**Arabic Culture as Generator for New Approaches**

**To Medieval Jewish Law**

Y. Zvi Stampfer

Abstract:

This study explores the formulation of Halakha (Jewish law) in Medieval Islamic lands, highlighting the cultural dynamics of the Judeo-Arabic environment. Prominent Jewish scholars from this setting were often well-versed in multiple disciplines, including law, theology, philosophy, biblical interpretation, and linguistics. Such diverse knowledge influenced their legal perspectives, closely aligning them with their cultural insights. This research argues that a thorough grasp of this context offers a more refined understanding of the legal endeavors pursued by Jewish jurists between the 10th and 13th centuries.

The thesis of this paper proposes a nuanced understanding of how the Halakha, or Jewish law, evolved during the medieval period within Islamic countries, deeply influenced by the surrounding Judeo-Arabic cultural context.[[1]](#footnote-1) This period was marked by a rich intellectual exchange, where Jewish scholars were not only well-versed in their traditional religious texts but were also engaged with a variety of secular disciplines prevalent in the Islamic world, such as law, theology, philosophy, scriptural interpretation, and linguistics. This interdisciplinary scholarship played a crucial role in shaping their legal perspectives, leading to a unique synthesis of Jewish legal thought and Arabic cultural elements.

To substantiate this thesis, the article will delve into two illustrative case studies. The first case study focuses on the realm of commerce, specifically addressing the legal status of trading intangible items. This aspect of Jewish law, under the influence of prevailing Islamic philosophical thought, saw innovative interpretations and applications. By examining how Jewish scholars integrated Islamic philosophical concepts into their legal reasoning, this case study will highlight the dynamic and reciprocal relationship between Jewish legal theory and Arabic intellectual traditions.

The second case study shifts the focus to laws of testimony, particularly examining the challenges Jewish scholars faced in reconciling Talmudic principles with the practical realities of a judicial system where non-Jewish witnesses were a commonality. This exploration will reveal how these scholars adeptly navigated these challenges by incorporating their understanding of Islamic theological sources, thereby reflecting a broader cultural engagement and intellectual exchange between Jewish and Islamic legal traditions.

Overall, these case studies aim to demonstrate that the development of medieval Jewish law was not an insular process but was significantly shaped by the broader Arabic cultural and intellectual environment. This intercultural dialogue led to a distinctive evolution in Jewish legal thought, showcasing the impact of Arabic culture on the formulation of new approaches in medieval Jewish law.

## Connections of Islamic law and Jewish law: state of research

The comparative study of Jewish and Islamic law has long fascinated scholars, leading to significant insights into the parallels and mutual influences between these two legal traditions. This research field has evolved through various methodological approaches, sparking debates particularly around the development and comparative analysis of Islamic Law. Initially, the classical academic approach, championed by Abraham Geiger in 1833[[2]](#footnote-2) and later expanded by Prof. Goitein and others, [[3]](#footnote-3) posited a two-phase interaction: initially, Judaism's influence on Islam until the 8th century, followed by a period where Islamic law began to influence Jewish law.

Judith Romney Wegner's work further supports this view,[[4]](#footnote-4) emphasizing the geographical and chronological proximity of Jewish and Islamic legal systems, suggesting mutual cultural dynamics could have influenced the nascent Islamic law. The influence of Islamic law on Jewish law is observed through direct absorption of principles, indirect adaptation to socio-economic changes within the Islamic milieu, and defensive responses to established Islamic practices. Gideon Libson highlights these parallels, suggesting a significant influence of Islamic principles on Jewish law. [[5]](#footnote-5)

For instance, the concept of khul‘/iftidā‘ divorce in Islamic law, allowing a wife to initiate divorce through financial compensation, found echoes in medieval Judeo-Arabic texts, indicating a cross-cultural exchange that provided Jewish women a similar mechanism for exiting marriages. [[6]](#footnote-6) A defensive adaptation of Jewish law in response to Islamic practices is illustrated by the *Takanat Moredet* (the rebellious wife enactment), allowing a wife to demand a divorce in court by declaring her repulsion towards her husband, contingent upon forfeiting her monetary rights. This enactment, attributed to a 10th-century Geonic source, emerged as a counteraction to Jewish women seeking divorce through Islamic courts, reflecting a realignment of Jewish legal practices in light of Islamic law and historical interactions.[[7]](#footnote-7)

However, this perspective is not without its critics. M.A. Friedman challenges the notion of direct borrowing, suggesting that practices like iftidāʾ in Jewish law may share terminology with Islamic law but diverge fundamentally in essence. [[8]](#footnote-8) He calls for caution in asserting cross-cultural exchanges. Oded Zinger's analysis of Cairo Genizah records, which reveals only a few cases of Jewish wife-initiated divorces, points to a lack of evidence for such adaptations. .[[9]](#footnote-9) It's important to note that the survival of documents in the Cairo Genizah can be random, and other cases might have existed. However, the conspicuous absence in this context is indeed significant.

Lena Salaymeh's research further challenges the narrative, showing that medieval Muslim jurists' interpretations of prophetic traditions (hadith) often required the husband's consent or a definitive assignment of blame for wife-initiated divorces, suggesting that Islamic law itself was neither straightforward nor lenient in matters of divorce. [[10]](#footnote-10) This effectively dispels the notion of any significant pressure on medieval Jewish jurists to assimilate Muslim law. She concludes:[[11]](#footnote-11)

This practical modification can be interpreted as reacting to an internal social demand – not necessarily “influence.” This type of legal change – motivated by “social welfare” or “public interest” – is endemic to all legal systems".

Salaymeh also observes that efforts to pinpoint the "birth" of Islamic law often overlook the dynamic influences that have shaped its development. During the early Islamic era, a melting pot of diverse Near Eastern traditions blurred the distinctions between Islamic and pre-Islamic customs.[[12]](#footnote-12)She suggest that similarities between Jewish and Islamic legal systems often arise from regional customs and conditions rather than direct correspondences. [[13]](#footnote-13) On the same accord, Mark Cohen's work, which shows how medieval Jewish jurists addressed the evolving economic landscape through their responsa and legal works, indicates a response to the mercantile economy rather than direct Islamic influence. [[14]](#footnote-14)

The research on early Christian-Muslim relations by Jack Tannous[[15]](#footnote-15) as well as Marc Herman’s[[16]](#footnote-16) insights on the blending of religious practices among Christian converts to Islam further support the view of fluidity in religious interactions. This challenges the traditional notion of a distinct separation between religions, suggesting instead a landscape of blurred theological boundaries and mutual exchange.

This paper adopts the concept of fluidity in religious interactions, aiming to shed light on the indirect influences that reveal deeper connections between Judaism and Islam. It focuses on the cultural, philosophical, and theological impacts on Jewish jurists and law, suggesting that Jewish scholars in the Islamic intellectual milieu interpreted the Talmud’s legal statements through lenses borrowed from their Islamic surroundings, and often rooted in Greek philosophy. These scholars, deeply immersed in their environment, internalized certain philosophical concepts as universal truths, allowing these ideas to subtly transition from the abstract to the practical realm and influence shifts from philosophy/theology to law. This approach underscores the nuanced and multifaceted nature of legal and religious exchanges, highlighting the importance of considering the broader intellectual and cultural contexts in which these interactions occurred.

