

COMMERCIAL AND FAMILY PARTNERSHIPS IN THE COUNTRIES OF MEDIEVAL ISLAM

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This study is not based on legal texts nor on any literary sources. It summarizes and discusses actual documents, either business correspondence referring to partnerships or legal documents such as contracts, depositions in court or court records. All this material comes from the so-called Cairo Geniza, a treasure of manuscripts written mainly during the Fāṭimid and Ayyūbid periods and originally preserved in a synagogue in Old Cairo. The nature of this board of ancient writings and its relevance for Islamic social history has been described by the present writer in a number of papers, e.g., "The Cairo Geniza as a Source for the History of Muslim Civilisation" in *Studia Islamica*, III (Paris 1955), pp. 75-91,

The Documents of the Cairo Geniza as a Source for Mediterranean Social History", *Journal of the American Oriental Society*, 80 (1960), pp. 91-100, and, of late, in his book *Studies in Islamic History and Institutions*, scheduled to appear in Spring 1965. See also the Bibliographical Note at the end of this article.

Geniza (pronounce : *Gheneeza*), as may be remarked in passing, is derived from the same Persian word as Arabic *janāzah*, burial, and has almost the same meaning. It is a place where discarded writings were buried so that the name of God which might have been written on them might not be desecrated. Thus a *geniza* is the opposite of an orderly archive. Writings were confided to it not in order to preserve them for future use, but, in contradistinction, because they were of no use any more. However, while those records had lost their value for their original proprietors, they often constitute priceless treasures for the historian.

All the documents discussed in this paper, albeit mostly written in Hebrew characters, are in Arabic language. Moreover, in respect of many of them it is evident that they were made in accordance with the prevailing law of the country and in some contracts it is expressly stated that they were concluded according to Muslim law. A great variety of situation is reflected in these documents. However, as Dr. A. L. Udovitch, of Brandeis University, who is

preparing a volume on partnership in Islamic law and who read this paper, has assured me there is hardly a single legal aspect discussed here which has not been touched upon by one or another of the Muslim jurists. Incidentally, this shows also that the latter were not merely theoretical hairsplitters but tried to cope with the exigencies of real life.

Before presenting a selection from the Geniza material on formal partnerships, it is necessary to state that at least one-half of the international trade was based on informal business corporation which could last for a lifetime and even for several generations. The most common, and so to say official designation for informal business cooperation, was *ṣuḥbah*, or "companionship". Merchants of lesser stature would simply be described as the *ṣāḥib* or "companion" of a merchant or firm of greater reputation. Friendship, *ṣadūqāh*, is also very common. "Cooperation" *mu'āmalah*, literally "having dealings with each other," would be used in order to describe a relationship as informal, not based on a legal instrument. Other expressions, such as *mujāmalah*, "mutual kindness", or *muwāsalah*, "close relationship", were also used.

The present writer must confess that it took him quite a number of years until he understood the nature of informal business cooperation as evident in countless Geniza papers. For at first sight it seemed strange that a merchant should invest so much time and work in the mere expectation that his efforts would be properly reciprocated, or, as our sources say, "he serves there and I serve here", "you are in my place there, for you know well that I am your support here". However, this is exactly what happened. An *'umlah*, or commission, was paid for special service, not for the relationship with which we are concerned here. The fact remains that the Mediterranean and Indian trade, as revealed by the Cairo Geniza, was largely based not upon cash benefits or legal guarantees, but on the human qualities of mutual trust and friendship.

1. PARTNERSHIP AND COMMENDA

Informal business cooperation, as has been observed, could last through a lifetime or even through several generations. However, formal partnerships mostly were of short duration and limited to specific undertakings. On the other hand, this legal institution was enormously developed and encompassed practically every economic activity. It could be *industrial*, such as running a workshop, or

building a house ; or *commercial*, being as common in the wholesale trade as in retail business ; or it was connected with *public administration* such as tax-farming, the basis or the whole economy of the state, or work in the royal mint or exchange, and occasionally even *public office*, like that of judges, court clerks or cantors.

The profuse development of the institution of partnership in the Middle Ages was due to the fact that it substituted in two large fields which are covered today by other forms of contracts : *employment* on the one hand and *loans on interest* on the other. In our book, *A Mediterranean Society*, we have studied twenty-six contracts of industrial partnership, many of which are nothing but veiled forms of employment, and we shall meet with similar arrangements in commerce and banking. We also tried to explain why medieval people were so much opposed to the idea of being in the service of another and preferred a more dignified form of cooperation.¹ The difficult problem of loans on interest has been studied elsewhere.² However, even a cursory examination of the Geniza material proves that lending money for interest was not only shunned religiously but was also *of limited significance economically*. The reason for this was in some measure the same which induced people to avoid employment : "The borrower is a slave to the lender" (Proverbs 22 : 7). Borrowing money manifested some sort of dependence—a state of affairs underlined by the fact that loans were often given as an act of charity. Therefore, *the economic role of financial investment today was fulfilled by various forms of partnership in the period and society discussed here*.

Partnerships could be concluded with regard to money, goods, or work, or with regard to two or to all three of these values. The most variegated combinations appear in our records. In principle, there was no difference between these variations. Any of them could be and was referred to loosely as partnership, *shirkah* in Arabic. It is, however, practicable to discern between two main types of contracts : one in which the contractors offer the various services in equal or unequal shares and partake in profit or less in proportion to their investments ; and the other in which one or several partners contribute capital or goods or both, while the other or others do the work, in which case they receive a smaller share in the profit—normally one-third, but do not participate in the losses. The former was called *shirkah*, partnership, in the strict sense of the word, or, even more commonly, *khul'ah*, literally "mixing (of

the investments)". The relationship was also expressed by some figurative phrases, which as *kīs wāḥid*, "one purse", or *lil-wasaṭ*, "into the midst", or *baynanā*, "between us", because, as we learn from several documents, the "mixed" money was actually put into one purse, and, we may imagine, this purse lay in the midst between the two contractors at the time when they threw their coins into it in the presence of witnesses. All these figurative expressions are found already in Talmudic literature in Hebrew, but seem to belong to the legal language of the Near East in general.

