



Backing the Wrong Horse?

Risk and Liability in Pawns

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Reuben claimed against Simeon: "I have lent you a horse, and at the time I lent it to you I informed you that it seemed to me that the gentiles who pawned the horse to me had stolen it, therefore be careful with it, that it won't be forced out of your hands." And Simeon replied: "you did not inform me of anything, and your horse is stolen, and he who owns the horse came and took it."¹

R. Haim (Eliezer) son of Isaac, *Sefer Teshuvot Maharah Or Zaru'a*, Ashkenaz, second half of the thirteenth century

¹ Haim son of Isaac, *Sefer Teshuvot Maharah Or Zaru'a*, ed. Menahem Avitan (Jerusalem: 2002), 250, §226.

Beginning in the late eleventh century, the medieval economy underwent a process of expansion that was supported by growth in the supply of credit. As part of this transformation, moneylending emerged as the main professional occupation of Jews living in the German Empire, although it was not solely a Jewish profession, nor were all Jews professional moneylenders at the time. The above quote, a responsum sent to R. Haim son of Isaac of Vienna, a late thirteenth-century scholar, discusses the question of liability for the loss of a horse. In this case, the loss was the outcome of a complicated business transaction which involved various people at different points in time. The story begins with Christians pawning a horse to a Jew, who in the responsum is given the stock name "Reuben," in exchange for a loan.

Credit transactions took place over an extended period of time and thus involved greater risk than simple acts of exchange. The ever-present risk of default, in which debtors were not able to repay their loans, called for the incorporation of a range of security measures. Among these measures we find warrantors, sworn oaths, chirographs, and other forms of signed or sealed contracts containing various contractual obligations. Despite the existence of such security measures, in the German Empire, Jewish moneylenders relied primarily on pawns to serve as collateral in credit transactions.

These pawns, which presumably were of greater value than the original sum of the loan, allowed the creditor to avoid incurring loss in the event of the debtor's default, by selling the pawned object. Theoretically, then, the pawn eliminated the risks in credit transactions, while exerting pressure on the debtor to repay the loan. However, specific objects that were given as pawns, such as the horse in the case sent to R. Haim, complicated credit transactions, and introduced new risks and parties to the exchange. Beyond these additional risks, the complications involved in caring for a living animal also raised numerous points of friction between the owner of the animal and the Jewish creditor as to who would be held liable if any misfortune befell the beast.

The moment a horse was transferred into the temporary possession of a Jewish creditor, a host of practical concerns arose. First and foremost, where was the animal to be kept – in one's own home or with a third party? Who would purchase food for the animal, and provide for its medical care, should the need arise? Despite its significant upkeep demands, a horse had distinct advantages in comparison to other pawns of similar value. In the event of the debtor's default, which would result in the resale of the pawn, horses were relatively simple to offload. Additionally, the horse could be put to work for the moneylender while it was in his or her custody leading to an additional income.

Considering these clear advantages, it is not surprising that there is ample evidence of Jews engaging in credit transactions secured by pawned horses (fig. 1). Perhaps the most extensive and detailed information about such cases is available in the *Frankfurter Gerichtsbücher*, court records from the imperial court in Frankfurt, which had jurisdiction over all the town's citizens, including Jews. These records contain claims that Jewish creditors brought to court, primarily following the default of their debtors. Among these extensive records, there are over 400 cases between 1330 and 1400 involving horses that were kept as pawns being transferred to the custody of a Jewish lender following the default of their debtor(s). While most of the records simply documented sums of money, horses are the physical item that appears most frequently in these records. Furthermore, many of these cases attest to Jews keeping the pawned horses in their own homes and suing their debtors for the associated costs.

Beyond the daily burden of feeding and caring for the animal, which, as the court records indicate, Jews certainly expected their creditors to pay for, it seems that a much greater risk for both creditors and debtors was the possibility of loss. A responsum to R. Isaak of Oppenheim, dating to the first half of the fourteenth century, sent by R. Meir son of Yehuda Katz, offers some indications to the practice of liability for horses:

... Because it is my opinion that in our times a pawn of a gentile that is in the hands of a Jew is the responsibility of the Jew... but those who lend on [the basis of] horses are used to condition, in our land [*medinatenu*], that in the event that they [the horses] are lost, they are the gentile's responsibility.²

This responsum seems to differentiate between two practices of liability, one for those who kept "regular" pawns, and another for those who kept horses. This is perhaps not surprising, since the risk of losing a horse was far greater than for a non-living pawn. A similar distinction between pawned horses and other types of pawns appears approximately a century earlier in the *Sachsenspiegel*, a compilation of customary law for the territory of Saxony, written by the local juror Eike von Repgow in the 1220s. The relevant clause in the legal book discusses the question of liability for pawns that were damaged while in the creditor's possession. While the *Sachsenspiegel* does not specifically relate to Jews' possession of pawns, it does state that if the creditor cannot return the pawn undamaged, he must compensate the debtor for the pawn's value while losing the initial amount given as a loan. However, if horses or other animals died while they are in the creditor's possession, without fault of the creditor, he was not required to pay compensation.³

