Eski Hukuk Mekteplerinin Bölgeselliği Tartışması Çerçevesinde Ebû Yûsuf'un İkhtilāfu Ebî Hanîfe ve İbn Ebî Leylā Adlı Eseri

Ömer Yılmaz | ORCID: 0000 0001 9576 1344
Doç. Dr. | omeryilmaz@nku.edu.tr
Tekirdağ Namık Kemal Üniversitesi | ROR ID: 01a0mk874
İlahiyat Fakültesi, İslam Hukuku ABD | Tekirdağ, Türkiye

Öz

Fetihlerle genişleyen İslam coğrafyasında Kûfe, buraya yerleşen alimler sayesinde bir ilim merkezi hüviyeti kazanmış ve bu niteliğini ilk dönemlerden itibaren hep korumuştur. Bunda sahâbeden pek çok alimin payı olmakla birlikte İbn Mes'ud etkisi çok açıktır. İbn Mes'ud, öğrencileri Alkame b. Kays, Esved b. Yezid, ve Mesrûk aracılığıyla Kûfe'de bir ilim geleneğinin oluşmasında etkili olmuştur ve bu gelenek bir sonraki jenerasyonda Şa'bî, Nehaî ve Hammad ile temsil edilmiştir. Ebû Hanîfe ve İbn Ebî Leylâ bu geleneğin hicrî ikinci asırdaki temsilcileridir. Kûfe ilim geleneğinin en belirgin özelliği, fıkhî problemlerin çözümünde Kur'an ve sünnet ile birlikte akla da önemli bir yer verilmesidir. Özellikle Irak merkezli hadis uydurma faaliyetleri bu geleneğe mensup ulemayı bir hadisle amel etmeden önce o hadisi titizlikle incelemeye sevk etmiştir. Kûfeye mensup olup, doğrudan ya da dolaylı olarak İbn Mes'ud'dan etkilenen bu alimlere ehli rey denmesi de bu gelenekte akla verilen önemden ileri gelmektedir. Bu durum, coğrafi açıdan bölgesel nitelik taşıyan bir fıkıh ekolünün ortak bir metodoloji takip edilmesi neticesinde mezhebe evrilmesi sürecini de açıklamaktadır. Bu süreç modern dönemde çok tartışılmıştır. Ancak birbirine taban tabana zıt görüşlerle konuyu tartışan araştırmacılar, Joseph Schacht ve Wael b. Hallaq'tır. Kısaca ifade etmek gerekirse Schacht, mezheplerin ortaya çıkışını bölgesel kadim hukuk mekteplerine dayandırırken Hallaq bölgesellik tezini reddetmektedir. Ebû Yûsuf'un *İhtilâfu Ebî Hanîfe ve İbn Ebî Leylâ* adlı eseri, bir yandan Kûfe hukuk ekolünün Hanefî mezhebine evrilme sürecindeki metodoloji birliğini gösterirken diğer yandan modern dönemdeki bölgesellik tartışmasına dair önemli bilgiler ihtiva etmektedir.

Anahtar Kelimeler
Kûfe, Ebû Hanîfe, İbn Ebu Leylâ, Ebû Yûsuf, İhtilaf

Atıf Bilgisi

Yılmaz, Ömer. "Eski Hukuk Mekteplerinin Bölgeselliği Tartışması Çerçevesinde Ebû Yûsuf'un İkhtilāfu Ebî Hanîfe ve İbn Ebî Leylā Adlı Eseri". *Akademik-Us* 15-16 (Kasım 2024), 107-120.

Geliş Tarihi	16.10. 2024
Kabul Tarihi	20.11.2024
Yayım Tarihi	30.11.2024
Değerlendirme	İki Dış Hakem / Çift Taraflı Körleme
Etik Beyan	Bu çalışmanın hazırlanma sürecinde bilimsel ve etik ilkelere uyulduğu ve yararlanılan tüm çalışmaların kaynakçada belirtildiği beyan olunur.
Benzerlik Taraması	Yapıldı – İntihal.net
Etik Bildirim	ilahiyatdergisi.etik@artvin.edu.tr
Çıkar Çatışması	Çıkar çatışması beyan edilmemiştir.
Finansman	Bu araştırmayı desteklemek için dış fon kullanılmamıştır.

Akademik-Us 15-16 (November 2024), 107-120 | Research Article

Within the Framework of the Discussion of the Regionality of Ancient Law Schools, Abū Yūsuf's Work Titled *Ikhtilāfu Abī Ḥanīfa wa Ibn Abī Laylā*

Ömer Yılmaz | ORCID: 0000 0001 9576 1344
Assoc. Prof. Dr. | omeryilmaz@nku.edu.tr
Tekirdağ Namık Kemal University | ROR ID: 01a0mk874
The Faculty of Theology, The Department of Islamic Law | Tekirdağ, Türkiye

Abstract

In the Islamic geography that expanded through the conquests, Kūfa became a center of knowledge thanks to the scholars who settled here and maintained this quality from the early periods. Although many scholars from the companions of the Prophet had a share in the intellectual environment in Kūfa, the influence of Ibn Masʿūd is evident. Ibn Masʿūd was influential in the formation of a tradition of knowledge in Kūfa through his students Alḳama b. Ḳays, Aswad b. Yazīd, and Masrūḳ. Shaʿbī, Ibrāhīm Nakhaʿī, and Ḥammād represented the Kūfa tradition in the next generation. Abū Ḥanīfa and Ibn Abī Laylā represent this tradition in the second century of the Hijra. The most distinctive feature of the Kūfa tradition of knowledge is reason, which is given an important place alongside the Ḳurʾān and the Sunnah in solving legal problems, thereby shaping the unique approach of the Kūfa tradition.

