



## Rav Hai Gaon's Jurisprudential Monograph *Kitāb Adab al-Qādā*: A Reconstructed Text from the Cairo Genizah

NERI Y. ARIEL

Law Faculty, Bar-Ilan University, Ramat Gan, Israel  
IRHT-CNRS, Hebrew section, Paris, France  
E-mail: [neri.ariel@irht.cnrs.fr](mailto:neri.ariel@irht.cnrs.fr)

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**Abstract** This essay presents the discovery of a previously almost entirely unknown treatise written in Judeo-Arabic by Rav Hai b. Sherira Gaon. This monograph, a manual for judges, is a Jewish instantiation of the well-established Muslim genre *Adab al-Qādī* (Duties of Judges). To date, only several indirect remnants translated into medieval Hebrew have been identified as part of this work; however, large parts of the skeleton of this halakhic monograph can be reconstructed from Genizah fragments. Not only is this work of immense importance with respect to judicial issues, but it also promises to elucidate aspects of halakhic literature written in Judeo-Arabic generally. After presenting the historical-philological thinking that led to this discovery, this article considers the text's importance and the social-literary circumstances that led to its development within its Islamic context. The Islamic and Jewish texts of the genre lead to the adoption of a more detailed model of the mutual shared legal relationships between Jews and Muslims in medieval Babylonia and yield what may be viewed as a more complicated and nuanced approach to the monotheistic-Abrahamic triangle.

**Keywords** Hai Gaon · Genizah · Textual reconstructions · Judah al-Barceloni · Abū Ja'far al-Ṭahāwī · Lost medieval books · Judeo-Arabic · Jewish and Islamic law

In the research conducted to date, little has been unearthed from primary sources about adjudication in Jewish courts of the geonic era.<sup>1</sup> The available sources were mostly documentary material, some of which dealt with the personal and legal status of dhimmīs in Muslim courts.<sup>2</sup> There were some remnants of indirect citations from geonic literature transmitted by medieval halakhic authorities,<sup>3</sup> commentaries on Talmud-related themes, and rabbinic

<sup>1</sup> Simcha Assaf, *Batei ha-Din ve-Sidrehem aḥarei Ḥatimat ha-Talmud* (Jerusalem, 1924); Menahem Ben-Sasson, *The Emergence of the Local Jewish Community in the Muslim World: Qayrawan, 800–1057* [in Hebrew] (Jerusalem, 1996), 293–345; Robert Brody, *The Geonim of Babylonia and the Shaping of Medieval Jewish Culture* (New Haven, 1998), 56–64, 152–53.

<sup>2</sup> For additional documentary materials, see Phillip Ackerman-Lieberman, *The Business of Identity: Jews, Muslims, and Economic Life in Medieval Egypt* (Palo Alto, CA, 2014); Oded Zinger, *Living with the Law Gender and Community among the Jews of Medieval Egypt* (Philadelphia, 2023).

<sup>3</sup> Simcha Assaf, "Perurim: Adab al-Qādā leRav Hai Gaon," *Tarbiz* 7 (1936): 217–18. Rishonim reference the work by the title חובות הדיינים.

responsa that shed light on different issues concerning court and legal procedures,<sup>4</sup> but almost no dedicated discussions of judicial issues are extant. Book lists in the Cairo Genizah do suggest that several monographs in Judeo-Arabic were dedicated, as a separate and independent body of knowledge, to the legal and ethical duties of judges.<sup>5</sup> *Adab al-Qāḍī* (The Etiquette of Judgeship) is an Islamic juridical genre comprised of manuals designed to provide professional and personal guidance for judges.<sup>6</sup> While this well-known genre appears mainly in the Muslim literature dating from the ninth century,<sup>7</sup> it is attested as well in Jewish writings.<sup>8</sup> The present article is an attempt to understand the relationship between what is found in Judeo-Arabic literature and the Islamic writings.

These manuals, most likely written by professional judges, addressed various aspects of the judge's position, such as qualifications, jurisdictional

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<sup>4</sup>In various collections of geonic responsa there are remnants of the genre that could supply further support for its reconstruction. Some responsa regarding judges' duties appear in Joel Müller, *Einleitung in die Responsen der Babylonischen Geonen* (Berlin 1891), 133, 164, 191, 236, and 286, and in Robert Brody, *Teshuvot Rav Natronai bar Hilai Gaon* (Jerusalem, 2010), 497–560. On other geonic responsa files, see idem, *Zion Between the Tigris and the Euphrates: The World of the Babylonian Geonim* (Jerusalem, 2015), 355–70.

<sup>5</sup>See Nehemya Alony, *The Jewish Library in the Middle Ages: Book Lists from the Cairo Genizah*, ed. Miriam Frenkel and Haggai Ben-Shammai (Jerusalem, 2006), 459, 467, and 477; Y. Zvi Stampfer, "Judaeo-Arabic Judicial Works: A Source of Historical Knowledge," in *Yad Moshe – Studies in the History of the Jews in Muslim Countries in Memory of Moshe Gil*, ed. Elinoar Bareket, Yoram Erder, and Meira Polliack, *Te'uda* 29 (Tel Aviv, 2018), pt. 2, 105–20; Jessica Goldberg and Eve Krakowski, "Introduction: A Handbook for Documentary Geniza Research in the Twenty-First Century," *Jewish History* 32 (2019): 115–30; Stefan C. Reif, *A Jewish Archive from Old Cairo: The History of Cambridge University's Genizah Collection* (Tel Aviv, 2021), 112–22, and Brody, *The Geonim of Babylonia*, 30–36, 251–68.

<sup>6</sup>The texts will be published in full in my forthcoming book, "The Etiquette of Judgeship in Geonic Literature: Kitāb Adab al-Qāḍā to Rav Hai Gaon and Kitāb lawāzīm al-ḥukkām by Rav Samuel Ben Ḥofni Gaon; Critical Edition with Annotated Translation and Commentary."

<sup>7</sup>See Muhammad Khalid Masud, "Adab al-Qāḍī," in *Encyclopaedia of Islam*, ed. Kate Fleet, et al., 3rd ed. (Leiden, 2007); Muhammad Khalid Masud, Rudolph Peters, and David S. Powers, "Qadis and Their Courts: An Historical Survey," in *Dispensing Justice in Islam: Qadis and Their Judgments*, ed. Muhammad Khalid Masud, Rudolph Peters, and David S. Powers (Leiden, 2006), 1–44. For a preliminary list of works, see Tanzil-Ur-Rahman, "Adab al-Qāḍī," *Islamic Studies* 5 (1966): 199–207. The most recent and comprehensive work on the Shiite subgenre is Raha Rafii, "The Judgeship and The Twelver Shi'ī Adab Al-qāḍī Genre 11–14th Centuries CE" (PhD diss., University of Pennsylvania, 2019). On the tendency of geonic monographs to empower the Babylonian tradition, see Y. Zvi Stampfer, "A Mechanism for Change in Traditional Culture: A Case Study from the Judicial Jewish Codes of the Geonic Period," *Jewish Quarterly Review* 107 (Spring 2017): 133–56.

<sup>8</sup>See Neri Y. Ariel, "Discovery of a Lost Jurisprudential Genre in the Genizah Treasures," *Judaica* 73 (2017): 299–309; idem, "Intertextuality of Translations into and from Judaeo-Arabic as a Transformative Platform in Jewish-Arabic Universalism: The Case of Legal Monographs of the Late Geonim," *Cultural and Religious Studies* 7 (2019): 477–82.

methods, sources to be consulted, court procedures and practices, and adjudication. Complementing this literature are the works of *Adab al-Qāḍī* that shed light not only on the nature of the legal system during this period but also contain extensive discussions on the reliability of witnesses, the moral and legal severity of oaths, and a judge's social obligations, such as concern for the disadvantaged. These works reveal the socio-political context as well as the values and principles of judges. A case in point is a treatise by Rav Hai Gaon (998–1038) entitled *Kitāb Adab al-Qaḍā* (כתאב אדב אלקצ'א), which is conventionally translated as “ethics of the dayanim” or “Book of Judges’ Duties.”<sup>9</sup> The only published halakhic-jurisprudential materials were partial Hebrew translations of this work. Simcha Assaf published two fragments, housed in the British Library,<sup>10</sup> which were translations by Rabbi Judah ben Barzilai al-Barceloni (Spain, twelfth century) and appeared under the title *Likutei Sefer ha-Din*.<sup>11</sup> Additionally, Shraga Abramson suggested that Oxford, Bodleian Library MS Marsh 509 (Neubauer 581.2; hereafter MS Marsh 509) belongs to *Kitāb Adab al-Qaḍā* by Rav Hai Gaon<sup>12</sup> but, regrettably, no evidence of a critical edition of this treatise by Abramson has survived.,

<sup>9</sup>The second and central chapter of a completed dissertation, which accounts for most of the dissertation in quantity and quality, is devoted to the treatise *Kitāb Adab al-Qaḍā* by Rav Hai Gaon. See Neri Y. Ariel, “Manuals for Judges (اداب الفضاة) in Geonica: A Study of Genizah Fragments of a Judeo-Arabic Monographic Genre” (PhD diss., The Hebrew University of Jerusalem, 2020). 3 n. 16.

