

HEBREW UNION COLLEGE - JEWISH INSTITUTE OF RELIGION
New York School

INSTRUCTIONS TO LIBRARY

Statement
by Referee

The Senior Thesis of Jonathan Well
Entitled: The Employer - Employee Relationship in the
Shulchan Aruch and Selected Responsa

- 1) May (with revisions) be considered for publication ☒ ☐
yes no
- 2) May be circulated ☐ ☐ ☐ ☐
to faculty to students to alumni no restriction
- 3) May be consulted in Library only ☐ ☐
by faculty by students
- ☐ ☐
by alumni no restriction

4/29/76
(date)

Michael Chernick
(signature of referee)

Statement
by Author

I hereby give permission to the Library to circulate my thesis

☐ ☒
yes no

The Library may sell positive microfilm copies of my thesis

☐ ☒
yes no

4-5-76
(date)

Jonathan Well
(signature of author)

Library
Record

The above-named thesis was microfilmed on

8/10/76
(date)

For the Library

(signature of staff member)

**THE EMPLOYER-EMPLOYEE RELATIONSHIP IN THE
SHULCHAN ARUCH AND IN SELECTED RESPONSA**

JONATHAN S. WOLL

**Thesis Submitted in Partial Fulfillment of Requirements
for Ordination**

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

April 5, 1976

Advisor: Professor Rabbi Michael Chernick

ACKNOWLEDGEMENTS

I wish to express my deepest gratitude to my advisor and teacher Rabbi Michael Chernick for his continual assistance and encouragement during this project. I am also grateful to Kenneth Gray for his time, his typing, his patience and above all, his friendship.

TABLE OF CONTENTS

ACKNOWLEDGMENTS.....	i
INTRODUCTION.....	1
Chapter	
I. THE ACCEPTANCE OF THE SHULCHAN ARUCH.....	5
II. THE HISTORICAL BACKGROUND OF THE RESPONDENTS.....	14
III. THE ASHKENAZIC RESPONDENTS.....	23
IV. THE SEPHARDIC RESPONDENTS.....	43
V. CONCLUSION.....	60
NOTES.....	70
BIBLIOGRAPHY.....	76

Introduction

From the time that the progeny of Ham, the youngest son of Noah, were committed to be servants to the rest of the world,⁽¹⁾ the concern for the relationship between employer and employee has been moot. Throughout Torah the people, Israel are constantly reminded of their former role as slaves to Pharaoh⁽²⁾ so that their empathy with the working individual will never be abated. In Torah there are passages stating laws governing the relationship between master and slave⁽³⁾ as well as laws which prescribe the treatment of the hired servant by his employer.⁽⁴⁾

By 1567, when Joseph Caro's code, Shulchan Aruch appeared, the judges in the Jewish community had more than the Torah on which to depend for the laws concerning the relationship between the employer and employee. The legal literature of Judaism had grown substantially to the point where interpretations of halacha would differ in the various segments of the Jewish world. There were already, the Talmud, the responsa literature, and the codes, such as Maimonides' Mishneh Torah, Jacob ben Asher's Tur, Joseph Caro's Beit Yosef to which one could turn for statements and interpretations of Jewish law. Since the literature was so vast, and the minhagim of the countries in which legal cases were heard by Jewish courts were so varied, one would think that a court's decision on a particular case would be different

from another's decision on a similar case.

The Sephardic and Ashkenazic worlds vied with each other for the dominant position in the halachic world. This becomes even more apparent when the period following 1567, the year the Shulchan Aruch was published, is studied.

Responsa literature arose as a reaction to a need for understanding the practical application of the law. Freehof⁽⁵⁾ compares the responsa of Jewish literature to the legal opinions that are solicited from an attorney general on state or federal level. Although their opinions do not hold the same weight as law, they have a great influence on the development of the law.

Jacob Moellin, a fifteenth century respondent, wrote to a correspondent that the responsa literature should be considered more authoritative than the code literature, because codes were only summaries of responsa and Talmudic debates, whereas responsa were the result of actual cases submitted.⁽⁶⁾ Although Moellin lived before the Shulchan Aruch, it can be seen that tension had already existed between the authority of the code literature and the responsa literature.

The following chapters are an examination of the treatment of the employer-employee relationship in the Shulchan Aruch, and in the responsa literature that developed from the tenth through the eighteenth centuries.

The purpose of this investigation is, 1) to determine to what degree each literature's decisions on employer-em-

ployee relationships agree or disagree, 2) to examine the influence of the responsa literature upon the Shulchan Aruch, and 3) to examine the influence of the Shulchan Aruch upon the responsa literature.

The first chapter discusses the acceptance of the Shulchan Aruch as an authoritative work by the halachic world at the time of Joseph Caro and its acceptance two generations after him, as well. The objectives of its author, and the purpose as perceived by others is discussed in the chapter.

A brief biographical sketch and the historical environment of each respondent, whose literature will be discussed, is given in the second chapter. The circumstances under which the Ashkenazic and Sephardic respondents wrote is necessary to the understanding of the contents of the responsa.

The third and fourth chapters are a review of Ashkenazic and Sephardic responsa dealing with employer-employee relationships. In those chapters, comparisons are made between the authorities used by the respondents and those laws stated in Shulchan Aruch, Choshen Mishpat 331-339, by Joseph Caro and by Moses Isserles in the Mappah. The final chapter is a discussion of the conclusions drawn from these chapters.

The responsa literature is not indexed according to topics. Therefore, it was necessary to find a listing of responsa that were concerned with labor law. If it were not for the two-volume work in Hebrew by Shillem Warhaftig, en-

titled, Jewish Labour Law, the research of the responsa would have been nearly impossible.

The number of responsa selected were randomly chosen, but with a bias toward century and location. There was no special effort to choose responsa that contained specific references to the Shulchan Aruch, as that would have invalidated the value of the investigation.

What follows is a study of the development of Jewish law in regard to its treatment of the worker.

Chapter I

The Acceptance of the Shulchan Aruch

When Joseph Caro wrote his work, Shulchan Aruch, in the middle sixteenth century, its reception by the rabbis and scholars of that generation was less than warm. The work arrived shortly after his Beit Yosef, a convenient study and halachic guide to the fourteenth century Ashkenazic Rabbi Jacob ben Asher's, Arba'ah Turim, which was a collection of the halacha, sifted from the Talmud, and edited with the opinions of many commentators for the practical application of the halacha in Jacob ben Asher's time. Caro took Asher's Tur, and through a system developed his halachic code, the Beit Yosef.

The Beit Yosef was not meant by Caro to be a work that would be studied by those other than judges and rabbis. He recognized that there would be a need for a guide to the Beit Yosef, and set out to collate an uncritical edition of customs and laws entitled Shulchan Aruch.

If the object of the Shulchan Aruch was to be only a study guide to the Beit Yosef, as it has been generally understood, then Caro's words in the introduction to the Shulchan Aruch are critical to understanding the purpose of his simplified "code". Caro wrote that a purpose for Shulchan Aruch was to allow all Jews to study and know Torah:

ראיתי אני דברי כי טור לקוט אולי ספיר
אמריו דברך קצרה דלאן צח וכו' יפה ונעים
למען תביא תורת פי תמימה אורה דפי כל איש ואיש

Caro continues and goes so far as to point out that the Shulchan Aruch is divided into thirty sections that can be studied in a period of a month, one section a day. Clearly, his statement partially obviates the contention that his purpose in writing the Shulchan Aruch was solely as a guide to his earlier work. Some believe that Joseph Caro was prepared to write the Shulchan Aruch even before he wrote the Beit Yosef.⁽¹⁾ While his intent was not obvious, the effects of his work were. The first edition of Shulchan Aruch was published in Venice, in 1564 or 1565. The Sephardic world may have been prepared for its coming, but the world of the Ashkenazim erupted when it appeared.

When the Shulchan Aruch appeared in Poland, the various rosh hayeshivot reacted in disappointment, and with outrage. The Shulchan Aruch did not represent their view of the halacha. The RaMaH, Rabbi Moses Isserles, a student steeped in the learning system of Rabbi Shachnah,⁽²⁾ wrote his two works, Darchei Moshe and the glosses to the Shulchan Aruch as answers to Caro's dismissal of the Ashkenazic tradition in the Beit Yosef and the Shulchan Aruch. In writing his glosses to the Shulchan Aruch, Isserles had two objectives that he hoped to achieve. The first objective was to limit the influence of the Beit Yosef on the students who would study the halacha, to prevent or destroy the impression that Caro's work was an ultimate source of the halacha, and to make known to those who study it that the law was not to be

regarded as a static force, but a body subject to dynamic interpretation. Isserles' second objective was to integrate the Ashkenazic tradition with that which was acceptable from the Sephardic tradition. If Isserles found a tradition which did not follow his, he would add the words, כפי' נהג' meaning that the Ashkenazic tradition of Poland was to be followed. (3)

Isserles' real concern was the imbalance between the Ashkenazic and the Sephardic traditions. The Ashkenazic tradition was not to be overlooked nor to be considered secondary to the Sephardic tradition. (4)

Another Ashkenazic rabbi of Caro's generation objected to populist oriented halachic cataloging. The MaHaRSHaL, Rabbi Solomon Luria, favored the opinions of the Rishonim and the Achronim (those who came after the Geonim). His prejudice toward the German and French scholars led Luria to disregard the Sephardic tradition, and charged Caro with ignoring the Tosafot and the Posekim that the Ashkenazim accepted. Unlike Isserles, Luria objected to the Beit Yosef, and later, the Shulchan Aruch, because their texts had fixed the halacha. (5) According to Luria, the halacha's sources were to be found only in the Talmud or the halachic Midrashim. (6) Luria's second objection to Caro's works, similar to Isserles", was that the Beit Yosef and the Shulchan Aruch went against the tradition that was accepted and practiced in Germany and in France. Caro had not stated the tradition as interpreted by the Ashkenazic scholars of

Gwermany and France.(7)

Those who objected to the Shulchan Aruch were not always concerned with the disintegration of the Ashkenazic tradition because of Caro's casual elimination of their traditions. Rabbi Mordecai Jaffe, who had spent nearly ten years in Italy, and later returned to Poland to become rabbi of the Lublin area, authored a work entitled the Levush. In the Levush, Jaffe set out to condense Caro's Beit Yosef, and include explanations of the halacha that were lacking. The Shulchan Aruch, Jaffe believed, was a text that had very little depth, because it lacked reasons for the stated halacha. He apparently did not see the Shulchan Aruch as a useless work, because he endeavored to use it as the basis of his own Levush. Jaffe saw value in the Beit Yosef and the Shulchan Aruch, except that the former was much too lengthy, and the latter was too short. If the two were combined, Jaffe reasoned, then there could be one volume that would contain halacha with explanations of its origins and reasons for its existence.(8) Jaffe's intent was to fill in gaps of halacha which the Shulchan Aruch did not cover, and to create a second Shulchan Aruch.(9) When the Levush was published, it began to replace Caro's code, for it was

