

# Legal Aspects from a Cairo Geniza Responsum on the Islamic Law of the Sea: Practice and Theory

HASSAN S. KHALILIEH

THE CAIRO GENIZA CONTINUES to bring to light an ever more comprehensive picture of the social, political, and economic life of Muslims and Jews during classical Islam.<sup>1</sup> An extraordinary responsum (actually, the query requesting a responsum) presented by Solomon b. Tsemaḥ, a notary at the rabbinical court (*bēt dīn*) of Fuṣṭāṭ (Old Cairo) to Daniel b. ‘Azarya, president and gaon<sup>2</sup> of the Palestinian yeshiva, in January 1059, is a case in point. Though it has been published three times,<sup>3</sup> the aspects of this document discussed in this essay have been largely if not entirely overlooked. The responsum and related documents show how theoretical aspects of Islamic maritime law were practiced in the eleventh century. My analysis shows from a new angle how important the Jewish documents from the Geniza are for Islamic and general Mediterranean history.

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1. An earlier version of the present essay was presented at the conference of the Society for Judaeo-Arabic Studies held at Emory University, Atlanta, Georgia, in August 1999. This research follows the approach to the Geniza as a source for the history of Islamic commercial law pioneered by Abraham L. Udovitch in his *Partnership and Profit in Medieval Islam* (Princeton, N.J., 1970). The author would like to thank Professors Menahem Ben-Sasson and Mark Cohen and the anonymous reviewers for their invaluable comments.

2. Daniel b. ‘Azarya arrived in the Fāṭimīd domain in the late 1030s and ascended to the Palestinian Gaonate in 1051. For a decade he upheld the religious supremacy of that office and ruled effectively over Fāṭimīd Jewry until his death in 1062. See Mark Cohen, *Jewish Self-Government in Medieval Egypt* (Princeton, N.J., 1980), 80.

3. This document—Bodl. MS Heb. a3 (Cat. 2873), f. 9—has been published by Simcha Assaf, *Gaonic Responsa from Geniza Manuscripts* (Hebrew; Jerusalem, 1970), 125–27; Moshe Gil, *Palestine during the First Muslim Period 654–1099* (Hebrew; Tel Aviv, 1983), 2:728–32; Menahem Ben-Sasson, *The Jews of Sicily 825–1068: Documents and Sources* (Hebrew; Jerusalem, 1991), 166–69.

I begin with a translation of the responsum, which was written originally in Judaeo-Arabic:

(1) A question was put to our master, *naṣṛ*<sup>4</sup> and gaon, may God watch over him. (2) What will our master say concerning the matter of Reuben<sup>5</sup> of Egypt, who purchased merchandise in a partnership with Simon of Sicily in Fustāt (3) and each paid half of that same merchandise on the basis of equal shares? The two agreed (4) that Simon would travel with the goods to Sicily, where he would complete their sale himself (5) on the condition that the profit that God, blessed be He, provided for him would be divided equally between both in proportion to the share of each (6) in the transaction, and the fund is basically divided in half. Accordingly the two wrote a contract—this is a copy of it—in two copies. (7) The scribe was to copy each document (contract) letter for letter [so that it would be] identical to the original. (8) In addition, Reuben sent by way of Simon four loads of flax for him to sell on his behalf, providing that he (Simon) was to receive a commission (*umāla*). (9) Reuben recorded Simon's name on the abovementioned four loads, to avoid paying the tithes (10) levied in Sicily on foreign merchants arriving and trading there. Reuben wrote out a contract of commitment for Simon and this is (11) a word for word copy of it. [. . .] the scribe was to copy the document letter for letter. (12) Simon sailed from Alexandria with the goods, the aforementioned four loads, (13) and other goods belonging to others heading for Sicily. But, during this journey he fell ill and died, and his corpse was jettisoned into the sea. (14) His cousin and another Jew were with him. After his death the vessel entered Tripoli (15) of the West (Tripoli of North Africa) and could not continue the journey to Sicily. The judges of *bēth dīn* and *shaykhs* of the city collected all the cargoes (16) aboard the vessel. The late Simon left a daughter of tender years with her widowed mother. (17) All of the cargoes are deposited and stored in Tripoli just as they were packed in Fustāt; // however, it is said that a small portion of them was shipped to Sicily //. (18) Now Reuben intends to appoint an agent to collect half the merchandise, which belonged to him from the start, as well as the four loads of flax (19) which were recorded in the second document by the local *bēth dīn*, while the remaining half of the former merchandise (20) that belonged to Simon

4. "Prince" [of Israel], a title referring here to the exilarchs, heads of the Diaspora.

5. Reuben and Simon are pseudonyms used in the geonic and post-geonic responsa and similar to the Muslim custom of using the aliases Zayd and 'Amr.

would remain there until a letter from the *bēth dīn* of Sicily (21) expressed its opinion in the matter of the affairs of the orphan and the widow [. . .]. Is Reuben permitted to act according to his wishes (22) and have his agent collect the merchandise and the four bales of flax without taking oaths or after he will be sworn, despite the fact that (23) it is marked in the document (as described in his letter) [as] stated in the document//? Assuming he must take an oath, (24) how and as regards to what issues must he swear? Will our master the *gaon* of the High Jewish Court (*bēth dīn ha-gadol*) have to (25) order the court of Egypt to impose an oath on Reuben stating what oaths he must fulfill and write him a deed (judgment), (26) after which Reuben will be able to obtain permission for what he wished to do in accordance with the orders of the High Jewish Court, (27) supposing that it will serve as father of orphans as the Sages have said, the High Court the father of (28) orphans? However, [what if] the *bēth dīn* of Tripoli is not satisfied and is inclined to put a lien on the merchandise (29) until the orphan reaches adulthood and brings a suit against Reuben? And then Reuben would say: If they (the judges) seize my own merchandise which has remained in its original condition (30) and most of it will not be sold in Tripoli, except at the lowest prices, the *sultān*<sup>6</sup> will confiscate it (31) under the pretext that the owner of the merchandise is absent, or under the pretext that it belongs to a minor orphan, and it will remain, therefore, in my hands until (32) someone who is entitled to collect it appears. Thus, who is held liable for my merchandise, is it the orphan for whom my portion was confiscated, or (33) the *bēth dīn* of Tripoli which disregarded the judgment of *bēth dīn ha-gadol*, may it be blessed by God? (34) May our rabbi instruct us and deliver a legal reasoning for every issue. Elucidate clearly your response because it may provide a legal precedent for other readers of this document. (35) Likewise, may our rabbi instruct us whether Sulaymān Ibn Shā'ul is obliged to take an oath: he of whom it was stated in (36) the former document which he has in regard to the brazilwood (*baqqam*)<sup>7</sup> mentioned earlier, a parcel of brazilwood packaged in hemp weighing (37) one hundred and ninety-five *raṭls*<sup>8</sup> (pounds), his name also appears on it and it is ad-

6. A general term that refers to the local civil authority.

7. Brazilwood is a common name for several trees of the leguminosae (pulse) family whose wood yields a red dye. It is hard and heavy with exceptional shock resistance, stiffness, bending and compression strength, and highly resistant to decay.

8. *Raṭl* (pound) equals 144 *dirhams* in Fustāt (or 12 ounces, *ūqiya*, of 12 *dirhams*), approximately 450 grams; the Damascene *raṭl* weighs 3,202 grams, while in Beirut and Aleppo it equals 2,566 grams.

dressed to him by Reuben. (38) These are the exact details concluded in the transaction. Reuben has already admitted to him that it is his as stated in the document. (39) What oath is he to take? Concerning what will he make his oath? Moreover, how is he to collect the brazilwood? May our rabbi instruct us and deliver a judgment on each and every matter and the judge of the court will make his judgment based on truth. (41) May [God] enlighten his face with the light of the great sages as stars.

The subject matter of the petitioner's inquiry focuses on the testimonial oath as established by Jewish law and an individual's right to collect his own portion of the goods. His account also pertains to aspects of Islamic law of the sea and sheds light on commercial transactions (ll. 2–8), taxation (ll. 9–11), funeral practices (ll. 13–14), the captain's jurisdiction (l. 14), adjudication processes (ll. 15–16), relationships between *dhimmīs* and Muslims (ll. 15–16), and the legal status of cargoes owned by a *dhimmī* juvenile (ll. 27–32). The inquirer follows the sequence of events meticulously to enable the *gaon* to examine the circumstances that led Reuben to lose his own commodities; without such explication an evenhanded judgment might not be reached.

