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Goitein, the Geniza, and Aspects of Islamic Maritime Laws and Practices

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Abstract S. D. Goitein left a tangible contribution in many areas relating to the cultural, economic, social, political, and legal history of classical Islam. With three monumental studies—the first volume of *A Mediterranean Society*, *Letters of Medieval Jewish Traders*, and *India Traders*—and numerous academic articles, he also left an indelible imprint on our understanding of the Islamic maritime heritage, providing his readers with a comprehensive overview of this realm, which extended from the Indian Ocean littoral to the eastern shores of the Atlantic, and laying the foundations for further exploration. This essay sheds light on two aspects of Islamic admiralty and maritime law through an examination of two documents published by Goitein in 1960s. The first document is an account statement describing the methods of paying freight charges practiced by shipowners and merchants; the second is a merchant letter discussing among other commercial transactions a point of case law that emerged at journey's end in Alexandria between the agent of a ship's proprietor and the merchants/shippers with whom he had contracted. The importance of the letter lies in its relation of a rare and early instance of a ship being assigned a juridical personality and being treated as a judicial entity in order to refund the merchants and shippers on the insolvency of the vessel's owner.

Keywords Goitein · Geniza · Islam · Maritime law · *Actio in rem*

S. D. Goitein investigated in depth commercial practices and the carriage of goods by sea during the classical Geniza period in three of his monumental monographs[1] and scores of articles. In addition to the subjects that he himself analyzed on the basis of the material in the Geniza, the everyday correspondence, merchant records, and legal writs that he published contain valuable information, much of it still little used, about the actual life and practices of shipowners, seamen, shippers, and passengers at sea and the practiced maritime law found in contracts for the leasing of vessels, freight charges, taxes and tolls in the ports, general average, collision, and salvage laws.

[1] S. D. Goitein, *A Mediterranean Society: The Jewish Communities of the Arab World as Portrayed in the Documents of the Cairo Genizah*, 6 vols. (Berkeley and Los Angeles, 1967–93), and *Letters of Medieval Jewish Traders* (Princeton, NJ, 1973); S. D. Goitein and Mordechai Akiva Friedman, *India Traders of the Middle Ages: Documents from the Cairo Geniza: India Book* (Leiden, 2008). See also Mark R. Cohen, "Geniza for Islamicists, Islamic Geniza, and the 'New Cairo Geniza,'" *Harvard Middle Eastern and Islamic Review* 7 (2006): 129–45.

Goitein himself touched on the customary law of the sea—considering especially the freedom of trade and navigation, maritime piracy, and legal pluralism and judicial autonomy in the Muslim world and their effect on domestic and overseas trade. His discoveries laid the foundations for a new sphere of legal research long before the emergence of the field of Islamic maritime legal theory.[2] In order to appreciate the potential value of published documents, I briefly examine excerpts from two merchant letters from Joseph Ibn ʿAwkal's archive that Goitein made available in 1967. The first document is an account statement that sheds light on the various forms of freight charges that prevailed in the eleventh-century Islamic Mediterranean. The second describes, among other commercial details, the imprisonment of a Tunisian merchant vessel in Alexandria and the creditors' right to proceed *in rem* against the defendant, that is, the vessel and its owner.[3]

The first document is an account statement addressed to Joseph Ibn ʿAwkal by his agent and is dated Shaʿbān 19, 429 (May 9, 1038). It deals with payment arrangements made between the shipowner and the merchant's agent and reads as follows:

> (page 1) (1) The following is what I have transferred to be received from the shipowners for provisions and freight expenses (2) and I have left in the warehouses under the supervision of Abū Saʿīd Khallūf (3) b. Zakariyyā al-Ashqar, (*may his soul find rest*)—*may God strengthen him*.
>
> (4) Qāsim b. Zāy: 28 bales of Mīṣārī flax, one of which is a Nile load, (5) in all, 9 2/3 loads. In addition to this he had one Nile