The second type of contracts was called *qirād*, meaning "mutual loan"—one lending capital and the other work until the completion of the relationship—or *muḍārabah*, "mutual participation in an enterprise". The different schools of Muslim law prefer one or another of these two expressions. However, in the Geniza records, they seem to be equally frequent and not related to a specific country or period. In the queries addressed to Moses, Maimonides (1135-1204 A.C.) the two terms are used indiscriminately. We render these terms with *commenda*, since this medieval form of business cooperation in Europe was essentially the same as its Muslim counterpart and was perhaps derived from it. In the parlance of the Jewish courts, the *commenda* was called *qirād al-gōyīm* "mutual loan according to Muslim law" and was sharply differentiated from the *qirād betōrat 'isqā*, a *qirād* in form of an *'isqā*, "the Jewish partnership", in which the manager received two-thirds of the profits, but also was responsible for losses.³ The Jewish *'isqā* was less common in the Geniza period than the Muslim *commenda*, as is proved by the extant contracts and an express statement to this effect in Maimonides' Responsa.⁴ The *'isqā* was less practicable. For a merchant who invested only work, but no capital, usually did not have much money. Consequently his responsibility for losses was only of limited value.

In a number of legal documents referring to partnerships the manager who also invests capital, albeit sometimes only of a small or merely nominal amount, receives special benefits in cash or otherwise, which are described as "compensation for his toil and work", or "for his work and food". Since these expressions are invariably in Hebrew in midst of an Arabic text it stands to reason that a contract according to Jewish law is intended although Muslim law has similar provisions. The Mishna provided these benefits in certain partnerships in order to avoid their use for veiled

taking of interest and usury.⁵ As we shall presently see, some other aspects, such as the trustworthiness of the partners and the oath incumbent on them are also expressed in Hebrew terms. In general, however, it is by no means always evident according to which law, Muslim or Jewish, a contract was made and which school of lawyers within one of the two religions was adhered to. We are perhaps right in assuming that local custom ("the merchants' law") together with the specific aims pursued by the contractors in the formation of a partnership were largely responsible for the conditions laid down in a contract. Both Muslim and Jewish laws, with a few exceptions, leave to their followers considerable freedom with regard to the legal form of their economic undertakings, and Maimonides' Code states with specific reference to partnerships that customs current in a country are binding, as long as no stipulations are made to the contrary.⁶

As the Geniza records prove, the following points had to be considered in the conclusion of a partnership or a commenda :

1. The number and status of the contractors.
2. The object of the contract and the aims pursued with it (which are not always self-evident from its wording).
3. The nature and extent of the contribution of the partners (capital, goods, premises or work or two or more of these). Likewise, specific rights and privileges granted to them.
4. The share of the partners in profit and loss and their responsibility for the capital invested.
5. Conditions with regard to expenditure for the partnership and living expenses of the partners.
6. Whether or not the partners were allowed to conclude other partnerships with regard to a similar object during the duration of their connection.
7. Whether the partner or partners who managed the common business were regarded as "trustworthy witnesses accepted in court" and were therefore freed from "the oath incumbent on partners" (both Hebrew expressions) or not. Normally the stronger partner imposed this exemption on the other contractors. Each partner was expected "to exert himself for the common good, to shun cheating, negligence and easy-going, to act as a pious person and a gentleman and not to put his own interest above those of his associate" but only in comparatively few contracts were such stipulations made in full.⁷

8. Except in case of specific commercial ventures, which were, however, the most common object of an association, the duration of a partnership had to be defined.

9. Similarly, it was important to state when the partners would be obliged to render accounts. Normally this was done at the conclusion of the partnership. But in many cases interim accounts were stipulated or promised.

10. Finally special conditions of any kind could be included.

Normally a contract (let alone a letter referring to a partnership) does not contain all the points enumerated. Much was left to current practise or to oral agreements, which incompleteness, however, often led to law-suits. Law-suits of this type appear in queries submitted to legal authorities as well as in actual court records.

As to the number of partners, it has been observed that Muslim lawyers usually envisage only partnerships between two.⁸ However, this should be understood merely as a manner of legal idiom. In reality, as the Geniza shows, partnerships between three or four (or more) were as common as those between two associates. We have met with contracts between four and five persons while discussing industrial cooperation. In an account written in 1058, two out of five partnerships listed were concluded between three merchants, one of whom participated with a share of one-eighth only.⁹ In a letter mention is made of a partnership to which two persons contributed each one-third and two others each one-sixth of the capital.¹⁰ A query submitted to Maimonides speaks of a partnership consisting of three investors at least and one manager.¹¹ We shall have opportunity to refer in the following repeatedly to partnerships of three or four members, respectively.

It is hardly necessary to emphasize that the situation was the same in connections between Jews and Muslims. Two brothers in Qayrawān had a partnership with a Muslim in 1048.¹² Several cases of four associates, one of whom was a Muslim, are referred to in Chapter VI, of *A Mediterranean Society* where the legality of the conclusion of partnership between the followers of these two religions will be discussed.¹³

The commonplace object of a partnership is the case when the two contractors put identical sums (200 dirhams in the examples we are referring to here) "into one purse", "sell and buy, take and give and do business with their capital and their bodies" and share profit and loss, as well as managerial cost and living expenses in

equal parts.¹⁴ Participations in business ventures with different shares are of similar frequency, while profit, loss and expenditure are divided in proportion to the investment. A Tunisian merchant would have ^{196, 700}one-sixth in a deal of lacquer sent from Egypt, having a total worth of 365 dinars, and five-sixths in a shipment of indigo and sal ammoniac dispatched from the same country.¹⁵ We have met cases of this type before when we discussed partnerships consisting of more than two persons. The division of such shipments between the partners required great expert knowledge and used to be undertaken either by the receiving party if it had sufficient authority, or by a common business friend in the presence of at least two other acquaintances serving as witnesses or by a local representative of merchants.¹⁶

The situation becomes somewhat more complicated in a court record, where one partner contributes fifty-nine out of a total of one hundred and fifty dinars and shares two-thirds of profit and loss, while each partner has the right of unilateral disposition of the common money kept in a leather bag. The two were merchants engaged in the sale of silk in the Egyptian Rif, each of them travelling to a different town at a time.¹⁷

