

## **”Such Judgments- They Know Not”?**

### **Rendering Decisions Based on Gentile Law and Business Practices:**

#### **The Stance of Halachic Decisors in the Ottoman Empire From the 16<sup>th</sup> Through the 19<sup>th</sup> Centuries**

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This article will deal with the stance of the Halachic decisors in the Ottoman Empire from the 16<sup>th</sup> through the 19<sup>th</sup> centuries regarding the question of whether it is permissible to render decisions regarding monies by using existing Gentile customs and laws. Most rabbinic authorities of that period, whose decisions are included in this study, were of the affirmative opinion of indeed using those existing laws, by citing the Jewish dictum “That the law of the resident country is law”- and therefore must be obeyed. They reasoned that even if the source is a Gentile one, the parties will abide by that custom, despite there not being a Jewish tradition, not knowing what their own tradition is, or even by one that is contrary to Jewish Halachah.

Many of those rabbis relied on the ruling of Rabbi Avraham Ben David of Posquieres, known as the *Raavad*, and on the responsa of Rabbi Shlomo Ben Avraham ibn Aderet, known as the *Rashba*.

Opposing them, was the 16<sup>th</sup> century Rabbi Chaim Shabtai, known as the *Maharchash* who ruled against this practice, by basing himself on the responsa of the *Rashba* himself (*Shu”t HaRashba* 6, 254), in which the *Rashba* strongly condemned anyone ruling according to Gentile law regarding the laws of inheritance- either due to custom or by citing the Jewish dictum “That the law of the resident country is law.” The *Rashba* ruled that way since it mimics the ways of the Gentiles and because it abandons Torah law. At the start of the 19<sup>th</sup> century, Rabbi Eliezer De Toledo also ruled that way by basing himself on that same ruling.

Other contemporary sages which were included in this study did not cite the aforementioned *Rashba* responsa, as opposed to several Ashkenazi sages who did rule that way based on it.

Rabbi Rephael Yosef Chazan, who lived in Izmir, Turkey in the 18<sup>th</sup> century, instituted the ruling that Gentile customs have no validity, even if the Jews do follow that particular practice. His grandson, Rabbi Chaim Palagi, also rules that way. Neither supplied reasoning for their unique ruling, nor did they deal with the basic principle of whether it is proper to even rule on issues based on Gentile customs.

This study deals with customs of the Gentiles primarily in the areas of commerce and inheritance. Only a few of these sources mentioned Gentile courts and of customs which arose from Gentile jurisprudence. The positions that the rabbis of the Ottoman Empire held regarding these matters requires further investigation.