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RABBI JOSEPH IBN MIGASH: HIS INFLUENCE ON
AND RELATIONSHIP TO ASHKENAZIC AND
SEPHARDIC TALMUD COMMENTARY

David W. Nelson

Thesis Submitted in Partial Fulfillment of
Requirements for Ordination

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INTRODUCTION

It often happens in the recording of history that a figure of some importance is forgotten by the generations that follow him. This does not necessarily occur because of any failing or lack in the person, but because he was preceded and followed by figures of such stature that he himself remained hidden in the shadow of greatness. Thus, it is said of Abraham Mendelssohn, the son of Moses and father of Felix, that he complained, "I am destined to be known as my son's father and my father's son." Such a figure, preceded and followed by overwhelming greatness, was Rabbi Joseph ben Meir Halevy Ibn Migash. And, like all such forgotten "middle-link" figures of history, Joseph Ibn Migash is the key to many questions. For greatness does not emerge ex nihilo into a world devoid of context. Rather, it develops out of the fabric woven by previous generations. Thus, if we are to understand the shining lights of twelfth- and thirteenth-century Spanish and Franco-German scholarship it is crucial that we achieve some understanding of the context from which they emerged. Joseph Ibn Migash is a vital element of that context.

In the present work I shall try to provide some understanding of Ibn Migash's work -- his attitudes, purposes, goals, and interests. Based on an analysis of a limited

portion of his work I shall attempt to draw some conclusions regarding his relationship to, and his influence on his contemporaries and those who followed him. Finally, I shall try to show how he fits into the vast world of Talmudic scholarship that began to bloom and flourish in the centuries after his death.

Concerning the relevant facts of Ibn Migash's life there is little disagreement among the few who have investigated the subject.¹ He was born in 1077, probably in Seville. At the age of twelve he went to Lucena to study under R. Isaac Alfasi. After some fourteen years of tutelage, Alfasi ordained him as Rabbi and, shortly before he died, appointed the twenty-six year old Ibn Migash to succeed him as head of the Academy in Lucena. It is indicative of his opinion of his student that Alfasi, in appointing Ibn Migash to succeed him, passed over his own son, who was also a scholar. Ibn Migash held the post at Lucena for thirty-eight years. He died there in 1141.

¹I am aware of only three sources of information regarding his life and work. The information in this Introduction has, therefore, been taken, unless otherwise noted, from all three. The sources are: Grajevsky, A.L. Rabenu Yosef Halevy Ibn Migash (A monograph published by the author, Jerusalem, 1963); Schloessinger, Max. "Ibn Migas, Joseph" (Jewish Encyclopedia, 1907: Vol. 6, pp. 537-538); Ta-Shema, I. "Ibn Migash, Joseph" (Encyclopedia Judaica, 1971: Vol. 8, pp. 1188-1189).

Little seems to be known of his personal life or of the details of his years in Lucena. It is commonly agreed, however, that he was a close friend of Yehuda Halevy, who wrote several poems in his honor, including tributes on the occasions of his ordination and his marriage.

Ibn Migash's works fall into two main categories. He wrote numerous responsa, some of which are quoted in later collections and others of which are extant in manuscript. He also wrote a commentary to an unknown number of Talmudic tractates. Today only his commentaries to Baba Bathra and Shevu'ot are extant. Neither of these exists in manuscript nor are there published versions dating from before 1702. In this work I shall deal exclusively with Ibn Migash's commentary to Baba Bathra 2a-29a, since these are the pages commented on by Rashi, whose commentary serves as one item of comparison from the early Franco-German period. The particular text of Ibn Migash's commentary which I shall use is a combined publication of the commentary to Baba Bathra and Shevu'ot, printed in Jerusalem in 1956. On the title page we read the following:

Be it known that the few novellae of R. Joseph Halevy Ibn Migash, of Blessed Memory, found in the Shitah Mekubetset to Baba Bathra, are from a different work unknown to us. The

book which is before us is a different book; the bulk of it is not found in the Shitah Mekubetset.

This disclaimer is rather surprising, since it is felt by some² that the sections of Ibn Migash's work quoted in the Shitah Mekubetset are of rather superior quality to the printed versions thereof. This issue of the authenticity and reliability of the text will be dealt with in the thesis. It is clear, however, that any attempt to authenticate a text of which there is no manuscript, and which was published for the first time nearly six centuries after the author's death must necessarily be nearly impossible. Therefore, we will proceed as if the text which we possess is reliable.

For purposes of clarity I shall divide all the comments in the work into 5 discrete categories, each with its own identifiable characteristics. The categories are: a) simple explanatory comments; b) longer conceptual comments; c) comments which use the term "ve'im tomar;" d) comments which cite the works or opinions of other authorities; and e) comments which contain legal rulings. It should be kept in mind as we proceed, however, that these

²Ta-Shema, op. cit., 1189.

categories are somewhat artificial, and are by no means clear-cut. Often a comment could be placed into any one of these categories, and occasionally it is quite clear that a single comment is functioning simultaneously in more than one category. Nevertheless, this categorization of the comments will greatly aid in understanding their different purposes and functions.

All the Hebrew sources quoted in the following chapters appear in very loose translation. The intention of the translation is always to capture the sense of the original text, and this often involves the interpolation into the text of individual words, phrases, and sentences. In order that the reader may distinguish between these interpolations and the text itself, all of the Hebrew texts have been included in the Appendices.

It is my hope that this work will shed some light on the accomplishments of Joseph Ibn Migash, thereby restoring him to his rightful place as one of the most significant and brilliant of the Spanish Talmudists.

Chapter One

SIMPLE EXPLANATORY COMMENTS

Let us begin by considering those comments of Ibn Migash which elucidate the simple meaning of the Talmudic text. Because the vast majority of Rashi's comments fall into this category we will use them as a standard for contrast and comparison by which to understand the purpose and style of Ibn Migash's work. The category itself divides into two sub-categories: lexicographical comments which serve to clarify the meaning of an unfamiliar word or a word or phrase which may have more than one meaning; and comments which serve to explicate full passages. Comments of the latter sub-category are used to clarify the text's meaning for the student when the meaning of the text is vague or ambiguous, or when, for some other reason, the simple meaning is unclear. In both sub-categories we will find Ibn Migash's comments to be much longer and more broadly explanatory than Rashi's. Two examples of lexicographical comments follow:

What is a mechitsah? A guda.

Baba Bathra 2a
Appendix Ia

Rashi: Guda. A wall. The Tanna calls a wall a mechitsah.

Appendix Ib

Ibn Migash: The meaning is "a wall."
This means that the courtyard is divided between them and each one recognizes his share in it, and all that remains for them is the making of the mechitsah.

Appendix Ic

Children may not be sent to school from one town to another but they may be sent from one synagogue to another. If there is a river in between they may not be sent. If there is a bridge (titura) they may be sent, but if there is a small bridge (gamla) they may not be sent.

Baba Bathra 21a
Appendix Id

Rashi: Titura. A wide bridge. It is related to the titura of the tefillin (Menachot 35a) which is the place where they rest, which resembles a bridge.
Gamla, a short plank.

Appendix Ie

Ibn Migash: Gamla. The meaning is "a bridge of boards." And the reason that children may not be sent across it is that there is cause to worry lest it rot away, or lest the river wash over it and the children fall into the river. Titura is a bridge of stones, with respect to which there is no such cause to worry.

Appendix If

These two examples illustrate several important differences between the two commentators with respect to style, intention, and interest. In the first example Rashi seems to be interested only in defining an unfamiliar or unusual word. Having provided a definition he is apparently not concerned with any subsequent consequences resulting from his choice of definition. Ibn Migash, on the other hand, is not defining for the sake of definition alone, but also to help the student understand how his definition functions within a larger framework of ideas. The fact that the Gemara defines mechitsah as guda, or wall, must be understood in the context of the alternative definition, proposed on the next page of the text, namely, that mechitsah means plugta, or division. If, by mechitsah, the Tanna means "wall," this implies that the partners already divided

the courtyard and all that remains to be done is to erect the physical partition between the two portions of the divided space. If mechitsah means division, however, this implies that the partners have not divided the courtyard yet. Ibn Migash, without going into the question in great depth, prepares us for the issues the Gemara will raise. Though we have placed his comment in the category of lexicographical comments, we see that his intent is not simple lexicography alone.

In the second example we see even more clearly the extent to which Rashi has interests that are often purely lexicographical. He defines titura and then points out the use of the same word in a different locus where the meaning is completely different. He then explains the relationship between the two different uses of the same word. Ibn Migash's comment reveals no such interest in linguistic analysis for its own sake. Rather he is concerned with the difference between titura and gamla in terms of its function in the law stated in the Gemara. Rashi's comment might help us to deduce the reason for permitting children to be taken to school across a titura, though not across a gamla, but it does not supply that reason directly. Providing underlying concepts is not one of Rashi's major goals. On the other hand, Ibn Migash is interested in teaching the student about the relationship of definitions to a conceptual framework.

We could examine numerous examples similar to these, but rarely, if ever, would we find a case in which Ibn Migash gives only a simple, dictionary-type definition of a word. Instead, every time he defines a word, he goes on to apply the definition in such a way as to facilitate analysis of the conceptual issues involved in the text. As for Rashi, we have seen that the basic form of his lexicographical comments is a one or two-word definition for strange or unfamiliar words in the Gemara without further comment.

Before moving on to the second sub-category we should note that Ibn Migash occasionally defines a word by supplying its Arabic equivalent. He defines nitfei (Baba Bathra 6a) as "...that which, in Arabic, is called kramidii ..." (Appendix Ig) and traklin (Baba Bathra 11a) as "...that which, in Arabic, is called ktsir kbir ..." (Appendix Ih). This definitional technique is frequently employed by Rashi, who gives Old French synonyms to explain difficult Talmudic terms. As with all his other definitional comments, however, Ibn Migash uses his Arabic definitions as single elements of larger comments which aid the reader in understanding the issues involved in the text.

With the second sub-category of comments Ibn Migash endeavors to explain or clarify the simple sense of full passages in the Talmud text. Two examples of this sub-category follow:

It has also been taught: When one says to his fellow, "I hereby sell you a portion of a vineyard," Symmachus says that the portion should not be less than three kabin. Said R. Yose, "These are nothing less than words of prophecy."

Baba Bathra 12a
Appendix Ii

Rashi: These are nothing but words of prophecy. That is, without reason.

Appendix Ij

Ibn Migash: Words of prophecy. For the seller says, "a portion of a vineyard," without qualification, and the Tanna says that it was the seller's intention that the portion be three kabin. And we may explain that R. Yose disagrees with Symmachus, saying, in effect, "We would need a prophet to clarify what the seller had in mind to sell, but these 'three kabin' of which Symmachus spoke are not to be relied upon as the correct interpretation." And this interpretation is correct.

Appendix Ik

This example shows clearly Rashi's tendency toward short, almost cryptic comments, and Ibn Migash's very different tendency toward longer, more explicit explanations. It is interesting to note that, although Rashi and Ibn Migash understand the phrase "words of prophecy" as referring to two different things -- Rashi regards it as a derogatory, almost mocking comment by R. Yose about Symmachus's statement, and Ibn Migash regards it as an indication of what would be necessary to make any reasonable or concrete statement about the seller's intention -- nevertheless, both commentators arrive at the same conclusion: Symmachus's statement is without foundation.

It is typical of Ibn Migash that he closes this comment by evaluating its quality, saying, "And this interpretation is correct." This sort of self-conscious evaluation, found frequently in his commentary, occurs again in our second example of this sub-category of explanatory comments:

Come and hear: One must distance a tree from his neighbor's pit by twenty-five cubits. This rule applies if there is a pit there, but if there is no pit may he plant up close? No, even if there is no pit he may not plant up close...If this is so what can be

said about the next phrase -- "but if the tree was there previously he need not cut it down"? If he may not plant up close even when there is no pit how does this last phrase apply in light of the rule in question? Just as R. Papa said in another connection, "It refers to the case of a buyer," so here too it refers to the case of a buyer.

Baba Bathra 18a
Appendix II

Rashi: Here too it refers to the case of a buyer. If a man planted a tree in his field, and afterwards sold half of his field to another man, and the buyer came and dug a pit, the seller would not have to cut down the tree which he planted in his domain.

Appendix Im

Ibn Migash: Here too it refers to the case of a buyer. This is the meaning: Reuven had a field with a tree planted in the middle of it. After some time he sold half the field to Shimon. When the field was surveyed, it turned out that

the portion belonging to Shimon, the buyer, reaches from the edge of the field to the border of the tree. In such a case you find the tree planted up close to the neighbor's field with no distance between them. But once Shimon's field is adjacent to Reuven's, neither may ever plant a tree without allowing for intervening distance. This is because one's neighbor can say to him, "Perhaps tomorrow I will decide to dig a pit and then the roots from your tree will cause damage to the pit." This is the explanation of the statement, "so here too it refers to the case of a buyer," which seems reasonable to me, but there are commentators who have explained it differently. Their explanations, however, are not so fitting -- the one I have given is more fitting.

Appendix In

This concluding gloss asserting the superiority of this comment over alternative explanations of the same phrase seems somehow unnecessary. Perhaps it would seem more appropriate if the commentator was to take issue with

specific points of alternative explanations with which he disagrees, but in this comment Ibn Migash does not cite the other "wrong" views. He merely notes their existence and proclaims them to be inferior to his own view. This technique might lead to one of two possible conclusions, both of which are highly conjectural: a) that the text of Ibn Migash's commentary, in the form in which we have it, includes later material added by another author or editor among which are editorial comments on the superiority of certain of Ibn Migash's explanations (the issue of the authenticity and originality of our text will be dealt with more fully in the last chapter); b) that, unlike Rashi's comments which, in their concise, terse, brevity seem to have originated as written marginalia on a manuscript, Ibn Migash's work reads like a record of his verbal teaching -- a student's lecture notes or some other verbatim or nearly-verbatim transcript of a lesson. The remarkable wordiness of Ibn Migash's comments would lend credence to this latter theory. In the second example he and Rashi agree completely with one another as to the meaning of the phrase, "so here too it refers to the case of a buyer." Yet despite their agreement, Ibn Migash's commentary is nearly four times as long as Rashi's, and is spun out using the sort of concrete example (Reuven and Shimon) that, while perfectly natural in a teacher's lecture to a class, would be excessively

wordy and unnecessarily story-like for a written format. The use of the second person singular form of address in the comment ("...in such a case you find the tree..." Heb.: atah motsei) rather than a less personal, more literary form is further evidence that Ibn Migash's comments may have originated in a classroom setting. In such a setting it would not be at all unusual for a teacher to make editorial "asides" to the effect that the explanation which he is presenting is far superior to others which the students may have heard in the past.

