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Introduction

Overview

Responsa literature is vast and varied—vast in the time that it spans, vast in its geographical origins; in fact, as vast as the history of the Jewish people and their presence, in communities large or small, across the globe. It is varied in the range of topics that it addresses, from religious minutia about the laws of the Sabbath and dietary laws, to medical questions, to issues of Jewish identity, to torts and inheritance disputes, to halakhic questions about the use of modern technology. The cases can be somber, sometimes political in nature, at times reflective of the darkest times in Jewish history. Or, they can be spicy, bordering on the stuff of soap operas.

While some questions might have been asked at any time in any place, others are a product of their time: they arose as a result of the historical experience of the Jewish community in a particular location. In the latter case, we can better appreciate the questions and their answers when we understand their historical context.

This book contains a collection of eight annotated translations of responsa, alongside the original Hebrew texts, focusing on the post-expulsion Spanish-Portuguese communities of the sixteenth to seventeenth centuries. This collection of responsa will acquaint the reader with Jews who, following their expulsion, settled in the Ottoman Empire, in Palestine under the Mamluks, in Amsterdam and in Brazil. Among them are both Jews who left their homes in Spain or Portugal immediately upon the expulsion decree,[1] and Jews who lived as New Christians, conversos, and returned to Judaism only later (as well as some who did not). The period of the expulsion of the Jews from the Iberian Peninsula was a tragic time in Jewish history, but the revitalization of the post-expulsion Spanish-Portuguese Jewish communities in new locales is testimony to the human spirit and determination.

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1 The Portuguese expulsion decree was issued in December 1496; the Jews were permitted eleven months to convert or leave, but were blocked at the ports and forcibly converted. Though "the majority of Jews preferred to leave rather than convert," "the vast majority of Jews in Portugal were forcibly converted and never left the kingdom" ([Soyer], ch. 4). However, "some Jews succeeded in leaving Portugal before the mass conversions of 1497, while others managed to escape as Conversos immediately thereafter" ([Ray], 41). The borders were "never hermetically" closed (Miriam Bodian, "Hebrews of the Portuguese Nation: The Ambiguous Boundaries of Self-Definition," *Jewish Social Studies: History, Culture, Society* 15, no. 1 [Fall 2008]: 67).

The volume includes eight chapters, each built around one responsum from one of the great halakhic authorities of the time, covering topics that include excommunication in Amsterdam, *'agunot*,[2] inheritance rights of a converso son, obligatory contracts and breach of agreement, heresy and humanist scholarship, informing on someone to the Venetian Inquisition, and more. A preparatory chapter addresses the topic of excommunication, a recurring concept among the responsa.

The halakhic authorities whose responsa are presented include six of the great Sephardic rabbis of the time, one rabbi of the Eastern Mediterranean group known as the Romaniots, and one Ashkenazi rabbi to whom former Crypto-Jews and conversos in Amsterdam—now Jews—turned to settle a dispute. The focus on Sephardic rabbis, natural for this period in Jewish history, is valuable for the illumination of the scholarly facet of Sephardic culture. Sephardic culture should not be known only for its Ladino songs and delicious cuisine, but also for the great scholarship of the prolific rabbis who served the Sephardic communities in their new locales. They bequeathed a myriad of responsa, which have served as sources for generations of scholars.

The responsa present a variety of issues characteristic of Jewish life in the sixteenth and seventeenth centuries, in some cases specifically as a result of the expulsion, while in others merely as a reflection of Jewish communal life at that time. Further, they contain varied halakhic themes, to expose the readers to several halakhic concepts and to a selection of examples of codified halakha.

The Halakhic Discourse in Responsa

In modern times, scholars have been mining the responsa literature for historical and sociological data and for use as source material for books and courses on Jewish history.[3] My goal, conversely, is to delve into the halakhic discourse,

2 *'Aguna* (pl. *'agunot*; lit., an anchored or chained woman) is a halakhic term for a woman who is "chained" to her marriage, whether because her husband has disappeared and his death cannot be verified or because her husband refuses to grant her a divorce.

