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Lost Jewish Culture Retrieved
from Vienna Literary Treasures:
A Single Remnant of a
Halakhot Ketanot (?)
Version in Judaeo-Arabic

Neri Yeshayahu Ariel

Aron Menczer (1917-1943) was an active member of the *Gordonia* Zionist youth movement in Vienna. Following the incorporation of Austria into Nazi Germany in March 1938 (the Anschluss), he became a central figure in the *Youth Aliyah Organization* in Vienna. Later – from September 1939 until the forced termination of the organization's activities in the spring of 1941 – he directed the Youth Aliyah in Austria.

In February 1939 he escorted a youth group to Palestine, but his commitment to Jewish children and youth still left in Austria made him return to Vienna, rejecting further options to leave Austria. Back in Vienna, he continued to facilitate and organize the emigration of Jewish children and youth, and when exit was cut off in late 1940 he concentrated all his efforts on Zionist educational and cultural work.

At Menczer's initiative, the *Youth Aliyah* training facilities in Vienna were turned into a regular Zionist-oriented school, giving hundreds of Jewish children and youngsters the only opportunity to acquire some structured education. At the same time, all the Zionist youth movements in Vienna joined forces under his leadership in an effort to continue their activity under adversity. These acts of resistance, keeping alive Jewish-Zionist identity and social cohesion, coupled with Aron Menczer's charismatic and caring personality, made him and his fellow youth leaders a beacon of light for the Jewish youth in Vienna, sheltering them, at least for sometime, from the darkness of the day.

Menczer continued his social and educational work in the forced-labor camp in upper Austria to which he was sent in May 1941, and in Terezin Concentration camp, to which he was deported in September 1942. In August 1943 he volunteered to join a team chosen to care for 1,200 Jewish children brought to Terezin from Bialystock. On October 5, 1943, he was sent with the children and the team to Birkenau and murdered there.

In memory of Aron Menczer and his deeds, the City of Vienna established, in 2004, the Aron Menczer Research Fund at the Hebrew University of Jerusalem, promoting the study of Jewish life, culture and history connected to the City of Vienna.

Lost Jewish Culture Retrieved from Vienna Literary Treasures: A Single Remnant of a *Halakhot Ketanot* (?) Version in Judaeo-Arabic

A Research of Manuscripts in the *Österreichische Nationalbibliothek*

Neri Yeshayahu Ariel

Abstract

In this article, I provide a critical edition of a single fragment from the Vienna Genizah Collection that was brought to me for consideration and with whose publication I have been entrusted. This is a monumental manuscript, since it most probably includes one of the rare examples of remnants of a lost genre that did not survive in any other form: arranged *Sheiltot* rendered in Judeo-Arabic. This publication represents the very beginning of the larger project I have undertaken in the Austrian Library to publish Genizah materials in Judaeo-Arabic which scholars were not aware of previously.

Introduction

The P.Vindob. H 112 fragment, which is the focus of our discussion here, is a single fragment of the papyri collection in Vienna that reflects the wealth of Jewish treasures in this city.¹ The Vienna Genizah documents were acquired among a much larger batch of Arabic papyri. They were all either acquired by or named after Archduke (Erzherzog) Rainer (hence Goitein's abbreviation PER).² We do not have clear evidence regarding the authorship of the text, but Allony's testimony may bring us closer to uncovering its milieu:

The fragments in the Archduke Rainer Collection may in fact have originated at Fayyum but no clear evidence is available – whether external evidence provided by the dealers nor internal evidence contained in the material itself – to show that it actually originated at Fayyum. The city of Fayyum, as is well known, was the birthplace of Seadya Ga'on, yet the Rainer Collection contains but one single fragment of Seadya Ga'on's hymns.³

The fragment is not made of papyrus but rather of paper. It survived, as far as I can tell, as a single fragment.

I would like to thank the Center for Austrian Studies, the European Forum at the Hebrew University of Jerusalem and the Aron Menczer Fund for their generous support of this research. Prof. Armin Lange and Prof. Bernhard Palme gave their permission to publish the fragment and I am grateful to them as well. In following publications I will discuss some elements of this text that have not been discussed here.