We have seen that Ibn Migash's lexicographical comments on the Talmud generally serve to facilitate a deeper understanding of the issues and concepts relevant to the text. We will now see that his explanatory comments on full passages serve the same purpose. Often we find cases in which Rashi and Ibn Migash make very similar explanatory comments on the simple meaning of a passage. Having explained the simple sense of the text, however, Rashi goes on to his next comment, while Ibn Migash invariably expands his comment far beyond his explanation of the simple meaning of the passage. Let us look at two examples of this phenomenon:

Therefore, if the wall falls, the stones and the place on which it stood belong to both of

them. But is this not self-evident? No, it must be stated to teach of the case in which it fell entirely into the domain of one of them, or the case in which one of them cleared the stones into his domain. In either of these cases you might have thought that the other should be under the law of "Let him who is making a claim against his neighbor bear the burden of proof," but the Mishnah teaches us that this is not the case.

Baba Bathra 4a
Appendix Io

Rashi: Is it not self evident that the stones belong to both of them? For even if the Mishnah did not so rule, does it not teach us indirectly that it is so by saying that they were compelled from the outset to build a wall between them. Therefore they would divide the stones equally since they are in the domain of both of them, and neither has a better claim to them than the other.

Appendix Ip

Ibn Migash: Therefore, if the wall falls...But is this not self-evident? That is, since the law compelled them to build the wall in the middle, and both were responsible for the building expenses, it is known that, if the wall fell, the stones would belong to both of them. Thus neither could make a claim, saying, "They are mine alone," unless he brought proof for his claim. We explain why the Mishnah made an apparently self-evident comment by saying that it was necessary in case one of them cleared the stones into his domain and claimed, "They were mine alone so I cleared them away," or claimed that after the wall fell he bought the stones from his neighbor. In such case you might have thought that since the stones are in his domain the other person should be under the law of "Let him who is making a claim against his neighbor bear the burden of proof." This is why the Mishnah teaches it.

Appendix Iq

If the above-quoted comment were the full extent of Ibn Migash's treatment of this text it would not be

noteworthy. His comment, a rather wordy expansion of the Gemara, explains the simple meaning of the text in nearly the same way as Rashi's comment. The quoted material, however, comprises barely half of Ibn Migash's extended comment. He continues from the point at which the comment quoted here ends and discusses why this common judicial principle is not applied. Then he goes on to introduce the question of whether there are witnesses³ who can testify in the matter. These expansions indicate clearly that Ibn Migash's interest goes beyond producing line-by-line commentary to explicate the simple meaning of the text:

A second example of Ibn Migash's tendency to expand upon simple explanatory comments is the following:

The people of the city may use kupah for tamchui or tamchui for kupah⁴ and they may change it for whatever they desire.

Baba Bathra 8b
Appendix Ir

³This part of the comment will be examined below, see page 75.

⁴Kupah: the charity fund of monies distributed to the local poor on Fridays. Tamchui: the "soup kitchen" -- food distributed every day to all poor, whether local or not.

Rashi: Kupah for tamchui. By distributing it to non-local poor, if there should be very many of them.

Appendix Is

Ibn Migash: Kupah for tamchui or tamchui for kupah. If the kupah was collected and there was a surplus, while at the same time the tamchui which was collected did not suffice, they may buy with the surplus kupah what is necessary for the tamchui. And likewise, if the tamchui was collected and there was a surplus, while the kupah which was collected did not suffice, they may sell the surplus tamchui and take from the proceeds what is needed for the kupah.

Appendix It

Here again, if Ibn Migash had stopped at this point there would be nothing extraordinary about the comment. It would have been the same type of comment as Rashi's, albeit longer, wordier, and more explicit. The comment, however, does not end here. Rather it goes on at some length to discuss whether it is permissible to use charitable funds for causes other than those specified by the donor.⁵

⁵This comment will be examined in detail below; see pp. 30ff.

These examples make it clear that, while Ibn Migash and Rashi often produced very similar explanatory comments on the simple meaning of the text, Ibn Migash usually does so in order to facilitate an investigation of some more abstract issue or concept in the Talmud.

In most of the comments which we have examined, as well as in numerous others, Ibn Migash's understanding of the simple meaning of the text does not differ substantially from Rashi's. It is, therefore, important to note that the two commentators occasionally differed on the meaning of talmudic passages. One such disagreement centered on the following:

A person may not open a bakery or a dyeing workshop beneath his neighbor's oil-, grain-, or wine-storehouse, nor may he put a cow-shed there. The reason is that there is already a storehouse there, but if there is no storehouse there he may do so, for living quarters are different. This is indicated by the Baraita taught in connection with this Mishnah which says, "If the cow-shed preceded the storehouse it is permitted."

Bara Bathra 18a
Appendix Iu

Rashi: Living quarters are different. A bakery, a dyeing workshop, and a cow-shed are potential living quarters for people, and we do not prohibit a person's living quarters unless the damage they cause is already occurring.

Appendix Iv

Ibn Migash: Living quarters are different. That is, people do not usually make their living quarters into a storehouse. Thus, if there is no storehouse on the upper floor, but only living quarters, we do not rule that one may not open a bakery, a dyeing workshop, or a cow-shed on the lower floor on the grounds that the upstairs neighbor may decide to make a storehouse there someday.

Appendix Iw

The difference in understanding between the two commentators in this case is extreme. Rashi understands the term "living quarters" as referring to the lower floor. Thus the Talmud does not prohibit the establishment of a bakery, a dyeing workshop, or a cow-shed on the lower floor as long as there is not yet a storehouse on the upper floor. This is because any of these three establishments could be

used for human habitation. By saying that "living quarters are different" the Talmud, as understood by Rashi, is pointing out the distinction between the establishment of a bakery, dyeing workshop, or cow-shed and the digging of a pit. For it had been established previously (Baba Bathra 17b) that one may not dig a pit on his property close up to the boundary with his neighbor's property, even if there is no pit on his neighbor's property. The reasoning there is that if the neighbor were to decide to dig a pit in the future, the proximity of the first pit to the boundary would weaken the second pit. In other words, the digging of a pit close up to the boundary is prohibited, not because of the damage it causes at the time when it is dug, but because of damage it might cause in the future. It might seem logical to analogize from this case of a pit and rule that the bakery, dyeing workshop, and cow-shed may not be opened on the lower floor even when there is no storehouse on the upper floor, because the owner of the upper floor may, at some future point, decide to make his living quarters into a storehouse. If he were to do so then the heat, smoke, and noxious odors from the previously established bakery, dyeing workshop, or cow-shed would damage the wine, grain, or oil stored above. The Baraita, however, tells us that this line of reasoning should not be applied, because any of the establishments in question might be used for human

habitation. And, although we prohibit a pit because of the future damage which it may cause, we cannot prohibit a person's living quarters because of future damage they may cause. Only if the damage they cause is immediately present are they prohibited.

Ign Migash understands the term "living quarters" in a completely different way. He says it refers to the upper floor. The Talmud prohibits the digging of a pit close up to a neighbor's property because the neighbor may decide to dig a pit on his property at any time. Usually, however, people do not make their living quarters into storehouses. Thus we permit the establishment of a bakery, dyeing workshop, or cow-shed on the lower floor because the likelihood of the upstairs neighbor taking future action which would make the downstairs establishment become a source of damage is almost nil. On the other hand, the likelihood of the neighbor in the case of the pit taking future action which would make the first pit become a source of damage is high. Thus, Rashi thinks that the Baraita's ruling is based on an essential difference between a person's right to establish and maintain living quarters and his right to other things, while Ibn Migash thinks that the ruling is based on the improbability of the upper floor being changed from living quarters into a storehouse.

In the next example Rashi does not explicitly state his view, but there is a strong indication that he accepts the prevalent interpretation. So widespread is the usual view, in fact, that Ibn Migash's very different understanding is practically unique.⁶

One who had a wall close up to his neighbor's wall may not put another wall up close to it unless he distances it by four cubits...How was the first wall up close? R. Judah said, "It means: One who wishes to put a wall up close may not put it up close unless he distances it by four cubits." Rava objected to this explanation, "But it teaches, 'one who had a wall close up to his neighbor's wall...' Rather," said Rava, "This is what it teaches: One who had a wall four cubits away from his neighbor's wall and it fell, may not put another wall up close unless he distances it by four cubits.

Baba Bathra 22a-b
Appendix IX

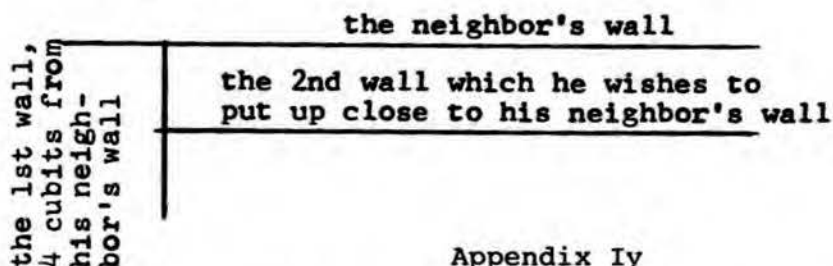
⁶Of all the commentaries I have seen, only that of Solomon ben Abraham Adret is in agreement with Ibn Migash. It is probably not mere coincidence that Adret is Spanish. See Ashkenazy's Shitah Mekubetset to Baba Bathra pp. 48-49.

Before examining Ibn Migash's understanding of this passage, let us clarify the problems involved and the usual understanding of them. The Mishnah implies that, in general, one's wall should be kept at a distance of four cubits from one's neighbor's wall. But if this is so how do we explain the phrase in the Mishnah, "One who had a wall close up..."? How was the first wall close up if the law is that a wall may not be erected closer than four cubits from a neighbor's wall? The very existence of a problem, however, is predicated on a visualization of the situation as involving two parallel walls. This image seems to be generally accepted by most commentators. Its widespread acceptance is indicated by the fact that this image is read into the Soncino translation of the passage: "If a man has a wall running alongside his neighbour's wall..." This image also seems to have been assumed by both R. Judah and Rava, since both of them perceive a problem in the passage. Thus we may assume that Rashi also accepts this image, since his only comment on the phrase, "he may not put another wall close up to his neighbor's wall," is "This is explained in the Gemara."

Ibn Migash, however, rejects the parallel-wall image. He comments as follows:

We ask specifically in the Gemara, "And how is the first wall close up?" Rava's position

is that it means: One whose wall was close up to his neighbor's wall at a distance of four cubits. But the true meaning is that the width of his wall is close up to his neighbor's wall like this:



Thus Ibn Migash sees the situation as one in which the walls are perpendicular to one another, rather than parallel. The novelty of this approach is striking. It reflects a sort of divergent and creative thinking that may account for Ibn Migash's general tendency to range far afield from the narrowly defined issues of the text under consideration in a comment to bring in numerous other diverse, related issues. And, while Ibn Migash's creative and novel understandings may occasionally seem strained, in this case his understanding of the realia referred to in the text is the one that best fits the requirements of consistency and logic.

In conclusion we may say that the first category of comments, which is common to Rashi and Ibn Migash,

consists of lexicographical and simple explanatory comments. While Rashi often provides lexicographical comments for their own sake, Ibn Migash generally uses them as tools to achieve a deeper understanding of the issues involved in the Talmud text. Similarly, when Rashi makes explanatory comments his goal is often merely to elucidate the simple meaning of the text. Ibn Migash almost always uses his explanatory comments as steppingstones to extended discussions of the conceptual framework of the whole passage. Finally, although the two commentators usually agree with respect to the simple meaning of the text, there are cases in which they differ.

Chapter Two

EXTENDED CONCEPTUAL COMMENTS

The second category of comments which we shall examine contains only Ibn Migash's comments. We shall not deal with Rashi's comments because the vast majority of them are concerned with a line-by-line explanation of the simple sense of the text, with emphasis either on the definition of words or the simple understanding of the issues present in the text. As we saw in the previous chapter, this type of commentary is by no means foreign to Ibn Migash, but it is also not his major focus. Rather, he is far more interested in the analysis of diverse halachic concepts and issues. Such analysis is not usually called for explicitly by the text in question. Ibn Migash merely uses the specific legal issues raised in the text as points of departure for his extended expeditions into a much wider world of halachic thought. As we shall see, in many instances his commentary is not so much a means, with its end being the understanding of the simple meaning of the text, but an end in itself, which the text serves as a means of entry. If Rashi's commentary is a doorway into the edifice of the text, Ibn Migash's work is itself an edifice, whose doorway is the text of the Talmud.

Let us consider in detail two examples of such comments.

The first comment deals with the statement on Baba Bathra 8b that the people of a city have the right to use surplus charity funds from the kupah to buy food for the tamchui, or to sell surplus food from the tamchui to procure extra funds needed for the kupah. Extending and expanding on the simple explanatory comment which he makes to this passage,⁷ Ibn Migash comments as follows:

And it is specifically from kupah to tamchui or from tamchui to kupah that they may transfer funds, for both serve the needs of the poor. But if they wish to transfer these funds to other things which are not related to the needs of the poor this is forbidden. This is so because it would be stealing from the poor, as it is taught in Tractate Shekalim: "The surplus of funds for the poor is for the poor, the surplus of funds for ransoming captives is for captives...etc." It is also taught (Baba Bathra 8b-9a): "Keep only one purse and stipulate to those from whom you collect

⁷The single explanatory comment, as well as the Talmudic text to which it refers, are quoted above, pp. 19-20.

charity that the money may be used for either local or non-local poor." We learn from this that one may use charity funds for any purpose only if one made a stipulation. If one did not make a stipulation one may not use the funds for another purpose, even if only to transfer them from local poor to non-local poor. Since Abaye was the head of the city (and could therefore act on behalf of its citizens), if he had been permitted to transfer funds to other purposes not related to the needs of the poor, how much the more would he have been permitted to transfer funds for local poor to non-local poor without stipulation! But this is not the case. Abaye admits that he makes a stipulation even to transfer from funds for local poor to funds for non-local poor. From this we learn that when it is taught that the people of the city may transfer funds to whatever they wish, it means as long as the funds are still used for the needs of the poor. But if they are not used for the needs of the poor then the people have absolutely no right to transfer.

This is so even if the funds in question were from a levy imposed by the people of the city. How much the more so, then, if they were from a levy imposed by one individual. For even if one errs by interpreting the phrase, "The people of the city...may change it for whatever they desire," even to something which is not related to the needs of the poor," such a right could be exercised only over funds from levies imposed by the people themselves. Over funds from levies imposed by others or by an individual, however, they could exercise no right of transfer whatsoever.

And even if the funds in question had been donated by an individual, and were in the form of an object, the identity of whose original owner had been forgotten (as, for example, if someone had donated a plot of land for the use of the poor, and the identity of its original owner has been forgotten) in such a case the people of the city still have no right whatsoever

to transfer the land to another use which is not related to the needs of the poor.

