A Halachah in Mishneh Torah

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The division of Mishneh Torah into halachos was necessary to ensure that the reader would be able to master and remember the material; thus it was done in such a way as to maximize comprehension and retention. Unfortunately, Rambam’s division of halachos was not retained in the printed editions for many centuries. Rambam did not number the halachos but merely delineated separate halachos with spaces and dots,¹ but the first printed edition and all subsequent ones used a numbering sequence that did not follow Rambam’s division of the halachos. When Rav Kappach put out his edition of Mishneh Torah based on original manuscripts, he restored the original breakdown of halachos. This breakdown is also retained in the Mechon Mamre internet edition. It finally reached the popular audience with the publication of the Shabse Frankel edition, where the original numbering system is retained but with “colons” inserted to show where the halachos actually begin and end. In their introduction, the editors point out how important their contribution is and that many mistakes have been made in interpretation because of these erroneous divisions,² but they give no examples.

1 Rav Yitzchok Shelot, in the introduction to his edition of Mishneh Torah (p. 19) based on fragments of Mishneh Torah believed to be in Rambam’s own hand and manuscripts of his Peirush HaMishnah, says that there was a סגל הפוך between halachos. Ksav Yad Oxford that is signed by Rambam has spaces between halachos.

2 Nevertheless, my personal canvassing of talmidei chachamim suggests that very few are aware what the colons in the Frankel Rambam indicate. And even at least some academic scholars who are touted to be experts in Rambam seem to be unaware of the entire issue. On a November 14, 2007 post on The Seforim Blog, Dr. Menachem Kellner followed the printed count of the halachos to claim that it is significant that the famous last halachah in Shemittah v’Yovel is the 13th halachah. It is, in fact, the 12th, and he corrects this in a footnote in the present version of the blog after the error was pointed out to him. As far as I can discern,
In order to benefit from Rambam’s pedagogic intent we must study the halachos as he wrote them. Moreover, the changes that were made were not merely a matter of carelessness but apparently the scribes and printers felt that they could improve on the structure that Rambam had designed, and that they were adding clarity, precision, and readability with their changes. Probably they felt the manuscripts in front of them had been written carelessly and by using their own simple logic they were reconstructing the original design. In reality, it was their lack of understanding how Rambam structured a halachah that caused them to feel they could improve the text. In some of the fourteen sefarim changes are made routinely, while in others there are very few. This is probably a function of the scribes who worked on these sefarim, but it is also possible that some subject matter was more prone to misinterpretation. Sefer Abavah has very few errors, with Hilchos Sefer Torah, Mezuzah, and Tefillin having almost none.

There are subtle lessons being taught by Rambam every time he composes a halachah. For us to be able to align ourselves with his way of thinking, we must read each halachah the way he wrote it.

In the following examples, using the text of Mechon Mamre and following their formatting, the bracketed numbers show where the printers began a new halachah, while the true halachos are delineated by separate paragraphs.\(^3\)

From the Beginning

Let us start at the beginning, the first halachos in Mishneh Torah. The scribes were active from the very beginning and edited and obscured the lesson Rambam wished to teach in his opening statement:

Prof. Isadore Twersky makes no mention of the issue of a definition of a halachah in his comprehensive book on Mishneh Torah. A noted academic scholar who is also an exceptional halad mid chacham told me some years ago that he still preferred to use the old printed editions which had the צורת הדף that he was accustomed to.

\(^3\) I retain the punctuation that was added on that site, but this is from the scholars of Mechon Mamre—not from the hand of Rambam so that, too, cannot be fully relied upon by the reader.
Rambam wished us to absorb this first halachah as a single thought—to swallow it in one bite. It is essentially the first of the 13 ikkarim formulated in Peirush HaMishnah and most, although not all, of what constitutes the mitzvah of yidut Hashem (as yet another halachah will be needed to complete the definition). There are not multiple rules here as the scribe suggests, but one integrated concept. Then Rambam added a point not found in the first ikar which is perhaps a summary but more accurately a deduction to help better define and understand how to perform the mitzvah of the previous halachah: "לבך לא מצא מצאה ואכמתו כא." The reality (truth) of G-d is unlike anything known to man and is the only reality. The second halachah makes this point and then proceeds to elaborate upon it. Then Rambam proceeds in the next halachah to give the final element in fulfilling the mitzvah of yidut Hashem.

