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# Usāma ibn Munqidh and Crusader Law in the Twelfth Century

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## Abstract

The major legal treatises of the Kingdom of Jerusalem all date from the thirteenth century, after the kingdom had largely been reconquered by its Muslim neighbours. There are no comparable sources for the first period of the kingdom in the twelfth century. The kingdom, evidently, did have a legal system in the twelfth century, but was it anything like the system described by the thirteenth-century texts? Is it possible to know what laws were being used, and the origins of these laws? Twelfth-century chronicles, charters, and other sources occasionally mention the courts and particular cases, but they are usually vague and lacking in detail. Of these, the most useful source is Usāma ibn Munqidh, whose observations of Frankish customs are often dismissed as unreliable jokes. However, his descriptions of crusader justice in the twelfth century are in fact surprisingly accurate when compared to the thirteenth-century legal texts. This shows that at least some of the laws and administrative offices described in the thirteenth century were already in place by the middle of the twelfth, and allows us to identify more precisely the possible influences and origins of the laws.

A difficult problem in the study of crusader law is the lack of legal texts from the twelfth century, when the Kingdom of Jerusalem was at its height. In the first period of the kingdom, from the end of the First Crusade in 1099 until the fall of Jerusalem to Saladin in 1187, there was evidently a legal system, which is occasionally mentioned in passing in the contemporary sources. The nobility participated in the *Haute Cour*, the “high court,” which dealt with questions of property ownership and inheritance among the nobles, and services owed to the king or regent. In the thirteenth century, many of these nobles wrote legal treatises, including John of Ibelin (*Le Livre des assises*), Philip of Novara (*Le Livre de forme de plait*), Geoffrey le Tor, James of Ibelin, and other authors whose texts do not survive.<sup>1</sup> There were

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<sup>1</sup> Jonathan Riley-Smith, *The Feudal Nobility and the Kingdom of Jerusalem, 1174–1277* (London, 1973), 122–24.

also “burgess” courts for the non-noble population, for which an anonymous author of the thirteenth century compiled a separate book of assizes. The burgess courts dealt with property ownership, inheritance, marriage, and criminal matters such as theft and murder; it also heard disputes between nobles and non-nobles, and had jurisdiction over the native, non-Frankish population.<sup>2</sup> Another short treatise, the *Abrégé* or the *Livres du plédéant et du plaidoyer*, was compiled in the crusader Kingdom of Cyprus in the fourteenth century.<sup>3</sup>

There are no such treatises for the twelfth century. No source describes the workings of either the high court or the burgess courts, or the origins of the kingdom’s laws. The treatises of John of Ibelin and Philip of Novara claim that the courts were founded by Godfrey of Bouillon after the First Crusade, but this is probably a thirteenth-century legend.<sup>4</sup> The earliest surviving laws, the canons of the Council of Nablus, date from 1120, but they may not have applied to the entire kingdom, and may not have had any influence on later crusader law.<sup>5</sup> There must have been some sort of legal system from the early days of the kingdom but, with no twelfth-century treatises comparable to those of the thirteenth, it is difficult to describe how it might have worked and what laws it might have used. Is it possible, using other sources, to demonstrate how the twelfth-century system worked, and what relationship it had to the laws recorded in the thirteenth century?

Maurice Grandclaude attempted to date the oldest assizes using the evidence of the assizes themselves, and compiled a list of laws that most likely dated from the twelfth century.<sup>6</sup> Joshua Prawer noted that the assizes of the burgess court borrowed heavily from the twelfth-century Provençal *Lo Codi*, but these borrowings occurred when the burgess assizes were written down in the thirteenth century.<sup>7</sup> For further evidence of the origins and development of crusader law, it is also possible to look beyond the assizes, in chronicles and other narrative accounts.

One source that has so far never been examined this way, although it is otherwise well-known to historians of the crusades, is the *Kitāb al-ītibār* of the poet, adventurer, and occasional diplomat Usāma ibn Munqidh (1095–1187). Usāma visited the kingdom many times in the mid-twelfth century, and in various parts of his *Kitāb* he recorded his observations on crusader or “Frankish” society, including examples of crusader justice. The *Kitāb* was written in the 1180s, when Usāma

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<sup>2</sup> Marwan Nader, *Burgesses and Burgess Law in the Latin Kingdoms of Jerusalem and Cyprus (1099–1325)* (Aldershot, 2006), 150; John L. La Monte, *Feudal Monarchy in the Latin Kingdom of Jerusalem* (Cambridge, 1932; repr. New York, 1970), 106–09.

<sup>3</sup> Joshua Prawer, *Crusader Institutions* (Oxford, 1980; repr. Oxford, 1998), 252–53.

<sup>4</sup> Peter W. Edbury, “Law and Custom in the Latin East: *Les Letres dou Sepulcre*,” *Mediterranean Historical Review* 10 (1995): 72–73 [= idem, *Kingdoms of the Crusaders: From Jerusalem to Cyprus* (Aldershot, 1999), no. IX].

<sup>5</sup> Benjamin Z. Kedar, “On the Origins of the Earliest Laws of Frankish Jerusalem: The Canons of the Council of Nablus,” *Speculum* 74 (1999): 330–31; Nader, *Burgesses and Burgess Law*, 45.

<sup>6</sup> Maurice Grandclaude, “Liste des assises remontant au premier royaume de Jérusalem (1099–1187),” in *Mélanges Paul Fournier* (Paris, 1929), 329–45.