The activities of fabricating ḥadīths, especially those centered in Iraq, have led scholars from this tradition to meticulously handle a ḥadīth before acting on it. The fact that these scholars, who belong to Kūfa, are called people of 'Ahl al-Ray' stems from the importance of reason in this tradition. It also explains the process of a school of jurisprudence that is geographically regional evolving into a school due to following a standard methodology. This process has been discussed extensively in the modern period. Schacht bases the emergence of schools of law on ancient regional schools of law. Hallaq vehemently rejects the regionalism thesis, sparking an intense and passionate scholarly debate. Abū Yūsuf's work titled Ikhtilāfu Abī Ḥanīfa wa Ibn Abī Laylā demonstrates the unity of methodology in the process of the Kūfa school of law that developed into the Ḥanafī school, a significant historical development in Islamic jurisprudence.

Keywords

Kūfa, Abū Ḥanīfa, Ibn Abī Laylā, Abū Yūsuf, Controversy

Citation

Yilmaz, Omer. "Within the Framework of the Discussion of the Regionality of Ancient Law Schools, Abū Yūsuf's Work Titled Ikhtilāfu Abī Ḥanīfa wa Ibn Abī Laylā". *Akademik-Us* 15-16 (November 2024), 107-120.

Date of Submission	16.10.2024
Date of Acceptance	20.11. 2024
Date of Publication	30.11.2024
Peer-Review	Double anonymized - Two External
Ethical Statement	It is declared that scientific and ethical principles have been followed while carrying out and writing this study and that all the sources used have been properly cited.
Plagiarism Checks	Yes – İntihal.net
Conflicts of Interest	The author(s) has no conflict of interest to declare.
Complaints	ilahiyatdergisi.etik@artvin.edu.tr
Grant Support	The author(s) acknowledge that they received no external funding in support of this research.

Introduction

Abū Ḥanīfa (d. 150/767) and Ibn Abī Laylā (d. 148/765) were not ordinary scholars in the second/eighth century Kūfa society but influential figures whose views were followed by a significant portion of the society. Considering the information provided by the books of *ṭabaqāt,* there is no obstacle assuming that these scholars spent a significant portion of their time in the Kūfa mosque.[1] Therefore, it is possible and necessary for them to interact with each other. Determining the extent of their relationship requires, first of all, examining the issues on which they have different opinions. Abū Yūsuf's (d. 182/798) work titled *Iḵẖtilāfu Abī Ḥanīfa wa Ibn Abī Laylā* is precious and provides information on the contemporaneous controversial issues.[2] The book makes an essential contribution to the history of Islamic law in evincing the methodology followed by the Kūfa tradition in a comparative manner between the *fatwās* (Islamic legal opinions) of two critical scholars of the period. Joseph Schacht (d. 1969) and Wael b. Hallaq compared the methodologies of Abū Ḥanīfa and Ibn Abī Laylā in their explanations of the emergence of schools of law. Explaining the emergence of schools of law with geographical characteristics in ancient schools of law, Schacht argued that Abū Ḥanīfa and Ibn Abī Laylā, as Irāqī scholars, followed a similar methodology. One of Schacht's main arguments is that during the second/eighth century, legal science in the Muslim world was concentrated around geographical centers and that jurists defined themselves with regional affiliations. According to Schacht, scholars who reached decisions with similar methodologies played an active role in the emergence of ancient law schools, which can be understood as institutions where legal scholars from a specific region or school of thought gathered from the second century of the Hijra (The emigration of the Prophet) onwards. There is a doctrine in ancient schools of law that the region's scholars generally accept. These scholars are respected in their societies, and the public favors their fatwas. The rulings that these scholars agree on constitute both the living tradition of the ancient school of law and the common denominator of the school's doctrine. Belonging to a regional school, standard methodology, doctrine, and devotion to a master are the basic concepts of Schacht's explanations of the process of the emergence of schools of law. According to Schacht, the geographical nature of ancient schools of law transformed over time, and these schools turned into the schools that followed the doctrine of a particular master during the ʿAbbāsid period. Therefore, Abū Ḥanīfa and Ibn Abī Laylā, as representatives of the Kūfa tradition, had a similar approach to each other.[3]

Schacht's approach has been criticized from many perspectives. However, there is no doubt that Wael b. Hallaq is the one who made the strongest criticisms of Schacht's

[1] Masʿūdī, *Mürūjü'ḏẖ-ḏẖahab* (al-Ḳāhira: al-Maktaba, 1964), 6/213; Ibn al-Nadim, *al-Fihirist* (İstanbul: Türkiye Yazma Eserler Kurumu Yayınları, 2019), 255; Ibn Ḵẖallikān, *Wafayāt al-aʿyān* (Bayrūt: Dāru Sādir, 1968), 2/164; Ḳuraṯẖī, *al-Cawāhir al-muḍıyya* (Jīze: Hijr, 1993), 1/7-50.