Narrative

Staying with Sefer Hamada, we note a common phenomenon. Sometimes the printers grouped many halachos under one halachah, as in the first chapter of Hilchos Avodah Zarah:

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ל ברוך הוא, לגדלו ולכבד מי שגדלו וכיבדו, כמו שהמלך רוצה לכבד עבדיו קה
ם לפניו, וזה הוא כיבודו של מלךוהעומדי.

ב

כון שעלה דבר זה על ליבם, התחילו לבנות לכוכבים היכלות, ולהקריב להם
כדי להשיג רצון —קרבנות, ולשבחם ולפארם בדברים, ולהשתחוות למולן
וזה, היה עיקר עבודה זרה הבורא, בדעתם הרעה.

ג

אלא  קאלווכך הם אומרים עובדיה היודעים עיקרה, לא שזה אומרים שאין שם
ירמיהו "(...)הוא שירמיהו אומר "מי לא ייראך מלך הגויים, כי לך יאתה כוכב זה.
ל לבדך; אבל טעותם וכסילותם, שמדמין קכלומר, הכול знаין אתה הוא ה (ח-י,ז
שזה ההבל רצונך הוא

ד

ואחר שארו הימים,
[ב

ל ציווה להם קעמדו בבני אדם נביאי שקר, ואמרו שה
עבדו כוכב פלוני, או כל הכוכבים, והקריבו לו ונסכו לו כך וכך, ובנו  ואמר להם:
כל העם הנשים והקטנים ושאר עם —לו היכל ועשו צורתו כדי לשתחוות לה
ומודיע להם צורה שבדה מליבו, ואומר זו היא צורת הכוכב הפלוני  הארץ.

ה

והתחילו על דרך זו לעשות צורות בהיכלות ותחת האילנות ובראשי ההרים ועל
הגבעות, ומתקבצים ומשתחווים להם; ואומרין לכל העם שזו הצורה מטיבה
והכומרין אומרין להם שבעבודה זו, תרבו  ומריעה, וראוי לעובדה וליראה ממנה.
ך

ותצליחו; ועשו כך וכאז

ו

והתחילו כוזבים אחרים, לעמוד ולומר שהכוכב עצמו או הגלגל עצמו או המלאך
דיבר עימהם ואמר להם, עבדוני بذلك וכך, והודיע להם דרך עבודתו, ועשו כך,
ופשט דבר זה בכל העולם,庵ל lavoro את הצורות בעבודות משונות זו  ואל תעשו כך.

ח

אלא  קאלושם ן והחכמים היו בהן wie הכומרין וכיוצא בהן, מדמין שאי
אבל צור העולמים, לא  הכוכבים והגלגלים שנעשו הצורות האלו בגללן ולדמותן.
יהיה שם מכירו ולא יודעו, אלא יחידים בעולם, כגון חנוך ומתושלח ונוח ושם
ועל דרך זו, היה העולם מתגלגל והולך, עד שנולד עמודו של עולם, הוא  ועבר.
אברהם אבינו עליו השלום

ט

[ג

 וכו נגמל איתן זה, התחיל לשוטט בדעתו והוא קטן, ולחשוב ביום ובלילה
היאך אפשר יהיה זה הגלגל הזה נוהג תמיד, ולא יהיה לו מנהיג; ומי  והיה תמיה:
ולא היה לו לא מלמד ולא מודיע  יסבב אותו, לפי שאי אפשר שיסבב את עצמו.
פשיםדבר, אלא מושקע באור כשדים בין עובדי עבודה זרה הטי