3 Early examples of this type of work include Morris S. Goodblatt, *Jewish Life in Turkey in the XVIth Century as Reflected in the Writings of Samuel De Medina* (New York: JTSA, 1952) and Israel M. Goldman, *The Life and Times of Rabbi David Ibn Abi Zimra: A Social, Economic and Cultural Study of Jewish Life in the Ottoman Empire in the 15th and 16th Centuries as Reflected in the Responsa of the RDBZ* (New York: JTSA, 1970). Works on women's lives, in particular, in which responsa literature is used as historical evidence include Elisheva Baumgarten, *Mothers and Children: Jewish Family Life in Medieval Europe* (Princeton: Princeton University Press, 2007), Avraham Grossman, *Pious and Rebellious: Jewish Women in Medieval Europe*, trans. Jonathan Chipman (Waltham: Brandeis University Press, 2004), and others. A wealth of responsa literature is analyzed and woven into the work of the eminent historian Jacob Katz. Matt Goldish, *Jewish Questions* (Princeton: Princeton University Press, 2008) contains

which was, of course, the focus of the responsum's author, while using what is known of the historical and sociological context to enrich our appreciation of the worlds of the questioner and of the halakhic authority, the challenges each faced, the knowledge and precedents available at the time, and the needs of the community. By means of a close, contextualized reading, we can enhance our understanding of how historical and social conditions might come into play in the halakhic process. And we can appreciate the scholastic achievement that the responsa embody. What makes these halakhic authorities great is not how historically interesting the questions they were asked were. Rather, it is their erudition, their ability to present careful, detailed halakhic arguments, with respect for the practical needs of the Jewish community and often with ingenuity.

When learning Talmud, it can be delightful to use one's imagination to envision what it must have been like to live in those times and to be sitting in the *bet midrash*—the study hall—listening to the discussion. Understanding the technology of the time, the monetary system, what people ate, and so on, is often essential in understanding the reasoning of the discussions. But the other essential element required to follow the discussion is, of course, familiarity with the rabbinic language and references.

Similarly, to be able to follow the discourse in the responsa literature, it is essential to be familiar with the halakhic foundations upon which the discussion is based, so that the halakhic references (which are assumed by the author to be known to the reader, who originally was typically another rabbi) can be considered. Without this knowledge a person attempting to read a responsum, even if he or she reads Hebrew (or another Judeo language in which the responsum is written) will get lost rather quickly. The question might make sense and be of interest in its own right, but the reader might be intimidated by the details of the answer. Nevertheless, it is by reading the answers that we can understand how the halakhic process has operated over the centuries, how the halakhic foundations laid down in the Talmud and interpreted by the Rishonim have been applied through the centuries.

By digesting the responses we can come to appreciate the erudition of the rabbis who wrote them, and, sometimes, how creative they were in their application of the halakhic sources available to them. We may also be impressed and delighted by their use of language: biblical and Talmudic phrases can be woven into the text, almost seamlessly, demonstrating mastery of the texts, even when

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a collection of translations of responsa aimed at using them as source material for historical purposes, but only the questions are translated, while the responses are summarized in one or two sentences. Goldish provides some historical background in the introduction to each of his translations. A predecessor to this genre was Samuel Freehof, *A Treasury of Responsa* (Philadelphia: JPS, 1963), in which the author briefly introduces each responsum, which is translated in abridged form.

the author did not have all the texts available at his fingertips, as was frequently the case.

In the collection of responsa presented here, the aim is to provide not only a translation of the text, but also enough background material and annotations to enable readers to be able to immerse themselves in this complex material, follow the discourse, and appreciate the immense knowledge displayed and methods used in applying this knowledge.

For each responsum, a selection of basic halakhic sources is provided, with translation and annotation. Other halakhic aspects are elucidated and referenced in the annotations, which can be used for further study of the halakhic issues at stake for a particular topic.

Translation and Presentation

Accepting the encumbrance of clumsiness that sometimes comes with fidelity in translation, I have generally favored a literal or near literal rendering of the texts to English. In this way I hope to encourage readers to use the translations to facilitate their reading of the original text, rather than as a replacement for it. So that the reader can more easily find a citation from the Talmud (and look up any corresponding passages from the Talmud that I chose to include in the related Halakhic Background), the page in the Vilna edition is included in square brackets following the translation of chapter names or numbers that appear in the responsa.[4]

Hebrew is more concise than English, and given that some of the authors tend to be quite verbose, sometimes citing more citations than necessary to make their point, sometimes referring to esoteric references that would be challenging to follow in translation, and sometimes using some convoluted logic, there is a risk that absolutely complete translations will lose the interest of the reader.