## Jewish law’s approach to the commerce of intangible goods.

The distinction between intangible and tangible goods has its roots in Roman law. In the second and third books of the 'Institutes', Gaius explores the concept of 'res,' or things, establishing a framework that differentiates between various types of objects from a legal perspective. At the beginning of Book II, Gaius categorizes objects into two main groups: *res corporales*, which are tangible things that can be physically touched, and res *incorporales*, which are intangible things that, although they cannot be touched, still have existence within the realm of law ('in iure'). Gaius explains:[[17]](#footnote-17)

(12.) Further, things (res) are divided into 'corporeal' and 'incorporeal'. (13.) 'Corporeal' things are tangible things, such as land, a slave, a garment, gold, silver, and countless other things.

(14.) 'Incorporeal' are things that are intangible, such as exist merely in law, for example an inheritance, a usufruct, obligations however contracted. It matters not that corporeal things are comprised in an inheritance, or that fruits gathered from land (subject to a usufruct) are corporeal, or that what is due under an obligation is commonly, for instance land, a slave, money; for the rights themselves, of inheritance, usufruct, and obligation, are incorporeal.

It is important to stress that according to Roman law, these two categories are distinguished by the legal mechanisms governing their transactions.

The legal status of intangible goods is conspicuously absent in the Babylonian Talmud, which is the principal source of Jewish Law. [[18]](#footnote-18) It appears that the initial endeavor to address this issue emerged at the cusp of the 10th and 11th centuries, undertaken by Rav Hayya Gaon, the head of the Pumbedita Jewish academy in Baghdad [[19]](#footnote-19) in his treatise *The Law of Sales.*

Rav Hayya's approach to the commerce of intangible items is particularly intriguing. Here, he employed his diverse philosophical and legal knowledge to develop a novel framework, thereby facilitating the application of theory to a specific economic domain.

*The Law of Sales* comprises sixty chapters. Each of these chapters articulates principles and details of Jewish law regarding buying and selling, all drawn directly from Babylonian Talmudic sources. However, chapter two, which deals with intangible items, serves as the sole exception to this trend. In this chapter, Rav Hayya departs from his usual methodology of delineating the principles of sales within Jewish law. In this chapter Rav Hayya wrote:[[20]](#footnote-20)

The second chapter: A discussion on what can[[21]](#footnote-21) constitute an object of a deed of sale.

I would say that a sale agreement is valid if the objects satisfy four criteria. The first criterion is:

/Variant a: that the agreement will be on a physical object(*ʿayn*) /

/*Variant b*: That the object (*shay*) of the sale will be body(*jism)*/

as we have mentioned.

However, all the *accidents* (Arabic: *ʾaʿrāḍ,* plural of *ʿaraḍ*) are not valid for a sale agreement. [[22]](#footnote-22)

Rav Hayya ruled that only physical objects with substance are valid as being marketable. That is to say, intangible items cannot be bought or sold. In this context, Rav Hayya does not refer the reader to a single Talmudic source or even allude to a Talmudic discussion on the subject, as, indeed, none exist.[[23]](#footnote-23) Instead, he addresses the *categories*, assuming his readers' familiarity with these classifications, and, thus, he does not further elucidate this topic. In order to sharpen his rulings regarding intangible items, Rav Hayya applied definitions and philosophical concepts, originated by Aristotle, which continued in use throughout the middle-ages – *accident*, *quality*, *position*, *categories*, and more. And so, hecontinues: [[24]](#footnote-24)

Now we need to define *body (jism*) and *accident* (*ʿaraḍ*).

We say that *substance* (*jism*) is **said to exist on its own** (*qāʾiman* *bi-nafsihi*). i.e. length, width, and depth.

An accident (*ʿaraḍ*) is **what will be in the object** (Arabic: *shayʾ*), **and may vanish while the subject** (*mawḍiʿa*) **will not vanish**.

Hence, a sale can be constituted on everything which has length, width, and depth, and cannot be constituted on its length, width, and depth by themselves **as this is part of [the quantity,]** nor on its color, as this is part of the **quality***.*

Neither (can the sale be constituted) on anything of its **position**such as standing sitting and lying

The same is true for all the **categories**.

The terminology used by Rav Hayya shows a clear connection to the ten categories of Aristotle, in his *Categories* in the *Organon*. A clear presentation of the concepts in Arabic sources can be found in *The Epistles of the Brethren of Purity* (*Rasāʾil ikhwān al-safāʾ*), an encyclopedia of Neoplatonic ideas composed in tenth-century Iraq. Epistles 10–14 were devoted to “logic” and dealt with its categories. I present it here for the sake of clarity. In epistle 10, chapter 11 it states:[[25]](#footnote-25)

Know that the learned (*ʿulamāʾ*) said that all things (*ʾashyāʾ*) are of two species, substances ( *jawāhir,* plural of *jawhar*) and accidents (*ʾaʿrāḍ,* plural of *ʿaraḍ*); that all substances belong to the same genus, **subsisting in themselves (*qāʾimah bi-dhāt-ha*, variant b: *bi-nafsihā*)** while accidents belong to nine genera, and they reside in substance and are qualities of them…

And continue: [[26]](#footnote-26)

The first (category) is “substance," and others are “quantity," “quality," “space," “time," “position” “relation," “possession," “activity," and “passivity." “of what quantity is it?” Is an inquiry into the measure of the thing; and there are four measures: numbered, weighed, measured by *kayl* [a measure of weights], and measured by *dhira* [a measure of length]. “How is it?” is an inquiry into its quality; and there are two species of qualities, accidental and substantial; substantial are those that determine the disappearance of the thing qualified with their disappearance, and accidental are those which do not cause the qualified to disappear along with their disappearance, like the body and its breadth and depth; and accidental qualities are complementary to the body, like its being square or triangular; indeed **when these qualities disappear from the body, it does not disappear with their disappearance**.

There is little room for doubt that Rav Hayya incorporated the concept and definition of categories into his work. However, pinpointing the exact source from which Rav Hayya drew inspiration proves to be a challenge. To our knowledge, Rav Hayya did not have proficiency in Ancient Greek. [[27]](#footnote-27) Nonetheless, Aristotle's construct of the ten categories was well-known within Islamic and Jewish scholarly circles.

Parts of Aristotle's *Organon* had been translated into Arabic as early as the eighth century by Ibn al-Muqaffaʿ, and again in the ninth century by Abū Nūḥ al-Anbārī. [[28]](#footnote-28) The concepts of the categories extended to Jewish scholarship, as demonstrated by the 10th-century works of Dāwūd ibn Marwān al-Muqqamaṣ (d. 937, Raqqa, Syria) in his work *Twenty Chapters* (*Ishrūn Maḳālat*) [[29]](#footnote-29)and Rav Saadia Gaon in the *Book of Beliefs and Opinions*, [[30]](#footnote-30) However, Rav Hayya's approach to the concept of categories does not directly align with that of his Jewish predecessors, indicating that while he was part of a Jewish scholarly tradition, his specific inspirations in this matter might have come from elsewhere.