Sometimes, the reason for the seemingly unequal treatment of the partners can only be surmised. In a partnership in a store of drugs, the two contractors share work, profit and loss, as well as living expenses, but one pays in one hundred dinars and the other only fifty. As the latter bore the byname "the druggist", we may assume that only he had a licence for the store or even that the very object of the contract was apprenticeship. This surmise is corroborated by the fact that the contract was made for two years, a period noted also in another document as sufficient for apprenticeship.¹⁸ Another contract in a store of drugs, to which each of the two partners contributed the very considerable sum of three hundred dinars, state, as expected, that profit and loss were to be shared "equally in halves", but contains also the following stipulation: "When Mr. Amram (the other partner) is in town, he may join me in selling and buying, as it pleases him". It is not evident why Mr. Amram should receive an equal share in the profit, since he was not supposed to contribute work regularly. Evidently his *jāh*, or social position, made a connection with him profitable.¹⁹ Dr. Udovitch draws my attention to al-Sarakhsi, *Mabsūṭ* XI, p. 159, where a contract of this type is foreseen in Muslim Ḥanafī law.

Benefiting from the prestige of one's associate is expressly mentioned as aim of a partnership in an interesting document in which a local notable castigates two partners of his brothers from a foreign country. He was supposed to receive one-half of the profit and the two brothers the other half. The turnover from the store had been 4,000 dinars during fifteen months, while every month thirty dinars had been paid for "the debt on the store". However, besides the dinars in cash, the notable had received only half a dinar per week (the two brothers together got the same sum). Since he implies improper management by the brothers, his "sitting in the store", which was regarded as vital for the brothers' success, most probably was not very regular. It is not excluded that the monthly debt was paid to none else but the complainant.²⁰

The prominence of imponderables and the great latitude in the concept of the object of a partnership are well illustrated by a contract concluded between 'Ulla, "a Trustee of the Court", and a prominent merchant, and a man called Yaḥyā. The partners invested 150 and 120 dinars, respectively. Out of the total of 270, one received to his management 200, the other 70. Profits from all transactions made by either side would be divided in equal shares. Moreover, any profit made by either side with capital received from third persons on commission, in partnership or on commenda, would be also equally shared, while losses would be borne only for goods bought with the capital belonging to the partnership. Each partner had to restitute the capital handled by him including goods perished on transport by land or on the sea. The partnership was to last for a period of two years. It was successfully concluded, for the document referring to it is a release, in which the partners absolve each other from all obligations and responsibilities which might have resulted from their former connection. As we shall see later on, the two men continued to have close mutual business relations of a very complex nature, but with less satisfactory results.²¹

In addition to cooperation with equal or proportional responsibilities or those based on imponderables such as the benefit from a partner's social position, partnerships, as alluded to before, served two vital purposes. They provided a dignified form of employment and the most popular means for the investment of capital. These two objectives appear sometimes combined in one and the same relationship.

In an agreement made around 1080, a person known from other documents as working in the caliphal "House of Exchange" invests in a banking business 500 dinars, while his junior partner contributes only 58, yet share in profit and loss with a ratio of 7/24. Otherwise, however, he is entirely subordinate. The senior partner has full disposition of the common capital and directs and supervises all actions of the junior. The latter has no right to sign promissory notes and has no say with regard to the granting of loans. The senior is exempt from the obligation of the oath of the partners. This contract is a typical example of a partnership with employment and possibly also apprenticeship as its main purpose.²²

A similar relationship, albeit without the element of apprenticeship is apparent in an agreement where one partner invests 600 dirhams in a store of drugs and juices and the other only 20. The latter "sits in the store" and does the selling, the former does the buying. Profit and loss are shared equally, but the storekeeper receives a weekly payment of nine dirhams, while his partner "takes out" only four. The difference is regarded as compensation for work. The investor most probably was a wholesale merchant in drugs and juices who had similar contracts with a number of storekeepers.²³

Mere investment was intended in such connections where the conduct of the business was entirely in the hands of the manager. There was no difference in this respect between investment in a store or in a specific business venture, such as the purchase, transport and sale of goods. In a contract for the renewal of a partnership we see a merchant put eighty dinars into a store for an additional year and sharing one-third of the profit or loss. With regard to these the manager was freed of the oath of the partners, but in case of damage to the capital, he had to prove in court that an act of God was involved. During the course of the year the capital could not be retrieved. If the investor wished to withdraw his money at its termination, he had to grant "a period of waiting" of two months—a common term in any business transaction.²⁴

Finally, partnerships could fulfil a function similar in certain respects to that of a modern insurance company. In a contract made during the last third of the eleventh century a scholar gives to his elder minor daughter fifty and to his younger daughter twenty-five dinars, in order to provide them with a trousseau when they would reach maturity. Meanwhile, the money was confided to a merchant in the form of a partnership to which he contributed only five

dinars. Profit was to be shared equally by the merchant and the girls, while the former had to bear $5/12$ and the latter $7/12$ of the losses. The capital itself was insured, being "a deposit of the Court", for which the highest possible form of security, such as a house had to be given. The father had no right to demand the money back or to interfere in any way in the operations of the merchant. In case anything happened to the latter, the rabbinical court, in consultation with three experienced elders and the persons in whose guardianship the girls would be at the time, would hand over the money to another partner. The difference between the amounts given to the two daughters cannot be explained by the Jewish law of primogeniture, which applied to males only. Besides the privileges of the first born, being unknown to Muslim law, had largely fallen into desuetude by that time. The reason for the discrimination certainly was the difference in the age of the two girls. It was expected that by the time the younger girl attained maturity the merchant would have added so much profit to her capital thus it equalled that of her sister, who, it was supposed, would have married many years before.³⁵