[2] A scant number of academic studies have so far been written on Islamic maritime law. Only one medieval treatise deals with maritime practices in the early Islamic Mediterranean (the rest treat the practices and customs in the eastern seas). Written in the form of responsa, the *Kitāb akriyat al-sufun wa-l-nizāʿbayna ahlihā* (Treatise concerning the leasing of ships and the claims between [contracting] parties) of Muḥammad Ibn ʿUmar al-Kinānī al-Andalusī (d. 310/923) treats legal aspects of shipping and maritime commerce. (It was edited and published in Muṣṭafā A. Ṭāher, "Kitāb akriyat al-sufun wa-l-nizāʿbayna ahlihā," *Cahiers de Tunisie* 31 [1983]: 5–54.) But Goitein was seemingly unaware of its existence. The breakthrough studies on commercial maritime laws came shortly after Goitein's death and include Deborah R. Noble, "The Principles of Islamic Maritime Law" (PhD diss., School of Oriental and African Studies, 1988); Muṣṭafā M. Rajab, *Al-qānūn al-baḥrī al-islāmī kamaṣdar li-qawāʿid al-qānūn al-baḥrī al-muʿāṣir* (Alexandria, 1990); Abraham L. Udovitch, "An Eleventh Century Islamic Treatise on the Law of the Sea," *Annales islamologiques* 27 (1993): 37–54; Hassan S. Khalilieh, *Islamic Maritime Law: An Introduction* (Leiden, 1998), and *Admiralty and Maritime Laws in the Mediterranean (ca. 800–1050): The Kitāb akriyat al-sufun vis-à-vis the Nomos Rhodion nautikos* (Leiden, 2006); and ʿAbd al-Raḥmān A. Ibn Fāyiʿ, *Aḥkām al-baḥr fī al-fiqh al-islāmī* (Beirut, 2000).

[3] S. D. Goitein, "Jewish Trade in the Mediterranean at the Beginning of the Eleventh Century" (in Hebrew), *Tarbiẓ* 36, no. 1 (1967): 366–95, 36, no. 2 (1967):48–77, and 36, no. 3 (1967): 158–90.

load of pepper belonging to me. (6) In all: 10 2/3 loads for which there was a freight charge of 19 1/2 *dīnārs*, one *qīrāṭ* and *ḥabba*. (7) He also had a basket of *sukk* belonging to me. He received one *dīnār* as a downpayment on the freight. His partner, (8) Aḥmad Qasandalās, received from my Master the Elder in Fustat 5 *dīnārs*, one-quarter, one-sixth, one-eight, and one *ḥabba*.

(10) I have transferred to you, that you should receive from ʿUmar b. Jawkal 17 bales of flax out of which 6 are (11) Nile bales. Furthermore, I have received from him 19 land bales and one load of (12) pepper, in all: 14 loads. He will receive from you from what you (13) have on our account 25 2/3 *dīnārs*.

(14) I have transferred to you to be received from Abū ʿAlī b. al-Jalūza 16 bales of flax (15) at varying rates of freight, whose details are recorded with him as I have written (16) to him. He shall receive from you the money for the freight, 15 *dīnārs*, less one *qīrāṭ*, and one *ḥabba*.

(17) I have transferred to be received by Ibn al-Qaddār from you a 50% down payment on the freight charges of 20 Nile (18) loads at different freights totaling 32 *dīnārs*. He received from my Master the (19) Elder—*may God make his honorable position lasting*—in Fustat 5 1/2 *dīnārs* and 2/3, and from one *dīnār*. (page 2) (1) In all he is to receive 37 1/2 *dīnārs* and 1/3. I myself received (2) from him all of the flax and other goods which he had transported for me. (3) I have sent you a draft to take from ʿAbdūn al-Nashsha 18 land bales, (4) which are equal to 6 Nile loads. He is to receive from our joint account for (5) previous freight 11 *dīnārs*. … (14) I stipulated with Ibn al-Jalūza that he would not charge for the porters' fees (15) for bringing them into port, nor packers' fees, nor is he to have any financial claim. However, he is to receive storage fees from the time (16) he enters (the port) until the time he takes it. Likewise, I stipulated with Ibn (17) Jawkal, that with regard to the 17 bales remaining with him, he is not to receive for them (18) porters' fees for bringing them into port, nor is he to have any financial claim, nor packers' fees, and no storage fees. (19) … except for the month of Shaʿbān, 429 (page 3) (1) on 17 bales of "minute spices." He has already received from me all (2) that was due on that for transportation, and likewise, for the two warehouses up to the middle of Shaʿbān (3) 429. … I have left with 5 *dīnārs* to be paid to you (5) for my Master the Elder—*may God make his honored position lasting*.[4]