A closer examination of Rav Hayya's definition of 'accident' reveals a potential clue to his philosophical influences. He defines an accident as something that "will be in the object and may vanish while the subject will not vanish," a definition that closely mirrors that of Porphyry, a 3rd-century Neo-Platonic philosopher. Porphyry's definition, [[31]](#footnote-31) "Accident is that which is present and absent without the destruction of its subject," suggests a direct philosophical lineage. Porphyry, who integrated Aristotelian concepts into Neo-Platonic thought, had his work, *Isagoge*—an introduction to Aristotle's logic—translated into Latin, Syriac, and Arabic, significantly impacting medieval scholarship across Islamic, Christian, and Jewish traditions. [[32]](#footnote-32)

The acceptance of Porphyry's definition among medieval Islamic scholars[[33]](#footnote-33) and its acknowledgment by Jewish scholars in Baghdad further supports the possibility of Rav Hayya's indirect engagement with Porphyrian thought. This is substantiated by the citation and analysis of Porphyry's definition by Ibn Abī Saʿīd, a 10th-century Jewish Aristotelian philosopher from Iraq. [[34]](#footnote-34) In a discourse concerning Aristotle's writings with his colleague, Yaḥyā ibn ʿAdī, a Christian philosopher based in Baghdad, Ibn Abī Saʿīd quoted the following definition: "... or as that which comes into being and passes away without the passing-away of its substratum".[[35]](#footnote-35) This similarity may indicate a shared intellectual heritage that could have influenced Rav Hayya's work. Thus, while Rav Hayya's direct sources remain uncertain, the broader intellectual milieu of his time, characterized by a synthesis of Aristotelian and Neo-Platonic thought, likely shaped his philosophical perspectives.

An additional notable feature in Rav Hayya's terminology deserves attention. He employs the term 'body' (*jism*), categorizing it within the first category, yet he omits the more commonplace term *'jawhar'* for substance. Furthermore, he emphasizes that dimensions constitute an accident, while bodies fall under the first category, equating to substances, as they serve as 'dimension bearers' (but are not dimensions themselves). He penned: "a sale can be constituted on everything which has length, width, and depth, and cannot be constituted on its length, width, and depth by themselves [as this is part of the *quantity* nor] on its color as this is part of the *quality*".

These very issues engaged the (Aristotelian and Neo-Platonic) philosophers of the 10th century based in Cairo and Baghdad. Some of these discussions have been preserved in a treatise by Yaḥyā ibn ʿAdī, titled 'On Whether Body Is a Substance Or a Quantity'. The introductory phrase reads: "A copy of what Yaḥyā ibn ʿAdī wrote in adjudicating between Ibrāhīm ibn ʿAlī (known as Abū Naṣr ibn ʿAdī) the Secretary and his Opponent, concerning their disagreement about whether body (*jism*) is a substance (*jawhar*) or an accident (*ʿaraḍ*); and [a copy of] what he wrote to Prince Sayf-al-Dawla Abū al-Ḥasan ʿAlī ibn ʿAbd-Allāh ibn Ḥamdān".[[36]](#footnote-36) This treatise was written in response to a dispute over Yaḥyā's previous work concerning bodies, in which he posited that a body is a type of substance. [[37]](#footnote-37)

It appears that Rav Hayya concurred with the notion that a body is a substance, and therefore, he applied the definition of substance to body (*jism*). In his treatise 'On Whether Body Is a Substance Or a Quantity', Yaḥyā also addresses the distinction between dimensions as an accident and the body as a 'dimension bearer'. Yaḥyā says:[[38]](#footnote-38)

“You will find [that] the possessors of length, breadth and depth… cannot be affirmed as existing when length, breadth and depth have been separated from them, even in the imagination, let alone in actual existence. And this is the case of things that are constitutive of the thing they are in, and [are] the parts out of which its essence exists.

The overall impression suggests that Rav Hayya had some familiarity with the Iraqi philosophers of his era, likely within the circles of Yaḥyā ibn ʿAdī or similar, and he integrated their concepts into his judicial work.[[39]](#footnote-39) However, Rav Hayya’s choice to adopt these concepts was not insignificant. Several medieval theologians dismissed the Aristotelian approach and proposed alternate theories. [[40]](#footnote-40)

For instance, the theory of time-atomism was developed by the early Muʿtazilī theologian Ḍirār b. ʿAmr (d. 815), who was active in Baṣra. He rejected Aristotle’s theory of substance and accidents and asserted that there is no bodily substance. Instead, a physical object is a bundle of attributes, and these attributes solely exist within the physical object. The accidents cannot persist for two consecutive moments but are continually re-created by God.[[41]](#footnote-41) The Ashʿarite school[[42]](#footnote-42) adopted the idea of time-atomism in a more sophisticated form, as highlighted by Fakhry:[[43]](#footnote-43)

Perhaps the most characteristic feature of the accidents of Kalām [=theology] is their perishable nature. The Ashʿarite school in general held that accidents were perishable by definition, so to speak; since their persistence in being was unthinkable. Al-Bāqilāni (d. 1013), for instance, who is credited with having refined the atomism of Islam defines the accident as “that which cannot endure … but perishes in the second instant of its coming-to-be."

Fakhry goes on to explain: [[44]](#footnote-44)

What has actually happened, the Mutakalims [=theologians] argue, is that God, who is the true Agent of pigmentation, causes the accident white to cease upon the application of the red pigment and itself does not endure, so that God recreates in the garment a similar accident as long as He wishes. However, were He disposed there would be nothing to prevent Him from creating in it the accident yellow or the accident black.

Rav Hayya refrained from engaging with questions of physics, such as the constitution of the universe, be it comprised of four elements or atoms, or metaphysical queries pertaining to the nature of celestial bodies. His attention was directed entirely towards understanding the broader concept of categories, along with the definition of physical entities and their incidental characteristics. To my understanding, this represents the initial application of the ten categories to the disciplines of economics and law.

Rav Hayya's stance on the economic relevance of non-tangible items reflects a distinctive blend of theological and judicial perspectives. As a jurist, he struggled to locate Jewish precedents pertinent to this topic. Demonstrating remarkable creativity and adaptability, he co-opted the theory of the ten categories, implementing some modifications, and applied it to Jewish law. The outcome was an all-inclusive framework for his legal structure, influence of which permeated Jewish law from his era into the Middle Ages and beyond.

Rav Hayya's ruling was consistently integrated by Jewish jurists into their legal writings, finding application in various cases involving transactions related to the legal right to use property owned by another party. Notably, these jurists adopted the Arabic terminology of the categories but at the same time sought Talmudic sources to substantiate these principles.[[45]](#footnote-45)

Contrary to Rav Hayya's assertion that only tangible items are tradable, such a viewpoint was not universally held among Muslim jurists. [[46]](#footnote-46) However, it is essential to acknowledge that one specific school, the Hanafi school, maintained that only physical objects can be part of commercial transactions. Al-Sarakhsī, a Hanafi jurist who lived two generations subsequent to Rav Hayya, declared that the item being traded ought to be a physical entity capable of possession and preservation. He elucidated as follows:

The reason is that the financial character of the object (*ṣifat al-māliyyat lil-shayʾ*) is carried by the property. The property is an object that can be preserved and stored for times of need. Usufructs (*manāfiʿ*) exist only instant by instant over time. They are accidents (*aʿrād*) that transfer from the sphere of nihility to the sphere of existence and fade immediately. (As a result) they cannot become/form a property...[[47]](#footnote-47)

The explanation of this saying is that usufructs are accidents that exist (or appear) in the physical object (*al-manfaʿah ʿarḍ yaqūm bil-ʿayn*). The physical object is a substance in which the accidents appear (*al-ʿayn jawhar yaqūm bihi al-ʿarḍ*). Everybody knows the difference between these two: usufructs exist only instant by instant over time while the physical object can exist for a long time. There is a big difference between something that exists and something that does not exist.[[48]](#footnote-48)

Sarakhsī adopted the time-atomism theory that the accident “perishes in the second instant of its coming-to-be."[[49]](#footnote-49) As a result, Sarakhsī said that one cannot sell the color or the smell or any intangibles relating to the object without the object itself.[[50]](#footnote-50) Despite these apparent similarities between Sarakhsī’s and Rav Hayya’s theory, it is important to note that on the theological level, Sarakhsī and Rav Hayya differ (in addition to the time gap). Sarakhsī adopted the time-atomism theory, while Rav Hayya adopted the theory of Aristotelian categories. However, as jurists, both Sarakhsī and Rav Hayya agree that intangible items cannot be traded.