...כיון כל חלקי התורה עקב פירוש דברי יוסף
 שצריך להוסיף, הכל ראוי לה' ית' (ס) נון קל ונוח
 מאד ורסדר יפה ונעים (10)

It was not Jaffe's good fortune to have followed Caro's system of exposition, because he had neglected many of the Posekim and traditions. His Levush was the subject of

objection, because he had depended too much on Joseph Caro's Beit Yosef as his principle source of halacha and Those who objected to the system followed in the Shulchan Aruch and its contents would have logically had to reject Jaffe's Levush.⁽¹¹⁾

Like Jaffe, Rabbi Joshua Falk wanted to perfect the contents of the Shulchan Aruch, and like Jaffe thought that the Beit Yosef and the Shulchan Aruch when combined with explanations from more Posekim, and further citations from Gemara as sources for the halacha would satisfy the deficiencies in the Shulchan Aruch. Sefer Me'irat Einayim, was written to explain Caro and Isserles word for word. With the ש"נ, Falk tried to create a close relationship between Caro's and Isserles' expressions. Falk's commentary on the fourth section of Shulchan Aruch, Choshen Mishpat, helped regain prominence for Caro's code that it had lost to Mordecai Jaffe's Levush.⁽¹²⁾ Albeit, that Shulchan Aruch regained its authority, it had fallen from prominence in the yeshivot of Poland:

אולם על הארץ קמה דבר נחמא היסודות מנצח
 ענין נוח היסודות, אולם על דברי היסודות דבר
 אק כי הדומות הוא היסודות אלא היסודות
 אולם אלה היסודות היסודות היסודות
 הארץ אלה היסודות היסודות היסודות
 אולם אלה היסודות היסודות היסודות
 אולם אלה היסודות היסודות היסודות
 אולם אלה היסודות היסודות היסודות
 אולם אלה היסודות היסודות היסודות

Other critics of the Shulchan Aruch were critical of its content and its lack of emphasis on the Talmud. Meir

ben Gedaliah, the MallaRaM of Lublin and Samuel Edels, the MallaRaSH, had no direct connection to the Shulchan Aruch, but both objected to its importance in the society. The resources for halacha, according to the MaHaRaM, were to be found in Gemara, in the opinions of the Rishonim, and in the product of his own musing, but not in the Shulchan Aruch.

וְדָרְשׁוּ מִן צִדְּוֹ אֵין מִמֶּנּוּ וְצִדְּוֹ רִיבֵי עֶסְקִי
 דְּדָרְשׁוּ דְּרֵי מֵאֵל וְיֵין אֵין דְּרֵיבֵי יֵין דְּרֵיבֵי
 בְּנֵי אֵל דְּרֵיבֵי דְּרֵיבֵי דְּרֵיבֵי דְּרֵיבֵי דְּרֵיבֵי
 מִדְּרֵיבֵי אֵין דְּרֵיבֵי דְּרֵיבֵי דְּרֵיבֵי דְּרֵיבֵי
 מִדְּרֵיבֵי דְּרֵיבֵי דְּרֵיבֵי דְּרֵיבֵי דְּרֵיבֵי
 מִדְּרֵיבֵי דְּרֵיבֵי דְּרֵיבֵי דְּרֵיבֵי דְּרֵיבֵי

Despite those who believed that the Shulchan Aruch was too reckless in codifying halacha, there were members of the Ashkenazic world who viewed Caro's work as a misunderstood and improperly perceived manuscript. David ben Samuel Halevy, of Cracow, authored the Sefer Turei Zahav, which is basically a commentary on the Shulchan Aruch. Known as the "TaZ" (ת"צ), Halevy composed his works in the early seventeenth century, about a generation after Caro and his early critics. The Shulchan Aruch, for the TaZ, was the natural end result of the Beit Yosef. The laws codified in the Beit Yosef were finalized in the Shulchan Aruch.⁽¹⁵⁾ David ben Samuel Halevy's intent in writing Turei Zahav was to raise questions and to answer them in his work. However, the answers were often unclear. In one sense, Halevy's mission in his writing was to restore the halacha to its proper station as authority.⁽¹⁶⁾ The past confusion of creating a final

guide to halacha had never been settled. There were still conflicts based on the opinions of different Rishonim and Achronim. His task was to put an end to this confusion by reconciling the opinions of the Achronim with the laws of the Shulchan Aruch. (17)

Opposition to the Shulchan Aruch by the Achronim created an environment of unpopularity for the work. In order to reverse their sentiment, Halevy saw it necessary to comment on, and explain the Shulchan Aruch in light of the sources from which Caro worked. By using the Rishonim, the Beit Yosef, and Isserles in his Darchei Moshe, Halevy sought to place the Shulchan Aruch in an honorable position. Thus, others would accept it as he had, as the final word on the halacha. (18)

Another proponent of the Shulchan Aruch, was the Polish rabbi, Shabbatei b. Meir Ha-Kohen, who authored the Siftei Kohen, or ShaKh. The ShaKh did not find the opinions of the Achronim on halacha acceptable, particularly those of the Sefer Me'irat Einayim and TaZ, and refuted them in his work. (19) He drew upon the Rishonim for his commentary on the Shulchan Aruch, which he justified. He did this by trying to minimize the differences between Caro and Isserles. (20) Above all, Rabbi Shabbatei Ha-Kohen valued the opinions of Luria. He considered his opinions even more authoritative than those of Isserles. Luria, was for Rabbi Shabbatei Ha-Kohen, the standard against which all differences of

opinion would have to be compared.⁽²¹⁾ The Achronim were not important to the ShaKh, and in his work he would either minimize these opinions, or would go so far as to deride them.⁽²²⁾

The TaZ and ShaKh did not seek to criticize the Shulchan Aruch. Rather their principle concern was to establish the Shulchan Aruch as a valid source of halacha. The Sefer Me'irat Einayim had emphasized that the Shulchan Aruch could not be useful unless one had already studied the TaZ and the Beit Yosef on which it was based.⁽²³⁾ The TaZ and ShaKh, rejecting this approach, were the first to separate the Shulchan Aruch from these basic works.⁽²⁴⁾ Through them, the Shulchan Aruch came to exist as a source unto itself. Thus, the successfully combatted opinions of two previous generations placed the Shulchan Aruch at the center of Codes literature.⁽²⁵⁾ They also removed the obstacles to the acceptance of the Shulchan Aruch by attacking the bases upon which some critical works stood.⁽²⁶⁾

The Shulchan Aruch now was accepted by the halachic world and to a higher degree Caro was praised for the wisdom of his work. In the responsa of Avodat Ha-Gershuni, Sha'ar Ephraim, Chavot Ya'ir, the Shulchan Aruch is already recognized as an authoritative work.⁽²⁷⁾ As more and more respondents saw fit to cite the Shulchan Aruch, its influence grew, and soon there were those who wanted only to write commentaries on the Shulchan Aruch.⁽²⁸⁾ For succeeding generations after the TaZ and ShaKh, the Shulchan Aruch

became the halachic work upon which scholars would base their writings, thought, and decisions.

Chapter II

The Historical Background of the Respondents

In the next two chapters there is a review of the responsa literature on which this thesis is based. Basically, there are two worlds from which the responsa are derived, the Sephardic and the Ashkenazic. It is important to review the situation in which each respondent lived in order to understand the circumstances which influenced his responsa. In general, one interest is the relationship of responsa to the Shulchan Aruch, particularly in matters which are relevant to that part of the fourth section of Shulchan Aruch, Choshen Mishpat entitled, Sekhirat Poalim. To fully appreciate the responsa, it is necessary however, to understand why certain professions or trades became the subject matter of the literature at particular times. Therefore, it is necessary to examine the historical influences acting upon each respondent in order to deal adequately with questions about the relationship between the responsa literature and its parallel in the Shulchan Aruch.

Tenth century Mainz, located on the left bank of the Rhine, was a city of prosperity for the Jewish population. Although the Jews were not allowed to own land, they did engage in the mercantile trades. They usually fell under the jurisdiction of a town bishop as occurred in Magdesburg and Hersaburg, and from this it can be understood that the merchants (Jews) were under the bishop's control.⁽¹⁾ In 1012, Emperor Henry II expelled the Jews from Mainz after an

incident where a cleric, Wecelein, converted to Judaism and entered into a controversy which did not come to a good end.(2)

Under the circumstances cited above many Jews converted to Christianity including the son of Gershom ben Judah Me'or Ha-Golah. Little is known of his lifetime, but he was apparently born in Metz in 960 C.E., and lived in Mainz where he conducted a yeshiva of renown.

Another respondent from the city of Mainz from the late fourteenth and early fifteenth century is Jacob ben Moses Moellin, known as the "MaHaRiL" (Morenu ha-Rav Jacob Ha-Levi). The Jews of Mainz, at the time of the MaHaRiL, were not as deprived as they were during the tenth century. The community was controlled by a Judenrat and did own land, at least through the period of the Black Death (1349) when nearly the whole Jewish community perished.(3) The MaHaRiL was born in 1360 following the calamity that befell the Jewish community during the Black Death when it was also set on fire.

Noellin was born in Mainz, and had gone to Austria to study under Meir Ha-Levi and Sholom ben Isaac. Meir ben Levi was the chief rabbi of Vienna who introduced ordination conferring upon the ordinee the title of "Morenu", which allowed the ordinee to perform rabbinical functions.(4) In 1387, Moellin founded a yeshiva in Mainz, and became known as the leader of the Jewish community, so much so that he became the head of the Jewish communities of Germany,

Austria, and Bohemia. (5)

His period of leadership was rocked by continual interference from the surrounding Christian communities. It was a time when Jews who were bankers and held notes had them cancelled by the royalty and further, all Jews were prohibited from emigrating. In 1401, however, Rupert granted a charter to Mainz, among other Jewish communities, guaranteeing that Jewish creditors would be paid their due, but this was modified by the administering bishop, rescinding 20 per cent of the debts with the remainder to be paid in four installments. (6)

The advent of the Hussite wars (1419-1436) brought more troubles for the Jewish community as the Catholic reactions strengthened. Increasingly, the Pope had to interfere with the affairs of the Dominican monks as their fanaticism increased against the Jews.