#### AT THE RABBINICAL COURT OF FUSṬĀṬ

Geniza records reveal that in spring of 1058 Moshe Bar Yehuda ha-Ḥazan of Palermo, and al-Ḥasan ha-Cohen Ibn Salmān, concluded and signed three contracts at the *bēt dīn* of Fustāṭ. The first deals with a consignment of four bales of flax to be entrusted to and registered under the name of Moshe Bar Yehuda ha-Ḥazan to avoid paying taxes in Palermo and to be sold in Sicily. The Egyptian merchant Ibn Salmān is to remunerate Moshe Bar Yehuda with a commission (*ʿumāla*) for his service.<sup>9</sup> Another is about a joint ownership and exploitation of commodities, such as joint participation in profits and losses. It involves joint investment meaning the sharing of profits and risks on condition that Moshe Bar Yehuda accompanies the shipments and sells them in Sicily. While the contractual terms of the third transaction reveal that the total value of goods entrusted to Moshe Bar Yehuda was 168<sup>15/24</sup> *dīnārs*, Ibn Salmān

9. S. D. Goitein, *A Mediterranean Society: The Jewish Communities of the Arab World as Portrayed in the Documents of the Cairo Geniza* (Berkeley, Calif., 1967), 1:184. He mistakenly wrote 186<sup>15/24</sup> instead of 168<sup>15/24</sup>. Similarly, Gil and Ben-Sasson unintentionally mistranslated line 13 of the contract, which states: “*yakān jumlat al-māl māya tḥamāniya wa-sittīn dīnār wa-niṣf wa-tḥumun* (the total amount [received by Moshe Bar Yehuda ha-Ḥazan] would be 168<sup>15/24</sup> *dīnārs*).”

would receive two thirds of the profit or a comparable proportion in case of loss, while the Sicilian partner would gain one third of the profits or lose an equivalent portion in the event of loss. The original agreement, written on March 23, 1058, early in the season of overseas commerce and the shipping business,<sup>10</sup> by 'Alī Ibn 'Amram, a notary at the same *bēt dūn*, states:

(1) . . . the price is  $6\frac{1}{4}$  *ḏīnārs*; the price for the ship's load of indigo is [. . .] (2) the price for the *qinṭar*,<sup>11</sup> after the deduction of [. . .] is [. . .] for (3) the unadulterated (portion); 200 *raṭl* of pepper for 11 *ḏīnārs*; [. . .] (4)  $3\frac{1}{4}$  *mann*<sup>12</sup> of chalk for 8 [*ḏīnārs*; . . . a bag] (5) of aromatic wood, after paying the freight charges, for 25 *ḏīnārs* and 5 *qīrāṭs*,<sup>13</sup> a load of sweet resin for (6)  $14\frac{1}{3}$  *ḏīnārs*; ten *manns* of Indian myrobalan for  $3\frac{3}{4}$  *ḏīnārs*; a basket of saffron (7) of 85 *raṭls*, for 5 *ḏīnārs*; a chest of [cinnamon] for 4 *ḏīnārs*; a chest of cheese (8) for  $3\frac{1}{2}$  *ḏīnārs*; a basket of myrrh, weighing 39 *manns*, for  $8\frac{1}{4}$  *ḏīnārs*; (9) a *qinṭar* of yellow myrobalan for  $1\frac{1}{4}$  *ḏīnār*; a quantity of cinnamon weighing 74 *manns* (10) for  $20\frac{1}{4}$  *ḏīnārs*; a quantity of aloe, weighing 53 *raṭls*, for  $3\frac{1}{2}$  *ḏīnārs*; a water-skin of camphor, (11) weighing  $7\frac{3}{4}$  *manns* for 9 *ḏīnārs*. I<sup>14</sup> have collected 8 *ḏīnārs* for the freight and service charges; (12)  $1\frac{9}{24}$  *ḏīnār* for packing canvas, ropes,<sup>15</sup> and house rental; and  $\frac{20}{24}$  *ḏīnār* for the paper value; one *ḏīnār* is to be deducted from the total value of the goods; (13) the total amount (of the *commenda*) is  $168\frac{15}{24}$  *ḏīnārs*. Moshe Bar

10. Ships habitually set out from the eastern basin of the Mediterranean in the early spring and returned for the Feast of Cross (*Īd al-Ṣalīb*), celebrated on September 26 or 27, while the return journey of eastward-bound ships commenced between late July and early September. See Goitein, *Mediterranean Society*, 1:316–17, 481–82 nn. 31–36; Moshe Gil, *In the Kingdom of Ishmael: Texts from the Cairo Geniza* (Hebrew; Tel Aviv, 1997), 4:414, Bodl. MS Heb. a 3, f. 23, ll. 48–50; 530, TS 8 J 18, f. 27, l. 15; Boudewijn Sirks, *Food for Rome: The Legal Structure of the Transportation and Processing of Supplies for the Imperial Distribution in Rome and Constantinople* (Amsterdam, 1991), 249; Jamie Morton, *The Role of the Physical Environment in Ancient Greek Seafaring* (Leiden, 2001), 255–65.

11. A *qinṭār* is equal to one hundred pounds.

12. A *mann* is equal to two *raṭls*.

13. A *qīrāṭ* is worth  $\frac{1}{24}$  of a *ḏīnār*; the term is derived from *keratia*, a unit of weight; the Greco-Roman *keration* was 0.189 gr. and the pound (*litra*) was reckoned at 1.728 *keratia*; the *solidus*  $\frac{1}{72}$  of the pound, weighed 24 *keratia*.

14. Refers to the Sicilian partner, Moshe Bar Yehuda ha-Ḥazan.

15. Typically, the consignor was required to wrap the consignments in proper packing materials before delivering them to the ship operators, who in turn had to place them on board and protect the commodities against the elements.

Yehuda ha-Ḥazan declares: (14) 'I have collected all these various commodities specified above. They are delivered to me, under my responsibility and supervision'. (15) The debtor Ḥasan ha-Cohen Ibn Salmān the broker (*al-ḡallāl*) has assigned him (Moshe) to travel and accompany them to Sicily, and authorized him to sell them for whatever price God apportions to us (16) and grants us as a livelihood. If God, be He glorified, renders the sale smooth and the entire profit is regained, Moshe Bar Yehuda (17) ha-Ḥazan will have to send the amount aboard any available vessel sailing for Fuṣṭāṭ. If . . . the money arrives safely the debtor Ḥasan ha-Cohen Bar Salmān (18) will be entitled to collect the entire aforesaid capital. Whatsoever God bestows of profit, two thirds of it shall be delivered to Ḥasan ha-Cohen Bar Salmān and the remaining third (19) delivered to Moshe Bar Yehuda ha-Ḥazan. However, in case of loss . . . Ḥasan ha-Cohen Bar Salmān will be held liable for two-thirds, (20) while Moshe Bar Yehuda ha-Ḥazan will be held liable for one third of the financial loss. In accordance with these stipulations, both parties have mutually consented (21) and taken upon themselves to fulfill literally as . . . described in this contract from the beginning to the end . . .<sup>16</sup>

The legal elements on which the abovementioned *commenda* contract of partnership depended were: first, the capital-investor (*commendator*) and the labor-investor (*agent/tractator*) specified the sum of the investment and value of goods (168<sup>15/24</sup> *ḡinārs*) and fixed the ratio of each party from the expected profit, two thirds for the Egyptian investor and one third for the Sicilian investor. With reference to the contract of partnership (Ibn Salmān's question, line 3), its terms show that each one financed 50 percent of the investment. If the venture were unsuccessful, the financial loss would lie upon both parties proportionate to each one's share. If they broke even, the Sicilian partner would receive no pecuniary reward for his efforts. The Sicilian partner/*tractator* was free to trade with the capital entrusted to him in any Sicilian marketplace to attain a profit on the condition that the duration of the partnership was limited to a sailing season; the capital and profits had to be sent to Egypt on the return of sailing ships from the Maghrib. Implicitly, the agreement was binding, as established by Islamic and Jewish laws, not at the moment it was signed but when the partner/*tractator*, in this case the Sicilian merchant, took

16. TS 12.5r; Gil, *Palestine*, 2:721–23; Ben-Sasson, *Jews of Sicily*, 157–58.

charge of the quantity of capital and merchandise specified in their original agreements.<sup>17</sup>

Documentary evidence from the Geniza confirms that the gaon received two inquiries from Ibn Salmān. The first was written on January 3, 1059, by ‘Alī b. ‘Amram at the request of Ibn Salmān to repeal the decision of the Tripolitanian *dayyan* and recover his own portions of the shipments. The notary copied the agreement of March 23, 1058, word for word, then appealed to the gaon to revoke the court decision at Tripoli and release Ibn Salmān’s goods.<sup>18</sup> Shortly after that, Ibn Salmān applied to the gaon again in January 1059 seeking not only to revoke the decision of the court at Tripoli but inquiring as well about the position of Jewish law on the oath of partners as testimony.