<sup>7</sup> Prawer, *Crusader Institutions*, 358–90.

was about 80 years old, and the book often gives the impression that he was a rambling old man whose anecdotes are jokes or fabrications. The anecdotes are not arranged chronologically, but often jump forward or backward in time as Usāma is reminded of other, similar experiences. This work is especially difficult to follow if it is read as an autobiography, as suggested by Philip Hitti's translation of the title as "memoirs."<sup>8</sup> It is, rather, a collection of stories taken from Usāma's own life, following a particular style of Arabic literature in which anecdotes are used to illustrate the ideal behaviour of proper Muslims.<sup>9</sup> This literary style, *adab*, is not required to follow a consistent chronology, and thus Usāma organized his stories by common themes, regardless of the time periods in which the stories actually took place.<sup>10</sup>

Since the behaviour of the Franks is meant to contrast with that of good Muslims, the stories could very well be made up and attributed to stereotypically ill-behaved foreigners, the neighbouring crusaders with whom Usāma's audience would have already been familiar. It is therefore customary for historians to warn against using Usāma as a source. Hartwig Derenbourg, who discovered the only known manuscript of the *Kitāb* in 1880, was disappointed that Usāma did not treat his subjects more seriously, and believed that Usāma had no insight into Christian–Muslim relations.<sup>11</sup> Paul Cobb, the most recent translator of the *Kitāb*, writes that, although he can be a valuable source, "historians who accept Usāma's anecdotes, jokes and twice-told tales as truth do so at their own peril,"<sup>12</sup> and states that Usāma's "contribution to our general knowledge of the culture of the European settlers in the Levant should not be exaggerated."<sup>13</sup> According to Carole Hillenbrand, it would be "dangerously misleading to take the evidence of his book at its face value."<sup>14</sup> Robert Irwin notes that Usāma was "not writing to provide ... infidel historians with accurate documentary information about Christian–Muslim relations in the twelfth century."<sup>15</sup>

But we should not be so quick to dismiss him, or at least his observations of the Frankish legal system. Usāma mentions three examples of Frankish justice: a case of theft that led to a judicial duel; a case of theft and murder that led to a trial by water; and a complaint against a Frankish lord who had stolen sheep from Muslim territory.

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<sup>8</sup> *An Arab-Syrian Gentleman and Warrior in the Period of the Crusades: Memoirs of Usāmah ibn-Munqidh*, trans. Philip K. Hitti (New York, 1929).

<sup>9</sup> Robert Irwin, "Usamah ibn Munqidh: An Arab-Syrian Gentleman at the Time of the Crusades Reconsidered," in *The Crusades and their Sources: Essays Presented to Bernard Hamilton*, ed. John France and W. G. Zajac (Aldershot, 1998), 73–74.

<sup>10</sup> *The Book of Contemplation: Islam and the Crusades*, trans. Paul Cobb (London, 2008), xxxi.

<sup>11</sup> Hartwig Derenbourg, *Ousama ibn Mounkidh, un emir Syrien au premier siècle des croisades (1095–1188)* (Paris, 1889), 497.

<sup>12</sup> Paul Cobb, *Usama ibn Munqidh, Warrior-Poet in the Age of Crusades* (Oxford, 2005), 69.

<sup>13</sup> *The Book of Contemplation*, xxxi.

<sup>14</sup> Carole Hillenbrand, *The Crusades: Islamic Perspectives* (New York, 2000), 260.

<sup>15</sup> Irwin, "Usamah ibn Munqidh," 73.

The judicial duel took place while Usāma was in the kingdom on a diplomatic mission from the *atabeg* of Damascus, Mu‘īn ad-Dīn Unur (r. 1138–49).<sup>16</sup> Usāma saw the duel while in Nablus to meet with Fulk, king of Jerusalem (r. 1131–43). According to the story, one peasant had accused another of helping some thieves rob a village near Nablus. The accused man fled, but returned when the king took his children as hostages. He asked the king to “grant justice” to him, and challenged his accuser to a duel. The challenge was accepted, but the peasant who had made the accusation did not have to fight. The king instead ordered the lord of the village to find a suitable combatant; a blacksmith was chosen, so that the lord would not lose any of his valuable farmers.<sup>17</sup> The blacksmith was strong but cowardly, and the accused was a feisty old man. Usāma describes the duel:

Then the *vicomte* came – he is the governor of the town – and gave each one of the duellists a staff and a shield and arranged the people around them in a circle. The two men met. The old man would press the blacksmith back until he pushed him away as far as the circle of people, then he would return to the centre. They continued exchanging blows until the two of them stood there looking like pillars spattered with blood. The whole affair was going on too long and the *vicomte* began to urge them to hurry, saying, “Be quick about it!” The blacksmith benefited from the fact that he was used to swinging a hammer, but the old man was worn out. The blacksmith hit him and he collapsed, his staff falling underneath his back. The blacksmith then crouched on top of him and tried to stick his fingers in the old man’s eyes, but couldn’t do it because of all the blood. So he stood up and beat the man’s head in with his staff until he had killed him. In a flash, they tied a rope round the old man’s neck, dragged him off and strung him up.<sup>18</sup>

Many historians have commented on this story, but none seems to have realized its significance for the kingdom’s legal history. Derenbourg described the events and the people involved, and noted the judicial functions of the viscount, but made no connection to specific crusader laws. As far as he was concerned, Usāma was only making fun of the Franks and their uncivilized legal system.<sup>19</sup> John L. La Monte mentioned the case as well, but despite his work on crusader law he also made no connection to specific assizes.<sup>20</sup> Ronnie Ellenblum used the case as evidence for his thesis that Muslims and Christians lived apart in this area of the kingdom.<sup>21</sup> Most recently, Marwan Nader has mentioned that Usāma accurately described the role of the viscount and the outcome of the duel, but he did not elaborate on this point.<sup>22</sup>

<sup>16</sup> Around 1138 (Irwin, “Usamah ibn Munqidh,” 78) or 1139 (Hans E. Mayer, “Studies in the History of Queen Melisende of Jerusalem,” *Dumbarton Oaks Papers* 26 (1972): 123).