¹ The fragment and first cataloguing are available here:

http://aleph.onb.ac.at/F/46XAQ1AYSS7RHENYVPC61PNTVLMFSGXA4ELGUT21P5DRNK46X5-03753?func=full-set-set&set_number=028517&set_entry=000089&format=999.

The fragment, along with other fragments from the Cairo Genizah, is available at the Friedberg Project as well: <http://www.genizah.org/onlineFGP.htm?type=FGP&lang=eng>. The manuscript was first described by A. Z. Schwarz, D. S. Löwinger and E. Roth, *Die Hebräischen Handschriften in Österreich* (New York, 1973), Part II, A, p. 62, Nr. 42. The physical description mentioned is as follows: "1 Blatt. 22 Zeilen. Schriftspiegel 12 X 17 cm. Papier. Orientalische Quadratschrift. Vgl. A.-L. Nr. 74 Signatur H112." On the content of Schwarz's identification, see below.

² Nehemia Allony, "Hebräisch," in: *Festschrift zum 100 jährigen bestehen der Papyrussammlung der Österreichischen Nationalbibliothek*, Papyrus Erzherzog Rainer (P. Rainer Cent.), Textband (Wien, 1983), pp. 229–233.

³ Allony, *ibid.*, p. 231.

To complete the edition I present here, I analyze the *Halakhot* included in this fragment, attempt to identify their origins and offer a number of possibilities for identifying the fragment. This is a pioneering piece of work on the Vienna collection that includes many other fragments, only few of which have been published. The remainder of the fragments still await scholarly attention. Of the Viennese collection there are currently 210 Genizah fragments available on the Genizah website of the Friedberg Institute (<http://www.jewishmanuscripts.org>), most appearing with images and partial descriptions. This collection is a small, separate collection in the ÖNB, alongside hundreds of fragments belonging to the *Österreichische Genizah* that are also part of the ÖNB. They will be made available to scholars throughout the INL in the very near future.⁴

In this article, I am publishing a transcription of the fragment from the Judaeo-Arabic. I have also added an annotated English translation that reflects the transcription. Explanations appear between brackets in the English {X}, and the notes relating to specific lines provide the reader with further details related to the Talmudic literature, Halakha and other sources which are necessary for textual interpretation. The references to specific line numbers (in both translations) relate to the line numbers in the transcription. The [=] sign marks the beginning of the Judaeo-Arabic translation which relates to the former Talmudic quote. As I will demonstrate, this “translation” is not only a literal translation of the quote into the lingua franca, but also incorporates short explanations and adds halakhic decisions. These all appear in a very concise form. On the one hand, the author assimilates his legal knowledge into the quotation, while on the other, he does not share his halakhic deliberations with the reader.

⁴ The project of cataloguing the Jewish treasures of the *Nationalbibliothek* will complete the scientific picture that facilitates the project *Hebräische Handschriften und Fragmente in Österreichischen Bibliotheken* (<http://hebraica.at/hebraica/hebraica1/Bibliothek>). For further information on the Austrian Genizah, see the entry “Bibliography.” Dr. Martha Keil and our research team are working diligently to make this Genizah available, digitalize it, identify the fragments and catalogue them in an optimal manner. In this regard, cooperation is crucial to bring the importance of the Austrian materials to the awareness of scholars.

ע"א

- 1 אלשהאדה ואדא חצ'ר שטר ופיה שהאדה ואחד ואתפק
מעא שאהד אכר ישהד במא פי דלך אלשטר פאן דלך
גאיז. ואיצ'א כמן יקול לצאחבה קד אקרצ'תך ק"ק דרהם
ושהד אלאכר בק' דינר פיגב עלי אלמדעא עליה אן יופיה
אלק' דרהם ויחלף עלי אלק' אלדי תבקת. יתומים שבאו 5
לחלוק בניכסי אביהן בית דין יורדין לנכסיהם ומעמידין
להן אפטורפס ובורר להן חלק יפה אם הגדילו אין יכולין
למחות. ואליתאמי אדא אחתאגו אן יקתסמון מיראת
אביהם פיגב אן יתולא אלקסמה בית דין ויקימון להם וכילא
וינצף בינהם ויכתאר להם אלחט' אלאופר פאדא כברו 10
פליס להם כלאם ולא מטאלבה. אפטורפס שמינהו אבי
יתומים לא ישבע מיני!הו בית דין ישבע. ואלוכיל אדא
אנצבה אבו אליתומים פליס עליה ואדא אקאמה מן
בית דין יגב אן יחלף אדא אכתארו אליתומים מטאלבתה.
גדר גדר והשלימו לעשרה הרי זה חזקה פרץ פרצה כדי 15
שיכנס ויוצא בה הרי זה חזקה. ואי אנסאן גדר גדאר
והו אנה גיר פי צ'יעה צאחבה וכאן מקדאר דלך י' אדרע
וכאן צאחבה חאצ'ר ולם ימנעה פקד אחזקהא לה אלדי
שרעה פי אלעמל וכדלך אן כרב ואתגר תגרה
ומקדארהא מא ידכל ויכרג פיהא פקד וגבת לה. 20
פחות משתות נקנה מקח ומחזיר אונאה לבעלה.
אדא באע אנסאן לצאחבה סלעה ופיהא גבינה אקל

