward over the other agnates. This distinguishes their doctrines from that of the Malikis, which divides the ‘āṣaba of a ward into classes, which, in order of priority, are: 1. the agnate descendants of a ward; 2. the ward’s father and his agnate descendants; 3. the ward’s grandfather and his agnate descendants, and so on.\textsuperscript{32}

The second example concerns pre-emption (\textit{shuf’a}). On the one hand, many Iraqi jurists reportedly extended the right of pre-emption to a neighbor, and Prophetic hadiths to that effect were put into circulation in Iraq.\textsuperscript{33} On the other hand, in Medina, the doctrine put into the mouth of the Prophet and some of the Companions limits the right of pre-emption to co-owners.\textsuperscript{34} Therefore, we can oppose the Iraqi doctrine to the Medinan doctrine.

Thus, with respect to positive law, existence or non-existence of a regional school depends on the level of doctrine.

The question that Schacht raised about how personal schools of law, i.e. the Hanafi and Maliki schools, came to predominate respectively in Iraq and the Hijaz deserves a closer examination. Hallaq does not present an answer to this question, but he writes instead:

But it is safe to assume that the reasons had little to do with methodological or purely juristic considerations. Given the underdeveloped nature of \textit{usûl al-fiqh} at the time, methodological consciousness was still rudimentary, at least insofar as the lower rung of the legally-interested—the followers, so to speak—were concerned. Be that as it may, there was certainly nothing in the doctrines of these leading scholars, or in their image as authority figures, to bind their followers to them.\textsuperscript{35}

\begin{thebibliography}{9}
\bibitem{Hallaq} Hallaq, “From Regional,” 20–21.
\end{thebibliography}
Admittedly, the science of *uṣūl al-fiqh* had not yet been developed in the lifetime of Abū Ḥanīfa. However, al-Khaṭṭāb al-Baghdādī cites a report that states, “If you want *āthār* or hadith, go to Sufyān, but if you want legal niceties (*daqāʿiq*), you must go to Abū Ḥanīfa.”

It is highly probable that here the perspective of later generations has been projected back to Abū Ḥanīfa. Nevertheless it is possible to imagine that the skillfulness with which Abū Ḥanīfa dealt with legal cases impressed contemporary jurists and laymen and that he was regarded as the most authoritative jurist in his time for that reason. The same holds true for Mālik, whose doctrine al-Shaybānī and al-Shāfiʿī identified with the Medinan doctrine.

I am not suggesting that Abū Ḥanīfa and Mālik themselves elaborated a whole system of law: whatever their contribution to the system may have been, part of it must have been created by other jurists active before or during their respective lifetimes. My hypothesis is twofold. First, Abū Ḥanīfa and Mālik were the authoritative representatives of the systems that later took their names, in other words, they emerged as systematizers of the existing rules that had been established prior to them. Second, the jurists active in the first decades of the eighth century, i.e. before Abū Ḥanīfa and Mālik stood out as authoritative jurists in Iraq and Medina respectively, had established the abstract rules that characterize the Islamic law of property, such as the prohibition of *riba* or the prohibition of ignorance (*jahāl*, *jahāla*) and uncertainty (*gharār*). This is to say, in the lifetime of Abū Ḥanīfa and Mālik, it is his skillfulness in applying these rules to individual cases, i.e. “legal niceties” that determined a jurist’s reputation.

I will verify the first hypothesis by examining rules governing civil liability and special types of sale, and how the earliest Hanafis and Mālik elaborated their doctrine on usurpation and the earliest Hanafis produced the concept of direct agency based on the rules governing civil liability and special types of sale respectively.

Why usurpation and direct agency? Anyone who compares the opinions and reports recorded in the *Āthārs* of Abū Yūsuf and al-Shaybānī, and in particular, in the *Muṣannafs* of ‘Abd al-Razzāq al-Ṣanʿānī and Ibn Abī Shayba, with the rules mentioned in the classical legal texts cannot help but be impressed by the diversity of these