While discussing the various objects and specific aims of partnerships we had numerous occasions to give examples of the contributions of the partners as well as their participation in profit and loss and their responsibility for the capital invested. A few additional instances will illustrate the wide range of variations prevailing in this matter. In a partnership consisting in export from Egypt to Syria and import from there, the manager provided approximately one-fourth of the investment ($124\frac{1}{2}$ dinars out of a total of $484\frac{1}{2}$, while the capitalist contributed 360), but shared profit and loss on equal terms with the latter.³⁶ In a similar undertaking, a business trip to Syria, four partners intended to travel together. One of them, when prevented by illness from joining the company, stipulated that losses would be borne by himself and his partners in equal shares, while the latter would take $\frac{1}{12}$ more in profit, the difference being regarded as compensation for their work and their living expenses.³⁷ A merchant travelling to Sicily in the spring of 1058 received from an Egyptian business friend oriental spices and aromatics worth $186\frac{5}{8}$ dinars with a view to sell them in his native island on condition that he shared one-third of profit and loss, as well as the responsibility for the restitution of the capital. Although the contract is expressly called "partnership", the conditions

specified are not in accordance with the usual provisions of either Jewish or Muslim law.²⁸

Actual contracts according to Jewish law, which gives the manager two-thirds of the profit, but makes him responsible for losses, have been found, although they are rare.²⁹ The Muslim "commenda" is more common, in which the manager receives only one-third, but is not responsible for losses, as stated above, and instances where the losses were not borne by the manager are reported. In one case, the investor lost almost fifty out of seventy dinars confided to an overseas trader, but was convinced by "the elders of the community" that he had no claim against him.³⁰ In another case, in a "partnership" amounting to one thousand dinars, losses were incurred whereupon the manager claimed to be not a partner but the bearer of a commenda, and therefore not responsible for the losses.³¹ A middleman who brought about the connection between the capitalist and the managers could become a member of the partnership. In a query submitted to Abraham Maimonides (1186-1237 A.C.) we read about a store of drugs in which 368 dinars were invested. The capitalist received one-half of the profit, while the middleman and the managers each got one-sixth, the latter having also the additional claim on a daily or weekly remuneration.³² The amount of the remuneration is not indicated in the case just described because it was irrelevant for the litigation which formed the object of the query. The sums mentioned in other documents with regard to persons "sitting in the store" are low, varying from 5 dirhams per week to half a dinar (about 18 dirhams at that time). This fact may have its source in the stipulation of Jewish law that the manager receives "the wages of an unemployed", which are defined as the sum which a person would consent to accept for the benefit of having no need to work.³³ In one contract, the partners receive their wheat and wine in addition to half a dinar per week.³⁴ In another, only the investor (of 200 dinars) received wheat and wine, as well as other living expenses except expenditure on his house and school fees for his boy.³⁵

In specific business ventures of limited scope, the manager used to receive his living expenses as well as the expenditure on transport, customs, etc. "out of the midst" (the partnership). This was common Muslim law, as well as a practice reflected in the Geniza record.³⁶ In an account written in 1047, the living expenses, designated with the Muslim term *nafaqah* amounted to 22½ dinars

for 14 months, i.e. somewhat less than half a dinar per week (more exactly 0.381 dinar).³⁷

There were, however, also agreements of partnerships, where the manager received one-third of the profit but bore the expenses himself. This usage explains why we find in one court record the investor claiming that the expenses had to be borne by the manager, while the latter declared that they were on the account of the partnership. In another legal document it was first stipulated that the transport of the goods was on account of the traveller, which was changed later on to the condition "all expenses to the midst". Both records concerned the transport of corals, the first from the "West" to Egypt in 1085, the second from Egypt to Jedda, the part of Mecca in 1036.³⁸

In one case we saw the managing partner indemnified by receiving 1/12 more of the profit, while losses were divided equally. Another document refers to a similar arrangement granting the merchant doing the selling a preferential share of 1/6. We had also an agreement into the opposite direction, namely with the profit shared equally, while the manager would have to bear 1/6 less of the loss.³⁹

Normally, a merchant concluded a number of partnerships even with regard to the same commodity or took the same commodity from one business friend on commission and from another on partnership. About such connections with others we read even in letters to most prominent merchants.⁴⁰ On the other hand, it is perhaps natural that there were limitations in this matter. In an unfortunately much mutilated dissolution of a partnership the manager is permitted to trade in the future in the merchandise concerned with others.⁴¹ A Tunisian merchant writes to the husband and son of his sister in Egypt: "All I bought this year is in partnership with you. I did not send anything to anyone else."⁴²

As to the duration of partnerships, joint specific ventures lasted as long as conditioned by their nature—and the goodwill of the manager. In a case of a partnership in ambergris which was transported from Tunisia to Syria and exchanged for brazilwood which in its turn was sold with great profit to European merchants, the operation lasted ten years, when the investor finally brought the manager to court.⁴³ The standard period of a partnership, even in a store, was one year after which it was renewed, if so desired. Special circumstances could induce the parties to contract for two

years or a stretch of time appropriate to the nature of the relationship, as in the case of the capital destined for the trousseau of two minor girls described above. However, even in the latter instance, where the provider of the capital had no right to demand it back, every year accounts had to be submitted to him. In joint business undertakings which often lasted longer than one year, every year accounts were made.⁴⁴

Special conditions attached to a contract of partnership are very prominent in the Geniza records. "I have heard that my partner has gone to Damascus, although I have instructed him not to leave Ramle and that all his selling and buying should be done through Sibā', the representative of the merchants"—we read in an old letter.⁴⁵ In a contract written in 1116-17 the two investors allow the manager to do business in the Egyptian Rīf and the three seaports, Damietta, Tinnis and Alexandria, but nowhere else (which probably referred to the capital, where the two were active themselves)⁴⁶. In an agreement made approximately at the same time, the manager undertakes to confine his sales and purchases to Aleppo and Antioch and other places in Northern Syria and to sell on cash only, since these were conditions imposed on him by his two partners who provided the capital.⁴⁷ When a manager acted against such stipulations and something happened to the principal, he was held responsible for the whole loss.⁴⁸

Sometimes it was expressly stated that the managing partners were free to act as they saw fit.⁴⁹ Where no such statement was made, it was taken for granted. "I have no right to raise objections against you", writes a merchant in Sicily to his partner in Egypt, "with regard to purchases made by you for our *khulṭah* just as you have no right to remonstrate against my actions here."⁵⁰ It must have been usual in both commercial and industrial partnerships that one contractor granted the other a loan, which the latter wholly or partly invested in the common undertaking. We have such contracts from the eleventh, twelfth and thirteenth centuries. In the last one, only 600 out of the 3,000 dirhams received as a loan were put into the partnership.⁵¹

The termination of a partnership was as complicated as its initiation. The following examples, dealing, as several did before, with a store of drugs, may serve as an illustration. One of the partners was a "druggist" and son of a "druggist", the second was the son of a money assayer, while his own profession is not

indicated. The partnership was dissolved under the following conditions :

1. The druggist receives from his partner fourteen dinars, payable in monthly instalments of one dinar.

2. He acknowledges the assessment of the value of the store which was handed over to him.

3. He will pay debts on the partnership to the amount of 800 dirhams. Liabilities in excess of this sum will be borne by the two partners in equal shares.