<sup>17</sup> *The Book of Contemplation*, 151 [= *Usāmah’s Memoirs: Entitled Kitāb al-ʿIṭibār*, ed. Philip K. Hitti (Princeton, 1930), 138–39].

<sup>18</sup> *The Book of Contemplation*, 151–52 [= *Usāmah’s Memoirs: Entitled Kitāb al-ʿIṭibār*, 139].

<sup>19</sup> Derenbourg, *Ousama ibn Mounkidh*, 188, 476–79.

<sup>20</sup> La Monte, *Feudal Monarchy*, 111.

<sup>21</sup> Ronnie Ellenblum, *Frankish Rural Settlement in the Latin Kingdom of Jerusalem* (Cambridge, 1998), 246–47.

<sup>22</sup> Marwan Nader, “Urban Muslims, Latin Laws, and Legal Institutions in the Kingdom of Jerusalem,” *Medieval Encounters* 13 (2007): 254.

Some of Usāma's details can be verified from other sources. King Fulk is well known, and is mentioned by Usāma on numerous other occasions. The lord of the village is not named, but he could be Rohard, viscount of Jerusalem, who owned land around Nablus.<sup>23</sup> Rohard was often part of Fulk's retinue, and was among the witnesses to a charter issued by Fulk in Nablus in 1138,<sup>24</sup> around the same time as the Damascene embassy. The viscount of Nablus is Ulric, who held that office from approximately 1115 to 1152,<sup>25</sup> and was also a member of Fulk's retinue. His presence at the duel and his title are quite significant to the story.

Usāma transliterated the Old French "*visconte*" as "*biskund*," but translated it as the Arabic title "*shihna*." This title originally referred to Seljuk military administrators in the Abbasid caliphate, but by the twelfth century it was usually the chief administrative office of a city.<sup>26</sup> Usāma must have been familiar with the office of the *shihna* of Damascus during his time there; the Damascene chronicler Ibn al-Qalānisi mentions Yūsuf ibn Fīrūz, who was *shihna* in the 1120s and 1130s, slightly before Usāma's time.<sup>27</sup> Saladin may also have been *shihna* of the city in 1156, according to a quotation of Ibn Abī Tayy by Abū Shāma.<sup>28</sup> Abū Shāma also noted that, when the crusaders invaded Egypt in 1168, they established *shihnas* in Fustāt and Cairo.<sup>29</sup>

The duties of a typical *shihna* included "preservation of public order, security on the roads and the suppression of bandits and robbers," and he had a police force and a court to judge local criminals.<sup>30</sup> He also carried out the decisions of the religious court of the *qādī*, and ensured that other officials such as tax collectors were able to fulfil their own duties; although a military governor, "he was concerned merely with the maintenance of order."<sup>31</sup> The Andalusian pilgrim Ibn Jubayr attributes a speech to Saladin in which the sultan calls himself the "*shihna* of the law," who carries out judgements but does not create them. As there was no such office in Andalusia,

<sup>23</sup> C. K. Slack, "Royal *familiares* in the Latin Kingdom of Jerusalem," *Viator* 22 (1991): 27–30.

<sup>24</sup> Hans E. Mayer, ed., *Die Urkunden der Lateinischen Könige von Jerusalem*, in MGH, *Diplomata Regum Latinorum Hierosolymitanorum*, 4 vols. (Hanover, 2010), 1:322–23, no. 139 [= *RRH*, 45, no. 181]. The charter otherwise deals with a grant of land to the Church of the Holy Sepulchre in Jerusalem.

<sup>25</sup> John L. La Monte, "The Viscounts of Naplouse in the Twelfth Century," *Syria* 19 (1938): 272.

<sup>26</sup> P. M. Holt, *The Age of the Crusades: The Near East from the Eleventh Century to 1517* (London, 1986), 70.

<sup>27</sup> *The Damascus Chronicle of the Crusades, Extracted and Translated from the Chronicle of Ibn al-Qalanisi*, trans. H. A. R. Gibb (London, 1932; repr. 2002), 237–38 [= Ibn al-Qalanisi, *History of Damascus*, ed. H. F. Amedroz (Leiden, 1908), 224].

<sup>28</sup> M. C. Lyons and D. E. P. Jackson, *Saladin: The Politics of the Holy War* (Cambridge, 1982), 10. They cite Abu Shama, *Kitāb al-Rawḍatayn*, ed. M. Hilmi M. Ahmad (Cairo, 1956), 1:100, although it is actually on 250–51. The account does not seem to be in the *RHC* edition. See also al-Zaybaq's edition: Abu Shama, *Kitāb al-Rawḍatayn fī akhbār al-dawlatayn al-Nūrīyah wa-al-Ṣalāhīyah*, ed. Ibrahim al-Zaybaq, 5 vols. (Beirut, 1997), 1:318–19.