Fifteenth century Poland was an oppressive environment for the Jewish community. It was an era of suffering in which Jews were forced to participate in the practice of usury. Their principle clients were members of the Cracow university community who were settled by the Polish government in the midst of the Jewish ghetto forcing the Jews to move elsewhere. (7) The Jewish community was subjected to severe anti-Jewish riots as in 1454, and were continually the brunt of anti-Jewish sentiments. (8)

Despite these sentiments, the Cracow Jews were able to

develop commercial ties with the communities of Breslau, Danzig, Lvov, and as far away as Constantinople.⁽⁹⁾ In 1485, the gentile community opposed Jewish participation in commerce by compelling the leaders of the Jewish community to accept the prescription that the Jews would not participate in most commerce. They would be allowed to sell shawls, hats and collars, but the struggle with the city council did not end with their edict. In 1495, the Jews were expelled from Cracow, and were forced to move to a neighboring town, Kazimierz. From there, the Jewish community stayed its protests to participate in commerce.⁽¹⁰⁾

When Moses ben Israel Isserles was born in the early sixteenth century (1525 or 1530), there was conflict between the Polish Jewish community and the recent immigrants from Bohemia-Moravia. Community rivalry grew to where it became necessary for each community to have its own rabbi. In 1519, the Polish King recognized the right of each community to do so.⁽¹¹⁾

Cracow-Kazimierz became a center for immigrants from all over the Jewish world. Large numbers of Jews from Germany, Italy, Spain, and Portugal settled in the community. Many wealthy members of these communities acquired from the King, privilege and exemptions from taxes which ordinary Jewish citizens were required to pay, but in 1563, under protest from the Jewish community, these practices stopped.⁽¹²⁾

Gradually, the Cracow-Kazimierz Jewish community

wrested itself from the harsh controls of the non-Jewish community. In 1551, the Jews were given the right to elect their own chief rabbi and judges who would be under the jurisdiction of the King, Sigismund Augustus. This kind of freedom added to the prosperity of the Jewish community and created an atmosphere for growth.⁽¹³⁾ By 1553, the Jewish community, by agreement with the authorities, added small extensions to their town, and permission to build a second synagogue was granted.⁽¹⁴⁾

In 1550, Isserles, author of Darchei Moshe, an explanation of Caro's Beit Yosef with notes and supplementary laws, was appointed to sit on the Beit Din of Cracow. There he rendered decisions that affected the community's daily life. Despite his having been party to a ruling of 1550, banning the sale of Maimonides' works,⁽¹⁵⁾ his reputation as scholar and legal respondent was universal.

The Mappah, Isserles' gloss to the Shulchan Aruch, was first published with the Shulchan Aruch in the Cracow edition of 1569-71.⁽¹⁶⁾

Between 1734 and 1768, raids were conducted on the Jewish populations Kiev, Volhynia, and Podolia by Haidamack. Although in the same region, Ostrog was limitedly affected by the Haidamack raids. Ostrog, then in Poland, was divided into two parts, into two kahal organizations under separate rabbis. This occurred because of internal strife within the community. For example, accusations of malfea-

sance were lodged against the Ostrog kahal.⁽¹⁷⁾

The period in which Rabbi Meir Margolioth of Ostrog lived was filled with unbearable taxation upon the Jewish community. Blood libels increased. Synagogues were distressed.⁽¹⁸⁾ The Baal Shem Tov, the leader of the new movement Hasidism, arose. Hasidism would offer the solace necessary for an impoverished community such as Ostrog.

Rabbi Meir Margolioth, who was a disciple of the Baal Shem Tov, served as rabbi in Jaslo and later in Horadenka. In 1755, Margolioth was appointed rabbi of the Lvov region, and in 1777, he was officially designated by the King of Poland, Stanislas III Augustus, as rabbi Ostracha, which established his authority over all the rabbis in the district. Sometime during the years 1791-1792, Margolioth produced his collection of responsa, Meir Netivim.⁽¹⁹⁾

The respondents from the Sephardic world reported here are from late sixteenth century to eighteenth century Turkey. The Ashkenazic world, reviewed earlier, suffered much from pogroms, high taxes, and many restrictions that those in the Sephardic world did not have to endure. On the contrary, Turkey had welcomed Jews in their exiles, and allowed them to become merchants and enter all trades, thereby making the Jewish community wealthy.

Salonika in the late sixteenth and early seventeenth centuries was similar to its sister cities of Constantinople and Smyrna (Izmir). The affluent Jewish community of Smyrna

claimed as citizens, industrialists, merchants, and doctors. For Smyrna, the "golden era" was the seventeenth century. (20)

Abraham di Boton, the author of the responsa, Lehem Rav, was born in Salonika in 1560, and died there sometime between 1603 and 1609. In Salonika, he was a rabbi and a leader of a Talmudic academy. Later in his life in 1601, he lived in Palestine and in 1603, arrived in Constantinople. Di Boton's chief work is his Lehem Mishnah, a commentary on Maimonides' code of Jewish law. His Lehem Rav, from which a selection will be examined in chapter four, was published in 1660 by his grandson Abraham, in Smyrna. (21)

Jews from Salonika, Constantinople, and from local towns settled in Smyrna establishing their own communities. At the head of the Smyrna community from sometime before 1630, there was a Rabbi Joseph Escapa. After 1630, a Rabbi Azariah Joshua Ashkenazi, from Salonika, arrived who later became the second rabbi within the community. (22) Escapa was the teacher of Sabbatai Şevi, whose movement to declare himself the messiah started in Smyrna. It was in Smyrna in 1648 that Escapa excommunicated his student and pretender to the messianic throne, Sabbatai Şevi, for having pronounced the Shem Hameforash, the Ineffable Name. The incident divided the community. (23)

In 1661, when Rabbi Escapa died, Rabbi Haim ben Israel Benveniste, author of the Ba'ei Hayyei, was appointed chief dayyan with jurisdiction in matters of marriage, divorce,

and ritual law.⁽²⁴⁾ Because some wealthy members of the Smyrna community opposed Benveniste being appointed chief rabbi, they urged that the rabbinate be divided into two different jurisdictions, ritual and civil law.⁽²⁵⁾ For a period of four years, Benveniste alone served in his capacity as head of the court. In 1665, the second post was filled by Rabbi Aaron Lapapa. Benveniste's relationship with Lapapa remained tense.⁽²⁶⁾

Benveniste was a supporter of Sabbatai Şevi, and because of the support he and Şevi received in Smyrna, Benveniste became chief rabbi while Aaron Lapapa was ostracized from the community.⁽²⁷⁾ Benveniste later regretted his affiliation with Sabbataism when Sabbatai Şevi converted to Mohammedanism.⁽²⁸⁾

During the period of Sabbatai Şevi, the community of Smyrna suffered and had lost its affluence. In the eighteenth century there was a return to the community's original affluence. Many of the Jews were engaged in the manufacture of wool from goat's fleece in the eighteenth century. By this time, there was an organization of workshop owners and a worker's organization.⁽²⁹⁾ In 1744, the Jews of Smyrna entered European trade.⁽³⁰⁾

One of the respondents reviewed later is Jacob ben Naim, author of the collection of responsa, Zera Yackov. As a rabbi of Smyrna during the late seventeenth and early eighteenth centuries, he headed a large yeshiva.⁽³¹⁾

It is known that he did have correspondence with Haim Ben-veniste, and apparently had succeeded him in the chief rab-binate of Smyrna.⁽³²⁾ However, little else about him is known.

Chapter III

The Ashkenazic Respondents

The following responsum 71 of Rabbenu Gershom (965-1028) answers the problem about a teacher who was hired to teach three children. His employer had promised him three pounds for a year's work, and said, too that he would find other children for him to teach along with his child. The employer felt that the combined salary would be ten pounds, that is, for teaching his child and others whom he would find. The teacher never realized the due of the employer's promise, and made a complaint.

Rabbenu Gershom answers by stating that the promise of extra money, the additional seven pounds to teach other children besides the employer's son, was only idle talk to entice the teacher to take the job. As an example, the respondent cites Baba Metzia 65b, where a certain person sold land to another. The buyer was upset by his purchase, because the seller said he could not be responsible if someone were to attach a lien to it. The seller said before the consummation of the deal that he would go so far as to collect for the potential buyer if that were to happen, and give him the profits if only the potential buyer would purchase the land. The fellow did buy the land, but the seller refused to fulfill the conditions of his "sales pitch". Rabbenu Gershom sees the seller's language as a "sales pitch".

or "smooth talk", only to entice the buyer. There is no legal obligation involved.

The responsum continues. The essence of the contract was the three pounds promised for teaching the employer's child since the teacher had failed to question the employer upon beginning his job about the additional children. It was clear to the teacher that the original talk was only a "come on", therefore entitling him to only the three pounds as originally negotiated.

Rabbenu Gershom continues the responsum by stating different examples of employer-teacher relationships that involve a complaint by the teacher against his employer for having not fulfilled the obligations of an employer to his employee.

Here is another instance where a teacher who was hired over a period of time, and complains of a breach of an understood arrangement. The teacher complains in the court that the employer had given him three pounds the first year, and only two pounds in the second year. The employer argued that he had paid the two pounds in the second year of the teacher's employment because his wife insisted that no more than two pounds should be given.

This was considered to be an invalid argument given by the employer. Even if the wife had made an agreement for him to teach her sons for an amount, and her husband came along and said he would hire the teacher for a lesser amount,

the wife cannot make the agreement for the amount to which she had agreed. Since she is in her husband's domain, she may not be a party in a contract. However, when the teacher took the case to court, he showed that he could not accept the arrangement for the lesser amount.

The decision was that if the employer had left the children with the teacher to be taught, even if the husband supported his wife in her earlier contention, then he must pay the higher amount. There is no source stated in the responsum as the basis for the decision.

Here is another case where the employee complains that the employer has not fulfilled his obligation. If the students become ill for a period of three months, that is, from the time of employment, and the teacher is able to bring witnesses to substantiate the allegation that they were already ill at the time he was hired, then the teacher must be paid as stated in responsum 133 of R.Meir of Rothenberg and in the Mordecai 344.

In Shavuoth 45b, Rabbi Nachman rules that the only time an employee may collect under oath is if there were witnesses present at the time of hiring. The employer's oath will not stand up against witnesses. If the teacher cannot bring witnesses to bear testimony in his favor, then he is to be treated like all other employees as stated in Mishneh Shavuoth 44b. (1)

A case is stated where the teacher complains that the

employer had promised to pay expenses in addition to his salary, and the employer had already given him nineteen dinars (and salary). But the teacher had expended thirty dinars of his own and asks the employer to reimburse him. The employer says that he never accepted the condition, and further the nineteen dinars were only a loan, and he expected to be paid. This is the same situation where there is an argument over a tallit.⁽²⁾ If either party wishes to swear and be free of his obligation, he may. The employer will not have to pay the thirty dinars and the employee will be free from paying the nineteen dinars to the employer.

The court may still assess the employer for expenses, and have it consigned to the plaintiff. Of course, if there were witnesses at the original negotiations, there would be no need for taking oaths. Experts will then make the assessment of expenses, and the money is paid to the teacher.

In a case where the employee claims three pounds as his salary, and his employer said he had promised only one pound, the employer is freed from his obligation by taking an oath,

שואב שואב which is administered by a court to a defendant releasing him from the payment of the sum in dispute.

If the teacher left the employer's home after the disagreement, but completed his work with the child and if he makes a claim for money that he had expended due to his departure, Rabbenu Gershom opines that the teacher should not be paid. This is due to the fact that the employer never

promised to take care of the employee's needs outside of the employer's home. Even if the employer may have set up the condition that when the teacher would leave the home he would take care of him, the employer could now say that he no longer wants the employee to be his child's teacher. He then could refuse to pay any of his expenses except the wages due for teaching.