[4]Norman Stillman, "East-West Relations in the Islamic Mediterranean in the Early Eleventh Century: A Study in the Geniza Correspondence of the House of Ibn ʿAwkal" (PhD diss.,

From this account one can learn about freight payment terms and methods in the Muslim world. At first, the shipowner collected in advance in Fustat all the freight charges for the entire journey; Ibn ʿAwkal's agent in Alexandria had to receive the cargo.[5] In the second instance, the shipowner received in Fustat payment only for the trip to Alexandria; however, once the ship arrived in Alexandria, the agent would have to pay the entire shipping cost from there to al-Mahdiyya.[6] In the third instance, the shipowner received *sulfa*[7] in Fustat, which was supplemented in Alexandria by the agent to one half the total cost.[8]

The data in this account reflect the practices of shipowners and shippers; and they substantiate the jurisprudential literature. Jurists hold different views about the collection of the freight charges. One opinion holds that lessors can collect them whenever they want, that is, before the departure, by installment, or at the destination.[9] Another rules that lessors have the right and choice to collect the fee on signing the shipping contract or at the journey's end.[10] A third allows them to receive the payable amount only after delivering the cargo safely at the destined port.[11] And the last calls for the payment of the shipping fees immediately;[12] however, stipulating to postpone the shipping fees to the journey's end is forbidden and invalidates the contract.[13] When compared with the Romano-Byzantine practice, both the sixth-century Justinianic Digest and the Rhodian Sea Law allow the shipmaster to collect half of the *neuron* (freight charges) in money or in kind before the ship sets sail, on the condition that the remaining amount be paid at the journey's end.[14]

University of Pennsylvania, 1970), 66–67. Stillman worked from Goitein's edition of T-S Ar. 53.51: see Goitein, "Jewish Trade in the Mediterranean [pt. 3]," 184–87.

[5] Recto, lines 4–9.

[6] Recto, lines 10–13, 14–16, and verso, lines 3–5.

[7] Goitein, "Jewish Trade in the Mediterranean," 187–88. *Sulfa* signifies advance or down payment; the lessor normally collects part of the transportation fees before the ship sets sail, whereas the remainder is paid at the agreed destination.

[8] Recto, line 17, and verso, lines 1 and 3.

[9] Abū Isḥāq Ibrāhīm Ibn Ḥasan al-Rafīʿ, *Muʿīn al-ḥukkām ʿalā al-qaḍāyā wa-l-aḥkām*, 2 vols. (Beirut, 1989), 2:525.

[10] Abū al-Qāsim Muḥammad Ibn Juzayy, *Al-qawānīn al-fiqhiyya* (Tunis, 1982), 281.

[11] Abū al-Walīd Muḥammad Ibn Aḥmad Ibn Rushd, *Al-bayān wa-l-taḥṣīl wa-l-sharḥ wa-l-taʿlīl fī masāʾil al-mustakhraja*, 20 vols. (Beirut, 1984), 9:150; Rafīʿ, *Muʿīn al-ḥukkām*, 2:525.

[12] Abū ʿUmar Yūsuf Ibn ʿAbd Allāh Ibn Muḥammad Ibn ʿAbd al-Barr, *Kitāb al-kāfī fī fiqh ahl al-madīna al-mālikī*, 2 vols. (Riāḍ, 1980), *Al-kāfī*, 2:752; Abū al-ʿAbbās Aḥmad Ibn Yaḥyā al-Wansharīsī, *Al-miʿyār al-muʿrib wa-l-jāmiʿal-mughrib ʿan fatāwā ahl ifrīqiya wa-l-andalus wa-l-maghrib*, 13 vols. (Beirut, 1981), 8:64.