You may object that we learn (Arachin 6b) "If a Jew donates a lamp or a candle to the synagogue..." even when the identity of the donor has not been forgotten it is permissible to use the donation for any mitsvah-related purpose, but not for a non-mitsvah-related purpose. However, that case is different. There the intention of the donation is that it be used for the synagogue, and "the synagogue" represents the needs of all the people of the city. Therefore, they bear the responsibility for the proper use of the contribution. Know that in such a case they may sell it or even drink beer from it (if that serves a communal need). But a contribution which is specified from the outset as being for the poor or ⁸⁻ for the

⁸⁻⁻⁸ This phrase, "for the people of the city," makes no sense, as it is a clear contradiction to what Ibn Migash has just said. I suspect that this reflects a corruption in the text, and suggest either of two possible emendations: a) change IN to PN, thus reading, "then the people of the city may not sell or transfer..."; b) change b'nei ha'ir to aniyei ha'ir, thus reading, "...as being for the poor or for the local poor..." and understanding "the poor" as meaning "the poor of all places," i.e., non-local poor.

people of the city⁻⁸ may not be sold or transferred to any other purpose.

And even though responsibility for these poor people devolved on the people of the city,⁹ it devolved on them with regard to what they lack. However, with regard to things other than that which they lack it did not devolve on them.

¹⁰⁻ Furthermore, this exchange from kupah to tamchui or from tamchui to kupah would

⁹ This passage is unclear because the antecedent of "on them" (עלֵיהֶם) and the subject of "devolved" (נִשְׁמַר) are unspecified. An alternate reading would be, "And even though responsibility for the distribution of these funds devolved onto these poor people..." I prefer the reading which I have supplied in the body of the text. It seems to fit better with what Ibn Migash is saying, namely, that responsibility for sustaining the poor falls on the shoulders of the citizens only with regard to what the poor lack. That is, once the poor have been brought up to a reasonable standard of living, the citizens' responsibility with regard to them ends. Thereafter the citizens may apply any surplus charity funds to other charitable causes, as long as those causes are also related to the needs of the poor.

¹⁰⁻⁻¹⁰ The meaning of this section is also unclear. If Ibn Migash is saying that the poor become the owners of the charity funds collected for their use then the alternate reading suggested in note 8 may be preferred to the reading in the body of the text. In any case the meaning of the sentence is unclear. Throughout this comment Ibn Migash has held that a contribution must be used for that which was intended by the contributor, and that no change in designation may be made without the approval of the contributor. But this sentence seems to imply that the consent or approval of the recipient, that is, the poor for whom the charity is collected, is necessary to transfer the funds.

be acceptable to the poor since it is their money and does not need to be collected.⁻¹⁰ Therefore, if the people of the city sold it or transferred it to another purpose not related to the needs of the poor, this would constitute theft from the poor, and it is prohibited. And if it does happen, that sale or transfer is null and void.

Appendix IIa

This comment, for all its length and stylistic complexity, seems to be proposing one rather simple point: a charitable contribution must be used for the purpose which was intended by the original contributor. The administrators of a charitable fund do not have complete autonomy with regard to the disposition of money in the fund. There may even be a further suggestion (based on the alternate reading suggested in note 8) that the recipient of charity is not completely free to do as he wishes with the money received, but is restricted to using it for the purpose intended by the contributor. In any case, this sort of extended and abstract comment which lengthily analyzes a halachic issue far beyond the scope of Talmudic text itself, is typical for Ibn Migash.

We have already seen¹¹ the minimal extent to which Rashi comments on this material. As usual his one-line comment deals only with the simple meaning of the text and refrains from any more in-depth consideration of the halchic issues involved. Comparisons between Ibn Migash's comment and the work of other later commentators, however, will prove much more fruitful. Let us consider, for example, the following comment from Ashkenazy's Shitah Mekubetset:¹²

"The people of the city...may change it for whatever they desire..." R. Aharon Halevy wrote: They may transfer specifically to the needs of the poor, as, for example, clothing, shelter, and similar things, but they may not transfer it to other things which are not related to the needs of the poor. All that is collected for the needs of the poor is for the poor, even if there was a surplus, as it is taught in Tractate Shekalim: "The surplus of funds for the poor is for the poor, the surplus of funds

¹¹Above, p.20

¹²Shitah, p. 12a.

for ransoming captives is for captives, the surplus of funds for ransoming a particular captive is for that captive, the surplus of funds for burying the dead is for the dead, the surplus of funds for burying a particular dead person is for his heirs..." Thus, one who transfers the funds to other things is stealing from the poor. And the Master brought further proof from what Abaye said (8b-9a): "At first the Master used to keep two purses, one for the poor of all places and one for the poor of the city. When he heard that R. Tachlifa bar Abdimi used to keep only one purse and stipulate that the funds could be used for either local or non-local poor, he too kept only one purse and stipulated." From this we can conclude that he needed to make a stipulation. But why? Wasn't his teacher the head of the city? And even so could he not transfer the funds to another purpose if he did not stipulate? Indeed he could not. Learn from this that the people of the city have no right whatsoever to transfer the funds except to a purpose that is

also related to the needs of the poor. The fact that it teaches, "...they may change it to whatever they desire..." does not necessarily mean to other poor, but to whatever they desire related to the needs of poor people, even though this charity was the charity given by the people of the city. And how much more may they not use it for other poor people if it was charity from a levy imposed by people of another city or by an individual. For if others, or an individual, have imposed the levy, then the people of the city have no right at all to transfer charity funds to any purpose which they decide. And what of the fact that it states in the first chapter of Arachin that ia a Jew donated a candle or a lamp to the synagogue and the identity of its original owner has been forgotten it is permissible to transfer it even for something that is optional, i.e., that is not mitsvah-related? This applies to anything which represents the needs of the synagogue. For the seven representatives of the city

may even sell the synagogue itself since they represent the inhabitants of the city, even to drink beer from it.¹³

Appendix IIb

This comment, not quoted in its entirety here, bears an extraordinary resemblance in style, form, and content to Ibn Migash's comment quoted above. The resemblance is so close that it includes the same lack of clarity regarding the material from Arachin. One cannot help wondering whether this comment is either based upon Ibn Migash or perhaps represents another version of his work. More significant, however, than the specific details shared by these two particular comments, is the formal similarity between them. The literary style and form of Ibn Migash's comment seems nearly identical to that of Aharon Halevy. In fact, the similarity goes even deeper as one reads through the Tosafistic comments quoted in great number in the Shitah Mekubetset. All these comments seem to be cast in the same formal style. Among the many formal and stylistic characteristics which they share are: 1) the extensive discussion of halachic principles and concepts

¹³The lack of clarity in this last section corresponds to the lack of clarity surrounding the corresponding material in Ibn Migash's comment.

which are only tangentially related to the text being commented upon;¹⁴ 2) the analysis of issues and ideas in the course of such discussions by means of numerous and extensive references to and comparison with other Talmudic passages; and 3) the subsequent discussion, occasionally at some length, of those other Talmudic reference passages in and of themselves.

All of these characteristics are clearly visible in yet another comment of Ibn Migash. The comment refers to the Gemara on Mishnah Baba Bathra 1:1 which reads: "Partners who wished to make a mechitsah in their courtyard build the wall in the middle." The Gemara states:

It is because they wished to build. But if they did not wish to, they cannot be compelled to do so. From this one may conclude that the damage of seeing is not damage.

Gemara Baba Bathra 2b
Appendix IIc

Ibn Migash: You might object as follows:
Who says that the fact that the partners

¹⁴In the comments just quoted by Ibn Migash and Aharon Halevy, for example, the question of who imposed the charity levy which was the source of the funds in dispute was introduced even though it was not mentioned in the Talmudic text itself.

cannot be compelled to build is because the damage of seeing is not damage? Perhaps the damage of seeing is damage, but here the reason one partner may refuse to build is that they are in a situation of achzuk dedayyerei.¹⁵ But if they were not in a situation of achzuk dedayyerei, then it could be argued even if one partner did not want to build they would both be compelled, even against the reluctant partner's will.

There are two responses to this line of reasoning:

1. Who says that these partners are in a situation of achzuk dedayyerei? Perhaps there was no chazakah (i.e., indication of acceptance of the status quo). Rather it is possible that as soon as they divided the courtyard one of them demanded of his partner that they build a wall because of the damage

¹⁵Achzuk dedayyerei: Both partners have lived with the present situation for at least three years without complaint, thereby indicating their acceptance of the status quo.

of seeing. In such a case there would be no chazakah since the chazakah of achzuk dedayyerei applied only to the situation as it existed before they decided to divide the courtyard. It cannot be seen as providing chazakah now since, up until now, neither one of the partners recognized any particular part of the courtyard as his own. Thus, there was no particular property on which one could claim chazakah.

2. Let us even assume that the situation was one of achzuk dedayyerei after the courtyard was divided and each one recognized his portion of it. If the damage of seeing is considered real damage then there would be no chazakah. This is because the damage of seeing is a constant damage and is, therefore, similar to a smoky oven or an outhouse, neither of which can ever have chazakah.

When you consider the idea, that the damage of seeing can have no chazakah because it is constant damage, you may be troubled by the

Mishnaic ruling (Baba Bathra 3:5) that an Egyptian window has no chazakah while a Tyrian window can have chazakah, and by the Talmudic ruling that a window lower than four cubits can have chazakah (although it may be contested). You might conclude from these sources that there can exist a window which facilitates the damage of seeing, and, nevertheless, has chazakah. There is a difference, however, between this case and ours. In the case of the window overlooking the courtyard one can say that the owner of the window is causing damage to the owner of the courtyard, but that the owner of the courtyard is not causing damage to the owner of the window. Therefore, once the owner of the window has opened the window and looked out into the courtyard while the owner of the courtyard keeps silent, we may assume that the latter excuses the former. But in a courtyard, where both parties cause damage to one another, and where the damage of seeing is equal for both, one may say that the fact that they both kept silent for three years

was not because they excused one another. Rather, it may have been because each one thought, "We are both damaged equally, so perhaps today or tomorrow he will make a partition. But I have not excused the damage of seeing." Therefore, since the damage of seeing is damage, he still could force the other to build a wall, although he may choose not to do so.

Alternatively, there is a second response: Let us say that, when the owner of the window opened the window and looked out and his neighbor kept silent, this constituted chazakah. This was due to the fact that there was an action -- i.e., the opening of the window -- which was a physical action. But in the case of partners who live in a single courtyard, when they decide to divide it, neither of them necessarily performs a physical action. The damage of seeing exists because they divide the courtyard and then sit there without making a partition.¹⁶

¹⁶ In other words, the damage comes about because of non-action rather than because of action.

In this case we do not say there is chazakah for there was no physical action performed to bring about a change in the situation. Only after such a change would the partners' continued silence constitute chazakah.

And here is a third response: Even in the case of a window, if we assume that there is chazakah on the window itself, nevertheless, the seeing which is facilitated by the window has no chazakah. Know that if the owner of the window wished to look through it at what his neighbor was doing, or to see what there was in his neighbor's domain, would we say that he may do so? No! Rather, his neighbor can certainly stop him from doing so. And one cannot say, "Let him look all he likes, for he has chazakah on it." For the owner of the courtyard will say to him, "It is clear that there is chazakah on the window itself, but there is no chazakah on standing there and watching what goes on in my domain." People simply do not have chazakah on such things.

We have seen in a responsum of our Rabbi,¹⁷ of Blessed Memory, that a window which facilitates the damage of seeing has no chazakah, and he brings, as proof, the law of partners who wished to make a mechitsah in their courtyard. Even though they are in a situation of achzuk dedayyerei, if one of them demands that his neighbor agree to divide the courtyard and build a wall in the middle, he can compel him to do so, because the damage of seeing is damage. This opinion fits with the statement in the Gemara (which is an alternative understanding of the Mishnah): "What is meant by 'mechitsah'? A division. And once they wish to divide they must build a wall, even if it is against their will." We have just shown, however, that the law of the window is not comparable to the law of the partners, since we have also taught in this connection that, "An Egyptian window has no chazakah, while a Tyrian window has chazakah..."

Appendix IIId

¹⁷This refers to Alfasi.

In this extended comment we see clear examples of the phenomena which characterize Ibn Migash's style. First of all, it is clear that the comment is not primarily intended to shed light on the meaning of the passage in the Gemara which is ostensibly its subject. Rather, it introduces, and then examines in some detail, two independent halachic concepts: damage and particularly the "damage of seeing," and chazakah. The main focus of the comment is the interaction between these two concepts, which is analyzed via the comparisons between the case of the two partners living in one courtyard and the case of the Egyptian window. In the course of his treatment of the subject Ibn Migash makes several distinct points:

1) One may only claim chazakah when three conditions are met: a) the prescribed length of time for the establishment of chazakah must have passed; b) that time must have elapsed since the creation of a new situation; c) that new situation must have come into being through the performance of some physical action.

2) Chazakah may be an inapplicable legal category in situations which involve certain types of damage.

3) Even if chazakah can be claimed in a situation in which there is damage, the claim may only be valid when only one party is being damaged. But if both parties are equally damaged the claim may be invalid.

Within these three main points we might also distinguish further nuances, but these do not constitute new or substantively different ideas. For example, to say that a window can have chazakah, but that the damage of seeing caused by it cannot have chazakah, is not essentially different from saying that, in general, chazakah may not be claimed in cases where damage is present.

This comment functions on a highly abstract conceptual level, which is quite removed from the practical matters at hand in the Talmud. In this respect it is typical of Ibn Migash's commentary, and shows how similar his commentary is to the works of the Tosafists who flourished nearly a century after him. This similarity is seen most clearly in the following excerpt from the first page of the commentary to Baba Barhra by R. Asher ben Yehiel, a tosafist born just over a century after Ibn Migash's death.

If partners divided their courtyard but did not build a wall, and after several years one of them demands that they build a wall between them, but the other claims, "You excused me from the damage of seeing which I cause you, and you gave or sold it to me and I have possessed it these three years," his claim is not a valid claim. And the issue of

chazakah is not relevant here, since the basis for chazakah is that one kept silent and did not protest, thereby losing his right to protest at a later time. Chazakah applies specifically where the one who claims to have chazakah causes damage, but is not damaged himself. A case of this would be where one has a window which opens onto his neighbor's courtyard, and he possesses it for three years without his neighbor protesting. But in this case either partner can say, "Why should I have protested more than you? For did I not cause damage to you, just as you caused damage to me? I was waiting. Perhaps you would initiate the demand that a wall be built." Furthermore, this damage is not similar to the damage caused by a window which overlooks one's neighbor's courtyard for another reason: In the case of a window the damage is not constant, since the window is made to admit light, but not necessarily to be used to look through into one's neighbor's courtyard. In fact, it is forbidden to look at one's neighbor's actions in his courtyard,

as we have said in connection with a garden. In a courtyard which one uses for entering and leaving one's home, however, it is impossible to avoid seeing what one's neighbor is doing. Thus, its damage of seeing is similar to the damage caused by a smoky oven or by an outhouse. As we have said (Baba Bathra 23a) such damages have no chazakah. Therefore, he must assist him in building the wall.