ע"ב

- מן אלסדס פאלביע מנפסך. ואן כאן אלביע ואלגבן הו
אלסדס בלא זיאדה ולא נקצאן כאן אלביע לאזם ויגב
רד אלסדס והי אלגבינה אלי צאחבהא. האחים שחלקו 25
כיון שנפל גורל על אחד מהן קנו כולם. ואדא אקתסמו
אלאכוה מיראתהם וטרחו אלסהם בינהם עלי נציב
בעצ'הם פקד וגבת אלקסמה לגמיעהם ואן כאן עלי
אביהם דין פיאכד צאחב אלדין נציבה ויקתסמון
אלבאקי ואן כאן להם אך פי בלד בעיד ולא יעלמון אנה 30
באקי ואקתסמו מאל אביהם בינהם באלסוא ויקתסמו
דפעה תאניה. יש אונאה במטלטלין ואין אונאה לקרקעות
וחכם אלגבינה עלי אלאשיא אלתי תנקל מן מוצ'ע אלי מוצ'ע

ואמא שרי אלעביד ואלעקאר ואלכתב אעני אלדיון פליס
 35 פיהא גבינה. אחי דפלגו ביני הדאדי⁵ ואתא בעל חוב
 דאבוהון שקלה למנאתא דחד מנהון בטלה מחלוקת.
 והיכא דהוה ידעין ביה וקמו אינון אחי ופלגו ממונא
 דאבוהון ביני הדאדי לבתר הכין אתא אחוהון מערבין
 ופלגין מרישא.⁶ והדא אלפצל קד תקדם תפסירה מן
 40 הדא אלבאב בבאבין. בני ירתי נכסי דאבוהון בנאתא
 לא ירתין אילא עיסור נכסים. קאלו אלאולי באל מיראת
 אלדכור ירתון מאל אבוהם ואלבנאת לא ירתון אלא עשר
 אלמאל. אלמנה ניזונת מניכסי בעלה ומשמשת
 במדור כדרך שנישתמשא בחיי בעלה. אלארמלה
 <⁷>

Annotated English Translation

- Recto -

(1) <....> testimony. If {the litigant – probably meaning the claimant,} brings a document containing the testimony of one {witness}, and another witness joins with him, testifying {in support of the first witness regarding} what is in the *shtar* {promissory note} – this is valid indeed.

Furthermore, if one tells his fellow, “I lent you 200 dirham,” while the other {the witness whose testimony was not written but rather made orally} testifies to 100 dirham, the defendant shall pay off the hundred dirham and make an oath concerning the additional 100 dirham.

(5) If {underage} orphans desire to divide the property left to them by their father, the *beit din* must arbitrate over their property and appoint a guardian for them who will ensure that they each obtain a fair share. When they grow up, however, they are not able to object. [=] If orphans need to divide the inheritance of their father, the *beit din* is required to take responsibility for this division, and to appoint a guardian who will

⁵ Regarding this spelling form, see Matthew Morgenstern, *Studies in Jewish Babylonian Aramaic: Based upon Early Eastern Manuscripts* (Winona Lake, IN: Eisenbrauns, 2011), pp. 76–80.

⁶ For a parallel in Halakhot Gedolot, see CUL T-S F6.11.