However, I chose to take that risk so that I might provide a complete and rich source. Translating only excerpts while summarizing the remainder, as is found in some other collections of translated responsa,[5] presents a different danger: shortchanging some of the richest Jewish literature.

Each responsum is introduced with some historical information, but readers who wish to attain a broader background can refer to the bibliography provided for each responsum. References to books in the bibliographies are indicated by [Author] (in brackets). At the end of this introduction there are several biblio-

4 The pagination of the Vilna edition is in accordance with the 1523 Bomberg edition of the Talmud.

5 Such as Freehof, *A Treasury of Responsa*.

graphic suggestions for general background about the expulsion of the Jews from Spain and Portugal—appropriate for all of the responsa—chosen (with difficulty) from the large corpus of literature about this period in history.

Questions for further discussion are offered after each responsum is presented and discussed. Some of these questions enable the reader to discover the current relevance of the ideas contained in the halakhic themes, while others can provoke consideration of halakhic methods and attitudes.

In addition to those who might read the book for independent study, or informal study groups, the target audience for this volume includes students, teachers, and rabbis in either formal or informal classes in areas of Jewish law, comparative legal systems, halakha, Jewish history, Sephardic culture, and Jewish ethics. A portion of the content is appropriate for Jewish gender studies. The book can be used to teach a halakhic concept, such as excommunication, breach of agreements, or the *'aguna*, by considering its application in an actual historical example, or to examine the impact of historical events on the Jewish experience.

The Eight Responsa

1. Divorce out of Love: R. David ben Solomon ibn Abi Zimra (1479–1573) Responsum 1,398

This responsum revolves around the plight of a woman in Jerusalem around the turn of the sixteenth century, whose husband has disappeared. He had sent her a writ of divorce (*get*), by messenger, but this document was lost when she fled, following the expulsion of the Jews from Spain. Is she free to remarry?

The responsum sheds light on a facet of divorce that is not commonly considered today: divorce employed to avoid *'iggun* (the state of being an *'aguna*). Because of the complexity of this woman's case, the responsum presents a microcosm of Jewish divorce laws: divorce by proxy, conditional divorce, a woman's testimony about her marital status and other factors come into play. Questions for discussion invite the readers to explore application of these laws to modern situations, such as the case of the wives whose husbands apparently—but not definitely—perished in the 9/11 World Trade Center tragedy.

2. The Tax Cut Lobby: R. Joseph ibn Lev (1505–1580) Responsum 4,14

The question posed in this responsum provides a window into the methods of survival of Jewish communities in the sixteenth century. Where Jews were allowed to reside, heavy taxes and high customs duties were levied on their communities in exchange for the privilege of living under the ruler's protection. Offering gifts and other favors so as to reduce those taxes or customs duties was a common practice.

The response introduces the readers to Jewish contract law and demonstrates some interesting aspects of the Sages' attitudes towards obligatory contracts and breach of agreements. Had Antonio in *The Merchant of Venice* studied Jewish law, he would have been able to tell Shylock and the Venetian court that in Jewish law the principle of *pacta sunt servanda* (agreements must be kept) is not sacrosanct, and Antonio's agreement to Shylock's stipulation in the event that he cannot repay the loan would have been considered *asmakhta*, a type of conditional contract that would not be upheld in a Jewish religious court of law.

3. Are You Calling Me a Heretic?!: *Ẓqan Aharon* 25 (authored by R. Elijah ben Benjamin Ha-Levi, 1481–after 1540)

When Spanish and Portuguese Jewish exiles arrived in Constantinople (Istanbul) following the expulsions from Spain and Portugal, they found an established, thriving and intellectual community of Romaniot Jews, Greek-speaking Jews who lived under Byzantine rule. When the Romaniot rabbi Ha-Levi, a member of the highest rabbinical court in the city, and, following the death of R. Elijah Mizraḥi in c.1526, the head of that rabbinical court, was asked about a man who is derided because of his study of philosophy, he not only comes to the man's defense, but to the defense of all those Jewish scholars who came before him, maintaining that such was always the Jewish tradition, from Talmudic times.