[2] Abū Yūsuf, *Iḵẖtilāfu Abī Ḥanīfa wa Ibn Abī Laylā* (al-Ḳāhira: Wafā, 1357), *9-230.*

[3] Joseph Schacht, *The Origins of Muhammadan Law* (Oxford: The Clarendon Press, 1950), 7; Joseph Schacht, *An Introduction to Islamic Law* (Oxford: The Clarendon Press, 1950), 28.

approach with the article he devoted to this subject.[4] According to Hallaq, Schacht developed the concept of regional schools based on references to sources, especially in Shāfiʿī's works. Therefore, it is known that Shāfiʿī (d. 204/820) wrote a work titled *Ikhtilāf al-'Iraqiyyayn*.[5] The title of this work confirms Schacht's regional schools thesis. However, the content of the work consists of individual rather than geographical views of Abū Ḥanīfa and Ibn Abī Laylā, who were considered to be Irāqīs but were quite distant from each other in legal matters in Hallaq's view. Hallaq conceives of the disagreement between Abū Ḥanīfa and Ibn Abī Laylā as a fundamental and methodological difference. While Abū Yūsuf's work, *Ikhtilāf Abī Ḥanīfa wa Ibn Abī Laylā*, provides a comprehensive account of the disagreements between Abū Ḥanīfa and Ibn Abī Laylā, it has been the subject of numerous studies. However, there is still a need for research that could challenge the theses of Schacht and Hallaq. In this article, I will question Schacht's thesis of the regionality of ancient law schools and Hallaq's antithesis that rejects regionality within the framework of Abū Yūsuf's work. The article consists of three parts. The first part examines the transformation of regional schools into schools over time, as it forms the crux of the discussion. Hallaq, who rejects Schacht's regionality thesis, also accepts the existence of such a transformation. The second part introduces Abū Yūsuf's work and its significance in the debate. The third part delves into the reasons for the disagreement between Abū Ḥanīfa and Ibn Abī Laylā, and their methodologies are examined comparatively.

1. The Transformation from a Regional Ancient Law School to a Sect

During the period of the four caliphs, when the Islamic geography expanded through conquests, the Companions went to newly conquered places to convey and teach Islam.[6] Thus, mosque lessons and circles of knowledge became widespread in newly established cities such as Kūfa and Basra. The Caliphs always supported scientific activities in these places. Indeed, Caliph ʿUmar (I) b. al-Khaṭṭāb demonstrated his importance to Kūfa by saying to the people, "I preferred to send Ibn Masʿūd to you even though I needed him."[7] Because Ibn Masʿūd was one of the first Muslims and the closest people to the Prophet, he was one of those pioneers who memorized the Ḳurʾān among the Companions. He learned more than 70 surahs (The designation used for the 114 independent units of the Ḳurʾān) from the Prophet himself. In this context, the Prophet recommended that the Ḳurʾān be learned from the following four people, who were known for their deep understanding and memorization of the Ḳurʾān: "Learn the Ḳurʾān from the following four people: Ibn Masʿūd, Mu'adh b. Djabal (d. 18/639), Ubayy b. Kaʿb (d. 33/654) and Sālim Mawlā Abī Ḥudhzayfa (d. 12/633)."[8] In Kūfa, in addition to Ibn Masʿūd, there were also distinguished Companions

[4] Wael b. Hallaq, "From Regional to Personal Schools of Law? A Reevalutaion", *Islamic Law and Society*, 8/1 (2001), 1-26.

[5] Shāfiʿī, *al-Um* (Bayrūt: Dārü ihyāi'-t-türāthi'l-arabī, 2001), 7/101-172.

[6] Balādhurī, *Fütūḥ al-Büldān* (Bayrūt: Hilāl, 1988), 1/111.

[7] Ibn Saʿd, *Kitābüt-Tabakāti'l-kebīr* (Leiden: Brill, 1909), 6/7.