<sup>29</sup> Abu Shama, *Kitāb al-Rawḍatayn*, ed. al-Zaybaq, 2:37 [= *RHC Oc* 4:112].

<sup>30</sup> Ann K. S. Lambton, "Shihna," *Encyclopaedia of Islam*, 2nd ed., 13 vols. (Leiden, 1960–2009), 9:437.

<sup>31</sup> Ann K. S. Lambton, "The Internal Structure of the Saljuq Empire," in *The Cambridge History of Iran*, vol. 5, *The Saljuq and Mongol Periods*, ed. John Andrew Boyle (Cambridge, 1968), 244–45.

Ibn Jubayr helpfully defines the term as “*ṣaḥīb ash-shurṭa*,” or “chief of police.”<sup>32</sup> The *shurṭa* was responsible for punishing crimes such as theft, false accusations, fornication, and drunkenness: that is, things that were not quite “religious” crimes but were nevertheless forbidden by the Qurʾān.<sup>33</sup>

Compared with the description in the thirteenth-century burgess assizes and the fourteenth-century *abrégé*, the viscount and the *shihna* seem to have had essentially the same duties.<sup>34</sup> According to these texts, the viscount, also referred to as the *bailli*, was appointed as head of the burgess court by the king. He was responsible for defending the laws of the kingdom, for hearing statements from both accuser and accused, and for dispensing justice accordingly.<sup>35</sup> The *abrégé* added that he was responsible for patrolling the streets of his town to prevent crimes, arresting any criminals he might find, delivering them to the proper court (depending on their social status and their crime), and judging them in his own court if the crimes fell within his jurisdiction. Like the *shihna*, he was also responsible for ensuring that taxes were collected and delivered to the king.<sup>36</sup> Indeed, one thirteenth-century *bailli* was recorded carrying out these police and juridical duties: Geoffrey of Sargines hanged numerous criminals during his tenure in Acre around 1260, including a knight who was arrested by Geoffrey’s police force in Acre after killing a bishop on Cyprus.<sup>37</sup> Usāma’s translation of “viscount” as “*shihna*” suggests that the viscount already had these duties in the mid-twelfth century.<sup>38</sup>

According to a list included in the legal treatise of John of Ibelin, Nablus also had both a high court and a burgess court.<sup>39</sup> Nablus was part of the royal domain in the twelfth century and the *Haute Cour* certainly met there, but neither court existed there when John was writing in the mid-thirteenth century, as Nablus was under Muslim control at the time. Peter Edbury has argued that John based his list of courts on a different list of places that had owed military service before 1187, and that the list of courts itself may not date from the twelfth century.<sup>40</sup> Nevertheless,

<sup>32</sup> *The Travels of Ibn Jubayr*, trans. Roland Broadhurst (London, 1952), 312 [= *The Travels of Ibn Jubayr*, ed. William Wright, 2nd ed. rev. by M. J. de Goeje (London, 1907), 298].

<sup>33</sup> Émile Tyan, *Histoire de l’organisation judiciaire en pays d’Islam*, 2nd ed. (Leiden, 1960), 566–71.

<sup>34</sup> Jonathan Riley-Smith, “Some Lesser Officials in Latin Syria,” *The English Historical Review* 87 (1972): 3.

<sup>35</sup> Édouard H. Kausler, ed., *Les Livres des Assises et des Usages dou Reaume de Jerusalem sive Leges et Instituta Regni Hierosolymitani* (Stuttgart, 1839) [hereafter cited as Kausler], 46–48, chs. 4–6 [= *RHC Lois*, 2:22–24, chs. 4–6].

<sup>36</sup> A. A. Beugnot, ed., *Abrégé du Livre des Assises de la Cour des Bourgeois*, in *RHC Lois* 2:239–41, ch. 7.

<sup>37</sup> *Gestes des Chiprois*, ed. Gaston Raynaud (Geneva, 1887), par. 122, pp. 35–37, pars. 297–98, p. 160. Geoffrey was also *bailli* in the other sense of the word. He had been left in charge of the French garrison in Acre by Louis IX, and was the lieutenant on the mainland for the regent, Queen Plaisance of Cyprus, who was herself regent for the absentee king, Conradin.

<sup>38</sup> As Riley-Smith has already noted, the viscount had certainly taken over the role of the *shihna* and the *shurṭa* by the thirteenth century: Riley-Smith, *Feudal Nobility*, 88–89.

<sup>39</sup> John of Ibelin, *Livre des Assises*, ed. Peter W. Edbury (Leiden, 2003), 603, ch. 236.

<sup>40</sup> Peter W. Edbury, *John of Ibelin and the Kingdom of Jerusalem* (Woodbridge, 1997), 130–31, 157.

Prawer noted that burgess courts existed elsewhere in the kingdom in the twelfth century: the viscount of Jerusalem and a number of burgesses witnessed the sale of some property as early as 1125,<sup>41</sup> and a court is mentioned again in charters and confirmations of property transactions dating from 1149, by which time Prawer believed the burgess court was “already fully composed and functioning.”<sup>42</sup> It would not be unusual, therefore, if a burgess court was functioning by this time in Nablus as well, although Usāma does not specifically mention one.<sup>43</sup>

The burgess assizes list theft as one of the matters over which someone might be brought before the court.<sup>44</sup> Although we do not know what happened to the actual thieves in Usāma’s story, the assizes also require anyone who catches a thief to bring him before the court, along with the stolen goods. If this person lets the thief go, he will be considered as guilty as the thief and will suffer the same punishment.<sup>45</sup> The same is true for anyone who associates or conspires with a thief, including anyone who gives assistance to a Muslim thief.<sup>46</sup> Since the old peasant man helped the thieves escape, according to these assizes he would have been legally responsible for the theft.