There is no indication of whether the plaintiff and defendant in the case were of Iberian origins or Romaniot (or one of each, possibly playing out some cultural conflict), but the tragedy of the expulsion was in his mind when Ha-Levi wrote his response. This responsum provides a fascinating view of the cultural life of Jews in the Ottoman Empire, where so many of the exiles found refuge, and serves as a springboard for discussion about the centuries-old tension between secular knowledge and religion.

4. Families Torn Apart: R. Moses ben Joseph di Trani (1500–1580) Responsum 1,142

This responsum tells of a family that was torn apart in the upheavals of the expulsion of the Jews from Iberia. Some family members chose to stay in Iberia or return there and live as Christians. Some returned to their Jewish faith in the Ottoman Empire. How does such a divide affect familial relationships? How does this affect inheritance of family property? In preparation for reading this responsum, inheritance laws, laws about a last will and testament, and legal loopholes in Jewish law will be explored.

5. What's in a Name?: R. Samuel de Medina (1506–1589) Responsum *Yo-re De'a* 199

A Portuguese Jew who was a former converso and now resides in the Ottoman Empire inquires about the use of his Christian name in correspondence with business connections and family who are located in Iberia. His concern is that the appearance of his Jewish name in any correspondence might endanger the recipient, or his own property being managed there. Does the use of his Christian name indicate a lack of loyalty to his Jewish faith? This is a simple, but touching, question about a Jew's identity and the travails of life under the Inquisition. Though the halakhic aspects are marginal (so that the chapter requires only a brief Halakhic Background), and the response could have been trivial, de Medina responds with gravity, respect for the questioner, and ample halakhic sources so as not to dismiss the question lightly. The discussion touches on some ethical questions that arise in the response and on questions of Jewish names and Jewish identity.

6. Is your Blood Any Redder? The Case of an Informer in the Venetian Inquisition: R. Solomon ben Abraham Ha-Kohen (c.1520–c.1601) Responsum 4,31

The responsum to be studied in this chapter—which relates events that took place in Venice—is fascinating from a historical perspective because it corroborates one of the trial records, or *processi*, from the Venetian Inquisition. The details of the case presented in a question to Ha-Kohen of Salonica are so consistent with the Inquisition records for the case of someone by the name of Filippo de Nis, who informed on the physicians who circumcised him and his nephew, that there can be little doubt that this responsum is in fact an epilogue to the de Nis case.

The texts upon which Ha-Kohen relies in his halakhic discussion include some of the most foundational and classic writings in Jewish ethics, which address moral questions that are frequently raised and debated in courses on the philosophy of law, political philosophy, and similar fields.

7. Excommunication in Amsterdam: Baḥ (*Ha-Yᵉshanot*) 5 (authored by R. Joel Sirkes, 1561–1640)

Towards the end of the sixteenth century, the Netherlands enjoyed a relatively tolerant atmosphere and offered economic opportunity. As such, it became a haven to descendants of Jews who were expelled from Spain and Portugal, or who became conversos, and to Crypto-Jews from Portugal who wished to return to Judaism in a society that would tolerate them.

The responsum deals with an unnamed physician in the Amsterdam community who is accused of holding heretical views and of giving permission to an (allegedly) unqualified man to serve as a ritual slaughterer. The possible outcome is shunning and excommunication of the accused. The fact that the dispute is addressed by R. Sirkes is of interest, as well, considering that he is an Ashkenazi rabbi situated in Poland.

8. South of the Equator, in the New World: *Torat Ḥayyim* 3,3 (authored by R. Ḥayyim Shabbetai, before 1555–1647)

Though the Netherlands became a haven to Jews and descendants of Jews, some felt compelled to emigrate from there to Brazil in the early seventeenth century.

The traditional liturgy regarding rainfall in the thrice-daily prayer assumes that the seasons occur according to the northern hemisphere, in particular the Middle East. Shabbetai was asked to respond to a liturgical question about these prayers from Jews who are in locations that were not even known to the Sages.