[8] Bukhārī, "Fażâ'ilü'l-Ḳurʾân," 8.

such as Saʿd b. Abī Waḳḳāṣ (d. 55/675), Ḥudhzayfa b. Yamān (d. 36/656), ʿAmmār b. Yasir (d. 37/657), Salmān Fārisī (d. 367656), and Abū Mūsā Ashʿarī (d. 42/662), and they also made significant contributions to the intellectual development in the region. It is narrated that when ʿAlī b. Abī Ṭālib came to Kūfa and witnessed the level of knowledge there; he expressed his content and said: "May Allah have mercy on Ibn Masʿūd; he filled this city with knowledge; his students are the lamps of this city." It is stated that the number of the Companions who settled in Kūfa was around 1,500, and seventy of them had participated in the Battle of Badr, a significant early Islamic battle where the Muslims achieved a decisive victory against the Quraysh, a powerful Meccan tribe. Around 300 of the Companions participated in the Bay'at al-Ridwan, a pledge of allegiance made by the Companions to the Prophet Muhammad during the Treaty of Hudaybiyyah. Kūfa became the center of the caliphate during the period of ʿAlī b. Abī Ṭālib (d. 40/661) and that he stayed there for a while increased the importance of Kūfa even more. Masrūḳ b. Adjdaʿ (d. 63/683), one of the scholars of the Tābiʿīn (The Successors of the Companions of the Prophet), says, "I observed that the knowledge of the Prophet was generally gathered in six people from the Companions; these are ʿAlī b. Abī Ṭālib, Ibn Masʿūd, ʿUmar (I) b. al-Khaṭṭāb, Zayd b. Thābit, Abu'l-Dardā and Ubayy b. Kaʿb; I saw that the knowledge of these six people was gathered in ʿAlī b. Abī Ṭālib and Ibn Masʿūd"[9], drawing attention to the critical share of the last two Companions in the formation of the Kūfa school of knowledge. Ibn Masʿūd, known for his deep understanding of the Ḳurʾān and the Sunnah, played a pivotal role in establishing the Kūfa school, which emerged as the second center of knowledge outside Medina during the Umayyad period. However, Ibn Masʿūd expressed his intellectual loyalty and closeness to ʿUmar (I) b. al-Khaṭṭāb, saying, "If everyone goes in one direction and ʿUmar (I) b. al-Khaṭṭāb goes in another, I will go where ʿUmar (I) b. al-Khaṭṭāb goes." Ibrāhīm Nakhaʿī (d. 96/714), one of the Tābiʿīn jurists, also drew attention to the method and consensus between ʿUmar (I) b. al-Khaṭṭāb and Ibn Masʿūd and stated that these two companions thought differently on very few issues[10]. It is clear that ʿUmar (I) b. al-Khaṭṭāb, ʿAlī b. Abī Ṭālib, Ibn Masʿūd, known for their opinions and ijtihads (The use of individual reasoning), as well as their knowledge of the Ḳurʾān and the Sunnah, were instrumental in the establishment of the Kūfa school. The process of ijtihad, which involves making a legal decision by independent interpretation of the legal sources, reflected the Companions' intellectual rigor. However, Ibn Masʿūd truly led the school among the Prophet's companions.[11]

During the Tābiʿīn period in Kūfa, mosque lessons and circles of learning thrived, producing a cadre of distinguished scholars. They enriched the knowledge of the Ḳurʾān and *ḥadīth*, they learned from their teachers with their own opinions and interpretations

[9] Zāhid Kawtharī, *Fiḳhü ahli'l-ʿIrāḳ ve ḥadīṣühüm* (Bayrūt: al-Maktaba, 1970), 43.

[10] Ibn Qayyim al-Jawziyya, *Iʿlāmü'l-muvaḳḳıʿīn* (Bayrūt: Dārü'l-kütübi'l-ʿilmiyya, 1998), 1/23.

[11] M. Esat Kılıçer, "Ehl-i Rey", *Türkiye Diyanet Vakfı İslam Ansiklopedisi* (Ankara: TDV Yayınları, 1994), 10/520-524.

and also pioneered scientific development in the Iraqi region. The fact that Kūfa was known as the second scientific center in the Muslim world after Medina is a testament to their scholarly achievements. The representative of the Kūfa school in the Tābiʿīn generation is Ibrāhīm Nakhaʿī. He passed on the knowledge he learned from the Companions and the Tābiʿīn scholars to the next generation. Contemporary scholars describe Ibrāhīm Nakhaʿī as the most learned person of his time. Ibrāhīm Nakhaʿī's methods and views were transmitted to the generation of Abū Ḥanīfa through his student Ḥammād b. Abī Sulaymān (d. 120/738). They profoundly affected the jurisprudence of Abū Ḥanīfa and his school. The enrichment of religious knowledge based on revelation with opinion and the solution of legal problems is a method that traces back to the era of the Companions. The process, which gained intensity in Kūfa, turned into a school known as the A*hl al-ray* in the middle of the 2nd (8th) century with the efforts of Abū Ḥanīfa and his students. The A*hl al-ray* was opposed mainly by the A*hl al-ḥadīth* centered in Medina. The Ahl al-ḥadīth benefited comprehensively from jurist companions such as ʿUmar (I) b. al-Khaṭṭāb, Zayd b. Thābit, ʿAbd Allāh b. ʿUmar b. el-Khaṭṭāb, ʿUthmān b. ʿAffān, Âʾisha bint Abī Bakr, and ʿAbd Allāh b. al-ʿAbbās among the companions. They passed on the knowledge they received from these companions to the next generation. Among the students of these scholars, Nāfiʿ (d. 117/735), Zührī (d. 124/742), Abü'z-Zinad (d. 130/748), Rabīʿa b. Abī ʿAbd al-Raḥmān (d. 135/753), and Yaḥyā b. Saʿīd (d. 142/760) distinguished themselves with their knowledge. This intellectual tradition was called the school of Medina, the people of Medina (ahl al-Medina), or the people of Hijaz (ahl al-Hijaz).