Rabbenu Gershom completes the responsum by stating cases dissimilar to those already described. In responsum 72, Rabbenu Gershom discusses further the laws of employing a teacher: If the employer specifically arranges with the teacher that he must come to work early and leave late during the winter months, and the teacher agrees, then the teacher is bound by the condition. If the arrangements were not clear or tenuous or generally stated, then the employer cannot force the teacher to fulfill the condition. The precedent is stated in Baba Matzia 83a.⁽³⁾ Rabbenu Gershom then deals with law concerning the teacher's expenditure of time.

If the teacher wrote books for himself while the children were occupied with other activities, that is the teacher's prerogative, as found in Baba Matzia 109a. If he writes during the time he should be teaching, and that is accepted custom, then the teacher's actions are permitted. However, if the employer knows that the teacher is wasting time, then the teacher may be fired without any prior notice. Baba Matzia 109a is cited as the source which Rabbenu

Gershom paraphrases: "A teacher of children, a slaughterer, and a doctor are forewarned that they must do well in their jobs. If they do poorly, they may lose their jobs without prior notice." Further since the loss sustained by the employer is because of the teacher's malfeasance and cannot be restored, anyone involved stands warned, and may be fired without prior notice. However, if the employer does not dismiss the teacher, thus indicating his approval of his work, then he must pay him his wages.

A passage from Baba Matzia 50b is cited as proof of the above, which states if there is overcharging by less than a sixth of the value of the employment, the employment continues. If there is overcharging of more than a sixth of the value of the job, the job is terminated. If there is a simple one-sixth overcharge, it is allowed, but must be returned within the time it takes to have an expert evaluate the work. If the time exceeds that condition, then the employer must pay the overcharge.

A passage from Mishneh Kiddushin 8a, is cited where a man discovers that the money he has paid to a woman for marriage is lacking a dinar. In effect, he is not married. If the woman knew an amount was missing after having counted it, and did not question the amount, it is considered as if she had agreed to the marriage for less money. Rabbenu Gershom cites this as a parallel to the case above. If the employer overlooks the "overcharge" by the teacher, then

the teacher is not required to make restitution to the employer later.

In his responsum 73, Rabbenu Gershom considers the circumstance of a teacher who becomes ill for a period of two weeks or more and then recovers. Using Kiddushin 17a, Rabbenu Gershom states that the teacher is not to be penalized for the days when he was ill as was followed in the case of a Hebrew slave. If a Hebrew slave were ill three years, and worked three years, he would be allowed to go free and would not be retained for the years during which he did not work.

Rabbenu Gershom bases his decisions solely on case law from Talmud. If Rabbenu Gershom could have used the Shulchan Aruch, particularly the section Hilkhot Sekhirat Poalim, with which this thesis is concerned, he would have been able to make reference to some of its parts. However, parallels would be inexact. Since he lived in the tenth and eleventh centuries he is precedent for, rather than adherent of the Shulchan Aruch.

In the first responsum where there was a question of the wife's power to make a contract without the knowledge of her husband, the employer, the responsum could have referred to section 332 where there are seven paragraphs that discuss the power of an employer's representative in negotiating a wage with an employee. In that case, Rabbenu Gershom's decision and the intent of section 332 are parallel to one another.

In an instance where the envoy hires the workers for more than was allotted, the envoy, not the employer loses the difference. The employer is the determiner of the wage. If the teacher in this case had accepted the lesser amount by not having contested it, that would have been the wage.⁽⁴⁾

Hilkhot Sekhirat Poalim in 334:4, discusses whose loss it is when a child becomes sick during the teacher's employment. Caro does not include the need for witnesses to prove the circumstance that the child had already been ill at the time of the teacher's employment. However, he does state that if the child had been ill and the teacher had knowledge of his illness, it would be his loss; otherwise, it would be the employer's loss.

In Sekhirat Poslim 333:1, the issue of an employer deceiving an employee is discussed. If the employer had agreed to take care of expenditures of the teacher earlier discussed outside of the employer's home, and later did not, according to the first statement of Choshen Mishpat 333:1, no legal recourse may be taken by the teacher, but Sekhirat Poalim 333:1 discusses cases where workers have not begun their work in cases where the employer had erred in his judgment in requiring workers where they were not needed. It can be said that Choshen Mishpat 333:1 does not deal with a case similar to that found in Rabbenu Gershom's responsum 71.

Sekhirat Poalim 331:1 parallels Rabbenu Gershom's

citation from Baba Metzia 83a, in responsum 72 concerning the hours during which an employee is required to work. In Shulchan Aruch the employer may not require the employee to work earlier or later than the customary time, but does not specify, as does Rabbenu Gershom the the law applies to work during winter months. It may be understood from Shulchan Aruch that if the employer and the employee had agreed to longer hours, the condition would be acceptable. Isserles in his gloss to Choshen Mishpat 333:5, declares that although the teacher is subject to the same law as the worker in 331:1, where it prescribes the time a worker may be employed, it is forbidden to do extraneous work with a student or to stay awake too late at night. Isserles rules that whatever side (the employer or the teacher) violates the customary practice in agreement, that side will sustain a loss and can be forced to abide by the agreement. (5)

The other circumstances in responsum 73, the prerogatives of a teacher during hours of his work, the reasons for dismissing a teacher, and overcharging by a teacher are not reviewed in Sekhirat Poalim .

A discussion on the payment of wages to a teacher for the time he did not work because of illness, as reviewed in Rabbenu Gershom's responsum 73, is found in Isserles' Mappah to Choshen Mishpat where he rules that a teacher's sick days are deducted. (6) In responsum 73, the teacher

was ill for more than two weeks and wanted to remain for an additional time⁽⁷⁾ to make up for that time which he was ill. In that case, the teacher was exempt from continuing his duties. It was not clear if the teacher had been paid his whole wage. Isserles continues in 333:5 that there are those of the opinion that if a worker or teacher has already received his wage, it is not necessary to return.⁽⁸⁾

Jacob ben Moses Moellin, the MaHaRiL (1360?-1427), in his responsum 41 deals with the problem of a teacher whose employer and child had fled. Citing Perek Ha'Omanim the MaHaRiL rules that if the teacher is still able to find employment, the teacher has no basis for a legal complaint against the employer.

If the teacher was not able to find work, but the cause of flight by the employer was unavoidable, the following conditions apply according to most authorities: 1) If the teacher had begun his teaching with the understanding that there were impending circumstances of danger, e.g. plague, pogrom, the loss would be sustained by the teacher. 2) If neither the employer nor the teacher knew of these circumstances, it is still the teacher's loss. 3) If the employer did have knowledge of a plague or pogrom, but the teacher did not know because he was a stranger in the city, the employer sustains the loss.

The employer's actions rather than the employee's are

taken into account in the above responsum. There is no question of the employee's loss of employment, because of flight due to dangerous circumstances. Section 334:1 of Hilkhot Sekhirat Poalim contains laws pertaining to the responsibility of the employee to the worker on the occasion of an uncontrollable circumstance leading to loss of employment. Caro uses the example of workers who are hired to water certain fields, but the river from which the water is ordinarily drawn has changed its course making it impossible to do the job. If the employee and employer had knowledge of this, then the employee sustains the loss as did the teacher when he and his employer knew of an approaching danger before beginning the work.

If the employee was unaware of the characteristics of the river, and the employer did know, the employer pays his worker under the conditions set for an idled worker, that is, less than an ordinary wage, but compensation for lost time.

Isserles, in his gloss, generalizes the specifics contained in Shulchan Aruch. He refers the reader to Choshen Mishpat 321:1-2, which deals with obligations in the face of general calamities. However, he warns that the worker should specify all conditions before beginning his work in order that he will be fully protected: "If the employees fled due to a change of air (an epidemic), as in any unavoidable circumstance, the worker or the teacher sustain

the loss of his wage." Neither Isserles nor Caro include in their prescriptions permission for the employer to dismiss the worker in a case where he flees during an unforeseen dangerous circumstance.

Moellin depends solely on the teachings of Rabbotenu, "my teachers" whom he does not identify, and on Perek Ha'Omanim, chapter 6 of Baba Metzia. Of course, Moellin does not rely on the Shulchan Aruch since he is prior to Caro's code.

In a second responsum by the MaHaRiL, 97, the question is asked about the possibility of a single individual preventing another from taking a public position, in this case, that of hazzan, if the community already accepted the candidate.

A Rabbi Simcha,⁽⁹⁾ had taught that the entire community must be in agreement over a public official, a hazzan or a shliach sibur. There was a general practice in the Rhine region that a minority could overrule a majority, but Moellin admits, he had never asked his teachers about the matter. However, he believed that it was a law founded on the Toratic text. As proofs for the responsum, MaHaRiL does not use any other sources except Talmud, a "baraitha", and an explanation by Rashi.

If the community accepted the public official at first, and later did not want him, he cannot be removed, if a charge of negligence against him cannot be proved.

Sekhirat Poalim does not discuss this problem.

In Teshuvot Ha-RaMA 50, Moses Isserles is concerned with the employer or employee withdrawing from a contract. Using Baba Metzia 76 Isserles states that both the employer and employee may renege on the work to be done as long as the employee has not begun his work. Once the work has begun, neither party may withdraw from the work situation, but this is not necessarily the case in which the RaSh is cited. That is, if the employees have started and have not tarried and are idle, and still can find work, the employees cannot take any civil action against the employer. If the employees had not begun work, and they were detained so long by the employer that they would not be able to find work elsewhere, the employer must pay them as idled workers because he had caused them a loss.

The concept developing is similar to the contemporary union hall. If the employees were able to go to the "hiring hall", and find work, the employer does not owe the employees any wages, but if there is no work, then he must pay them as long as they had not begun the employer's work. If the employees were retained by the employer without having started their work and then they go to the "hiring hall", and find that there is no one there to hire them, the employer is responsible for their wages.

Another case where the employee did not go out to get work, and even if he had, he would not have been able to

secure a job, the employer must pay the employee as an idled worker. If, however, the employee did have work, but had wasted time, then had decided to try to find another job, if all the jobs were taken, the employer bore no obligation to pay the employee.

In a case where the average wage is three pounds, and the employer gives the employee four pounds, the wage of four pounds is secured on condition that the employee has begun his work. If the work is stopped, then the employee must be able to find other work of equal value, in order for the employer not to have to pay him as an idled worker.

If the employee does find work, but below the value of the original work, the first employer must pay the employee the difference. Thus, the employee receives in total what the first employer would have paid. All of the above were decided upon by R. Asher.

Isserles then declares that the law governing the teacher is like that which governs the worker. His sources are Alfasi, R. Asher, the Tosafists, and Mordecai ben Hillel.

The Mordecai writes about a group of people who hired a teacher, and then wanted to renege even before he had begun his work. The Mordecai decides that they may not renege on the contract. Similarly, a group of community representatives who hire a teacher may not renege.

The Mordecai also rules that a rabbi who interprets the law is under the legal rubric of a teacher. These decisions are based on responsa of Nachmanides, and of Rabbi Meir of Padua.

