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The 'Anusim in the Responsa of Samuel de Medina 1506-1589

Leslie Jean Alexander

Thesis Submitted in Partial Fulfillment of Requirements for Ordination

Hebrew Union College-Jewish Institute of Religion
New York, N.Y.

Date March 25, 1983

Referee: Professor Martin A. Cohen

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The sultans of the Ottoman Empire believed in Islamic supremacy. Their policial/religious goal was conversion of all mankind to their faith. In reality, the policy of the Ottoman Turks was relatively liberal. In their Empire, adherents to other religions were permitted to retain their beliefs. Moslems merited more rights, but in comparison to the persecutions of Christian Europe, restrictions were minor.

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In Christian Europe, these Jews were called Marranos, the Spanish word for "pigs". When they left the countries of persecution, they also left behind this label and resumed their identity as heirs of a proud tradition. The responsa of Medina never refer to them as "Marranos"; instead, Medina calls them 'anusim, or forced converts.

Religiously, these forced converts had developed traditions and philosophies greatly at variance with those of other Jews. The Jewish community had always been comprised of a number of diverse groups, each representing the traditions of a different location. But now the variety and disparities began to cause divisiveness. In this predicament, Medina had to serve as a stabilizer. He forced certain aspects of conformity within the community and would not tolerate any disregard of communal legislation.

Medina was a Sephardic Jew and clearly asserted the superiority of his traditions over those of the Ashkenazic Jews in the community. His responsa and community legislation reflect Sephardic traditions, which sometimes came into direct conflict with those of other groups. The commentators whose authority he respected were, for the most part, other Sephardic Jews.

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CHAPTER ONE: BUSINESS

Business relationships create important connections between individuals. They constitute a major part of life and therefore can become a serious source of tension between people. Questions about business agreements involving 'anusim pose unusual problems. Medina deals with these in his responsa. Four of the issues presented in this chapter deal with questions of debt. They come from Medina's Hoshen Ha Mishpat volume of responsa. Additionally, there are two questions of business which do not specifically concern responsibility for a debt. One involves a dispute over control of family funds. The other asks whether it is acceptable to utilize a previously used Gentile name in conducting business.

The first question[1] concerns a man, Reuven, and his business partner, Shimon, who is a former Portuguese 'anus. The locations discussed in the problem are Turkey, Ancona and Rome. Reuven had sent Shimon to Ancona to trade skins and send back the money earned. In exchange, Shimon shipped goods to Reuven for sale in Turkey. Reuven's skins in the meantime arrived in Ancona and Shimon sold them. Shimon recorded the sales in the city record in his own name, as law required. What should have been a smooth process of exchange was instead interrupted by Papal decrees. An edict declared that Ancona's converted Jews must give up both their money and their lives.

Shimon traveled to Rome and stood trial. The authorities could inflict the death sentence at will. Shimon attempted to avert the decree. He transported all his possessions to Rome in the hope that he could use them as ransom for his life. When Shimon came to trial he found that the Pope had summoned the town scribes who held Ancona's record books, along

with the new 'anusim, to Rome. The record found that Shimon had sold skins recently. The Pope took all the money and freed Shimon. Later, when Shimon returned to Turkey, he requested that Reuven return the goods he sent from Ancona.

Reuven refused to return Shimon's possessions. He felt he could hold them as security for the lost funds. He claimed that Shimon had erred; he had neglected to send the money immediately after the sale, prior to the Pope's decree. Shimon responded that in these sales it is customary to receive a promissary note (חוב) that is later converted into money. He had sought the payment immediately, but the decree was instituted less than twenty days after the sale. He denied any transgression. Reuven claimed additionally that Shimon neglected to write Reuven's name on the city's record of sale. If he had done this, the money would not have been taken. Shimon replied that it was common practice to inscribe the name of the exchanger on the record. That facilitated collection of money owed. Shimon brought witnesses that he had properly handled the sale of Reuven's skins.

Medina is asked to decide who holds responsibility in this case. Reuven claims that Shimon is liable to pay him something. Shimon questions Reuven's right to withhold his property before a decision is reached in the case.

Medina, in his teshuvah, declares at the outset that Shimon is patur, free from responsibility and Reuven is hayav, responsible for the return of Shimon's possessions. His rationale for this decision is that any guardian is freed from his responsibility if he is forced or threatened. For Medina, the most powerful example of force is an edict of the Pope (גזרת האפיפיור). Medina provides textual background for his decision.

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2. Haim Z'ew Hirschberg and Yaakov Geller quote M. Lattes from Likkutim de-vei Eliyahu 7 in the Encyclopedia Judaica entry "Ottoman Empire", volume 16, p. 1532.

CHAPTER ONE: BUSINESS

Business relationships create important connections between individuals. They constitute a major part of life and therefore can become a serious source of tension between people. Questions about business agreements involving 'anusim pose unusual problems. Medina deals with these in his responsa. Four of the issues presented in this chapter deal with questions of debt. They come from Medina's Hoshen Ha Mishpat volume of responsa. Additionally, there are two questions of business which do not specifically concern responsibility for a debt. One involves a dispute over control of family funds. The other asks whether it is acceptable to utilize a previously used Gentile name in conducting business.

The first question[1] concerns a man, Reuven, and his business partner, Shimon, who is a former Portuguese 'anus. The locations discussed in the problem are Turkey, Ancona and Rome. Reuven had sent Shimon to Ancona to trade skins and send back the money earned. In exchange, Shimon shipped goods to Reuven for sale in Turkey. Reuven's skins in the meantime arrived in Ancona and Shimon sold them. Shimon recorded the sales in the city record in his own name, as law required. What should have been a smooth process of exchange was instead interrupted by Papal decrees. An edict declared that Ancona's converted Jews must give up both their money and their lives.

Shimon traveled to Rome and stood trial. The authorities could inflict the death sentence at will. Shimon attempted to avert the decree. He transported all his possessions to Rome in the hope that he could use them as ransom for his life. When Shimon came to trial he found that the Pope had summoned the town scribes who held Ancona's record books, along

with the new 'anusim, to Rome. The record found that Shimon had sold skins recently. The Pope took all the money and freed Shimon. Later, when Shimon returned to Turkey, he requested that Reuven return the goods he sent from Ancona.

Reuven refused to return Shimon's possessions. He felt he could hold them as security for the lost funds. He claimed that Shimon had erred; he had neglected to send the money immediately after the sale, prior to the Pope's decree. Shimon responded that in these sales it is customary to receive a promissary note (חוב) that is later converted into money. He had sought the payment immediately, but the decree was instituted less than twenty days after the sale. He denied any transgression. Reuven claimed additionally that Shimon neglected to write Reuven's name on the city's record of sale. If he had done this, the money would not have been taken. Shimon replied that it was common practice to inscribe the name of the exchanger on the record. That facilitated collection of money owed. Shimon brought witnesses that he had properly handled the sale of Reuven's skins.

Medina is asked to decide who holds responsibility in this case. Reuven claims that Shimon is liable to pay him something. Shimon questions Reuven's right to withhold his property before a decision is reached in the case.

Medina, in his teshuvah, declares at the outset that Shimon is patur, free from responsibility and Reuven is hayav, responsible for the return of Shimon's possessions. His rationale for this decision is that any guardian is freed from his responsibility if he is forced or threatened. For Medina, the most powerful example of force is an edict of the Pope (גזרת האפיפיור). Medina provides textual background for his decision.

He cites Abraham ben David of Posquière (ראב"ד) who quotes Rabbi Yitzhak in the Talmud.[2]

ולך תהיה צדקה , אם לא קנאו , צדקה מנין ?

'You will get credit for it'; but if there is no actual possession, how can one get credit for the act?

According to the laws of security (משכון), Reuven should keep only his own possessions. Shimon is free from responsibility regardless of what type of shomer (guardian) he was. Shimon should take an oath avowing the facts of the case and Reuven should then relinquish his hold on Shimon's possessions.

Reuven further asserted that his claim that Shimon erred was based on the special nature of the business relationship between them. He contends this despite the general principle that all shomrim are generally blameless in cases of 'onsin (force).

Medina disagrees with Reuven's claim. He rules that Reuven forfeited his right to a trial by putting forth a claim which was insufficiently supported. He was not in Ancona and therefore was removed from the actual occurences. Medina cites a similar hypothetical case from the Tur (Jacob ben Asher) in which a lender claims that the money owed him is of greater value than the security he holds.[3] Witnesses support his claim, or (in a variation of the hypothetical), the borrower agrees but claims that the loan was lose by 'ones. He then requests that the lender return his security. The borrower swears, as law prescribes, that he lost the loan due to force. He says that it is not in his possession and that he did not lay a hand on it. He may therefore collect the money held by the lender. The lender cannot contest the case since he is ignorant about the circumstances of the loss.

Rabbi Medina determines on the basis of the commentators' principles that Shimon's oath is to be believed. He avoided error since he had no opportunity to send the money before the decree. In addition to this, Medina decides that all Shimon's transactions were justified. The account book which lists Shimon as the seller of the furs is in accordance with local custom: the person listed is the one who executes the deal. Reuven cannot swear an oath concerning any of his allegations since he was not in Ancona.

Medina's teshuvah adduces applicable cases decided by other scholars as support for his decision. Rif (Rabbi Yitzhak Alfasi) writes of a loan of one hundred zuz (monetary unit) made by a person to his neighbor.[4] The neighbor left a saw handle as a pledge. If the lender lost the saw handle he would also lose the right to reclaim the zuz. This rule holds only when the pledge was lost or stolen. If it was taken by force from the paid watchman (שומר שכר), he can collect the money owed. The Rambam decides a case in which one lends on security.[5] If armed robbers take the money by force, the forced person swears and the lender returns his security. If the borrower loses the money without being forced, the holder of his security need not return it.

In the case at hand, Medina concludes that Shimon can swear an oath that he acted correctly and also that he was forced. He may then collect his possessions. Reuven received Shimon's goods from Ancona earlier than Shimon received Reuven's skins. That created a business relationship in which Reuven was the renter. When Shimon received the skins he became, instead, a shomer. Shimon and Reuven thus took on mutual obligations. Medina explains this as a simultaneous transfer of goods. If there are two mutual shomrim and one loses something, the original owner collects the remaining item. Therefore, in this case,

the money left in Reuven's hand belongs to Shimon and must be returned. Medina quotes commentators' explanations of this type of guardianship (שמירה). Rav Papa says that this sort of agreement lacks the clear statement: " שמור לי היום ואשמור לך למחר ": "Act as my shomer today and I will act as your shomer tomorrow." This statement was indeed absent in Medina's case. The inference is that Shimon is free from responsibility for the lost goods.

The Tur (Jacob ben Asher) gives an example of a case involving simultaneous transfer of goods, shemirah beba'alim.[6] A prosepctive borrower requests the loan of a light coat and offers his own coat in exchange. One coat is long and the other short. If the loan occurs simultaneously and later one coat is lost, the coat that remains returns to its original owner. The circumstances of this case are similar to those in Medina's she'ela.

The second she'ela (question) that focuses on a problem of debt concerns three people: Reuven; a goy; and Shimon, who live in a Christian country. Reuven owes a maneh (societal equivalent to one hundred dollars) to the gentile. The gentile owes Shimon the same amount. In a court decision, the goy arranges to have Reuven pay Shimon the maneh that he owes Shimon, since Reuven also owes him a maneh. This simple process is impeded by an edict that forces the Jews to give the Pope's representatives all their assets. Reuven's money is confiscated. This delays his ability to pay Shimon. Medina reports that Reuven and Shimon are meanwhile saved from greater horrors at the hands of the Pope. Shimon then attempts to claim the maneh promised him in the original deal with the goy. Reuven finds its impossible to pay Shimon since all his worldly goods (נכסים)

have been taken. The questioner asks who holds responsibility in this case. Must Reuven pay Shimon the maneh?

The teshuvah immediately states that at first glance, the law supports Shimon. Medina cites the Rosh (Asher ben Jehiel) in order to provide textual clarification.[8] He says that it was commonly thought that if the lender was goy and the receiver a Jew, the Jew has legally acquired (קנין) from the goy, because it would be possible to seize goods from the Jew with the assistance of the beyt din. The Rosh interprets that if the lender is a gentile and took the Jew's money back by force before the Jew could pay another Jew he owed, the first Jew is still hayav (responsible) to pay the Jew to whom he owed the money. The Jew already owed his fellow. Just because a goy stole the one Jew's money, the other does not have to suffer. The Tur agrees with this evaluation.[9] Medina infers that all agree that the law supports Shimon when money matters are at stake. However, in issues of threat to life, the borrower would be free from repayment responsibility due to (חמירא סכנתא) legal stringencies enacted to protect people from danger.

The Rosh writes that a person is responsible for the charge of (מזיק ממון חברו)damaging a friend's property when he virtually voluntarily hands over the other person's property.[10] When an Israelite is directly forced by gentiles and as a result gives them his friend's money, he is (פטור) free from responsibility. The Rosh's opinion is that if a person brings with him another Jew's money to hand over in a process of financial exchange (נשא ונתן)with the gentile, he must return the money. This applies even in a case where he was forced. The fact that he initially brought the money indicated an element of volition

in his transmission of another's money. The Poskim add that someone who initially carries his friend's money in hand and gives it to those who pressure him is responsible to repay it even if he was threatened with death.[11] The Rosh specifies that a Jew who is forced and then exhibits his friend's goods and utilizes them in order to bargain is patur. His exhibition was involuntary. In contrast, a Jew who is pressured for money and enters another's house in order to acquire the necessary goods must take responsibility for it. The Jew might have thought that: " אין לאדם להזיק ממון חברו ביד ", "No one should forcibly appropriate his friend's money" even when faced with a death threat.

The Gaonim wrote that pikuah nefesh, saving a life, was most important.[12] If a Jew were forced to the point where he entered someone's house to steal money, he was patur. The Rif similarly asserts that if a Jew is pursued and the transmission of money will save a life, the Jew is patur. They cited one condition. The goyim had to specifically ask for the other person's money. The Rambam and the Rosh also feel that if force occurs and specific money is not requested but is turned over, the Jew is hayav (responsible). If the Jew holds a deposit which the gentile specifically seeks, the Jew is patur. The owner's deposit becomes as his own.

Nimmukei Yosef's (Yosef ibn Habibah) opinion is that if they pressure the Jew for specific money in his hand, he is patur. However, if the Jew does not have the money in hand, since the gentiles could not force him specifically with regard to that money, he is responsible to repay the money. The Rif conditionally agress with this except if the Jew is being forced to pay a head tax. In this case, the Jew does not need to repay his friend since all Jews are forced to pay it anyway.

Medina then applies all these views to the situation. He decides that Reuven may keep the money since the sefer mishpat (law code) states that he is not responsible. The condition that determines the decision is that Reuven had to be forced to show the money. He did not initially make use of it. Medina provides an additional example as support for this decision. When the time came for a certain debt to be paid, the public crier announced that the Jew was in possession of the obligation owed to peloni (a certain person). The Pope's workers were informed of this and a bad incident occured as a result. The Jew's money was stolen before he could repay it. He need not repay after the theft.

The law and the accepted societal standards in these countries were not necessarily the same. A king could act illegally and take something by force through an unusual tax. His law became the law of the land whether it was generally accept practice or not. In a case such as that, Reuven would clearly be patur. If the Pope seized the money Reuven held, he could do so lawfully. It was customary and accepted behavior in that country. The country's laws also held that if someone was a gentile and became Jewish while in the land, he lost all of his possessions. They had the right to declare forfeiture because of the Talmudic principle:

דינא דמלכותא דינא

"The law of the (gentile) land is the law (for Jews) in every (non-ritual) respect."

Medina concludes that Shimon's claim is inappropriate. Reuven was forced. He did not choose to give up the money. The gentiles had already planned the seizure of money. The Pope legally claimed the property and Reuven would have been given the "death tax" (קנס מיתה) had he not complied.