י

וליבו משוטט  ואביו ואימו וכל העם עובדים עבודה זרה, והוא היה עובד עימהן.
ואלומדעתו הנכונה; וידע שיש שם ומבין, עד שהשיג דרך האמת, והבין קו הצדק,
חוץ منه קאלאחד, הוא מנהיג הגלגל, הוא ברא הכול, ואין בכל הנמצא
אברכים צ以後 של였다.
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In the opening of Hilkhos Avodah Zarah, what Rambam considered eighteen halachos are lumped into three by the printers. We can see what their thinking was. The material seems to be a narrative and they prefer to maintain the narrative flow. But Rambam did not dabble in "Torah entertainment" even to make a short introduction just to keep his audience engaged. In the first eight halachos, he is step by step defining the history of avodah zarah, a history that differs from that given by Ramban and with significant halachic and hashkafic consequences. Each halachah is a lesson that he wanted us to contemplate before going to the next. The
last ten halachos detail the process begun by Avraham Avinu to fight avodah zarah, which culminated in Matan Torah. These steps must be carefully digested as well, as they are the model that we are required to follow in our assignment of fighting avodah zarah, as Rambam says, most of the mitzvos were given to uproot avodah zarah. That Rambam is writing halachah is made clear in the first halachah of the second perek:

Even worshipping G-d with the seemingly innocent intentions of Enosh, that he defined in the first perek, is avodah zarah. The tendency to group separate halachos together is not limited to narrative-type material and is the most common diversion from Rambam’s design. In the following case, four halachos are cataloged as one:

Even though the last halachah deals with a separate lav in the taryag, based on a separate pasuk; it is all joined together because superficially the theme is the same. Rambam’s pedagogical method in teaching in an optimal manner for comprehension and retention is suppressed.
Contrast and Concept

One of the most common corruptions is splitting a halachah that displays a full concept into two halachic statements. For example:

קהלת יומים חלשים – פרק ב
א [א] האומר הז בנים, וא שאמר יושב יושב—הרי זה נאמן; ופוטר את אחיו מן
הלכות, ומנ וייבום. [ב] ואמר הז אחים, וא שאמר יושב יושב—איני אחיו לאמור
אש Staten. ולوسائلוポイント ילבנ: שערני זה מתמטן ולאוסרו, ולאחר מותו.

Rambam uses “contrast” to show how two similar cases are ruled on differently and he ends by explaining why. With a brother we expect a motive and with a son we do not. The use of contrast and symmetry runs throughout Rambam’s structuring of halachos in Mishneh Torah.

Here is another simple example:

halachot גנבה – פרק א
ב [א] האשים או האשים שגנבו, ויוכין לשלמים שלחמי כפל ושלחמי אשבת
המשנים. וירשה את איש שיאס הלשון—וריה הכפל שלח הייבום עד ששתנרה
א לא ישת, ובית דינו מיתרין פסוק. [ב] קשון שלגה—פסוק שלחמי, ומשある程度.
דבר נמח ממנת; או איבדו—אינו דואג לשלמה או קור, ואסיפי לאחר שהומנו.

Rambam deals again here in a contrast, and thus child vs. woman is one halachah. By using contrast and defining the parameters in one structure, he is presenting building blocks of הלמדות. His lessons are concepts, not merely statements of facts. The reader is meant to digest a concept based on distinctions.