Isserles does not accept these notions. Rather, he believes that there is a difference between a teacher and a Posek Ha'ir. He says that the teacher is not subject to the conditions of an idled worker, since a teacher's skill decreases when he is out of work, but a rav's does not. This is because his work is based on prior memorization. The teacher always has to be paid in full because the cancellation of his work will always cause him unrecoverable loss.

If there were unforeseeable circumstances that caused the community leaders to renege on the hiring of the teacher, it becomes the teacher's loss.

From the MaHaRiL's responsum 31, and from the MaHaRaM's 86, Isserles cites passages stating that in the event of unforeseeable circumstances, the employee sustains the loss. However, in the Mordecai and R. Asher, it states that if the community officials renege due to the eventuality of a plague, the loss is sustained by the employer, because they have reneged in violation of the law. The responsum is primarily concerned with the employer's obligations to his employee.

Not all of the issues in the responsum are dealt with

in the Shulchan Aruch and in Isserles' glosses, but it is possible to isolate the following issues from the responsum with which the text is concerned:

Isserles' used Baba Metzia 76 as the basis for the right of either the employer or the employee to renege on a contract as long as the employee had not begun his work. In Choshen Mishpat 333:1-2, there are similar dicta. The statement by R. Asher about employees who have not begun work and have been detained by the employer until they cannot find other work is recorded as law in 333:2.

Another statement of R. Asher found in the RaMA's responsum is paralleled in 333:2, which decides that the employer must pay the difference in wages to the employees if they find work at a lower wage. If they were to find work at an equivalent wage, the former employer would no longer be obligated to the employee to pay any of his wage.

In Isserles' gloss to Choshen Mishpat 333:5, he reiterates his declaration that the law governing the teacher is like that which governs the worker in the limitation of working hours, and if he has hired himself out for a time period. He does not cite his gloss as a source in the responsum, but credits earlier decisions previously mentioned as the sources for his statements. However, since the glosses are the codified end product of the RaMA's studies, this is not surprising.

Isserles, in his responsum, rules that a teacher is

not subject to the conditions specified for an idled worker. This ruling contradicted the Mordecai, because a teacher's skill weakens if he is unemployed. This decision he codified in a gloss found in Choshen Mishpat 335:1. However, he adds that if the teacher enjoys his idleness more than his teaching then he will be treated as an idled worker. There is a further parallel in Shulchan Aruch and Choshen Mishpat 334:1 by Caro and Isserles already discussed in reference to responsum 41 of the MaHaRiL, which relates to Isserles' statement on the employer's obligations in the case of an unforeseeable circumstance that prevents the continuation of employment. Isserles however, quotes it in the responsum in MaHaRiL's 41 and MaHaRaH of Padua's 86.

The eighteenth century respondent Meir Margolioth wrote in his collection of responsa, Meir Netivim, in Section I, number 33 about an individual who read from the Torah regularly. He was also a slaughterer and a ritual examiner. Because he had failed to examine some animals properly, the congregation replaced him with someone else. Due to this, he was also replaced as reader of the Torah, and a second person had already been secured to read the Torah for several Sabbaths. The ex-slaughterer desired to return to the work of reading on the grounds that he had the job first. The congregation did not want him to return.

The respondent proceeds to give his decision immediately. If the first individual is not desired by the whole or the majority of the congregation, then certainly the congregation is permitted to replace him with whomever they desire.

Margolioth paraphrases two passages from Shulchan

Aruch:

אמרו זקנים שמואל קראו קוראין מן התורה
 וס"ת אין להם כח ליתן במצות לאבות.
 (אולם דין, אולם ח"י)
 (קטל, סדיף כי)
 מ' אמר דקראו דמ"כ ימ"ק דר"ק אין בבידו
 (אולם ח"י, קטל, סדיף כי)
 (אולם ח"י, קטל, סדיף כי)

which seem to indicate the ex-slaughterer's right to continue to be Torah reader. However, Margolioth links the work of Torah reader to that of hazzan or shelihei zibbur. Thus, if a congregation no longer desires an individual to be the hazzan, although he had been one of the shelihei zibbur, he may not serve against the congregation's will. The respondent relies on Shulchan Aruch, Orah Hayyim for the following conclusion:

דיחיד סדרו נסבין על ס"ל אינו יכול לדרש
 עליו אחר כן. ס"ל דרשן יכולין לדרש אכילו אחר
 נסבין עליו.

Meir Margolioth cites the MallaRiL's responsum 42 explaining that a hazzan may not be released and another hired if there was an impropriety on the hazzan's part. Despite an agreement with a second hazzan, the congrega-

tion may have contracted, he may not be hired although he may have begun to conduct worship. Specifically, a few congregants may not withdraw an agreement, but a majority may remove a person despite a former agreement.

The discussion then proceeds as to what constitutes several individuals and what is a majority. In a small town where ten is the quorum, five individuals may be considered a majority, whereas a larger town divided will not be a large enough consensus to control proceedings. The HallaRil said that in a small town four individuals would be enough to withdraw an agreement.

The ba'al kri'ah is likened to shelihei zibbur. According to the responsa Keneset Yechezkel and Emunot Shemuel, the role of Moses at Sinai is transferred to the ba'al kri'ah when he reads the Torah; therefore the whole congregation should desire him.

The question of removal of a hazzan from his position should be based on his reading skill, ability to sing sweetly, but certainly a hazzan need not be retained because he did a mitzvah in the past.

From the Magen Abraham to Shulchan Aruch, Orah Hayyim Meir Margoliot extracts the decision that if the position were a paid position, the person could be removed. On the basis of a statement by R. Shlomo Luria, it is understood that a majority may remove an individual from his position where an equally divided community cannot.

Margolioth then points to examples of congregations which had hired and removed sextons and cantors without giving few or any reasons. Yet, in Mantua, Italy a shelihei zibbur became the enemy of one member of the congregation, and could not be removed. This illustrates that an individual's objection is not sufficient to fire a shelihei zibbur. Only a majority may do this.

In the responsa from Meir Netivim, references are made to the Shulchan Aruch. At one time the citation substantiates the respondent's argument and another time it was used as an example contradicting the respondent's thesis that the congregation may appoint whomever they want. However, the individuals in the responsa were not hired functionaries, but rather were volunteers who served at the will of a congregation without wages.

Since the case involves one who works gratis, and deals with those who serve congregations, Hilkhot Sekhivat Poalim do not apply.

Chapter IV

The Sephardic Respondents

Abraham di Boton of Smyrna wrote the Lehem Rav, a work that reflects the halachic problems faced in sixteenth and early seventeenth century Sephardic world. Not unlike an earlier Ashkenazic responsum, the question in responsum 2 involves the retaining of a hazzan.

A congregation has had a hazzan for some time who has been accepted on a permanent basis, and has been found to be competent in his duties. Now, the majority of the congregation no longer wishes him to serve, whereas a small number want him to remain. The majority replaced him with one of their relatives who was a resident of the city. May the minority force the majority to retain the former hazzan because the whole congregation had made an agreement with him in the very beginning? Those who asked this question quoted Levi ibn Habib, who said that anyone who is morally and religiously satisfactory in a position should not be penalized. Also, no community should be forced to hire someone they do not want in order to preserve a sense of kinship within the community. However, this is an ethical, rather than legal prescription.

Di Boton opens his response by citing the Beit Yosef, Orah Hayyim, which quotes Solomon b. Adret. Adret's opinion is that the only reason for depriving a hazzan of

his position is religious and moral deficiency. Quoting the Talmud,⁽¹⁾ Adret wrote that institutions and by extrapolation, individuals should be maintained in their positions so no one will suspect them of sinful behavior or conditions. Thus, the hazzan should be kept. However, where the custom of transferring authority from one person to another is accepted without arousing such suspicion, this concern is no longer valid, and the hazzan could be fired. Nevertheless, even if the concern for arousing suspicions is removed, the statement by Levi ibn Hlabib holds in this case, and the hazzan should be kept. However, the Lehem Rav does not necessarily agree that the hazzan should not be released from his job. One must consider that the situation of each generation, Adret's compared to Hlabib's, changes. Nevertheless, he sides with the older position that posits that as long as there are contracts or tenure for hazzanim, releasing them from these agreements would make them suspect, and thus the first hazzan's integrity is put into question unfairly.

According to Rabbenu Simcha, one of the ba'alei tosafot, one person's objection to a matter is sufficient to reject an alternate condition; therefore, his views would agree with the position that the minority has the power to veto the hiring of the second hazzan. This position is also supported by R. Joseph Colon. Opposed to this position is R. Meir of Rothenburg in Teshuvot

Maimuniot to the Mishneh Torah, Kinyan, 24. There the concept of setting up a hiring council for public servants by the community is introduced. Such an institution would render the minority's objection invalid. R. Meir indicates that those who would sit on such a council would be from the taxed, and therefore prosperous segment of the community.

Although the procedure suggested by R. Meir is useful in helping the community to run smoothly, nevertheless, the view of Rabbenu Simcha should be strongly considered. The respondent's teacher, unidentified in the text, wrote in his own book of responsa 279, that a hazzan who was originally selected by the entire congregation and who was not found morally or religiously deficient, could not be removed from his position.

The Lehem Rav closes with the opinion that the only time a majority may remove the hazzan is if the hazzan was guilty of some impropriety. If the minority is not aware of the flaw in the hazzan's personality, and objects, then they may be overlooked. Otherwise, there is no reason to embarrass the hazzan by removing him from office.

The discussion continues with an attempt to identify "the majority". Is the majority to which the questioner refers, composed of only the wealthy who pay for the community's institutions, or is the majority made up of all the people in the kehillah?

The Lehem Rav decides that if the majority is composed

of the moneyed class who have additional rights due to their subsidizing the community's institutions, then both hazzanim should be hired.

In the Lehem Rav, responsum 4, a congregation hired a teacher for a complete year on the condition that they would not retire him. If they did renege, they agreed to give him his complete wage. The hiring party agreed to give him his complete wage. The hiring party agreed to be bound by

לְנִדּוּי, הֶרֶם, וְשִׁמְיָה (niddui, herem, and sh'mita)

i.e. excommunication in the case of non-fulfillment of the contract. The conditions were also adopted according to the halachic requirements par excellent, that is by means of a kinyan. Now, the congregation does not want the teacher to instruct the children of the congregation. Our rabbis ruled that the congregation is obligated to pay for the year after there were the conditions that he would teach the children for a complete year, and if they do not pay, there will be a ban imposed.

Lehem Rav opens with a quote in the name of Rabbenu Joel from Jacob b. Asher's, Tur, Choshen Mishpat 336, where it states that whoever hires a teacher for his son, and the son is ill with a malady common to him, the teacher's wage shall be the responsibility of the employer who must assume the cost even to his own loss. The teacher is not to be paid as an idled worker on the grounds that every teacher of Torah loses his skill when not engaged in his profession.

This is based on the idea that money paid to an idled porter is not that of an idled laborer, since he gets out of condition if he is not working.⁽²⁾ From this, it is learned that because the congregation had hired him as a teacher for a year, and reneged, they should give him his whole wage in full, not as an idled worker. Although the congregation had not hired him with a validating act of acquisition (kinyan), this makes no difference. Since the teacher began his work it is as if he had been fully contracted with a kinyan. The proof for this is found in the Tur 333, where it states that the employee is not paid when the employee has not begun his work. But if he had begun his work, the employer may not renege. Although the Tur rules that the worker is paid as an idled worker, still the teacher is to be paid his whole wage for the reasons given earlier.