The third question of debt is a bit unusual.[13] It involves a family: Reuven, Shimon, and Shimon's wife. The situation takes place in Italy, which is Shimon's home. Shimon has become an idolator (עובד אלילים). Reuven and Shimon's wife devise a plan to convince Shimon to leave Italy. They want him to move somewhere where he can do teshuvah. Reuven decides to negotiate with Shimon. Reuven sets the condition that Shimon leave giyut (Christian land), settle in a Jewish place, and reestablish Jewish credibility. To facilitate the move, Reuven will loan him three hundred zuz immediately and one thousand more when he arrives at his new home. If Reuven should renege on the deal and later withhold the thousand zuz loan, Shimon may keep the three hundred loaned earlier. Shimon accepts the deal and relocates. He fully reenters the Jewish fold. The problem occurs when Reuven refuses to loan the additional one thousand and also requests the return of the three hundred already loaned. Reuven had voluntarily inscribed a written statement of the initial deal. He now says this was asemakta be'almah, not a serious promise. Medina is asked if Reuven owes Shimon money. Must Reuven loan the one thousand? Can he recover the original three hundred given to Shimon?

Medina's conclusion immediately states that Reuven is not required to loan Shimon anything. The reason that Reuven can renege on his agreement is that he served as a facilitator for Shimon's return to Judaism. He did an important mitzvah for Shimon that clears him of any transgression. Shimon is considered similar to a child or woman (sic) who must be taught to serve God through inducement or fear. Reuven utilized a method that he knew would promote trust between Shimon and himself. The money served

as a lure to guide Shimon into belief in God's Torah. He should not have had to lose his money in order to show an Israelite the importance of serving God.

Reuven thought that after Shimon had moved to a Jewish community and had done teshuvah, he would willingly repay the money owed. Reuven expected Shimon to appreciate the fact that due to his repentance he was assured life eternal (חיי עולם). Instead, Reuven fears that Shimon's present attitude is mercenary and rebellious. If he persists in that attitude it could force negation of his identity as an Israelite. He could be ostracized from the community.

The teshuvah includes the view of various commentators. Maimonides writes that the batay-din (courts of Jewish law) of the United monarchy did not welcome converts.[14] In David's days the hesitation was: " שמא מן הפחד חזרו ", "they returned due to fear." In Solomon's time the suspicion was:

שמא בשביל המלכות הטובה והגדולה שהיה בישראל חזרו

"they returned because of the good and large kingdom that existed in Israel." Maimonides suggests that the returnees to Judaism resembled gentiles who came into Jewish lands in the effort to avoid the collapse of the other societies. These returnees were not counted as (גרי צדק), righteous converts.

Medina's conclusion is reiterated. Reuven is not obligated to loan to Shimon. He cites a case between Jews where one vows to loan the other a (שיעור) defined quantity of goods. The law states that the Jew is not obligated to actually make the loan. It is permitted to change one's mind without question. Even if the deal was arranged as an unusual method of loan which would be due for repayment in only two years, the lender

could still renege. The loss of profit involved in the loan between Jews would amount to a large gift. It is not the norm for a man to arrange this sort of deal, even with a good friend.

Rabbi Yoḥanan states in the Talmud that someone can promise an unusual gift and later change his mind due to (מחוסר אמונה) the fact that the initial offer was too good to be believed. Rav Papa comments that if a small present is offered, the same doubts do not arise. The mind of the receiver can remain at rest. One learns from this that a person can renege on a large gift offer without shame. Rashi's comment concludes the responsum. He says that one can renege on an agreement to give a large gift. If this is true, a person is allowed to change the conditions of a deal that concerns return to Judaism. For the greatest gift a person can give is the chance to come back to the community.

The fourth issue deviates from the usual question and answer pattern.[15] It involves two women, Shimon's widow, and Reuven's widow (Hannah), and a gentile messenger. The case takes place in Turkey and Italy. Shimon's widow sent a goy to Frankia (Italy) to detain there the possessions she held jointly with Hannah. The gentile went there and attempted to acquire the goods, but was obstructed by the government. The messenger returned and claimed that he was not paid by Shimon's widow as they had agreed. The gentile therefore returned to Italy and informed on the sisters and their daughters. He told the government that the family went to Turkey to return to Judaism. Reuven's widow was forced to attempt a rescue of the Italian money that had been detained because of Shimon's widow's actions and the gentile's act of informing. Hannah had to bribe people in order to save the money. She claimed that Shimon's widow was responsible for the loss of their common money in Frankia.

Samuel de Medina rejects the claim of Reuven's wife. He states that Shimon's wife has no more responsibility for the loss than does Reuven's wife. He turns to the Poskim (commentators) for amplification of this answer. They distinquish between a case of "dinah degarmi", an action that causes damage to another person, which makes one responsible, and a case of garmah benezikin, a different type of damage, which leaves one free of responsibility.[16] The Tur makes someone responsible for dinah degarmi under two conditions:[17] the damage to a friend's money or goods (ממון) must occur because of some connection with one's own wealth and the damage must happen immediately when the incident occurs.[18]

Rabbi Solomon ben Abraham Adret explains that dinah degarmi can only occur in a case where guf hadavar, the actual thing, is affected. It must also be immediate damage. Garmah benezikin occurs when a person's action or money leave guf hadavar unaffected. The Rif disagrees. He cites a case where: "בזרק כלי מראש הגג " someone "threw vessels from a roof." Heaps and cushions had been set below but someone removed them. The thrower becomes responsible for the broken vessels. Medina makes clear how easy it is to become obligated in cases of nezikin (property damage). Even if one avoids personal contact with the transfer of the goods and is only shown his friend's money, he can in some cases be held responsible.

Medina evaluates his case on the basis of the information provided. There is little possibility that Shimon's widow is responsible for the money loss. She avoided personal action. The problem occured when she refused to appease the gentile. She would not pay what she considered an unfair amount.

The Ri (Isaac ben Samuel of Dampierre) would hold that the woman is patur (free from responsibility) since she did not directly adversely

affect the situation. She did not anticipate that the gentile's payment would leave him frustrated. She could not foresee that he would decide to spread slander. The woman offered a certain amount of payment considered proper in cases of delivery (שליחות). The gentile tried to force the woman to pay a great deal more (תרקבא דדנרי). One cannot claim a situation of force in some cases, such as divorce, but it does apply with regard to money cases.

The Ran (Nissim ben Reuben Gerondi) expands on the issue of force.[19] " יש אונס בדיני ממונות ", "there is the possibility of a claim of pressure in money cases." Someone asked to pay another said "a field was given you." This payment failed to appease the person owed. The indebted person utilized many methods in his attempt to compromise with the claimant. No solution was found. The indebted man is no longer responsible to pay because he was under 'ones, he was blackmailed.

In Medina's case, the woman gave the goy a certain amount considered excellent payment in similar cases. The terrible man was unappeased. She is free from obligation due to 'ones.

Medina provides a similar textual example from הרי"ק [20]. Shimon tells Ya'akov to arrange his daughter's get (divorce). Shimon promises to reimburse Ya'akov for all expenditures. Ya'akov returns and asks for an unusually large repayment amount. Shimon is not required to pay it. Shimon did not expect that Ya'akov would squander so much money. Shimon can avoid reimbursement of an outrageous amount of money. He is not considered a person who causes (dinah degarmi) damage to his fellow. Shimon can take a vow which will leave him patur. It is impossible to prove that Shimon personally caused Ya'akov any loss. Ya'akov will have to remain unsatisfied.

Medina connects the textual material to his case. The implications

are that Shimon's wife did indeed avoid personal action in the case. She made the mistake of choosing the wrong man to serve as shaliah, messenger. This mistake does not carry enough force to obligate her. She did not intend to give the money away. She planned only to spend enough to pay the shaliah. She could not foresee that the goy would become an informant. She did not directly cause nor need she have foreseen the problem.

Medina brings a final textual connection from the Rashba (Solomon ben Abraham Adret). Yehudah and Levi played a Purim joke. Their gag involved a house near a general's home. A problem occured and Yehudah and Levi were accused falsely. If Yehudah and Levi were found guilty, they would pay the damage without assistance from the community. Despite the fact that the boys were linked with the community, it held no responsibility for the error which caused the debt. This case indicates that even though both Reuven's and Shimon's widows are financially connected, the developments which necessitated the expenditures were not the fault of Reuven's widow. She deserves reimbursement for the loss caused by Shimon's wife's error. This is Medina's interpretation of the law.

The fifth issue also is not recorded in a question and answer format.[21] It is an evaluation of a problem. The focus also changes, from questions of debt to concern with administration of an estate. The people involved are Reuven's wife, Hannah; her daughter, Sarah; Hannah's sister, who is also Shimon's wife; and her daughter. The situation occurs in Venice and Turkey. Hannah's sister informed the Venice authorities that Hannah and her daughter Sarah wanted to move to Turkey and live as Jews again. She also told the government that she and her daughter wanted to remain in Venice as gentiles.

The problem that led to this betrayal had to do with control over family funds. Shimon's wife lacked any economic skills. Shimon decided that it would be more appropriate to name Hannah (his sister-in-law) as executor of his will. He was so sure that his wife should not control the money that he appointed an alternate executor named Augustina Enriquez to take over should Hannah die.

After Shimon's death, Hannah's sister asked the gentile courts to give her financial control. The case went to trial and Hannah was compelled to transfer her power to her sister. Hannah knew that her sister lacked knowledge about investments so she quickly invested as much of the funds as she could. Hannah hoped that this action would restrict her sister's ability to usurp large amounts of money. She also wanted to take her family's money out of the government treasury's grasp. The action had an element of revenge in it. Hannah wanted to respond to her sister's cruelty. Shimon's daughter became the major inheritor. Hannah feared that her niece would assimilate, and that the money would be lost through marriage to a gentile or through an official's claim.

Medina cites the gemarah in order to present the basis for his opinion.[22] If one sees a friend drowning in a river, a person dragged by a wild animal or someone being accosted by robbers, one is obligated to save him. One should never stand by while a friend is being killed. Even where there is no danger of death, but only a threat of injury or discredit, one must still act to save another person. The Torah teachess that this must be done even at the peril of loss of the life of the person threatening him. The type of threat posed is irrelevant. One must save the endangered person, "אפילו בנפש הרודף ", "even if it means killing the person who is pursuing him (to kill him)." Medina infers from this that if someone's

Jewish belief is threatened, a person is obligated to save the person faced with the threat. Again, the origin and nature of the threat is irrelevant, for: "אין לך רודף גדול מזה", "there is no threatener of one's life greater than this." If there is risk of life involved in the rescue, it is still required to attempt to save another's life. If the risk involves only money, it becomes all the more imperative to attempt the rescue.

Rabbi Medina concludes that Hannah behaved correctly. Her actions were an attempt to save Shimon's daughter. She had to spend some money which was from Shimon's daughter's inheritance. It did not belong to Shimon's wife. Hannah expended funds in the hope that she would protect the rest for her niece. In this case, Reuven's wife had good intentions and used appropriate judgement.

Medina includes textual support from the Rosh.[23] If a person sees a friend drowning, and it is necessary to risk one's own life to save him, it must be done. Some would infer that the responsibility to save applies in a case of threat to life, but that if a person is pressured by a heathen court, one is not required to save him. This is not true. The Rosh goes on to explain that the rescuer should be reimbursed for all expenditures made in order to save another. The person rescued will repay him. The rescuer is not obligated to permanently lose personal funds in fulfillment of the mitzvah of rescue: if the rescue is successful, the saved person repays him. If the rescuer breaks any of the pursuer's vessels (כלים) he is not <u>hayav</u> to pay him back. But, if he breaks anything that belongs to an uninvolved bystander, he must reimburse him. (In reality, the person who saves another does not incur the responsibility to pay for broken vessels (שבירת כלים); he must initially pay for the damage, but the rescued

person ultimately reimburses him). Neither needs to pay for the breakage of an assailant's vessels. They were broken in the attempt to save the intended victim.

On the basis of information cited, Medina concludes that Reuven's wife was required to save Shimon's daughter in order to avoid transgressing the prohibition "לא תעמוד על דם רעך", "do not stand by idly when your neighbor's blood is shed."[24]

This case teaches that people have the responsibility to rescue people from the danger of giyut. Reuven's wife was forced to spend money to achieve this. She had to make sure that her sister was unable to actually gain control over the funds.

In the talmudic chapter "Kol HaGet" a similar concern is stated. A testator tells a friend to take a certain object and prevents its placement into the hands of another person. The person who writes the will has a specific desire to insure that his deposit will end up in the possession of the person that he chooses and not another.

Medina applies this to the present case. Shimon had asked that his goods not be placed in his wife's hands. Therefore, Medina's conclusion is that Reuven's wife's actions were important and obligatory. Money was spent to achieve the rescue of Shimon's possessions. Hannah should be blessed for her deed.

The last question involves some 'anusim who had lived in Portugal but had moved to Turkey and returned to Judaism. While they lived in Portugal they had been known by gentile names. When they rejoined the Jewish community, they adopted Jewish names. The 'anusim come to Medina with their problem. They need to write letters to Portugal. Some of their

relatives and business associates will only recognize their gentile names. Is it forbidden for them to use their previous names for business? Will these signatures create suspicion that they have reverted to Christianity?

Medina's initial response is that there is no suspicion that this action is forbidden. In general, one should avoid questionable conduct, but occasionally it is difficult to do so. He brings a textual challenge to his position from the Tur. It is forbidden to call oneself a gentile in order to avoid death. It indicates an acceptance of their faith and a denial of Judaism's principles. Medina could apply this position of the Tur to his case.[25] It would indicate that the use of a gentile name is equivalent to acceptance of the faith, and therefore is forbidden. It is possible, though, that the Tur's case can be distinquished in important ways from Medina's. A name change instituted as a life-saving device is forbidden; Medina's case deals only with money needs (צורך ממון). It lacks the force of a life-saving issue. However, since it is <u>not</u> a life-and-death issue, the Tur might hold that it would be all the more prohibited to change the names.

Medina suggests that the name change is permitted despite the above comments. The verse below serves as his justification:

ומך אחיך עמך...לעקור משפחת גר

> ...and your brother being in straits...
> gives himself over to the resident alien
> among you or to an offshoot of an alien's
> family. [26]

This verse indicates that a name change can be permitted only if the Jew can <u>avoid</u> deviation from the correct path and still leave the gentile with the presumption that he is also gentile.

In the Talmud, Rava brings a case that supports this opinion.[27] Those who burn with the fire of Torah study (שרי לצורבא) maintain that one should avoid voluntary tax contributions to the "fire worshippers." One should attempt: " לאברוחי ארי׳ה מינ׳ה ", "to chase away the tax collector." Medina sees this guidance as legal permission for his questioner to utilize a non-Jewish name. The Jew serves God and lives where no one can take hold of him. He cannot be forced to be gentile. It is only the questioner's messages which will reach gentile hands. The Jew will avoid loss of possessions through the utilization of his gentile name. He will avoid detection but remain a Jew. This is permitted.

A Jew must be careful to avoid identification as an 'avdah denurah, an idolator. If a Jew says that he is a gentile, does this indicate that he truly identifies as one? Does this statement cast doubt on one's Jewish identity? The Ran asks whether someone who worships idols does so truthfully.[28] He can be someone who merely agrees to idolatry without conviction in order to avoid special taxation. The Mefarshim (commentators) decide that there is a possibility that a person who worships idols can retain his Jewish status if he is not truly an accepter of idolatry. The Nimmukei Yosef (Joseph ibn Haviva) quotes some commentators who deny that someone is still an Israelite when he labels himself a goy in order to escape governmental obligations, but he feels that these commentators err in judgement. The person is permitted to act as he does.

The individual in Medina's case is unseen by gentiles. When they see a letter, they will not pay attention to the signature. This is permitted. Some commentators would still hold that it is not acceptable. Medina points out that the letter is actually being sent to a different country, which should settle the issue. He refers the dissenters again to

the viewpoint of those "who burn with the fire of Torah", who advise Jews to evade the loss of money to gentiles.

Medina includes the opinion of the Sefer Mizwot Katan (סמ"ק) that when one permits a Jew to exclude himself from the community, it is tantamount to allowing him to deny his Jewishness. When a Jew excludes himself from payment of a Jewish clothes tax, for example, he shows his separation from Judaism. This is forbidden. It is permitted, though, to wear gentile clothing when it is not done to assert a gentile identity (except that one may not wear specifically prohibited clothing in an attempt to escape recognition).