⁷ Here a translation of the previously quoted Talmudic text was expected. Unfortunately, the rest of the text and its context have not survived.

(10) divide {the inheritance} among them and will choose the greater part for them {meaning, will take care of their interests}; when they grow up, they have no grounds for legal recourse. “A guardian appointed by the orphans’ father is not required to take an oath {that he has not impaired their property}; one who is appointed by the court is required to take an oath.” [=] If the orphans’ father appointed the guardian he does not {= have to take an oath}, but if his appointment was made by the *beit din* he must take an oath, should the orphans choose to bring a claim against him.

(15) “If a man raises a fence and completes it to a height of ten handbreadths, or widens an opening so that it allows for entry and exit, this constitutes effective occupation.” [=] If a person builds a fence, and changes in the estate of his fellow, to a height of ten handbreadths, and his fellow is present but does not prevent him, the one who raises the fence thereby establishes his right. In the same way, if he creates a large enough breach

(20) to come in and out through it {and the landowner does not object} – it is {considered} an act of establishing right {that is, of legally establishing the point of entry}.

“{If a seller deceives the buyer as to the value of the sale, by} less than a sixth {of the sale price}, the sale is valid and he must give {the value of} deception back to its owner.”
[=] If a person sells his merchandise to his fellow, deceiving him by less than a

- Verso -

sixth – the sale is {valid}. If the sale has occurred and the value of the deception was exactly a sixth of {the price}, no more and no less, the sale is valid. {However, in this case} he is obliged to

(25) give the sixth, i.e. the value of the deception, back to its owner. “When brothers divide [an estate] all of them acquire possession [of their respective shares] as soon as the lot for one of them is drawn.” [=] If brothers are sharing out their inheritance and they draw lots among themselves, and the lot falls to one of them, this division carries authority for all of them. If their father had a debt, the debtor collects his part and they share

(30) what is left. If they had a brother in a remote city but did not know of his existence and divided up their father’s property – they must divide it up again {taking the remote brother into consideration}. “There is deception in movables, but not in real estate.” [=] The law regarding deception relates to things {objects} that can be taken

from place to place. But when it comes to the purchase of slaves, lands and bills, i.e. liens {or: promissory notes regarding debts}, there is no deception in them {and the price paid cannot later be contested}.

(35) “When brothers have divided {their late father’s property} between them, and a creditor of their father’s comes and takes the {mortgaged} inheritance of one of them, the {first} division {of the property} is canceled {and they must begin the division between them again from the beginning}.” Where they already knew about him {about the existence of the brother} and these⁸ brothers {nonetheless} shared their father’s money amongst themselves, they must afterwards join it together again and share again from the beginning. This issue was already discussed in a {former}

(40) chapter among our chapters. “Sons inherit their father’s inheritance; daughters do not inherit more than a tenth of the property.” [=] The early {Sages} said: The more privileged in the matter of inheritance are the males; they inherit their father’s money and the daughters only inherit a tenth of the property.

A widow is to be sustained from the properties of her {deceased} husband, and uses {their common} living space, as she used to during her husband’s life.

⁸ This personal pronoun is apparently used a bit freely, since its original usage stands for the third-person, plural, distanced form (“they”), and see Jacob Nahum Halevi Epstein, *A Grammar of Babylonian Aramaic* (Jerusalem: Magnes, 1960), pp. 20–21; Michael Sokoloff, *A Dictionary of Jewish Babylonian Aramaic of the Talmudic and Geonic Periods* (Ramat Gan, 2002), p. 119; in Syriac it normally occurs in its enclitic form “they/them”: Payne Smith, *Syriac Dictionary*, p. 21; Michael Sokoloff, *A Syriac Lexicon: A Translation from the Latin, Correction, Expansion and Update of C. Brockelmann’s Lexicon Syriacum* (Winona Lake, IN and Piscataway, NJ: Gorgias Press and Eisenbrauns, 2009), p. 60; and not only as a personal pronoun but also as a demonstrative pronoun: Theodor Nöldeke, *Kurzgefasste Syrische Grammatik* (Leipzig: T. O. Weigel, 1880), §§ 64, 67, pp. 44–45; Arthur Ungnad, *Syrische Grammatik* (München: Oskar Beck, 1913), § 10, p. 27. According to Ungnad’s German translations of this demonstrative pronoun, perhaps an alternative translation for the current form would be “those brothers.”