A case in which the Lehem Rav rendered a decision about a scholar who was dismissed from his position before the end of his contract is cited. In this case, he decided that the scholar was entitled to his whole wage. His decision was supported by the other rabbis of his city including the chief rabbi.

In the case, the scholar's employers assumed that there would be a difference between paying one who carries a heavy load and one who carries little or none at all. Thus, they reasoned if they lessened the scholar's responsibilities, they would pay him less. The scholar became upset. The employer cited in the Beit Yosef to Tur 333, where Adret's

opinion is quoted in relation to a case where members of a community hired a scholar to be a lecturer who was unhappy in his position. Citing תרמ"ד ס'א"ק קנ"ה, Adret claimed that they could pay the scholar as an idled worker if the court decided that he was troubled. Disagreeing with the employers' premises, the Lehem Rav contended that Adret was talking about a teacher of children who was a little upset. A scholar who teaches Torah, מרביץ תורה, and is a lecturer is different from one who teaches children. If the scholar enjoys explaining Torah to the members of the community, and he had been hired by the community for that specific purpose, the community may not change his duties.

From the above case, the Lehem Rav writes that a congregation could use Adret's case as precedent since the evidence was accepted in a court in the case of a teacher. Because there had been a judgment rendered in Adret's case, the court could use the case as precedent, and if it can be shown to the court that the teacher became upset, then they could pay him as an idled worker.

If from the very beginning the congregation stated that upon reneging they would pay him his whole wage, they are then obligated to do so. This is as it had already been explained where a rav is hired to teach ten children for two pounds as stated in Beit Yosef 333. If the congregation had not made such an agreement, then the Lehem Rav concludes that they are bound to pay his whole wage by the agreement

to excommunication.

Di Boton does not use the Shulchan Aruch as a text as discussed in responsum 2 from which to cite laws and on which to base his decisions, but it is plain that he has no aversion to using codes. In responsum 4, the Tur of Jacob ben Asher, and the Beit Yosef compiled by Joseph Caro, are used as legal references. The sections used may also be found in Shulchan Aruch in Hilkhos Sekhirat Poalim.

"Whoever hired a teacher for his son and the student became ill...and it is regular for the child to be ill... it is the employer's loss, and he must pay the complete wages", is taken from Choshen Mishpat 334:4, edited to parallel Rabbenu Joel's words in the Tur. In Shulchan Aruch there are other conditions: 1) if the teacher is aware of the student's illness, whether the illness is chronic or only temporary, the teacher is not paid. It is his loss, and 2) only when it is regular for the child to be ill, and the teacher is not aware of the student's condition, is the employer required to pay the teacher his complete wages, and accept the loss. Choshen Mishpat 335 in Isserles' gloss explains that the teacher is entitled to his whole wage, but not as an idled worker. This is because a teacher who is not working becomes weak in his teaching skills. This statement parallels the opinion cited by di Boton, from the Tur.

The question of consummating a deal with a kinyan, is not treated in Shulchan Aruch in the section concerning the

laws of hiring an employee.

The passage from the Tur 333 cited to show that the employer has special obligations to the employee when the employee begins his work, is paralleled in Shulchan Aruch, Section 333. In Section 333 the laws governing the conditions of withdrawal by the worker are reviewed.

Whereas di Botton was able to conclude in his responsum that the employer may not renege on full salary if the employee has begun his work, the same cannot be concluded from the passage in Shulchan Aruch. The only responsibility that the employer has to the employee in the passage from Shulchan Aruch is to pay the employee as an idled worker if the work promised is cancelled and if the employee is no longer able to obtain another job at the original wage.

In Choshen Mishpat 333:8 of the same section, it is required that one who contracts an artisan to create an article for him is obligated to take it. Isserles' gloss to the same paragraph reviews the prohibition of either a teacher or an employer of a teacher to renege on an agreement, since the employer's responsibility to his son is one he may not break. On the same basis he may rescind an order for the teacher to leave if he had earlier told him to do so, because of his obligation to his child.

Beyond the conditions stated above, the laws of employment do not restrain the employer from refusal to pay a

full wage if the employee had begun his work as di Boton had cited from the Tur.

The Lehem Rav refrains from referring to Shulchan Aruch although he does use the Tur and Caro's Beit Yosef. From the Tur, di Boton cites a law; from the Beit Yosef, a responsum used in the text. (The Shulchan Aruch without Isserles' glosses, contains no sources, and this characteristic alone may have created di Boton's aversion to citing the text)

Haim Ben Israel Benveniste of Constantinople and Smyrna published his responsa, Ba'ei Hayyei in the seventeenth century. Some responsa deal with the hiring of workers. A shoḥet (ritual slaughterer) was hired by a town council. In the contract was written that within a certain period of time, the town council might opt to hire another shoḥet. If the council did desire to hire another then they would be required to pay the shoḥet his complete wage. If the second shoḥet was hired, it was agreed that he be restrained from taking the job until the first has completed his term. However, if the first shoḥet found and started another job before the council's contract terminated, then the new shoḥet could begin his job. R. Shlomo Luria was quoted as authority for considering the new shoḥet an evil man, rasha, if the community were not dispensing with the services of the first, according to contractual agreements. (3)

From this responsum 70, it is learned that: 1) since there was a formal act of contractual consummation, a

kinyan, the shoḥet cannot be paid as an idled worker,
 2) if there is a reneging on a contract made with a kinyan,
 the whole salary must be paid, even if no work was done,
 3) if the second person shows up when the services of the
 first are nearly completed, the second person is not impin-
 ging upon the rights of the first, according to the letter
 of the law, and 4) if the second shoḥet arrives even after
 the end of the contract of the first, if he was not solici-
 ted by the community, he may be restrained from taking the
 employment even if it is then offered him. This restraint
 is grounded in the assumption that the second shoḥet is
 being considered a rasha.

The dynamics of this case are not reviewed in the
Shulchan Aruch at all. Beneviste in another response,
Ba'ei Hayyei 219, deals with the following case.

A plague befell a city during the time a secretary was
 already hired by his employer for fifty groshim per year.
 The secretary fled during the plague, but returned to his
 employer at its end. The employer had not spoken to the
 secretary during the year.

The secretary requested his wage from the employer,
 but received a wage only after deductions had been made
 for the period of time he had fled, because of the plague.
 The secretary claimed that the employer was obligated to
 pay the whole wage since the plague was an unforeseeable
 event, an oḥel. The employer refused to pay the addi-

tional wage. The case went before a court, and there it was decided that the employer was obligated to pay his secretary his whole wage. The employer objected on the grounds that the employee was owed only for the time he worked in the villages.

Citing R. Asher, quoted in Beit Yosef, Tur Choshen Mishpat 333, the judges answered the employer's objections. The employer contended that the court's interpretation of R. Asher from the Beit Yosef was not correct. The writer requested that Benveniste prove that the decision was incorrect since R. Asher's statement was misinterpreted by the Beit Yosef.

In his responsum 219, Benveniste refers to Kiddushin, and states that the judges in the above case did not understand R. Asher. The Beit Yosef understood the text as it knew from the Tur Choshen Mishpat 333.⁽⁴⁾ The court then decided in favor of the employee because of the plague on the basis of the Beit Yosef's understanding of R. Asher.

Benveniste proceeds to describe four different approaches to the problem as treated by the Meir of Rothenburg, the R. Asher, and Tosafot.

Meir of Rothenburg regarded the law of the employee and the eved ivri, the Hebrew servant, as similar. Therefore, if an individual became sick at the beginning or the end of his job, he received his wages, just as the Hebrew slave went free after six years even if he had been inca-

pacitated during them. If the employee worked three days, and was sick for three more days, he should receive his complete wage. Benveniste noted that Meir of Rothenburg retracted this view later.

After he retracted the above, Benveniste reported that R. Meir wrote that there was still the following relationship between the employee and the eved ivri. Where the employer had paid the employee in full, he may not take back any part of the wage. In the case where the employer had not paid the employee in full, he only pays the employer what he had earned.

R. Asher extends those conditions that apply to the Hebrew servant to the employee only when the employee is ill the first three days and has worked the next three, since the Talmudic case of the eved ivri speaks of three years' work and three years' sickness. In this case the employer would pay for only the days the employee had worked. If the employee did work the first three days, and was ill on the last three days, then the employer would be obligated to pay the employee his whole wage. The same would be true if the eved ivri had worked the first three years and then been taken ill. He would then be manumitted.

There is no connection seen by the Tosafot between the Hebrew servant and the employee. Therefore, the employer pays the employee only for the work he has done.

Benveniste comments that the judges should not have

depended on the Tur since it did not record the conflicting opinions. Why then, accept R. Asher against two dissenting authorities? The law following the majority is normative halachic procedure. Further, in what case should the opinion of R. Asher apply? Only when the unforeseeable circumstance or illness incapacitates the worker, but not when an external circumstance prevents him from him doing his work. The Talmud, Benveniste comments, does not instruct a worker to run, but to find other ways of doing the work whether it be in the house or if he had to leave for another city.

The MaHaRaM of Padua, in his responsa 86, is of the opinion that if neither the employer nor the employee knew of the impending dangerous circumstance, then the employee must suffer the loss. The RaMA further opined that if the employee is the first one to withdraw, even in an unavoidable circumstance, the employee loses his wage.

Benveniste writes that the only time that the employer would be required to pay for a circumstance that was unforeseeable would be if it lasted only a few days, and not a long time. Then the employee would be granted "sick pay". Unless it was contractually stated otherwise, an illness of long duration would not be recompensed.

The judges again are criticized for not knowing even the basics of the halacha. Benveniste decided in the case that if the employer had not already paid the whole wage to the secretary, then it would not be necessary for the

employer to pay it.

One is aware of Benveniste's criticism of the judges. Benveniste regards them as virtually incompetent since they put their trust in the Tur, and failed to understand it properly because they did not refer to Talmud and its sources. It could be expected that his respect for the Shulchan Aruch would be no higher than for any other code used as a legal source to support a decision.

The Shulchan Aruch's position on the withdrawal of services by an employee in the case of an uncontrollable circumstance, and his employer's responsibility is found in Choshen Mishpat 333. Neither Joseph Caro nor Moses Isserles in his gloss compare the employee to the Hebrew servant.

In Choshen Mishpat 333:5, the law states that the employee may withdraw his services in the case of sickness or the death of a relative. Isserles extends the condition of sickness to include, him, his wife, or his children, as well as the death of a relative. Isserles also rules that the employee should be paid only for what work he has done, not the whole wage. This is based on R. Asher, Rashi, and Tur. However, if either party reneged because of an unforeseeable circumstance, and later returned to complete the work, the employer is obligated to pay full wages.⁽⁵⁾ If the worker did not return, continues Isserles, or he did not complete the work, the employer can deduct all of the employee's sick days or the days when he could not work.