<sup>10</sup>London, British Library Add. 27181, Add MS 27181, 8v and 14r. George Margoliouth, *Catalogue of the Hebrew and Samaritan Manuscripts in the British Museum*, 4 vols. (London, 1899–1935; vols. 1–3 repr. London, 1965); vol. 4, ed. Jacob Leveen (London, 1977), no. 565. Now available on British Library website ([www.bl.uk/manuscripts/Viewer.aspx?ref=add\\_ms\\_27181\\_f008v](http://www.bl.uk/manuscripts/Viewer.aspx?ref=add_ms_27181_f008v)) and Ktiv website of the National Library of Israel ([https://web.nli.org.il/sites/NLIS/en/ManuScript/Pages/Item.aspx?ItemID=PNX\\_MANUSCRIPTS990001212910205171](https://web.nli.org.il/sites/NLIS/en/ManuScript/Pages/Item.aspx?ItemID=PNX_MANUSCRIPTS990001212910205171)).

<sup>11</sup>Simcha Assaf, “Seridim mi-Sefer ha-Dinim le-Rav Hai Gaon,” *Ha-Zofeh Quartalis Hebraica* 9 (Budapest 1925), 76–79; idem, *Teshuvot ha-Geonim ve-Likutei Sefer ha-Din le-Rabbi Yehudah al-Barceloni* (Jerusalem, 1927), 12–13, 80ff., and 134, and Simcha Emanuel, “Addenda and Corrigenda to Sarei ha-Elef” [in Hebrew], *JSIJ* 1 (2002): 139, §42. It is possible that other parts of *Teshuvot ha-Geonim* belong to Rav Hai’s book as well. Regarding al-Barceloni in the reception of Rav Hai’s book, see Adiel Broyer, “Ketai’m Ḥadashim mi-Sefer ha-Itṭim,” *Yeshurun* 34 (2016): 2 n. 7.

<sup>12</sup>See Rav Hai b. Sherira Gaon, *The Laws of Oaths: The Arabic Text and a Medieval Hebrew Translation*, ed. Shraga Abramson, prepared for publication by Robert Brody and David E. Sklare (Jerusalem, 2012). Several assumptions of Abramson regarding other related fragments were slightly corrected. See Neri Y. Ariel, “Aus Ibn Aknin’s פצל פי אדאב אלד'ינין (*faṣl fī ādāb al-dayyānīm* – “Kapitel über die guten Sitten der Richter”),” *Judaica* 74 (2018): 287–94, <https://www.e-periodica.ch/cntmng?pid=jud-001%3A2018%3A74%3A%3A456>; idem, “Annotated Edition with Commentary of *Faṣl fī ādāb al-Dayyanin* from *Ṭibb al-Nufūs* by Ibn Aknin,” *Sefunot* 13 (2021): 13–88. Some of the first attempts to relate fragments to this lost book may have stemmed from a longstanding tradition to relate unattributed halakhic views

though we do find allusions to this work by Rav Hai Gaon in Abramson's other writings.<sup>13</sup>

Like Assaf, Abramson was aware of the existence of the underlying book, but he could find only meager remnants in its support and therefore relied on documented materials found in book lists from the Cairo Genizah.<sup>14</sup> It is important to bear in mind that the process of identifying fragments from this monograph is quite complicated,<sup>15</sup> as there are several other works belonging to this *Adab al-Qāḍī* genre, and scholars therefore must isolate the relevant fragments ascribed to Hai Gaon from remnants of other books.<sup>16</sup> It is impossible at this stage to estimate how long the missing parts of the book may have been, and even the parts that have been found and reconstructed are difficult to decipher because they contain numerous philological and halakhic gaps. In other cases, the text was so tattered that no discussion at all survived, and only fragments of single broken letters remained. Frustration regarding the discursive lacunae in the material is common among Genizah scholars.

Notwithstanding these difficulties, I have managed to uncover large portions of the original Judeo-Arabic text, so that we now have a reconstructed, critical edition of the original text. This was accomplished by combining content-related fragments or by demonstrating that they were different versions of the same text. Here, a reconstructed version of two short passages tells the story of a lost book and of an obscured culture in Jewish history. Although not all the pieces of the puzzle have been located, the publication of this article is an invitation to colleagues who might know of relevant materials that could enrich the work in progress.

More than ten copies of the book have been identified, based on a model that lists distinct criteria intended to ensure the accuracy of the identification process.<sup>17</sup> Though far from complete, the picture of this previously lost treatise has been significantly refined. It is with some confidence that

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to Rav Hai Gaon, no doubt the greatest halakhic authority of that time. See Robert Brody, *Geonim of Babylonia*, 368 n. 47.

<sup>13</sup>As communicated to the author by Prof. Robert Brody.

<sup>14</sup>For further documentation, see Neri Y. Ariel, "Guidelines of the Genre 'Judges' Conduct of Judgement' in Geonic Literature and Muslim Law," *Jewish Thought* 4 (2022): 42 n. 23.

<sup>15</sup>See "Methodology" section in Jessica Goldberg and Eve Krakowsky, "Introduction: A Handbook for Documentary Geniza Research in the Twenty-First Century," *Jewish History* 32, no. 2–4 (2019). For further details, see Robert Brody, "Responsa in Geniza Fragments," *Jewish History* 32, no. 2–4 (2019): 463–75; Ariel, "Manuals for Judges," i–iii; idem, "Towards an Identification Methodology of Genizah Fragments," *Terumah* 24 (2017): 185–200.

<sup>16</sup>See Neri Y. Ariel, "Annotated edition with commentary of *Fasl fi Kitab Adab al-Dayyanin*"; idem, "אוס איבן אקנינס אלדיינין פֿי אדאב אלדיינין";

<sup>17</sup>Ariel, "Towards an Identification Methodology," 187–99.

several fragments can be related to other monographs—both known and anonymous—of the *Adab al-Qāḍī* genre. The abundance of such compilations should be of no surprise, since the context in which the Geonim lived also included multiple works devoted to the ethical and practical training of judges. Some fragments are different in character and style from those believed to have been authored by Hai Gaon.<sup>18</sup>

### Textual Evidence from *Likutei Sefer ha-Din*

Assaf dedicated his attention to the field of the Jewish court and its evolution, to *Adab al-Qāḍī* writings and, in particular, to Rav Hai Gaon's *Kitāb Adab al-Qaḍā*. He published two paragraphs drawn from responsa literature that he identified as related to this book. The two paragraphs are quotes brought by R. Judah al-Barceloni in the name of Hai Gaon. *Sefer ha-Din* of al-Barceloni has not survived in its entirety, and only a few rare quotes from it have become available in the British Library manuscript containing geonic responsa (above, n. 11). No further remnants of this book by al-Barceloni are known. These paragraphs quote Rav Hai Gaon's work, but the name of the work from which they derive is not mentioned. Although the author's name is not specified, Assaf suggested identifying these texts as a part of Rav Hai Gaon's *Kitāb Adab al-Qaḍā* for two reasons: (a) the two paragraphs are neither mentioned nor referenced in any other known work by Rav Hai; and (b) the subject of the two paragraphs corresponds to known contents of this juridical book, which is well documented in Genizah book lists and several quotes by the Rishonim (medieval Talmudic and halakhic authorities). Regrettably, in contrast to the two other major halakhic works by Hai Gaon, the few brief quotations scattered throughout the Rishonim literature are ambiguous and contextually incoherent.

Assaf's hypothesis was supported by my discovery of dozens of additional remnants written in Judeo-Arabic that can certainly be identified as belonging to this lost book. Although the textual puzzle is far from being resolved, the parallels with the original in Judeo-Arabic and the extensions of the texts discovered in the Genizah offer a clearer picture than was previously available. These texts have restored a virtually lost monograph and a subgenre containing a rabbinic manual for judges. Despite the gaps in the text, these highly significant paragraphs have made it possible to piece together and identify other fragments of this puzzle.

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<sup>18</sup>See the appendix in Ariel, "Manuals for Judges," 224ff.

## Paragraph א

Assaf located this passage as the first of two paragraphs in the al-Barceloni translation. The same paragraph from Rav Hai was also quoted by other Rishonim, more or less concurrently, in *Sefer ha-Ittur* of Issac b. Aba Mari from Marseille, Provence,<sup>19</sup> and by Rabbenu Ephraim from al-Qal'a of Beni Hammad in his critical commentaries on *Sefer ha-Halakhot* of Rabbi Issac al-Fasi.<sup>20</sup> The critical edition provided here includes the original text in Arabic, the Hebrew translation of al-Barceloni, and the additions of *Sefer ha-Ittur*. The text of T-S NS 262.43 continues the text found in T-S Ar.48.143. The comparison of the two versions—in Judeo-Arabic and Hebrew—is followed by an English translation.