4. The assets of the partnership belong to the two in equal shares and both will cooperate in collecting them.

5. Sixteen flasks (presumably of rose oil), which had not yet been paid, belonged to the druggist. Any losses with regard to this item will be borne by the two in equal shares.⁵¹

Other Geniza records referring to the dissolution of a partnership contain similar arrangements. One, concerning a bank in the Mediterranean port of Damietta, shows that a full six years after the withdrawal of two partners, who had invested 600 dinars, the accounts with at least one of them had not yet been settled.⁵²

Most court records, however, related to these matters are mere releases, i.e. statements to the effect that the parties concerned had no claims any more against each other. Such releases are full of legal verbiage but contain little subject-matter. Clearly, the settlement was made out of court, or before Muslim notaries. Express references to the latter are made in such documents of release with regard to partnerships. This is indeed what we would expect. Since the most common form of legally valid business cooperation was the Muslim commenda, it is only natural that such contracts should be made before a Muslim authority.⁵³

2. FAMILY PARTNERSHIPS

In September 1112, a merchant and his nephew (the son of his sister) appeared before a notary in Old Cairo to renew a family partnership, which had existed for years, but had lacked legal sanction. Each of the two had been used to make transactions and to conclude contracts without the knowledge of the other, sometimes in the name of the contractor only. The two relatives made new accounts, assessed their property and laid down rules for their future cooperation. It is highly instructive to observe under which conditions this informal relation was converted into a formal partnership. The

joint capital, 3,750 dinars, a very respectable sum, belonged to the two in equal shares. The geographical scope of the business was to be very wide, comprising "the West", i.e. the Muslim countries of the Mediterranean west of Egypt, and Egypt itself and the "Yemen", which term was used to encompass the whole trade route to India. The absence of Palestine, Syria and the Hijāz from this list was due to the state of insecurity created in those countries by the advent of the Crusades. As previously, each partner was entitled to act independently of the other, while any commitment incurred by one would be binding on the other, irrespective of the fact whether the document or transaction concerned was made in the name of both or of only one of them. Likewise, all profits obtained by any transaction made by one of the two belonged to the partnership. Unlike previous usage, certain personal expenses would not be borne by the common purse. However, since the uncle had married with money provided by it, the nephew would have the same prerogative when he married. No time-limit was set to this contract.¹

Thus, family partnership was characterized first by its comprehensiveness. Any profit accruing to the relatives from any work done by them belonged to the common purse. Such a stipulation was found by us in a regular partnership only once, but there the contract was for the duration of two years only, and other restrictions were attached to it.²

Secondly, the family partnership was endowed with overriding legal power. Whatever form was given by a partner to his transactions, they equally involved the other members. In conformity with this legal situation we read the following in the will of a merchant who had made his brother sole executor and guardian of his children: "Everything which is registered in my name or the name of my brother or that of us two or in the name of our children, as well as all the pieces of jewelry for the little ones (i.e. the girls for their future trousseaus) and the real estate, the sheep, the orchards and their rights of tax-farming will be divided in equal shares—after payment of the items mentioned before—one-half going to my brother and the other half to my children." Naturally, the dying man would have had no right to make dispositions with regard to the property of his brother and the latter's children had not the overriding power of family partnership been recognized by the authorities with which such property was registered (Muslim or Jewish, or, most probably, both). The partition of the estate was

a legal necessity, for the belongings of minor orphans were under the jurisdiction or at least supervision of the court. *De facto*, however, since the surviving brother was entrusted with the administration of the property of his nephews, as well as with their education (as the will expressly states), he was expected to continue the partnership until it would be formally reinstated when the orphans would come of age.³

In his penetrating study on "Family Partnerships and Joint Ventures in the Venetian Republic", Frederic C. Lane makes the following general statement: "In most societies, at most times, it has been the great family which by its wealth, power, prestige and presumption of permanence has been the outstanding institution in private economic enterprise."⁴ The Geniza world was no exception to this role. During the eleventh century, its trade, which then was still flourishing, was dominated by "the great houses". Of all the more prominent merchants engaged in it, we are able to salvage their family connections from the *debris* of the Geniza. Moreover, from Fez in Morocco to al-Ahwāz in Iran, merchants appear in their letters not only as individuals but also as firms, many letters being addressed to or sent in the names of two or more brothers or a father and his sons. It is indicative of the decline of the trade of the Geniza people in the twelfth century that no such addresses have been traced thus far from the latter period.⁵

A good example for a family business is presented by the Tāhertīs of Qayrawān, for in their case correspondence of or regarding to the head of the family (called Barhūn), his four sons and eight grandsons has been traced. One of his daughters was the mother of Nahray ben Nissim, the great merchant, about whom the Bibliographical Note at the end of this article might be compared. Another daughter was married to the Berechiahs, a leading Qayrawānese family (cf. n. 5), and there were several other such connections. Moreover, the Tāhertīs are repeatedly referred to in the plural as "the sons of the Tāherti"—which by-name designating its bearer as an immigrant Qayrawān from Tāhert, Algeria, was first borne by Barhūn's father. Their prominence in the Geniza remnants was partly due to their sheer number and influence. They are described in a letter written by an opponent as "one band, united by one spirit". On the other hand, the preservation of so much material related to them might have been caused by a merely accidental circumstance. As is evident from one letter, one of

them was in charge of collections made for the Jewish academy of Jerusalem. Thus it is natural that they should have been connected with the synagogue of the Palestinians in Old Cairo where the Geniza chamber was located.⁶