[13] Saḥnūn Ibn Saʿīd al-Tanūkhī, *Al-mudawwna al-kubrā*, 6 vols. (Cairo, 1905), 4:410.

[14] Khalilieh, *Admiralty and Maritime Laws*, 106.

One of the rarest and most revealing of the documents Goitein brought to light involves fascinating case law from the archive of Ibn ʿAwkal dated October 30, 1030. It is an incident reported by Khallūf b. Zakariyyā al-Ashqar, his agent in Alexandria, describing a payment dispute that arose at the journey's end between the agent of the Tunisian ship proprietor (*wakīl al-maqrūḍ*, lit. "agent of the loaned person/debtor") and the shippers. The pertinent part of the letter in question follows.

TS 13 J 17, f. 11

(1) In the name of God, the Most Great. (I write) this letter, my Lord and Leader [. . .] may God prolong (2) your life, perpetuate your happiness and not deprive you of success that is from Him, from Alexandria, Thursday (3) early in [the month of] Marḥeshvan.[15] I am well, God be praised, and longing for you, may God soon bring about (4) a safe meeting, He it is Who guarantees this. Know, my lord *shaykh* (elder), that I arrived here (5) two days ago, after a six-day journey (from Fustat to Alexandria) and I asked for news about the agent of the loaned/*maqrūḍ* (shipowner) (6) and I learned that he collected three hundred din[ars] from [I]bn ʿImrān for twelve bales of flax, including commission. (7) He sold the ship out from under him on the testimony of some Gentiles (non-Jews) who bore witness against him; they were among those who were on (8) the ship with me. The case was dealt with in Court and it [= the merchandise] was gathered by the *qāḍī* and indeed my shipment was detained through his fault, (9) those same four loads of pepper, an account with which you are familiar. Know then and rest assured. Afterwards (10) a ledger of the loaned [shipowner] was found and in it were details of your account with him, what he sent you, and what (11) you owed him, and a separate totaling up. His agent collected for you all your money you had with (12) the man. (As to) [I]bn al-Basmalī's (vessel), the value of her cargo was recorded and handed over to be (delivered) in Qayrawān, to the *qāḍī* ʿAbd [I]bn Hāshim. (13) As yet, we do not know what will transpire. I pray to God that the outcome will be good for you and for me (14) and for all Isr[ael].[16]

[15] Marḥeshvan is the second month of the ecclesiastical year and the eighth month of the civil year in the Hebrew calendar. It is an autumn month of 29 days, except in years of 355 or 385 days, in which it has 30 days.

[16] Goitein, "Jewish Trade in the Mediterranean," 387–89 (doc. T-S 13 J 17, f. 11). The English translation is quoted from Stillman, "East-West Relations in the Islamic Mediterranean," 323. See also Menahem Ben-Sasson, Miriam Frenkel, and Nadia Zeldes, *The Jews of Sicily, 825–1068* (in Hebrew) (Jerusalem, 1991), 226–29; and Shlomo Simonsohn, ed., *The Jews of Sicily*, vol. 1, *383–1300* (Leiden, 1997), 77–79.