In the chapter Ben Sorer U'moreh of the tractate Sanhedrin, it is stated that even to change one's shoe strap in a time of persecution is forbidden.[29] In times of peace, everyone may wear different clothing. The סמ"ק specifies that one may not change Jewish aspects of himself if his intention is to profane God's name. If he merely wants to avoid recognition, he may change clothes. One may attempt to avoid tax demands, but may not wear kilayim (forbidden materials) in order to do so. He may wear any permitted fabric.

Medina's questioner intends to escape recognition. He wants to avoid gentile examination of his business matters. If he uses his gentile name, he can succeed in this because: "עינים להם ולא יראו", "they have eyes but see not."[30] The man intends to remain Jewish. His action is permitted.

Medina cites the רר"ק in clarification of his opinion. He writes that those who forbid this sort of action do not disagree with regard to this case, but wish to restrict those who specifically dress in forbidden materials in order to prove that they are not Jews.

The Talmud, in tractate Gittin, describes a case of some divorce papers that arrived from medinat hayam (great distances).[31] The names inscribed on them resemble gentile names, but the gittin were kosher. The rabbis explained that most Israelites outside of Israel utilized gentile names. Even Jews in Israel sometimes have non-Jewish names. Rashi comments that he has frequently seen names that are common to both Jews and gentiles, but has not often heard of Jews who use distinctly gentile names. The Rosh indicates that it is possible that Israelites would have gentile names. He had seen a get signed Lokos and Los which was kosher. Those were certainly gentile names. It is not common for Jews to use these names. It is clear that the shaliah (messenger) did not err. The names were so unusual that he investigated their fitness prior to signing the document. They were acceptable signatures and deemed kosher.

Medina concludes that Jews should avoid actions that are specifically forbidden. It is permitted to utilize non-Jewish names, as the text from Gittin proves. The questioner may sign documents with his gentile name. The Jews involved will understand that the writer is a Jew. The gentiles will lack awareness of his Jewish identity. They will not realize that a Jew is involved with business transactions or owns merchandise. They will believe that a gentile owns the goods described in the letter. The gentiles will never know the man's true identity. The issue will never reach the public forum. It cannot be designated as hilul Hashem, desecration of God's name. It is permitted.

At first glance, the responsa examined here deal with common concerns of the Jewish legal system. All communities are faced with business conflicts. These problems are unusual due to the fact that outside influences play a major role in the development of the problems. The first two questions

deal with debts incurred by 'anusim due to confiscation of property by the Christian authorities. The third regards the validity of the suspension of accepted business etiquette when the goal is to bring a person back to Judaism. The fourth issue involves questions of improper actions taken in order to save money held in a Christian country. The fifth issue concerns a conflict over trusteeship, made more complicated by the attempts of some family members to hold the money in a Christian land. The last question deals with gentile names used in business and whether those names adversely affect one's Jewish standing and identity.

Rabbis have always served as mediators and judges in business cases. The problems presented here are unusual because they were either caused or exacerbated by the fact that the people involved were 'anusim.

Notes

1. שאלה נה
2. משכין
3. פשיטות בחושן המשפט סי' ע"ב
4. פרק האומנין בבא מציעא 82a, שבועות 43b
5. פי' מהלכות שכירות
6. חושן משפט סי' ש"ה
7. שאלה נה
8. פסקין פ"ק דגיטין על ענין "מעמד שלשתם בגוי"
9. חושן משפט סי"ף ש"ה
10. פרק הגוזל ומאכיל רי"ף
11. הלכות חובל ומזיק פ"ה
12. ראב"ד
13. שאלה קכח
14. פרק י"ג הלכות איסורי ביאה
15. שלה עוד
16. בבא קמא 117b, 100a, 98b
17. כלל דברי הרי"י חושן משפט סי' שפ"ו :from
18. רא"ש agrees: פרק הגוזל עצים, פרק כיצד הרגל
19. על הרי"ף
20. שרש עשירי
21. שלא עוד
22. סוף פרק בן סורר ומורה
23. בברייתא
24. Leviticus 19:16
25. יו"ד סי' קצ"ל
26. Leviticus 25:47

Notes, cont.

27. נדר'ם פרק קונס
28. Ibid.
29. 74b
30. Psalm 115
31. פ"ב/

CHAPTER TWO: FAMILY STATUS

Family status issues provide the focus of a number of Medina's responsa which concern 'anusim. Four of the problems are questions of 'anus inheritance. These are found in Medina's section on Hoshen Hamishpat; he classifies these as issues of economic law. Two matters outside the realm of inheritance also deal with status questions. One asks whether a child is to be considered a mamzer, a child of a forbidden union. The other asks whether the child of an 'anus is considered a Jew. Both of those issues are found in Medina's Even HaEzer section, which involves problems related to marriage and divorce.

The first question concerns a man, Reuven; his son, Yehuda; a youth, Shimon; and various townspeople.[1] Reuven served as Shimon's guardian for many years. Reuven escaped from persecution in a Christian country. He lacked sufficient funds to enable him to rescue his entire family. Instead, he brought the young boy, Shimon, who was not related to him.

Reuven fed, sheltered, dressed, and educated Shimon through the years. People assumed that the boy was Reuven's son. Hearing this, Reuven would immediately correct the misconception. He explained the circumstances surrounding their departure from giyut and attempted to prevent the community from labeling Shimon as his son. Reuven took an oath that the boy was not his son. (He states in his she'elah that the boy was a ger zedek of converted parents.)

The boy wrote a shetar mekilah, a writ of debt cancellation, witnessed and signed by scholars, in which he promised to cease all use of Reuven's money when he reached the age of majority. Reuven accepted the responsibility for the boy's care, but declined to call him his son.

A problem arose that troubled Reuven. During his travels he heard people describe him as Shimon's father. Reuven feared that the boy's intention was "נוהן עיניו בממנו ", to set his eyes on Reuven's money, and to attempt an inheritance claim after Reuven's death. Reuven considered this a threat to his son Yehudah's fair claim. Reuven wanted to insure his real son a clear and uneventful process of inheritance.

Questions were posed to Rabbi Medina. Would Reuven be believed in his statement that Shimon was not his son? Would there be any doubt regarding the issue of inheritance?

Medina's teshuvah begins with the assertion that "ראובן נאמן בדברו", "Reuven's statement is believed." All texts support that conclusion. There is no question that the boy lacks identification as Reuven's son.

Even if one presumed that Shimon might be Reuven's son, it is still clear that Reuven's statement would be believed. Reuven has the power to declare who is a qualified heir. He also has the right לפסול, to swear that someone is unfit to be counted an heir.

A man's credibility with regard to these questions is extensive. A currently married man has a right to claim that his wife's newborn son is another man's child or that the baby is a ben-gerusha, a divorced woman's illegitimate child.

Despite any contrary observations or the possibility of self-incrimination, the man is believed. Reuven would have the right to disinherit his son in a different way. He could consider the boy his son but assert that the mother was a gentile woman and still be believed.

Medina discusses the difference in status between a ben-gerusha

and a ben-goyah. He deems a ben-gerushah to have superior rights. Generally, a person is not believed "לשים עצמו רשע " to incriminate himself. When the case deals with a person in giyut, one might suppose that general assumptions lack applicability. But, the decision holds true despite the case. Inheritance is withheld because "האנוסין דין ישראל יש להם", "the same law is applicable to 'anusim that applies to all Jews."

Medina further treats the issue of designation of a child's status. The Talmud, in tractate Kiddushin, addresses the case where a man says "my boy is a mamzer."[2] Rabbi Yehudah says he is believed, since it is surely recognizable to others (יכיר יכירנו לאחרים). A man is believed when he declares "this son is my first-born." He is additionally believed if he says, "this is a ben-gerushah." The Talmud, in chapter Yesh Nohalin, asserts that one who calls a middle child the first-born is believed.[3] Rabbi Yoḥanan differs and says he is not believed.

The law supports Rabbi Yehudah's view. A man is allowed to say that a goy is not his son even if the rabbis presume the opposite true. He can say that the boy is a mamzer, another man's son. Despite clear indication that the man's wife gave birth to his child, halakah supports the man's testimony without question.

The Tosefot make a distinction.[4] They say that in general, the Torah believes the man's choices. Any statements he makes regarding his sons are accepted. He can name his youngest son the bekor. He can label his son illegitimate. He can say that his son is a ben-gerushah. Yet, the Tosefot reject a man's negative self-identification, such as his right to say that he voluntarily married a woman who had not been properly divorced. The rabbis prefer to identify the situation as a case

of a man who hates his wife and therefore denies connection with the child she bore.

In the Talmudic tractate Yebamot[5], the laws of inheritance are expounded in a similar way. The son is denied inheritance. Tractate Kiddushin explains that the Torah denies inheritance to "גוי את הגר וגר את הגר", "a non-Jew from a convert of a convert from a convert."[6] The gemara infers from this that an Israelite's son born to a maidservant or a gentile woman is denied identification as his son. He cannot consider the child the fulfillment of the commandment "פרו ורבו", to be fruitful and multiply. The son cannot be considered the bekor of his father, nor be given the benefits due a first-born Israelite son. He cannot inherit from his father.

Medina explains that law "רווחת ישראל" described by the Talmud. Gentile women's sons cannot ever be identified as the sons of a Jewish father. He gives an example of a convert who has children while in giyut. The father becomes Jewish and the children follow suit. The man thinks his sons will enable him to fulfill the mitzvah of "be fruitful and multiply." He assumes that they will be included in the din bekor, the inheritance law regarding first-born sons. For example, should he have children in kedushah, his original eldest will still be the bekor. This is not necessarily true.

Reuven's case is clear. The boy cannot inherit him. If Reuven had considered Shimon his son, but admitted that the mother was a gentile, Shimon would still be denied inheritance.

Medina offers alternative hypothetical arguments. Reuven could call his young son the first-born. It would become clear that Shimon was not his son, or that the boy was his son, but that a gentile woman

or a handmaiden bore him. In those cases, Shimon is not legally Reuven's son. Or, Reuven could act differently. He could claim that Shimon was not his son. He could say that he was another man's son, or the son of a gentile woman. Despite this claim, he could avoid invalidation of Shimon's bekor status and transmission of that status to another son. If he did this, authorities would doubt his word.

The Tosafist בה"ג disagrees with Rabbi Yehudah's opinion regarding the trustworthiness of a father in the case of a divorced woman's son. He agrees with him about the invalidation of the bekor status.[7] He quotes Rosh, who also agrees with Rabbi Yehudah's principles of inheritance, especially with regard to bekor cases. He calls the bekor matter a migo[8] because the truth would be recognizable. One doubts a father who labels his eldest son a mamzer without cancellation of the bekor status. The label itself should cancel the status.

The Rambam rules that a man with a pregnant wife is believed in labeling his son a mamzer or a ben-gerushah, or to deny his inheritance right without cancellation of the bekor status.[9] Most commentators agree with him and state that we believe all the father's words.[10]

Medina forms a conclusion to his case. Reuven is believed. When he calls the boy another man's son or a ben-goyah, Medina follows Rabbi Yehudah's rulings. There are no witnesses to the boy's birth. They cannot testify that Reuven always called the boy his son. Despite the fact that Reuven fed and clothed the boy, there is no proof that he is Reuven's son and inheritor. Even if Shimon were Reuven's son, Reuven would still have the privilege to choose another inheritor. Reuven's true son holds the inheritor status.

The teshuvah ends with a textual reference to a case treated by the Ran which is very similar to Medina's problem. Two men left

medinat hayam, a faraway country. They shared everything from business to food and drink. One man died; his friend was denied inheritance rights.

The second inheritance question involves an 'anus, Reuven; his son; and his two brothers, Levi and Shimon.[11] All are 'anusim. The locations involved are Portugal, Italy and Turkey. Reuven died in Portugal and his two surviving brothers came "to find shelter beneath the wings of the shechinah". The younger brother, Levi, held Reuven's possessions. The other brother, Shimon, brought Reuven's son. Levi took the goods to Italy and held them in a Jewish place.

The law of redeemer (גואל) could apply to this case. Shimon is older. He saved his brother's orphan. Shimon claimed Reuven's goods held in Levi's hands. Levi has reservations about transferring the goods to Shimon. Reuven's inheritors could claim the goods tomorrow and Levi fears responsibility for repayment despite the transfer. He intends to move to Turkey and bring his household and does not know what to do with Reuven's possessions. He asks if he should leave the goods with a beyt-din, court of Jewish law, or bring them to the inheritors. Levi claims that the deceased entrusted him with the money, and that his brother Reuven wanted to avoid unnecessary expenditures.

In the teshuvah, Medina states immediately that Shimon's ge'ulah claim lacks validity. Usually, it is true that women, slaves, and children were denied the responsibility of financial administration. The reason for this was the children lack business sense. ר"יבש and Rambam state that an older person who volunteers for the job of administrator could be passed over; the choice should ideally be made weighing a person's

inner capability. In Medina's case, Levi is deemed worthy of bearing responsibility for Reuven's goods. Shimon's claim is invalid.

Textual support again comes from ר יב"ש .[12] The choice of a guardian depends on the trustworthiness of the man and the validity of his judgements. The Talmudic tractate Gittin presents a case of orphans left with a certain householder whom their father appointed guardian.[13] It is stated in Gittin that he is responsible to tithe their crops.

The gemara presents the possibility that a grandmother could support orphans.[14] The Rosh comments that this resembles an appointment as guardian. The grandmother has the ability to profit but lacks beyt-din approval for her role. He also discusses the case of orphans placed with a ba'al habayit (householder).[15] This can occur if they are at least nine years old. If they are younger, the law of placement (שמ יכה) does not apply. The householder lacks the power to sell their possessions except metaltelin, moveable objects. He may not claim a share of their goods but, as a full guardian, may utilize profits earned by their possessions.

The Ran states that the householder resembles a guardian. He tithes the crops. He controls every issue that a guardian controls. The Ramah (Meir ben Isaac Arama) agrees with regard to ba'al habayit control, but denies him full guardian status. The guardian is allowed to collect the orphan's property. He can remove the holder's claim.

The Ran also presents an alternative view. The gemara says that women, slaves, and children are excluded from service as guardians. Yet the father can appoint anyone he desires as the orphan's guardian.

In the Talmudic case, the father appointed the orphans themselves

to be guardians. They already held deposits. The beyt-din holds selection rights after the father's death. It is preferable to honor the father's choice and appoint the orphans.

Medina utilizes the textual support to conclude that the correct beyt-din appointee in this case is the younger son. The orphan's father preferred the younger brother. Levi holds the possessions as approved by his dead brother. The younger brother is fit to be the trustee. He is trustworthy and may legitimately employ his business sense in handling the affairs

The third she'elah concerns two individuals, a meshumad and his Jewish sister, Leah.[16] The situation takes place in Portugal and Turkey. A man died and the court of Jewish law held his possessions. They awaited a claim from his next of kin. His closest surviving relative was an apostate Jew on his father's side. A woman, Leah, arrived at the beyt-din: she was the logical inheritor's sister. Her brother, as a meshumad, was considered legally dead. She claimed the closest inheritor status. The question posed to Medina is whether the woman's claim is valid. Does she deserve to inherit the deceased's worldly goods?

Medina's teshuvah states initially that the converted Jew forfeits his inheritance. It is desirable that his sister receive the goods. One should investigate the legal basis for such an inheritance. The beyt-din also has the option of holding the goods in anticipation of the meshumad's return to Judaism.

By the time Medina was approached to judge the case, a few years had passed. The inheritor had been offered the option of return and did not do teshuvah. The inheritor had been born and raised in giyut.

The agreed law in this case, Medina rules, is to give the presumptive inheritor's sister the goods. The meshumad's opportunity to inherit (torat yerushah) was cancelled. He was considered dead. His sister was the only remaining inheritor.

Medina cites a rabbinic argument which questions a convert's right to inherit his father's goods. The basic assertion was that אנוסים קצת לישראל : " 'anusim are still considered Jews with regard to certain obligations." such as Levir (יבם) status. There was a recorded case where a woman was bound to a Portuguese Levir, even though he was an 'anus. A further principle concerning 'anusim was that: "דממונא מאיסורא לא ילפינן", "certain restrictions do not apply (to 'anusim) with regard to money matters." However, prohibitions in matters of 'ervah, forbidden sexual relations, did still apply to them. Rabbis were especially stringent in matters such as halizah. Money matters were handled differently. Medina determines that the law allows Leah's acquisition of the inheritance as the presumed inheritor's sister.