2. Abū Yūsuf and his Book Titled *Ikhtilāfu Abī Ḥanīfa wa Ibn Abī Laylā*

Abū Yūsuf addresses the issues on which his teachers, Abū Ḥanīfa and Ibn Abī Laylā, disagreed in his book titled *Ikhtilāfu Abī Ḥanīfa wa Ibn Abī Laylā.* These disagreements, which often revolved around intricate points of Islamic law, were significant in developing Islamic jurisprudence. Shaybānī narrated the book from Abū Yūsuf. Sarakhsī stated that Shaybānī made some additions to the work. The work is also available in the *Mabsūṭ* of Sarakhsī. The fact that the copy in the *Mabsūṭ* is larger than the copy published by Abu'l-Wafā Afgānī indicates that additions were made to the work. The work, which includes many chapters of jurisprudence, was published by Abu'l-Wafā Afgānī. It is also available at the end of Shāfiʿī's work called *al-Umm*, under the names of *Hāẕā ma'ẖtalafa fīhi Abū Ḥanīfa wa Ibn Abī Laylā ʿan Abī Yūsuf.*[12] Among these three scholars who had a teacher-student relationship, the most prominent aspect of Ibn Abī Laylā is that he undertook public duty as the judge of Kūfa during his lifetime. Ibn Abī Laylā was appointed as the judge of Kūfa during the reign of the Umayyad caliph Walid b. Yazid. He served as the judge of Kūfa during both the Umayyad and Abbasid periods, and he continued this duty until he died in 765.[13] The fact that he served as the judge of Kūfa during the period of two opposing governments alludes

[12] Shāfiʿī, *al-Um,* 7/101-170.

[13] Ibn al-Athīr, *al-Kāmil fi't-Tārīkh* (Bayrūt: Dār al-Maʿrifa, 2011), 7/249.

to general acceptance regarding his qualification for the post of judge. It is difficult to say that the *iftā'*, education, and judiciary duties were separated when Ibn Abī Laylā lived. Ibn Abī Laylā, who tried the cases in the Kūfa mosque, naturally followed the open trial method. In this context, it can be said that Ibn Abī Laylā also trained students along with his profession as a judge. Abū Yūsuf has an essential place among Ibn Abī Laylā's students in his contribution to the science of Islamic law. Abū Yūsuf, born in 731 as the child of a low-income family with many children in Kūfa, received a religious education per the scientific tradition of his time and then advanced his legal knowledge with Ibn Abī Laylā. After reaching a level where he could criticize Ibn Abī Laylā's views, he left him and joined Abū Ḥanīfa's Islamic law council. Ibn Abī Laylā and Abū Ḥanīfa were prominent scholars of Kūfa during their time. Abū Yūsuf's close contact with these scholars broadened his horizons in terms of jurisprudence. The issues these scholars disagreed on were fascinating to Abū Yūsuf. Within this framework, Abū Yūsuf discussed the disagreements of his teachers in a work called *Ikhtilāfu Abī Ḥanīfa wa Ibn Abī Laylā*. In the book, Abū Yūsuf relates the disagreements and makes preference between them. While he preferred Abū Ḥanīfa's view on some issues, he preferred Ibn Abī Laylā's on other issues.[14]

3. Reasons for the Difference of Opinion between Abū Ḥanīfa and Ibn Abī Laylā

Abū Ḥanīfa and Ibn Abī Laylā belonged to a common scholarly tradition in Kūfa. Scholars who influenced the Kūfa tradition during the Companions period and the following period were indirect teachers of both scholars. Being representatives of the same tradition, the same region and the same generation brought them closer to each other in terms of the methods they followed in reaching legal rulings. Therefore, when the differences of opinion presented by Abū Yūsuf in his book *Ikhtilāf Abī Ḥanīfa wa Ibn Abī Laylā*, which is a comprehensive collection of their disagreements, are examined, it can be observable that the disagreement between them is a requirement of the nature of jurisprudence and does not arise from methodological differences. In this context, the approaches of both scholars to evidence, such as the Ḳurʾān, Sunnah, ijmāʿ (The opinion of the recognized religious authorities), ḳıyās (reasoning by analogy), and istiḥsān, are similar. On the contrary, the disagreement was seen as a difference of opinion between scholars who belonged to the same tradition and followed the same methodology. In this respect, there is no difference between the disagreement between Abū Yūsuf and Shaybānī and the disagreement between Abū Ḥanīfa and Ibn Abī Laylā. This section thoroughly and comprehensively analyses the significant disagreements between Abū Ḥanīfa and Ibn Abī Laylā, addressing each issue in detail.