A cursory reading of their comprehensive correspondence conveys the impression that the second generation, the brothers Tāhertī worked together permanently, while the grandsons were connected with each other rather through informal cooperation, strengthened by partnerships contracted for specific business ventures as was the case with other such connections. The brothers divided their work between themselves in such a way that one or two of them, but not always the same, stayed in Egypt for a number of years, while the others were active at their base in Qayrawān and other places in Tunisia or in Spain. In a most detailed account for the year 1024, which was submitted to one of the two brothers then in Egypt, the assets of the latter are kept asunder, while the items belonging to those remaining in Tunisia are lumped together under the heading "for your brothers".⁷

In many cases it is not evident whether partnerships between brothers or between a father and a son referred to in the Geniza records were of a transient or a more permanent character. For such partnerships came before court mostly after the death of one of the participants, when the heirs of the latter had to be satisfied or settlements had to be made with third parties.⁸ In other instances, however, the partnerships between close relatives, like those between the Tāhertīs of the third generation, were clearly limited to specific undertakings and sometimes outsiders were involved in them as well.⁹ Mostly it is not evident from our sources in which way father and son or brothers cooperated in the trade between the eastern and western part of the Mediterranean. We see them acting as a concern on either end of the trade route, but under which arrangement is not revealed.¹⁰

In retail stores and workshops it was perhaps common that brothers and even cousins worked and lived together without formal arrangements. Naturally, we hear about such cases only when something went wrong.¹¹ However, in small business, too, formal partnerships were concluded between close relatives. The following agreement, dated 1181, is particularly illustrative. Two brothers conclude a partnership in a store for a certain period (which is not preserved) with equal share in profit and loss. They will live

together and eat on one table, all the common cost for food to be borne by the store. In addition, each receives one dirham per day. If one brother (it seems the younger one and a bachelor) does not want to partake in his brother's food, he will receive two dirhams per day for living expenses and the latter, four. The preferential treatment of one brother most probably was due to the fact that he was the master and the other, the apprentice.¹²

At the root of the family partnership in those days was the mutual responsibility in which parents and children and brothers and sisters were held by both state and society. There is ample opportunity to study this practice with regard to the payment of the poll-tax. The situation was similar in the world of commerce. When a man went broke in Old Cairo, his father, a high community official, had to go into hiding.¹³ Once a wine merchant travelled to Aden in South Arabia after having sold bad wine. His father was brought to court, but could not be convicted since, according to law, a father was not responsible for his son's debts. However, "righteous elders" intervened, and the old man paid the whole sum demanded by his son's customers.¹⁴ Conversely, we find a member of a prominent Damascene family and business firm granting a release to the sister of a former partner of his, confirming that she was not responsible for any liabilities resulting from his connections with her brother.¹⁵

Joint responsibility was the basis of family partnership, but did not lead to it automatically. The general impression conveyed by the Geniza records is that the members of a family usually worked together, but preferred to keep their accounts separate. *Taḥābabū wa-taḥāsabū*, "love each other, but make accounts with each other" is a principle recommended in a saying widely diffused in the Arab world. While the existence of big family business is well attested in the Geniza, especially for the eleventh century, the complete and long range pooling together of resources, as we have found in the document from the year 1112 and in the will discussed at the beginning of this sub-section, seem to have been the exception rather than the rule.

NOTES

1. *Partnership and Commenda*

1. See *A Mediterranean Society*, Chapter II (2) and *ibid.*, n. 30.
2. *Ibid.*, Chapter III F.
3. Maimonides, *Responsa*, pp. 38 and 45. 'Isqā simply means "dealings", but had assumed the specific meaning of the contract described in our text. The expression *qirāḍ betorat 'isqā*, which in reality contains a contradiction, is mentioned in JTS EN Adler 2727 (*Qirāḍ*). The opposite expression, namely '*isqā 'alā ḥukm al-qirāḍ*, is found in a contract of commenda dated 1215/6, UL Cambridge Or. 1080 J 137, line 12 [India book 161].
4. Maimonides, *Responsa* p. 148. The text states that the Muslim *qirāḍ* was particularly common in contracts referring to oversea trade. Other instances *ibid.*, pp. 120 and 676.
5. TS 12.670, verso, line 7: *sekhar 'amālō umzōnō*, cf. Mishna, B. Meṣī'a 5 : 4. Vienna, Erzherzog Rainer 22, lines 21, 23 and 25: *sekhar ṭorhō wa'amālō*. The same in JTS EN Adler 4010 [India book 157], verso, lines 11-12.
6. *The Code of Maimonides*, Book Twelve, translated by Isaac Klein, New Haven 1951, p. 222 (Treatise IV: Agents and Partners, chapter V, para. 1). A good summary of the Jewish law of partnership and 'isqa, including medieval developments, is contained in E. E. Hildesheimer, *Das jüdische Gesellschaftsrecht*, Leipzig 1930. For the relation of the commenda and its Muslim counterpart, cf. Robert S. Lopez and Irving W. Raymond, *Medieval Trade in the Mediterranean World*, New York, 1955, p. 24, note 31, and p. 174 ff., H. R. Idris, "Commerce maritime et *kirāḍ* en Berberie Orientale", *JESHO* 4 (1961), pp. 225-39; A. L. Udovitch, "At the Origins of the Western Commenda," *Speculum* 27 (1962), pp. 198-207. These two articles contain further bibliographical information. Mr. Udovitch prepares also a book on the Muslim law of partnership in general. Meanwhile, the article *Shirka* in *EI*¹ (Heffening) and Bergsträsser-Schacht, *Grundzüge des Islamischen Rechts*, Berlin 1935, pp. 74-6, may be compared.
7. The quotation is from TS 8 J 11, f. 14, lines 11-12. Only the right half of this manuscript is preserved. Thus, the original contained twice as many phrases to the same effect.
8. Bergsträsser-Schacht (see n. 6), p. 74.
9. TS Box J 1, f. 1.
10. Oxford, Bodleian MS. Heb. a 2 (Catalogue 2805), f. 18 [N 44].
11. Maimonides, *Responsa*, p. 37.
12. TS 20.96, verso, line 20.
13. See Chapter VI A 2 and *ibid.*, nn. 15-17.
14. TS 8 J 11, f. 14, cf. note 7. By a ridiculous coincidence also the names of the contractors of this model partnership were identical, both being called Ibrāhīm b. Mūsā (Abraham, son of Moses), with the difference that one was from Majorca, while the name of the locality from which the second partner hailed is not preserved.
15. Oxford, Bodleian MS. Heb. a 2 (Catalogue 2805), f. 16, line 16. TS 12.250, line 8.