This responsum is also of interest because it is the first known responsum sent from the New World, and is one indication of the Jewish character of this new community. Though the Recife community was disbanded, R. Shabbetai's responsum would serve as a resource when other Jewish communities arose south of the equator.

Notes on Translation, Transliteration, and Citations

The translations are my own, other than most of the translations of verses from the Bible, which are usually from one of the JPS translations or the Jerusalem Bible,[6] according to the most suitable interpretation. However, sometimes the translations are my own. Biblical citations are in parentheses and are always an addition to the author's original text (he assumed the reader would know where the text is from). In the English, words in square brackets are explanatory insertions or fill in omissions made by the author of the responsum. (If omissions in quotations are not critical to understanding the responsum, an ellipsis indicates that the rabbi himself omitted some of the original text.) In the Hebrew texts, acronyms and words abbreviated by apostrophes are spelled out in square brackets.

The responsa often have nested quotes. For example, the author of the responsum cites a selection from the Talmud that, in turn, contains a quote. To reduce confusing nests of quotation marks in the translations, biblical quotations are in italics and Talmudic quotes are in a sans serif font, without quotation marks. For example:

> [There is] proof in what [is found] in chapter "The gold" [*Bava Mᵉtsi'a* 58b]: *Do not defraud one another* (Lev. 25:17)—the text refers to [defrauding] by insulting words. [... How?] Do not say [to a penitent] "remember your previous deeds."

And:

> The essence of this matter is [found] in *Bava Batra* chapter "Partners" [3a]. We say there: R. Yoḥanan said: "Our *mishna* is [the case of a courtyard] when it is not subject to the law of division," but if it is subject to the law of division, even though they do not want [i.e., agree] to divide [the courtyard], they divide [it].

For Talmudic Sages, I use common spellings rather than strict transliterations. Names and dates of post-Talmudic rabbinic figures are given in accordance with the *Encyclopaedia Judaica*, 2nd ed. (EJ),[7] or, if the name does not appear there, with the *Jewish Encyclopedia* of 1906.[8]

Transliteration conventions follow the *SBL Handbook of Style*,[9] with some exceptions.

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6 Jewish Publication Society (Philadelphia, 1955 and 1962) and The Jerusalem Bible (Jerusalem: Koren, 1992).

7 Michael Berenbaum and Fred Skolnik, eds. *Encylcopaedia Judaica*, 22 vols., 2nd ed. (Detroit: Macmillan Reference, 2007).

8 Isidore Singer et al., eds., *The Jewish Encyclopedia*, 12 vols. (New York: Funk & Wagnalls, 1906).

9 *The SBL Handbook of Style*, 2nd ed. (Atlanta: SBL Press, 2014).

Source Texts

The following editions are used for the source texts:

Mishna:[10] MS Kaufmann A 50[11] (with numbering according to the common printed editions).

Babylonian Talmud (BT): Vilna edition, with some significant variants noted. The Friedberg Project for Talmud Bavli Variants is relied on for comparison with manuscripts and early printed editions. Tractates referenced with no indication of which Talmud are from the Babylonian Talmud.

Jerusalem Talmud (JT): *Talmud Yerushalmi* (Jerusalem: Academy of the Hebrew Language, 2016). This edition is according to the MS Leiden Or. 4720. The convention for citation is tractate chapter:halakha (page column), such as JT *Mᵉgilla* 3:2 (74a).

R. Asher ben Jehiel (on BT): Vilna edition.

Maimonides, *Mishne Torah*: Yitzhak Shilat, *Rambam Mᵉduyyaq* (Maale Adumim: Mᵉkhon Maʿaliyot and Shilat, 2004-2018) for all the volumes that have been published. For those volumes that have not yet been published: Maimonides, *Mishne Torah*: Yosef Qafiḥ (Qiryat Ono: Mᵉkhon Mishnat Ha-Rambam, 1984–1996).

R. David ben Solomon ibn Abi Zimra Responsum 1,398: Venice, 1749 (first printing of this volume), with a few very minor obvious errors corrected. No discrepancies of any significance are found between that and the more accessible Warsaw, 1882 edition.

R. Joseph ibn Lev Responsum 4,14: Amsterdam, 1726. In addition, the editions published in Kuru Tshesme (near Constantinople) (1597), Venice (1606), and Fuerth (1692) were used to resolve some corruptions in the text.

