Introduction

According to the sharī'a, the witness must be 'adl, that is, a person of good character or morals, to qualify for evidence; his 'adāla should be substantiated by a procedure known as tazkiya or ta'dil before the witness is allowed to testify. The procedure must take place even if the defendant does not contest the witness' 'adāla. The qādī initiates the procedure which involves two phases: a secret (sirrī) investigation, carried out by sending a sealed envelope to qualified persons, and a public ('alanī) hearing, in which these persons confirm their attestation.1 Art. 1716 of the Mejelle provides that only after the witness has delivered his testimony does the qādī ask the defendant's opinion regarding the witness' 'adāla; the defendant's approval of the 'adāla is tantamount to acknowledgment of the charge against him, and the qādī renders his decision accordingly. Only if the defendant contests the witness' 'adāla or denies the charge, does the qādī start the procedure of the tazkiya.

The customary procedure of tazkiya is strongly inspired by the sharī'a procedure though with some variations intended to accommodate it to a tribal environment. The tribal qādī asks the plaintiff to provide honest and reliable people (ṣidq wa-amāna) for the tazkiya procedure. The number of the muzakkīn [muzakkūn] in matters pertaining to women's chastity ('ird) and blood (dam) is five; otherwise two muzakkīn will do. The secret inquiry is carried out by means of an exchange of sealed letters or trustworthy agents commissioned by the tribal qādī to investigate the 'adāla of the witnesses; the muzakkīn must confirm that the witness is 'adl and reliable (amīn), and that his testimony is acceptable (maqbūl al-shahāda). The public hearing of the muzakkīn is not required in the tribal tazkiya. Having undergone the test of tazkiya successfully, the main witnesses may testify on the plaintiff's version, whereupon the qadī renders his decision accordingly. The above-mentioned procedure of tazkiya is required only when the parties belong to different tribes. In that case, the procedure may be performed by the shaykh of the tribe to which the man required to take the oath belongs. When the two parties belong to the same tribe, notables of good morals (wujahāʾ uḏūl) of the witness' khamsa, blood-money group, provide collective responsibility (mas'ūliyya jamaʿiyya) and joint liability based on blood relationship (taḥāmūn qarābī) for the 'adāla of the witness; if they fail to state the truth they will bear responsibility before God. False testimony entails Islamic religious sanctions in the next world and a "collective revenge" (intiqām ijtimaʿī), that is, social sanctions in this world such as disqualification for the status of 'adl, implying thereby that their testimony will not be accepted in future.2

The document under review presents a variation of tribal customary tazkiya procedure; it pertains to an agreement concerning a land dispute over rights of ownership and demarcation between al-Taʿāmira and al-ʿUbaydiyya tribes. The parties to the agreement are shaykhs

---

2 Al-ʿAbbādī, al-adilla, 76–84, 120; al-Qusūs, 34; Abū Ḥassān, 81; 104f.; cf. Fāriq al-Muzhir Āl Firʿawn, 69 (fn. 1), 211
and leading personalities acting as representatives and agents of their respective tribes. Since the parties have no tribal or official documents by means of which they can prove their allegations, they agree that a particular individual, Darwīsh, from al-ʿUbaydiyya tribe, probably a well-known figure respected for his moral standing and integrity, be given full discretion to resolve the land dispute. Darwīsh’s decision must be backed up by an oath, the substance and wording of which are to be provided by the representatives of al-Ṭaʾāmira tribe, and be held, in accordance with tribal customary law, on a fixed date at a specified site. The truthfulness of the oath and the ʿadāla of the person under oath qualifying him for testimony must undergo a test of tazkiya by five specified individuals from al-ʿUbaydiyya tribe agreed upon by the parties. If al-ʿUbaydiyya tribe meet these conditions, the representatives of al-Ṭaʾāmira tribes undertake, on the basis of joint responsibility and liability, to abide by Darwīsh’s decision. If these conditions are not met, the disputed lands shall be divided between the two parties, al-Ṭaʾāmira being awarded twice as much as al-ʿUbaydiyya. If either party infringes the terms of the agreement, it will be liable to pay damages and a fine to the other party.

The presence of the most senior representatives of the tribal leaders of the two parties at the conclusion of the agreement, and their approach to the test of tazkiya as a means to establish land rights in accordance with custom (ʿurf, ʿāda) or tribal normative custom (sunan al-yamīn), suggest that agreements between leaders of tribes are a source for deriving basic norms of tribal customary law. It is noteworthy that no sureties were appointed to back up the implementation of the agreement, indicating perhaps that in the event of infringement of the agreement, the parties would have resorted to the civil court.

Text

True copy made on May 10, 1954 from an original written [by the copyist Mūhammad Sālim al-Dhuwayb] on April 4, 1935.4

CONTRACT OF GENERAL AGREEMENT (ʿAQD ITTIFĀQ ʿUMŪMĪ)

Between the notables (awjuh), elders (shuyūkh) and prominent persons (aʿyān) of the Bedouin (ʿurbān) tribes (qabīla) of al-Ṭaʾāmira and al-ʿUbaydiyya {5}

First Party: The shaykh, notables and prominent persons of the Bedouin and ʿashīras of al-Ṭaʾāmira: Shaykh Salāma Sulaymān, ʿAbd Allāh al-Dirāwī, Muhāmmad al-Dīk, Ḥāsan al-Qādī, Shaykh Salīm al-Waḥṣ, Shaykh Ibrāhīm al-Salāma, Mūsā al-Ḥamd, Maḥmūd Dakhl Allāh, Shaykh Ḥāsan al-Zīr, al-ʿUwayḍa al-ʿUrjān, Sālim al-Mughnim and Khalīl al-Suʿīd as the First Party and as representatives (mumaththilīn) of all the fractions and ʿashīra of al-Ṭaʾāmira and as authorized agents (nāʾibīn) for each of their members, generally (ʿumūmiyya) and specially (khusūsiyya), for purposes of the common good (masāliḥ ʿāmma).

Second Party: The shaykh, notables and prominent persons of the Bedouin and ʿashīras of al-ʿUbaydiyya: Shaykh ʿAtiyya al-Ulāyyān, Rashīd al-ʿĪd, Maḥmūd al-ʿAtiyya, Mūsā al-Muḥammad, ʿAlī Ḥāsan al-Raḍāyīda, ʿIwād al-ʿĀbd Allāh, Ḥamdān al-Muṣliḥ, Maḥmūd al-ʿArāj, Ḥusayn al-Ḥamdān and Muḥammad al-Jaddū as the Second Party and as representatives of all the fractions and ʿashīras of al-ʿUbaydiyya and as authorized agents of each member of them, generally and especially, for purposes of the common good.

4 Almost twenty years have passed since the original document was written. It may well be that the land dispute remained unresolved. The copyist of the original document added this line.