The Poskim reason that the brother no longer has even the responsibility as a Levir. He forfeits his status as brother. Others say that this determination depends on the brother's status as a meshumad at the time that his deceased brother married. If the brother was still Jewish at the time of the wedding, he is bound to fulfill the role of Levir.

In Medina's case, the meshumad was born and raised as a gentile. His family had been in giyut many generations. He forfeits identity as a Jewish brother. Rabbi Medina agrees that a converted Jew retains the yibum responsibility. It is the stringency of 'ervah which prompts

this. With regard to money issues, he agrees that the meshumad lacks status as a brother and therefore forfeits the inheritance.

One scholar rules that the convert inherits but that the Jewish court keeps the goods. He addresses a case in which the man was born a Jew, but his decision lacks actual case documentation. Medina consistently rules that the meshumad forfeits inheritance. He concludes that the sister inherits. The rabbis can act to avoid retention of the funds so that the woman can immediately receive them.

The case holds no uncertainty for Medina. The inheritor was born in giyut. He had never lived as a Jew. He ignored the opportunity to return and forgot his identity both as Jew and as brother. The sister merits the money. She is a Jew and an observer of Torah.

Medina provides textual support for his conclusion.[17] The Mordecai quotes: "ודאי משומד אינו יורש את אביו"
"an unequivocal convert away from Judaism does not inherit from his father." Others say he does inherit, but that the beyt-din holds the power to cancel the inheritance. The Riba (Isaac ben Asher HaLevi) writes that if a Jew converts, the law is that the nearest Jewish relative inherits.[18] Maimonides asserts that the court decides whether to withhold inheritance money and fine the meshumad. They prevent the evil one's acquisition of money. He also states that a convert's sons would collect their meshumad father's inheritance.

Medina writes that a meshumad is equivalent to a dead person. The inheritor's sister is not disqualified as the inheritor simply because the discussion omits her. Medina derives this from the fact that Rambam gives the convert's children the right to his money during his lifetime, even while he is present. Thus, the meshumad's sister

deserves an inheritance. In her case, the convert is not present and is considered dead.

The responsum includes a comment by the Tur who suggests that the beyt-din hold the money. Again, he feels that there is a possibility that the meshumad will return, do teshuvah, and collect the inheritance. Medina comments that this decision applies to a person born as a Jew who converts (and usually to one who is in the vicinity, to facilitate future return). In Medina's case, the inheritor was from a family that had been living for generations in giyut. All agree that the woman Leah, an 'ishah kesherah, is fit to receive the inheritance since she is Jewish. There is no reason to wait for the meshumad's return.

Rabbi David HaCohen provides the last textual addition. He agrees that an apostate Jew does not inherit in place of a Jewish sister. The meshumad remained gentile one hour beyond the death of the testator. He therefore loses his inheritance rights. One should reason on the basis of "ממה נפשך ", ability to decide either way, and follow the Torah's leniency.

There is also a question of safek safeka, unusual doubt. There is a doubt that the convert inherits and, on the other hand, a doubt about his forfeiture of inheritance. There is doubt about his return to claim the goods and, contrarily, doubt with regard to his avoidance of return. If the man returns, there is a possibility that doubt about his right to inherit will remain and a possibility that, rather, such doubt concerning his inheritance will end. The sister avoids doubtful status completely. She surely inherits.

Medina adds that certain principles may affect those who utilize this decision. If a ketubah, a marriage document, lacks conditions,

the husband inherits. If it includes conditions, the sister inherits. Generally, the meshumad brother would forfeit any right to monetary gain despite the possibility that he was born a Jew. Therefore, Medina authorizes the sister's inheritance. The court should release its hold on the money. The sister of the usual inheritor is to receive the money immediately.

Medina concludes that the case is certain. The inheritor was conceived and born in giyut. He avoided returning to Judaism for several years. His Jewish identity and status as a brother are forfeit with regard to the money. The sister is Jewish and an observer of Torah. God deems that the woman merits the inheritance.

The last inheritance question involves a husband, wife, and orphans. The situation prompting the question takes place in Portugal and Turkey.[19] A Portuguese 'anusah married an 'anus. It was the kingdom's custom that when a husband died, the wife who survived him acquired half her husband's goods. This agreement was not connected to any initial dowry contribution.

This particular woman's husband died in Portugal. She asserted her right to the goods. She held a will written at the time of their wedding, signed by her husband and governmental judges. The husband gave his wife control over both her portion and their son's portion of the inheritance. Subsequently, the deceased's family went to Turkey to find shelter and return to Judaism.

The she'elah questions the ability of other inheritors to force the widow's forfeiture of her half of the inheritance. They want to prevent her collection of any money except her deposited dowry. A

question is also posed in general with regard to the custom of a widow's inheriting half of her late husband's assets. Does a law promulgated in the country of marriage prevent the inheritors from legally contesting the woman's inheritance? An additional question is asked. If the court assumes the woman's right to one half her husband's property, and she invests the money,can she keep half the gain? Or, does the gain become the orphan's property? If the latter is true, can the woman utilize the capital?

Medina begins the teshuvah with the statement: "לא זכתה האלמנה בחצי הנכסים", "the woman does not merit half the possessions." Marriage issues are judged according to customs. When one marries a woman, the intention is to uphold the custom of his place. Medina presents Maimonides' view.[20] One marries a woman in accordance with the custom of the land. The commentators agree that marriage follows minhag hamedinah.

Medina cites commentators to clarify his view. The Ritba (Yom Tov ben Abraham Ishbili) discusses a case of a woman who marries a man. The woman was raised in one place and the man in another. Questions arise about the situation. The couple was married in one place, but desired to settle somewhere else. The marriage conditions were set in the first location. Does the change require the couple to set new conditions? If the couple intends to settle in one spot, but eventually resides elsewhere, need they not construct new conditions?

Medina examines the Ritba's case.[21] A young woman was misled. She was married in the district of Nehardea. She asked to come before Rab Nahman, the Rabbi of the Bavel area, and present her case. The Bavel area followed the rulings of the Rav, while the Nehardea area

followed those of Shmuel. The woman was told that she would have to go to Nehardea and confront the problem there, according to the rules of that place. The Ritba also considers the case of a man who married a woman born in another place. He ruled that if the couple intended to settle in her native area, they should follow the customs of the intended district of settlement.

Medina assumes that when the couple married, their mutual intention was to uproot their home in giyut. They wanted to settle where they could serve God. Rabbi Taitazak, Medina's mentor, promoted the outlook that all the 'anusim were really Jews.

Medina concludes that the 'anusim in Portugal all intend to uproot their lives there and fix their homes in a place where they can serve God. Because of this, he concludes that the widow cannot collect half the inheritance. The custom established in her place of marriage has no force. Medina assumes that the couple's original idea was to uproot their Portuguese home.

The fifth issue discusses the problem of a giyoret (female convert to Judaism); her husband, the husband's brother; and the woman's second husband.[22] The situation occurs in Sofia and Turkey. A giyoret marries a Jew, is widowed, and becomes a yebamah. A witness testifies that the yabam (Levir) is dead. The woman becomes free to remarry and weds a ger-zedek from Gaski. The second husband claims that he is from the seed of Israel, of 'anus background. Soon, the woman becomes pregnant. Later, witnesses arrive who testify that the Levir is still alive. The woman is therefore required to leave her new husband. She may neither live with her husband, nor with the yabam to whom she is bound. She

must get halizah, a release from marriage obligation, from the yabam.

The question asked concerns her son's status: is he considered a mamzer? Medina states at the outset that, based on the opinions of the commentators, the boy is not a mamzer.[23] He invokes Maimonides' legal categories to explain the situation.[24] There are three classes of illegitimacy. The first is mamzer waday, cases of certain illegitimacy. The second is mamzer safek, cases of doubtful illegitimacy. The third is mamzer midiwrey sofrim, cases of persons declared illegitimate by rabbinical enactment.

Maimonides treats a similar case. A woman heard that her husband was dead, and remarries. The first husband returns, but the woman had already borne the second husband's son. The son is classified a mamzer midiwrey sofrim. Torah law allows a safek mamzer to participate in the Jewish community. The Biblical phrase, "לא יבא ממזר בקהל השם", "a mamzer may not enter into God's congregation", indicates that a mamzer is forbidden to participate in the community. A safek mamzer, though, is allowed. However, the rabbis forbade even this safek mamzer from congregational involvement.

Tha Rambam cites a different sort of safek case. This regards the possible illegitimate child of a married or divorced woman. According to Torah law, this person is permitted to participate in community life. The situation is not similar to other cases of illegitimacy. This type of doubtful (safek) case is also unrelated to other cases of doubt, such as one whose circumcision is uncertain, safek 'arlah, or one who is suspected of eating forbidden fat, safek helev. These are forbidden by the Torah. The legislation with regard to safek mamzer is a gezerah, an enactment written in order to permit those who were not clear mamzerim to enter the community.

Medina deduces from the sources that the man is completely free (היתר גמור). He may marry a Jewish woman and enter the congregation with all the rest of Israel. No one should question his status.

Medina cites the Riba as textual support.[25] The Riba discusses the marriage of a yebamah to a ger. The applicable law is similar to that of a case where a woman's husband traveled to medinat hayam, a distant place, and was lost. The woman married a second husband. Later, the first husband returned. The woman was forced to separate from both, but the woman's son from her second marriage avoided mamzer status. The Rosh and Tur agree that the son is free from suspicion.

The sages write that " אין ממזר מיבמה החולצת ", there is no illegitimate child from a woman bound to a Levir who is later freed from her obligation. The Jerusalem Talmud asserts that in this case the woman has certainly borne a fit child.[26] The סמ"ג is the most lenient among the commentators. He says there is no possibility of an illegitimate child from a yebamah.

Medina utilizes the sources to conclude that the boy avoids mamzer status and that his ability to participate in facets of community life may not be questioned.

The last question involves Jacob; his sons, Reuven and Shimon; and a local resident.[27] The situation occurs in Portugal and Turkey. Jacob had lived forty years in Turkey. He previously lived in Portugal, but had come " לחסות תחת כנפי השכינה ", to find shelter beneath the wings of the Shekinah. Jacob had been an 'anus, but had settled in Salonika as a Jew. In Portugal, he had fathered two sons who were well-

versed in Torah, Reuven and Shimon.

Five years before the question was written, people came from another town who wanted Reuven to come and serve as their teacher and interpreter of Jewish law (פסקן ומרביץ תורה). One resident became jealous. "עברה עליו רוח קנאה ורוח שנאה", "there passed through him a spirit of jealousy and hate." He delved into Reuven's background and accused him of being unfit to judge ordinary cases or to convey the laws of the Torah. The man publicized the fact that Reuven's father was a Portuguese 'anus. He also spread the rumor that his mother was not even an 'anus, that she was gentile, mibenot hagoyim. The commotion drove the people whom Reuven taught into a state of confusion. They were filled with doubt and desired to discover the truth. The people came to Rabbi Medina in order to find out the law in the case of Reuven and his actions.

It was possible that the resident spoke truthfully. In that case, Reuven would lack presumption of fitness. The information would void his right to judge regular cases. The alternate possibility is that the man's statement lacks veracity. He could have no proof for doubts of Reuven's status. The questioners asked the law with regard to a man who spreads rumors, should the latter possibility prove true.

Medina begins the teshuvah with the notion that Reuven is presumed fit to judge. His yoreh yoreh, yadin yadin status stands. The case needs no further discussion. The person who contested Reuven's legitimacy is responsible for the transmission of gossip. He behaved in an unacceptable fashion and punishment is necessary.

Medina cites a case in the Talmudic tractate Kiddushin which concerns a woman's family connections. She was to marry a kohen, a

priest. Rabbi Meir is of the opinion that it is necessary to check her lineage.[28] But the majority view of the sages is that all families are presumed fit.[29] If someone specifically contests family legitimacy, then a check is appropriate. If two witnesses know of a taint in the family lines, the person is unfit. The witnesses need not be educated in Torah law. The rabbis indicate that the focus of fitness concerns was the priesthood. Major care was to be taken with this sector of society. It is not necessary to check so carefully when issues of priesthood are not in question. All Israel is presumed fit. Medina also quotes a case from Rabbi Taitazak's responsa. A girl was left bound to a yabam. Her husband had died. They had no children. The girl was freed because one person said that the yabam was dead. The Rabbi avoided the imposition of a state of limbo ('agunah).

In the present case, Reuven could be accused of being the son of an 'anus father and gentile mother. In cases such as this, the policy is to avoid speculation about negative possibilities. The commentators assume that the forced converts are Jews. "אנו מחזיקים בכל בני האנוסים דמי ישראל הם". The Gaon Harav Ẓemaḥ wrote that the presumption is that all 'anusim will return to do teshuvah. We also assume that their father and mother are both Jewish.

Harav Shlomo ben HaRashbetz presents a case that supports the above statement.[30] One 'anus testifies that another 'anus is invited to read from the Torah. This way it is possible to avoid any suspicion with regard to his mother's Jewish identity. The 'anusim were careful: they avoided marrying gentiles. Their lineage should be free from suspicion.

Medina concludes by stating his satisfaction with the decision

reached by the commentators. The man Reuven is presumed fit (כשר). He can be reinstated as a judge and counted as a yoreh yoreh, yadin yadin. Only with regard to the priesthood are there any questionable issues. In these cases, family background is checked. In general cases though, the rabbis say "כל משפחות בחזקת כשרות הן עומדות": all families are presumed to be Jewishly fit.[31]

This chapter has detailed a question of identification as a son; a dispute over the choice of a brother to serve as executor of an estate; a question of the right of a woman to inherit; a problem of governmental differences in inheritance laws and how it affects a woman's inheritance; a question of possible illegitimacy; and a problem of confusion regarding a man's status as Jew, rabbi, and judge.

These six responsa have provided insights into questions of family status that affected 'anusim. Problems with inheritance, children's illegitimacy, and rumor can face all Jews, but these teshuvot focused on the ways in which aspects of these problems uniquely affected 'anusim who returned to Judaism.

Notes

1. שאלה שה
2. פרק עשרה יוחסין על המגניאין
3. רבי יהודה שלח רבי אבא לרב יוסף בר חמא
4. פרק יש נוחלין
5. רבי יוחנן: פרק הבא על יבמתו
6. פ"ק דיין
7. בה"ג: יש נוחלין
8. Migo: Legal principle that causes acceptance of a limited claim made by a person who could have made a broader claim and still have been believed.
9. ר"ף agrees: פרק ט"ו מהלכות איסורי ביאה
10. רא"ש, תוספות, ר"ן, רשב"א, רמב"ן
11. שאלה מו
12. סימן שכ"ג
13. פרק הניזקין
14. "אפילו שסמכו אצל אשה"
15. פסקי מהרמ"ה
16. שאלה שטו
17. בשם רב צדק גאון, בשם רב חננאל
18. חושן המשפט סי' רפ"ג
19. שאלה שכג
20. פרק כ"ג הלכות אישות: טור, ריב"ש, רשב"א agree
21. והוכיח מההיא דגמרא של הי' פ" נערה
22. קטן issue
23. סי' קנ"ט
24. פט"ו הלכות אב
25. א"ה סי' קנ"ט

Notes, cont.

26. דעת בעל הלכות גדולים

27. שאלה קי"ב

28. also רבי יונה

29. also ר' חמא and ר'

30. ב"י א"ה סי' ג'

CHAPTER THREE: MARRIAGE AND DIVORCE

Questions of marriage and divorce provide the last category of responsa studied in this work. The questions are particularly important because they are issues of law which, if handled improperly, can adversely affect a family's Jewish status. The first two responsa discuss the validity of a woman's get. The second two issues question the validity of a marriage. One of them may be invalid because a witness to the union was a voluntary convert to Christianity; the other, due to incorrect testimony brought with regard to the death of a Levir. (The latter has in part been discussed in Chapter Two above.) In addition to these four major responsa, pertinent portions of two additional responsa will be addressed in this chapter. The full discussion of those two she'elot appear in other sections of this work. All four of the major questions considered are from Medina's Even HaEzer (marriage and divorce) volume of responsa.