R. Elijah ben Benjamin Ha-Levi, *Zᵉqan Aharon* 25: Constantinople, 1734, with a few minor corrections.

R. Moses ben Joseph di Trani Responsum 1,142: Venice, 1629, with a few very minor obvious typographical errors corrected.

R. Samuel de Medina *Yore Deʿa* 199: Salonica, 1594-1598, with a few minor obvious typographical errors corrected.

R. Solomon ben Abraham Ha-Kohen Responsum 4,31: Salonica, 1730 printing, with a few very minor obvious typographical errors corrected.

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10 The word Mishna with an uppercase M refers to the entire code—all six "orders." The word *mishna* with a lowercase *m* refers to one unit of law in the Mishna. One *mishna* (pl. *mishnayot*) may contain several halakhic statements or opinions.

11 Considered to be one of the most reliable extant manuscripts of the Mishna.

R. Joel Sirkes Responsum (*Ha-Yᵉshanot*) 5: Frankfurt-am-Main, 1697, which is the first printed edition of this collection of responsa. I made some minor corrections to what are obvious typographical errors. In the Frankfurt edition, the responsum number is 4, but the number 5 is in accordance with the more ubiquitous photo offsets of the Ostrog 1834 edition (such as New York, 1966).

R. Ḥayyim Shabbetai, *Torat Ḥayyim* 3,3: Salonica, 1722 printing, with a few obvious errors corrected.

R. Asher ben Jehiel (Rosh) 4,10: Yitsḥak Yudlov, ed. (Jerusalem: Machon Yerushalayim, 1993). (This responsum is included in the Halakhic Background for the previous one in this list.)

Glossary

Some commonly used terms:

Amora'im (sg.: *amora*) Sages in the Talmud during the time after the compilation of the Mishna.

bar (Aramaic), ben (Hebrew) "the son of."

baraita Tannaitic text that is not in the Mishna.

gᵉmara The portion of the Talmud that is the discussion and elaboration of each *mishna* by the Amora'im.

Geonim (sg.: Gaon) The heads of the academies in Babylonia, recognized as the highest halakhic authorities approximately between the end of the sixth century to the middle of the eleventh century.

Rishonim (lit., "first ones") The name given to medieval Jewish scholars who lived after the Geonim approximately up to the time of R. Joseph Caro (1488–1575), author of the *Shulḥan ʿArukh*.

Tanna'im (sg.: *tanna*) Sages from the period of Hillel until the compilation of the Mishna, from about 20–200 CE.

Abbreviations

BT Babylonian Talmud
EH Even Ha-ʿezer
ḤM Ḥoshen Mishpat
JT Jerusalem (Palestinian) Talmud
MT Mishne Torah (authored by Maimonides)
OḤ Oraḥ Ḥayyim
SA Shulḥan ʿArukh (authored by R. Joseph Caro)
YD Yo-re Deʿa

Further Reading

[Beinart] Beinart, Haim. *The Expulsion of the Jews from Spain.* Portland: Littman Library of Jewish Civilization, 2002.

[Marx] Marx, Alexander. "The Expulsion of the Jews from Spain" *Jewish Quarterly Review* 20, no. 2 (January 1908): 240-271.

[Marx2] ———. "The Expulsion of the Jews from Spain (Additions and Corrections to "JQR.", XX, 240-71)." *Jewish Quarterly Review*, n.s. 2, no. 2 (October 1911): 257-258.

[Perez] Perez, Joseph. *History of a Tragedy: The Expulsion of the Jews from Spain.* Urbana: University of Illinois Press, 2007.

[Ray] Ray, Jonathan. *After Expulsion: 1492 and the Making of Sephardic Jewry*. New York: New York University Press, 2012.

[Soyer] Soyer, François. *The Persecution of the Jews and Muslims of Portugal: King Manuel I and the End of Religious Tolerance (1496–7)*. Leiden: Brill, 2007.

On Excommunication

Introduction

This brief preparatory chapter explores the concepts of *niddui* (shunning) and *ḥerem* (excommunication),[1] and the halakhic basis for this method of punishment in Jewish communities.