Appendix IIe

The resemblance of R. Asher's comment to the previously quoted comment of Ibn Migash is remarkable. R. Asher introduces the same concept, namely, chazakah, and deals with it in nearly the same way as Ibn Migash. Like Ibn Migash he distinguishes between situations in which damage is unilateral and situations in which the damage is bilateral. He also distinguishes between situations in which the damage is constant and unavoidable and those in which it is intermittent and avoidable. Finally the resemblance is completed with the use of the same case as Ibn Migash used, namely, that of a window overlooking one's neighbor's courtyard.

We are thus left with a picture of Ibn Migash's style of commentary which suggests a much closer link to

the Tosafists, who wrote years after his death, than to Rashi, who was his contemporary. Like the Tosafists he uses a Talmudic passage as a point of departure for in-depth examinations of halachic issues only tangentially related to the text. Like them he accomplishes these examinations by means of comparisons drawn between the case at hand and numerous other cases in the Talmud.

Chapter Three

THE USE OF THE TERM "VE'IM TOMAR"

We have seen a remarkable similarity of content between some of Ibn Migash's comments and parallel comments by various Tosafists. We will now see, however, that the similarity is not merely in content and general elements of literary style, but extends also to very specific formal devices. Most notable of these is the term "ve'im tomar," "and if you say/object." This term is used to introduce material, often a Talmudic passage, which apparently contradicts the point that has just been made. The structure, however, is that of a "straw man," for the commentator generally goes on to show why the apparent contradiction does not actually exist. By means of this process the commentator achieves his goal of analysis of the issues involved. In order to demonstrate how the apparent contradiction is, in fact, only apparent, he must further clarify the issues in the Talmudic case so as to show why it is different from the parallel case, even though they appeared to be similar at first.

The importance of this device in an attempt to contrast Ibn Migash's commentary to that of other authors, is indicated by the following statement regarding the Tosafot:

The term ve-im tomar ("and if you were to say") and ve-yesh lomar ("and then one may answer") -- almost exclusively characteristic of this /i.e., the Tosafistic/ literary genre -- are the most commonly used in the tosafot and more than anything else typify their essential character.¹⁸

If, indeed, the term "ve'im tomar" typifies "the essential character" of the Tosafistic commentaries its extensive use in Ibn Migash's commentary is further indication of some sort of link between these two bodies of material.

We have already seen a major instance of the ve'im tomar form in Ibn Migash's comment on Baba Bathra 2b. There the term, used in the first line of the comment,¹⁹ provides the structure for the entire comment. Let us now consider two other examples of its use:

The first example is the continuation of Ibn Migash's comment to Baba Bathra 18a²⁰ in which he explains why one is not prohibited from opening a bakery, a dyeing workshop, or a cow-shed on the ground floor of a building if the owner of the upper floor has not yet established a storehouse there. The rationale for the ruling, according to Ibn Migash, is that people do not usually make their living quarters into storehouses. Thus, since there is little likelihood that the owner of the

¹⁸Israel Ta-Shma, "Tosafot" (Encyclopedia Judaica, 1972: vol. 15, p. 1278).

¹⁹See above, p.40

²⁰See above, p.22

upper floor would make an establishment that would be damaged by the heat, the smoke, or the noxious odors from the bakery, dyeing workshop, or cow-shed, the opening of any of these establishments on the ground floor is not prohibited. Ibn Migash continues:

And if you say (ve'im tomar), "But did you not say that even in a field in which pits are not usually dug Raya holds that one may not plant a tree up close? Thus let the upper floor be considered as a field in which pits are not usually dug as well," these cases are not similar. In the case of a field, even if it is one in which pits are not usually dug, it does sometimes happen that a person decides to dig a pit there. But here we have said that people do not ever make their living quarters into a storehouse. Therefore, although there is no storehouse on the upper floor, we do not concern ourselves with the possibility that the owner may decide to make a storehouse there.

Appendix IIIa

Here the term ve'im tomar introduces an analogy

which, if it were sustained, would call the correctness of the Talmud's ruling into question. If the ruling is based on the unlikelihood of the owner of the upper floor taking action which would cause the downstairs establishment to become damaging, then why does Raya hold, in the case of a field in which there is little likelihood of a pit being dug, that one may not plant a tree close up to the field, for fear that the roots might damage a pit if, by chance, one is ever dug? The response is that the analogy cannot be sustained. In the case of a field there is a remote possibility that a pit will be dug. In the case of a building, however, there is no possibility that the owner of the upper floor would make a storehouse there. If these two cases were both decided on the basis of improbability then the rulings would have to be the same. But, in actuality, one case is decided based on improbability while the other is based on impossibility.

A similar process of analysis is employed in the second example:

A ladder must be kept four cubits away from a pigeon coop so that a weasel cannot jump from it to the coop. A wall must be kept four cubits from the neighbor's gutter so that he may put up a

ladder. Shall we say that this Mishnah is not in accordance with R. Yose's opinion? For if it is in accordance with R. Yose, did he not say by way of contradiction, "This one may dig where he likes on his property and this one may dig where he likes on his property"? You may even say that it is in accordance with R. Yose, for R. Ashi said, "When we were in the home of R. Kahana he said, 'R. Yose admitted that one is responsible for his arrow.'"²¹

Baba Bathra 22b
Appendix IIIb

Ibn Migash: Shall we say...R. Yose's opinion? And if you say (ve'im tomar), "Why did the Gemara not ask this of the Mishnah"²² which teaches, 'One who had a wall close up to his neighbor's wall may not put another wall close up unless he distances it by four cubits'? Shall we not

²¹"Arrows" is a model of damage in which damage is caused as a direct result of one's action. For example, if one shoots an arrow and it causes damage when it lands, he is responsible for the damage.

²²Baba Bathra 2:4

say that Mishnah is not in accordance with R. Yose's opinion? It is clear that the rest of the prohibitions in the chapter are in accord with R. Yose, for they can all be considered as arrows...However, with regard to this wall, one cannot say that the putting up of a wall close to the neighbor's wall is an arrow, since the damage is not caused by the wall itself, but by the lack of space for treading the ground between the two walls (and the resultant weakening of the neighbor's wall). Therefore, if it is not like an arrow, yet it is still prohibited, why not say, 'Shall we say that the Mishnah is not in accordance with R. Yose's opinion'?"

Here is your answer: The whole issue of whether something is like an arrow or not applies only when the damage occurs because of the thing which one did itself. But here, the damage caused to the neighbor's wall was not caused by the second wall itself, but because treading of the ground between

the two walls was prevented. In such a case the whole category of damage, according to the model of "arrows" is inapplicable. Rather, all authorities concur in requiring that a distance of four cubits be left between one's wall and one's neighbor's wall because the treading of the ground alongside a wall improves the wall. Once the neighbor has built his wall it is as if he acquired possession of the four cubits adjacent to the wall for the purpose of leaving room for treading the ground...

Appendix IIIc

Here again Ibn Migash has introduced a seemingly parallel case, but now his question is different. Why was the question which the Talmud raised in the case at hand not also asked in a parallel case? If the two cases are the same then the same question should have been put to both. Here the answer is not intended to shed analytical light on the case (i.e., on 22b), but rather to clarify the nature of the parallel case of the two walls. The conclusion is that the Talmud did not ask the question, "Shall we say that this Mishnah is not in accordance with R. Yose's opinion?" in the

case of the two walls simply because that case has nothing to do with the issue of damage. Rather, the four cubits' distance in that case are required because of the right of the owner of a wall to four cubits of ground adjacent to his wall. The four cubits allow for the strengthening of the wall that will result when that ground is trod on and compacted. Although both the case of a ladder and that of the two walls appear to be similar, since both require a distancing by four cubits, they are, in fact, based on completely different conceptual foundations.

Both of these examples of the ve'im tomar form, if seen out of context, could easily be taken for classic examples of Tosafot. In both, the term ve'im tomar is used to introduce other Talmudic cases which the student might equate with the case at hand. Both comments use the form to set up a "straw man," and then both proceed to argue it down. Perhaps most important, both comments employ this formulaic literary structure as a vehicle for a deeper conceptual analysis of the issues at hand in one or both of the Talmudic cases cited.

Chapter Four

THE CITATION OF OTHER AUTHORITIES

Just as the use of the term "ve'im tomar" is characteristic of the Tosafot, so is citing different commentators, and discussion, comparison and evaluation of their opinions.²³ These phenomena, too, are common in the work of Ibn Migash, and they set his commentary style apart from Rashi's succinct and purposeful format. We have already seen this once, in the concluding paragraph of Ibn Migash's long comment on Baba Bathra 2b (quoted above, p.46), where he quotes and rejects an opinion of "Our Rabbi, of Blessed Memory." Given Ibn Migash's academic background, and the fact that Isaac Alfasi was his principal teacher and his predecessor in his post as Head of the Academy, it is reasonable to assume that this un-named teacher is Alfasi. It is worthwhile noting that this is not the only instance in which Ibn Migash rejects Alfasi's ruling. Another such rejection is in his comment on the following Talmudic passage:

²³Ta-Shma writes as follows of the Tosafot: "After Rashi's death the teaching and study methods of Isaac Alfasi, Hananel b. Hushi'el, and Nathan b. Jehiel of Rome, which represented a tradition...different from the local one, began to penetrate into France and Germany. The tosafists took every occasion to quote these novel views and compare them with their own traditions..." Ta-Shma "Tosafot" op. cit.

There must be enough empty space left at the beginning and at the end of a book to roll around. To roll around what? If to roll around the cylinder this contradicts what was said of the circumference.²⁴ If to roll around the circumference this contradicts what was said about the cylinder.²⁵ R. Nachman b. Yitschak said, "It means both." Rav Ashi said, "It refers to a Torah scroll, for there is a Baraita which teaches, 'All other books are rolled from their beginning to their end, but a Torah scroll is rolled to the middle and one puts a cylinder at each end.'"

Baba Bathra 14a
Appendix IVa

Ibn Migash: And the fact that it teaches, "...but a Torah scroll is rolled to its middle..." does not mean literally its middle, but rather, it refers to the place

²⁴A Baraita was cited on Baba Bathra 13b which required that, if Torah, Prophets, and Writings are bound in a single scroll, enough space must be left at the end to wrap around the entire circumference of the scroll.

²⁵In the Baraita mentioned in note 24 sufficient empty space was required to be left at the beginning to roll around the cylinder.

at which one stopped, whether it be at the beginning, at the end, or in the middle. But the Gemara taught, "...to its middle..." to diminish the emphasis on the beginning and the end. Thus, you would not say that one must roll it each and every time it is read to the beginning, as is the case with other books. It teaches us, instead, that one need only roll it up to the place at which one stopped. The fact that the Baraita (on 13b -- see note 24) teaches, "...and he leaves enough at the end to roll around the circumference..." seems problematic to us in light of this other Baraita which teaches, "All other books are rolled to their beginning, but a Torah scroll is rolled to its middle." If other books are rolled to their beginning, why do I need enough at the end to roll around the circumference? When I studied Torah before our Rabbi, of Blessed memory, I posed this question to him. He responded that the phrase "...enough at the end to roll around the circumference..." does not mean enough to encompass the whole scroll,

but rather, enough to go around the cylinder many times in order to separate the cylinder from the writing. Were less room left the writing would be erased by rubbing against the cylinder. And so it taught, "He leaves a blank space at the end large enough to encompass, and at the beginning to roll around the cylinder..."

This interpretation, however, is not a good one, and I have two concerns about it.

1) According to this interpretation, space is left at the end to encompass the cylinder, but how does it explain the space required to be left at the beginning? For, since it is rolled to the beginning, space enough should be left at the beginning to encompass the entire scroll. 2) There is a problem even with the space required to be left at the end. For if you think that that space is for encompassing the cylinder, one should leave a blank space at the end of a Torah scroll as well, for it has a cylinder there.

However, from the fact that we do not require a blank space for encompassing at the end of a Torah scroll, we learn the reason for requiring a blank space for encompassing at the end of all other books. It is not for rolling around the cylinder, but for encompassing the circumference of the entire scroll, because those books are rolled to their end. A Torah scroll, however, because it is rolled to its middle, does not need a blank space for encompassing left at the end. But unsolved problems still remain regarding this matter, and, although I did not know the solution in the lifetime of Our Rabbi, of Blessed Memory, I have now figured out the answer. When it says, "All books are rolled to their beginning..." it refers to books that are written as discrete units and that have no other books accompanying them. But when the Baraita teaches, "...he leaves a blank space at the end to roll around the circumference..." -- thereby implying that it is rolled to the end -- it refers to a Torah, Prophets, and Hagiographa joined together.

For it has clearly been taught, "One who wishes to join the Torah, Prophets, and Hagiographa together as one should join them and leave enough space for the cylinder at the beginning, and enough for encompassing at the end."

Appendix IVb

In this comment Ibn Migash rejects his teacher's response to the question he posed, and makes a point of saying that he did not understand the matter in his teacher's lifetime, but came to understand it only after Alfasi's death.

Ibn Migash's candid willingness to reject his teacher's viewpoint shows his creative, free-thinking boldness. Such independence is thoroughly consonant with other comments of Ibn Migash which I have cited.²⁶ It may be too soon to draw any firm conclusions regarding Ibn Migash's world-view, since they would be based, at this point, on a very limited analysis of a small portion of his work. Nevertheless, the comments cited here give a distinct impression of Ibn Migash as one who did not feel strictly bound to accept "normative" views, the view of his

²⁶See especially the comment, quoted on p. 27, in which his understanding of the simple meaning of the Gemara seems radically different from that of most other commentators.

teacher, or the view of other scholars. The following comment, in which he rejects the opinion of R. Chananel, adds to the picture of independence.

A person may not open a bakery or a dyeing workshop beneath his neighbor's storehouse, nor may he put a cowshed there... If he has increased the number of windows, what is the ruling?

Baba Bathra 20b
Appendix IVc

Ibn Migash: If he has increased...ruling? Our Rabbi, of Blessed Memory, interpreted thus: The owner of the upper floor increased the number of windows in his domain in order to make it into a storehouse (since windows are good for a storehouse, as they allow air to enter so that the produce will not become rotten). Afterwards, the owner of the lower floor made a cow-shed. What is the ruling in such a case? Do we consider the storehouse to have preceded because the owner of the upper floor increased the number of his windows before the owner of the lower floor made his cow-shed? Or do we consider

the cow-shed to have preceded because he has not yet actually made a storehouse (since he has not yet stored anything in it)?