The Identification Enigma of the Fragment in Question

The identification of the fragment in the Schwarz Catalogue is somewhat vague: “Halakhisches Material (Vielleicht Šeiltot des R. Aḥai Gaon 139), mit Kommentar in arabischer Sprache mit hebräischen Buchstaben.” Schwarz identifies the fragment as a part of the Sheiltot (“questions” or, less literally, “discourse”) of Rav Aḥai, no. 139. However, when the reader compares the text provided above with the responsa presented by Schwarz, it is clear that the two texts are not identical; however, connections between them are apparent. There is indeed a clear connection between the fragment and the content of the Halakhot discussed in this particular Sheilta. However, the specific Halakhot cited in Vienna Mss. are not identical to the Sheiltot versions that are known to us, and the order of Halakhot is different in the two documents. To the best of my knowledge, no research has been conducted on the genre of Sheiltot written in Judaeo-Arabic and the phenomenon requires further investigation.⁹ Most of this material was transmitted orally; hence the wide variety of text variants. The option of a renewed compilation or a shortened version translated into Arabic is therefore plausible. This genre has a deep affinity with Halakhot Ketanot.¹⁰

There are elements missing in the Sheiltot which appear in our text and vice versa. For example, the opening discussion here regarding witnesses and documents does not appear in the Sheiltot. On the other hand, the long citations of the Talmudic discussion are missing in Vienna Mss. The shortened and newly arranged version understandably leads to the hypothesis that this text is a broken sequence of Sheilta. The processing and shortening of the material led to ambiguity in the text since in the original Sheilta, the citation follows BT, Kiddushin 42b: **אמר רבא אמ' רב נחמן האחין שחלקו הרי הן כלקוחות פחות משתו' נקנה מקח יתר על שתות בטל מקח שתות קנה ומחזיר**

⁹ In Mss. MS JTS RAB 1803 another example is found of Sheiltot written in Arabic rather than Aramaic. For a preliminary publication by Amit Gvaryahu under “Talmud blog,” see <https://thetalmudblog.wordpress.com/2013/02/12/a-quotation-of-yerushalmi-in-a-judaeo-arabic-manuscript>. This genizah fragment invites further investigation and contextualization.

¹⁰ See Neil Danzig, *Introduction to Halakhot Pesuqot with a Supplement to Halakhot Pesuqot* (New York and Jerusalem: Jewish Theological Seminary of America, 1993), pp. 260-261, f. 104-107. Danzig identified this fragment as Halakhot Ketanot. I will extensively discuss his and Prof. Brody’s view in my forthcoming publication.

אונה [R. Nahman said: When brothers divide (the inheritance), they are considered as purchasers from each other; {for an error of} less than a sixth, the transaction is valid; exceeding a sixth, it is null; {exactly} one sixth, it is valid, but the amount of error is returnable]. The discussion regarding price deception (*ona'ah*) is directly related to the halakha listed immediately beforehand which dealt with the distribution of an inheritance among brothers. The Judaeo-Arabic text can only be understood in several difficult passages with the assistance of the background provided in the Sheilta. The textual relationship with this Sheilta also explains the connection to the halakha in line 15 in Vienna Mss. regarding גדר גדר והשלימו לעשרה, since it is closely related to the current context: the distribution among the abovementioned brothers is irreversible if they performed an act of ownership (*kinyan*) in its regard. The connection between these *halakhot* is explicitly stated in the Sheilta:

והיכא דפלגו וקנו מנהון, הא מנתא דמר והא מנתא דמר – לא מצו הדרי בהו. אי נמי, לא קנו ואזלו אחזיקו איניש איניש במנתיה – לא מצו הדרי בהו. דתנ' בד"א? במחזיק. אבל בנותן מתנה והאחים שחלקו והמחזיק בנכסי הגר דלמיקנא בעלמא הוא דקבעי – נעל, גדר, פרץ כל שהוא – הרי זו חזקה. ותני רב שרביא בקידושין דבי לוי תנא: נעל, גדר, פרץ כל שהוא – בפניו הרי זו חזקה. בפניו – אין, שלא בפניו – לא! 'בפניו' לא צריך למימרא ליה לך חזק וקנה, שלא בפניו – צריך למימר ליה לך חזק וקנה.