And here is a clearer example of a halachah as concept:

halachot גירושין – פרק י
ב [א] תלמודיא אשתו, נתקדה והתחלקה לוחר—אף על פי שלשה בсал, טעבוד על
הראשה; ואה חיהו העורש, ובשלו—לוקה, מפורש או הלוח, שבファー: שАОר ו
יוכל בשלו העורש... (זכריה, כ,ז) [ב] כי עיין אחר, ששרד נורשה—וריה
ומוחה לארח לברכה: שאמור דירא, מפורש ומקהלת, והויה לארח אותר (זכור
בד,ז) وخוארית לארח אחר Souls מקדוש, והיו שאמורה אחר התורה. ול

In this halachah, Rambam wishes to completely define the parameters of the law of מחזור גרושת in its entirety. It is the woman’s marriage after the divorce that prohibits her to the first husband, not the fact that she was נבעלה to the second man. It is especially necessary to explain this, since the pasuk speaks of לארח שהומנה that might lead us to believe that it is the נבעלה of the second man that creates the prohibition.

Whereas in Hilchos Shabbos the scribes were pretty loyal to Rambam, they made a change in a halachah defining מחזור.
Since Rambam explains a whole concept within a balachab he must cover an entire range of facts—and explain when היחב and when פטור. In this case he is explaining what the כותב is. In other contiguous balachos he defines the משלשה מחכמה and the כותב ("written text") and what does not qualify. This is the תודמל, the conceptualization of a balachab. The breakup by the scribes is not such a serious offense here, but nevertheless it deprives the reader of Rambam’s subtle indication that we must absorb the היחב and פטור together and formulate in our mind the range that forms an independent concept.

Resolution by Context

At times the erroneous breakup obscures the simple meaning of Rambam’s words. This can emerge when the division disguises the context of a particular statement. Let us look at a famous passage from Hilchos Teshuvah:
כל מי שניחם על המצוות שעשה, ותהה בליבו מה, ואמרהזכייותעל
הרי זה איבד את כולן, ואין מזכירין לו —לא עשיתי אותן אולייהועלתי בעשייתן.
ראה יחזקאל "שנאמר "וצדקת הצדיק לא תצילנו ביום רשעו שם זכות...
אין זה אלא בתוהה על הראשונות(, לג,יב.
ו так בכל שנה ושנה, —מיתתו ותיו, בשעתייעוונות אדם וזככיהם ששוקלין
ביום טוב של ראש השנה: ותיוייעם זכשוקלין עוונות כל אחד ואחד מבאי העולם
tולין לו והבינוני, נחתם לחיים; ומי שנמצא רשע, נחתם למיתה. מי שנמצא צדיק,
אם עשה תשובה, נחתם לחיים; ואם לאו, נחתם למיתה עד יום הכיפורים:

אף על פי שתקיעת שופר בראש השנה גזירת הכתוב, רמז יש בו:
רועורו עורו ישנים משינתכם, והקיצום נרדמים מתרדמתכם; וחפשו במעשיכם וחז
אלו השוכחים את האמת בהבלי הזמן, ושוגים כל שנתם  בתשובה, וזכרו בוראכם.
הביטו لنפשותיכם, והטיבו דרכיכם —בהבל וריק אשר לא יועיל ולא יציל
ומעליכם; ויעזוב כל אחד מכם דרכו הרעה, ומנהטוהנשארש אל נבואה.

ה_paragraph באלפבית ל' ל''ב לק''ד (לפי הicamente של geleter על המילים ומילים נוספים
לפי בטקסט ההלכתי). לפיכך צריך כל אדם שיראה עצמו כל השנה כולה, כאילו חצייו
הרי הכריע עצמו —חטא חטא אחד חייב; וכן כל העולם, חצייו זכאי וחצייו חייב:
—והכריע את כל העולם כולו לכף חובה, וגרם להם השחתה; עשה מצוה אחת
הרי הכריע את עצמו והכריע את כל העולם כולו לכף זכות, וגרם להן תשועה
זה שצידק עצמו הכריע ( י,כהמשלי ם" )זה הוא שנאמר "וצדיק, יסוד עול והצלה.
את כל העולם כולו והצלו.