The preference of some Geniza traders for drawing up their business transactions in courthouses was intended to avert future disputes and altercations. Despite these precautions, reality could and did dictate new rules. Compelling factors could force judicial authorities to overlook contracts formulated by notaries, signed by the contracting parties, and attested by witnesses in the courthouse. That was the case with al-Ḥasan ha-Cohen Bar Salmān and the heirs of Moshe Bar Yehuda ha-Ḥazan. Although people tried to protect their property by all means including written contracts, their plans could occasionally and unexpectedly be upset. In the poetic words of al-Mutanabbī (303–54/915–65):

*Not all that a man seeks can be attained  
the wind might blow against the will of ships*<sup>19</sup>

#### AT THE PORT OF EMBARKATION

A ship-leasing contract naturally and obviously required the lessor to hire a professional crew and provide a seaworthy vessel. The shipmaster and

17. Moses Maimonides, *The Code of Maimonides (Mishneh Torah, book 12)*, trans. I. Klein (New Haven, Conn., 1951), 5:208–44, in particular 220–30; ‘Abd Allāh Ibn ‘Abd al-Raḥmān Ibn Abī Zayd Qayrawānī, *Al-Nawādir wal-Ziyādāt ‘alā mā fī al-Mudawwana min ghayribā min al-Ummahāt* (Beirut, 1999), 7:243–45; Abū al-Walīd Muḥammad Ibn Aḥmad Ibn Rushd, *Al-Bayān wal-Taḥḥīl wal-Sharḥ wal-Tawjīh wal-Ta’līl fī Masā’il al-Mustakbraja* (Beirut, 1984), 12:319–22; ‘Alī ‘A. ‘Abd al-Raḥmān, *Al-Mudāraba fī al-Fiqh al-Islāmī* (Cairo, 1980), 5–6. *Commenda* in Islamic law is well covered by Udovitch, *Partnership and Profit*, 170–248. For the application of *commenda* contracts in daily life transactions, consult Goitein, *Mediterranean Society*, 1:164–86; A. L. Udovitch, “At the Origins of the Western *Commenda*: Islam, Israel, Byzantium?” *Speculum* 37 (1962): 198–207.

18. TS 12.152 Gil, *Palestine*, 2:724–28.

19. Abū al-Ṭayyib Aḥmad Ibn al-Ḥusayn al-Mutanabbī, *Dūwān* (Beirut, 1958), 472.

his crew had to deliver the cargo at the destined port and if nondelivery of or damage to the goods could be attributed to him or his sailors, he would, on accepted principles, be liable for the losses. Otherwise, however, he would be absolved from responsibility.<sup>20</sup> The lessee had to protect the commodities by using adequate packing and appropriate containers to avoid damage in the transportation process.<sup>21</sup> As the cargo was packed, the name of the consignor, the recipient, or both (and occasionally the name of the merchant accompanying the shipment) was written in Arabic, and in Hebrew script as well if the recipient was Jewish. Religious formulae and identifiable figurative marks of the merchant were occasionally written and drawn on the outside of the packing material.<sup>22</sup> Because of the burden of taxes and customs at the port of destination, the name of the Sicilian merchant, Moshe Bar Yehuda ha-Ḥazan, who was to accompany the shipment, was marked on the shipments and was certainly recorded by the cargo registrar (*kātib mawriḍa*/ship's scribe)<sup>23</sup> in the cargo book (*shāmīl* or *sharanbal*).<sup>24</sup> The registration officially consisted of details

20. Muṣṭafā A. Ṭāher, ed., *Kitāb Akriyat al-Sufun wal-Nizā' bayna Ablibā, Cahiers de Tunisie* 31 (1983): 44; Abū Bakr Aḥmad Ibn 'Abd Allāh Ibn Mūsā al-Kindī, *Al-Muṣannaf* (Masqaṭ, 1983), 21:153; Goitein, *Mediterranean Society*, 1:321, 337.

21. Goitein, *Mediterranean Society*, 1:332–33. The most common packing material was strong canvas, which was frequently used to wrap bales of flax. Sacks of coarse drill [*tilliw*] were used mainly for grain, while coarse haircloth served for the transport of wax. Oil, wine, other liquids, indigo, silk, and precious items were carried in skins and leather bags. Common articles such as copper, glass vessels, antimony, sal ammoniac, and books were carried in wickerwork crates and baskets.

22. Ibn Rushd, *Al-Bayān wal-Taḥqīl*, 15:375; Abū al-'Abbās Aḥmad Ibn Yahyā al-Wansharī, *Al-Mi'yār al-Mu'rib wal-Jāmi' al-Mughrib 'an Fatāwā Abl Ifrīqiya wal-Andalus wal-Maghrib* (Beirut, 1981), 8:305; Khalilieh, *Islamic Maritime Law*, 78–79; Goitein, *Mediterranean Society*, 1:332–37; Gil, *In the Kingdom of Ishmael*, 2:720–21, TS Misc 25.19 (upper margin) and (verso), l. 3. In a business letter dated 1046, Nahrāy Ibn Nissīm instructs his addressee Salāma Ibn Nissīm al-Barqī to draw two shields of David and two additional plant figures on the covers of the shipments carefully and precisely, to avoid any possible misunderstanding on the addressee's part.

23. Gil, *In the Kingdom of Ishmael*, 4:149, doc. Gottheil and Worrell, l. 24.

24. Ṭāher, ed., *Akriyat al-Sufun*, 37; 'Alī Ibn Yahyā al-Jazīrī, *Al-Maqāḍ al-Maḥmūd fī Talkbū al-'Uqūd* (Madrid, 1998), 229; Jamāl al-Dīn Abū al-Faṭḥ Yūsuf Ibn Ya'qūb Ibn al-Mujāwir, *Ṣifāt Bilād al-Yaman wa-Makkab wa-Ba'ṣ al-Ḥijāz al-Muammā Tā'rīkh al-Mustabīr* (Leiden, 1951), 1:139; Simcha Assaf, *Texts and Studies in Jewish History* (Hebrew; Jerusalem, 1946), 133, TS 16.54, l. 31; Gil, *In the Kingdom of Ishmael*, 2:634, TS Arabic 18 (1).101, l. 12 (*al-sharanbal*); 4:21, ENA NS 18, f. 35 v. l: 2; 4: 436, INA D 55, f. 14 v. l. 20.

of the quantity, quality, and weight of the goods, in addition to the embarkation and debarkation ports. A copy of the bill of lading was customarily submitted to the shipper or his proxy.<sup>25</sup>

#### EN ROUTE

##### *Maritime Burial*

While headed home to Palermo, Moshe Bar Yehuda ha-Ḥazan “fell ill and died, and the corpse was thrown into the sea” (l. 13). Ibn Salmān’s query to the gaon Daniel b. ‘Azarya does not describe funeral practices at sea. The lack of such a description can probably be explained by the fact that burial at sea was a common practice to avoid the spread of disease and possible damage to cargo from decomposition and stench. Many travel accounts and Geniza letters refer to passengers, merchants, and sailors who died on the high seas and were thrown overboard.<sup>26</sup>

While there is much information in Islamic sources on maritime burial, Jewish halakhic sources barely touch on this topic. However, the famous story of the “Four Captives” indirectly reflects the legal attitude of halakhah toward burial at sea. The circumstances in which the four Jewish sages were allegedly captured by a Spanish flotilla commandeered by

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25. S. D. Goitein, *Letters of Medieval Jewish Traders* (Princeton, N.J., 1973), 333–34, TS NS J 300; Gil, *In the Kingdom of Ishmael*, 2: 369, TS 12.282, l. 11; 599, TS 12.325, l. 14 (*ruq’at al-ḥaml*); 606, TS 12.291, l. 16; 616, TS 10 J 11, f. 17, ll. 8, 10; 763, Mosseri II 188, l. 13; 911, TS Arabic 51.87 (c), l. 17; vol. 3: 27, ENA 4100, f. 29, l. 19; 200, TS 16.263, l. 14; 233, TS 8 J 16, f. 31, l. 13 (*riṣālat ḥaml*); 384, TS 12.362, l. 10 (*ta’biyat al-matā*); 520, ENA 1822A, f. 28, l. 15; 528, Bodl. MS Heb. c 28, f. 34, l. 29; 850, TS 10 J 31, f. 8, l. 10; vol. 4: 149, Gottheil and Worrell, 36, l. 18; 618, TS 13 J 17, f. 7, l. 24. Western scholars conventionally believe that the bill of lading is a medieval development of the late fourteenth century. See Enrico Bensa, *The Early History of Bills of Lading* (Genoa, 1925), 6; Robert Lopez and Irving Raymond, *Medieval Trade in the Mediterranean World* (New York, 1955), 245–46; John. E. Dotson, “Freight Rates and Shipping Practices in the Medieval Mediterranean” (Ph.D. diss, Johns Hopkins University, 1969), 62–63.