The first question involves Reuven, the preparer of a get; the deliverers of the get; a wife; and a husband, Peloni ben Reuven.[1] The situation occurs in Ancona, Salonika and Sofia. Reuven prepared a Salonika woman's divorce document. The woman's husband was a meshumad la'avodah zarah, an idolator. The husband made a document of delivery and appointed a certain Rav Avraham Elimelech to be the shaliah from Sofia. The document arrived in Salonika inscribed with an incorrect husband's name. The questioners ask Rabbi Medina if one can trust a messenger who would carry a get inscribed with the wrong name. Can one trust the original shetar shelihut (document) that was witnessed incorrectly and then sent with a shaliah? Can one trust a person who arranges (מסדר)

a divorce document by himself? Two witnesses are usually needed. Is the deliverer (shaliah) in this case a false witness? He said "bifanay niktab, bifanay nihtom", "it was written and signed in front of me." He was in Sofia but the divorce document was written in Ancona. Is it possible to deem kosher a suspicious get and document of delivery? The arranger of the get asserts that he rechecked the document. He was not required by Jewish law to do so, but he wanted to assist the woman. He considered the woman divorced immediately after he deemed the divorce document fit.

Medina's teshuvah begins with a citation from the Talmud. A person brings a get from medinat hayam (a distant place). He testifies that he witnessed it being written and signed. The Talmud questions the process. Rabbah responds that there was a lack of care taken in the inscription of the woman's name. There were also no witnesses to uphold the get. In the case in the gemara, there was only one witness. Two are required for all Torah testimony. One witness is enough in cases of ('isurin) rabbinical prohibitions. The Tosefot add that the case teaches that a divorce document generally requires two signers. In the case in the gemara, one witness is found to be sufficient. Since most of the get was already written, it just needed the verification of the specific name inscribed on the document. Gittin are equivalent to cases of 'isurin. One witness's testimony is believed.

If a get is required in a case of dabar shebe'erwah (sexual impropriety), two witnesses must be present. This is because people behave more carefully with regard to dabar shebe'erwah. The Talmud discusses a specific case of a 'get' that involved an agunah (woman bound to marry a Levir). When faced with this problem, the rabbis try to

rule leniently. They are stringent in most cases of document confirmation and require two witnesses. In an agunah case they would decide leniently.

The Rambam adds that it is not necessary to require shaliah holkah (a messenger who delivers from one place to another) witnesses.[2] The rabbis state that no witnesses are mentioned in connection with the messenger of delivery.[3] One does not need to bring witnesses that he is a shaliah. Medina concludes that the authorities agree that a messenger does not require witnesses. He then asks: does the shaliah need to be assigned with witnesses present or is it sufficient if the meeting between the shaliah and the husband is private? Rambam's view is that the transfer of the get from the sender to the messenger does not need witnesses. He cites a case where a messenger carries a get to Israel.[4] The messenger did not see the get written. He did not know the witnesses. The husband had merely instructed the messenger to make sure that witnesses saw the get transfered to the wife. The husband gave the get to the shaliah without witnesses. None were required for this initial transfer. The Tur accepts Maimonides' position.[5] He asks further whether the various messengers who transport the get need witnesses and finds in Maimonides a clarification of the role of such witnesses. Their role is to inform others about the truth of a certain issue. In Medina's case at hand, the sender and the messenger agree that they do not require witnesses because there is no suspicion in the case.

The Rosh partially rejects Maimonides' position. He agrees that the shaliah is not required to bring a document nor to bring witnesses who can identify him. The Rosh does think, however, that witnesses are required to bring an identifying document and to bring other witnesses to their own identity. The Rosh holds that witnesses are required when the

husband who desires a divorce appoints the messenger. Once that has been done, the messenger is to be believed when he says that the divorced man appointed him as shaliah with witnesses present. Medina learns from this that the messenger does not require witnesses to identify him. His word is believed. The reason for this is that his role is not considered the most important aspect of a get. The construction of a divorce document is governed by special laws which determine if a get will be upheld. These laws specifically indicate that in a case of sexual impropriety two witnesses are required. In issues that are not central to the get, they are not required. They are only utilized in order to give the get more strength.

Medina includes the comments of the Rosh who says that the shaliah who transfers the get cannot be believed if he says of the delivery, "he sent me" (שלימאנ). He can only serve as one of the witnesses who comes to testify about the get and its delivery. The Rosh feels that his clarification is one that all commentators would agree with.

The Rambam sets forth another case. A shaliah brings a divorce document to another land. He gives it to the woman privately. Two witnesses watch the transfer of the get, but the messenger omits the statement about the get, "bifanay niktab, bifanay nihtom." ("I saw it written and signed"). The woman later remarries. Even so, it is required that the authorities reclaim the woman's get and void the delivery process. If the get is not withdrawn, it is invalid until people who can confirm its validity sign it as witnesses. Once the get leaves the hands of the messenger improperly, the law deems it pasul (invalid). If she can acquire signatures that confirm the document, it can be deemed retroactively

kosher. Once the get is upheld, it becomes clear that the shaliah was trustworthy. A shaliah can act effectively only if he is believed. The testimony of only one witness is required to support the shaliah. (One witness here serves the role of two in other contexts.) Additionally, one witness in a case of divorce is more credible than the woman to whom the get is delivered.

The Ri presents a case in which the messenger who delivered the get did not recognize the man's wife.[6] There were no fit witnesses there to testify that the woman was the divorcer's wife. There were only relatives and women present to testify. The question arises about whether they fulfill the requirement that allows them to testify in this case. The Ashiri answers this question.[7] Relatives and women cannot testify. Medina then gives the example of a blind person who is also unfit for testimony. He cannot recognize anything by sight. He utilizes a general voice impression. This makes him prone to error. A person who is fit to be a witness would be permitted to testify at the time of the transfer of the get. Wherever the text says 'witnesses' it means 'kosher witnesses'. Women and relatives cannot be considered as witnesses. But one witness can be allowed to testify. However, if it is possible for one witness to testify, should this not indicate that relatives or women should also be able to identify themselves as messengers and say, "peloni (so and so) appointed me."? What is meant is " עד אחד כשר ", "one kosher witness." It might be possible to say that Medina's case is different since the shaliah has the get in his hands. (In a case where the document is not in his hands, he must have to resort to efforts of the kinds discussed above.) Medina considers whether, despite the above opinion, it could be reasonable to say that a witness who is a woman or

a relative should be accepted as nakon veyashar, correct and honest. The rabbinic leniency regarding shelihut should also be taken into consideration. Medina presents other commentator's views of the viability of testimony from one witness in transferral of divorce documents. Rabah and Rava rule leniently on issues that are not 'ikar haget (essential to the validity of the get). When the testimony provides information about major aspects of the get, a woman may not serve as a witness nor may one man. He can only provide galuy miltah, a statement about the outward appearance of the case. If one male witness is sufficient in a certain case, then any further witness is not to be suspected. The Rashba deals with a case of a person who hired a shaliah. He brought a document signed by two witnesses.[8] The divorce document reached the carrier's hands and he conveyed it to the woman involved. The signatures on the shetar were not recognized by the rabbis, but they upheld the get despite that problem. The shaliah and one witness who accompanied him testified about the witness's signatures. The woman was permitted to remarry with the divorce document. The rabbis chose not to suspect the possibility that the husband did not intend to divorce his wife. A carrier can be believed when he puts a get in a woman's hand and identifies it as the divorce document specifically given to him by her husband. It is possible that the husband could arrive later and raise an objection. He could claim the get was given to the shaliah to be held as a deposit, but that he did not intend to send the get. If that eventuality occurs, the person in possession of the get would be believed. The agent of receipt for the woman's divorce (שליח קבלה) would be believed despite the fact that he did not carry it the full distnace. He is of equal status to the deputy who carries the document en route (שליח הולכה). This deputy's statement is trusted in order to free the woman. The agent of receipt

can say that the deputy gave him the get in order to facilitate the woman's divorce.

Medina infers from the Rashba that the divorcing man appoints the messenger. He can transfer the get to another person and also verbally convey the circumstance of the original appointment. The second shaliah can appoint a third. The third sheliah can be believed when he testifies that the divorced man appointed the previous messenger. His understanding is that the original transfer was correct. It is possible that the witnesses to the shetar could be suspicious of this transfer process. They only trust the first messenger's appointments. Medina denies that there is any need to be suspicious. One can trust the probability that this person's document delivery is correct. He should be trusted to testify that so and so appointed a first shaliah. This is so even in a case where the man now testifies that Peloni ben Shimon was appointed the shaliah for this and also another divorce document as well, and that the get and the document of delivery for that other get were lost. Despite the problem, no one suspects that anyone else was involved in the delivery. The problem is classified as a scribal error. In the question currently posed to Medina, the people suspect the messenger. They call him a liar. They err in this evaluation. Problems with a document of delivery have no connection with the question of truthfulness of a shaliah's testimony.

The opinions of the Rosh and the Rif concerning the validity of documents are cited. They assert that truthful words are easily recognized. They refer to the Talmudic case (see above, p.55) in which the woman's name was incorrectly inscribed. In that instance, the scribe erred. The deliverer is to be believed. It was the appearance of the document that

prompted the suspicion. The writer's error was responsible for it. It is logical to assume that the get was written and transported by Peloni ben Reuven. The document of delivery was written for Peloni ben Shimon. The Rosh and the Rif discuss another case that presents similar problems. A shetar was written that included property additions. Rabbi Yonah wrote that he would give four measures (אמות) of his yard to Rabbi Shlomo as payment for his services as deliverer of Yonah's wife's get. The husband added clauses to the get and appointed another scribe and shaliah for the additions to the document. Witnesses to the get observed this transaction. The new shaliah was hired to give the newly-witnessed additions to Rabbi Shlomo. The transfer of these vital new elements would immediately affect Yonah's wife's status; she would be considered divorced. The instructions were clear. A question arises. Is the first document delivery void, or is it acceptable?

Medina argues that in the Rosh and Rif's case, the delivery would be void. There is an error in transfer there; there is no scribal problem. In the current problem before Medina, there is a scribal mistake. The witnesses also erred. They did not check the veracity of the document before they signed it. The scribal errors in this case make it possible to uphold the shetar and the status of the messenger.

In the Talmud, Rava bar Rav Huna provides some general rules. A case that involves a verified get from any place or any divorce document in the land of Israel does not require that a shaliah testify "bifanay niktab, befanay nihtom." The shaliah can say that the husband appointed him as messenger to bring the get to the man's wife. One witness can testify that a certain shaliah was appointed with the permission of the divorced man. The migo creates the belief that the witness actually

held the get. A man can testify truthfully that a certain divorcer appointed a certain man as deliverer. He can also assert that the document includes an error. The shetar is upheld due to the scribal error. The migo situation supports this. Some great commentators (גדולי הפוסקים) state that the woman is considered divorced immediately after the man assigns delivery of the woman's get on her behalf.

Medina utilizes this legal material to reach a conclusion in his own case. The woman involved avoids classification as an 'agunah (a woman bound to marry a Levir) since there is no solid reason to enforce it. He determines to ask Rav Avraham Elimelech to appoint a shaliah to deliver the divorce into the woman's hands. The Rabbi will arrange for the woman to be divorced and permitted to marry anyone whom she desires.

The second responsum in many ways resembles the first.[9] It is more specific and includes the actual text of a get. It is the first question of all the responsa studied which utilizes the real names of all those involved. They are Yosef ben Mordecai, the husband; Rosa bat Raphael, the wife; HaRav Yuda ben Avraham Algazi, the deliverer of the get; Shlomo ben Moshe and Yaakov ben Shlomo, witnesses. A problem occurs in Ancona concerning a specific contract for delivery of a get. It was dated Sunday, the eighth day of the month of Tammuz, in the year five thousand three hundred and thirty since the creation of the world.

The husband appointed a shaliah for the get and gave him complete autonomy: " ידיו כידו ופיו כפיו ועשיתו כעשיהו ", "his (the shaliah's) hands are like his (the divorcer's) hands, his mouth like his mouth, and his actions like his actions." The messenger was also given the ability to appoint: " שליח ושליח שליח עד מאה שלוחים ", "another messenger, and that

shaliah can appoint another, up to one hundred shelihim."

The husband intended that when the get reached his wife, she would be immediately divorced and permitted to remarry. The divorce document was signed and sealed in Ancona. A problem occurred when the husband made void all his personal declarations with regard to the get. The husband's actions are criticized. He should not have voided the document of divorce or canceled the messenger; the get was already sent.

Medina must solve the woman's problem. The get was invalid since it lacked witnesses. The woman has remained an 'agunah. She has been alone for many years. She originally left her husband in order: "לחסות ונחת כנפי השכינה", "to find shelter beneath the wings of the Shekinah." Her husband is responsible for her predicament. He is an apostate who fled Torah. Alone, without a solution, the woman loses faith. Medina is challenged to discover a way to free the woman with the shaliah's original divorce document. In general cases the preconceived notion is that a messenger who brings a get from outside the land is believed to deliver if he states: "בפני נכתב ובפני נחתם", "it was written and signed in my presence." If the get is not validated, the messenger is not believed. In Medina's case, the get cannot be upheld.

The Poskim hold that if witnesses testify that the husband appointed a specific shaliah to bring the woman her get, that is sufficient. A messenger does not have to state that it was written and signed in his presence. In Medina's case, three witnesses testify that Yosef ben Mordecai appointed a shaliah to bring Rosa a divorce document.

Medina includes the opinions of various commentators on this issue. Yitzhak ben Sheshet states that two kosher witnesses to the delivery of the get are still insufficient to confirm its validity. Even if they are

experts about this issue, and they both say that the husband appointed them as deliverers of the get, and they can testify that they saw it signed and knew the signatures, they still cannot validate a get. The Rashba and Tosefot state that even if the shaliah holds the delivery contract and testifies that the husband appointed him and that he was handed a kosher get and identifies the witnesses, it is still not validated. Even if the witnesses are identical to the ones listed in the delivery contract, the get is not upheld. It could have been forged, lost, or burned. Even if there is no suspicion at all, the get is not acceptable to be validated or upheld by a rabbinic judgement. The Rama explains that the requirements are strict. There must be witnesses to the shaliah's appointment who also saw the transfer of the get. This will insure that no problems can occur.

In Medina's case, there is no rabbinic judgement about the document of delivery (שטר שליחות). The witnesses do not live in the woman's area and the shaliah cannot testify that it was written and signed in his presence. Medina considers the difficulties involved in attempting to uphold the woman's get. Nonetheless, Medina decides to free the woman on the basis of the divorce document and the messenger's statement about the case. Rabbi Yuda Algazi supports his decision.

Medina details the basis for his decision. The Rashba delineates three aspects of a divorce document that creat suspicion. It must be validated by signatures, lest it be forged. It must be written and signed for a specific woman's name. The husband must put the get in the hand of an official messenger or shaliah who delivers it. The rabbis see no need for suspicion of messengers except in regard to validation of signatures. Even if they are not validated, the woman is free to remarry.

If the document is written outside Israel, we free the woman if the witnesses say that they saw the document written and signed. Rashba discusses possible justifications for leniency with regard to divorce documents. The validation of documents is rabbinic law. In the case of get, rabbis are lenient because they wish to prevent women from living as 'agunot. In these cases, the rabbis do not see reason to suspect whether the husband really gave the get. Everyone who transfers papers with the statement that they are connected with the divorce is trusted. If the husband returns and contests the get's legitimacy and points out the possibility that the get was not written or signed, the rabbis do not give credence to his words. But it is not common for a person to be disruptive in this way.

Medina reiterates that Rabbi Yuda allows this woman's divorce to stand. There should be no worry that it is forged. The shetar shlihut (delivery contract) is also recognized as valid. The marks on the get and the names are all confirmed. It is also not necessary to worry that the husband did not want the divorce. In Medina's case, the witnesses testify that they saw the whole procedure. They saw the get written and signed in Ancona. They wrote at the end of the document: " ומה שראינו ונעשה בפנינו כתוק"ת ", "and that which we have seen and which has been performed in front of us has been properly inscribed and sealed."

Medina includes the opinion of Yizhak ben Sheshet, who states that there is no reason to doubt the legitimacy of a get. There should be no reason for a man to contest it unless there is a real problem with the document which verifies the signatures. This is not generally a concern. It is possible that all deliverers of the get either saw the

witnesses sign, or recognize their signatures.