[where the brothers divided [the inheritance] and performed an act of acquisition [*kinyan*] among themselves, each has acquired his portion, and they cannot renege. Alternatively, if they did not perform a *kinyan* but rather, each of them took possession of his portion, they cannot renege. Since it is written in the Baraita: What case is this referring to? To a case of possession (*hazaka*), but with regard to the giver of a gift and brothers dividing [the inheritance] and one who holds the property of a convert, requiring only a *kinyan*, if one locked, fenced or broke into [the property], it is considered a *hazaka*. And it was stated by Rav Sheravia in Kiddushin of Bei Levi: If one locked, fenced or broke into [the property], it is a *hazaka* – In his presence, yes, but not in his absence! In his presence, there is no need to tell him “go and take possession and acquire it”, but if it was done in his absence, it is necessary to tell him: “go, take possession and acquire” {your ownership in the property}.]

As is the case regarding many *Genizah* sources that remain obscure and anonymous, this text does not appear in any other source in rabbinic literature. The reason for its aforementioned inadequate identification is the fact that most scholars who worked on the *Genizah* in Austria in the past lacked mastery in Judaeo-Arabic. A tremendous

amount of development has yet to be accomplished in this field and unfortunately, many texts from the *Österreichische Nationalbibliothek*, some of which were written in Judaeo-Arabic, have yet to be researched sufficiently.

Although there is no proof that could serve as a basis for certain identification, there are still several arguments that support the attribution of the text to a specific circle since there are texts with similar characteristics in the Cairo *Genizah* which also deal with related topics.

As is the case regarding many halakhic fragments that are part of the genre of the monographs of the late *Geonim*, we are aware of remnants belonging to the genre of judges' duties which deal with custody of orphans' property.¹¹ Such an issue requires no further explanation in the context of Diaspora Jewry.¹² Although it includes Talmudic phrases (as "proof-text") and their translations into Judaeo-Arabic as is typical of the judges' duties genre, the fragment under discussion here is quite unique, since it is not a fragment relating strictly to the genre of *Adāb Al-qaḍī* [ادب القاضي].¹³ However, I am inclined to view this text as the very beginning of this genre. Texts from the classical Geonic period and apparently from the Sheiltot as well were canonized, translated and processed for learning purposes and practical applications. In the fragment, there is almost no free halakhic discussion; rather, the author quotes and translates different Talmudic phrases regarding specific matters. Intermittently, he provides a brief summary of the bottom line of the updated contemporary halakha up to his time.

It is typically Geonic to cite the halakha in such a manner, directly from the Talmudic passage, without citing any source other than the Mishna and Talmud. Even among the Hebrew and Aramaic sources, the author-redactor chooses the most primary ones,

¹¹ For example, the fragment Or. 1080.6.1, which in my estimation belongs to Rav Hai Gaon's *Kittab Adāb Al-qaḍāʾ* [כתאב אדב אלקצ'א] or to a parallel work of the same genre, reflects similar issues that require the involvement of the *beit din* and describes how it is expected to care for orphans' properties as custodians.

¹² See e.g. Mark R. Cohen, *Poverty and Charity in the Jewish Community of Medieval Egypt* (Princeton: Princeton University Press, 2005); Eve Krakowski, *Female Adolescence in the Cairo Genizah Documents*, A Dissertation Submitted to the Faculty of Division of the Humanities in Candidacy for the Degree of Doctor of Philosophy, Dep. of Near Eastern Languages and Civilizations, The University of Chicago, Chicago, Illinois, December 2012.