26. Muḥammad Ibn Aḥmad Ibn Jubayr, *Riḥlat Ibn Jubayr* (Beirut, 1959), 287; Assaf, *Texts and Studies*, 137–40, TS 20.9, l. 7; S. D. Goitein, “Portrait of a Medieval India Trader: Three Letters from the Cairo Geniza,” *Bulletin of the School of Oriental and African Studies* 50 (1987): 460, TS AS 156.238, ll. 5–13: “. . . but the captain had a stroke and died. We threw his body overboard into the sea. So the boat remained without a commander and . . . we had no charts.” Ben-Sasson, *Jews of Sicily*, 162, TS 20.152, l. 24.

'Abd al-Raḥmān Muḥammad Ibn Rumāḥis, the fleet admiral of the Umayyad caliph 'Abd al-Raḥmān al-Nāṣir,<sup>27</sup> were as follows: the admiral set out to capture ships of the Christians near Spain. The ships sailed as far as the coast of Palestine and swung about into the "Greek Sea." They encountered and captured a ship carrying four Jewish sages from the city of "Sefastin" on their way to a Kallah convention and took prisoner the four sages—R. Ḥushiel, R. Moses, R. Shemariah, a fourth unidentified rabbi as well as R. Moses' wife and son. The narrator describes the capture of a Christian commercial ship carrying four Jewish sages as follows:

The commander of a fleet, whose name was Ibn Rumāḥis,<sup>28</sup> left Cordova, having been sent by the Muslim king of Spain 'Abd al-Raḥmān an-Nāṣir. This commander of a mighty fleet set out to capture the ships of the Christians and the towns close to the coast. They sailed as far as the coast of Palestine and swung about to the Greek sea and the islands therein. [Here] they encountered a ship carrying four great scholars traveling from the city of Bari to the city called Sefastin, and who were on their way to a Kallah convention. Ibn Rumāḥis captured the ship and took the sages prisoner. One of them was R. Ḥushiel, the father of Rabbenu Ḥananel; another was R. Moses, the father of R. Ḥanokh, and R. Ḥanokh who was taken prisoner with his wife (who at the time was but a young lady) and his son; the third was R. Shemariah b. R. Elḥanan. As for the fourth, I do not know his name. The commander wanted to violate R. Moses's wife, inasmuch as she was exceedingly beautiful. Thereupon, she cried out in Hebrew to her husband R. Moses and asked him whether or not those who drown in the sea will be quickened at the time of the resurrection of the dead. He replied unto her: *The Lord said: I will bring them back from Basban; I will bring*

27. 'Abd al-Raḥmān al-Nāṣir was born in Ramaḍān 277/January 891 and was the first caliph and greatest ruler of the Umayyad dynasty of Spain. He reigned as hereditary *amīr* (prince) of Cordova from 300/912 and took the title of caliph in 317/929 until his death in 350/961.

28. 'Abd al-Raḥmān Muḥammad Ibn Rumāḥis's naval activity, as described by the Jewish narrator, corresponds with the historical evidence in classical Arabic literature. For further details, consult J. L. Delgado, *El poder naval de Al-Andalus en la época del Califato Omeya* (Granada, 1993), 186, 196–97, 208–11, 243, 258–61, 273–75, 278, 286; Elsayyed Sälem and Aḥmad 'Abbādy, *Tārikh al-Baḥriyya al-Islāmiyya fī al-Maghib wal-Andalus* (Beirut, 1969), 187–88; Elsayyed Sälem, *Tārikh Madīnat Almeria al-Islāmiyya: Qā'idat Uṣṭāl al-Andalus* (Beirut, 1969), 38–53.

them back from the depths of the sea. Having heard his reply, she cast herself into the sea and drowned.<sup>29</sup>

A story of the same nature and consequences is reported from the talmudic period. According to a narrative in *bGittin*, after the destruction of the Second Temple, the Romans transported a few hundred Jewish captives, including learned leaders, men, women, and children, by sea to Rome. While sailing some captives asked the scholars, "If we were to sink in the deep sea, would God resurrect us? The greatest scholar replied: *The Lord said: I will bring them back from Bashan; I will bring them back from the depths of the sea* (Ps 68.23)."<sup>30</sup> Having heard that, the captives allegedly cast themselves into the sea. The halakhic debate does not center on the permissibility of burying the corpse at sea under certain circumstances. Rather the issue is whether the resurrection applies to those who founder in the sea. Hence casting the corpses of travelers overboard might have been undesirable but was not forbidden in extreme situations.

Whether the dead was Muslim, Jew, or Christian, passengers had to obey the regulations of the ship on which they sailed: *dhimmīs*, who sailed on Muslim ships, had to obey the safety regulations established in Islamic shipping laws. So did Muslim and Jewish travelers on Christian ships, as we will note in due course. The shipmaster had sole discretion as to whether to throw the corpse into the sea or to keep it until either the destination or the nearest port was reached.

### *The Shipmaster's Jurisdiction*

Besides being a professional seaman, a shipmaster, according to the famous Arab pilot Ibn Mājid, had to be well acquainted with all matters on board, intelligent, unprejudiced, upstanding, faithful, trustworthy, re-

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29. Abraham Ibn Daud, *The Book of Tradition (Sefer ha-Qabbala)*, ed. G. D. Cohen (Philadelphia, 1967), 63–64; Gerson D. Cohen, "The Story of the Four Captives," *Proceedings of the American Academy for Jewish Research* 29 (1960–61): 56–60. The halakhah and other Jewish historical sources from the mishnaic and talmudic periods show that Jews who died abroad often expressed the wish to be buried in Palestine, and their bodies were transported in ships to a Palestinian port. For further details on this topic, refer to Aaron Felder, *Mourning and Remembrance in Halachah and Jewish Tradition* (New York, 1992), 5; Raphael Patai, "Ancient Jewish Seafaring and Riverfaring Laws," *By Study and Also by Faith: Essays in Honor of Hugh W. Nibley*, ed. J. M. Lundquist and S. D. Ricks (Salt Lake City, Utah, 1990), 400; Patai, *The Children of Noah* (Princeton, N.J., 1998), 98–100.

30. *bGitt* 57b; Menahem Stein, "Mother Earth in Ancient Hebrew Literature" (Hebrew), *Tarbiz* 9 (1937/38): 273; Saul Libermann, *Shkiin* (Jerusalem, 1939), 58.

spectful, soft-spoken, and friendly to all merchants and passengers.<sup>31</sup> The emphasis on being trustworthy and respectful is not coincidental. A tenth-century Islamic treatise on the law of the sea in the Mediterranean clearly states that “the validity of the contract for leasing ships and hiring sailors and such, is posited on the safe delivery [of cargo], on the professional behavior [of the crew], and on the unambiguous designation of the destination.”<sup>32</sup> Except for factors beyond human control—unforeseen attacks or technical problems—that could arise and hinder the transport of goods, they ought to be delivered safely at the destination regardless of whether a shipper or his agent did or did not accompany them.<sup>33</sup>

Although Muslim shipmasters were the highest authority onboard their ships in matters of discipline and safe delivery of cargo, they were required to comply with Islamic law and practice. In the absence of a cargo owner onboard, the captain acted as his agent until the ship anchored at the nearest Islamic port. As an agent he could not expropriate cargoes of shippers who died en route. The captain became the depositary of the property of the deceased until the ship moored either at its destination or at the nearest Islamic port, where he had to deliver it to the judicial authorities who would transfer it to the heirs.<sup>34</sup> The depositary was held responsible for loss or damage to that cargo if there had been fault or negligence on his part.<sup>35</sup>

Our Geniza documents reflect Islamic maritime law and practice, which contrasts with Christian usage. Muslim shipowners and captains

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31. Shihāb al-Dīn Aḥmad Ibn Mājīd, *Kitāb al-Fawā'id fī Uṣūl 'Ilm al-Baḥr wal-Qawā'id* (Damascus, 1971), 29–30.