## Jewish law’s approach to the testimony of non-Jewish witnesses.

In Talmudic sources, there is a rule concerning the acceptance of non-Jewish witnesses in court. One source asserts that only Jewish men are qualified to provide testimony as witnesses. [[51]](#footnote-51) In contrast, another Talmudic source seems to accept the testimony given by non-Jewish witnesses. [[52]](#footnote-52) An examination of legal practices among medieval Jews in Islamic countries reveals that Jews often attended Muslim courts, offering testimony and accepting that given by non-Jews.[[53]](#footnote-53) Within the judicial works of the period, one can discern efforts to reconcile these two seemingly contradictory viewpoints of the Talmud. This paper is particularly interested in how Jewish scholars within the Judeo-Arabic context incorporated theological concepts to address this issue.

Muslim theologians during the Middle Ages deliberated on the means of determining truth. They developed methods to discern and define what is truthful. Among them, the Muʿtazilī theologians acknowledged the significance of a deep cognitive pursuit of truth, but also emphasized the "tranquility of the heart/soul". Prof. Joseph van Ess traced this concept back to Al-Jāḥiẓ (d. 868/9), an early Muʿtazilī Theologian. Van Ess observes: [[54]](#footnote-54)

"Yet how do we recognize that we have hit upon the truth? The answer was: by feeling that this movement has come to an end, by reaching “quietude of the heart” (sukūn al-qalb), as al-Naẓẓām had argued. As long as you are not sure of something, you are nervous, but when you have come to a clear conclusion you feel relaxed; you are in a state of ἀταραξία, as the Greek expression had it."

Abd al-Jabbār (935–1025), a renowned Iranian Muslim jurist and theologian active in both Iran and Iraq, wrote extensively, with over 70 books to his credit. As a prominent figure of the Muʿtazilate school, he encapsulated its doctrines and principles. He reiterated the aforementioned perspective, proposing two concurrent pathways to truth: the soothing impact of the information on the soul and the consistency of the new information with previously accepted logic. In his magnum opus, Kitāb Al-Mughnī Fī Abwāb Al-Tawḥīd wa Al-ʿAdl, he elaborates: [[55]](#footnote-55)

We have already clarified the way one can discern that he has garnered new knowledge and that his contemplation is accurate. We determine this when: (a) he acknowledges, through his disposition, a sense of soulful tranquility concerning the newfound knowledge, and (b) this knowledge aligns with prior understanding, suggesting that tranquility follows genuine knowledge. In such situations, he is assured of his attainment of true knowledge, confident that his explorations yielded truth without any further inquiry.

Additionally, he notes[[56]](#footnote-56):

A person's tranquility towards the knowledge acquired is not through perception but intuitive reasoning (bi-badīhat al-‘aql) – akin to our understanding of the malevolence of injustice and the nobility of justice… This principle is foundational across all knowledge forms, and its application is imperative.

He underscores that the benchmark for ascertaining the veracity of any knowledge is the unique sense of soulful tranquility it engenders: [[57]](#footnote-57)

The manner in which the correctness of **any sort of knowledge** can be defined is that the knowledge [in question] is the only one which **can be characterized exclusively in terms of tranquility of the soul**.

It is important to note that there existed other approaches among Muslim theologians regarding the use of intuition for obtaining the truth. One such example is from al-Fārābī, the famous Muslim Aristotelian philosopher (d. 951). As Prof. Biesterfeldt put it in short:[[58]](#footnote-58)

"If the mutakallimūn think that they can reach certainty, says al-Fārābī, they are simply mistaken. The criterion for certainty they like to adduce: sukūn al-nafs, is a category which does not go beyond the level of a rhetorical proof. It means the satisfaction of having understood something regardless of the reliability of its contents; the truth, however, is frequently hard to accept and only swallowed with reluctance. Like the entire method, sukūn al-nafs seems to be, at least in the view of an Aristotelian, only the subjective feeling that one is right, but not the objective guarantee that one has discovered the truth. "

We will turn now the Medieval Jewish theologians. Saadia Gaon (d. 942, Baghdad), in his quest to define truth, posits that both the mind and the soul must work in tandem. He articulates: [[59]](#footnote-59)

Truth is that which is inherent in those **minds** that are free of defects,

and is considered sound by the **souls** who follow it.

From this perspective, Rav Saadia Gaon emphasizes that truth isn't solely an intellectual pursuit; it necessitates the soul's involvement. Although he doesn't employ identical phrasing, his perspective may resonate with the Mu‘tazilite approach to truth determination.

An example from Geonic literature illustrates the utilization of the concept of tranquility in the context of determining truth. Rav Shmuel Ben Ḥofni, a Jewish jurist and Mu‘tazilite theologian served as the head of Sura academy in Baghdad (d. 1034), offers insights in his treatise *Laws of Divorce*. He references the Talmudic edict that mandates a husband to divorce his wife if two witnesses confirm her consensual relations with another man. The Talmud also states that a singular, highly credible witness can be deemed equivalent to two witnesses. [[60]](#footnote-60)Building on the Talmudic foundation, Rav Shmuel Ben Ḥofni employs the term "tranquility" to elucidate this notion. He observes:[[61]](#footnote-61)

"Even in the case that there was a testimony (on the wife's adultery) by one witness (only, but one) on whom the husband relied as two witnesses, and/i.e. **he was tranquil** towards his words..."

The choice of the term "tranquility" to express certainty regarding such a grave matter as infidelity is intriguing. This suggests that Rav Shmuel Ben Ḥofni likely borrowed this terminology from Mu‘tazilite theology as mentioned above, which equates the attainment of truth with a sense of tranquility.

Nearly two centuries later, Maimonides (d. 1204) adopted Rav Shmuel’s approach. He wrote (Mishne-Tora, Marriage 24:12):

"When a man sees his wife commit adultery, or he was informed of this by one of his relatives or her relatives - whether male or female - **whom he believes and his mind rests (=סומכת דעתו) upon his words**, he is obligated to divorce her and is forbidden to engage in relations with her, for he relies on their word as true".