R. Chananel, of Blessed Memory, interpreted this passage differently: If the owner of the lower floor increased the number of windows in his store, what is the ruling? Shall we say that, because he increased the number of his windows, the owner of the upper floor can no longer prevent him from making a bakery or a dyeing workshop (since the smoke will exit through these windows, thus not causing damage to the storehouse above)? Or shall we say that he can still prevent him? This latter interpretation does not seem to fit since the owner of the lower floor does not have the right to increase the number of his windows unilaterally. This is because his neighbor can claim that doing so would damage the wall, as we learn in Baba Metsia (117b). "If the owner of the lower floor wishes to increase the number of his

windows he is not heeded. If he wishes to decrease the number he is heeded."

Appendix IVd

In essence, Ibn Migash here openly criticizes R. Chananel for not being aware of the Talmudic ruling regarding the right of the owner of the lower floor to install extra windows. Had he been aware of the law he would not have interpreted the passage as he did.

These examples indicate that Ibn Migash tried, in his commentary, to be as objective an analyst as possible. Where his analysis led him to conclusions that differed from those of his teachers, he held his ground and explained why his interpretations were better. In light of these observations it is somewhat puzzling to read the following in A.L. Grajevsky's monograph on Ibn Migash:

R. Joseph Halevy...[believed] it was better to use the clear and correct decision of the Gaonim than to err in the explanation of law from the Talmud itself. For himself, Ibn Migash was conscientious in considering the tradition. Even in a place where, in his opinion, a novel interpretation should be applied to the Talmud, if he had received

a different interpretation from his teacher, he would follow his teacher and suspend his own opinion.²⁷

Grajevsky's observation presents a startling contrast to the image we have formed based on the commentary which we have considered. The explanation of the differences between our findings and Grajevsky's probably lies in the fact that Grajevsky focuses primarily on Ibn Migash's responsa, while dealing only briefly with his Talmud commentary. Perhaps Ibn Migash allowed himself freedom to dispute preceding traditions only in his commentary to the Talmud but felt it wise to adopt a more conservative stance in his responsa. Such a difference in attitude might reflect two different periods of his life, or differences in Ibn Migash's philosophical outlook on these two different genres of halachic writing. In any case, it is beyond dispute that Ibn Migash felt himself at liberty to disagree with and reject the teachings of his predecessors in his Talmud commentary.

²⁷ A.L. Grajevsky Rabbenu Joseph Halevy Ibn Migash
(Published by the author: Jerusalem, 1963), p. 16.

Chapter Five

COMMENTS WHICH FUNCTION AS LEGAL DECISIONS

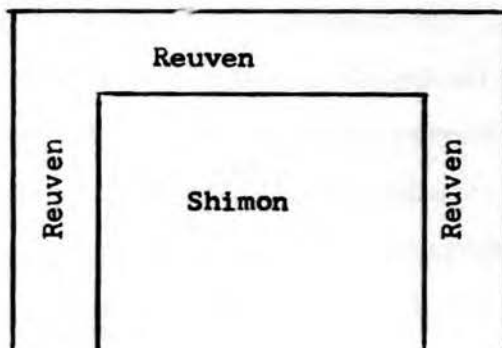
We have seen numerous instances of the extent to which Ibn Migash focuses, in his commentary, on wide-ranging conceptual analyses of the various halachic issues suggested in a Talmudic passage. We shall now consider the last, major, distinguishable element of his work, namely, legal decisions found in his commentary. Throughout his commentary Ibn Migash often functions as a posek, or legal decisor, pausing in the midst of a discussion on a particular topic to pronounce his own decision as to the final law in a given case. Let us consider a few examples of such legal pronouncements.

If one's fields surround his neighbor's on three sides, and he fences in the first, and the second, and the third side, the neighbor is not compelled to contribute to the cost of fencing. R. Yose said, "If the neighbor decides to fence the fourth side, then the cost of the whole is charged him... It has been said: R. Huna said, "'The cost of the whole' is according to the actual cost of fencing.'"...

Rava said, "Give him the minimum that he is willing to accept, or else I will issue judgment against you according to the opinion of R. Huna, as he interpreted R. Yose."

Baba Bathra 4b-5a
Appendix Va

Ibn Migash: R. Huna, as he interpreted R. Yose. From this we can conclude that it is the law. But is specifically where one surrounds his neighbor's fields with his fields that the neighbor is charged with the cost of the whole because the one whose fields are surrounded benefits from the fencing while the owner of the surrounding fields has lost the cost of the fencing. For he can say to him, "You have caused me this excess of fencing," thus:



If his fields were adjacent to the public thoroughfare, and his neighbor's fields were adjacent to them, and he put up a fence between himself and the public thoroughfare, in such a case, even though his neighbor benefits from that fence, he is not charged for any of it. While the neighbor benefits, he who erected the fence incurs no loss. In such a case one could not say, "You have caused me this excess of fencing." And even in the case of one who does surround his neighbor's fields with his fields, it is only after he (the one who surrounds his neighbor's fields) has put up fences that his neighbor is charged. The neighbor may not be charged or forced to aid in the job ab initio, since he (i.e., the neighbor) can say "I am not concerned about passers-by." Even if he (who surrounds his neighbor) fences in the first side and the second side and the third side, the neighbor is not charged at all since his interests do not even enter the picture until the

fourth side is finished. How much the more so, then, should he not be charged to participate in the building with him ab initio!

Appendix Vb

In this comment there are actually two independent halachic rulings. The first is contained in the opening statement that the halacha follows the opinion of R. Huna. This ruling is by no means unique to Ibn Migash. In Rashi's commentary to the same line we read the following:

An editorial gloss: "...or else I will issue judgement against you according to the opinion of R. Huna, as he interpreted R. Yose..." It follows that such is the halacha, and so ruled R. Chananel.

Appendix Vc

R. Asher ben Yechiel and others rule also that the law follows R. Huna's interpretation of R. Yose. Ibn Migash, however, goes on to a second step in which he strictly limits the application of R. Huna's ruling to situations in which two conditions obtain: 1) the fields belonging to the one who erects the fence must actually surround his neighbor's fields; 2) the fence must already be in place before the neighbor can be charged. If either of these conditions is not met, then, according to Ibn Migash, the

principle of R. Huna's ruling may not be applied to the situation.

Although we have classified this comment as a legal decision, the method which it employs is essentially Tosafistic. Like a Tosafist, Ibn Migash analyzes the case under consideration by comparing and contrasting it with other cases. Thus, by citing the case of fields bordering on the public thoroughfare and the case in which the fencing has either not been started or not been completed, Ibn Migash has clarified two important elements of his understanding of this law. He has restricted the payment obligation of the beneficiary of his neighbor's fencing to the cases where: a) the fence is already built, and b) the beneficiary benefits at his neighbor's expense. This limitation implies that this case is qualitatively different from other cases, for example, that of partners living in a single courtyard. In that case, if one wishes to build a wall, the other can be compelled to contribute to the building project from the outset. Thus, in the course of issuing a legal decision, Ibn Migash has also probed somewhat into the underlying basis of the law.

On the other hand, some of Ibn Migash's halachic rulings do not serve to deepen the reader's conceptual understanding of the Gemara. Rather they limit and qualify

Talmudic laws solely for the purpose of indicating the correct understanding of the application of the law. An example of this type of ruling can be seen in the following comment to Baba Bathra 4a. In the first part of his comment²⁸ Ibn Migash explained the Talmudic law governing the ownership of the stones from a wall which divided a courtyard if the wall falls. The stones belong equally to the owners of the two halves of the courtyard, even if the stones fall into the domain of only one of the former partners. He continues the comment as follows:

This ruling applies specifically where there are witnesses who can testify that at the very time that the partners came to court and were ordered to build the wall, they saw these stones, and are sure that these stones are from that wall. ²⁹-And since the partners have not become distant⁻²⁹ the party suing for half the stones swears thus: "He did not buy my half from me." Alternatively he might swear that

²⁸See above, p. 19.

²⁹--²⁹Meaning of this phrase uncertain.

they are still partners with regard to the stones, and, after swearing, he takes his portion from the other. If there are no witnesses to testify to this effect, even though both parties admit that the stones are in one of their domains, if he in whose domain the stones are claims, "They are mine and you have no part of them," or, "I bought them from you," we rule in such a case that he is to be believed. This is so because he could have made a more extreme claim, saying, "The partnership never existed," or, "I returned your share to you." Instead of making such an extreme claim, however, he said merely, "They are mine," or, "I bought them from you." Therefore he is believed after he takes an oath.

Appendix Vd

Here again Ibn Migash's legal ruling consists of a qualification and limitation of the Talmudic law. The equal award of the stones to both partners is appropriate only when there are witnesses who can testify regarding the stones. Although the language of the comment is

unclear, it seems Ibn Migash specifically requires that the witnesses testify that they saw the stones before the wall was built and know them to have belonged to both partners at that time. When such witnesses are not available, however, the party in possession of the stones is believed, on the weight of a judicial oath. By so limiting the decision of the Gemara Ibn Migash has, in effect, formulated a new and different ruling. Without explicitly defining it as such, he has treated the whole case as if the issue involved were the potency of judicial evidence. The Talmud's ruling only applies if it is supported in some way by the testimony of witnesses, the most unimpeachable form of evidence according to the halachah. If, however, the case cannot be decided based on the testimony of witnesses, but must be judged based on possession and judicial oaths, which are less potent forms of evidence than the testimony of witnesses, then the ruling shall be different.

Thus we see that Ibn Migash's legal rulings function in two ways. First, they serve as vehicles for achieving a deeper understanding of issues raised by the Talmud. Second, they serve as simple halachic rulings which limit, define, and qualify the terms and applicability of the Talmud's laws.

Chapter Six

IBN MIGASH AND MAIMONIDES

Thus far we have examined the relationship between Ibn Migash's commentary and Rashi's, and between Ibn Migash and the Tosafists. We have also seen something of the link between Ibn Migash and his teacher, Isaac Alfasi. One of the most important aspects of Ibn Migash, however, is his position as a link in the Spanish legal tradition which begins with Alfasi and culminates with Maimonides. Unlike Ibn Migash's relationship with Alfasi, however, his link with Maimonides is unclear. At the very least, we can assume that Maimonides was familiar with Ibn Migash's work, simply because his father, Maimon, was a student of Ibn Migash.

Although we can draw no firm conclusions in this matter without some clear Maimonidean source referring to Ibn Migash, it may nevertheless prove fruitful to examine their respective views on a few selected issues.

According to Ibn Migash,³⁰ Alfasi held that there could be no chazakah on a window which facilitated the damage of seeing. Ibn Migash rejected his teacher's

³⁰At the end of his comment to Baba Bathra 2b. See above, p. 46 .

ruling in this case, holding instead that there could be chazakah on the window itself, even though there clearly could be no chazakah on the damage which it facilitates. In connection with this issue we find the following ruling in Maimonides' Mishneh Torah:

If one installed a window overlooking his neighbor's courtyard and the owner of the courtyard excused him or indicated his approval, as, for example, if he helped him install it or knew about the potential damage but did not protest, the owner of the window has chazakah on the window. The neighbor may not come later and protest, demanding that he close it up. And how are we to understand this law of a window which the owner of the courtyard allowed the other to install? If the window is large enough for a man's head to fit through, or if it is lower than four cubits (even though a man's head cannot fit through it) the owner of the courtyard may not build opposite, or beside it, unless he distances his construction by four cubits.

Mishneh Torah Shechenim 7:6
Appendix VIa

Based on this passage it seems that Maimonides supports Ibn Migash's opinion that there can be chazakah on a window which facilitates the damage of seeing.³¹

In the following example, however, Maimonides' position is clearly at odds with that of Ibn Migash,

³¹It is interesting to note the gloss on this passage by Vidal Yom Tov of Tolosa, the late fourteenth century Spanish author of Maggid Mishnah. He writes as follows:

I have already written in Chapter 2 that it was the opinion of Maimonides and of his teacher that there can be chazakah on the damage of seeing when the damaged party sees that some action is being performed opposite him (which will be damaging to him) but keeps silent. According to this interpretation, the sugya and the Mishnah in Chapter Three of Baba Bathra (59a) should be interpreted simply as dealing with a window which facilitates the damage of seeing. The disagreement there between R. Zera and R. Ilai is over an Egyptian window, through which a man's head cannot fit. But with regard to a Tyrian window, through which a man's head can fit, even if it is higher than four cubits, there can be chazakah for its damage of seeing. And this is the interpretation of Rabbi Ibn Migash, of Blessed Memory. But R. Alfasi has a different system, whereby there can be no chazakah at all on the damage of seeing...

It is interesting to note that the Maggid Mishnah understands Maimonides to hold that chazakah can apply not only to a window which facilitates the damage of seeing, but to the damage of seeing as well. This seems contrary to our understanding of Maimonides, based on our reading of both the passage in Mishneh Torah, Shechenim 7:6 and the passage in Chapter Two, referred to by the Maggid Mishnah. Furthermore, the Maggid Mishnah's understanding of Ibn Migash's view on the matter is also at odds with the one stated in the printed edition of Ibn Migash's commentary. This might indicate that the text of Ibn Migash's commentary available to Vidal of Tolosa was different from our text, or it could reflect a misunderstanding of Ibn Migash on the part of Vidal of Tolosa.

although it may be consistent with Alfasi's view.

R. Elazar asked R. Yochanan, "When money is collected for the building or the improvement of the town wall, is it collected from each household proportional to the number of its members, or proportional to its means?" He said, "It is collected proportional to its means, and Elazar, my son, remember this ruling well." There are those who report the discussion as follows: R. Elazar asked R. Yochanan, "When money is collected for the building or the improvement of the town wall, is it collected from each household proportional to its proximity to the wall, or proportional to its means?" He said to him, "It is collected proportional to its proximity to the wall, and Elazar, my son, remember this ruling well."

Baba Bathra 7b
Appendix VIb

Alfasi's ruling in this matter is, perhaps, not as explicit as we might wish, but his intent is quite clear. He recasts the wole section as follows:

R. Elazar asked R. Yochanan, "When money is collected for the building or the improvement of the town wall, is it collected from each household proportional to the number of its members, or proportional to its means, or proportional to its proximity to the wall?" He said to him, "Proportional to its proximity to the wall, and Elazar, my son, remember this ruling well."

Talmud Katan Baba Bathra 5a
Appendix VIc

By combining the two versions of Eliezer's question and Yochanan's response into a single format Alfasi indicates his ruling. He holds that the proximity of households to the town wall determines the amount to be collected from each one.