**Arabic original according to T-S  
Ar.48.143 with <corrections> and  
{additions} from T-S NS 262.43 [ψ]T-S  
A-S 161.89 « + (v2) »**

פאן אסתעדי אלכצמין כ(אן) אלמקדם פי  
אלאסתעדי אלי בית דין מקדמא פי סמאע כלאמה  
ואלנטר פי חכמה <ואן> (אס)תעדי אלמדעא  
עליה וקאל א- < > כאנת לכצמין  
מטאלבה פ- < > יטאלבני לם יעדיה {אל} חאכם  
ולם ילום אלמדעני אן יכסט מטאלבתה  
אן יעתל אלמדעא עליה בצ'רר {ילחקה}

**Hebrew translation of al-Barceloni  
with corrections from *Sefer ha-Ittur*<sup>21</sup>**

כתב<sup>22</sup> רב האי ז"ל בחיבורו הכי:  
וכיון שיבואו בעלי דינין לפני בית דין, מי שיבוא  
קודם להתרעם לפני בית דין, מקדימין אותו  
לשמוע טענותיו ולחתוך את דינו. אבל אם יהיה  
הנתבע מתרעם על תובעו, ויאמר: "אם יש לפלוני  
זה שום טענה אחרת או תביעה יתבעני!" – אין  
הדיין צריך<sup>23</sup> לכוף את התובע ולומר לו: "בקש  
תביעתך אצל פלוני," אלא אם יטעון הנתבע בשום  
מורע שמורע<sup>24</sup> לו באיסור התביעה.<sup>25</sup>

<sup>19</sup> *Sefer ha-Ittur*, Berurin, §bet, col. 4.

<sup>20</sup> *Temim Deim* §68 was printed alongside the halakhot of Alfasi Bava Qamma 20b. For later references, see Meiri Bava Qamma 46b (Jerusalem, 1963), 145–46 n. 40, in Benjamin M. Lewin, ed., *Ozar ha-Geonim*, vol. 12, BT Bava Qamma (Jerusalem 1943), 46b, *ha-Teshuvot*, 35, §89.

<sup>21</sup> *Sefer ha-Ittur* 2:2,4. The author of *Sefer ha-Ittur* is indeed adding his own, later interpretations and developing the discourse further, as is customary in his compilation. On the ramifications of his halakhic decision see Yechiel Zilber, *Berur Halakhah* (Bnei Brak, 1984), §§69, 90. As pointed out by Assaf in *Teshuvot ha-Geonim*, 10–13, the compiler of these collections was most probably Abraham ben Isaac of Narbonne (Rabad the second), who authored *Sefer ha-Eshkol*.

<sup>22</sup> *Sefer ha-Ittur*: פירש. This version sees the passage as an interpretation to BT Bava Qamma 46b, as will be discussed below.

<sup>23</sup> *Sefer ha-Ittur*: הדיינים צריכין.

<sup>24</sup> According to the Judeo-Arabic text the defendant claims that the claimant causes him increasing damages.

<sup>25</sup> *Sefer ha-Ittur*: מאורע שאירע באיחור התביעה. According to Assaf, *Likutei Sefer ha-Din*, 77 n. 1, this is the correct version.

כאנה יקול אנה ישנע עליי באן לה עליי חקוק>י<  
ואנא אריד אן אביע אמלאכי ומן יריד אלשרא  
יכשא  
מן אן תטהר עליי ותאיך תוגב  
את?סר(א)[ק]>א<ק<sup>26</sup> אמלאכי פאדא תוגה דלך  
אלזם אלחאכם אלמדעי אן יטהר חקא אן כאן לה  
או אן יקר באן לא ותיקה לה עלי אלמדעא עליה

פאן קאל לי עליה מטאלבאת בגיר ותאיך  
אטאלבה בהא אדא שית לם ילזמה בסטהא לאן  
אלמשתרי לא ירגע עליה  
אלא בותיקה טאהרה כ"ק אלחכמ' המלוה את  
חבירו בשטר גובה מנכסים משועבדים על ידי  
עדים גובה מנכסים בני חורין

ופי אצל אלחכם אלדי דכרנאה קאלו אמ' רב נחמן  
אמ' ראבה בר אבוה מנין שאין נוקקין אלא לתובע  
<תחלה> שנ' מי בעל דברים יגש אליהם יגש  
דבריו אליהם תחלה [Ψ]  
>א...י< נהר...< פ>ע...ים>...קין>...< בע  
תחלה היכי דא>מ<י>...<...< ילי ניכסיה<sup>34</sup>

כגון, שיש לו קרקעות<sup>27</sup> למכור ומתיירא שמא  
ישמעו הקונים שיש לו<sup>28</sup> חובות בשטר ויהיו  
מתפחדים<sup>29</sup> מקניית הקרקע שמא יוציאנה מידם  
בעל חוב בשטר וכשיתברר זה לדיין

צריך לכופף את התובע ולומר לו: "באר טענותיך  
אצל זה או אסהיד על נפשך דלית לך עילויה שטר  
חוב."<sup>30</sup>

אבל אם יאמר התובע שיש לו טענות שלא בשטר  
ואינו רוצה עכשיו לתובען<sup>31</sup> אין הדיין רשאי לכופף  
אותו על זה, כי אין בעל חוב גובה מיד הלקוחות  
אלא אם יהיה חובו בשטר כדאמר  
על ידי עדים

גובה מנכסים בני חורין וכן נמי הוציא עליו כתב  
ידו שהוא חייב<sup>32</sup> גובה מנכסים בני חורין.<sup>33</sup>  
ועל עיקר דין זה שהזכרנו אמרינן: אמר רב נחמן  
אמ' רבה בר אבוה: "מניין שאין נוקקין אלא  
לתובע תחלה? שנאמר מי בעל דברים יגש  
אליכם<sup>35</sup> (!) – יגש דבריו אליכם,<sup>36</sup>  
אמרי נהרדעי: "פעמים שנוקקין לנתבע תחלה  
היכי דמי דקא זילי נכסי."<sup>37</sup>

<sup>26</sup>For a full explanation of this difficult verbal morpheme, see Ariel, "Manuals for Judges," 76 n. 77.

<sup>27</sup>*Sefer ha-Iṭtur*: קרקע (and later on as well).

<sup>28</sup>*Sefer ha-Iṭtur*: לו עליו.

<sup>29</sup>*Sefer ha-Iṭtur*: מתיראין.

<sup>30</sup>Paraphrase in "talmudic" language of al-Barceloni on Rav Hai. *Sefer ha-Iṭtur*: דלית ליה עילויה שטר.

<sup>31</sup>*Sefer ha-Iṭtur*: יש לי עליו טענות שלא בשטר ואין רצוני עכשיו לתובעו.

<sup>32</sup>*Sefer ha-Iṭtur* missing: שהוא חייב.

<sup>33</sup>M. Bava Batra 10:8.

<sup>34</sup>The original text continues but is not fully presented here. Here ends the parallel to paragraph א in Assaf's edition from the translation of Rabbi Judah al-Barceloni.

<sup>35</sup>Exod 24:14.

<sup>36</sup>In *Sefer ha-Iṭtur* the entire sentence is missing, offering only נהרדעי.

<sup>37</sup>BT Baba Qamma 46b. The continuation in *Sefer ha-Iṭtur*, ראונו, כגון ראובן, etc.—until the subsequent opinion cited in the name of מפרשים יש according to the Palestinian Talmud—is apparently also a part of the quotation from Rav Hai, although it does not appear in al-Barceloni's version.

English translation of the Genizah text:

When the two litigants face each other, the claimant precedes in presenting his arguments to the *beit din* and his case is examined. However, if the defendant counters and says: “If my litigant has any case, he should sue me [at once],” the judge cannot force [the claimant], and the claimant {is not obliged to elaborate his prosecution}.<sup>38</sup> If the defendant claims that he caused increased damage . . . , saying: “He [the claimant] libels me claiming that I have debts towards him, and I want to sell my real estate properties; [but] the person who wants to purchase fears that documents might be presented against me that will force a lien on my properties.”

If possible, the judge should require the claimant to present any debt he has [i.e., documents to support it], or to admit that he has no documents at all against the defendant. If he says: “I have claims against him without documents, so I will prosecute him based on them, whenever I wish,” he [the judge] should not force him to elaborate [his claims], since the purchaser cannot be prosecuted unless by means of an explicit document; as the Sages said: “If a man lent money to his fellow on the security of a bond of indebtedness, he may recover the debt from mortgaged property. But if he had lent it only before witnesses, he may recover the debt only from unmortgaged property.”<sup>39</sup> On the essence of the law that we mentioned, they [the Sages] said: “R. Nahman said, on behalf of Rabbah b. Abuha: Whence can we learn that prior consideration should be given to the first plaintiff? It is said: “Let anyone who has a legal matter approach them’ (Exod 24:14) – Let him submit his matters to them first.” The Nehardeans, however, said: “It may sometimes be necessary to give prior consideration to the defendant, for instance, in a case where his property would otherwise depreciate in value.”<sup>40</sup>

Although Rav Hai’s treatise appears to be no more than a reprise of Talmudic discussions, every rewriting is interpretative, and one must especially consider nuances in the language employed in this text. Even a minor deviation from the text or a small addition to what appears in the Talmud can make a big difference in meaning and in legal decisions. To understand the inherent

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<sup>38</sup>T-S AS 161.89.

<sup>39</sup>Herbert Danby, *The Mishnah* (London, 1933), 381.