In the case in question, the witnesses acknowledge that the preparation of the get occurred in their presence. There is no reason to suspect that the husband will contest it. The divorce document is acceptable. Medina refers to a case cited by the Rambam.[10] Two people delivered a get (elsewhere than Israel). They did not see the document written or signed. The husband gave the document to them and deemed it their responsibility to deliver it to his wife. When the men completed the job, the divorce became final. Even if the get is not validated, the husband cannot contest it. He appointed the messengers. They are witnesses. In Medina's case, the delivery agreement is valid. The witnesses saw it written and signed with their own eyes. It cannot be contested. The woman is given the get.

The commentator's viewpoints add support.[11] Because testimony is an area of rabbinic jurisdiction and is not specifically prescribed in the Torah, authorities have the latitude to be more lenient. Rabbinic precedents require that the witness testify that he saw the document written and signed. If that occurs, a husband cannot contest the divorce. In evaluating the comments of the sages, Medina decides to rule leniently with regard to testimony requirements. A messenger alone is a sufficient witness. In the specific question that Medina must answer, that decision is in any event not necessary: witnesses exist who can testify.

In order to demonstrate how frequent this type of problem is, Rabbi Medina quotes the complaint of Rav Yosef. He feels that the migo applies with regard to the get. As a rabbi, he is frequently a shaliah. He has delivered documents to several 'agunot. He has arranged divorces

and prepared gittin without requesting payment. The town does not have a scribe, although the sages deem this important. The rabbi, by necessity, handles everything. He considers these tasks the rabbi's lot.

Rabbi Medina considers the issue of women's status as 'agunot very problematic. The problems cause him grief. In this case, the woman's get provides hope. He publicly requests that the other sages of the city support him. He asserts his opinion in this issue. The woman should be freed. He requests direction on the right path. He hopes that both the woman's husband and God will provide some direction.

The third problem concerns a marriage which may be considered invalid.[12] The people involved are a young man and woman, both 'anusim; and the witnesses to the marriage. The situation occurs in Portugal and Flanders. A young Portuguese 'anusah, born in giyut, married an 'anus, also born in a Christian country. The marriage occured in Flanders before witnesses who were also 'anusim. There was a problem with one of the witnesses. He was originally a Turkish Jew who moved to Flanders and became a Christian. The witnesses to the marriage were therefore a mixture of forced converts from the community and one voluntary convert, a meshumad. Some of the witnesses had moved to Turkey by the time the problem was discovered. Others still lived in giyut. Medina was asked whether the validity of the marriage is suspect.

The teshuvah begins by asking what the law is with regard to one who is born a Jew, converts to another religion, and then marries a daughter of Israel before kosher witnesses. The answer will assist in determining the law for an 'anus who does the same thing. Medina brings textual sources for initial consideration. A case in the Talmudic tractate

B'korot discusses a person suspected of sale of sabbatical crops. He is a convert to Judaism who observes Torah law. If he becomes suspect in one area, this indicates that he can be suspected about his observance of all law, despite the fact that he is considered "like an Israelite." If one is a meshumad, there is a practical difference. If he marries, his marriage is considered valid (קדושיו קדושין).

In the tractate Yevamot it states that a convert from Judaism resembles an Israelite in all matters.[13] A question is asked about the law if he retracts his apostasy and marries a Jewish woman. It is decided that his marriage is valid. The Tur narrows the categories of acceptance.[14] If the meshumad profanes the Sabbath publicly, he loses the validation of his Jewish marriage. Other opinions state that if a convert to Judaism resumes his former evil ways, his marriage to a Jew is still valid. That applies all the more in a case where a Jew becomes a meshumad.

Tractate Bekorot includes a statement that if one profanes the Sabbath in public and becomes an idolator, one of these transgressions equals transgression of the whole Torah. This person resembles a complete gentile. He no longer merits the name Israel. His marriage is considered a gentile union.

Medina states that if someone publicly professes to be an idolator and profanes Shabbat, but later resumes his Jewish belief, his Jewish marriage is valid. The commentators in Sefer Mizwot Gadol שמ"ג and Rambam take the question a step further. If a Jew who converts to another faith and willfully professes idolatry marries, it is a complete marriage and the woman requires a get in case of divorce. Despite the fact that someone who marries a meshumad requires a get, if that woman is raped,

the law is different. The penalty is not the same as it is in cases of (אשת איש) a woman married to a Jewish man. The marriage of an apostate from Judaism is not recognized by the Torah. If someone rapes her, he does not receive the usual punishment (stoning if she is a betrothed young woman; hanging, if she is married).

The Poskim state that one whose family had previously left Judaism does not hold responsibility as a Levir. This does not include a meshumad who was born a Jew. A valid marriage implies that one also holds the Levirate responsibility. Rav Saadya Gaon presents a case in which a Jew travelled far from his community (מדינת הים) and converted to another faith. He followed gentile customs. His wife had remained in the Jewish community. After her husband left, she bore his son. Rav Saadya indicates that in cases like this, it is important to assure that the meshumad involved was born a Jew. If he was, his marriage is valid, and that governs the woman's future situation, including marriage, divorce, halizah, cancellation of Levirite responsibility, marriage annulment, and cases of illegitimacy. The end of the chapter Haholez in the Talmudic tractate Yevamot is more specific. It states that if a meshumad marries, his marriage is not only valid by rabbinic law, but legitimate by Biblical law as well.

The Rambam looks at the circumstances that surround conversion of the 'anusim in Portugal. He decides that if it is possible for a person to return and he does not, a woman is not tied to him as a Levir, nor does she require halizah. A man's decision to remain in a gentile society equals a voluntary decision to convert. The מנרטי presents a similar case. A person who was originally a forced convert in Italy is now considered a voluntary convert. He had the possibility

of fleeing, but avoided departure. The potential to earn money prompted him to stay. Rabbeynu Hananel disagrees with the above-stated views. He specifically states that the marriage of an apostate Jew is valid. He agrees that the children of this Jew, who have never experienced Jewish life, are like complete gentiles. Their marriages cannot be kiddushin (consecrated Jewish marriages).

In Medina's case, the law suggests that the woman is permitted to marry anyone. There is a doubt about the validity of her marriage. Even if she had been married in front of kosher witnesses, the presence of doubt frees her to remarry. When three people come and prove that the people who witnessed a marriage were voluntary converts from Judaism, born in a gentile land, and invalid for testimony under Torah law, the marriage is not considered kiddushin. The participation of invalid witnesses voids the marriage.

The Talmud, in Ketubot 3a, discusses the concept of (אפקעינהו) retroactive marriage annulment. The rabbis held the power to annul marriages in particularly difficult cases. The betrothal of a woman is governed by rabbinic law. When the rabbis annul the marriage, no divorce is necessary. Shmuel ben Ḥofni requires a more restrictive procedure:[15] even if a woman is married in front of invalid witnesses as determined by the rabbis, the woman must receive a get before she is free to marry. Her present marriage is also not valid until her husband returns and they are married in the presence of kosher witnesses. Rav Aḥa believes that the rabbis determine the validity of a marriage and that their annulment suffices.

Medina continues to present textual citations. Some appear to be in conflict with one another. The Rif and the Rashba tell of a woman

married before witnesses deemed unfit by the rabbis. The marriage is suspect, but the Gaonim still require a get. Yizhak be Sheshet discusses the case of a person who marries, where one of the witnesses is a convert to idolatry. The marriage is not deemed valid. Harav David HaCohen states that the apostate Jews in Italy were considered Israelites. If one of them married a woman in front of a witness, the marriage was considered legally binding. The witnesses from the community had to send written testimony that (קדוש קדושין) the marriage was Jewishly valid.

They had to testify that no Jews lived there, except forced converts. The marriage would then be considered valid. If people in the community were transgressors strictly for reasons of convenience (עוברין עבירות לתיאבון), the marriage is invalid.

The Rashba's opinion adds information pertinent to the discussion. In the case of testimony, the Torah rules out the statements of a thief. He is presumed to be a liar since he avoids fulfillment of so many promises of monetary repayment. But marriage follows a different rule. If any Jew testifies that a woman is married, she is considered married and requires a divorce document in order to end the union. If the kiddushin occurs in the presence of both Jews and 'anusim and both serve as witnesses, the legitimacy of the marriage is affected. The marriage is not valid and that is the end of the discussion. (סוף דבר).

Medina infers from the ideas of the commentators that in general, cases where a couple is married in the presence of both Jewish and 'anus witnesses, their testimony is invalid and the marriage is void. Forced converts are not acceptable witnesses. They have become idolators for the sake of convenience. Medina reports the conclusions of several

authorities on this issue. One states that a woman who is married before kosher witnesses, as was the woman in Medina's case, is married legally. Another opinion asserts that despite the presence of kosher witnesses, the marriage is void. Since 'anusim were accepted as witnesses, the marriage lacks validity. In the case in question, all the witnesses are unfit, whether they are 'anusim or meshumadim.

Medina cites the outlook of the Rashbam. He holds that such a betrothal and marriage are upheld. The witnesses are fit to testify. These 'anusim were careful to avoid transgression. They rebelled against the goyim. Those who adopted gentile customs, who transgressed by consuming nebelot (categories of non-kosher meat), were motivated by fear. They erred because they assumed that since they acted against their will and had not been warned, their actions were permitted. These people's actions are similar to shogeg, error. These 'anusim should be acceptable witnesses.

Medina holds that in this case, the information indicates that there was not kiddushin. One must suspect error on the part of the witnesses. Some of the cited cases teach that many 'anusim transgress willfully. They have the ability to free themselves, but opt not to use the opportunity to leave. (At the same time, those 'anusim who really are not able to leave giyut are not suspect.) The problem to which Medina must reply includes a meshumad who converted voluntarily. He served as a witness to the marriage. It is important to explore this man's motives before hesitations about the marriage's validity can be dismissed.

The ר יב"ש comments on a similar case, which concerns a divorce document that was signed and delivered by 'anusim. His conclusion is

that someone who chooses to transgress the mizwot of the Torah and becomes an idolator has, in the eyes of the law, committed a capital offense. (יהרג ואל יעבור). Rav Saadyah asserts that voluntary converts are invalid witnesses. As far as he is concerned, gentiles rate a higher status than these converts do.

Medina evaluates the ר' יהודה 's case. When a woman's divorce document includes the signatures of 'anusim, an authority should check the background of the people involved. He should attempt to discover the factors that prompted them to remain in a gentile land. Large groups of people, both rich and poor, fled giyut. Some people remained in a place where they could not live as Jews and save their souls. Those individuals frequently lapsed from observance of proper law (חוקים כשרים). The sage must check these people's circumstances before it is possible to accept their testimony. An 'anus who is careful about avoidance of transgression is an appropriate witness. A get signed by him is valid. The woman is free to remarry. Some 'anusim cannot be proper witnesses. They live as gentiles due to monetary incentive. If they sign a woman's documents, she cannot be freed. The get becomes invalid.[16]

It is important to clarify at the outset which type of 'anus has served as a witness. They must be (שוגגים) people who transgress in error and not (פסולים לעדות) those who are invalid to testify. Even in a situation where the testimony of 'anusim is deemed acceptable and the marriage is valid, it is appropriate to suspect those who would marry before these witnesses.

Medina presents information from other texts which discuss 'anus' testimony.[17] The Sefer Mizwot Katan cites a case in which a forced convert

married a widow. Other 'anusim witnessed the ceremony. They were friends who desired to return and do teshuvah. His marriage proved valid; a get would be required in the event of divorce. Despite the fact that these were (חוטא ישראל) Jewish transgressors, they were individuals who sincerely desired to return to Judaism. They are called (צדיקים) righteous.

ר"יב"ש and Rashba agree with the Gaonim who state that if someone is married with invalid witnesses (פסולי עדות), the marriage is void. There is no special consideration for those who are (חוטא ישראל) transgressors but committed to teshuvah. This does not change their status as unacceptable witnesses.

Medina cites a case considered by Rashi of another widow's marriage.[18] The couple are 'anusim. They transgress the laws of the Torah. They live as gentiles and so do the witnesses to their wedding. In the case ruled on by the Gaonim, the husband and wife were born as Jews, but did not need a get. In Medina's case, both individuals were born in giyut. There is also a witness who is an evil person who left Judaism voluntarily, yet Medina rules that the woman needs a get. An Israelite who leaves the religion of his own free will and then marries a Jewish woman is still considered to be validly married. His status as a transgressor does not alter that situation. It is all the more important to validate marriages of 'anusim, since most turn their hearts heavenward. They want to leave their lives as gentiles behind and return to Judaism. Even those who stay behind and are suspected of the transgression: " נכר אלהים את , "involvement with a strange faith" are still valid witnesses. It appears that they are suspect with regard to (ערות) forbidden sexual relations, but are fit to testify at a marriage.

Certain texts adduced by Medina discuss suspicion with regard to testimony. Rabbi Nachman states that one who is suspect of forbidden sexual conduct is still fit to testify. He is only unfit to be a witness in certain cases concerning marital and sexual issues. He is fit only for cases which could restrict a woman from certain actions. He is unacceptable as a witness in cases which can permit a woman's action. Rashi (Shlomo bar Yizhak) feels that Nachman's response enlightens those who desire to find justifications to free women. This is especially important for 'anusim who immediately returned to Judaism once they found assistance. He adds that despite this leniency with regard to testimony, the woman does require a get. Medina interprets this. He feels that people should avoid criticism of witnesses. If someone marries, the marriage is generally valid despite the fact that one witness may be a voluntary transgressor.

Rab Saadyah provides the final commentators' opinion.[19] Even if the husband does not return due to conversion or death, the woman is permitted to remarry. The husband had already converted and denied his heritage. He ate nebelot and tereyfot (categories of unkosher meat). Saadyah also adds that it is only real teshuvah which determines whether someone is acceptable as a witness. Going to the mikveh alone (טבילה) does not determine genuine return. A person who has voluntarily left Judaism is always unfit until the extent of his teshuvah (return) is determined.

Medina concludes that he requires the direction of other rabbis in this case. He has seen strong contradictory arguments that force him to withhold a decision until his colleagues study the matter. All the sages of the city respond.[20] They agree that any Jewish woman who has married

a Jewish man while in a time of persecution (גזרת השמד) in the presence of so-called Israelite witnesses, does not have a valid marriage. She is permitted to marry any man either in the place of persecution or in a Jewish area. The accepted practice in the city is that every woman who comes from Portugal or Castille is not suspect with regard to new marriages performed after escape from the persecution. She can marry anyone she wants since there can be no kosher witnesses in a (מקום השמד) place of destruction. Any marriage that lacks valid witnesses is void. This way, a woman can never be tied in Levirate status. She does not need a get. She never needs halizah. She is permitted to remarry.

The rabbis saw dissolution of marriage solemnized under the duress of persecution as a means of assistance to women who were left alone or married voluntary converts. They assumed that most questions about marriage would be posed by those people who sought annulment. Those who remained married seldom consulted the courts about witnesses, but presumably assumed that their marriage stood, because of the long duration of their (apparent) wedded state.

The last major problem explored here does not reach a conclusion that is ultimately satisfactory for the woman. She wants to remain married and cannot. The rabbis do produce a positive resolution of her child's problem of status and free the woman to remarry.

The woman involved in the case is a convert to Judaism.[21] She marries a Jew and then is widowed and left a yebamah. A witness comes to testify that the yebam is dead. The woman remarries with the Jewish court's approval. Her second husband is also a righteous convert who claims he is

of Jewish lineage from the 'anusim . The woman becomes pregnant before information arrives that the Levir to whom she was originally bound is still alive. The court separates the couple despite the fact that no law exists that demands this, since the information received about the yabam is thus far strictly hearsay. There are no witnesses. The rabbis effect the separation while clarification of the truth is sought.

The second husband leaves home with a bitter heart. He checks for news daily, in the hope that he can return. If the Levir is still alive, the woman's husband wants her to perform halizah and be freed from her yebamah status. One sage in Sofia deems it acceptable for the wife to return to her second husband after halizah. He bases this decision on a sebarah (a logical argument) of the Poskim.

Medina does not allow for the wife's return to her husband. He considers the woman forbidden to both men, the yabam and the husband alike. His support is the law: "אשה שהלך בעלה למדינת הים ", "a woman whose husband travelled far away...." Rabbi Medina suggests that the woman travel to Constantinople. That is where the Levir reportedly lives. She should carry a document signed by all of Salonika's rabbis; the document will ask the rabbis there to take pity on the woman, examine the issue, and determine if the Levir is alive. If he is alive, they should arrange the woman's halizah since she is forbidden to live with him.