Ibn Migash disagrees with his teacher's ruling in this case. He states his own opinion in the following way:

"...is it collected from each household proportional to its proximity to the wall, or proportional to its means?" In other words, is it collected proportional to means alone, or proportional to proximity to the wall as well? Whether the former

or the latter is so, in either case it is collected proportional to means, but in the latter instance it is more so. For the collection proportional to means in the latter instance is according to proximity to the wall. Thus, if there are two houses, which are both close to the wall but of unequal means, the collection from each should certainly be proportional to means. Likewise, if there is a house close to the wall but of no means, it is absurd to think that anything could be collected from it. Since it has no means, why be concerned with it? Rather, even though it is close to the wall, certainly nothing will be collected from it, because it has no means. Thus we learn that means are the primary criterion for collection. Why does it say "...proportional to its proximity to the wall..."? Because we say that collection is also proportional to proximity to the wall. That is, we determine first who has abundant means and who has little means, and then we determine who is closer to the damage that is averted

by the existence of the wall and who is farther from it. Based on this, the collection is made. And this is the law.

Appendix VIId

Thus, Ibn Migash's opinion is that the primary determinant of the amount of the levy to be collected from any given household is the financial means available to that household. Within the framework of means, however, proximity of houses to the town wall functions as a secondary determinant. This opinion seems to be in conflict with that of Alfasi, who holds either that proximity is the sole determinant, or, at least, that it is the primary determinant.

Let us now consider Maimonides' treatment of the subject, and the analysis of that treatment by the Maggid Mishnah.

When money is collected from the people of the city to build a wall, it is collected proportional to the proximity of the houses to the wall: a house closer to the wall gives more.

Mishneh Torah Shechenim 6:4
Appendix VIe

Magid Mishnah ad loc.: [The entire section of Baba Bathra 7b, quoted above, is quoted]

And the law is written according to the latter version alone.³² That is, the levy is proportional to the proximity of the houses, and so Maimonides rules. But Rabbi Ibn Migash, of Blessed Memory, holds that the latter version comes to add to the former, and to inform you that they collect proportional to means according to the proximity of houses to the wall. So, if there is a rich person whose house is close to the wall, and on equally rich who is far from the wall, they collect less from him who is far than from him who is near. The collection, however, is always proportional to means. Thus, if there is a rich person who is far from the wall and a poor one who is close, what will they collect from the poor one, seeing he has nothing? Rather, they will collect more from the rich person who is far from the wall than from the poor one who is close. In any case, it is all

³²That is, according to the second version of the exchange between R. Elazar and R. Yochanan, in which the answer to R. Elazar's question was that proximity is the determinant.

according to the particular situation.
 So if invaders come in wartime to capture
 or destroy or burn the city, money is
 collected according to any and all criteria.
 This is the view of R. Solomon ben Abraham Adret
 in the name of Rabbi Joseph Halevy Ibn Migash,
 of Blessed Memory. And this does not seem to
 be correct based on the words of Maimonides,
 since he did not mention means at all...

Appendix VIf

Here Vidal of Tolosa has pointed out the relationship between Maimonides and Ibn Migash, correctly concluding that Maimonides differs with Ibn Migash. Maimonides does not recognize financial means as a determinant in the imposition of levies for town improvements, while Ibn Migash sees financial means as the primary issue in the imposition of a levy, though not the only one.

Although we cannot draw firm conclusions without an exhaustive examination of every relevant source, it seems, based on these examples, that Maimonides is not consistent in support or rejection of Ibn Migash's views. As we have said, he was doubtless familiar with Ibn Migash, since his father, Maimon, was one of his pupils. And if we can learn anything at all from the frequent mention of Ibn Migash by

Vidal Yom Tov of Tolosa it is that, in the eyes of later Spanish authorities, Joseph Ibn Migash was a crucial contributor to Maimonides' halachic thinking and to the development of the Spanish legal tradition.

Conclusion

In the preceding chapters we have made numerous observations regarding the Talmud commentary of Joseph Ibn Migash. We have compared it to Rashi's commentary and shown that, although the two commentaries share numerous common features, these commonalities are superficial. In fact, Ibn Migash's whole purpose in commenting on the Talmud is far different from Rashi's. Rashi strives to provide a clear line-by-line understanding of the simple meaning of the text, while Ibn Migash delves into the conceptual frameworks underlying the issues raised by the text. We have also compared Ibn Migash's work to the Tosafot, and found numerous remarkable similarities between them in both style and content. These similarities include the weaving of complex discussions on the conceptual basis for the Talmud text, the use of the term "ve'im tomar", and the citing of the opinions of other authorities. We have seen how Ibn Migash's commentary occasionally functions as a source for legal decisions. And finally, we have examined the possible connection between Ibn Migash's work and that of Maimonides, especially as that connection is viewed by Vidal Yom Tov of Tolosa.

Up to now, however, all we have done is to note similarities and differences between Ibn Migash and other Talmudists. We have made no attempt to formulate any

theories about the origin and source of these similarities and differences, the direction of influence, or any of the other causal elements which underlie the relationship between and the development of these works. Let us turn to these issues now and try to provide, if not firm conclusions, at least a set of reasonable hypotheses that can point the way towards further investigation.

The first step in understanding Ibn Migash's place in the Spanish halachic tradition is to consider his relationship with Alfasi. The following comment by Benedict may provide a valuable insight into that relationship:

Alfasi's book, which is actually a wonderful summary of the creations of Jewish law from the end of the Talmudic period through the end of the Gaonic period, aroused much opposition from the sages of Spain when it appeared, because of its tendency toward independence. They /the Spanish sages/, who were faithful to the works of the Gaonim out of /a sense of/ complete dependence, could not forgive Alfasi for occasionally having dared to disagree with both early and late Gaonim.³³

We have already noted (in Chapter Four) a tendency in Ibn Migash's commentary toward independence, and a refusal to accept traditional interpretations when they were at

³³B. Z. Benedict, "On the History of the Torah-Centre in Provence," Tarbiz. XII (1951), 101.

odds with his own understanding. Viewed in light of these tendencies, Benedict's comment may indicate that the strong bond which existed between Ibn Migash and his teacher was rooted in an independent spirit which was common in both men. All of our sources point out that, in appointing Ibn Migash to succeed him as head of the Academy at Lucena, Alfasi passed over his own son, who was also a distinguished student. Although the natural love between a proud teacher and an exceptional and devoted student probably would not account for such an extraordinary act of favoritism, the appointment could well be explained by Alfasi's conviction that Ibn Migash, like himself, would not bend to the pressures of unreasonable or inferior traditions.

More difficult to fathom than his relationship with Alfasi is Ibn Migash's link with, and possible influence on the commentators who came after him. We have noted many similarities, of both content and form, between Ibn Migash's commentary and the Tosafot. The general scholarly view,³⁴ however, is that the Tosafistic methodology developed in France during the generations of Rashi's children (specifically, with his sons-in-law) and grandchildren. Only in the time of Nachmanides,

³⁴Ta-Shima "Tosafot", op.cit., p. 1282.

nearly half a century after Ibn Migash's death, did this methodology filter south into Spain. Ibn Migash's commentary style and its form indicate the possibility that he influenced the Tosafists. It is possible, however, that our printed text of Ibn Migash's commentary to Baba Bathra was actually written later, by someone else, and wrongly attributed to Ibn Migash. A second possibility is that the traditions of analysis, commentary, and legal decision which are represented in our text originated with Ibn Migash, but were recorded some time after his death. In such a case it is not unlikely that these traditions would be cast in the form of the day, i.e., in the style of the Tosafot.

Regarding the first of these possibilities, that is, that our text is wrongly attributed to Ibn Migash, we cannot draw a firm conclusion in the absence of any manuscript. If, however, such an incorrect attribution had been made, it would have had to occur very shortly after Ibn Migash's death since Nachmanides, born only 53 years after Ibn Migash died, already accepted the attribution of this material to Ibn Migash. In his commentary (Chidushei HaRamban) on Baba Bathra 2b he writes as follows:

"From this we may conclude that the damage of seeing is not damage." Our great Master,

R. Isaac Alfasi, finds this to be problematic. Why must the Talmud's ruling be based on the idea that the damage of seeing is not damage? Perhaps the damage of seeing is damage, but what we are dealing with here is a situation in which these partners have chazakah.... And the response of his student, R. Joseph Halevy, of Blessed Memory, based on the Mishnah which teaches, "An Egyptian window can have no chazakah but a Tyrian window can have chazakah," is not problematic...

Appendix VIIa

This comment presents a parallel to materials in our Ibn Migash commentary and an attribution of the material to Ibn Migash. This confirmation of Ibn Migash's authorship, even if Nachmanides had written it shortly before his own death, could not have been written more than 129 years after Ibn Migash's death. It is unlikely that an attribution to such a renowned authority as Ibn Migash could be promulgated and accepted so soon after his death if it were not accurate.

We are left, then with two possibilities. Both would necessitate some contact between Ibn Migash and the early twelfth-century scholars of France. In the case of the first possibility such contact would be needed to

transmit Ibn Migash's halachic system to them so that it could later be cast in Tosafistic style. In the case of the second possibility contact would be needed to transmit the methodology being developed by Ibn Migash to the French. In fact, some contact of this sort has been documented. Benedict³⁵ describes a letter written for Ibn Migash by Yehudah Halevy to the sages of Narbonne. Although the letter is not dated, Benedict maintains that it was probably written at the beginning of the twelfth century. By itself it is not highly significant, since the only bit of substance in it is a request by Ibn Migash for a commentary to Seder Kodashim. But the documented existence of one such letter between Ibn Migash and the scholars of Narbonne, and the subsequent exchanges of letters between those scholars and both Yehudah Halevy and R. Baruch ben Isaac Albalia (a contemporary of Ibn Migash) may well indicate that this single contact was only the beginning of a correspondence between Ibn Migash and the scholarly community of Provence.

One other factor must be taken into consideration at this point. All of the later commentators who either explicitly mentioned Ibn Migash or clearly agreed with him either were natives of Spain or, in the case of R.

³⁵ Benedict, op. cit., p. 99.

Asher ben Yechiel, had spent time there. Apparently, Ibn Migash's work was not known to the scholarly community in Franco-Germany. Therefore, if Ibn Migash's work was cast in the Tosafistic form by a later author, it is most probable that that author was Spanish. But, according to the accepted view, the Tosafistic method did not reach Spain until the time of Nachmanides, and we have seen that Nachmanides was already acquainted with Ibn Migash's work, and quoted it in his commentary. That quote, as mentioned above, is a parallel of our text of Ibn Migash's comment. It has all the stylistic characteristics we have noted in Ibn Migash's work. Thus, we can draw one tentative conclusion. Ibn Migash's work could not have been cast in the Tosafistic mold by a Franco-German scholar, for if it had been we would probably find Ibn Migash cited in the Ashkenazic Tosafot. It also could not have been cast in that mold by a Spanish Tosafist, for, by the time Spanish Tosafists exist (that is, in Nachmanides' time) Ibn Migash's commentary is already in existence and is being quoted. Therefore, Ibn Migash himself must have composed his commentary in the characteristic Tosafot-style in which it appears in the texts which we have examined. This conclusion, however, still leaves unanswered the most fundamental question: Did Ibn Migash learn the methodology of the Tosafot from the scholars of Provence,

did they learn it from him, or did it develop naturally in both Spain and France at the same time? Unfortunately, given the scope of the present work, we cannot hope to provide even the most conjectural, tentative hypothesis in answer to this question. The investigation of the matter, however, would greatly increase our understanding of this early but crucial period in the development of the study of the Talmud.

Appendix I

- a (p.6) מאי מדיצה גורא :
- b (p.7) גורא, סתלב (כחנן). דקרי סגל לגורא מחלה :
- c (p.7) מאי מחיצה גורא. פ"י כותל.
שהחצר מחלקת היא ביניהם
וכל א' וא' מכיר בחלקו ממנה ולא נשאר ביניהם
רק עשיית המחיצה בלבד :
- d (p.7) לא ממשיג ינוקא ממחא למחא אבל
מבי בגישהא לבי בגישהא ממשיג ואי מפסק
גורא לא ממשיג ואי איכא תיחורא ממשיג
ואי איכא נמלא לא ממשיג
- e (p.7) תיחורא:
גשר רחב והבית במנהות (ד' ל"ו)
תיחורא דהפילין מקטששכס שחמה
לגשר : נמלא. טח קגרה :
- f (p.8) גמלא פ"י גשר של עצים. חזינו
סעמא דלא ממשיג ליה
לינוקא עליה משום דאיכא למיחש דילמא מתלעי
הנך עצים אי גמי שטיף להו גורא ונפיל ליה
לינוקא לנו גורא. תיחורא גשר של אבנים דליכא
למיחש להני :
- g (p.10) שקדין בל ערבי קראמידיי.
- h (p.10) שקדין אחו בלשון ערבי קצייר בביר
- i (p.11) רגיא נמי רבי
האומד לחביו מנה בברם אני סוכר לך
סוכטוס אומד לא יפרות מ' קבין אר יוס
אין אלו אלא דברי נביאות
- j (p.12) אין אלו אלא דברי נביאות. כנא קטס

Appendix I (continued)

k (p.11) דברי גביאות. שהרי הוא אומר סתם מנת בכרס
ואמר התנא בדעתו שהוא שלשה קבין
ויש לפרש שרבי יוסי חולק הוא על סומכוס
כלומר צריכין אנו גביא שיברר לנו מה היה
בדעתו להקנות אבל שלשה קבין שאמר סומכוס
אין לספק עליו וזה הפי' הוא הנכון:

l (p.13) תיש י' מרחיקן את
האילן מן הבור עשרים וחמש אמה מעמא
דאיכא בור הא ליכא בור סמך לא כי ליכא
בור נמי לא סמך ... אי דבי אימא סיפא
ואם אילן קדם לא יקץ ואי דלא סמך הוי
משכחת לה כראד פפא בלוקה הנ בלוקה

m (p.13) הכא נמי
בלוקה. ארס שנטע אילן כחך
שהו ולא יזכר תי' שהו לארס ארס
וכא בלוקה ואמר בור אן אה לך
לקץ אילן שנטע כרסות:

n (pp.13-14) הכא נמי בלוקה. פי' כגון ראובן שיש לו שדה
ויש לו בה באכציה אילן גסוע ולאחר
זמן מכר כמנה מחציתה לשמעון וכשגמדה השדה
הגיע המדה של שמעון הלוקה מן המיצר ועד
שפת האילן בכה"ג אתה מוצא שהיא אילן סמוך
לשדה חבירו בלי הרחקה אבל שדה שמעון שהוא
סמוך לשדה ראובן לצולם אין אחד מהן יכול ליטע
אילן סמוך לשדה חבירו בלי הרחקה משום דאמר
ליה למחר ממליכנא ועבידנא בור ואתו שרשין
דילך ומוקי ליה לבור הדין הוא פירושא דאיסתבר
לן בהא דאמרינן הכא נמי בלוקה ואיכא מרבוחא
דפריש פירושא אחרינא ולא דייק הואי דפרישנא
ספי דייק:

o (pp.16-17) לפיכך אם נפל רכותל המסם והאבנים של
שניהם: פשיטא לא צריכא דנפל לרשותא דרד מנייהו אי נמי דפנייהו דר
לרשותא דידיה מדו דחיסא ניהוי אידך המציא מתכידו עליו דרואה קביל:

Appendix I (continued)

- p (p.17) פשיטא. והאגנים של שניהם דלתי
לא פסק לן דתנא דמחזי כמלמד
שמחלה בין שניהם פשיטא על
כרחם הו' חלקן בשוה האגנים
סגרי כרשות שניהם פשיטא וד
מי מהם תנבר:
- q (p.18) לפיכך אם נפל הכחל המקום
המבנים של שניהם פשיטא.
כלומר כיון שזמן הדין הוא שיבנה הכחל באמצע
ההוצאת הבנין על שניהם הדבר ידוע שאם נפל
המקום המבנים של שניהם האין אחד מהן יכול
לסעוק ולומר שלי לבדי עד שיביא ראיה לדבריו.
אמוראינג לא צריכא דקדים חד מינייהו ומינייהו
לרשותו וסעוק האומר שלי לבדי היה חצי פשיטא
די נמי בוצ' דנפל ובנייהו מחבריה מה' דתימא
כיון דברשותי קיימי לתי אידך המציא מחבירו
עליו הראיה קמל
- r (p.19) ורשאים בני העיר לעשה קפה
המדי והמדי קפה ולשנותה לכל מה
שדע
- s (p.20) לעשות קפה המדי . לחלק לעני
שולם אם ירבו עליהם:
- t (p.20) לעשות קפה המדי והמדי קפה. שאם
גבו לקופה והותירה ולא הספיק
להם התמחוי שגבו רשאיין לקנות ממחר הקופה
מה שצריך לתמחוי וכן גמי אם גבו לתמחוי
הותיר והקופה שגבו אינה מספקת מוסרין מחר
התמחוי ולוקחין מה שצריך לקופה.
- u (p.21) לא יפתח אדם תעה של נרחומין
ושל צבעין תעה ארעז של חבירו ולא רפת
בקד מעמא דאיכא ארעז. הא ליכא ארעז
עבד דידה שאני דיקא נמי דתני עלה (ו) אם
התה ופת בקד קדמת לארעז מותר

Appendix I (continued)

- | | |
|--|---|
| v (p.22) | <p>דירה שלי. חנות ורמס
 נדך דירקן של חסן קן וזין לו
 לאסר דירקן עליו אלזי הסדק שכן:</p> |
| w (p.22) | <p>דירה שאני כלומר לא עביר איניש
 דעביר מבית דירתו אוצר
 ומשום הכי כי ליכא בה בעליה עדיין אוצר לא
 אמרינן דילמא למחר מימלך ועביר בה אוצר</p> |
| x (p.25) | <p>מתני' כי שהיה כותל סמוך לכותל חבירו לא יסמך לו כותל אחד וא"כ
 הרחוק מכו ארבע אמות ... גמ' וקמא
 היכי סמך אמר רב יהודה הכי קאמר
 הבא לסמך לא יסמך אלא אם כן הרחוק
 ממנו ארבע אמות מחקף לה רבא והא מי
 שהיה כותלו סמוך לכותל חבירו קריג אלא
 אמר רבא "הכי קריג מי שהיה כותלו סמוך
 לכותל חבירו כרחוק ארבע אמות והפל לא
 יסמך לו כותל אחד אלא אם כן הרחוק ממנו
 ד' אמות</p> |
| y (pp. 26-27) | <p>משנה מי שהיה כותלו סמוך לכותל חבירו לא
 יסמך לו כותל אחד וא"כ הרחוק ממנו
 ד' אמות דייקנן בגמרא וכותל קמא היכי סמך
 ליה לכותל חבירו והוקמה רבא דהכי קאמר מי
 שהיה כותלו סמוך לכותל חבירו בד' אמות פירש
 רחב כותלו סמך לאורך כותלו של חבירו. כגו.
 כותל חבירו</p> |
| <p>כותל חבירו
 לסל חבירו כי אמות
 כותל הראשון סמוך</p> | <p>כותל כי שרצה לסמך כנגד של חבירו</p> |

Appendix II

a (pp. 30-35) חזקא מקומה

לתמחוי ומתמחוי לקומה שהכל צורך עניים אבל אם
רצו לשנותם לדברים אחרים שאינן מצרכי עניים
אסור דגול עניים הוא והייט דתנן במסכת שקלים
מותר עניים לעניים מותר שברים לשבויים
ואמרינן נמי (לקמן בסמך) עבד חד כיסא ואחני
ושמעינן מינה טעמא דאחני הא לא אחני לא
אפילו מעני העיר לעני עולם וכיון דאבי ריש
מתא הוא אם כן הוא דאפילו לדברים אחרים
שאינן צרכי עניים יכולין לשנותן כ"ש דהנה
יכול לשנות לעני עולם בלא תנאי אלא לאו
שמע מינה דהא דתנאי ולשנותן לכל מה שירצו
לצורך עניים הוא אבל שלא לצורך עניים אין
להם לשנותן כלל ואפילו היתה הצדקה שפסקו
עליהם בני העיר וכ"ש אם היא צדקה שפסק
אותה יחיד שאפילו למי שסופה ומאשר ולשנותן
ככל מה שירצו אפילו לדבר שאינו צורך הי"מ
במה שפסקו בני העיר עצמן אבל במה שפסקו
אחרים אין יחיד אין להם בה רשות כלל לשנותן.
ואפילו היתה צדקה זו שפסק זה היחיד דבר
שנשתק ממנו שם בעלים כגון שהקדיש קרקע
לעניים ונשתק ממנו שם בעליו אין להם רשות
לבני העיר לשנותן לדבר שאינו צורך עניים
כלל והוא דאמרינן (ברייחא פ"ק דערבין דף
י' ע"ב) ישראל שהתנדב מנחה או נר לבית
הכנסת דקיימא לן דאפילו היכא דלא נשתק
שם בעלים ממנו מותר לשנותה לדבר מצוה אבל
לא לדבר הרשות שאני התם דעיקר והקדש
לבית הכנסת הוא ובית הכנסת צורך בני העיר
וברשות דידהו רמיא תרע שהרי יש להן רשות
למכרה ואפילו למשתי בה שכרא אבל מה שנקדש
מעיקרו לעניים או לבני העיר אין בהם שום
רשות כלל למכרו או לשנותו לדבר אחר ואע"ג
דהנך עניי רמו עליהו כי רמו עליהו במאי
דחסר להו אבל במאי דלא חסר להו לא רמו
עליהו. ועוד דבהווא ניהא להו לעניים דמפונא
דידהו הא' ולא צריך גבייה הילכך אם מכרו
אותו בני העיר או שינוהו לדבר שאינו צורך
עניים גול עניים הוא אסור ואוהה מכירה או
אוהה שינוי מבוטלת ושנוי מבוטל הוא וחזר:

Appendix II (continued)

- b (pp. 36-39) לשטון לכל מה שיש. כסב בראש ח'ל דחוק לנר
 פנים כון כסב וסחר וקולט ט אכל לנרם
 אורם פאל מלכי פנים אל דל דעס לנר פנים לעניים סא
 אפיל כספיו כיתם כסבם שקלי ספד פנים לעניים ספד
 שנים לבנים ספד שני לאוס שני ספד כספיו למתים ספד
 כסב לנרע וסילך כסבם לאוס לנרם לארם ביי טול כספיו.
 וסד ברא כרז זל דאוס מולמד אפי לקמן פנים סא ספד מר
 פיי כסב מר לפני דעלמס וסד לפני ספד כון דעסמס לכל דרר
 סאלימס בר אברמי וריי ספד מר וספס ארס נמי ספד מר וספד
 דאלימס ספס ביי ואחא וסא רביי ריש ספד סא סא ואפיל ספד לי
 כל אפי לא סא פלי לשני אלא לא שס מרס דלן לס ספד
 שילט פנים לא חוק אלא לכל מה שילט מלכי פנים ואף סל מי
 ספסם לאוס לנרס לנרס ביי לאוס ספד כל סן אס ספד לאוס
 נר פיר לארס א ספד לאוס פיר. אס ספד לאוס לארם א
 וסד אן לס ספד לספס לכל מה ספס ספד. וסלמין ברס
 סרן קול דסרין יסרול ספסרוב נר א ספד לבס כסבס אס
 כסבס אס כסבס ספד לספס ואפיל לנרס כרסם פיי פלי
 לנרס כס כסבס אפיל נרס כסבס פלמס סילן למסר ספס
 ספד ספד כסבס אפי ספד ואפיל לספס כס ספד.

c (p. 40) ספס דרס רס לארס אן
 ספסרוארס אלא "הוקרארס לא שפד
 הוק

- d (pp. 40-46) ספס דרס רס לארס אן ספסרין וסד
 אלא הוק רס לא שפס הוק.
 וסד ספס ליכס לן דפסום הוק רס לא
 שפס הוק רס רסלמס לקלס פיס לן דחוק
 רס רספס הוק חסב הייט ספס דפסב עליה
 פסום דסא אסוק דריי רבי אכל לא אסוק
 דריי רבי אפי דאין שנים רסין נמי בוני
 אס הכולל בכל כרסן. שני חסובות בדבר חס
 דסא ליכס לן דרני שותפי אסוק דריי רבי
 דלמס לא אסוק אלא לבתר דפלו לאתר חס
 דס חס מינייט וס תב ליי לנבריה למיכני
 לכסל פסום הוק רס רס רס חס חוק כל
 דפס חוק דאסוק דריי חס ספד דפלו
 ברסות ליכס למסר דחוק רס פסום דס לא
 הוס ספס חולמס דס מינייט כיי הוי דליחוק
 עליה. דס דאין דאסוק דריי רבי לבתר דפליג
 בריחית וסובר ליי חולמס דכל חס מינייט
 א הוק רס שפס הוק ביי רס מרס לא
 ספס חוק פסום דחוק כס חס חוק וס חוקרס

Appendix II (continued)

d (cont.) ובית הכנסת דמי. ואי קשיא לך הא דתנן (בבבא בתרא) חלוק המצורית אין לו חוקה ולצורי יש לו חוקה ואמרינן עלה בגמרא למטה מארבע אמות יש לו חוקה ויכול למחות ושמעין מימה דחלוק דאית ביה היזק ראייה אית ליה חוקה שאני התם דיש לומר דבעל חלוק מוסיף לבעל חצר אבל בעל חצר אינו מוסיף לבעל חלוק והוה פתח חלונו ושחק בעל חצר ש"מ אחולי אחיל ליה אבל בחצר דתרייהו מוקי אהרדי וההיזק של ראייה הוה לשניהם יכול לומר הא דשחקי ב' שנים לאו משום מחילה אלא משום דתרייהו שוין בחיזוק והוה אמינא היום או מחר תרצה לעשות מחיצה אבל לא מחלתי ולכך כיון דהיזק ראייה שמהיזק היזק יכול לכונו כחול. (א"נ) מבי פתח ליה לחלוק ושחק ליה חבירה הוי חוקה דהא מעשה קעביד בידיהם אבל גבי שותפים דדידי בחצר א' דחד מיניהו לא עביד בידי מידי דאית ביה היזק ראייה אלא מחמת דיתבי ולא עביד מחיצה הא דהוי ההיזק ליכא למימר בכי הא דהוי חוקה דהא ליכא מעשה דאחזיק ביה. והפילו גבי חלוק נמי דאיכא חוקה לחלוק נופיה אבל ראייה עצמה לית בה חוקה חדע דאי בעי בעל חלוק לעיוני ביה מאי קעביד חבירה ומאי איכא ברשותיה מי איכא למימר דמצי למעבד הכי אלא דדאי חבירה מעכב עילוויה ולא מצי האידך למימר אין מעיינא ומעיינא דהא אחזיקי ליה בהכי משום דאמר ליה האידך ממי דלחלוק נופיה איכא חוקה אבל למיקם התם ולעיוני מאי דאיכא ברשותי ליכא בהא חוקה דהא לא מחזקו אינשי בהכי. וחזינא לרבינו הרב דיל דכתב בתשובת שאלה דחלוק נמי היכא דאית ביה היזק ראייה לית ליה חוקה וקא מיתי ראייה מדין שותפין שרצו לעשות מחיצה בחצר דאע"ג דאחזק דדידי הכי כי קא תבע ליה חד מיניהו למפלוג ולמבני כותל לאמצע כייפי ליה לחבירה למיפלג ולמבני בהדיה משום היזק ראייה שמהיזק היזק ללישנא בתרא דאמרינן מאי מחיצה פלוגתא וכיון דרצו בונין את הכותל בעל כרחן. והגן הא בדינא דלא דמי דין חלוק לדין ונני שותפין דעוד דהא תנינן בהדיא חלוק המצורי אין לו חוקה ולצורי יש לו חוקה

Appendix II (continued)

- e (pp. 48-50) **וְשִׁוְרָפִין** שְׁלֹקֵי אֵת הַחֹרֶץ וְלֹא נָטוּ סִימָל בִּימֵיהֶם וְאַחַר כֵּן שָׂרִיס הַנֶּגֶז
 הָאֵד לְנִטָּה סִימָל בִּימֵיהֶם וְהַכְּנִיחַ שִׁוְרָפִין הָיָה מְחַלֵּה לִי עַל הַיָּקָה
 וְלֹא שִׁיךְ כֹּהֵן חֻקָּה [ג] דְּעִמְמָה דְּחֻקָּה הִיט כִּיִּן דְּהִתָּק וְלֹא מִיחָה הַסִּפֵּד הִיט
 חֻקָּה הִיטָה שְׁמִיחֻקִּי הָיָה מִיָּקָה וְאִישׁ יָקָה כִּיִּן מִי שִׁיט לִי חֲטָן פְּרוּחַ לְחֹרֶץ חֲבִירוֹ
 וְהַיָּקָה נָטוּ שָׂרִיס - אֲבָל הָכֵא מִיָּה לְמִימֵר לְמֵה הִיט לִי לְמִיחָה יוֹדֵר מִיָּקָה וְהָלֹא
 הִיט מִיָּקָה כִּיִּן שְׂרִיט מִיָּקָה וְהִיטָה מִיָּה אֲלֵי הַפְּרוּחַ אֲחֵה לְהַנִּטֵּעַ . וְשִׁדֵּר לֹא
 דִּי הָיָה הִיטָה לְהִיזָקָה דְּחֲטָן דְּהִיטָה לֹא הִיטָה הִיטָה כִּיִּן הָיָה כִּיִּן שְׂרִיטָה עֲשִׂי לְאִדָּה וְלֹא לְהַפְּרוּחַ
 נָטוּ חֲבִירוֹ וְאִשְׁדֵּר לִי לְהַפְּרוּחַ כְּמִשְׁכָּה חֲבִירוֹ כְּדִמְרִיק נָטוּ גִיטָה אֲבָל חֹרֶץ
 שְׁמִיחֻקִּי נְכִיטָה וְיִיחָה וְאִי אֲכֵדֵר שִׁלָּה יִהְיֶה לְהַפְּרוּחַ חֲבִירוֹ דִּי הָיָה הִיטָה
 לְקִטְרוֹל וְכִיִּת הַכֵּה דְּחִמְרִיק לְקִמָּן (דף כג.) דְּלִית לֵה חֻקָּה הַלֵּךְ לִיךְ לְכִיִּשׁ
 נָטוּ חֲבִירוֹ .