Maimonides was deeply immersed in the Judeo-Arabic milieu, but his "Mishne-Tora" was authored in Hebrew. Thus, while the original Arabic terminology isn't explicitly present, clear echoes of Rav Shmuel's phrasing can be discerned. Maimonides translates the Arabic expression in Rav Shmuel’s work, suggesting a husband's reliance and tranquility towards a witness's words, into Hebrew. Rav Shmuel’s phrasing "on whom the husband **relied** as two witnesses, and/i.e. **he was tranquil** towards his words" was translated to Hebrew as: "**whom he believes and his mind rests upon his words".**

The Arabic root "SKN," denoting tranquility, can be translated into Hebrew to imply 'reliance', 'trust', or 'restfulness'. Both Maimonides and Rav Shmuel base their directives on the Talmudic source, emphasizing that a husband's obligation to divorce stems either from two witnesses or one witness whose words inspire such profound trust that the husband finds tranquility in them. Maimonides adapted the concept slightly but, he adopted it in its essentials as regards rhetoric and arguments made before a judge. We will return to his view at the end of this section.

The most striking instance of a Jewish jurist integrating the Mu‘tazilite principle—both in terms of concept and terminology—emerges from a previously unpublished fragment discovered in the Cairo Genizah. This judicial document, dated to the 11th or 12th century, delves into the laws governing witnesses. Within it, the author grapples with an apparent inconsistency found in the Talmud concerning testimonies: on one hand, there's a source that legitimizes the testimonies of non-Jewish witnesses, while on the other, some sources dismiss such testimonies. The author begins by laying out the contradiction: [[62]](#footnote-62)

We say that a non-Jew is not counted among the testifiers, since the Bible draws a connection between Jews and testimony, as it states (Exodus 20:13) "you shall not bear false witness against your neighbor", and (Deuteronomy 19:16–19) "if a man appears against another to testify maliciously and gives a false testimony against him… you shall do to him as he schemed to do to his fellow (lit.: brother)". And the sages said explicitly "a non-Jew is not qualified to testify "…

One may ask how did the Sages state categorically that non-Jews are not qualified to testify, yet they stated: "Any document that is approved by a non-Jewish court, despite the fact that those who signed it are Gentiles, is valid, except for bills of divorce, the manumitting of slaves, and the like"?

To reconcile the apparent contradictions between the two Talmudic rulings, the author introduces a differentiation based on the purpose or function of testimony. He postulates that in certain instances testimony possesses a ceremonial or ritualistic dimension. In such cases, it is imperative for the witness to be Jewish. Conversely, in situations where the testimony's primary goal is the mere elucidation of truth, devoid of any ceremonial undertones, any means of procuring the truth is deemed acceptable. Thus, in these scenarios, testimonies from non-Jews, and other groups typically excluded from ceremonial testimonies, are deemed valid. He articulates:[[63]](#footnote-63)

We will respond and unravel [the meaning of] this statement, in accordance with God's guidance and His clarification of its vagueness.

We say that the Sages did not advocate signing such documents for the sake of testimony, and testimony has no relevance to this. Rather the Sages wrote [opined?] that when knowledge (‘ilm) reached them regarding any monetary matter in a way that **made their souls tranquil** towards it, they ruled in accordance with that.

This is not through the method of testimony, but rather the method of clarification of the issue in any manner.

.

In the Talmud there is no hint regarding tranquility of soul and accepting testimony based upon such concepts. In using the concept of "tranquility of the soul", it seems clear that this author has integrated the Mu‘tazilite approach to obtaining truth, and solved an internal Talmudic contradiction.

This author broadens the application of "tranquility of soul" as a source for obtaining truth in all legal cases that do not have a ceremonial component.

He writes:[[64]](#footnote-64)

For monetary matters require testimony only to prevent deceit, as they stated, "Witnesses exist only because of liars."

Therefore, in cases where it became clear to them that one of the litigants was lying and **the truth became manifest in any manner that** **made their souls tranquil** towards it, they would rule accordingly.

The integration of the Mu‘tazilite theology vis a vis obtaining truth follows a developmental path. First Rav Saadia incorporated these concepts in the theological introduction to his judicial work on testimonies. Following this, Rav Shmuel Ben Hofni introduced this concept to explain the Talmudic ruling that the testimony of one witness can be considered valid even though generally Jewish law requires two witnesses.

Once Geonic scholars adopted this concept, it paved the way for wider usage in judicial decisions. The aforementioned author extends the application of this concept beyond philosophical deliberations and resolving specific Talmudic contradictions. He delves deeper, utilizing the principle to authenticate testimonies from groups previously viewed with skepticism or outright rejection. A notable case he examines involves the testimony of non-Jews. He further asserts that this concept has universal applicability.

According to this, as regards the testimony of women, children and other populations that are generally not accepted for standard testimony, as long as the judges find that the testimony sits well with both logic and intuition it can be accepted.

This concept became deeply integrated into Jewish law. The concept appears in various places in different forms, with the same underlying basis: that one can establish truth without two proper witnesses and it remains binding by Jewish law. For example Rabbi Shlomo ibn Aderet of Barcelona (d. 1310) was asked about the validity of testimony of non-Jews regarding the biblical prohibition of slaughtering a mother cow and its calf on the same day (responsum I,118). He replied that in principle this testimony is invalid. However, after discussion, he quotes the Talmudic phrase mentioned above, and concludes: "If he believes the one witness, then he forbids (to slaughter them on the same day), as if there were two (valid) witnesses. Because it goes by intuition (Ha'amanat ha-lev)".

An interesting additional item for further research is to analyse the way Maimonides integrates this concept into his judicial writings. One notable example of many is his ruling in Hilkhot Sanhedrin. There he writes (Mishne-Tora, Sanhedrin 24, 1–2):

"A judge may adjudicate cases involving monetary law based on factors that he is inclined to regard as true and concerning which he feels strongly in his heart are correct even though he does not have proof of the matters… Nevertheless… most of the courts among the Jewish people agreed… not to disqualify a promissory note on the basis of the testimony of a woman or an unacceptable witness, nor accept their testimony with regard to all other judgments, nor to judge according to the inclinations of one's thoughts without firm knowledge. The rationale for this stringency is to prevent any simple person from saying: "**My heart trusts this person's words and my mind relies on this**.""

It appears that while Maimonides was acquainted with this principle, he was also aware of critiques, such as those presented by Al Fārābī. This theory warrants comprehensive research beyond this paper's purview.

## conclusion

This paper has illuminated the integration of theological concepts into legal practices among medieval Jewish scholars, revealing a rich tapestry of intellectual and cultural interplay. The exploration of theological notions, such as the tranquility of the soul in adjudicating truth and the nuanced acceptance of testimony from non-Jews, underscores the depth of cross-cultural influences on legal thought. Additionally, the examination of the reconciliation of Talmudic contradictions and the incorporation of Islamic philosophical principles into Jewish law, particularly in the realm of commerce with intangible assets.

The profound impact of Islamic philosophy and legal principles on medieval Jewish law, exemplified by the scholarly endeavors of figures such as Rav Hayya Gaon, has been a focal point of this study. By weaving Aristotelian categories into Jewish jurisprudence, these scholars facilitated a form of intellectual symbiosis that enriched Jewish legal frameworks, for example, concerning the trade of intangible items.

Through case studies on the laws of testimony and the commerce of intangibles, this paper has argued for the undeniable influence of Arabic culture on Jewish legal thought. The synthesis of diverse knowledge with Arabic cultural elements by Jewish scholars residing in Islamic countries led to the development of a unique legal perspective. Although the extent of this influence remains a subject of scholarly debate, the evidence presented supports the clear impact of Islamic thought on the evolution of Jewish law.