ומפני עניין זה, נהגו כל בית ישראל להרבות בצדקה ובעשייה טובים ולשוך
והנהגו כולם לקום במצוות, מראש השנה עד יום הכיפורים, יתר מכל ימות השנה.
בזועה בלילה בעשרת ימים אלו, ולהתפלל בבתי כנסיות בדברי תחנונים ודברי כ
עד שיאור היום.

The printers again lump many distinct halachos together here, seeing
them as a narrative. But in so doing they introduce imprecision and the
reader does not know that the word
לפייך
begins a new halachah and goes
back to explain the implications, not of the previous lines that appear to
be part of the same halachah, but rather of all the previous halachos
that have been presented before it.

The commentators, trying to understand the connection, are ham-
pered by their text and thus we find the Maaseh Rokeach commenting.

לפייך צודר כל אדם שרירא ע październ. מילה לפייך אנף מעריצים בול"ש א"ה
על פיתקעות שופר וכ. אפשורי דל"ק" ו'אושׁнструורים בインターフים או האמה הב deber
וגז שותפים ב'in ו'תת民办 או הז אב פייך דל"ק" כי אילו מן המקרא
ועשא.

He assumes the לפייך refers to something in the lengthy "halachah" that it appears in. The Lechem Mishneb is also misled but Mirkeres HaMishneb senses the problem and is willing to look back one halachah to
explain what the halachah connects to, but his reading remains awkward and unconvincing.

The true breakdown of the balachos proves it correct:

Once we realize that Rambam is lining up short balachos in building his structure, we can easily discern that the 'לפיכך' goes back to the start of this structure. Since the editors did not understand the precise halachic presentation Rambam was making—leading up to explaining what a person must view himself as, therefore they misled the readers by their changes. Similar to what we said earlier, they looked at these balachos as a narrative, not a precise halachic presentation.

In Hilchos Shemittah, the proper reading can resolve a מחלוקת in interpreting the Rambam:

Or Sameach connects balachah ב to the perceived separate balachah א to explain that the reason it is prohibited to buy an esrog is because it isמשומר.
But Chazon Ish points out (Sheviis 10:105) that Rambam clearly implies that one may buy פירות שביעית even if they have been watched. With our correct breakup of the halachos, we see that Rambam placed the prohibition of buying the esrog in the same halachah as that of paying the עם הארץ with sheviis money. As Maharik and Radvaz note, the prohibition of esrog is also lest we hand him money of sheviis. By including the payment with lulav that has no קדושת שביעית this problem is overcome. The next halachah does not refer to esrog specifically as that is only the very end of the previous halachah where the problem is giving him money of sheviis. If theעם הארץ is not suspected of selling illegally because the product he is selling is not generally watched then we are easier on him and let him buy what he needs for food—he will probably use it properly since he needs the food.

In the following case, the proper breakup of the halachah definitely resolves the מחלוקת:

The meforshim are troubled by why Rambam concludes that esrog is not subject to תנאי since the rule is that תנאי שבממון קיים. He explains that esrog is not subject to תנאי because it is not ממון and that הירושה as well is labeled by the Torah as an issue of משפט and not ממון. But why is
Lechem Mishneh sees the explanation in Rambam’s words, that when the marriage is not protected with sufficient financial deterrents against its quick dissolution then the conjugal relations are viewed as illegitimate. It is an issue of אסור not ממון. Rav Akiva Eiger, among others, objects to this perspective of categorizing it as אסור, and brings a proof to the contrary. However, Rambam’s having joined it together with the case of-Unה under one halachah shows that the Lechem Mishneh is correct in his interpretation. Rather that listing three separate halachos for the three exceptions, he puts together the two exceptions that are based upon the conjugal nature of marriage.