16. JTS EN Adler 4010 [India book no. 158]. See also *A Mediterranean Society*, Chapter III, sub-section C.

17. TS 8 J 32, f. 3 verso, line 7 : *al-'aybah alladhī yaduhu wa yad sharīkuhu fiha fi 'l-shīl wa'l ḥaṭṭ* (dated 1162).

18. Jerusalem, Hebrew University Library, Geniza MS. 83 b. (dated 1132). Translated in *Readings*.

19. TS 16.170 (dated 1095). The document is incomplete and one line contains the statement "Mr. So and So sells and buys with me", but the wording of the preceding and following lines, as well as the room left in the same line after the statement quoted does not allow to assume that the person referred to (known from other documents as a respectable "trustee of the court") substituted for Amram during his absence.

20. TS 28.17. The weekly emolument is called here *muwāqafah* which is *muwāfaqah*, "agreement, the sum agreed upon." Lines 27-8 seem to imply that the notable invested money in the brothers' business.

21. U L Cambridge Or. 1080 J 73.

22. TS 12.784. Translated in *Readings*.

23. TS 12.670 (November 29, 1228). Translated in *Readings*.

24. U L Cambridge Or. 1080 J 121 (around 1075).

25. TS 12.461. The scholar is known from a number of dated manuscripts, among them TS 20.110, a partnership in a weaver's workshop to which he provided the money.

26. TS 16.87 (Spring 1097).

27. TS 8 J 6, f. 9 (July 4, 1231). This is the draft of the contract, translated in *Readings*. TS NS J 268 contains the notes taken by the notary on the same day in the same matter. The expression "compensation for their work and living expenses" is in Hebrew, cf. above, n. 5.

28. TS 12.5 and 20.152. By "loss" possibly loss on the profit made is meant.

29. E.g. JTS EN Adler 2727 (Qirād), where the contract is called 'isqā, c.f. above n. 3.

30. TS 13 J 2, f. 5 (dated 1095). The commenda is called here *muḍārabah*.

31. Gottheil-Worrell, Fragments from the Cairo Genizah in the Free Gallery, VII, p. 34, line 11 : *wadda'd annuh muqḍriḍ lā sharik*. The text is full of misreadings and ridiculous translations. The essence of the document is that all depositions by the claimant before Muslim or Jewish clerks in this matter were made under duress and void and that only documents signed by the Nezer (read 'l-nzr in line 20, for 'l-nzh) Nathan b. Samuel were valid.

32. British Museum MS. Or. 5563 D, publ. in Abraham Maimuni *Responsa*, pp. 207-09.

33. Five dirhams, cf. n. 23. Half a dinar: n. 20. For the concept of "the wages of unemployed", cf. E. E. Hildesheimer, *Gesellschaftsrecht* (see n. 6), pp. 97, 112, 119.

34. In the contract quoted in n. 18. Wine as a main constituent of the daily diet is an ancient Mediterranean tradition, as is still to be observed in countries like France, Italy and Greece.

35. Mosseri A 17. The contract is called here *mu'āmalah*, but the word is also used loosely for partnership. The words '*suknuhu fi dārihi*' could perhaps

mean also: his rent.

36. E.g., TS NS J 6, lines 9, 15 and 16. JTS EN Adler 4010 [India book 158], cf. above n. 2.

37. Oxford, Bodleian MS. Heb. e 98, fol. 64 a, line 6, where the Muslim *nafaqah* is used. Cf. above, p. 26.

38. TS 16.203, lines 7-8, JTS EN Adler 4010 [India book 158].

39. Above, n. 27. Secondly, the second source quoted in n. 4. Thirdly, n. 25. In the originals the fractions are given in *qirāts* or 1/24s. For managers working gratuitously as an act of piety, cf. *A Mediterranean Society*, Ch. VIII (Old Age).

40. E.g., TS 12.291, lines 12-13 and 14-16 (addressed to Ibn 'Awkal, a most prominent Cairine merchant, active at the beginning of the eleventh century).

41. TS 28.6 B. The contract referred perhaps partly to a workshop.

42. TS 20.127, line 33.

43. Oxford, Bodleian MS. Heb. c 28 (Catalogue 2876), f. 11, and d 66 (Catalogue 2878), f. 5, which refer to the same affair (dated 1085).

44. Cf. above nn. 18, 21, 24, 25 and 37. The contract referred to in n. 35 does not contain any limitation in time. However, the document is not a legal instrument but a memo. made by the manager for his own use, presumably as a draft for a contract.

45. Oxford, Bodleian MS. Heb. 611 (Catalogue 2874), f. 8, publ. MJ II 29.

46. U L Cambridge Or. 1081 J 36.

47. TS NS J 6, lines 10-13.

48. As reported in a query submitted to Maimonides, *Responsa*, pp. 41 and 150-51.

49. E.g., in the sources quoted in n. 27.

50. Philadelphia, Dropsie College 389, line 83.

51. (a) The source quoted in n. 16 (dated 1038). (b) Industrial contract no. IX (dated 1134) in *A Mediterranean Society*, Chapter II (2), n. 30. (c) U L Cambridge 1080 J 280 verso (around 1230).

52. TS 13 J 3, f. 27 (July 1218).

53. E.g. U L Cambridge. Or. 1080 J 288 (December 1153, Left half torn away). The bank of Damietta: TS 13 J 6, f. 5.

54. TS 16.138 (Alexandria, August 1077): *shirkah be 'edē goyim*. Hebrew 'ed "witness", is a translation of the Islamic term 'adl, "trustworthy witness, notary".