The burgess assizes also deal with judicial combat. In most cases the assizes assume that the accuser will challenge the accused to a duel,<sup>47</sup> but the accused could also challenge his accuser.<sup>48</sup> The assizes are vague on the details of appointing a replacement combatant (a “champion”), but all the major legal treatises agree that a wounded man or a man over the age of sixty can appoint a replacement.<sup>49</sup> The burgess assizes are more detailed about events after a duel was called. If the combatants were unable to provide their own equipment, the court would equip them. This included food and drink, but also the necessities for the duel: a staff,

<sup>41</sup> Prawer, *Crusader Institutions*, 265; *RRH*, 27, no. 110.

<sup>42</sup> Prawer, *Crusader Institutions*, 272; *RRH*, 64, no. 255; Mayer, *Urkunden*, 353–54, no. 175 [= *RRH*, 64–65, no. 256].

<sup>43</sup> Nablus may have also had a *Cour des Syriens* for disputes among the Muslims and native Christians. This is inferred from the presence of a “*ra’is*” there in the 1170s, as the *ra’is* was normally in charge of these courts (Riley-Smith, *Feudal Nobility*, 90; *Cart Hosp*, 362–64, nos. 530–32; Mayer, *Urkunden*, 627–28, no. 361 [= *RRH Add*, 30, no. 513a]). Although Usāma says the thieves were Muslims, he does not mention the religion or ethnicity of the villagers who helped them; Hitti’s translation, that the combatants were Franks (*An Arab-Syrian Gentleman and Warrior*, 167), is not supported by the Arabic. In any case, if a *Cour des Syriens* existed in the 1130s, it would not have been involved in this matter, as all criminal cases, even those involving non-Latins, had to be brought to the burgess court.

<sup>44</sup> Kausler, 59–60, ch. 23 [= *RHC Lois*, 2:32, ch. 23].

<sup>45</sup> Kausler, 289–90, ch. 240 [= *RHC Lois*, 2:184, ch. 245].

<sup>46</sup> Kausler, 299, ch. 213 (Venice manuscript) [= *RHC Lois*, 2:187–88, ch. 250]. This could have been what happened in Usāma’s story, if the thieves were Muslim.

<sup>47</sup> For example, someone who is accused of assault, but denies it, should remain in prison for a year and a day, and can be challenged by the accuser or his relatives during that time: Kausler, 315–17, ch. 260. [= *RHC Lois*, 2:201–02, ch. 266].

<sup>48</sup> Kausler, 317–18, ch. 261 [= *RHC Lois*, 2:202–03, ch. 267].

<sup>49</sup> Kausler, 163–64, ch. 145 [= *RHC Lois*, 2:101, ch. 148]; John of Ibelin, *Livre des Assises*, 250, ch. 93; Geoffrey Le Tort, *RHC Lois*, 1:441, ch. 23; James of Ibelin, *RHC Lois*, 1:459, ch. 18; Philip of Novara, *Le Livre de forme de plait*, ed. and trans. Peter W. Edbury (Nicosia, 2009), 44, ch. 10 [= *Livre de Philippe de Navarre*, *RHC Lois*, 1:483, ch. 10].

shield, and red-coloured clothing and shoes. The combatants could be provisioned for up to 40 days while preparing for the duel.<sup>50</sup> At the beginning of the duel, the two combatants would make one last attempt at reconciliation. If they could not reconcile, the accuser would swear on the Gospels that his accusation was true, and the accused would likewise swear that it was false. Afterwards the combatants would be given their shield and staff, and would be placed in a field at midday, so that the position of the sun would not give either side an unfair advantage. They could each make a statement if they wished, and then the duel would begin, with each combatant attacking each other simultaneously. The loser, whether he was alive or dead, would be taken away and hanged.<sup>51</sup>

Usāma's story is, admittedly, not a perfect match with the assizes. He does not mention a specific court, and the theft, accusation, and combat seem to take place within a single day. There is no attempted reconciliation, or swearing of oaths. It is possible that he omitted, or forgot, some of the details, or perhaps the rules for judicial combat were not yet exactly as recorded in the thirteenth century. Perhaps more likely, however, is that Fulk intervened, as he had done a few years earlier in 1134, when count Hugh II of Jaffa was accused of treason, challenged to a duel, and sentenced by the high court *in absentia*. In that case, Fulk was trying to get rid of a troublesome vassal.<sup>52</sup> Likewise, according to Usāma, Fulk allowed the accuser to be replaced with a champion, so that the local lord would not lose a valuable labourer. Even a century later, at a time when the assizes, at least those of the high court, were being, or had already been, written, they were not necessarily being followed to the letter. Philip of Novara, a chronicler and a jurist, describes a duel that follows the assizes almost exactly, but again the regent of Jerusalem intervened, in this case to force the two sides to reconcile rather than allow them to fight to the death.<sup>53</sup> Politics was sometimes more important than the law, even in the more legal-minded thirteenth century.

The actual combat in Usāma's story does closely match the assizes. The viscount equipped each combatant with a staff and a shield, as required for a duel between non-nobles (who would have used swords and lances). Perhaps food and drink were also provided to the combatants, as Usāma mentions that the blacksmith frequently asked for a drink. The combatants then attacked each other simultaneously. Usāma observed that the duel went on for a long time and the viscount told the combatants

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<sup>50</sup> Kausler, 323–24, ch. 266 [= *RHC Lois*, 2:206, ch. 273]. John of Ibelin gives a similar description for combat between non-knights: John of Ibelin, *Livre des Assises*, 252, ch. 95.