> The most effective punishment and method of enforcement wielded by the Jewish communal authorities was excommunication. ... There were two forms of excommunication: the milder form was known as *niddui*, and the more severe type as *herem*. The severity of each type again differed in degree according to the culpability of the offender. When the ban of *niddui* was imposed on a guilty person ... no one was to speak or deal with him for a period ranging in duration from seven to thirty days. When the ban was more rigorous, the following penalties were imposed: the culprit was required to change his permanent seat in the synagogue and was denied the honor of being called up to the Torah; for a period of a number of years he was not to be counted in the quorum of three that is necessary for grace after meals, nor in the quorum of ten worshippers that constitute a congregation... After this came the most rigorous form of the ban, the *herem*, a solemn anathema of indefinite duration. The penalties of the *herem* usually required that the culprit be completely isolated from his fellow Jews. ... Like a heathen, his bread and wine were forbidden. He was denied burial in a Jewish cemetery, and no one was to perform the ceremony of circumcision on his children. ... The severity of the ban was determined by the nature of the offense.[2]

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1 These are both forms of excommunication. Though there is a technical distinction, at times the terms are used interchangeably. The Aramaic *shamta* (excommunication) is sometimes used to mean *niddui*.

2 Morris Goodblatt, *Jewish Life in Turkey in the XVIth Century as Reflected in the Legal Writings of Samuel De Medina* (New York: Jewish Theological Seminary of America, 1952), 88-89. See 88-90 for further discussion of these forms of punishment. See also [Kaplan], 115. Kaplan states: "It does not appear to me that, in imposing excommunications the leaders of the Portuguese Jewish community in Amsterdam distinguished among the various stages of *nidui*, *herem* and *shamta*" (139n78).

In several of the responsa in this book, this type of punishment is proposed for the defendant in the case under discussion. However, it is not really what the author of the responsum is seeking. Rather, he is seeking some kind of reconciliation or compromise, and hoping that the threat of shunning or excommunication will bring this about.

Halakhic Background

Selections from the Talmud, the Rishonim and the halakhic codes elucidate the halakhic basis of excommunication and the views of the Sages on such punishment.

In *Mo'ed Qatan*, a discussion about the suspension of mourning customs for a mourner during a festival (including the intermediary days) leads to a question about whether shunning is suspended during these days; Rav Yosef concludes, using an a fortiori argument, that it is not. From this brief excerpt we learn that excommunication was a method used to enforce a court decision.

***Mo'ed Qatan* 14b** **מועד קטן י"ד ב'**

אבל אינו נוהג אבילותו ברגל שנאמר ושמחת בחגך ... מנודה מהו שינהוג נידויו ברגל אמר רב יוסף תא שמע דנין דיני נפשות ודיני מכות ודיני ממונות ואי לא ציית דינא משמתינן ליה ואי סלקא דעתך אינו נוהג נידויו ברגל משומת ואתי מעיקרא אתי רגל דחי ליה השתא משמתינן ליה אנן

A mourner does not observe the mourning customs during a festival, as it says *You shall rejoice in your feast* (Deut. 16:14). ... [Regarding] one who is shunned—should he abide by [the restrictions of] his shunning during the festival? Rav Yosef said: "Come and hear:[3] 'Capital cases, [offenses subject to] flogging, and monetary cases are judged [during the festival].' And if he does not heed the [court's] ruling, we excommunicate him [even during the festival].[4] If you would think that one is not [obligated to] abide by the restrictions of shunning during the festival, [so that] the festival comes [and] suspends for one who is already excommunicated [from before the festival], would we excommunicate someone [during the festival]?![5]

3 The expression *ta shema'* introduces a Tannaitic source.

4 Scriptural allusion for this practice is offered in *Mo'ed Qatan* 16a: And from where [do we know] that we shun [one who refuses to appear in court]? As it is written: *Curse Meroz* (Jud. 5:23) [who did not come to aid]... . And from where [do we know] that we excommunicate? As it is written: *bitterly curse* (ibid.).

5 So, concludes Rav Yosef, since we do have the option to excommunicate during the festival, a fortiori it must be that the festival does not suspend the excommunication.

The following statement, also from *Mo'ed Qatan*, gives some details about the procedure.