The woman follows Medina's advice, travels to Constantinople, and secures the cooperation of the rabbis there. It is found that the Levir is alive; halizah is performed; and she returns to Salonika.

The second husband, meanwhile, is matched with a motherless girl. Medina is instrumental in the arrangement of the match. The girl's father is now afraid that the wife will return and demand her ketubah payment. Medina promises the father that the wife is forbidden ever again to live

with that husband. He also states that due to a rule of the Poskim, the law denies the woman her ketubah. Medina also guarantees that he destroyed the ketubah when Rabbi Yiẓhak Gatinow delivered it to him. The union of the couple is now completely over.

Rabbi Yiẓhak returns and requests the ketubah document. Medina explains that the woman has no legal marriage document. The woman owns only her accessories and clothes. Rabbi Yiẓhak returns excitedly to claim the ketubah again. Medina says that Yizhak pities the wife excessively, nothing can be done. Yiẓhak claims that the town's sage has determined that Medina's action when he tore the ketubah served as the reason to grant her payment. Medina is suspicious of this. He feels that this legal logic may be invented. But Rabbi Yiẓhak demonstrates that he had indeed brought the woman before the haḳamim (sages) who were Salonika's teachers of Torah, in the Old Catalan (קטלאו ישו) synagogue. They validated the woman's position. The husband should give the get and the amount of her marriage agreement.

Medina responds that the woman has the right to collect a divorce document but not money from the ketubah. All the sages agreed on this compromise except Rabbi Yiẓhak Adrabi. He hesitated with regard to the money. He felt that she should be paid the monetary equivalent of her wedding outfit. Medina argues with the support of the Rashba, who wrote in such a case that a woman is denied her bride's outfit. Another sage wrote a notation (פסוק) that a woman receives her bridal outfit equivalent and the amount on her ketubah. The Rashba disagrees; he has never seen this so-called rule fulfilled. He concludes that in order to avoid mistakes, it is preferable to establish a generally equitable guideline.

Medina cites other commentators who rule on similar cases. The Tur presents a case where the woman's first husband returns after she is married to her second husband.[22] She is forbidden to both husbands. She requires two gittin and acquires no ketubah. She does not get the usual compensations given women. She is not given the cash equivalent of the items she brought into the marriage that had since worn out. The Rashba adds that the woman loses her bride price money.[23] Medina agrees with the Rashba.

The majority of women who lack a ketubah still receive a portion of the original two hundred zuz agreement. Money is added to equal "נכסי צאן ברזל" the things she brought into the marriage. Even when the marriage contract is lost completely, the husband has the responsibility to pay the ketubah. In the current case, though, if the goods were lost or depreciated the husband is not required to replace them. These restrictive laws apply in the case of a woman who marries a second husband and then is faced with the return of the first, who was thought dead. In the case of a yebamah (woman bound to a Levir), the restrictions are not so stringent. That sort of case demands leniency.

Medina presents the issue described by another commentator.[24] If a yebamah marries a so-called stranger, either accidentally or willfully, whether children are born or not, the marriage must be annulled.

In Medina's case, the man holds none of the woman's possessions; she has them all. The husband thought that halizah would free his wife and enable his marriage to continue. He owns nothing, so he can give her nothing. If the woman desires to take one of her husband's possessions, she must bring proof that she brought it into the marriage. If she orally claims the object and her husband denies that she owns it, he is believed.

Rashi and others agree that the woman in this situation cannot acquire from either husband. The goods from the marriage belong to the husband. That includes those items the wife originally brought into the marriage which have been worn out. She cannot ask for the monetary equivalent of these goods. In fact, if she has already taken anything with her, she must return it. The man in the case is a ger zedek and a good man. He did not create the problem; he merely followed the advice of the sages. His merit can be assumed.

The last two additions to this section are segments of two teshuvot more fully outlined in other sections. The first regards the case of Israelites who utilize gentile names.[25] It importantly points out that a get could be considered kosher despite unusual signatures. The get in this teshuvah was signed Lokos and Los. Jews did not usually have names like this. The teshuvah points out that the unusual names prompted the shaliah to be more rigorous in this investigation of the get's legitimacy. The responsa gives other examples of extraordinary divorce documents. Those that come from medinat hayam list names similar to gentile names and are still kosher. It is also true that Jews living both outside and within the land of Israel sometimes use gentile names.

The last section of a teshuvah which merits further discussion here is the case which discusses arrangement of marriage conditions.[26] Maimonides begins with the statement that when someone marries a woman, he arranges the marriage in accordance with the customs of the land.[27] Rashba discusses the marriage of two people from different towns. He inquires which law governs the couple when they marry in one place and want to settle in another, and concludes that the marriage condition should be consonant with the place they intend to live. Inevitable contradictions arise when

the couple plans to live in one place but ends up in another. The Ritba concludes that when one marries a woman born in a different place and intends to live there with her, he should follow the customs prevalent in her home community.[28] Medina infers a conclusion that applies to 'anusim: when a man marries a woman it is presumed at that time that they intend to uproot their home in a gentile land and settle in a place where they can be Jews and worship God.

The lives of 'anusim were severly disrupted when they returned to Judaism. The responsa that discuss problems with marriage and divorce highlight some of these difficulties. Three of the issues concern the validity of a divorce document. The women who held these gittin depended on them to make possible their eventual remarriages. The fact that other 'anusim had signed and sent these documents placed them in question. These women had chosen to return to Judaism. In many cases they requested that their spouses divorce them, to enable them to leave giyut when their husbands did not desire to go. Medina was well aware of the trials these women had already encountered as he explored the possibilities of accepting divorce documents written by possible voluntary converts.

The questions of the validity of marriages are similar. One might initially tend to read these responsa with the preconceived notion that the questioner desires that a marriage be found valid, and have the reaction that the wives who have come to Turkey have been treated unfairly by Medina. In reading the she'elot, however, it becomes clear that Medina understands that the questioners desire to be told that their marriages, solemnized in gentile lands, are not valid. They want to be free to remarry, not bound to a husband who has remained in another place. Medina attempts to find justifications for the annulment of these marriages.

It is conceivable that a couple who desired to remain married would be adversely affected by the questions with regard to ceremonies witnessed by 'anusim and voluntary converts. This problem does not, however, appear to be the focus of any of the responsa in Medina's volumes.

Medina demonstrates, in dealing with these difficult status questions, an ability to balance concern for the sanctity of the law, with an awareness of the unusual position of 'anusim who have left a familiar lifestyle in order to rejoin the Jewish community and worship the God of Israel.

Notes

1. שאלה פב
2. פ"ו מהלכות גירושין
3. סוגיות בפ"ק
4. ריש פ"ז
5. א"ה סיף רל"ח
6. בג"ה סיף רל"ח
7. ריש פ"ק בבא מציעא
8. ב"י א"ה
9. שאלה עז
10. הלכות גירושין פ"ז
11. רמב"ם, רש"י, טור, כ"ג
12. שאלה י
13. פרק החולץ טבל
14. בא"ה סימן מ"ד
15. ר' בעל הל"ג, ר' הינו הבא'
16. רב סעד'ב פ"ה הלכות עדות ענין עמי הארץ see
17. בשם רש"י
18. סי' א"ח
19. ג"מ בה"א מרדכי
20. יוסף בכמהר"ה. שלמה טאיטאזאק זללה"ה, אליעזר השמעוני
21. תשובה קטו
22. אבן הטור סי' י"ז
23. ב"י בס'
24. סיף קנ"ט
25. שאלה קצט
26. תשובה שכז
27. פרק כ"ג הלכות אישות
28. שלה"י פי' נערה

CHAPTER FOUR: IMAGES OF 'ANUSIM

Samuel de Medina's responsa concern specific questions of Jewish law. It is possible to delve into a teshuvah (responsum), look beyond the immediate concerns, and discover important information about the 'anusim (forced converts) themselves. Almost between the lines, the responsa hint at the Jewish community's actual regard for the 'anusim. The Jews living in freedom knew of the contradictions inherent in the lives of secret Jews and feared for their future.

The Jews held prejudices regarding the so-called forced converts. The extreme references equate 'anusim with non-Jews or voluntary converts. They describe certain of the anusim's actions which indicate their break with their heritage. Other references record reactions to Jews who failed to return to Judaism out of fear or complacency. They also present information about those who have done teshuvah (repentance/return) out of financial incentive.

Despite the many references to the possibilities for assimilation by the 'anusim, Jews seem to have had faith in their general commitment. Secret Jews continued identification as Israelites even though outward appearances indicated differently. Jews frequently believed that most forced converts living in Gentile lands (giyut) would return to Judaism at the first opportunity.

From fragments of information within the questions and answers, useful generalizations emerge about both legal and emotional outlooks toward 'anusim. The terminology used presents varied images in a brief, almost covert, fashion. Expressions of apprehension about forced converts' ability to retain Jewish identity lace the discussions. Some phrases, repeated frequently, are noteworthy. Medina fears that the future

of the 'anusim is: "להתערב זרע גדולים וקדושים בהם", "to mingle great and holy seed with the gentiles",[1] and "תטמע בין הגוים", "to be swallowed up among the gentiles."[2]

Only in some cases would this assimilation reflect a forced convert's direct intention to accept gentile religion. Frequently, the blend with the dominant culture occured without deliberation on the part of the 'anus.

Jews compared the forced conversions to their ancestor's experience of persecution after the destruction of the Temple in Jerusalem. Medina's teshuvot utilize words such as hafekah (upheaval) and shemad (decimation).[3] Both are images of destruction and religious persecution that are found in descriptions of major Jewish catastrophes throughout history.

The responsa include phrases that predict negative resolutions to the problem of the 'anusim, but also present a number of cliches that hint at a positive outcome of the problems of Jews in giyut. Forced converts are not in reality lost to the Jewish people. Their true goal is: "לחסות תחת כנפי השכינה, לשמור את משה ויהודה", "to find shelter beneath the wings of the Shekinah and to observe the religion of Moses and Judah."[4] "Their hearts are turned heavenward", "ליבם לשמים", despite living in countries of persecution.[5]

The 'anusim do not want to pay mere lip service to the tradition of their ancestors. They truly want, "לחזור בתשובה...לקבל עול תורת ומצוות", "to return in repentence and to accept the yoke of Torah and its obligations."[6]

The secret Jews, no matter what the external appearance of their actions, are concerned: "על קדושה השם", "with sanctifying the name of God."[7]

Assumptions about 'anusim weave throughout the text within wider discussions. They lie below the surface of many arguments. Sometimes,

responsa derive laws that apply to 'anusim from extant legislation about voluntary apostates or non-Jews. This is an implicit statement about the respondent's view of the forced convert that is rarely verbalized openly. Medina discusses the derivation of a law governing fate of a marriage between two 'anusim from a law of: " משומד שה יה הורתו ולידתו בקדושה ", "a voluntary apostate of holy parentage and birth who marries a Jewish woman in front of acceptable witnesses."[8]

In other cases, forced converts are clearly distinguished from Jews. The Rashba (Solomon ben Abraham Adret) states that marriages conducted in front of witnesses, some of whom are Jewish and some 'anusim, are invalid.[9] This is a plain statement that an 'anus is not the same as a Jew.

In one instance, the text refers to a ger zedek who claims he is " מזרע ישראל ", of the seed of Israel, and also one of the 'anusim.[10] A question arises: if this man is mizera Yisrael, an 'anus, why did he convert to Judaism? Why was his Jewish status in question? There are no other instances in the responsa where an 'anus requires conversion when returning in teshuvah.

Rav David HaCohen, while labeling the forced converts in Poland meshumadim, states that they are indeed Yisraelim and declares their Jewish marriages valid.[11] To be sure, difficulties arise when a reader attempts to distinguish between the usage of the terms meshumad and 'anus. Sometimes, as in the above reference, the term meshumad indicates an 'anus, a forced convert, rather than a voluntary convert. At other times, meshumad means an apostate Jew, a person who changes religion of his own volition. Thus, Rav Saadyah states that meshumadim are pesulim (invalid), that is, they are less than the gentiles.[12] Despite occasional problems of definition, it remains clear that an 'anus, no matter what motivated his apostasy,

can return to Judaism without conversion.

There are disagreements about the status of a converted Jew who makes no attempt to return to his original faith. Some actions which an 'anus can voluntarily perform may render him unfit to carry the name Jew. The Tur writes specifically, that it is forbidden for a man to call himself a goy in order to avoid being killed.[13] If anyone asserts that he is a gentile, others must assume that he agrees to their faith and denies the principles of his own.

Medina's quote from the gemara makes the point abundantly clear during a discussion about the validity of a marriage:

> מי שמחלל שבת בפרהסיא ועובד עבודה זרה ...
> שכל העובר על אחד מהם כעובר על כל התורה
> כולה.והוה ליה גוי גמור . אין שם ישראל עליו וכמן שהגוי שקדש
> ...one who violates the Sabbath in public and performs idolatry is disqualified to be a witness. Anyone who transgresses either is like a person who transgresses the whole Torah. He is like a complete gentile. He no longer retains the name Israel, and, with respect to marriage, is like a gentile who marries. 14

Other teshuvot make similar statements regarding idolatry. The comments of Nimmukei Yosef on Perek HaGozel Uma'akil are included in one of Medina's teshuvot.[15] Nimmukei Yosef observes that the perush holds that a person is no longer considered a Jew if he serves idolators.

Medina records a case that determines a woman's ability to remarry. Rab Saadya holds that even if a husband does not come home, if he is dead and his death is impossible to prove, the woman is permitted to remarry. The reason for this decision is that the husband converted from Judaism. He ate nebelot and tereyfot (types of forbidden foods). He denied his Jewish identity, and therefore the law voids the Jewish marriage and frees the woman.[16]

Medina also discusses his evaluation of a Jew who marries a gentile while settled in giyut.[17] That person is considered someone who voluntarily gives his seed to Molech, a strange god.[18] The expression "give seed to Molech", is Biblical and indicates the consequences of continued idolatry. In Medina's world, that Jew can no longer be considered an 'anus. His action is not shogeg (merely an error of judgement).

Rabbeynu Hananel asserts that even when a Jew leaves the faith, his Jewish marriage is valid.[19] The child of this apostate, though, who has never lived as a Jew, is considered as a complete gentile. " אין קדושיו עדושין ". His Jewish marriage is not valid.

The teshuvot discuss those 'anusim who had the ability to leave giyut and save themselves from the destruction. Instead, some converted. Despite this, they were considered forced converts.[20] Later these 'anusim threw off the yoke of heaven. They disconnected themselves from Torah and its obligations voluntarily. They followed gentile customs (הולכים בחוקים הגוים) and transgressed Torah law. These apostates also pursued other Jews in order to convince them to leave behind their heritage. The commentators agree that these people have no part of the God of Israel. These people are lower in the community conception than the gentiles themselves.

Medina's responsa indicate how difficult it was to distinquish between a voluntary apostate and a Jew pretending to be a gentile. Many forced converts in gentile lands utilized non-Jewish names. Rashi indicates that use of distinctly gentile names was unusual.[21] It was more common to hear names shared by both Jews and gentiles. The Jewish authorities feared that one who used a gentile name would soon call himself a goy. That was forbidden. The more stringent of the Poskim wrote:

שלא ישנה האדם עצמו וגופו
בפני הגוים שלא יחשבוהו לגוי

A person should not change himself or his body in the eyes of the gentiles so that in no circumstances should they think him a gentile.22

That action was considered a hilul Hashem, a desecration of the name of God. The reference that serves as the basis of this discussion comes from the Talmudic Tractate Sanhedrin. It states: " לשנוי ערקתא דמסאנא אסור ," "it is forbidden even to change a shoe strap in times of religious persecution." [23]

The Sefer Mizwot Katan discusses this rabbinic dictum. Changes which are forbidden are those done in order to profane God's name. Only in some circumstances is it permitted to wear non-Jewish clothes in order to escape detection as a Jew. An appropriate example is when the gentile government imposes a special tax on Jews and a Jew attempts to avoid it. Even in this case, a Jew should never wear kilayim (forbidden mixed fibers), but other clothes are permitted.