(This applies as well, to the employee who did not renege)⁽⁶⁾ This law also applies to teachers who become ill. Their sick days are deducted.⁽⁷⁾ The law here parallels the citation from Tosafot in the responsum.

Isserles in Shulchan Aruch, Choshen Mishpat 334:1, writes that if neither the employer nor the employee knew of the unavoidable circumstance, the loss is sustained by the employee.⁽⁸⁾ This statement agrees with Benveniste's citation of the MallaRaM of Padua in the responsum.

Benveniste cites the RaMA as ruling that an employee sustains a loss if he is the first to renege, even during a dangerous or unavoidable circumstance. Isserles cites his source in his gloss to Shulchan Aruch as a responsum of the R. Jacob Ha-Levi Moellin, 41, and the MaHaRam of Padua, 86 (same source cited by Benveniste)⁽⁹⁾

Benveniste's decision corresponds with Isserles' statement Choshen Mishpat 333:5, where he writes that if the worker or the teacher has already received his pay, it is not necessary for him to return it.⁽¹⁰⁾ It is similarly understood that if the sick pay had not been paid, the employer is not obligated to pay it. What is notable is that though many parallels to Benveniste's decision exist in the Shulchan Aruch, he hardly used the work in arriving at it.

Jacob ben Naim of Smyrna wrote in his late eighteenth century responsa collection Zera Ya'akov, of the responsibility of an employee who has been hired as a messenger to

carry money from one place to another to be exchanged for wares, and who has been robbed.

In responsum 25, ben Naim cites Teshuvot Ginat Veradim to Choshen Mishpat, responsum 1. The respondent Ibn Ḥabib states that messengers transporting another's wares from one place to another are not required to remain all night for the purpose of guarding the wares. However, if wares are sent to a warehouse for the purpose of storage, the total guarding of the wares is the extent of the owner's responsibility. In ibn Ḥabib's second responsum he states that the later decisions held that the responsibilities of the messenger and warehouseman, as described earlier, apply only to a situation where there has been a robbery.

Naim insists that the cases cited in ibn Ḥabib's responsa do not parallel his case since the messenger involved was not carrying wares, but money. Since the messenger is permitted to use the money for the purchase of wares, it is his full responsibility, particularly if they are stolen. The messenger is not freed from his responsibility until the money is exchange for wares.

No decision had to be rendered because the parties settled their differences extra-legally in the end at the suggestion of the rabbinic authorities.

The dynamics of the case and the responsibility of the employee to his employer are not discussed in Hilkhot Sekhirat Poalim. The only point of relation to Hilkhot

Sekhirat Poalim is the law of unavoidable or uncontrollable circumstances. Generally this is defined in terms of sickness, plague or death. Is it also an אונס when an individual is held up by robbers? And what about his salary?

The employee is involved in doing his work whether he is a day worker or a contractor. He is considered fully responsible since he is given the right to make purchases. This makes him a sho'el, a borrower, in a sense.

If the employer had previous knowledge that there may be danger in traveling a certain road whereas the employee had none, then in this case, the employer would owe the employee his wages. If both knew of the danger, then the employee would not be allowed to collect. There is no discussion of the responsibility of the employee toward the materials for which he has been hired to carry in Sekhirat Poalim.

Chapter V

Conclusion

Prior to the Shulchan Aruch, decisions by a respondent were usually based on Talmud and other responsa. In the responsa by Rabbenu Gershom, the decisions were based on references to Talmud alone and his ability to create his own legal assumptions. This was due to the fact that this was all that was available to him. Availability of new material, especially as the literature grew among the Rishonim, Ba'alei Tosafot, and later authorities, provided new bases for halachic decisions. This is reflected in Jacob Moellin who also wrote prior to the Shulchan Aruch. He wrote in his responsum 41 that his statements were in accordance with "our teachers", probably referring to the Ba'alei Tosafot. Moellin also depended upon the Talmud, the Tosafists, a baraitha, Rashi, and his own judgment for his decisions rendered in his responsa 41 and 97.

Similarly, in the responsum of Isserles, which is concurrent with the Shulchan Aruch for which he wrote the Mappah, the decisions were based on Talmud, R. Asher, Alfasi, and Mordecai ben Hillel, the responsa of R. Meir of Rothenburg, and Jacob Moellin. Again, we see that with the growth of the literature, new sources for halachic decisions became available. Further, a decision extracted from the Mordecai used as a proof-text in the responsum was based on the responsa of Nachmanides and Rabbi Meir of Padua.

Of all the Ashkenazic respondents reported here, only Meir Margolioth of Ostrog lived after the Shulchan Aruch. Meir Margolioth whose responsa, Meir Netivim were written in the eighteenth century, did use the Shulchan Aruch almost exclusively in the responsum with which I have dealt. In responsum 33, he paraphrases two passages from the Shulchan Aruch. One he uses to support a point, and the other, he rejects as being non-applicable. He also uses responsa from Jacob Moellin, Ychezkel Katzenellenbogen's Kenesset Yehezkel and Emunot Shemuel.

Very little can be said about Isserles since his views are well represented in the Shulchan Aruch through his Mappah. By having used the opinions of the Alfasi, an eleventh century North African respondent, Isserles evidences some acceptance of Sephardic halachists. Isserles did not use the Shulchan Aruch in his responsum, because he probably did not accept it as a code, but only as a guide to Caro's earlier work, Beit Yosef. Although he may not have accepted it as a code, he nevertheless made sure to include the Ashkenazic view of halacha in it.

Meir Margolioth of Ostrog, briefly reviewed in the second chapter, lived in a world in upheaval. Hasidism, a movement of which Meir Margolioth was a part, arose out of this world in which Jews were not able to accept their poverty and discomfort. Perhaps, the Shulchan Aruch was accepted as a code of law, because of the anti-nomianism that

appeared with the rise of Hasidism providing a security that nothing else could. The Hasidim who were at odds with the Mitnagdim may have found the Shulchan Aruch an acceptable halachic source instead of relying upon the legal sources of the established order.

All the respondents from the Sephardic world in this thesis wrote after the Shulchan Aruch. Therefore, it is possible to examine its effect upon their responsa.

The late sixteenth respondent Abraham di Botton uses Solomon Adret's citing of the Talmud as quoted in the Beit Yosef, Rabbenu Simcha, one of the Ba'alei Tosafot, and Rabbi Joseph Colon, renowned fifteenth century Italian talmudist and respondent. Interestingly, di Botton accepts the opinion of R. Meir of Rothenburg in Teshuvot Maimuniot to the Mishneh Torah over those already mentioned. In another responsum, Rabbenu Joel is quoted from the Tur, and the Tur itself are used by di Botton as prooftexts.

Haim ben Israel Benveniste, seventeenth century respondent, quoted R. Shlomo Luria in one responsum, and refers to Talmud in order to straighten out a legal misinterpretation. The interpretation was rendered by a court whose ruling is challenged in the responsum. In the same responsum, Benveniste examines the views of R. Meir of Rothenburg, R. Asher, the Tosafot, the Talmud, and the responsa of both Katzenellenbogen (MallaRaM of Padua) and Isserles.

Finally, the late eighteenth century author of Zera

Ya'akov, Jacob ben Naim cites in his responsum, ibn Habib's Teshuvot Ginat Veradim, which serves as the full source for his decision.

Among the Sephardic responsa, it can be seen that most of the source material is from the Sephardic world. The use of the Tur illustrates respect for the halacha of both the Ashkenazic and Sephardic traditions, because it came from a hybrid tradition originating in the school of Meir Of Rothenburg.

Meir of Rothenburg (1215-1293) sought to complement the Sephardic tradition with the Ashkenazic as evidenced in Teshuvot Mamuniot, the work of his disciple, Meir Ha-Kohen. Meir of Rothenburg collected the sections of Maimonides' Mishneh Torah, and added to them decisions rendered by French and German authorities. Thus, he created a relationship between the two traditions.⁽¹⁾

Meir of Rothenburg's practice of including other traditions was adopted by his students, one of whom was Mordecai ben Hillel, author of Sefer Mordecai.⁽²⁾ The Mordecai, like Ha-Kohen's Maimuniot, was an attempt to relate the Ashkenazic and Sephardic traditions. Ben Hillel wrote his commentary to the halachot of Sephardic commentator and respondent Alfasi (1013-1103). There, ben Hillel tried to complement the work by introducing the Ashkenazic tradition to the Sephardic tradition.

Rabbenu Asher, one of the Ba'alei Tosafot, and father of the author of the Tur, Jacob b. Asher, was also a product

of Rothenberg's school. He left the Ashkenazic world for Spain and took with him the Ashkenazic tradition, probably hoping to spread its influence. In Spain, his son Jacob compiled the Tur, which is an integration of the Sephardic and Ashkenazic halachic experience.

The exchange of the traditions did not end with those works already mentioned. The Sephardic tradition of Maimonides and Alfasi, as seen in the Maimuniot and the Mordecai, respectively, influenced Luria, Isserles, and others in the Ashkenazic tradition.⁽³⁾ In sum, Meir of Rothenburg's school influenced the decisions of both the Ashkenazic and Sephardic worlds.⁽⁴⁾

Joseph Caro in his introduction to the Shulchan Aruch had written that his work was only to be a guide to his commentary on the Tur, the Beit Yosef. Apparently, some individuals disregarded Caro's statement as can be seen by the ShaKh's and the TaZ's acceptance of the Shulchan Aruch as final authority for halacha. There is also evidence in the responsum of Meir Margolioth, reviewed in the third chapter, that the Shulchan Aruch was becoming accepted as an authority. Members of the Sephardic world were perhaps more cautious in their acceptance of the Shulchan Aruch for the purpose of stating halacha than were those of the Ashkenazic world. All the Sephardic respondents wrote after the Shulchan Aruch, yet none used the Shulchan Aruch as source of halacha. Their choice of responsa for prooftexts may reflect

the attitude that responsa are superior to the code literature, because they dealt with a fluid reality. A code could never as directly confront such situations. This notion is found clearly expressed by Moellin.⁽⁵⁾ Benveniste's chastisement of the judges in his responsum 219, for having depended upon the Tur reveals his attitude toward the use of a code. He felt that the Tur did not record the conflicting opinions. The dependence on a code, therefore, restricted the number of legal options open to the court, and thus, they misjudged the case.

Another reason the Sephardic respondents may have spurned the Shulchan Aruch as an authoritative text, was that they may have accepted it only as a guide to the Beit Yosef. Aside from the reality factor mentioned above, some just may have viewed the text as Caro had, and therefore, felt it improper to be used for anything else.

In the Ashkenazic and Sephardic responsa certain types of occupations occurred more often than others. The majority of cases involved teachers, ritual slaughterers, and hazzanim. In one case, there was a messenger and in another, a secretary. None of the responsa was concerned with occupations that may have been included in guilds. Teachers, ritual slaughterers, and hazzanim were usually hired by communities, and were subject to their caprice. Messengers and secretaries, since they were both unskilled or non-craft occupations, would probably not be controlled by a guild. Guilds

would ordinarily have individuals who were self-employed, and would employ no others, while those occupations in the responsa were subject to being hired by others.