Concepts and Halachah

In the following example dealing with kidnapping, the editors did not understand the conceptualization, and thus broke in the wrong place:

What Rambam does in the first halachah is to give fundamental rules that the Torah proscribes in the definition of the crime of kidnapping, and he quotes a pasuk to show the source of this definition. The second halachah revolves around a single principle that Rambam has formulated as one concept. The kidnapping must be the humiliating process of depriving a human being of humanity and making him a slave. It does not apply to one who is sleeping who does not know it is happening or to the unborn. It must be an overpowering humiliation of the person himself. We are only aware that this is how Rambam views it by seeing how he has included the two laws under one halachah.

In the definition of gambling we again find Rambam cueing us about how to look upon different forms of this activity:
The printer’s breakup is logical, putting all the gambling under the Rabbinic prohibition of גזל, and then in a separate halachah explaining that with a gentile there is only a lesser prohibition. But Rambam’s order teaches that horseracing is not as bad as dice and he wants to make this point. Apparently as it has elements of skill and training that we value, the halachah of horseracing is joined with that which is a lesser sin of playing dice with a gentile, and in fact the simple reading of Rambam is that there is no prohibition at all on horseracing against gentile horse owners.

The following erroneous breakdown of halachos misled some poskim and the accurate text proves others correct:

The first two printed halachos are in fact one, as Rambam gives a complete description of the concept of צמיתות, both what it is and what it is not. It is not the violation of the 50-year rule of יובל but the negation of the literal term of צמיתות and the literal concept of לעולם.
The next one and a half printed halachos are also one, whereas the printer has chopped off the ending of the balachab. The printers felt that Rambam interjected some mussar here, devoting a balachab to telling us not to sell our houses. But when we realize that the last line is included in this balachab explaining that we have unique laws governing the return of בית ושדה we understand that Rambam is telling us that these Torah laws returning the property to its original owner were meant as protection for those who violate the laws of דרך ארץ or who were forced to sell out of absolute necessity. The prohibitions to sell are not merely issues of practicality but are in fact real laws, and not just mussar. The Shulchan Aruch does not catalog the prohibition of selling. According to Rambam it belongs there and Maaseh Rokeach is wrong in thinking it only an עצה טובה דנראה דאין זה אלא עצה טובה דרכי ...אדם וכו’. תורת כהנים א ימכור לנועם;

Understanding the Lomdus and Determining the Law

In the following case, the Shulchan Aruch would certainly agree with the scribes that the breakup into separate halachos is called for:

The Tur Shulchan Aruch has the first halachah about the נייר in siman 143 under תנאי בגרושין while the halachah of טס של זהב is in siman 124 about the material on which a גט may be written. According to Rambam there is one central principle being expressed here which is consistent with the presentation of the Talmud where the two laws are brought together. The נייר may in fact be given with the condition that the paper be returned, even though one could question whether this is כריתות, it in fact qualifies as he explains via contrast—only when he holds on to the נייר by retaining the paper has the line been crossed. In association with this principle, there is a need to explain that if the husband links another status to the נייר, i.e., that of פרעון כתובה, this does not violate כריתות, even if it is only partial payment which could be understood as still linked with the טס that he has used as the נייר.

The lack of the scribes’ ability to grasp Rambam’s subtle conceptual indications, his expression of Brisker lomdus couched in his structuring of a balachab, caused them to make such mistakes, and their errors helped
disguise from future generations how Brisker lomdus is a constant undercurrent in Mishneh Torah. A major tool in understanding Rambam’s lomdus is the Sefer HaMitzvos. In the following case, a lack of expertise in Sefer HaMitzvos causes the scribal error:

הפלת.Hand 100 – הלכות חובל ומזיק
אלא כל , ולא החובל לבדו .בחברובו בעצמו בין , אסור לאדם לחובל —דרך ניציון, בין איש בין אישה, בין קטן בינג Tested —אפילו —אפילו

The scribes assumed that the lifting of the hand is not part of the essential "lav" and is probably a Rabbinic prohibition or based on והלכת in his "lav" קביעה וקריאת שם although before actual separation הפרשה, there is no exact place where this resides but only an approximate place. The function of the halachah is to define the nature of מעשר הנקבע ולא הופרש. In the first part of the halachah, he contrasts liquids and whole objects mixed together.