[14] Sarakhsī, *Mabsūṭ* (İstanbul: Gümüşev, 2015), 30/198.

3.1. The Fruits in the Garden Sold

If a person buys a date palm garden whose fruits have not been picked, it has been discussed to whom they belong. According to Abū Ḥanīfa and Shaybānī, the fruits belong to the seller. According to Ibn Abī Laylā, the fruits belong to the buyer. Just as the tree branches are included in the scope of the contract, the fruits on the tree branches are also included in the fruit belongs to the branch of the tree; the branch of the tree belongs to the tree, and the tree belongs to the soil. When the soil is sold, these are also included in the sale; therefore, the fruits belong to the buyer. Abū Ḥanīfa's evidence is the following ḥadīth: "Whoever buys a date palm garden with fruits in it, the fruits belong to the seller unless the buyer states a special condition."[15] There is no methodological difference in this disagreement regarding who the fruits of the sold garden belong to. One of the parties claimed that the fruits belonged to the seller, while the other claimed that they belonged to the buyer. One of the parties gave a ruling based on the evidence of analogy, while the other gave a ruling based on the evidence of the Sunnah. However, their perspectives on analogy and Sunnah are the same.

3.2. Oath Obligation on Defective Goods

If there is a defect in the animal purchased by the buyer, there may be a conflict between the seller and the buyer. In this case, the buyer may claim that the goods were sold with defects, while the seller may claim that the goods became defective after being delivered to the buyer. In such a legal conflict, it is controversial whether the burden of proof will be on the buyer or the seller. Shaybānī accepted the general rule that the goods were delivered without defects. Based on this, anyone who claims that the goods they purchased have a defect is obliged to prove it. The following *ḥadīth* of the Prophet, a crucial guide in resolving legal disputes and a cornerstone of Islamic contract law, confirms Shaybānī's approach. The ḥadīth, a saying or an action of the Prophet considered a source of Islamic law, stipulates that providing evidence belongs to the plaintiff, and the obligation to swear an oath belongs to the denier. This ḥadīth, a significant guide in Islamic contract law, requires the plaintiff not to swear an oath. However, when Ibn Abī Laylā doubted this issue, he would make the plaintiff swear an oath because he saw the buyer as the denier. According to him, the buyer denies that the contract is binding on him and that he must pay the sales price, which shifts the burden of proof and the obligation to swear an oath to the buyer.[16] Despite their differing views, Ibn Abī Laylā and Shaybānī share a common ground in their legal actions. Their shared adherence to the same ḥadīth, which stipulates that the burden of proof rests on the plaintiff and the denier most swear an oath, is a significant point of unity. This unity, despite the nuances in their interpretations of the burden of proof and the denier in buyer-seller disputes, should reassure the audience of the coherence and robustness of the legal framework.

---

[15] Abū Yūsuf, *Ikhtilāf,* 14; Shāfiʿī, *al-Um,* 7/104; Sarakhsī, *Mabsūṭ*, 30/169.

[16] Abū Yūsuf, *Ikhtilāf,* 15; Shāfiʿī, *al-Um,* 7/104; Sarakhsī, *Mabsūṭ*, 30/170.

3.3. Selling Unripe Fruit

Selling fruit before it ripens has been a debate regarding Islamic law. According to Ibn Abī Laylā, it is not permissible to sell unripe fruit. He argues that the Prophet prohibited the sale of fruit until it was clear that it was ripe. In Islamic law, this concept of 'harm' encompasses physical damage and potential loss or detriment, reflecting the ethical and legal considerations of the issue. Evaluating the issue within the framework of this evidence, Ibn Abī Laylā stated that selling unripe fruit invalidates the contract. According to Ibn Abī Laylā, this situation is like selling one of the poles on the house's ceiling.

On the other hand, Abū Ḥanīfa does not see any harm in selling fruit before it ripens. According to him, the unripe fruit is left on the branch if no conditions are put forward during the contract. Abū Ḥanīfa and Ibn Abī Laylā also have different opinions on who this fruit belongs to. According to Ibn Abī Laylā, everything in the garden becomes the buyer's property when a date palm garden with fruits is sold. It implies that the buyer assumes the risk and responsibility for the fruit's development and potential harm. According to Abū Ḥanīfa, the fruit on the tree branch belongs to the seller. It means that the seller retains the rights and benefits of the fruit until the contract conditions are completed. Abū Ḥanīfa's evidence on this issue is the following ḥadīth: “Whoever sells a date palm garden with buds on its trees - unless a particular condition is stated during the contract - the fruit on the tree belongs to the seller.”[17] When we delve into the divergence of opinion between Ibn Abī Laylā and Abū Ḥanīfa on the sale of unripe fruit, we find that each side engages in scholarly interpretation of the ḥadīths. These ḥadīths, the sayings and actions of the Prophet, are the foundation of their arguments. The significance of this debate lies in the fact that while they share the same methodological approach, their interpretations of the ḥadīths lead to starkly different conclusions, underscoring the complexity and intellectual depth of the difference of opinion between the two scholars.