<sup>40</sup>BT Baba Qamma 46b.



motivations for the inclusion of the relative standing of claimant and defendant within judges' duties and manuals for judges, we shall delve a bit deeper into the context of this Talmudic issue and its *Sitz im Leben*. The biblical context that the Talmud interprets is the covenant mentioned in Exodus 24, where instruction is given concerning proper civil procedure and the structure of the hierarchical court system. At the center of our discussion stands the method of Rav Hai Gaon and whether it is possible to locate it among the other *poskim* and halakhic traditions. The Rishonim translated it, discussed its versions deeply, and used it for their halakhic decisions. Both versions, the medieval translation and the original in Judeo-Arabic, share some missing words and phrases, which fill in for each other: the Hebrew translation helps reconstruct the original Arabic text and vice versa. Though a great portion of this text can be reconstructed, the source name is still missing from the Arabic version. As such, Assaf's deliberation finds reassurance from the Genizah, strengthening the textual basis of this lost book. Although not knowing a single original passage from the treatise, in light of the quotations, he assumed that he discovered there might be a possibility of restoring the Arabic source.

### Paragraph 2

The second paragraph Assaf published contains an especially important section from the end of the treatise by Rav Hai Gaon, which aids in comprehending the obscure structure of the work. Here, again, only the name of Rav Hai Gaon appears in another translated quote from *Likutei Sefer ha-Din* (Excerpts from the Law Book) by Rav Judah al-Barceloni. Like paragraph א, the current remnant (Add. 27181, 14r) was found in the same British Library codex containing mainly geonic responsa.<sup>41</sup> Even after further discoveries from the Cairo Genizah, there are parts of this textual sequence that have still not been linked definitively to their original Judeo-Arabic version, surviving only thanks to this translated source in Hebrew brought in this anthology of *Teshuvot ha-Geonim*, a halakhic compilation including much later materials as well.<sup>42</sup> Astonishingly, the original Judeo-Arabic text in the aforementioned MS Marsh 509 matches the Hebrew quote perfectly. This discovery is also supported by identical Talmudic quotations that are helpful in reconstructing the fragmented text and its missing and illegible parts. Thus,

<sup>41</sup>Simcha Assaf, "Remnants from *Sefer Mussar ha-Dayyanim* of Rav Hai Gaon," *Hazofeh: Quartalis Hebraica* 9 (1925): 76–79; Assaf, *Teshuvot ha-Geonim ve-Likutei Sefer ha-Din*, 12.

<sup>42</sup>Aside from the Assaf publication, little is known about *Kovetz Teshuvot ha-Geonim*. See Brody, *Geonim of Babylonia*, 365 and n. 36. On diverse strata and later materials in these anthologies, see Simcha Emanuel and Mordechai Sabato, "An Old-New Collection of Responsa from the Geonim and R. Isaac Alfasi," *Alei Sefer* 28 (2018): 31–48.

the Hebrew translation has been confirmed to be faithful to the source. This shows how great sages exercised caution with the materials Hai Gaon delivered to them. We may assume that these texts were corrected and revised in the textual transmission.

The Arabic text is more easily read and interpreted when viewed in light of its medieval Hebrew translation. The comparison of the source with the medieval translation highlights both the difficulties that the Arabic sources present and the methods employed by a halakhic scholar to resolve textual lacunae and ambiguities. In my translation, I rendered the original Arabic text into English, as well as the additional contributions made in the medieval translation that are not an integral part of the text. When the text was unclear in the original Arabic, the medieval translations served as a guide to enhance its readability. There are lacunae before this reconstructed textual unit begins, and there is missing material towards its end (between 114v and 115r of MS Marsh 509). Part of the missing text that has been reconstructed is presented in the following table:

#### Judeo-Arabic Text

//Missing part, no parallel found so far//

#### Medieval Hebrew Translation

כתב רב האי ז"ל בחיבורו הכי: ולענין מי שהוא  
חייב ממון ונמנע מלפרוע אמ' בו רבותינו: [אמ' רב  
יהודה משמיה דרב שמואל בר שילת משמיה דרב  
מנדין אותו לאלתר...]<sup>43</sup> ואין מזכין ב"ד לגבות  
בעל חוב אלא ממקרקעי כדאמר' וכי כתבין  
אדרכתא אמקרקעי

#### T-S K6.198r

[ ] [י] אמטלטלי לא כתבין אן [לם]  
[כ]ק או לם [ירד וא [ ] אן יטרק פי [ ]  
[ ] סמאת [ ]אן יוכד אל [ ]

אמטלטלי לא כתבין ואם אין לנתבע קרקע או אם  
לא רצה המלוה להיפרע מן הקרקע  
ישאר הנתבע בחרם ובשמתא עד שיהא פורע כל  
הממון שהוא חייב לפרוע מן המטלטלין כדאמרין  
מיניה אפילו מגלימא שעל כתפיה

#### T-S K6.198v

פאן כאן בעידא אכתר מן [ ] כאמל  
מא אדא כרג אלרסו[ל] גדה יום אלג' וצל אכר  
אלנהאר וואפי אלכצם אלי אלבלד יום אלראבע  
וחצר [פי] בית דין בעד גד והו יום אלכאמס.  
אכתר מן הדה אלמסאפה לא ילום אלחאכם אן  
יראסלה פאן

ואנו צריכים לכך בזמן שיש בין הלווה ובין הדיין  
מהלך יום אחד שזה כדי שילך השליח אליו יום ג'  
וידוענו בו ביום ויחזור יום ד'  
ויהיה בב"ד יום חמישי.  
אבל אם היה רחוק יותר מזה אין צריך  
להודיעו. ועוד אם

<sup>43</sup>The bracketed text reveals a parallel between the al-Barceloni Hebrew translation and the original Judeo-Arabic text. I have not presented the entire text here, only those sections accompanied by a Judeo-Arabic source. For further details, see Assaf, "Seridim," 77–78.

## T-S NS 309.14r

כאן דו אלחק שדיד אלב[אס ויגלב פי טן אל  
 חאכס] 44 [אנה] אן אחוק לה עקאר[א]  
 [במאלה... סר] [אלפ]דין 45 אפתכאכה  
 וירתגאעה ל[ה אן ...ה] כמה קד דכרנא פי קצה  
 מארי בר איסק לאן אלאפתכאך ואגב לה כמה  
 קאלו [הלכתא שומא לעולם] הדר[.]. ופי הדא  
 אלמעני

## Oxford, Bodleian Library MS

## Marsh 509 115r

קאלו וכי כתבינן אדרכתא מודיעין ליה והני  
 מילי דמקרב אבל מרחק לא ואי איכא קרובים  
 או נמי שיירתא דאזלין ואתיאן מעכבינן ליה עד  
 תרי עשר ירחי שתא כי הא דרבינא שהינה  
 למריה דאחא בר סמא ((אלימא)) תרי עשר  
 ירחי שתא עד דאזל שליחא לבי חוואי ואתא  
 ולא היא מארה דאחא בר סמא אלימא הוא דאו  
 נפל אדרכתא לידיה לא הוה מאצי לאפוקה  
 מיניה אילא כגון דאזיל שליחא בתלתא ואתי  
 לארבעה ואתי לחמשה לדינא: תם אלכתאב  
 ובריך רחמנא דסיע בהדן

היה המלוה איש קשה  
 ויחוש הדיין כי שמא לא יוכל הלוח להוציא  
 הקרקע  
 מידו כשירצה לפדותו ממנו  
 ראוי הוא להיות מאחר אותו כמו שזכרנו  
 בפסק מארי בר איסק כי הלוח רשאי לפדות קרקעו  
 מיד המלוה כמו שאמרנו והילכתא שומא הדרא  
 לעולם ובזה

אמרו כי כתבינן אדרכתא אנכסיה מודיעין ליה  
 וה"מ דמקרב אבל דמרחק לא ואי איכא קרובים ואי  
 נמי איכא שיירתא דאזלין ואתן מעכבינן ליה עד  
 י"ב ירחי כי הא דרבינא וכו'  
 ומסקנא  
 ולא היא רב אחא בר חמא אלמא הוה  
 ואי הוה נפיל אדרכת' לידיה תו לא אפשר לאפוקי  
 מיניה אלא כדאזיל שליחא בתלתא ואתי בארבע  
 ו(ה)[ב]א בחמשה בבי דינא.

## English translation:

Rav Hai wrote in his commentary as follows: To the matter of someone who owes money and refrains from paying, our rabbis said . . . a *beit din* is not authorized to collect from a debtor, but from real property, as they (BT Bava Qamma 112b) said: "An *adrakhta* (authorization document) can be attached only to immovables but not to movables." If the defendant has no land or if the lender doesn't want to be repaid from the land, the defendant will be stayed in excommunication (*herem*) and in a ban (*shamta*) until he pays off all the money that he must redeem from the movables, as we say (BT Bava Batra 157a): "even from the mantle that is on his shoulders." And if he was further than [the walking distance of one full day], such that if the court emissary were to leave on the morning of the third day, arrive at the end of the day, and the litigant succeeded in arriving at the city on the fourth day [so that] he would be present in court two days later, that is, on the fifth day. If he were further than this distance, the judge would not be obligated to send him.

<sup>44</sup>Completions according T-S K6.198v.

<sup>45</sup>This suggestion is according to al-Barceloni's translation.



Figure 1. Cambridge University Library, Taylor-Schechter Genizah Collection, T-S NS 309.14.