Appendix III

- a (p. 54) וא"ת הא אמרת דאפילו שדה שאינה עשויה
לבורות קאמר רבא לא סמיך וכ"ת שכן תהי' האי
עליה גמי כשדה שאינה עשויה לבורות. לא דמי
דאלו שדה אציג דאינה עשויה לבורות עביד
איניש דמימלך ועביד בה בורות אבל הא אמרינן
דלא עביד איניש דעביד מכ"ת דירתו אוצר ומשיה
כי ליכא אוצר בעליה לא חיישינן דילמא מימליך
ועביד לה אוצר :
- b (pp. 55-56) מתני' 'מדחזקן את המלם מן השכר
ארבע אמות כ"י שלא תקפץ הנמיה ואת
'הכותל מן המוחלה ד' אמות כ"י שיהא זוקף
את המלם: ג"כ לימא מתניתין דלא כ"י
יוסי דא"ר ר"י הא אמר י' זה חצר בתוך שלו
זה נטע בתוך שלו אפילו תימא ר' יוסי הא
'אמר רב איש כי הוינן כ"י רב כהנא דהאמר
'מדי רבי יוסי בני ר' ידיה
- c (pp. 56-58) לימא מתני' דלא כ"י יוסי. וא"ת אמאי לא
מתמה גמי במתני' דתנן מי שהיה כותלו
סמוך לכותל תבירו ה"ו לא יטמוך לו כותל אחר
אמאי הרחיק ממנו ד' אמות ונימא מתני' דלא
כ"י יוסי בשלמא כולה פרקין איכא למימר דגירי'
הוא דכד מעיינת בכולהו עניני דיליה משכחת לה
דבכולהו איכא למימר כגירי דמו אבל גבי כותל
כ"י דליכא למימר דסמיכת כותלו לכותל תבירו
גירא הוא דהא היזיקא לא מחמת הכותל גופיה
הוא אלא מחמת דקא מימנע דדשא מהתם הוא
אמאי לא אמר גמי עליה גימא דלא כ"י יוסי.
תשובתך כי אמר גירי ולא גירי הי"ט היכא דמטי
והיזק משהוא מידי גופיה דקעביד אבל הכא
דהיזיקא דקא מטי לכותל דתביריה לאו מהאי
כותל גופיה הוא דמטי אלא משום דקא מימנע דדשא
הוא בכ"י האי גומא ליכא למימר גירי ולא גירי
אלא לכ"י בין לרבנן בין לר' יוסי בעי הרחקה
מכותל תבירו ד' אמות וטעמא דמילתא דכ"י
דכותל מעלי ליה דדשא מכ"י בגייה תביריה להשא
כותל דיליה הוי ליה כמאן דאחזיק בהגהו ד'
אמות דסמיכי ליה לענין דדשא וקנגהו להא
מילתא.

Appendix IV

a (p.61) כדי לגל מא א כדי לגל
עמד קשיא דקא א כדי לגל דקא קשיא עמד
אד נרמנר יצחק לצודין קתני רב אשי אמר
כי תניא הריא בספר תורה כדתניא יכל
הספרים נגללים מתחלתן לסופן וסוף נגלל
לאמצעיתו ועושה לו עמוד אילך ואילך

b (pp. 61-65) רב אשי אמר כי תניא והיא דאמרינן כדי
לגל עמו בין בתחילה בין בסוף בספרי
תורה שאינו נגלל לסופו אלא לאמצעיתו ולפיכך
אין צריך להגיה בסופו כדי לגל על הכרך כולו.
הוא דקתני סוף לאמצעיתו לאו אמצעיתו ממש
הוא אלא מקום שפסק בין בתחילה בין בסוף
בין באמצעי הוא דקתני לאמצעיתו למעוטי
תחלה וסוף שלא תאמר צריך לגללן על כל
פעם ופעם לתחלה כמו בשאר ספרים קא משמע
לן דאינו צריך אלא למקום שפסק והא דקתני
בהאי ברייתא ועושה לו היקף בסופו דשמע מינה
דשאר ספרים נגללין לסופן קשיא לן עלה הא
דקתני בהא ברייתא אדעתא כי כל הספרים נגללין
לתחלתן וספר תורה לאמצעיתו דכיון דלתחלתן
הן נגללין כדי היקף בסופן למה לי וכשהיה
לומד תורה לפני הרב רבינו זצ"ל הקשיתי לפניו
קשיא זו ופריק דהא דתני כדי היקף בסופו
אינו להקיף בו כל הכרך כולו שהרי לתחלתו
הוא נגלל אלא כדי שיגלל בו בעמוד הרבה
פעמים כדי שיתרחק העמוד מן הכתב שאם יהיה
פחות מכן ימחק הכתב מחמת דיוחזק העמוד חזק
קתני ועושה לו גליון בסופו שיעור כדי היקף
ובתחילתו כדי שיגלל בו העמוד. וזה הפירוש
אינו עולה כהוגן דשתי תשובות יש בדבר וזה
שלה הפירוש תינח כדי היקף בסופו מתוך כדי
עמוד בתחלתו היכי מתוך דכיון דלתחלתו הוא
נגלל לעביד ליה כדי היקף בתחלתו ועוד דאפילו
סופו גמי אי סלקא דעתך הוא כדי היקף משום
העמוד הוא סוף גמי לעביד ליה בסופו גליון
כדי היקף דהא אית ליה עמוד אלא מדלא מצרכינן
ליה לסוף כדי היקף בסופו שמעינן דטעמא
דמילתא דבעינן בשאר ספרים כדי היקף בסופו

Appendix IV (continued)

b (cont.) ולא משום עמוד הוא אלא כדי שיקיף בו על (cont.)
 הכרך כולו משום דלסוף הו' גלגלן דהא היה
 כיון דלאמצעייתו הוא גלגל אצ"ו צריך כדי היקף
 בסוף וקמ"ו ל' קרשין בדוכתה ולא איחבור ל'
 סעמא בימי רבינו הרב אב"ל אבל השתא
 איסתבר לי בסיווקה דהא דקטעי כל הספריים
 גלגלן לתחלתו בספר שנכתב בפני עצמו עסקינן
 ולפיכך גלגל לתחילתו שהרי אין עמו ספר אחר
 והוא דקטעי וקשה לו כדי היקף במוטו דש"ס
 דלסוף הוא גלגל בתורה נביאים וכתובים
 מרובקים כמות עסקינן כדקטעי מהיא תרצה
 לתדבק תורה נביאים וכתובים כמות מדבק
 וקשה לו כדי עמוד בתחילתו וכדי היקף בסופו.

c לא יפתח תחת הכ"ן... ריבה בהלכות מדו (p. 66)

d (pp.
66-68)

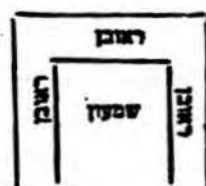
ריבה בהלכות מהו רבינו זצ"ל פירש
 ריבה העליון בעליון חלונות לשות
 סמנה אצ"ו לפי שהחלונות יפה לאוצר להבט
 מהן הרוח כדי שלא תרקב התבואה ואח"כ צ"ה
 התחתון רשת בקר מהו כיון דריבה העליון
 בהלכות מיקמי ולעבדי התחתון רשת בקר אצ"ו
 קרים א דילמא כיון דאכתי לא עשה אצ"ו
 שהרי לא נטו מה כלום רשת בקר קרים ור"ה
 ר"ל פירש ריבה התחתון בהלכות כמותו מהו
 כיון שריבה בהלכות לא יכיל ליה העליון
 לעסובת לספרי תורה של מהמסין ושל צבעין
 דהא הבלה נפיק ליה מהני חלונות ולא מסי הידיקא
 דחבלה לאוצר העליון א דילמא מצי לעסובי עליה.
 והאי פירושא בשרא מסתברא ולא רייק דהא
 תחתון לית ליה רשותא לרבות בהלכות משום
 דא"ל ק"מ פרעת ליה לכוהל כדאמרינן בפ' תבית
 העליון (ספיעא דף קי"ח) תחתון שבא לרבות
 בהלכות אין שומעין לו למעט שומעין לו.

Appendix V

- a (pp. 70-71) מתני' ג'המקף את חבירו משלש חזותיו וגדר את הראשונה ואת השנייה ואת השלישית אין מדיבין אותו רבי יוסי אומר יאם עמד וגדר את דרכיית מלגלגין עליו את הכל איהב רב דונא אמר רבא לפי מה שגדו אתא לקמיה דרבא איל ויל פייסה במאי דאפיס ואי לא דאנא לך דינא כריה אליבא דרבי יוסי

- b (pp. 71-73) ואי לא דאנא לך כרב וטא אליבא דרבי יוסי. אלמא חילטא

מחילה דוקא במקף את חבירו הוא שמלגלגין עליו את הכל משום דהא איתגני בההא היקף דקא חסיד האין דאמר ליה את גרסת לי היקפא



יתירא כגון הוי אבל איתא שדו סמוכין לרשות הרבים ושדה חבירו סמוכין לה עמד וגדר בינו ובין רשות הרבים אפיס שחבירו הרי בהנה בצונו גדר אין

מלגלגין עליו כלום משום דהא בהנה וזה לא חסר הוא שהרי אין כאן לומר את גרסת לי. הקפה יתירה ואפילו במקף את חבירו גמי דוקא לאחר שגדר הוא שמלגלגין עליו את הכל אבל לחייבו מתחילה לגדור עמו ולהציא עמו בבגין אינו יכול לומר על כך מפני שיכול לומר לו אגא לא איכפת לי בעוברי דרכים שהרי אפי' אם גדר ראשונה ושנייה ושלישית אין מדיבין אותו כלום לפי שצדיין לא נבנס עד שיגמור את הרביעית וכ"ש להציא עמו בבגין מעיקרא האין מדיבין אותו בכך.

- c (p. 73) כהכחא לא דאנא לך כרבי יוסי ס' מכלל דהכ' אלמא וק' פסק ר"ת

Appendix V (continued)

- d (pp. 75-76) דדקא ויכא דאיכא מהדי
 דהנהא שעתא דאנו לבי דינא חיינו לנהנו
 אבנים השתמדענה דנהנו אבנים דהאי כחל
 גינה דכין דשוחפין לא מרחקל משתבע האין
 ולא זכין אי גמי דשוחפין גינה בגינהו ושקל
 ליה למנתיה מיניהו. אבל אי ליכא מהדי דמסדי
 חכי אציג דקא מודו דברשותיה גינה כין דקא
 טעין חמר ידי גינה ולית לך בהא מירי אי
 גמי דבנתינו מינך אמרינן בבי הא מילתא מנ
 דאי בעי אמר לא היו דברים מעולם אי גמי
 אהדינו ניהלך מהימן כי אמר לי ידי גינה
 אי גמי דבנתינו מינך מהימן בשבועה:

Appendix VI

- a (p.79) דרי שמה חלון לחצר הבירו ומחל
לו בעל החצר או שנילה דעתו שהיה כגון שבא וסייע
עט. או שידע הנזק ולא ערער. דרי זה החזיק בחלק
ואינו יכול אחיך לחזור ולערער
עליו לסתום. וזכור [ז] דינה של
חלק זה שהניחה לפתחה אם ראשו
של אדם יכול ליכנס ממנה או
שהיתה למטה [ז] מארבע אמות מעל שאין ראשו נכנס ממנה אין
בעל החצר יכול לבנות כנגדה או מצדיה אלא איך הרחיק ארבע
אמה בנו שביארנו:
- b (p.81) בעא מיניה רבי אלעזר מרבי יודנן
כשהן טובין לפי נפשות טובין או דילמא לפי שבח ממון טובין אמר ליה לפי
ממון טובין ואלעזר בני קבע בה מסמחת איכא דאמר בעא מיניה רבי אלעזר
מרבי יודנן כשהן טובין לפי קרוב בתים הן טובין או דילמא לפי ממון טובין
אמר ליה לפי קרוב בתים הן טובין ואלעזר בני קבע בה מסמחת
- c (p.82) בעא מיניה ר'א
מרבי יודנן כשהן טובין לפי נפשות הן טובין
(6) או לפי שבח ממון הן טובין או לפי קרוב
בתים הן טובין אמר ליה לפי קרוב בתים
הן טובין ואלעזר בני קבע בה מסמחת:
- d (pp. 82-84) בעא מיניה ר' אלעזר ור' לפי
ממון. פירש ממון לבדו או דילמא אי לפי קרוב
בתים הן טובים. בין ללישנא קמא בין ללישנא
בתרא לפי שבח ממון הן טובין מיהו לישנא
בתרא סמי וזא דקא מסמיא דהאי שבח ממון
לפי קרוב בתים הוא תודע שהרי אם יש שם
שני בתים ששניהן קרובין ואין שוין כממון
דדאי לפי שבח ממון הן טובין אינן אם יש שם
בית קרובה ואין בה ממון כלל כלום עולה על
דעת שטובין ממנה כלל כיון שאין בה ממון למאי

Appendix VII

a (p.92) אלמא היזק ראייה לא שמיה היזק. קשיא
ליה לרבינו הגדול רבי יצחק אלפסי מנ"ל
דמשו' היזק ראייה לא שמיה היזק דילמא
לעולם אימ' לך דהיזק ראי' שמיה היזק
והכא במאי עסקינן בואחזוק הנך שותפי
... ומה שהשיב עליו תלמידו רב יהוסף
הלוי ז"ל מיהא דתנן חלון המצרי אין
לו חזק' ולצורי יש לו חזקה ל"ק....