32. Ṭāher, ed., *Akriyat al-Sufun*, 14; Wansharīsi, *Al-Mi'yār*, 8: 297–298.

33. Ṭāher, ed., *Akriyat al-Sufun*, 16–17, 19; Saḥnūn Ibn Sa'īd al-Tanūkhī, *Al-Mudawwana al-Kubrā* (Cairo, 1905), 4:409–10, 440; Aḥmad Ibn Muḥammad al-Ṭaḥāwī, *Kitāb al-Shurūṭ al-Ṣaḡīr* (Baghdad, 1992), 1:447; Ibn Abū Zayd al-Qayrawānī, *Al-Nawādir wal-Ziyādāt*, 7:38, 43; Ibn Rushd, *Al-Bayān wal-Taḥqīq*, 8:81–82, 498; Ibn Juzayy, *Al-Qawānīn al-Fiqhiyya*, 281; Aḥmad Ibn al-Mughīth, *Al-Muqni' fī 'Ilm al-Shurūṭ* (Madrid, 1994), 442–44; Jazīrī, *Al-Maqṣad al-Maḥmūd*, 224–25; 'Abd al-Wāḥid Ibn 'Alī al-Tamīmī al-Marrākishī, *Watbā'iq al-Murābiṭīn wal-Muwaḥḥidīn* (Cairo, 1997), 470–72; Shammākhī, *Al-Ṭāh*, 3:575; Kindī, *Al-Muṣannaḥ*, 21:155; Shihāb al-Dīn Abū al-'Abbās Ibn Idrīs al-Qarāfi, *Al-Dhakhīra* (Beirut, 1994), 5:474–75; Abū Bakr Muḥammad Ibn Muḥammad Ibn 'Āṣim, *Iḥkām al-Aḥkām 'alā Tuḥfat al-Aḥkām* (Beirut, 1994), 197; Wansharīsi, *Al-Mi'yār*, 8:300–301; Abū 'Abd Allāh Muḥammad Ibn Muḥammad al-Ḥaṭṭāb, *Mawāhib al-Jalīl li-Sharḥ Mukhtaṣar Khalīl* (Beirut, 1995), 7:550–51; 'Abd al-'Azīz Ibn al-Barrāj, *Al-Mubadḍab* (Qumm, 1989), 1:483; Khalīlieh, *Islamic Maritime Law*, 61–64.

34. Khalīlieh, *Islamic Maritime Law*, 175.

35. D. R. Noble, “The Principles of Islamic Maritime Law” (Ph.D. diss., University of London, 1988), 60–65.

were required by law to transfer the property and possessions of the deceased person to the *qāḍī* (local judicial authority) either at the first port of call or at the port of discharge. The *qāḍī*'s duty was to assign a trustworthy commissioner [*wakīl*] to be responsible for storing, contacting the family of the deceased, and delivering the property to them.<sup>36</sup> If the deceased was a *ḥimmi*, his belongings were to be delivered to those in charge of his community's administrative and judicial affairs. Thus in our Geniza documents, neither the cousin of the late Moshe Bar Yehuda ha-Ḥazan nor the other Jew who happened to be in the ship had the right to take charge of the deceased's cargo. In the summer of 1058, when the ship anchored in Tripoli instead of Sicily, its captain handed the shipment over to the Islamic judicial authorities, who turned them over to the Jewish authorities in the city. The *ḍayyan* sequestered everything in order to guard the rights of the widow and the only daughter back in Sicily. The fact that the Jewish court and elders could take possession of the goods of a foreign Jew proves that the right of non-Muslim communities to deal with estates and property of their co-religionists was still recognized in the eleventh century.

If such an incident took place on a Christian ship, the master and his crew would evidently confiscate the deceased's property. Ibn Jubayr, a well-known Andalusian traveler and *qāḍī* who witnessed a similar incident on a Genoese ship sailing from Acre to Sicily, reports:

Throughout all these days we had seen no land—may God soon dispel our cares—and two Muslims died—may God have mercy on them. They were thrown into the sea. Of the [Christian] pilgrims two died also, and were followed thereafter by many others. One fell alive into the sea, and the waves carried him off more quickly than a flash of lightning. The captain of the ship inherited the effects of the departed Muslims and Christian pilgrims, for such is their custom for all who die at sea. There is no way for the [true] heir of the deceased to recover his inheritance, and at this we were much astonished.<sup>37</sup>

Evidently, two different customs of handling inheritance at sea prevailed in the medieval Mediterranean world, a Christian one and an Islamic one. The Christian maritime tradition, as reflected in the thirteenth-century

36. Wansharīṣī, *Al-Mi'yār*, 8:304–05; Ibn Rushd, *Al-Bayān wal-Taḥqīl*, 15:374–75; TS 13 J 3, f. 4; TS 24.6, ll. 21–27; Ben-Sasson, *Jews of Sicily*, 107–12.

37. Ibn Jubayr, *Riḥlat Ibn Jubayr*, 287: “*li-annabā sunna 'indabum fī kull man yamūt fī al-baḥr wa-lā sabīl li-wārith al-mayyit ilā mirātibibi.*”

Catalan *Libre del Consolat de Mar* (Consulate of the Sea) allowed the captain to take over the possessions of the deceased on board, regardless of his religious and ethnic identity. Its Article 118 decrees:

In the situation described above, the master of the vessel shall receive as part of his compensation or wages the bed and one suit of clothing of the deceased person, that is, after the navigator has received one suit of clothing. If the person who died aboard the vessel did not leave many possessions, the master of the vessel should not even receive that much. If the property of the deceased party amounts to less than one hundred *besant*, the (captain) patron should take only the clothing and turn all other effects of the deceased into cash by selling it.

Similarly, Article 121 of the *Consulate* rules that “any provisions left by a passenger or any other person dying aboard the vessel will be taken over by the patron of the vessel.”<sup>38</sup>

#### ON LAND

##### *Adjudication*

The ship that the late Moshe Bar Yehuda ha-Ḥazan, his cousin, and another Jew had boarded was to sail directly from Alexandria to Palermo. For an unknown reason, probably technical, and following the death of Moshe Bar Yehuda, the captain diverted course to the port of Tripoli. Once it entered the harbor, the ship’s legal position changed. The captain’s exclusive jurisdiction then gave way to a co-jurisdiction exercised by him and the port superintendent.<sup>39</sup> In accordance with this guideline, the captain of the ship was required by the Islamic maritime norms to deliver the deceased’s properties to the judicial authorities. As soon as the *qāḍī* verified that no Muslim party was involved and the commercial transaction was exclusively Jewish, he transferred the case to the Jewish court.<sup>40</sup>

Muslim jurists decreed that the adjudication should take place at the

38. S. S. Jados, *Consulate of the Sea and Related Documents* (Tuscaloosa, Ala., 1975), 66–68.

39. Khalilieh, *Islamic Maritime Law*, 143.

40. Cases involving Muslims and *dhimmīs* as well as *dhimmī* minorities of different denominations had to be brought before Islamic courts. On the Jewish communal jurisdiction in the Islamic Mediterranean, consult Goitein, *Mediterranean Society*, 2:311–45.

destination.<sup>41</sup> Abū 'Imrān al-Fāsī (d. 430/1038) issued a *fatwā* dealing with an argument between the ship owner and passengers, stating:

A ship loaded in Alexandria traveled along with al-Mahdiyya vessels. It was taken off Jabal Barqa (Libya) by the Rūm (Byzantines), but the Sicilian ships freed the prisoners and brought them to Sicily. Do the deliverers have rights on the ship and the surviving passengers? Do they deserve restitution for having saved them from the enemy? Can the issue be judged in al-Mahdiyya? [He answered:] The Muslims who freed their brothers must not be rewarded, but, after the event, may be compensated by the owner of the ship. The litigation must be resolved in the city where the boat was going, if the *amīr* has jurisdiction over it.<sup>42</sup>