If the creditor was a violent person and the judge suspects that he would hold the land for his debt [when the debtor comes to redeem it], he [the judge] may redeem his land and return it to him [the debtor], as we have mentioned in the deed of Mari b. Issac, that the redemption is his duty [probably upon the judge],<sup>46</sup> as they said: “And the halakha is that repossession based on an appraisal can always be returned (BT Bava Metzia 35a).” They said: “Whenever we write an *adrakhta* we notify the debtor, provided he resides nearby, but if he resides at a distance this is not done,” etc. (BT Bava Qamma 112b). The book was completed, and blessed he be who assisted us [that is, the author to complete the book].

The text, which appears at the end of the work, closes with a colophon that testifies to the boundaries of the text and may well signal its integrity. Though insufficient in its own right, it is supported by intrinsic textual evidence. Further evidence is furnished at the colophon discovered in additional Genizah fragments of the Taylor-Schechter Collection (Fig. 1). T-S NS 309.14 contains this concluding section of a book with the following additional words:

<sup>46</sup>Compare with al-Barceloni’s translation, which sees this as a permission for the debtor. The explanation seems to deviate from the original text in Judeo-Arabic. The instructions in this book are directed to the judge: it is his ethical responsibility to ensure that the debtor does not lose his right to the real estate entirely due to his debt.

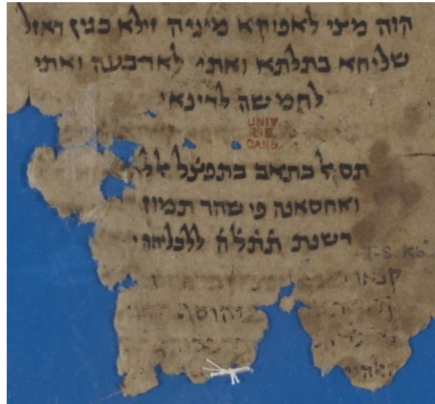


Figure 2. Cambridge University Library, Taylor-Schechter Genizah Collection, T-S K6.198.

T-S NS 309.1

תם כתאב < אדב אלקצא  
 >וללה אל-חמד ואלשכר  
 <...> כתירא  
 <...> ענא בכתבתה תמאם בר  
 <.....> קרוי וכאן דלך פי שהר  
 <.....> כלות מנה

Translation:

<Completed is the Book> of the  
 judges' good manners,  
 <to God> be praise and thanks  
 <...> manifold.  
 <...> by me in writing it (?), Tamam  
 son of  
 <...> from Kairouan (?<sup>47</sup>). It was  
 [done] in the month  
 <...> at the end of it

T-S K6.198 of the Taylor-Schechter Collection (Fig. 2) appears to contain a different colophon, again, based on its content and the use of different ink than the body of the text. Thus, it seems to be a colophon followed by an owner's note:

T-S K6.198 transliteration:

תם אלכתאב בתפצל אלה  
 ואחסאנה. פי שהר תמוז  
 דשנת תתל"ה ללכליקה  
 קנאו <הצעיר> יצחק בר חיים  
 <קדושת .... יהוסף הלוי>  
 <... יבור...>  
 <... האלהים ...>

English translation:

Completed is the book with God's mercy  
 and His goodness, in the month of  
 Tammuz [~July]  
 in the year 835 of the Creation [1075 CE].  
 It was purchased by <the young(?)> Isaac  
 bar Ḥayim,  
 the holiness of ... Joseph Halevi(?) ...  
 <... may he be blessed by God <... ...>

<sup>47</sup>Joshua Blau, *A Dictionary of Medieval Judaeo-Arabic Texts* (Jerusalem, 2006), 543.

There is therefore a combination of evidence here that supports a complete historical reconstruction of a lost treatise. Each piece of evidence by itself may be flawed or insufficient, but the aggregation of all the pieces of evidence tips the scale favoring a reliable reconstruction that reveals the composition of Rav Hai Gaon. (For an approximated structure of R. Hai's *Kitāb Adab al-Qaḍā*, see Appendix 1.)

The words **תם אלכתאב** (completed is the book) appear in both colophons, and because the surviving text preceding them is identical in both Genizah fragments cited here (the text on the recto sides of both TS NS 309.14 and TS K6.198 also matches and is identical, with slight variations), it leads to the likely conclusion that both fragments can be identified as parts of R. Hai's *Kitāb Adab al-Qaḍā*, known from Genizah book lists.

### **Preliminary Contextualization according to Islamic Legal Culture**

The reciprocal legal relationship between Judaism and Islam is extensive and far-reaching. Notwithstanding research conducted on the relations between these two Abrahamic faiths, there is still much that we do not know about their legal foundations. Some scholars suggest that certain doctrines in Jewish law were extrapolated from Islamic law;<sup>48</sup> however, more research is needed to understand the intricate dynamics between these two religions and legal systems. It is yet to be determined if the last word has been said in this comparative field or whether there are other paradigms that need to be considered when looking into the legal histories of both religions.

In places where there are lacunae in Jewish law, scholars have demonstrated that Islamic law has been consulted to fill those gaps. As noted above, the Geonim developed talmudic legal knowledge, making use of the Islamic literature available to them, though it is not easy to trace how it facilitated the accommodation to or adaptation of the law.<sup>49</sup> I wish to demonstrate that there were more than just individual legal doctrines drawn from Islam. The two cultures were not merely “influenced” by each other to a limited degree but shared the same cultural milieu. For this reason, applying methodologies from the field of comparative literature can reveal significant proximities and similarities that lead to a shared legal narrative. As is evident from numerous studies devoted to scholarly collaboration in the Middle Ages, it is assumed that scholars corresponded with each other, engaged in scholarly negotiation, learned from one another how to construct their discussion frameworks

<sup>48</sup>See Gideon Libson, “Comparative Jewish-Islamic Law: Issues and the History of Research” [in Hebrew], *Pe'amim* 62 (Winter 1995): 42–81.

<sup>49</sup>For examples, see *ibid.*

and work within certain literary patterns, and grappled with similar ideas, methodologies, and ways of thinking. In this sense, law is not substantially dissimilar from any other field of medieval research, such as linguistics or poetry. Jewish law not only borrowed specific legal doctrines from Islamic law, but the Geonim adopted the literary tradition, applied it, and developed it further.

Rather than citing textual parallels from Islamic law, the following is an attempt to contextualize them and outline the similarities and differences that are important for understanding the shared sphere of these legal works. Several key themes can be found in the *Adab al-Qāḍī* genre, that is, in both Judeo-Arabic and Islamic compositions—for example, delays in the judicial process or the implementation of sanctions to discipline noncompliant or defiant litigants. I aim to illuminate this issue within the ambit of Islamicate traditions. It is plausible that the Geonim were “influenced” by the Shafiite or Ḥanafite schools of law that were then dominant in Babylonia, though this cannot be established conclusively. It is likely that other schools of law were also influential, though the original works of the *Adab al-Qāḍī* genre have not survived.<sup>50</sup>

Philological tools are also helpful in establishing the degree to which Jews and Muslims participated in a shared cultural milieu. Efforts to reconstruct a text arising from the Jewish offshoot of the *Adab al-Qāḍī* genre and to analyze it within its legal historical context demands a careful examination of the texts crafted by the Geonim. Contributions of the two cultures to each other are discernible from comparative investigation of the textual traditions. One example is the compilation of Muslim legal texts that made use of numerical, analytical, and Archimedean elements. The Geonim recognized the meticulously crafted works of Islam and looked to emulate them in structure and presentation. As a parabolic comparison, a corresponding work written during the same period as the Geonim was chosen.

One of the most important influences on the design of the geonic legal treatises was the Hanafite school, in particular, *Sharḥ Maʿānī al-āthār* (Explanation of the Meanings of the Traditions), composed by Imam Abū Jaʿfar Aḥmad al-Ṭaḥāwī (853–933). This work has received relatively little scholarly attention, despite it being one of the foremost works of the Ḥanafite school.<sup>51</sup> This is an unfortunate oversight, as the compilation offers a comprehensive discussion of both daily piety and unique insight into the Hanafite

<sup>50</sup>One of the central texts of the Hanafite school on the subject is the work by Abū Yūsuf: *Yaʿqūb ibn Ibrāhīm al-Qāḍī, al-Muḡtaḥid, al-Ḥanaḥī*.