¹³ See Neri Ariel, "Towards an Identification Methodology for Genizah Fragments" (forthcoming).

namely sources quoted in Hebrew from the Mishna and baraitot that appear in the Babylonian Talmud. Presumably, these quotes seemed to the author to be an especially exhaustive summary of the halakha in a distinct matter. Most interesting are the Aramaic sources that are not known to us from any other place in Talmudic literature, but appear to be free Talmudic phraseology, a phenomenon which is quite common in the genres of the early Geonic sources and post-Talmudic literature.¹⁴ The language of the translations is Judaeo-Arabic, the language used by the Jews from the Arabic conquest and thereafter.¹⁵ Not only the language, but also the style of writing shows a close affinity to the writings of the Geonim, possibly even more specifically to the end of the early Geonic period, with the advent of monographic-style writing. Aside from quotations that typically resemble halakhic monographs from the Geonic period, there is further evidence regarding the monographic character of this work (line 39): *והדא אלפצל קד תקדם תפסירה מן הדא אלבאב בבאבין*. [= “The interpretation of this halakha already preceded this chapter earlier in our chapters”]. This fragment was therefore originally part of a book and the anonymous author is taking responsibility for its writing, its internal arrangement and its structure. As I pointed out elsewhere, the translation does not always follow the quote; this is a common phenomenon which highlights the canonization and the halakhization of the Talmudic text: the halakha is apparently quoted merely as an a-priori deliberation; however, it is indeed a reformulation of the Talmudic passage.¹⁶ There are still many open questions regarding the exact identification and the “*Sitz im leben*” of this fragment within halakhic literature. Both from the paleographic aspect and from the content style it can be inferred that this text originates from Babylonian circles and was used for learning purposes, possibly as a halakhic commentary written in Judaeo-Arabic based on the Sheiltot and other classical works, as well as a practical manual for judges. A fuller comprehension of this text can be obtained with assistance from additional

¹⁴ See e.g. Robert Brody, *Readings in Geonic Literature*, Hakkibutz Hameuchad 1998, pp. 118–119.

¹⁵ For a discussion regarding the dominant languages in the Jewish culture and literature of the Middle Ages, see Joshua Blau, *The Emergence and Linguistic Background of Judaeo-Arabic* (Jerusalem, 1999), pp. 229–239; Rina Drory, *The Emergence of the Jewish-Arabic Literary Contacts at the Beginning of the Tenth Century* (Tel Aviv, 1988), pp. 41–54 (esp. p. 52, n. 11). Hence the author needed to bring the halakha to his target audience formulated in the language that was familiar to them (but which was not necessarily the lingua franca).

¹⁶ See n. 13.

fragments and findings that will help complete the greater picture and shed light on this unique work.

Comments and Further Discussion

Lines 1-5 (Topic I). As is very common in Genizah documents, the beginning of the fragment is missing. The context of this single fragment is unfortunately shrouded in fog, as is the fate of many works from the Judaeo-Arabic world of literature. The first word at the beginning of this fragment is the last word of the previous sentence that did not survive. The discussion and the Talmudic quote that preceded this halakha are missing. In the following sentence, the author writes that if an individual witness joins an existing witness and the legal action is recorded in a document, the action is legally valid. However, the author does not provide any sources to support this statement. The assumption underlying this halakha is that a single witness does not suffice to extract money from a defendant, and can only join an additional witness to do so. However, a witness is relied upon on his own, i.e. his legal actions have relevance and other ramifications, mainly in the field of prohibitions [*issur ve-heter*].¹⁷ In BT tractate BB 165a the halakha is stated: אמימר אכשר בעד אחד בכתב ועד אחד בעל פה [“Amemar declared (= a deed to be) valid with the signature of one witness and the oral evidence of another”]. According to Amemar, therefore, a testimony that is composed of two testimonies, one written in the document and one oral, is valid.¹⁸ This suggests that a source may have preceded the beginning of the text found here, which contained the background for this halakha.

The next halakha cannot be read separately since it appears to contradict the first halakha and, standing on its own, it does not accord with accepted halakhic assumptions regarding testimonies. Therefore, we suggest that the first halakha was actually stated along with this halakha: A litigant sues another party claiming that he lent him two hundred dirham. There is a witness only for the sum of one hundred, combined with a written document with the signature of another individual witness. The other witness in the written testimony still testifies that the loan was for 200).א,

¹⁷ See Deuteronomy 19:15 and the interpretations in Tosefta Zuckerman, Shevuot 3:8; Sifrey Devarim 188:15 (Finkelstein edition, p. 228) and Midrash Tanaim there (Hoffman edition, pp. 115-116); BT, Shevuot 40a.