<sup>51</sup> Kausler, 325–27, ch. 268 [= *RHC Lois*, 2:207–08, ch. 275].

<sup>52</sup> Mayer, "Studies in the History of Queen Melisende of Jerusalem," 110. Hugh's story is found in WT, 14.15–17, p. 651.

<sup>53</sup> Filippo da Novara, *Guerra di Federico II in Oriente (1223–1242)*, ed. and trans. Silvio Melani (Naples, 1994), par. 22(117), pp. 78–82 [= *Gestes des Chiprois*, par. 122, pp. 35–37]. The story also appears in the fifteenth-century Venetian translation and expansion of Philip's chronicle known as the *Chronicle of Amadi*; René de Mas Latrie, ed., *Chroniques d'Amadi et Strambaldi*, vol. 1: *Chronique d'Amadi* (Paris, 1891), 121–23. The regent of Jerusalem at the time was John of Ibelin, uncle of the jurist of the same name; the king, Holy Roman Emperor Frederick II, had not yet arrived in the kingdom.

to hurry; the assizes say that a duel should start at midday when the sun cannot give either side an advantage, so perhaps by this point the sun had noticeably changed position. The outcome of the duel follows the assizes exactly: the defeated man, in this case the accused, was taken away and hanged, even though he had already been killed.

The second case mentioned by Usāma was one that he did not personally witness. While he was in Nablus with Muʿīn ad-Dīn, apparently during the same visit around 1138, they met a blind Muslim man who wished to enter Muʿīn ad-Dīn's service. The man's mother had been married to a Frank, whom she later killed. The man and his mother also attacked, robbed, and killed Christian pilgrims, but the man was caught and was put on trial. He was tied up and thrown into a cask of water; as Usāma explained, if he was innocent he would sink, and if guilty he would float. The man tried to make himself sink, but he could not, so he was pronounced guilty and was blinded. Although the man now wanted to join the army in Damascus, Muʿīn ad-Dīn instead had someone teach him the Qurʾān and jurisprudence.<sup>54</sup> Nader also briefly mentioned this case as an example of Usāma's familiarity with crusader law.<sup>55</sup>

As with the first anecdote, the basis of the story is theft. In this case the man and his mother were specifically attacking pilgrims, who were a frequent target in the twelfth century.<sup>56</sup> Thieves mentioned in the contemporary sources were usually organized bandits, and usually dealt with through military expeditions, but there is one Muslim source that mentions petty Muslim thieves. Ḍiyāʾ ad-Dīn al-Maqdisī recounts a story in which a *shaykh* discovers a thief inside a house, and warns him against continuing his life of crime. "Some time later," the man was captured by the Franks and killed.<sup>57</sup> Ḍiyāʾ ad-Dīn did not witness this, as he was writing in Damascus and recording the memories of his ancestors who had left the Nablus area in the 1160s,<sup>58</sup> but the story may indicate that Muslim thieves could be arrested

<sup>54</sup> *The Book of Contemplation*, 152–53 [= *Usāmah's Memoirs: Entitled Kitāb al-Ftibār*, 139–40].

<sup>55</sup> Nader, "Urban Muslims", 254.

<sup>56</sup> The presence of thieves in the kingdom, Christian and Muslim, is attested by Usāma himself (*The Book of Contemplation*, 139–42 [= *Usāmah's Memoirs: Entitled Kitāb al-Ftibār*, 127–29]), and by numerous other sources, such as Fulcher of Chartres in 1101 (FC, 2.4.2–3, pp. 373–74), the English pilgrim Saewulf around 1103 (R. B. C. Huygens, ed., *Peregrinationes tres: Saewulf; Iohannes Wirziburgensis, Theodericus*, *Corpus Christianiorum Continuatio Mediaevalis* 139 (Turnhout, 1995), 63–64), and the Kievan monk Daniel around 1106 (C. W. Wilson, ed., *The Pilgrimage of the Russian Abbot Daniel to the Holy Land, 1106–1107 A.D.* (London, 1888), ch. 51, p. 42; ch. 56, p. 50; ch. 88, p. 69). Later in the century, brigands were reported by the anonymous author of the *Tractatus de locis et statu sancte terre ierosolimitane* in the 1170s (Benjamin Z. Kedar, "The *Tractatus de locis et statu sancta terre ierosolimitane*," in *The Crusades and their Sources*, 131), William of Tyre in 1178–79 (WT, 21.25(26), pp. 997–98), and Ibn Jubayr in 1184 (*The Travels of Ibn Jubayr*, trans. Broadhurst, 315 [= *The Travels of Ibn Jubayr*, ed. Wright, 300]).

<sup>57</sup> Daniella Talmon-Heller, "The Cited Tales of the Wondrous Doings of the Shaykhs of the Holy Land by Ḍiyāʾ al-Dīn Abu ʿAbd Allah Muhammad b. Abd al-Wahid al-Maqdisi (569/1173–643/1245): Text, Translation, and Commentary," *Crusades* 1 (2002): 139; Arabic text, *ibid.*, 122.