<sup>51</sup>Citations are to the edition of *Sharḥ Maʿānī al-āthār* edited by Ibrāhīm Shams al-Dīn (Beirut, 2001). Another source from the same author that requires further inquiry for its *Adab al-Qāḍī* parts is an even greater codex: *Sharḥ Mukhtaṣar al-Ṭaḥāwī fī al-fiqḥ al-Ḥanaḥī* (8 vols.) by Aḥmad ibn ʿAlī Jaṣṣās.

legal world. *Ma'ānī al-āthār* was written in the period of the Geonim, but even if the Geonim had not known this work specifically, they knew similar materials in the format of a hadith (oral tradition), that is, files of traditions that are interpretations of the Qur'an or transmission of the deeds of the companions of the Prophet (Atzhab) that were already common in their day. Unlike other Islamic *Adab al-Qādī* works, this chapter on *Adab al-Qādī* (in this context specifically named *kitāb al-Qādā wa'al-Shahadāt*) is integrated within a larger *fiqqiya* (jurisprudential principles distilled from the body of *fiqh*). This raises questions as to the type of writing that had preceded it. It is worth noting that *Ma'ānī al-āthār*, like other *fiqqiya*, offers coverage of a variety of topics, making it a comprehensive codex. Interestingly, the ritual matters and judicial components are intertwined, as is the language of theology and law.<sup>52</sup> *Ma'ānī al-āthār* discusses diverse topics and is quite similar to geonic works that offer instructions for the judges, serve as reference books, and provide guidance to judges at work in the courts. These guidelines are very general, as they aim to create encyclopedic knowledge of judicial procedure. In this sense, the nature of the Jewish and Muslim works is similar, as is the type of transmission of authoritative traditions. What emerges from the comparison is that when we strip the raw material of its particularities relating to differences of traditions, we are left with extensive abstract discussions that reflect perspectives shared by the Jewish and Muslim juristic traditions.

The relevant treatise in al-Ṭaḥāwī's *quasi Adab al-Qādī* consists of ten chapters, reflecting Arabic literature's special emphasis on chapter numbering. Arranging rules within such a structure is not only an issue of aesthetics but also a matter of the integrity of the law itself. Most of the al-Ṭaḥāwī chapters do not focus directly on the character or functions of the judge, as this genre typically comprises material concerning testimonies, witnesses, and other elements commonly found in general *fiqh* literature. Instead, they provide a flexible *adabic* context and structure, emphasizing the cultural aspects of the compound *Adab* [+] *al-Qādī* genre. The number of chapters is not at all incidental, as the number ten is a sign of completeness and is consistent with efforts in this literature to supply an all-encompassing overview of a judge's responsibilities. Although this is an exaggerated expectation from such a short treatise, it does outline the qualities of a proficient judge, the legal procedure to be followed, and the relationship of the judge to the litigants, the public, other judges, the law, the court, the community, scholars, and the government. It should be noted that before the canonization of rules for judges had evolved in Islam, al-Ṭaḥāwī's work represented his attempt to define the judge's role by referring to substantive law in areas related to

<sup>52</sup>For a discussion of the hermeneutical terminology *bāṭin* ("inward," "hidden") vs. *zāhir* (external and manifest) see al-Ṭaḥāwī, 447.



judicial procedure. By furnishing a broad overview, *Adab al-Qāḍī* served as an invaluable resource for judges and those interested in learning about the judicial system. (See Appendix 2.)

Similarly, Rav Hai's *Kitāb Adab al-Qaḍā* contains essential statements about the order of law, but much of it is a collection of traditions, a concentration of legal law in its proper framework. The book's table of contents reveals a presentation that is neither well-ordered nor easily comprehensible.<sup>53</sup> It is preferable to identify this *fiqh* book as more within a hadith-chain than as a normative *Adab al-Qāḍī* treatise aiming to provide apodictic instructions for the jurist or the judge. It is important to emphasize that the work is a self-standing monograph, and the names of the authorities that ordinarily might have been included in it have been omitted. This omission and the failure to mention contemporary works may have been consistent with Rav Hai's aim to represent the work as his own and to confirm his own halakhic creativity. In his discursive style, the author indeed interpreted talmudic passages and rendered halakhic rulings, but his main goal was to present his halakhic compilation as an independent work while simultaneously seeking to ensure its wide accessibility. Other books of *Adab al-Qāḍī* might serve as responsa, biographies of qadis, and appear in different contexts. Works of *Adab al-Qāḍī* promoted overlap among various genres and reveal the extent to which the general jurisprudential culture was pervasive. The Muslim codices represented an available prototype that the Geonim (and Karaites as well) adapted for Jewish needs. They did not create vast parallel *fiqh* books as some of their Muslim colleagues did, but rather sought to provide guidance in practical legal matters.

This guidance required the development of certain attributes in the qadi as an Islamic administrator and rested on his relationship to political conditions and the reality of Jews who appeared before a Muslim judge. Adjudication in a Muslim court is well documented, though the Geonim prohibited recourse to non-Jewish tribunals. Regarding the judge's role, similarities between the Islamic text and what is found in Jewish sources stand out. In the text of al-Taḥāwī, the Prophet is portrayed as an advocate of the public interest. In addition to the verb *nathr*, which appears frequently in this genre and means to adjudicate, there is also the verb *mashi*, which implies that the judge should act quickly and diligently to care for the public's concerns. The promotion of the public good, and specifically the welfare of society, reveals a wider range of the judge's characteristics than is normally expected.

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<sup>53</sup>This is a characteristic of many Islamic *fiqh* books; see Norbert Oberauer, "Islamisches Recht," in *Enzyklopädie Recht und Literatur*, ed. Thomas Gutmann, Eberhard Ortland, and Klaus Stierstorfer, <https://lawandliterature.eu/index.php/de/inhalt?view=article&id=35&catid=11>.

The compilation by al-Ṭaḥāwī was intended to stand on its own. It functions as an independent legal codex, meant to aid judges in their judicial duties. Unlike the geonic materials, however, this was a classical hadith or sharḥ text<sup>54</sup> that the author traced back to Muhammad. Many of the discussions found in this unit can also be traced to biblical, Quranic, and further Islamic and cultural Arabic sources. As was typical of *Adab al-Qāḍī*, this chapter deals with a variety of legal issues. The author's independent reflections are often minimal and mostly assimilated within the text, in accordance with the style of *adab*.

### Parallel Content of Islamic Law

The foregoing analysis suggests that the Muslim system constituted a categorical, disciplinary, and even doctrinal framework for the entire discussion that appears in Jewish jurisprudential literature. Despite undeniable differences, the Geonim drew from these discussions, adapting them according to their needs. Parallels in the two systems reflect a shared perspective. At times one can trace a line that leads from Jewish sources to Muslim sources, or vice versa, and sometimes not at all. Disparities invariably stem from inherent differences between the religions or from distinctive sources upon which each culture rests, but the parallels and the differences reflect the image of the tree with roots and branches that aptly describes the history of law. For texts that speak stutteringly in Judeo-Arabic, owing to historical circumstances that made it impossible for them to survive in their entirety, Islam is their voice.

Whereas the geonic work described above is an established monograph, al-Ṭaḥāwī's *Sharḥ Ma'āni al-Āthār* presents a different image. The treatise on *Adab al-Qāḍī* in this *fiqhi* collection is more representative of the general picture of Islamic law and serves as a *shraḥ*, a hermeneutical work or super-commentary. The importance given to the content of hadith tradition (*matn*) and to the chain of transmitters (*isnād*) in Islamic works is not only technical but is highly important in the substantive parts of the procedural law. This *Adab al-Qāḍī* treatise functions as a hadith, in that it relates the adjudicative content to the Prophet. The frequent appearance of the formula ﷺ<sup>55</sup> gives the impression that, in contrast to later or more developed works of *Adab al-Qāḍī*, there is no real rift between the hadith and *Adab al-Qāḍī* genres.

<sup>54</sup>Cf. the hadith regarding the horse, al-Ṭaḥāwī, 43536, which is similar to a hadith brought in the collection of hadith by Sunan Abi Dawud, from Sahih al-Albani Book 25, Hadith 37, regarding the Office of the Judge (Kitāb al-Aqḍiyah, كتاب الأفضية).

<sup>55</sup>This refers to the formula "God's shadow upon him and peace be upon him"—a unique formulary for hadith and the transmission of traditions in an original and reliable way in Islam.

There are inclusions of long *isnāds* comprising only names, with verbs that are typical for tradition chains (among other expressions) and even the common sign ح, which usually refers to the existence of parallel hadith branches. As is typical in hadith literature, the reliability of a certain hadith is questioned here, and for some traditions one finds disagreements as to whether they are reliable (*ṣaḥīḥ*) or confused and nonauthoritative.<sup>56</sup>

Some of these traditions do not add new information to the content of the *matn*, but only reference authorities who have said the same thing to strengthen the chain of tradition and its connection to the divine truth revealed by the Prophet Muhammad. In other words, the *Adab al-Qāḍī* stands as an intermediary between interpretive, legal, and literary genres. In this particular context, the linking of the *isnād* to Muhammad has a special significance beyond the usual practice of tracing the tradition to the Prophet. Muhammad is presented here as the ultimate arbiter, as in many other sources.<sup>57</sup> These traditions are reminiscent of the Mishnah, Midrash, and Talmud, not only in the authoritative way of thinking but also in the discursive content.<sup>58</sup> Likewise, Hai Gaon repeats the authoritative sources with respect to jurisprudence, namely the Talmud.

The primary focus of the treatise is the judge. The hadith mentioned at the outset pertains to the rights of ahl al-Dhimma. Indeed, the order of each subchapter is hadith-oriented, though the order of the entire treatise still requires further clarification. The section stating that it is considered inappropriate in the eyes of the Prophet to become involved in the adjudication of ahl al-Dhimma underscores the importance of refraining from any actions that would erode the privileges granted to Jews and Christians. The treatise then proceeds to discuss the implications of the rulings, how they should be applied in different situations, and presents opinions of various scholars on the issue.<sup>59</sup>

<sup>56</sup>See al-Ṭaḥāwī, 462, for the expression حديثاً منقطعاً شاذاً and the discussion concerning disposition of the properties of someone who went bankrupt and then died.