It is difficult to explain the reason for particular occupations occurring in the literature while others did not by attributing the reason to one institution. But there were institutions which controlled the labor scene that operated during the times of the respondents. Again, the presence of these institutions cannot explain every instance.

One institution that was in existence during the eleventh, twelfth and thirteenth centuries was the Herem Hayyishub which restricted the number of craftsmen in a town, and controlled their activities.⁽⁶⁾ Although known in Germany and Central Europe, the Herem Hayyishub was unknown in Spain.⁽⁷⁾

Since the Herem Hayyishub was established to protect trade and to establish a town monopoly, certain people were exempt: 1) rabbis, 2) students, 3) personal servants, 4) ones who possessed money, but did no business, 5) wholesale traders, and 6) refugees.⁽⁸⁾ If a question did arise concerning a profession involved in the Herem Hayyishub, the subject of the responsum would be the application of the Herem Hayyishub, not the profession itself. The institution, in a sense, covered the employer and employee relationship. Therefore, there would be no question of an actual employer and employee relationship.

Rabbenu Gershom of Mainz made rulings on the Herem

Hayyishub regarding artisans⁽⁹⁾, therefore his knowledge of the institution would mean he probably accepted the exemptions aforementioned. He dealt with the exempted occupations in his responsa probably because they had no other institution to which to turn for complaints against or by employers. Rabinowitz compares the Herem Hayyishub, with the guild, and seems satisfied with the explanation that although they influenced each other, the Herem Hayyishub appeared first.⁽¹⁰⁾

The guild survived the Herem Hayyishub. In seventeenth century Germany, trade disputes in a guild situation would be settled within the guild.⁽¹¹⁾ Guilds had their own rabbis.⁽¹²⁾ This information suggests that guild professions would not question the authority of their guilds, thereby restricting their complaints to local jurisdiction. Guilds were made up of individuals where employer-employee problems would probably not occur, as already mentioned.

Whereas the Herem Hayyishub did not exist in the Sephardic countries of Provence, Spain, Turkey and Greece, the guild system did. In fact, some Jewish guilds were so strong that they successfully competed with the Christian guilds.⁽¹³⁾ There is no reason to think that the Sephardic guilds were conducted any differently from the Ashkenazic guilds where all problems would be handled within the guilds.

There is a third possibility for the occurrence of the types of occupations in the responsa that would apply principally to the early eastern European responsa. In many areas

of eastern Europe, Jews were restricted to non-craft occupations, thereby restricting their businesses to money-lending,⁽¹⁴⁾ which may have been a business that would not employ others. If this were the case, then the only other types of occupations that would be subject to an employer, whether public or private, would be teachers, ritual slaughterers, and hazzanim.

Although Choshen Mishpat and the responsa seemingly utilized different sources for the bases of their decisions, the treatment of the relationship of the employer and the employee in the literature did not seem to vary. In my judgment, only one of the cases reviewed unfairly placed responsibility on the employee. Although the messenger and his employer in Jacob ben Naim's responsum had come to a settlement, the respondent's assigning the liability to the employee seemed out of line.⁽¹⁵⁾

On the whole, the decisions rendered limited the employer's responsibility to his employee. Social benefits, as we know them, were not accorded to the employee. The employer and the employee in the halacha reviewed, are viewed as two parties entering into an agreement without either one having an advantage over the other. Once employment had begun, the employee seems to have been at an advantage, particularly in a case where an unforeseeable and unfortunate circumstance would arise.

The laws concerning the hiring of workers as viewed in

Shulchan Aruch, Choshen Mishpat 331-339, and in the above responsa per circumstance, are no less advanced than the social legislation of our day.

Notes

Introduction

1. Genesis 9:25.
2. Deuteronomy 5:15, 15:15, 16:12, 24:22.
3. Exodus 12:44, 21:1-11.
4. Leviticus 25:6.
5. Solomon B. Freehof, The Responsa Literature, (The Publication Society of America, Phila., 1959), p. 23.
6. Ibid. , pp. 35-36.

Chapter I

The Acceptance of the Shulchan Aruch

1. Chaim Tchernowitz, Toledoth Ha-Posekim, Vol. 3: The Shulhan Aruk, (The Jubilee Committee, New York, 1947), p. 29.
2. Ibid. , pp. 38-40.
3. Ibid. , p. 46.
4. Isserles was not immediately accepted by the rabbis of his generation, because he was viewed as a young upstart, but in time the Ashkenazim did turn to Isserles and came to him to settle their differences. (Tchernowitz, op. cit. , pp. 70, 72)
5. Tchernowitz, op. cit. , p. 86.
6. The Jewish Encyclopedia, "Caro, Joseph".
7. Tchernowitz, op. cit. , p. 86.
8. Ibid. , p. 105.
9. Ibid. , p. 109.
10. Ibid.

Chapter II

The Historical Background of the Respondents

1. Margolis and Marx, A History of the Jewish People, (Harper & Row, New York, 1965), p. 353.
2. Ibid. , p. 354.
3. The Jewish Encyclopedia, "Mayence".
4. Margolis & Marx, op. cit. , p. 408.
5. Encyclopedia Judaica, 12:210.
6. Margolis & Marx, op. cit. , pp. 580-581.
7. Encyclopedia Judaica, 5:1026.
8. Ibid.
9. Ibid.
10. Ibid. , 5:1027.
11. Ibid.
12. Ibid. , 5:1028.
13. Cecil Roth, A History of the Jews, (Schocken Books, New York, 1970), p. 269.
14. Encyclopedia Judaica, 5:1028.
15. Encyclopedia Judaica, 9:1082.
16. Ibid. , 9:1083.
17. The Jewish Encyclopedia, "Ostrog".
18. Margolis & Marx, op. cit. , pp. 580-581.
19. Encyclopedia Judaica, 11:66.
20. Ibid. , 9:1161.
21. The Jewish Encyclopedia, 3:339.
22. Encyclopedia Judaica, 9:1161.
23. Margolis & Marx, op. cit. , pp. 558-559.

Chapter II (continued)

24. Gershom Scholem, Sabbatai Sevi, (Princeton Univ. Press, 1973), p. 37.
25. Ibid.
26. Ibid. , p. 379.
27. Ibid. , p. 408.
28. Ibid. , p. 706.
29. Encyclopedia Judaica, 9:1161.
30. The Jewish Encyclopedia, 11:416.
31. Encyclopedia Judaica, 9:1163.
32. The Jewish Encyclopedia, 7:39.

Chapter III

The Ashkenazic Respondents

1. מאנה דלודת מ"ד צמוד ק"י: כל הנכדעין אהמורה גשרעין ולא
מלאין. ואלו גשרעין ונוטעין: נכסין, ובעל צע, והנה, ובעל צע, ובעל צע, ובעל צע
על הכרע והנה על סנקסו. הסכר כי צדל אמר לו: יתן לי סכר סכר
דיצק הנה אמר: נתי, והלא אמר: לא גאלי. והוא גאלי ונוטע. דר' יהונתן
אמר: צדל אמר: יתן לי סכר סכר, כי צדל אמר לו: יתן לי סכר סכר, כי צדל
 2. Baba Metzia 2a.
 3. מאנה דלודת מ"ד צמוד ק"י: כל הנכדעין אהמורה גשרעין ולא
מלאין. ואלו גשרעין ונוטעין: נכסין, ובעל צע, והנה, ובעל צע, ובעל צע, ובעל צע
 4. Sekhirat Poalim 332:2.
 5. Nordecai, Baba Metzia, ch. 6 citing the Yerushalmi and
the Hagahot Maimuni to Mishneh Torah, Sekhirut.
 6. תוסי ור"ל, תאודת מ"מ מו"י ס"ט קנין ס"י נ"א
 7. Solomon Eidelberg, Teshuvot HaRaMa, p. 169f.

Chapter V (continued)

5. See note no. 5 in Introduction.
6. Rabbi L. Rabinowitz, The Herem Hayyishub,
(Edward Goldston, London, 1945), p. 105.
7. Ibid. , p. 78.
8. Ibid. , pp. 35-36.
9. Ibid. , p. 28.
10. Ibid. , p. 103.
11. Ibid. , p. 129.
12. Ibid.
13. Ibid. , p. 130.
14. Ibid. , p. 9.
15. See discussion in Chapter IV.

Bibliography

Code

Caro, Joseph, Shulchan Aruch, Vol. 8: Choshen Mishpat,
E. Grossman's Publishing House, New York, 5727.

Responsa

Ben Naim, Jacob, Zerah Ya'akov.

Benveniste, Haim ben Israel, Ba'ei Hayyei.

di Boton, Abraham, Lehem Rav, Druck von Josef Fischer,
Cracow, 1884.

Isserles, Moses, Sh'elot u' Teshuvot HaRaMA, ed. Rabbi Dr.
Asher Ziev, Jerusalem, 5731.

Meir of Margolioth, Sefer Meir Netivim, published by
Rabbi A. Kohn, New York.

Me'or Ha-golah, Rabbenu Gershom, Teshuvot Rabbenu Gershom
Me'or Ha-golah, Solomon Eidelberg, Yeshiva Univ., 5716.

Moellin, Jacob, Sefer She'elot u' Teshuvot MaHaRiL,
Cremona, 1556.

Encyclopedia

Encyclopedia Judaica, 1972 ed.

The Jewish Encyclopedia, 1901-1904 ed.

The Universal Jewish Encyclopedia, 1939 ed.

Other Secondary Sources

- Cohen, Boaz, Kuntres ha-Teshuvot, Budapest, 1930.
- Freehof, Solomon B., The Responsa Literature, Jewish Publication Society, Phila., 1959.
- Hendel, Dr. M., Mal'acha u' Ba'alei Mal'acha Ba'am Yisrael, Joshua Chachik Publishers, Tel-Aviv, 5715.
- Margolis, Max L. and Marx, Alexander, A History of the Jewish People, Harper Torchbooks, Harper and Row Publishers, New York, 1965.
- Orbach, Ephraim A., Ba'alei Tosafot, Bialik Institute, Jerusalem, 1955.
- Passamaneck, Stephen M., A Handbook of Post Talmudic Halakhic Literature, Hebrew Union College-Jewish Institute of Religion, Los Angeles, 1965.
- Rabinowitz, Rabbi L., The Herem Hayyishub, Edward Goldston, London, 1945.
- Roth, Cecil, A History of the Jews, Schocker Books, New York, 1970.
- Scholem, Gershom, Sabbatai Sevi, translated by R.J. Zwi Werblowsky, Bollingen Series XCIII, Princeton University Press, 1973.
- Tchernowitz, Chaim, Toledoth Ha-Poskim, Vol. 3: The Shulhan Aruk, The Jubilee Committee, New York, 1947.
- Warhaftig, Dr. Shillel, Dinei Avodah B'Mishpat Ha-Ivri, 2 vol., Moreseth Ltd., Tel-Aviv, 1969.