¹⁸ The scholars discussed the topic of a written testimony (*edut be-shtar*) in the halakha at length and see Yuval Sinai, *The Judge and the Judicial Process* (Jerusalem, 2010), pp. 341-375; Eliav Shochetman, *Civil Procedure in Rabbinical Courts*, vol. 2. (Jerusalem, 2011), pp. 991, 930-932.

the genre of adaptations of halakhic books of the Geonim into Judaeo-Arabic.²² Juxtaposing this fragment with the halakha that appears in the Sheiltot may reveal close connections between these apparently random halakhot. Therefore, we might even dare to suggest that this work is one of the earliest halakhic monographs of the late Geonim; however, it is later than the Sheiltot and the halakhot literature.

Lines 35–39, 40–41 (continuation of Topic V). In these lines we find an original formulation in Aramaic that we do not find in any other source. This fragment therefore demonstrates a reformulation of the Talmudic halakha into Geonic language and style. Not very much is here beyond what appears in the Talmudic discussion in BT, BB 107a. However, such a formulation may possibly have been the basis of Maimonides, *Nachlaot*, 10:2 and other decisors who ruled in this case according to the end of the Talmudic discussion that stated the halakha according to Rav's opinion. The author says that he already interpreted this halakhic matter in a former chapter, but unfortunately this chapter did not survive.

Line 32. Although the halakha is ruled according to Shmuel in most monetary cases (see BT, Bekhorot 49b) there is a halakhic decision here that appeared in the Talmudic discussion in the name of Rav (“*batla mahloket*”), an exception where the halakha is ruled against Shmuel. The passage in Bekhorot also lists the exceptions to the rule, so wherever it is stated explicitly, we follow the explicit statement despite the rule.²³

²² The scholars pointed out this phenomenon mainly regarding Halakhot Pesukot. Also see Robert Brody, *The Geonim in Babylonia and the Shaping of Medieval Jewish Culture* (New Haven: Yale University Press, 1998), pp. 222–223; Nachman Danzig, *Introduction to Halakhot Pesuqot*, pp. 67–69; Ahron Shweka, *Studies in Halakhot Gedolot: Text and Recension*, Thesis Submitted for the Degree of Doctor of Philosophy, Hebrew University of Jerusalem 2008, p. 54.

²³ Also see Mishneh Torah, Bikurim 11:18 and Kesef Mishneh and Mahari Kurkus there; Yechezkel Abramski, *Kovetz Maamarim*, p. 221. Not much has been written about the rules pertaining to halakhic decisions in the Amoraic period. For an example of such a work regarding the Tannaic period, see Yehuda Brandes, *The Beginnings of the Rules of Halachic Adjudication: Significance, Formation and Development of the Rules concerning the Tanaitic Halacha and Literature*, Thesis Submitted for the Degree of Doctor of Philosophy, Jerusalem, 2002. Regarding the problematic nature of these rules in

This rule regarding the difference between movable property and real estate appears to have been initially formulated here, since it does not appear in the Talmud or in the early works of the Geonim. Since this quote is followed by a translation in Judaeo-Arabic related to what was written previously, it should be assumed that the author here quoted the halakha from a source that is unavailable to us. In this regard, the fragment introduces an opportunity for further familiarity with early Geonic literature.

Lines 43–44 (Topic VI). The beginning of this sentence is a paraphrase of what appears in BT, Ketubot 103a: בעלה בחיי משתמשת במדור כדרך משתמשת בחיי [= English translation: Our Rabbis taught: [A widow] may use [her deceased husband's] dwelling just as she had used it during his lifetime.] The end of this sentence is also a paraphrase, based on Tosefta Liebermann, Ketubot 11:5: האשה שמת בעלה יושבת בביתם כדרך שישבה בהן בחיי בעלה... שכך כותב לה תהא יתבה בביתי ותתזני מנכסאי כל יומי מיגד [English translation: A woman whose husband died dwells in her houses just as she did when her husband was alive...for thus does he write for her: "You will dwell in my house and enjoy support from my property as long as you spend your widowhood in my house"]

Hence, this fragment is a paraphrase of several sources, but is also a quotation of a specific source. This Geonic source was most probably a written source. The proof is the beginning of the translation into Judaeo-Arabic. Unfortunately, only the first word of this translation, אלארמלה, survived and at this point, the text ends.



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