When the Printer Seems to Be Right
At times we can easily sympathize with the scribes who broke up a halachah. It is from these cases that the most can be learned.

The following halachah in Hilchos Maasros is a good example:


Indeed, the first part of the halachah seems totally unrelated to the second part. Why did Rambam construct such a halachah? With the knowledge that it is in fact one statement, one concept, let us see what lesson Rambam wants to teach us.

Firstly, he shows that with this קביעה וקריאת שם there is a physical מעשר although before actual separation הפרשה, there is no exact place where this resides but only an approximate place. The function of the halachah is to define the nature of מעשר הנקבע ולא הפורים. In the first part of the halachah, he contrasts liquids and whole objects mixed together.
Although this קראת שם designates the מעשר and removes the שם טבל, the remaining integration of מעשר והוליין מתוכנים in liquids is a prohibited mixture to the owner—there is not total separation of the והוליין. However, if the mixture is in a solid form, they are considered divided and the והוליין may be eaten.

In the second half, he completes his elucidation about that which has been נקבע ולא מופרש, firstly that it is considered full-fledged מעשר to the extent that it can be נפדה, even though it had this integration with the והוליין still in place. Secondly, even though we showed in the first half that the whole fruits of מעשר are separated from the והוליין, here we show that the integration and original state is still partially in place. Thus, after the פדיון there is reintegration to the extent that its שם טבל state is renewed, for otherwise (as Raavad notes) there could be no הפרשה on it for מעשר.

But something else has occurred to this portion with its קבעה—it has retained something of its status as מעשר and thus it can only be used for הפרשה of other מעשר. This is explicit in the Yerushalmi and Raavad, Radvaz, and Maharik refer us to it. The final הווה is that though it remains linked to its שם טבל status because of its continued connection to the physical batch it is a part of, still it can be used for תרומת מעשר for a separate batch.

The entirety of the halachah defines this process of ננקבע ולא הופרש—linked to its batch in some degree, especially in its liquid state, but independent מעשר at the same time. All the commentaries struggle with halachah ה, that they see as an independent concept—hard to explain. Some go so far as to say it speaks of מפשר מפורש ממלוה and others learn from here that even that which is מופרש can have פדיון ממע''ש and be used for מעשר ראשון. Lost by most is the fact that Rambam is explicit that he is only talking about this status of ננקבע. Had the halachah not been broken up, many more meforshim would have tuned in to the fact that Rambam is defining נقضاء linked to its batch in some degree, especially in its liquid state, but independent מעשר at the same time. All the commentaries struggle with halachah ה, that they see as an independent concept—hard to explain. 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A Halachah in Mishneh Torah: 227

פרק ה - אישות כותהל

טו המקדש במלווה —
כגון היה כך:—even if the money was physically still in her possession, it would not be valid, as that money is not his anymore after it was lent to her. The intent was to be מקדש with the debt and this is not tangible at this point and at this point she gets no הנאה by transferring the debt to full ownership, since even before this time she had full use of the money of the debt. We do not recognize the fact that she does not have to pay the debt as tangible value and it is this that the suitor has used for his מעשה קדושין.

יז ההיה לו אצלה מלווה על המשכון —
כגון שהלווה אותה עתה מאתיים זוז, ואמר לה הרי את מקודשת לי בהנאת זמן שארוויח ליך במלווה זו, הרי זו מקודשת —פלונישתהיה בידך כך וכך יום, ואיני תובעה ממך עד זמן שהרי מעתה יש לה הנאה להשתמש במלווה זו עד סוף זמן שקבע; ואסור לעשות פירשו רבים בהנאת מלווה, דברים שאין ראוי לשומען כן, מפני שהיא כריבית.