<sup>57</sup>For example, the Prophet is responsible for exercising judicial discretion in applying the punishment of Ḥadd. According to Islamic law, certain crimes are punishable by fixed sentences; these include theft, highway robbery (*ḥirābā*), engaging in forbidden sexual relations (*zinā*), falsely accusing someone of forbidden sexual relations (*qadhf*), and drinking alcohol.

<sup>58</sup>See, for example, the hadith discussion in al-Ṭaḥāwī, 433ff., on whether a judge may adjudicate in a case where there is one witness who takes an oath.

<sup>59</sup>The discussion in the first section is based on a Quranic interpretation of Surah 5, Al-Ma'eda, verse 42, on the laws of dhimmis. Overall, there is a hierarchical structure regarding the type and classification of issues under discussion. Regarding issues that are common to Islamic law and the dhimmi law, al-Ṭaḥāwī brings a second opinion that the Muslim judge can adjudicate according to Islam. Cf. Simonsohn, *A Common Justice*; Ido Shahar, *Legal Pluralism in the Holy City: Competing Courts, Forum Shopping, and Institutional Dynamics in Jerusalem* (London, 2015).

### *Judicial Authority*

The presumption is that the qadi is appointed for his judicial authority in a certain manner, and his power is always restricted by the governor, the imam, the caliphate, and the entire judicial administration. He is appointed as a jurisconsult in the fields of his professional expertise, and his territorial jurisdiction is limited to a particular region and population.<sup>60</sup> Typically, the Muslim judge is not obligated to judge for the Jewish or Christian minorities; the Jewish community enjoyed the status of dhimmis and was authorized to judge themselves. Not all judges were trained, and some needed manuals for judgeship. Therefore, the author chose to locate the issue of judicial authority at the beginning of this chapter, as it is a question of obedience and obligation of citizens towards the law. Thus, the need for the regulation of the personal status of the judge is evident, as he settles civil relationships within the Islamic empire and serves as a regulator for all legal affairs. In this, of course, the Muslim *Adab al-Qāḍī* is very different from the Jewish representation of the genre, as it also deals, for example, with criminal law and the death penalty, which are part of the mainstream law. Some criminal cases are documented in the Rabbinic law, but the judicial power of the Jewish judge under the emperor was quite restricted for civic matters (and even in these instances, Jews frequently approached the Muslim court, striving to gain a judicial result in their favor). The concerns of family law discussed in this chapter provide a brief overview of this issue from the standpoint of the judge who is authorized to deal with personal status.<sup>61</sup>

### *Judicial Oaths and Evidence*

The function of oaths and evidence is typical for the genre of Jewish legal literature. Significant weight is given to the doctrine of oaths, which is used to establish the credibility of litigants. These discussions show great similarities between Jewish and Islamic law. The basic rule of this system is that the prosecutor is the initiator of the case, and thus must bring evidence, and the defendant is a passive respondent and must swear if the evidence presented by the prosecutor is not strong enough. This principle is fundamental to Jewish civil procedure and many discussions in this genre are built upon it. One of the most important sources cited in this context is the hadith dis-

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<sup>60</sup>See al-Ṭahāwī, 433ff.

<sup>61</sup>See Neri Y. Ariel, "Thoughts on Quotation Norms and Plagiarism in the Judaeo-Arabic Culture of the Central and Late Middle Ages," in *Intertextuality in Jewish-Islamic Law*, special issue of *the Asiatische Studien – Études Asiatiques: Zeitschrift der Schweizerischen Asiengesellschaft-Revue de la Société Suisse-Asie* (forthcoming).

cussion of whether a Muslim court may accept the oaths of Jews. In this hadith, the Jews are considered disbelievers, thus they are suspected of lying in their oaths. The phrase *تُذَرُّكُمْ يَهُودُ بِخَمْسِينَ يَمِينًا* (can the Jews swear fifty oaths declaring their innocence?) appears and is discussed at length.<sup>62</sup> The mechanism in Jewish courts, the extensive writings by Jewish scholars on this issue of witnesses, and the common use of oaths in the larger framework of the genre may reflect a Jewish reaction, and possibly even rejection, of the perception of them as untrustworthy heretics.<sup>63</sup>

Jewish writers of this period dedicated numerous monographs to vows and oaths. Not only did this topic appear in every *fiqh* book, but it was also heavily incorporated in the *Adab al-Qāḍī* genre. One of the most basic principles mentioned by Rav Hai Gaon was *ha-motzi me-ḥavero* 'alav ha-re'aya (the burden of proof falls on the claimant). Similarly, Islamic sources mentioned by al-Ṭaḥāwī contain similar principles that are well known from other texts. One of the sources quoted in this context is a well-known hadith regarding the gap between the status of the complainant and the defendant. The hadith mentioned here, however, does not specify from which source it was taken. It nevertheless appears that in this text there is a precedent of *Adab al-Qāḍī*, which emphasizes the importance of maintaining this distinction.<sup>64</sup> As one learns from many other sources, the place of oaths and evidence in court is emphasized as serving the ideal of justice, rather than serving the interests of the claimant. Similarly, in the Islamic legal system, swearing in the name of God for personal benefit is considered legally and religiously corrupt. Therefore, the Islamic legal system may bar a plaintiff from taking an oath.

The grounds for the decision to combine the *fiqh* materials within the framework of *Adab al-Qāḍī*, which is also the genre of qadi's etiquette, are both warranted and understandable. The qadis are not only part of the administration but are also responsible for ensuring that God's name is not uttered gratuitously (*la-shav*). This relates to the suspicion of the Prophet concerning loyalty to certain hadith and to (the verb) *shahada*. In the first conjugation, it is about testifying; its meaning is not only that of a litigant who is summoned to court. In the Islamic tradition this conjugation refers to someone who fights in the war for Allah (*istashahda*, in the tenth conjugation), which

<sup>62</sup>See the parallel in the Book of Oaths (Qasamah, كتاب القسامة), Retaliation and Blood Money, in "Chapter: Regarding Mentioning the Different Wordings in the Report of Sahl," Vol. 5, Book 45, Hadith 4718.

<sup>63</sup>See al-Ṭaḥāwī, 439.

<sup>64</sup>Hadith book of *Bulugh al-Maram* §1423, "Book of Cases and Evidence," Book 14, Hadith 27, narrated by Ibn 'Abbas.

is intertwined with the term *shahada*, testifying to one's belief in God and that Muhammad is His messenger.<sup>65</sup> There are many differences in the details and in the system of the oaths; on this issue, however, the two systems closely approximate one other.

After several chapters discussing general judicial issues that are not directly connected, the fifth chapter concentrated on the judge himself. This is a common feature in this literary genre, as the personality of the judge and the judiciary are typically at the center of the general framework.<sup>66</sup> There al-Ṭaḥāwī brings forth a hadith found in other sources<sup>67</sup> that portrays a judge as halfway between a spiritual figure capable of perceiving ideal justice and one characterized by human imperfection. This literature seeks to position the judge between the divine and the human. It was important to the Islamic administration that judges balance benevolence and meticulousness in adjudicating disputes. Judges may serve as Allah's messengers, and their authority has an impact on the destiny of humankind. The responsibility of the judge is not only to render a true verdict, but also to account for the souls of all Muslims, which has a crucial influence on the entire world. While there is a disagreement among various Islamic schools as to the range of their deliberation and judicial discretion, it is clear from what is presented in al-Ṭaḥāwī's treatise that the authority of judges extends to the entire jurisdiction over which they are responsible, whether as law creator or as legal administrator.<sup>68</sup>

## Conclusion

If the early geonic corpus was composed of collective oral traditions, the successors of Se'adya Gaon (882–942) specialized in the composition of legal codices. Known as "late monographic works," "Judges' Duties manuals" were the jurisprudential apogee of this geonic literary creativity. To date, the *Adab al-Qāḍī*, or Judges' Duties genre, has not been the subject of focused scholarship in its Jewish instantiation.<sup>69</sup> These jurisprudential remnants from

<sup>65</sup>See al-Ṭaḥāwī, 442.

<sup>66</sup>This insight was presented by Robert Gleave in a seminar talk entitled "Christian Law – Islamic Context: The Nomocanon of the Coptic Canon Lawyer al-Ṣafī Ibn al-ʿAssāl (d. 1260)" at the University of Exeter, May 11, 2022.

<sup>67</sup>al-Ṭaḥāwī, 446. Cf. <https://www.hadithportal.com/index.php>, vocalized transcription.

<sup>68</sup>al-Ṭaḥāwī, 447–49, and Ariel, "Guidelines," 65–66 n. 112.