The Ran (Nissim ben Reuben Gerondi) expands the discussion to include cases of idol worship.[24] If someone worships idols, he asks, does this indicate free agreement to be an idolator? In some cases people lie and do not truly accept the faith to which they pay lip service.

Medina points out that ultimately a person's actions are between him and God. When he is in private, where gentiles will not see him, he does not transgress " ג לאוים " that make him liable for malkot lashes.[25] (That is probably a euphemism of a type often used to soften discussion of grave matters: Medina probably intends the three cardinal prohibitions which one must die rather than violate).

God is the final judge of the 'anusim, but the community must still develop legal responses to specific kinds of behavior. Medina discusses those forced apostates who had the opportunity to do teshuvah, but instead chose to remain in gentile lands to expand wealth.[26] Those who remained due to fear of losing possessions are considered idolators. They are sectarians, and "מורודין אותם", we denigrate them. מנרטי presents a similar case. A forced apostate in Poland stayed there after he was free to leave. He did not flee, but remained in order to earn money.

Commentators respond similarly to this behavior. One Posek writes that each meshumad, even if he is an 'anus, must take advantage of any possibility to free himself. He must come "לחסות תחת כנפי השכינה", to find shelter beneath the wings of the Shekinah. If he does not come, "מזיד גמור הוא", he is a totally voluntary transgressor.[27]

The Rambam's (Maimonides') opinion is included in the teshuvah[28]. If one is able to free his soul and flee from under the hand of an evil king, he must do so. If he does not flee, he is called "כלב שב על קיחו", "a dog sitting on his vomit" and is considered a willful idolator. Harav David HaCohen doubts the validity of testimony given by 'anusim in Jewish legal cases after they "עוברים עבירות לנוחיותם", sin for convenience. Medina feels it is important to check the affairs of these 'anusim carefully. They transgress willfully. The 'anusim who truly are not able to free themselves are not to be suspected.[29]

While some 'anusim avoided return to Judaism due to the convenience offered by the non-Jewish world, others rejoined the community for similar mercenary reasons. Medina, in one question, encounters the problem of a Jew who returns due to such an incentive. He responds that those who

required Torah because of "decay in the world" are not worthy to be called by the name Israel.[30] Medina infers this from Maimonides' statement regarding converts. Maimonides explains that the Jewish courts, batey din, did not receive converts in the days of David and Solomon. In David's time, the reason was " שמא מן הפחד חזרו ", "perhaps they returned out of fear" and during Solomon's reign: " שמא בשביל המלכות הטובת והגדולה שהיה בישראל חזרו " "perhaps they returned because of the fine and great kingdom that existed in Israel."[31]

Medina also quotes a posek who suggests that the community should suspect those who returned after a long time in giyut. There is a chance that these people came out of fear of aish (fire): that they dreaded persecution at the hands of the non-Jewish governments which were aware of their New-Christian status.[32]

Sometimes, Jews used incentives as a lure to save relatives living in giyut. These 'anusim were thought of like children or women (sic) who could not think logically. Medina quotes Rav Saadya to clarify the analogy.[33] Women and children are taught to serve God out of fear of anticipation of reward. When their knowledge expands, the truth about God is revealed slowly. They eventually learn to serve God out of love.

Medina evaluates one case in which an 'anus is offered financial assistance in order to spur a move.[34] The Jews hoped that after a person's return, he would see his mistake and truly desire to regain Torah. The force of teshuvah should prompt the person to avoid utilizing the financial lure. He will instead thank the family member for the mitzvah of bringing him back to " חיי עולם ", "life eternal".

A Yisrael should not serve God out of expectation of reward. If he returns in response to a lure but still continues in rebellion, it is

forbidden to approach him. One who retains such a mercentary attitude should not be considered Jewish.

Saving 'anusim was considered a Jewish responsibility. These people were captives, and pidyon shebuyim took precedence over many other mitzvot. Medina quotes the gemara and applies it to this issue:

> לרואה את חברו טובע בנהר או חיה
> גרורהו או לסטים באים עליו שהוא חייב להצילו
>
> One who sees his friend drown in a river or sees him being dragged by an animal or being overcome by robbers must rescute him. [35]

The Torah says: "לא תעמוד על דם רעך", "do not stand idly by when your neighbor's blood is shed."[36]

Medina writes that these sources teach the obligation to save a threatened person no matter what the threat is . Even when there is no danger of death, if someone is threatened with injury or discredit, one must act to save him.[37] Medina's teshuvah suggests that if someone's Jewish belief is threatened, the person in danger must be saved. No more dangerour a pursuer exists than a threat to someone's Judaism.

The Jewish community could not save every secret Jew held in Christian lands, nor could every 'anus gather the money with which to flee. In these instances, converted Jews remained in giyut and lived double lives. 'Anusim were married in Jewish ceremonies which other 'anusim witnessed. Later, when these secret Jews returned to Jewish lands, rabbis grappled with questions about the validity of legal actions taken by 'anusim while in giyut.[38] Some commentators decided that the testimony of 'anusim was invalid since these people were idolators and sinned out of convenience. Medina also presents the view of some authorities that

they were valid witnesses. They weren't conscious transgressors. They performed religious functions in attempts to avoid assimilation.

Support could be found for either acceptance or rejection of 'anus witnesses. It was important to discover what type of 'anus the witness was. If he was a person who had the ability to flee and did not choose to save his soul, he had probably left "חוקים כשרים", regard for proper law, and had to be suspected.[39] If he stayed due to real financial difficulty, he could testify. The key to decisions that surrounded fitness for testimony was careful inspection of a person's actions while in giyut, and his motivations for remaining there.

In contrast to the doubts raised with regard to 'anus' loyalty, there were also many positive presumptions about the Jewish commitment of secret Jews. Rabbi Taitazak, Medina's mentor, assumes that: "כל בני האנוסים מישראל", "all of the forced converts are Israelites."[40] This is consistent with the statement of the Talmudic sages that: "כל משפחות בחזקת כשרות הן עומדות", "all families are presumed fit according to Jewish law."[41] Medina adds to these the statement of the Gaon Harav Aemah, who said that the presumption with regard to the 'anusim is that their father and mother were both Jewish.[42]

After Medina establishes that 'anusim families retain Jewish status, he deals with the responsibilities that follow as a result of that status: "אנוסים דין ישראל יש להם", "the same law is applicable to 'anusim that applies to all Jews."[43] They must be concerned with the midat hasidut, a guidelines that warns a Jew to prevent himself from becoming too distant from the tradition.[44]

According to the Rambam, the possibility existed for 'anusim to testify specifically because they were careful about unnecessary trespasses.[45]

They rebelled against the goyim. When they transgressed ude to fear, they thought it was permitted, since they were forced against their will. Their actions were errors.

Rav Saadyah agrees with the Brahbam (Samuel ben Meir). He states that the 'anusim are free from both " דינ י אדם ", laws affecting people and " דינ י שמ ים ", laws between a person and God. They are safe from excommunication.

The Jewish community believed that 'anusim wanted to return to Judaism. They presumed that in all their actions, their hearts were turned heavenward.[46] They felt that the forced Jews desired to uproot their homes in Christian countries and settle in a place where worship of the true God was possible. Even the people who could not afford to make a journey with their whole family were careful to prepare them for the possibility of leaving. Its as thought that the reason they did not reveal their actual belief to the non-Jewish community was in order to avoid danger. They they were not yet delivered, they sincerely loved God and Torah above all.

The statement of Medina in one teshuvah clearly presents his view in defense of the 'anusim.[47] An 'anus who had returned in teshuvah was accused by a Jew of improper action during a business deal. The business problem had occured in Ancona, a Christian territory. Medina denied the Jew's right to sue the 'anus before a beyt-din. The Jew could not testify about the events of the transactions since he himself had not been in Ancona. He had not experienced the force of the government. He had not been threatened with death. The 'anus had.

Notes

1. שם ואילך
2. Ibid.
3. שאלה שהוקבה
4. תשובה שכג
5. שאלה שכג
6. תשובה קכח
7. שאלה נה
8. תשובה י
9. Ibid.
10. תשובה קטו
11. תשובה י
12. Ibid.
13. ו"ך סוף ק"ל
14. הכורות
15. תשובה קצב
16. ש"מ בה"ל, מרדכי
17. תשובה י
18. Leviticus 18:21, 20:2-4
19. תשובה י
20. Ibid.
21. תשובה קצב
22. Ibid.
23. 74b
24. פרק קונם
25. ש עכו"ם : idolatry; murder; forbidden sexual relations
26. תכה הב"י כ"ח מנ"ט

Notes, cont.

27. כ׳ הגדול בדורו כמהר״ר
28. פ״ה מהלכות יסודי
29. תשובה י
30. תשובה שכח
31. הלכות איסורי ביאה
32. הרב הפסק ביבמה
33. פ״ו מהתשובה
34. תשובה קכח
35. שלא עוד, סוף פרק בן סורר ומורה
36. Leviticus 19:16 (Sifra)
37. שלא עוד
38. תשובה י
39. כ״ס פ״ה הלכות עדות בענין עמי הארץ
40. תשובה שכט
41. תשובה קיב
42. תשובה שכט
43. תשובה שה
44. תשובה קצט
45. תשובה י
46. תשובה נד
47. תשובה נב

CONCLUSIONS

Samuel de Medina truly sympathizes with the 'anusim. He is aware that Jews who live in relative freedom in the Ottoman Empire can never fully understand the extent of their plight. The Jewish community makes generalizations about the Jewish convictions, or lack thereof, of those 'anusim still in gentile lands. Medina does not discount the validity of the community's suspicions about the 'anusim who remain in lands controlled by the Pope. Instead, he continually distinguishes between those forced converts who assimilate comfortably into gentile society and those who under difficult circumstances maintain their faith and wait for opportunities to rejoin their fellow Jews.

Those responsa in Medina's volumes that focus on 'anusim consist mainly of sincere queries sent by the 'anusim themselves. These people have already demonstrated their commitment to Judaism. They live in Turkey. They have left Portugal, Ancona or France. They ask Medina to assist them in the arduous process of rebuilding their lives. They are anxious to ensure that each step they take, in business, family arrangements, or marriage, is done in accordance with the law and customs of the Jewish society. Frequently, this takes unusual effort. Many strands of the fiber of their lives are still in giyut. Their clients, money, spouses, or children are bound by different laws. It is nearly impossible to connect the two worlds sufficiently to make any satisfactory communication possible.

Medina's role is frequently one of assisting these Jews in their move back into the Jewish community. His responsa settle questions regarding the status of these returning Jews. He arranges validation

of divorces and annulment of marriages. He ensures that children born while their parents' Jewish lives were disrupted retain their legitimacy. Medina also serves as a source of support for the 'anusim. He clarifies boundaries for them so that they can remain aware of what actions are acceptable, which will prompt others to question their Jewish sincerity. Frequently, the 'anusim are harder on themselves than others would be. They want to insure that their Jewish name will remain unsullied.

While Medina's responsa reflect the Jewish community's acceptance of these returnees, they also make explicit the lack of tolerance for those people, once Jews, who remain in Christian lands too long. They are dismissed as voluntary converts. The information in these responsa challenges the current Jewish image of the 'anus or Marrano as a hero.

Frequently in the modern world, the experience of the 'anusim has been compared to that of holocaust victims. This is an unfortunate equation, but a predictable one in a Jewish world whose view of history has been so profoundly influenced by that experience of horror.

The forced converts were not in themselves revered or respected by their Jewish brethren. The unfortunate circumstance in which the 'anusim found themselves was something that Jews could understand. It was expected, though, that a Jew would naturally flee the Christian world at the first opportunity. If he did, he was assisted in his readjustment. If he did not, he was a deviant. He was no longer considered a Jew.

Martin A. Cohen, in his article, "Toward a New Comprehension of the Marranos", provides evidence to end the myth of the 'anus loyalty to Judaism. He asserts that the image of all forced converts as true Jews who practiced their tradition secretly is a romanticized one:[1]

> In 1391 the converts in Spain rejected the alternative to conversion, namely, death, required by Talmudic tradition, and in 1492 they rejected the alternative of exile. There are even cases on record of Spanish Jews who chose exile in 1492 being baptized in Portugal and elsewhere and returning as New Christians to Spain. In 1497 in Portugal, where Jews for the most part were converted by force and fiat, the majority did not thereafter choose to leave the country when its doors were open, or attempt flight when they were closed. [2]

'Anusim were only truly accepted when they ceased to be 'anusim. If the community suspected that a person had remained a gentile, even for a short time, because that identification had provided possibilities for financial gain, the person was ostracized. Forced converts were granted a certain amount of time in which to arrange their departure from a Christian country. If most people who wanted to escape arrived within a certain period of time and some did not, those who tarried were questioned. The community sought to welcome those who genuinely desired to return, but they tried to avoid the validation of those who had merely utilized their status as both Christian and Jew to their best advantage.

Medina's commentary reflects the lack of tolerance within the Jewish community toward 'anusim still in gentile lands. This harsh judgement contrasts sharply with their lenient and sympathetic attitude toward the 'anusim who returned. Medina and other rabbinic authorities utilized all means at their disposal to ease the problems of the uprooted Jews. They were considered full Israelites despite the fact that they, and in some cases their parents, had converted to Catholicism. The rabbis

did not probe deeply into the backgrounds of the 'anusim unless there was an unusual reason to suspect their lineage. Virtually all those who made an effort to find their place among their people were trusted.

The modern Jewish community can learn a lesson from Samuel de Medina and his scholarly contributions. Medina and his peers were concerned about the security and growth of the Jewish people. They were able to comfortably blend a respect for halakah (Jewish law) and for the Jews who chose to observe it. Today's Jewish religious leaders seem to have lost the ability to understand the needs of their constituencies. Many rabbis adhere to unnecessarily stringent interpretations of the law when more lenient, yet still acceptable, choices are available. For example, Russian Jews who had been persecuted and prevented from living full Jewish lives, upon their arrival in Israel or the United States, are no longer accorded the same honor that the 'anusim received in Medina's day. Their background is questioned, their marriages mistrusted, their words disbelieved. They are indeed assisted by the community, but their status is in question until the milah (circumcision) and tebilah (ritual immersion) is certified by an Orthodox rabbi. By all rights, these Russian Jews should be less suspect according to Jewish law than their Portuguese or Spanish brethren in the sixteenth century. They are not, for the most part, converts to any other religion. If they have been "idolators", the only false god they might conceivably have served is the hammer and sickle.

Ethiopian Jews are also the victims of over-scrutiny. The mistrust of their Jewish status has led to more scandalous treatment than the Soviet Jews have received. Israel's religious community took years to declare its willingness to accept the Falashas as Jews, and is still lukewarm in its attempts to rescue them from starvation and assault in

Ethiopia. And it still requires their immersion in a mikweh before fully accepting them as Jews. The same authorities who bewail assimilation are slow and tentative to accept those who plead for acceptance with outstretched arms.

The clearest example of such unnecessary stringency today is provided by the bureaucracy in charge of marriage in Israel. Medina found textual support for the presumption that each 'anus had a Jewish father and mother. No proof was necessary. In Israel, when two young Jews wish to marry, they must bring attestation of their Hebrew name and birthdates; their parents Hebrew names; their mother's maiden name; parent's place of birth; their tribal lineage (Cohen, Levi, Israel) and their cultural association (Ashkenazic or Sephardic). They must provide witnesses who certify their background and past relationships and affidavits from their community's Orthodox rabbi if they were born outside Israel. It is helpful if the couple has each of their mother's marriage documents (ketubot). All this is filed with the special marriage bureau.[3]

Current Jewish legal practice does not follow the precedents established in Medina's day. Modern authorities can less legitimately claim that their excessive stringency is necessitated by a lack of diligence in the community at large than could Medina. And yet, in response to the sacrifices, commitment, and loyalty of the 'anusim who came before him, Medina strained for legal avenues to assist and free them. Ought we to do less today for Jews from Russia and Ethiopia, or for those in America and Israel who strive for Jewish identification?

Medina and his peers understood and respected the law enough to use it to benefit the Jewish people. It is still possible for today's rabbis to learn from these scholars. They, too, can learn to temper the

midat hadin (quality of justice) with the midat harahamim (quality of mercy) in order to assure a future for all Jews who desire to "find shelter beneath the wings of the Shekinah."

Notes

1. p.24
2. Cohen, p.26
3. Jewish Spectator, Fall 1982, p.57

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