However, if one couples this transfer of the value of the הלווה with a physical transfer to the woman of the associated משלך, then this constitutes a valid מעשה קדושין. She received something tangible that she can enjoy at the moment of קדושין. The מעשה קדושין, however, is with the הלווה via the giving of the משלך, not with the המשלך.

Rambam’s understanding of הנאה הוא משלך is unique and he is critical of those who have taught otherwise. He requires that there be a physical transfer to the woman of the הלווה at the time of the מעשה קדושין. Consistent with what he has said so far he requires a transfer of something tangible and the receipt of הנאה at the time of מעשה קדושין. The מעשה קדושין is not with the הלווה but the הנאה she gets from the loan. Since there was a physical transfer to her of the asset—the actual money of the loan—at the time of מעשה קדושין, this constitutes a valid מעשה קדושין. At the moment of הנאה she gains the tangible benefit of the use of the money; this is the הנאה של הלווה.
Rav Yehudah HaNasi argues that the קדושין is valid. Most Rishonim feel that the קדושין is done with the פרוטה. They learn the is that the קדושין can’t be used for מolah המלוה, but the קדושין is valid since she knows it is with the פרוטה that the קדושין is being made.

But following Rambam’s logic and knowing the proper breakdown of the balachab, we know that he is saying that the קדושין is done jointly with the מלוה ופרוטה. Were the קדושין done with the פרוטה then it would be totally unrelated to the balachab’s closing law of חוב של אישה, and indeed the scribes felt they were completely unrelated and thus they constructed a new balachab out of קדושין מטלמה שלשתן. Again, most readers would agree with their division. But, in fact, one principle is being stated throughout the balachab, that the transfer to the אישה of the value of the חוב can be considered a tangible transfer of an asset by concretizing the transfer. On the one hand, the physical transfer of the פרוטה, unrelated to the מלוה, can be joined with it to qualify the entire transfer as tangible. On the other hand, the transfer of a חוב owed to another person to the woman is tangible when done via מטלמה שלשתן קדושין. The woman legally has acquired a new asset that she had no access to before. There is a kind of parallel and contrast here so commonly found in a balachab in Mishneh Torah. In the first case, the physical element of giving a פרוטה attaches the intangible debt to it to constitute a קדושין, and in the latter case, the intangible debt is considered the transfer of a concrete asset because of a process that makes the woman an owner of this debt at the moment of קדושין מעשה. This balachab was built upon those that precede it. The first part is based on and extends upon וחזר את המשכון and the second half explains that it is with her own מלוה מקדש fails the קדושין מעשה test.

This lesson from the Rambam is subtle and profound—he conveys it by the way he divides the balachab.
At the End

We have ended with a complex case and, perhaps for some, a not totally convincing or clear explanation. Yet, we must acknowledge that the same form of thinking that was behind the structuring of these halachos was behind the tens of thousands of halachos whose structure seems obvious to us if we pay attention. Rambam organized his sefer and every halachah within it based on fundamental conceptual principles. We must absorb his individual “lessons” the way he taught them.

The language of conceptualization and abstraction changes over time. Ramban will explain a Talmudic principle and resolve a contradiction with an abstract idea, and the modern lamdan will attempt to translate his intent into the modern idiom—perhaps abstracting further, often in the language of Brisk, and at best using the terms of practical thought that are well understood in modern times. Rambam in Mishneh Torah does not very often make a conceptual statement but rather expresses the conceptual underpinnings by the way he builds and organizes a perek\(^\text{10}\) and by the way he structures a halachah. After more than 800 years, we are only beginning to scratch the surface of the sefer that Rambam said would continue to teach the Torah to Israel into eternity.\(^{11}\)  

\[^{10}\text{See “Mishneh Torah – Science and Art,” Hakirah 9, pg 199ff.}\]

\[^{11}\text{See his letter to R. Yosef b. Yehudah regarding his dispute with the Roshei Yeshiva, pg. 302 in the Shelot edition of Ig\’ar HaRambam.}\]