The continuity of this legal tradition is attested in a much later collection of Islamic responsa. It establishes that misunderstandings between the lessees and lessors should be adjudicated at their destination "if the judge is reasonably just," regardless of the school of law with which he was affiliated. Otherwise the case might be tried in any Islamic territory, provided the judge was fair and just and the location accessible to all parties concerned.<sup>43</sup> In most major Islamic port cities along the Mediterranean, local judges, who also functioned as port superintendents, settled disputes and adjudicated cases brought before them by carriers, shippers, travel-

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41. Settling arguments between contracting parties at the destination was a pre-Islamic custom. See Clyde Pharr et al., *The Theodosian Code and Novels and the Siondoan Constitutions* (Princeton, N.J., 1952), 400, Article *CTb* 13.9.5 and *CTb* 13.9.6; Sirks, *Food for Rome*, 215. *Code of Justinian* 11.5.1 rules: "Where a shipmaster alleges that he had a wreck, he must hasten to appear before the judge of the province, who has jurisdiction, and prove the fact by witnesses in his presence." See S. P. Scott, *The Civil Law* (Cincinnati, Ohio, 1932), 15:168. Nonetheless, according to the maritime law of classical Athens, judicial hearings in cases involving disputants of different nationalities is determined not by the national jurisdictions but by the place where the commercial contract was signed. See Kathleen M. Atkinson, "Rome and the Rhodian Sea-Law," *Ivra* 25 (1974): 58–59.

42. H. R. Idris, "Commerce maritime et Kirād en Berberie Orientale d'après un recueil inédit *Fatwās Médiévales*," *Journal of the Economic and Social History of the Orient* 4 (1961): 238.

43. Abū al-Qāsim Ibn Aḥmad al-Burzulī, *Fatāwā al-Burzulī: Jāmi' Masā'il al-Aḥkām li-mā Nazala min al-Qaḍāyā bil-Muḥtāḥ wal-Hukkām* (Beirut, 2002), 3:654–55; Wansharīṣī, *Al-Mi'yār*, 8:304–05; Idris, "Commerce maritime," 238; Khalilieh, *Islamic Maritime Law*, 149–50; Noble, "Principles of Islamic Maritime Law," 90–92.

ers, and crewmen.<sup>44</sup> The Maghribī jurisconsult al-Wansharīṣī (834–914/1430–1508) illuminates this matter further in a *fatwā* as follows:

Concerning the location of the adjudication, if errors must be settled between the passengers and the shipowner, but not among the passengers themselves, it is more appropriate to say [that the adjudication] should take place at the destination if the arbitrator at that place is fair and just. Otherwise, after the vessel lays anchor its owner collects the properties and commodities of all passengers, those alive and the dead, and unloads them in one place, while the adjudication is held in another. But, if some passengers, or heirs, or those who have goods on board the vessel are determined to unload the entire consignments and appeal to that arbitrator, the edict in such a case is that whoever calls for it is acceptable so long as the arbitrator's judgments are trustworthy; it is preferable to consult knowledgeable and trustworthy people on the verdict and undertake the adjudication and testimony at the port of debarkation. With regard to the adjudication among the ship-owners and the testimony among them, the testimony of he who seeks personal benefit is inadmissible.<sup>45</sup>

Regardless of the ethnic, religious, and *madhhab* affiliation of the litigants, all controversies that occurred within the Islamic territories or maritime jurisdiction had to be heard before a Muslim court.<sup>46</sup> Ibn Muḡassar (d. 677/1278) reports that the *qāḡī* in a maritime city served also as *nāzīr*, or superintendent of the port. The *qāḡī* of Ascalon, then the main port in southern Palestine, and the *qāḡī* of Alexandria held such double appointments in their respective cities.<sup>47</sup> Similarly the *qāḡī* of Seville, as reported by the twelfth-century Andalusian market superintendent Ibn 'Abdūn, also served as a port superintendent.<sup>48</sup> When disputes occurred

44. Khalilieh, *Islamic Maritime Law*, 153.

45. Wansharīṣī, *Al-Mi'yār*, 8:304–05; Burzulī, *Fatāwā*, 3:654–55.

46. This principle was applicable if: (a) a Muslim party was involved in the transaction; (b) a contact was signed in Islamic court and/or territory; or (c) the dispute arose within the Islamic domain and territorial waters.

47. Muḡammad Ibn 'Alī Ibn Yūsuf Ibn Muḡassar, *Akbbār Miḡr*, ed. H. Massé (Cairo, 1919), 77, 91. On p. 91 he writes: "In this year 544/1149 died Abū al-Ḥasan 'Alī Ibn al-Ḥasan of Bṣān, the father of al-Qāḡī al-Fāḡīl of Cairo, who functioned as the judge and the port superintendent of Ascalon" [*wa-ftbā (544 A.H.) māta Abū al-Ḥasan 'Alī Ibn al-Ḥasan al-Bṣānī wālīd al-Qāḡī al-Fāḡīl bi-Miḡr wa-kāna qāḡī 'Aṣqalān wal-nāzīr ftbā*]; Khalilieh, *Islamic Maritime Law*, 153.

48. Muḡammad Ibn Aḡmad Ibn 'Abdūn, *Seville Musulmane au debut du XII<sup>e</sup> Siècle*, trans. E. Lévi-Provençal (Paris, 1947), 63–65.

among Muslim traders and sailors while traveling to a foreign country, as the Maghribī traveler Ibn Baṭṭūṭa (703–775/1304–77) reports with regard to the Muslim community in China, they had to settle matters in the presence of a *qāḍī* at that Chinese port.<sup>49</sup> However, they had the option to appeal to a higher court if doubts emerged as to the *qāḍī*'s decisions.

*Islamic Guardianship or Jewish Communal Interest?*

Our Geniza documents shed interesting light on the issue of Islamic legal guardianship versus Jewish communal interest. The Egyptian merchant

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49. The diplomatic and commercial relations between the Islamic Empire and China and India involved establishing independent Islamic law courts in major port cities. The precise date is unknown, but the third century A.H./ninth century C.E. historical sources refer to the presence of Muslim *qāḍīs* in Khānfū. Ḥamīdullāh reports: "The merchant Sulaimān reports that at Khānfū, which is the rendezvous of merchants, a Muslim is charged by the ruler of the country to adjudicate the disputes that arise between the members of the Muslim community arriving in the country. Such was the desire of the king of China. On days of festival, this chief of the Muslim conducts the service of the Muslims, pronounces the sermon and prays for the Caliph (*Sulṭān al-Muslimīn*) therein. The merchants of 'Irāq cannot rise against his decisions. And in fact he acts with justice in conformity with the *Qur'ān* and the precepts of Muslim law." Similarly, Indian rulers permitted Muslim judges to preside and administer the *Shari'a*. The shipmaster Buzurg Ibn Shahriyār states: "If the thief is a Muslim, he is judged before the *ḥunarman* of the Muslims, who sentences him in accordance with Islamic law. This *ḥunarman* is like a *qāḍī* in a Muslim country. He can only be chosen from amongst Muslims." See Buzurg Ibn Shahriyār of Ramhormuz, *Book of the Wonders of India*, 94; Muḥammad Ibn 'Abd Allāh Ibn Baṭṭūṭa, *Ibn Baṭṭūṭa, Travels in Asia and Africa (1325–1354)* (London, 1929), 290–91; Muḥammad Ḥamīdullāh, *Muslim Conduct of State* (Lahore, 1961), 122–23, paragraph 234. While Islamic juridical authority existed in the Far East, neither Arabic nor Christian sources hint at the presence of Muslim *qāḍīs* in any major port within the Byzantine realm until the late fourteenth century, though they mention mosques founded in Constantinople during the ninth century to serve Muslim prisoners of war and merchants. Documentary sources report that Constantinople allowed a Muslim *qāḍī* to settle litigations and disputes in 1399. For further details, consult Stephen W. Reinert, "The Muslim Presence in Constantinople, 9th–15th Centuries: Some Preliminary Observations," *Studies on the Internal Diaspora of the Byzantine Empire*, ed. H. Ahrweiler and A. E. Laiou (Washington, D.C., 1998): 125–50. From Reinert's article one infers any dispute between Muslim merchants en route to Constantinople was most likely settled before a *Shari'a* court within the Islamic Empire. Dotson draws our attention to cases in Latin Europe and remarks that both parties to the shipping contract, lessee and lessor, had the right to bring the case before any judge, as they consensually saw fit, but not necessarily at the destination or port of origin. See Dotson, "Freight Rates and Shipping Practices," 76.