***Mo'ed Qatan* 16a**	**מועד קטן ט״ז א׳**
Rav Yehuda, the son of Rav Shmuel bar Shelat [said] in the name of Rav: "We immediately shun [one who refuses to appear in court] and repeat this after thirty days, and excommunicate him after sixty."	אמר רב יהודה בריה דרב שמואל בר שילת משמיה דרב מנדין לאלתר ושונין לאחר שלשים ומחרימין לאחר ששים

Rulings by Maimonides, based on several pages in *Mo'ed Qatan*, fill in some details.

Maimonides *MT Hilkhot Talmud Torah* (The Laws of Torah Study) 7	**רמב״ם משנה תורה הלכות תלמוד תורה ז**
4 What is the practice that one who is shunned [must] observe himself, and what practice is done to him [by others]? A person who is shunned is forbidden to cut his hair or launder his clothes, like a mourner, all the days of his ostracism. He is not included in the quorum of three for the grace after meals, and he is not included in the quorum of ten for any matter that requires ten.[6] One should not sit within four cubits of him. But he [may] teach others, and they may teach him; he [may be] hired and hire [others]. If he dies while in his state of shunning, the religious court sends and places a stone on his coffin, that is to say, they stone him, because he separated from the community. Needless to say, he is not eulogized, nor is his bier accompanied.	**ד** מה הוא המנהג שינהוג המנודה בעצמו ושנוהגין עמו, מנודה אסור לספר ולכבס כאבל כל ימי נידויו, ואין מזמנין עליו, ולא כוללין אותו בעשרה לכל דבר שצריך עשרה, ולא יושבין עימו בארבע אמות. אבל שונה הוא לאחרים, ושונין לו, ונשכר, ושוכר. ואם מת בנידויו, בית דין שולחין ומניחין אבן על ארונו, כלומר שהן רוגמין אותו, לפי שהוא מובדל מן הציבור. ואין צריך לומר שאין מספידין אותו, ואין מלוין את מיטתו:

6 Such as public reading of the Torah, or public repetition of the silent prayer.

ה יתר עליו המוחרם, שאינו שונה לאחרים, ואין שונין לו, אבל שונה הוא לעצמו כדי שלא ישכח תלמודו, ואינו נשכר, ואין נשכרין לו, ואין נושאין ונותנין עמו, ואין מתעסקין עמו אלא מעט עסק כדי פרנסתו׃

5 One who is excommunicated [has] more stringent [restrictions] than him. He may not teach others, nor may they teach him, but he [is permitted] to teach himself so that he will not forget what he has learned. He may not be hired, and he may not hire [others]. It is not [permitted] to trade or do business with him, but only a small amount of business for his livelihood.

ו מי שישב בנידויו שלשים יום ולא ביקש להתירו, מנדין אותו שנייה. ישב שלושים יום אחרים ולא ביקש להתירו, מחרימין אותו׃

6 One who remains ostracized for thirty days and does not request a release from shunning [by appearing in court, as required] is shunned a second time. If he remains another thirty days and does not request a release, he is excommunicated.[7]

The following passage from *Mo'ed Qatan* (cited in the responsum in "Excommunication in Amsterdam") elucidates a further application of shunning and excommunication: making certain that scholars adhere to the standard of behavior expected of them.

***Mo'ed Qatan* 17a** **מועד קטן י״ז א׳**

ההוא צורבא מרבנן דהוו סנו שומעניה אמר רב יהודה היכי ליעביד לשמתיה צריכי ליה רבנן לא לשמתיה קא מיתחיל שמא דשמיא ... אמר רב הונא באושא התקינו אב בית דין שסרח אין מנדין אותו אלא אומר לו הכבד ושב בביתך

There was once a young scholar about whom bad word was going around. Said Rav Yehuda [bar Ezekiel]: "What shall be done in this case? Shall we excommunicate him? The rabbis need him! But if we do not excommunicate him, the name of Heaven will be desecrated!" ... Rav Huna said: "It was enacted in Usha that if the head of a court should sin,[8] [the first time] he should not be shunned, but only be told: *Be dignified and stay at home*. (2 Kings 14:10)

7 This is how Maimonides interprets "sixty" in the statement attributed to Rav in *Mo'ed Qatan* 16a.

8 Lit., "stank" in a manner deserving of shunning or excommunication.