<sup>58</sup> Benjamin Z. Kedar, "The Subjected Muslims of the Frankish Levant," in *The Crusades: The Essential Readings*, ed. Thomas Madden (Oxford, 2002), 237 [originally in *Muslims Under Latin Rule, 1100–1300*, ed. James M. Powell (Princeton, 1990), 141].

and tried by Frankish authorities. Indeed, the punishment in the burgess assizes for those who were caught stealing a second time is hanging.<sup>59</sup>

Unfortunately Usāma had no more to say about the thieves in the first anecdote, but he does note that the man in the second story was caught and put on trial, although apparently for murder, not theft. He was subjected to a trial by water, which is mentioned only twice in the burgess assizes, but in both cases as a method of proving murder. One assize calls for trial by water when someone is accused of murder by the relatives of the victim; if he is found guilty he would be hanged, but if not, then he would still be imprisoned for a year and a day.<sup>60</sup> The other says that if someone buries a body inside his house, the body should be dug up and examined; if there are signs of violence and the owner of the house is suspected of murder, he would undergo a trial by water, and would be buried alive if found guilty.<sup>61</sup>

As with the judicial duel, the ordeal of water is not quite an exact match with the burgess assizes. Usāma may not have known all the details, since he did not witness the events himself, but he was correct about the circumstances in which the ordeal could be used. He was also correct that a guilty man was supposed to float. This was apparently so well known (at least to Europeans) that references to the ordeal rarely mention what was supposed to happen to the accused, whether guilty or innocent. The two burgess assizes do not mention it, nor, for example, do the twelfth-century English Assizes of Clarendon and Northampton, which agree that the ordeal should be used in cases of murder and theft.<sup>62</sup> A few medieval authors confirm that a guilty man would float, usually in passing while discussing the other implications of the ordeal; for example, Hincmar of Reims in the ninth century,<sup>63</sup> Peter Cantor in the twelfth century,<sup>64</sup> and the *Liber Augustalis*, a Sicilian legal code written around the same time as the burgess assizes in the thirteenth century.<sup>65</sup>

The burgess assizes do not mention blinding as a punishment, but in a similar case in England in the 1170s, a thief failed the ordeal of water and was blinded and castrated.<sup>66</sup> Perhaps blinding was also used as a punishment in twelfth-century

<sup>59</sup> Kausler, 348–49, chs. 291–92 [= *RHC Lois*, 2:223, chs. 298–299].

<sup>60</sup> Kausler, 314–15, ch. 259 [= *RHC Lois*, 2:200, ch. 265].

<sup>61</sup> Kausler, 338–39, ch. 278 [= *RHC Lois*, 2:216, ch. 285].

<sup>62</sup> *Chronica magistri Rogeri de Houedene*, ed. William Stubbs, 4 vols. (London, 1869), 2:248–50.

<sup>63</sup> Hincmar von Reims, *De divortio Lotharii regis et Theutbergae reginae*, Responsio 6, ed. Letha Böhringer, MGH, *Concilia 4, Supplementum 1* (Hanover, 1992), 156. Hincmar approved of the ordeal and believed God would not allow the water to accept a guilty man.

<sup>64</sup> *Petri Cantoris Verbum abbreviatum*, ed. George Galopin, PL (Paris, 1855), 205:227–28 and 233, ch. 78. Peter did not approve of the ordeal, because it was tantamount to blasphemy, effectively tempting God.

<sup>65</sup> *Die Konstitutionen Friedrichs II. für das Königreich Sizilien*, ed. Wolfgang Stürmer, MGH, *Constitutiones et Acta Publica Imperatorum et Regum*, vol. 2, supp. (Hanover, 1996), bk. 2, ch. 31, p. 337. The *Liber Augustalis* forbade the ordeal of water, reasoning that both the guilty and the innocent were buoyant because of the air inside their bodies.

<sup>66</sup> William of Canterbury, *Miracula Sanctae Thomae Cantuariensis*, in *Materials for the History of Thomas Becket*, ed. James Craigie Robertson, 7 vols. (London, 1875; repr. Wiesbaden, 1965), 1:157. No date is given, but the man's eyesight was supposed to have been miraculously restored by Becket, so it must have happened after Becket's murder.

Jerusalem, but fell out of use before the assizes were written down. Otherwise, Usāma correctly described an ordeal of water, which in its basic details matches both the later burgess assizes and other examples of European ordeals. Since there was nothing comparable in Islamic law – and, as with the previous anecdote, Usāma was more interested in the apparent barbarism of the Franks than in recording accurate details for the historical record – the story suggests that these assizes, or an early form of them, must already have been in use.

In both of these stories, Usāma described the proceedings as “*fiqh*,” which normally refers to the science of Islamic jurisprudence, and “*ḥukm*” and derivative words, meaning legal judgements or administration of justice in general. Although he was certainly mocking the strangeness of Frankish justice, he nevertheless seems to have recognized it as a rational legal system. In fact, he was not always so hostile to the Frankish system, at least when describing the high court, which he presents more positively in a third anecdote.