It seems, then, that a definite practice existed whereby liability for any misfortune was assumed by the debtor. Municipal legislation from Nürnberg from the late thirteenth century, however, reveals a different attitude specifically toward Jews' liability for pawned horses. For example, the *Judenordnungen* of the second half of the thirteenth century, regulating Jewish pawnbroking among other matters, stipulated that Jewish moneylenders were obligated to pay damages for a lost horse, including compensation for the rope or harness with which the horse was tied.⁴

One might speculate whether this regulation was a response to an existing practice, wherein Jews did in fact hold their debtors liable in the event of loss, as both the *Sachsenspiegel* and the responsum seem to indicate. Regardless, we see that Jewish halakhic authorities as well as Christian municipal authorities identified horses as a pawn with special characteristics, requiring and receiving its own treatment. Notably, crime posed a threat to credit transactions well before the Jewish creditor ever accepted a horse as a pawn. Returning to our case, the conflict between Reuben and Simeon arose because the gentile who had pawned the horse to Reuben had stolen it. The mobility of horses made them perfect stolen goods – the thief could simply ride to the next town, pawn the horse for a pretty penny, and leave the creditor to deal with the legal repercussions. The Jewish trade privilege, initially granted to the Jews of Worms and Speyer by Henry IV in 1090 and later extended to all the Jews of the

2 Simcha Emanuel, ed., *Responsa of Rabbi Meir of Rothenburg and his Colleagues* (Jerusalem: World Union of Jewish Studies, 2012), 749–53 before responsum §382.

3 Friedrich Ebel, ed., *Sachsenspiegel Landrecht und Lehnrecht*, Book III/5 (Stuttgart: P Reclam, 1953), 119.

4 Moritz Stern, ed., *Die israelitische Bevölkerung der deutschen Städte. Ein Beitrag zur deutschen Städtegeschichte mit Benutzung archivalischer Quellen*, Nürnberg im Mittelalter (Kiel: 1894–1896), 3:216.

Empire, entitled Jews to receive compensation for stolen items found in their possession.⁵ In the thirteenth century, though, as this privilege was legislated in territorial and municipal legal codes, Jews were required to prove that their transaction was made in good faith, or in a prescribed manner, subject to public oversight. These restrictions, of course, increased the risk incurred by Jewish pawnbrokers.

We also find a propensity to assume a high degree of risk in regard to horses in the *Frankfurter Gerichtbücher*, where several records refer to Jews claiming horses from "a guest from Nürnberg" or simply an "unnamed guest." Without the minimal knowledge of the debtor's name, one wonders whether these moneylenders ever expected their debtors to repay the loan. Despite the real and present risks in such transactions, horses emerge as a popular pawn in the context of Jewish creditors and their Christian clients.

Further Reading

- ❖ David Schnur, *Die Juden in Frankfurt am Main und in der Wetterau im Mittelalter: Christlich-jüdische Beziehungen, Gemeinden, Recht und Wirtschaft von den Anfängen bis um 1400*. Wiesbaden: Kommission für die Geschichte der Juden in Hessen, 2017.
- ❖ Joseph Shatzmiller, *Cultural Exchange: Jews, Christians, and Art in the Medieval Marketplace*. Princeton: Princeton University Press, 2017.
- ❖ Daniel Lord Smail, "The Materiality of Credit: Debt Collection as Pawnbroking in Late Medieval Mediterranean Europe." In *Crédit en ville au Moyen Âge*, edited by Claire Billen et al., 95–110. Marne-la-Vallée: Société Française d'Histoire Urbaine, 2018.
- ❖ Haym Soloveitchik, "Usury and Moneylending," *Collected Essays*, vol. 1, part 2. Oxford: Littman Library of Jewish Civilization, 2013.
- ❖ Michael Toch, "Economic Activities of German Jews in the Middle Ages." In *Wirtschaftsgeschichte der mittelalterlichen Juden: Fragen und Einschätzungen*, edited by Michael Toch, 181–210. München: Oldenbourg, 2008.

⁵ Dietrich von Gladiss and Alfred Gawlik, eds., *MGH Diplomata Regum et Imperatorum Germaniae VI: Heinrici IV. Diplomata*, vol. 2 (Weimar: Harrassowitz Verlag, 1952), Speyer: no. 411, 543–47; Worms: no. 412, 547–49.