al-Ḥasan ha-Cohen Ibn Salmān tried through his agent to recover his property, but the Jewish authorities in Tripoli refused to deliver them without a full-fledged lawsuit between the merchant and representatives of the widow and the orphan, a protracted affair. To assist their countryman, the rabbinical court in Old Cairo turned to the Jewish high court in Jerusalem. The reasoning of the Cairene court was that any delay in returning the goods of the Egyptian merchant might lead to their confiscation by the Muslim authorities of Tripoli. He points out in his inquiries to Daniel b. 'Azarya that the Tripolitanian *ḍayyan* ruled in favor of the widow and her orphan for the fear that the *sultān*<sup>50</sup> would confiscate the merchandise under the pretext that its owner was absent, or that part of it belonged to a minor orphan.<sup>51</sup> Meanwhile, we later learn that the *ḍayyan* at the Tripoli *bet ḍin* disregarded all written contracts composed by a notary and signed by both merchants at the courthouse of Fustāṭ. Undoubtedly, the allegations posed in the inquiries raise two fundamental questions. First, did Islamic judicial and civil authorities have the right to put a lien on properties owned by young non-Muslim orphans until they reach adulthood? Second, why did the *ḍayyan* not enable the Egyptian merchant to recover his property through his agent, opting rather to deliver the commodities in their entirety to the widow and the orphan?

Ibn Salmān's allegations show the extent to which he was aware of the legal status of minor orphans' property in Islamic law. A later Islamic source reflects the position that the Geniza evidence shows to have been the norm in the eleventh century. Muḥammad Ibn 'Arafa al-Warḡhamī (716–803/1316–1400) promulgated a *fatwā* authorizing a trustworthy person to manage and sell the deceased's property. Ibn 'Arafa's responsum pertains to a Tunisian merchant who arrived in Alexandria to carry out commercial transactions but subsequently died there. Fearing that the *sultān* and local authorities would confiscate the deceased's property and acting on behalf of the actual heirs, a trustworthy person took upon himself to sell that property and transfer the profits to the heirs in Tūnis.<sup>52</sup> Further Islamic legal inquiries support the claims posed by Ibn Salmān.<sup>53</sup>

Ibn Salmān could understand the hasty decision of the Tripolitanian *ḍayyan* if it aimed to protect Jewish properties against confiscation, but

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50. The governor of Tripoli was al-Muntaṣir Ibn Khazrūn 450–459/1058–1067, whose dynasty Banū Khazrūn ruled this important port-city and its surroundings from 391–540/1001–1146.

51. See ll. 29–32, also doc. TS 20.152, ll. 26–28.

52. Wansharīstī, *Al-Mi'yār*, 6:225–26; 8:345; 9:102–03.

53. Burzulī, *Fatāwā*, 4:538–66; *Al-Mawsū'a al-Fiqhiyya* (Kuwait, 1990), 17:84–101.

he could not endorse it.<sup>54</sup> As a consequence, he appealed to the *bēt dīn ba-gadol* to review the case. In so doing, he supported his argument with documents attested and signed by the Cairene rabbinical court. Ultimately, the *bēt dīn ba-gadol* reconsidered and subsequently accepted Ibn Salmān's appeal and instructed the elders of Palermo's Jewish community to accelerate the judicial procedures and release the shares of that Egyptian merchant.<sup>55</sup> The eleventh-century court decision in this detail is compatible with the Jerusalem Talmud (*Mo'ed Katan*), which rules:

- A. R. Hiyya associate of rabbis said, "In the case of business dealings [of the deceased, left in the possession] of an estate of minors, [in which partners wished to collect what was owing to them,] the [capital] may be retrieved [by the partners, since otherwise this would lead to considerable loss, were the partners required to wait until the orphans reached maturity]."
- B. *They proposed to rule that* that applies when there are witnesses to the original transaction.
- C. Lo, if there are no witnesses who know about it, may it not be done?
- D. *Rabbis of Caesarea in the name of R. La:* "It is necessary to rule that when there are witnesses who know about the transaction [the funds may be collected]. Lo, if there are no witnesses to support the claim of the partners, then the capital is treated as a bailment [left with deceased, and may be collected in the proper manner]. Do we wish to maintain that such a bailment cannot be collected from the estate to which minors are heirs? [Surely not!]"<sup>56</sup>

Moses Maimonides wrote a century and a half later in his *Mishneh Torah*:

We have already explained that if the trustee dies the investor submits to an oath and collects half. If there are witnesses testifying that certain movables were bought with the money he granted to trade with on a profit-sharing basis, then the investor is entitled to them without having to submit to an oath. Neither a creditor nor a widow can collect from these unless there is a profit, inasmuch as the deceased's part of

54. Goitein, *Mediterranean Society*, 2:395–96.

55. Ben-Sasson, *Jews of Sicily*, 170–71, doc. TS Arabic 50.193.

56. *The Talmud of the Land of Israel, Yerushalmi Tractate Mo'ed Qatan*, ed. J. Neusner (Atlanta, Ga., 1998), 2.3, 12:29.

the profit goes to the heirs and the creditor and the widow may collect only from that share.<sup>57</sup>

Ibn Salmān did not have to submit to an oath inasmuch as witnesses attested to both oral and written contracts. This would apply all the more to contracts that were formulated at the request of both partners by a scribe at the rabbinical court. The Egyptian partner had the right to collect the four loads of flax registered under the name of the late Moshe Bar Yehuda ha-Ḥazan in addition to his own shares of the goods. Note that Maimonides entitles the heirs, in this case the widow and the orphan, to collect only the shares of their husband and father irrespective of their socioeconomic status. If the halakhah's position is so clear and dismisses any right of the widow and her orphan to collect the entire shipment, why then did the *dayyan* rule in their favor? The only sensible solution I propose is that the *dayyan* may have had envisioned their socioeconomic position in the future in the absence of the head of the family. Evidently humane rather than legal considerations were behind the *dayyan*'s decision. Instead of relying on donations from the Palermo Jewish community, the value of the cargoes would enable the widow and her orphaned daughter to survive for a few years.

#### AT THE PROPOSED DESTINATION

Two factors could have prompted the Egyptian merchant al-Ḥasan ha-Cohen Ibn Salmān to sign the initial agreements with Moshe Bar Yehuda ha-Ḥazan in the *bēt dīn* of Fustāṭ: (a) to protect his investment and goods against mismanagement on the part of Moshe Bar Yehuda ha-Ḥazan; and (b) to evade paying a tithe on the value of his merchandise in the Palermo customs house.

Islamic taxes fell under two theoretical categories: canonical taxes expressly permitted by Islamic law, and noncanonical ones imposed by the government. Under the former category, any merchant arriving in a Muslim port was required to pay a canonical tax, either a tenth [*ʿushr*]<sup>58</sup> or a

57. Maimonides, *Code of Maimonides (Mishneh Torah)*, book 12), 5:232–33.

58. Nāṣīr-ī Khosraw, *Book of Travels (Safarnāma)*, 13: "It [Tripoli, Lebanon] is also a customs station, as ships from Byzantium, Europe, Andalusia, and the Maghrib dock there. They pay ten percent to the *sultān*, which income provides for the soldiers' maintenance." Ibn al-Mujāwir, *Ṣifat Bilād al-Yaman*, 1:140. Paul Forand, "Notes on 'Ushr and Maks,'" *Arabica* 13 (1967): 137; 'Abd al-Jabbār Nāḥī, "Dirāsa Muqārana lil-Aḥwāl al-Tijāriyya li-Mawānī' al-Khalij al-'Arabī wal-Jazīra al-'Arabiyya fī al-Qarn al-Rābi' al-Hijrī," *Majallat Dirāsāt al-Khalij wal-Jazīra al-'Arabiyya* 14 (1988): 197; Ṣafā' 'Abd al-Fattāḥ, *Al-Mawānī wal-Thughūr*

fifth [*kbums*],<sup>59</sup> of his merchandise. Theoretically, the amount of tax levied on the merchants differed according to their religion, country of origin, and political and social status. For example, the amount of customs paid by a Muslim was not the same as that levied on a *ḍhimmi*, the dues imposed on a *ḍhimmi* trader were less than the amount levied on a *ḥarbi* merchant, and the taxes levied on local citizens differed from those imposed on foreigners.<sup>60</sup> Tolls and taxes of a noncanonical nature were ubiquitous, though they varied over time and place. These included transit taxes along routes [*marāṣid*]<sup>61</sup> and at city gates [*qabāla*], and transaction taxes levied when goods were sold or transferred [*maghārim, rusūm, itāwa, mukūs, adā', wājib, etc.*].<sup>62</sup>