<sup>69</sup>In addition to Jews, Christian and Islamic minorities also prepared such compilations. Although there is currently no clear evidence regarding the range of such compilations within the genre of *Adab al-Qāḍī*, it is important to note that minorities in the Islamicate traditions also needed such adjudication manuals.

the geonic age, here extracted and reconstructed from Genizah documents, contain comprehensive professional manuals for judges that address various jurisprudential themes: court procedures, judicial integrity and ethics, in addition to other elemental legal principles, such as witness liability and oaths. I have argued that this literature must be viewed against the backdrop of the contemporary texts written by qadis and muftis for Muslim courts. I present these finds as an example—of course, open to discussion—of what can be expected of future Genizah research. The cumulative perspective gained from the identification of Genizah texts will assist in identifying further fragments, while the methodology of contextualization is meant to help develop our toolkit further, beyond comparing “parallelomania.”<sup>70</sup>

Rav Hai Gaon was undoubtedly the greatest legal authority of the geonic period, and most of the extant Genizah texts of the *Adab al-Qādī* genre stem from his treatise. Research conducted to date not only links single fragments, but also reconstructs chapters, pamphlets, and in the case of Rav Hai Gaon's treatise, the entire skeleton of a book. These findings are in line with projects undertaken by Genizah scholars in recent decades. In comparison to noted Muslim compositions in the field, this work reflects an advanced level of normative legal discussion, similar to that found in Ibn Abi al-Dam or al-Ḥassaf/al-Jaṣṣās, but also contains elements from the ancient literature that is not characteristically normative. It is conceivable that Hai Gaon's text was part of a literary stream of *Adab al-Qādī* works and earlier compositions of the same genre that reflect hadith, among them the above-discussed work by al-Ṭahāwī.<sup>71</sup>

Prior to recent research on halakhic-jurisprudential or adjudicative texts of the *Adab al-Qādī* genre, the only extant published materials were rare Hebrew translations of Hai Gaon's *Kitāb Adab al-Qādā*. Assaf published the two above-mentioned Hebrew fragments belonging to this treatise, housed in the British Library. These were translated and altered by Rabbi Judah ben Barzillai al-Barceloni of the twelfth century. Assaf hinted that some other quotes may derive from this work by Rav Hai. He also assumed that these paragraphs were drawn from Rav Hai's *Ḥovot ha-Dayanim*, but he could not provide convincing evidence to support his conjecture. Assaf based his intuitive conclusions on the appearance of Rav Hai's name and upon vague references to this book in medieval writings. Supporting this conclusion was the fact that adjudication was the subject of the text and that this

<sup>70</sup>See Samuel Sandmel, “Parallelomania,” *Journal of Biblical Literature* 81 (1962): 1–13.

<sup>71</sup>See Christian Müller, *Recht und historische Entwicklung der Scharia im Islam* (Berlin, 2022), 38–50.

was not found in any other known book or responsa by Rav Hai. Nevertheless, due to the nature of his findings and the lack of technological tools, it was impossible for him to verify his reasonable hypothesis independently. Shraga Abrahamson also attributed a Judeo-Arabic fragment to Rav Hai Gaon.<sup>72</sup>

Based on the comments of Assaf and Abramson, we have been able to uncover much of the original Judeo-Arabic text. There were diverse Judeo-Arabic fragments from the Genizah that contained parallels and extensions of the paragraphs in Assaf's edition of al-Barceloni's *Sefer ha-Din*. With the discovery of Rav Hai Gaon's *Kitāb Adab al-Qadā* we have nearly forty surviving fragments of eleven different manuscripts. The surviving fragments of ten manuscripts were found in the Cairo Genizah; pamphlets from two other manuscripts came from different sources (Oxford, St. Petersburg) and are not considered to be Genizah materials. With further research and the discovery of additional fragments belonging to this monograph or to others of the same genre, it is hoped that a more complete picture of medieval Jewish judicial practice will in time emerge.

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<sup>72</sup>As noted above, Shraga Abramson hinted that a single fragment in Judeo-Arabic, MS Marsh 509, belongs to *Kitāb Adab al-Qadā* by Rav Hai Gaon as well, but no full analysis of this work by Abramson has survived.



## Appendix 1: The Approximated Structure of R. Hai's *Kitāb Adab al-Qadā*

Table 1 presents a summary of the reconstructed structure of Rav Hai's lost Book, *Kitāb Adab al-Qadā*. Note that fragments identified as belonging to other works of this genre have been excluded.

Table 1.

Chapter number	Fragment number	Issue/Further evidence
Introduction of the book, table of contents, other front matter, and beginning of chapter one have not survived.		
1	T-S AS 157.116 T-S AS 157.116; T-S NS 111.25a	Characteristic of the judges Criteria for judges' dismissal
2	T-S Ar.52.209; T-S AS 167.37+38; T-S NS 111.25 (2v) (title §2)	Prohibited appointments
3 (completely missing)		
4–6	T-S AS 161.89; T-S Ar.18(1).93 (title §5); T-S NS 262.43 T-S Ar.48.143 T-S Ar.18(1).93 (title §6); T-S G2.154	Construction of court panels Prosecutions Determination of court; court appointments Legal procedure: receiving of claims and their investigation
7–{9?}	RNL Yevr.-Arab. II847; ENA JTS 3786.5; T-S Ar.47.219; T-S Ar.18(1).102	Argumentations
10–14	T-S Ar.48.69; ENA 2639.42–45 (title §11, 13); ENA 2580.3; T-S Ar.47.56 (title §14)	Documentation of court procedures; evidence; reconciliation ( <i>pesharah</i> )
{15–16?} Order doubtful <sup>a</sup>	T-S AS 171.119; Or. 1080.6.1 T-S Ar.18(2).16; Mosseri MS (without shelfmark) Ibid; ENA 3383.8; ENA 3363.6;	Orphans' properties and social aids/custodies Ethical instructions for judges; prohibition against bribery
{17–21?}	HUC 1185; ENA 2710.18+19; ENA 2766.8; ENA 2716.2; ENA 3055.2; ENA 3786.5; ENA 2580.1	Specific examples and addendum: testimonies and deeds; collection of ketubbot Court procedure: differences between civil law and criminal law (based on ten differences <i>mamonot</i> and <i>nefashot</i> )
22–23	Oxford, Bodleian MS Marsh 509 (Neubauer 581.2) T-S NS 309.14; T-S K6.198	Legal authorities Sanctions to compel rebellious litigants End of the book and colophons

<sup>a</sup>There are also several fragments that likely belong to this book, but it is still unclear where they should be positioned: T-S Ar.49.48; T-S NS 312.85; TS NS 309.60; T-S Ar.18(2).128. There are also fragments that require further identification before determining if they belong to this book: T-S Ar.18(1).41 Manchester B3192; ENA 2699a.3. These could potentially belong to other works of the same genre.

## Appendix 2: Overview of the Chapters Comprising Quoted Section of *Adab al-Qāḍī*

Table 2.

1	بَابُ الْقَضَاءِ بَيْنَ أَهْلِ الذِّمَّةِ	Chapter: Judgeship between Protected Persons (dhimma)
2	بَابُ الْقَضَاءِ بِالْيَمِينِ مَعَ الشَّاهِدِ	Chapter: Rendering Judgment Based on the Oath of a Witness
3	بَابُ رَدِّ الْيَمِينِ	Chapter: On Acceptance of an Oath <sup>b</sup>
4	بَابُ الرَّجُلِ يَكُونُ عِنْدَهُ الشَّهَادَةُ لِلرَّجُلِ هَلْ يَجِبُ عَلَيْهِ أَنْ يُخْبِرَهُ بِهَا؟ وَهَلْ يَقْبَلُهُ الْحَاكِمُ عَلَى ذَلِكَ أَمْ لَا؟	Chapter: Is a Person with Evidence Obligated to Testify in Court? Is the Judge Obligated to the Testimony?
5	بَابُ الْحَاكِمِ يَحْكُمُ بِالشَّيْءِ فَيَكُونُ فِي الْحَقِيقَةِ بِخِلَافِهِ فِي الظَّاهِرِ	Chapter: Judgment Where the Reality is Different from What is Outwardly Apparent
6	بَابُ الْخَرَ يَجِبُ عَلَيْهِ دَيْنٌ وَلَا يَكُونُ لَهُ مَالٌ كَيْفَ حُكْمُهُ؟	Chapter: A Freeman Owes a Debt but Lacks Money to Pay: What is the Ruling?
7	بَابُ الْوَالِدِ هَلْ يَمْلِكُ مَالَ وَوَلَدِهِ أَمْ لَا؟	Chapter: Does the Father Own His Child's Property or Not?
8	بَابُ الْوَالِدِ يَدَّعِيهِ الرَّجُلَانِ كَيْفَ الْحُكْمُ فِيهِ؟	Chapter: Paternity of a Child is Claimed by Two Men. What is the Ruling?
9	بَابُ الرَّجُلِ يَبْتَاعُ سِلْعَةً فِي قَبْضِهَا ثُمَّ يَمُوتُ وَتَمَنُّهَا عَلَيْهِ دَيْنٌ	Chapter: A Man Buys a Commodity, Takes Possession ( <i>muhzakat</i> ), Dies, and There is a Conflict Regarding Its Value
10	هَلْ تُقْبَلُ عَلَى الْقُرْوِيِّ. بَابُ شَهَادَةِ الْبُدْوِيِّ	Chapter: Testimony of a Nomad: Is the Testimony of an Uneducated Person Admissible?

<sup>b</sup>Almost every law book in the classical Islam and the hadith collections includes such a chapter as normative law, titled *Kitab al-Aiman Wa al-Nudhur* and the like.