As we reflect on the intricate interactions between Jewish and Islamic legal systems, it becomes evident that it was influenced by the surrounding intellectual landscape of the Islamic world. This study underscores the importance of recognizing the interconnectedness of these legal traditions, demonstrating how the blending of diverse intellectual streams contributed to the development of a rich, multifaceted legal thought that continues to resonate within Jewish jurisprudential discourse.

1. Having the opportunity to be part of the research group 'Rethinking Premodern Jewish Legal Cultures' and present a draft of this article at the seminar held by the Katz Center for Advanced Judaic Studies at the University of Pennsylvania was an immense privilege. The depth of insight offered by the participants has significantly enriched the content of this article. I am profoundly thankful to my esteemed colleagues of this group, Professors Menahem Ben-Sasson, Guy Darshan, Natalie B. Dohrmann, Talya Fishman, Alyssa M. Gray, Simcha Gross, Chaya T. Halberstam, Louise Hecht, Marc Herman, Tirza Y. Kelman, Evelyne Oliel-Grausz, Micha J. Perry, Daniel Strum, and Yael Wilfand—for their invaluable contributions and support.

   I also express my gratitude to Professors Aviram Ravitzky and Yair Lorberbaum for their friendly review and insightful feedback. My deep appreciation extends to my dear friend Joel Guberman for many years of weekly study, which has profoundly impacted the refinement of this article's prose. Lastly, my thanks to the editors and reviewers, whose constructive and kind comments have further enhanced this work. [↑](#footnote-ref-1)
2. Abraham Geiger, *Was hat Mohammed aus dem Judenthume aufgenommen?* (=What has Mohammed Derived from Judaism?), Baden, 1833; *Judaism and Islam*, Eng. trans. F. M. Young, 1898 ; reprint ed., with a Prolegomenon by Moshe Pearlmann, New York, 1970. [↑](#footnote-ref-2)
3. For a comprehensive review of research conducted from the 19th century through the end of the 20th century on the influence of Jewish law on Islamic law, see: Libson, Gideon. *Jewish and Islamic Law: A Comparative Study of Custom during the Geonic Period*. Cambridge, MA: Harvard Law School, 2003, 2-7; 186, n. 15. [↑](#footnote-ref-3)
4. Wegner, Judith Romney. “Islamic and Talmudic Jurisprudence: The Four Roots of Islamic Law and Their Talmudic Counterparts.” The American Journal of Legal History 26, no. 1 (1982): 25–71. [↑](#footnote-ref-4)
5. See: Ḥ. Z. (J. W.) Hirschberg. Review of Rav Saadia Gaon's Translation of the Torah, Tarbiz, 31 (1962), pp 414-422. (on p.421); G. Libson, "Legal Status of the Jewish Woman in the Gaonic Period: Muslim Influence – Overt and Covert,” in *Developments in Austrian and Israeli Private Law*, ed. H. Hausmaninger et al. (Wien and New York: Springer-Verlag, 1999), 213-43. P. 242; G, Libson, *Jewish and Islamic Law: a comparative study of custom during the Geonic period*. Cambridge, MA: Harvard Law School, 2003, eps. p. 158 [↑](#footnote-ref-5)
6. See: Mordechai A. Friedman, “The Ransom-Divorce: Divorce Proceedings Initiated by the Wife in Medieval Jewish Practice,” Israel Oriental Studies 6 (1976), 288–307; See: Friedman, Divorce upon the Wife’s Demand as Reflected in Manuscripts from the Cairo Geniza.” *Jewish Law Annual* 4 (1981): 103– 126; Krakowski, Eve. Coming of Age in Medieval Egypt: Female Adolescence, Jewish Law, and Ordinary Culture. Princeton: Princeton University Press, 2018, pp. 257-258; Baskin, Judith R. "Chapter 3: The *Taqqanah* of the Moredet in the Middle Ages". In Accounting for the Commandments in Medieval Judaism, (Leiden, The Netherlands: Brill, 2022). [↑](#footnote-ref-6)
7. See G, Libson, *Jewish and Islamic Law: a comparative study of custom during the Geonic period*. Cambridge, MA: Harvard Law School, 2003, p. 111. [↑](#footnote-ref-7)
8. Ibid, note, 000. [↑](#footnote-ref-8)
9. Zinger, Oded. Living with the Law: Gender and Community Among the Jews of Medieval Egypt. Philadelphia: University of Pennsylvania Press, 2023, chapter 3: Compromising Women, pp. 78-109. [↑](#footnote-ref-9)
10. *Lena Salaymeh, The Beginnings of Islamic Law: Late Antique Islamicate Legal Traditions,* Cambridge: Cambridge University Press, 2016, ch,. 6, pp. 163–96 (the chapter was published previously in: Lena Salaymeh, "Every Law Tells a Story: Orthodox Divorce in Jewish and Islamic Legal Histories", *UC Irvine Law Review*, 4 (2014), pp. 19-63. [↑](#footnote-ref-10)
11. Salaymeh, *The Beginnings of Islamic Law*, p. 183 (Orthodox Divorce, p. 48). [↑](#footnote-ref-11)
12. Salaymeh, Lena, "Legal-historical Hybridity – Tracing Islam in its Islamicate Context". In: The *Beginnings of Islamic Law: Late Antique Islamicate Legal Traditions*. Cambridge University Press; 2016:84-104 [↑](#footnote-ref-12)
13. Salaymeh, Lena, "'Comparing' Jewish and Islamic Legal Traditions: Between Disciplinarity and Critical Historical Jurisprudence", *Critical Analysis of Law*, Vol. 2 No. 1 (2015), pp. 153-172.] [↑](#footnote-ref-13)
14. Cohen, Mark R.. *Maimonides and the Merchants: Jewish Law and Society in the Medieval Islamic World*, Philadelphia: University of Pennsylvania Press, 2017. [↑](#footnote-ref-14)
15. Tannous, Jack. "CHAPTER 12: Conversion and the Simple—The More Things Change, the More They Stay the Same". The Making of the Medieval Middle East: Religion, Society, and Simple Believers, Princeton: Princeton University Press, 2019, pp. 363, 395-396. [↑](#footnote-ref-15)
16. Forthcoming. I would like to thank the author for sharing this chapter. [↑](#footnote-ref-16)
17. G.2.12–14; Francis de Zulueta, *The Institutes of Gaius* (Oxford: Clarendon Press, 1946), vol, 1, 67, 69. [↑](#footnote-ref-17)
18. A precedent relating to the sale of intangibles seems to exist in the Talmud Yerushalmi (Bava Batra 13:4). Jewish law as formulated in the Geonic period was based mainly on the Babylonian Talmud. [↑](#footnote-ref-18)
19. For Rav Hayya’s bibliography see: Robert Brody, “Hay (Hayya) Gaon”, in: *Encyclopedia of Jews in the Islamic World*, Executive Editor Norman A. Stillman. [↑](#footnote-ref-19)