Commentary

The letter appears on its face to be informal business correspondence between the agent and his principal. A closer examination, however, may revolutionize our understanding of the historical evolution of the admiralty and maritime laws not only in the Mediterranean but also beyond. The letter's uniqueness lies in the judicial procedures the Alexandrian court exercised to refund the merchants and shippers on the insolvency of the owner of the vessel. According to Ibn Zakariyyā's account, the vessel, which departed from Fustat, arrived in Alexandria after a six-day journey on the Nile. As it anchored in the port, the creditors (i.e., shippers/merchants) sued the *maqrūḍ* (debtor/loaned shipowner) in the local court for failing to meet his financial obligations to them. Apparently, the plaintiffs proceeded in two directions, filing two claims in the court—against the shipowner (*in personam*), on the one hand; and against the vessel itself (*in rem*), on the other—in order to obtain security. The kadi ordered the arrest and detention of the ship (*res*/property), granting the defendant a fixed period to repay the loans to the plaintiffs. When the defendant could not pay within the time period prescribed, the kadi ordered that the arrested vessel be sold through judicial auction (it later fetches three hundred dinars). In response to the Alexandrian court's decision, the Tunisian ship's proprietor appealed to the chief kadi (*qāḍī al-quḍā*), ʿAbd al-Raḥmān Ibn Muḥammad Ibn ʿAbd Allāh Ibn Hāshim (in office 1006–33 C.E.), in Qayrawān, in hopes of repealing the judgment, but to no avail.[17] Ibn Hāshim al-Qāḍī affirmed the judgment of the court, ruling that, in the case of *taflīs* (bankruptcy) of the owner, the kadi is authorized to imprison the vessel (*ḥijr*/*taḥbīs*) for a limited period of time, granting the debtor an opportunity to save the *res* (i.e., vessel); otherwise, it would be auctioned.[18]

The fundamental question is, What makes this commercial letter so unique? When it was published by Goitein four decades ago, neither he nor other contemporary scholars who came across it and studied it paid attention to the invaluable and fascinating legal data it contains. It is by far one of the oldest and rarest legal cases to assign a juridical personality to the ship and treat it as a judicial entity.

The legal significance of this particular document is particularly interesting from a common law perspective: it may provide persuasive evidence with regard to the historical origins and evolution of the *actio in rem* against a ship. The origin of the action, considered one of the two dominant and distinctive features of the admiralty jurisdiction, is shrouded in obscurity. Although the roots of the *in rem* institution can be traced back to Roman law, under which

[17] Ben-Sasson, Frenkel, and Zeldes, *Jews of Sicily*, 229.
[18] Ibn Rushd, *Al-bayān wa-l-taḥṣīl*, 10:547–48.

a person can proceed against another's property (*res*),[19] neither the Rhodian Sea Law nor the Justinianic Digest nor the ninth-century Byzantine Basilika contains a single reference pertaining to the personification of a ship. Furthermore, medieval European maritime laws contain rules governing the seizure of disputed property, but none contain a single rule pertaining to the *in rem* procedure against a ship.[20] This means that the *actio in rem* does not necessarily owe its inception to the civil law countries of continental Europe; instead, legal evidence proves that these countries applied the *actio in personam* to secure claims. But, if by the 1030s, the *in rem* institution was prevalent in the Muslim Mediterranean world, how and when did such a proceeding reach the admiralty courts of England? The few lines from a Geniza merchant letter could indeed open a new chapter in the historical evolution of maritime laws in the Mediterranean and the Atlantic.

What has been addressed above is "a little from much" (*ghayḍ min fayḍ*) and "a drop in the ocean" (*nuqṭa fī baḥr*), as the Arabic maxims state. Goitein's contribution to Islamic admiralty laws will further be appreciated when future studies reanalyze the publications dealing with maritime affairs. Most importantly, a deeper and more thorough investigation of the October 30, 1030, letter from the archive of Ibn ʿAwkal and other discoveries from the Cairo Geniza compared with Islamic jurisprudential sources could constitute a major breakthrough in comprehending the evolution and development of the maritime and admiralty laws in the Mediterranean and the common law countries. It is clear, then, how a single real incident described in a routine business letter can remodel a generally accepted legal theory that, until the publication of this concise essay, has viewed the *actio in rem* as a purely common law establishment.

[19] Digest 6.3.1; Digest 6.16.1.

[20] Including the Tabula Amalfitana (1010), the Ordinances of the Consuls of the Sea of Trani (1063), the Rolls of Oléron (1160), the Constitutum Usus of Pisa (1233), and the Consulate of the Sea of Barcelona (1258).