Around 1140, after the treaty between Damascus and Jerusalem had been concluded, Usāma was involved in a dispute with the Frankish lord of Banias, who had stolen some flocks of sheep from Muslim territory.<sup>67</sup> Although the flocks were returned, some of the sheep were lost. Usāma asked for compensation from King Fulk, who ordered “six or seven” of his knights to come to a decision about the case. They decided that the lord should pay for the lost sheep, and Usāma was compensated with 400 dinars. Usāma observed that the knights were “the masters of legal reasoning, judgement, and sentencing.”<sup>68</sup>

Once again, Usāma’s observations were accurate. The “six or seven” knights were exercising their right to participate and pass judgement in the high court. William of Tyre also mentioned knights passing judgement in the court when Hugh II of Jaffa was accused of treason in 1134,<sup>69</sup> and in 1174 when a Templar was arrested for killing an Assassin ambassador.<sup>70</sup> The judicial role of the knights is also mentioned in the thirteenth-century treatises; John of Ibelin listed the investigation and judgement of crimes and disputes among the services they owed to their lord,<sup>71</sup> and Geoffrey le Tor wrote that knights were obliged to make judgements and support each other’s decisions.<sup>72</sup>

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<sup>67</sup> Renier Brus, although Usama does not name him specifically. Banias had been captured by Zengi a few years earlier, and a joint army from Jerusalem and Damascus recaptured it in 1140. It was then handed back to Renier. The siege takes up much of book 15 in William of Tyre’s chronicle (WT, 15.7–11, pp. 684–91).

<sup>68</sup> *The Book of Contemplation*, 76–77 [= *Usamah’s Memoirs: Entitled Kitāb al-ʿIṭibār*, 64–65].

<sup>69</sup> WT, 14.15–17, pp. 652–54.

<sup>70</sup> WT, 20.30, pp. 954–55.

<sup>71</sup> John of Ibelin, *Livre des Assises*, 481–83, ch. 187.

<sup>72</sup> Geoffrey le Tor, *RHC Lois*, 1:448, ch. 15.

## Conclusion

The questions of Usāma's reliability, and of the origin of the burgess assizes, are partially solved by Usāma himself. His anecdotes take real people, places, and events and set them in a literary context; they are intended to show that the Franks are unsophisticated and uncultured. Nevertheless, these twelfth-century accounts match up very well with the Frankish laws of the following century. Beneath his exaggerations and jokes, Usāma seems to be a reliable witness for the legal system of crusader Jerusalem.

If some of the burgess assizes were already in use, then they must have had another source in addition to the twelfth-century Provençal *Lo Codi*, from which Praver identified the origins of a few laws and perhaps the overall organization of the treatise. But *Lo Codi* does not discuss the role of a viscount in the legal system, nor does it contain any provisions for judicial ordeals. It was based entirely on Roman law, and, as Praver said, there is "no resemblance whatsoever between Roman and Crusader penal practise."<sup>73</sup> Praver also speculated that some laws were introduced by the French crusaders who arrived on the Second Crusade during Baldwin III's reign,<sup>74</sup> but this could not be the case here, as Usāma's anecdotes took place before the crusade. Therefore, there must be another source for these sections of the burgess assizes, which was unrelated to *Lo Codi*, and which was already in use in Jerusalem by the mid-twelfth century.

One source may be the pre-existing Muslim institutions that the Franks discovered when they arrived. Since the duties of the viscount were recognizable to Muslim authors as those of their own officials, the Franks presumably combined these institutions with their own European forms of administration. Another source may be King Fulk himself, whose accession to the throne in 1131 was the most significant change in the kingdom between 1120 and 1140. Fulk, who had previously been count of Anjou, replaced many of the kingdom's officers with members of his Angevin retinue. The dispute between Fulk and Hugh II of Jaffa, for example, may have been part of a larger conflict between the established nobility and the newly-arrived Angevins.<sup>75</sup> Among the positions to which Fulk appointed members of his retinue were the viscount and chancellor of Jerusalem; the aforementioned Rohard was one of these replacements.<sup>76</sup> It is surely significant that these offices had legal duties in Jerusalem. Interest in the law was common in Fulk's family in Anjou, and his grandson, Henry II of England, was an active legislator.<sup>77</sup> His sons and

<sup>73</sup> Praver, *Crusader Institutions*, 413.

<sup>74</sup> Praver, *Crusader Institutions*, 428.

<sup>75</sup> Hans E. Mayer, "Angevins versus Normans: The New Men of King Fulk of Jerusalem," *Proceedings of the American Philosophical Society* 133 (1989): 22 [= idem, *Kings and Lords in the Latin Kingdom of Jerusalem* (Aldershot, 1994), no. V].

<sup>76</sup> Mayer, "Angevins versus Normans," 19–20. Rohard himself was not Angevin, but was always closely associated with Fulk.

<sup>77</sup> Bernard S. Bachrach, *Fulk Nerra, the Neo-Roman Consul, 987–1040: A Political Biography of the Angevin Count* (Berkeley, 1993), 46–47.

successors in Jerusalem, Baldwin III and Amalric I, were also noted as experts in the law of the kingdom.<sup>78</sup> Perhaps Fulk introduced new laws along with his other changes, and this was one of the reasons that the established nobility resented him.<sup>79</sup>

Usama's anecdotes point to the existence of an active legal system in the mid-twelfth century, during and following the reign of King Fulk. Some of the laws that would later end up as part of the burgess assizes were already in use. They may not have yet been written down, but they survived the fall of Jerusalem in 1187 and the restoration of the kingdom in Acre, and were included in the thirteenth-century treatise. There were also burgess courts in the twelfth-century kingdom to enforce these assizes, and some of the administrative infrastructure described by the thirteenth- and fourteenth-century treatises was also in place. Usāma is thus a reliable source for certain aspects of Frankish law and society.

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<sup>78</sup> WT, 16.2, p. 716 (for Baldwin); WT, 19.2, p. 865 (for Amalric).

<sup>79</sup> A similar idea was proposed in the nineteenth century by Bernhard von Kugler, *Geschichte der Kreuzzüge* (Berlin, 1880), 122–23.