3.4. Bankrupt Debtor’s Freeing Enslaved People

According to the scholarly rigor of Ibn Abī Laylā, the act of freeing enslaved people by a person ruled bankrupt and imprisoned due to debt is deemed invalid. His view is deeply rooted in the principle that when a debtor is ruled bankrupt, creditors have rights over his property, a principle that must be upheld. Therefore, a debtor's freeing of enslaved people in this situation is seen as a disposal of something that infringes on someone else's rights. This act of disposal is considered harmful to creditors and thus not valid. The ḥadīth stating that there is no harm and no reciprocation of harm also forms the basis of his view. On the other hand, Abū Ḥanīfa presents a profound and deeply considered perspective. He argues that a bankrupt debtor's property remains his. Therefore, he sees no issue with the debtor freeing an enslaved person. In his view, even if the person is bankrupt, his slave remains his property, and creditors have no claim over the enslaved person. This perspective is

[17] Abū Yūsuf, *Ikhtilāf,* 20; Shāfiʿī, *al-Um,* 7/107; Sarakhsī, *Mabsūṭ*, 30/175.

based on the right of ownership.[18] Their scholarly debate on the validity of a bankrupt debtor's freeing of enslaved people is not a matter of methodological difference. Both scholars accept the ḥadīth, stating that there is no harm and no reciprocation of harm. The crux of their disagreement lies in their evaluation of the act. Ibn Abī Laylā sees it as harmful to creditors, while Abū Ḥanīfa views it as the debtor's rightful disposal of his property.

3.5. Swap of Debts

When two parties find themselves in a situation of mutual debts, which are equal, the practice of barter is a preferred method to reduce the debts of *dhimmah* (The legal quality which makes the individual a proper subject of law). After the barter transaction, the parties, who are both creditors and debtors, are freed from both debts. According to Abū Ḥanīfa, if the debts are equal, the parties' consent is not taken into account, and the barter transaction is carried out automatically, highlighting the efficiency of Islamic finance. On the other hand, Ibn Abī Laylā's perspective emphasizes the importance of mutual agreement in debt exchange, which not only underlines the fairness in Islamic finance but also actively involves the parties in the process. He resorted to analogy when evaluating the barter transaction. Parties with mutual receivables from each other have the right to demand their property, and each has the right to demand the property of the other. According to the Hanafis, if the debts are equal, they consider it a business that does not bring any benefit not to reduce the debts through barter and for each party to collect their receivables.[19] As can be seen, there is no methodological difference between the parties in this debate.

3.6. The Testimony of the People of the Book

If a Muslim goes on a journey and dies during the journey, and before he dies, if he makes a will with the witnesses of two people from the People of the Book, it is debatable whether this witnessing will be valid or not. According to Abū Ḥanīfa, witnessing the People of the Book is not accepted. According to Ibn Abī Laylā, the witnessing in the incident in question is accepted. Shurayḥ's (d. 80/699) view on this issue aligns with Ibn Abī Laylā's. Shurayḥ said: "The witness of the People of the Book against the Muslims is not acceptable except as a will. Nor is their witnessing in a will other than while on a journey accepted." The following verse also seemingly supports this view: "*O believers! When death approaches any of you, call upon two just Muslim men to witness as you make a bequest; otherwise, two non-Muslims if you are afflicted with death while on a journey. If you doubt ⌜their testimony⌝, keep them after prayer and let them testify under oath, ⌜saying⌝, "By Allah! We would never sell our testimony for any price, even in favor of a close relative, nor withhold the testimony of Allah. Otherwise, we would surely be sinful.*"[20] Two different opinions have been narrated from Ibrāhīm Nakhaʿī

[18] Abū Yūsuf, *Ikhtilāf,* 21; Shāfiʿī, *al-Um,* 7/109; Sarakhsī, *Mabsūṭ*, 30/177.

[19] Abū Yūsuf, *Ikhtilāf,* 63; Sarakhsī, *Mabsūṭ*, 30/193-4.

[20] al-Māidah 5/106.

on this issue. The first is in line with the approach of Ibn Abī Laylā. According to another opinion attributed to Ibrāhīm Nakhaʿī, the following verse abrogated the 106th verse of al-Māidah: "*Then when they have ⌜almost⌝ reached the end of their waiting period, either retain them honorably or separate from them honorably. Moreover, call two of your reliable men to witness either way—and ⌜let the witnesses⌝ bear true testimony for ⌜the sake of⌝ Allah. It is enjoined on whoever has faith in Allah and the Last Day. And whoever is mindful of Allah, He will make a way out for them,*"[21] Abū Ḥanīfa's view on the issue is also based on the 106th verse of the al-Māidah. The verse states that the witnesses will be sworn in after the prayer. It is a quality that can only be valid for Muslims who pray. The following ḥadīth of the Prophet is also within this framework: "*The testimony of a member of a religion about a member of another religion is not accepted. However, the testimony of Muslims constitutes an exception to this rule.*"[22] According to this ḥadīth, the testimony of Muslims is valid in any case. The essential quality for a Muslim is truthfulness. However, the testimony of members of other religions against Muslims is not valid. This is due to the lack of friendly relations between them and Muslims.[23] In the debate on the witness of the people of the book on the will made by the person who died while on a journey, both sides reach their verdict based on the same verse (al-Māidah 5/106). The difference of opinion is not due to a methodological difference but to the parties' different understandings of the verse.