2. Family Partnerships

1. TS Box 28, f. 263 [India book 212], translated in *Readings*.

2. Cf. above, note 21.

3. TS 20.99. This interesting will is much mutilated and effaced. According to the names mentioned and known from other documents, it must have been written late in the eleventh century.

4. *Journal of Economic History*, 4 (1944), p. 178.

5. Fez: Abraham and Tanḥūm, sons of Jacob, TS 12.829, publ. MT I, pp. 123-26 (February 1007). This firm was entrusted with the transfer of donations from Morocco to the Jewish academies in Baghḍād, cf. *ibid.*, p. 125.

lines 15-16. Two Taherti brothers of Qayrawān write to the three Tustarīs in Old Cairo, TS 12.133. Three Taherti brothers in Qayrawān address Ibn 'Awkal and his two elder sons in Old Cairo, U L Cambridge 1080 J 248. In a later letter, he and his three sons are addressed, British Museum Or. 5542, f. 15. A generation earlier, he and his father formed one firm, TS 12.383. The brothers Berechiah of Qayrawān, who were intermarried with the Tahertis, sent the letters TS 12.175, TS 13 J 36, f. 1, and TS 12.250. A letter from a firm in al-Ahwāz, addressed to the three Tustarīs, is preserved in TS 13 J 25, f. 18. The letter contains a reference to a third firm, the sons of Zakkariyā'. An early letter to the three Tustarīs is found in TS 8 J 36, f. 2.

6. Cf. S. D. Goitein, "La Tunisie du XI^e siècle à la lumière des documents de la Geniza du Caire", *Lévi-Provençal Memorial Volume*, Paris 1962, pp. 566-8, where, however, Barhūn's daughter is referred to erroneously as the wife of Nahray b. Nissim. She was the wife of his father (i.e. his mother or step-mother?). The article speaks about five instead of four brothers because at the time of its writing the identity of Mūsā and Abu 'l-Khayr, both names being referred to as borne by a son of Barhūn, was not yet established. *Uṣbah wāḥidah wa kalimatuhum wāḥidah* TS 12.128. lines 11-12. Collection for the Jerusalem Academy: U L Cambridge 1081 J 24, verso, line 2. See also the preceding note.

7. In Oxford Bodleian MS. Heb. d. 65 (Catalogue 2877), f. 9, lines 15, 24 and 34, published ATaS, pp. 179-80, the brothers Ismā'īl and Abu'l-Khayr (Mūsā) are in Egypt, while Abu'l-Faḍl Ṣāliḥ is in Spain. In several other letters these two brothers are referred to as being in Egypt, while their wives and children are still in Tunisia. In U L Cambridge Or. 1080 J 248, Ṣāliḥ is in Qayrawān, but in 1080 J 35 he is in Egypt together with Ismā'īl. In David Kaufmann Collection 13, line 17, Abū Surūr Isaac is on his way to Egypt. Thus, each of the four brothers was at one time in that country. The account of 1024: U L Cambridge J 291.

8. E.g. TS 20.21 (April 1076). Release of a man who had owed 145½ dinars to a partnership, perhaps permanent, between a father and a son. TS 16.255 (some twenty or twenty-five years later. Complaint against a representative of the merchants who did not settle the accounts of a partnership between two brothers, one of whom had died). TS 12.651 (January-February 1130. Settlement after the death of a brother, who was also a partner, with the latter's daughter and wife).

9. E.g. David Kaufmann Collection 13, line 13 (partnership of writer with his brother and Ibn 'Awkal). TS 20.76, lines 16-17 (several partnerships with a brother in different specified commodities).

10. E.g. David Kaufmann Collection (Second Series) XV, lines 13, 23, verso line 6. (Three brothers cooperating in Qayrawān and Old Cairo.)

11. Maimonides, *Responsa*, pp. 150 and 155. (The two queries refer perhaps to the same case; one and three cousins respectively who continued the actual partnerships of their fathers, sharing work, domicile and food.)

12. TS 10 J 4, f. 7.

13. TS 13 J 19, f. 6, line 18; *al-ḥazzān algādol* (the chief cantor) *mukhtaṭṭi mājra 'bnihi 'nkasar* (because of the mishap of the bankruptcy of his son).

14. TS 12.587 (June 1178).

15. TS 28.7 (April 1060). Despite its sixty-three lines, the document does not reveal the circumstances of the case. The brother is not described as dead. The name of the Damascene family: Ibn Ḥirbīsh.

3. Bibliographical Note

The manuscripts are quoted according to the cities and collections, in which they are preserved, and the signs used by the latter. Note the following abbreviations:

- TS** : Taylor-Schechter Collection, preserved in the University Library, Cambridge, England.
- U L Cambridge** : Other collections of Geniza papers in the same library.
- Mishna** : First codex of post-biblical Jewish law, concluded around 200 A. D., referred to in the Ḥadīth as *mathnāt*.
- Talmud** : The totality of authoritative Jewish legal writings, including the Mishna, canonized around 500. Both the Mishna and the Talmud as a whole are available in English translations.
- Maimonides** : R. Moses b. Maimon Responsa, ed. J. Blau, Jerusalem 1957-1961. Responsa correspond to Muslim *fatāwā*.
- India Book** : A Collection of 315 Geniza documents on the India trade prepared by the present writer for publication.
- A Mediterranean Society** : *A Mediterranean Society, The Jewish Communities of the Arab World, as portrayed in the Documents of the Cairo Geniza*, a three-volume book prepared by the present writer. (Two volumes completed.)
- Readings** : *Readings in Mediterranean Social History*, Selected Documents from the Cairo Geniza translated in English by S. D. Goitein (to be published soon.)
- N** : Geniza records connected with Nahray ben Nissim, a Qayrawānese merchant, scholar and public figure, who emigrated to Egypt, where he lived between 1045 and 1096. Prepared for publication by Mr. M. Michael.

The writer wishes to express his thanks to the libraries whose manuscripts have been used in this article.