Al-Makhzūmī (d. 585/1189) provides extensive details on commercial taxes in Egypt's Mediterranean ports: Alexandria, Damietta, Tinnīs, and Rosetta, as well as the ports of Qulzum and 'Aydhāb on the Red Sea.<sup>63</sup>

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*al-Miṣriyya min al-Fatḥ al-Islāmī ḥattā Nibāyat al-'Aqr al-Fāṭimī* (Cairo, 1986), 122. *Ushr* (often translated as "tithe") is a tax levied on the following persons: (a) Muslim cultivators who owned *'ushariyya* land irrigated by running water, brooks, and streams or by rain. They paid 10 percent of their produce; (b) Muslim merchants and artisans, who paid 2.5 percent of their annual earnings; (c) *ḍhimmi* merchants and artisans, who contributed 5 percent of their annual earnings; (d) enemy alien [*ḥarbi*] merchants, who paid 10 percent of the actual value of their merchandise when they entered the realm of Islam [*Dār al-Islām*]. For further details on *ushr*, consult Abū Yūsuf Ya'qūb, *Kitāb al-Kharāj* (Leiden, 1969), 78–83; Yaḥyā Ibn Ādam, *Kitāb al-Kharāj* (Leiden, 1967), 28–33. These two works have been translated by A. Ben Shemesh as *Taxation in Islam* (Leiden, 1970).

59. Al-As'ad Abū al-Makārim Ibn Mammātī, *Qawānīn al-Dawāwīn*, ed. 'Aziz Suryal Aṭīya (Cairo, 1943), 326; Abū al-'Abbās Aḥmad al-Qalqashandī, *Ṣaḥḥ al-'Aḥbā fī Ṣinā'at al-Insā'* (Cairo, 1913), 3:463; Taḥiyy al-Dīn Aḥmad Ibn 'Alī al-Maqrīzī, *Al-Mawā'iz wal-I'tibār fī Dhikr al-Khūṭaṭ wal-Āthār* (Cairo, 1967), 2:122; T. Sato, "'Ushr,'" *EI* (Leiden, 2000), 10:917–19; Nāji, "Dirāsa Muqārana," 186, 194; 'Abd al-Fattāḥ, *Al-Mawānī' wal-Thughūr*, 123. This tax levied on incoming merchants at the frontiers [*thughūr*] required a *ḍhimmi* trader to pay  $\frac{1}{20}$  *ḍinār* [5 percent] while a Muslim merchant paid  $\frac{1}{40}$  *ḍinār* [2.5 percent]. It was collected once a year even if the merchant made several commercial trips to *Dār al-Islām*.

60. 'Abd al-Fattāḥ, *Al-Mawānī' wal-Thughūr*, 123.

61. Abū 'Abd Allāh Muḥammad Ibn Aḥmad al-Muqaddasī, *Aḥsan al-Taqāsīm fī Ma'rīfat al-Aqālīm* (Leiden, 1906), 104–05.

62. TS Box J 1, f. 54; Goitein, *Mediterranean Society*, 1:345–46; O. R. Constable, *Trade and Traders in Muslim Spain: The Commercial Realignment of the Iberian Peninsula 900–1500* (Cambridge, 1994), 129.

63. Claude Cahen, "Douanes et Commerce dans les Ports Méditerranéens de l'Égypte Médiévale d'après le Minhāj d'al-Makhzūmī," *Journal of the Economic and Social History of the Orient* 7 (1964): 221–22.

When a *Rūmī* (Byzantine or Italian) commercial ship arrived in port, the secretary registered the port of origin, type and quantity of the cargo on board, and passengers' names and origins in order to estimate the customs dues. Similarly, when a Muslim vessel anchored in the terminal, the scribe had to record the arrival date, the names of the vessel, the passengers and the ship owners, as well as the quantity, quality, and purchase price of the shipments before warehousing them. Moreover, neither the shipmaster nor the merchant could unload cargo without an official permit.<sup>64</sup>

In addition to the Islamic canonical taxes, the nonrefundable toll fees and entry and exit permits,<sup>65</sup> arriving and departing merchant had to pay gratuities to government officials and port laborers.<sup>66</sup> In practice, no distinction was made between local and foreign traders. Once they fulfilled their obligations, they were granted a certificate called a *barā'a* as a proof of payment of the dues.<sup>67</sup> A merchant who did not have enough money to pay the customs had to leave some goods behind as security for later payment, as we read in a Geniza letter: "And he left behind him the big parcel of kohl in the customhouse as a deposit for the unpaid customs fee [*wa-qad taraka qiṭ'at kuḥl al-kabūra ft al-kbūr 'alā baqīyyat al-maks*]." <sup>68</sup>

#### CONCLUSIONS

The documentary and legal evidence presented above sheds light on the daily life of Geniza traders. It proves that the inquiries addressed in Islamic jurisprudence were not hypothetical but represented actual situations that merchants and sailors encountered on the high seas and on land. Once again, but from a new angle, Geniza letters written by Jews

64. TS 16.215v, ll. 4–5; Abū al-Ḥasan 'Alī Ibn 'Uthmān al-Makhzūmī, *Kitāb al-Minhāj ft 'Ilm Kharāj Miqr*, ed. C. Cahen and Y. Rāghib (Cairo, 1986), 46–49, 57–58. For a French translation of the texts, see Cahen, "Douanes et Commerce d'après le Minhāj," 299–300, 311–14.

65. TS 10 J 16, f. 15, ll. 9–10; Rāshid al-Barrāwī, *Ḥālat Miqr al-Iqtīādīyya ft 'Abd al-Fāṭimīyyīn* (Cairo, 1948), 250–51.

66. Makhzūmī, *Kharāj Miqr*, 9–10; Cahen, "Douanes et Commerce," 283; Goitein, *Letters*, 284–86; 'Abd al-Fattāḥ, *Al-Mawānī wal-Thughūr*, 124; Barrāwī, *Ḥālat Miqr al-Iqtīādīyya*, 269–70, 344–46; John Wansbrough, "Venice and Florence in the Mamluk Commercial Privileges," *Bulletin of the School of Oriental and African Studies* 27 (1965): 520: "And when the galleys arrive at the harbor of Beirut there is a gratuity of 30 florins on each galley for the superintendent."

67. Forand, "Notes on 'Ushr and Maks," 137.

68. TS 12.434, ll. 14–15. In verso ll. 10–12, the sender complains that the merchandise of other merchants was released but not his own since he could not pay the dues; this letter is dated from the early twelfth century.

have been shown to portray daily life in classical Islamic society in general.

*Dhimmī* merchants and intellectuals were acquainted with the Islamic law of the sea as well as the taxation system in ports. Shippers of all social segments, including *dhimmīs*, realized that they had to abide by the shipping regulations set up by Islamic jurists, as in the case of the death of the Sicilian merchant Moshe Bar Yehuda ha-Ḥazan. Regardless of whether the deceased was a Muslim or a *dhimmī*, neither the ship owner nor the ship's captain and crew could seize his personal effects and mercantile shipments. In such circumstances the deceased's belongings had to be transferred at first to Islamic judicial authorities, who, when they realized that no Islamic party was involved, sent the case to the appropriate *dhimmī* authorities. The very fact that "the Jewish court of elders" was able to take possession of the goods of the foreigner proves that in those days the right of the non-Muslim communities to deal with the estates of their coreligionists was still recognized in principle. This in turn leads us to infer that *dhimmīs* living in the realm of Islam enjoyed autonomy, managed their shipping businesses, and issued their own laws and other legal decisions free of any interference from the governing authorities. Furthermore, the responsum teaches us about the authority of the rabbinical court of the Palestinian yeshiva, its official jurisdiction over the Egyptian community, and its unofficial jurisdiction over the communities of the Maghrib.