Conclusion

When the disagreements between Abū Ḥanīfa and Ibn Abī Laylā are examined, it is evident that they do not indicate a methodological difference. Ibn Abī Laylā, who served as the judge of Kūfa for approximately 30 years, played a significant role in shaping the application of the law. His influence, as evidenced by the fact that Abū Yūsuf and Shaybānī followed his opinion on some issues, is a testament to the enduring impact of his work on subsequent scholars. His legacy, though indirect, continues to shape the discourse of Islamic jurisprudence, demonstrating the ongoing nature of his influence. It also evidences that before the Ḥanafī school gained identity and authority, some Hanafīs quickly followed the view of Ibn Abī Laylā rather than Abū Ḥanīfa. Both scholars, as representatives of the Kūfa scholarly tradition, were instrumental in shaping the discourse of Islamic jurisprudence. The fact that these scholars, who belong to Kūfa, are called people of 'Ahl al-Ray' also indicates the unity of methodology among the members of this school. Therefore, contrary to what Hallaq said, there was no fundamental difference between them based on methodology.

[21] at-Talaq 65/2.

[22] Ibn Abī Shayba, *Musannaf*, 6/533.

[23] Abū Yūsuf, *Ikhtilāf*, 74; Shāfiʿī, *al-Um*, 7/134; Sarakhsī, *Mabsūṭ*, 30/198.

Kaynakça | References

Abū Yūsuf. *Ikhtilāfu Abī Ḥanīfa wa Ibn Abī Laylā.* al-Ḳāhira: Wafā, 1357.

al-Ḳurashī. *al-Cawāhir al-muḍıyya*. Jīze: Hijr. 1993.

al-Baghdādī. *Taʾrīkhu Baghdād*. al-Ḳāhira: al-Maktabatü'l-Hancī, 1931.

Balādhurī. *Fütūḥ al-Büldān.* Bayrūt: Hilāl, 1988.

Hallaq, Wael. "From Regional to Personal Schools of Law? A Reevalutaion", *Islamic Law and Society*, 8/1 (2001), 1-26.

Ibn Abdulbar. *Djāmiʿü bayāni'l-ʿilm.* Bayrūt: Dārü'l-kütübi'l-ʿilmiyya, 1971.

Ibn al-Athīr. *al-Kāmil fi't-Tārīkh*. Bayrūt: Dār al-Maʿrifa, 2011.

Ibn Khallikān, *Wafayāt al-aʿyān.* Bayrūt: Dāru Sādir, 1968.

Ibn Kathīr. *al-Bidāya wa-l-Nihāya*. Bayrūt: Dāru Hicr, 1997.

Ibn Qayyim al-Jawziyya. *Iʿlāmü'l-muvaḳḳıʿīn.* Bayrūt: Dārü'l-kütübi'l-ʿilmiyya, 1998.

Ibn al-Nadīm. *al-Fihrist*. İstanbul: Türkiye Yazma Eserler Kurumu Yayınları, 2019.

Ibn Saʿd. *Kitābüt-Tabakāti'l-kebīr.* Leiden: Brill, 1909.

Kawtharī, Zāhid. *Fıḳhü ahli'l-ʿIrāḳ ve ḥadīṣühüm.* Bayrūt: al-Maktaba, 1970.

Kılıçer, M. Esat. "Ehl-i Rey", *Türkiye Diyanet Vakfı İslam Ansiklopedisi* (Ankara: TDV Yayınları, 1994), 10/520-524.

Masʿūdī, ʿAlī b. Ḥusayn. *Mürūjü'dh-dhahab.* al-Ḳāhira: al-Maktaba, 1964.

Sarakhsī, *Mabsūṭ.* İstanbul: Gümüşev, 2015.

Schacht, Joseph. *The Origins of Muhammadan Law*. Oxford: The Clarendon Press, 1950.

Schacht, Joseph. *An Introduction to Islamic Law.* Oxford: The Clarendon Press, 1950.

al-Shahrastānī, M. *al-Milal wa-l-Niḥal*. Bayrūt: Dār al-Maʿrifa, 1975.

Shāfiʿī. *al-Um.* Bayrūt: Dārü ihyāi'-t-türāthi'l-arabī, 2001.

al-Suyūṭī. *Itqān*. al-Ḳāhira: al-Hay'atu'l-Mıṣriyyatu'l-āmma, 1974.

al-Ṭabarī. *Tārīkh al-rusul wa-l-mulūk*. Leiden: Brill, 1901.