20. CUL T-S 10Fa2.4, fol. 1. Original Judeo-Arabic: “ואלפצל אלב' אלקול פי מא יצח עליה עקד אלביע (ומא לא יצח עליה עקד אלביע). פאקול אן אלבאיע יצח מנה עקד אלביע עלי מא אגתמעת פיה ד' אוצאף.." [↑](#footnote-ref-20)
21. Variant b (written on the margin of the manuscript): ‘and cannot.' [↑](#footnote-ref-21)
22. Original Judeo-Arabic: אלוצף אלאול אן יכן (!) אלעקד עלי עין /אן יכון אלשי אלמעקוד עליה אלביע גסמא/ כמא דכרנא ואמא גמיע אלאעראץ' פלן יצח עליהא עקד אלביע [↑](#footnote-ref-22)
23. For research around Talmudic sources on the status of usufructs, see Yitsḥak Brand, *Yesh me-ayin: ʻisḳaʼot bi-nekhasim mufshaṭim ba-mispaṭ ha-Talmudi* “Out of Nothing”: Transactions in Incorporeal Estate in Talmudic Law] (Jerusalem, 2017), 172-190, 204-216; on “property” that the debtor owes, see 313-366 and 394-412 of that work. [↑](#footnote-ref-23)
24. CUL T-S 10Fa2.4, fol. 1. I marked the words that will be in focus in the following discussion in bold. Original Judeo-Arabic: ויגב אן נחד אלגסם ואלערץ' ההנא ונק[ול] אן אלגסם הו מא כאן קאימא בנפסה דא טול וערץ' ועמק ואלערץ' [הו] מא יכון פי אלשי ויפסד מן גיר [פסאד] אלמוצ'ע. פאלביע יצח עלי כל מא כאן טוילא [עריצ'א] עמיקא והו חד אלגסם ולא יצח עלי טולה או ערצ'[ה ועמקה] ודלך מ[ן אלכמיאת] ולא עלי אלואנה דונה ודלך מן אלכיפיא[ת] ולא עלי ש[י מן א]פעאלה כאלקיאם או אלקעוד או אלאנצ'גאע וכדלך גמיע אלמקולאת.. [↑](#footnote-ref-24)
25. Carmela Baffioni, *On Logic: An Arabic Critical Edition and English Translation of Epistles 10–14* (Oxford , 2010), 79. I do not claim that Rav Hayya was influenced directly by this source, but we know that Hayya was familiar with ideas that can be found in the Epistles of the Brethren of Purity (see: S Y. Zvi Stampfer, “Genizah within the Genizah: Muslim Works Incorporated into Judeo-Arabic Manuscripts in the Cairo Genizah,*“* *Intellectual History of the Islamicate World* 8 (2020) p. 287 n. 27. This source presents the concept for the ten categories which appears in Rav Hayya's work in a clear fashion. [↑](#footnote-ref-25)
26. Ibid (*On Logic*), p.81 [↑](#footnote-ref-26)
27. Robert Brody, *The Geonim of Babylonia and the Shaping of Medieval Jewish Culture* (New Haven, 1998), 140 [↑](#footnote-ref-27)
28. See Joseph van Ess, *Theology and Society in the Second and Third Centuries of the Hijra*, trans. John O'Kane, 5 vols. (Leiden, 2016-20), 2:30-31, 530 n. 2. [↑](#footnote-ref-28)
29. See: Dawud al-Muqammis, *Twenty Chapters ('Ishrūn Maqāla)*. edited, translated and annotated by S. Stroumsa, Leiden, The Netherlands: Brill, 2022, p. 25-28. [↑](#footnote-ref-29)
30. *Hanivḥar beʼEmunot ve-Deʿot (Kitāb al-Amānāt wa-l-Iʿtiqādāt)*, edited, translated and annotated by Yosef Kafaḥ (Jerusalem, 1970). For discussion on substance and accidents, see 38, 195-196; for the categories, see 94-111. For an English translation, see *The Book of Beliefs and Opinions*, trans. Samuel Rosenblatt, (New Haven, 1976): 87-131. See also Sefer Yetsirah (Kitab al- Mabadi =Book of creation) ʿim perush ha-Ggaon Saadia bar Yosef Fayumi, makor ve-targum. edited, translated and annotated by Yosef Kafaḥ (Jerusalem, 1972), pp. 43, 46, 53. i, Na'ama Ben-Shachar, Los Angeles 2015, pp. 000 [↑](#footnote-ref-30)
31. Introduction (or Isagoge) to the logical Categories of Aristotle (1853) vol. 2, Chap. V. Of Accident. Alternative translation in: *Porphyry Introduction*, translated with a commentary by Jonathan Barnes, Oxford and New York, 2006, p. 12: "Accidents are items which come and go without the destruction of their subject." [↑](#footnote-ref-31)
32. See: Jonathan Barnes' edition of Porphyry (ibid, n. 000), pp, ix-xxiv; Raphael Jospe.  Jewish Philosophy in the Middle Ages, Boston, 2009, p. 91 (and see also ibid, p. 83). [↑](#footnote-ref-32)
33. Among them was the Muslim philosopher of the 10th century, Abu Nasr al-Fārābī, who brings this definition in his commentary on the *Isagoge* (Jon McGinnis, *Classical Arabic Philosophy: An Anthology of Sources*, Indianapolis, Cambridge, 2007, p. 61): "There are two types of accident. (1) A permanent accident... (2) A separable accident, present sometimes, absent at others, though its subject remains". It was brought also by the authors of *The Epistles of the Brethren of Purity* which we cited above and marked the definition in bold. [↑](#footnote-ref-33)
34. Pines (Shlomo Pines, " A Tenth Century Philosophical Correspondence", Proceedings of the American Academy for Jewish Research , 1955, Vol. 24, pp. 103-136, p. 136) defined Ibn Abī Saʿīd as "the first in date of the long line of Jewish Aristotelians", while Isaac Israeli ben Solomon, the Egyptian Jewish philosopher of the 9th- beginning of the 10th century "adopted certain Peripatetic doctrines… his knowledge of Corpus Aristotelicum appears to have been much less thorough than that of Ibn Abī Saʿīd" (ibid, n. 110). For the differences between the 10th and the 12th centuries Jewish Aristotelian philosophers see: Samuelson, Norbert M. (1997). Medieval Jewish Aristotelianism: An Introduction. In Daniel H. Frank & Oliver Leaman (eds.), *History of Jewish Philosophy*. Routledge. pp. 228—244, p. 185. [↑](#footnote-ref-34)
35. Translation by Pines (ibid, n. 000), p. [↑](#footnote-ref-35)
36. Menn, S., & Wisnovsky, R. (2017). “Yaḥyā ibn ʿAdī and Ibrāhīm ibn ʿAdī: On whether body is a substance or a quantity. Introduction, editio princeps and translation”. Arabic Sciences and Philosophy, 27(1), 1-74. doi:http://dx.doi.org/10.1017/S0957423916000096, p. 34. [↑](#footnote-ref-36)
37. See Menn & Wisnovsky (ibid), p. 4. [↑](#footnote-ref-37)
38. Menn, S., & Wisnovsky, ibid. p.41. For farther discussion see ibid, p.8, n.9. [↑](#footnote-ref-38)
39. For Rav Hayya's acquaint with Islamic sources see: Y.Z. Stampfer, ”Genizah within the Genizah. Muslim Works Incorporated into Judeo - Arabic Manuscripts in the Cairo Genizah”, in : *Intellectual History of the Islamicate World* 8 ( 2020 ),pp. 265-283. [↑](#footnote-ref-39)
40. See Randall Collins, *The Sociology of Philosophies: A Global Theory of Intellectual Change* (Cambridge, MA, 1998), 399-401. [↑](#footnote-ref-40)
41. See van Ess, *Theology and Society*, 3:41-44. On Ḍirār, see J. van Ess, “Ḍirār B. ʿAmr," in *Encyclopaedia of Islam*,eds. Peri Bearman, Thierry Bianquis, Clifford Edmund Bosworth, Emeri van Donzel, and Wolfart P. Heinrichs, 2nd ed. (Leiden, 2012).