³⁶ Cited in Juynboll, *Muslim Tradition*, 120.
opinions and reports. Although we may be tempted to posit the existence of a prototype of Islamic law that gradually grew in quality and quantity to become classical law, I maintain that a great number of the diverse opinions advanced regarding various issues disappeared at some point during the generation of the Successors and that of Abū Ḥanīfa in Iraq and of Mālik in Medina. At the same time the bulk of the rules derived from the surviving rules laid the foundation of the system of Abū Ḥanīfa or Mālik, and their followers. What brought about the disappearance of the ancient opinions was the introduction of new principles, many of which were embodied in Prophetic hadiths. As is well known, Islamic law in general, and the law of property in particular, are characterized by many stringent Divine restrictions imposed in a paternalistic vein. If these restrictions were introduced in the course of the first centuries A.H. (contrary to the traditional Muslim view), then those jurists who failed to accommodate various customary transactions to these restrictions, which were introduced because of religious considerations, would prove to be unsuccessful. To be successful, it was also necessary for jurists to establish a consistent system: if the fatwās that a jurist issued or the opinions that he transmitted to his disciples frequently contradict one another, his disciples will leave him in search of another master whose doctrine is more consistent. Making a consistent system would not have been an easy task: remember that in the end jurists elaborated the science of usūl al-fiqh to systematically deduce positive rules from the four ‘sources’ (usūl). In my view, the systems of Abū Ḥanīfa and Mālik were successful because they made it possible to achieve this difficult task. In support of this argument, I will examine the process by which the rules regulating usurpation (Chapter One) and direct agency (Chapter Two. For the definition of which, see p. 122–23) were formed and elaborated, because they seem to have been introduced as late as the first decades of the second century A.H. To substantiate this inference, let us compare the chapter headings of the Āthār and the Jāmi‘ al-ṣaghīr of al-Shaybānī. The Āthār is a collection of statements attributed to the Successors, the Companions and the Prophet. It contains numerous statements attributed to Ibrāhīm al-Nakha‘ī that were transmitted to Abū Ḥanīfa via Ḥammād b. Abī Sulaymān. The Jāmi‘ al-ṣaghīr is essentially a compendium of the doctrine of Abū Ḥanīfa, together with the opinions of Abū Yūsuf and al-Shaybānī on topics about which they disagree with Abū Ḥanīfa.
When we compare the chapter headings of the two works, we find that several topics mentioned in the Jāmi‘ al-shaghīr are not found in the Athār, such as suretyship (kafāla), transfer of debt (hawāla), agency (wakāla), acknowledgement of debt (iqrār), settlement (ṣulh), and usurpation (ghasb). Statements attributed to the Successors about suretyship, transfer of debt, acknowledgement of debt and settlement are recorded in the Muṣannaf of al-Shābānī and Ibn Abī Shayba, who record no report about agency. As for usurpation, the Muṣannaf of Ibn Abī Shayba records only one statement attributed to al-Shābī (d. 104/722–3, 105/723–4 or 109/727–8) about it:

Abū Bakr—Wakī‘—Sufyān—[Sulaymān] al-Shaybānī—al-Shābī: he said, regarding a person who took foodstuffs belonging to another person, i.e. usurped it (fī rajul akhadha ʿaṭām li-rajul, yaʾnī ghasaba-hu), “He must [return] similar one (ʿalay-hi mithlu-hu).”37

The phrase, “i.e. usurped it”, which seems to be added by Ibn Abī Shayba or one of those who figure in the isnād, may suggest that the legal concept ‘usurpation’ was introduced at some point in time. In fact, in later Hanafi and Maliki texts, hardly any statement is attributed to Successors, Companions, or to the Prophet on the subject of usurpation and direct agency. We can safely assume that the concepts of usurpation and direct agency were introduced in Iraq and Medina by the generation that followed the Successors, the youngest of whom include Qatāda (d. 117/735–6) and al-Zuhri (d. 124/741–2): in other words, these concepts were introduced shortly before Abū Ḥanīfa (b. ca. 80/699; d. 150/767) and Mālik (b. between 90 and 97/708 and 716; d. 179/795) stood out as representative jurists in their respective regions. Therefore usurpation and direct agency must have been the best tests to measure the ability of a jurist or a group of jurists who sought to create a new religious law without losing touch with social realities and the existing legal tradition. I will argue, in the first two chapters, that the rules adopted by Abū Ḥanīfa or his immediate disciples regarding usurpation and direct agency were based on existing rules that had been espoused by their Iraqi predecessors as well as inspired by norms embodied in Prophetic hadiths. I will argue also that the same is true of rules adopted by Mālik with regard to usurpation.

37 Ibn Abī Shayba, Muṣannaf, 4:559, no. 23115.
As for the second hypothesis, namely that the jurists active in the first decades of the eighth century had established the abstract rules that characterize the Islamic law of property, I will verify it, in Chapter Three, through the analysis of the prohibition of *ribā*. In the times of Abū Ḥanīfa and Mālik, the prohibition had been crystallized into Prophetic hadiths. But a closer examination of the early sources will reveal that at least part of the rules that Abū Ḥanīfa or Mālik explained as an application of the prohibition were introduced no earlier than 75/694–5 to regulate specific transactions. This indicates that these rules were abstracted to be embodied in the Prophetic hadiths in the first decades of the eighth century C.E., i.e. before Abū Ḥanīfa and Mālik stood out as authoritative jurists in their respective regions.