    Other theologians claimed that there are no accidents; see for example van Ess, *Theology and Society*: 1:418-420. [↑](#footnote-ref-41)
42. Generally speaking, the majority of Jewish scholars at that time did not align with the Ashʿarite school. See: Sarah Stroumsa, "Saadya and Jewish Kalam," in *The Cambridge Companion to Medieval Jewish Philosophy*, edited by Daniel H. Frank and Oliver Leaman (Cambridge: Cambridge University Press, 2003), p. 125. [↑](#footnote-ref-42)
43. Majid Fakhry, *Islamic Occasionalism: And Its Critique by Averroes and Aquinas* (London, 1958; repr. 2013): 40. See also Richard Arthur, “Time Atomism and Ashʿarite Origins for Cartesian Occasionalism Revisited," in *Asia, Europe, and the Emergence of Modern Science: Knowledge Crossing Boundaries*, ed. Arun Bala (New York, 2012), 73-92. [↑](#footnote-ref-43)
44. Fakhry, *Islamic Occasionalism*, 30. [↑](#footnote-ref-44)
45. This practice is evidenced in the works of several prominent figures, including Rav Isaac Alfasi (d. 1103, Córdoba), in *Responsa of the Geonim*, edited by Eliyahu Harkavi, no. 489; Joseph ibn Migash (d. 1141, Córdoba) in *Shitah Mekubezet*, Tractate Bava Batara 147b; and see also *Sefer ha-ʿItur* by Isaac b. Abba Mari, second treatise, Kinyan, fol. 9b.See also Aviram Ravitsky, *Aristotelian Logic and Talmudic Methodology: The Application of Aristotelian Logic to the Interpretation of the Thirteen Hermeneutic Principles*(Hebrew), Jerusalem: Magnes Press, 2009 [↑](#footnote-ref-45)
46. See Frank Vogel and Samuel Hayes, *Islamic Law and Finance: Religion, Risk, and Return* (Leiden, 1998), 94-5. [↑](#footnote-ref-46)
47. *Kitāb al-mabsūṭ li-Shams al-Dīn al-Sarakhsī*. (Bayrūt, 1993), Book 11, p. 79. [↑](#footnote-ref-47)
48. *Kitāb al-mabsūṭ*, ibid, p. 80. [↑](#footnote-ref-48)
49. See Fakhry, *Islamic Occasionalism*, 40. [↑](#footnote-ref-49)
50. For the influence of theology on Hanafi law, see Hiroyuki Yanagihashi, *A History of the Early Islamic Law of Property: Reconstructing the Legal Development, 7th-9th Centuries* (Leiden, 2004), 36-7. [↑](#footnote-ref-50)
51. TB Yevamot, 47:1 "non-Jew is a disqualified witness". [↑](#footnote-ref-51)
52. TB Gittin 11:1, "Any document that is approved by a non-Jewish court, despite the fact that those who signed it are Gentiles, is valid, except for bills of divorce, manumitting of slaves, and alike". [↑](#footnote-ref-52)
53. See: Simonsohn, Uriel. *A Common Justice: The Legal Allegiances of Christians and Jews Under*

    *Early Islam.* Philadelphia: University of Pennsylvania Press, 2011, pp. 174-213, esp. 197. [↑](#footnote-ref-53)
54. Biesterfeldt, Hinrich. "Al-Jāḥiẓ and Early Muʿtazilī Theology". In *Kleine Schriften by* Josef van *Ess*, part vi: die muʿtazila,  (Leiden, The Netherlands: Brill), p. 1329-1330: [↑](#footnote-ref-54)
55. **Abd al-Jabbar, al-Mughni, p. 70** [↑](#footnote-ref-55)
56. **Al-Mughni, p. 54** [↑](#footnote-ref-56)
57. **Al-Mughni, p. 58** [↑](#footnote-ref-57)
58. Biesterfeldt, Hinrich. "Al-Fārābī and Ibn al-Rēwandī". In *Kleine Schriften by Josef van Ess*, (Leiden, The Netherlands: Brill, 2018), p. **1372**. [↑](#footnote-ref-58)
59. Laws of Testimony. Original Judeo-Arabic: " אלחק הו מא קאם פי **אלעקול** אלסאלמה מן אלאפאת וצח ענד אל **נפוס** אלמדברה בה". [↑](#footnote-ref-59)
60. BT Kiddushin,61:1. [↑](#footnote-ref-60)
61. *Laws of Divorce by Samuel ben Hofni Gaon*, edited by Y, Zvi Stampfer, Jerusalem 2008, p. 135. Original Judeo-Arabic: ואפילו שהד פי דלך שאהד ואחד כאן ענד אלזוג' מותוקא בה כשאהדין מסכונא אלי קולה וטלקהא לא יגו'ז לה מראגעתהא. [↑](#footnote-ref-61)
62. Genizah fragment, T-S Ar.18(2).35. The original JA: "תם נקול אן אלגוי ליס מן אהל אלשהאדה לכון אלתורה (עדקת) [עקדת] אלשהאדה בישראל פי קולהא לא תענה ברעך ואיצ'א ועשיתם לו כאשר זמם לעשות לאחיו וק' אלעלמא פציחא אין עדות לגוי... פאן אעתרץ' מעתרץ' וקאל כיף יקול אלעלמא אין עדות לגוי עלי אלאטלאק וקד קאלו כל השטרות העולים בערכאות שלגוים א'ע'פ' שחותמהן גוים כשרים חוץ מכגיטי נשים ושחרורי עבדים". [↑](#footnote-ref-62)
63. Original JA: "אגבנ'א פי כשף הדא אלקול בחסב מא ארשדנא אלכאלק תע' אליה ואט'הר לנא גאמצ'ה וקלנא לם יקל אלעלמא באמצ'א הדה אלשטרות מן גהה אלעדות ולא ללעדות פי דלך מדכל ולכנא וגדנא אלעלמא ז'ל ידון [ירון?] אנה מתי חצל להם אלעלם בוגה תסכן נפוסהם אליה פי באב מן אבואב אלממון חכמו בה לא מן טריק אלשהאדה בל מן טריק ט'הור דלך אלאמר להם בוגה מא". [↑](#footnote-ref-63)
64. Original JA: "לאן אלממון לא יחתאג פיה אלי אלשהאדה אלא מן אגל מן יכדב כמא קאלו לא אִיבְּרו שַהְדֵי אלַא לשַקַארי פאן צח ענדהם כדב ואחד מן אלכצום וט'הר אלחק עליה בוגה מא ממא תסכן אלנפס אליה חכמו בה ונט'יר דלך". [↑](#footnote-ref-64)